

AGREEMENT
BETWEEN THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF
CHINA AND THE GOVERNMENT OF THE POLISH PEOPLE'S
REPUBLIC RELATING TO CIVIL AIR TRANSPORT

The Government of the People's Republic of China and the Government of the Polish People's Republic, hereinafter referred to as "the Contracting Parties";

Desiring to facilitate friendly contacts between their two peoples, and develop mutual relations between the two countries in the field of civil aviation;

Have agreed on the establishment and operation of scheduled air services between their respective territories as follows:

Article 1
DEFINITIONS

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

a) the term "aeronautical authorities" means, in the case of the People's Republic of China, the Civil Aviation Administration of China, and, in the case of the Polish people's Republic, the Ministry of Transport-General Directorate of Civil Aviation, or in both case's any other person or agency authorized to perform the functions presently exercised by the said authorities;

b) the term "airline" means any air transport enterprise offering or operating international air services;

c) the term "designated airline" means an airline which has been designated and authorized' in accordance with Article 3 of this Agreement;

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

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

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

g) the term "capacity" means:

(i) in relation to an aircraft, the payload of that aircraft available on a route or section of a route,

(ii) in relation to a specified air service, the capacity of the aircraft used on such service multiplied by the frequency operated by such aircraft over a given period on a route or section of a route;

h) the term "tariff" means the prices to be paid for the carriage of passengers, baggage and freight and the conditions under which those prices apply, including prices and conditions for agency and other auxiliary service, but excluding remuneration or conditions for the carriage of mail;

i) the term "Schedule" means the Route Schedule annexed to this Agreement or as amended in accordance with the provisions of Article 16 of this Agreement. The Schedule forms an integral part of this Agreement and all references to the Agreement shall include references to the Schedule except where otherwise provided.

Article 2 GRANT OF RIGHTS

(1) Each Contracting Party grants to the other Contracting Party the rights specified in this Agreement to enable its designated airline to establish and operate international air services on the route(s) specified in the Schedule, hereinafter called "the agreed services" and "the specified route(s)" respectively.

(2) Subject to the provisions of this Agreement, the designated airline of each Contracting Party shall enjoy while operating an agreed service on a specified route, the following rights:

a) to fly without landing across the territory of the other Contracting Party along the fixed international air routes or air routes prescribed by the aeronautical authorities of the other Contracting Party.

b) to make stops for non traffic purposes in the aid territory, at point(s) to

be agreed upon between the aeronautical authorities of both Contracting Parties, and

c) to make stops at the point(s) on the specified route in the territory of the other Contracting Party for the purpose of taking on board and discharging international traffic in passengers, baggage, cargo and mail.

(3) In case the designated airline of one Contracting Party desires to operate an additional or charter flight on the specified route, it shall submit an application to the aeronautical authorities of the other Contracting Party, and the flight can be operated only after approval has been obtained. The said application shall be submitted not later than seventy-two hours before the take-off of such flight.

Article 3 DESIGNATION AND AUTHORIZATION

(1) Each Contracting Party shall have the right to designate in writing to the other Contracting Party one airline to operate the agreed services on the route specified in the Schedule.

(2) The substantial ownership and effective control of the airline designated by each Contracting Party shall remain vested in such Contracting Party or its nationals.

(3) The aeronautical authorities of the other Contracting Party may require the airline designated by the first Contracting Party to satisfy them that it is qualified to fulfil the conditions prescribed under the laws and regulations normally and reasonably applied by them to the operation of international air services by the said authorities.

(4) On receipt of such designation, the other Contracting Party shall, subject to the provisions of paragraph (2) of this Article, grant without delay to the airline so designated the appropriate operating authorization.

(5) When an airline has been so designated and authorized it may commence at any time operation of the agreed services.

Article 4
REVOCATION OF OPERATING AUTHORIZATION

(1) Each Contracting Party shall have the right to revoke or suspend the operating authorization already granted to the designated airline of the other Contracting Party, or to impose such conditions as it may deem necessary on the exercise by the said designated airline of the rights specified in Article 2 of this Agreement, in any of the following cases:

- a) where it is not satisfied that the substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or its nationals, or
- b) where that airline fails to comply with the laws and regulations of the Contracting Party granting these rights, or
- c) where that airline otherwise fails to operate in accordance with the conditions prescribed under this Agreement.

