

No. 31870

**NEW ZEALAND
and
CHINA**

Agreement relating to civil air transport (with annexed route schedule). Signed at Wellington on 21 October 1993

Authentic texts: English and Chinese.

Registered by New Zealand on 1 June 1995.

**NOUVELLE-ZÉLANDE
et
CHINE**

Accord relatif au transport aérien civil (avec tableau des routes annexé). Signé à Wellington le 21 octobre 1993

Textes authentiques : anglais et chinois.

Enregistré par la Nouvelle-Zélande le 1^{er} juin 1995.

AGREEMENT¹ BETWEEN THE GOVERNMENT OF NEW ZEALAND AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA RELATING TO CIVIL AIR TRANSPORT

The Government of New Zealand and the Government of the People's Republic of China hereinafter referred to as the "Contracting Parties";

Desiring to facilitate friendly contacts between their two peoples and develop mutual relations between the two countries in the field of civil aviation;

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

Have agreed on the establishment and operation of air services between and beyond their respective territories as follows:

ARTICLE 1 DEFINITIONS

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

- (1) the term "aeronautical authorities" means, in the case of New Zealand, the Minister of Transport or any person or agency authorised to perform the functions presently exercised by the said Minister, and in the case of the People's Republic of China, the General Administration of Civil Aviation of China, or any person or agency authorised to perform the functions presently exercised by the said Administration;
- (2) the term "airline" means any air transport enterprise offering or operating international air services;
- (3) the term "designated airline" means an airline which has been designated and authorised in accordance with Article 3 of this Agreement;
- (4) the term "territory" means the land area, territorial sea and inland waters, and airspace above them under the sovereignty of a State,

¹ Came into force on 21 October 1993 by signature, in accordance with article 20.

² *Ibid.*, 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.

and, in relation to New Zealand, shall exclude the Cook Islands, Niue and Tokelau;

- (5) the term "air service" means any scheduled air service performed by aircraft for the public transport of passengers, baggage, cargo or mail separately or in combination;
- (6) the term "international air service" means an air service which passes through the air space over the territory of more than one State;
- (7) the term "stop for non-traffic purposes" means a landing for any purpose other than taking on or discharging passengers, baggage, cargo or mail;
- (8) the term "capacity" means:
 - (a) in relation to an aircraft, the payload of that aircraft available on a route or section of a route; and
 - (b) in relation to an air service, the capacity of the aircraft used on such service multiplied by the frequency operated by such aircraft over a given period on a route or section of a route;
- (9) the term "tariff" means the prices to be paid for the carriage of passengers, baggage and cargo and the conditions under which those prices apply, including prices and conditions for agency and other auxiliary service, but excluding remuneration and conditions for the carriage of mail;
- (10) the term "Route Schedule" means the Route Schedule annexed to this Agreement or as amended in accordance with the provisions of Article 17 of this Agreement. The Route Schedule forms an integral part of this Agreement.

ARTICLE 2 GRANT OF RIGHTS

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

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

- (a) to fly without landing across the territory of the other Contracting Party along the air route(s) prescribed by the aeronautical authorities of the other Contracting Party; and
- (b) to make stops for non-traffic purposes in the territory of the other Contracting Party, at points to be agreed upon between the aeronautical authorities of both Contracting Parties; and
- (c) to make stops at the points on the specified route in the territory of the other Contracting Party for the purpose of taking on board and discharging international traffic in passengers, baggage, cargo and mail.

3. Nothing in paragraph 2 (c) of this Article shall be deemed to confer on the designated airline of one Party the right of taking on at one point in the territory of the other Party traffic in passengers, baggage, cargo or mail destined for another point in the territory of the other Party (stop-over and cabotage traffic).

ARTICLE 3

AIRLINE DESIGNATION AND AUTHORISATION

1. Each Contracting Party shall have the right to designate in writing to the other contracting Party one airline to operate the agreed services on the specified route, and to withdraw or alter such designations.

2. On receipt of such designation, the other Contracting Party shall, subject to the provisions of paragraphs 3 and 4 of this Article, grant to the airline so designated the appropriate operating authorisation without unreasonable delay.

