

No. 21084

**UNITED STATES OF AMERICA
and
POLAND**

Air Transport Agreement (with schedule and exchange of notes). Signed at Warsaw on 19 July 1972

Exchange of notes constituting an agreement amending and extending the above-mentioned Agreement. Warsaw, 26 August 1976

Exchange of notes constituting an agreement modifying the above-mentioned Agreement of 19 July 1972, as amended and extended. Warsaw, 13 and 16 December 1977

Exchange of notes constituting an agreement amending the above-mentioned Agreement of 19 July 1972, as amended and extended. Warsaw, 19 June and 11 August 1978

Exchanges of notes constituting an agreement amending the above-mentioned Agreement of 19 July 1972, as amended and extended. Warsaw, 29 December 1978, 15 and 30 January 1979

Authentic texts: English and Polish.

Registered by the United States of America on 22 June 1982.

AIR TRANSPORT AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE POLISH PEOPLE'S REPUBLIC

The Government of the United States of America and the Government of the Polish People's Republic,

Recognizing the increasing importance of international air travel between the two countries and desiring to conclude an agreement which will assure its continued development in the common welfare, and

Being parties to the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December 1944,²

Have agreed as follows:

Article 1. For the purpose of the present Agreement:

A. "Agreement" shall mean this Agreement, the schedule attached thereto, and any amendments thereto.

B. "The Convention" shall mean the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December 1944 and includes any annex adopted under article 90 of that Convention and any amendment of the annexes or Convention under articles 90 and 94 thereof so far as those annexes and amendments have been adopted by both Contracting Parties.

C. "Aeronautical authorities" shall mean, in the case of the United States of America, the Federal Aviation Administration with respect to the technical permission, safety standards, and requirements referred to in articles 3 and 6 (B) respectively, otherwise the Civil Aeronautics Board, and in the case of the Polish People's Republic, the Ministry of Transport, or, in both cases, any person or agency authorized to perform the functions exercised at present by those authorities.

D. "Designated airline" shall mean an airline that one Contracting Party has notified the other Contracting Party to be an airline which will operate a specific route or routes listed in the schedule to this Agreement. Such notification shall be communicated in writing through diplomatic channels.

E. "Territory" has the meaning assigned to it in article 2 of the Convention and the terms "air service", "international air service", "airline" and "stop for non-traffic purposes" have the meanings respectively assigned to them in article 96 of the Convention.

Article 2. Each Contracting Party grants to the other Contracting Party rights for the conduct of air services by the designated airline or airlines, as follows:

- (1) To fly across the territory of the other Contracting Party without landing;
- (2) To land in the territory of the other Contracting Party for non-traffic purposes; and
- (3) To make stops at the points in the territory of the other Contracting Party named on each of the routes specified in the appropriate paragraph of the schedule of this Agreement for the purpose of taking on and discharging international traffic in passengers, cargo, and mail, separately or in combination.

¹ Applied provisionally from 19 July 1972, the date of signature, and came into force definitively on 8 December 1972, the date of written notification from the Government of Poland to the Government of the United States of America that it had been approved, in accordance with article 16.

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; vol. 958, p. 217; vol. 1008, p. 213, and vol. 1175, p. 297.

Article 3. Air service on a route specified in the schedule to this Agreement may be inaugurated by an airline or airlines of one Contracting Party at any time after that Contracting Party has designated such airline or airlines for that route and the other Contracting Party has granted the appropriate operating and technical permission. Such other Contracting Party shall, subject to articles 4 and 6, grant this permission without undue procedural delay, provided that the designated airline or airlines may be required to qualify before the competent aeronautical authorities of that Contracting Party, under the laws and regulations normally applied by those authorities, before being permitted to engage in the operations contemplated in this Agreement.

Article 4. A. Each Contracting Party reserves the right to withhold, suspend, or revoke the operating permission referred to in article 3 of this Agreement with respect to an airline designated by the other Contracting Party, or to impose conditions on such permission, in the event that:

- (1) Such airline fails to qualify under the laws and regulations normally applied by the aeronautical authorities of that Contracting Party;
- (2) Such airline fails to comply with the laws and regulations referred to in article 5 of this Agreement; or
- (3) That Contracting Party 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 that Contracting Party.

B. Unless immediate action is essential to prevent infringement of the laws and regulations referred to in article 5 of this Agreement, the right to suspend or revoke such permission shall be exercised only after consultation with the other Contracting Party.

Article 5. 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 airline or airlines designated by the other Contracting Party and shall be complied with by such aircraft upon entrance into or departure from and while within the territory of the first Contracting Party.

B. The laws and regulations of one Contracting Party relating to the admission to or departure from its territory of passengers, crew, cargo or mail of aircraft, including regulations relating to entry, clearance, immigration, passports, customs, and quarantine, shall be complied with by or on behalf of such passengers, crew, cargo or mail of the airlines of the other Contracting Party upon entrance into or departure from and while within the territory of the first Contracting Party.

Article 6. A. Certificates of airworthiness, certificates of competency, and licenses 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 routes and services provided for in this Agreement, provided that the requirements under which such certificates or licenses were issued or rendered valid are equal to or above the minimum standards which may be established pursuant to 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 licenses granted to its own nationals by the other Contracting Party.

B. The competent aeronautical authorities of each Contracting Party may request consultations concerning the safety standards and requirements relating to aeronautical facilities, airmen, aircraft, and the operation of the designated airlines which are maintained and administered by the other Contracting Party. If, following such consultations, the competent aeronautical authorities of either Contracting Party find that the other Contracting Party does not effectively maintain and administer safety standards and

requirements in these areas that are equal to or above the minimum standards which may be established pursuant to the Convention, they will notify the other Contracting Party of such findings and the steps considered necessary to bring the safety standards and requirements of the other Contracting Party to standards at least equal to the minimum standards which may be established pursuant to said Convention, and the other Contracting Party will take appropriate corrective action. Each Contracting Party reserves the right to withhold, suspend or revoke the technical permission referred to in article 3 of this Agreement with respect to an airline designated by the other Contracting Party, or to impose conditions on such permission, in the event the other Contracting Party does not take such appropriate action within a reasonable time.

Article 7. Each Contracting Party may impose or permit to be imposed just and reasonable charges for the use of public airports and other facilities under its control, provided that such charges shall not be higher than the charges imposed for the use of such airports and facilities by its national aircraft engaged in similar international services.

Article 8. A. Each Contracting Party shall exempt the designated airline or airlines of the other Contracting Party on the basis of reciprocity and to the fullest extent possible under its national law from import restrictions, customs duties, excise taxes, inspection fees, and other national duties and charges on fuel, lubricants, consumable technical supplies, spare parts including engines, regular equipment, ground equipment, stores (including food, beverages and tobacco), and other items intended for use solely in connection with the operation or servicing of aircraft of the airlines of such other Contracting Party engaged in international air service. The exemptions provided under this paragraph shall apply to items:

- (1) Introduced into the territory of one Contracting Party by or on behalf of the designated airlines of the other Contracting Party;
- (2) Retained on aircraft of the designated airlines of one Contracting Party upon arriving in or leaving the territory of the other Contracting Party; or
- (3) Taken on board aircraft of the designated airlines of one Contracting Party in the territory of the other and intended for use in international air service;

whether or not such items are used or consumed wholly within the territory of the Contracting Party granting the exemption.

B. If the national laws or regulations of either Contracting Party so require, materials referred to in paragraph A may be required to be kept under customs supervision or control of said Contracting Party.

C. The exemptions provided for by this article shall also be available in situations where the designated airline or airlines of one Contracting Party have entered into arrangements with another airline or airlines for the loan or transfer in the territory of the other Contracting Party of the items specified in paragraph A, provided such other airline or airlines similarly enjoy such exemptions from such other Contracting Party.

D. The regular airborne equipment, as well as the materials and supplies retained on board the aircraft operated by a designated airline of either Contracting Party may be unloaded in the territory of the other Contracting Party only with the approval of the customs authorities of such territory. In such case, they may be placed under the supervision of the said authorities up to such time as they are reexported or otherwise disposed of with the consent of the same authorities.

