5 (1957) Nr. 10

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 1992 Nr. 177

A. TITEL

Luchtvaartovereenkomst tussen het Koninkrijk der Nederlanden en de Verenigde Staten van Amerika, met bijlage; Washington, 3 april 1957

B. TEKST

De tekst van de Overeenkomst en bijlage is geplaatst in *Trb.* 1957, 53.

De Overeenkomst is gewijzigd bij Protocol van 31 maart 1978, bij notawisseling van 13 oktober en 22 december 1987, bij notawisseling van 29 januari en 13 maart 1992 en bij notawisseling van 14 oktober 1992 (zie rubriek J hieronder).

C. VERTALING

Zie *Trb.* 1957, 53.

D. PARLEMENT

Zie *Trb.* 1957, 197, rubriek J van *Trb.* 1988, 117 en van *Trb.* 1992, 63 en rubriek J hieronder.

G. INWERKINGTREDING

Zie *Trb.* 1957, 197 en *Trb.* 1987, 149.

J. GEGEVENS

Zie *Trb.* 1957, 53 en 197, *Trb.* 1969, 243, *Trb.* 1979, 145, *Trb.* 1987, 33 en 149, *Trb.* 1988, 12 en 117 en *Trb.* 1992, 63.

Verwijzingen

Voor het op 31 maart 1978 te 's-Gravenhage tot stand gekomen Protocol met betrekking tot de onderhavige Overeenkomst zie ook *Trb.* 1992, 178.

Wijziging van 13 maart 1992

De in de op 29 januari/13 maart 1992 te 's-Gravenhage gewisselde nota's houdende een overeenkomst tot wijziging van de onderhavige Overeenkomst is in overeenstemming met artikel 91, juncto additioneel artikel XXI, eerste lid, onderdeel a, van de Grondwet op de voet van artikel 61, derde lid, van de Grondwet naar de tekst van 1972 overgelegd aan de Eerste en de Tweede Kamer der Staten-Generaal bij brieven van 11 augustus 1992 (Kamerstukken II 1991/92, 22 708, nr. 1).

De toelichtende nota die de brieven vergezelde, is ondertekend door de Minister van Verkeer en Waterstaat J. R. H. MAIJ-WEGGEN en de Minister van Buitenlandse Zaken H. VAN DEN BROEK.

De goedkeuring door de Staten-Generaal is verleend op 14 september 1992.

De wijziging van 13 maart 1992 is op 23 november 1992 in werking getreden.

Wat het Koninkrijk der Nederlanden betreft, geldt de wijziging alleen voor Nederland.

Wijziging van 14 oktober 1992

Op 14 oktober 1992 zijn te 's-Gravenhage nota's gewisseld tussen de Regering van het Koninkrijk der Nederlanden en de Regering van de Verenigde Staten van Amerika tot wijziging van onder meer de onderhavige Overeenkomst, zoals gewijzigd.

De tekst van de nota's luidt als volgt:

Nr. I

MINISTER FOR FOREIGN AFFAIRS

The Hague, 14 October 1992

Dear Sir,

I have the honor to refer to the negotiations between the Government of the Kingdom of the Netherlands and the Government of the United States of America, held at Washington, D.C. on 1 to 4 September 1992, on the bilateral air transport relationship between the Kingdom of the Netherlands in Europe and the United States of

America, and in light of the understandings reached in those negotiations, I have the honor to propose that the Air Transport Agreement between the Kingdom of the Netherlands and the United States of America, of 3 April 1957, as amended, and the Protocol relating to the Netherlands-United States Air Transport Agreement of 1957, of 31 March 1978, as amended, be amended as follows:

