

No. 14424

**CANADA
and
NETHERLANDS**

**Air Transport Agreement (with annex). Signed at Ottawa
on 17 June 1974**

Authentic texts: English, French and Dutch.

*Registered by the International Civil Aviation Organization on 14 November
1975.*

**CANADA
et
PAYS-BAS**

**Accord relatif aux transports aériens (avec annexe). Signé à
Ottawa le 17 juin 1974**

Textes authentiques : anglais, français et néerlandais.

*Enregistré par l'Organisation de l'aviation civile internationale le 14 novem-
bre 1975.*

AIR TRANSPORT AGREEMENT¹ BETWEEN THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS

The Government of Canada and the Government of the Kingdom of the Netherlands, hereinafter referred to as the Contracting Parties,

Being Parties to the Convention on International Civil Aviation opened for signature at Chicago on the 7th day of December 1944,²

Desiring to conclude an Agreement on air transport between and beyond their respective territories,

Have agreed as follows:

Article I. For the purpose of this Agreement, unless otherwise stated:

(a) "Aeronautical authorities" means, in the case of Canada, the Minister of Transport and the Canadian Transport Commission and, in the case of the Kingdom of the Netherlands, for the Netherlands the Minister of Transport and Public Works and for the Netherlands Antilles, the Minister of Communications, or in all three cases, any other authority or person empowered to perform the functions now exercised by the said authorities.

(b) "Air Service" means any scheduled service performed by aircraft on the routes specified in the Route Schedule annexed to this Agreement for the transport of passengers, cargo and mail separately or in combination;

(c) "Convention" means the Convention on International Civil Aviation opened for signature at Chicago on the 7th day of December 1944;

(d) "Designated Airline" means an airline which has been designated and authorized in accordance with Articles III and IV of this Agreement;

(e) "Territory", "Airline" and "Stop for non-traffic purposes" have the meanings respectively assigned to them in Articles 2 and 96 of the Convention.

Article II. 1. Each Contracting Party grants to the other Contracting Party the following rights for the designated airline or airlines:

(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 named on the routes specified in the Route Schedule for the purpose of taking up and discharging international traffic in passengers, cargo and mail, separately or in combination.

2. Nothing in paragraph 1 of this Article shall be deemed to confer on the airlines of one Contracting Party the privilege of taking up, in the territory of the other Contracting Party, passengers, cargo or mail carried for remuneration or hire and destined for another point in the territory of that other Contracting Party.

¹ Applied provisionally from 17 June 1974, the date of signature, and came into force definitively on 15 July 1975, the date laid down in an exchange of diplomatic notes, stating that the formalities required by the national legislation of each Contracting Party had been accomplished, in accordance with article XXI (1) and (2).

² United Nations, *Treaty Series*, vol. 15, p. 295. For the texts of the Protocols amending this Convention, see vol. 320, pp. 209 and 217; vol. 418, p. 161; vol. 514, p. 209; vol. 740, p. 21; vol. 893, p. 117, and vol. 958, p. 217.

Article III. Each Contracting Party shall have the right to designate, by diplomatic note, an airline to operate air services on the routes between Canada and the Netherlands as specified in the Route Schedule, drawn up in application of this Agreement and annexed hereto, and an airline to operate air services on the routes between Canada and the Netherlands Antilles, as specified in that Route Schedule, and to substitute, in either case, another airline for the one previously designated.

Article IV. 1. Following receipt of a notice of designation or of substitution pursuant to Article III, the aeronautical authorities of the other Contracting Party shall, subject to the provisions of Article V, grant with a minimum of delay to an airline so designated or substituted the appropriate authorizations to operate the air services for which the airline has been designated.

2. Upon receipt of such authorizations the airline may begin at any time to operate the air services, partly or in whole, provided that the tariffs established in accordance with the provisions of Article XII of this Agreement are in force in respect of such services.

