UNITED STATES
OF AMERICA

Treaty Series No. 21 (1981)

Exchange of Notes

between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America

further amending the Agreement concerning Air Services, signed at Bermuda on 23 July 1977, as amended on 25 April 1978 and 27 December 1979

(with Exchanges of Letters)

Washington, 4 December 1980

[The Exchange of Notes is considered to have entered into force on 1 April 1980, except Annex 5 which is considered to have entered into force on 1 January 1980]

Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
May 1981

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EXCHANGE OF NOTES
BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA FURTHER AMENDING THE AGREEMENT CONCERNING AIR SERVICES, SIGNED AT BERMUDA ON 23 JULY 1977, AS AMENDED

No. 1

The Secretary of State of the United States of America to Her Majesty's Ambassador at Washington

Department of State,
Washington.

December 4, 1980.

Excellency,

I have the honor to refer to negotiations which have taken place in London and Washington pursuant to the Agreement between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland concerning Air Services, signed at Bermuda on 23 July 1977(1), as amended by the Exchanges of Notes of 25 April 1978(2) and 27 December 1979(3) (hereinafter referred to as the " Agreement ").

As a result of these negotiations and in accordance with Article 18 of the Agreement, I have the honor to propose that:

(1) If the Government of the United Kingdom designates a second airline for the gateway route segment London–Miami as set forth in UK Route 1 in Section 3 of Annex 1 to the Agreement, the Government of the United States shall, pursuant to paragraph (5) of Article 3 of the Agreement, accept such further designation. Subject to compliance with the remaining provisions of the Agreement, the second designated airline may commence services on or after 14 April 1980. The Government of the United States shall use its best efforts to grant necessary authorizations and technical permissions in the shortest possible time, and the periods set forth in Article 12 (Tariffs) of the Agreement and Annex 2 (Capacity on the North Atlantic) to the Agreement shall be reduced to the extent necessary to permit airline planning, marketing and start of services on the permitted date.

(2) If the Government of the United States designates a second airline for the gateway route segment Boston–London or a second airline for the gateway route segment Miami–London as set forth in US Route 1 in Section 1 of Annex 1 to the Agreement, the Government of the United Kingdom shall, pursuant to paragraph (5) of Article 3

(1) Treaty Series No. 76 (1977), Cmnd. 7016.
(2) Treaty Series No. 85 (1978), Cmnd. 7332.
(3) Treaty Series No. 34 (1980), Cmnd. 7862.

of the Agreement, accept such further designation or designations. Subject to compliance with the remaining provisions of the Agreement, the second designated airline may commence services on Boston–London on or after 14 April 1980 and on Miami–London on or after 15 January 1981. The Government of the United Kingdom shall use its best efforts to grant operating authorizations and technical permissions in the shortest possible time, and the periods set forth in Article 12 (Tariffs) of the Agreement and Annex 2 (Capacity on the North Atlantic) to the Agreement shall be reduced to the extent necessary to permit airline planning, marketing and start of services on the permitted date.

(3) US Route 1 in Section 1 of Annex 1 to the Agreement shall be amended to read in its entirety as shown in Enclosure 1 to this Note.

(4) UK Route 1 in Section 3 of Annex 1 to the Agreement shall be amended to read in its entirety as shown in Enclosure 2 to this Note.

(5) A Section 6 shall be added to Annex 1 to the Agreement as set out in Enclosure 3 to this Note.

(6) A Section 7 shall be added to Annex 1 to this Agreement as set out in Enclosure 4 to this Note.

(7) An Annex 5 shall be added to the Agreement as set out in Enclosure 5 to this Note.

If the foregoing proposals are acceptable to the Government of the United Kingdom of Great Britain and Northern Ireland, I have the honor to propose that the present Note and its enclosures, together with your reply in that sense, shall constitute an Agreement between our two Governments which shall be considered to have entered into force on 1 April 1980, except that Annex 5 shall be considered to have entered into force on 1 January 1980.

Accept, Excellency, the renewed assurances of my highest consideration.

For the Secretary of State:

E. JOHNSTON

SECTION 1

Scheduled Combination Air Service Routes for the United States
US Route 1: Atlantic Combination Air Service

(A) *US Gateway Points*	(B) *Intermediate Points*	(C) *Points in UK Territory*	(D) *Points Beyond* (6)(7)
Anchorage		London	Berlin
Atlanta		Prestwick/Glasgow	Frankfurt
Boston(1)			Hamburg
Chicago			Munich
Dallas/Ft. Worth			
Denver(2)(3)			Oslo(8)
Detroit			
Houston(4)			
Los Angeles			
Miami(1)			
Minneapolis/St. Paul(5)			
New York			
Philadelphia			
San Francisco			
Seattle			
Washington/Baltimore			
Points to be selected under Section 6 of this Annex(3)			

(1) Footnote 3 shall apply to operations of any airline designated pursuant to paragraph (5) of Article 3.

(2) May not be served nonstop until 14 April 1980.

