

AVIATION

Transport Services

Agreement Between the
UNITED STATES OF AMERICA
and HONG KONG

Signed at Hong Kong April 7, 1997

with

Annex



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89-497, approved July 8, 1966 (80 Stat. 271; 1 U.S.C. 113)—

“ . . . the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

HONG KONG

Aviation: Transport Services

*Agreement signed at Hong Kong April 7, 1997;
Entered into force April 7, 1997.
With annex.*

**AGREEMENT BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND THE GOVERNMENT OF HONG KONG
CONCERNING AIR SERVICES**

The Government of the United States of America and the Government of Hong Kong (hereinafter referred to as the "Contracting Parties"),

Desiring to conclude an Agreement for the purpose of providing the framework for air services between the United States of America and Hong Kong,

Have agreed as follows:

ARTICLE 1

Definitions

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

(a) the term "aeronautical authorities" means in the case of Hong Kong, the Director of Civil Aviation, and in the case of the United States, the Department of Transportation, or, in both cases, any person or body authorized 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 authorized 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 United States means the land areas under the sovereignty, jurisdiction, protection, or trusteeship of the United States, and the territorial waters adjacent thereto;

(d) the term "air service" means any scheduled air service performed by aircraft for the public transport of passengers, mail or cargo;

(e) the term "international air service" means an air service which passes through the airspace over the territory of more than one state;

(f) the term "airline" means any air transport enterprise offering or operating an international air service;

(g) the term "stop for non-traffic purposes" means a landing for any purpose other than the taking on or discharging of passengers, cargo or mail;

(h) the term "user charge" means a charge imposed by a competent charging authority on airlines for airport or air navigation property or facilities, including related services and facilities;

(i) the term "tariff" means one or more of the following:

- (1) 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;
- (2) the rate charged by an airline for the carriage of cargo (excluding mail) on scheduled air services; and
- (3) the conditions governing the availability or applicability of any such fare or rate including any benefits attaching to it;

(j) the term "this Agreement" means this Agreement, its Annex and any amendments thereto.

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 1944,¹ including the Annexes and any amendments to the Convention or to its Annexes which apply to both Contracting Parties, insofar as these 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

¹ TIAS 1591; 61 Stat. 1180.

air services on the routes specified in the appropriate Section of the Annex 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 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 area of the other Contracting Party at points determined for that route in accordance with the Annex to this Agreement for the purpose of taking on board and discharging passengers and cargo, including mail, separately or in combination.

(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 routeing, 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 Authorization 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 authorizations.

(3) (a) The Government of Hong Kong shall have the right to refuse to grant the operating authorizations 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 United States or its nationals.

(b) The Government of the United States shall have the right to refuse to grant the operating authorizations 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.

(4) The aeronautical authorities of one Contracting Party may require an airline designated by the other Contracting Party to satisfy them that it is qualified to fulfil the conditions prescribed under the laws and regulations normally applied to the operation of international air services by such authorities. Appropriate operating authorizations shall be granted to such airlines with minimum delay.

(5) When an airline has been so designated and authorized it may begin to operate the agreed services, provided that the airline complies with the applicable provisions of this Agreement.

ARTICLE 5

Application of Laws and Regulations

(1) The laws and regulations of one Contracting Party relating to the admission to or departure from its area of aircraft engaged in international air navigation, or to the operation and navigation of such aircraft while within its area, 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 entry into, departure from, or while within, the area of the first Contracting Party.

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

ARTICLE 6

Revocation or Suspension of Operating Authorization

(1) Each Contracting Party shall have the right to revoke or suspend an operating authorization for the exercise of the rights specified in Article 3(2) of this Agree-

ment by an airline designated by the other Contracting Party, or to impose such conditions as it may deem necessary on the exercise of those 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 United States or its nationals;
- (ii) in the case of the Government of the United States, 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 those rights; or
- (c) if the other Contracting Party is not maintaining and administering safety standards as set forth in Article 7 (Recognition of Certificates and Licenses).

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

(3) This Article does not limit the rights of either Contracting Party to suspend, limit or condition air transportation in accordance with the provisions of Article 12 (Aviation Security).

ARTICLE 7

Recognition of Certificates and Licences

(1) Certificates of airworthiness, certificates of competency, and licences, 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 agreed services on the specified routes provided that such certificates or licences were issued or rendered valid pursuant to, and in conformity with, the standards established under the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944 (hereinafter referred to as the "Convention").

(2) The Government of the United States reserves the right, however, to refuse to recognize as valid for the purposes of flights above its own area, certificates

of competency and licenses granted to or validated for its own nationals by non-U.S. authorities.