Article 9. A. There shall be a fair and equal opportunity for the airlines of each Contracting Party to operate on any route covered by this Agreement.

B. In the operation by the airlines of either Contracting Party of the air services described in this Agreement, 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.

C. The air services made available to the public by the airlines operating under this Agreement shall bear a close relationship to the requirements of the public for such services.

D. Services provided by a designated airline under this Agreement 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 countries 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 Agreement 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 to:

- (1) Traffic requirements between the country of origin and the countries of ultimate destination of the traffic;
- (2) The requirements of through airline operations; and,
- (3) The traffic requirements of the area through which the airline passes, after taking account of local and regional services.

E. Without prejudice to the right of each Contracting Party to impose such uniform conditions on the use of airports and airport facilities as are consistent with article 15 of the Convention, neither Contracting Party shall unilaterally restrict the airline or airlines of the other Contracting Party with respect to capacity, frequency, scheduling or type of aircraft employed in connection with services over any of the routes specified in the schedule to this Agreement. In the event that one of the Contracting Parties believes that the operations conducted by an airline of the other Contracting Party have been inconsistent with the standards and principles set forth in this article, it may request consultations pursuant to article 12 of this Agreement for the purpose of reviewing the operations in question to determine whether they are in conformity with said standards and principles.

Article 10. A. All rates to be charged by an airline of one Contracting Party for carriage to or from the territory of the other Contracting Party shall be established 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. Such rates shall be subject to the approval of the aeronautical authorities of the Contracting Parties, who shall act in accordance with their obligations under this Agreement, within the limits of their legal competence.

B. Any rate proposed to be charged by an airline of either Contracting Party for carriage to or from the territory of the other Contracting Party shall, if so required, be filed by such airline with the aeronautical authorities of the other Contracting Party at least thirty (30) days before the proposed date of introduction unless the Contracting Party with whom the filing is to be made permits filing on shorter notice. The aeronautical authorities of each Contracting Party shall use their best efforts to insure that the rates charged and collected conform to the rates filed with either Contracting Party, and that no airline rebates any portion of such rates by any means, directly or indirectly, including the payment of excessive sales commissions to agents.

C. It is recognized by both Contracting Parties that, during any period for which either Contracting Party has approved the traffic conference procedures of the International Air Transport Association, or other association of international air carriers, any rate agreements concluded through these procedures and involving an airline or airlines of that Contracting Party will be subject to the approval of the aeronautical authorities of that Contracting Party.

D. If the aeronautical authorities of a Contracting Party, on receipt of the notification referred to in paragraph B above, are dissatisfied with the rate proposed, the other Contracting Party shall be so informed at least fifteen (15) days prior to the date that

such rate would otherwise become effective, and the Contracting Parties shall endeavor to reach agreement on the appropriate rate.

E. If the aeronautical authorities of a Contracting Party, upon review of an existing rate charged for carriage to or from the territory of that Party by an airline or airlines of the other Contracting Party, are dissatisfied with that rate, the other Contracting Party shall be so informed and the Contracting Parties shall endeavor to reach agreement on the appropriate rate.

F. In the event that an agreement is reached pursuant to the provisions of paragraph D or E, each Contracting Party will exercise its best efforts to put such rate into effect.

G. If:

- (1) Under the circumstances set forth in paragraph D, no agreement can be reached prior to the date that such rate would otherwise become effective; or
- (2) Under the circumstances set forth in paragraph E, no agreement can be reached prior to the expiration of sixty (60) days from the date of notification,

then the aeronautical authorities of the Contracting Party raising the objection to the rate may take such steps as may be considered necessary to prevent the inauguration or the continuation of the service in question at the rate complained of; provided, however, that the aeronautical authorities of the Contracting Party raising the objection shall not require the charging of a rate higher than the lowest rate charged by its own airline or airlines for comparable service between the same points.

H. When in any case under paragraph D and E the Contracting Parties cannot agree within a reasonable time upon the appropriate rate after consultation initiated by either of them, the terms of article 13 of this Agreement shall apply. In rendering its decision or award, the arbitral tribunal shall be guided by the principles laid down in this article.

I. Any rate specified in terms of the national currency of one of the Contracting Parties shall be established in an amount which reflects the effective exchange rate (including all exchange fees or other charges) at which the airlines of both Parties can convert and remit the revenues from their transport operations into the national currency of the other Party.

Article 11. A. Each designated airline shall have the right to establish and maintain representatives in the territory of the other Contracting Party for management, promotional, informational, and operational activities.

B. Each designated airline shall have the right to engage in the sale of air transportation in the territory of the other Contracting Party directly and, in its discretion, through its agents. Such airline shall have the right to sell such transportation, and any person shall be free to purchase such transportation, in the currency of that territory or in freely convertible currencies of other countries.

C. Each designated airline shall have the right to convert and remit to its country local revenues in excess of sums locally disbursed. Conversion and remittance shall be permitted promptly and without restrictions at the prevailing rate of exchange in effect for the sale of transportation at the time such revenues are presented for conversion and remittance and shall be exempted from taxation on the basis of reciprocity and to the fullest extent permitted by national law. If a Contracting Party does not have a convertible currency and requires the submission of applications for conversion and remittance, the designated airline or airlines of the other Contracting Party shall be permitted to file such applications as often as weekly free of burdensome or discriminatory documentary requirements.

Article 12. Either Contracting Party may at any time request consultations on the interpretation, application or amendment of this Agreement. Such consultations shall

begin within a period of sixty (60) days from the date the other Contracting Party receives the request.

Article 13. A. Any dispute with respect to matters covered by this Agreement not satisfactorily adjusted through consultation shall, upon request of either Contracting Party, be submitted to arbitration in accordance with the procedures set forth herein.

B. Arbitration shall be by a tribunal of three arbitrators constituted as follows:

- (1) One arbitrator shall be named by each Contracting Party within sixty (60) days of the date of delivery by either Contracting Party to the other of a request for arbitration. Within thirty (30) days after such period of sixty (60) days, the two arbitrators so designated shall by agreement designate a third arbitrator, who shall not be a national of either Contracting Party.
- (2) If either Contracting Party fails to name an arbitrator, or if the third arbitrator is not agreed upon in accordance with paragraph (1), either Contracting Party may request the President of the Council of the International Civil Aviation Organization to designate the necessary arbitrator or arbitrators.

C. Each Contracting Party shall use its best efforts consistent with its national law to put into effect any decision or award of the arbitral tribunal.

D. The expenses of the arbitral tribunal, including the fees and expenses of the arbitrators, shall be shared equally by the Contracting Parties.

Article 14. This Agreement and all amendments thereto shall be registered with the International Civil Aviation Organization.

Article 15. Either Contracting Party may at any time notify the other of its intention to terminate this Agreement. Such notice shall be sent simultaneously to the International Civil Aviation Organization. This Agreement shall terminate one year from the last day of the month in which the notice of termination is received by the other Contracting Party, unless withdrawn before the end of this period by agreement between the Contracting Parties.

Article 16. This Agreement will enter into force provisionally on the day it is signed and will enter into force definitively upon the date of written notification from the Government of the Polish People's Republic to the Government of the United States of America that the Agreement has been approved by the Council of Ministers of the Polish People's Republic. The exercise of rights accorded by this Agreement shall be subject to the supplementary understandings contained in the exchange of notes attached to this Agreement.

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

DONE in duplicate at Warsaw, in the English and Polish languages, both texts being equally authentic, this 19th day of July, 1972.

For the Government of the United States of America:
[Signed — Signé]¹

For the Government of the Polish People's Republic:
[Signed — Signé]²

¹ Signed by Walter J. Stoessel, Jr. — Signé par Walter J. Stoessel.

² Signed by Mieczysław Zajfryd — Signé par Mieczysław Zajfryd.

SCHEDULE

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

1. From the United States via points in Iceland, Ireland, the United Kingdom, Belgium, the Netherlands, the Federal Republic of Germany, Norway, Denmark, and Sweden to Warsaw and beyond to points in Finland and the Union of Soviet Socialist Republics and beyond.