(3) Flights from these points may not enjoy local traffic rights between points in Column (C) and points in Column (D) except that they may enjoy such traffic rights at Oslo when served through Prestwick/Glasgow.

(4) May not be served nonstop until 1 July 1980.

(5) May not be served nonstop until 1 June 1980.

(6) In addition, Austria and Belgium may be served until 23 July 1980; the Netherlands, Norway and Sweden may be served until 23 July 1982; and these points shall be considered as appearing in Column (D) for the specified periods.

(7) Only one US airline may be designated to serve each point in Column (D) on this route, including those in Footnote 6, except for Frankfurt for which two airlines may be designated on US Routes 1 and 2 taken together.

(8) Limited after 23 July 1982 to services through Prestwick/Glasgow; only one US airline may serve Oslo through Prestwick/Glasgow at any time.

13069 B*

Enclosure 2

SECTION 3

Scheduled Combination Air Service Routes for the United Kingdom
UK Route 1: Atlantic Combination Air Service

(A) *UK Gateway Points*	(B) *Intermediate Points*	(C) *Points in US Territory*	(D) *Points Beyond*
London Manchester Prestwick/Glasgow Belfast(1)		Atlanta(2) Boston Chicago Dallas/Ft. Worth(3) Detroit Houston Los Angeles Miami New Orleans(4) New York Philadelphia St. Louis(5) San Francisco Seattle Washington/Baltimore Points to be selected under Section 6 of this Annex.	

(1) May be served nonstop if selected under Section 6 of this Annex.

(2) Service may begin on or after 1 June 1980.

(3) Service may begin on or after 23 July 1980.

(4) Service may begin on or after 1 April 1981.

(5) Service may begin on or after 14 April 1980.

SECTION 6

Notes on New Gateway Points

1. In accordance with the provisions of this Section, a Contracting Party may select new gateway points from among the following:

(*a*) Cleveland, Denver, Ft. Lauderdale, Honolulu, Kansas City, Las Vegas, Minneapolis/St. Paul[1], New Orleans, Orlando, Phoenix, Pittsburgh, Portland, St. Louis, San Diego and Tampa.

(*b*) Any other point in United States territory whose international airport is located more than 100 direct air miles from the international airport of a point already served or selected for service under this Agreement.

(*c*) Any other point in United States territory whose international airport is located less than 100 direct air miles from the international airport of a point already served or selected for service under this Agreement, provided that the other Contracting Party does not object to its selection. In deciding whether to object, the other Contracting Party shall have regard to whether the proposed point is generally considered to be a separate metropolitan area from the proximate gateway point.

(*d*) Notwithstanding subparagraph (*c*) above, Newark and Baltimore. Services at these points may be held out, promoted and sold as services at New York and Washington, respectively, as well as Newark and Baltimore. Such selections and services shall not derogate from the rights of airlines designated for services at New York and Washington/Baltimore on North Atlantic routes to use any or all New York or Washington/Baltimore area airports and hold out, promote and sell their flights as Newark and Baltimore services as well as New York and Washington services without regard to the airport used. The traffic carried on gateway route segments to/from New York and to/from Washington/Baltimore by airlines designated for these gateway route segments (including their services, if any, to and from Newark and Baltimore airports) shall, for the purposes of Article 3(2)(*b*)(i) of this Agreement, be counted separately from traffic carried on gateway route segments to/from Newark and to/from Baltimore, respectively, by airlines designated for Newark or Baltimore gateway route segments subsequent to gateway selection pursuant to this Section.

(*e*) Belfast, solely by the United Kingdom.

2. (*a*) At the time of selecting a new gateway point in accordance with the provisions of this Section, a Contracting Party may notify the other Contracting Party that it wishes the services of its designated airline at that gateway to receive market development protection

[1] May not be served by a UK airline for 3 years after the start of service on 1 June 1980 or such later date as all necessary authorizations and technical permissions have been granted by the United Kingdom (provided that reasonable efforts have been made to obtain them).

for a period not to exceed three years from the date on which the service is permitted in accordance with paragraphs 2 to 6 of this Section or such later date as all necessary authorizations and technical permissions have been granted by the other Contracting Party (provided that reasonable efforts have been made to obtain them). During a period of invoked market development protection, no nonstop North Atlantic service under this Agreement may be commenced at that gateway point by an airline of the other Contracting Party, unless the designated airline of the Contracting Party invoking such protection operates fewer than 100 non-stop round trip combination flights within the first twelve-month period after the start of the market development period, or fewer than 150 such flights within any subsequent twelve-month period.

(*b*) Such market development protection shall be accorded to the United Kingdom designated airline or airlines serving St. Louis and New Orleans and shall commence on 14 April 1980 and 1 April 1981, respectively, or on such later dates as all necessary authorizations and technical permissions have been granted by the United States (provided that reasonable efforts have been made to obtain them). It may be invoked by the United States for its designated airline serving Denver, and if so shall commence on 14 April 1980, or on such later date as all necessary authorizations and technical permissions have been granted by the United Kingdom (provided that reasonable efforts have been made to obtain them), and provided that the United States gives notification to the United Kingdom of its wish to invoke such protection at the time of or before signature of the Exchange of Notes incorporating this Section into this Agreement.

