

AVIATION

Transport Services

Agreement Between the
UNITED STATES OF AMERICA
and JAPAN

Amending the Agreement of August 11, 1952,
as Amended

Effected by Exchange of Notes
Signed at Washington August 21, 1996

with

Memorandum of Understanding



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89-497, approved July 8, 1966 (80 Stat. 271; 1 U.S.C. 113)—

“ . . . the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

JAPAN

Aviation: Transport Services

*Agreement amending the agreement of August 11, 1952,
as amended.*

Effected by exchange of notes

Signed at Washington August 21, 1996;

Entered into force August 21, 1996.

With memorandum of understanding.

The Japanese Ambassador to the Secretary of State

書簡をもって啓上いたします。本使は、千九百五十二年八月十一日に東京で署名された日本国とアメリカ合衆国との間の民間航空運送協定（修正を含む。）（以下「協定」という。）に関する最近の協議及びこの書簡に添付されている千九百九十六年四月十六日に署名された了解書に言及する光栄を有します。

本使は、更に、日本国政府に代わって、当該了解書に含まれた協定に関連する事項に係る規定に対する同意を確認し、これにより路線について協定の付表が修正されることを確認する光栄を有します。

本使は、閣下がアメリカ合衆国政府に代わって同様に確認されれば幸いであります。

本使は、アメリカ合衆国政府により同様の確認がなされるときは、この書簡及びその旨の閣下の返簡がこの問題に関する日本国政府とアメリカ合衆国政府との間の合意を構成すること並びにその合意が閣下の返簡の日付の日に効力を生ずることを提案いたします。

本使は、以上を申し進めるに際し、ここに重ねて閣下に向かって敬意を表します。

千九百九十六年八月二十一日にワシントンで

アメリカ合衆国駐在 日本国特命全權大使

寺森 邦彦

アメリカ合衆国 國務長官 ウォーレン・M・クリストファー閣下

Translation

Washington, August 21, 1996

Excellency:

I have the honor to refer to the recent consultations on the Civil Air Transport Agreement between Japan and the United States of America, signed at Tokyo, August 11, 1952, as amended¹ (hereinafter referred to as the "Agreement"), and to the Memorandum of Understanding, signed on April 16, 1996, appended hereto.

I have further the honor to confirm agreement, on behalf of the Government of Japan, to the provisions on matters relating to the Agreement contained in the said Memorandum of Understanding and also confirm that, with respect to routes, the Schedule to the Agreement be modified accordingly.

I shall be grateful if Your Excellency would provide the same confirmation on behalf of the Government of the United States of America.

If the same confirmation of the Government of the United States of America is provided, it is suggested that this Note and Your Excellency's reply to that effect shall constitute an agreement between the Government of Japan and the Government of the United States of America on this matter, which will enter into force on the date of Your Excellency's reply.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

Kunihiko Saito
Ambassador Extraordinary
and Plenipotentiary of Japan
to the United States of America

His Excellency
Warren M. Christopher
The Secretary of State
of the United States of America

¹ TIAS 2854, 7333, 8882; 4 UST 1948; 23 UST 677; 29 UST 1375.

MEMORANDUM OF UNDERSTANDING

The Ministry of Transport of Japan and the Departments of State and Transportation of the United States of America have agreed upon the following provisions, which constitute either understandings relating to all-cargo services operated by their respective airlines under the bilateral Civil Air Transport Agreement, signed at Tokyo, August 11, 1952, as amended (hereinafter referred to as "the Agreement") or other agreements or understandings relating to the Agreement, or amendments of the Schedule attached to the Agreement.

Before the entry into force of this Memorandum of Understanding (hereinafter referred to as "this 1996 MOU"), both the Ministry of Transport and the Department of Transportation may take necessary measures to implement the elements of this 1996 MOU.

This 1996 MOU shall become effective by the exchange of diplomatic notes between the Government of Japan and the Government of the United States.

I. ALL-CARGO SERVICES

A. Japanese All-Cargo Services

1. Japan Airlines

(a) Japan Airlines (hereinafter referred to as "JAL") may operate all-cargo services from any point or points in Japan.

(b) In addition to the points in the United States to which it may operate before the date of the signature of this 1996 MOU, JAL may operate all-cargo services to three (3) additional points in the United States. These points may be selected, or changed, on 60 days notice by the Government of Japan to the Government of the United States.

(c) Frequency limitations applicable to all-cargo services by JAL under subparagraph IIB2 and section III of the Memorandum of Understanding of November 6, 1989¹ (hereinafter referred to as "the 1989 MOU") and paragraph 2 of the Record of Consultations of July 21, 1995² (hereinafter referred to as "the 1995 ROC") shall no longer apply to such services.

