



MAN/CDP-2009-26

The Embassy of the Kingdom of the Netherlands presents its compliments to the Department of Foreign Affairs of the Republic of the Philippines and has the honour to refer to the consultations held in Manila on 10 and 11 July 2008 between delegations of the Government of the Kingdom of the Netherlands and the Government of the Philippines concerning the Air Transport Agreement between the Government of the Kingdom of the Netherlands and the Government of the Republic of the Philippines, done at The Hague on 8 May 1969, as amended (further to be referred to as "the Agreement").

The Embassy of the Kingdom of the Netherlands has the honour to propose the following amendments to the Agreement:

Two new paragraphs concerning reference to nationals or airlines of a Member State to be added to Article I:

- (g) References in this Agreement to nationals of the Kingdom of the Netherlands shall be understood as referring to nationals of European Community Member States;
- (h) References in this Agreement to airlines of the Kingdom of the Netherlands shall be understood as referring to airlines designated by the Kingdom of the Netherlands.

Article III regarding *Ownership and Control (Designation and Authorisation of Airlines and Revocation or Suspension of Rights)* to be replaced with the following text:

(1) Either Contracting Party shall have the right to designate one or more Airline(s) to operate International Air Services on the routes specified in the Annex and to substitute another Airline for an Airline previously designated. Such designations shall be transmitted to the other Contracting Party in writing through diplomatic channels.

On receipt of such a designation the other Contracting Party shall grant the appropriate operating authorisations and permissions with minimum procedural delay, provided:

a) in the case of an airline designated by the Kingdom of the Netherlands:

- 1. it is established in the territory of the Kingdom of the Netherlands under the Treaty establishing the European Community and has a valid Operating Licence in accordance with European Community Law; and
- 2. effective regulatory control of the airline is exercised and maintained by the European Community Member State responsible for issuing its Air Operator's Certificate and the relevant Aeronautical Authority is clearly identified in the designation;

b) in the case of an airline designated by the Philippines:

- 1. majority ownership and effective control of such airline are vested in the Philippines and/or its nationals; and

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2. such airline has a valid Operating License in accordance with applicable law of the Philippines and effective control is exercised by the Philippines,

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

d) the designated airline qualifies before the Aeronautical Authorities of the Contracting Party assessing the authorization, under the laws and regulations normally and reasonably applied to the operation of the International Air Services by these Authorities in conformity with the Convention;

e) the designated airline(s) operate(s) in accordance with the conditions prescribed under this Agreement.

(2) Either Contracting Party may revoke, suspend or limit the operation authorisation or technical permissions of an airline designated by the other Contracting Party where:

a) in the case of an airline designated by the Kingdom of the Netherlands:

1. it is not established in the territory of the Kingdom of the Netherlands under the Treaty establishing the European Community or does not have a valid Operating Licence in accordance with European Community Law; or
2. effective regulatory control of the airline is not exercised or not maintained by the European Community Member State responsible for issuing its Air Operator's Certificate or the relevant aeronautical authority is not clearly identified in the designation;

b) in the case of an airline designated by the Philippines:

1. majority ownership and effective control of such airline are not vested in the Philippines and/or its nationals; or
2. such airline does not have a valid Operating License in accordance with applicable law of the Philippines or effective control is not exercised by the Philippines;

c) that airline has failed to comply with the laws and regulations referred to in this Agreement;

d) the airline is already authorized to operate under a bilateral agreement between the Philippines and another Member State which is exercising traffic rights under this Agreement on a route that includes a point in that other Member State, the airline would in effect be circumventing restrictions on the traffic rights imposed by that other agreement; or

e) the designated airline holds an Air Operators Certificate issued by a Member State, there is no bilateral air services agreement between the Philippines and that Member State and the traffic rights necessary to conduct the operation proposed by such designated airline are not reciprocally available to the designated carriers of the Philippines.