1. Article 1 of the Air Transport Agreement of April 3, 1957, as amended ("the Agreement"), and Article 1 of the Protocol of March 31, 1978, as amended ("the Protocol") shall be amended to reflect the following changes and additions:

a) The term "air service" means scheduled air service or charter air service of both, as the context requires, performed by aircraft for the public transport of passengers, cargo or mail, separately or in combination, for compensation;

b) The term "Convention" means the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944, and includes (i) any amendment thereto which has entered into force under Article 94(a) thereof and has been ratified by both Contracting Parties; and (ii) any Annex of any amendment thereto adopted under Article 90 of that Convention, insofar as such amendment or Annex is at any given time effective for both Contracting Parties;

c) The term "designated airline" means an airline designated and authorized in accordance with the terms of this Agreement;

d) The term "user charge" means a charge made to airlines for the provision of airport, air navigation of aviation security property or facilities, including related services and facilities.

2. Article 2 of the Agreement shall be replaced by the following:

1. Each Contracting Party grants to the other Contracting Party the following rights for the conduct of its international air services by the airlines of the other Contracting Party:

a) the right to fly across its territory without landing;

b) the right to make stops in its territory for non-traffic purposes.

2. Each Contracting Party grants to the other Contracting Party the rights specified in this Agreement for the purpose of operating scheduled international air services on the routes specified in Annex 1 and charter international air services as specified in Article 4 of the 1978 Protocol, as amended. Such services, whether scheduled or charter, are hereinafter called "the agreed services" and such routes are called "the specified routes". While operating an agreed service, the designated airlines of each Contracting Party shall enjoy, in addition to the rights specified in paragraph (1) of this Article, the right to make stops in the territory of the other Contracting Party for the purpose of taking on board and discharging passengers, cargo, or mail, separately or in combination.

3. Nothing in paragraph (2) of this Article shall be deemed to confer on the airline or airlines of one Contracting Party the right to take on board, in the territory of the other Contracting Party, passengers, cargo or mail carried for compensation and destined for another point in the territory of that other Contracting Party.

3. Article 3 of the Agreement and Article 2 of the Protocol shall be replaced by the following:

1. Each Contracting Party shall have the right to designate as many airlines as it wishes to conduct international air services in accordance with this Agreement and to withdraw or alter such designations. Such designations shall be transmitted to the other Contracting Party in writing through diplomatic channels, and shall identify whether the airline is authorized to conduct the scheduled or charter air service specified in this Agreement, or both.

2. On receipt of such a designation, and of applications from the designated airline in the form and manner prescribed for operating authorizations and technical permissions, the other Contracting Party shall with minimum procedural delay grant to the designated airline or airlines the appropriate operating authorizations and technical permissions, provided the airline meets the standards set forth in this Agreement and is qualified to meet the conditions prescribed under the laws and regulations normally applied to the operation of international air services by the Contracting Party considering the application or applications.

4. Article 4 of the Agreement shall be replaced by the following:

Each Contracting Party reserves the right to withhold, suspend, limit, impose conditions, or revoke the privilege of exercising the rights provided for in this Agreement from an airline designated by the other Contracting Party in the event that it is not satisfied that substantial ownership and effective control of such airline are vested in nationals of the other Contracting Party, or in case of failure by such airline to comply with the laws or regulations referred to in Article 5 hereof, or in case of failure of the airline or the government designating it otherwise to perform its obligations hereunder, or to fulfill the conditions under which the rights are granted in accordance with this Agreement.

5. The following paragraph shall be added to Article 6 of the Agreement:

2. Each Contracting Party may request consultations concerning the safety standards and requirements maintained and administered by the other Contracting Party relating to aeronautical facilities,

aircrew, aircraft, and operation of the designated airlines. If, following such consultations, either Contracting Party finds that the other Contracting Party does not effectively maintain and administer safety standards ans 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 the Convention, and the other Contracting Party shall take appropriate corrective action. Each Contracting Party reserves the right to withhold, revoke or limit the operating authorization or technical permission of an airline or airlines designated by the other Contracting Party in the event the other Contracting Party does not take such appropriate action within a reasonable time.

