

Sept. 28, 1995

Hong Kong/United States of America
Memorandum of Understanding

1. Delegations representing the Government of the United States of America and the Government of Hong Kong met in Hong Kong from 26 to 29 September 1995 to discuss arrangements for the implementation of the Air Services Agreement between their respective Governments (the "Agreement") when it enters into force as well as arrangements for the conduct of air services between the United States and Hong Kong for the period before such Agreement enters into force. A list of the two delegations is at Annex 1, and the text of the draft Agreement is at Annex 2.

2. The Hong Kong delegation indicated that it would recommend the Agreement be signed by a representative of the Government of Hong Kong as soon as the Governor of Hong Kong had received for that purpose a specific authorisation from the Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom. The United States delegation indicated that it would recommend the Agreement be signed by a representative of the Government of the United States of America as soon as the Government had been notified that the Governor of Hong Kong had received the specific authorisation.

Routes

3. As anticipated in the Annex to the Agreement, the Appendix to this Memorandum of Understanding ("MOU") contains the routes which may be served by the designated airlines.

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Designation

4. The Hong Kong side expressed concern over the situation which could arise if the United States side were to designate more airlines under Article 4 of the Agreement to serve Hong Kong than were currently designated to serve Hong Kong under the Air Services Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America, signed at Bermuda on 23 July 1977, as amended ("Bermuda 2"). While the terms of the Agreement itself do not impose any general limitations on the number of United States airlines which may be designated to serve Hong Kong, the wishes of the Hong Kong side are relevant to the decision of the United States side concerning such designations. Should the Hong Kong side transmit to the United States side their views concerning Department of Transportation (DOT) proceedings which might result in designations believed to be excessive by the Hong Kong side, those views would be transmitted by the Department of State to DOT for full and proper consideration during DOT's proceedings, and would also be transmitted to the President for consideration in review of DOT proposals.

5. It was understood that the United States side might consider it necessary to refuse to grant or to revoke, suspend or condition the operating authorisation of an airline for the exercise of rights specified in Article 3(2) of the Agreement, if that airline is substantially owned or effectively controlled by an airline designated, or which could be designated, pursuant to another bilateral air transport agreement with the United States. It was also understood that before taking such action, the United States side would inform the Hong Kong side. In such circumstances, the United States side would recognise the right of the Hong Kong side to call for consultations under Articles 6(2) and 16 of the Agreement about whether the airline in question was in fact substantially owned or effectively controlled by an airline designated, or which could be designated, pursuant to

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another bilateral agreement with the United States. It was further understood that the Hong Kong side had the right to take any other action it might judge necessary under the Agreement.

6. The United States side confirmed that, as currently owned and controlled, Hong Kong based airlines now authorised by United States authorities to conduct operations to the United States would continue to qualify for such operating authority.

Ground Handling

7(a) To the extent that designated airlines of either side are performing their own ground handling or ground handling for other airlines at any airport on the date the Agreement enters into force, such airlines will be permitted to continue to perform such services at that airport for as long as that airport remains open for international civil aviation. Designated airlines whose ground handling has been performed under arrangements with other airlines or organisations will similarly be permitted to continue such arrangements.

(b) As far as Hong Kong's replacement Airport is concerned, the current intention of the Airport Authority is to allow airlines to perform their own technical line maintenance and passenger handling functions on the basis of objective and non-discriminatory criteria, and to permit passenger handling agents, whether third party or an airline, to perform in-terminal passenger handling for other carriers based on objective and non-discriminatory criteria.

(c) Under the conditions of the Airport Authority's draft agreements with its cargo handling franchisees, airlines are entitled to request the franchisee to sub-let space in its cargo terminal for that airline to self-handle its cargo terminal handling activity.

(d) US airlines will receive no less favourable treatment than other airlines in ground handling matters.