(3) Each Contracting Party may request consultations concerning the safety standards maintained by the other Contracting Party relating to aeronautical facilities, aircrew, aircraft, and operation of the designated airlines. If, following such consultations, one Contracting Party finds that the other Contracting Party does not effectively maintain and administer safety standards and requirements in these areas that at least equal the minimum standards which may be established pursuant to the Convention and which are applicable to them or on their behalf, the other Contracting Party shall be notified of such findings and the steps considered necessary to conform with these minimum standards; 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 corrective action within a reasonable time.

ARTICLE 8

Principles Governing Operation of Agreed Services

(1) There shall be fair and equal opportunity for the designated airlines of each Contracting Party to compete with the designated airlines of the other Contracting Party.

(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 all or part of the same routes. In particular, when a designated airline of one Contracting Party proposes to inaugurate services between a point in the area of that Contracting Party and a point in the area of the other Contracting Party already served by a designated airline or airlines of the other Contracting Party, the incumbent airline or airlines shall each refrain from increasing the frequency of their services to the extent and for the time necessary to ensure the airline inaugurating service may fairly exercise its rights under paragraph (1) of this Article. Such obligation to refrain from increasing frequency shall not last longer than two years or beyond the point when the inaugurating airline matches the frequencies of any incumbent airline, whichever occurs first, and shall not apply if the services to be inaugurated are limited as to their capacity by the license or certificate granted by the designating Contracting Party.

(3) 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 area of the Contracting Party which has designated the airline and the country of ultimate destination of the traffic. The right to embark or disembark on such services international traffic destined for or coming from third countries at a point or points on the routes specified in this Agreement shall be exercised in accordance with the general principles of orderly development of international air transport to which both Contracting Parties subscribe and shall be subject to the general principle that capacity should be related to:

- (a) traffic requirements between the area of origin and the countries of ultimate destination of the traffic;
- (b) the requirements of through airline operation; and
- (c) traffic requirements of the area through which the airline passes, after taking account of local and regional services.

(4) The Contracting Parties recognize that airline actions leading to excess capacity or the underprovision of capacity can both run counter to the interests of the travelling public. If one Contracting Party believes that the operations of a designated airline or airlines of the other Contracting Party have been inconsistent with the principles set forth in this Article, it may request consultations pursuant to Article 16 (Consultations) for the purpose of reviewing the operations in question to determine whether they are in conformity with these principles. In such consultations there shall be taken into consideration the operations of all airlines serving the market in question and designated by the Contracting Party whose airline or airlines are under review. If the Contracting Parties conclude that the operations under review are not in conformity with the provisions set forth in this Article, they may decide upon appropriate corrective or remedial measures, except that, where frequency or capacity limitations are already provided for a route specified in the Annex, the Contracting Parties may not vary those limitations or impose additional limitations except by mutual agreement.

(5) Neither Contracting Party shall unilaterally restrict the operations of the designated airlines of the other except according to the terms of this Agreement.

ARTICLE 9

Tariffs

(1) The tariffs to be charged by the designated airlines of the Contracting Parties for carriage between Hong Kong and the United States shall be those approved

by the aeronautical authorities of both Contracting Parties and shall be established at reasonable levels, due regard being had to all relevant factors, including the cost of operating the agreed services, the interests of users, reasonable profit and the tariffs of other airlines operating over the whole or part of the same route. To further the reasonable interests of users of air transport services, and to encourage the further development of civil aviation, individual airlines should be encouraged to initiate innovative, cost-based tariffs.

(2) Any tariff agreements with respect to carriage by the designated airlines concluded as a result of inter-carrier discussions, including those held under the traffic conference procedures of the International Air Transport Association, or any other association of international airlines, and involving the airlines of the Contracting Parties will be subject to the approval of the aeronautical authorities of those Contracting Parties, and may be disapproved at any time whether or not previously approved. The submission of such agreements is not the filing of a tariff for the purposes of the provisions of paragraph (3) of this Article. Such agreements shall be submitted to the aeronautical authorities of both Contracting Parties for approval at least 105 days before the proposed date of effectiveness, accompanied by such justification as each Contracting Party may require of its own designated airlines. The period of 105 days may be reduced with the consent of the aeronautical authorities of the Contracting Party with whom a filing is made. The aeronautical authorities of each Contracting Party shall use their best efforts to approve or disapprove (in whole or in part) each agreement submitted in accordance with this paragraph on or before the 60th day after its submission. Each Contracting Party may require that tariffs reflecting agreements approved by it be filed and published in accordance with its laws.

