

No. 16211

**BRAZIL
and
NETHERLANDS**

Air Transport Agreement (with annex and protocol of signature). Signed at Brasília on 6 July 1976

Authentic texts: Portuguese, Dutch and English.

Registered by Brazil on 19 January 1978.

**BRÉSIL
et
PAYS-BAS**

Accord relatif aux transports aériens (avec annexe et protocole de signature). Signé à Brasília le 6 juillet 1976

Textes authentiques : portugais, néerlandais et anglais.

Enregistré par le Brésil le 19 janvier 1978.

AIR TRANSPORT AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL AND THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS

The Government of the Federative Republic of Brazil and the Government of the Kingdom of the Netherlands,

Having decided to conclude an agreement on regular air transport between the two countries, have appointed their duly authorized representatives for this purpose, who have agreed on the following provisions:

Article 1. The Contracting Parties reciprocally grant each other the rights specified in the present Agreement and the Annex thereto, drawn up in application of said Agreement, in order that the international air services specified herein, which will be referred to hereafter as “agreed services”, may be established.

Article 2. 1. Any of the agreed services may be inaugurated immediately or at a later date, at the option of the Contracting Party to which the rights have been granted, but not before:

- a) the Contracting Party to which the rights have been granted shall have designated an airline of its nationality for the specified route or routes;
- b) the Contracting Party granting the rights shall have issued the necessary operating permission to the designated airline, in compliance with the provisions set forth in paragraph 2 of this article and in article 6.

2. The airline designated by one of the Contracting Parties may be called upon to prove to the aeronautical authorities of the other Contracting Party that it is able to satisfy the requirements prescribed by the laws and regulations normally applied by such authorities to the operation of international airlines.

3. The Contracting Parties reserve the right to substitute the originally designated airline by other national airlines, giving advance notice to the other Contracting Party. All the provisions of the present Agreement and its Annex shall apply to the newly designated airline.

Article 3. 1. In order to avoid discriminatory practices and to assure equal treatment, it is agreed that:

I. The charges and fees that either of the Contracting Parties imposes or allows to be imposed on the airline designated by the other Contracting Party for the use of airports and other facilities shall not be higher than the charges and fees paid by its national aircraft engaged in similar international services for the use of such airports and facilities.

II. Fuels, lubricating oils, regular equipment, aircraft stores and spare parts brought into the territory of one Contracting Party or placed on board the aircraft of the other Contracting Party in said territory, whether directly by an airline designated by the latter Contracting Party, or on the account of said airline for the sole use of its own aircraft in the agreed services, shall enjoy the same treatment

¹ Applied provisionally from 6 July 1976, the date of signature, and came into force definitively on 30 November 1977, the date of the last of the notifications by which the Parties informed each other via diplomatic channels of the completion of their respective constitutional procedures, in accordance with article 15.

granted to the national airlines engaged in international transportation, with respect to customs duties, inspection fees and/or other national duties and charges.

III. Aircraft of one of the Contracting Parties used in the operation of the agreed services, and fuels, lubricating oils, regular equipment and spare parts for the upkeep and repair of the aircraft, as well as aircraft stores, including food, beverages and tobacco, retained on board, shall be exempt from customs duties, inspection fees and similar duties or fees in the territory of the other Contracting Party, even though used or consumed in flights over such territory.

2. The goods mentioned in the above paragraph and enjoying the exemption established therein may not be unloaded from the aircraft within the territory of the other Contracting Party without the consent of its customs authorities, and when not used by the airlines themselves shall be subject to the control of such authorities.

3. Passengers, luggage and merchandise in transit through the territory of one Contracting Party and remaining in the airport area reserved for them shall be subject, except in respect of security measures for the safeguarding of international civil aviation, only to the control established for that area. Luggage and merchandise in direct transit shall be exempt from customs duties, fees and charges.

Article 4. Certificates of airworthiness, certificates of competency and licenses issued or validated by the aeronautical authorities of either of the Contracting Parties and still in effect shall be recognized as valid by the other Contracting Party for the purpose of operating the agreed services. The Contracting Parties reserve the right, however, of refusing to recognize certificates of competency and licenses granted to their own nationals by authorities of the other Contracting Party or by another State for purposes of flight into and over their own territory.

Article 5. 1. The laws and regulations of one Contracting Party pertaining to the entry into its territory, layover and departure therefrom of aircraft employed in international air navigation, or pertaining to the operation and navigation of such aircraft within its territory shall be applied to the aircraft of the airline designated by the other Contracting Party.