Article V. 1. The aeronautical authorities of each Contracting Party shall have the right to withhold the authorizations referred to in Article IV with respect to an airline designated or an airline substituted for a designated airline by the other Contracting Party, to revoke such authorizations or impose on them conditions, temporarily or permanently:

- (a) in the event of failure by such airline to qualify before the aeronautical authorities of that Contracting Party under the laws and regulations normally applied by these authorities in conformity with the Convention;
- (b) in the event of failure by such airline to comply with the laws and regulations of that Contracting Party;
- (c) in the event that they are not satisfied that substantial ownership and effective control of the airline are vested in the Contracting Party designating the airline or its nationals; and
- (d) in case the airline otherwise fails to operate in accordance with the conditions prescribed under this Agreement.

2. Unless immediate action is essential to prevent infringement of the laws and regulations referred to above, the rights enumerated in paragraph 1 of this Article shall be exercised only after consultations with the other Contracting Party. Unless otherwise agreed by the Contracting Parties, such consultations shall begin within a period of sixty (60) days from the date the other Contracting Party receives the request.

Article VI. 1. The laws, regulations and procedures 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 shall be complied with by a designated airline of the other Contracting Party upon entrance into, departure from and while within the said territory.

2. The laws and regulations of a Contracting Party respecting entry, clearance, immigration, passports, customs and quarantine shall be complied with by or on behalf of crews, passengers, cargo and mail upon entrance into, departure from and while within the territory of such a Contracting Party.

3. Passengers in transit across the territory of either Contracting Party shall be subject to no more than a simplified control. Baggage and cargo in direct transit shall be exempt from customs duties and other similar taxes.

Article VII. 1. Certificates of airworthiness, certificates of competency and licences 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 operating the air services on the routes specified in the Route Schedule, provided that such certificates or licences were issued or rendered valid pursuant to and in conformity with the standards established under the Convention. Each Contracting Party reserves the right, however, to refuse to recognize, for the purpose of flights above its own territory, certificates of competency and licences granted to its own nationals by the other Contracting Party.

2. If the privileges or conditions of the licences or certificates referred to in paragraph 1 above, issued by the aeronautical authorities of one Contracting Party to any person or designated airline operating the air services on the routes specified in the Annex, should permit a difference from the standards established under the Convention, and which difference has been filed with the International Civil Aviation Organization, the aeronautical authorities of the other Contracting Party may request consultations with the aeronautical authorities of that Contracting Party with a view to satisfying themselves that the practice in question is acceptable to them. Failure to reach a satisfactory agreement in matters regarding flight safety will constitute grounds for the application of Article V: in other cases Article XVII applies.

Article VIII. 1. The charges imposed in the territory of either Contracting Party for the use of airports and other aviation facilities on the aircraft of a designated airline of the other Contracting Party shall not be higher than those imposed on aircraft of a national airline engaged in similar international air services.

2. Neither of the Contracting Parties shall give a preference to its own or any other airline over an airline of the other Contracting Party in the application of its customs, immigration, quarantine and similar regulations or in the use of airports, airways and air traffic services and associated facilities under its control.

Article IX. 1. There shall be fair and equal opportunity for the airlines of both Contracting Parties to operate the air services between their respective territories on the routes specified in the Route Schedule annexed to the Agreement.

2. In operating the air services, the airlines of each Contracting Party shall take into account the interests of the airlines of the other Contracting Party so as not to affect unduly the services which the latter provides on the whole or part of the same route.

3. The air services provided by the designated airlines of the Contracting Parties shall bear a close relationship to the requirement of the public for transportation on the specified routes and shall have as their primary objective the provision, at a reasonable load factor, of capacity adequate to carry the current and reasonably anticipated requirements for the carriage of passengers, cargo and mail between the territory of the Party which has designated the airline and the countries of ultimate destination of the traffic.

4. Provision for the carriage of passengers, cargo and mail both taken up and discharged 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) traffic requirements of the area through which the airline passes after taking account of other transport services established by airlines of the States comprising the area; and
- (c) the requirements of through airline operation.