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

Article 5
PROVISION OF TECHNICAL SERVICES AND RATE
OF CHARGES

(1) Each Contracting Party shall designate in its territory regular airport(s) and alternate airports to be used by the designated airline of the other Contracting Party for the operation of the specified route, and shall provide that airline with such communications, navigational, meteorological and other auxiliary services in its territory as are required for the operation of the agreed services.

(2) The designated airline of each Contracting Party shall be charged for the use of airports, facilities and technical services of the other Contracting Party at fair and reasonable rate prescribed by the appropriate authorities of the other Contracting Party. Such rates shall not be higher than those paid by airlines of

other States engaged in international air services for the use similar facilities and services.

Article 6 CUSTOMS AND DUTIES

(1) Aircraft operated on international air services by the designated airline of one Contracting Party, as well as their regular equipment, spare parts, supplies of fuels, oils (including hydraulic fluids), lubricants and aircraft stores (including food, beverages and tobacco) on board such aircraft shall be exempt from all customs duties, inspection fees and other duties or taxes on arriving in the territory of the other Contracting Party, provided such equipment and supplies remain on board the aircraft up to such time as they are reexported.

(2) Supplies of fuels, oils (including hydraulic fluids), lubricants, spare parts, regular equipment and aircraft stores introduced into the territory of each Contracting Party by or on behalf of the designated air line of the other Contracting Party or taken on board the aircraft operated by such designated airline and intended solely for use in the operation of international air services shall be exempt from all duties and charges, including customs duties and inspection fees imposed in the territory of the first Contracting Party even when those supplies are to be used on the parts of the journey performed over the territory of the contracting Party in which they are taken on board. The materials referred to above may be required to be kept under customs supervision or control.

(3) The regular airborne equipment, spare parts, aircraft stores, and supplies of fuels, oils (including hydraulic fluids), and lubricants retained on board the aircraft of either Contracting Party may be unloaded in the territory of the other Contracting Party only with the approval of the customs authorities of that Contracting Party, who may require that those materials be placed under their supervision and control up to such time as they are reexported or otherwise disposed of in accordance with customs regulations.

(4) Airline tickets, airway bills as well as airline publicity materials and give away items of the designated airline of either Contracting Party introduced into the territory of the other Contracting Party shall be exempt from all customs duties, inspection fees and other duties or taxes.

Article 7
REPRESENTATION AND PERSONNEL

(1) For the operation of the agreed services on the specified route(s), the designated airline of each Contracting Party shall have the right, on reciprocal basis, to set up representation at point(s) of call within the territory of the other Contracting Party. The staff of the representations referred to in this paragraph shall be subject to the laws and regulations in force in the country where such representations are located.

(2) The staff members of the representation of the designated airline of each Contracting Party in the territory of the other Contracting Party shall be nationals of either Contracting Party, unless otherwise agreed. The number of such staff shall be determined on reciprocal basis between the aeronautical authorities of both Contracting Parties.

(3) The representation and staff of the designated airline of each Contracting Party shall be accorded, to the maximum extent practicable, the assistance of the other Contracting Party so as to enable them to conduct their activities safely and efficiently.

(4) The designated airline of each Contracting Party may conduct its sales activities in the territory of the other Contracting Party subject to national legislation in force in that territory and, where necessary, appropriate arrangements can be made between the designated airlines subject to the approval of the competent authorities of the Contracting Parties.

(5) The crew members of the designated airline of either Contracting Party on flights into and out of the territory of the other Contracting Party shall be nationals of the Contracting Party designating such airline. If a designated airline of either Contracting Party desires to employ crew members of any other nationality on flights into and out of the territory of the other Contracting Party, prior approval be obtained from that other Contracting Party.

Article 8
TRANSFER OF AIRLINE EARNINGS

Either Contracting Party undertakes to grant the designated airline of the

other Contracting Party the right for free transfer, at the official rate of exchange, of the excess of receipt over expenditure achieved on its territory in connection with the carriage of passengers, baggage, cargo and mail by the said designated airline. Whenever the payment system between the Contracting Parties is governed by a special agreement, that agreement shall apply.