3. A gateway point shall be selected by written notification to the other Contracting Party through diplomatic channels and such notification shall take place in accordance with the following timetable regarding sequence, timing and, subject to the provisions of paragraph 2 above, commencement of services at the gateway point. For services permitted to start as set out in column (A), the Contracting Parties shall select new gateway points in the sequence set out in column (B) and shall observe the latest dates for delivery of notification set out in column (C).

(A) *Date of Permitted Start of Services*	(B) *Sequence of Selection*	(C) *Latest Date for Delivery of Notification of Selection*
1 April 1981	(1st) US—Point A	30 November 1980
	(2nd) UK—Point A	31 December 1980
1 April 1982	(1st) UK—Point B	31 October 1981
	(2nd) US—Point B	30 November 1981
1 April 1983	(1st) US—Point C	31 October 1982
	(2nd) UK—Point C	30 November 1982
1 April 1984	(1st) UK—Point D	31 October 1983
	(2nd) US—Point D	30 November 1983
1 April 1985	(1st) US—Point E	31 October 1984
	(2nd) UK—Point E	30 November 1984

A point selected by the United Kingdom in accordance with the provisions of this Section shall be regarded as appearing in column (C) of UK Route 1

(or column (A) in the case of Belfast) from the date of permitted start of services. A point selected by the United States in accordance with the provisions of this Section shall be regarded as appearing in column (A) of US Route 1 from the date of permitted start of services. Each point thus selected shall be one of the "Points to be selected under Section 6 of this Annex" referred to in those routes.

4. Either Contracting Party may advance its selection of Point E so that service at that point may start on 1 April 1981 or the same date in any subsequent year. The latest date for notification of advance selection of Point E by a Contracting Party having first right of selection for service to begin in a given year shall be 2 January of the year of permitted start of service (or 1 February in 1981); the latest date of such notification by a Contracting Party having second right of selection in a given year shall be 1 February of the year of permitted start of service (or 1 March in 1981). Any advance selection of Point E by a Contracting Party having second right of selection in a given year shall be made only after the Contracting Party having first right of selection has made its second selection in that year, or the latest date for notification of such second selection has passed, or the Contracting Party having first right of selection has signified an intention not to make a second selection in that year.

5. A Contracting Party shall to the extent feasible provide to the other Contracting Party advance notice of its intention to select a gateway point or of its decision not to exercise such right. Such notice shall not be binding upon the sending Contracting Party, but receipt of a notice of decision not to select shall permit the receiving Contracting Party to proceed forthwith to make its next available selection pursuant to paragraphs 4, 6, or 7 of this Section.

6. A Contracting Party not selecting a gateway point in accordance with the timetable set forth above may nevertheless select such gateway point at any subsequent time except during any four-month period prior to the latest date for notification, under paragraph 3 above, for the other Contracting Party. Services may start at such gateway point on the date which would have applied if the selection had been made on time, or three months after the actual selection (whichever is later).

7. Either Contracting Party may change a previous selection of a gateway point during any period when it is entitled to make a selection pursuant to paragraphs 3, 4, or 6 of this Section or at any time after 1 December 1984 (and in the same manner as for a selection). In such an event, services from the new point shall be permitted to start on the first date of the traffic season immediately after the notification of the change or three months after the date of such notification (whichever is later). Services from the point renounced shall cease no later than the permitted start of services at the new point. Market development protection may not be invoked or continued at either the new point or the point renounced.

8. In their selection of gateway points as set out above, the Contracting Parties shall have regard to the availability and quality of service from

nearby gateways and the need to develop an attractive pattern of frequent service at gateways which are in the early years of operation.

9. Both Contracting Parties shall use their best efforts to grant necessary authorizations and technical permissions in the shortest possible time, and the periods set forth in Article 12 (Tariffs) and Annex 2 (Capacity on the North Atlantic) shall be reduced to the extent necessary to permit airline planning, marketing and start of services on the permitted date.

SECTION 7

London Airports

1. Any London airport (including Heathrow) may be served by British Airways, Pan American World Airways, and Trans World Airlines (or the corporate successor airline in any name change, merger, acquisition or consolidation in which any of the above three airlines is the major airline element) on US Routes 1 and 2 and UK Routes 1, 2, 3, 4, and 5 if the first point of arrival in United States territory or the last point of departure from United States territory is one of the following gateways, served as a traffic point: Anchorage, Boston, Chicago, Detroit, Los Angeles, Miami, Minneapolis/St. Paul (US designee only), New York, Philadelphia, San Francisco, Seattle, or Washington/Baltimore.

2. Notwithstanding the provisions of paragraph 1, any airline designated by either Contracting Party pursuant to paragraph (5) of Article 3 and serving the gateway route segments Boston–London or Miami–London may use any London airport except Heathrow.