B. An airline or airlines designated by the Government of the Polish People's Republic shall be entitled to operate air services on each of the specified routes, in both directions, and to make scheduled landings in the United States at the points specified in this paragraph:

1. From Poland via points in Denmark, the Netherlands, Belgium, France* or the United Kingdom,* and Montreal** to New York.

C. Points on any of the specified routes may at the option of the designated airlines be omitted on any or all flights.

*Before the exercise of these rights, the Government of Poland will select either France or the United Kingdom and notify the Government of the United States of this selection. The other point will then be deemed to be deleted from the route.

**Montreal may be served either as an intermediate point to New York or as a point beyond New York.

EXCHANGE OF NOTES

I

The American Ambassador to the Polish Minister of Transport

EMBASSY OF THE UNITED STATES OF AMERICA

Warsaw, July 19, 1972

No. 48

Excellency:

I have the honor to refer to the Air Transport Agreement signed today between the Government of the United States of America and the Government of the Polish People's Republic. In order to assure that the Agreement reflects an equitable exchange of opportunities for the airlines of each country, after taking into account the nature of the respective markets and the commercial access which each country is able to make available to the other, I propose, on behalf of my Government, that the Agreement be subject to the following supplementary understandings:

1. The designated airline of Poland will enjoy the full rights and privileges of article 11 of the Agreement.

2. The Government of Poland is unable at this time to implement that part of article 11 which contemplates the right to sell air transportation in Poland for Polish currency. However, the designated airline of the United States will otherwise enjoy the full rights and privileges of article 11 of the Agreement. With respect to paragraphs B and C of article 11, these rights and privileges will be implemented as follows:

- (a) The designated airline of the United States will have the right to sell air transportation in Poland directly to any person for freely convertible currency using its own transportation documents.
- (b) Sales for Polish currency will be made through the designated airline of Poland or any other Polish organization which is or may be authorized to settle in freely convertible currency.
- (c) The revenues earned from sales performed under subparagraph (b) may, at the option of the designated airline of the United States, be used in whole or in part to cover its local expenses connected with the operation of its air services and with the activities of its local representatives. Local expenses for which such revenues may be used include office maintenance (including salaries and rent of offices and housing), maintenance of company vehicles, advertising, landing and other airport fees, handling fees, and fuel necessary for servicing aircraft.
- (d) Any revenues in excess of sums locally disbursed in accordance with paragraph (c) may be converted and remitted in United States currency.

3. (a) The designated airline of Poland will enjoy the right to operate on its route the following number of roundtrip frequencies per week during the periods indicated:

<i>Period</i>	<i>Number of frequencies</i>
1973 summer season	2
1973/74 winter season	2
1974 summer season	3
1974/75 winter season	2
1975 summer season	3
1975/76 winter season	2
1976 summer season	3

(b) Additional frequencies will be operated only following approval by the United States authorities. Requests for such additional frequencies will be made by filing the proposed schedule through diplomatic channels at least 120 days but no more than 150 days before its proposed effective date, and the Polish authorities will be informed of the decision made by the United States authorities no later than 60 days after the United States authorities receive the request. Any such additional frequencies which may be approved by the United States authorities will be exercised without traffic rights between the United Kingdom and New York and between France and New York.

4. The foregoing understandings and any other necessary matters will be reviewed in consultations between the Contracting Parties to be initiated no later than December 31, 1975. If agreement on amending these understandings, in whole or in part, is not reached before October 31, 1976, the Air Transport Agreement will automatically terminate on that date.

If these understandings are acceptable to your Government, I have the honor to propose that this note and your reply to that effect constitute an agreement between our two Governments relating to the Air Transport Agreement.

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

WALTER J. STOESEL, Jr.

His Excellency Mieczysław Zajfryd
Minister of Transport of the Polish People's Republic
Warsaw

[POLISH TEXT — TEXTE POLONAIS]

AMBASADA STANOW ZJEDNOCZONYCH AMERYKI

Warszawa, dnia 19 lipca 1972 r.

Ekscelencjo,

Mam zaszczyt powołać się na Umowę o komunikacji lotniczej, podpisaną w dniu dzisiejszym między Rządem Stanów Zjednoczonych Ameryki a Rządem Polskiej Rzeczypospolitej Ludowej. W celu zapewnienia, by Umowa odzwierciedlała zrównoważoną wymianę możliwości przyznanych przedsiębiorstwom lotniczym każdego z krajów, po uwzględnieniu charakterystyki odnośnych rynków oraz możliwości handlowych, które każdy z krajów jest w stanie udostępnić drugiemu, proponuję w imieniu mojego Rządu, ażeby Umowa została uzupełniona następującymi uzgodnieniami:

1. Wyznaczone przedsiębiorstwo lotnicze Polski korzystać będzie z pełnych praw i przywilejów wynikających z artykułu 11 Umowy.

2. Rząd Polski nie jest w stanie obecnie wprowadzić w życie tej części artykułu 11, która dotyczy prawa sprzedaży przewozów lotniczych w Polsce za walutę polską. Jednakże wyznaczone przedsiębiorstwo lotnicze Stanów Zjednoczonych będzie poza tym korzystać z pełnych praw i przywilejów wynikających z artykułu 11 Umowy.

W odniesieniu do ustępów B i C artykułu 11 wymienione prawa i przywileje będą stosowane jak następuje:

(a) Wyznaczone przedsiębiorstwo lotnicze Stanów Zjednoczonych będzie miało prawo sprzedaży przewozów lotniczych w Polsce bezpośrednio każdej osobie za waluty wolno-wymienne przy użyciu własnych dokumentów przewozowych.

II

[POLISH TEXT — TEXTE POLONAIS]

MINISTER KOMUNIKACJI POLSKIEJ RZECZYPOSPOLITEJ LUDOWEJ

Warszawa, dnia 19 lipca 1972 r.

Ekscelencjo,

Mam zaszczyt powołać się na Pańską notę z dnia 19 lipca 1972 r. o następującym brzmieniu:

[See note I — Voir note I]

Mam zaszczyt potwierdzić zgodę mojego Rządu na powyższą propozycję.

[Signed — Signé]¹

Jego Ekscelencja Walter J. Stoessel, Jr.
Ambasador Stanów Zjednoczonych Ameryki
w Warszawie

MINISTER OF TRANSPORT OF THE POLISH PEOPLE'S REPUBLIC

Warsaw, July 19, 1972

Excellency:

I have the honor to refer to your note of July 19, 1972, the text of which reads as follows:

[See note I]

I have the honor to confirm that the foregoing proposal is acceptable to my Government.

MIECZYŚLAW ZAJFRYD

His Excellency Walter J. Stoessel, Jr.
Ambassador of the United States of America
Warsaw

¹ Signed by Mieczysław Zajfryd — Signé par Mieczysław Zajfryd.

EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹ BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND
THE GOVERNMENT OF THE POLISH PEOPLE'S REPUBLIC AMEND-
ING AND EXTENDING THE AIR TRANSPORT AGREEMENT OF
19 JULY 1972²

I

The American Ambassador to the Polish First Deputy Minister of Transport

EMBASSY OF THE UNITED STATES OF AMERICA

Warsaw, August 26, 1976

Excellency:

I have the honor to refer to the Air Transport Agreement signed on July 19, 1972,² between the Government of the United States of America and the Government of the Polish People's Republic. In order to assure that the Agreement reflects an equitable exchange of opportunities for the airlines of each country, after taking into account the nature of the respective markets and the commercial access which each country is able to make available to the other and in the interest of further development of air services between the two countries, I propose, on behalf of my Government, that the Agreement be subject to the following supplementary understandings:

1. The designated airline of Poland will enjoy the full rights and privileges of article 11 of the Agreement.

2. The Government of Poland is unable at this time to implement that part of article 11 which contemplates the right of the designated airline of the United States to make direct sales of air transportation in Poland for Polish currency. However, the designated airline of the United States will otherwise enjoy the full rights and privileges of article 11 of the Agreement. With respect to paragraphs B and C of article 11, these rights and privileges will be implemented as follows:

- (a) The designated airline of the United States will have the right to sell air transportation in Poland on all of its services directly to any person for freely convertible currency using its own transportation documents.
- (b) Sales of air transportation in Poland for Polish currency on all services of the designated airline of the United States will be made through the designated airline of Poland and any other Polish organizations which are or may be authorized to settle in freely convertible currency. The Government of the Polish People's Republic guarantees that sales by the Polish designated airline and other Polish organizations in countries other than the United States of scheduled air transportation of passengers, accompanying baggage, cargo, and mail which are carried on all services of the designated airline of the United States will not be less than the equivalent of \$4.5 million, excluding commissions, during 1977. For 1978 and 1979, this minimum level will be increased or decreased by the percentage change in the number of Polish visitors to the United States during 1977 and 1978, respectively, from the number of such visitors in 1976 and 1977, respectively, using the data which appears in the Annual

¹ Came into force on 1 November 1976, in accordance with the provisions of the said notes.

