Feb. 24, 1995

AIR TRANSPORT AGREEMENT

BETWEEN

THE GOVERNMENT OF THE
UNITED STATES OF AMERICA

AND

THE GOVERNMENT OF CANADA

ACCORD RELATIF AU TRANSPORT AÉRIEN

ENTRE

LE GOUVERNEMENT DES ÉTATS-UNIS
D'AMÉRIQUE

ET

LE GOUVERNEMENT DU CANADA

INDEX

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THE GOVERNMENT OF THE UNITED STATES OF AMERICA

AND

THE GOVERNMENT OF CANADA

THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF CANADA (hereinafter "the Parties");

RECOGNIZING that the geographic situation of the two countries, including the location of their main centers of population, and the close relationship between their two peoples create a situation unique in international civil aviation for the Parties;

DESIRING to enhance access by their respective cities to the transborder air transportation system;

RECOGNIZING the importance of efficient air services for trade, tourism and investment flows;

DESIRING to conclude an agreement for the purpose of promoting transborder commercial air services to the fullest possible extent;

DESIRING to promote a liberal international aviation system;

DESIRING to promote fair and equal opportunities for airlines to compete in the marketplace with minimum government regulation;

DESIRING to make it possible for the airlines to offer the traveling and shipping public a variety of service options at the lowest prices that are not discriminatory and do not represent abuse of a dominant position, and wishing to encourage individual airlines to develop and implement innovative and competitive prices;

DESIRING to ensure the highest degree of safety and security in international air transport and to maintain public confidence in the safety of civil aviation; and

BEING PARTIES to the Convention on International Civil Aviation, done at Chicago on December 7, 1944;

DETERMINED that this Agreement shall reflect the special relationship between the two countries, consistent with general international obligations;

HAVE AGREED AS FOLLOWS:

ARTICLE 1

Grant of Rights

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

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

   (b) the right to make stops in its territory for non-traffic purposes; and

   (c) the rights otherwise specified in this Agreement.

2. Nothing in this Article shall be deemed to confer on the airline or airlines of one Party the rights to take on board, in the territory of the other Party, passengers, their baggage, cargo, or mail carried for compensation and destined for another point in the territory of that other Party.

ARTICLE 2

Designation and Authorization

1. Each Party shall have the right to designate as many airlines as it wishes to conduct international air transportation in accordance with this Agreement and to withdraw or alter such designations. Such designations shall be transmitted to the other Party in writing through diplomatic channels or by such other mechanisms as may be agreed between the Parties.

2. On receipt of such a designation and on application from the designated airline, in the form and manner prescribed for operating authorizations and technical permissions, the other Party shall grant appropriate authorizations and permissions with minimum procedural delay, provided:

   (a) substantial ownership and effective control of that airline are vested in the Party designating the airline, nationals of that Party, or both;

   (b) the designated airline is qualified to meet the conditions prescribed under the laws and regulations normally applied to the operation of international air transportation by the Party considering the application or applications; and

   (c) the Party designating the airline is maintaining and administering the standards set forth in Articles 13 (Safety) and 14 (Aviation Security).

ARTICLE 3

Revocation of Authorization

1. Either Party may revoke, suspend, limit or condition, the operating authorizations or technical permissions of an airline designated by the other Party where:

   (a) such airline fails to maintain its qualifications as required by the aeronautical authorities of that Party under the laws and regulations normally applied by those authorities;

   (b) substantial ownership and effective control of that airline are not vested in the other Party, the other Party's nationals, or both;

(c) that airline has otherwise failed to comply with the laws and regulations referred to in Article 12 (Application of Laws) of this Agreement; or

(d) the other Party is not maintaining and administering the standards as set forth in Article 13 (Safety) and Article 14 (Aviation Security).

2. Unless immediate action is essential to prevent further noncompliance with subparagraphs 1(a), 1(c) or 1(d) of this Article, the rights established by this Article shall be exercised only after consultation with the other Party.

3. This Article does not limit the rights of either Party to withhold, revoke, suspend, limit or impose conditions on the operating authorization or technical permission of an airline or airlines of the other Party in accordance with the provisions of Article 14 (Aviation Security).

ARTICLE 4

Fair Competition[1]

1. Each Party shall allow a fair and equal opportunity for the designated airlines of both Parties to compete in providing the international air transportation governed by this Agreement.

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

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

4. Neither Party shall require the filing of schedules, programs for charter flights, or operational plans by airlines of the other Party for approval, except as may be required on a non-discriminatory basis to enforce the uniform conditions foreseen by paragraph 2 of this Article or as may be specifically authorized in Annex III to this Agreement. If a Party requires filings for information purposes, it shall minimize the administrative burdens of filing requirements and procedures on air transportation intermediaries and on designated airlines of the other Party.

ARTICLE 5

Pricing

1. The Parties acknowledge that market forces shall be the primary consideration in the establishment of prices for air transportation. Intervention by the aeronautical authorities shall be limited to:

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[1] The provisions of this Article are subject to limitations during the transition period as specified in Annex V.

(a) prevention of unreasonably discriminatory prices or practices;

(b) protection of consumers from prices that are unreasonably high or restrictive because of the abuse of a dominant position;

(c) protection of airlines from prices to the extent that they are artificially low because of direct or indirect governmental subsidy or support; and

(d) protection of airlines from prices that are artificially low, where evidence exists as to an intent of eliminating competition.

2. Prices for air transportation between the territories of the Parties shall not be required to be filed, unless such filing shall be required for the purposes of implementing a mutual agreement reached under paragraph 3 of this Article. Such prices shall be permitted to come into and remain in effect unless the aeronautical authorities of both Parties agree otherwise. The designated airlines of the Parties shall continue to provide immediate access, on request, to information on historical, existing and proposed prices to the aeronautical authorities of the Parties in a manner and format acceptable to the aeronautical authorities.

3. If the aeronautical authorities of one Party are dissatisfied with an existing or proposed price for air transportation between the territories of the Parties, either on their own motion or in response to a complaint, they shall so notify the aeronautical authorities of the other Party and the airline offering the price. The aeronautical authorities receiving the notice of dissatisfaction shall acknowledge the notice, including an indication of their agreement or disagreement with it, within 10 working days of receipt of the notice. The aeronautical authorities shall cooperate in securing information necessary for the consideration of a price on which a notice of dissatisfaction has been given. If the aeronautical authorities of both Parties agree that such an existing or proposed price is inconsistent with the principles of this Article, they shall put that agreement into effect. Without such mutual agreement, the price may go into effect or continue in effect.

4. Prices for international air transportation between the territories of the Parties and third countries may be required to be filed in accordance with the regulations of the respective Parties. Each Party shall apply its rules and policies on prices between its territory and third countries without discrimination to the airlines of both Parties. In any event, each Party shall allow any airline of one Party to meet any scheduled price including combinations of scheduled prices charged in the marketplace for transportation between the territory of the other Party and a third country provided that the resulting price does not undercut the prices for international scheduled air transportation of the third and fourth freedom airlines in that market. Charterers or airlines operating international charter air transportation, however, may meet any price, including combinations of prices, of either scheduled or charter services.

5. The aeronautical authorities of either Party may request technical discussions on prices at any time. Unless the aeronautical authorities agree otherwise, technical discussions shall take place no later than 10 working days following the receipt of a request. If the aeronautical authorities are unable to resolve the issue, either Party may then request consultations between Parties. Such consultations shall take place no later than 10 working days following the receipt of a request, unless otherwise agreed.