6. Article 10 bis of the Protocol shall be deleted and Article 10 of the Protocol shall be replaced by the following:

1. The airlines of one Contracting Party shall have the right to establish offices in the territory of the other Contracting Party for the promotion and sale of air transportation.

2. The designated airline or airlines of each Contracting Party shall be entitled, in accordance with the laws and regulations relating to entry, residence and employment of the other Contracting Party, to bring in and maintain in the territory of the other Contracting Party managerial, sales, technical, operational and other specialist staff required for the provision of air services.

3. Each designated airline may perform its own ground-handling in the territory of the other Contracting Party ("self-handling") or, at its option, select among competing agents for such services in whole or in part. These rights shall be subject only to physical constraints resulting form considerations of airport safety. Where such considerations preclude self-handling, ground services shall be available on an equal basis to all airlines; charges shall be based on the costs of services provided; and such services shall be comparable to the kind and quality of services if self-handling were possible.

4. The airlines of each Contracting Partly shall have the right to engage in the sale of air transportation in the territory of the other Contracting Party directly and, at the airline's discretion, through its agents. Each 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.

5. The airlines of one Contracting Party shall be permitted to pay for local expenses, including purchases of fuel, in the territory of the other Contracting Party in local currency. At their discretion, the airlines of one Contracting Party may pay for such expenses in the territory of the other Contracting Party in freely convertible currencies according to local currency regulation.

6. Each airline shall have the right to convert and remit to its country on demand local revenues in excess of sums locally disbursed. Conversion and remittance shall be permitted promptly without restrictions or taxation in respect thereof at the rate of exchange applicable to current transactions which is in effect at the time such revenues are presented for conversion and remittance.

7. Notwithstanding any other provision of this Agreement, as amended, airlines of both Contracting Parties shall be permitted, without restriction, to employ in connection with international air transportation any surface transportation for cargo to or from any points in the territories of the Parties or in third countries, including transport to and from all airports with customs facilities, and including, where applicable, the right to transport cargo in bond under applicable law and regulations. Such cargo, whether moving by surface or by air, shall have access to airport customs processing and facilities. Airlines may elect to perform their own surface transportation or to provide it through arrangements with other surface carriers, including surface transportation operated by other airlines and indirect providers of cargo transportation. Such intermodal cargo services may be offered at a single through price for the air and surface transportation combined, provided that shippers are not misled as to the facts concerning such transportation.

7. Article 7(b), (c) and (d) of the Agreement shall be replaced by the following:

1. On arriving in the territory of one Contracting Party, aircraft operated in international air transportation by the designated airlines of the other Contracting Party, their regular equipment, ground equipment, fuel, lubricants, consumable technical supplies, spare parts (including engines), aircraft stores (including but not limited to such items of food, beverages and liquor, tobacco, and other products destined for sale to or use by passengers in limited quantities during flight) and other items intended for or used solely in connection with the operation or servicing of aircraft engaged in international air transportation shall be exempt, on the basis of reciprocity, from all import restrictions, taxes, levies, duties, and similar fees and charges imposed by the national authorities, and not based on the cost of services; provided such equipment and supplies remain on board the aircraft.

2. There shall also be exempt, on the basis of reciprocity, from the taxes, levies, duties, fees and charges referred to in paragraph (1) of this Article, with the exception of charges based on the cost of the services provided:

a) aircraft stores introduced into or supplied in the territory of one Contracting Party and taken on board, within reasonable limits, for use on outbound aircraft of an airline of the other Contracting Party engaged in international air transportation, even when these stores are to be used on a part of the journey performed over the territory of the Contracting Party in which they are taken on board;

b) ground equipment and spare parts (including engines) introduced into the territory of a Contracting Party for the servicing, maintenance or repair of aircraft of an airline of the other Contracting Party used in international air transportation;

c) fuel, lubricants and consumable technical supplies introduced into or supplied in the territory of a Contracting Party for use in an aircraft of an airline of the other Contracting Party engaged in international air transportation, even when these supplies are to be used on the part of the journey performed over the territory of the Contracting Party in which they are taken on board; and

d) promotional and advertising materials introduced into or supplied in the territory of one Contracting Party and taken on board, within reasonable limits, for use on outbound aircraft of an airline of the other Contracting Party engaged in international air transportation, even when these stores are to be used on a part of the journey performed over the territory of the Contracting Party in which they are taken on board.