Article 9 ENTRY AND CLEARANCE REGULATIONS

(1) The laws and regulations of either Contracting Party relating to the admission into, stay in, departure from and flight over its territory of aircraft engaged in the operation of international air services, as well as laws and regulations relating to the admission to, stay in and departure from its territory of passengers, crew, baggage, cargo and mail shall be applicable to the aircraft of the airline designated by the other Contracting Party, its crew as well as the passengers, baggage, cargo and mail carried by such aircraft, while in the territory of the first Contracting Party. Each Contracting Party shall promptly supply to the other Contracting Party at the latter's request the texts of the above-mentioned laws and regulations.

(2) Passengers in direct transit across the territory of either Contracting Party shall be subject to no more than very simplified control. Baggage and freight, if in direct transit, shall be exempt from customs duties, inspection fees and other duties and charges.

Article 10 CAPACITY PROVISIONS

(1) There shall be reasonably equal opportunity for designated airlines of the Contracting Parties in operating the agreed services on the specified routes.

(2) Matters relating to frequency, type of aircraft, schedule, ground handling and other matters pertaining to the operation of the agreed services shall be agreed upon after consultation between the designated airlines of both Contracting Parties. Frequency and type of aircraft so agreed shall be subject to the approval of the aeronautical authorities of both Contracting Parties.

(3) In the operation of the agreed services, the designated airline of each Contracting Party shall take into account the interests of the designated airline of the other Contracting Party so as not to affect unduly the air services which the latter airline operates over the whole route or parts thereof.

(4) The agreed services provided by a designated airline shall retain as their primary objective the provision, at a reasonable load factor, of capacity adequate so the requirements for the carriage of passengers, mail and cargo, originating from or destined for the territory of the Contracting Party designating the airline. The right of the designated airline of either Contracting party to embark or to disembark at the point in the territory of the other Contracting Party international traffic destined for or coming from third countries shall be of a supplementary nature.

Article 11 INFORMATION AND STATISTICS

The aeronautical authorities of either Contracting Party shall furnish to the aeronautical authorities of the other Contracting Party, at their request, statistical data as may be reasonably required for the purpose of reviewing the capacity provided by the designated airline of the first Contracting Party on the specified route. Such data shall include all information required to determine the amount of traffic carried.

Article 12 ESTABLISHMENT OF TARIFFS

(1) The tariffs on any agreed services shall be established at reasonable levels, due regard being paid to all relevant factors including cost of operation, reasonable profit, characteristics of service (such as standards of speed and accommodation) and the tariffs of other airlines for any part of the specified route. These tariffs shall be fixed in accordance with the following provisions of this Article.

(2) The tariffs referred to in paragraph (1) of this Article shall be agreed upon between the designated airlines of both Contracting Parties, in consultation, when necessary and possible, with other airlines operating over the whole or part

of that route. The tariffs so agreed shall be subject to the approval of the aeronautical authorities of both Contracting Parties and shall be submitted to their respective aeronautical authorities at least 90 days prior to the proposed date of introduction of these tariffs. This period can be reduced in certain cases upon agreement between the said authorities.

(3) If the designated airline cannot agree on any of these tariffs, the aeronautical authorities of the Contracting Parties shall try to determine the tariffs agreement between themselves.

(4) If the aeronautical authorities cannot agree on approval of any tariff submitted to them under paragraph of this Article or on the determination of any tariff under paragraph (5), the matter shall be referred to the Contracting Parties for settlement in accordance with the provisions of Article 15 of this Agreement.

(5) Pending determination of a new tariff in accordance with the provisions of this Article, the tariffs already in force shall prevail. Nevertheless, a tariff shall not be prolonged by virtue of this paragraph for more than 12 months after the date on which it otherwise would have expired.