ARTICLE 6

Tariffs

1. The Parties acknowledge that the general terms and conditions of carriage which are broadly applicable to all air transportation and are not directly related to the fare, rate or charge shall be subject to national laws and regulations. Either Party may require notification to or filing with its aeronautical authorities of any such terms and conditions. If one Party's aeronautical authorities take action to disapprove any such term or condition they shall inform the other Party's aeronautical authorities promptly.

2. The designated airlines shall make full information on prices and the general terms and conditions of carriage available to the general public.

ARTICLE 7

Airport Access

1. Each designated airline shall have the right to perform its own ground-handling in the territory of the other Party ("self-handling") or, at its option, select among competing agents for such services in whole or in part. These rights shall be subject only to physical constraints resulting from considerations of airport safety and operational constraints arising from such physical limitations. Where such considerations preclude self-handling, ground services shall be available on an equal basis to all airlines; charges shall be based on the costs of services provided, including a reasonable rate of return/profit; and such services shall be comparable to the kind and quality of services as if self-handling were possible.

2. Both Parties shall give sympathetic consideration to representations by the other as to problems which may arise in connection with access to airport facilities by their respective airlines, and shall endeavor to persuade relevant airport authorities to work with affected airlines to find constructive solutions to such problems.

ARTICLE 8

User Charges

A. **User Charges for Air Navigation Services/Air Traffic Control**

User charges that may be imposed by the competent charging authorities or bodies of each Party on the airlines of the other Party for the use of air navigation and air traffic control services shall be just and reasonable; provided that any such charges shall be assessed on the airlines of the other Party on terms not less favorable than the most favorable terms available to any other airline in providing similar international air transportation.

B. User Charges for Airport, Aviation Security, and related Facilities and Services

1. User charges that may be imposed by the competent charging authorities or bodies of each Party on the airlines of the other Party shall be just, reasonable, not unjustly discriminatory, and equitably apportioned among categories of users. In any event, any such user charges shall be assessed on the airlines of the other Party on terms not less favorable than the most favorable terms available to any other airline in providing similar international air transportation at the time the charges are assessed.

2. User charges imposed on the airlines of the other Party may reflect, but shall not exceed, the full cost to the competent charging authorities or bodies of providing the appropriate airport, aviation security, and related facilities and services and may provide for a reasonable return on assets, after depreciation. Facilities and services for which charges are made shall be provided on an efficient and economic basis.

3. Recognizing that existing user charges (including their level and structure) have not been found to be inconsistent with the principles described in paragraphs 1 and 2 of this Part, the Parties shall not challenge existing user charges (including their level and structure) imposed by an airport in the territory of the other Party that were in effect for airport, aviation security, and related facilities and services on the date of signature of this Agreement, provided such charges are just, reasonable and not unjustly discriminatory.

C. General

1. Reasonable notice shall be given prior to changes in user charges.

2. Each Party shall encourage consultations between the competent charging authorities or bodies in its territory and the airlines or their representative bodies using the services and facilities, and shall encourage the competent charging authorities or bodies and the airlines or their representative bodies to exchange such information as may be necessary to permit an accurate review of the reasonableness of the charges in accordance with the principles of this Article.

3. Neither Party shall be held, in dispute resolution procedures pursuant to Article 17, to be in breach of a provision of this Article, unless:

   (i) it fails to undertake a review of the charge or practice that is the subject of complaint by the other Party within a reasonable amount of time; or

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

ARTICLE 9

Customs Duties and Charges

1. On arriving in the territory of one Party, aircraft operated in international air transportation by the designated airlines of the other Party, their regular equipment, ground equipment, fuel, lubricants, consumable technical supplies, spare parts (including engines), aircraft stores (including but not limited to such items as food, beverages and liquor, tobacco and other products destined for sale to or use by passengers in limited quantities during flight), and other items intended for or used solely in connection with the operation or servicing of aircraft engaged in international air transportation shall be exempt, on the basis of reciprocity, from all import restrictions, property taxes and capital levies, customs duties, excise taxes, and similar fees and charges that are (1) imposed by the national authorities, and (2) not based on the cost of services provided, provided that such equipment and supplies remain on board the aircraft.

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

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

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

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

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

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

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

5. Baggage and cargo in direct transit across the territory of either Party shall be exempt from customs duties.

Commercial Opportunities

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

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

3. The airlines of each Party may engage in the sale of air transportation in the territory of the other Party directly and, at the airline's discretion, through its agents, except as may be specifically provided by the charter regulations of the country in which the charter originates that relate to the protection of passenger funds, and passenger cancellation and refund rights. Each airline shall have the right to sell such transportation, and any person shall be free to purchase such transportation, in the currency of that territory or in freely convertible currencies.

4. Each airline shall have the right to convert and remit to its country, on demand, funds obtained in the normal course of its operations. Conversion and remittance shall be permitted promptly without restrictions or taxation in respect thereof at the market rate of exchange applicable to current transactions and remittance on the date the carrier makes the initial application for remittance, and shall not be subject to any charges except normal service charges collected by banks for such transactions.

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

6. Cooperative Arrangements

   (a) In operating or holding out the authorized services on the agreed routes, any designated airline of one Party may enter into cooperative marketing or operational arrangements such as blocked-space, code-sharing or leasing arrangements, with an airline or airlines of either Party provided that all airlines in such arrangements 1) hold the underlying route rights and 2) meet the requirements normally applied to such arrangements, including any necessary authorizations.[1] [2]

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[1]/ During the phase-in period described in Annex V, cooperative arrangements involving service to Toronto (Pearson International Airport), Montreal (Dorval Airport) and Vancouver (Vancouver International Airport) shall be subject to the limitations set forth in Section 4 of that Annex.

[2]/ For charter operations, leasing arrangements shall be approved as described in this paragraph, while other applications shall be given favorable consideration, subject to the laws and regulations normally applied.

(b) Applications seeking authority to enter into cooperative marketing or operational arrangements with airlines of third countries shall be considered subject to the laws and regulations normally applied, and at the discretion of the authorities of each country.

ARTICLE 11

Computer Reservation Systems

1. In recognition that each Party has national laws and regulations relating to operations of, and non-discriminatory access to, computer reservation systems in its territory, the airlines of both Parties, consistent with Article 4 (Fair Competition), shall be entitled to inform the public of their services in a fair and impartial manner through the computer reservation systems operating in each territory.

2. Where one Party considers that its airlines are not receiving non-discriminatory treatment from a computer reservation system in the territory of the other Party, that Party may request consultations with the other Party to seek a resolution of the problem consistent with paragraph 1 of this Article.

3. Recognizing that, consistent with Article 4 (Fair Competition), all computer reservation systems owned in whole or in part by airlines of each Party have achieved effective access in the territory of the other Party, each Party accepts that computer reservation systems offering services in the territory of the other Party are subject to the national laws and regulations of that Party regarding such systems and their services, and subject to compliance with such laws and regulations.

ARTICLE 12

Application of Laws

1. While entering, within, or leaving the territory of one Party, its laws and regulations relating to the operation and navigation of aircraft shall be complied with by the other Party's airlines.

2. While entering, within, or leaving the territory of one Party, its laws and regulations relating to the admission to or departure from its territory of passengers, crew or cargo on aircraft (including regulations relating to entry, clearance, aviation security, immigration, passports, customs and quarantine or, in the case of mail, postal regulations) shall be complied with by, or on behalf of, such passengers, crew or cargo of the other Party's airlines.