A new paragraph (4) regarding *taxation on aviation fuel* to be added to Article IV:

(4) Nothing in this Agreement shall prevent the Kingdom of the Netherlands from imposing, on a non-discriminatory basis, taxes, levies, duties, fees or charges on fuel supplied in its territory for use in an aircraft of a designated airline of the Philippines that operates between a point in the territory of the Kingdom of the Netherlands and another point in the territory of the Kingdom of the Netherlands or in the territory of another European Community Member State.

Nothing in this Agreement shall prevent the Republic of the Philippines from imposing, on a non-discriminatory basis, taxes, levies, duties, fees or charges on fuel supplied in its territory for use in an aircraft of a designated airline of the Netherlands that operates between a point in the territory of the Republic of the Philippines and another point in the territory of the Republic of the Philippines or in the territory of a third State in Asia.

To replace Article V regarding *Commercial Activities* and *Intermodal Cargo Services* with the following text:

(1) In operating or holding out the Air Services on the Agreed Routes, any Designated Airline of one Contracting Party may enter into commercial and/or cooperative marketing arrangements including but not limited to blocked-space, code sharing and leasing arrangements, with an airline of the other Contracting Party. This is applicable too on domestic routes operated with the designated airline of the Contracting Party concerned, provided (a) that the operating carrier in such arrangements holds the appropriate operating authorization and (b) that tickets make it clear to the purchaser at the point of sale which Airline will actually operate each sector of the service and with which Airline or Airlines the purchaser is entering into a contractual relationship. The code-sharing services of the marketing carrier will not be counted as a frequency.

(2) The designated airline(s) of each Contracting Party will be permitted subject to national laws to employ surface and/or sea transportation for cargo in connection with international air transportation, to be provided by companies officially recognized and licensed by the authorities of the other Contracting Party to or from any point in the territory of the one Contracting Party concerned or in third countries, including transport to and from all airports with customs facilities, under the applicable law and regulations. Such cargo, whether moving by surface or by air will have access to airport customs processing and facilities.

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.

(3) The designated airline(s) of each Contracting Party shall be allowed subject to national laws;

- to establish in the territory of the other Contracting Party offices for the promotion and sale of air transportation and ancillary or supplemental services (including the right to sell and to issue any ticket and/or airway bill, both its own tickets and/or airway bills and of any other carrier) as well as other facilities required for the provision of air transportation;
- in the territory of the other Contracting Party to engage directly and, at its discretion, through its agents, and/or other airlines in the sale of air transportation and ancillary or supplemental services;
- to sell such transportation and ancillary or supplemental services and any person shall be free to purchase such transportation or services in any currency.
- To bring in and maintain in the territory of the other Contracting Party its managerial, commercial, operational and technical staff as it may require in connection with the provision of air transportation and ancillary or supplemental services;

(4) Each designated airline shall have the right to perform its own ground handling in the territory of the other Contracting Party ("self handling"), or, at its option, select among competing agents for such services in whole or in part. This right shall be subject only to physical constraints resulting from considerations of airport safety. Where such considerations preclude self handling, ground services shall be available on an equal basis

to all airlines.

The activities mentioned in this Article shall be carried out in accordance with the laws and regulations of the other Contracting Party. In case of the Netherlands this includes applicable European Community law.

Article IX regarding *Tariffs* to be replaced with the following text:

(1) Each Contracting Party shall allow prices for air transportation to be established by each designated airline based upon commercial considerations in the marketplace. Intervention by the Contracting Parties shall be limited to:

- a. prevention of predatory and/or unreasonably discriminatory prices or practices;
- b. protection of consumers from prices that are unreasonably high or restrictive due to the abuse of a dominant position;
- c. protection of airlines from prices that are artificially low due to, amongst others, direct or indirect governmental subsidy or support.

(2) Each Contracting Party may require notification or approval to its Aeronautical Authorities of prices to be charged to or from its territory by airlines of the other Contracting Party.