2. The laws and regulations of one Contracting Party pertaining to the admission to, stay in or departure from its territory, of passengers, aircraft crew or cargo, and concerning entry, clearance, immigration, passports, customs and quarantine, shall be applied to passengers, crew and cargo of aircraft of the airline designated by the other Contracting Party, while in the territory of the first Contracting Party.

Article 6. 1. Each Contracting Party reserves the right to withhold or revoke the operating permission of an airline designated by the other Contracting Party when it has not yet proven to its satisfaction that substantial ownership and effective control of said airline are in the hands of nationals of the other Contracting Party.

2. The airline designated may be fined by the authorities of the other Contracting Party under the terms of its legal operating permission or have its operating permission totally or partially suspended for a period from one to three months:

- a) in cases of non-compliance with laws and regulations specified in article 5 of this Agreement, and other governmental norms established for the functioning of the designated airlines;
- b) when the aircraft flight crews employed in the agreed services are not nationals of one or the other of the Contracting Parties, except in cases of training of flight personnel by instructors duly authorized by the responsible agencies of the Con-

tracting Party designating the airline and during the training period, or if special permission is granted.

3. In cases of recurrence of the violations referred to in the above paragraph 2, the permission may be revoked.

4. The revocation of the operating permission referred to in paragraphs 1 and 3 of this article shall only be effected after consultation with the other Contracting Party. The consultation should be initiated within sixty (60) days from the date of the respective notification.

Article 7. The aeronautical authorities of the two Contracting Parties shall maintain close contact to guarantee close co-operation on all questions dealt with in the present Agreement, in order that they may be satisfactorily carried out.

Article 8. 1. If either of the Contracting Parties considers it desirable to modify any of the terms of the Annex to this Agreement it may request a consultation between the aeronautical authorities of both Parties, such consultation to be initiated within sixty (60) days from the date of the respective notification.

2. The results of the consultation shall become effective after confirmation by exchange of notes through diplomatic channels.

Article 9. 1. Disputes between the Contracting Parties concerning the interpretation or application of the present Agreement and its Annex which cannot be settled by means of negotiation or direct consultation shall be submitted to arbitration, in accordance with the procedures set forth in article 85 of the Convention on International Civil Aviation concluded at Chicago in 1944,¹ as to the composition and functioning of the respective tribunal. The expenses of the arbitral tribunal shall be shared equally by the Contracting Parties.

2. The Contracting Parties shall engage their best efforts in the carrying out of the arbitral decision.

Article 10. Whenever a multilateral air convention accepted by both Contracting Parties becomes effective, the present Agreement shall be modified so that its provisions shall comply with those of the new convention.

Article 11. The present Agreement and its Annex, as well as any modification thereof, shall be registered with the International Civil Aviation Organization.

Article 12. Either of the Contracting Parties may, at any time, notify the other Contracting Party of its intention to terminate the present Agreement, making a simultaneous communication of this purpose to the International Civil Aviation Organization. The termination of the present Agreement shall become effective twelve (12) months after receipt of the notice by the other Contracting Party, unless it is withdrawn by mutual consent of the Parties before expiration of said period. If receipt of the notice is not acknowledged by the Contracting Party to which it is addressed, such notice shall be deemed to have been received fourteen (14) days after its receipt by the International Civil Aviation Organization.

Article 13. The present Agreement supersedes all permissions, privileges and concessions in respect of the subject matter of this Agreement and which are in

¹ 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.

existence on the date that it becomes effective and which have been granted for any reason by one of the Contracting Parties to the airline of the other Contracting Party.

Article 14. For the purpose of the present Agreement and its Annex:

a) The term “aeronautical authority” means, in the case of the Federative Republic of Brazil, the Minister of Aeronautics and, in the case of the Kingdom of the Netherlands, the Minister of Transport, Water Control and Public Works or, in both cases, any person or agency that is legally authorized to perform the functions which they now exercise;

b) The term “agreed services” means scheduled air services for the transport of passengers, cargo and mail on the specified routes herein;

c) The term “designated airline” refers to any airline the Contracting Parties may have selected to operate the agreed services and regarding which written communication has been made by the aeronautical authorities of the other Contracting Party, according to article 2, paragraph 1, item *b*, of the present Agreement;

d) The term “tariff” means the price to be paid for the carriage of passengers and cargo and the conditions under which this price applies, including prices and conditions for agency and other related services but excluding remuneration and conditions for the carriage of mail;

e) The expression “territory” shall have the same meaning as that given to it by article 2 of the Convention on International Civil Aviation, concluded at Chicago in 1944, it being understood that, as regards the Kingdom of the Netherlands, the present Agreement shall apply to the Kingdom in Europe only;

f) The definitions of “airline”, “air service”, “international air service” and “stop for non-commercial purposes” are the same as those contained in article 96 of the above-mentioned Convention on International Civil Aviation.