3. In the application of its customs, immigration, quarantine and similar regulations, neither Party shall give preference to its own or any other airline over an airline of the other Party engaged in similar international air transportation.

ARTICLE 13

Safety

1. Each Party shall recognize as valid, for the purpose of operating the air transportation provided for in this Agreement, certificates of airworthiness, certificates of competency, and licenses issued or validated by the other Party and still in force, provided that the requirements for such certificates or licenses at least equal the minimum standards that may be established pursuant to the Convention. Each Party may, however, refuse to recognize as valid for the purpose of flight above its own territory, certificates of competency and licenses granted to or validated for its own nationals by the other Party.

2. Either Party or the aeronautical authorities of either Party may request technical discussions concerning the safety standards maintained and administered by the other Party relating to aeronautical facilities, aircrews, aircraft, and operation of the designated airlines. If, following such technical discussions, one Party finds that the other Party does not effectively maintain and administer safety standards and requirements in these areas that at least equal the minimum standards that may be established pursuant to the Convention, the other Party shall be notified of such findings and the steps considered necessary to conform with these minimum standards, and the other Party shall take appropriate corrective action. Each Party reserves the right in accordance with Article 3 to withhold, revoke, or limit the operating authorization or technical permission of an airline or airlines designated by the other Party in the event the other Party does not take such appropriate corrective action within a reasonable time.

ARTICLE 14

Aviation Security

1. The Parties reaffirm that their obligations to each other to provide for the security of civil aviation against acts of unlawful interference (including in particular their obligations under the Convention of International Civil Aviation, done at Chicago on December 7, 1944; the Convention on Offences and Certain Other Acts Committed on Board Aircraft, done at Tokyo on September 14, 1963; the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on December 16, 1970; and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on September 23, 1971; and any other multilateral agreement governing aviation security binding upon the Parties) form an integral part of this Agreement.

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

3. The Parties shall act in conformity with the aviation security standards and, so far as they are applied by them, the recommended practices established by the International Civil Aviation Organization, and designated as Annexes to the Convention on International Civil Aviation, and shall require that operators of aircraft of their registry, operators who have their principal place of business or permanent residence in their territory, and the operators of international airports in their territory act in conformity with such aviation security provisions. Each Party shall give advance information to the other of its intention to notify ICAO of any differences to the ICAO standards.

4. Each Party agrees that its operators of aircraft may be required to observe the aviation security provisions required by the other Party for entrance into, departure from, or while within, the territory of that other Party. Each Party shall ensure that effective measures are taken within its territory to protect aircraft, to inspect passengers and their carry-on items, and to carry out appropriate checks on crew, cargo (including baggage) and aircraft stores prior to and during boarding or loading. Each Party shall also act favorably upon any request from the other Party for reasonable special security measures to meet a particular threat.

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

6. When a Party has reasonable grounds to believe that the other Party has departed from the provisions of this Article, the first Party may request immediate consultations with the other Party. Failure by the Parties to reach a satisfactory resolution of the matter within 15 days from the date of receipt of such request shall constitute grounds for withholding, revoking, limiting or imposing conditions on the operating authorizations or technical permissions of an operator of aircraft of the other Party to operate air transport services authorized by this Agreement. When justified by an emergency, a Party may take interim action prior to the expiry of 15 days.

7. Each Party shall also give sympathetic consideration to a request from the other Party to enter into reciprocal administrative arrangements whereby the aeronautical authorities of one Party could make in the territory of the other Party their own assessment of the security measures being carried out by aircraft operators in respect of flights destined to the territory of the first Party.

ARTICLE 15

Statistics

The aeronautical authorities of both Parties shall continue the program which has been inaugurated of joint preparation of agreed true origin and destination statistics for air passenger traffic over the routes operated pursuant to this Agreement.

ARTICLE 16

Consultations and High Level Meetings

1. The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation, exchange of information and consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

2. Either Party may request consultations regarding any aspect of the Agreement, including, but not limited to, any actual or proposed measure or any matter that it considers affects the interpretation or application of the Agreement. On matters which the requesting Party deems and states to be urgent, such consultations shall commence within 15 days of the date of delivery of the request, unless otherwise agreed between the Parties. In all other cases consultations shall commence at the earliest possible date, but not later than 30 days from the date of receipt of the request for consultations, unless otherwise agreed by the Parties.

3. The Parties shall make every attempt to arrive as expeditiously as possible at a mutually satisfactory resolution of any matter through consultations. To the extent one Party has requested consultations regarding an actual or proposed measure of a State, Provincial, or local government or authority of the other Party, which the requesting Party believes to be inconsistent with the Agreement, such other Party shall bring the requesting Party's views to the attention of the relevant governmental unit or authority.

4. The Parties shall exchange sufficient information to enable a full examination of how the actual or proposed measure or other matter affects, or might affect, the operation of the Agreement.

5. Each Party shall treat any confidential or proprietary information exchanged in the course of consultations on the same basis as the Party providing the information treats it.

6. If the Parties fail to resolve a matter pursuant to the provisions on consultations within:

   (a) 30 days of the commencement of consultations,

   (b) 30 days of delivery of a request for consultations in matters deemed and stated to be urgent by the requesting Party, or

   (c) such other period as they may agree,

   either Party may request in writing a High Level Meeting (hereinafter referred to as an "HLM"), as set out below.

7. An HLM, which may include representatives of, for the United States, the Department of State and/or the Department of Transportation and, for Canada, the Department of External Affairs and/or the Department of Transport, shall be held at the request of either Party. At the request of either Party the HLM shall be between, for the United States, the Secretary of State and/or the Secretary of Transportation and, for Canada, the Secretary of State for External Affairs and/or the Minister of Transport, or their designees.

8. The purpose of an HLM shall be to:

   (a) consider any matter that may affect the operation of this Agreement; and

   (b) resolve disputes that may arise regarding its interpretation or application.

9. An HLM may:

   (a) establish, and delegate responsibilities to, ad hoc or standing committees, working groups or expert groups;

   (b) seek the advice of non-governmental persons or groups; and

   (c) take other action to carry out its purposes.

10. If an HLM is requested pursuant to this Article, the requesting Party shall state in the request the measure or other matter complained of and indicate the provisions of this Agreement that it considers relevant.

(b) be independent of, and not be affiliated with or take instructions from, any Party; and

(c) follow a code of conduct to be established by the Parties within 90 days following the entry into force of this Agreement.

6. All panelists shall meet the qualifications set out in paragraph 5 of part A of this Article. Individuals may not serve as panelists for a dispute in which they have participated.

7. Arbitration shall be by a panel of three panelists to be constituted as follows:

(a) Within 20 days after the receipt of a request for arbitration, each Party shall name one of its citizens or permanent residents as a panelist. Within 20 days after these two panelists have been named, they shall by agreement appoint a third panelist, who shall not be a citizen or permanent resident of either country, and who shall act as President of the panel.

(b) If either Party fails to name a panelist, or if a third panelist is not appointed in accordance with subparagraph (a) of this paragraph, either Party may request the President of the Council of the International Civil Aviation Organization to appoint the necessary panelist or panelists within 20 days. If the President of the Council is a citizen of one of the Parties, the most senior Vice-President who is not disqualified on that ground shall make the appointment.

