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RATES, FARES, AND PRACTICES IN FOREIGN AIR TRANSPORTATION—1964

GOVERNMENT

Storage

HEARINGS BEFORE THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH CONGRESS
SECOND SESSION

ON

H.R. 1716

A BILL TO AMEND SECTION 1002 OF THE FEDERAL AVIATION ACT OF 1958 TO AUTHORIZE THE CIVIL AERONAUTICS BOARD TO SUSPEND CERTAIN RATES RELATING TO FOREIGN AIR TRANSPORTATION, AND FOR OTHER PURPOSES

H.R. 6400

A BILL TO AMEND THE FEDERAL AVIATION ACT OF 1958 TO PROVIDE FOR THE REGULATION OF RATES AND PRACTICES OF AIR CARRIERS AND FOREIGN AIR CARRIERS IN FOREIGN AIR TRANSPORTATION, AND FOR OTHER PURPOSES

S. 1540

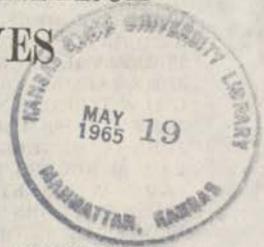
AN ACT TO AMEND THE FEDERAL AVIATION ACT OF 1958 TO PROVIDE FOR THE REGULATION OF RATES AND PRACTICES OF AIR CARRIERS AND FOREIGN AIR CARRIERS IN FOREIGN AIR TRANSPORTATION, AND FOR OTHER PURPOSES

MAY 19, 20, 21, 22, 25; JUNE 1, 1964

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RATES, FARES, AND PRACTICES IN FOREIGN AIR TRANSPORTATION—1964

TUESDAY, MAY 19, 1964

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee met, pursuant to notice, at 10 a.m., in room 1334, Longworth House Office Building, Hon. Oren Harris (chairman of the committee) presiding.

The CHAIRMAN. The committee will come to order.

Today the committee opens hearings on several bills, H.R. 1716, which was introduced by our colleague on the committee, Mr. Williams, and H.R. 6400, introduced by me.

Also a similar bill to H.R. 6400 is S. 1540, is before the committee, having passed the Senate.

These two bills, that is, the Senate bill and H.R. 6400, come to us as a recommendation from the Civil Aeronautics Board.

The bill introduced by Mr. Williams, I believe, is a proposal which the industry some time ago recommended since this matter was presented to the Congress in the 87th Congress.

(The bills referred to, and agency reports thereon, are as follows:)

[H.R. 1716, 88th Cong., 1st sess.]

A BILL To amend section 1002 of the Federal Aviation Act of 1958 to authorize the Civil Aeronautics Board to suspend certain rates relating to foreign air transportation, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subsection (d) of section 1002 of the Federal Aviation Act of 1958 (49 U.S.C. 1482) is amended—

(1) by amending the heading of such subsection to read as follows: "POWER TO PRESCRIBE RATES AND PRACTICES OF AIR CARRIERS IN INTERSTATE AND OVERSEAS AIR TRANSPORTATION"; and

(2) by striking out "": *Provided*, That as to rates, fares, and charges for overseas air transportation, the Board shall determine and prescribe only a just and reasonable maximum or minimum, or maximum and minimum rate, fare, or charge".

(b) The heading of subsection (e) of such section 1002 is amended to read as follows: "RULE OF RATE MAKING FOR INTERSTATE AND OVERSEAS AIR TRANSPORTATION".

(c) The heading of subsection (g) of such section 1002 is amended to read as follows: "SUSPENSION OF RATES IN INTERSTATE AND OVERSEAS AIR TRANSPORTATION".

SEC. 2. Section 1002 of such Act is amended by adding at the end thereof the following new subsection:

SUSPENSION OF RATES IN FOREIGN AIR TRANSPORTATION

"(j) (1) Whenever any air carrier or foreign air carrier shall file with the Board a tariff stating a new individual or joint (between air carriers, between foreign air carriers, or between air carriers and foreign air carriers) rate, fare, or charge for foreign air transportation or any classification, rule, regulation, or

practice affecting such rate, fare or charge, or the value of the service thereunder, which appears to the Board to be inconsistent with the public interest, the Board is empowered, upon complaint or upon its own initiative, at once, and if it so orders, without answer or other form of pleading by the air carrier or foreign air carrier concerned, but upon reasonable notice, and by filing with such tariff and delivering to the air carrier or foreign air carrier affected thereby a statement in writing for such suspension, to suspend the operation of such tariff and defer the use of such rate, fare, or charge, or of any classification, rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, for a period or periods not exceeding three hundred and sixty-five days in the aggregate beyond the time when such tariff would otherwise go into effect. During the period of such suspension or suspensions the air carrier or foreign air carrier affected thereby shall maintain in effect and use the rate, fare, or charge, or such classification, rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, which was in effect immediately prior to the filing of the new tariff.

"(2) The Board is further empowered, with respect to any existing tariff of a foreign air carrier, upon complaint or upon its own initiative, at once and, if it so orders, without answer or other form of pleading by the foreign air carrier, but upon reasonable notice, to suspend the operation of any such tariff which appears to be inconsistent with the public interest and to continue such suspension for a period or periods not exceeding three hundred and sixty-five days in the aggregate from the date of such suspension. During the period of such suspension or suspensions, the foreign air carrier may put into effect and use the lowest, or the most advantageous to it, of such rates, fares, or charges, or of such classification, rule, regulation, or practice affecting such rate, fare, charge, or the value of the service thereunder, as may be currently in effect for air carriers engaged in the same foreign air transportation.

"(3) In exercising and performing its power and duties under this subsection, the Board shall take into consideration, among other factors—

"(A) the requirements of section 1102 of this Act;

"(B) the requirement that rates be established and maintained at just and reasonable levels, due regard being had for all relevant factors, such as costs of operation, reasonable profit, the characteristics of each service, and the rates charged by other air carriers and foreign air carriers;

"(C) the public interest requirement for adequate, efficient, and dependable transportation of persons and property by air carriers and foreign air carriers at the lowest cost consistent with the furnishing of such service; and

"(D) the need of each air carrier for revenue sufficient to enable such air carrier, under honest, economic, and efficient management, to provide adequate, efficient, and dependable air carrier service."

Sec. 3. That portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 which appears under the heading

"Sec. 1002. Complaints to, and investigations by, the Administrator and the Board." is amended—

(1) by striking out

"(d) Power to prescribe rates and practices of air carriers."

and inserting in lieu thereof

"(d) Power to prescribe rates and practices of air carriers in interstate and overseas air transportation.";

(2) by striking out

"(e) Rule of ratemaking."

and inserting in lieu thereof

"(e) Rule of ratemaking for interstate and overseas air transportation.";

(3) by striking out

"(g) Suspension of rates."

and inserting in lieu thereof

"(g) Suspension of rates in interstate and overseas air transportation.";

and

(4) by adding at the end thereof the following:

"(j) Suspension of rates in foreign air transportation."

[H.R. 6400, 88th Cong., 1st sess.]

A BILL To amend the Federal Aviation Act of 1958 to provide for the regulation of rates and practices of air carriers and foreign air carriers in foreign air transportation, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (a) of section 404 of the Federal Aviation Act of 1958 (49 U.S.C. 1374(a)) is amended by inserting "(1)" immediately after "(a)" and adding at the end thereof the following new paragraph:

"(2) It shall be the duty of every air carrier and foreign air carrier to establish, observe, and enforce just and reasonable individual and joint rates, fares, and charges, and just and reasonable classifications, rules, regulations, and practices relating to foreign air transportation; and, in case of such joint rates, fares, and charges, to establish just, reasonable, and equitable divisions thereof as between air carriers or foreign air carriers participating therein which shall not unduly prefer or prejudice any of such participating air carriers or foreign air carriers."

Sec. 2. Section 801 of the Federal Aviation Act of 1958 (49 U.S.C. 1461) is amended by inserting "(a)" immediately after "801" and by adding at the end thereof the following new subsection:

"(b) Any order of the Board pursuant to section 1002 (f) requiring that an air carrier or foreign air carrier discontinue demanding, charging, collecting, or receiving a rate, fare, or charge for foreign air transportation, or enforcing any classification, rule, regulation, or practice affecting such rate, fare, or charge, and any action of the Board pursuant to section 1002(g) suspending the operation of a tariff filed with the Board by an air carrier or foreign air carrier stating a new individual or joint rate, fare, or charge for foreign air transportation, shall be subject to the approval of the President: *Provided*, That any order of the Board directing an air carrier or foreign air carrier to alter any rate, fare, or charge, or any classification, rule, regulation, or practice affecting such rate, fare, or charge, to the extent necessary to correct any discrimination, preference, or prejudice, and any order that the air carrier or foreign air carrier shall discontinue demanding, charging, collecting, or receiving any such discriminatory, preferential, or prejudicial rate, fare, or charge, or enforcing any such discriminatory, preferential, or prejudicial classification, rule, regulation, or practice, shall not be subject to such approval. Copies of any such proposed orders, and of proposed statements containing reasons for suspension, shall be submitted to the President by the Board before publication."

Sec. 3. Subsection (d) of section 1002 of the Federal Aviation Act of 1958 (49 U.S.C. 1482(d)) is amended by changing the colon following the word "effective" to a period and striking out the following: "*Provided*, That as to rates, fares, and charges for overseas air transportation, the Board shall determine and prescribe only a just and reasonable maximum or minimum, or maximum and minimum rate, fare, or charge."

Sec. 4. Subsection (e) of section 1002 of the Federal Aviation Act of 1958 (49 U.S.C. 1482(e)) is amended by inserting the words "and foreign air carriers" after the words "air carriers" where they appear in paragraphs (2) and (3) of the subsection, and by inserting the words "and foreign air carrier" after the words "air carrier" where they appear in paragraph (5).

Sec. 5. Subsection (f) of section 1002 of the Federal Aviation Act of 1958 (49 U.S.C. 1482(f)) is amended to read as follows:

"RATES AND PRACTICES IN FOREIGN AIR TRANSPORTATION

"(f) Whenever, after notice and hearing, upon complaint or upon its own initiative, the Board shall be of the opinion that any individual or joint rate, fare, or charge demanded, charged, collected, or received by any air carrier or foreign air carrier for foreign air transportation, or any classification, rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, is or will be unjust or unreasonable or unjustly discriminatory, or unduly preferential, or unduly prejudicial, the Board may alter the same to the extent necessary to correct such unjustness, unreasonableness, discrimination, preference, or prejudice and make an order that the air regulation, or practice affecting such rate, fare, or charge, or the value of or receiving any such unjust, unreasonable, discriminatory, preferential, or prejudicial rate, fare, or charge, or enforcing any such unjust, unreasonable,

discriminatory, preferential, or prejudicial classification, rule, regulation, or practice. The Board may in the aforesaid order set forth and prescribe the lawful rate, fare, or charge (or the maximum or minimum or the maximum and minimum thereof) thereafter to be demanded, charged, collected, or received, or the lawful classification, rule, regulation, or practice thereafter to be made effective."

SEC. 6. Subsection (g) of section 1002 of the Federal Aviation Act of 1958 (49 U.S.C. 1482(g)) is amended—

- (1) by striking out the words "interstate or overseas";
- (2) by amending the parenthetical phrase following the word "joint" to read as follows: "(between air carriers, between foreign air carriers, or between an air carrier or carriers and a foreign air carrier or carriers)"; and
- (3) by inserting the words "or foreign air carrier" after the words "air carrier" wherever they appear therein.

SEC. 7. Subsection (1) of section 1002 of the Federal Aviation Act of 1958 (49 U.S.C. 1482(1)) is amended by changing the colon following the word "operated" to a period and striking out the following: "Provided, That as to joint rates, fares and charges for overseas transportation the Board shall determine and prescribe only just and reasonable maximum or minimum or maximum and minimum joint rates, fares or charges."

SEC. 8. The amendments made by this Act shall become effective thirty days after the date of enactment of the Act.

[S. 1540, 88th Cong., 1st sess.]

AN ACT To amend the Federal Aviation Act of 1958 to provide for the regulation of rates and practices of air carriers and foreign air carriers in foreign air transportation, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (a) of section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 1374(a)) is amended by inserting "(1)" immediately after "(a)" and adding at the end thereof the following new paragraph:

"(2) It shall be the duty of every air carrier and foreign air carrier to establish, observe, and enforce just and reasonable individual and joint rates, fares, and charges, and just and reasonable classifications, rules, regulations, and practices relating to foreign air transportation; and, in case of such joint rates, fares, and charges, to establish just, reasonable, and equitable divisions thereof as between air carriers or foreign air carriers participating therein which shall not unduly prefer or prejudice any of such participating air carriers or foreign air carrier."

SEC. 2. Section 801 of the Federal Aviation Act of 1958 (49 U.S.C. 1461) is amended by inserting "(a)" immediately after "801" and by adding at the end thereof the following new subsection:

"(b) Any order of the Board pursuant to section 1002(f) requiring that an air carrier or foreign air carrier discontinue demanding, charging, collecting, or receiving a rate, fare, or charge for foreign air transportation, or enforcing any classification, rule, regulation, or practice affecting such rate, fare, or charge, and any action of the Board pursuant to section 1002(g) suspending the operation of a tariff filed with the Board by any air carrier or foreign air carrier stating a new individual or joint rate, fare, or charge for foreign air transportation, shall be reported to the President by the Board before publication: *Provided*, That any order of the Board directing an air carrier or foreign air carrier to alter any rate, fare, charge, or any classification, rule, regulation, or practice affecting such rate, fare, or charge, to the extent necessary to correct any discrimination, preference, or prejudice, and any order that the air carrier or foreign air carrier shall discontinue demanding, charging, collecting, or receiving any such discriminatory, preferential or prejudicial rate, fare, or charge or enforcing any such discriminatory preferential, or prejudicial classification, rule, regulation, or practice, need not be so reported."

SEC. 3. Subsection (d) of section 1002 of the Federal Aviation Act of 1958 (49 U.S.C. 1482(d)) is amended by changing the colon following the word "effective" to a period and striking out the following: "*Provided*, That as to rates, fares, and charges for overseas air transportation, the Board shall determine and pre-

scribe only a just and reasonable maximum or minimum, or maximum and minimum rate, fare, or charge."

SEC. 4. Subsection (e) of section 1002 of the Federal Aviation Act of 1958 (49 U.S.C. 1482(e)) is amended by inserting the words "and foreign air carriers" after the words "air carriers" where they appear in paragraphs (2) and (3) of the subsection, and by inserting the words "and foreign air carrier" after the words "air carrier" where they appear in paragraph (5).

SEC. 5. Subsection (f) of section 1002 of the Federal Aviation Act of 1958 (49 U.S.C. 1482(f)) is amended to read as follows:

"RATES AND PRACTICES IN FOREIGN AIR TRANSPORTATION

"(f) Whenever, after notice and hearing, upon complaint or upon its own initiative, the Board shall be of the opinion that any individual or joint rate, fare, or charge demanded, charged, collected, or received by any air carrier or foreign air carrier for foreign air transportation, or any classification, rule, regulation, or practice affecting such rate, fare, or charge or the value of the service thereunder, is or will be unjust or unreasonable or unjustly discriminatory, or unduly preferential, or unduly prejudicial, the Board may alter the same to the extent necessary to correct such unjustness, unreasonableness, discrimination, preference, or prejudice and make an order that the air carrier or foreign air carrier shall discontinue demanding, changing, collecting, or receiving any such unjust, unreasonable, discriminatory, preferential, or prejudicial rate, fare, or charge, or enforcing any such unjust, unreasonable, discriminatory, preferential or prejudicial, classification, rule, regulation, or practice. The Board may in the aforesaid order set forth and prescribe the lawful rate, fare, or charge (or the maximum or minimum or the maximum and minimum thereof) thereafter to be demanded, charged, collected, or received, or the lawful classification, rule, regulation, or practice thereafter to be made effective."

SEC. 6. Subsection (g) of section 1002 of the Federal Aviation Act of 1958 (49 U.S.C. 1482(g)) is amended—

(1) by striking out the words "interstate or overseas";

(2) by amending the parenthetical phrase following the word "joint" to read as follows: "(between air carriers, between foreign air carriers, or between an air carrier or carriers and a foreign air carrier or carriers)"; and

(3) by inserting the words "or foreign air carrier" after the words "air carrier" wherever they appear therein.

SEC. 7. Subsection (i) of section 1002 of the Federal Aviation Act of 1958 (49 U.S.C. 1482(i)) is amended by changing the colon following the word "operated" to a period and striking out the following: "Provided, That as to joint rates, fares, and charges for overseas transportation the Board shall determine and prescribe only just and reasonable maximum or minimum or maximum and minimum joint rates, fares, or charges.

SEC. 8. The amendments made by this Act shall become effective thirty days after the date of enactment of the Act.

Passed the Senate November 26, 1963.

Attest:

FELTON M. JOHNSTON, *Secretary*.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., May 23, 1963.

HON. OREN HARRIS,
*Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in reply to your letter of February 20, 1963, requesting the views of the Bureau of the Budget on H.R. 1716, a bill to amend section 1002 of the Federal Aviation Act to authorize the Civil Aeronautics Board to suspend certain rates relating to foreign air transportation, and for other purposes.

The Bureau of the Budget strongly supports the objective of this bill but believes it to be seriously inadequate to achieve this objective, i.e., to create in the Government of the United States equal powers over the rates and practices of air carriers and foreign air carriers operating between the territory of the

United States and foreign countries as foreign governments have over the rates and practices of U.S. air carriers flying between the United States and their territories. H.R. 1716 would not appear to give the Civil Aeronautics Board more than suspension powers for a period of 365 days; any rates desired by foreign carriers could be put into effect at the end of the suspension period without remedy for the Board.

The Bureau of the Budget greatly prefers a Civil Aeronautics Board draft bill to amend the Federal Aviation Act of 1958 to provide for the regulation of rates and practices of air carriers and foreign air carriers in foreign air transportation, and for other purposes, which the President transmitted to the Congress by letter of May 14, 1963.

Sincerely yours,

PHILLIP S. HUGHES,
Assistant Director for Legislative Reference.

CIVIL AERONAUTICS BOARD,
Washington, D.C., April 28, 1964.

HON. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in further reply to your letter of February 20, 1963, requesting a report by the Board on H.R. 1716, a bill to amend section 1002 of the Federal Aviation Act of 1958 to authorize the Civil Aeronautics Board to suspend certain rates relating to foreign air transportation, and for other purposes.

H.R. 1716 would empower the Board to suspend tariffs of air carriers and foreign air carriers engaged in foreign air transportation, while H.R. 6400, which is also pending before your committee, would not only authorize the Board to suspend tariffs but also to regulate the rates and practices of such carriers.

The Board pointed out to your committee in a letter dated May 29, 1963, that the provisions of H.R. 6400 were identical to those of a draft bill submitted by the President to the Congress on May 14, 1963, and urged that prompt and favorable consideration be given to such bill for the reasons set forth in the "Statement of Purpose and Need" accompanying the draft legislation. The Board repeated its endorsement of H.R. 6400 in a letter to your committee dated March 30, 1964, urging that prompt and favorable consideration be given to such bill rather than to S. 1540, a similar bill.

In view of the foregoing, the Board is opposed to the enactment of H.R. 1716, and again urges that prompt and favorable consideration be given to H.R. 6400.

The Board has been advised by the Bureau of the Budget that there is no objection to the submission of this report from the standpoint of the administration's program.

For the Civil Aeronautics Board:

HAROLD R. SANDERSON, *Secretary.*

CIVIL AERONAUTICS BOARD,
Washington, D.C., May 29, 1963.

HON. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN. This is in reply to your letter of May 23, 1963, requesting a report by the Board on H.R. 6400, a bill to amend the Federal Aviation Act of 1958 to provide for the regulation of rates and practices of air carriers and foreign air carriers in foreign air transportation, and for other purposes.

The provisions of H.R. 6400 are identical to those of a draft bill submitted by the President to Congress on May 14, 1963.

For the reasons set forth in the "Statement of Purpose and Need" which accompanied the draft bill, a copy of which is enclosed, the Board urges that prompt and favorable consideration be given to H.R. 6400.

Sincerely yours,

ALAN S. BOYD, *Chairman.*

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, June 25, 1963.

HON. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: We again refer to your letter of May 23, 1963, in which you ask for our comments on H.R. 6400.

This bill is designed to amend the Federal Aviation Act of 1958, 49 U.S.C. 1301, et seq., to give the Civil Aeronautics Board more power and control than it now possesses over foreign air transportation. Under the present law, the Civil Aeronautics Board has practically no direct authority over the rates and practices of either United States or foreign air carriers engaged in foreign air transportation. The only power as to the adjustment of rates and practices in foreign air transportation now possessed by the Board (apart from its power to disapprove agreements among air carriers and foreign air carriers fixing rates and practices in foreign air transportation) is that of ordering a carrier to remove a discrimination in its rate structure if, after notice and hearing, such a discrimination is found to exist (49 U.S.C. 1482(f)).

If enacted, H.R. 6400 would not affect the functions and activities of the General Accounting Office. Its provisions generally seem to be in the public interest and we are not opposed to enactment.

The need for some type of legislative control has been emphasized by the publicity given to a recent proposal of the International Air Transport Association, an international organization of 90 airlines that set fares and rates for most of the world's international air routes, to increase fares on the North Atlantic routes. The United States found it necessary to agree to the proposal. We note that the provisions of H.R. 6400 accord with a statement of U.S. international air transport policy, recently approved by the President after submission to him by an Interagency Steering Committee, and that the bill would serve to implement paragraph II(j) of the annex to the Agreement Between the Government of the United States of America and the Government of the United Kingdom Relating to Air Services Between Their Respective Territories, commonly called the Bermuda Agreement (60 Stat. 1499, 1506 (1946)).

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., June 27, 1963.

HON. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is to acknowledge and reply to your letter of May 23, 1963, requesting the views of the Bureau of the Budget on H.R. 6400, a bill to amend the Federal Aviation Act of 1958 to provide for the regulation of rates and practices of air carriers and foreign air carriers in foreign air transportation, and for other purposes.

While the immediate problem of the breakdown of the system of rate negotiations developed by the International Air Transport Association lends urgency to this proposal, there is a longstanding underlying need to place the U.S. Government, through the Civil Aeronautics Board, in a position more nearly equal to that of foreign governments with respect to the control of international air rates. Virtually all important international air carrier nations, except the United States, assert this power. At the present time, however, the powers of the CAB over the rates and practices of both U.S. carriers in foreign air transportation and foreign air carriers is limited to removing discriminatory or prejudicial rates found to exist after notice and hearing.

In keeping with the Administration's international air policies, this Government, in the interests of U.S. citizens who travel abroad by air and U.S. businessmen shipping goods by air in international commerce, should maintain continuous surveillance of international air rates and should press for the lowest rates consistent with reasonable profits for U.S.-flag carriers who are believed to be the most efficient.

The proposed bill would give the Board authority to prescribe rates and practices and to suspend tariffs, but these powers would be exercised consistently with the provisions of our international agreements, as provided by section 1102 of the Federal Aviation Act, and would be subject to the approval of the President to assure consistency with the general foreign policy and security objectives of the U.S. Government.

The Bureau of the Budget strongly recommends enactment of H.R. 6400 and advises that it would be in accord with the program of the President.

Sincerely yours,

PHILLIP S. HUGHES,
Assistant Director for Legislative Reference.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., May 5, 1964.

HON. OREN HARRIS,
*Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on H.R. 6400, a bill to amend the Federal Aviation Act of 1958 to provide for the regulation of rates and practices of air carriers and foreign air carriers in foreign air transportation, and for other purposes.

The bill would amend the Federal Aviation Act of 1958 to give the Civil Aeronautics Board discretionary authority, subject to Presidential approval, to prescribe rates and practices and to suspend tariffs in international air transportation to and from the United States under the same standards now applicable to interstate transportation. The bill embodies the recommendations of an interdepartmental committee and was transmitted to the Congress by President Kennedy on May 14, 1963.

On November 26, 1963, the Senate passed S. 1540, companion bill to H.R. 6400, and S. 1540 is likewise with the House Committee on Interstate and Foreign Commerce. As S. 1540 passed the Senate, it differs from H.R. 6400 in only one respect. Whereas H.R. 6400 requires Presidential approval of Board orders or actions relative to foreign air transportation, S. 1540 merely requires that Board orders or actions be reported to the President prior to publication.

Whether or not this legislation should be enacted involves policy considerations concerning which the Department of Justice makes no recommendation. However, the Bureau of the Budget has advised that although there is no objection to the submission of this report, the enactment of H.R. 6400 would be in accord with the program of the President.

Sincerely yours,

NICHOLAS DEB. KATZENDACH,
Deputy Attorney General.

DEPARTMENT OF STATE,
Washington, July 26, 1963.

HON. OREN HARRIS,
*Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: In your letter of May 23, 1963, you requested the Department's view on H.R. 6400, a bill to amend the Federal Aviation Act of 1958 to provide for the regulation of rates and practices of air carriers in foreign air transportation, and for other purposes. The Department strongly supports enactment of this legislation.

Passage of the bill would achieve two objectives. By giving the Civil Aeronautics Board authority to fix rates in international air transportation, H.R. 6400 would greatly improve the position of the United States in the bilateral agreements it has with more than 40 countries. Moreover, if the Civil Aeronautics Board has clear ratemaking authority over international air transportation, the United States will go with a far stronger hand into any intergovernmental conference on rates that may come out of the present situation.

Since the subject of this legislation is primarily within the jurisdiction of the Civil Aeronautics Board, this statement is directed primarily to those aspects of

the bill which bear upon the series of bilateral air agreements to which the United States is a party. Specifically, this statement is directed to the question of how the legislation would affect the position of the United States under the alternative rate articles in our present "Bermuda type" bilateral air services agreements. In presenting this detailed analysis, however, we wish to emphasize the effect upon our existing bilateral is not the only aim of the bill. We believe that passage of H.R. 6400 would make it possible for the United States to work far more effectively than at present for our position that international air fares should be lowered and not raised.

We shall use as examples of the two alternative rate provisions article II (e) and II (f) of the annex to the Bilateral Air Agreement between the United States and the United Kingdom. Both articles provide for the submission of proposed rates by the carriers of one country to the aeronautical authorities of the other, and provide for a 30-day period in which notice of dissatisfaction may be given and consultations may be held.

At the present time, because the CAB has no ratemaking authority over international air services, the article which is now in force is II (f). It provides, in substance, that if no agreement has been reached on the proposed rate at the end of 30 days, the country objecting to the proposed rate "may take such steps as it may consider necessary to prevent the inauguration or continuation of the service in question at the rate complained of." On the other hand, under the alternative article II (e), which would be applicable if H.R. 6400 were enacted, a proposed rate goes into effect provisionally, unless the aeronautical authorities of the country whose flag carrier proposed the rate agrees to suspend its operation.

The critical factor in determining which of the two alternative rate articles applies is whether "power is conferred by law upon the aeronautical authorities of the United States to fix fair and economic rates for the transport of persons and property by air on international services and to suspend proposed rates in a manner comparable to that in which the Civil Aeronautics Board at present is empowered to act with respect to such rates for the transport of persons and property by air within the United States * * *." In the Department's view, H.R. 6400 meets this criterion in every relevant respect.

Section 4 of the bill would amend section 1002(e) of the Federal Aviation Act of 1958 which sets forth the criteria to be applied by the Board in determination of rates. By inserting the words "foreign air carriers" at each point in the present section 1002(e) where only the words "air carriers" now appear, the bill would make precisely the same criteria applicable with respect to rates in international air transportation as are presently applicable with respect to rates in air transportation within the United States. This is made clear by the definition of "foreign air carriers" which appears in section 101(19) of the present act, and the definition of "foreign air transportation" which appears in section 101(21).

Section 5 of the bill would amend section 1002(f) of the Federal Aviation Act, which sets forth the powers of the Civil Aeronautics Board with respect to rates in international air transportation. Under the present section 1002(f), the only authority vested in the Board over rates in international air transportation relates to removal of unjustly discriminatory, or unduly preferential, or unduly prejudicial rates or practices. This authority is clearly not comparable to that vested in the Board by section 1002(d) with respect to rates in domestic air transportation. The proposed amendment would add to the CAB's present authority over existing rates definite power to review and disapprove "unjust" or "unreasonable" rates. The Board's authority would be to alter, set forth, and prescribe the lawful rate, after notice and hearing, upon complaint or upon its own initiative.

Section 6 of the bill would amend section 1002(g) of the Federal Aviation Act, which sets forth the authority of the Board with respect to suspension of proposed rates. By striking the words "interstate or overseas" qualifying the words "air transportation," and by adding the words "or foreign air carriers" wherever they appear in the present section, the bill would give the CAB precisely the same power to suspend rates in international air transportation as it now has with respect to rates proposed by U.S. air carriers for transportation within the United States. This authority would be to suspend new rates, according to the criteria set forth in section 1002(e), for a period of up to 90 days, which may be extended to an aggregate of up to 180 days.

Thus, in all relevant respects the bill would accomplish the purpose of bringing into force the preferable rate article—article II (e) of the annex to the

bilateral with Great Britain and corresponding provisions in other agreements. Present article II(f) would not longer be in force. As set forth previously in this report, the effect would be to permit our carriers to operate provisionally at rates which they propose, pending arbitration or other settlement. Foreign countries would be precluded from taking steps to suspend inauguration or continuation of services at such rates.

There may appear to be some inconsistency between the Federal Aviation Act as it would be amended by passage of H.R. 6400 and the provisions of the then applicable rate article in the bilateral agreements. Under that article, rates proposed by one country's carriers and objected to by the other country are to go in effect provisionally, pending arbitration or other settlement. This provision, of course, applies to both parties. Thus, the CAB would not, consistently with the bilaterals, be able to suspend the proposed rates of a foreign carrier. However, the other country could not suspend the rates proposed by our carriers. In such a situation we could expect that the dual rate permitted by the bilateral would be resolved by competitive forces in favor of the lower rate. It is of course clear that the power to suspend rates that would be granted to the CAB by section 1002(g) as amended would be subject to section 1102, relating to conformity with international agreements. Thus there could be no conflict between exercise of the authority granted to the Board in H.R. 6400 and existing international agreements.

It should be noted that under the so-called new rate article, which appears in the bilateral air agreement with Mexico and the agreement with the United Arab Republic now awaiting signature, the situation would be reversed. Under this article, which is to be the model for future bilateral air negotiations, both countries would have the right to suspend an objectionable rate. Thus, under the new rate article suspension action by the CAB pursuant to amended section 1002(g) would be consistent with our international obligations and, at the same time, all countries would be in an equal position—unlike the situation prevailing today.

Finally, it is appropriate to comment briefly on section 2 of the bill, which would amend section 801 of the Federal Aviation Act, which sets forth the powers of the President to review determinations with respect to international air transportation. Under the present statute, only those actions of the Board under section 401 relating to oversea or foreign air transportation and under section 402 relating to permits to foreign air carriers are subject to the approval of the President. Since H.R. 6400 would substantially add to the powers of the Board over foreign air carriers and international air transportation, the bill would make actions under these new powers likewise subject to approval of the President. The Department of State believes that this provides adequate assurance that the powers granted to the Board would be exercised in conformity with our international obligations and with the overall foreign policy interests of the United States.

For the reasons stated, the Department of State supports H.R. 6400, and strongly urges its prompt enactment.

The Bureau of the Budget advises that there is no objection to the submission of this report and that enactment of H.R. 6400 would be in accord with the program of the President.

Sincerely yours,

For the Secretary of State:

FREDERICK G. DUTTON,
Assistant Secretary.

FEDERAL AVIATION AGENCY,
Washington, D.C., January 23, 1964.

HON. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request of December 30, 1963, for the views of this Agency on S. 1540, a bill to amend the Federal Aviation Act of 1958 to provide for the regulation of rates and practices of air carriers and foreign air carriers in foreign air transportation, and for other purposes.

This bill, as originally proposed by the Civil Aeronautics Board, would provide the authority necessary to meet and deal with the foreign air transportation rate problem in a manner consistent with the President's international air transport

policy statement issued in April 1963. It would vest in the Civil Aeronautics Board authority to assure "just and reasonable" rates in foreign air transportation, as distinguished from the present limited authority simply to remove discriminatory rates. Its effect would be to vest in the Board authority over rates in foreign air transportation similar to the authority which the Board now possesses with respect to interstate and oversea air transportation, except that such authority would have to be exercised within the framework of section 1102 of the act.