3. Equipment and supplies referred to in paragraphs (1) and (2) of this Article may be required to be kept under the supervision or control of the appropriate authorities.

4. The exemptions provided by this Article shall also be available where the designated airlines of one Contracting Party have contracted with another airline, which similarly enjoys such exemptions from the other Contracting Party, for the loan or transfer in the territory of the other Contracting Party of the items specified in paragraph (1) and (2) of this Article.

8. Article 7(a) of the Agreement and Article 10(b) of the Protocol shall be replaced by the following:

1. User charges that may be imposed by the competent charging authorities or bodies of one Contracting Party on the designated airlines of the other Contracting Party shall be just, reasonable, nondiscriminatory, and equitably apportioned among categories of users. In any event, any such charge shall be assessed on the airlines of

the other Contracting Party on terms not less favorable than the most favorable terms available to any other airline at the time the charges are assessed.

2. User charges imposed on the airlines of the other Contracting Party may reflect, but shall not exceed, an equitable portion of the full cost to the competent charging authorities or bodies of providing the appropriate airport, air navigation, airport environmental, and aviation security facilities and services, and in the case of airports, may provide for a reasonable rate of return on assets, after depreciation. Facilities and services for which charges are made shall be provided on an efficient basis. Reasonable notice shall be given prior to changes in user charges.

3. Each Contracting Party shall encourage consultations between the competent charging authorities or bodies in its territory and airlines using the services and facilities, and shall encourage the competent charging authorities or bodies and the airlines to exchange such information as may be necessary for an accurate review of the reasonableness of the charges in light of the principles of paragraphs (1) and (2) of this Article.

9. Article 8 of the Agreement and Article 5 of the Protocol shall be replaced by the following:

1. Each Contracting Party shall allow a fair, equal, and nondiscriminatory opportunity for the designated airlines of both Contracting Parties to compete with the designated airlines of the other Contracting Party.

2. Neither Contracting Party shall unilaterally limit the volume of traffic, frequency or regularity of service, or the aircraft type or types operated by the designated airlines of the other Contracting Party, except as may be required for customs, technical, operational or environmental reasons under uniform conditions consistent with Article 15 of the Convention.

3. Neither Contracting Party shall impose on the other Contracting Party's designated airlines a first refusal requirement, uplift ratio, no-objection fee, or any other requirement with respect to the capacity, frequency or traffic which would be inconsistent with the purposes of this Agreement.

4. Neither Contracting Party shall require the filing of schedules, programs for charter flights, or operational plans by airlines of the other Contracting Party for approval, except as may be required on a non-discriminatory basis to enforce uniform conditions as foreseen by paragraph (2) of this Article or as may be specifically authorized in this Agreement. If a Contracting Party requires filings for information

purposes, it shall minimize the administrative burdens of filing requirements and procedures on air transportation intermediaries and on designated airlines of the other Contracting Party.

10. Article 13 of the Agreement shall be replaced by the following:

1. Any dispute arising under this Agreement, other than disputes that may arise under Article 12 (Pricing)[1]), which is not resolved by a first round of formal consultations, may be referred for decision to some person or body. If the Contracting Parties do not agree, the dispute shall, at the request of either Contracting Party, be submitted to arbitration in accordance with the procedures set forth below.

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

a) within 30 days after receipt of a request for arbitration, each Contracting Party shall appoint one arbitrator. Within 60 days after these two arbitrators have been named, they shall by agreement appoint a third arbitrator, who shall act as President of the arbitral tribunal;

b) if either Contracting Party fails to name an arbitrator, or if the third arbitrator is not appointed in accordance with subparagraph (a) of this paragraph, either Contracting Party may request the President of the Council of the International Civil Aviation Organization to appoint the necessary arbitrator or arbitrators within 30 days. If the President of the Council is of the same nationality as one of the Contracting Parties, the most senior Vice President who is not disqualified on that ground shall make the appointment.