(3) Any proposed tariff for carriage between Hong Kong and the United States shall be filed with the aeronautical authorities of the Contracting Parties by the designated airline or airlines seeking its approval in such form as the aeronautical authorities may separately require to disclose the particulars referred to in Article 1, paragraph (i). It shall be filed not less than 40 days (or such shorter period as the aeronautical authorities of the Contracting Parties may agree) before the proposed effective date. The proposed tariff shall be treated as having been filed with the aeronautical authorities of a Contracting Party on the date on which it is received by those aeronautical authorities.

(4) Any proposed tariff may be approved by the aeronautical authorities of a Contracting Party at any time and, provided it has been filed in accordance with paragraph (3) of this Article, shall be deemed to have been approved by the aeronautical authorities of that Contracting Party unless, within 30 days (or such

shorter period as the aeronautical authorities of the Contracting Parties may agree) after the date of filing, the aeronautical authorities of one Contracting Party have served on the aeronautical authorities of the other Contracting Party written notice of disapproval of the proposed tariff.

(5) If a notice of disapproval is given in accordance with the provisions of paragraph (4) of this Article either Contracting Party may, within 30 days of the service of the notice of disapproval, request consultations between the Contracting Parties which shall be held within 30 days from the date the other Contracting Party receives such request in writing for the purpose of attempting to reach agreement on the appropriate tariffs.

(6) If agreement is reached on the appropriate tariff under paragraph (5) of this Article, each Contracting Party shall exercise its best efforts to put such tariff into effect. If an agreement is not reached prior to the proposed effective date of the tariff, or if consultations are not requested, the aeronautical authorities of the Contracting Party expressing dissatisfaction with that tariff may take action to continue in force the existing tariffs beyond the date on which they would otherwise have expired at the levels and under the conditions (including seasonal variations) set forth therein. In this event, the other Contracting Party shall similarly take any action necessary to continue the existing tariffs in effect.

(7) A tariff established in accordance with the provisions of this Article shall remain valid until a replacement tariff has been established.

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

(b) Any proposed tariff for such carriage shall be filed by the designated airline of one Contracting Party seeking approval of such tariff with the aeronautical authorities of the other Contracting Party. It shall be filed in such form as those aeronautical authorities may require to disclose the particulars referred to in Article 1, paragraph (i) and not less than 40 days (or such shorter period as they may decide) prior to the proposed effective date. The proposed tariff shall be treated as having been filed on the date on which it is received by those aeronautical authorities.

(c) Such tariff may be approved at any time by the aeronautical authorities of the Contracting Party with whom it has been filed and shall be deemed to have been approved by them unless, within 30 days after the date of filing, they have served on the designated airline seeking approval of such tariff written notice of disapproval.

(d) Notwithstanding the provisions of paragraph (7), a tariff approved by virtue of paragraph (9) for carriage by a U.S. designated airline between Hong Kong and a state other than the United States or for carriage by a Hong Kong designated airline between the United States and another state shall not be prolonged past the original expiry date, if any, of the tariff to which it corresponds, if that tariff is no longer in effect or has been amended.

(9) Notwithstanding the provisions of paragraphs (4) and (8)(c) of this Article, the aeronautical authorities of a Contracting Party shall not disapprove any proposed tariff filed with them by a designated airline which corresponds (e.g. in price level, conditions and date of expiry but not necessarily the routeing being used) to the tariff charged by an airline of that Contracting Party for comparable services between the same points or is more restrictive or higher than that tariff.

ARTICLE 10

Commissions

The aeronautical authorities of a Contracting Party may require that the rate of commission paid by a designated airline to an agent in respect of tickets sold or air waybills completed by that agent for carriage on scheduled air services originating in the area of that Contracting Party shall be filed for approval by them in accordance with the procedures under Article 9. Where rates of commission are subject to such approval, the airlines shall pay only those rates which have been approved.

ARTICLE 11

Customs Duties

(1) Aircraft operated in international air services by the designated airlines of one Contracting Party, their regular equipment, fuel, lubricants, consumable technical supplies, 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 exempted 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 regular equipment and

such other items remain on board the aircraft. In the case of the above-referenced charges in the United States, the exemption for Hong Kong designated carriers shall apply only to customs duties, excise taxes, and similar fees and charges imposed by U.S. national authorities.

(2) Regular equipment, fuel, lubricants, consumable technical supplies, spare parts including engines, aircraft stores (including but not limited to such items as food, beverages and tobacco) introduced into the area of the other Contracting Party by or on behalf of that designated airline or taken on board the aircraft operated by that designated airline, shall be exempted 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 such regular equipment and such other items are to be used on any part of a journey performed over the area of the other Contracting Party. In the case of the above-referenced charges in the United States, the exemption for Hong Kong designated carriers shall apply only to customs duties, excise taxes, and similar fees and charges imposed by U.S. national authorities.