² See p. 206 of this volume.

Reports of the United States Immigration and Naturalization Service. The designated airlines of the two countries will reach agreement on the method of determining the amount of such sales actually made before the end of 1976, and such agreement shall be a condition of the operation of the frequency levels specified in paragraph 3(a) below after May 14, 1977.

- (c) The revenues earned from sales performed under subparagraph (b) above may, at the option of the designated airline of the United States, be used in whole or in part to cover its local expenses connected with the operation of its air services and with the activities of its local representatives. Local expenses for which such revenues may be used include office maintenance (including salaries and rent of offices and housing), maintenance of company vehicles, advertising, landing and other airport fees, handling fees, catering, fuel necessary for servicing aircraft, and domestically produced items necessary for the maintenance and servicing of aircraft.
- (d) Any revenues in excess of sums locally disbursed in accordance with subparagraph (c) above may be converted and remitted in United States currency.

3. (a) Subject to the provisions of paragraph 2(b), the designated airlines of each country may operate the following numbers of roundtrip frequencies per week during the periods indicated:

Period	Number of Frequencies*	
	Polish Airline	U.S. Airline
November 1, 1976-May 14, 1977.....	3	3
May 15, 1977-October 14, 1977.....	4**	4**
October 15, 1977-May 14, 1978.....	4	4
May 15, 1978-October 14, 1978.....	5	6
October 15, 1978-May 14, 1979.....	4	4
May 15, 1979-October 14, 1979.....	5	6

(b) The frequency level specified in subparagraphs (a) above for the Polish airline for the 1978 and 1979 summer seasons may be increased by mutual agreement between the two countries.

(c) Additional frequencies by the designated airline of either country may be operated only following approval by the authorities of the other country. Requests for such additional frequencies will be made by filing the proposed schedule through diplomatic channels at least 120 days but no more than 150 days before its effective date, and the authorities of the requesting country will be informed of the decision made no later than 60 days after the request is received. Requests for extra sections by the designated airlines will be made by filing directly with the aeronautical authorities at least 15 days before the proposed date of operation, except that requests for occasional, single extra sections may be considered on short notice on an exceptional basis.

4. In the event the Polish authorities cannot fulfill the guaranteed level of sales provided in paragraph 2(b) above, or if either country believes that a fundamental change of circumstances has occurred, prompt consultations will be held, at the request of either country, to make appropriate adjustments in these supplementary understandings. If agreement on such adjustments cannot be reached within 60 days from the commencement of consultations, paragraph 3(a) above shall thereupon be deemed to have been amended to reduce the frequency levels to 3 roundtrip flights per week for each airline.

* These numbers are expressed in terms of narrow-bodied aircraft. Wide-bodied aircraft may be substituted using the following ratios:

Seats	Ratio
201-300.....	1:1.5
301-400.....	1:2.0
400-above.....	1:2.5

In this connection, the Polish authorities undertake to provide the necessary facilities for the operation of wide-bodied aircraft at Warsaw airport by the summer traffic season in 1978 if either airline elects to operate such aircraft.

** Each airline may operate one additional roundtrip frequency per week if at least one of its frequencies makes an intermediate traffic stop in each direction.

5. The foregoing understandings and any other necessary matters may be reviewed in consultations at any time, at the request of either country, and such consultations will be held in any event prior to April 30, 1979. If agreement on amending these understandings is not reached, the Air Transport Agreement will automatically terminate on October 14, 1979.

If these understandings are acceptable to your Government, I have the honor to propose that this note and your reply to that effect constitute an agreement between our two Governments relating to the Air Transport Agreement which shall enter into force on November 1, 1976, and which shall supersede the supplementary understandings contained in the exchange of notes dated July 19, 1972, attached to the Agreement.

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

[Signed — Signé]¹

His Excellency Romuald Pietraszek
First Deputy Minister of Transport
of the Polish People's Republic
Warsaw

[POLISH TEXT — TEXTE POLONAIS]

AMBASADA STANÓW ZJEDNOCZONYCH AMERYKI

Warszawa, dnia 26 sierpnia 1976 r.

Ekscelecncjo:

Mam zaszczyt nawiązać do Umowy o komunikacji lotniczej, podpisanej dnia 19 lipca 1972 roku między Rządem Stanów Zjednoczonych Ameryki a Rządem Polskiej Rzeczypospolitej Ludowej. W celu zapewnienia, aby Umowa odzwierciedlała zrównoważoną wymianę korzyści dla przedsiębiorstw lotniczych każdego kraju, przy uwzględnieniu charakterystyki odnośnych rynków i możliwości handlowych, które każdy kraj jest w stanie zapewnić drugiemu krajowi oraz w interesie dalszego rozwoju linii lotniczych między obydwojma krajami, proponuję w imieniu mojego Rządu, aby Umowa została uzupełniona następującymi dodatkowymi uzgodnieniami:

1. Wyznaczone przedsiębiorstwo lotnicze Polski będzie korzystało z pełnych praw i przywilejów artykułu 11 Umowy.

2. Rząd Polski nie jest obecnie w stanie stosować tej części artykułu 11, która dotyczy prawa wyznaczonego przedsiębiorstwa lotniczego Stanów Zjednoczonych do dokonywania bezpośrednich sprzedaży przewozów lotniczych w Polsce za walutę polską. Jednakże wyznaczone przedsiębiorstwo lotnicze Stanów Zjednoczonych będzie poza tym korzystać z pełnych praw i przywilejów artykułu 11 Umowy. W odniesieniu do ustępów B i C artykułu 11, te prawa i przywileje będą stosowane jak następuje:

- (a) Wyznaczone przedsiębiorstwo lotnicze Stanów Zjednoczonych będzie miało prawo sprzedaży przewozów lotniczych w Polsce na wszystkie swoje linie lotnicze bezpośrednio każdej osobie za waluty wolnowymienne przy użyciu swoich własnych dokumentów przewozowych.
- (b) Sprzedaże przewozów lotniczych w Polsce za walutę polską na wszystkie linie lotnicze wyznaczonego przedsiębiorstwa lotniczego Stanów Zjednoczonych będą dokonywane przez wyznaczone przedsiębiorstwo lotnicze Polski i wszelkie inne instytucje, które są lub mogą być upoważnione do rozliczania się w walutach wolnowymienialnych. Rząd Polskiej Rze-

¹ Signed by R. T. Davies — Signé par R. T. Davies.

[See note I — Voir note I]

Mam zaszczyt potwierdzić zgodę mojego Rządu na powyższą propozycję.

[Signed — Signé]¹

Jego Ekscelencja Richard T. Davies
Ambasador Stanów Zjednoczonych Ameryki
Warszawa

The Polish First Deputy Minister of Transport to the American Ambassador

POLSKA RZECZPOSPOLITA LUDOWA
MINISTER KOMUNIKACJI²

Warszawa, dnia 26 August 1976³

Excellency:

I have the honor to refer to your note of August 26, 1976, the text of which reads as follows:

[See note I]

I have the honor to confirm that the foregoing proposal is acceptable to my Government.

[Signed — Signé]¹

His Excellency Richard T. Davies
Ambassador of the United States of America
Warsaw

¹ Signed by R. Pietraszek — Signé par R. Pietraszek.

² Polish People's Republic Minister of Transport.

³ Warsaw, 26 August 1976.

EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹ BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND
THE GOVERNMENT OF THE POLISH PEOPLE'S REPUBLIC MODI-
FYING THE AIR TRANSPORT AGREEMENT OF 19 JULY 1972,² AS
AMENDED AND EXTENDED³

I

No. 39

The Embassy of the United States of America presents its compliments to the Ministry of Foreign Affairs and has the honor to refer to the tariff filings recently made by LOT Polish Airlines and Pan American Airways for various low-fare innovations for travel between the United States and Europe.

The United States is committed to an international aviation policy which features low-fare, competitive international air services. At the same time, the United States believes that these new low fares must be regarded as experimental because their effect upon the competitive structure of North Atlantic passenger rates is as yet unclear. However, the possibility exists that these experimental fares, once introduced, could become permanent even though they might later prove to have a disruptive effect on the market. This is due to the fact that the provisions of article 10 of the U.S.-Polish Air Transport Services Agreement of 1972² do not easily permit the suspension of existing fares.

In view of this possibility, the United States proposes that the authorities of both countries agree that the new low-fare filings presented by LOT Polish Airlines and Pan American Airways are experimental and will not continue in effect after March 31, 1978, if the summer 1978 season succeeding low-fare filings cannot be agreed upon. Moreover, during the 1977-1978 winter season, either government may take action to prevent the continuation of such fares before their respective dates of expiration, provided that it notifies the other government six weeks in advance of its intent to take such action and agrees to consultations if requested by the other government.

The Embassy of the United States of America would appreciate a reply from the Ministry of Foreign Affairs confirming that the foregoing is acceptable to the Government of Poland.

The Embassy of the United States of America takes this opportunity to convey to the Ministry of Foreign Affairs the renewed assurances of its high consideration.

Warsaw, December 13, 1977

Embassy of the United States of America

II

[POLISH TEXT — TEXTE POLONAIS]

DPT 2151-1-76

Ministerstwo Spraw Zagranicznych przesyła wyrazy szacunku Ambasadzie Stanów Zjednoczonych i w nawiązaniu do noty Nr 39 z dnia 13 grudnia 1977 r. ma zaszczyt poinformować, że Rząd Polskiej Rzeczypospolitej Ludowej wyraża zgodę na propozycję

¹ Came into force on 16 December 1977, by the exchange of the said notes.

² See p. 206 of this volume.

³ See p. 224 of this volume.

zawartą w wyżej wymienionej nocie, dotyczącą przyjęcia taryf zgłoszonych przez Polskie Linie Lotnicze „LOT” i Pan American Airways, jako taryf, które będą obowiązywały do 31 marca 1978 r. z możliwością 6-tygodniowego wypowiedzenia przez każdą ze Stron.

Kierując się dążeniem do jak najszybszego uregulowania problemu taryf w interesie pasażerów obu państw, Ministerstwo Spraw Zagranicznych proponuje, aby wyżej wymienione taryfy weszły w życie w dniu 20 grudnia 1977 r.

Jednocześnie Ministerstwo Spraw Zagranicznych ponawia propozycję przeprowadzenia, tak szybko jak to możliwe, konsultacji w sprawie nierozwiązanych problemów w przewozach lotniczych między PRL a USA.

Ministerstwo Spraw Zagranicznych korzysta z okazji, aby ponowić Ambasadzie Stanów Zjednoczonych wyrazy swego wysokiego poważania.

Warszawa, dnia 16 grudnia 1977 roku

Ambasada Stanów Zjednoczonych Ameryki
w Warszawie

[TRANSLATION¹ — TRADUCTION²]

DPT 2151-1-76

The Ministry of Foreign Affairs presents its compliments to the Embassy of the United States and, with reference to note No. 39, dated December 13, 1977, has the honor to inform it that the Government of the Polish People's Republic agrees with the proposal contained in the above note concerning the acceptance of the tariffs filed by LOT Polish Airlines and Pan American Airways, which are scheduled to become mandatory on March 31, 1978, with the option for either side to withdraw after giving 6 weeks' notice.

Desiring to resolve the tariff problem as quickly as possible in the interest of passengers from the two countries, the Ministry of Foreign Affairs proposes that the above-mentioned tariffs enter into force on December 20, 1977.

Moreover, the Ministry of Foreign Affairs reiterates its proposal that consultations be carried out as soon as possible regarding the unresolved air transport problems between the Polish People's Republic and the United States of America.

The Ministry of Foreign Affairs avails itself of this opportunity to express to the Embassy of the United States the renewed assurances of its high consideration.

Warsaw, December 16, 1977

Embassy of the United States of America
Warsaw

¹ Translation supplied by the Government of the United States.

² Traduction fournie par le Gouvernement des Etats-Unis.

EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE POLISH PEOPLE'S REPUBLIC AMENDING THE AIR TRANSPORT AGREEMENT OF 19 JULY 1972,² AS AMENDED AND EXTENDED³

I

No. 21

The Embassy of the United States of America presents its compliments to the Ministry of Foreign Affairs and has the honor to refer to recent discussions between representatives of our two governments with regard to the provision of scheduled and nonscheduled air services by the airlines of both countries through the end of this year. These representatives recommended that diplomatic notes be exchanged to bring into effect the following understandings and amendments of the U.S.-Poland Air Transport Agreement of 1973^{*2} as amended by an exchange of notes dated August 26, 1976.⁴

Notwithstanding numbered paragraph 2 (B) of the exchange of notes dated August 26, 1976, the Government of the Polish People's Republic guarantees that sales for Polish currency by the Polish designated airline and other Polish organizations in countries other than the United States of scheduled air transportation of passengers, accompanying baggage, cargo, and mail which are carried on all services of the designated airline of the United States will not be less than the equivalent of \$4.5 million, excluding commissions, during 1978. The Polish designated airline will provide the United States designated airline with current information on a monthly basis regarding the status of the foregoing sales guarantee in order to assure its full attainment.

Notwithstanding numbered paragraph 3 (A) of the exchange of notes dated August 26, 1976, the designated airline of the United States may operate seven narrow-bodied roundtrip frequencies per week during the period May 15, 1978-December 31, 1978. Frequencies may operate between the United States and Warsaw via Vienna, without local traffic rights between Vienna and Warsaw but with the right to carry stopover traffic.

The United States authorities will approve the operation of 38 one-way extra section flights between New York and Warsaw during the period May 14, 1978-December 31, 1978.

The dates specified in numbered paragraph 5 of the exchange of notes dated August 26, 1976, are amended to read, "October 31, 1978" and "December 31, 1978", respectively.

The delegations noted that the Polish authorities did not provide the necessary facilities for the operation of wide-bodied aircraft at Warsaw airport in 1978, as provided in the exchange of notes dated August 26, 1976. The Polish delegation expressed its intention to achieve this objective in 1979.

Notwithstanding paragraphs G and H of article 10 of the Air Transport Agreement, neither party may prevent the inauguration or the continuation of budget, APEX, or standby air fares, except with respect to traffic originating in its own territory on a one-way or roundtrip basis.

* Should read "1972".

¹ Came into force on 11 August 1978, the date of the note in reply, in accordance with the provisions of the said notes.

² See p. 206 of this volume.

³ See pp. 224 and 230 of this volume.

⁴ See p. 224 of this volume.

The Polish designated airline will continue to appoint the United States designated airline as its ground handling agent at airports in the United States for its scheduled and charter services where the United States designated airline has ground handling facilities available.

Airport ground handling services in Poland will be provided to United States airlines, both scheduled and supplemental, without discrimination and on a basis no less favorable than that provided for the Polish airline.

Each party will, during the period of effectiveness of the Air Transport Agreement, allow the airline or airlines, both scheduled and supplemental, of the other party to operate passenger and cargo charter air services between the two countries, including services with stops in third countries, (A) without limitations on volume, frequency, or regularity of service; and (B) without the requirements for prior approval of individual flights or series of flights. No individual passenger charter flight may be operated with more than 252 passengers on board. The charter-worthiness of flights will be determined by the rules of the country in which the traffic originates. Prices will be established by charterers under the surveillance of the country of traffic origin.

