

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 1986 Nr. 163

A. TITEL

*Overeenkomst tussen het Koninkrijk der Nederlanden en Hong Kong
inzake luchtdiensten, met Bijlage;
's-Gravenhage, 17 september 1986*

B. TEKST

**Agreement between the Government of the Kingdom of the Netherlands
and the Government of Hong Kong concerning air services**

The Government of the Kingdom of the Netherlands and the
Government of Hong Kong,

Desiring to promote the development of air services between their
respective areas;

Desiring to conclude an Agreement for the purpose of providing
the framework for such air services;

Have agreed as follows:

Article 1

Definitions

For the purpose of this Agreement, unless indicated otherwise:

(a) the term "aeronautical authorities" means in the case of Hong
Kong, the Director of Civil Aviation, and in the case of the Kingdom
of the Netherlands, the Minister of Transport and Public Works, or,
in both cases, any person or body authorised to perform any functions
at present exercisable by the above-mentioned authorities or similar
functions;

(b) the term "designated airline" means an airline which has been

designated and authorised in accordance with Article 4 of this Agreement;

(c) the term "area" in relation to Hong Kong includes Hong Kong Island, Kowloon and the New Territories and in relation to the Kingdom of the Netherlands has the meaning assigned to "territory" in Article 2 of the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944;

(d) 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 said Convention;

(e) the term "user charge" means a charge made to airlines by the authorities or permitted by them to be made for the provision for aircraft, their crews and passengers and cargo, of airport property or facilities, or air navigation facilities, including related services and facilities;

(f) the term "this Agreement" means this Agreement, its Annex drawn up in application thereof, and any amendments to the Agreement or to the Annex.

Article 2

Provisions of the Chicago Convention applicable to international air services

In implementing this Agreement the Contracting Parties shall act in conformity with the provisions of the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944, including the relevant Annexes insofar as those provisions are applicable to international air services.

Article 3

Grant of Rights

(1) Each Contracting Party grants to the other Contracting Party the following rights in respect of its international air services:

- (a) the right to fly across its area without landing;
- (b) the right to make stops in its area for non-traffic purposes.

(2) Each Contracting Party grants to the other Contracting Party the rights hereinafter specified in this Agreement for the purpose of operating international air services on the routes specified in the appropriate Section of the Schedule annexed to this Agreement. Such services and routes are hereinafter called "the agreed services" and "the specified routes" respectively. While operating an agreed service on a specified route the airlines designated by each Contracting Party shall enjoy in addition to the rights specified in paragraph (1) of this

Article the right to make stops in the area of the other Contracting Party at the points specified for that route in the Schedule to this Agreement for the purpose of taking on board and discharging passengers and cargo including mail.

(3) Nothing in paragraph (2) of this Article shall be deemed to confer on the designated airlines of one Contracting Party the right to take on board at one point in the area of the other Contracting Party, passengers and cargo including mail carried for hire or reward and destined for another point in the area of the other Contracting Party.

(4) If because of armed conflict, political disturbances or developments, or special and unusual circumstances, a designated airline of one Contracting Party is unable to operate a service on its normal routing, the other Contracting Party shall use its best efforts to facilitate the continued operation of such service through appropriate temporary rearrangements of routes.

Article 4

Designation of and Authorisation of Airlines

(1) Each Contracting Party shall have the right to designate in writing to the other Contracting Party one or more airlines for the purpose of operating the agreed services on the specified routes and to withdraw or alter such designations.

(2) On receipt of such a designation the other Contracting Party shall, subject to the provisions of paragraphs (3) and (4) of this Article, without delay grant to the airline or airlines designated the appropriate operating authorisations.

(3) The aeronautical authorities of one Contracting Party may require an airline designated by the other Contracting Party to satisfy them that it is duly licensed by the aeronautical authorities of the other Contracting Party and that it is qualified to fulfil the conditions prescribed under the laws and regulations normally and reasonably applied to the operation of international air services by such authorities and not inconsistent with the provisions of this Agreement.