(3) If either Contracting Party considers any such prices inconsistent with the considerations set forth in paragraph (1) and paragraph (2) of this Article, it shall request consultations and notify the other Contracting Party of the reasons for its dissatisfaction as soon as possible. These consultations shall be held not later than 30 days after receipt of the request of the other Contracting Party, and the Contracting Parties shall co-operate in securing information necessary for reasoned resolution of the issue. If the Contracting Parties reach agreement with respect to a price for which a notice of dissatisfaction has been given, each Contracting Party shall use its best efforts to put that agreement into effect. Without such mutual agreement, the new price shall not take effect or continue to be in effect.

(4) Notwithstanding the provisions of this Article, in the case of the Kingdom of the Netherlands, the prices to be charged by the designated airlines for carriage wholly within the European Community shall be subject to European Community Law.

Furthermore the Embassy has the honour to propose that the Route Schedule mentioned under I and II of the Annex to the Agreement be replaced by the following Route Schedule:

I. Scheduled Passenger and Combination Operations

The airline(s) designated by the Republic of the Philippines shall be entitled to operate scheduled passenger services on a 3rd, 4th and 5th freedom basis:

From all Points in the Philippines via Thailand, Singapore, India, Pakistan, Bahrain, KSA, two (2) points in the Gulf, a country in the Near East, three (3) countries in Europe and one (1) roving point, to all points in the Netherlands, to one (1) roving beyond point in the U.S. and v.v., to be chosen by (a) designated airline(s) of the Philippines and confirmed in writing by the Aeronautical Authorities of the Netherlands. This point will subsequently be included in the applicable route schedule in accordance with paragraph 3, Article XIII of the Agreement.

The airline(s) designated by the Kingdom of the Netherlands shall be entitled to operate scheduled passenger services on a 3rd, 4th and 5th freedom basis:

From all Points in the Netherlands via Austria, Greece, Dubai or Abu Dhabi, India, Pakistan, Bangkok, Singapore, Kuala Lumpur and one (1) roving point to be chosen by the designated airline(s) of the Netherlands to all points in the Philippines and v.v. The point to be chosen by the designated airline(s) of the Netherlands shall be subject to the prior and mutual approval of the Aeronautical Authorities of both Contracting Parties. After such approval, this point will subsequently be included in the applicable route schedule in accordance with paragraph 3, Article XIII of the Agreement.

The exercise of fifth freedom traffic rights to the new beyond point in the US for the Philippines and the new intermediate point for the Netherlands shall not be subject to commercial arrangements or any other conditions.

II. All Cargo Operations

The designated all cargo airline(s) of either Contracting Party shall be entitled to operate all cargo services on the basis of 3rd, 4th and/or 5th freedom with unlimited frequencies in any configuration:

- from all points in the territory of the one Contracting Party
- via any intermediate point,
- to all points in the territory of the other Contracting Party to
- any point beyond;
- with an average actually transported capacity of an average of 250 tons per week for points between the two Contracting Parties except Clark/Subic for which the average capacity actually transported shall be 700 tons per week, each operated capacity shall be counted cumulatively per month.

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If the foregoing proposals are acceptable to the Government of the Philippines, it is suggested, in accordance with Article XIII of the Agreement, that this Note and the Department's reply to that effect shall be regarded as constituting an Agreement between the Kingdom of the Netherlands and the Republic of the Philippines on this matter, which shall be provisionally applied from the date of your reply, and which shall enter into force on the date on which both Governments have informed each other in writing that the formalities constitutionally required therefore in their respective countries have been complied with.

The Embassy of the Kingdom of the Netherlands avails itself of this opportunity to renew to the Department of Foreign Affairs the assurances of its highest consideration.