User Charges

8. The delegations expressed their mutual understanding that user charges referred to in Article 15 of the Agreement are just and reasonable only if they do not exceed by more than a reasonable margin, over a reasonable period of time, the full cost to the competent charging authorities of providing the appropriate airport, air navigation, and aviation security facilities and services at the airport or within the airport system. Such full costs may include a reasonable return on assets, after depreciation. In the provision of facilities and services, the competent charging authorities consider such factors as efficiency, economy, environmental impact and safety of operation.

Charters

9. The Hong Kong side confirmed that its policy on charter operations was not to give scheduled operators any right of veto over charter applications, which are considered according to objective criteria. In applying these criteria, the aeronautical authority takes into consideration, inter alia, the information provided by the applicant about tour operators/passenger/shippers/freight forwarders requirements, the size of the consignment, the need for special handling of the shipment, the need for direct service from the departure point to destination, and timing requirements. The Hong Kong side further confirmed that, subject to the necessary technical documentation being in order, the normal processing time for acting upon a charter application is three working days.

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Dispute Resolution

10. For the avoidance of doubt, neither side intends to object to the submission of the provisions of this MOU as evidence in relation to an issue in dispute before any arbitral tribunal established (a) under Article 17 of Bermuda 2 or (b) under Article 17 of the Agreement, as anticipated in paragraph 12 of this MOU.

Provisional Application

11(a) The delegations stated that they intended to recommend to their respective Governments that air services between the United States and Hong Kong be conducted on the routes specified in the Appendix to this MOU on the basis of comity and reciprocity in a manner consistent with the understandings contained in paragraphs 3, 7 and 11 of this MOU.

(b) The U.S. and Hong Kong delegations expressed their mutual understanding that in all other respects, the provisions of Bermuda 2, as amended as of the date of the signature of this MOU, should continue to be applicable to air services between Hong Kong and the United States.

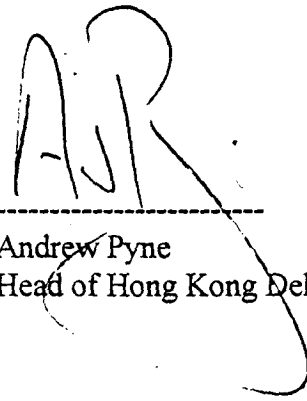
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Application under the Agreement

12. The two delegations understood that the arrangements set out in paragraphs 3 to 10 above would apply fully on the date of entry into force of the Agreement, and that any previous governmental understandings between the United Kingdom and the United States of America in so far as they related to Hong Kong air services would cease to have effect from that date.



Edward B. O'Donnell
Head of US Delegation



Andrew Pyne
Head of Hong Kong Delegation

Hong Kong,
29 September 1995

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Section I

Hong Kong Route 1 : Combination Air Services

(A)	(B)	(C)	(D)
	<u>Intermediate Points</u>	<u>Points in US Territory</u>	<u>Points Beyond</u>
Hong Kong	Japan 1/	Alaska Guam/ Commonwealth of the Northern Marianas Hawaii Six other points to be selected 2/	Canada Two points to be selected 3/4/

- 1/ Hong Kong airlines designated on this route may serve Japan with no more than 7 round trip combination flights per week with full traffic rights between US points and Japan.
- 2/ The Government of Hong Kong will notify the Government of the United States of its selections in writing. The points selected by the Government of Hong Kong may, at its discretion, be changed from time to time with not less than 90 days notice to the Government of the United States in writing. There will be no limit on the number of Hong Kong carriers that can be designated to operate from these points to Hong Kong. If the Government of Hong Kong notifies the Government of the United States that it will convert one of these multiple designation points to single designation, the Hong Kong side may select an additional US gateway with single designation (total of seven).
- 3/ Hong Kong airlines may operate no more than 7 weekly round trip frequencies with full traffic rights between each of these points and the United States.
- 4/ The Government of Hong Kong will notify the Government of the United States of its selections in writing. The points selected by the Government of Hong Kong may, at its discretion, be changed from time to time with not less than 90 days notice to the Government of the United States in writing.