3. Except as otherwise agreed by the Contracting Parties, the arbitral tribunal shall determine the limits of its jurisdiction, in accordance with this Agreement, and shall establish its own procedure. The arbitral tribunal, once formed, shall have the jurisdiction to grant interim relief pending its final determination. At the direction of the tribunal or at the request of either of the Contracting Parties, a conference to determine the precise issues to be arbitrated and the specific procedures to be followed shall be held no later than 15 days after the tribunal is fully constituted.

4. Except as otherwise agreed by the Contracting Parties or directed by the tribunal, each Contracting Party shall submit a memorandum within 45 days after the tribunal is fully constituted. Replies shall be due 60 days later. The tribunal shall hold a hearing at the request of either Contracting party, or at its discretion, within 15 days after replies are due.

[1]) Ten rechte dient hier te worden gelezen: Article 11 (Pricing).

5. The tribunal shall attempt to render a written decision within 30 days after completion of the hearing or, if no hearing is held, after the date both replies are submitted, whichever is sooner. The decision of the majority of the tribunal shall prevail.

6. The Contracting Parties may submit requests for clarification of the decision within 15 days after it is rendered and any clarification given shall be issued within 15 days of such request.

7. Each Contracting Party shall, consistent with its national law, give full effect to any decision or award of the arbitral tribunal. In the event that one Contracting Party does not give effect to any decision or award, the other Contracting Party may take such proportionate steps as may be appropriate.

8. The expenses of the arbitral tribunal, including the fees and expenses of the arbitrators, shall be shared equally by the Contracting Parties. Any expenses incurred by the President or Vice-President of the Council of the International Civil Aviation Organization in connection with the procedures in paragraph (2)(b) of this Article shall be considered to be part of the expenses of the arbitral tribunal.

11. Article 16 of the agreement shall be amended to replace the phrase "one year after the date of this receipt" with the phrase "two years after the date of its receipt".

12. Paragraphs 2A and B, 3 and 4 of the current Schedule shall be replaced and paragraph 5 shall be added as follows:

2A. The Netherlands via intermediate points to a point or points in the United States and beyond.

3. Each designated airline may, on any or all flights and at its option:

A. operate fligh numbers in either or both directions;
B. combine different flight numbers within one aircraft operation;
C. serve points on the routes in any combination and in any order (which may include serving intermediate points as beyond points and beyond points as intermediate points);
D. omit stops at any point or points;
E. transfer traffic from any of its aircraft to any of its other aircraft at any point on the routes;
F. serve points behind any point in its territory with or without change of aircraft or flight number and may hold out and advertise such services to the public as through services, without directional or geographic limitation and without loss of any right to carry traffic otherwise permissible under this

Agreement; provided, that the services must serve a point in the territory of the Contracting Party designating the airline.

4. On any segment or segments of the routes above, a designated airline may perform international air transportation without any limitation as to change, at any point on the route, in type or number of aircraft operated, provided that in the outbound direction the transportation beyond such point is a continuation of the transportation from the territory of the Contracting Party that has designated the airline and, in the inbound direction, the transportation to the territory of the Contracting Party that had designated the airline is a continuation of the transportation beyond such point.

5. In operating or holding out authorized services on the agreed routes, designated airlines of either Contracting Party, which hold appropriate authority to provide such service, may, on the basis of reciprocity, and subject to the requirements normally applied to such arrangements, enter into cooperative arrangements such as blocked-space, code-sharing or leasing agreements with another airline and/or company which also holds appropriate authority, provided that such arrangements do not include cabotage or revenue pooling unless such revenue pooling is permitted by both Contracting Parties.