3. The substantial ownership and effective control of the airline designated by each Contracting Party shall remain vested in such Contracting Party or its nationals.

4. The aeronautical authorities of the other Contracting Party may require the airline designated by the first Contracting Party to satisfy them that it is qualified to fulfil the conditions prescribed under the laws and regulations normally and reasonably applied by them to the operation of international air services by the said authorities.

5. When an airline has been so designated and authorised, it may commence operation of the agreed services in accordance with the

relevant provisions of this Agreement subject to two (2) months written notice to the aeronautical authorities of the other contracting Party.

ARTICLE 4

REVOCATION, SUSPENSION OR IMPOSITION OF CONDITIONS

1. Each Contracting Party shall have the right to revoke or suspend the operating authorisation granted to the designated airline of the other Contracting Party or to impose such conditions as it may deem necessary on the exercise by the said designated airline of the rights specified in Article 2 of this Agreement, in any of the following cases:

- (a) where it is not satisfied that the substantial ownership and effective control of that airline are vested in the other contracting Party or its nationals, or
- (b) where the *airline* fails to comply with the laws and regulations of the first Contracting Party, or
- (c) where that airline otherwise fails to operate in accordance with the conditions prescribed under this Agreement.

2. Unless immediate revocation, suspension or imposition of the conditions mentioned in paragraph 1 of this Article is essential to prevent further infringements of laws and regulations, such right shall be exercised only after consultation with the other Contracting Party.

ARTICLE 5

APPLICATION OF LAWS AND REGULATIONS

1. The laws and regulations of one Contracting Party relating to the admission to, stay in and departure from its territory of aircraft engaged in international operation shall be applicable to the aircraft of the designated airline of the other Contracting Party, while entering, within, and departing from the territory of the first Contracting Party.

2. The laws and regulations of one Contracting Party relating to admission to, stay in or departure from its territory of passengers, crew, cargo or mail, such as regulations relating to entry, passports, customs and quarantine, shall be applicable to the passengers, crew, cargo or mail carried by the aircraft of the designated airline of the other contracting Party while entering, within and departing the territory of the first Contracting Party.

3. Passengers, baggage and cargo in direct transit and not leaving the area of the airport reserved for such purpose shall be subject to no more than a simplified control.

ARTICLE 6 CAPACITY PROVISIONS

1. There shall be fair and equal opportunity for the designated airlines of the Contracting Parties to operate the agreed services on the specified routes.

2. In operating the agreed services the designated airline of each Contracting Party shall take into account the interests of the designated airline of the other Contracting Party so as not to affect unduly the services the latter provides on the whole or part of the same routes.

3. The agreed services provided by the designated airline of the Contracting Parties shall bear a close relationship to the requirements of the public for transportation on the specified routes *and* shall have as their primary objective the provision at a reasonable load factor of capacity adequate to meet the current and reasonably anticipated requirements for the carriage of passengers, cargo and mail originating in or destined for the territory of the Contracting Party which has designated the airline.

4. Provision for the carriage of passengers, cargo and mail, both taken on board and discharged at points on the specified routes other than points in the territory of the Contracting Party designating the airline shall be made in accordance with the general principles that capacity shall be related to:

- (a) traffic requirements to and from the territory of the Contracting Party which has designated the airline;
- (b) traffic requirements of the region through which the agreed service passes, taking account of other air services established by airlines of the States comprising that region; and
- (c) the requirements of through airline operation.

ARTICLE 7 COMMERCIAL ARRANGEMENTS

1. Capacity, frequency and type of aircraft used in operation of the agreed services shall be agreed upon between the aeronautical authorities of the Contracting Parties. The flight schedules in respect of the agreed services operated by the designated airline of either

Contracting Party shall be subject to the approval of the competent authorities of the other Contracting Party.

2. The designated airline of either Contracting Party may, according to traffic requirements, apply for operation of extra section on the specified route. The application for such flight shall be submitted at least three days before its proposed operation to the aeronautical authorities of the other Contracting Party, and the flight can be operated only after approval has been obtained from such authorities.