The basic purpose of S. 1540 is to equip this Government with the authority over rates in foreign air transportation equivalent to that possessed by other governments. Given the present system for formulating rates in foreign air transportation and the terms and conditions of existing bilateral air transportation agreements, this authority is particularly desirable.

The bill as passed by the Senate contains one very substantial amendment to the Board's original proposal which we believe requires careful consideration by your committee. The original Board proposal provided that its orders requiring discontinuance of rates or practices or suspension of tariffs would be subject to the approval of the President. The Senate amendment requires only that such orders be reported to the President prior to publication.

The statement on international air transport policy of April 1963, in urging this legislation specifically provided that the exercise of such authority by the Board should be subject to the President's approval. This was because international air transportation is an integral aspect of this Nation's foreign affairs. This being the case, it would seem very unwise to remove one area of foreign affairs from the effective control of the President. In enacting legislation designed to give this Government an effective means of controlling international air rates, we should not fragment the basic responsibility for the conduct of foreign affairs which the President bears.

We urge favorable action on this bill, amended to conform to the Board's original proposal.

The Bureau of the Budget has advised that there is no objection from the standpoint of the administration's program to the submission of this report to your committee.

Sincerely,

N. E. HALABY, *Administrator.*

CIVIL AERONAUTICS BOARD,
Washington, D.C., March 30, 1964.

HON. OREN HARRIS,
*Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in further reply to your letter of December 30, 1963, requesting a report by the Board on S. 1540, an act to amend the Federal Aviation Act of 1958 to provide for the regulation of rates and practices of air carriers and foreign air carriers in foreign air transportation, and for other purposes.

The provisions of S. 1540 are identical to those of H.R. 6400, which is also pending before your committee, except for the fact that under the Senate bill orders of the Board, other than those relating to the removal of discriminations, directing an air carrier or foreign air carrier to discontinue a rate in foreign air transportation or suspending tariffs of carriers for such transportation need only be reported to the President prior to publication, while under the House bill Presidential approval of such orders is required.

As the Board pointed out to your committee in a letter dated May 29, 1963, urging that favorable consideration be given to H.R. 6400, the provisions of such bill are identical to those of a draft bill submitted by the President to the Congress on May 14, 1963. The Board reiterates, therefore, its endorsement of H.R. 6400, and urges that prompt and favorable consideration be given to such bill rather than to S. 1540.

The Board has been advised by the Bureau of the Budget that there is no objection to the submission of this report from the standpoint of the administration's program.

For the Civil Aeronautics Board:

HAROLD R. SANDERSON, *Secretary.*

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,
Washington, D.C., April 9, 1964.

HON. OREN G. HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in further reply to your request for the views of this Department on S. 1540, an act to amend the Federal Aviation Act of 1958 to provide for the regulation of rates and practices of air carriers and foreign air carriers in foreign air transportation, and for other purposes.

S. 1540 deals with oversea air transportation (i.e., transportation from the continental United States to U.S. territories and possessions or between U.S. territories and possessions) and foreign air transportation (i.e., transportation between the United States and any place outside thereof but not including oversea transportation).

This act (1) sets forth the duties of the air carriers and foreign air carriers in foreign air transportation in establishing just and reasonable rates and practices; (2) requires that orders of the Civil Aeronautics Board directing an air carrier or foreign air carrier to discontinue a rate or practice for foreign air transportation and actions of the Board suspending tariffs filed by such carriers for such transportation be reported to the President; (3) extends the Board's authority over the rates of U.S. carriers in oversea air transportation from the present right to prescribe only maximum and minimum rates to the right to prescribe exact rates (the Board now has this authority in respect to rates for interstate transportation); (4) extends the public interest factors to be considered by the Board in acting on rates to cover foreign air carriers as well as U.S. air carriers; (5) continues existing authority of the Board to order an air carrier or a foreign air carrier to remove a discrimination, preference, or prejudice in its foreign air transportation rate structure, and authorizes the Board to require discontinuance by the carrier of the unreasonable or discriminatory rate or practice, as well as provides new authority to prescribe the lawful rate or practice; and (6) authorizes the Board to suspend rates and practices of air carriers or foreign air carriers in foreign air transportation pending hearing. The Board presently has this authority over air carriers in interstate and oversea air transportation.

A recent statement of international air transport policy, approved by the President, recommended that " * * * Congress should adopt legislation which would give to the Civil Aeronautics Board authority, subject to approval by the President, to control rates in international air transport to and from the United States."

H.R. 6400 and S. 1540 in its original form, introduced at the request of the President, give effect to the "Statement of International Air Transport Policy" by giving the Board power to approve or disapprove the rate of United States and foreign international air carriers similar to the power it now has with respect to domestic carriers.

For some time, the Board has sought additional rate powers in foreign air transportation. At the present time, some foreign governments unilaterally control the rates of the U.S. air carriers, but the United States does not have the machinery to control the rates of foreign air carriers. It is in this area that the power to control rates and tariffs is desired. Because of the responsibilities of the President in the area of foreign affairs we supported legislation that would subject CAB action in this field to Presidential approval.

We endorse enactment of H.R. 6400 and would therefore support S. 1540 if amended to the original language making the CAB orders regarding rates for foreign air transportation by air carriers or foreign air carriers subject to the approval of the President.

We have been advised by the Bureau of the Budget that there would be no objection to the submission of this report, and further, that enactment of H.R. 6400 or S. 1540 if amended as recommended herein would be in accord with the program of the President.

Sincerely,

ROBERT E. GILES.

DEPARTMENT OF STATE,
Washington, April 27, 1964.

HON. OREN HARRIS,
*Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: In your letter of December 30, 1963, you requested the Department's views on S. 1540, an act to amend the Federal Aviation Act of 1958 to provide for the regulation of rates and practices of air carriers and foreign air carriers in foreign air transportation, and for other purposes.

Except for one amendment made by the Senate, S. 1540 is identical to H.R. 6400, which has already received the unqualified support of the Department. In our letter to you dated July 26, 1963, we analyzed in detail each of the provisions of H.R. 6400, the effect which its passage would have on our extensive network of bilateral aviation agreements, and the reasons why this country would be in a considerably more favorable position vis-a-vis foreign countries if the legislation were enacted. We strongly urged prompt enactment of the bill, and we renew that support now.

The purpose of S. 1540, as you know, is to give to the Civil Aeronautics Board authority to prescribe rates and practices and to suspend tariffs in international air transportation to and from the United States under the same standards now applicable to interstate transportation. The question raised by the amendment to the bill made by the Senate is whether this discretionary authority is to be exercised subject to the approval of the President. The Senate amendment would remove the requirement of approval by the President of any order granted pursuant to the new authority, and substitute simply a requirement to reporting such order to the President before publication.

The Senate amendment would remove the power to fix rates of international air transportation from policy review by the President. Removal of this power from Presidential review would fragment the President's authority over the conduct of foreign affairs. This could be justified only if international air rate-making were not an integral aspect of our foreign relations. However, the incidents surrounding the North Atlantic rate dispute during the spring of 1963 demonstrate the interrelationship of aviation ratemaking, like other aspects of economic regulation of international transportation, with our overall foreign relations. The history of this dispute leaves no doubt that international rate-making has vast and far-reaching foreign policy ramifications. We would conclude, therefore, that the President's constitutional powers over foreign affairs require that the international ratemaking function, being an integral aspect of foreign affairs, should be subject to policy review by the President.

The executive branch, of course, does not propose to become directly involved in details of ratemaking. But the exercise of this function would affect our foreign relations to at least the same extent as exercised by the Civil Aeronautics Board of the other powers relating to regulation of international air transportation now contained in sections 401 and 402 of the Federal Aviation Act. Section 801 authorizes review in these latter cases and we see no justification for drawing a distinction between these cases and the new powers to be granted by H.R. 6400.

Moreover, as a practical matter, it would appear that elimination of Presidential review has the correlative effect of subjecting international ratemaking decisions to the process of judicial review as required by section 1006 of the Federal Aviation Act. As the law now stands, Board actions which are subject to Presidential review under section 801 are immune from judicial review under section 1006. Accordingly, if the requirement of Presidential review is eliminated, it would appear as though these decisions would then become subject to judicial review. If the powers available under S. 1540 are ever to be exercised, it would probably be essential that they be exercised promptly. Presidential review, rather than the cumbersome and time-consuming process of review in the courts of appeals, would permit this expeditious action.

In summary, we reiterate our support of the objectives of S. 1540 and H.R. 6400. We continue to be concerned by the problem of rates in international air transportation for the aviation industry, the traveling public, and for the overall foreign relations of the United States. We favor enactment of S. 1540 as originally introduced; i.e., with the powers over rates in international transportation subject to Presidential approval.

The Bureau of the Budget advises that there is no objection to the submission of this report and that S. 1540 as introduced on May 15, 1963, would be in accord with the program of the President.

Sincerely yours,
For the Secretary of State:

FREDERICK G. DUTTON,
Assistant Secretary.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., April 27, 1964.

HON. OREN HARRIS,
*Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Bureau of the Budget on S. 1540, a bill to amend the Federal Aviation Act of 1958 to provide for the regulation of rates and practices of air carriers and foreign air carriers in foreign air transportation, and for other purposes, which has been passed by the Senate.

As introduced, at the request of the President, S. 1540 and H.R. 6400 were identical. Their purpose is to give the Civil Aeronautics Board authority to prescribe rates and practices of air carriers, both U.S. and foreign, and to suspend tariffs in international air transportation to and from the United States. As proposed the legislation would have made the Board's authority subject to approval of the President in view of his preeminent responsibilities in the area of foreign policy.

As passed, S. 1540 would give the Civil Aeronautics Board ultimate authority over international air rates and provide only that the President be informed of Board actions. The Bureau of the Budget would be strongly opposed to the enactment of S. 1540, in its present form, as a serious abridgement of the powers and responsibilities of the President in the realm of foreign policy.

The Bureau of the Budget endorses the views being expressed by the Departments of State and Commerce in reports being sent to your committee and urges that the bill be restored to its original text. If thus amended the bill would be in accord with the program of the President.

Sincerely yours,

PHILLIP S. HUGHES,
Assistant Director for Legislative Reference.

The CHAIRMAN. I think it is generally understood that the question of international rates came to a head sometime ago when a controversy resulted between this country and other nations regarding rates to be charged.

I am sure that it will be developed that IATA could not come to an agreement which resulted in a head-on crash between airlines operating in this country and our own airlines operating in other countries.

Obviously, the question of the Bermuda-type agreements arises in connection with this matter. There are many questions that should be developed since this is quite a departure from, or would be quite a departure from, the procedures that we have had over the years.

I have a feeling there will be some disagreement developing during the course of the hearings but it will be the purpose of the committee to try to develop all these questions with a view of trying to resolve the issue in the best interests of our own country and, of course, our own airlines, which compete with airlines from other countries coming to this country.

So, I should think that during the course of the hearings we would like to know something about the difficulty in IATA, just what the problem is that requires us to consider a complete departure from what we have experienced over the last many years, and find out how it

affects our own airlines, what they have to do or do not have to do and why the Government should have this authority.

To start off this in effort to obtain information, the Chairman of the Civil Aeronautics Board is the first witness.

Mr. Boyd, I know you have been interested in this problem for some time. For several months, I have had in mind to give you a hearing as I told you from time to time.

We are glad to have you and we are glad to have your statement.

STATEMENTS OF HON. ALAN S. BOYD, CHAIRMAN; JOHN WANNER, GENERAL COUNSEL; JOSEPH WATSON, DIRECTOR, BUREAU OF INTERNATIONAL AFFAIRS; IRVING ROTH, DIRECTOR, BUREAU OF ECONOMIC REGULATION; AND AL STOUT, CHIEF, COMMERCIAL RATES SECTION, CIVIL AERONAUTICS BOARD

Mr. Boyd. Thank you, Mr. Chairman.

I am accompanied this morning by Mr. John Wanner, General Counsel of the Civil Aeronautics Board, Mr. Joseph Watson, our Director of our Bureau of International Affairs, Mr. Irving Roth, Director of the Bureau of Economic Regulation, Mr. Al Stout, who is Chief of our Commercial Rates Section.

The Civil Aeronautics Board appreciates this opportunity to present its views with respect to H.R. 1716, H.R. 6400, and S. 1540.

H.R. 1716 would amend the Federal Aviation Act of 1958 so as to give the Board power to suspend tariffs of United States and foreign air carriers engaged in foreign air transportation.

H.R. 6400, on the other hand, would not only give the Board power to suspend tariffs of such carriers, but would also empower it to regulate the rates and practices of the carriers.

S. 1540 is identical to H.R. 6400 except for the fact that under the Senate bill actions and orders of the Board would only have to be reported to the President prior to publication, while under the House bill his approval would be required. Since this is the only difference between H.R. 6400 and S. 1540, I propose to limit my comments to H.R. 1716 and H.R. 6400 except to the extent necessary to discuss this variation.

As the Board has stated in reports to your committee, it strongly urges that favorable consideration be given to H.R. 6400 rather than to H.R. 1716.

H.R. 6400

H.R. 6400 is identical to draft legislation submitted by the President to the Congress on May 14, 1963. The bill is in furtherance of the recommendation in the "Statement on International Air Transport Policy," approved by the President on April 24, 1963, that Congress should adopt such legislation.

As your committee knows, this statement of policy was based on a report submitted to President Kennedy by an Interagency Steering Committee, consisting of representatives of the Federal Aviation Agency, the Bureau of the Budget, the Civil Aeronautics Board, the Agency for International Development and the Departments of State, Defense and Commerce, appointed by him in September 1961 to study U.S. international air transportation policies and problems.

The President recognized that the recommendations made were consistent with the interests of our carriers and the needs of travellers and shippers, and at the same time took account of the legitimate interests of other countries and the principles which govern this Nation in international aviation matters.

Specifically, he said:

The U.S. air transport policy takes into account all of the U.S. interests: the health and growth of our carriers, the contributions which air transport can make to our national security, and above all the needs of the consumer—the traveler and shipper. It does so in a way which considers the legitimate needs of other nations, and the basic principles under which we conduct our international relations.

In addition to implementing these objectives, H.R. 6400 also is consistent with the views of the Board since 1942 that it should be given power to regulate rates in foreign air transportation.

In point of fact, the Board repeatedly has urged legislation in this field up to and including the 87th Congress. During the 87th Congress we recommended that consideration of the legislation be deferred until completion of the Interagency Steering Committee study.

Before discussing the provisions of the bill, I believe that it would be helpful to comment on the premise in the statement of policy that the Board should be empowered to regulate rates in foreign air transportation because of the need "for more effective governmental influence on rates" to protect the needs of the traveler and the shipper.

The fact of the matter is that the Board now has no really effective method by which it can protect travelers and shippers against foreign rates which are too high.

Similarly, the Board lacks power to prevent the establishment of rates which are so low as to endanger the financial health of the carriers.

At the present time, the only direct authority which the Board has over foreign rates charged by either our carriers or foreign air carriers is the power to remove any discrimination found to exist after notice and hearing. But as to level of rates—that is, whether they are too high or too low—the Board has only indirect powers in this area through its approval of rate agreements between carriers reached through IATA, the International Air Transport Association.

As I shall point out later, this is not only indirect but also quite ineffective in critical situations.

The Board's present power to approve rate agreements of the IATA carriers is derived from the requirement in section 412 of the Federal Aviation Act that agreements between our carriers and other carriers affecting air transportation shall be filed with the Board for its approval.

If the Board approves, all of the carriers who are parties to the agreement are relieved, through the application of section 414 of the act, from what otherwise would be an antitrust violation of fixing rates by agreement.

On the other hand, if the Board disapproves, the carriers are then unable to act in concert without risking antitrust prosecution, but must all act individually in filing their rates.

When they do so, however, the Board is powerless to prevent the carrier from filing any rate it chooses—the rate filed may be wholly unacceptable from the standpoint of conventional rate-fixing criteria.

Thus, a rate may be either too high, or it may be so low as to endanger the financial health of the carriers, without the board being able to deal with the matter.

The contrast between the Board's powers with respect to rate in interstate and foreign air transportation further points up the need for additional authority over foreign rates.

In interstate air transportation the Board has full authority to fix rates after notice and hearing, and it may suspend the operations of new tariffs for interstate transportation pending a determination of the lawfulness of such tariffs. It is this power which the Board is seeking here for foreign air transportation; that is, the power to fix rates and suspend tariffs. The Board could then take effective action in the foreign field as it may now taken in the domestic field. at the same time, recognition would be given to the differing problems involved in the two types of transportation, and the foreign policy factors involved, by making the new powers discretionary and subjecting their exercise to the approval of the President.

Specifically, the Board would have discretionary authority under H.R. 6400 to prescribe rates and practices and to suspend tariffs in foreign air transportation under the same conventional ratemaking standards that apply to interstate air transportation.

I emphasize that the authority is discretionary, since this confers flexibility of action in this Government in view of the special considerations which exist in foreign air transportation.

Similarly, orders of the Board directing an air carrier or foreign air carrier to discontinue a rate in foreign air transportation or suspending a tariff would be subject to the approval of the President.

However, orders relating to the removal of discrimination would not require the President's approval since the act, presently permitting such orders, does not impose such a requirement.

In addition, the bill would place an affirmative duty upon the carriers to establish just and reasonable rates and practices relating to foreign air transportation.

Finally, the existing power of the Board over rates and practices in oversea air transportation would be modified so as to correspond with those which it presently has with respect to interstate air transportation, and which are proposed for foreign air transportation.

At this point, I believe that it would be advisable to point out why the Board considers that the provision in H.R. 6400 requiring Presidential approval is preferable to the provision in S. 1540 requiring that such orders only be reported to the President prior to publication.

The requirement in H.R. 6400 was incorporated therein as the result of a recommendation in the report of the Interagency Steering Committee.

The Committee reached the conclusion that Presidential approval was imperative because of the significant impact that the regulation of rates and practices in foreign air transportation would have upon the relations of the United States with the countries whose carriers would be affected.

One of the things that no doubt influenced the Steering Committee in making such a recommendation was the fact that at the present time section 801 of the act requires that the issuance, amendment, or transfer by the Board of a certificate authorizing an air carrier to engage in

oversea or foreign air transportation, or any permit issuable to any foreign air carrier, shall be subject to the approval of the President, and that giving the Board authority to control rates in international air transportation would substantially add to its powers over foreign air carriers.

Obviously, the provision was designed to provide assurance that the additional powers would be exercised in conformity with our international obligations and with the overall foreign policy interests of the United States.

While it is true that such orders are essentially technical or economic in nature, they could have a serious effect on our international relations as evidenced by the dispute a year ago with the British and other countries regarding the North Atlantic round trip discount fare.

I would now like to describe how international rates in air transportation are fixed and the various intergovernmental agreements governing them, since I believe that a knowledge of these procedures and agreements is essential in order fully to understand the effect of the Board's present and proposed powers on international rates.

Since 1946, most rates and fares in international air transportation have been determined collectively by carrier representatives at the Traffic Conference of the International Air Transport Association, subject to subsequent approval by the governments concerned, including the United States.

Thus, if all of the governments concerned approve the rates agreed upon at the Conference, they become effective and no problems arise. As a practical matter, most airlines have generally known what their governments would approve before they participated in a traffic conference and, over the years, carrier and governmental agreement has usually been reached.

However, in order to take care of the situation where IATA is unable to agree on a rate, or where a rate is agreed upon by IATA but is disapproved by one or more of the governments concerned, or where the carrier concerned is not a member of IATA, most air transportation agreements between the United States and the various countries contain rate articles relating to the rates to be effective in such instances.

Almost all of the outstanding air transport agreements between the United States and foreign countries are of the Bermuda type. The rate article in such agreements provides essentially that disputes between two countries with respect to proposed new rates shall, if possible, be settled by the governments before the rates go into effect.

If the two governments cannot agree, then the article provides for arbitration of the dispute and a commitment by each country to use its best efforts to implement the arbitration award.

The status of a proposed rate during the period of time required for consultation and arbitration is dealt with in alternative provisions of the bilateral agreement.

Paragraph (f) of the rate article is in effect during the time that the Board; that is, the CAB, does not have power to suspend and fix rates in foreign air transportation, while paragraph (e) would go into effect if the Board did obtain such power from the Congress. The differences between these two paragraphs are of great importance

in deciding on the substance of any legislation Congress should enact in this field.

At the present time, of course, paragraph (f) is in effect. Paragraph (f) provides that where one country is not satisfied with the rate proposed by the carrier of the other country, the objecting country can attempt to resolve the difficulty by discussing the problem with the other country, but if those efforts fail then the objecting country "may take such steps as it may consider necessary to prevent the inauguration or continuation of the service in question at the rate complained of."

Paragraph (e) of the rate article, which would be applicable in the event of enactment of legislation such as H.R. 6400, provides that where there is a dispute as to a proposed rate, that rate goes into effect provisionally—that is, pending completion of arbitration—unless the country of the carrier proposing the rate sees fit to suspend it.

Thus, enactment of H.R. 6400 would terminate the present right of a foreign country to suspend the rates of U.S. carriers since such rates would go into effect provisionally pending settlement of the dispute in accordance with the arbitration procedures.

Moreover, the Board would have the power, notwithstanding objections by a foreign country, to suspend and fix new rates of U.S. carriers and to modify existing rates of such carriers which it considers uneconomic.

The Board would, at the same time, lose the right, which it theoretically has now under the bilateral agreements, to suspend the rates of foreign air carriers, since such rates would go into effect provisionally pending arbitration. I emphasize that the right which would be lost is a "theoretical" one since the Board now lacks statutory power to suspend any rates in foreign air transportation. This absence of power has resulted in a one-way street in which foreign governments have been able to take unilateral action against our carriers, while we have not been able to do the same with respect to theirs.

The Board firmly believes that the advantages of H.R. 6400 greatly outweigh its disadvantages, because the prime need for rate control is the protection of the American public from excessive rates charged by the IATA carriers with the assistance of their governments.

Carriers accounting for the vast preponderance of international air traffic belong to IATA. These foreign carriers and their governments have, in general, pursued a high rate policy which we believe arises in large measure from a desire to offset the effect of uneconomical or prestige routes and possibly from higher costs in many cases.

In contrast, the U.S.-flag carriers are the most efficient in the world and generally speaking can afford to charge lower rates than their foreign competitors. Therefore, the principal need is for legislation which will permit the lower rates of our carriers to be put into effect.

The validity of such an opinion is supported by the dispute of a year ago with the British and other countries regarding the reduction of the round trip discount agreed upon by the United States and foreign carriers at the IATA Conference held at Chandler, Ariz.

As your committee knows, despite the Board's disapproval of the reduction of the round trip discount, the governments of several European countries insisted that the increased fares be placed in effect by United States and other carriers.

If provisions similar to those in H.R. 6400 had been in effect, and if as a consequence paragraph (e) of the rate article had been operative, the Board would have had the power to require the U.S.-flag carriers to charge the lower pre-Chandler fares and the foreign governments would have been unable unilaterally to prevent them from doing so.

The sole recourse of the foreign countries under these circumstances would be the consultation and arbitration provisions of the bilaterals. Moreover, for competitive reasons the foreign air carriers would have been compelled to follow suit and charge the lower fares charged by the U.S. carriers. Thus, the rate authority would have operated for the protection of the American traveling public, and I might add parenthetically, for the entire traveling public.

Although our objective of lower rates in the North Atlantic has in a large measure been realized for the current season, this does not mean that the legislation is not needed or that we will be equally successful the next time.

To say that "it was not easy to do" is probably the understatement of the year—in fact a major crisis occurred and a lot of hard work and cooperation by governments and carriers were necessary.

Fortunately, we already know that traffic across the North Atlantic has been up sharply since the new fares became effective on April 1, and we are confident that the lower fares are at least partially responsible.

As I have pointed out, the United States would lose the theoretical right to suspend the rates of foreign air carriers if H.R. 6400 is adopted and the provisions of paragraph (e) come into effect.

In our judgment, however, the loss is relatively unimportant. The power to suspend is of value primarily in cases where a foreign carrier proposes a rate which is uneconomically low, because in the absence of the power to suspend the rate our carriers must meet it or suffer severe diversion.

While this may have been a major problem a few years ago the threat of cutrate competition appears to have diminished.

Moreover, it is important to note that rate cutting has been confined primarily to a few non-IATA carriers, and that the governments of most of these carriers either do not have bilateral agreements with the United States, or have agreements which do not contain provisions similar to those of paragraph (e). Thus in these cases there is no paragraph (e) prohibiting suspensions, and the Board could suspend and fix rates of such carriers, whether they are too high or too low.

In addition, if it develops, after experience under the legislation, that the provisions of paragraph (e) do not sufficiently protect the overall public interest of the United States, the agreements containing the provisions of paragraph (e) could be renegotiated.

One objection which has been advanced against giving the Board rate control authority is that it would deprive U.S. carriers of the flexibility necessary to participate in IATA rate conferences, and that the IATA procedures for establishing a fair and sound rate structure for international air services would be impaired.

The Board does not believe that this is a sound objection. From long experience in rate and other international matters, the Board is fully aware of the problem of negotiating flexibility, and has no intention of using its rate power in a manner inconsistent with the continuance of IATA as the basic mechanism for determining international rates and fares in the first instance.

For a number of years the Board has followed the practice of consulting with our carriers prior to IATA conferences and advising them of the Board's views concerning changes in the IATA rate structure.

In establishing these guidelines the Board has been aware of the need to permit negotiating flexibility on the part of our carriers, and this would obviously continue to be necessary if rate legislation is adopted. Indeed, enactment of H.R. 6400 would probably improve the negotiating position of our carriers, since it would be backed by greater power in the Board.

It has also been urged that if the United States were given unilateral power to fix rates, this could lead to widespread adoption of the same practice by other countries, to frozen rates, and to loss of negotiating flexibility on the part of all carriers participating in the IATA conference.

The short answer to this is, of course, that virtually all other countries do have authority to fix the rates of their and our carriers, and will use that power when they deem it necessary, as the recent controversy with the British and other countries regarding the Chandler fares demonstrated.

This authority is derived from many sources other than direct statutory rate authority, such as decrees, regulations, direct power derived from the air sovereignty of the country according to the constitutional structure of that government, and provisions in bilateral agreements which have the effect of law without implementing legislation.

A further contention has been made that the fixing of international rates is a multilateral problem, that no one government can expect to impose its will on other governments, that even two governments bilaterally cannot solve a multilateral rate problem effectively and successfully, and that the problem can best be handled by the carriers through the IATA machinery.

We can largely agree with this point. One need become only generally familiar with the complexity of international rates to appreciate the tremendous difficulty of reconciling different viewpoints, and the need for an organization such as IATA.

Indeed, the international air transport policy study recently released recognizes this quite clearly when it states that "this multilateral mechanism (IATA), though it has some drawbacks, seems to be the most practical one we can achieve, and it should be maintained."

The fact is, however, that legislation is needed in addition to and as a supplement to the IATA machinery. The knowledge by the IATA carriers that the Board lacks effective power to back up its positions with regulatory action obviously diminishes the Board's influence over IATA actions.

Thus, power to suspend and fix rates would be a powerful force for reasonable rates even if that power were never exercised.

Moreover, this lack of effective power in the Board becomes an important factor which inhibits and restricts our final action upon IATA resolutions after the carriers have reached agreement.

Clearly, the Board must think twice before disapproving an IATA resolution when the consequences of our disapproval are such as to throw all power into the hands of other governments while the Board must stand helpless with respect to either the suspending or the fixing of rates.

Furthermore, the IATA mechanism does not always solve the difficult problem with which it is set up to grapple. The carriers themselves may sometimes be unable to reach agreement, and an open-rate situation comes into being.

Or some government may disapprove the rates established by IATA and for this reason an open-rate situation is brought about, the very situation which recently existed on the North Atlantic.

Finally, there are some important operations by carriers who are not participants in IATA. In all of these situations it seems abundantly clear to us that this Government should not be deprived of the tools necessary to take effective action in the fixing of rates.

On balance, therefore, the Board firmly believes that from the viewpoint of the public interest, especially the traveling and shipping public, Congress should enact H.R. 6400, and that loss of the right to suspend the rates of the foreign air carriers which are subject to the Bermuda rate provisions will be a small price to pay.

H.R. 1716

H.R. 1716, which is sponsored by the Air Transport Association, would amend the act so as to empower the Board to suspend proposed tariffs of air carriers and foreign air carriers relating to foreign air transportation, as well as existing tariffs of foreign air carriers, for a period or periods not exceeding 365 days.

In the case of suspension of a proposed tariff, the tariff, in effect immediately prior to the filing of the new tariff would be maintained.

In the case of suspension of existing tariffs, the foreign air carriers could use the lowest or most advantageous tariff currently in effect for air carriers engaged in the same foreign air transportation.

Certain criteria would have to be taken into consideration by the Board in exercising its suspension power. The Board would also be given the same power to prescribe rates and practices for air carriers in oversea transportation that it now has with respect to interstate air transportation.

It is clear that the ATA bill provides the Board only with the power to suspend rates, and does not give it the power to fix rates of either United States or foreign air carriers engaged in international air transportation.

It is equally clear that the bill does not bring into force the provisions of paragraph (e) of the rate article of the Bermuda-type bilaterals, under which a proposed rate in dispute goes into effect unless the country of the carrier proposing the rate sees fit to suspend.

On the contrary, it leaves in effect the provisions of paragraph (f), under which a country objecting to a proposed rate may take such steps as are necessary to prevent the rate from going into effect. The bill must, therefore, be reviewed in light of this background in determining whether or not it gives the Board the necessary power to protect the American public from unreasonably high rates imposed by foreign air carriers acting through IATA in concert with their governments.

There is only one area in which the ATA bill would be advantageous, and that is in the situation where a foreign carrier files a rate which is uneconomically low.

In such a case the Board would be able to suspend the rate—something it cannot do now, nor could do in the case of carriers subject to the Bermuda rate provisions if H.R. 6400 is enacted.

As I have previously stated, however, the problem of rate-cutting in international air transportation is now minor, and has been confined primarily to a few non-IATA carriers.

I also indicated that carriers accounting for the vast preponderance of international air traffic belong to IATA, and that these foreign carriers and their governments have, in general, pursued a high rate policy. On the other hand, we believe the U.S. carriers are generally the low-cost carriers and the most efficient.

The ATA bill is deficient in a number of respects from the standpoint of giving the Board the necessary power to protect the American public against unreasonably high rates. Its most basic defect is the fact that no power whatsoever would be conferred upon the Board after the expiration of the 365-day suspension period.

Although it is contemplated that settlement of a disputed rate would be negotiated during the suspension period, the inability of the Board to control the rate at the end of the period would tend to weaken this Government's hand in any such negotiations.

Moreover, even where negotiations would not be a factor, i.e., where the Board was dissatisfied with the rate of U.S.-flag carriers, the power to suspend would be futile since the carrier would be able to put the rate into effect at the end of the 365-day period regardless of the Board's wishes.

One of the most glaring inadequacies of the bill is the fact that the right of a foreign country to suspend rates filed by U.S. carriers would not be terminated by its enactment, since paragraph (f) of the Bermuda-type bilaterals would be left in effect.

Let us suppose, for example, that both the U.S. Government and the U.S. carriers desire to put into effect lower fares at the next IATA traffic conference, but that the conference fails to reach agreement on the fares because one or more carriers, under the unanimity rule, veto a fare reduction.

In this case, despite the wishes of our Government and our carriers, the foreign governments would be free, under paragraph (f), to suspend any reduced rates proposed by our carriers following the breakdown of the IATA procedures.

In fact, the Board may be confronted with this precise situation in the transpacific area within the next 6 to 9 months. It is not known to what extent U.S. carriers will advocate lower rates for this area. However, even if they do, they as well as the Board could be prevented from putting such rates into effect because of the opposition of foreign governments.

Moreover, the power to suspend foreign rates would result in minimal advantages or be illusory in most instances. There would appear to be little necessity for suspending unduly high rates of foreign carriers since they would not result in injury to U.S. carriers.