8. If a Party believes that a panelist should not serve because the panelist is in violation of the code of conduct, the Parties shall consult and if they agree, the panelist shall be removed and a new panelist shall be selected in accordance with this Article.

9. Unless otherwise provided in this Agreement or the Parties otherwise agree:

(a) the panel shall establish its own procedures;

(b) the procedures shall ensure at least one oral hearing before the panel as well as the opportunity to present written submissions and rebuttal arguments;

(c) subject to paragraph 10 of Part A of Article 17, the Parties shall deliver their initial submissions simultaneously no later than 20 days after the last panelist is selected, and their rebuttal submissions simultaneously no later than 15 days after receipt by both Parties of the initial submissions. The submissions shall each be delivered to the members of the panel and to the other Party.

10. Unless the Parties otherwise agree within 20 days from the date of delivery of the request for the establishment of a panel, within 40 days from the date of the delivery of the request for the establishment of a panel, or within 5 days after the last panelist has been selected, whichever is later, each Party shall submit to the panel its views as to the question or questions on which it believes the panel should make its ruling. Based upon the Parties' submissions pursuant to this paragraph, the panel shall, within 15 days after the last panelist has been selected, reach a decision as to the question or questions to be decided. If it considers necessary, the panel may require additional

11. Unless it is mutually agreed by the Parties that an HLM will not be convened or should be delayed, an HLM requested pursuant to this Article shall convene within 20 days of delivery of the request and shall endeavour to resolve the dispute promptly.

12. An HLM may:

(a) call on such technical advisers or create such working groups or expert groups as it deems necessary,

(b) have recourse to good offices, conciliation, mediation or such other similar procedures, or

(c) make recommendations,

as may assist the Parties to reach a mutually satisfactory resolution of the dispute.

ARTICLE 17

Resolution of Disputes

Part A - Panel Proceedings

1. The dispute settlement provisions of this Article shall apply when a Party considers that there has been a violation of the Agreement except that this Article shall not apply to individual prices charged by the airlines designated by either Party.

2. If an HLM has convened pursuant to Article 16 and the matter has not been resolved within:

(a) 40 days after the delivery of the request for an HLM, or

(b) such other period as the Parties may agree; or

if it is mutually agreed by the Parties, pursuant to paragraph 11 of Article 16, that an HLM should not be convened, then either Party may request in writing the establishment of an arbitral panel with respect to the matters referred to in paragraph 1 of Part A of this Article which have been discussed at the HLM, or if an HLM has not been convened, which have been the subject of consultations.

3. Unless otherwise agreed by the Parties, the panel shall be established and perform its functions in a manner consistent with the provisions of this Article.

4. The panel shall make its final report public, except to the extent the report contains information considered proprietary or confidential by the person or Party who provided the information, in which case such information shall be treated on the same basis as the person or Party who provided the information treats it.

5. Panel members shall:

(a) have expertise or experience in law, matters covered by this Agreement, or the resolution of disputes arising under international agreements, and shall be chosen strictly on the basis of objectivity, reliability and sound judgment;

(b) be independent of, and not be affiliated with or take instructions from, any Party; and

(c) follow a code of conduct to be established by the Parties within 90 days following the entry into force of this Agreement.

6. All panelists shall meet the qualifications set out in paragraph 5 of part A of this Article. Individuals may not serve as panelists for a dispute in which they have participated.

7. Arbitration shall be by a panel of three panelists to be constituted as follows:

(a) Within 20 days after the receipt of a request for arbitration, each Party shall name one of its citizens or permanent residents as a panelist. Within 20 days after these two panelists have been named, they shall by agreement appoint a third panelist, who shall not be a citizen or permanent resident of either country, and who shall act as President of the panel.

(b) If either Party fails to name a panelist, or if a third panelist is not appointed in accordance with subparagraph (a) of this paragraph, either Party may request the President of the Council of the International Civil Aviation Organization to appoint the necessary panelist or panelists within 20 days. If the President of the Council is a citizen of one of the Parties, the most senior Vice-President who is not disqualified on that ground shall make the appointment.

8. If a Party believes that a panelist should not serve because the panelist is in violation of the code of conduct, the Parties shall consult and if they agree, the panelist shall be removed and a new panelist shall be selected in accordance with this Article.

9. Unless otherwise provided in this Agreement or the Parties otherwise agree:

(a) the panel shall establish its own procedures;

(b) the procedures shall ensure at least one oral hearing before the panel as well as the opportunity to present written submissions and rebuttal arguments;

(c) subject to paragraph 10 of Part A of Article 17, the Parties shall deliver their initial submissions simultaneously no later than 20 days after the last panelist is selected, and their rebuttal submissions simultaneously no later than 15 days after receipt by both Parties of the initial submissions. The submissions shall each be delivered to the members of the panel and to the other Party.

10. Unless the Parties otherwise agree within 20 days from the date of delivery of the request for the establishment of a panel, within 40 days from the date of the delivery of the request for the establishment of a panel, or within 5 days after the last panelist has been selected, whichever is later, each Party shall submit to the panel its views as to the question or questions on which it believes the panel should make its ruling. Based upon the Parties' submissions pursuant to this paragraph, the panel shall, within 15 days after the last panelist has been selected, reach a decision as to the question or questions to be decided. If it considers necessary, the panel may require additional

information from the Parties prior to reaching a decision as to the question or questions to be decided. If a panel is requested to make a decision pursuant to this paragraph the time for the initial submissions by the Parties shall be 15 days from the date of such decision by the panel. If the Parties so agree, the panel may, if it considers necessary, extend the period of time within which it is required to reach a decision under this paragraph.

11. On request of a Party, or on its own initiative, the panel may seek information and technical advice from any person or body that it deems appropriate, provided that the Parties so agree and subject to such terms and conditions as the Parties may agree.

12. Unless the Parties otherwise agree, the panel shall base its report on the submissions and arguments of the Parties and on any information before it pursuant to paragraph 11, Part A of this Article.

13. Unless the Parties otherwise agree, the panel shall, within 90 days after the last panelist is selected, present to the Parties an initial report containing:

    (a) findings of fact;

    (b) its determination as to whether there has been a violation of this Agreement; and

    (c) if both Parties so request within 20 days of the request for the establishment of a panel, its recommendations, if any, for resolution of the dispute.

14. Panelists may furnish separate opinions on matters not unanimously agreed.

15. A Party may submit written comments to the panel on its initial report within 14 days of presentation of the report, and shall serve those comments on the other Party. The other Party may reply to the comments within 5 days.

16. In such an event, and after considering such written comments, the panel, on its own initiative or on the request of either Party, may:

    (a) request the views of either Party;

    (b) reconsider its report; and

    (c) make any further examination that it considers appropriate.

17. The panel shall present to the Parties a final report, including any separate opinions on matters not unanimously agreed, within 30 days of presentation of the initial report, unless the Parties otherwise agree.

18. Unless the Parties agree otherwise, the final report of the panel shall be published 15 days after it is transmitted to the Parties.

Part B - Implementation of Panel Reports

1. If in its final report a panel has determined that there has been a violation of this Agreement, the Party complained against shall either cure the violation or the Parties shall reach agreement on the resolution of the dispute, which normally shall conform with the determinations and recommendations, if any, of the panel.

2. Where resolution of the dispute involves a State, Provincial, or local government or authority, the Parties shall use their best efforts, consistent with national law, to give full effect to such resolution.