3. All other services on US Routes 1 and 2 and UK Routes 1, 2, 3, 4, and 5 may use any London airport except Heathrow.

ANNEX 5

North Atlantic Air Cargo Operations

PART I

Scope and Applicability

(1) The Contracting Parties adopt the following provisions concerning international traffic in cargo (excluding mail) transported by designated airlines and charter-designated airlines (and, in regard to pricing, by airlines of other countries) in scheduled combination air service, scheduled all-cargo air service, and charter air service over the North Atlantic between:

(*a*) on the one hand, any point or points in the United States of America (hereinafter referred to as " the United States ") and

(*b*) on the other hand, any point or points in the United Kingdom of Great Britain and Northern Ireland (hereinafter referred to as " the United Kingdom ").

PART II

Transitional Period

(2) From 1 January 1980 to 31 December 1982 the Contracting Parties shall apply the following provisions to North Atlantic cargo charter traffic as defined in Part I of this Annex:

(*a*) *Charterworthiness*: Each Contracting Party shall permit the following categories of cargo charters:

(i) *Sole use/single entity cargo flights.* The sole purpose of each flight shall be the carriage of cargo consigned by a single person (other than a forwarder, consolidator, or shippers' association) who has contracted for the exclusive use of the carrying capacity of the aircraft.

(ii) *Specialist cargo flights.* The sole purpose of each flight shall be the carriage (separately or together) of livestock, bloodstock, or out-of-gauge (outsize) cargo.

(iii) *Other cargo flights.* The carrying capacity of the aircraft on each flight shall be purchased exclusively for cargo carriage by one or more persons, including shippers, forwarders, consolidators, or shippers' associations. Either Contracting Party may require that individual consignments carried (within which there may be consolidation of cargo) shall exceed either 1,000 kilograms in weight or 7 cubic meters in volume.

(b) *Tonne Limitations on Charters.* Each Contracting Party may limit carriage by each charter-designated airline under category (iii) of sub-paragraph (*a*) of this paragraph to no more than 1,500 tonnes in each direction in 1980, 2,000 tonnes in each direction in 1981, and 3,000 tonnes in each direction in 1982. Not more than 400 tonnes in 1980, 600 tonnes in 1981, and 900 tonnes in 1982 of the above airline cargo allowance may be carried in each direction between any point in Column (A) and any point in Column (C) as shown in UK Routes 10, 11 and 12 (except for the gateway route segment London–New York where no weight limitations by gateway shall apply). There shall be no weight limitation on flights in category (i) or category (ii) of sub-paragraph (*a*) of this paragraph.

PART III

Liberalized Cargo Air Services

(3) From 1 January 1983, the Contracting Parties shall cease to apply the limitations set out in Part II of this Annex, and thereafter shall apply the following provisions to international traffic in cargo as defined in Part I of this Annex:

(*a*) *Scheduled All-Cargo Designations.* Notwithstanding paragraph (3) of Article 3, the United States may by reference to this sub-paragraph designate for US Route 7, and the United Kingdom may by reference to this sub-paragraph designate for UK Routes 10, 11, and 12, any number of airlines to operate scheduled all-cargo air services. The procedures and requirements in paragraphs (1), (6), and (7) of Article 3 shall apply.

(*b*) *Scheduled All-Cargo Routes.* All airlines designated by either Contracting Party for scheduled all-cargo air services may operate such services between any point or points in the United States and any point or points in the United Kingdom. Consequently, for the purposes of the application of this Part, " United States " shall be considered as appearing in Column (A) of US Route 7 and Column (C) of UK Routes 10, 11, and 12, and " United Kingdom " shall be considered as appearing in Column (C) of US Route 7 and Column (A) of UK Routes 10, 11, and 12.

(*c*) *Scheduled All-Cargo Traffic Rights.* Airlines designated with reference to sub-paragraph (*a*) above may claim the rights and shall be subject to the obligations set out in Section 5 of Annex 1. However, only airlines now or hereafter designated under paragraph (3) of Article 3 (without reference to sub-paragraph (*a*) above) may pick up and discharge traffic (in addition to transit and on-line connecting traffic) at points in Column (C) for transport between points in Column (B) and points in Column (C) and between points in Column (C) and points in Column (D) in the Route Schedules set out in Annex 1.

(*d*) *Cargo Charter Operations.* International charter traffic in cargo shall continue to be governed by the pertinent provisions of Article 14 of this Agreement, except as those provisions are modified or suspended by this Annex.

PART IV

General Provisions for Both Periods

(4) From 1 January 1980 the Contracting Parties shall apply the following general provisions to international traffic in cargo as defined in Part I of this Annex.

(5) *Surface Transportation.* Notwithstanding any other provision of this Agreement, the airlines and indirect providers of cargo air transportation of each Contracting Party shall be permitted by the other Contracting Party and its aeronautical authorities, to the extent the matter is within their jurisdiction, to employ in connection with the carriage of cargo by international air transportation any surface transport in the territories of the Contracting Parties or to or from third countries, provided that shippers are not misled as to the facts concerning such transportation. Such joint services may be offered at a single price filing (made under paragraph (8) of this Annex) provided that all applicable laws governing surface transportation are complied with.