Also, the power to suspend an existing rate of a foreign air carrier could probably be used in very few instances because the foreign air carrier would be entitled to charge "the lowest, or the most advanta-

geous to it, of such rates" as may be currently in effect for air carriers engaged in the same foreign air transportation.

In a great many cases the U.S. carrier would be charging the same rate (due to IATA, competitive forces, or by order of a foreign country) as the rate of the foreign air carrier which would be suspended. The suspension would, therefore, have no practical effect. Where unduly low rates are filed by carriers of countries not having Bermuda-type bilaterals, as is likely to be the case, the Board should not be limited to mere suspension of the rate, but should also be able to prescribe a correct rate.

Finally, the ATA bill is deficient because it does not give the Board power to regulate the rates of our own carriers. While we can hope that it would rarely be necessary to require our carriers to increase or decrease their rates, such occasions may arise.

Whenever foreign carriers, governments and our own carriers favor high rates, the traveling and shipping public can be protected by the Board only if it has power to regulate the rates of the U.S.-flag carriers.

This would conclude my discussion of the ATA bill except for the fact that ATA contended at the hearings on S. 1540 and no doubt will repeat such contentions here, that only suspension power is necessary because the Board has power under section 402 of the act to insert conditions dealing with rate matters in the permits of foreign air carriers.

The Board is unable to agree that any effective control over the suspension and fixing of rates could be achieved under this section. Section 402 of the act is the licensing provision which requires that a foreign air carrier must obtain a permit from the Board before it may engage in foreign air transportation to and from the United States.

Section 402(e) provides that the Board may attach to a foreign air carrier permit "such reasonable terms, conditions, or limitations as, in its judgment, the public interest may require."

Although section 402 constitutes a broad grant of authority, it does not give the Board the power to regulate the level of the rates of foreign air carriers.

This view is further supported by the fact that the rate and tariff powers which the Board does possess both with respect to foreign and U.S. carriers are spelled out in precise and definite terms in the act.

The Board has full power in interstate air transportation to suspend and determine the level of rates in such transportation, and to cure discrimination in rates or practices. Similar powers are also spelled out precisely with respect to the Board's authority over rates in overseas air transportation, that is, transportation between the United States and its possessions, such as Puerto Rico.

In the field of foreign air transportation, the Board is given the same power by section 404 to cure discriminations with respect to foreign air carriers as it has with respect to U.S. air carriers.

Both foreign and domestic carriers are covered equally with respect to the content, filing, and observance of tariffs; and procedures, time limits, and statutory standards are spelled out in detail. There is not, however in this long and detailed enumeration of specific powers any grant of power to suspend or fix the level of rates of either U.S. or foreign air carriers in foreign air transportation.

In our view, therefore, an attempt by the Board in these circumstances to regulate the level of the rates of a foreign air carrier by conditioning its license would represent an attempt indirectly to exercise powers which the Congress intended to withhold from the Board.

Finally, even if the Board agreed with ATA that it had power to exercise some form of rate control under section 402, this power plus the ATA bill would still be unsatisfactory. Under the prevailing system of bilateral agreements, paragraph (f) would remain in effect and foreign countries would continue to be able to suspend the rates of our carriers.

SUMMARY

In view of the length of my testimony and the complexity of this problem, I would like to close with a brief summary:

1. Statutory authority for the regulation of rates in foreign air transportation is necessary because of the need for more effective governmental influence on rates to protect the needs of the traveler and the shipper.

2. The Board is virtually powerless at the present time to influence the level of rates because its indirect power of approval of rate agreements of IATA carriers is ineffective.

3. Legislation cannot provide the perfect solution of all possible situations, since no one government can expect to impose its will on other governments.

4. It is the opinion of the Board, and it has been supported in this opinion by the Senate in passage of S. 1540, that the prime need for rate control will continue to be protection of the American public from high rates by IATA carriers rather than protection of U.S.-flag carriers from the low rates of foreign competitors.

5. Enactment of H.R. 6400, and the consequent activation of paragraph (e) of the Bermuda-type bilateral, would provide the greatest assurance of obtaining fair and reasonable rates for the public and the carriers. Foreign governments would be unable to prevent the rates of our carriers from going into effect, and economic forces would preclude the foreign carriers from operating at higher rates.

6. The Board strongly urges, therefore, that favorable consideration be given to H.R. 6400.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Boyd.

This is obviously a rather complicated problem and it is somewhat difficult to understand in its full import.

We will, however, try to get a picture of the problem as we go along.

I think that we will need further discussion of these proposals and what is offered and further explanation of what we are able to do, in contrast to what foreign governments are able to do, and further explanation of IATA and perhaps more discussion on the so-called Bermuda-type agreements which have come into the picture as a result of the agreements reached by the International Air Transport Association in 1947 or 1949.

Mr. BOYD. The Bermuda agreement, I believe was signed in 1946, Mr. Chairman.

The CHAIRMAN. 1946.

Mr. BOYD. Yes, sir.

The CHAIRMAN. This Bermuda-type agreement is the predominant program now insofar as international rates are concerned. I believe that is true, isn't it?

Mr. BOYD. Well, the bulk of the bilaterals the United States has are of the Bermuda type, and the bulk of the rates under which the carriers operate are set by the International Air Transport Association which was given the blessings of the United States and the United Kingdom at the time the Bermuda agreement was signed.

The CHAIRMAN. But these rates which are finally arrived at in these various IATA conferences from time to time are primarily insofar as we are concerned, subject to the so-called Bermuda-type agreement?

Mr. BOYD. Well, if I understand your question correctly, Mr. Chairman, the rates as such are not subject to the agreement. The rates are something separate. What is subject to the agreement is what happens, after IATA has agreed on rates, if a government disapproves. That is where the Bermuda agreement comes in.

The CHAIRMAN. And then when that occurs—well now, there is one section of the Bermuda-type agreement, if they are approved, that comes into play, and if they are disapproved another section comes into play, isn't that right?

Mr. BOYD. No, sir.

The CHAIRMAN. What is the difference between (e) and (f)?

Mr. BOYD. The difference between (f) and (e) is what power the Government has where the Government disapproves. Under—

The CHAIRMAN. If you get confused, you can imagine how confused we are going to get.

Mr. BOYD. I can explain the difference, I keep forgetting which is which. We are under (f) now, and this paragraph (f)—I would like to read this in full into the record, if I may, Mr. Chairman, because this paragraph (f) of the Bermuda-type agreement is based on the assumption that the Civil Aeronautics Board of the United States will obtain from the Congress rate legislation.

The CHAIRMAN. Before you do that, let's get a little better picture of the Bermuda agreements.

I am just assuming I don't know anything about it and it is a pretty good assumption, I would think, even though I have had the pleasure of attending one of these conferences in the past, and I think it might be helpful to the members to give a little, first, give a little background of this thing so we will know what we are talking about.

Mr. BOYD. All right, sir.

What we are talking about is an executive agreement entitled "Air Transport Agreement." The Bermuda agreement was an agreement reached on the island of Bermuda by a delegation from the United States and a delegation of the United Kingdom, signed in the early part of 1946, after extensive negotiations throughout 1945, in an effort to establish the future civil air transportation relations between the two countries and hopefully to provide a model for other countries to follow.

The Bermuda agreement was essentially a compromise between two completely different points of view.

The CHAIRMAN. Between these two countries.

Mr. BOYD. Between these two countries.

The CHAIRMAN. Only?

Mr. BOYD. Well, there were other countries on both sides of the argument; but this is just bilateral between these two countries.

These differences became apparent at the Chicago conference in 1944 when all of the nations of the free world were invited to a conference by the United States to settle this matter of aviation relations after the war.

At that time the United States was a very strong proponent of freedom of the skies. In other words, that civil aircraft should be able to fly wherever they wanted to go on such frequencies and with such capacities as they chose, and with no rate regulation.

The United Kingdom was at the complete opposite end of the scale.

The United Kingdom wanted to have complete control over rates, to have complete control over capacity, to have complete control over routings, and to have complete control over frequency of operation.

Well, as you will recall, this was the irresistible force and the immovable object, so nothing came out of the Chicago convention, to settle any of this, and it became apparent that there had to be a settlement.

We just could not have a state of affairs after World War II where nobody knew what the situation was.

So the United States and United Kingdom got together with major delegations at Bermuda, and they argued for, I think 2 or 3 months, Mr. Chairman, but I am not sure of myself. I know it was a long time, and they came out with the agreement—

The CHAIRMAN. Major delegations. What are you talking about—delegations from each of the two countries?

Mr. BOYD. Yes, sir.

The CHAIRMAN. Or delegations from each of the other countries?

Mr. BOYD. Just from these two countries.

The CHAIRMAN. All right.

Mr. BOYD. And they came up with the agreement which has since been called the Bermuda agreement, which devised or developed through compromise a series of principles which are called the Bermuda principles.

Now, these principles as best I can enumerate them from memory, are, first of all, you have a route annex which is not a principle but this is just deciding who gets what route over which the carriers can fly.

Then there is the principle or policy of multiple designation which the United States insisted on, that is to say, that either country may designate one or more of its own carriers to operate on the routes it has been granted.

This was because of the U.S. belief in the forces of competition.

The second principle was on capacity, that the capacity to be offered by the carriers of each country should be reasonably related to the traffic to be carried between those two countries.

However, the carrier managements should have the freedom to decide how much capacity should be offered.

In other words, in the first instance the carrier management makes a decision that "we want to put 10 flights a week on," and neither we nor the British can say, "No; you should only put 5 flights a week on."

They have the right under the Bermuda agreement to do this.

It is to be reasonably related to the traffic moving between the two countries.

Now, that gets into definitions. Traffic insofar as the United States and the U.S. carrier is concerned is called third freedom traffic when that traffic moves from New York to London, that is third freedom traffic for a U.S. carrier.

When traffic moves on a U.S. carrier from London to New York that is fourth freedom traffic and this is the traffic on which the capacity is supposed to be based.

We also have another category or definition which is called fifth freedom traffic, and that is the traffic which moves from a third country to a country in the bilateral agreement.

For example, traffic which Pan American or TWA would haul from Rome to London or vice versa would be fifth freedom traffic, and the capacity is not supposed to be geared to carry that fifth freedom traffic under the concept of the agreement.

That fifth freedom traffic is supposed to be generally what is called fill up traffic.

I have enlarged on this capacity quite a bit, Mr. Chairman, because then we come to the next policy—

The CHAIRMAN. What is first and second freedom traffic?

Mr. BOYD. First and second, well these are not as far as passengers are concerned involved—passengers are not involved in first or second freedom traffic.

I have forgotten what first freedom is. I think second freedom is the right to operate a civil aircraft through a foreign country and to make stops for nontraffic purposes. I guess maybe the first is to overfly a country with a civil aircraft on peaceful mission.

Two, is to stop in transit for fuel or something like that.

Now, getting back to capacity, a carrier under the agreement puts in a certain amount of capacity, a certain number of frequencies. After a reasonable period of time the other country may say, "We think you have got too much capacity. We want to have a capacity consultation."

This brings up one of our cherished policies from the Bermuda agreement which is that of ex post facto review, and we say "OK, we can have a review of capacity after the service has been put in."

But the service must go in in the first instance, so ex post facto review is another one of the policies.

What else have we got? I have to call on Mr. Watson here. One of the other Bermuda phrases is fair and equal opportunity to compete. That is, the carriers of both countries under the agreement must have fair and equal opportunity to compete.

We construe this to mean there are no holds barred insofar as competing is concerned, that this does not mean reciprocity in the sense that reciprocity is defined by some to mean, "You run a flight and we run a flight."

This is not involved. It is that you can run as many flights as you want and we run as many as we want subject to the right to have capacity consultations.

In the capacity consultations the country, either country, may raise the question of undue effect, which is another one of the Bermuda principles.

That is to say that even though we have this more or less free competition, the agreement provides that the United States for example,

under the Bermuda agreement, cannot provide so much competition that it has an undue effect on the operation of BOAC. This would mean if there is sufficient traffic for everybody to make a living, the U.S. carriers cannot run BOAC out of business just by adding frequency and capacity, assuming that BOAC has got a fairly reasonable operation, fairly efficient.

If they are operating a dog, that is something else again, but assuming that the operations are comparable in terms of equipment, efficiency, and so forth, then the United Kingdom under that situation would be able to say, "Hold the phone. You cannot do this to us under the terms of the agreement."

And we couldn't.

But they would have to show it was the action of our carrier in this instance that was creating the harm, the harmful effect on the British carrier.

Now, these are the major Bermuda principles, Mr. Chairman.

The CHAIRMAN. In those then come these two provisions, the ones which you were about to read.

Mr. BOYD. These are in the rate article of the Bermuda agreement, and paragraph (f) of the rate article in the Bermuda agreement provides as follows:

Prior to the time when such power may be conferred upon the aeronautical authorities of the United States—

parenthetically this power is the rate power by legislation to which I alluded earlier as being assumed—

if one of the contracting parties is dissatisfied with any rate proposed by the airline or airlines of either contracting party for services from the territory of one contracting party to a point or points in the territory of the other contracting party, it shall so notify the other prior to the expiry of the first 15 of the 30-day period referred to in paragraph (b) above, and the contracting parties shall endeavor to reach agreement on the appropriate rate.

Now, if I may interject here this provision means that if one of the countries disagrees with a proposed rate which has been filed 30 days before the time the rate becomes effective it must contact the country whose carrier published the rate within 15 days and say "Let's talk about this. We don't like this rate and let's see if we can reach an agreement."

That is this paragraph.

In the event that such agreement is reached each contracting party will use its best efforts to cause such agreed rate to be put into effect by its airline or airlines. It is recognized that if no such agreement can be reached prior to the expiry of 30 days the contracting party raising the objection to the rate may take such steps as it may consider necessary to prevent the inauguration or continuation of the service in question at the rate complained of.

That is paragraph (f) and that is the paragraph under which we are and have been living, Mr. Chairman, and that is why the foreign countries last spring were able to force our carriers to raise their fares over our stringent and violent objections, because they complained about our rate. We talked, they were dissatisfied, so in the words of the agreement they took such steps as they considered necessary, and—

The CHAIRMAN. And that step was, "If you don't agree to the rate we suggest you don't get to land at our airport."

Mr. Boyd. That was one of the possibilities, Mr. Chairman. Of course, it worked differently in different countries.

We were very pleased that in one country the government sent officials out to the airport to collect the difference from passengers on one of our airplanes when it landed. This was wonderful publicity, I will tell you, to have Pan American come in with a bargain rate ticket and this foreign government with a uniformed guard saying, "Give us \$25 extra."

In other cases there were threats there would be confiscation of the aircraft and in others there were civil penalties threatened to be imposed on the carriers in the way of fines, and also our carriers were advised in one or two countries if they did not increase their fares they would be guilty of criminal violation.

So that is where we were, and that is where we are.

The CHAIRMAN. Do most of your bilateral agreements, most of our bilateral agreements now with foreign nations follow this principle of the Bermuda type?

Mr. Boyd. Yes, sir. Yes, sir. We have, as I recall, we have about 48 or 49 agreements, Mr. Chairman, and about three-quarters of them have the Bermuda type rate article in them.

I can provide the committee with a list of the types of bilaterals we have.

The CHAIRMAN. I have a list here. I will submit it for the record and you can look it over to see if you have any corrections. Most of them are Bermuda type, and in No. 2 there seems to be a new form with Mexico and the United Arab Republic. Is that true?

Mr. Boyd. Yes, sir.

(The list referred to follows:)

TYPES OF BILATERAL AGREEMENTS TO WHICH UNITED STATES IS A PARTY AND FOREIGN COUNTRIES PARTIES TO VARIOUS TYPES

1. Bermuda type:

Australia
Belgium
Brazil
Canada
Chile
China
Colombia
Cuba
Denmark
Finland
France
Germany
India
Iran
Israel
Italy
Japan
Korea
Netherlands
New Zealand
Norway
Pakistan
Spain
Sweden
Switzerland
Union of South Africa
United Kingdom

1. Bermuda type—Continued

Venezuela
Nigeria, Jamaica, and Trinidad
have assumed obligations of
United Kingdom

2. New form:

Mexico
United Arab Republic

3. Short form:

Peru
Uruguay

4. No rate article:

Austria
Bolivia
Burma
Czechoslovakia
Dominican Republic
Ecuador
Greece
Iceland
Ireland
Lebanon
Panama
Paraguay
Portugal
Syria
Thailand
Turkey

The CHAIRMAN. Then there seems to be No. 3, a short form with Peru and Uruguay.

Mr. BOYD. Yes, sir.

The CHAIRMAN. And No. 4, apparently there is no rate article with a number of countries, primarily smaller countries which are included, you can look over to see if this is true. This might be helpful.

Mr. BOYD. Yes, sir. I am sure that list of yours is correct.

The CHAIRMAN. I will put it in the record if there is no objection that it go into the record at this point subject to your correction.

Mr. BOYD. Yes, sir.

Mr. Chairman, what we are trying to do, among other things, is to get under paragraph (e) of the rate article, and I would like to—

The CHAIRMAN. I think you might as well go ahead and explain that, Mr. Boyd, so we can get the whole thing here.

Mr. BOYD. All right, sir. Paragraph (e) provides:

In the event that power is conferred by law upon the aeronautical authorities of the United States to fix fair and economic rates for the transport of persons and property by air on international services, and to suspend proposed rates in a manner comparable to that in which the Civil Aeronautics Board at present is empowered to act with respect to such rates for the transport of persons and property by air within the United States, each of the contracting parties shall thereafter exercise its authority in such manner as to prevent any rate or rates proposed by one of its airlines for services from the territory of one contracting party to a point or points in the territory of the other contracting party from becoming effective if in the judgment of the aeronautical authorities of the contracting parties whose airline or airlines is or are proposing such rate, that rate is unfair or uneconomic. If one of the contracting parties on receipt of the notification referred to in paragraph (b) above—

That is the 15-day notice.

The CHAIRMAN. Paragraph what?

Mr. BOYD. (b) as in baker. That is the 15-30-day notice.

is dissatisfied with the rate proposed by the airline or airlines of the other contracting party, it shall so notify the other contracting party prior to the expiry of the first 15 of the 30 days referred to and the contracting parties shall endeavor to reach agreement on the appropriate rate.

Then I will skip over if agreement is reached.

If agreement has not been reached at the end of the 30-day period referred to in paragraph (b) above, the proposed rate may, unless the aeronautical authorities of the country of the air carrier concerned see fit to suspend its application, go into effect provisionally pending the settlement of any dispute in accordance with the procedure outlined in paragraph (g) below.

Which is a procedural paragraph. But you see, Mr. Chairman, the difference is that where we have a disagreement now under paragraph (f) the foreign countries are able to do what they want to do, and impose it on our carriers.

If we have a disagreement, and we have rate legislation, then we are able to permit our carriers to operate at whatever the U.S. Government feels is the appropriate rate or tariff, pending legislation; in other words, they can stop us now, but they couldn't stop us under paragraph (e).

The CHAIRMAN. In other words, if there was any stopping under paragraph (e) you would have the right to do it?

Mr. BOYD. That is right, sir.

The CHAIRMAN. In other words, using as an example—the United Kingdom could stop its own but it couldn't stop American air carriers?

Mr. BOYD. That is right, sir.

The CHAIRMAN. I get that difference. I am sorry to be taking so much time in getting this out at this point.

Do you have any questions, Mr. Staggers?

Mr. STAGGERS. I have no questions.

The CHAIRMAN. Mr. Younger?

Mr. YOUNGER. Thank you, Mr. Chairman.

That this is complicated is the understatement of the year. Do I understand now that a foreign country can exercise its rights to control the traffic, planes, and rates from this country landing in their country?

Mr. BOYD. Yes, sir.

Mr. YOUNGER. Your statement on page 19:

Since no one government can expect to impose its will on other governments—

Isn't that contrary to that statement?

Mr. BOYD. Well, obviously, Mr. Younger, sooner or later you have to reach agreement and either we live with other countries or we go to war, and they are in the same shape with us.

The problem is this: That we can reach agreement—let me go back. They can impose their will on us as was done last year and ultimately we do reach agreement. But the agreement has to be influenced to some extent by who has the ultimate power because, if we don't reach agreement, we go back to what they want to do.

Now, we are always in a position where we can say no more of this, we denounce the agreement, but this is not the answer. The answer, as we see it, is that we have comparable power with the other countries.

Mr. YOUNGER. I am just trying to reconcile that with your statement "Since no one government can expect to impose its will on other governments" that is actually being done now. That is the situation now, isn't it?

Mr. BOYD. From time to time; yes, sir.

Mr. YOUNGER. Yes. And that is what was done last year with the rates?

Mr. BOYD. Yes, sir.

Mr. YOUNGER. So that you can expect one government to impose its will on other governments?

Mr. BOYD. Yes, sir. If I may say in that context, the meaning in my statement was that we didn't—we don't want to give the impression in our testimony or develop a record for this legislation which will give any impression that we think we can go around with a baseball bat and hit people over the head and make them do what we, the United States, want them to do, because we don't have that philosophy, and we wouldn't have it, if we—when we get the legislation, but we don't want to be in the position where we are now where our friends across the water have the baseball bats and we have our hands tied behind our back.

Mr. YOUNGER. That is what is rather disturbing to me; that you don't even want the same rights that the other countries have. You

don't want to even intimate that you want the same powers that they now possess.

Mr. BOYD. Well, of course, when we talk about the same powers other countries possess, Mr. Younger, we run immediately into a completely different form of constitutional government in most of these other countries and they possess the power that they seem to feel they want at the moment in many cases by issuing decrees or fiats or whatever because they don't operate under the same legal systems we do.

They can get a law or a regulation that has the effect of law in many countries in the length of time it takes to write it out on a sheet of paper and have somebody sign it. We can't do that and there is no way we can do that under our constitutional system.

So, what we want is power which will enable us to permit our carriers who are the most efficient, and there is certainly no question about that, to put in and maintain rates that are fair and reasonable without regard to what the foreign competition wants to do.

Now, our carriers have for a long time—

Mr. YOUNGER. Just a minute there.

Mr. BOYD. Sir?

Mr. YOUNGER. Again I don't reconcile it. You say you want the power to have our carriers establish rates regardless of what the other country wants done.

Mr. BOYD. Well—

Mr. YOUNGER. Is that what you just said?

Mr. BOYD. Yes, sir; that is right.

Mr. YOUNGER. Aren't we then in a position to impose our will on the other government?

Mr. BOYD. No, sir; no, sir. Because the bilateral agreement specifically provides that where we have a dispute, whether or not we have rate legislation, the next step is arbitration. But, with rate legislation, then our rates go into effect pending arbitration.

Without rate legislation, their rates go into effect pending arbitration. So there is a next step all the way down the line.

Mr. YOUNGER. That is all, Mr. Chairman.

The CHAIRMAN. Well, now, did you distinguish between—just to carry that forward a little bit, and as I said earlier this is a very complicated thing and I think we will probably have to get into it—did you distinguish the difference between the powers of the Civil Aeronautics Board when you talk about the authority which Mr. Younger asked you about, and the authority of the U.S. Government, which the Board doesn't have?

Mr. BOYD. No, sir; I didn't make that distinction.

The CHAIRMAN. Well, there is a distinction, isn't there?

Mr. BOYD. Yes, sir. So far as we know, the State Department will be in here to testify shortly and probably answer better than I can but, so far as we know, the CAB, Civil Aeronautics Board, does not have power to effect control of rates with the existing legislation in the Federal Aviation Act.

Now, I think we assume that within the sovereign power of the U.S. Government there is power to take pretty much whatever kind of action one desires. Whether or not it is consonant with an existing agreement is something else again, but I am frankly not competent to discuss this. This is a matter of constitutional power.

The CHAIRMAN. Yes. But what I was trying to make clear on the record is what you are talking about here is the power of or authority within your own organization.

Mr. BOYD. Yes, sir; I am limiting myself to that.

The CHAIRMAN. Yes. Well, I think maybe some could get the impression you are talking about the overall authority of this country, including the Board, and I think we should probably get that distinction as it will be developed as we go along.

Mr. BOYD. No, sir; I am limiting myself.

The CHAIRMAN. Mr. Macdonald?

Mr. MACDONALD. Mr. Boyd, along that same line, I am happy for once to agree with you as far as I understand this proposed bill. However, how, if the rate section (e) becomes law—how would that change the action, say, whatever government it was, that boarded the Pan American plane and demanded \$25 more which was a lower rate than Pan American wanted—how would this rate section affect that government?

Mr. BOYD. That government would have had no right to interfere in any way with Pan American or its passengers without—unless it were willing to violate the bilateral because the bilateral provides that when the United States has rate legislation the rate that the United States approves will be, in effect, pending arbitration.

Therefore, we do not assume that any country is going to deal in bad faith so they would have no right to interfere; or put it another way, if they did interfere it would be without right or without color of right.

Mr. MACDONALD. They wouldn't have to agree to this. They have already agreed to it.

Mr. BOYD. That is right, sir.

Mr. MACDONALD. If there is rate legislation then they will arbitrate before they take any action?

Mr. BOYD. That is correct.

Mr. MACDONALD. My last question: If they did this to Pan Am or TWA last year, were you powerless to reciprocate?

Mr. BOYD. Yes, sir, the CAB had no power. We have no retaliatory power.

Mr. MACDONALD. You couldn't tell them that as long as they were confiscating planes or holding them up by armed guards—if you want to be dramatic, getting ransom out of them—therefore, they were abrogating their agreement and they could no longer, say, fly to New York?

Mr. BOYD. Unfortunately, this is the basic problem, Mr. Macdonald. These other governments have the power to do what they did in the light of the agreement, by virtue of their own domestic laws. I say the power. I don't know that they had the power or the right to put a soldier out at the steps and say to each person who got off, "Give me \$25, American."

Mr. YOUNGER. Will the gentleman yield for just one question on that point?

Mr. MACDONALD. Yes.

Mr. YOUNGER. Isn't there also a difference in that the foreign government itself owns the plane rather than our position where we have companies who are independent of the Government?

Mr. BOYD. Generally speaking, Mr. Younger, the major air carriers are owned either totally or almost totally by governments.

Mr. YOUNGER. That is what I mean.

Mr. BOYD. There are private interests, I believe to some extent, in Alitalia, Air India.

Swissair, though, as far as I know is pretty much of a privately owned company. KLM stock is traded on the New York Stock Exchange. But there is a major government interest in KLM also, and, I think, Canadian Pacific is privately owned. It is owned by the Canadian Pacific Railroad, but most of them are either totally or for the most part government owned.

Excuse me, sir, I don't know whether I answered your question.

Mr. MACDONALD. I actually—this last question, because it is in a vague area, but if you say you don't have the power to retaliate?

Mr. BOYD. Yes, sir.

Mr. MACDONALD. For a government who does this rather high-handed thing that you pointed out was done with Pan Am. Don't you think you should have the power or some agency should have it?

Mr. BOYD. Well, let me put it this way, Mr. Macdonald.

If we have rate legislation then this sort of stuff would never arise, and one of the things that frankly has concerned me about the whole development last year was that aviation is a very important matter, certainly it is my livelihood and that of many other people, but it is not the whole world, and if we had had rate legislation we could have kept this in the aviation area, and solved it as an aviation problem.

Instead of that what happened was that we got right to the brink of an international crisis with some of our best international allies and friends. It escalated completely out of the field of aviation, and it should never have gotten out of that.

Mr. MACDONALD. So you don't feel you need that kind of a problem or want it?

Mr. BOYD. I don't think so. If we get the rate legislation the problem is resolved. It won't exist.

Mr. MACDONALD. Thank you, Mr. Chairman.

Mr. HULL. I just wondered, Mr. Chairman, does IATA have anything to do with ratemaking when you have those meetings?

Mr. BOYD. Yes, sir; that is the main function of IATA. If I may take a minute for some background on the Chandler conference, IATA operates in the rate area through traffic conferences, and for some reason they give the conference the name of the community where the conference is held so you hear of the Salzburg conference, the Chandler conference, and so forth.

At Chandler, Ariz., in September of 1962, there was a traffic conference meeting of the IATA carriers. There must be unanimous vote, incidentally, for any agreement to be reached. As is the practice of the Board, as I mentioned earlier, prior to any traffic conference we ask our carriers, the U.S.-flag carriers to come in and tell us what they understand is going to come up, and what they expect to propose themselves to the conference, and then we write a letter which is fairly general saying, "We are in agreement in these areas and that area and this is what we think you ought to do generally," so they have got plenty of flexibility, we don't try to tie them down.

At the time of the meeting with the carriers, there were two meetings in fact, prior to the Chandler conference, the Board was given the dis-

inct impression by our carriers that the status quo would remain. There would be no effort to increase fares but it was doubted that there would be any opportunity to decrease fares, although our carriers have historically sought normally to lower the fares.

So, we said, "OK, status quo looks all right."

After all 1961 had been a bad year, jet transition, and traffic hadn't grown and they were all in pretty poor shape financially.

So lo and behold they have the conference at Chandler and come out without a fare increase as such. What they did was to take the 10-percent round trip discount and reduce it to a 5-percent round trip discount, which had the effect of increasing the fare, and we said, "Hold the phone" when we found out about this.

It had already been agreed and by our carriers, too. So we called our carriers in and said, "What is all this about?"

And they said, "Well, we tried," and I am certainly making no allegations here that they didn't.

"We tried to get a better deal and we couldn't. So this being the best deal we could get we agreed to it."

And our position was: We are the U.S. Government, we are not the air carriers and this deal is not good enough for the U.S. Government, because there was no justification for increasing the fares, and we asked our carriers to provide us with something in writing for justification and they came back with letters and said, "This was the best we could do," which we didn't construe as being very good justification.

So, then, we issued a tentative disapproval of the fares, of the agreement, which had the fares in it, and said, "We propose to disapprove these fares because this increase is not justified."

So then the organization itself, the association, IATA, petitioned the Board for opportunity to present some material in the hope of persuading us that we should permit the agreement to be approved.

We said all right. So they came in with a petition signed, I think by 28 carriers, members of IATA, and the gist of their petition was, "If you don't approve this fare agreement there will be utter chaos." And we didn't think that was justification either, so we looked at it and we said, "No, we disagree and therefore we disapprove."

Well, the disapproval really means that the carriers who file the tariffs with the Board are then subject to antitrust action, if they act in concert.

Mr. HULL. That would be in our country, not in foreign countries.

Mr. BOYD. Yes, sir.

So, the United Kingdom asked if they could have some informal talks with us, and we said, sure, and we talked with a representative of the United Kingdom for 3 days and we got nowhere, and the gist of the conversation was that "you can't do this to us." And they made it stick later on but we didn't appreciate it at the moment.

Mr. HULL. I was wondering where his \$25 lug came in if there is anything to the agreement they make with the IATA.

Mr. BOYD. The what?

Mr. HULL. The \$25 or whatever it was.

Mr. BOYD. This is what happened.

We told our carriers, "You keep charging the old fare," which they did. The European governments told their carriers, "You charge the

higher fare," and they told our carriers, "You charge the higher fare," and our carriers were charging the old fare, the lower fare, so when they got to this one foreign country, they had somebody there to pick up the difference, and I presume turn it over to Pan American although I have never found out just what they did with the money.

This was only on one planeload.

Mr. HULL. Thank you, sir.

Thank you.

The CHAIRMAN. Mr. Devine?

Mr. DEVINE. I have no questions, Mr. Chairman.

The CHAIRMAN. Mr. Jarman?

Mr. JARMAN. Mr. Boyd, my understanding is that under 6400 the Board would have the power to suspend tariffs of carriers and would also have the power to regulate the rates and practices of carriers.

Let's assume that a carrier had a rate that was either too high or too low, and the Board stepped in and exercised its authority.

What would be the time factor involved under that authority before a decision might be finally reached on a rate?

Mr. BOYD. I am not sure that I can answer your question, Mr. Jarman.

I think I would have to know whether it is a carrier—whether it is a U.S. carrier, whether it is operating under Bermuda, whether the fare is applied to a country operating under a Bermuda type of agreement or some other type agreement, and I am not trying to evade the question.

I think that all of these things have got to be stated in the premise in order to give you—

Mr. JARMAN. Let's assume it is a U.S. carrier.

Mr. BOYD. Yes, sir.