3. If in its final report a panel has determined that there has been a violation of this Agreement and the Party complained against has not cured the violation or reached agreement with the complaining Party on a mutually satisfactory resolution pursuant to paragraph 1 within 30 days of receiving the final report, such complaining Party may suspend the application of benefits of equivalent effect arising under this Agreement until such time as they have reached agreement on a resolution of the dispute. However, nothing in this paragraph shall be construed as limiting the right of either Party to suspend the application of proportionate benefits in accordance with principles of international law.

4. In considering what benefits to suspend pursuant to paragraph 3 of Part B of this Article:

   (a) a complaining Party should first seek to suspend benefits similar to those affected by the measure or other matter that the panel has found to violate this Agreement; and

   (b) a complaining Party that considers it is not practicable or effective to suspend benefits similar to those affected may suspend benefits that are not similar.

Part C - Remuneration and Payment of Expenses

1. The panel shall use its best efforts to maintain its expenditures at a reasonable level and shall consult with the Parties before incurring any extraordinary expenses.

2. The remuneration of panelists and their assistants, their travel and lodging expenses, and all general expenses of panels shall be borne equally by the Parties.

3. Each panelist shall keep a record and render a final account of the person's time and expenses, and the panel shall keep a record and render a final account of all general expenses.

ARTICLE 18

Index and Titles

The Index and titles used in this Agreement are for reference purposes only.

ARTICLE 19

Amendment of Agreement

If either Party considers it desirable to modify any provision of this Agreement, it may request consultations with the other Party. Such consultations, which may be through discussion (including discussion between aeronautical authorities) or by correspondence, shall begin within a period of sixty (60) days from the date of the request. Any modification agreed pursuant to such consultations shall be effected by agreement between the two Governments.

ARTICLE 20

Multilateral Conventions

If a general multilateral air transport services convention comes into force in respect of both Parties, in the event of inconsistencies, the provisions of that multilateral convention shall prevail. Consultations in accordance with Article 16 of this Agreement may be held to determine if, and in what manner, this Agreement should be amended to bring it into conformity with the provisions of the multilateral convention.

ARTICLE 21

Termination

Either Party may, at any time, give notice in writing through diplomatic channels to the other Party of its decision to terminate this Agreement. Such notice shall be sent simultaneously to the International Civil Aviation Organization. This Agreement shall terminate at midnight (at the place of receipt of the notice to the other Party) immediately before the first anniversary of the date of receipt of the notice by the other Party, unless the notice is withdrawn by agreement of the Parties before the end of this period. In the absence of acknowledgement of receipt by the other Party, the notice shall be deemed to have been received fourteen (14) days after the receipt of the notice by the International Civil Aviation Organization.

ARTICLE 22

Registration with ICAO

This Agreement and all amendments thereto shall be registered with the International Civil Aviation Organization.

ARTICLE 23

Definitions

For the purposes of this Agreement, unless otherwise stated, the term:

"Aeronautical Authorities" means, in the case of the United States, the Department of Transportation, and in the case of Canada, the Minister of Transport and the National Transportation Agency, or in both cases, any person or agency authorized to perform the functions exercised at present by those authorities;

"Agreement" means this Agreement, its Annexes, and any amendments thereto;

"Air transportation" means any operation performed by aircraft for the public carriage of passengers, baggage, cargo, and mail, separately or in combination, for remuneration or hire;

"Airline" means any air transport enterprise offering or operating air transportation;

"Convention" means the Convention on International Civil Aviation, done at Chicago on December 7, 1944, and includes:

(1) any amendment that has entered into force under Article 94(a) of the Convention and has been ratified by both Parties; and

(2) any Annex or any amendment thereto adopted under Article 90 of the Convention, insofar as such Annex or amendment is at any given time effective for both Parties;

"Courier service" means the transportation of cargo on an expedited basis, priced to include door-to-door pick-up and delivery.

"Designated airline" means an airline designated and authorized in accordance with the terms of this Agreement;

"Gateway" means, in respect of providing international air transportation pursuant to this Agreement, the point of last departure in the territory of one Party and/or the point of first arrival in the territory of the other Party;

"International air transportation" means air transportation that passes through the airspace over the territory of more than one State;

"Meet," as used in Article 5 (Pricing), means the right to continue or institute, on a timely basis, using such expedited procedures as may be necessary, an identical or similar price or such price through a combination of prices, on a direct, interline, or intraline basis, notwithstanding differences in conditions including, but not limited to, those relating to airports, routing, distance, timing, connections, aircraft type, aircraft configuration, or change of aircraft.

"Price" means any fare, rate or charge (including discounts, frequent flyer plans or other benefits affecting the cost of air transportation) for the carriage of passengers (and their baggage) and/or cargo (excluding mail), or the charter of aircraft charged by airlines, including their agents, and the conditions governing the availability of such fare, rate or charge but excluding general terms and conditions of carriage which are broadly applicable to all air transportation and are not directly related to the fare, rate or charge;

"Territory" means the land areas under the sovereignty, jurisdiction, protection, or trusteeship of a Party, and the territorial waters adjacent thereto; and

"User charge" means a charge imposed on airlines for the provision of airport, air navigation, or aviation security facilities or services including related services and facilities.

ARTICLE 24

Entry into Force

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

2. This Agreement shall supersede the Air Transport Agreement, done at Ottawa January 17, 1966, with exchange of notes, as amended; the Nonscheduled Air Services Agreement, with annexes and exchanges of notes, done at Ottawa May 8, 1974; the Agreement Concerning Regional, Local and Commuter Services, effected by exchange of notes at Montreal August 21, 1984, as amended; the Agreement on Aviation Security, done at Ottawa November 21, 1986; and the Agreement Relating to Air Navigation, effected by exchange of notes at Washington July 28, 1938.

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

EN FOI DE QUOI, les soussignés, dûment autorisés par leur gouvernement respectif, ont signé le présent Accord.

DONE at Ottawa, in duplicate, this 24th day of February, 1995, in the English and French languages, each text being equally authentic.

FAIT à Ottawa, en double exemplaire, ce 24e jour de février 1995, en anglais et en français, chaque texte faisant également foi.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA

POUR LE GOUVERNEMENT DES ÉTATS-UNIS D'AMÉRIQUE

FOR THE GOVERNMENT OF CANADA

POUR LE GOUVERNEMENT DU CANADA

Section 1

Passenger/Combination Route Authorities

Designated airlines of Canada and designated airlines of the United States have the unlimited right to perform passenger/combination scheduled international air transportation to and from any point in the territory of Canada to and from any point in the territory of the United States with no restrictions as to capacity, frequency, and aircraft size, subject to uniform and non-discriminatory regulations not inconsistent with Article 15 of the Chicago Convention. Airlines may, at their option, combine two or more points in the territory of the other Party in a through service carrying no local passengers or cargo between points in the territory of the other Party.[1]

Section 2

All-Cargo Services

Designated airlines of Canada and designated airlines of the United States shall have the right to perform all-cargo scheduled international air transportation to and from any point in the territory of Canada to and from any point in the territory of the United States with no restrictions as to aircraft weight group, package size, capacity or frequency, subject to uniform and non-discriminatory regulations not inconsistent with Article 15 of the Chicago Convention,[2] and subject to the following limitation:

> Points in the territory of the other Party shall not be combined on any same plane scheduled all-cargo courier service operated with aircraft having a maximum certificated takeoff weight greater than 35,000 pounds. However, any all-cargo co-terminalizing authorities in existence as of the date of entry into force of this Agreement shall remain in effect.[3]

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[1]/ During the phase-in period described in Annex V, passenger/combination services operated by airlines of the United States shall be subject to the limitations on operations to/from Toronto (Pearson International Airport), Montreal (Dorval), and Vancouver (Vancouver International Airport) set forth in Section 2 of that Annex. Services to Washington National Airport shall be subject to the limitations set out in Annex II, Section 2.