(6) *Authorizations.* The aeronautical authorities of each Contracting Party shall issue, subject to paragraph (6) of Article 3, sub-paragraphs (*b*) and (*c*) of paragraph (4) of Article 14 of this Agreement, and paragraph (3) of this Annex upon timely and proper request by designated and charter-designated airlines of the other Contracting Party, all necessary licences, permits, and authorizations, expeditiously and with a minimum of administrative complexity.

(7) *Fair Competition.* The Contracting Parties suspend the operation of paragraphs (2), (3) (United States-United Kingdom gateway route segments only), (4), and (5) of Article 11 of this Agreement in regard to scheduled all-cargo air service.

(8) *Pricing.* Subject to sub-paragraph (*e*) of this paragraph the Contracting Parties suspend the operation of paragraphs (4), (5), (6) and (7) of Article 12 of this Agreement and Article 13 of this Agreement in regard to the pricing of cargo carriage on scheduled combination and all-cargo air services, and paragraph (8) of Article 14 of this Agreement in regard to the pricing of cargo carriage on charter air services, and shall instead apply the following provisions to tariffs, prices, and rates charged for the carriage of cargo by designated and charter-designated airlines:

(*a*) Each Contracting Party may require notification of or filing with its aeronautical authorities of tariffs, prices, and rates charged, but such notification or filing may not be required before the proposed effective date.

(*b*) Subject to the provisions of sub-paragraph (*e*) of this paragraph, neither Contracting Party shall take unilateral action to prevent the initiation, continuation, or termination of a tariff, price, or rate charged by an airline designated by either Contracting Party. If either Contracting Party considers that a tariff, price, or rate proposed or in effect is predatory as regards other airlines, discriminatory as between shippers in similar circumstances, or unduly high or restrictive in such a way as to constitute abuse of a dominant market position, it may notify the other Contracting Party of the reasons for its dissatisfaction and request consultations. If so requested, such consultations shall commence not later than 30 days after the receipt of the request. If agreement is reached through such consultations on an appropriate tariff, price, or rate, each Contracting Party shall use its best efforts to put such agreement into effect. In the absence of agreement the tariff, price, or rate originally proposed or charged shall come into effect or continue in effect.

(*c*) In regard to tariffs, prices, or rates proposed or charged by airlines of third countries in the market defined in Part I of this Annex, the Contracting Parties shall seek to promote and fully maintain competition for cargo transport and shall consult before taking any action to disallow a tariff, price, or rate proposed or charged by an airline of a third country.

(*d*) Neither Contracting Party shall regulate the tariffs, prices, or rates proposed or charged by indirect providers of cargo air transportation for international traffic in cargo originating in the country of the other Contracting Party.

(*e*) Until 1 January 1983, where dissatisfaction has been notified pursuant to sub-paragraph (*b*) of this paragraph on the grounds that a tariff, price, or rate is unduly high or restrictive in such a way as to constitute abuse of a dominant market position created by restrictions on entry to the market, and more competitive tariffs, prices, or rates are not available, the Contracting Party expressing dissatisfaction may prevent the use of such tariff, price, or rate pending consultations and in the absence of agreement through consultations, take the unilateral action permitted under paragraph (7) of Article 12 of this Agreement for scheduled cargo or under paragraph (8) of Article 14 of this Agreement for charter cargo.

(9) *Combination Charters.*

(*a*) Until 1 January 1985 or such earlier date as may be agreed, no passengers shall be carried for compensation on any cargo charter flights other than ancillary attendants responsible for care and protection of cargo, and no cargo shall be carried for compensation on any passenger charter flight, except as provided in sub-paragraph (10)(*a*) or in paragraph (11) of this Annex.

(*b*) From 1 January 1985 or such earlier date as may be agreed, passengers may be carried in combination with cargo on charter flights operated by charter-designated airlines provided that such passengers are carried in accordance with any agreement between the Contracting

Parties regulating the carriage of charter passengers including any requirements imposed by either Party in accordance with paragraph (6) of Annex 4 and Article 14 of this Agreement, other than requirements which discriminate against combination charters. Cargo may be carried both above and below the main floor of the aircraft.

(10) *Boston Operations*

(*a*) From 1 January 1980 cargo may be carried below the main floor of aircraft on passenger charter flights serving or transiting Boston to or from any point or points in the United Kingdom. Until 31 December 1981 such cargo shall be included in the calculation of the weight limits set out in paragraph (2) of Part II of this Annex, except that for both 1980 and 1981, the limits per gateway per airline shall be 600 tonnes per year in each direction between Boston and London, Boston and Manchester, and Boston and Prestwick/Glasgow on combination charter and cargo charter flights.