Article 15. This Agreement shall be provisionally applied from the date of its signature within the administrative powers of the aeronautical authorities of each Contracting Party, and it shall enter into force through notification via diplomatic channels after the accomplishment of constitutional procedures of each Contracting Party, from the date of the last one of these notifications.

DONE in Brasília, on [6 July 1976] in two originals, in the Portuguese, Netherlands and English languages, all being equally authentic. In the case of any inconsistency, the text in the English language shall prevail.

For the Government
of the Federative Republic
of Brazil:

For the Government
of the Kingdom
of the Netherlands:

ANNEX TO THE AIR TRANSPORT AGREEMENT

Section I. The Contracting Parties grant each other the right to operate, through the intermediary of their respective designated airlines and in accordance with the conditions of this Annex, the agreed services on the Routes and landing points specified in the Route Schedules that form part of this Annex.

Section II. 1. Under the conditions provided in the present Agreement and this Annex, each Contracting Party grants to the airline designated by the other Contracting Party and for the purpose of operating the agreed services on the specified routes the following rights:

- a) the right of embarkation and disembarkation of passengers, cargo and mail whose point of origin or destination is in the territory of the other Contracting Party;
- b) the right of embarkation and disembarkation of passengers, cargo and mail in international traffic, carried to and from landing points in third countries, included in the Route Schedules.

2. Each Contracting Party authorizes the overflight of its territory by the airline designated by the other Contracting Party, with or without technical landings at stops included in the Route Schedules.

3. The exercise of the rights mentioned above is subject to the conditions set forth in section IV below.

Section III. The aeronautical authorities of the Contracting Parties shall consult each other at the request of either one, in order to determine whether the principles enunciated in section IV are being observed by the designated airlines, and particularly to avoid the diverting of an unjust portion of traffic from one of the said airlines.

Section IV. 1. The agreed services shall have as their fundamental purpose the supply of a capacity adequate to the traffic demand.

2. The exploitation of the agreed services, principally the operation of routes or sections of routes common to both designated airlines of the Contracting Parties, shall take into account the interests of the other designated airline in order that the services performed by each of them shall not be unduly affected. Once the principles of reciprocity are ensured, a just and equitable treatment shall be granted to the designated airlines of the two Contracting Parties in order that they may operate the air services on the routes specified in the Schedules attached on equal conditions.

3. The right of an airline designated by one of the Contracting Parties to embark and disembark at the specified points of the routes, international traffic proceeding to or from countries other than those of the Contracting Parties, shall be exercised in such a way that the available capacity shall be related to:

- a) the traffic need between the country of origin and those of destination;
- b) the requirements of an economical operation of the agreed services;
- c) the existing traffic demand in the regions covered by the services, with due respect to the interest of local and regional services.

Section V. The aeronautical authorities of either of the Contracting Parties shall, at the request of the aeronautical authorities of the other Contracting Party, periodically or at any time, supply the statistics that may be reasonably requested, for verification as to how the capacity provided by the airline designated by the other Contracting Party is being used for the agreed services. These statistics should contain all the elements necessary to determine the volume of traffic, as well as its points of origin and destination on-line.

Section VI. 1. The tariffs to be charged by the designated airline of one Contracting Party in payment for transportation of passengers and cargo proceeding to or from the territory of the other Contracting Party shall be set at reasonable levels, due consideration being given to all relevant factors, including the operating cost, characteristics of the service, reasonable profit and the tariffs charged by other airlines on the same or similar routes, observing as far as possible the mechanism adopted by the International Air Transport Association (IATA).

2. The tariffs thus established shall be submitted to the approval of the aeronautical authorities of the other Contracting Party at least forty-five (45) days before the date on which

they should become effective; in special cases, this period may be shortened, if said authorities should so agree.

3. If, for any reason, a particular tariff cannot be determined according to the foregoing provisions, or if during the first fifteen (15) days of the period either of the aeronautical authorities notifies the other of its disapproval of any tariff that has been submitted to it, the aeronautical authorities of the Contracting Parties shall undertake to determine such tariff by consultation.