[2]/ During the first year of the phase-in period described in Annex V, all-cargo services operated by airlines of the United States shall be subject to the limitations on operations to/from Toronto, Montreal, and Vancouver set forth in Section 3 of that Annex.

[3]/ The Parties shall meet within three years to consider whether co-terminalizing of all-cargo courier services might be permitted and, if so, under what conditions.

Section 3

Fifth Freedom Services

No airline may exercise fifth freedom rights, except on the following routes and with the limitations indicated:

1. For one airline designated by Canada:

   Canada-Honolulu-Australasia and beyond. Notwithstanding subparagraph (d) of Section 5 of this Annex, no point beyond Australasia may be served, in either direction, if a point in Australasia is not served in both directions on the route.

2. For any number of airlines designated by Canada:

   Canada-San Juan and beyond.

3. For one airline designated by the United States:

   United States-Gander-Europe and beyond.

Section 4

Blind Sector (Intransit) Rights

In addition to, and/or in conjunction with the exercise of, the rights granted in this Agreement to serve points in the territory of the other Party with full traffic rights, designated airlines of Canada and the United States may operate to any other point or points in third countries, without traffic rights between points in the territory of the other Party and such other points in third countries.

Section 5

Route Flexibility/Change of Aircraft

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

(a) operate flights in either or both directions;

(b) combine different flight numbers within one aircraft operation;

(c) carry its own stop-over traffic;

(d) omit stops at any point or points; and

(e) transfer traffic from any of its aircraft to any of its other aircraft, at any point on the routes without limitation as to change in type or numbers of aircraft operated;

without directional or geographic limitation and without loss of any right to carry traffic otherwise permissible under this Agreement; provided that the service begins or terminates in the territory of the Party designating that airline. That is, the flight number assigned to services between the United States and Canada may not be the same as that assigned to flights behind the territory of the Party designating the airline performing the service.

Section 6

Intermodal Services

1. Airlines of both Parties shall be permitted, without economic regulatory restriction, to employ in connection with international air transportation, or as a substitute for international air transportation, any surface transport for cargo to or from any points in the territories of the Parties or in third countries, including transport to and from all airports with customs facilities, and including, where applicable, the right to transport cargo in bond under applicable laws and regulations.

2. The movement of air cargo by surface transport shall be subject to nondiscriminatory laws and regulations normally applied. Air cargo, whether moving by surface or by air, shall have access to airport customs processing and facilities during hours of operation normally provided and where services are available.

3. Airlines may elect to perform their own surface transportation or to provide it through arrangements with other surface carriers, including surface transportation operated by other airlines and indirect providers of cargo air transportation. Such intermodal cargo services may be offered at a single, through price for the air and surface transportation combined, provided that shippers are not misled as to the facts concerning such transportation.

4. With respect to the employment of surface transport for air cargo as outlined in paragraph 1, nothing in this article shall be deemed to confer on the airline or airlines of one Party any new or additional rights, to take on board, in the territory of the other Party, air traffic destined for another point in the territory of that other Party.

Annex II

Slots and Access to Washington National Airport

Section 1

Slots at Chicago O'Hare and New York LaGuardia Airports

1. Except as otherwise provided in this Annex and in Section 5 of Annex V, Canadian and United States airlines shall be subject to the same system for slot allocation at United States high density airports as are U.S. airlines for domestic services.

2. The United States shall establish a base level of free slots for Canada at New York LaGuardia Airport of 42 slots in the summer and winter seasons, and a base at Chicago O'Hare Airport of 36 slots for the summer season and 32 slots in the winter season. With respect to slots made available by the United States additional to those held by Canadian airlines as of December 22, 1994, the United States will endeavor to provide such slots at times of the day suitable for transborder air service. Should Canadian airlines purchase slots at New York LaGuardia Airport and/or Chicago O'Hare Airport between December 22, 1994 and the entry into force of this Agreement, those slots shall be added to the base level for that airport. Slots received by a Canadian airline other than by purchase between December 22, 1994 and the entry into force of this Agreement, shall not increase the base level of slots, but instead shall be included within the base level of slots to be made available by the U.S. Government.

3. Base slots shall be subject to normal non-discriminatory U.S. regulations including withdrawal under the "use it or lose it" rules. Canadian base slots shall not, however, be subject to withdrawal for the purpose of providing a U.S. or foreign airline with slots for international services or to provide slots for "new entrants".

4. Any slot needs of Canadian airlines above the base levels shall be acquired through the prevailing system for slot allocation applicable to U.S. domestic operations. Slot holdings so acquired shall be subject to normal non-discriminatory U.S. regulations including "use it or lose it".

5. Canadian airlines may monetize slot holdings and, subject to the constraints described in Annex V, Section 5, during the transitional phase, may freely buy, sell and trade slots. The sale or other disposal of a slot which forms part of the base level shall permanently modify the base so that neither the airline nor the Government of Canada shall have a claim to any other time slot to restore the base. However, slots acquired above the base level and later disposed of shall not modify the base.

6. Any United States airline authorized to provide transborder services from O'Hare or LaGuardia may make unconditioned use of any existing or new slot holdings at its disposal to operate such services, consistent with United States regulations.

Section 2

Access to Washington National Airport

1. Nonstop air services under this Agreement may be provided by designated airlines of the United States and Canada to and from Washington National Airport, subject to the following:

   a) the prevailing perimeter rule;

   b) United States customs and immigration pre-clearance being available at the Canadian point of departure;

   c) the acquisition by Canadian airlines of the necessary slots at Washington National Airport under the prevailing rules for slot acquisition and minimum slot use applicable to United States airlines; and

   d) other uniform and non-discriminatory regulations consistent with Article 15 of the Convention.

2. United States airlines may not inaugurate non-stop service between Washington National Airport and any point in Canada unless and until a Canadian airline inaugurates a non-stop service from any point in Canada to Washington National Airport. Following the inauguration of any non-stop service by any Canadian airline between any point in Canada and Washington National Airport, United States airlines may operate any non-stop services between Washington National Airport and any point in Canada.[1]

3. Designated Canadian airlines shall be permitted to operate non-stop air services to Washington National Airport in accordance with the conditions laid out in paragraph 1 of this Section no later than ninety (90) days after the date of signature of this Agreement.

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[1]/ Subject to the phase-in limitations set forth in Annex V, Section 2, on Passenger/Combination Route Authorities. It is understood that isolated charter operations shall not constitute service within the meaning of this paragraph.

Annex III

Charter Air Transportation

Designated airlines of each Party shall, in accordance with the rules of the country of origin of the charter, have the right to carry international charter traffic of passengers and cargo, separately or in combination:

(a) Between any point or points in the territory of the Party that has designated the airline and any point or points in the territory of the other Party, except that, in the case of all-cargo charters for courier services operated with aircraft having a maximum certificated take-off weight greater than 35,000 pounds, points in the territory of the other Party shall not be combined on any same plane service[1] [2]; and

(b) Between any point or points in the territory of the other Party and any point or points in a third country or countries, provided that such traffic is carried via the territory of the Party that has designated the airline and makes a stopover in that territory for at least two consecutive nights.