These amendments and arrangements are acceptable to the United States Government. If these amendments and arrangements are also acceptable to the Government of the Polish People's Republic, the Embassy of the United States of America has the honor to propose that this note and your reply to that effect constitute an agreement between our two governments which shall enter into force on the date of your reply.

The Embassy of the United States of America takes this opportunity to convey to the Ministry of Foreign Affairs the renewed assurances of its highest consideration.

Warsaw, June 19, 1978

Embassy of the United States of America

II

[POLISH TEXT — TEXTE POLONAIS]

DPT 2151-1-76

Ministerstwo Spraw Zagranicznych przesyła wyrazy szacunku Ambasadzie Stanów Zjednoczonych Ameryki w Warszawie i ma zaszczyt potwierdzić odbiór noty nr 21 z dnia 19 czerwca 1978 r. o następującej treści:

„Ambasada Stanów Zjednoczonych Ameryki przesyła wyrazy szacunku Ministerstwu Spraw Zagranicznych i ma zaszczyt nawiązać do przeprowadzonych ostatnio rozmów między przedstawicielami naszych obydwu rządów dotyczących zapewnienia regularnej i nieregularnej komunikacji lotniczej przez przedsiębiorstwa lotnicze obydwu krajów do końca bieżącego roku. Wspomniani wyżej przedstawiciele zalecili, aby wejście w życie poniższych ustaleń i poprawek dot. Umowy o komunikacji lotniczej między Polską a Stanami Zjednoczonymi z 1972 r. (zmienionej w drodze wymiany not 26 sierpnia 1976 roku) nastąpiło w drodze wymiany not.

Niezależnie od postanowień punktu 2b wymiany not z dnia 26 sierpnia 1976 roku, Rząd Polskiej Rzeczypospolitej Ludowej gwarantuje, że sprzedaże za polską walutę przez polskie wyznaczone przedsiębiorstwo lotnicze i inne polskie organizacje w krajach innych niż USA regularnych przewozów pasażerskich, bagażu towarzyszącego, ładunków i poczty, przewożonych na wszystkich liniach wyznaczonego przedsiębiorstwa lotniczego Stanów Zjednoczonych, nie będą w 1978 r. mniejsze niż równowartość 4,5 milionów \$, z wyłączeniem prowizji.

Ministerstwo Spraw Zagranicznych ma zaszczyt zakomunikować, że wyraża zgodę na powyższe i przyjmuje propozycję Ambasady, aby przytoczona powyżej nota oraz odpowiedź na nią stanowiły porozumienie, które wejdzie w życie z dniem dzisiejszym.

Jednocześnie Ministerstwo pragnie zakomunikować, iż ustalenia wymienionego porozumienia nie mogą wiązać jakiegokolwiek ze Stron przy renegotjowaniu warunków przedłużenia obowiązywania Umowy o komunikacji lotniczej po dniu 31 grudnia 1978 r. lub negocjowaniu nowej umowy lotniczej.

Ministerstwo Spraw Zagranicznych korzysta z okazji, aby ponowić Ambasadzie wyrazy swego wysokiego poważania.

Warszawa, dnia 11 sierpnia 1978 roku

Ambasada Stanów Zjednoczonych Ameryki
w Warszawie

[TRANSLATION¹ — TRADUCTION²]

DPT 2151-1-76

The Ministry of Foreign Affairs presents its compliments to the Embassy of the United States at Warsaw and has the honor to confirm receipt of note No. 21, dated June 19, 1978, which reads as follows:

[*See note I*]

The Ministry of Foreign Affairs has the honor to express its agreement with the foregoing and to accept the Embassy's proposal that the above-cited note and the reply thereto constitute an agreement which shall enter into force on this date.

The Ministry also wishes to state that the provisions of the aforementioned arrangements shall in no way bind the Parties when they renegotiate the conditions for the extension of the provisions of the Air Transport Agreement after December 31, 1978, or when they negotiate a new air agreement.

The Ministry of Foreign Affairs avails itself of this opportunity to renew to the Embassy its high consideration.

Warsaw, August 11, 1978

Embassy of the United States of America
Warsaw

¹ Translation supplied by the Government of the United States.

² Traduction fournie par le Gouvernement des Etats-Unis.

EXCHANGES OF NOTES CONSTITUTING AN AGREEMENT¹ BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND
THE GOVERNMENT OF THE POLISH PEOPLE'S REPUBLIC AMEND-
ING THE AIR TRANSPORT AGREEMENT OF 19 JULY 1972,² AS
AMENDED AND EXTENDED³

I

[POLISH TEXT — TEXTE POLONAIS]

POLSKA RZECZPOSPOLITA LUDOWA
MINISTER KOMUNIKACJI

Warszawa, dnia 29 grudnia 1978

Ekscelencjo:

Mam zaszczyt powołać się na Umowę o komunikacji lotniczej podpisaną dnia 19 lipca 1972 roku między Rządem Polskiej Rzeczypospolitej Ludowej a Rządem Stanów Zjednoczonych Ameryki i zaproponować w imieniu mojego Rządu, aby ta Umowa została uzupełniona następującymi dodatkowymi uzgodnieniami i poprawkami:

1. Artykuł 10 Umowy zastępuje się w całości następującym tekstem:

„A. Każda z Umawiających się Stron zezwoli na ustalanie taryf, z zastrzeżeniem postanowień niniejszej Umowy, przez każde przedsiębiorstwo lotnicze, na podstawie handlowej analizy rynku a interwencja Umawiających się Stron będzie ograniczona do (i) zapobiegania agresywnym lub dyskryminacyjnym taryfom lub praktykom; (ii) ochrony konsumentów przed taryfami zbyt wygórowanymi lub restryktywnymi z powodu nadużycia władzy monopolu; (iii) ochrony przedsiębiorstw lotniczych przed taryfami sztucznie zaniżonymi z powodu bezpośredniego lub pośredniego rządowego subsydiowania lub pomocy.

B. Każda z Umawiających się Stron może wymagać notyfikacji lub zgłoszenia do jej władz lotniczych taryf przewidzianych do stosowania do i z jej terytorium przez przedsiębiorstwa lotnicze drugiej Umawiającej się Strony. Umawiająca się Strona, wymagając takiej notyfikacji lub zgłoszenia taryf, nie będzie dyskryminowała przedsiębiorstw lotniczych którejkolwiek Umawiającej się Strony lub przedsiębiorstw lotniczych krajów trzecich. Taka notyfikacja lub zgłoszenie może być wymagane od przedsiębiorstw lotniczych którejkolwiek Umawiającej się Strony nie wcześniej niż czterdzieści pięć (45) dni przed proponowaną datą wejścia w życie — w przypadku taryf pasażerskich i nie wcześniej niż sześćdziesiąt (60) dni przed proponowaną datą wejścia w życie — w przypadku taryf towarowych. Każda Umawiająca się Strona zezwoli na notyfikację lub zgłoszenie w krótszym terminie niż podany wyżej, o ile jest to konieczne, aby umożliwić wyznaczonym przedsiębiorstwom lotniczym zareagowanie w odpowiednim czasie na konkurencyjne oferty. Żadna z Umawiających się Stron nie będzie wymagać notyfikacji lub zgłoszenia przez przedsiębiorstwa lotnicze drugiej Umawiającej się Strony taryf stosowanych przez przedsiębiorstwa czarterowe dla ruchu pochodzącego z terytorium tej drugiej Umawiającej się Strony.

¹ Came into force on 30 January 1979 by the exchange of the said notes, with retroactive effect from 1 January 1979, in accordance with the provisions of the said notes.

² See p. 206 of this volume.

³ See pp. 224, 230 and 232 of this volume.

Jeżeli niniejsze uzgodnienia mogą być przyjęte przez Pański Rząd, mam zaszczyt zaproponować, aby niniejsza nota i Pańska odpowiedź na nią stanowiły porozumienie między naszymi obydwojma Rządami, które wejdzie w życie z dniem 1 stycznia 1979 roku i które zastąpi dodatkowe uzgodnienia zawarte w wymianie not z dnia 26 sierpnia 1976 roku, zmienionych notami z dnia 19 czerwca i 11 sierpnia 1978 roku.