Hong Kong Route 2 : All-Cargo Air Services

(A)	(B)	(C)	(D)
	<u>Intermediate Points</u>	<u>Points in US Territory</u>	<u>Points Beyond</u>
Hong Kong		Alaska Guam/ Commonwealth of the Northern Marianas Hawaii Eight other points to be selected 1/	Two points to be selected 2/3/

- 1/ The Government of Hong Kong will notify the Government of the United States of its selections in writing. Points selected by the Government of Hong Kong may, at its discretion, be changed from time to time with not less than 90 days notice to the Government of the United States in writing.
- 2/ The Government of Hong Kong will notify the Government of the United States of its selections in writing. Points selected by the Government of Hong Kong may, at its discretion, be changed from time to time with not less than 90 days notice to the Government of the United States in writing.
- 3/ Hong Kong airlines may operate no more than 8 weekly round trip frequencies with full traffic rights between these points and the United States taken together. One of these frequencies may be converted into two weekly flights to be operated by aircraft with a capacity of less than 50 tonnes operated to and from points in column (C) not in the continental United States. Such conversion shall apply for the remainder of the traffic season in which it is made. No more than 5 weekly frequencies can be operated to any one point.

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US Route 1 : Combination Air Services

(A)	(B)	(C)	(D)
<u>US Gateway Points</u>	<u>Intermediate Points</u>		<u>Points Beyond</u>
Alaska	Japan 3/	Hong Kong	Singapore 4/
Guam/ Commonwealth of the Northern Marianas			Thailand 4/
Hawaii			A point in Korea 5/6/
Six other points to be selected 1/2/			A point in the Philippines 5/6/

- 1/ The Government of the United States will notify the Government of Hong Kong of its selections in writing. Points selected by the Government of the United States may, at its discretion, be changed from time to time with not less than 90 days notice to the Hong Kong aeronautical authorities in writing.
- 2/ If the Government of the United States selects New York, Los Angeles, Seattle, and/or San Francisco, there will be no limit on the number of US carriers that can be designated to operate from those points to Hong Kong. If the Government of the United States notifies the Government of Hong Kong that it will convert one of these multiple designation points to single designation, the United States side may select an additional US gateway with single designation (total of seven). At any other point selected by the Government of the United States, except Chicago, only one US carrier can be designated to operate from that point to Hong Kong. If Chicago is selected by the Government of the United States, no more than two US carriers can be designated to operate from that point to Hong Kong and until 1 January 2000 no more than 14 round trip frequencies per week can be operated. Further, after that date the provision of Article 8(2) sentences two and three will no longer apply to services at Chicago.
- 3/ Not more than 14 round trip combination flights per week may serve Japan with full traffic rights between Japan and Hong Kong. Flights that serve

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Japan with full traffic rights between Japan and Hong Kong on US Route 3 shall count towards that number.

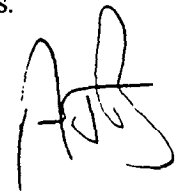
- 4/ US airlines may operate no more than 7 weekly round trip frequencies with full traffic rights between Hong Kong and these points taken together. Flights that serve Thailand with full traffic rights between Thailand and Hong Kong on US Route 3 shall count towards that number.
- 5/ On or before 1 November 1997, if the Government of the United States notifies the Government of Hong Kong that US Route 3 will not be operated thereafter, US airlines may operate no more than 7 weekly round trip frequencies with full traffic rights between Hong Kong and these points taken together, with no more than 5 weekly frequencies to any one point.
- 6/ The Government of the United States will notify the Government of Hong Kong of its selections in writing. The points selected by the Government of the United States may, at its discretion, be changed from time to time with not less than 90 days notice to the Hong Kong aeronautical authorities in writing.