In the performance of services covered by this Annex, designated airlines of each Party shall also have the right:

(1) to make stopovers at any points whether within or outside of the territory of either Party;

(2) to carry transit traffic through the other Party's territory; and

(3) to combine on the same aircraft traffic originating in one Party's territory with traffic that originated in the other Party's territory.

Each Party shall on the basis of comity and reciprocity consider applications by airlines of the other Party to carry traffic not covered by this Annex.

Annex IV

Continuation of Designations and Authorizations

Section 1

Designations

Any airline of Canada or the United States holding a current designation from its respective government under the 1966 Air Transport Agreement, as amended, or the 1974 Nonscheduled Air Services Agreement, or endorsed under the 1984 Agreement Concerning Regional, Local and Commuter Services (and in the case of endorsements for discretionary authority under the 1984 Agreement, licensed by the other Party for those discretionary services), or holding authorizations from both aeronautical authorities pursuant to the 1966 Exchange of Notes No. 273 and No. L-12 on all-cargo services, shall be deemed to be an airline designated to conduct international air transportation pursuant to this Agreement, except for United States airlines' new scheduled air services to and from Montreal (Dorval), Toronto (Pearson), and Vancouver during their respective phase-in periods specified in Annex V (Transition Phase) of the Agreement.

Section 2

Licence Authorizations

Canada:

For purposes of Canadian licensing requirements, any airline of the United States or Canada holding a valid licence issued by the National Transportation Agency of Canada on the date of entry into force of this Agreement for the operation of scheduled or nonscheduled air services shall, pending issuance of an appropriate licence under this Agreement, continue to have all the authorities provided in the said licence and be deemed to have therein the authority to operate scheduled or nonscheduled international air transportation respectively to and from points in Canada and the United States as provided in this Agreement, including Annex V (Transition Phase) of the Agreement, except for United States airlines' new scheduled air services to and from Montreal (Dorval), Toronto (Pearson), and Vancouver during their respective phase-in periods specified in Annex V (Transition Phase) of the Agreement.

United States:

Any license issued to an airline of Canada or the United States by the U.S. Department of Transportation shall continue in effect under otherwise-applicable terms and conditions of that license pending application for and issuance of an appropriate license under this Agreement.

Section 1

General

The transition phase shall begin on the date this Agreement enters into force and shall end one year from that date in respect of all-cargo services, two years from that date in respect of passenger/combination services at Montreal and Vancouver and three years from that date in respect of passenger/combination services at Toronto. During the transition phase only, the provisions of this Annex shall apply as set forth below.

During the transition phase, the United States shall be entitled to exercise all rights (including, but not limited to rights related to routing, designations and frequencies) that were available immediately prior to the entry into force of this Agreement pursuant to the 1966 Air Transport Agreement between the United States and Canada, with Exchange of Notes related to all-cargo services, as amended, ("the 1966 Agreement"); the 1974 Nonscheduled Air Service Agreement, with annexes and exchange of notes ("the 1974 Agreement"); and the 1984 agreement on Regional, Local and Commuter Services ("the RLCS Agreement"). In addition, United States airlines shall retain any authority to serve any points in Canada (including but not limited to authorities related to routing, designations and frequencies) that existed on the date of entry into force of this Agreement, whether or not such service was conducted pursuant to any of the above-mentioned agreements.

Section 2

Passenger/Combination Route Authorities of United States Designated Airlines

Notwithstanding the provisions of Annex I, Section 1, during the transition phase, the following shall apply to United States airline service between the United States and Toronto (Pearson) ("Toronto"), Montreal (Dorval) ("Montreal") and Vancouver (Vancouver International Airport) ("Vancouver").

A. In addition to the rights set forth in Section 1 above, effective immediately upon entry into force of this Agreement:

(1) All co-terminal route authorities that were available to the United States (pursuant to the 1966 Agreement) immediately prior to the entry into force of the Agreement may be split into separate routes and redesignated to the same or different airlines.

(2) The United States may designate an airline to serve each of the following new routes: Nashville-Toronto, Portland-Vancouver and Pittsburgh-Montreal (to provide independent authorities for the United States airline services operated as intermediate stops on Routes D.2., B.4., and F.1. of the 1966 Agreement as of December 22, 1994.)

(3) The United States designated airline for Route D.2. of Schedule I of the 1966 Agreement shall no longer be required to make an intermediate stop at Toronto as a condition of service to Montreal.

(4) The United States may designate six airlines using different airline codes for up to two frequencies per day by each airline on passenger/combination services from any points in the United States (in markets existing as of the entry into force of this Agreement or in new markets) to be selected by the United States to and from Montreal.

(5) The United States may designate six airlines using different airline codes for up to two frequencies per day by each airline on passenger/combination services from any points in the United States (in markets existing as of the entry into force of this Agreement or in new markets) to be selected by the United States to and from Vancouver.

(6) The United States may designate two airlines using different airline codes for up to two frequencies per day by each airline on passenger/combination services from any points in the United States (in markets existing as of the entry into force of this Agreement or in new markets) to be selected by the United States to and from Toronto.

B. In addition to the rights in Part A above, with effect from the first anniversary of the entry into force of this Agreement:

(1) The United States may designate six United States airlines using different airline codes for up to two frequencies per day by each airline on passenger/combination services from any points in the United States (in markets existing as of the entry into force of this Agreement or in new markets) to be selected by the United States to and from Montreal.

(2) The United States may designate six United States airlines using different airline codes for up to two frequencies per day by each airline on passenger/combination services from any points in the United States (in markets existing as of the entry into force of this Agreement or in new markets) to be selected by the United States to and from Vancouver.

(3) The United States may designate two United States airlines using different airline codes for up to two frequencies per day by each airline on passenger/combination services from any points in the United States (in markets existing as of the entry into force of this Agreement or in new markets) to be selected by the United States to and from Toronto.

(4) Frequencies authorized for the United States in paragraphs (1) and (2) above may be used to increase daily frequencies in any market selected for service in the first year to a maximum of four daily frequencies per airline. Frequencies authorized for the United States in (3) above (Toronto) may not be used to increase daily frequencies of airlines selected for service to Toronto in the first year.

C. In addition to the rights in Part B above, with effect from the second anniversary of the entry into force of this Agreement:

(1) The United States may designate four United States airlines using different airline codes for up to two frequencies per day by each airline on passenger/combination services from any points in the United States (in markets existing as of the entry into force of this Agreement or in new markets) to be selected by the United States to and from Toronto.

(2) United States airlines may operate passenger/combination services to and from any points in the United States to and from Montreal and to and from any points in the United States to and from Vancouver with no restrictions as to capacity, frequency and aircraft size, subject to non-discriminatory regulations not inconsistent with Article 15 of the Chicago Convention. Airlines may, at their option, combine two or more points in Canada on a through service carrying no local passengers or cargo between Canadian points.

(3) Frequencies authorized for the United States in (1) above (Toronto) may be used to increase daily frequencies for any airline selected for Toronto in the first two years, up to a maximum of four daily frequencies per airline, per market.

D. The United States may change any of its designations or selections in Parts A, B and C above of airlines or markets at any time, provided such changes conform to the limitations provided in this section.