(4) (a) The Government of Hong Kong shall have the right to refuse to grant the operating authorisations referred to in paragraph (2) of this Article, or to impose such conditions as it may deem necessary on the exercise by a designated airline of the rights specified in Article 3(2) of this Agreement, in any case where it is not satisfied that substantial ownership and effective control of that airline are vested in the Government of the Kingdom of the Netherlands or its nationals or in both.

(b) The Government of the Kingdom of the Netherlands shall have the right to refuse to grant the operating authorisations referred to in paragraph (2) of this Article, or to impose such conditions as it may deem necessary on the exercise by a designated airline of the rights specified in Article 3(2) of this Agreement, in any case where it is not satisfied that that airline is incorporated and has its principal place of business in Hong Kong.

(5) When an airline has been so designated and authorised it may begin to operate the agreed services, provided that a tariff established in accordance with the provisions of Article 7 of this Agreement is in force in respect of that service.

Article 5

Revocation or Suspension of Operating Authorisation

(1) Each Contracting Party shall have the right to revoke an operating authorisation or to suspend the exercise of the rights specified in Article 3(2) of this Agreement by an airline designated by the other Contracting Party, or to impose such conditions as it may deem necessary on the exercise of these rights:

- (a) (i) in the case of the Government of Hong Kong, in any case where it is not satisfied that substantial ownership and effective control of that airline are vested in the Government of the Kingdom of the Netherlands or its nationals or in both;
- (ii) in the case of the Government of the Netherlands, in any case where it is not satisfied that that airline is incorporated and has its principal place of business in Hong Kong; or
- (b) in the case of failure by that airline to comply with the laws or regulations of the Contracting Party granting these rights; or
- (c) if that airline otherwise fails to operate in accordance with the conditions prescribed under this Agreement.

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

Article 6

Principles Governing Operation of Agreed Services

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

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

(3) The agreed services provided by the designated airlines 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 and cargo including mail to and from the area of the Contracting Party which has designated the airline. Provision for the carriage of passengers and cargo including mail both taken on board and discharged at points on the specified routes other than points in the area of the Contracting Party which designated the airline shall be made in accordance with the general principles that capacity shall be related to:

(a) traffic requirements to and from the area of the Contracting Party which has designated the airline;

(b) traffic requirements of the region through which the agreed service passes, after taking account of other transport services established by airlines of the States comprising the region; and

(c) the requirements of through airline operation.

(4) The aeronautical authorities of the Contracting Parties shall from time to time jointly determine the practical application of the principles contained in the foregoing paragraphs of this Article for the operation of the agreed services by the designated airlines.

Article 7

Tariffs

(1) The term "tariff" means:

(i) the fare charged by an airline for the carriage of passengers and their baggage on scheduled air services and the charges and conditions for services ancillary to such carriage;

(ii) the freight rate charged by an airline for the carriage of cargo (excluding mail) on scheduled air services;

(iii) the conditions governing the availability or applicability of any such fare or freight rate or price including any benefits attaching to it; and

(iv) the rate of commission paid by an airline to an agent in respect of tickets sold or air waybills completed by that agent for carriage on scheduled air services.

(2) The tariffs to be charged by the designated airlines of the Contracting Parties for carriage between Hong Kong and the Kingdom of the Netherlands shall be those approved by both aeronautical authorities and shall be established at reasonable levels, due regard being had to all relevant factors, including the cost of operating the agreed services, the interest of users, reasonable profit and the tariffs of other airlines operating over all or part of the same route.

(3) The tariffs referred to in paragraph (2) of this Article may be agreed by the designated airlines seeking approval of the tariff, after consultation with other designated airlines operating over the whole or part of the same route. However, a designated airline shall not be precluded from proposing nor the aeronautical authorities from approving, any tariff, if that airline shall have failed to obtain the agreement of the other designated airlines to such a tariff, or because no other designated airline is operating on the same route. Reference in this and in the preceding paragraph to "the same route" means the route operated, not the specified route.