Mr. JARMAN. And it set a fare that the Board considers either too high or too low.

Mr. BOYD. Well, we would suspend, all right. That is the triggering point, I believe, we suspend.

The CHAIRMAN. You would do that in either the 6400 or 1716?

Mr. BOYD. Yes, sir.

The CHAIRMAN. At that point?

Mr. BOYD. Yes, sir.

The CHAIRMAN. All right.

Mr. BOYD. Now, frankly, I don't recall whether the time is set forth in 6400. My recollection, though, is, Mr. Jarman, that it would be under the same procedural limitations, same provisions we now have in the domestic law which would be suspended for not more than 6 months. There is a 180-day clause which we use—there is a 180-day clause in the law today for interstate air transportation, and the provision would be exactly the same procedure.

Mr. JARMAN. You would suspend but there would be hearings and the presentation of both sides of the question?

Mr. BOYD. Yes, sir.

Mr. JARMAN. What I am trying to get clear in my own mind is how much of a time delay factor is involved in the authority that the Board requests. What kind of delays are involved in the interstate cases that the Board now has before it?

Mr. BOYD. Right. Well, there can't be more than 180-day delay, so that is 6 months. But as a matter of fact and practice, Mr. Jarman,

what normally happens is that when the Board suspends a tariff today in interstate air transportation, the carrier either withdraws the tariff or, after consultation with the staff, it will put in another tariff, which the staff will indicate we think this might be all right. However, the staff can't commit the Board.

But normally, these things are worked out between the staff and the carrier, and in the vast majority of the cases, suspension cases, we don't go to hearing.

Mr. JARMAN. How much contest is there over rate questions in the domestic field? How many such cases arose under your interstate authority in 1963?

Mr. BOYD. I would say between 40 and 50.

Mr. JARMAN. Per year?

Mr. BOYD. Yes, sir.

Mr. JARMAN. Well, then, as to the expediting of a decision, I assume that there is no backlog of such cases now before the CAB?

Mr. BOYD. Yes, we have got a backlog of cases, of tariff cases, but we have no backlog of cases where we utilized our suspension power. You see the Board can either suspend and investigate or it can permit the tariff to go into effect and investigate.

And we have several cases where we have permitted the tariff to go into effect. We did not suspend, but we ordered an investigation because the tariff, in our judgment was sort of on the fence as to whether or not the fares to be charged were compensatory, and we do have some backlogs in that area.

Mr. JARMAN. Would that approach be possible under 6400?

Mr. BOYD. Yes, sir.

Mr. JARMAN. Where you would permit the rate to go into effect and simply investigate rather than suspend.

Mr. BOYD. Yes, sir; we could do either. It would be the same as in the interstate.

Mr. JARMAN. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Sibal?

Mr. SIBAL. Thank you, Mr. Chairman.

Mr. Chairman, where is the main thrust coming from in pushing this legislation. Who is behind this, what agency of Government or what group of people are pushing this?

Mr. BOYD. It is the Civil Aeronautics Board, Mr. Sibal, and we have been pushing that since 1942. We had a spur last year but we have sought this except for the period I mentioned earlier, the 2d session of the 87th Congress, we asked the Congress not to take action pending the completion of our international air transport policy study.

Mr. SIBAL. This because, as you indicated in your statement, that you feel that you need this authority in order to protect the public interest?

Mr. BOYD. Yes, sir.

Mr. SIBAL. Has the Board given any consideration, had any discussion among its members as to the problem which I think might arise if this legislation passed wherein you would become subjected to perhaps pressures or influences from the State Department in your work in this area.

Perhaps the State Department might be interested in relation with a particular foreign government which had an interest in a particular foreign carrier.

Have those elements come to your consideration?

Mr. BOYD. No, sir; I can't say there has been any consideration of that in terms of discussion among the Board members. It is difficult for me to conceive of such a situation.

Now, obviously today and ever since the Board has been in existence the State Department has had the right to advise us of political considerations that are involved in international aviation matters. And in fact we seek the views of the State Department in connection with permit proceedings and all other matters involving international aviation.

But we are not concerned about pressures. That is the story of our life.

Mr. SIBAL. Do you think the question, do you think my question is farfetched?

Mr. BOYD. What?

Mr. SIBAL. Do you think my question is farfetched and please feel free to say so.

Mr. BOYD. I don't think your question is farfetched but I think we view our function as being stated in the law, and if the State Department or the White House or Defense or anybody else wants to make a representation to us we are glad to receive it, and if we think that their representation comports or their advice or suggestions comport with what we should be doing under the law then we do it.

If we don't agree with them then we say, "Thank you very much."

Mr. SIBAL. The reason I ask this question is you show in your statement the authority you have in regulating these carriers in the case of interstate commerce?

Mr. BOYD. Yes, sir.

Mr. SIBAL. And you show by comparison you lack similar authority in many instances in terms of international traffic. And yet it would seem to me it doesn't necessarily follow that what authority you should have on an interstate basis you should have on an international basis because there are other different elements involved, aren't there?

Mr. BOYD. Absolutely, and that is one of the reasons why H.R. 6400 is couched in terms of discretionary power. Whereas our domestic ratemaking power is not discretionary at all. It is absolute.

Mr. SIBAL. Would it be your feeling that your decisions, the CAB's decisions in these ratemaking problems, even though your power is discretionary under H.R. 6400 should be made on the determination of the economics of the airlines, and the economics of the public in terms of the public interest.

Do you feel that is what the primary consideration should be?

Mr. BOYD. Absolutely. That is what the Board is in business for, and we—that is what we deal with.

Mr. SIBAL. And you wouldn't feel that part of your responsibility would be to work with those areas of our Government who have the responsibility perhaps of bolstering up the foreign economy or anything like that?

Mr. BOYD. Oh, sure. We don't feel we are separate and apart from the rest of the Government, but as far as the Board is concerned, our considerations are economic considerations.

If there are political considerations then it is up to the State Department to advise us of those political consideration and we certainly take that into consideration.

Mr. SIBAL. No matter how it affects the American carrier.

Mr. BOYD. Well, now that is a hard question to answer. I think I could say in a broad way, yes, no matter how it affects the American carrier, because in the time that I have been in Washington, the State Department has never made any recommendations or asked anything of us which would be detrimental to the American carriers, and just as we are the economic agency, and State is the political agency, I am perfectly confident that the State Department is concerned about the economic welfare of the carriers, as we are concerned about the political posture of the United States.

Mr. SIBAL. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. MOSS.

Mr. MOSS. Mr. Chairman, what you are actually seeking here is additional authority which was clearly contemplated at the time of the 1946 agreement?

Mr. BOYD. Yes, sir.

Mr. MOSS. And the difficulty of last year with the Government of Great Britain occurred under that agreement and was completely in consonance with the agreement?

Mr. BOYD. Absolutely, yes, sir.

Mr. MOSS. We had agreed in advance that where disapproval was voiced by our Government, that the other government, under section (f) could then take whatever steps, in its judgment might be required, and we didn't limit the steps it could take.

Mr. BOYD. That is exactly right, Mr. MOSS. What steps they could take depended on what authority their domestic law gave them.

Mr. MOSS. So, we are not going here into the basic rights of a sovereign nation but rather the rights which are clearly agreed upon in advance in the Bermuda agreement, and you want to have the additional powers which were contemplated in the section (e) of the agreement so that this Government can deal more effectively without its hands tied as was the case last year, where there are disagreements?

Mr. BOYD. That is right, sir. To put us on a par with the other parties to the agreement.

Mr. MOSS. I think you made a very excellent statement. Those are all the questions I have, Mr. Chairman.

The CHAIRMAN. Mr. BROTZMAN?

Mr. BROTZMAN. Just to follow up on that point. Had this law been in effect, Mr. Chairman, last year, at the time of the crisis what could the Board have done to correct the situation?

Mr. BOYD. Well, first of all, Mr. Brotzman, there would have been no crisis. Had this legislation been in effect last year, when on March 18, we issued our order disapproving the IATA agreement which had the effect of raising the fares by reducing the roundtrip discount from 10 to 5 percent, our carriers would have operated legally, lawfully within the terms of the bilateral agreement at the old rate, and the United Kingdom and Italy and Spain and all these other countries would have, I am certain, said, "That is all right. We want to go to arbitration. But you have every right to operate at the old fare."

So, there would have been no crisis.

As a matter of fact, this is exactly what happened, Mr. Brotzman, in the case of the Canadian carriers, because Canada does have legislation, while their bilateral is not in identical terms with ours, their bilateral form, it is practically the same, and the Canadian carriers con-

tinued operating at the old rate, and they operated without any restrictions.

So, I don't think there is any question there would have been no crisis had we had that legislation.

Mr. BROTZMAN. Now to sum up two key statements, I think you made on pages 3 and 4, your present authority, as I understand it, is to remove discrimination after notice and hearing.

Mr. BOYD. Yes, sir.

Mr. BROTZMAN. Now this: When you use the word "discrimination," is this discrimination between two competing airlines or what does this mean?

Mr. BOYD. No, sir; this is discrimination in terms of the traveling public.

Mr. BROTZMAN. I see. This has nothing to do with rates.

Mr. BOYD. Yes; it does. It does but it means discrimination or nondiscrimination; let me put it this way: Nondiscrimination means if you and I get on an airplane, take the same trip, we pay the same fare and the fact you wear glasses and I don't doesn't have anything to do with it.

But often—I shouldn't say often, but sometimes a situation will develop where carrier will say, "Everybody who wears horn-rimmed spectacles can fly at a 20-percent discount."

Well now, that is not a legitimate distinction, and that is discrimination. I am being discriminated against; you are getting the preference.

Mr. BROTZMAN. Thank you. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Dingell?

Mr. DINGELL. No questions, Mr. Chairman. Thank you very much.

The CHAIRMAN. Mr. Hull?

Mr. HULL. No questions.

The CHAIRMAN. Mr. Van Deerlin?

Mr. VAN DEERLIN. No questions.

The CHAIRMAN. Mr. Pickle?

Mr. PICKLE. No questions.

The CHAIRMAN. Mr. Boyd, you mentioned in your statement the authority of the Board on disapproval under section 412 of the present act, agreements relating to the rates and that the carriers must then act individually when filing rates as required by section 414. I believe that is page 4 of your statement.

Mr. BOYD. Yes, sir.

The CHAIRMAN. And you stated when they do so the Board is powerless to prevent carriers from filing any rate it chooses. It may be wholly unacceptable from the standpoint of conventional rate-fixing criteria.

Mr. BOYD. Yes, sir; it may be wholly unacceptable.

The CHAIRMAN. Yes. By that do you mean that when you do approve a rate agreement under section 412 you have approved the rate from the standpoint of conventional rate-fixing criteria?

Mr. BOYD. To the extent that it is possible, Mr. Chairman.

Now on international rates and fares the only information we have available to us is the information relative to the U.S.-flag carriers.

So, we use them as a measuring stick, but the fact of the matter is that we do not know what the economic situation is of the foreign-

flag carriers. We assume that our carriers are models for this exercise and, if the fares proposed in the agreement makes sense related to the U.S. carrier figures, then we approve them.

So, in that sense, it is based on economic criteria.

The CHAIRMAN. All right. By that do you actually determine the just and—apply the just and reasonable criteria to our own carriers?

Mr. BOYD. Yes, sir; yes, sir.

The CHAIRMAN. Do you have the usual type hearings and investigation, and require information to be filed, and so forth, to arrive at that determination?

Mr. BOYD. Oh, no; but I don't want to leave any inference here we normally have any hearings in connection with tariff approvals, Mr. Chairman. We normally do not.

The CHAIRMAN. How do you arrive at the just and reasonable decision?

Mr. BOYD. Well, very simply because we have a number of recurrent reports which are filed by our carriers, which are available to the Board for ascertaining what the earnings of the carriers are, and we start, of course, from—we don't set any of these fares in a vacuum. We have a history going back to 1939 or 1940, and we relate fare changes to a considerable extent to what the fares have been in the past. We have no formula, Mr. Chairman, to say that a fare of x dollars is just and reasonable and a fare of x plus \$5 is unjust and unreasonable.

There is a broad area of discretion, and there has to be. We cannot predict any more than the carriers can precisely how much traffic they are going to generate on any given fare.

Everybody makes projections, but it is guesswork, and as often as not the guess is pretty far off. So you have to use discretion and we do use it.

The CHAIRMAN. Of course, that is always a problem in the theory of ratemaking.

Mr. BOYD. That is correct, sir.

The CHAIRMAN. Whether it is by your Board or by the Interstate Commerce Commission. But do you apply the same rule—ratemaking criteria—on arriving at international rates that you do, at arriving at domestic rates?

Mr. BOYD. I would have to—I would like to ask Mr. Roth about this. My impression is that we do not, in either international or domestic, require the carriers to file supporting material but that always in the domestic filings they do file supporting material and whether they do in international I do not know.

Would you address yourself to that, Mr. Roth?

Mr. ROTH. Yes, sir. I would say, Mr. Chairman, that generally speaking we apply fairly similar criteria internationally as we do domestically but not identically—not identical criteria.

This in part is related to the difference in procedures that are involved and the very lack of suspension power in the hands of the Board in the case of international transportation.

The tariffs are filed with the Board for either domestic or international fares at least 30 days in advance. In the case of the domestic tariffs the air carriers are required by our tariff regulations to make a prima facie case with whatever economic data they wish to submit as their statement in support of the particular air tariff.

This, together with all other data available in the Board's files, would be utilized by the staff in analyzing the tariff and in accordance with established criteria and principles which, generally speaking, are generally similar to ICC principles for surface transportation ratemaking, the board reaches a determination whether to exercise its domestic suspension power.

In the case of an international rate, the Board's only jurisdiction is related to the review of the agreement among the air carriers.

I think there, by virtue of the very nature of the process of unanimous agreements among a series of air carriers, the relatively more limited information we have with respect to the various air carriers, extremely limited information as to the foreign air carriers, the Board tends, in general, to give a greater degree of discretion to the international air carriers.

But on the other hand, in situations where earnings appear to be adequate, the Board, I believe, would follow similar criteria either domestically or internationally in passing upon the question of a general fare increase, for example.

The CHAIRMAN. If you were required by law to use the just and reasonable rule, could our carriers have charged the same fares in the transatlantic case?

Mr. ROTH. Do you want me to answer that, Mr. Boyd?

Mr. BOYD. Yes.

Mr. ROTH. Very definitely, sir.

As a matter of fact, we can furnish the committee with a record of earnings for Pan American and TWA for their transatlantic operations for the 12 months ended March 31, 1964, and I believe that Pan American's rate of earnings was between 11 and 12 percent, and TWA in part because they had virtually no income tax liability due to loss carryforwards from prior years, earned well above 20 percent on investment.

The exact figures are the Atlantic division of Pan American reported a rate of profit after taxes of 11.9 percent on the total investment devoted to their Atlantic division, and TWA's rate of profit after taxes in this 12-month period was 25.9 percent.

This is the precise 12-month period in which the Chandler agreement vetoed by the Board was to take effect, and it is the period during which a part of the rate increase of the Chandler agreement was effective.

I think certainly viewed by the results in that year, the two U.S. carriers clearly did not need the fare increase that was involved.

In other words, I think there would have been just and reasonable rates without the increased fares that were involved in that period.

The CHAIRMAN. Well, of course, under the rule of ratemaking a carrier must charge a tariff, and the agency involved is required under the law to approve the tariff that is just and reasonable.

In other words, a return that would be considered reasonable on their investment. When that gets to be too high then it is part of the duty, it is the duty of the Board, for example, to reduce it, isn't it?

Mr. ROTH. Yes, sir.

The CHAIRMAN. If TWA as you have just mentioned as an example, makes 25 percent, isn't that a little beyond the just and reasonable rule?

Mr. BOYD. Let me answer that, if I may.

Certainly it is, but there are a couple of factors that enter in here, Mr. Chairman.

One is that the fares have got to be competitive. We can't require that TWA lower its fares because the result of that would be, if there were some way to require TWA to lower its fares and the others to hold their fares up because they are not making a reasonable return, TWA would get so much business it wouldn't know what to do.

The CHAIRMAN. That is precisely the reason, Mr. Boyd, that I raise this question.

Mr. BOYD. Yes, sir.

The CHAIRMAN. You cannot apply from a practical standpoint the usual rule of ratemaking on just and reasonable in the international ratemaking of our own carriers where you do not have the authority to do something about the rates charged by other carriers.

Mr. BOYD. Well, I just have to disagree with you, Mr. Chairman. I shouldn't say I disagree with you but the fact of the matter is we can't do it in the domestic area. We have got carriers in the domestic area who are making a potful of money, and—we have one making 15 percent for 12 months ended March, 15.4 percent after taxes; 16.3 percent after taxes.

But these carriers are competitive with other carriers and they are not the major carriers in the market.

I mean they are not the major domestic carriers.

Well now, we can't force their rates down regardless of just and reasonable because we would just put the others in a bucket if we do that.

So there has got to be—I mean you can't have a situation where everybody earns the same thing; they have different wage contracts.

The CHAIRMAN. I know but if you have a given route in this country on the domestic carriers, you take the entire across-the-board situation and arrive at a rate. That is the way you do what is just and reasonable.

Mr. BOYD. And some make more money than others on it.

The CHAIRMAN. Sure, we encourage that. We encourage efficiency.

Mr. BOYD. That is right.

The CHAIRMAN. Now, in arriving at an international rate, do you take into consideration what other or foreign carriers charge?

Mr. BOYD. Well, what they charge, yes. That is what we are dealing with, but what they are earning we don't know.

The CHAIRMAN. No, you can't take that into account.

Mr. BOYD. But they all charge the same. There is no such thing as a fare situation that is out of kilter where one carrier charges one thing and another carrier charges something else, because it has got to seek its own level.

The CHAIRMAN. Where you have an agreement, as you have explained here, in an international situation that is entirely different, then you cannot apply the same rigid rules that you can in the field of domestic operations.

Mr. BOYD. Well, that is certainly true because we don't have all the information and we don't have the jurisdiction and that is why we asked for discretionary power, because we are not looking for trouble, Mr. Chairman.

The CHAIRMAN. Or asking for it. The final question is then, it is your contention that you would not in any way penalize our carriers

on the just and reasonable rule if you were given this extended authority even though you are not permitted to get all the information that would permit you to arrive at the same kind of conclusion as you would on the domestic level?

Mr. BOYD. If I understand your question, Mr. Chairman, I can assure you that we will not by virtue of this law or any other law discriminate in any way against our carriers nor penalize our carriers in any way.

The CHAIRMAN. I would not indicate that you would discriminate at all.

Mr. BOYD. Yes, sir.

The CHAIRMAN. But I was trying to find out if under the authority and the requirement of the rulemaking, rate rulemaking, would the carriers under certain conditions be under much greater restrictions?

Mr. BOYD. No, sir.

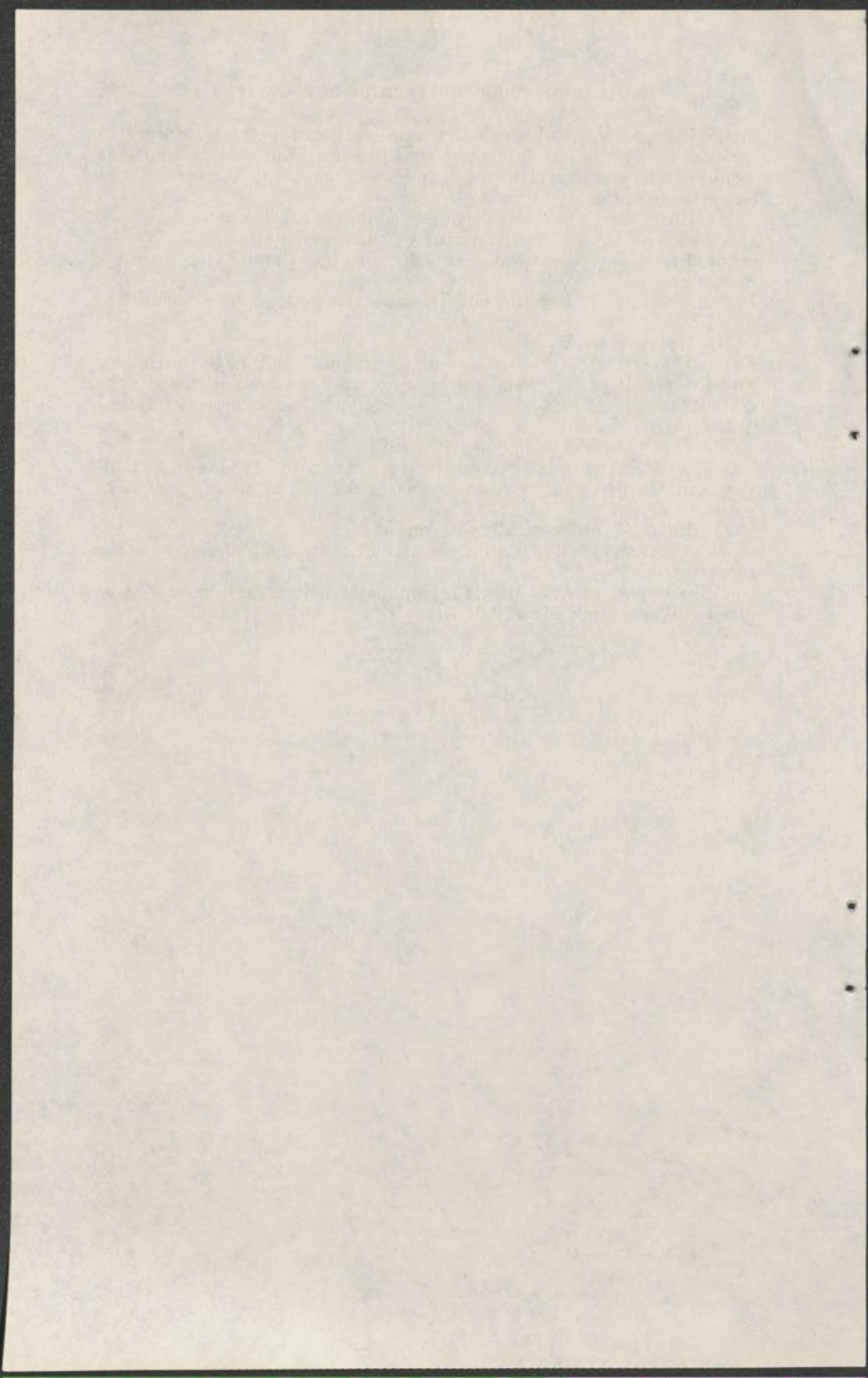
The CHAIRMAN. Thank you very much.

I want to compliment you on the statement you have made here today and thank you and your associates for the testimony you have given.

Mr. BOYD. Thank you, Mr. Chairman.

The CHAIRMAN. The committee will adjourn until 10 o'clock in the morning.

(Whereupon, at 12:15 p.m., the committee adjourned to reconvene at 10 a.m., Wednesday, May 20, 1964.)



RATES, FARES, AND PRACTICES IN FOREIGN AIR TRANSPORTATION—1964

WEDNESDAY, MAY 20, 1964

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee met, pursuant to recess, at 10:10 a.m., in room 1334, Longworth House Office Building, Hon. Oren Harris (chairman of the committee) presiding.

The CHAIRMAN. The first witness this morning, as we continue the hearings on international aviation will be the Honorable Nathaniel H. Goodrich, General Counsel of the Federal Aviation Agency.

Mr. Goodrich.

STATEMENT OF NATHANIEL H. GOODRICH, GENERAL COUNSEL, FEDERAL AVIATION AGENCY, ON BEHALF OF HON. N. E. HALABY, ADMINISTRATOR, FEDERAL AVIATION AGENCY

Mr. GOODRICH. Mr. Chairman, and Mr. Williams, the Administrator asked me to present the statement that he had planned to make this morning. He regrets his inability to be present. This statement is that of Mr. Halaby, the Administrator of the Federal Aviation Agency.

I appreciate the opportunity to discuss with you the very important foreign air rate bills you are considering today.

In 1961 the President appointed an Interagency Steering Committee composed of representatives of the Federal Aviation Agency, the Bureau of the Budget, the Civil Aeronautics Board, the Agency for International Development, and the Departments of State, Defense, and Commerce, for the purpose of directing a comprehensive study of the policy of the United States in the area of international air transport.

I had the honor of chairing the Steering Committee.

The result of the Committee's efforts was a report to the President which provided the basis for his "Statement of International Transport Policy" of April 1963.

In that statement the President set forth his policy views on every major aspects of international air transportation. It covered air routes and services, capacity principles, air carrier policy, rates, competition among U.S. carriers, air cargo development, and others.

The President's recommendation, following the recommendation of our Interagency Steering Committee report, was that Congress should adopt legislation "which would give the Civil Aeronautics Board authority, subject to approval by the President, to control rates in international air transport to and from the United States."

The events since have proved the need for the legislation which the President recommended and which is now before the Congress.

Of the three proposals under consideration—H.R. 1716, H.R. 6400, and S. 1540—I am convinced that the administration's proposal, H.R. 6400, is by far the best one. I have seen the very excellent analysis of these bills in Chairman

Boyd's remarks to you, and I do not believe that the reasons he gave for preferring H.R. 6400 need repeating. I merely want to give a strong second to what Chairman Boyd has already said.

There is one question, however, which I would like to speak to specifically because I think it is a very important one. The question is whether the Board's ratemaking determinations should be subject to the approval of the President. As you know, H.R. 6400 provides for such Presidential approval. The Senate deleted the provision in passing S. 1540.

The provision for Presidential approval should be restored. The Interagency Steering Committee recommendation on this point was that it is "imperative" that the President have this review authority. The committee deliberated on this question at length and in the course of its deliberation considered all the advantages and disadvantages of Presidential approval. The members, after that careful consideration, unanimously approved the recommendation.

The President has the responsibility for the conduct of the Nation's foreign affairs. Board decisions on rates to be charged by foreign air carriers may have a significant impact on a particular foreign carrier and on the foreign government whose flag that carrier flies. The President must not be deprived of his power to control that impact itself in his judgment, foreign policy considerations require it.

We are one government speaking as one, particularly in our relations with other governments. The actions of one element of the whole must be consistent with the actions of the others, and consistency can be assured only by establishing a central control point. In this case, given the obvious foreign affairs aspect, the central authority should be in the President.

The Senate Commerce Committee report gives, as the reason for deleting the provision placing the final approval of Board actions in the President, that there is no need to add to the responsibilities of the President matters technical in nature. While ratemaking matters are technical, a consideration of the impact of the Board's actions could involve matters of policy bearing directly on the national interest, hence matters of great interest to the President. The technical matters will be left to CAB.

The principle of Presidential approval in this area is not a new one. It has existed since the Civil Aeronautics Act of 1938 with respect to the Board's statutory authority to issue, deny, transfer, amend, cancel, suspend, or revoke foreign air carrier operating permits, and to Board authority to impose terms, conditions, and limitations in such permits (sec. 801, Federal Aviation Act). If the Board's authority is to be extended to include authority to determine rates in foreign air commerce, as we believe it should be, the principle of Presidential approval also should be extended for precisely the reasons Congress found persuasive in subjecting the issuance of operating authority to Presidential approval.

In conclusion, gentlemen, let me assure you that what we are always interested in is a safe system of air transportation which serves the needs of travelers and shippers and serves them economically. This is in keeping with the philosophy expressed in the President's April 1963 policy statement that U.S. policy for the air transport industry " * * * must promote the welfare of U.S. carriers, an important element in our commercial life and a beneficial influence in the world's air transport system. It must be appropriately mindful of the U.S. strategic and political interests. Above all, it must develop for the passenger and the shipper of goods a sound, efficient system of air transport."

This legislation will help us greatly in moving toward that goal.

The CHAIRMAN. Does that conclude your statement?

Mr. GOODRICH. That concludes the Administrator's statement, Mr. Chairman.

The CHAIRMAN. Do you have any further comment on that yourself?

Mr. GOODRICH. No, sir; we have no further comments to add to the views the Administrator asked me to submit.

The CHAIRMAN. Mr. Nelsen?

Mr. NELSEN. Mr. Chairman, I did not attend the hearings prior to today but I note the main point raised here is the authority vested in the President.

There is not too much stated relative to the need of a ratemaking authority. I would like to have the opinion of the witness as to why we need this authority at this time.

Have rates been going up or down?

Mr. GOODRICH. Well, sir, I would prefer, in answering your question to defer to the explanation that Chairman Boyd of the Civil Aeronautics Board presented to this committee yesterday. The subject of ratemaking is economic in nature and primarily in the jurisdiction of the Board. The Administrator and the FAA thoroughly agree with the statement of need that Chairman Boyd has presented to this committee.

The occasion for the need, as explained by him yesterday, is in part the report that was made by the Interagency Steering Committee to the President, which resulted in President Kennedy's April 1963 statement of international air transport policy, and which, quite coincidentally, was followed by a dispute just about a year ago, between Great Britain and the United States over the rates that should apply in international air transport.

That dispute, and the inability of the Civil Aeronautics Board to act constructively to resolve that dispute, are the reasons why this legislation is sought by the Board. Insofar as it sees a need to have its authority to act defined more clearly, the Federal Aviation Agency agrees, and supports its request. My purpose here this morning in presenting the Administrator's statement was to speak principally to one element of that request that was deleted when the Senate passed the legislation giving the Board that authority, specifically, the authority of the President to approve rates that the Board would set under the bill the Senate adopted and which is before this committee in H.R. 6400.

Mr. NELSEN. You referred to the controversy that existed within the United States and England.

If we were to give to our authorities here the right of ratemaking is it not likely that it would follow the same pattern—would follow in other countries?

Would we not be endangering the possibility of interference with our airlines that fly to foreign countries?

Wouldn't we be up against the same problem there?

Mr. GOODRICH. As I understand the situation, Mr. Nelsen, most foreign countries do have such a power and they do employ it in accordance with their own national policy considerations.

Basically, international air transport rates are set in the first instance by the carriers themselves through the International Air Transport Association, and those rates normally go into effect unless one of the member countries finds reason to object.

The United States, through the Civil Aeronautics Board is in the view of Chairman Boyd who is responsible for this function, essentially without power to counteract or to react to what foreign countries might do in a completely effective manner.

Mr. NELSEN. In the area of rates, have the rates been going higher or lower over the last 10-year period?

Mr. GOODRICH. Frankly, sir, I don't know the answer to that question. I would have to defer to the Board economic experts.

Mr. NELSEN. Thank you; no more questions.

Mr. WILLIAMS (presiding). Mr. Curtin?

Mr. CURTIN. No questions.

Mr. WILLIAMS. Mr. Sibal?

Mr. SIBAL. I am very much interested in Mr. Halaby's statement because it is very similar to what I tried to develop when Mr. Boyd was here yesterday, the Chairman of the CAB, and on the face of it I think Mr. Halaby's statement is in conflict with Mr. Boyd's testimony. I would like your comment on it.

Now, you throughout this statement say that it is important that the President have the power to approve the decisions of the Board, and you make the point that our foreign relations might very well be involved.

I gather then you would feel that the purely economic problems in terms of the rates that the airlines would charge, the American carriers would charge, and the—to people who ship and to the people who travel, would have to give way to the paramount interest of our relations with other countries that would possibly be affected by the situation of foreign carriers, is that correct?

Mr. GOODRICH. Sir, if I recall correctly, when Chairman Boyd commented on that point yesterday he said it was a very difficult question to answer in the terms in which you state it. To provide some background for your question, Mr. Boyd as Chairman of the CAB was a member of the Interagency Steering Committee, whose report to the President resulted in the April 1963, statement on international air transport policy, and as Mr. Halaby's statement indicates that report to the President was unanimous.

It did include a recommendation that the President have the power to approve rates set by the Board.

Mr. SIBAL. I understand that.

Mr. GOODRICH. And the point in my referring to it is to indicate that Mr. Boyd does agree—

Mr. SIBAL. Let me read to you what Mr. Boyd said.

In response to my question as to whether or not the views of the State Department and the President might not carry a good deal more weight than the facts involved in terms of the rate problem before the Board, Mr. Boyd said:

I don't think your question is farfetched but I think we view our function as being stated in the law, and if the State Department or the White House or Defense or anybody else wants to make a representation to us we are glad to receive it, and if we think that their representation comports or their advice or suggestions comport with what we should be doing under the law then we do it. If we don't agree with them we say, "Thank you very much."