13. Article 4(a) and (b) of the Protocol shall be replaced by the following:

a) The designated airline(s) of each Contracting Party shall have the right to carry international charter traffic in passengers (and their accompanying baggage) and/or cargo between any point or points in one Contracting Party via intermediate points to any point or points in the other Contracting Party and beyond, provided that the service must serve a point in the territory of the Contracting Party designating the airline.

In the performance of services covered by this Article, the airline(s) of one Contracting Party shall also have the right:

1. to make stopovers at any points whether within or outside the territory of either Contracting Party;
2. to carry traffic through the other Contracting Party's territory;
3. to combine on the same aircraft traffic originating in one Contracting Party's territory with traffic originating in the other Contracting Party's territory;
4. to combine on the same aircraft traffic originating at or destined for a point or points behind a point in its territory with U.S. - Netherlands traffic; and
5. to combine on the same aircraft traffic orginating at or destined for an intermediate point or points, or traffic originating at or destined for a point or points beyond the territory of either Contracting Party with U.S. - Netherlands traffic.

Each Contracting Party shall extend favorable consideration to

applications by the designated airline(s) of the other Contracting Party to carry traffic not covered by this Article on the basis of comity and reciprocity.

b) Any airline designated by either Contracting Party performing international charter air transportation originating in the territory of either Contracting Party shall have the option of complying with the charter laws, regulations and rules of either its homeland or of the other Contracting Party. If a Contracting Party applies different rules, regulations, terms, conditions, or limitations to one or more of its airlines, or to airlines of different countries, each designated airline shall be subject to the least restrictive criteria. However, nothing in this paragraph shall limit the rights of one Contracting Party to require airlines designated under this Article by the other Contracting Party to adhere to requirements relating to the protection of passenger funds and passenger cancellation and refund rights.

I propose that if the foregoing proposal is acceptable to the Government of the United States of America, that this note and your note in reply indicating such acceptance shall constitute an agreement between our two governments, which shall enter into force upon an exchange of diplomatic notes following completion of all necessary internal procedures of the Government of the Kingdom of the Netherlands. Pending entry into force, the terms of this agreement shall be applied provisionally from the date of your note in reply.

Please accept the renewed assurances of my highest consideration.

(sd.) H. VAN DEN BROEK

Mr. Thomas H. Gewecke
Chargé d'Affaires of the Embassy
of the United States of America
at The Hague

Nr. II

EMBASSY OF THE UNITED STATES OF AMERICA

The Hague, October 14, 1992

Excellency:

I have the honor to acknowledge the receipt of Your Excellency's note of October 14, 1992, which reads as follows:

(Zoals in Nr. I)

I have the honor to inform Your Excellency, on behalf of the Government of the United States of America, that it accepts the above proposal of the Government of the Kingdom of the Netherlands and to confirm that Your Excellency's note and this reply shall constitute an agreement between our two governments, the terms of which shall be applied provisionally from the date of this note and which shall enter into force upon a subsequent exchange of notes following the completion of all necessary internal procedures of the Government of the Kingdom of the Netherlands.

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

(sd.) THOMAS H. GEWECKE

Charge d'Affaires ad interim

His Excellency
Hans van den Broek,
Minister for Foreign Affairs,
The Hague

De in de nota's vervatte overeenkomst behoeft ingevolge artikel 91 van de Grondwet de goedkeuring van de Staten-Generaal, alvorens het Koninkrijk aan de overeenkomst kan worden gebonden.

De bepalingen van de in de nota's vervatte overeenkomst zullen ingevolge het aan het slot van de nota's gestelde in werking treden op een in een latere diplomatieke notawisseling overeen te komen datum, na voltooiing van de constitutionele procedures door de Regering van het Koninkrijk der Nederlanden.

De overeenkomst wordt vanaf 14 oktober 1992 voorlopig toegepast.

Uitgegeven de *vijfentwintigste* november 1992.

De Minister van Buitenlandse Zaken,

H. VAN DEN BROEK

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