(d) JAL may coterminate all the points in the United States to which it may operate.

¹ TIAS 12406.

² No record of this document in Office of Treaty Affairs' files.

(e) JAL may operate all-cargo services to any point or points beyond the points in the United States to which it may operate (except the three (3) additional points referred to in subparagraph (b) above).

(f) JAL may operate all-cargo services to any point or points beyond one of the three (3) additional points referred to in subparagraph (b) above without local traffic rights between that point in the United States and the beyond point or points. The point in the United States may be selected by the Government of Japan on 60 days notice to the Government of the United States. This point may not be changed.

2. Nippon Cargo Airlines

(a) Nippon Cargo Airlines (hereinafter referred to as "NCA") may operate all-cargo services from any point or points in Japan.

(b) NCA may allocate the frequencies* that it may operate under the Memorandum of Understanding of April 30, 1985¹ (hereinafter referred to as "the 1985 MOU"), the 1989 MOU and the 1995 ROC among any of the four (4) points in the United States to which it may operate under the 1985 MOU, the 1989 MOU and the 1995 ROC with full coterminization.

(c) In addition to the points in the United States to which it may operate before the date of the signature of this 1996 MOU, NCA may operate all-cargo services to three (3) additional points in the United States. The three (3) additional points may be selected, or changed, on 60 days notice by the Government of Japan to the Government of the United States.

(d) In addition to the frequencies referred to in subparagraph (b) above, NCA may operate all-cargo services with eighteen (18) additional weekly frequencies. These eighteen (18) frequencies may be operated with full coterminization to all seven (7) points in the United States to which it may operate.

(e) NCA may operate all-cargo services with six (6) weekly frequencies to one (1) point beyond any one point in the United States to which it may operate, with full traffic rights, and may operate all-cargo services with twelve (12) weekly frequencies to another (or the same) point beyond any one point in the United States to which it may operate, without local traffic rights between the point in the United States and the beyond point. The

* As of March 31, 1996, NCA may operate 23.853 weekly frequencies available pursuant to the 1985 MOU, the 1989 MOU and the 1995 ROC plus the frequencies banked in accordance with subparagraph II of the 1985 MOU. The frequency growth formula and the banking mechanism provided for in the said subparagraph remain effective. [Footnote in the original.]

¹ TIAS 11999.

beyond points may be selected, or changed, on 60 days notice by the Government of Japan to the Government of the United States.

3. New Japanese Entrant

The Government of Japan may designate one (1) airline not operating scheduled combination or all-cargo services between Japan and the United States as of the date of the signature of this 1996 MOU to operate all-cargo services between any point or points in Japan and one (1) of the points in the United States to which NCA may operate. The new entrant may use up to six (6) of any weekly frequencies available to, but unused by NCA. The point in the United States may be selected, or changed, on 60 days notice by the Government of Japan to the Government of the United States.

B. U.S. All-Cargo Services

1. The U.S. Incumbent Airlines

(a) Federal Express, Northwest Airlines and United Airlines, or any airline designated by the Government of the United States in accordance with the Agreement in substitution for those airlines (hereinafter referred to as "the U.S. incumbent airlines") may operate all-cargo services from any point or points in the United States.

(b) In addition to the points in Japan available for the operation of all-cargo services by the U.S. incumbent airlines before the date of the signature of this 1996 MOU (except for the points referred to in subparagraph IIA2 of the 1989 MOU), the Government of the United States may select three (3) additional points in Japan for all-cargo services by the U.S. incumbent airlines (which may include one or more of the points referred to in subparagraph IIA2 of the 1989 MOU). These points may be coterminized with the other points in Japan to which these airlines may operate. These points may be selected, or changed, on 60 days notice by the Government of the United States to the Government of Japan.

(c) If one of the points selected in subparagraph (b) above is Sapporo, the U.S. incumbent airlines may operate all-cargo services to any point or points beyond Sapporo, without local traffic rights between Sapporo and the beyond point or points.

2. The U.S. 1989 MOU All-Cargo Airline

(a) United Parcel Service, or any airline designated by the Government of the United States in accordance with the Agreement in substitution for United Parcel Service, (hereinafter referred to as "the U.S. 1989 MOU all-

cargo airline") may operate all-cargo services from any point or points in the United States.