Now, I think that that is the end of that particular answer. I think that this is a contrary position to what Mr. Halaby makes in his statement.

Mr. GOODRICH. Well, sir, my impression is that Chairman Boyd did not intend to take a position contrary to that of Mr. Halaby's. I think it is—

Mr. SIBAL. I don't think we can draw any intention. This is what he said. Don't you think that statement is different from what you have read?

Mr. GOODRICH. No, sir; I don't think so because he was talking about the Board's reaction to views presented to it by the State Department or other agencies of the Government and I don't believe, as he ex-

plained himself yesterday, that he addressed himself specifically to what the President might thereafter do when the Board reached its conclusions.

Mr. SIBAL. Do you feel that the Board could keep the decision-making process solely within the area of aviation if we make this decision subject to the approval of the President.

Mr. GOODRICH. Yes, sir, I do, because the Congress has already given the President power to review foreign air carrier permits issued by the Board, and that is contained in section 801 of the act.

I don't think the principle is any different.

Mr. SIBAL. In other words, you are saying that the ratemaking authority which H.R. 6400 would give to the CAB, would be kept within the area of aviation itself, even if the President had to approve it, is that what you are saying?

Mr. GOODRICH. Yes, sir, because I don't think the area of aviation itself is completely distinguishable from all the factors that bear on its successful activity.

Mr. SIBAL. What do you mean then in this portion of the testimony, if you will bear with me for just a moment:

The President has the responsibility for the conduct of the Nation's foreign affairs. Board decisions on rates to be charged by foreign air carriers may have a significant impact on a particular foreign carrier and on the foreign government whose flag that carrier may fly. The President must not be deprived of his power to control that impact, if in his judgment foreign policy considerations require it. We are one government speaking as one particularly in our relations with other governments. The actions of one element of the whole must be consistent with the actions of the others and the consistency can be assured only by establishing a central control point. In this case given the obvious foreign affairs aspects, the central authority should be in the President.

Now, how does that statement which I am not arguing with necessarily—

Mr. GOODRICH. That is right.

Mr. SIBAL. That is what these hearings are for, I presume, to find out, but how does that statement square with your statement of 2 minutes ago where you said you thought this decisionmaking authority would be kept strictly within the area of aviation?

Mr. GOODRICH. I believe I added that aviation in its operations is not completely divorced from foreign affairs elements, particularly international air transportation. That is the reason why what I tried to say was that a decision could be kept within the framework of aviation interests but those interests would have to be determined in light of the obvious foreign implications they possess.

Mr. SIBAL. Would you say that any foreign implication, whether or not it specifically relates to aviation, should be considered if the President felt it was in the national interests?

Mr. GOODRICH. I would think so, sir.

Mr. SIBAL. So, therefore, it could be that there would be other items involved besides aviation problems?

Mr. GOODRICH. Yes. But as I mentioned before, Mr. Sibal, I don't think that aviation, when it involves us in transportation in foreign countries, can be divorced from its very obvious foreign affairs aspects.

Mr. SIBAL. I respect that viewpoint but I am just wondering what the CAB authority would really mean if we are going to have the President reviewing all the decisions with other considerations which

Mr. Halaby himself suggests he would have in mind when he gives approval or withholds approval.

Mr. GOODRICH. Sir, I don't think CAB's authority would have any less meaning than it has today under section 801 of the act where Congress has given the President authority to approve foreign air route actions of the Board.

Mr. SIBAL. We are not holding hearings to wind up situations where they have any less authority than they have today. If they had sufficient authority today they wouldn't be in here asking us for H.R. 6400.

Mr. GOODRICH. No, sir. As I understand it, they feel there is a need to clarify their authority in terms of setting international rates, and that is the purpose of H.R. 6400. The only point I am trying to make in answer to your question is that I see nothing inconsistent in Presidential approval under H.R. 6400 with Presidential approval presently provided under section 801.

Mr. SIBAL. But how about whether or not you see anything consistent with Presidential approval and the authority which the CAB seeks under H.R. 6400?

Mr. GOODRICH. The authority the CAB seeks under H.R. 6400 is phrased and framed in terms of accompanying Presidential approval.

I understand that to be the Board's position and the position taken by Chairman Boyd yesterday and earlier by him in the international air transport policy statement, and the considerations that preceded it.

Mr. SIBAL. Well now, I just want one or two more questions and then I will drop this.

Mr. Halaby's statement further say:

The Senate Commerce Committee report gives the reason for deleting the provision placing final approval of the Board actions in the President that there is no need to add to the responsibilities of the President matters technical in nature.

While ratemaking matters are technical, a consideration of the impact of the Board's actions could involve matters of policy bearing directly on the national interest hence matters of great interest to the President.

So again, doesn't that seem to indicate that we may get into considerations from the President's point of view, I assume under the advice of the State Department or on the advice of the State Department, which might be quite foreign to the particular ratemaking problem which the CAB had before it?

Mr. GOODRICH. Sir, that is a matter of judgment in any particular given case but as a matter of principle I would not tend to agree with the way you stated it.

I would think, if there are foreign affairs aspects to decisions by one or another agency of the Federal Government, the President, in his constitutional capacity, certainly should have the opportunity to review them.

Mr. SIBAL. I agree with that. I want to make it clear I agree with that.

Mr. GOODRICH. I understand that.

Mr. SIBAL. What I am not interested in doing is creating a problem for the CAB where they are purporting to play one role which really is negated by foreign policy considerations, and we are not interested in an exercise of futility.

Mr. GOODRICH. There again, sir, I wouldn't subscribe to the concept of Presidential action negating Board actions because we don't know the form it will take. The principle involved as I see it is simply one of whether the President can exercise his constitutional power of reviewing the action of any Government agency that has a possible foreign affairs aspect.

Mr. SIBAL. Thank you.

Thank you Mr. Chairman.

The CHAIRMAN. Mr. Moss?

Mr. MOSS. No questions.

The CHAIRMAN. Mr. Springer?

Mr. SPRINGER. You are the attorney for the FAA, is that right?

Mr. GOODRICH. Yes, sir.

Mr. SPRINGER. Now, have you been in consultation with the legal counsel for the CAB?

Mr. GOODRICH. On frequent occasions, but I assume you are asking the question with reference to this particular bill?

Mr. SPRINGER. Yes.

Mr. GOODRICH. Members of my staff have, in connection with the preparation of statements, yes, sir.

Mr. SPRINGER. Are you familiar with the decisions that have been made in the past with reference to route lines, the grant of route lines.

Mr. GOODRICH. No, sir, I am not personally familiar with them.

Mr. SPRINGER. You are not acquainted then with the diplomatic background of these decisions?

Mr. GOODRICH. Only in general terms.

Mr. SPRINGER. Based upon that experience what do you think was the underlying factor in the grants on those routes?

Mr. GOODRICH. I am not sure, Mr. Springer, that I understand your question.

Mr. SPRINGER. Are you familiar with any of the diplomatic background of grants of those routes, specifically, one would be Air France nonstop from New York to Mexico City.

Mr. GOODRICH. No, sir, I can't say that I am personally familiar with those.

Mr. SPRINGER. Are you familiar with Australia's what is the name of that line, Dr. Stevenson, Quantas, are you familiar with any of the diplomatic background of those route grants?

Mr. GOODRICH. No, not in terms of that specific route, I am not.

Mr. SPRINGER. In other words, then, you don't have any knowledge of an area in which grants were made from a diplomatic basis of route?

Mr. GOODRICH. No, sir. I have not been engaged in any of that Government activity.

Mr. SPRINGER. When you are talking about foreign policy here, is it your thought that the power, we will say, of the White House to either review it or to cancel it, would be based upon the same kind of diplomatic background that was granted to routes?

Mr. GOODRICH. Well, if I understand you correctly, Mr. Springer, I would say that the White House, and the President in his constitutional capacity in the field of foreign affairs, would have a very deepseated interest in considerations underlying the grant of routes, and I think the Congress has agreed in section 801 of the act.

Mr. SPRINGER. Well, this is the area that disturbs me most in this proposal that you have, and may I say this is free from politics. I think there were just as many mistakes made in the Eisenhower administration in the grant of the routes as there ever have been with any Democratic administration.

So, this is not political in any sense.

As a matter of fact, most of these route grants were made while Eisenhower was in the White House. But the point I want to make is I am familiar with the diplomatic maneuvering and I want to say in my opinion that many of these grant routes were made on diplomatic bases in which they granted some of these routes for some other reward we might get unrelated to the whole air industry.

Do you see what I mean?

Mr. GOODRICH. Yes, sir.

Mr. SPRINGER. Do you think that there ought to be power to reside in the White House and may I say it isn't made in the White House, it merely goes up there, and it is made over at the State Department, that they ought to have the right to say whether a fare should be granted to cancel or modify it or whatever it is, based upon some diplomatic maneuver which the United States might be engaged in with France, England, or the Dutch or Australia or some other country?

Mr. GOODRICH. Sir, I think the way you phrase the question constitutes a pretty persuasive reason for answering "Yes," because if the prime ingredients are diplomatic factors it would be pretty important for the President to have the power.

Mr. SPRINGER. Do you think then that the rights of airlines, as a free enterprise operations, ought to be subjected to these diplomatic maneuverings at their price, at the price of them?

Mr. GOODRICH. Well, your question contains an assumption that I can't agree with or even comment on because I don't know that there is a price they must pay.

Mr. SPRINGER. If you don't know that then you don't know the background but I am calling that to your attention because I do have that background and that is exactly what was done.

Many of the Congressmen objected to that publicity on the floor and made statements to that effect that we did not think that airline routes ought to be the subject of bargaining which—by which the State Department relieves themselves of a problem with some other country by granting a parallel route or route that some country doesn't have.

Now, I want to read to you from the fifth annual report which is the last one in 1963 these words. This is from page 84 and 85 International Aviation Activities new statement of international air transport policy.

Mr. SIBAL. Mr. Springer, what publication is that?

Mr. SPRINGER. This is the Fifth Annual Report of the Federal Aviation Agency.

At page 85, I am reading:

Marked emphasis was placed throughout on the necessity for keeping the environment of international air transport industry as free as possible from restrictions, whether imposed by Government or intercarrier agreements.

Now, this sentence.

U.S. policy, the statement made clear, is to push for conditions in which U.S. international air carriers can thrive, to wit, an atmosphere of free enterprise.

Now, do you believe that our airlines, which are a free enterprise system, can exist and thrive in an area which is subject, we will say, to the State Department setting their rates?

Mr. GOODRICH. Mr. Springer, that is a difficult question to answer because I don't assume that the State Department would succeed in usurping the statutory functions of the CAB.

Furthermore, as Chairman Boyd explained the situation that occurred last year, in his testimony yesterday to this committee, it seemed to me he was saying that H.R. 6400, if it had been available last year to the Board, would have enabled American air carriers in international air transportation to compete more effectively in the situation that developed, because as I recall it, American air carriers had a roundtrip reduced air fare they were prevented from retaining in effect by virtue of the agreements that were reached at Chandler, Ariz.

I think Chairman Boyd made it perfectly clear that if the Board last year had the authority provided in H.R. 6400, the Board would have been able to make it possible for American air carriers to compete more effectively with foreign air carriers in international air transportation.

As it was, American air carriers had no recourse but to fail to make available to the traveling public the reduced roundtrip fares that otherwise they could have provided.

Mr. SPRINGER. Now are you talking about when the British Government canceled our right for landing?

Mr. GOODRICH. Yes, sir.

Mr. SPRINGER. Do you think the decision made by the State Department and I am still stating the State Department because that is where the decision is made.

The President only executes it. I don't mean he doesn't know about it. But that is where the negotiating is done, in the State Department.

Do you think that would have made it more feasible for the American carriers to operate if they had that decision to make?

Mr. GOODRICH. Mr. Springer, again, indicating my inability to agree with your basic assumptions where the decisions are made, I do think, to answer your question—

Mr. SPRINGER. Where do you think decisions—

Mr. GOODRICH. That the American carriers would have been able to compete more effectively because, as Chairman Boyd explained yesterday, foreign air carriers tend to be higher cost of operation carriers, and we believe that our American air carriers operating as they do under a free competitive enterprise system do operate more economically. The proof of the pudding, I suppose, is the fact that they were able to offer lower round trip fares but were prevented from doing so because the CAB could not back them up in the situation that developed as a result of the Chandler conference.

Mr. SPRINGER. Well, now, do you think that is exactly what the State Department is going to back them up when they start lowering rates?

Mr. GOODRICH. Sir, I have no doubt but that the State Department would at all times act in the very best national interests.

Mr. SPRINGER. Now may I say that if this had occurred, and they had had that power, I think the State Department would have caved in on the question of whether—this is my opinion—would have caved in on those rates, because it was extremely embarrassing to the State Department, that they can have this power of decision to make that they should have.

It merely means this, that if they decide to put in fare rates and the State Department doesn't want that and the State Department doesn't think that diplomatically is going to work out in their scheme of things they cancel it, doesn't it?

Mr. GOODRICH. Mr. Springer, based on my—

Mr. SPRINGER. Can they or not?

Mr. GOODRICH. Sir, I don't know whether they can do anything unilaterally. My opinion is, if there are differences of opinion among Government agencies, there are always many opportunities to get a thorough discussion of the merits in the White House before the President makes the final determination.

Mr. SPRINGER. I am just giving you my opinion from only what I have seen under three administrations.

Mr. GOODRICH. I understand, sir.

Mr. SPRINGER. They want this power they didn't have a year ago to relieve them of an embarrassing situation and to force the carriers here to go along with what decision they make in the State Department.

Mr. GOODRICH. Sir, this legislation is not phrased in terms of giving the power or authority or the decision to the State Department. It is phrased in terms of giving the approval authority to the President.

The CHAIRMAN. Will the gentleman yield?

Mr. SPRINGER. Yes; I will yield.

The CHAIRMAN. There was some discussion about this yesterday which the gentleman raises appropriately, but I believe that our own companies wanted to reduce the rates as had been suggested but they could not reduce the rates.

In other words, they were not forced into this, but wanted it themselves but cannot do so because the foreign nations they were serving demanded that they charge higher rates.

I believe that was the issue that was developed yesterday.

Mr. SPRINGER. May I ask the gentleman this question? If you gave the President this power, then can he make that decision, can he make the decision on which the rate would be based?

Mr. GOODRICH. Sir, his power would be a power to review and presumably to disapprove if the recommended rates weren't compatible with other considerations brought to his attention.

Mr. SPRINGER. All right.

Then he would have the power to cancel the rate, wouldn't he?

Mr. GOODRICH. He certainly would have the power, Mr. Springer, to bring these other factors to the attention of the ratemaking authority.

Mr. SPRINGER. Well, I asked you, does he have the power to cancel it or not under this legislation?

Mr. GOODRICH. I would like to refer to the bill if you don't mind.

The CHAIRMAN. Well, under the bill, the answer is quite clear if the gentleman will permit, under H.R. 6400; yes, he would, under the Senate bill he would not, under the Williams bill he would not.

Mr. SPRINGER. That is the first question.

Now the second question I ask the gentleman, does he have the power to modify the rate?

Mr. GOODRICH. Not in express terms, Mr. Springer.

Mr. SPRINGER. I beg your pardon?

Mr. GOODRICH. Not in express terms.

Mr. SPRINGER. Well, in your opinion then, from what you see in looking at that law, does he indirectly or is it clear whether or not he can modify the rates?

Mr. GOODRICH. Sir, my opinion is that the course that would develop after Presidential review would be a reconsideration by the Civil Aeronautics Board.

Mr. MOSS. Will the gentleman yield at that point?

Mr. SPRINGER. Yes.

Mr. MOSS. I think you have to ready H.R. 6400 with the Bermuda agreement.

Mr. SPRINGER. With what?

Mr. MOSS. With the Bermuda agreement and you have to specifically read it with paragraph (e) and paragraph (f) of the agreement, because under paragraph (e) in the event the authority is given by the Congress to the CAB to regulate these rates, there is already provided for an arbitration procedure on a disputed rate brought about by failure of the CAB to approve it.

Mr. SPRINGER. Let me ask you that.

Mr. MOSS. Only following that would the matter be referred to the President.

The CHAIRMAN. Let's get all of the facts in, not only the Bermuda-type agreement. It would depend upon whatever the agreement was, and what bilateral agreement with a particular country involved. Yesterday's hearing developed that most of the nations have a Bermuda-type agreement.

There are several nations that have a different form, and different type of agreement from the Bermuda-type agreement.

So, whatever the agreement would be with a particular country involved, the procedure under this bill would have to follow. I believe that to be right.

Mr. GOODRICH. Yes, sir.

Mr. SPRINGER. Is there any direct answer to my question?

Can there be any direct answer as to whether or not he can modify an agreement?

Mr. GOODRICH. Reading the bill as it stands today, I would say no, sir, except through subsequent action of the CAB.

Mr. SPRINGER. Except through subsequent action of the CAB.

Mr. GOODRICH. Of the regulatory authority.

Mr. SPRINGER. I take it then that he could cancel. I am trying to get the train through which the events could go.

First, if he wanted to he could cancel it or he could approve it. If he canceled it it goes back to the CAB for further hearings, is that your opinion?

Mr. GOODRICH. He would disapprove, sir, and I assume then the Board would reconsider.

Mr. SPRINGER. And it would go back to the CAB for further hearings?

Mr. GOODRICH. In the Board's discretion.

Mr. SPRINGER. In the Board's discretion.

If the Board comes up with another decision does that go back to the President?

Mr. GOODRICH. Yes, sir.

Mr. SPRINGER. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Long?

Mr. LONG. No questions, Mr. Chairman.

The CHAIRMAN. Mr. Glenn?

Mr. GLENN. I have no questions, Mr. Chairman.

The CHAIRMAN. Mr. Jarman?

Mr. JARMAN. I have no questions.

The CHAIRMAN. Mr. Keith, have you had an opportunity or do you have any questions?

Mr. KEITH. I regret to say, Mr. Chairman, that I haven't sufficient background at this point to ask any questions.

The CHAIRMAN. Mr. Curtis?

Mr. CURTIS. No questions, Mr. Chairman.

The CHAIRMAN. Mr. Pickle?

Mr. PICKLE. I would like to ask the chairman, I was here part of the hearing yesterday, are the facts in the record, Mr. Chairman, with regard to what actually happened with the British about a year ago? We keep referring to the dispute that occurred then and apparently this legislation has arisen partly from that incident.

Now, if the facts have been put in the record then I will get that information from the record.

The CHAIRMAN. Mr. Boyd, Chairman of the Board, discussed it some yesterday. This witness would have very little information and background on it himself since his agency was not involved with that directly.

Mr. Tipton will be on as the next witness, and representing the airline industry including the two, one or two companies that were involved, I am sure he will give us a complete rundown.

Mr. PICKLE. That is fine, Mr. Chairman.

The CHAIRMAN. Mr. Sibal?

Mr. SIBAL. I have questioned, Mr. Chairman.

The CHAIRMAN. Mr. Cunningham?

Mr. CUNNINGHAM. No questions, Mr. Chairman.

The CHAIRMAN. Mr. Brotzman?

Mr. BROTZMAN. No questions.

The CHAIRMAN. Mr. Goodrich, thank you very much.

Mr. Moss? Mr. Rogers?

Mr. ROGERS of Florida. No questions.

The CHAIRMAN. Thank you very much.

Mr. Stuart Tipton, president of the Air Transport Association of America.

STATEMENT OF STUART G. TIPTON, PRESIDENT, AIR TRANSPORT ASSOCIATION OF AMERICA

Mr. TIPTON. Mr. Chairman and members of the committee.

The CHAIRMAN. Mr. Tipton, you may proceed.

Mr. TIPTON. For the record, my name is Stuart G. Tipton. I am president of the Air Transport Association of America which represents substantially all of the certificated scheduled airlines of the United States.

Mr. Chairman, I would like to submit an extensive statement on this subject which we have prepared in an effort to clarify the many issues that arise here, and to make a fair statement of our position.

Our statement is long, and if it is satisfactory with you and with the committee, I will file this statement and proceed on the basis of touching on the salient issues and seeking to utilize less of the committee's time.

The CHAIRMAN. Yes, you may do so. Your full statement will be included in the record together with the attachments.

Mr. TIPTON. Good. Thank you, Mr. Chairman.

The CHAIRMAN. And you may proceed.

Mr. TIPTON. The committee has heard a good bit of testimony on this legislation, and it will be my purpose to avoid repetition, and thus I will plunge as quickly as I can into the issues as they present themselves to the committee.

The Air Transport Association's position with respect to the bill supported by the Civil Aeronautics Board and by the FAA is this: We do not believe that the bill is a sound one. We believe that the committee should not report it. We believe that the legislation will not work.

Here is why we think the bill is unsound.

It breaks down into four reasons, and I will state them as quickly and as clearly as I can.

The first reason is that the legislation which purports to provide for the fixing of rates in international operations is fundamentally in conflict with the facts of international air transportation, as we know them, and as they are.

It is fundamentally in conflict with them because it purports to give one government the power to fix international rates when it is perfectly clear that any route in the international field or any rate has two ends to it, one located in the United States, one located in a foreign country.

Both the United States and the foreign country concerned have their own rate philosophies, their own power of determination, and their own sovereignty. They both have those interests and those powers to deal with any rate that is proposed.

No one government can impose its will on others successfully. No one government can fix a rate as it applies in international operations.

Now, I have oversimplified this when I have said there are two governments involved, because in most rates there are far more governments than that involved, because any rate in the international field is affected by a variety of other rates, a rate to Rome affects the rate to London because the trip offered is New York, London,

Rome. It affects the rate to Frankfurt which often is New York, London, Frankfurt, and possibly on to Rome.

You follow that course, and you obviously, with respect to any rate structure, involve not merely two governments but many governments, so that essentially the ratemaking process in the international field is and has to be a multilateral problem.

So, when you take that fact of life into account, it becomes reasonably clear that neither the United States nor any foreign government can fix international rates.

International rates by their very nature are the product of negotiation. There is no way that anyone can get around that. This committee cannot legislate for the United Kingdom, and our Congress cannot legislate for the United Kingdom.

The House of Commons cannot legislate for the United States. So, that when you come right down to it, what we are talking about is a subject which only yields in its solution to international negotiation. That is the No. 1 reason why this proposed legislation, H.R. 6400 is unsound, or to put it possibly more precisely, unrealistic.

Second reason: If the Board purports to exercise this power, inevitably the exercise of this power will become fashionable. Other governments seeing the United States attempt to exercise its sovereignty in this fashion necessarily leads to their doing the same thing.

The result of that also necessarily is that the fixing, the establishment of rates in the international field, becomes constantly a subject of governmental dealing.

At the present time, as you know, the basic method of establishing rates in the international field is through a conference of carriers who work out these highly complex problems, subject to approval by governments.

If we change that to a governmental process, as this legislation inevitably would do, rates would be fixed not by a conference of carriers but by a conference of governments.

Now, the difficulty with that is manifold. In the first place, the fixing of rates should be a managerial function of the carriers who charge them and who are responsible, in our case, in the case of U.S. carriers, at least, who are responsible to their stockholders and directors for success.

In addition, if governments undertake this responsibility inevitably it becomes in part political, because these governments, among themselves, have endless axes to grind with each other, and it would be impossible to exclude these extraneous matters from these rate discussions. It would be impossible and it wouldn't be done.

The United States in order to achieve a rate objective would probably be—would probably find itself having introduced into the discussions such things as foreign aid problems or problems of military bases. Inevitably that would happen.

So that it is definitely in the U.S. interest to keep this away from intergovernmental responsibility to the major extent that we can. This bill moves in the direction of transferring it to governments; and that is the second reason why it is unsound.

It has been said here several times that other governments have this same power to fix international rates and thus the United States should have it. Those statements, I believe, have been based upon

an inadequate review of the actual laws of the foreign countries. We have so reviewed them as best we can. It is difficult. But we can find only a very few governments, four to be exact, that have this power to fix international rates. Other governments do not have it.

For example, the United Kingdom does not have it. So that we mustn't proceed on the basis that it is settled that other governments have this power. They have powers of a variety of sorts, but they don't have this power to fix rates.

That is the second reason why we think this legislation is unsound.

The third reason: Inevitably when you start out to provide for the fixing of rates our form of government and our legal process requires hearings, notice, hearings, proceedings before you can fix a carrier's rate.

Now, let us take an example, the North Atlantic where we have 19, I think, foreign carriers as well as 3 of our own.

There you have a major rate proceeding. If the United States were to start exercising its power under this bill to fix a rate, they would be starting a hearing which would involve these many carriers backed by their many governments, and I don't know when the hearing would ever end. We had a relatively simple problem here some years ago when the Civil Aeronautics Board decided to investigate and fix the rates for our domestic system for they weren't involved with other governments, they weren't involved with any conflicting things of that sort.

It took 4½ years to get the proceeding over with.

The CHAIRMAN. What was that, I didn't get that?

Mr. TIPTON. That was the general passenger fare investigation of some years ago. I was making the point that it took us 4½ years to run through a domestic rate proceeding.

Under this legislation, it provides for an international rate proceeding of far more complication than that, so that you could expect those proceedings to go on a very long time.

Now, in the international rate field where rates have been changing annually over the past 18, 20 years, it would be quite impracticable to utilize this rate fixing machinery, and the machinery, if you are going to fix rates surely our carriers would insist that they were entitled to a hearing, and so that the procedure here provided—an essential procedure if rates are to be fixed, is so clumsy and awkward that it cannot be applied in the international field.

The CHAIRMAN. I raised that question with Chairman Boyd yesterday, Mr. Tipton, and I believe the record shows that he indicated there would not be these long, drawn-out hearings and proceedings.

Mr. TIPTON. I only refer to what the statute provides. It provides for hearings, as it must, and, of course, there is a provision in this statute as well as the provision of the domestic law on the same subject that they must complete the proceeding in 6 months.

But no proceeding has ever been completed in 6 months. The proceeding goes on and on as I have said. The general passenger fare investigation went on 4 years, I think Mr. Boyd was taking an unrealistic point of view.

The CHAIRMAN. Mr. Boyd said yesterday he thought their limitation would be suspension authority for 6 months, 180 days. He did try to explain it some, and I wasn't altogether sure that it was clear,

but do you agree with him that 6 months would be the maximum authority of suspension?

Mr. TITTON. Under the bill as proposed, and under the domestic, corresponding domestic statute, the Board can suspend the rate proposed for 6 months, but in the Board's reviews of these rates, they have never managed to get the proceeding done in 6 months that I recall, and the carrier then comes forward and "voluntarily" extends the time of suspension. It just seems to me quite clear that the procedure here is far more complex than the chairman thought.

Now, to go to the fourth reason, and this reason gets a little complicated.

A basic difficulty with this legislation is that while it purports to give the Board the right to fix and regulate the rates of foreign-flag carriers as well as American-flag carriers, the net effect of legislation when combined with the Bermuda agreement has the result of taking away from the Board their power to regulate the rates of foreign-flag carriers.

Now, the reason I say it gets a little complicated is because of the relationship between this legislation and the Bermuda agreement.

In the Bermuda agreement, and I will try to cover this quickly because it has been covered before, in the Bermuda agreement, it was anticipated when that agreement was written that there would be disputes among governments and carriers on rates.

It was obvious, and they provided for it. It provided that in the event of a dispute the governments would get together, discuss the matter, if they couldn't agree in discussion, then they would submit it to arbitration, the issue to arbitration, and when the arbitration was over, they would do their best to use their powers to carry into effect the arbitral award.

That is the way these disputes were supposed to be settled.

Well, obviously, there was going to be a considerable period during which this arbitration was going on. One just took place over a route problem and it took 18 months to finish. A rate arbitration problem would take longer than that. So, there was a long period, and the fellows who were drafting the agreement had to make arrangements for what was going to happen to the disputed rate while all of this talking was going on.

So, they provided two different ways of dealing with it.

If the Board had rate-fixing authority the disputed rate would continue in effect all during the talking. If the Board did not have rate-fixing authority the government that was objecting to the rate could insist upon its suspension during this argument.

Now, at the present time, since the Board does not have rate-fixing authority the disputing government does have the power to insist that the rate be suspended.

If this bill is passed, however, the other provision comes into effect, and the complaining government is bound—the carrier offering the disputed rate can continue that in effect.

Well, we regard that effect as a very bad one from the standpoint of this legislation.

Chairman Boyd yesterday—I have reviewed his statement—he thought that it was a very good effect in that we are fundamentally in conflict with the chairman's position.

The reason that the Board thinks that it would be good to be able to continue a disputed rate in effect during the discussion is that this sort of thing could happen. They could fix an American-flag carrier's rate at a level lower than that desired by foreign governments, and then insist that those foreign governments that didn't like it nevertheless permit it to continue. That is the reason that Mr. Boyd thought that this bill was good.

In other words, what he was saying was under that provision we can shove a low rate down the throats of complaining governments abroad.

Now, I think before accepting that conclusion we had better analyze it a little bit because in the first place, I don't believe that the United States is really going to shove these rates down the throats of foreign governments.

A great international ruckus would result, negotiation would take place, we would be right in the same position we are right now.

Mr. Moss. Mr. Chairman, I wonder if I might ask a question at this point?

The CHAIRMAN. Mr. Moss?

Mr. TIPTON. Certainly.

Mr. Moss. Isn't the assumption that we would have the right to do that which you call "shoving down the throat" very precisely spelled out in the Bermuda agreement?

Mr. TIPTON. Yes, sir.

Mr. Moss. And contrariwise, is not the action taken by Britain contemplated and authorized in the Bermuda agreement, because in section (f) it expressly states that the government objecting to the contracting party may take such steps as it may consider necessary; it is very broad, and they are all sanctioned by the agreement.

And certainly we must assume we are going to operate under some form of agreement, and if, as was contemplated at the time of the Bermuda agreement, the authority here sought is given to the CAB, then the right to have the new rate in effect provisionally is also provided. So the question you raise then would go to the question of abrogation of the agreement by the governments now signatory to them, or agreeing to international air commerce under the terms of that agreement. If we reach that point, of course, we have no kind of agreement, and it is a matter then of governments attempting to undertake to reach new agreements.

But if we are to proceed under international law, as agreed to by the contracting parties, then the position of the Chairman of the CAB is well founded on the agreement itself, and what you contemplate is a course of action abridging the agreement rather than adhering to it.

Isn't that true?

Mr. TIPTON. No.

Mr. Moss. Well, you say, the next step: would a government agree? Would a government permit? The governments have agreed, would they permit it? Would they then honor their agreement? If they didn't then we would have an abridgement of the agreement.

Mr. TIPTON. That is right.

Now, there is no question that what Mr. Moss has said is true with respect to those governments that have signed this rate provision and a very large number of them have. They have agreed if this legisla-

tion is passed they would permit a low rate offered by an American carrier, even though disputed, to continue in effect. The question I raise at this time is whether or not this result would actually be accepted without substantial international controversy, even though presently provided, whether it would be accepted without international controversy, and I think that, in my judgment, it would not.

Mr. Moss. Mr. Tipton, we accepted it very reluctantly, last year. I know that I as an American felt rather embarrassed that the British Government would threaten to confiscate our property, but she made the threat, and we finally backed down because really we had agreed to back down.

It was provided for in the agreement.

We didn't like it but we did it, and if these governments have entered into the agreement in good faith, and we should assume that most of them have, there are governments I wouldn't concede good faith to under any conditions, but most of those of concern to us I feel would honor in good faith as we have the agreement we entered into.

Mr. TIPPON. I think that my point is not directly in conflict with Mr. Moss.

My point is not that they would ignore or violate the agreement. My point is that it would not be accepted without controversy, the action of the United States in effect in insisting they accept this fixed rate and abide by it, and would create international controversy that we would find difficult to deal with, possibly leading to the abrogation or denunciation of agreements, the insistence upon change.

It would induce controversy that need not be had.

That is my point here, that when you fix rates, without regard to what the agreement provides—20 years have passed since that agreement was signed—that is a pretty hard blow to strike under these circumstances.