4. The tariffs established according to the provisions of this section shall remain in effect until new tariffs are established in accordance with these same provisions.

5. The tariffs charged by the designated airline of one of the Contracting Parties, when serving sectors in common between the territories of both Parties or sectors included on routes common to both, between the territory of one Contracting Party and third countries, shall not be lower than those charged by the airline of the other Party for the performance of identical services.

6. The airline designated by one Contracting Party may not, itself or through any intermediary, directly or indirectly, grant discounts, abatements, or any reductions of tariffs in effect, except those provided for in the resolutions approved by both Contracting Parties.

Section VII. The time-tables (schedules) shall indicate the type, model and configuration of the aircraft employed as well as the frequency of services and landing points and shall be submitted by the designated airline of each Contracting Party to the aeronautical authorities of the other Contracting Party at least forty-five (45) days before the date on which they are due to become effective. Such time-tables shall be approved within the above-mentioned period, unless they involve alteration of landing points or capacity, in deviation of what is specified in this Annex.

Section VIII. 1. The following alteration of routes shall not be dependent upon advance notice between the Contracting Parties, the respective communication from one aeronautical authority to the other being sufficient:

- a) inclusion or suppression of landing points in the territory of the Contracting Party which designated the airline;
- b) omission of landing points in the territory of third countries.

2. The alteration of agreed routes by inclusion of a landing-point not provided for in the Route Schedule, outside the territory of the Contracting Party which designates the airline shall be subject to previous agreement between the aeronautical authorities of both Parties.

ROUTE SCHEDULE

1. ROUTE OF BRAZIL

<i>Stops within Brazil</i>	<i>Intermediate stops (1) (2)</i>	<i>Stops within the Netherlands</i>	<i>Stops beyond (1) (2)</i>
Points in Brazil	(One point in West Africa or one point in Europe) (One point in Europe or one point in North Africa)	Amsterdam	(Three points beyond in Europe) (3)

(1) When filing its time-table the designated carrier can at its option omit stops in third countries.

(2) The points will be established through notification of the Brazilian Government to the Netherlands Government when the Brazilian authorities designate a Brazilian airline to operate the agreed services.

(3) The Brazilian Government will indicate one of the three points that can be served before or after the related points when it makes the notification mentioned in note (2).

2. ROUTE OF THE NETHERLANDS

<i>Stops within the Netherlands</i>	<i>Intermediate stops (1)</i>	<i>Stops within Brazil</i>	<i>Stops beyond (1)</i>
Points in the Netherlands	Zurich Lisbon or Monrovia	Rio de Janeiro and/or São Paulo	Montevideo (2) Buenos Aires Santiago

- (1) When filing its time-table the designated carrier can at its option omit stops in third countries.
 (2) Montevideo can be served before or after Buenos Aires.

PROTOCOL OF SIGNATURES

On the occasion of the signing of the Air Agreement between the Government of the Federative Republic of Brazil and the Government of the Kingdom of the Netherlands the Contracting Parties agreed on the following:

1. The airline designated by Brazil is authorized to operate two frequencies per week with B-707-320 or DC-8/63 or similar type of aircraft, with a maximum of 156 usable seats, in Dutch territory. The normal passenger configuration may be used for traffic of passengers embarking or disembarking in the other stations mentioned in the Route Schedule.

2. The airline designated by the Netherlands is authorized to operate two frequencies per week with DC-8/63 or similar type of aircraft, with a maximum of 156 usable seats in the Brazilian territory. The normal passenger configuration may be used for traffic of passengers embarking or disembarking in the other stations mentioned in the Route Schedule.

3. The employees, and their dependents, of the airlines designated by the Contracting Parties, when travelling on service for the airline, may embark or disembark at the points specified in the Route Schedule.

4. The airlines designated by Brazil and the Netherlands, where it concerns foreign crew members, employed in the agreed services, as stated in the last line of article 6, paragraph 2, alinea [item] *b* of the Air Transport Agreement, will submit respectively to the Aeronautical Authorities of the other Contracting Party a complete list indicating the name, nationality, the function as crew member, the type and licence number and the Authority who granted same. Unless when stated to the contrary, these crew members may exercise their functions in the agreed services.

DONE in Brasília, on July 6, 1976.

For the Government
of the Federative Republic
of Brazil:

ANTONIO F. AZEREDO DA SILVEIRA

For the Government
of the Kingdom
of the Netherlands:

LEOPOLD QUARLES VAN UFFORD