5. Before inauguration of the air services on the routes specified in the Route Schedule annexed to this Agreement, the Contracting Parties shall agree to the practical application of the principles contained in the previous paragraphs of this Article regarding the operation of these air services by the designated airlines.

Article X. The aeronautical authorities of both Contracting Parties shall exchange at regular intervals and in a format agreed upon between these authorities, statements that include all information required to determine the amount of traffic carried on the routes specified in the Route Schedule and the origins and destinations of such traffic.

Article XI. 1. Each Contracting Party shall on a basis of reciprocity exempt the designated airline or airlines of the other Contracting Party to the fullest extent possible under its national law from all import restrictions, customs duties, excise taxes, inspection fees and other national duties and charges on aircraft fuel, lubricating oils, consumable technical supplies, spare parts including engines, regular aircraft equipment, stores and other items intended for use or used solely in connection with the operation or servicing of aircraft of the designated airline or airlines of such other Contracting Party operating the air services, as well as printed publicity material distributed without charge by that designated airline or airlines.

2. The immunities granted by this Article shall apply to the items referred to in paragraph 1 of this Article:

- (a) introduced into the territory of one Contracting Party by or on behalf of the designated airline or airlines of the other Contracting Party;
- (b) retained on board aircraft of the designated airline or airlines of one Contracting Party upon arriving in or leaving the territory of the other Contracting Party;
- (c) taken on board aircraft of the designated airline or airlines of one Contracting Party in the territory of the other Contracting Party and intended for use in operating the air services;

whether or not such items are used or consumed wholly within the territory of the Contracting Party granting the immunity, provided such items are not alienated in the territory of the said Contracting Party.

Article XII. 1. The tariffs on any air service shall be established at reasonable and non-discriminatory 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, where it is deemed suitable, the tariffs of other airlines for any part of the specified route. These tariffs shall be fixed in accordance with the following provisions of this Article.

2. The tariffs referred to in paragraph 1 of this Article shall be agreed upon between the designated airlines of the Contracting Parties; such agreement shall be reached, whenever possible, through the traffic conference procedures of the International Air Transport Association. Any reduction or exemption authorized by a Contracting Party shall be available to, and may be equally applied by, the designated airline of the other Contracting Party.

3. The tariffs so agreed shall be submitted to the aeronautical authorities of the Contracting Parties at least forty-five (45) days before the proposed date of their introduction: in special cases, a shorter period may be accepted by the aeronautical authorities. If within thirty (30) days from the date of submission the aeronautical authorities of one Contracting Party have not notified the aeronautical authorities of the other Contracting Party that they are dissatisfied with the tariff submitted to them, such tariff shall be considered to be acceptable and shall come into effect on the expiration of the forty-five (45) day period mentioned above. In the event that a shorter period for the submission of a tariff is accepted by the aeronautical authorities, they may also agree that the period for giving notice of dissatisfaction be less than thirty (30) days.

4. If a tariff cannot be established in accordance with the provisions of paragraph 2 above, or, if during the period applicable in accordance with paragraph 3 above, a notice of dissatisfaction has been given, the aeronautical authorities of the Contracting Parties shall endeavour to determine the tariff by agreement between themselves.

5. If the aeronautical authorities cannot agree on any tariff submitted to them under paragraph 3 of this Article or on the determination of any tariff under paragraph 4, the dispute shall be settled in accordance with the provisions of Article XVII of the present Agreement.

6. (a) No tariff shall come into force if the aeronautical authorities of either Contracting Party are dissatisfied with it except under the provisions of paragraph 3 of Article XVII of the present Agreement.

(b) When tariffs have been established in accordance with the provisions of this Article, those tariffs shall remain in force until new tariffs have been established in accordance with the provisions of this Article.