The question I am raising is, first, would our Government ever do it, and second, would our Government be prepared to meet the international controversy which I am confident would arise, because feelings were strong during this discussion the various governments had with respect to rates a year ago, and they would be equally strong in the event that we sought, our Government sought, to utilize this power.

I am confident that, and here I am not charging and government—

Mr. Moss. I would just like to see our Government have occasion to be a little more insistent at times.

Mr. TIPPON. They can be insistent. They can be insistent without utilizing power of this kind, because this raises what I regard as a second major objection to this conclusion. It has been pointed out that if this law is passed a foreign government will not be able to interfere with a U.S. carrier's rate proposal.

But let's look at it from the other side. The U.S. Government will not be able to interfere with a foreign-flag carrier's proposal either.

Now, I think that we have to consider the problem from a relatively long-range basis and consider all facets of it, and not just one.

At the present time the problem is getting the U.S.-carrier's objectives of lower rates across against foreign-flag carrier opposition. That is the present situation, and the bill looks good from that standpoint.

But let's look down the road a little bit to a possible circumstance, a circumstance that cannot be ignored, in which the United States objective will be to try to avoid having foreign-flag carriers assault U.S. carriers with destructive rate competition.

Now, it seems at the moment that that isn't likely to happen. But we have to remember that we are legislating here for a considerable period, and the possibility—all of the elements join together here to make this a definite possibility for the future.

U.S. carriers are privately financed, privately owned carriers, unsubsidized by their Government. We are facing abroad, carriers heavily supported by their government, in many cases by capital contributions, in other cases by actual operating expense contributions, many times wholly owned, usually, at least partly owned by their governments.

In addition we have developments abroad that have been well understood and well recognized, in which foreign-flag carriers, particularly in Europe, are beginning to draw together. We have heard much about Air Union. A group of European carriers that would get together and in effect operate as one. There is extensive pooling of revenues, of operations by foreign-flag carriers.

There is now, has been, it seems to be growing. Thus beginning to develop are aggregations of power among the foreign-flag carriers, and if they want to really take on the U.S. carriers, they are in a pretty good position to do so by substantial rate reductions that we would not be economically in a position to meet.

I don't think that possibility should be ignored.

Mr. Moss. Mr. Chairman, I wonder if I may direct another question at that point.

If they entered into those arrangements and proposed uneconomic rates, that in itself would be a violation of the Bermuda agreement, would it not?

Mr. Tipton. Not necessarily.

Mr. Moss. Paragraph (h) :

Rates to be agreed in accordance with the above paragraph shall be fixed at reasonable levels, due regard being paid to all relevant factors such as cost of operation, reasonable profit, and the rates charged by any other air carriers.

Mr. Tipton. Yes, that is what it says.

Mr. Moss. It would seem to me that that would be an abridgment of the agreement.

Mr. Tipton. And that is what the United States would contend. When this happened, as I have described it, the United States would contend under that provision that these rates were uneconomically low and we would argue with these governments, and then we would have arbitration and that arbitration would be long, and during all of that period these uneconomic rates would be in effect because we have put paragraph (e) in effect by enacting this legislation.

Thus, the U.S. Government during this long period would be unable to do a thing about it.

Now, maybe ultimately, at the end of all the arbitration it would be decided that under that provision of the agreement the rate should be suspended but during this 2-year period, and it will be more than 2 years, during that period, the U.S. carriers would have to withstand

the assault of these uneconomic rates without any protection from its Government.

Now, that is the effect of enacting this legislation.

Consequently, I feel strongly, we feel strongly, that that step should not be taken. That the committee and the Congress have to look down the road a ways, and understand and anticipate problems, and in dealing with this legislative problem, to make it all inclusive, and not limit it to a current circumstance.

The CHAIRMAN. Before you leave that.

Mr. TIPTON. Yes.

The CHAIRMAN. If you are about to, and since you brought into play the experience you had a year ago, why not explain what did happen and use that as an example?

Some members asked earlier that we have a discussion of that situation to see just what the result was.

Mr. TIPTON. Here is what happened.

IATA reached an agreement on the rates to be applicable a year ago this past April. They reached an agreement sometime prior to that on what the rate should be. The Civil Aeronautics Board, exercising the authority it already had under section 412 of the Civil Aeronautics Act, looked at that agreement, decided that the modest increase in rates that was there provided was unsound and disapproved the agreement, which had the result of eliminating any agreement as far as the carriers were concerned on rates then to go in effect.

That disagreement, the result of that action, caused a controversy among governments as to what rate would be permitted by those governments to be operated, to be used by the carriers coming in.

Our carriers continued their old rates that were somewhat lower than those agreed to by IATA. The United Kingdom—

The CHAIRMAN. Under direction of the Board—

Mr. TIPTON. Under direction of the Board.

The CHAIRMAN. Or in carrying out the agreement?

Mr. TIPTON. They continued them in view of the fact that there had been no agreement to change them. So at that point the United Kingdom, and other governments, quite a number of other governments, took the position that our carriers must change those rates to conform to the agreement that had been made by IATA and had been disapproved by the Board.

From that followed consultations under the agreement.

Simultaneously, efforts were made by IATA to reach a further agreement that the Board would approve.

After the dispute had been brought to a crisis by the United Kingdom threatening to throw us out of the United Kingdom and other governments, as I recall, they didn't make such threats, but they were standing in the wings waiting to do the same thing, the governments met, discussed, and the strong position of the United States was deferred.

I want to emphasize "deferred" here, because the United States ultimately won this argument. There followed then a number of meetings by governments, by IATA. The rates ultimately determined upon by IATA, and put into effect this April 1, were the rates that the U.S. Government set out to get when they started this dispute. (NOTE.—Subsequent inquiry revealed that the ultimate rates agreed

upon by IATA were actually lower than those which the CAB initially set as its objective.)

Now, to go into detail of who talked to whom and how many meetings and where, would be—would take too long, but the essence of the matter was that this was ironed out by governments and carriers seeking to solve the dispute by discussion.

Now, I was interested in Mr. Boyd's testimony from this standpoint. He said that he was helpless, that there was nothing he could do.

I felt that in saying that he didn't give full credit either to the statutory authority that he has got now or his very outstanding ability to use it because it took him—I guess about a year, and that isn't long in international negotiations—took him about a year and he won the argument.

We got the rates we started out to get, without the help of this legislation or in my opinion hindrance, but based upon statutory authority that he already has, plus what I regarded at the time and still do, as a magnificent job of negotiating.

Mr. BROTZMAN. May I ask a question, Mr. Chairman.

Check me on this. Now, if I understand it there was an initial agreement, the IATA agreement.

Mr. TIPTON. By the carriers, yes.

Mr. BROTZMAN. By the carriers, which the Board refused to approve.

Mr. TIPTON. Right.

Mr. BROTZMAN. And this, I think you said, included a modest increase.

Mr. TIPTON. Yes.

Mr. BROTZMAN. Now, do I understand that after we had all of the discord and the arguments and then the hearings and, as you said, the negotiation between governments and carriers, did you end up with the same rate as the one that was initially contained in the IATA agreement?

Mr. TIPTON. No.

Mr. BROTZMAN. This is what I don't understand.

Mr. TIPTON. With a substantially reduced rate.

Mr. BROTZMAN. With a substantially reduced rate?

Mr. TIPTON. Yes.

When the Board disapproved this IATA agreement they said in effect, this is a modest increase, I am sure they would have agreed it was modest, but they said that, "It is our philosophy that the rates not be increased by any amount but should be reduced," and that is where we wound up.

Mr. BROTZMAN. This was the reason assigned by the Board for not giving their approval to the initial agreement?

Mr. TIPTON. Yes. And as I say, they won the argument.

Mr. BROTZMAN. OK.

Thank you.

Mr. MACDONALD. Mr. Chairman, could I ask one question before he leaves this subject?

Mr. Tipton, yesterday I asked Mr. Boyd did he feel that he wanted the ability to interfere in a dispute that he called between governments, not between carriers, and he said the subject shouldn't be

settled on his level; and just now in your answer to Mr. Brotzman's questions you said he does have statutory powers to interfere in such a situation and I was wondering if that is so what statutory power does he have?

Mr. TIPTON. He has statutory power in these two areas: The carriers serving the United States and other foreign governments have a great stake in the ability of, first, getting IATA agreement and, second, getting it approved by all the governments.

If they can—the reason they have a great stake is that that clears all their problems with all the governments, and establishes a rate on which they can rely for the period it is set out for, so they have a great stake in achieving that agreement.

Now, the Board has the power to blow them completely out of the water because it has the power as it did in this case to disapprove an IATA agreement, all governments have.

But that is one power the Board has which is a tremendous power.

I think—I don't believe the Board, in talking to this committee has stressed nearly enough the enormous power they have over carriers in approving or disapproving these agreements. That is one.

Mr. MACDONALD. But they did use that power which led to the fact that these people in Great Britain came aboard and ordered American citizens to pay \$25 more, so I would hardly say that was a very effective power from the short-range viewpoint anyway.

Mr. TIPTON. Well, it was ultimately a very effective power, because what the Board said, in effect, was that—

Not only do we disapprove this agreement, but we are very likely to disapprove any agreement that doesn't come pretty close to establishing rate reductions of the kind we are looking for.

Well, that is a very extensive power, and that, plus another I will mention in a comment, is what caused them to win the argument.

As I say, they didn't win it that day, but you are not going to—invariably, this is a process of negotiations and nothing can change it, so that some time passes while you are arguing this out. It took a little less than a year to get exact—strike “exactly”—there may have been some charges the Board didn't like very well, but as far as rate levels were concerned they claim close to winning the argument, and the great power they had was the power to disapprove one of these agreements.

Now, there is a second power, and that is the power given in the Civil Aeronautics Act to grant permits to foreign-flag carriers by section 402 of the Civil Aeronautics Act. That power is one which contains the power to insert conditions, limitations, and the like in foreign air carrier permits. It has always been our opinion that that provision of the statute gives them a further power in the rate field that they can condition a carrier's permit to meet the requirements of the Civil Aeronautics Board as far as rates are concerned.

Now, that is the power that the United Kingdom was using. They, what they told us was, if we didn't charge the rates they wanted they would withdraw our permit. That was what all the talk was about—taking our airplanes and all that sort of thing. They were going to withdraw our permit and if we landed there we would be landing contrary to British law and all that.

But that is the same power that in our judgment the Board has now. I must say that the Board does not agree with us on this.

The feel that that statute, that provision, is not broad enough to cover rate regulation.

Now, I believe in this instance, and I hope this doesn't get me into no end of trouble with the Civil Aeronautics Board, but I believe they are carrying water on both shoulders here, because not long ago, July 1961, they passed upon an issue which was very close to this. The question there was whether they could introduce under 402 into these permits, whether they could introduce conditions which might and could be used to restrict the capacity of foreign-flag carriers. Whether they could use that to possibly make them cut down their schedules.

This proposal by the Board to do that, to insert that condition was strongly attacked by foreign-flag carriers. They said the Board couldn't do it. They said that the statute was not broad enough to permit them to do it, and the Board in an excellently reasoned opinion, said they did have, and that they would continue their proceeding looking toward the introduction of those conditions.

If I might, Mr. Chairman, I would like to present at this point these two—there is an opinion and an opinion on reconsideration, these two cases which I believe should be read along with the Chairman's statement in which he discussed the character of section 402.

The CHAIRMAN. They may be included in the record.

(The opinions referred to follow:)

Order No. E-17235: Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 27th day of July 1961

DOCKET 12063

In the Matter of Investigation of the Terms, Conditions, and Limitations of Foreign Air Carrier Permits

ORDER

On January 18, 1961, the Board by Order E-16288, instituted a proceeding under Docket 12063 to determine whether all foreign air carrier permits should be amended by the imposition of a new condition pursuant to which foreign air carriers could be required to furnish traffic data to the Board and submit their schedules for approval by the Board, and more specifically, whether a proposed new Part 213 of the Economic Regulations, appended to said Order E-16288 as Appendix A, should be adopted by the Board and incorporated in the permits by reference.

A prehearing conference in this matter was held on February 23, 1961. Prior to the date of the conference, Pan American World Airways, Inc. (Pan American) on February 16, 1961, filed a motion to broaden the scope of this proceeding so as to also determine whether the Board should require foreign air carriers to file with the Board for approval agreements relating to pooling of traffic and revenues or other cooperative working arrangements affecting air transportation to or from the United States.

A number of foreign air carriers participating in the prehearing conference orally indicated their intention to challenge the Board's jurisdiction to proceed with this case. Since the foreign air carriers participating in the conference claimed a lack of sufficient time in which to prepare for the conference on the question of the Board's jurisdiction and the issues raised by Order E-16288, the Examiner established March 24, 1961, as the date for the filing of written comments and motions with respect to matters raised by Order E-16288. Answers to such comments and motions, including answers to Pan American's motion of February 16, 1961, were due to be filed on or before April 12, 1961. At the request of Counsel for Bureau of Economic Regulation of the Board, the date for filing of answers was extended to May 1, 1961.

A number of the foreign air carriers filed comments regarding the proceeding as proposed by Order E-16288, and several of these carriers filed motions seeking dismissal of this proceeding for the lack of jurisdiction.¹ As already noted, Pan American, by motion filed on February 24, 1961, requested that the Board expand the issues of the proceeding so as to also determine whether all foreign air carrier permits should be amended by imposition of a new condition pursuant to which foreign air carriers could be required to file with the Board for approval agreements regarding pooling and related arrangements affecting air transportation to or from the United States. Except for Bureau Counsel, who filed an answer to Pan American's motion on February 21, 1961, answers to the foregoing motion of Pan American were filed on or shortly before the May 1, 1961, deadline.²

On May 1, 1961, Bureau Counsel filed an answer to the comments and motions of the various parties seeking dismissal of the proceeding.³ Several of the carriers filing motions to dismiss the proceeding have also filed requests for oral argument before the Board on the issue of the Board's jurisdiction.

After the filing of answers due on May 1, 1961, KLM on May 8, 1961, and El Al, LAN, Iberia and Varig on May 9, 1961, filed replies to Bureau Counsel's answer of May 1, 1961. Each of the carriers filing replies to Bureau Counsel's answers strongly pressed for an oral argument before the Board on their previously filed motions for dismissal of this proceeding for the lack of jurisdiction. On May 26, 1961, Bureau Counsel filed a letter making various comments on the replies filed on May 8 and May 9, 1961. On June 1, 1961, BOAC, BWIA, and BAL filed a motion to dismiss subject proceeding and a brief in support thereof. While we could properly reject all the documents filed after May 1, 1961, in this matter, we have in our discretion decided to consider the letters replying to Bureau Counsel's answer of May 1, 1961, Bureau Counsel's comments with respect to those letters, and the motion to dismiss filed by the British carriers on June 1, 1961.

The comments, motions, and answers submitted for our disposition by the Examiner reveal a variety of approaches to the question of the Board's power to promulgate the proposed new Part 213 as an amendment to foreign air carriers permits and wide disagreement between the position taken by Bureau Counsel and that taken on behalf of the many foreign air carriers. Certain of the motions to dismiss have confused the question of our jurisdiction to entertain this proceeding with the question of our power to promulgate the proposed new Part 213. Again, a number of the arguments confuse the question of the validity of the proposed permit amendments and regulation with the validity of specific actions that the Board might take pursuant to them at some future date. We are convinced that we not only have the power to go forward with the proceeding, but also to amend the permits and adopt the regulation as pro-

¹ The parties filing such comments and motions are: Alitalia-Linee Aeree Italiane S.P.A. (Alitalia), March 24, 1961; Cunard Eagle Airways Limited, Eagle Airways (Bermuda) Limited and Eagle Airways (Bahamas) Limited (Cunard Eagle), March 24, 1961; Deutsche Lufthansa Aktiengesellschaft, (Lufthansa), March 24, 1961; El Al Israel Airlines Limited (El Al), March 24, 1961; Iberia Air Lines of Spain (Iberia), March 24, 1961; KLM Royal Dutch Airlines (KLM), March 24, 1961; Linea Aerea Nacional de Chile (LAN), March 24, 1961; Lineas Aereas de Nicaragua S.A. (Lanica), March 24, 1961; Sabena Belgian World Airlines (SABENA), March 27, 1961; Scandinavian Airlines System (SAS), March 24, 1961; Swissair, Swiss Air Transport Company, Ltd. (Swissair), March 24, 1961; Trans-Canada Air Lines (Trans-Canada), March 23, 1961; and Varig Airlines (Varig), March 24, 1961. SABENA showed good cause for the late filing of its motion to dismiss.

Comments not challenging the Board's jurisdiction were filed by: Aerolineas Peruanas S.A. (APSA), March 24, 1961; Compania Ecuatoriana de Aviacion S.A. (CEA), March 24, 1961; Empresa Guatemalteca de Aviacion S.A. (AVIATECA), March 24, 1961; Japan Air Lines Company, Ltd. (JAL), March 24, 1961; Pilots of Pan American Airways (PAA Pilots), March 24, 1961; and Transportes Aereos Nacionales, S.A., of Honduras (TAN), March 24, 1961.

Certain of the comments filed on March 24, 1961, stated tentative statements of position with respect to the problem raised by Order E-16288 while others related to requests for evidence and various matters of procedure during the hearing stage of this proceeding. Aerlinne Eireann Teoranta (Irish International Airlines), filed a tentative statement of position on March 31, 1961, after obtaining leave for a late filing, in which this latter carrier also contests the Board's jurisdiction and, among other things, requests that the Board ascertain the position of the Department of State with respect to the foreign relation issues raised by this proceeding.

² The following parties answered Pan American's motion: American Airlines, Inc. (American), Bahamas Airways Limited (BAL), British Overseas Airways Corporation (BOAC), British West Indian Airways Limited (BWIA), El Al, Iberia, Irish International Airlines, JAL, KLM, LAN, Lufthansa, Qanta Empire Airways Limited (Qantas), SABENA, SAS, Swissair, Trans-Canada, Varig, and Bureau Counsel.

³ Answers in opposition to motions seeking dismissal of the proceeding were seasonably filed by American, Pan American, and Trans-World Airlines, Inc. (TWA). Answers in support of the motions to dismiss were timely filed by El Al, Iberia, LAN, and Varig.

posed in the order instituting the investigation. Whether we should do so as a matter of public interest, is the issue to be resolved in the proceeding.

The motions of the foreign air carriers that the Board dismiss this proceeding for lack of jurisdiction are based mainly on the contentions (1) that the Board would exceed its powers under the Act in requiring reports and in regulating foreign air carriers in the manner proposed by the new Part 213; and (2) that in any event, the Board is prohibited from exercising the powers proposed in Part 213 by various intergovernmental agreements.

Section 402(b) of the Act provides that the Board is empowered to issue a permit to a foreign air carrier authorizing it to engage in foreign air transportation if it finds that such carrier is "fit, willing, and able" and that the transportation will be in the public interest. Section 402(f) provides that any permit issued under the provisions of the section may, after notice and hearing, be altered, modified, or amended by the Board whenever it finds such action to be in the public interest. Section 402(e) provides that the Board may attach to a foreign air carrier permit "such reasonable terms, conditions, or limitations as, in its judgment, the public interest may require."

The section imposes no express limitation on the Board's power to attach terms, conditions, and limitations to such a permit, nor does it contain anything that could be construed as an implied limitation on its authority to do so. On its face, therefore, Section 402 constitutes a broad grant of authority to the Board to attach terms, conditions, and limitations, subject only to the requirement that they be "reasonable" and that, in the judgment of the Board, they be required by the "public interest."

Certain of the foreign carriers argue that the detailed provisions for the regulation of citizen air carriers set forth in Section 401 of the Act and the absence of comparable provisions in Section 402 relating to foreign air carriers indicates a Congressional intent to grant the Board narrower powers in the regulation of foreign flag carriers than those granted with respect to U.S. carriers. From this they argue that the proposed regulation is not a true term, condition, or limitation but is an attempt by the Board, legislative in nature, to assert a power which it does not possess under the Act.

There are, of course, marked differences between Section 401 and Section 402 of the Act, and we assume that the differences have some significance. However, these differences, rather than supporting the view that Congress intended to give the Board less control over foreign carriers than over U.S. carriers, lead to the opposite conclusion.

To us, the Congressional plan seems clear. In dealing with citizen air carriers, Congress spelled out in considerable detail both the rights and correlative obligations of the carriers and required the Board in exercising its powers under the Act with respect to them to do so in the light of those specific rights and obligations. On the other hand, in dealing with noncitizen air carriers, Congress imposed few specific obligations and granted few correlative rights, but left the nature and extent of the regulation to be undertaken largely to the discretion of the Board, subject to the requirement that Board action be predicated on the standards of "public interest" set forth in the Act. That this is so can be seen by a comparison of some of the provisions of the two sections. Under Section 401 the Board "shall issue a certificate" if it finds that the service is required by the public convenience and necessity. Under Section 402 it is "empowered" to issue a permit if it finds that the transportation will be in the public interest. Section 401(e) provides that there shall be attached to the exercise of the privileges granted by a certificate such reasonable terms, conditions, and limitations as the public interest may require. Section 402(e) provides that the Board may attach to a permit such reasonable terms, conditions, or limitations as, "in its judgment", the public interest may require. Section 401(e) grants each U.S. carrier, as an incident of holding a certificate, authority to make charter trips and other special services without regard to the points named in its certificate under regulations prescribed by the Board. Section 402 grants no similar authority to the holder of an air carrier permit.

Under Section 401 a certificate may be revoked only for intentional failure to comply with the provisions of the Act, or a rule or condition adopted thereunder, and even then only if the holder fails to comply within a reasonable period of time with an order of the Board directing compliance. Under Section 402 a foreign air carrier permit may be revoked by the Board whenever it finds such action to be in the public interest. Section 401(e) specifically provides that no term, condition, or limitation of a certificate shall restrict the right of an air

carrier to add or change schedules or equipment as the development of the business and the demands of the public shall require. Section 402 imposes no limitation on the Board's power to attach such a term or condition to a foreign air carrier permit.

We find nothing elsewhere in the Act or in its legislative history that would require or warrant acceptance of the narrow view of the Board's powers that is advanced by the foreign carriers. Congress obviously was not unmindful of the international, political, and national defense considerations that might affect foreign air transportation, or of the need to devise a regulatory plan that would take those factors into account. Indeed, Sections 801 and 1102 of the Act appear to have been designed to provide that accommodation. However, there is no indication that Congress intended in any other manner to limit the Board's regulatory powers over foreign air carriers.

Turning to the specific proposal here under consideration, we conclude that the Board can properly take the contemplated action under the power granted it to impose terms, conditions, and limitations. The inclusion of an express prohibition in Section 401 against the imposition of a term, condition, or limitation restricting the right of a carrier to add to or change schedules or equipment indicates that but for the prohibition such a restriction could be imposed as a term, condition, or limitation. Similarly, considering the direct bearing that traffic statistics may have on the public interest determinations the Board must make, we also have no doubt that a requirement for the filing of such statistics is also an appropriate matter for inclusion in a term, condition, and limitation. We are, of course, dealing here only with the basic question of the Board's jurisdiction. The ultimate determination of whether the particular condition, in the light of all pertinent facts, is reasonable and in the public interest will be made at the conclusion of the proceeding on the basis of the matters adduced at the public hearings to be held therein.

The foreign carriers moving for dismissal of the proceeding also contend that the proposed Part 213 would violate Section 801 of the Act. They argue that not only the amendment of the permits and the proposed regulation must be approved by the President, but that, additionally, each individual action by the Board pursuant thereto must be similarly approved. We do not agree.

Under the procedure proposed, the permit amendments and the regulation would both be submitted to the President for his consideration in accordance with the provisions of Section 801 of the Act. Should he approve, everything required by Section 801 will have been done. The Board's subsequent action in individual cases would not result in any further amendment of the permits but would merely constitute the application and implementation of the conditions the President, in his discretion, had determined to impose.

This procedure is consistent not merely with the letter of Section 801, but its spirit as well. For, while the power of the President over those changes in certificates and permits for foreign air transportation enumerated in Section 801 is absolute, not all actions of the Board that may affect foreign air transportation require his approval. The Board exercises many powers in respect of certificates and permits for foreign air transportation, some of them of major importance, without approval of the President. "It is not to be supposed that Congress intended to burden the President with the duty of ultimate decision of all questions which might come before the Board." *Pan American Airways v. Civil Aeronautics Board* (178 F. 2d 34 (C.A. D.C., 1959)).

It might be added that the proposed procedure is not novel, but is one that has been followed for many years without challenge in various matters relating to both certificates and permits. Thus, the Board under general conditions in certificates of public convenience and necessity implemented by specific regulations, and without further proceedings looking toward amendment of those certificates, has required carriers to file and has reserved the right to disapprove on public interest grounds proposals to render service through a particular airport; to provide nonstop service; and to change service patterns. Additionally, in certificates for foreign air transportation designating general areas rather than points, the Board by condition has required the carriers to operate only under approved service plans specifying the particular points to be served and has reserved the right to approve or disapprove those service plans without further formal procedures or Presidential approval. Nor has this procedure been limited to U.S. carriers. For many years the foreign air carriers have filed airport notices and requests to do business in a name other than that in which their permit was issued.

Moreover, the procedure contemplated by the new part 213 is precisely the same as that followed in the case of off-route charter operations by foreign air carriers. In the charter field, the Board after a formal proceeding amended the outstanding permits of all foreign carriers who were parties to the proceeding to authorize them to conduct off-route charters under regulations prescribed by the Board. The Board's decision to amend the permits, together with an implementing regulation, were transmitted to the President concurrently and were approved by him. Since that time, the foreign carriers have filed with the Board applications for authority to conduct individual charter flights and those requests have been granted or denied by the Board in accordance with the terms of the regulation without additional proceedings and without referring the action to the President for his consideration.

The foreign carriers further urge that action under the proposed regulation would amount to an unlawful delegation of power by the President or would in any event require a written delegation of power by him before the Board could proceed. In the light of the matters heretofore discussed, we doubt that delegation, in any real sense, would be involved. However, assuming, *arguendo*, that Board action would entail a delegation of authority by the President, we find nothing in the pleadings of the foreign carriers to indicate that assignment of the function of administering the regulation would not be within the President's discretion. Whether such a delegation, if needed, would be one that would have to be made in writing is immaterial in deciding whether the Board can properly move forward with this proceeding and reach a decision therein which it will transmit to the President.

The second major contention of the foreign air carriers in support of their motions to dismiss for lack of jurisdiction is that the proposed regulation would be inconsistent with the requirements of Section 1102 which provides that the Board in performing its powers and duties under the Act shall do so consistently with any obligation assumed by the United States in any treaty, convention, or agreement that may be in force between this country and a foreign country.

One of the purposes of the proposed permit amendments and the regulation is to enable the Board, in appropriate situations, to require foreign carriers to submit traffic statistics that will give it information on the origin and destination of the traffic carried, from which the Board can determine whether the frequencies and capacity being operated by a particular carrier are excessive in terms of the primary justification traffic between the United States and the foreign carrier's home country. Also, the regulation would permit the Board, through its reserved authority to disapprove schedules, to prevent the operation of frequencies and capacity which are excessive in terms of such traffic. It is to this that the foreign carriers principally object.

A number of the moving parties take the position that an amendment of the permits and adoption of a regulation to reserve authority to disapprove schedules in and of itself would constitute a violation of the standard capacity provisions of the Bermuda type agreements, and would be prohibited by Section 1102. We do not agree.

The Board is here considering the amendment of all outstanding foreign air carrier permits and the promulgation of regulations applicable to all foreign air carriers operating pursuant to authority granted under the Act. Thus, the contemplated action would cover carriers of countries with whom we have no transport agreements as well as those of countries with whom we have such agreements. Additionally, bilateral agreements are subject to amendment, and agreements could be entered into in the future with other countries which would not necessarily contain provisions different from those included in the existing bilateral arrangements. Finally, the situations in which the Board might take action pursuant to the regulation could vary widely. For example, the Board might act to meet restrictive action by a foreign country against a U.S. carrier. There could be situations in which consultation had been resorted to but had failed to resolve a problem of excessive capacity. Or, there could be situations in which both consultation and arbitration had been resorted to and action under the regulation would be in effectuation of the arbitration award.

We find it unnecessary here to determine whether there may be situations in which action by the Board disapproving schedules or equipment would be inconsistent with an obligation that the United States has assumed under a particular agreement. The important point is that there are many actions the Board could take in various situations under the regulation without raising

this problem. The mere possibility that there may be specific situations in which the Board could not properly act under the regulation does not impair the Board's power to promulgate such a regulation or affect its validity under the Act.

In any situation in which the Board contemplates disapproving a scheduled filing, the foreign air carrier is given the right under the regulation to appeal the Board's notification. In appealing the Board's action the foreign carrier will have a full opportunity to urge not merely that the action is not required in the public interest, but is also inconsistent with some outstanding agreement.

The foreign carriers make a number of additional arguments directed to showing that the contemplated action would not comport with certain international obligations the United States has assumed. They contend that a provision for approval of schedules would not be a law or regulation "normally applied" to U.S. carriers, and, hence, would contravene outstanding bilateral agreements. They further assert that the proposed regulation would deny "equality of opportunity" to the carriers of each country to operate the routes granted as provided for in the agreements. As a third point, they argue that the requirement for approval of schedules would not apply "without distinction as to nationality" and hence would be contrary to Article II of the Chicago Convention.

Apart from the fact that certain of the provisions of the international agreements relied on have no application to the present situation,⁴ the simple answer to these arguments is that the Board has no intention of applying unequal treatment to the various foreign air carriers or to the foreign air carriers, on the one hand, and U.S. air carriers, on the other hand.⁵ The same is true with respect to the charge that the regulation would be discriminatory in that it would allow the Board to require filings by one foreign air carrier but not by another. In order to avoid the imposition of unnecessary burdens on any carrier, the Board has proposed that the requirements for filing be applied only when the circumstances indicate that this is necessary in the public interest. So long as the Board applies the regulation to all carriers with an even hand, we find nothing discriminatory in that proposal.

Finally, some of the foreign carriers contend that the requirement of Section 213.5 for the filing of traffic data violates Articles 54 and 67 of the Chicago Convention. Article 54 does not purport to vest an exclusive power in the Council of ICAO to collect and publish international air traffic statistics and Article 67 does not limit any country's right to seek traffic data from other nations by means other than those provided for by ICAO. We find nothing in the consultation or other provisions of the bilateral agreements to which the United States is a party that would conflict with the proposed requirement.⁶

In view of the foregoing, we will deny the motions of the foreign air carriers to dismiss the proceeding.

We further will deny Pan American's motion to broaden the scope of the proceeding to include the question of requiring foreign air carriers to file pooling and similar agreements. As Pan American points out, the issues that would be raised by the grant of its motion are related to issues already in the case. However, inclusion of the issues proposed by Pan American is not necessary to a sound disposition of the proceeding, and their inclusion would inject additional complex questions of law and policy which would unduly expand the scope of the proceeding and unduly delay its disposition.

We also will deny the request of the foreign air carriers for oral argument. The Board's jurisdiction in this matter has been exhaustively briefed by the

⁴ For example, the Chicago Convention was not intended to deal with the controversial questions of aviation rights. These were left to be determined by other international agreements independent of the Convention. Article II applies to the navigation of aircraft rather than economic matters and is not pertinent here.

⁵ Although the Board does not agree that Section 401(e) would preclude it from taking action to require a U.S. carrier to abide by the capacity provisions of an agreement the United States may have entered into, it is not necessary to debate that point. Unequal treatment would arise only if the Board took action against a foreign air carrier, but failed to take action against a U.S. carrier under the same circumstances.

⁶ Swissair asserts that it would be contrary to the will of the foreign governments for data on their carriers to be disclosed to the public, and that, in view of the provisions of Section 1104 of the Act, such data cannot be withheld from Congress. The secrecy which it may be appropriate to afford to statistics collected under the regulation is a matter for determination when the record in this case is complete, and constitutes no basis for dismissal of the proceeding. However, at this time it might be noted that access by the duly authorized Committees of Congress to such statistics is not tantamount to publication. The Congress has demonstrated its willingness and ability where appropriate to withhold much more highly secret information from public disclosure.

parties and they have had a full opportunity to set forth all pertinent arguments in support of their positions. Oral argument is not required as a matter of fairness to them, and would only serve to further delay the proceeding.