ARTICLE 8 TARIFFS

1. The tariffs applicable between the territories of the two Contracting Parties shall be established at reasonable levels, due regard being paid to all relevant factors including cost of operation, the interests of users, reasonable profit, characteristics of service (such as speed and standard of accommodation), and, when it is deemed suitable, the tariffs of other airlines operating over the whole or part of the specified route.

2. The tariffs referred to in paragraph 1 of this Article shall, if possible, be agreed upon between the designated airlines of both Contracting Parties, in consultation when necessary and possible with other airlines operating over the whole or part of the same route. However, a designated airline shall not be precluded from submitting any proposed tariff unilaterally. The tariffs for an agreed service shall be submitted to the aeronautical authorities of both Contracting Parties for approval at least sixty (60) days prior to the proposed date of introduction of these tariffs, unless those aeronautical authorities permit the filing to be made on shorter notice.

3. The tariffs shall become effective after their approval by the aeronautical authorities of the Contracting Parties. If neither of the aeronautical authorities has expressed disapproval within thirty (30) days from the date of submission, in accordance with paragraph 2 of this Article, these tariffs shall be considered as approved. In the event of the period for submissions being reduced, as provided for in paragraph 2, the aeronautical authorities of the Contracting Parties may agree that the period within which any disapproval must be notified shall be less than thirty (30) days.

4. If a tariff cannot be established in accordance with the provisions of paragraph 3 of this Article, the aeronautical authorities of the two Contracting Parties shall try to determine the tariff by mutual agreement.

5. If the aeronautical authorities cannot agree on the determination of any tariff under paragraph 4 of this Article, the matter shall be referred

to the Contracting Parties for settlement in accordance with the provisions of Article 18 of this Agreement.

6. Pending determination of a new tariff in accordance with the provisions of this Article, the tariffs already in force shall prevail.

ARTICLE 9

PROVISION OF TECHNICAL SERVICES AND RATE OF CHARGES

1. Each Contracting Party shall designate regular airports and alternate airports in its territory to be used by the designated airline of the other Contracting Party for the operation of the agreed services, and shall provide that airline with such communications, navigational, meteorological and other auxiliary services as are required for the operation of the agreed services.

2. The designated airline of each Contracting Party shall be charged for the use of airports (including the technical equipment and other facilities and services), communications and navigational facilities and other auxiliary services of the other Contracting Party at fair and reasonable rates prescribed by the appropriate authorities of the other Contracting Party. Such rates shall not be higher than those applicable to any other airline engaged in international air services for the use of similar equipment, facilities and services.

ARTICLE 10

CUSTOMS DUTIES

1. Aircraft operated on international air services by the designated airline of one Contracting Party, as well as their regular equipment, spare parts (including engines), fuels, oil (including hydraulic fluids), lubricants, and aircraft stores (including food, beverages and tobacco) on board such aircraft shall be exempt on the basis of reciprocity from all customs duties, taxes, inspection fees and other similar fees and charges on arriving in the territory of the other Contracting Party, provided such equipment and items remain on board the aircraft up to such times as they are re-exported.

2. The following equipment and items shall also be exempt on the basis of reciprocity from the same customs duties, taxes, inspection fees and other similar fees and charges, with the exception of charges corresponding to the services provided:

- (a) regular equipment, spare parts (including engines), fuels, oil (including hydraulic fluids), lubricants and aircraft stores (including food, beverages and tobacco) introduced by or on behalf of the

designated airline of one Contracting Party into the territory of the other contracting Party or taken on board the aircraft in the territory of the other Contracting Party and exclusively intended for use or consumption by aircraft engaged in international services, even when such equipment and items are to be used on part of the journey performed over the territory of the other Contracting Party;

- (b) spare parts (including engines) introduced into the territory of one Contracting Party by or on behalf of the designated airline of the other Contracting Party for the maintenance or repair of aircraft engaged in the operation of international services by the designated airline of that other Contracting Party.

3. Printed ticket stock, air waybills and publicity materials introduced into the territory of one Contracting Party by or on behalf of the designated airline of the other Contracting Party, shall be exempt on the basis of reciprocity from all the customs duties, inspection fees and other similar fees and charges.