Manila, 22 December 2009

Department of Foreign Affairs
2330 Roxas Blvd.
Pasay City



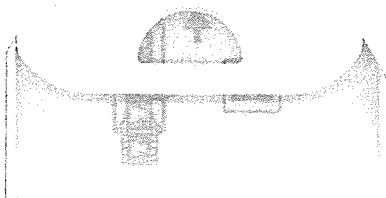
REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FOREIGN AFFAIRS
MANILA

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Article III regarding *Ownership and Control (Designation and Authorisation of Airlines and Revocation or Suspension of Rights)* to be replaced with the following text:

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1. it is established in the territory of the Kingdom of the Netherlands under the Treaty establishing the European Community and has a valid Operating License in accordance with European Community Law; and

2. effective regulatory control of the airline is exercised and maintained by the European Community Member State responsible for issuing its Air Operator's Certificate and the relevant Aeronautical Authority is clearly identified in the designation;

- b) in the case of an airline designated by the Philippines:

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2. such airline has a valid Operating License in accordance with applicable law of the Philippines and effective control is exercised by the Philippines,

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d) the designated airline qualifies before the Aeronautical Authorities of the Contracting Party assessing the authorization, under the laws and regulations normally and reasonably applied to the operation of the International Air Services by these Authorities in conformity with the Convention;

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2. effective regulatory control of the airline is not exercised or not maintained by the European Community Member

State responsible for issuing its Air Operator's Certificate or the relevant aeronautical authority is not clearly identified in the designation;

- b) in the case of an airline designated by the Philippines:
 - 1. majority ownership and effective control of such airline are not vested in the Philippines and/or its nationals; or
 - 2. such airline does not have a valid Operating License in accordance with applicable law of the Philippines or effective control is not exercised by the Philippines;
- c) that airline has failed to comply with the laws and regulations referred to in this Agreement;
- d) the airline is already authorized to operate under a bilateral agreement between the Philippines and another Member State which is exercising traffic rights under this Agreement on a route that includes a point in that other Member State, the airline would in effect be circumventing restrictions on the traffic rights imposed by that other agreement; or
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purchaser at the point of sale which Airline will actually operate each sector of the service and with which Airline or Airlines the purchaser is entering into a contractual relationship. The code-sharing services of the marketing carrier will not be counted as a frequency.

- (2) The designated airline(s) of each Contracting Party will be permitted subject to national laws to employ surface and/or sea transportation for cargo in connection with international air transportation, to be provided by companies officially recognized and licensed by the authorities of the other Contracting Party to or from any point in the territory of the one Contracting Party concerned or in third countries, including transport to and from all airports with customs facilities, under the applicable law and regulations. Such cargo, whether moving by surface or by air will have access to airport customs processing and facilities.

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.

- (3) The designated airline(s) of each Contracting Party shall be allowed subject to national laws;
- to establish in the territory of the other Contracting Party offices for the promotion and sale of air transportation and ancillary or supplemental services (including the right to sell and to issue any ticket and/or airway bill, both its own tickets and/or airway bills and of any other carrier) as well as other facilities required for the provision of air transportation;

- in the territory of the other Contracting Party to engage directly and, at its discretion, through its agents, and/or other airlines in the sale of air transportation and ancillary or supplemental services;
 - to sell such transportation and ancillary or supplemental services and any person shall be free to purchase such transportation or services in any currency;
 - to bring in and maintain in the territory of the other Contracting Party its managerial, commercial, operational and technical staff as it may require in connection with the provision of air transportation and ancillary or supplemental services;
- (4) Each designated airline shall have the right to perform its own ground handling in the territory of the other Contracting Party ("self handling"), or, at its option, select among competing agents for such services in whole or in part. This right shall be subject only to physical constraints resulting from considerations of airport safety. Where such considerations preclude self handling, ground services shall be available on an equal basis to all airlines.