(b) In addition to the point in Japan and frequencies available under the 1989 MOU, the U.S. 1989 MOU all-cargo airline may operate all-cargo services to Osaka with up to twelve (12) weekly frequencies, six (6) of which may be operated to one (1) point beyond Osaka with full traffic rights, and six (6) of which may be operated to another (or the same) point beyond Osaka without local traffic rights between Osaka and the beyond point. The beyond points may be selected, or changed, on 60 days notice by the Government of the United States to the Government of Japan.

(c) The U.S. 1989 MOU all-cargo airline may coterminimize all the points in Japan to which it may operate, provided that not more than the number of weekly frequencies it may operate under the 1989 MOU may serve the point in Japan available under the 1989 MOU and that not more than twelve (12) weekly frequencies may serve Osaka, even if those points are coterminimized.

3. New U.S. Entrant

The Government of the United States may designate one (1) airline not operating scheduled combination or all-cargo services between the United States and Japan as of the date of the signature of this 1996 MOU to operate all-cargo services with six (6) weekly frequencies between any point or points in the United States and one (1) point in Japan other than Tokyo, and beyond to one (1) point without local traffic rights between the point in Japan and the beyond point. The point in Japan and the beyond point may be selected, or changed, on 60 days notice by the Government of the United States to the Government of Japan.

C. Japan and United States All-Cargo Services

1. For purposes of frequency limitations on all-cargo services under the 1985 MOU, the 1989 MOU, the 1995 ROC and this 1996 MOU, any all-cargo flight from either country to the other country, and a return flight in the opposite direction, shall together constitute one frequency regardless of the number of traffic stops made in either country or whether or not the flight operates beyond the other country. If an airline does not operate a return flight, the flight in one direction shall still constitute one frequency.

2. For purposes of all-cargo services to the beyond points referred to in subparagraphs IA2(e) and IB2(b) above, the two beyond points may be served on a single flight. However, notwithstanding paragraph IC1 above,

if served on a single flight, the flight shall constitute one beyond frequency for each point for purposes of the beyond frequency limitations referred to in those subparagraphs.

3. The following shall apply to all-cargo frequencies operated by JAL and NCA:

(a) Notwithstanding subparagraph IA1(c) above: (1) if JAL operates not more than four (4) weekly all-cargo frequencies to Chicago, all of its all-cargo frequencies to Chicago will count toward the frequency limitations referred to in section III of the 1989 MOU (hereinafter referred to as "the 1989 Japanese frequency limitations"); and (2) if JAL operates more than four (4) weekly all-cargo frequencies to Chicago, four (4) of its all-cargo frequencies to Chicago will count toward the 1989 Japanese frequency limitations.

(b) If NCA operates not more than four (4) weekly all-cargo frequencies to Chicago, all of its all-cargo frequencies to Chicago will count toward the 1989 Japanese frequency limitations. If NCA operates more than four (4) weekly all-cargo frequencies to Chicago, four (4) of its all-cargo frequencies to Chicago will count toward the 1989 Japanese frequency limitations.

(c) If NCA operates not more than three (3) weekly all-cargo frequencies to Los Angeles, all of its all-cargo frequencies to Los Angeles will count toward the 1989 Japanese frequency limitations. If NCA operates more than three (3) all-cargo frequencies to Los Angeles, three (3) of its all-cargo frequencies to Los Angeles will count toward the 1989 Japanese frequency limitations.

II. GENERAL PROVISIONS

Nothing herein affects the rights or obligations of the Government of the United States or the Government of Japan under the Agreement or any other agreements or understandings between the two sides relating to the Agreement, except with respect to the specific rights and obligations stipulated herein. Furthermore, nothing herein shall be considered to alter or shall prejudice either side's interpretation of the rights and obligations under the Agreement or any other agreements or understandings between the two sides relating to the Agreement.

Yoshiyuki Kamei

Minister of Transport of
Japan

Federico Peña

Secretary of Transportation of
the United States of America

Done April 16, 1996

The Acting Secretary of State to the Japanese Ambassador

**DEPARTMENT OF STATE
WASHINGTON**

August 21, 1996

Excellency:

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

[For translation of the Japanese note, see p. 4.]

I have further the honor to inform Your Excellency that the Government of the United States of America also provides the same confirmation as the Government of Japan provides and accepts the above proposals of the Government of Japan and to confirm that Your Excellency's Note and this reply shall constitute an agreement between our two Governments on this matter, which will enter into force on the date of this reply.

Accept, Excellency, renewed assurance of my highest consideration.

For the Acting Secretary of State:

Joel S. Spiro

His Excellency
Kunihiko Saito,
Ambassador of Japan.