4. The equipment and items referred to in paragraphs 1 and 2 of this Article may be unloaded in the territory of the other Contracting Party with the approval of the Customs authorities of the other Contracting Party. Such equipment and items shall be kept under the supervision or control of the Customs authorities of the other Contracting Party up to such time as they are re-exported, or otherwise disposed of in accordance with the Customs regulations.

5. The exemption provided for in paragraphs 1 and 2 of this Article shall also be available where a designated airline of one Contracting Party has contracted with another airline, which similarly enjoys such exemptions in the territory of the other Contracting Party, for the loan or transfer in the said territory of the items as specified in paragraphs 1 and 2 of this Article.

6. Baggage and cargo in direct transit shall be exempt from all the customs duties, taxes, inspection fees and other similar fees and charges on the basis of reciprocity with the exception of the charges corresponding to the services provided.

ARTICLE 11

REPRESENTATION AND PERSONNEL

1. For the operation of the agreed services on the specified route, the designated airline of each Contracting Party shall have the right, on a reciprocal basis to set up representation at the point(s) of call on the specified route within the territory of the other Contracting Party.

2. Unless mutually arranged otherwise, the staff members of the representation of the designated airline of each Contracting Party shall be nationals of either Contracting Party and the number of such staff shall be determined between the aeronautical authorities of both Contracting Parties. Such staff shall be subject to the laws and regulations in force of the other Contracting Party.

3. Each Contracting Party shall take all necessary steps to facilitate and to assist the setting up and operation of the representative offices referred to in paragraph 1 of this Article.

4. The crew members of the designated airline of either Contracting Party on flights into and out of the territory of the other Contracting Party shall be nationals of the first Contracting Party. If a designated airline of either Contracting Party desires to employ crew members of any other nationality on flights into and out of the territory of the other Contracting Party, prior approval shall be obtained from the other Contracting Party.

ARTICLE 12 TAXATION

The revenues and profit received by the designated airline of each Contracting Party within the territory of the other Contracting Party in connection with the operation of international services *shall be exempt* from all taxes by the other Contracting Party.

ARTICLE 13 CONVERSION AND REMITTANCE OF REVENUE

1. The designated airline of each Contracting Party shall have the right to engage in the sale of air transportation in the territory of the other Contracting Party directly or through its agents.

2. The designated airline of each Contracting Party shall have on a reciprocal basis the right to remit to the Contracting Party designating the airline its revenue received in the territory of the other Contracting Party.

3. The conversion and remittance of such revenue shall be effected in convertible currencies at the effective rate of exchange prevailing on the date of remittance.

4. Each Contracting Party shall facilitate the conversion and remittance of the revenue received in its territory by the designated airline of the other Contracting Party, and assist the said airline in attending to the relevant formalities.

ARTICLE 14 AVIATION SECURITY

1. The Contracting Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of the present Agreement. The Contracting Parties shall in particular act in conformity with the provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft signed at Tokyo on 14 September 1963,¹ the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970,² and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971.³

2. The Contracting Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, their passengers and crew, airports and air navigation facilities, and any other threat to the security of civil aviation.

3. The Contracting Parties shall, in their mutual relations, act in conformity with the aviation security provisions and technical requirements established by the International Civil Aviation Organization and designated as Annexes to the Convention on International Civil Aviation to the extent that such security provisions and requirements are applicable to the Contracting Parties; they shall require that operators of aircraft of their registry or operators of aircraft who have their principal place of business or permanent resident in their territory act in conformity with such aviation security provisions.

4. Each Contracting Party agrees that the operators of aircraft referred to in paragraph 3 of this Article may be required to observe the aviation security provisions and requirements established by the other contracting Party for entry into, departure from or while within the territory of that other Contracting Party. Each Contracting Party shall ensure that adequate measures are effectively applied within its territory to protect the safety of the aircraft prior to and during boarding or loading, and to inspect passengers, crew, baggage, cargo and aircraft stores prior to boarding or loading. Each Contracting Party shall also give sympathetic consideration to any request from the other Contracting Party for reasonable special security measures to meet a particular threat, it being understood it is highly important that information upon which the threat

¹ United Nations, *Treaty Series*, vol. 704, p. 219.