(*b*) Notwithstanding paragraph (3) of Article 3 of this Agreement, the United States may by reference to this sub-paragraph designate any number of airlines over US Route 7, and the United Kingdom may by reference to this sub-paragraph designate any number of airlines over UK Route 10, for scheduled all-cargo air services to and from Boston beginning on or after 1 January 1982.

(*c*) From 1 January 1982 until 31 December 1982 " United Kingdom " shall be considered as appearing in Column (C) of US Route 7, and in Column (A) of UK Route 10, solely for scheduled all-cargo air services to, from and through Boston.

(*d*) An airline designated with reference to sub-paragraph (*b*) of this paragraph shall not be entitled to pick up and discharge traffic (other than transit and on-line connecting traffic) at points in Column (C) for transport between points in Column (B) and points in Column (C) and between points in Column (C) and points in Column (D) on the routes specified in sub-paragraph (c) of this paragraph, but may claim the rights and shall be subject to the obligations set out in Section 5 of Annex 1.

(11) *Charter Waivers.* In each of the five years 1980–1984, each Contracting Party may in respect of one-way cargo charter flights in either direction grant waivers to its charter-designated airlines from the limitations set out in this Annex to the extent of the greater of 15 one-way flights or 3 percent of the number of one-way cargo charter flights operated during the immediately preceding year between the United Kingdom and the United States. The other Contracting Party shall accept as charterworthy traffic carried pursuant to such waivers duly notified to it. This provision may be used to permit, *inter alia,* combination charter flights.

PART V

Modification or Termination

(12) Upon the request of either Contracting Party consultations shall be held within 30 days from the date of receipt of the request to review the operation of the provisions of this Annex and to decide as to its revision

or modification. Parts I through IV of this Annex shall terminate one year from the date of the receipt of the request for consultations unless within that period the Contracting Parties have agreed to make no revision or modification or have agreed on the question of revision or modification and have put such revision or modification into effect. Should Parts I through IV of this Annex terminate all other provisions of this Agreement governing scheduled cargo services and cargo charter services which have been suspended by the operation of this Annex shall return into effect as they had effect on 31 March 1979, but for the purposes of paragraph (2)(*c*) of Annex 4 to this Agreement the weight limits shall be 250 tonnes and 62.5 tonnes respectively for a 90-day period after termination. Within this further 90-day period the Contracting Parties shall commence negotiations concerning cargo charters with the objective of concluding a liberal and comprehensive agreement for cargo charters prior to the end of the 90-day period. If agreement has not been reached by the end of the 90-day period the revived provisions of Annex 4 to this Agreement governing cargo charter services shall terminate. Each Contracting Party shall thereupon be entitled, for the purposes of Article 14 of this Agreement, to impose on cargo charter traffic covered by paragraph (3) of Article 14 such charterworthiness conditions and such conditions in regard to prices and rates as it considers necessary.

No. 2

Her Majesty's Ambassador at Washington to the Secretary of State of the United States of America

British Embassy,
Washington.
4 December, 1980.

Sir,

I have the honour to acknowledge receipt of your Note of today's date which reads as follows:

[As in No. 1]

In reply, I have the honour to confirm that the proposals set forth in your Note are acceptable to the Government of the United Kingdom of Great Britain and Northern Ireland. My Government further agrees that your Note and its enclosures, together with this reply, shall constitute an Agreement between our two Governments which shall be considered to have entered into force on 1 April 1980, except that Annex 5 shall be considered to have entered into force on 1 January 1980.

I avail myself of the opportunity to renew to you, Sir, the assurances of my highest consideration.

NICHOLAS HENDERSON

EXCHANGES OF LETTERS

Letter No. 1

The Department of State of the United States to the Department of Trade of the United Kingdom

December 4, 1980

Dear Mr. Roberts:

In the consultations which concluded 5 March 1980 the delegations representing the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland reached the following understandings:—

1. **Opening of New Gateways**

If either Contracting Party came to believe that the level of traffic in the US/UK market was significantly different from its expectations then it would be open for it to call for consultations as provided for in Article 16 of the Agreement in order to propose any changes that it may consider justified to the arrangements for opening up new gateways. The Contracting Parties expect that in any event they may wish to have consultations concerning new services on or before October 1983.

2. **Passenger Charters**

Since the Contracting Parties were unable to reach agreement on the passenger charter regime to replace the arrangements embodied in Annex 4 to the Agreement, which expired, under paragraph (6) of that Annex, on 31 March 1980, they decided that:—

(*a*) Annex 4 should not be replaced on its expiry;

(*b*) each Contracting Party would thereafter continue to regulate charter traffic in a responsible manner and on a basis of comity and reciprocity; and

(*c*) the two Contracting Parties would meet in due course when they had gained further experience of the way in which passenger charter operations were developing, to consider a new passenger charter regime.

I should be grateful for your confirmation that the above reflects accurately the understanding of your Government.

Sincerely,

B. BOYD HIGHT

Deputy Assistant Secretary for
Transportation and Telecommunications.