Article XIII. Each Contracting Party grants to the airline or airlines of the other Contracting Party the right of free transfer of funds obtained by each in the normal course of its operations. Such transfers shall be made on the basis of prevailing foreign exchange market rates for current payments and shall be subject only to the respective foreign currency regulations applicable to all countries in like circumstances, for the purpose of safeguarding the external financial position and balance of payments. The transfer of funds shall not be subject to any charges except those normally collected by banks for such operations.

Article XIV. Income or profits derived by an airline, which is resident for purposes of income taxation in the territory of one Contracting Party, from the operation by it of an aircraft in international traffic shall be exempt from any income tax and all other taxes on profits imposed by the government of the other Contracting Party.

Article XV. In a spirit of close co-operation, the aeronautical authorities of the Contracting Parties shall consult each other from time to time with a view to ensuring the implementation of, and satisfactory compliance with, the provisions of this Agreement and its Annex.

Article XVI. 1. If either of the Contracting Parties considers it desirable to modify any provisions of the present Agreement, or its Annex, it may request consultations with the other Contracting Party. Such consultations, which may be between the respective aeronautical authorities and which may be through discussion

or by correspondence, shall begin within a period of sixty (60) days from the date of the request.

2. Any modifications of the present Agreement, or its Annex decided upon during the consultations referred to in paragraph 1 above, shall be agreed upon in an exchange of diplomatic notes between the Contracting Parties.

3. Any modifications of the Agreement shall take effect on the date on which the Contracting Parties have informed each other in writing that the formalities constitutionally required therefor in their respective countries have been complied with.

4. Any modifications of the Annex shall take effect on the date of the exchange of diplomatic notes referred to in paragraph 2.

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

2. If the Contracting Parties fail to reach a settlement by negotiation, they may agree to refer the dispute for decision to some person or body, or either Contracting Party may submit the dispute for decision to a Tribunal of three arbitrators, one to be nominated by each Contracting Party and the third to be appointed by the two arbitrators. Each of the Contracting Parties shall nominate an arbitrator within a period of sixty (60) days from the date of receipt by either Contracting Party from the other of a notice through diplomatic channels requesting arbitration of the dispute and the third arbitrator shall be appointed within a further period of sixty (60) days. If either of the Contracting Parties fails to nominate an arbitrator within the period specified, or if the third arbitrator is not appointed within the period specified, the President of the Council of the International Civil Aviation Organization may be requested by either Contracting Party to appoint an arbitrator or arbitrators as the case requires. In all cases, the third arbitrator shall be a national of a third State, shall act as President of the Tribunal and shall determine the place where arbitration will be held.

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

4. The expenses of the Tribunal will be shared equally between the Contracting Parties.

Article XVIII. Either Contracting Party may at any time give notice in writing through diplomatic channels to the other Contracting Party of its decision to terminate this Agreement: such notice shall be communicated simultaneously to the International Civil Aviation Organization. The Agreement shall terminate one (1) year 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 acknowledgement of receipt by the other Contracting Party, the notice shall be deemed to have been received fourteen (14) days after the receipt of the notice by the International Civil Aviation Organization.

Article XIX. The present Agreement and any amendment thereto shall be registered with the International Civil Aviation Organization.

Article XX. If a general multilateral air convention comes into force in respect of both Contracting Parties, the provisions of such convention shall prevail. Consultations in accordance with Article XVI of this Agreement may be held with a

view to determining the extent to which the present Agreement is affected by the provisions of the multilateral convention.

Article XXI. 1. The Agreement shall enter into force on a date to be laid down in an exchange of diplomatic notes, which shall state that the formalities required by the national legislation of each Contracting Party have been accomplished.

2. Notwithstanding the provision of the preceding paragraph this Agreement shall be applied provisionally as from the date of signature.

3. As regards the Kingdom of the Netherlands, this Agreement shall apply to the Kingdom in Europe and the Netherlands Antilles.

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

DONE in two copies at Ottawa this 17th day of June 1974, in the English, French and Dutch languages, each version being equally authentic.

EN FOI DE QUOI, les soussignés, dûment autorisés à cet effet par leurs Gouvernements respectifs, ont signé l'Accord.