With respect to comments and statements submitted relating to requests for evidence and other matters of procedure, including among other things, proposed statement of issues, such matters will be left to the determination of the Examiner.

ACCORDINGLY IT IS ORDERED:

1. That all requests, motions and objections challenging the Board's jurisdiction in this matter be and hereby are denied;

2. That the requests for oral argument be and hereby are denied;

3. That the motion of Pan American to broaden the scope of the proceeding to include the issue of requiring foreign air carriers to file with the Board for approval agreements relating to pooling of traffic and revenues or the cooperative working arrangements affecting air transportation from the United States be and hereby is denied;

4. That the proceeding shall move forward promptly to hearing without awaiting disposition of any petitions for reconsideration of this order that may hereafter be submitted by any party to the proceeding.

By the Civil Aeronautics Board:

[SEAL]

(Signed) HAROLD R. SANDERSON,
Secretary.

Order No. E-17537: Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 4th day of October 1961

DOCKET 12063

In the Matter of Investigation of the Terms, Conditions, and Limitations of Foreign Air Carrier Permits

ORDER ON PETITIONS FOR RECONSIDERATION

By Order E-17235, dated July 27, 1961, the Board ruled on challenges to its jurisdiction to proceed with the investigation in Docket 12063 and to promulgate a proposed new Part 213 of the Economic Regulations of the Board. The proceedings in Docket 12063 were instituted to determine whether all foreign air carrier permits should be amended by the imposition of a new condition pursuant to which foreign air carriers could be required to furnish traffic data to the Board and submit their schedules for approval by the Board, and more specifically, whether a proposed new Part 213 of the Economic Regulations should be adopted by the Board and incorporated in the permits by reference. Among other things, Order E-17235 denied all requests, motions and objections challenging the Board's jurisdiction in this matter and all requests for oral argument on the question of the Board's jurisdiction in this proceeding.

We have before us petitions for reconsideration of Order E-17235 filed by Aerlinne Eireann Teoranta (Irish International Airlines); British Overseas Airways Corporation (BOAC), British West Indian Airways Limited (BWIA) and Bahams Airways Limited (BAL), commonly referred to as the British carriers; Deutsche Lufthansa Aktiengesellschaft (Lufthansa); KLM Royal Dutch Airlines (KIM); SOCIETE ANONYME BELGE D'EXPLOITATION DE LA NAVIGATION AERIENNE (SARENA); Scandinavian Airlines System (SAS); El Al Israel Airline Limited (El Al); Iberia Airlines of Spain (Iberia); Linea Aerea Nacional de Chile (LAN); and S. A. Empresa de Viacao Aerea Rio Grandense (Varig).¹ Collectively considered, the foregoing petitions for reconsideration in one way or another request that the Board: (a) reconsider Order E-17235; (b) stay all further proceedings in Docket 12063 pending final disposition of the petitions for reconsideration; (c) vacate or rescind Order E-17235; (d)

¹ Petitions to reconsider Order E-17235 were due to be filed with the Board on or before August 17, 1961. Except for the petition of Irish International Airlines, each of the petitions noted above was filed on or before August 17, 1961. We have allowed the filing and consideration of the petition of Irish International Airlines because this carrier accounted for the one-day late filing as due to delays in the transmittal of its petition through the mails.

grant oral argument on the question of the Board's jurisdiction in this matter; (e) dismiss the proceedings in Docket 12063 or individual respondent parties therefrom for the lack of jurisdiction; and (f) grant such other or further relief as may be deemed just and proper in the premises.

After careful consideration of each of the petitions for reconsideration, the Board finds that the matter set forth in said petitions fail to establish error in Order E-17235 or otherwise demonstrate that the relief requested in said petitions is warranted in any way. In essence, the arguments advanced for reconsideration are basically reiterations and further argument in support of contentions advanced by the petitioners in their original motions to dismiss the proceedings in Docket 12063, which matters were considered and rejected by the Board in Order E-17235.

If further findings yet need to be made with respect to the reiterations advanced in the petitions for reconsiderations, it is only necessary to address ourselves to the allegations of several of the petitioners that we have misread and misconstrued our authority under sections 402, 1102, and 801 of the Federal Aviation Act. The petitioners reargue their earlier contentions to the effect that in asserting our jurisdiction to promulgate the proposed new Part 213 of the Economic Regulations we have erred in allegedly failing to consider the limiting effects of the provisions of sections 1102 and 801 of the Act upon our authority under section 402 of the Act. The position of the foreign air carrier parties contesting our jurisdiction in this matter would produce a manifest inconsistency between our clear authority to condition foreign air carrier permits as provided for in section 402 and the provisions of sections 1102 and 801 requiring adherence to intergovernmental agreements and Presidential approval of permit amendments, respectively.

In spite of the necessary concomitants of national airspace sovereignty and even though section 402 is clear in its provisions regarding our authority to attach terms and conditions to foreign air carrier permits, it is argued that because of the provisions of outstanding bilateral air transport agreements to which the United States is a party, section 1102 limits our authority to act under section 402 of the Act with respect to the permits of those foreign air carriers whose countries are also parties to such agreements. However, there is no express provision in section 1102 that the Board shall disregard any other express authority or prohibition of the Act, or that the Board shall fail to exercise any of its powers and duties to be performed under any of the other provisions of the Act. On the contrary, the provisions of section 1102 clearly assume that such other powers and duties will, in general, be performed. It certainly cannot be presumed that Congress has done a vain thing in providing the Board with the conditioning powers of section 402. Each provision of the Act must be given its intended meaning and effect so that each provision will, insofar as possible, harmonize with other provisions of the statute, thus permitting each provision thereof to be effective. Accordingly, it seems clear that the provisions of section 1102 regarding adherence to international obligations constitute no bar to our authority under section 402 as proposed in Docket 12063. Moreover, it is clear that the provisions of section 1102 do not abandon our national air space sovereignty, especially when viewed in conjunction with the outstanding international agreements to which section 1102 alludes. Further, there is nothing in the international agreements that deprives the Board of the right to perform its functions under section 402 of the Act. Finally, the promulgation of the proposed new Part 213 would not require the Board to take any of the actions which are now being protested by the foreign carriers. We have tried to make it abundantly clear that if adopted by the Board the proposed new Part 213 of the Economic Regulations would be only an enabling regulation and would not be self-executory. The Board contemplates no action at any time which would be inconsistent with any outstanding international agreement, treaty, or convention. On the other hand, it must be recognized that bilateral agreements are subject to amendment after consultations by both of the parties thereto at any time and that such agreements are also subject to denunciation by either of the parties at any time.²

The provisions of section 801 of the Act likewise harmonize with the principles and conclusions heretofore discussed with respect to the status of the provisions of section 402 of the Act. The President's authority under section

² Through inadvertence, the ninth line from the bottom of page 8 of Order E-17235 contains an error in terminology which destroys the intent of the sentence of which that line is a part. The words "differet from" should be changed to read "identical to * * *".

801 does not minimize the authority of the Board under section 402 of the Act. In contending that the Board has no power to amend the foreign air carrier permits in the manner proposed by the new Part 213 of the Economic Regulations, the protesting parties ignore the President's role in this proceeding. It is the President—and the President alone—who will finally decide this case pursuant to section 801 of the Act. The President's power to approve or disapprove the Board's ultimate recommendations in this matter is unqualified. It is the Board's function under section 402 to reach the determination whether the proposed regulation is in the public interest and whether the public interest requires attachment of the proposed terms, conditions and limitations to foreign air carrier permits. Congress thus bound the Board to the standard of public interest which it further defined in section 102 of the Act. The Congress also required public hearings in proceedings under section 402 so that the President would have the advantage of both an evidentiary record and the Board's recommendations with respect to 402 issues requiring Presidential determination under section 801 of the Act.

Certain of the petitioners further contend that, under the proposed Part 213, the Board and not the President would perform the actual functions of requiring submission of traffic data and schedules and the approving and disapproving of such schedules. The simple answer to this contention is that the President alone must decide whether to approve or disapprove the proposed amendment of the foreign air carrier permits. As to how the new Part 213 would be administered in the event the President should approve the proposed regulation is a matter for the President to decide. If some delegation of ministerial authority to the Board should eventuate from the President's approval of the proposed regulation, there is no reason now to assume that such a delegation of power by the President would be improper. In any event, questions as to kind and extent of delegation of authority necessary to the administration of the proposed Part 213 are matters bearing upon the merits of the regulation as proposed and not upon the issue of our jurisdiction to promulgate the proposed Part 213.³

ACCORDINGLY, IT IS ORDERED:

That the petitions filed for reconsideration of Order E-17235, dated July 27, 1961, be and each is hereby in all respects denied.

By the Civil Aeronautics Board:

[SEAL]

(Signed) HAROLD R. SANDERSON,
Secretary.

Mr. NELSEN. Mr. Chairman, I have a question.

You cited the case where the Civil Aeronautics Board's opinion as to rates finally prevailed in the controversy referred to in your earlier remarks. Assuming now that a delicate situation existed between the governments involved and the President had the authority to step into the negotiation, is it not possible that in view of a delicate situation that the State Department and the President might say to the CAB, "Well, under the circumstances we don't want to rock the boat. We would rather you do not press your point."

Isn't that a possibility?

Mr. TIPTON. It is indeed.

Mr. NELSEN. Thank you, Mr. Chairman.

Mr. ROGERS of Florida. Mr. Chairman, may I ask a question here.

Mr. Tipton, it appears to me that your objection to this legislation is it is stating in a positive sense something which you claim now the CAB has in a negative way; is that true?

Mr. TIPTON. It is not quite that, Mr. Rogers.

I feel that the power it has now is more calculated to achieve the results the Government wants, albeit indirect power, than the direct

³ On August 28, 1961, the British carriers filed with the Board certain exceptions to the Examiner's Further Report of Prehearing Conference served August 7, 1961, as revised by Notice of the Examiner dated August 18, 1961. Aside from the fact that these further exceptions should have been filed with the Examiner, we find the exceptions without merit and each is hereby denied.

power to fix rates which brings in its train all of the difficulties that I describe.

Mr. ROGERS of Florida. Now, as I understand it, you said that actually the CAB's position prevailed because they objected, now if their position prevailed simply because of a negative position or objection they still would have had the same result if they had the power here by projecting the rate positively, would they not?

Mr. TIPTON. They would have had the same results, in other words, and that is my point.

Mr. ROGERS of Florida. So they can do now—

Mr. TIPTON. Without this legislation.

Mr. ROGERS of Florida. They can do now without this legislation, although it is a different approach; is it?

Mr. TIPTON. You see, they can do without this legislation which, as I pointed out, has very great disadvantages in that it deliberately creates unnecessary international controversy because of its threatened unilateral action, because it results in depriving the Board of any power to regulate foreign flag carriers, and others that I have mentioned.

Mr. ROGERS of Florida. Do we have the power now to regulate foreign flag carriers?

Mr. TIPTON. We don't have the power now except as I have described through IATA, approval or disapproval of the IATA agreement under section 412, and section 402 which deals with their permits.

Mr. ROGERS of Florida. We would still have that. So that doesn't change that situation in any degree, would it?

Mr. TIPTON. The situation that would be changed was that we would start out to regulate international rates, and wind up with only regulating U.S. carriers.

Mr. ROGERS of Florida. Isn't this what—

Mr. TIPTON. And deprive ourselves at the same time of protecting American-flag carriers ultimately, possibly in the future against destructive rates by foreign-flag carriers.

Mr. ROGERS of Florida. Isn't this in effect what we have done now, in other words, we took the position of the American-flag carriers in the negotiations with Britain.

Mr. TIPTON. Yes.

Mr. ROGERS of Florida. And they finally have agreed to that.

Mr. TIPTON. Yes.

Mr. ROGERS of Florida. Let me ask you just one more question or two on the IATA agreement.

How do you come to a determination? Does each member have a vote and what is the membership?

Mr. TIPTON. The membership is made up of all international carriers.

Mr. ROGERS of Florida. And each one has a vote?

Mr. TIPTON. Each one has a vote, and the agreement cannot be adopted without a unanimous vote. Each carrier, to say it conversely, each carrier, has a veto, and so it is an agreement when you finish.

Mr. ROGERS of Florida. I understand, I yield to Mr. Macdonald.

Mr. MACDONALD. If what you say there is true I wasted all yesterday because I was trying to understand Mr. Boyd and I finally thought

I understood him to say that while what you say is true that perhaps in the long run through negotiations they can help themselves, but that this time it took a year.

If they had this requested rate regulation, that in the first instance it would go to arbitration and in the meantime the lower rate would still continue in effect, and therefore they would have the low rate for a full year instead of being subjected to the humiliation of being told that American citizens have to pay more or that the airplanes were going to be confiscated.

So, I don't believe, if my understanding is correct, that your answer to Mr. Rogers was responsive.

Mr. TIPTON. Well, if this legislation had been in effect at the time of the fracas last time I am not sure how that would have been carried into effect for one reason, and this is one I have dwelt on a little bit before.

To fix a rate under this legislation you have to hold hearings, and follow the normal rate-fixing procedure, that is what the statute provides. I am not at all sure, I rather doubt, as a matter of fact, that the Board could have gotten that done, just physically gotten it done, in the time required to have dealt with this problem.

Mr. MACDONALD. The problem wouldn't have arisen until the rate had been fixed obviously.

Mr. TIPTON. That is right.

Mr. MACDONALD. So that is of no moment to what we are talking about.

Mr. TIPTON. Well, what they were faced with was an immediate series of negotiations about this business.

Mr. MOSS. Would you yield at this point?

Mr. MACDONALD. Yes.

Mr. MOSS. One of us is confused.

Now, in the situation a year ago, had the Government or the CAB possessed the authority specifically sought under 6400 they would have voiced objection to the higher rates?

Mr. TIPTON. Right.

Mr. MOSS. And those rates there proposed would have gone into effect provisionally under (e).

Mr. TIPTON. Let me start over as if the Board had that power.

They disapproved the Chandler rates. They wanted substantially lower rates, the Board did.

Mr. MOSS. That is correct.

Mr. TIPTON. If they had had this legislation, they would have started a proceeding to fix the lower rates presumably since they wouldn't have been able to touch foreign-flag carriers at that point, they would have tried to fix the rates of our carriers.

I think that is what Mr. Boyd said he would have contemplated. If he had done so, you have got this procedural problem intervening but let's drop it out for the purpose of this discussion. I think it is a real problem and cannot be ignored but let's drop it out for clarification. They would fix Pan American and TWA passenger rates to Europe at the level they wanted them set.

In that event, Mr. Boyd is right. On the basis of this agreement the United Kingdom, France, Germany, Italy would have been bound during all the discussion and dispute that followed to permit our carriers to have those rates in effect.

Now that, I think that is quite clear, and this is his point, I believe, in saying that this legislation is good because it would have permitted him to do that if he could have gotten over these procedural hurdles.

It is our judgment that notwithstanding that the dispute would have raged in the same fashion it did and we would have had great international difficulty. They would have had to accept it under the agreement, but that would not have eliminated all the ill feeling. That is one thing.

The second thing, it carries with it, the legislation which would have permitted that very short range advantage, an advantage that would have gained them, let's make it 9 months, that very short range advantage establishes a principle that is a bad one for many years.

Mr. Moss. Would you yield further?

The principle we are discussing is established in the agreement, so whether it is good or bad it has been in existence since 1946.

As a matter of fact, the authority sought here was contemplated in the 1946 agreement because there was an agreement made at that time that the executive department of the United States would press for this authority. So, even that was contemplated.

Now, as to who prevailed, haven't you oversimplified rather substantially the question of who prevailed and how, whether it was the registering of disapproval by the CAB, whether it was a subsequent IATA conference followed by yet another conference, and finally by unilateral action of some of the carriers which at that point laid them open to antitrust problems, there was much more than saying that the disapproval of the CAB led ultimately to an agreement.

Many things led to an agreement, and carefully reviewing the subsequent occurrences could lead independent researchers to come to different conclusions as to what might have brought about the change in fares which are now available.

So it is oversimplification when you say the CAB won the fight.

Mr. TIPTON. It may be an oversimplification to say that, to just rest on the notion that the CAB won the argument. But the fact remains that without this legislation they got what they wanted.

Now, I have no doubt a lot of things entered into it but that was the case.

Mr. Moss. Some countries are still in disagreement with the rates, aren't they?

Mr. TIPTON. I think the IATA agreement is closed. I don't know whether they like it very well, but they have gone along with it. The agreement is closed.

Mr. MACDONALD. But the point is a whole year's time was used up before the thing was settled. I think that is the strongest argument the CAB makes, as I said earlier. If this legislation passes—and I will phrase it as a question—isn't it true if this legislation passes that what happened 9 months or a year later as you said would have happened automatically at the time of the dispute, and thereby the American fares would have prevailed for a year ahead of time?

Mr. TIPTON. Yes. I really don't think that the committee should proceed on the assumption that this all would have been easy because it would not have been.

What the Board would have had to do, after they disapproved the Chandler fares, and thus created a controversy, their next step, if

they use this legislation at all, their step—their next step would have had to be to fix a rate under this legislation. They would have had to fix it because that is the only thing that brings into effect the favorable result.

Mr. MACDONALD. Can you correct this confusion in my mind?

Wouldn't the rate have been fixed prior to the announcement by Pan Am if Pan Am was the line involved or TWA? They just can't arbitrarily announce a rate, can they, without going to CAB?

Mr. TIPTON. They way they go through the CAB is to file a tariff.

Mr. MACDONALD. Right.

Mr. TIPTON. And if the Board likes it they let it go into effect.

Mr. MACDONALD. Right.

Mr. TIPTON. And that does not constitute a fixing.

Mr. MACDONALD. In other words, that is not a rate hearing.

Mr. TIPTON. That is right.

Mr. MACDONALD. They don't have a rate hearing. They just agree to the request and that has no legal effect.

Mr. TIPTON. The legal effect it has is to publish the rate. The Board at that point can let it go into effect, and that is the way rates usually are placed in effect. But under this bill, to make it effective, it contemplates the fixing of a rate by the Board because that is what brings into effect paragraph (e).

Mr. MACDONALD. And that would not necessarily be, as you say, that a rate fixing hearing had been held prior to the announcement of the new rate.

Mr. TIPTON. That is right. It would not necessarily have been fixed and that is my point. That when the Board then after having disapproved the Chandler rates would decide to fix this rate for Pan American, and TWA, they would have then had to go through the procedure prescribed by the statute of hearings, arguments, of material relating to this, all this, so I think it is very doubtful whether it would be that easy to bring it into effect, as we said, 9 months before it actually went into effect.

Mr. Moss. Mr. Chairman, I would like to have the Board counsel give his opinion on this point. As I read the agreement the mere granting by the Congress of the authority to fix brings into effect paragraph (e), is that correct, in the event the power is conferred by law upon the aeronautical authority of the United States to fix fair and reasonable rates?

Now, in the case last year we were objecting to higher rates. The rate was then under discussion. I think the objection was to a reduction in the discount for a roundtrip, was it not?

Mr. TIPTON. Yes.

Mr. Moss. And our people wanted at least the fare they already had rather than a higher fare.

So the rate there was fixed. The other side was proposing a higher rate. We were proposing at that point at least the status quo.

Mr. TIPTON. I think the—I think you are making a valid point (e)—and I am glad that you corrected me because I stated it wrongly, if the ratemaking power, fixing power is given to the Board, then (e) becomes effective. But the point you may be overlooking is that in order for the Board to force our carriers to operate at a particular rate it must actually fix the rate, it must establish it under the just and reasonable standards and after a hearing.

Mr. Moss. Didn't the trouble arise because our carriers were continuing to charge the rate that had the 10 percent rather than the 5-percent discount?

Mr. TIPTON. Limiting ourselves to this precise circumstance that we had last year, I think it likely that the carriers would have published a tariff, filed a rate for use that the Board would have thought was all right if you limit consideration to this one single circumstance. I don't think that legislation should be passed to deal with the fact situation of one single event.

Mr. Moss. It is illustrative of the problem; isn't it?

Mr. TIPTON. It is illustrative of a problem but I don't believe legislation should be based on one problem for consideration forever.

Mr. Moss. Of course, we wouldn't go to that. If we just go to the point of what actual legislation is based on, to be very technical about it, it is based upon the commitments of the United States 20 years ago to seek this authority, because that is spelled out in the Bermuda agreement.

Mr. TIPTON. That is right, and the question before the Congress—

Mr. Moss. So, it isn't based solely on one case. It is actually in keeping with the commitment made two decades ago.

Mr. TIPTON. But we must consider, I think very carefully our negotiators have always maintained that their commitments to foreign governments are subject in an instance of this kind, to the determination of the Congress.

Mr. Moss. That is what it is all about.

Mr. TIPTON. That is what we are arguing today. I don't think the fact that a commitment was made 20 years ago should persuade the Congress that right now they should enact the legislation.

Mr. Moss. I raise the point merely to counter a contention that only this one case has caused congressional consideration.

Again, that is an oversimplification. Many things have caused it. Requests have been made repeatedly. It was part of the original agreement, and so it is here with rather a lengthy history, not just a one-case history. The one case illustrates an extreme example of what can happen under the authority now held by the CAB without going the step further and giving them that which was contemplated at the time of the Bermuda agreement.

Mr. TIPTON. What we are trying to persuade you is that notwithstanding a commitment if you wish to call it, some years ago, that this legislation, should not be passed, that paragraph (e) of the Bermuda agreement should not be brought into effect because over the long term it is bad.

Now, if—

The CHAIRMAN. We are going to have to conclude.

Obviously, you have not covered your statement, Mr. Tipton. There obviously will be a good many questions asked. So we are going to have to ask you to come back in the morning. However, Mr. Springer has a question. I think we will have to come back in the morning.

Mr. SPRINGER. I will wait until the morning.

The CHAIRMAN. I think I would want you to discuss when you come back in the morning—you made quite a point out of the fact that this legislation would bring about government-to-government negotiations instead of the IATA-type agreements.

You have given an example here of what happened between us and the United Kingdom primarily a year ago, and you have laid great stress on the fact that Mr. Boyd finally got what he wanted.

That developed from a government-to-government negotiation.

Now, it seems to me that you are arguing at one point that we should not adopt this legislation because of that, and then you have given us a very good reason why it should be the way this works out.

I would like to have that discussed a little further.

Mr. TIPTON. My positions there, Mr. Chairman, they don't appear to be consistent, but they are consistent and I will make that clear in the morning.

The CHAIRMAN. All right.

The committee will adjourn until 10 o'clock in the morning.

Mr. Tipton will be here at 10 o'clock so the members would want to be here to hear him.

(Mr. Tipton's prepared statement follows:)

STATEMENT OF STUART G. TIPTON, PRESIDENT, AIR TRANSPORT ASSOCIATION
OF AMERICA

My name is Stuart G. Tipton. I am president of the Air Transport Association of America which represents substantially all of the certificated scheduled airlines of the United States. In addition to the 19 airlines which conduct international operations, our membership includes trunk and local service airlines, Alaskan and Hawaiian airlines, helicopter operators and an all-cargo airline. Together they form a transport system of tremendous significance to the national interest and play a vital role in the advancement of U.S. foreign commerce objectives. These airlines have a direct interest in the legislation now under consideration and we, therefore, appreciate this opportunity to appear before the committee to set forth the views of our industry.

Considerable controversy has developed in the last year as to the level of international air transport rates, the manner in which such rates are determined, and the proper role of Government in influencing and approving rates. This has led some to contend that the Civil Aeronautics Board should have even greater control over international rates than it presently has, and that legislation is needed. Our U.S.-flag airline members do not agree with that contention.

Conceivably, the public interest might be better served if no controls whatsoever existed, and airlines were permitted to compete in world transportation markets on the basis of a relatively free play of economic forces. However, this is not the case, nor is it ever likely to be the case, because—

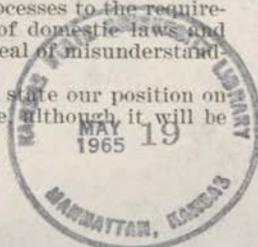
(1) International air transportation involves the rights of many individual sovereign nations—and air transport services between any two nations are subject to the authority of both, not just the authority of the nation of which the airline providing such services is a national;

(2) All scheduled airlines operate within the restricted environment of a regulated public utility both at home and abroad—and they are not completely free to make economic decisions without regard to the variety of requirements imposed by appropriate civil aviation jurisdictions; and

(3) Not all international airline operations are inspired by or based upon strictly commercial requirements or values—while U.S.-flag airlines are privately owned and operated as a basic part of the American private enterprise system, most foreign airlines are either wholly owned or are substantially supported financially by their governments.

This means, quite simply, that individual international airlines, and their governments for that matter, do not have complete freedom in the determination of international rates—and they each are limited in the extent to which they can influence pricing on a strictly competitive basis. It also means that international air transport ratemaking is unavoidably complex. And because of this, and because of the close relationship of ratemaking processes to the requirements of international agreements and to the application of domestic laws and regulations, international ratemaking is subject to a great deal of misunderstanding and confusion.

In this statement, therefore, every effort will be made to state our position on the merits of the pending legislation as plainly as possible, although it will be



necessary, in the interest of separating fact from fiction, to refer to the complications involved in the rate provisions of our bilateral air transport agreements, and to set the record straight with respect to the power now possessed by the Civil Aeronautics Board.

OUR BASIC PHILOSOPHY ON RATE CONTROL AND ON THE NEED FOR THE PENDING
LEGISLATIVE PROPOSALS

There is, we believe, a proper role for the U.S. Government to play in the field of international rate control, and that role is exercising the power to prevent the introduction or continuation of rates which are adverse to the public interest, in the full meaning of that term. The question with which the committee is faced is whether legislation actually is needed to exercise that power, and, if so, what kind of legislation would be suitable and effective?

Our basic philosophy on government international rate control covers two general points. The first is, we do not believe the Civil Aeronautics Board needs any additional authority to exercise the necessary control of international rates. In view of the fact that the persistent requests of the Board over the years for international rate legislation have been denied, it would appear that the Congress has taken a similar position. Nevertheless, I will explain our position in this regard in some detail later in this statement.

The second point is, we are opposed to international air transport price fixing by governments—and our opposition goes considerably beyond the question of self-interest. It involves, instead, the serious question of whether one government can impose its rate philosophies on other governments, or, in the alternative, whether it is in the public interest for a group of governments to decide rates through a mixture of political and economic compromise.

The airlines, therefore, have a deep interest in the three bills which are before the committee. Each of the bills sets out to give the Civil Aeronautics Board greater control over international air transport rates. Each has the public interest of the United States as it stated chief objective. We have already indicated our basic belief that no legislation is needed. But there are important differences in the three bills and I would like to comment briefly on these differences.

H.R. 1716 was introduced at our request, solely to remove any doubts about the Board's authority to control the rates of foreign air carriers flying to the United States. We have never entertained such doubts ourselves, but the Government long has—so we proposed this bill to authorize the Civil Aeronautics Board to suspend not only the rates of foreign airlines, if such rates are found to be contrary to the public interest, but the rates of U.S.-flag airlines as well. If the committee finds that some legislation to control international rates is needed, it will be seen that H.R. 1716 not only will provide the passenger and the shipper with the best possible guarantee that the rates charged will be fair, reasonable, and just—but, more importantly, the provisions of this bill can, in fact, be implemented.

The second bill, H.R. 6400, represents the legislative proposal of the Civil Aeronautics Board. While this bill purports to give the United States control over the rates and practices of foreign air carriers operating to this country, this would not be the actual effect of the legislation if adopted. Enactment of H.R. 6400 would actually divest the United States of rights which it has over foreign air carrier rates pursuant to intergovernmental agreements. In short, this bill would establish price-fixing authority which could never be fully implemented because the authority could not be applied to foreign carriers serving the United States. Moreover, such price-fixing authority would be wholly undesirable because the empty threat of unilateral action by the U.S. Government could serve only to further complicate the international ratemaking process.

The third bill before you, S. 1540, is the amended version of the CAB's bill which the Senate passed on November 26, 1963, and referred to the House. Actually, it is identical to H.R. 6400 except for an amendment to section 2 whereby the proposed requirement of Presidential approval of the Board's international rate actions is deleted. In its stead is a requirement for reporting certain of these actions to the President before publication. The Senate amendment raises many questions, of course, but we think it is more important for us to point out the very basic objectionable features common to both rate-fixing bills.

While we support the view that the public interest requires the Civil Aeronautics Board to exercise effective international rate control, we are convinced that Government price fixing is not the way to accomplish this.

WHY GOVERNMENT PRICE FIXING IS OPPOSED

There are three reasons why we are opposed to international air transport rate fixing, either by the U.S. Government or by a group of governments acting together. The first reason is fairly evident—if the Civil Aeronautics Board secures, and tries to implement rate-fixing powers, other governments will claim the right to take similar action to protect what they consider to be their sovereign rights and interests. This will lead to intergovernmental negotiations where the pressure of political necessity will far outweigh economic requirements. We simply do not believe it to be in the public interest for a group of governors to determine in this manner the rates U.S.-flag airlines must charge U.S. citizens.

The second reason is more basic—the proposed rate-fixing legislation (H.R. 6400 and S. 1540) simply is impossible to implement. As I shall outline in detail later, obligations under international agreements between the United States and other countries will prohibit the Civil Aeronautics Board from fixing or changing the rates of foreign carriers serving the United States, and the Board's complicated rate-fixing decision processes even will prevent any timely effort to fix U.S. carrier rates.

And the third reason is that unilateral government price fixing will stifle, if not destroy, the essential rate negotiating process. The successful development of acceptable and economically feasible rate levels requires that individual airlines have some flexibility in their positions (the antithesis of rate fixing by governments) in order that a compromise can be struck. In short, the airlines must be free to negotiate.

You will note that I have referred to airline negotiations, and not negotiations between governments. To be sure, in extreme circumstances, it may realistically be the governments negotiating. But, in the main, it is the airlines, as it should be. First, the expertise required for ratemaking lies with airline managements. It will always lie there under our free enterprise system, because it is recognized to be an essential exercise of management prerogative. And, practically speaking, to have these negotiations conducted by governments would be impossibly time consuming. Even more importantly, the U.S. Government would be placed in a position where it might have to make important political or economic concessions to achieve rate objectives. The conclusion was reached long ago that the basic machinery for international ratemaking should be a conference of carriers which works out the detailed rate schedules for submission by each member carrier to its respective government for approval. I refer, of course, to the International Air Transport Association.

This is not to say that the various governments concerned, including the United States, do not play a significant role even before the rates are settled upon by the conference. To the contrary, the United States through the Civil Aeronautics Board has always actively influenced IATA rate determinations. The Board makes its views known to American carriers in consultation prior to IATA meetings. After that, if the Board finds the agreement eventually reached in IATA inconsistent with the public interest, the Board, under section 412 of the Federal Aviation Act, disapproves the agreement—as it did last year.

It is important to keep in mind that rates must be negotiated by an international conference of carriers. There is simply no other way to handle the highly complex problem of ratemaking. We would hope that the committee in considering legislation will recognize that this is the case, and will make sure that no action is taken which will impair the carriers' ability to negotiate. Specifically, if our Government is given the power unilaterally to fix rates and if that power is exercised, it could easily lead to widespread adoption of the same practice on the part of other governments. This would make conference ratemaking impossible. Each carrier would come to the conference with its rates frozen by governmental order, and there would be little point in having a conference meeting. As I have indicated, the essence of conference ratemaking is the ability of the participants to provide some accommodation for the problems, the objectives, and the desires of their colleagues in other countries.

Compromise is as much an essential part of an IATA conference as it is a part of the operation of Congress. If each Member of Congress was forced to take an absolutely inflexible position, the work of the greatest legislative body on earth would come to a shuddering halt. This is the reason we stress particularly that the committee not follow the Senate's lead by carrying the United States further in the direction of governmental rate fixing in the international field.

THE INTERNATIONAL RATE PROBLEM

The need for consideration of international air transport rate legislation has been characterized by some as a need to solve a great international rate problem—the problem of unreasonably high international airline fares. While we find that characterization to be misleading, we do agree that rate problems have existed in the past, and that still others will arise in the future, and that the Board should exercise some form of rate control in these situations.