US Route 2 : All-Cargo Air Services

(A)	(B)	(C)	(D)
<u>US Gateway Points</u>	<u>Intermediate Points</u>		<u>Points Beyond</u>
Alaska		Hong Kong	Two points to be selected 2/3/4/
Guam/ Commonwealth of the Northern Marianas			
Hawaii			
Eight other points to be selected 1/			

- 1/ The Government of the United States will notify the Government of Hong Kong of its selections in writing. Points selected by the Government of the United States may, at its discretion, be changed from time to time with not less than 90 days notice to the Hong Kong aeronautical authorities in writing.
- 2/ US airlines may operate no more than 8 weekly round trip frequencies with full traffic rights between Hong Kong and these points taken together. One of these frequencies may be converted into two weekly flights to be operated by aircraft with a capacity of less than 50 tonnes operated to and from points in column (A) not in the continental United States. Such conversion shall apply for the remainder of the traffic season in which it is made. No more than 5 weekly frequencies can be operated to any one point.
- 3/ The Government of the United States will notify the Government of Hong Kong of its selections in writing. Points selected by the Government of the United States may, at its discretion, be changed from time to time with not less than 90 days notice to the Hong Kong aeronautical authorities in writing.
- 4/ To be selected from points in Korea, Thailand and the Philippines.

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US Route 3 : Round the World Combination Air Services 1/

(A)	(B)	(C)	(D)
<u>US Gateway Points</u>	<u>Intermediate Points</u>		<u>Points Beyond</u>
Segment (a):			
New York			Frankfurt
Washington/ Baltimore			Turkey
			Lebanon
			Syria
			Iran
			Pakistan
			New Delhi
			Calcutta
			Points on segment (b) 2/
Segment (b):			
Honolulu	Japan	Hong Kong	Thailand
Los Angeles			Points on segment (a) 2/
San Francisco			

1/ Not more than seven flights per week may operate in each direction on each segment.

2/ Segments (a) and (b) shall be combined, except as may be agreed pursuant to Article 3, paragraph (4).

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Section II

Notes Applicable to All Routes

1. In addition to the right to carry transit, connecting and local traffic between points in column B and points in column C and between points in column C and points in column D, designated airlines may carry transit and on-line connecting traffic between points in column C and points in other destinations, including points not listed in columns B or D. Such on-line connecting traffic may be connected at any points in columns A, B, C, or D or at points in countries not listed in such columns.
2. Each designated airline may carry transit and on-line connecting traffic between any two points in the area of the other Contracting Party which appear in column C on any route for which that airline is designated.
3. Except as may be otherwise specifically provided, a designated airline may, on any or all flights, and at its option, serve points on a route and operate via points not listed in columns A, B, C, or D in any order, operate flights in either or both directions, and omit stops at any point or points, without loss of any right to uplift or discharge traffic otherwise permissible under the relevant routes or notes applicable thereto, provided that the service begins or terminates in the area of the Contracting Party designating the airline. Unless specifically restricted, a point on a route appearing in column B shall be considered as also appearing in column D, and a point in column D shall be considered as also appearing in column B.
4. A designated airline may carry traffic between points in column A and points in column C, on the same flight or otherwise, via any points including points not listed in columns B or D but excluding points in the areas of the Contracting Parties.

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5. A designated airline may serve points behind any homeland gateway point shown in column A with or without change of aircraft or flight number and may hold out and advertise such services to the public as through services.

6. A designated airline of one Contracting Party may make changes of gauge at points in column B or column D or at other points outside the area of the other Contracting Party. Such an airline may also make a change of gauge in the area of the other Contracting Party from one aircraft to another aircraft. The above changes of gauge are subject to the following conditions:

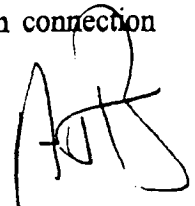
(a) operations beyond the point of change of gauge shall be performed by an aircraft having capacity less, for outbound services, or more, for inbound services, than that of the arriving aircraft;

(b) aircraft for such operations shall be scheduled in coincidence with the inbound or outbound aircraft, as the case may be, and shall have the same flight number;

(c) in the case of combination air services only, the onward flight, inbound or outbound as the case may be, shall be scheduled to depart within three hours of the scheduled arrival of the incoming aircraft, unless airport curfews, airport slots, or other operational constraints, at the point where the change of gauge occurs or at the next point or points of destination of the flight, prevent such scheduling; and

(d) if a flight is delayed by unforeseen operational or mechanical problems, the onward flight may operate without regard to the conditions in paragraphs (b) and (c) of this Note.