FAIT en deux exemplaires à Ottawa, ce 17^e jour de juin 1974, en anglais, en français et en hollandais, chaque version faisant également foi.

TEN BLIJKE WAARVAN de ondergetekenden, daartoe behoorlijk gemachtigd door hun onderscheiden Regeringen, deze Overeenkomst hebben ondertekend.

GEDAAN te Ottawa, de 17^e juni 1974, in twee exemplaren, in de Engelse, de Franse en de Nederlandse taal, zijnde de drie teksten gelijkelijk authentiek.

[Signed — Signé]

MITCHELL SHARP

For the Government of Canada
Pour le Gouvernement du Canada
Voor de Regering van Canada

For the Government of the Kingdom of the Netherlands:

Pour le Gouvernement du Royaume des Pays-Bas :

Voor de Regering van het Koninkrijk der Nederlanden:

MAX VAN DER STOEL

[Signed — Signé]

A N N E X
ROUTE SCHEDULE

I A Netherlands

Routes to be operated by the airline designated by the Government of the Kingdom of the Netherlands:

- 1) The Netherlands - Montreal - New York (N.Y.)* - Houston - Mexico City and vice versa.

It is understood that the designated airline shall not enjoy stopover and fifth freedom rights at Montreal to or from points beyond.

- 2) The Netherlands - Montreal and/or Toronto and vice versa.

B Canada

Routes to be operated by the airline designated by the Government of Canada:

- 1) Canada - Amsterdam - points beyond to be named by Canada in Europe, Africa north of the Sahara, Near and Middle East, Asia and beyond, and beyond to Canada and vice versa.

It is understood that the designated airline shall not enjoy stopover and fifth freedom rights at Amsterdam to and from points in Spain, Iran, Indonesia, China, the Philippines, Australia and New Zealand.

NOTE 1: Points on all routes may be omitted on any or all flights at the option of the designated airlines.

NOTE 2: It is understood that air services on the Netherlands route I A 2) and stopover and fifth freedom rights at Amsterdam to and from points beyond on the Canadian route I B 1) may only be exercised during the validity of a commercial arrangement between the designated airlines of both Contracting Parties, approved by the aeronautical authorities of the Contracting Parties.

NOTE 3: Intra airline connections at Amsterdam and Montreal are authorized provided that the passenger remains in transit and that the scheduled time between the connecting flights does not exceed six hours.

II A Netherlands Antilles

Routes to be operated by the airline designated by the Government of the Netherlands Antilles:

The Netherlands Antilles - two points in the Continental U.S.A. to be named by the Netherlands Antilles or one point in the Continental U.S.A. to be named by the Netherlands Antilles and one point in the Caribbean to be agreed - a point in Canada to be named by the Netherlands Antilles and vice versa.

The exercise of fifth freedom and stopover traffic rights between intermediate points and the point in Canada shall be subject to prior agreement between the aeronautical authorities of Canada and the Netherlands Antilles.

B Canada

Routes to be operated by the airline designated by the Government of Canada:

Canada - two points in the Caribbean (excluding San Juan, Puerto Rico) to be named by Canada - a point in the Netherlands Antilles to be named by Canada - points beyond to be agreed and vice versa.

The exercise of fifth freedom and stopover traffic rights between the point in the Netherlands Antilles and points beyond shall be subject to prior agreement between the aeronautical authorities of the Netherlands Antilles and Canada.

* For all-cargo services only.

NOTE 1: Points on all routes may be omitted on any or all flights at the option of the designated airlines.

NOTE 2: The date for the establishment of an air service between Canada and the Netherlands Antilles shall be subject to an agreement reached between their aeronautical authorities following consultation between the designated airlines.

The inauguration of such a service will be considered by the above noted authorities when the scheduled origin and destination traffic between the Netherlands Antilles and Canada is considered sufficient to justify the establishment of such a service by both designated airlines.