(3) The regular equipment and the other items referred to in paragraphs (1) and (2) of this Article may be required to be kept under the supervision or control of the customs authorities of the other Contracting Party.

(4) The regular equipment and the other items referred to in paragraph (1) of this Article may be unloaded in the area of the other Contracting Party with the approval of the customs authorities of that other Contracting Party. In these circumstances, such regular equipment and such items shall enjoy, on the basis of reciprocity, the exemptions provided for by paragraph (1) of this Article until they are re-exported or otherwise disposed of in accordance with customs regulations. The customs authorities of that other Contracting Party may however require that such regular equipment and such items be placed under their supervision up to such time.

(5) The exemptions provided for by this Article shall also be available in situations where a designated airline of one Contracting Party has entered into arrangements with another airline or airlines for the loan or transfer in the area of the other Contracting Party of the regular equipment and the other items referred to in paragraphs (1) and (2) of this Article, provided that that other airline or airlines similarly enjoy such exemptions from that other Contracting Party.

(6) Each Contracting Party shall use its best efforts to secure for the designated airlines of the other Contracting Party on a reciprocal basis an exemption from taxes, charges, and fees imposed by State, regional, and local authorities on the items listed in paragraphs (1) and (2) of this Article, as well as from fuel through-put charges, in the circumstances described in those paragraphs, except to the extent that the charges are based on the actual cost of providing the service.

ARTICLE 12

Aviation Security

(1) Each Contracting Party reaffirms that its obligation to the other Contracting Party to protect the security of civil aviation against unlawful interference forms an integral part of this Agreement. Each Contracting Party shall in particular act in conformity 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 1971.¹

(2) Each Contracting Party shall be provided at its request with all necessary assistance by the other Contracting Party 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

- (a) the Aviation Security Standards (except to the extent to which a difference thereto in accordance with the Convention on International Civil Aviation has been filed by them or on their behalf); and
- (b) so far as they are applied by them or on their behalf, the Recommended Practices established by the International Civil Aviation Organization and designated as Annexes to the Convention.

Each Contracting Party shall require that operators of aircraft of its registry or operators of aircraft having their principal place of business or permanent resi-

¹ TIAS 6768, 7192, 7570; 20 UST 2941; 22 UST 1641; 24 UST 564.

dence in its area, and the operators of airports in its area, act in conformity with such aviation security provisions.

(4) Each Contracting Party agrees that such operators of aircraft may be required to observe the aviation security provisions required by the other Contracting Party for entry into, departure from, or while within the area of that other Contracting Party. Each Contracting Party shall ensure that adequate measures are effectively applied within its area to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading. Each Contracting Party shall also give positive consideration to any request from the other Contracting Party for reasonable special security measures to meet a particular threat.

(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, each Contracting Party shall assist the other Contracting Party by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof.

(6) Should a Contracting Party depart from the aviation security provisions of this Article, the other Contracting Party may request immediate consultations with the first Contracting Party. Failure to reach agreement within 30 days from the date of receipt of such a request shall constitute grounds for suspending, limiting or imposing conditions on the operating authorizations or technical permissions of the airline or airlines of the first Contracting Party. When justified by an emergency, a Contracting Party may take the same action on an interim basis prior to the expiry of 30 days. Any action taken in accordance with this paragraph shall be discontinued upon compliance by the first Contracting Party with the security provisions of this Article.

ARTICLE 13

Conversion and Remittance of Revenue

(1) The designated airlines of Hong Kong shall have the right to convert and remit from the United States on demand local revenues in excess of sums disbursed to pay for local expenses, including purchases of fuel, in the United States. The designated airlines of the United States shall have the right to convert and remit from Hong Kong on demand local revenues in excess of sums disbursed to pay for local expenses, including purchases of fuel, in Hong Kong.

(2) The conversion and remittance of such revenues shall be permitted without restriction at the rate of exchange applicable to current transactions which is in effect at the time such revenues are presented for conversion and remittance, and shall not be subject to any charges except those normally made by banks for carrying out such conversion and remittance.

ARTICLE 14

Commercial Operations

(1) The designated airlines of each Contracting Party shall have the right, in accordance with the laws and regulations of the other Contracting Party relating to entry, residence and employment, to bring into and maintain in the area of that other Contracting Party those of their own managerial, technical, operational and other specialist staff who are required for the provision of air transportation.

(2) The designated airlines of each Contracting Party shall have the right to engage in the sale of air transportation in the area of the other Contracting Party, either directly or through agents. The designated airlines of each Contracting Party shall have the right to sell, and any person shall be free to purchase, such transportation in local currency or in any freely convertible other currency.