Proszę przyjąć, Ekscelencjo, zapewnienie o moim najwyższym poważaniu.

[Signed — Signé]¹

Jego Ekscelencja William E. Schauffele, Jr.
Ambasador Stanów Zjednoczonych Ameryki
Warszawa

[TRANSLATION² — TRADUCTION³]

POLISH PEOPLE'S REPUBLIC
THE MINISTER OF TRANSPORTATION

Warsaw, December 29, 1978

·Excellency:

I have the honor to refer to the Air Transport Agreement signed July 19, 1972, between the Government of the Polish People's Republic and the Government of the United States of America⁴ and to propose in the name of my Government that this Agreement be amended by the following supplementary understandings and amendments:

[See note II]

If the above-mentioned understandings are acceptable to your Government, I have the honor to propose that the note transcribed above and your reply to it constitute an agreement between our two Governments which shall enter into force on January 1, 1979, and which shall supersede the supplementary understanding contained in the exchange of notes of August 26, 1976,⁵ as amended by the notes of June 19 and August 11, 1978.⁶

Accept, Excellency, the assurances of my highest consideration.

MIECZYŚLAW ZAJFRYD

His Excellency William E. Schauffele, Jr.
Ambassador of the United States of America
Warsaw

II

No. 5

The Embassy of the United States of America presents its compliments to the Ministry of Foreign Affairs of the Polish People's Republic and has the honor to convey the following full text of the November 9, 1978, *Ad referendum* U.S.-Poland Air Transport Agreement with substitutions in paragraph 2C:

Excellency: I have the honor to refer to the Air Transport Agreement signed on July 19, 1972, between the Government of the United States of America and the Government of the Polish People's Republic and to propose, on behalf of my Gov-

¹ Signed by Mieczysław Zajfrzyd — Signé par Mieczysław Zajfrzyd.

² Translation supplied by the Government of the United States.

³ Traduction fournie par le Gouvernement des Etats-Unis.

⁴ See p. 206 of this volume.

⁵ See p. 224 of this volume.

⁶ See p. 232 of this volume.

ernment, that this Agreement be subject to the following supplementary understandings and amendments:

1. Article 10 of the Agreement is replaced in its entirety by the following text:

“(A) Each Contracting Party shall allow the prices subject to this agreement to be established by each airline based upon commercial considerations in the marketplace, and intervention by the Contracting Parties shall be limited to (i) prevention of predatory or discriminatory prices or practices; (ii) protection of consumers from prices that are unduly high or restrictive due to the abuse of monopoly power; and (iii) protection of airlines from prices that are artificially low because of direct or indirect governmental subsidy or support.

“(B) Each Contracting Party may require notification or filing with its aeronautical authorities of prices proposed to be charged by airlines of the other Contracting Party to or from its territory. A Contracting Party requiring such notification or filing of prices shall not discriminate among the airlines of either Contracting Party or with respect to airlines of third countries. Such notification or filing may be required of airlines of either Contracting Party no more than forty-five (45) days before the proposed date of effectiveness in the case of passenger prices, and no more than sixty (60) days before the proposed date of effectiveness in the case of cargo prices. Each Contracting Party shall permit notifications or filings on shorter notice than set forth above when necessary to enable designated airlines to respond on a timely basis to competitive offerings. Neither Contracting Party shall require the notification or filing by airlines of the other Contracting Party of prices charged by charterers to the public for traffic originating in the territory of that other Contracting Party.

“(C) If either Contracting Party believes that a price proposed or charged by an airline of the other Contracting Party for the carriage of international traffic between the United States and Poland, including traffic carried on an interline or intraline basis via intermediate points, is inconsistent with the considerations set forth in paragraph (A) of this article, it shall notify the other Contracting Party of the reasons for its dissatisfaction as soon as possible. In the case of a proposed price, such notice of dissatisfaction shall be given to the other Contracting Party within thirty (30) days of receiving notification of filing or the price. Either Contracting Party may then request consultations which shall be held as soon as possible and in no event later than thirty (30) days from receipt of the request. The Contracting Parties shall cooperate in securing information necessary for reasoned resolution of pricing consultations.

“(D) If the Contracting Parties reach agreement with respect to a price for which a notice of dissatisfaction has been given, based on the considerations set forth in paragraph (A) of this article, each Contracting Party shall exercise its best efforts to put such agreement into effect.

“(E) If,

- (i) With respect to a proposed price, consultations are not requested or an agreement is not reached as a result of consultations; or
- (ii) With respect to a price already being charged when notice of dissatisfaction is given, consultations are not requested within 30 days of receipt of the notice or an agreement is not reached as a result of consultations within sixty (60) days of receipt of the notice,

either Contracting Party may take action to prevent the inauguration or continuation of the price for which a notice of dissatisfaction was given, but only with respect to traffic where the first point on the itinerary (as evidenced by the document authorizing transportation by air) is in its own territory. Neither Contracting Party shall take unilateral action to prevent the inauguration or continuation of any price proposed or charged by an airline of either Contracting Party, except as provided in this paragraph.

“(F) Notwithstanding the filing requirements that either Contracting Party may establish, each Contracting Party shall allow any airline of either Contracting Party to meet on a timely basis, using short-notice filing procedures if necessary, any lower or more competitive price proposed or charged by any airline or charterer for the carriage of international traffic to or from its territory. For the purposes of this article, the term “meet” includes the right to establish (i) an identical or substantially similar price on a direct, intra-line or interline routing, notwithstanding differences in conditions relating to routing, roundtrip requirements, connections or aircraft type, or (ii) such price through combination of prices.

“(G) If relevant agreements with third countries so provide, each Contracting Party shall allow airlines of third countries to meet any price of a designated airline of either Contracting Party for carriage of international traffic between the territories of the Parties.”

2. Article 11 of the Agreement will be implemented as follows:

(A) The designated airline of Poland will enjoy the full rights and privileges of article 11.

(B) The designated airline of the United States will have the rights to sell air transportation in Poland directly to any person and using its own transportation documents for freely convertible currencies on all of its services.

(C) Sales of air transportation in Poland for Polish currency by the U.S. designated airline will be made through the Polish designated airline and any other organizations which are or may be authorized to settle in freely convertible currencies. As long as the U.S. designated airline does not make direct sales in Poland for Polish currency, the Government of Poland will guarantee that sales on behalf of the U.S. designated airline by the Polish designated airline and other Polish organizations, during any four consecutive quarters, in countries outside the United States for passengers [who] are carried on all services of the U.S. designated airline will achieve a minimum level. This level will be determined as follows:

X: Number of U.S. citizens carried by the Polish designated airline, as shown in data of the U.S. Immigration and Naturalization Service (INS) published by the U.S. Department of Transportation, during the most recent four consecutive quarters for which such data are available.

Y: X for calendar year 1978.

R: 4.4 million dollars divided by Y.

If X is equal to or less than Y, the minimum level will be R multiplied by X. If X is greater than Y, the minimum level will be 4.4 million dollars, plus 75 percent of R multiplied by the first 5,000 of X in excess of Y, plus 65 percent of R multiplied by the next 5,000 of X in excess of Y, plus 55 percent of R multiplied by any additional excess of X over Y.

The U.S. designated airline will furnish the relevant INS data to the Polish designated airline on a timely basis in order to permit determination of the sales commitment during each period of four consecutive quarters. It will also furnish information on the status of the sales commitment to the Polish designated airline within 60 days after the close of each quarter in order to permit a review of the sales commitment. If a shortfall exists and is not satisfied, together with the current sales commitment, by the third quarterly review data, the Polish designated airline will, notwithstanding article 9(E) of the Agreement, reduce the number of weekly roundtrip frequencies to be operated in the next quarter after the foregoing third review from the number operated in the previous corresponding quarter in proportion to the shortfall, but in any event by at least one such frequency. This frequency limitation shall be removed when the sales commitment plus any shortfall has been satisfied in two consecutive reviews.