² *Ibid.*, vol. 860, p. 105.

³ *Ibid.*, vol. 974, p. 177 and vol. 1217, p. 404 (corrigendum to volume 974).

is based is communicated to the Contracting Party which has been requested to provide such special measures.

5. When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of such aircraft, their passengers and crew, airports or air navigation facilities occurs, the Contracting Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof.

ARTICLE 15 PROVISION OF STATISTICAL DATA

The aeronautical authorities of either Contracting Party shall furnish to the aeronautical authorities of the other contracting Party, at their request, statistical data as may be reasonably required for the purpose of reviewing the capacity provided by the agreed services operated by the designated airline of the first Contracting Party on the specified route. Such data shall include all information required to determine the amount of traffic carried by the said airline on the agreed services.

ARTICLE 16 CONSULTATION

1. The contracting Parties shall, in the spirit of close cooperation and mutual support, ensure the correct implementation of and satisfactory compliance with the provisions of this Agreement. To this end, the aeronautical authorities of the Contracting Parties shall consult each other from time to time.

2. Either Contracting Party may at any time request consultation with the other Contracting Party concerning this Agreement. Such consultation shall begin as soon as possible, and at least within sixty days from the date of receipt of the request by other Contracting Party unless otherwise agreed.

ARTICLE 17 AMENDMENT AND MODIFICATION

1. If either of the Contracting Parties considers it desirable to amend any provision of this Agreement or its Annex, it may at any time request consultation with the other Contracting Party, and such consultation, which may be between aeronautical authorities and which may be through discussion or by correspondence, shall be within a period of ninety

days from the date of receipt of the request by the other Contracting Party, unless both Parties agree to an extension of this period.

2. Any amendment to this Agreement or its Annex agreed upon as a result of the consultation referred to in paragraph 1 of this Article shall come into force when it has been confirmed by an exchange of notes through diplomatic channels.

ARTICLE 18 SETTLEMENT OF DISPUTES

1. If any dispute arises between the Contracting Parties relating to the interpretation or implementation of this Agreement, the aeronautical authorities of the two Contracting Parties shall in the first place endeavour to settle the dispute by negotiation.

2. If the aeronautical authorities of the Contracting Parties fail to reach a settlement of the said dispute, it shall be settled through diplomatic channels.

ARTICLE 19 TERMINATION

Either contracting Party may at any time give notice to the other Contracting Party through diplomatic channels of its decision to terminate this Agreement. This Agreement shall then terminate twelve (12) months after the date of receipt of the notice by the other Contracting Party unless such notice is withdrawn by agreement between the Contracting Parties before the expiry of this period.

ARTICLE 20 ENTRY INTO FORCE

The present Agreement shall come into force from the date of its signature.

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

DONE in Wellington on 21st October, 1993, in original copies in the English and Chinese languages, both texts being equally authentic.

For the Government
of New Zealand:
D. MCKINNON

For the Government
of the People's Republic of China:
LI JINHUA

ANNEX
ROUTE SCHEDULE

1. The route of the agreed services operated by the airline designated by the Government of New Zealand shall be as follows in both directions:

Points in New Zealand — Sydney or Brisbane and another point in Asia or Southwest Pacific — two points in China

Note: The unspecified intermediate point and destination points shall be agreed upon between the aeronautical authorities of the Contracting Parties.

2. The route of the agreed services operated by the airline designated by the Government of The People's Republic of China shall be as follows in both directions:

Points in China — Sydney or Melbourne and another point in Asia or Southwest Pacific — Wellington and Auckland.

Note: The unspecified intermediate points shall be agreed upon between the aeronautical authorities of the Contracting Parties.

3. The designated airline of either Contracting Party may omit on any or all flights, any point on the specified route, provided the agreed service begins and terminates in the territory of the Contracting Party designating the airline.

4. A shift from one agreed point to another by the designated airline of each Contracting Party shall be subject to six month's notice to the aeronautical authorities of the other Contracting Party.