(4) Any proposed tariff for carriage between Hong Kong and the Kingdom of the Netherlands shall be filed with the aeronautical authorities of both Contracting Parties in such form as the aeronautical authorities may separately require for disclosure of the particulars referred to in paragraph (1) of this Article. It shall be filed not less than 60 days (or such shorter period as the aeronautical authorities may agree) before the proposed effective date. The proposed tariff shall be treated as having been filed with a Contracting Party on the date on which it is received by the aeronautical authorities of that Contracting Party.

(5) Any tariff proposed pursuant to paragraph (4) of this Article may be approved by the aeronautical authorities of either Contracting Party at any time and, provided it has been filed in accordance with paragraph (4) of this Article, shall be deemed to have been approved by the aeronautical authorities unless, within 30 days (or such shorter period as the aeronautical authorities of both Contracting Parties may agree) after the date of filing, either of the aeronautical authorities have served on the other written notice of disapproval of the proposed tariff.

(6) If a notice of disapproval is given in accordance with the provisions of paragraph (5) of this Article, the aeronautical authorities of the two Contracting Parties may determine the tariff by mutual agreement. Either Contracting Party may within 30 days of the service of the notice of disapproval, request consultations which shall be held within 30 days of the request.

(7) If a tariff has been disapproved by one of the aeronautical authorities in accordance with paragraph (5) of this Article, and the

aeronautical authorities have been unable to determine the tariff by agreement in accordance with paragraph (6) of this Article, the dispute may be settled in accordance with the provisions of Article 14 of this Agreement.

(8) Subject to paragraph (9) of this Article, a tariff established in accordance with the provisions of this Article shall remain in force until a replacement tariff has been established.

(9) Except with the agreement of the aeronautical authorities of both Contracting Parties, and for such period as they may agree, a tariff shall not be prolonged by virtue of paragraph (8) of this Article:

(a) where a tariff has a terminal date, for more than 12 months after that date;

(b) where a tariff has no terminal date, for more than 12 months after the date on which a replacement tariff is intended to become effective, as filed with both aeronautical authorities by the designated airline or airlines of one or both Contracting Parties.

(10) (a) The tariffs to be charged by a designated airline of Hong Kong for carriage between the Netherlands and another State shall be subject to approval by the aeronautical authorities of the Netherlands and, where appropriate, of the other State. The tariffs to be charged by a designated airline of the Netherlands for carriage between Hong Kong and a State other than the Netherlands shall be subject to approval by the aeronautical authorities of Hong Kong and, where appropriate, of the other State.

(b) The aeronautical authorities of each Contracting Party shall approve any tariff filed by the designated airline of the other Contracting Party for carriage between a point in the area of the first Contracting Party and a point other than in the Kingdom of the Netherlands or Hong Kong provided that:

(i) the airline in question is authorized by both aeronautical authorities to undertake such carriage; and

(ii) that tariff is identical with the duly approved tariff for that carriage charged by the airlines of the first Contracting Party or the airlines of the country in which the other point is situated or, if there are no such airlines, by any other airline authorised to undertake such carriage by the aeronautical authorities of the first Contracting Party.

(c) No tariff shall be approved for such carriage unless it has been filed by the designated airline seeking that approval with the aeronautical authorities of the Contracting Party, in such form as those aeronautical authorities may require to disclose the particulars referred to in paragraph (1) of this Article not less than 60 days prior to the proposed effective date (or such shorter period as those aeronautical authorities may in a particular case agree to meet the objective of subparagraph (b) of this paragraph).

(d) The Contracting Party which has approved a tariff established in accordance with subparagraphs (a), (b) and (c) of this paragraph may withdraw its approval with effect from the same day as that on which the tariff approved for its own or any other airline ceases to be effective.