(D) The revenues earned from sales performed under paragraph (C) above may, at the option of the designated airline of the United States, be used in whole or in part to cover its

local expenses connected with the operation of its air services and with the activities of its local representatives. Local expenses for which such revenues may be used include office maintenance (including salaries and rent of offices and housing), maintenance of company vehicles, advertising, landing and other airport fees, handling fees, catering, fuel necessary for servicing aircraft, and domestically produced items necessary for the maintenance and servicing of aircraft.

(E) Any revenues in excess of sums locally disbursed in accordance with paragraph (D) above may be converted and remitted in United States currency.

3. The route described in paragraph A of the schedule attached to the Agreement is amended to read as follows:

“1. From points in the United States via intermediate points to Warsaw and one other point in Poland to be selected by the U.S. Government* and beyond to points outside Poland without geographical or directional limitation.”

4. The route described in paragraph B of the schedule attached to the Agreement is amended to read as follows:

“1. From points in Poland via points in Denmark, the Netherlands, Belgium, France** or the United Kingdom** and Montreal*** to New York and one other point in the United States to be selected by the Government of Poland†”.

5. Each Party will allow both the scheduled and charter airlines of the other Party to operate passenger and cargo charter air services between the two countries, including services with stopovers in third countries, (A) without limitations on volume, frequency or regularity of service or on type of aircraft used; and (B) without requirements for prior approval of individual flights or series of flights. The charterworthiness of flights will be determined by the rules of the country in which the traffic originates. Articles 3, 4, 5, 6, 7, 8, 10 (as amended), 11, 12, 13 and 14 of the Agreement will apply *mutatis mutandis* to charter air services. Airlines designated to operate charter air services pursuant to article 3 of the Agreement shall be referred to as “charter designated” airlines.

6. The designated airline of each Party will continue to appoint the designated airline of the other Party as its ground handling agent at airports in the territory of that other Party for its scheduled and charter services where the designated airline has ground handling facilities available. Airport ground handling services will be provided to scheduled and charter airlines without discrimination and on a basis no less favorable than that provided for the national airline or airlines.

7. Each Party will issue appropriate visas, in accordance with its laws and regulations and without numerical limitation to crews of the airlines of the other Party who are nationals of that Party. With regard to crews who are nationals of other states, the normal procedures will be observed and these applications will be reviewed on an individual basis.

8. Both Parties confirm the right of the designated airlines to change gauge at any point or points on the routes set forth in the schedule attached to the Agreement.

9. The foregoing understandings and any other necessary matters will be reviewed in consultations at any time, at the request of either Party, and in any event during the latter part of 1981. If agreement on continuation, amendment or rescission of these understandings is not reached by March 31, 1982, the Agreement will terminate on that date.

FOOTNOTES:

* Rights to operate at this point may be exercised when the Polish designated airline is allowed to exercise right to operate at the additional point in the U.S. in paragraph B(1) below.

** Before the exercise of these rights, the Government of Poland will select either France or the United Kingdom and notify the Government of the United States of this selection. The other point will then be deemed to be deleted from the route.

*** Montreal may be served either as an intermediate point to New York or as a point beyond New York.

† Rights to operate at this point may be exercised when wide-bodied aircraft may operate at Warsaw airport without special conditions or limitations.

10. Each Party will use its best efforts to allow the continuation of unrestricted and efficient operation of the aircraft which are actually used by the designated airline of the other Party, including supply of appropriate fuel at the airport regularly served.

If these understandings are acceptable to your Government, I have the honor to propose that this note and your reply to that effect constitute an Agreement between our two Governments which shall enter into force on January 1, 1979, and which shall supersede the supplementary understandings contained in the exchange of notes dated August 26, 1976, as amended by notes dated June 19 and August 11, 1978.

The Embassy of the United States of America would appreciate receiving from the Polish Government a draft confirming note on the subject agreement. Upon receipt of the draft note, the Embassy of the United States of America and the Ministry of Foreign Affairs should exchange on the same day notes confirming the agreement.

The Embassy of the United States of America takes this opportunity to convey to the Ministry of Foreign Affairs the renewed assurances of its highest consideration.

Warsaw, January 15, 1979

Embassy of the United States of America

III

No. 7

The Embassy of the United States of America presents its compliments to the Ministry of Foreign Affairs of the Polish People's Republic and has the honor to confirm the United States-Poland Air Agreement of November 9, 1978, with substitution of a new text for paragraph 2C, as supplied by the Embassy of the United States to the Ministry of Transportation on December 14, 1978. The Embassy of the United States received the full text in Polish of the agreement in the Ministry of Transportation letter of December 29, 1978. The Embassy of the United States conveyed to the Ministry of Foreign Affairs the full text of the same agreement in English in Note Number 5 of January 15, 1979.

On the same day that this Note is presented to the Ministry of Foreign Affairs, the Embassy of the United States of America would appreciate receiving from the Ministry of Foreign Affairs a note confirming the subject agreement.

The Embassy of the United States of America takes this opportunity to convey to the Ministry of Foreign Affairs the renewed assurances of its highest consideration.

Warsaw, January 30, 1979

Embassy of the United States of America

IV

[POLISH TEXT — TEXTE POLONAIS]

DPT 2151-1-76

Ministerstwo Spraw Zagranicznych Polskiej Rzeczypospolitej Ludowej przesyła w tym celu szacunku Ambasadzie Stanów Zjednoczonych Ameryki w Warszawie i w nawiązaniu do jej noty Nr 7 z dnia 30 stycznia 1979 r. oraz do porozumienia w sprawie komunikacji lotniczej z dnia 9 listopada 1978 r., osiągniętego między delegacjami Rządów Polskiej

Rzeczypospolitej Ludowej i Stanów Zjednoczonych Ameryki, ma zaszczyt oznajmić, co następuje.

Ministerstwo Spraw Zagranicznych przekazało Ambasadzie Stanów Zjednoczonych Ameryki, w liście Ministra Komunikacji z dnia 29 grudnia 1978 r., pełny tekst porozumienia w języku polskim, z uwzględnieniem nowego tekstu paragrafu 2c.

Ministerstwo Spraw Zagranicznych otrzymało pełny tekst porozumienia w języku angielskim, z uwzględnieniem nowego tekstu paragrafu 2c, w nocy Ambasady Stanów Zjednoczonych Ameryki Nr 5 z dnia 15 stycznia 1979 r.

Niniejsza nota, wraz z notą Ambasady Stanów Zjednoczonych Ameryki Nr 7 z dnia 30 stycznia 1979 r., stanowi potwierdzenie uzgodnień przyjętych przez oba Rządy we wspomnianym porozumieniu.

Ministerstwo Spraw Zagranicznych korzysta z okazji, aby ponowić Ambasadzie Stanów Zjednoczonych Ameryki wyrazy wysokiego poważania.

Warszawa, dnia 30 stycznia 1979 roku

Ambasada Stanów Zjednoczonych Ameryki
w Warszawie

[TRANSLATION¹ — TRADUCTION²]

DPT 2151-1-76

The Ministry of Foreign Affairs of the Polish People's Republic presents its compliments to the Embassy of the United States of America at Warsaw and, with reference to Embassy note No. 7 of January 30, 1979, and to the Air Transport Agreement dated November 9, 1978, concluded between the delegations of the Governments of the Polish People's Republic and of the United States of America, has the honor to inform the Embassy of the following:

The Ministry of Foreign Affairs transmitted to the Embassy of the United States of America, in a letter from the Minister of Transportation dated December 29, 1978, the full text of the agreement in the Polish language, taking note of the new text of paragraph 2C.

The Ministry of Foreign Affairs received the full text of the agreement in the English language, with the new text of paragraph 2C, in Embassy note No. 5, dated January 15, 1979.

The above-mentioned note together with note No. 7 of January 30, 1979, of the Embassy of the United States of America constitute the confirmation of the agreements accepted by the two Governments with respect to the above-mentioned Agreement.

The Ministry of Foreign Affairs avails itself of this opportunity to express to the Embassy of the United States of America the renewed assurances of its high consideration.

Warsaw, January 30, 1979

Embassy of the United States of America
Warsaw

¹ Translation supplied by the Government of the United States.

² Traduction fournie par le Gouvernement des Etats-Unis.