E. During the transition phase, the following shall apply with respect to the provisions of Parts A, B and C above:

1. In respect of any new service from Toronto to a United States point to which a Canadian airline did not operate large aircraft at the time this Agreement entered into force, a United States airline, in the exercise of route authority under this Annex, may increase its frequencies to match the number of large-aircraft frequencies operated by a Canadian airline on the city pair, provided that the United States airline is operating at least two frequencies in that city-pair.

2. If a Canadian airline that did not have authority to serve a city-pair with large aircraft inaugurates service for that city-pair with large aircraft, a United States airline that is, at the time this Agreement enters into force, serving that city-pair under restrictions precluding the utilization of large aircraft or limiting aircraft size may operate large aircraft and may match the number of frequencies operated by the Canadian airline using such aircraft.

"Large" aircraft means an aircraft type certified as capable of carrying more than 60 passengers.

F. Without prejudice to operations at Washington National Airport by all United States airlines holding authority at Washington immediately prior to the entry into force of this Agreement, at such time as a Canadian airline commences non-stop service to Washington National Airport, where any United States airline, or its affiliate, holds authority to operate between Baltimore and Toronto, with large or small aircraft, that airline may commence service with large aircraft from Washington National Airport to Toronto. Upon institution of Washington National-Toronto non-stop service by a U.S. airline pursuant to this paragraph, such inauguration shall constitute, and be consistent with, one of the U.S. route entitlements for year two or year three of the transition phase described in this Annex, as follows: If a Canadian airline commences non-stop service to Washington National Airport during the first year of the transition phase, inauguration of such service by the United States airline pursuant to this paragraph shall constitute a United States route entitlement for year two. Should non-stop service by a Canadian airline be initiated in year two of the transition phase, inauguration of such service by the United States airline pursuant to this paragraph shall constitute a United States route entitlement for year three.

G. With effect from the third anniversary of the entry into force of this Agreement, the transition phase shall terminate and the passenger/combination route authorities of the airlines of the United States shall be as set forth in Section 1 of Annex I.

Section 3

All-Cargo Services

Notwithstanding the provisions of Annex I and Annex III, during the first year of the transition phase only, the following shall apply:

A. Any new scheduled or non-scheduled all-cargo service by airlines of the United States to/from Toronto, Montreal and Vancouver (i.e., service that was not in operation before the entry into force of this Agreement) shall be limited to aircraft up to 75,000 pounds maximum certificated takeoff weight inclusive.[1]

B. All-cargo scheduled route authorities and non-scheduled exemption authorities of United States airlines that were in effect immediately prior to the entry into force of this Agreement shall remain in effect with all restrictions on aircraft weight groups, package size and similar restrictions, other than the co-terminalizing restrictions set out in Annex I, and Annex III, removed. In addition, each licensee shall be free to change the United States point of call on a daily basis.

With effect from the first anniversary of the entry into force of this Agreement, the transition phase applicable to scheduled and non-scheduled all-cargo services shall terminate and the all-cargo route authorities of the airlines of the United States shall be as set forth in Annex I and Annex III.

Section 4

Cooperative Arrangements

1. Notwithstanding the provisions of paragraph 6 of Article 10, the limitations in this Section shall apply with respect to cooperative arrangements for service to or from Toronto (Pearson) ("Toronto"), Montreal (Dorval) ("Montreal") and Vancouver (Vancouver International Airport) ("Vancouver") during the transition phase.

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[1]/ This restriction does not preclude the operation of ad hoc or single-entity charter flights using aircraft having a maximum certificated takeoff weight greater than 75,000 pounds.

2. The limitations in this Section apply to the aggregate number of code-share frequencies on which connecting code-share passengers may be carried between Toronto, Montreal or Vancouver and any U.S. gateway point. Connecting code-share passengers are those originating at/destined to a point behind/beyond the U.S. gateway and flow via that gateway to/from Toronto, Montreal or Vancouver, where the passenger's ticket on any sector of that journey lists an airline of one Party, but the aircraft is being operated by an airline of the other Party.

(a) With effect immediately upon entry into force of this Agreement, Canadian or U.S. airlines may operate up to four code-share frequencies at Toronto and up to twelve code-share frequencies at each of Montreal and Vancouver.

(b) With effect from the first anniversary of entry into force of this Agreement, Canadian or U.S. airlines may operate up to four additional code-share frequencies at Toronto and up to twelve additional code-share frequencies at each of Montreal and Vancouver.

(c) With effect from the second anniversary of entry into force of this Agreement, Canadian or U.S. airlines may operate up to eight additional code-share frequencies at Toronto and there shall be no limitations on the number of code-share frequencies at Montreal and Vancouver.

(d) With effect from the third anniversary of entry into force of this Agreement, there shall be no limitations on the number of code-share frequencies at Toronto.

(e) For each frequency operated by a U.S. airline resulting from the operation of paragraphs (1) and (2) of Section 2, Part A and paragraph (2) of Section 2, Part E of this Annex, a Canadian or U.S. airline may operate an additional code-share frequency provided it is operated to and from the same Canadian gateway as the new U.S. carrier service. If a new U.S. route entitlement is advanced pursuant to Section 2, Part F of this Annex, the same number of code-share frequencies may be advanced. The Canadian code-share frequency entitlement under this sub-paragraph shall not be diminished by the reduction of a U.S. carrier's frequencies which have been in operation for more than one month.[2]

(f) The transborder frequencies on which such connecting code-share passengers may be carried to or from Toronto shall also be subject to the same limitation on the use of second year Toronto frequencies to increase first year frequencies, and the limitation at Toronto to four frequencies per airline, per market in year three, as applies to United States airline service authorized pursuant to this Annex.

(g) Canadian aeronautical authorities may award to Canadian airlines code-share frequencies for which this paragraph provides entitlement. Any one Canadian airline may be awarded no more than half of the available code-share frequencies (except when the number of frequencies is an odd number in which case one airline may operate an additional frequency) in a given year at each of Montreal, Toronto and Vancouver during the applicable year of the transition phase.

3. The provisions of this Annex do not limit the rights of United States and Canadian airlines, in accordance with paragraph 6 of Article 10, to code-share for traffic carried solely on the transborder segments. Further, the provisions of this Annex do not limit the rights of Canadian and United States airlines to code-share on connecting services in Canada or to/from a third country behind/beyond Toronto, Montreal and Vancouver provided that both airlines have the underlying route rights and any necessary authorizations.

4. The long-standing exception from the requirement for underlying rights in the case of a regional small aircraft operator based in one country which, as a standard practice, uses the designator code of a major airline based in the same country and with which it is commercially affiliated, including circumstances where the major airline does not have the underlying route right, shall continue to apply.

Section 5

Use of Base Level Slots During Transition Phase

1. With respect to the base level of slots for Canada at New York LaGuardia Airport and Chicago O'Hare Airport as outlined in Annex II, during the three year transition phase described in Section 1 of this Annex, Canadian airlines may lease or sell such slots only to other Canadian airlines. These base slots may, however, be traded with any United States or Canadian airline for slots at other times at O'Hare Airport or LaGuardia Airport to adjust arrival and departure times to meet transborder service needs. The buying, selling, leasing or trading of slots by Canadian airlines in accordance with this provision will not affect the base level of slots for Canada.

2. Notwithstanding Annex II, Section 1 of this Agreement, the base level of slots for Canada shall not be subject to withdrawal under the "use it or lose it" rules during the three year transition period.