Article 8

Customs Duties

(1) Aircraft operated on international air services by a designated airline of either Contracting Party, their regular equipment, fuel, lubricants, spare parts including engines, and aircraft stores (including but not limited to such items as food, beverages and tobacco) which are on board such aircraft shall be relieved by the other Contracting Party on the basis of reciprocity from all customs duties, excise taxes and similar fees and charges not based on the cost of services provided on arrival, provided such equipment and supplies remain on board the aircraft.

(2) Regular equipment, spare parts, supplies of fuels and lubricants and aircraft stores as well as printed ticket stock, air waybills, any printed material which bears insignia of the company printed thereon and usual publicity material distributed without charge by that designated airline, introduced into the area of one Contracting Party by or on behalf of a designated airline of the other Contracting Party or taken on board the aircraft operated by such designated airline and intended solely for use on board aircraft in the operating of international services shall be relieved by the other Contracting Party on the basis of reciprocity from all customs duties, excise taxes and similar fees and charges not based on the cost of services provided on arrival, even when these supplies are to be used on the parts of the journey performed over the area of the Contracting Party in which they are taken on board. This provision shall not be interpreted in such a way that a Contracting Party may be made subject to the obligation to refund customs duties which have been levied on the items referred to above.

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

(4) Regular airborne equipment, spare parts, supplies of fuels and lubricants and aircraft stores on board the aircraft of a designated airline of either Contracting Party may be unloaded in the area of the other Contracting Party only with the approval of the customs authorities of that Party who may require that these materials be placed under their supervision up to such time as they are reexported or otherwise disposed of in accordance with customs regulations.

Article 9

Aviation Security

The Contracting Parties agree to provide maximum aid to each other with a view to suppressing unlawful seizure of aircraft and other unlawful acts against aircraft, airports and air navigation facilities and threats to aviation security. The Contracting Parties shall act in accordance with the aviation security provisions of the Convention on Offences and certain other Acts Committed on board Aircraft, signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970, and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971. The Contracting Parties shall also have regard to applicable aviation provisions established by the International Civil Aviation Organisation. When incidents or threats of unlawful seizure of aircraft or other unlawful acts against aircraft, airports or air navigation facilities occur, the Contracting Parties shall expedite and facilitate all communications intended to terminate such incidents rapidly and safely.

Article 10

Sale of Air Transport Services

The airlines of the Contracting Parties shall be free to sell air transport services in the areas of both the Contracting Parties, either directly or through an agent.

Article 11

Transfer of Earnings

A designated airline of Hong Kong shall have the right to convert and remit to Hong Kong on demand local revenues in excess of sums locally disbursed. A designated airline of the Netherlands shall have the right to convert and remit to the Netherlands on demand local revenues in excess of sums locally disbursed. Conversion and remittance shall be permitted without restrictions at the rate of exchange applicable to current transactions which is in effect at the time such revenues are presented for conversion and remittance.

Article 12

User Charges

(1) Neither Contracting Party shall impose or permit to be imposed

on the designated airline or airlines of the other Contracting Party user charges higher than those imposed on its own or any other airlines operating similar international air services.

(2) Each Contracting Party shall encourage consultation between its competent charging authorities and airlines using the services and facilities, where practicable through the airlines' representative organisations. Reasonable notice should be given to users of any proposals for changes in user charges to enable them to express their views before changes are made. Each Contracting Party shall further encourage the competent charging authorities and the airlines to exchange appropriate information concerning user charges.

Article 13

Consultation

(1) Either Contracting Party may at any time request consultations on the implementation, interpretation, application or amendment of this Agreement. Such consultations, which may be between aeronautical authorities, shall begin within a period of 60 days from the date the other Contracting Party receives a written request, unless otherwise agreed by the Contracting Parties.

(2) Each aeronautical authority shall provide, on request, such statements of statistics as the other may reasonably require for the purpose of the consultations.