Letter No. 2

The Department of Trade of the United Kingdom to the Department of State of the United States of America

4 December, 1980

Dear Mr. Hight,

I have your letter of today's date on the subjects of opening of new gateways and passenger charters.

2. This is to confirm that your letter reflects accurately the understanding of my Government.

Yours sincerely,

C. W. ROBERTS,

Under-Secretary
Civil Aviation International Relations Division,
Department of Trade.

Letter No. 3

The Department of Trade of the United Kingdom to the Department of State of the United States of America

4 December, 1980

Dear Mr. Hight,

Use of Airports in the UK

In the course of our negotiations concerning cargo operations from 1 January 1980, I amplified the UK regulations, referred to in Mr. Shovelton's letter to Mr. Atwood dated 25 April 1978, which impose certain restrictions on the use of airports in the UK as follows:

(*a*) Airlines not currently operating at Heathrow Airport will not be allowed to commence operations there.

(*b*) Heathrow Airport will not be available for passenger charter flights on which cargo is carried nor for cargo flights on which charter passengers are carried.

(*c*) Passenger charter flights on which cargo is carried and cargo flights on which charter passengers are carried will be subject to the same restrictions as other planeload charters as regards the use of Abbotsinch (Glasgow) and Turnhouse (Edinburgh) airports.

2. It is intended that these regulations will be applied in such a manner so as not to discriminate against US airlines in competition with UK or foreign airlines of similar designation status and historical operating pattern.

Yours sincerely,

C. W. ROBERTS

Letter No. 4

The Department of State of the United States of America to the Department of Trade of the United Kingdom

December 4, 1980

Dear Mr. Roberts:

I have your letter of today's date on the subject of use of airports in the UK which amplified the UK regulations which impose certain restrictions on the use of airports in the United Kingdom.

I confirm that these statements are understood by my Government.

I welcome your assurances that there is no intention that these regulations will be applied in any manner which would discriminate against US airlines in competition with UK or foreign airlines of similar designation status and historical operating pattern.

Sincerely,

B. BOYD HIGHT

Letter No. 5

The Department of State of the United States of America to the Department of Trade of the United Kingdom

December 4, 1980

Dear Mr. Roberts:

In connection with negotiations between our two governments on deregulation of air cargo services in the US–UK market, you raised questions concerning the applicability of US antitrust laws to possible joint operations among UK all-cargo airlines. This letter, which I have reviewed with the Civil Aeronautics Board and the Departments of Justice and Transportation, attempts to respond to your concerns and to provide those assurances which are possible under the circumstances.

As I understand it, your government is concerned that US antitrust laws might inhibit UK all-cargo airlines from engaging in some joint or cooperative arrangements that may be essential for them to be viable competitors in a deregulated environment. You have stated that the UK all-cargo airlines are presently very small companies, lacking large, modern aircraft and a strong financial base. They also lack extensive experience in the US–UK market, due in part to past regulatory policies. It appears that a number of US airlines interested in the US–UK cargo market are larger carriers and may be growing rapidly in the coming few years. They may also have greater experience and established positions with shippers and forwarders. Your government is, accordingly, hopeful that the UK carriers might have a wide degree of freedom to consider joint or cooperative commercial arrangements for the US–UK market, at least for a start-up period. The purpose of those arrangements would be to

ensure that the smaller, less experienced UK airlines could operate as effective competitors in the less regulated environment on which we have agreed.

The United States appreciates your interest in having UK carriers participate actively in the US–UK cargo market. Indeed, we share that interest to a large degree, for efficient airlines regardless of flag will contribute to an active, competitive market with resulting benefits for US shippers and importers. Also, we recognize that the UK's continued support for a deregulated environment will be better assured if your airlines have satisfactory operating results in that environment. For these reasons, the United States would—as a general matter of policy—be sympathetic to efforts by UK airlines to be effective and successful competitors. We would in turn be concerned if it were thought that US law was preventing UK airlines from filling that role.

The question, then, is whether the US antitrust laws would prevent UK airlines from engaging in joint or cooperative activities which were necessary for those airlines to fulfill this shared desire that they be active and effective competitors. (Of course, in many circumstances an airline—even a very small one—will be a more effective competitor if it operates wholly independently. For purposes of this discussion, however, we are assuming that the airline managements have reached a different conclusion.) We believe that there is both sufficient flexibility and rationality in US law that this would not be the case. Further, the United States Government would be prepared to cooperate with your government to minimize any such risk.

First, aside from questions of immunity, several types of joint activities by UK airlines would be consistent with the US antitrust laws. Those laws are flexible on the subject of joint ventures, particularly those operating in international commerce where risks may be greater, costs higher, and joint experience needed. Considerations of comity would also play an important role in the case of joint activities among UK airlines where UK laws and/or policies support the conduct in question. It is, of course, very difficult to state meaningful generalizations in this area, and assurances concerning unknown factual situations are impossible. Nevertheless, your government and airlines can take comfort from the fact that the application of US antitrust laws to foreign joint ventures has been exceedingly limited, although such ventures are in fact common. Particularly when conducted among smaller airlines and new entrants, cooperative arrangements including shared terminal space, joint promotional efforts, aircraft leasing, blocked-space agreements, and consortia operations could well be structured with little antitrust risk. The Department of Justice, through its Business Review Procedure, would be prepared to comment on any particular arrangements your airlines might wish to propose.