7. Stops for non-traffic purposes may be made at any point in connection with the operations on any route.



8. Notwithstanding the terms of any of the Notes, designated airlines in serving Hong Kong shall not make stops for traffic or non-traffic purposes at any point or points in the mainland territory of the People's Republic of China.

9. In these Notes:

"Transit traffic" means that traffic which is carried on a flight through a point. Flight, for the purpose of this definition, means either:

- (a) the arrival and onward operation of an aircraft by an airline whether or not under the same flight identification number, or
- (b) the arrival of one aircraft and next onward operation of another aircraft under the same flight identification number, as otherwise allowable under this Agreement, including Note 6 of this Section; and

"On-line connecting traffic" means that traffic which is carried on an incoming flight of an airline and is transferred to an onward flight of the same airline under a different flight identification number. For passengers only, the onward transfer shall be ticketed on the first available onward flight of that airline for the point to which a passenger is connecting, provided that the time between the scheduled arrival of the incoming flight and the scheduled departure of the onward flight does not exceed 24 hours.

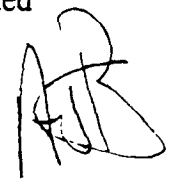
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Hong Kong/US Air Services Consultations
26-28 September 1995, Hong Kong

UK/HONG KONG DELEGATION

Mr Nick Starling	International Aviation Directorate Department of Transport
Mr Andrew Pyne	Principal Assistant Secretary Air Services Negotiations Unit Economic Services Branch Hong Kong Government
Miss Janice Tse	Assistant Secretary Air Services Negotiations Unit Economic Services Branch Hong Kong Government
Miss Judith Ritchie	International Aviation Directorate Department of Transport
Mr Arthur Ho	Principal Assistant Secretary Air Services Negotiations Unit Economic Services Branch Hong Kong Government
Miss Winnie Ho	Assistant Secretary Air Services Negotiations Unit Economic Services Branch Hong Kong Government
Dr Andrew Young	Deputy Principal Crown Counsel International Law Division Hong Kong Government
Mr Stephen Kwok	Chief Operations Officer Civil Aviation Department Hong Kong Government
Mr William McArthur	General Manager International Affairs Cathay Pacific Airways Limited

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Mr Ivan Chu

Manager
International Affairs
Cathay Pacific Airways Limited

Mr Simon Large

Assistant Manager
International Affairs
Cathay Pacific Airways Limited

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Hong Kong/US Air Services Consultations
26-28 September 1995, Hong Kong

US DELEGATION

Mr Ed O'Donnell	Director Office of Aviation Negotiations Department of State
Mr Paul Gretch	Director of International Aviation Department of Transportation
Ms Mary Street	Office of International Aviation Department of Transportation
Mr Peter Bloch	General Counsel's Office Department of Transportation
Ms Julie Oettinger	Office of the Legal Adviser Department of State
Mr Michael Brownrigg	Economic/Political Section US Consulate General Hong Kong
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Mr Ralph Ditano	National Air Carrier Association
Mr Richard Carlson	Air Transport Association
Mr Glenn Anslinger	Continental
Ms Cecelia Bethke	Northwest
Ms Sandra Chiu	United
Ms Kerstie Krepp	Evergreen
Ms Mary Kennedy	American

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Ms Sarah Prosser

Federal Express

Mr Oscar Couto

Port of Portland

Mr Samuel Keiter

Detroit Metropolitan Wayne County
Airport

Mr Barrett Murphy

Chicago O'Hare International Airport

Mr Carlos Shoda

Commonwealth Ports Authority
(Northern Marianas)

Ms Diane Peterson

Airports Council International
North America

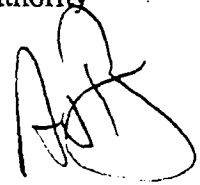
Mr Michael English

Polar Air Cargo

Mr Victor Hocog

Chairman, Board of Directors
Commonwealth of Ports Authority
(Northern Marianas)

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