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 - a. prevention of predatory and/or unreasonably discriminatory prices or practices;
 - b. protection of consumers from prices that are unreasonably high or restrictive due to the abuse of a dominant position;
 - c. protection of airlines from prices that are artificially low due to, amongst others, direct or indirect governmental subsidy or support.
- (2) Each Contracting Party may require notification or approval to its Aeronautical Authorities of prices to be charged to or from its territory by airlines of the other Contracting Party.
- (3) If either Contracting Party considers any such prices inconsistent with the considerations set forth in paragraph (1) and paragraph (2) of this Article, it shall request consultations and notify the other Contracting Party of the reasons for its dissatisfaction as soon as possible. These consultations shall be held not later than 30 days after receipt of the request of the other Contracting Party, and the Contracting Parties shall co-operate in securing information necessary for reasoned resolution of the issue. If the Contracting Parties reach agreement with respect to a price for which a notice of dissatisfaction has been given, each Contracting Party shall use its best efforts to put that agreement into effect. Without such mutual agreement, the new price shall not take effect or continue to be in effect.

(4) Notwithstanding the provisions of this Article, in the case of the Kingdom of the Netherlands, the prices to be charged by the designated airlines for carriage wholly within the European Community shall be subject to European Community Law.

Furthermore the Embassy has the honour to propose that the Route Schedule mentioned under I and II of the Annex to the Agreement be replaced by the following Route Schedule:

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The airline(s) designated by the Kingdom of the Netherlands shall be entitled to operate scheduled passenger services on a 3rd, 4th and 5th freedom basis:

From all points in the Netherlands via Austria, Greece, Dubai or Abu Dhabi, India, Pakistan, Bangkok, Singapore,

Kuala Lumpur and one (1) roving point to be chosen by the designated airline(s) of the Netherlands to all points in the Philippines and v.v. The point to be chosen by the designated airline(s) of the Netherlands shall be subject to the prior and mutual approval of the Aeronautical Authorities of both Contracting Parties. After such approval, this point will subsequently be included in the applicable route schedule in accordance with paragraph 3, Article XIII of the Agreement.

The exercise of fifth freedom traffic rights to the new beyond point in the US for the Philippines and the new intermediate point for the Netherlands shall not be subject to commercial arrangements or any other conditions.

II. All Cargo Operations

The designated all cargo airline(s) of either Contracting Party shall be entitled to operate all cargo services on the basis of 3rd, 4th and/or 5th freedom with unlimited frequencies in any configuration:

- from all points in the territory of the one Contracting Party
- via any intermediate point,
- to all points in the territory of the other Contracting Party to
- any beyond point;
- with an average actually transported capacity of an average of 250 tons per week for points between the two Contracting Parties except Clark/Subic for which the average capacity actually transported shall be 700 tons per week, each operated capacity shall be counted cumulatively per month.

If the foregoing proposals are acceptable to the Government of the Philippines, it is suggested, in accordance with Article XIII of the Agreement, that this Note and the Department's reply to that effect shall be regarded as constituting an Agreement between the Kingdom of the Netherlands and the Republic of the Philippines on this matter, which shall be provisionally applied from the date of your reply, and which shall enter into force on the date on which both Governments have informed each other in writing that the formalities constitutionally required therefore in their respective countries have complied with.

The Embassy of the Kingdom of the Netherlands avails itself of this opportunity to renew to the Department of Foreign Affairs the assurances of its highest consideration."

In reply, the Department has the honor to inform the Embassy that the proposals in the above-quoted Note are acceptable to the Government of the Republic of the Philippines which has completed its domestic requirements for the amendment of the Agreement, and that this Note, together with the Embassy's Note, constitute an Agreement between the two Governments which shall be provisionally applied from the date of this reply, and which shall enter into force on the date on which the Government of the Kingdom of the Netherlands has informed the Government of the Republic of the Philippines in writing that the formalities constitutionally required in the Netherlands have been complied with.

The Department of Foreign Affairs avails itself of this opportunity to renew to the Embassy of the Kingdom of the Netherlands the assurances of its highest consideration.



Pasay City, 23 December 2009