Article 14

Settlement of Disputes

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

(2) If the Contracting Parties fail to reach a settlement of the dispute by negotiation, it may be referred by them to such person or body as they may agree on or, at the request of either Contracting Party, shall be submitted for decision to a tribunal of three arbitrators which shall be constituted in the following manner:

(a) within 30 days after receipt of a request for arbitration, each Contracting Party shall appoint one arbitrator. Within 60 days of the appointment of the second arbitrator, the two arbitrators shall appoint by agreement between them a third arbitrator who shall act as President of the tribunal;

(b) if within the limits specified above any appointment has not been made, either Contracting Party may request the President of th

Council of the International Civil Aviation Organisation to make the necessary appointment within 30 days. If the President considers that he is a national of a State which cannot be regarded as neutral in relation to the dispute, the most senior Vice-President who is not disqualified on that ground shall make the appointment.

(3) Except as hereinafter provided in this Article or as otherwise agreed by the Contracting Parties, the tribunal shall determine the limits of its jurisdiction and establish its own procedure. 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 not later than 30 days after the tribunal is fully constituted.

(4) Except as otherwise agreed by the Contracting Parties or prescribed 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 30 days after replies are due.

(5) The tribunal shall attempt to give 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 shall be taken by a majority vote.

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

(7) The decision of the tribunal shall be binding on the Contracting Parties.

(8) Each Contracting Party shall bear the costs of the arbitrator appointed by it. The other costs of the tribunal shall be shared equally by the Contracting Parties including any expenses incurred by the President of the Council of the International Civil Aviation Organisation in implementing the procedures in paragraph (2)(b) of this Article.

Article 15

Amendment

(1) Any amendments to this Agreement other than the Annex agreed in writing by the Contracting Parties shall enter into force on the date when the Government of the Kingdom of the Netherlands notifies the Government of Hong Kong in writing that its constitutional procedures have been completed.

(2) Any amendments to the Annex agreed by the Contracting

Parties shall come into effect when confirmed in writing between the aeronautical authorities of both Contracting Parties.

Article 16

Termination

Either Contracting Party may at any time give notice in writing to the other Contracting Party of its decision to terminate this Agreement. This Agreement shall terminate at midnight (at the place of receipt of the notice) immediately before the first anniversary of the date of receipt of the notice by the other Contracting Party, unless the notice is withdrawn by agreement before the end of this period.

Article 17

Registration with ICAO

This Agreement and any amendment thereto shall be registered with the International Civil Aviation Organisation.

Article 18

Entry into Force

(1) This Agreement shall enter into force on the date on which the Government of the Kingdom of the Netherlands notifies the Government of Hong Kong in writing that its constitutional procedures have been completed.

(2) As regards the Kingdom of the Netherlands, this Agreement shall apply to the Kingdom in Europe only.

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

DONE in duplicate at The Hague this 17th day of September 1986 in the english language.

For the Government of the Kingdom of the Netherlands

H. VAN DEN BROEK

For the Government of Hong Kong

JOHN YAXLEY

Annex**ROUTE SCHEDULE****Section 1**

Routes to be operated by the designated airline or airlines of Hong Kong:

Hong Kong–intermediate points–Amsterdam

Notes:

1. The designated airline or airlines of Hong Kong may on any or all flights omit calling at any of the above mentioned points, and may serve them in any order, provided that the agreed services on these routes begin at Hong Kong.

2. No traffic may be picked up at an intermediate point and set down at Amsterdam or vice versa, except as may from time to time be agreed by the aeronautical authorities of the Contracting Parties. This restriction also applies to all forms of stopover traffic.

3. No points in the mainland of China may be served as an intermediate point.

Section 2

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

Amsterdam–intermediate points–Hong Kong

Notes:

1. The designated airline or airlines of the Netherlands may on any or all flights omit calling at any of the above mentioned points provided that the agreed services on these routes begin at Amsterdam.