Second, under specified circumstances, foreign airlines may obtain explicit immunity from antitrust enforcement. Section 412(*a*) of the Federal Aviation Act (as recently amended) provides that the Civil Aeronautics Board shall approve a contract or agreement filed by air carriers or foreign air carriers "that it does not find to be adverse to the public interest, or

in violation of this Act." The Board may not approve a contract or agreement "which substantially reduces or eliminates competition" unless it finds that the contract or agreement "is necessary to meet a serious transportation need or to secure important public benefits including international comity or foreign policy considerations and it does not find that such needs can be met or such benefits can be secured by reasonably available means having materially less anticompetitive effects."

Section 414, in turn, provides for a grant of antitrust immunity to the extent necessary for persons to proceed with the contract or agreement so approved, where the Board finds that such exemption is required in the public interest, or whenever an agreement or contract which substantially reduces or eliminates competition, and is subject to the above-quoted finding, has nonetheless been approved. The Board staff, as well as independent counsel, would be in a position to provide more detailed information on the background of these provisions and the decisional law under them. The essential point is that the US law provides a clear procedural avenue for obtaining immunity for inter-airline agreements that meet certain standards. To the extent such an agreement involving UK cargo airlines would advance the shared interest stated above and is not unnecessarily anticompetitive, the case for approval and immunity would be substantial.

Most agreements among air carriers do not have substantial anticompetitive consequences, and therefore do not require an elaborate justification to be found consistent with the public interest. Others, such as agreements to set prices or allocate markets, are likely to have severe enough anticompetitive consequences to require a showing of considerable public benefit that cannot be obtained by less anticompetitive alternatives before they can be approved. While no one can bind the board, or predict beyond doubt what it would do in an individual case (particularly given recent amendments to US law), it is likely that the Board's interest in securing and maintaining a more competitive US–UK cargo environment would be given considerable weight in its deliberations.

As you know, it is not possible under US law to give assurances that the Civil Aeronautics Board (or a successor agency) will grant antitrust immunity for future agreements that may be filed with it. Nor can I give assurances that, under no circumstances, will an antitrust action be brought by either the government or a private party against future, unspecified conduct. Nor can I guarantee that United States law will not change over the coming years. I can assure you, however, that we share your desire that the UK all-cargo airlines benefit from and actively compete in the new deregulated regime for the US–UK market, and as a government the United States will be sympathetic to joint or cooperative activities among smaller UK airlines, that may be necessary to further that goal. We would also, as a government, be most interested in the views of your government in any administrative or judicial proceeding concerning such joint operations, and would give the fullest possible weight to those views. The United States would also, of course, honor its agreements with your government concerning notification and consultation concerning potential actions under the US antitrust laws. Finally, on behalf of the

Department of State, I assure you that we would provide whatever assistance possible to ensure that the views of your government are made known to any relevant agencies of the US Government and are, under the principle of comity, given the most careful consideration.

Sincerely,

B. BOYD HIGHT

Letter No. 6

The Department of Trade of the United Kingdom to the Department of State of the United States of America.

4 December, 1980.

Dear Mr. Hight,

I acknowledge your letter of today's date on the scope of US anti-trust laws and the assistance you are able to give in respect of the possible application of these laws to UK carriers. As you know, my Government does not accept the jurisdiction which the US claims in respect of these laws, nor their appropriateness in some circumstances to international air service operations.

2. You were unable in your letter to give firm assurances that the US Government and the CAB would exercise their powers and discretions in favour of UK airlines if the UK saw no objection to the arrangements proposed. It is only fair to advise you that if after consultation HMG indicates that it sees no objection to the arrangements proposed but nevertheless anti-trust action is brought against the UK airlines concerned then we might consider such action as a reason for seeking modification, and if necessary termination, of the cargo agreement as provided for in Part V of that Annex to the Agreement.

Yours sincerely,

C. W. ROBERTS

Letter No. 7

The Department of Trade of the United Kingdom to the Department of State of the United States of America.

4 December, 1980.

Dear Mr. Hight,

In the course of our negotiations concerning North Atlantic UK/US cargo operations which led to the conclusion of Annex 5 to the Air Services Agreement, which is provided for in the Exchange of Notes of today's date, I said that my Government would want to monitor carefully the progress towards the liberal regime and operations during that regime.

2. We would want to be satisfied that the large number of US operators and their greater financial and operational capability did not prevent UK airlines from being effective and successful competitors in the market. We expect to see our airlines maintaining an adequate presence in the market.

3. If my Government felt that the measures agreed had created a situation in which UK airlines were not operating in this way then we might wish to seek changes in Annex 5 by use of the modification procedure provided for in it.

Yours sincerely,

C. W. ROBERTS

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