(3) Each Contracting Party agrees to use its best efforts to ensure that the designated airlines of the other Contracting Party are offered the choice, subject to reasonable limitations that may be imposed by airport authorities, of providing their own services for ground handling operations; of having such operations performed entirely or in part by another airline, an organization controlled by another airline, or a servicing agent, as authorized by the airport authority; or of having such operations performed by the airport authority.

ARTICLE 15

User Charges

(1) A Contracting Party shall not impose or permit to be imposed on the designated airlines of the other Contracting Party user charges higher than those imposed on its own airlines operating similar international air services. Such charges shall be just and reasonable and equitably apportioned among categories of users.

(2) A Contracting Party shall not be held to be in breach of this Article unless:
(a) it fails to undertake a review of the charging practice that is the subject of a complaint by the other Contracting Party within a reasonable time; or (b) fol-

lowing such a review, it fails to take all steps within its power to remedy any charge or practice that is inconsistent with this Article.

(3) Each Contracting Party shall encourage consultation on user charges between its competent charging authorities and airlines using the services and facilities provided by those charging authorities, where practicable through those airlines representative organisations. Reasonable notice of any proposals for changes in user charges should be given to such users to enable them to express their views before changes are made. Each Contracting Party shall further encourage its competent charging authorities and such users to exchange such information as may be necessary to permit an accurate review of the reasonableness of the charges.

ARTICLE 16

Consultations

Either Contracting Party may at any time request consultations on the implementation, interpretation, application or amendment of this Agreement. Such consultations shall begin within 60 days from the date the other Contracting Party receives such request in writing, unless otherwise agreed by the Contracting Parties.

ARTICLE 17

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, other than disputes under Article 9 (Tariffs), it may be referred by them to such person or body as they may agree on or, at the request of a 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 after these two arbitrators have been nominated, they shall by agreement appoint a third arbitrator, who shall act as President of the arbitral tribunal;
- (b) if within the time limits specified above any appointment has not been made, a Contracting Party may request the President of the Council of the International Civil Aviation Organization to make the necessary

appointment within 30 days. If the President of the Council considers that his impartiality might be called into question by either Contracting Party on the grounds of his nationality or otherwise, the most senior Vice President who is not so disqualified 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 a Contracting Party, 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 a 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. The decision shall be taken by a majority vote.

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

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

(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 or Vice-President of the Council of the International Civil Aviation Organization in implementing the procedures in paragraph (2)(b) of this Article.

ARTICLE 18

Amendment

Any amendments to this Agreement, including any amendment which may be required as a result of any multilateral convention which may in the future apply

to both Contracting Parties, shall be agreed by the Contracting Parties and shall enter into force on a date to be determined in a written exchange between the Contracting Parties, indicating that all necessary procedures have been completed by them.

ARTICLE 19

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 such notice by that other Contracting Party, unless such notice is withdrawn by agreement before the end of this period.

ARTICLE 20

Registration with the International Civil Aviation Organization

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

ARTICLE 21

Entry into Force

This Agreement shall enter into force on the date of signature.

In witness whereof, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

Done, in duplicate at Hong Kong this 7th day of April 1997.

For the Government of
the United States of America:

For the Government
of Hong Kong:

[Signature]

[Signature]

ANNEX
Scheduled Air Services
ROUTE SCHEDULE

Section 1

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

Hong Kong - intermediate points - points in the United States - points beyond.

Notes:

1. The points to be served on the routes specified above are to be jointly determined by the Contracting Parties.
2. The designated airline or airlines of Hong Kong may on any or all flights omit calling at any points on the routes specified above, and may serve points in any order provided that the agreed services on these routes begin at Hong Kong.
3. No traffic may be taken on board at an intermediate point or at a point beyond and discharged at points in the United States or vice versa, except as may from time to time be jointly determined by the Contracting Parties.
4. No point in the mainland of China may be served as an intermediate point or a point beyond.

Section 2

Routes to be operated by the designated airline or airlines of the United States:

Points in the United States - intermediate points - Hong Kong - points beyond.

Notes:

1. The points to be served on the routes specified above are to be jointly determined by the Contracting Parties.
2. The designated airline or airlines of the United States may on any or all flights omit calling at any points on the routes specified above, and may serve points in any order provided that the agreed services on these routes begin at points in the United States.

3. No traffic may be taken on board at an intermediate point or at a point beyond and discharged at Hong Kong or vice versa, except as may from time to time be jointly determined by the Contracting Parties.

4. No point in the mainland of China may be served as an intermediate point or a point beyond.