Article 13 DOCUMENTS

(1) The aircraft of the designated airline of either Contracting Party operating on the specified route shall bear its nationality and registration marks and, subject to the international regulations or recommendations accepted by the two Contracting Parties, carry on board the following certificates and documents:

- a) certificate of registration,
- b) certificate of airworthiness,
- c) journey log sheet,
- d) aircraft radio station licence,
- e) licences or certificates for each member of the crew,
- f) list of crew members,

g) list of passengers giving the places of departure and destination,

h) manifest of cargo and mail, and

i) general declaration.

Each Contracting Party shall recognize as valid the certificates and licences mentioned above issued or rendered valid by the other Contracting Party.

(2) The designated airline of either Contracting Party can operate the agreed services on the specified route(s) with aircraft lease⁸ from a third country. However, consultations shall be conducted between the Contracting Parties at the request of the other Contracting Party in case of aircraft having nationality of a third country.

Article 14 SEARCH AND RESCUE

In case the aircraft of the designated airline of one Contracting Party is in distress or meets with an accident in the territory of the other Contracting Party, the other Contracting Party, subject to the international regulations or recommendations accepted by the two Contracting Parties, shall:

a) inform without delay the first Contracting Party of the accident,

b) immediately start search and rescue operations,

c) render assistance to the passengers and crew,

d) provide all security measures for the aircraft and its contents,

e) carry out investigation into the accident,

f) permit the representatives of the first Contracting Party access to the aircraft, and participation in the investigation as observers,

g) give clearance to the aircraft and its contents as soon as they are no longer necessary for the investigation,

h) communicate in writing to the first Contracting Party its conclusions and the final report concerning the investigation.

Article 15 CONSULTATIONS

(1) The Contracting Parties shall ensure the correct implementation of, and satisfactory compliance with, the provisions of the present Agreement in a spirit of close co-operation and mutual support. To this end, the aeronautical authorities of the Contracting Parties shall consult each other from time to time.

(2) Either Contracting Party may request consultation with the other Contracting Party, which may be either oral or in writing, and which shall begin within a period of 60 days from the date of receipt of the request, unless both Contracting Parties jointly determine an extension of this period.

(3) If any difference of opinion arises in respect of the interpretation or implementation of this Agree merit, the aeronautical authorities of the Contracting Parties shall endeavour to settle it through consultation in a spirit of friendly cooperation and mutual under standing. If the aeronautical authorities fail to reach a settlement, the Contracting Parties shall endeavour to settle it through diplomatic channels.

Article 16 AMENDMENT

If either of the Contracting Parties considers it desirable to amend any provision of this Agreement including the Schedule, it may request consultation with the other Contracting Party. This consultation, which may be between aeronautical authorities and which may be through discussion or by correspondence, shall begin within a period of 60 days from the date of receipt of the request. Any amendments so negotiated shall not come into force until they have been confirmed by way of an exchange of notes through diplomatic channels.

Article 17
TERMINATION

Either Contracting Party may at any time notify the other Contracting Party of its decision to terminate this Agreement. If such notification is given, this Agreement shall terminate twelve months after the date of its receipt by the other Contracting Party unless the notification under reference is withdrawn before the expiry of that period.

Article 18
TITLES

Titles are inserted in this Agreement at the head of each article for the purpose of reference and convenience and in no way to define, limit or describe the scope or intent of this Agreement.

Article 19
ENTRY INTO FORCE

The present Agreement shall come into force on the date of exchange of diplomatic notes confirming that the Contracting Parties have completed their respective legal procedures.

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

Done at Beijing on the 20th day of March 1986 in two originals, each in the Chinese, Polish and English languages, all texts being equally authentic.

For the Government of the
People's Republic of China

or the Government of the
Polish People's Republic

SCHEDULE

(1) Routes

a) The route of the agreed services operated by the designated airline of the Government of the People's Republic of China shall be as follows in both directions:

Beijing - one or two intermediate points - Warsaw.

b) The route of the agreed services operated by the designated airline of the Government of the Polish People's Republic shall be as follows in both directions:

Warsaw - one or two intermediate points - Beijing.

(2) Intermediate points shall be agreed upon between the aeronautical authorities of the Contracting Parties.

(3) Any point or points on the specified route may be omitted on any or all flights at the discretion of the designated airline of each Contracting Party provided that this operation originates in the territory of the Contracting Party designating the airline.