2. No traffic may be picked up at an intermediate point and set down at Hong Kong or vice versa, except as may from time to time be agreed by the aeronautical authorities of the Contracting Parties. This restriction also applies to all forms of stopover traffic.

3. No points in the mainland of China may be served as an intermediate point.

D. PARLEMENT

De Overeenkomst behoeft ingevolge het gestelde in artikel 91 van de Grondwet de goedkeuring van de Staten-Generaal, alvorens het Koninkrijk aan de Overeenkomst kan worden gebonden.

G. INWERKINGTREDING

De bepalingen van de Overeenkomst, zullen ingevolge artikel 18, eerste lid, in werking treden op de datum, waarop de Regering van het Koninkrijk der Nederlanden de Regering van Hong Kong er schriftelijk van in kennis heeft gesteld, dat aan de constitutionele procedures is voldaan.

Wat het Koninkrijk der Nederlanden betreft, zullen de bepalingen van de Overeenkomst ingevolge artikel 18, tweede lid, alleen gelden voor Nederland.

J. GEGEVENS

Van het op 7 december 1944 te Chicago tot stand gekomen Verdrag inzake de burgerluchtvaart, naar welk Verdrag onder meer in artikel 1, letter c, van deze Overeenkomst wordt verwezen, zijn de Engelse tekst en de Nederlandse vertaling bekendgemaakt in *Sib.* H 165. Een bijgewerkte vertaling in het Nederlands is geplaatst in *Trb.* 1973, 109. Zie ook, laatstelijk, *Trb.* 1985, 45. Bij dit Verdrag is tevens de Internationale Burgerluchtvaartorganisatie (ICAO), waarnaar onder meer in artikel 9 van deze Overeenkomst verwezen wordt, opgericht.

Van het op 14 september 1963 te Tokio tot stand gekomen Verdrag inzake strafbare feiten en bepaalde andere handelingen begaan aan boord van luchtvaartuigen, naar welk Verdrag in artikel 9 van deze Overeenkomst wordt verwezen, zijn de Engelse en de Franse tekst geplaatst in *Trb.* 1964, 115; en is de Nederlandse vertaling geplaatst in *Trb.* 1964, 186. Zie ook, laatstelijk, *Trb.* 1981, 113.

Van het op 16 december 1970 te 's-Gravenhage tot stand gekomen Verdrag tot bestrijding van het wederrechtelijk in zijn macht brengen van luchtvaartuigen, naar welk Verdrag in artikel 9 van deze Overeenkomst wordt verwezen, zijn de Engelse en de Franse tekst, alsmede de vertaling in het Nederlands, geplaatst in *Trb.* 1971, 50. Zie ook, laatstelijk, *Trb.* 1981, 114.

Van het op 23 september 1971 te Montreal tot stand gekomen Verdrag tot bestrijding van wederrechtelijke gedragingen, gericht tegen de veiligheid van de burgerluchtvaart, naar welk Verdrag in artikel 9 van deze Overeenkomst wordt verwezen zijn de Engelse en de Franse tekst, alsmede de vertaling in het Nederlands, geplaatst in *Trb.* 1971, 218. Zie ook, laatstelijk, *Trb.* 1981, 115.

Voor zover het de luchtdiensten tussen Amsterdam en Hong Kong betreft, treedt de onderhavige Overeenkomst in de plaats van de op

13 augustus 1946 te Londen tot stand gekomen Overeenkomst tussen het Koninkrijk der Nederlanden en het Verenigd Koninkrijk van Groot-Brittannië en Noord-Ierland betreffende bepaalde luchtdiensten, met Bijlagen en nota's, van welk Verdrag de tekst is bekendgemaakt in *Stb.* H 77. Zie ook, laatstelijk, *Trb.* 1982, 131.

Uitgegeven de *zevenentwintigste* november 1986.

De Minister van Buitenlandse Zaken,

H. VAN DEN BROEK