In 1962, the U.S.-flag airlines were confronted with one kind of an international rate problem—the increasing development of uneconomic and destructive rate-cutting practices by certain foreign carriers. As indicated by the legislative history of the Civil Aeronautics Act of 1938, the Congress has long appreciated the fact that destructive rate practices create chaos and impair airline operational performance.

The Civil Aeronautics Board felt then that it lacked specific legislative authority to prevent such practices. We felt that American carriers should be in a position to charge established and approved rates without being undercut. The Board felt then that the only solution was rate-fixing legislation despite the fact such legislation could not be applied against most foreign carriers. We felt then, as we still feel, that the Board already had sufficient authority to act, but, to dispel any doubts that the Board could cope with this problem, we recommended the enactment of rate suspension legislation. Both legislative proposals were considered by this committee in 1962 but no action was taken.

A different kind of international rate problem developed in early 1963 when a disagreement arose between the U.S. Government and other governments as to action governments might take to prevent disputed rates from taking effect. The dispute came about as a result of an international carrier agreement on the level of transatlantic rates which were to take effect in the spring of 1963. Although the U.S.-flag carriers were advocating a level of fares lower than a majority of foreign carriers were then willing to accept, the absence of carrier agreement in this respect prevented the most desirable level of fares from being introduced.

The low-fare philosophy of the U.S.-flag carriers has, however, subsequently prevailed. As a result of considerable international effort and cooperation, of compromise and negotiation, a substantial reduction in North Atlantic fare levels, among others, became effective April 1, 1964. This development was, in part, encouraged by the strong position taken by the Civil Aeronautics Board and by the support given by the Congress and the administration to the general proposition that a reduction in the level of transatlantic rates was in order. But it is significant to note that this development took place without the Board achieving any new or additional rate control authority.

And yet, during the height of the rate dispute last year, the Civil Aeronautics Board vigorously urged the enactment of its long-standing rate-fixing legislative proposal on the grounds that such authority would provide the only solution. But there was, and still is, a much more effective solution—airline negotiations, and through such negotiations the rate levels urged by this Government became a reality—somewhat agonizingly perhaps, but a reality nevertheless. Other governments may have aroused us, and even won temporary victories with threats of confiscating our planes, but those are substantially our rates which have been adopted—the rates sought by our carriers and championed by our allegedly powerless Government.

The Civil Aeronautics Board, however, still advocates the enactment of rate-fixing legislation to solve both the problem of unreasonably high rates, and the problem of destructive rate cutting. The Board takes this position even though it has been demonstrated that airline negotiations have achieved dramatic rate reductions without the Board having any rate-fixing authority, and despite the recognition that such authority cannot be utilized to prevent destructive rate-cutting practices. As the Senate found in its consideration of S. 1540, and as reported on page 14 of Senate Report 473 which accompanied S. 1540:

"The bill (rate-suspension bill proposed by the airline industry) contained some features more desirable and advantageous than the bill reported, for example, of the question of destructive rate practices."

Frankly, we still consider the best solution to any international rate problem is the maximum use, by the Board, of existing powers under the Federal Aviation Act, together with the enactment, if such action is necessary, of legislation such as H.R. 1716 authorizing the suspension of any rate which is adverse to the public interest. This would prevent destructive rate-cutting practices, would prevent

the establishment of unreasonably high rates, and would preserve, for the reasons I shall now outline, the advantages of the most favorable of the two alternative rate clauses under which the United States is obligated by intergovernmental agreements.

THE BERMUDA AGREEMENT AND ITS TWO RATE CLAUSES

It is important to take note here of the two alternative rate clauses of the Bermuda-type bilateral agreements we have with most other nations. Despite the fact this always adds a certain amount of confusion to the international rate-making question, some basic understanding of the matter is necessary because the impact of these alternative rate clauses becomes significant in the consideration of rate legislation.

The basic problem is that one clause is more advantageous to the United States than the other, and those advantages will be maintained under the provisions of one of the pending bills, but will be lost under the provisions of the other two bills. As the Senate found in its review of S. 1540, and as reported on page 6 of Senate Report 473:

"The effect of subparagraph (e) (one of the alternative rate clauses which would be activated with enactment of S. 1540) is to remove the right of the aeronautic authority of either country to prevent the rate of a foreign carrier from going into effect. Thus, the committee was faced with the *paradox that the very act of granting the Board control over foreign air transportation rates of both United States and foreign carriers deprived the Board of direct control over the rates of foreign carriers.*"

[Emphasis supplied.]

I would respectfully suggest that it is more than just a paradox—it is fatal to the stated purpose of S. 1540 (in the words of the Senate report) to " * * * give to the Board the same degree of control over rates and practices of foreign air carriers operating into U.S. territory as foreign countries now have." The paradox is the finding contained in the Senate report that "the bill (S. 1540) reported by the committee provides remedies where they are most needed—in the area of excessive charges imposed upon the U.S. public by foreign carriers and their governments." The actual effect of S. 1540 is completely the opposite, as the Senate report itself subsequently admitted.

When the Bermuda agreement was executed, the Civil Aeronautics Board had no direct authority over international rates. This concerned the British. They were fearful of the lower rate potential of American-flag airlines. The two Governments therefore agreed to two alternative rate clauses in the agreement (texts in attachment A): one, paragraph (e), would apply in the event the Civil Aeronautics Board received rate-fixing authority; and the other, paragraph (f), would apply if the CAB did not receive such authority. The chief distinction between the two clauses is whether or not, and under what conditions, a disputed rate may go into effect.

If the Civil Aeronautics Board receives the rate-fixing authority provided for in H.R. 6400 or S. 1540, paragraph (e) would apply. This clause provides that where one party objects to a new rate as being too high or too low, or for any other reason, the disputed rate could go into effect following consultations and pending a third party advisory report. This rate clause provides for no further courses of action in the event the dispute remains unresolved beyond the commitment of the parties to use their best efforts to put into effect the opinion expressed in a third party advisory report. In other words, the disputed rate could remain in effect indefinitely and, pending settlement of the dispute, no matter how long that may take, American carriers could operate at one rate level and foreign carriers at another without either Government being able to take action.

Thus, while enactment of H.R. 6400 or S. 1540 would permit the Civil Aeronautics Board to fix the rates of American international carriers, the resulting activation of alternative rate clause (e) would prohibit any control over foreign carrier rates, and this is the power which is stated to be the underlying purpose of the legislation in the first place, in order to protect the large numbers of American citizens who use the services of foreign carriers.

On the other hand, so long as the Civil Aeronautics Board does not have rate-fixing authority, paragraph (f) applies. This clause provides that following consultations the party objecting to a new rate " * * * may take such steps as it may consider necessary to prevent the inauguration or continuation of the service in question at the rate complained of." Under this clause, such action can be taken without regard to any further efforts by the two Governments to

resolve the issue. Such action could include rate suspension or the conditioning of operating permits but, in either case, this clause of the agreement permits the taking of necessary action to prevent the disputed rate from going into effect.

The Board and the Senate report argue that this clause permits foreign countries to prohibit the introduction of lower, more reasonable rates by American carriers. It is true that alternative rate clause (f) would enable a foreign country to prevent the introduction of a rate which it, for any reason, objects to. But alternative rate clause (f) is a two-edged sword. The U.S. Government could invoke it similarly against foreign carriers, and the exercise of such reciprocal power could, at least, encourage a settlement, by negotiation, more in keeping with the interests of both parties.

THE LOOPHOLE IN THE CAB'S CASE

Simply stated, with its forced abandonment of the objective to directly control the rates of all carriers operating to and from the United States, the Board's case now rests solely on the questionable theory that the fixing of U.S. carrier rates will eventually influence foreign carrier rates. This theory wholly ignores the realities of international political pressures and completely overlooks the persuasive and strong bargaining powers of foreign governments. It also ignores the complexities of the CAB ratemaking decision process.

Any legislation enacted should serve the public interest. But the public interest involves many factors, including the traveling and shipping public, the economic health of the industry, and the postal service and the national defense. Certainly, we can all agree that the objective is adequate control of international rates for the protection of the traveler and shipper. We believe, however, that empowering the Civil Aeronautics Board to fix international rates would not, of itself, accord the public any greater protection against unfair, unreasonable, or otherwise unjust rates and charges than would be the case if the Civil Aeronautics Board fully utilized its existing powers, or had the power to suspend rates contemplated by H.R. 1716.

A substantial segment of the American traveling and shipping public utilizes foreign-flag air carries, as was pointed out in Senate Report 473. Thus, the rates charged by foreign-flag airlines affect a considerable number of American citizens. If the Civil Aeronautics Board were given the authority to fix international rates, most of our bilateral air agreements provide that the Board could not prevent the establishment by a foreign air carrier of a new rate which was deemed to be adverse to the public interest, nor could the Board change any existing foreign carrier rate no matter how inconsistent such existing rate might be with the public interest. In other words, if either H.R. 6400 or S. 1540 is enacted, the Board could not protect those Americans using foreign-flag air carriers against being charged a rate which is unreasonable or unfair.

In addition, both H.R. 6400 and S. 1540 fail to recognize that international ratemaking must take into account literally thousands of individual tariffs and is clearly a multilateral endeavor. The recognized alternative systems for international ratemaking are: multilateral agreement among governments, or government-approved multilateral agreement among carriers. Our Government wisely chose the latter course some 18 years ago and has maintained this policy ever since. The decision to use an international conference of carriers to develop rates subject to each government's approval was reaffirmed by President Kennedy in his statement last April on U.S. international air transport policy. The policy statement indicated that "this multilateral mechanism, though it has some drawbacks, seems to be the most practical one we can achieve, and it should be maintained."

If the Civil Aeronautics Board's legislative proposal is enacted and implemented, it would conflict with, if not destroy, the conference system of ratemaking—the system which the executive branch has concluded "should be maintained." Specifically, if the Civil Aeronautics Board were to fix and prescribe the rates to be charged between the United States and virtually all major foreign points, it would be academic to convene a rate conference to develop rates already fixed and prescribed by the United States and/or any other government.

The Civil Aeronautics Board would also have to take into account every government's view since no one government can unilaterally determine a rate if another government uses its full sovereign power to prevent the establishment of a particular rate. If our Government sought to obtain agreement from other governments on rates, the United States might well be placed in the position of

being asked to make various concessions, such as the granting of additional traffic rights to foreign carriers.

Finally, under the Board's proposal as set forth in H.R. 6400 and S. 1540, even the rates of U.S.-flag carriers could not be fixed except after notice and hearing. The same requirement of notice and hearing now exists with respect to the Board's authority to fix domestic air fares, and the provisions of H.R. 6400 and S. 1540 are supposed to be an extension of that authority. This means that the Board could not fix, for example, the rates of one U.S. transatlantic carrier without including other U.S. transatlantic carriers in the same hearing, and similarly fixing their rates at the same time. In fact, if it were to proceed realistically, the Board would have to include all appropriate foreign carriers in the same hearing since the objective should be a common rate for all carriers.

This would lead to a massive transatlantic passenger fare case taking years to resolve. Some years ago, the CAB undertook to set fares for the entire domestic airline industry. The *General Passenger Fare Investigation case* (CAB docket No. 8008) was the result. That case took over 4 years from the time it was initiated until final decision.

Furthermore, assuming the Board ultimately fixed U.S. transatlantic carrier rates, the Board could not impose its will on the European governments concerned if they objected. These governments have an equal right to decide on the fares to be charged by airlines flying to and from their countries. The Civil Aeronautics Board cannot expect to set fares for the world. In the last analysis the rate level would have to be negotiated between the governments involved. The existing IATA machinery substantially accomplishes this without the legalistic and time-consuming notice and hearing procedure.

AN AMENDMENT TO H.R. 1716

One technical problem about H.R. 1716 should be called to your attention in this connection. We have said that the rate-suspension provisions of H.R. 1716 are applicable to any rate, but this is not technically correct as the bill now stands. When an earlier version of the bill was first drafted, the then primary rate problem was destructive rate cutting by foreign carriers. We then felt there was no special need to include a provision giving the Board the authority to suspend existing U.S. carrier rates since such rates were not in question. Now, however, in view of the broader question, we would see no objection to an appropriate amendment to section 2 of H.R. 1716 to reflect that existing U.S. carrier rates, as well as existing foreign carrier rates, are subject to the Board's suspension authority.

With such an amendment, H.R. 1716 would, in fact, achieve all of the advantages claimed for H.R. 6400 and S. 1540 without the serious drawbacks inherent in the rate-fixing proposals. In short, H.R. 1716 would—

Give the Board summary power to stop any carrier in foreign air transportation from placing into effect a rate inconsistent with the public interest;

Enable the United States to discharge the obligation to see to it that its own carriers adhere to a reasonable rate structure;

Enable the Board to cope with problems which would arise from the failure of IATA to achieve rate agreements or from any government's disapproval of those agreements; and

Enable the Board to deal with problems arising from rate actions by non-IATA carriers.

By providing for suspension of rates up to 1 year, H.R. 1716 would protect the vital public interest in the continuation of service and the avoidance of destructive rate wars. Moreover, it would do so without placing the Civil Aeronautics Board in the position of taking over a proper role of its carriers and of the multilateral ratemaking machinery. The suspension for up to 1 year would provide ample time for the carriers, subject to overall government approval, to negotiate acceptable compromises. Lastly, it would provide an incentive for the carrier proposing the suspended rate to bargain in good faith, while the existence of a deadline on the suspension will avoid the possibility of complacency on the part of the opponents of the rate.

THE BOARD'S POWER UNDER SECTION 402 OF THE ACT

At the beginning of my statement I said that our basic philosophy on Government rate control covered two general points. One of these, our opposition to

international air transport price fixing, has been reviewed in some detail. It would seem appropriate now to discuss the other point; that is, the Board's existing authority to exercise rate controls. We have already described the Board's extensive power to approve or disapprove IATA rate agreements under section 412 of the act, and how it has used that power. Now let us review the application of section 402 of the act in view of its relevance to the general subject being considered.

There has been a great deal of discussion concerning the Board's existing power, or lack of it, to deal with foreign air carrier rate questions under section 402. Doubts have been expressed over the applicability of section 402 conditioning power to the rate area. These expressions of doubt have damaged the position of the United States and should be cleared up once and for all.

No foreign air carrier may engage in foreign air transportation to and from the United States unless it holds an appropriate permit issued by the Board under section 402, and approved by the President under section 801. Before issuing such a permit, the Board must find the transportation to be in the public interest. Section 402(f) provides that any permit issued may, after notice and hearing, be altered, modified, or amended by the Board whenever it finds such action to be in the public interest. Section 402(e) provides that the Board may attach to a foreign air carrier permit "such reasonable terms, conditions, or limitations as, in its judgment, the public interest may require."

Section 402 imposes no express limitation on the Board's power to attach terms, conditions, and limitations to such a permit, nor does it contain anything that could be construed as an implied limitation on its authority to do so. On its face, therefore, section 402 constitutes a broad grant of authority to the Board to attach terms, conditions, and limitations, subject only to the requirement that they be "reasonable" and that, in the judgment of the Board, they be required by the "public interest."

A little over 2 years ago it was proposed that a rate condition be imposed upon certain foreign carriers in a series of section 402 proceedings. While the Board did not find that the record warranted imposing such a condition, it clearly implied that it had the power to take such action when the public interest so required in an appropriate case (CAB Orders E-17912 and E-17913, Jan. 8, 1962.)

We know of nothing in the act or in its legislative history that would require or warrant acceptance of a narrow view of the Board's powers in this area. Congress obviously was not unmindful of the international, political, and national defense considerations that might affect foreign air transportation, or of the need to devise a regulatory plan that would take those factors into account. Indeed, sections 801 and 1102 of the act appear to have been designed to provide that accommodation. However, there is no indication that Congress intended in any other manner to limit the Board's regulatory powers over foreign air carriers.

In large measure, what I have just stated is taken directly from the Board's own opinion of July 27, 1961, denying the motions of many foreign air carriers to dismiss the "Part 213" proceeding for lack of jurisdiction (CAB Order E-17235). That Board order was reaffirmed on reconsideration (CAB Order E-17537).

We would think that the Board needs no further amplification of its section 402 power. If such is not the case, however, we urge this committee to set forth a clear statement of congressional intent on the subject. In this way, it will be clear to all that the Board has a power equal to that which other governments chose to invoke in last year's rate crisis.

CONCLUSION

We suggest that the following tests be used to measure the effectiveness and the productivity of the pending rate legislative proposals:

1. The need for rate authority which can be fully implemented, if there is any question at all about the Board's existing powers;
2. The need to provide for the governmental control necessary to protect all elements of the public interest, including the interests of those Americans using foreign carriers, and the preservation of an economically sound U.S.-flag air-transport system;
3. The need to minimize governmental regulatory powers consistent with the administration's announced intention to use restraint in the regulation of private business;

4. The need to encourage international air transport growth, as well as to enhance the economic position of the U.S.-flag air-transport industry; and
5. The need to preserve the benefits of the private enterprise system by recognizing the needs, the rights, and the obligations of management in reaching business decisions.

H.R. 6400 and S. 1540 do not meet these tests. The inadequacies and inconsistencies of rate-fixing legislation are obvious—and legislation for which there is no need, or which holds little promise of implementation, would serve no useful purpose. In fact, such legislation would serve only to impede the negotiation of international rates.

Before concluding, I would like to make reference to the claim that enactment of H.R. 6400 and S. 1540 will provide our Government with a power equal to that possessed by other governments. The misrepresentation here is self-evident—there can be no equality of power if, as is the case with rate-fixing legislation, the United States can take no action against foreign carriers. Moreover, to our knowledge, no foreign government used rate-fixing authority during the intergovernmental rate controversy last year. The fact is that certain governments, whether they had rate-fixing authority or not, simply utilized the provisions of applicable bilateral agreements, and their powers to condition foreign air carrier permits, to achieve their rate objectives. These are powers which the United States now has.

The wise and calculated use of existing powers is far more important than the acquisition of new power just for power's sake. Legislation sought for the purpose of gaining special powers, particularly when such powers are known to be impossible to apply, will be looked upon as little more than an empty threat. What is needed is the will to use available powers—powers which can, in fact, be used effectively. Such powers, in our opinion, already exist. But if you share the Board's doubts, we would respectfully urge that you give favorable consideration to H.R. 1716—the only legislation which, for the reasons we have given in this statement, can be used effectively.

[Attachment A]

TEXTS OF BERMUDA-TYPE BILATERAL AGREEMENT ALTERNATIVE RATE CLAUSES

"(e) In the event that power is conferred by law upon the aeronautical authorities of the United States to fix fair and economic rates for the transport of persons and property by air on international services and to suspend proposed rates in a manner comparable to that in which the Civil Aeronautics Board at present is empowered to act with respect to such rates for the transport of persons and property by air within the United States, each of the Contracting Parties shall thereafter exercise its authority in such manner as to prevent any rate or rates proposed by one of its carriers for services from the territory of one Contracting Party to a point or points in the territory of the other Contracting Party from becoming effective, if, in the judgment of the aeronautical authorities of the Contracting Party whose air carrier or carriers is or are proposing such rate, that rate is unfair or uneconomic. If one of the Contracting Parties on receipt of the notification referred to in paragraph (c) above is dissatisfied with the new rate proposed by the air carrier or carriers of the other Contracting Party, it shall so notify the other Contracting Party prior to the expiry of the first fifteen of the thirty days referred to, and the Contracting Parties shall endeavour to reach agreement on the appropriate rate. In the event that such agreement is reached each Contracting Party will exercise its statutory powers to give effect to such agreement. If agreement has not been reached at the end of the thirty day period referred to in paragraph (c) above, *the proposed rate may, unless the aeronautical authorities of the country of the air carrier concerned see fit to suspend its operation, go into effect provisionally pending the settlement of any dispute in accordance with the procedure outlined in paragraph (g) below.*

"(f) Prior to the time when such power may be conferred by law upon the aeronautical authorities of the United States, if one of the Contracting Parties is dissatisfied with any new rate proposed by the air carrier or carriers of either Contracting Party for services from the territory of one Contracting Party to a point or points in the territory of the other Contracting Party, it shall so notify the other prior to the expiry of the first fifteen of the thirty-day period referred to in paragraph (c) above, and the Contracting Parties shall endeavor to reach agreement on the appropriate rate. In the event that such agreement is reached each Contracting Party will use its best efforts to cause such agreed rate to be

put into effect by its air carrier or carriers. It is recognized that if no such agreement can be reached prior to the expiry of such thirty days, the Contracting Party raising the objection to the rate *may take such steps as it may consider necessary to prevent the inauguration or continuation of the service in question at the rate complained of.* [Emphasis supplied.]

(Whereupon, at 12:05 p.m., the committee adjourned to reconvene at 10 a.m., Thursday, May 21, 1964.)

RATES, FARES, AND PRACTICES IN FOREIGN AIR TRANSPORTATION—1964

THURSDAY, MAY 21, 1964

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee met, pursuant to recess, at 10 a.m., in room 1334, Longworth House Office Building, Hon. Oren Harris, chairman of the committee presiding.

Mr. WILLIAMS (presiding). When the committee adjourned yesterday, Mr. Stuart Tipton was in the process of giving his testimony. I do not believe that you had completed it yet, Mr. Tipton.

Mr. TIPTON. No, Mr. Chairman, I had not. With the committee's permission, I will proceed with my testimony.

Mr. WILLIAMS. All right, sir.

STATEMENT OF STUART G. TIPTON, PRESIDENT, AIR TRANSPORT ASSOCIATION OF AMERICA—Resumed

Mr. TIPTON. During the discussion yesterday we had a great deal of discussion of the difficulty of rate formulation developing in the international field and the thing is that it is unquestionably difficult. But it seems to me that it is worthwhile for the committee to consider what have been the net results of the working of this process over the years in which we have been operating under it.

If I may direct the committee's attention to the charts—the chart which is before you, it indicates in the best way we know how to indicate what has been the progress with respect to international rates over these years.

I think it is necessary, in examining this legislation and seeking to solve this problem, to understand what it is I believe all of us are driving at, and that is to get the lowest fare available to American citizens that gives them an opportunity to travel abroad which is consistent with the economy of American-flag carriers. And I believe that the record over these years has been a good one.

You will note this chart [indicating] which shows the yields from the operation of scheduled service in international and territorial operations from 1946 to 1963.

Now, I should explain that this yield is not a rate. It is the average of all rates paid by all passengers. It is what a passenger-mile yields to the carrier. It is about the only way, in view of the great variety of rates that are charged, that you can really get a clear and overall view of what the rate levels amounted to.

Here we have from this period, 1946, in which we started out immediately after World War II, a yield in cents per mile of over 8 cents, and it has progressed downward over these years until 1963 it has reached the low point indicated on the chart of below 6.

Now, of course, while most of our discussion up to this time is related to passengers and passenger fares—

Mr. SPRINGER. May I ask a question before we get off the first chart? Has the downward trend of revenue passenger-mile yields, scheduled service—U.S.-flag carriers in the international field—now, a part of this has been due to the fact that you have lowered the fares. That is one. Is that all you are attempting to show?

Mr. TIPTON. That is all.

Mr. SPRINGER. I am going to have to leave you in a minute. What has been the effect of other carriers who have been added in these years? I am talking about Japanese Air Lines, Pakistan Air Lines, India Air Lines, Lufthansa, Alitalia. All of these largely which were started with our own funds. I was in Japan when they flew their first flight to the United States and that was as a result of \$12 million, I am sure, that they got from us to compete with our carrier from San Francisco to Japan.

Now, what is the effect of those miles on our carriers?

Mr. TIPTON. Actually, there is no effect. This represents the passenger miles carried by American-flag carriers. Now, the effect of the introduction of the increasing competition over these years has been to reduce the participation—reduce the percentage participation of U.S. carriers in the total international market going back and forth between the United States.

Mr. SPRINGER. The great profitable venture in international trade now is between the United States and Europe?

Mr. TIPTON. Yes, it is indeed.

Mr. SPRINGER. In that you had a terrific revision or I should say, it has been fractionalized to a much greater extent today than it was in 1953, 11 years ago.

Mr. TIPTON. Oh, yes. The U.S. carriers' participation in that market has gone down, I believe, from the neighborhood of 60 percent down to, I think—it has got as low as 37 percent.

Mr. WILLIAMS. I did not hear the question. Is that our share?

Mr. SPRINGER. Percentage share of the traffic from Europe to the United States, which is the big profitable venture.

Mr. TIPTON. Which is the heaviest traveled route in the world.

Mr. SPRINGER. One further question. What was our percentage last year between the United States and Europe?

Mr. TIPTON. I am proud to say that we increased our participation, I believe, to 41.5 percent—to 41.5 percent last year. It had dropped as low, I believe, as 37 percent. Last year we—as I say—I am real proud to say, it went up to 41.5. We hope we can hold it.

Mr. SPRINGER. Now, you are talking about passengers.

Mr. TIPTON. Passengers.

Mr. SPRINGER. That is all.

Mr. MOSS. Mr. Chairman.

Mr. WILLIAMS. Mr. Moss.

Mr. MOSS. I think this is a very interesting bit of statistical information. I am not yet able to relate to the question we have before us.

But if it is to be related to that question, it seems to me that we could have in each of these categories comparable statistics or charts on the domestic operations of American carriers. If this has significance it either illustrates that rates have not been proper or they have been proper. If it shows progress in commercial aviation in reducing costs through the expansion of the business, the ability to operate on less revenue per mile and I think appropriately then it would relate to the same statistical data on domestic carriers.

Mr. TIPTON. Yes; I think so. I do not believe that the yield per passenger-mile for international operations is necessarily—that it necessarily should be as low as the domestic operation, since there are vast differences in them. But, in the domestic operations the yield at the present time is approximately the same as it is in domestic. The domestic yield is a little bit higher, 6.1, than the international yield at the present time.

Mr. MOSS. If it was related to that, also, there would be the question of what—I guess the use of the aircraft itself, the load factor of passenger and freight in both carriers of the operation.

Mr. TIPTON. Yes; and as far as the load factor is concerned, our domestic load factors have over past years run slightly higher than international, but there is no appreciable difference between them. But moving down to freight in which we have had the same experience. This is obviously a developing phase of our business, but in the operation of our present rate machinery, as I have described it, we have had the same experience with freight as we have had with passengers, starting out immediately after the war with an extremely high rate, and of course, very, very limited volume and that has gone down through the operation of this international rate machinery to a little less than 25 cents a ton-mile.

Mr. ROGERS of Florida. How late do these figures go, 1963?

Mr. TIPTON. Through 1963.

Mr. ROGERS of Florida. What has been the experience on income? I thought TWA was having an increase in their international revenues quite dramatically over the last year or two. Is not this so?

Mr. TIPTON. That is true.

Mr. ROGERS of Florida. Would your charts reflect that?

Mr. TIPTON. This reflects the rate levels at which they moved their freight traffic, so to that extent it would not necessarily indicate increase or decrease of revenue. The only purpose of this is to demonstrate the extent to which it has been possible under existing law, under existing machinery to bring rates to their present levels from levels which were considerably higher.

Mr. ROGERS of Florida. Thank you.

Mr. TIPTON. From the standpoint of traffic development.

Mr. WILLIAMS. What is the gross revenue derived from freight hauled by the U.S.-flag carriers?

Mr. TIPTON. Gross freight revenue by U.S.-flag carriers—I do not have that readily at hand.

Mr. WILLIAMS. If I can get an idea just how big that business is.

Mr. TIPTON. Internationally, I assume you are talking about. I will have that in just a moment. When I get it I will provide it. I will proceed until I get it and I will report it.

This chart [indicating] shows passenger volume, which, it seems to me, is also relevant in determining how well the rate machinery has

worked, because it has attracted a very, very substantial increase in volume. Note, in 1946, the very beginning of things, a little over a billion passenger-miles moving in 1954 to about 4 billion now in—in 1963 it is about 12 billion, up just short of 11 billion passenger-miles.

Mr. Moss. Will the gentleman yield for an additional question?

I would like to suggest that now rate relevancy to this whole question would be the figures in each of these categories of the operating costs per ton-mile or per passenger-mile. We are talking of rates. Then there is a relationship of one to the other and it would be significant to this consideration.

Mr. Tipton. I am glad to put those in the record. I do not have them readily at hand.

Mr. Williams. You mentioned operating costs. That is not all overhead. I think a breakdown of the operating costs and total costs would be helpful.

Mr. Moss. Yes, approximate.

Mr. Tipton. Those figures are available and I will have them.

The answer to the chairman's question, the gross revenue in 1963 from the transportation of freight internationally, \$93.8 million. We have the same indication of increased volume for freight here which also tends to reflect the fact that the freight rates were developing business. They were rates at which shippers could move their cargo.

Starting in 1946 we had 15 million ton-miles in 1946. And 105 million in 1954. And in those subsequent years it increased to 381 million ton-miles in 1963. It is rising now at a very rapid rate and hopefully will continue in view of the fact that many of the carriers are putting on new freight aircraft.

Let me turn to a clear indicator of what has happened. Looking at the yield and volumes in that way, it is hard to tell exactly how much somebody had to pay to go to Europe. And by reason of the great variety of different rates, both for cargo and passengers, we have had to present this in terms of yields in order to give an overall picture. Now here [indicating] we have tried to show what has happened to the rates on the transatlantic, which is the heaviest volume route in the world. We have tried to demonstrate what has happened to those rates during the years under consideration here, 1946 to 1964.

You will notice in order to do this we have shown them both as peak summer season and off-season rates, because they are different during the peak summer season. Rates are slightly higher than they are during the off season.

Looking at the peak summer season rates, the chart on my left, we started out with a range of rates in the 1946-51 period of \$325 to \$375 in which the \$350 rate seemed to be the most prevalent.

During the next 5-year period, 1952 to 1957, the range had dropped from \$270 to \$290, and the most prevalent was \$290. This is a tourist or coach fare. It is the lowest one-way fare.

In 1958 to 1964—this period—the range was from \$240 to \$255, and the most prevalent rate available was \$250. That is peak summer season. Those are the rates, the last that I mentioned, the rates that prevail for this summer season.

On the other side it shows the off-season rates, they have moved down, as you can see, and the most prevalent in the first period was \$325, and the most prevalent in the next period, 1952 to 1957, \$920,

and for 1958 to 1963 the range was \$240 to \$290, the most prevalent being \$240. This summer season the lowest rate is \$210. This does not include, I should say, the short-term excursion fares, which are somewhat lower.

Mr. Moss. Again, if this is offered in furthering the committee's grasp of the adequacy of the proper rate-fixing procedures, would it not require that we have available at each of those points of change the change in the volume of business, the gross and net revenues, in order that we would be able to make some evaluation of the reasonableness of the rates and the effect of those rates upon the American carriers?

Mr. TIPTON. Of course they would be—well, we would be glad to furnish that information.

Mr. Moss. I would not want you to furnish it, Mr. Tipton, if it appears to be unrelated. But to me it merely illustrates that there have been some decreases in the cost of transportation. Now, was this wise or unwise? Did they increase the total passengers—what was the effect of them upon the operating picture of the carrier? If they have, again, any relevancy, to me it seems that they are totally inadequate when presented and only to this extent they must then relate so that a picture which tells the story finally develops so we can make an evaluation of the impact upon our carriers.

Mr. TIPTON. We will be glad to furnish that information. But let me emphasize again why we are showing these figures.

The reason we are showing these figures is not to demonstrate that carriers were wise or unwise or that they made money or did not make money. What we are showing them for is to show to the committee how the present system of making international rates has permitted rates to come down. And the reason we feel we must emphasize that is the emphasis which has been given in the past, that by reason of the interference of foreign-flag carriers and foreign governments, it has not been possible to get rates down and therefore, the Civil Aeronautics Board must have more power than they have now.

Now, what we are saying through these figures, is that under our present system, on the basis of the powers the Board has now, rates have come down through the operation of the IATA machinery, through the carrier conference machinery, rates have come down and have come down extremely well and reached a point where traffic volumes have gone up at a very substantial rate and have reached now a figure of about \$12 billion for 1963 and that will obviously increase very substantially during this year. That is the point we are making with these figures.

Now, as far as impact on the carriers is concerned, up until this year the carriers didn't do very well. The international and territorial carriers during the period from, say—make it 1959—I can give you these figures for all these years, but 1959 the rate of return was 4½ percent. In 1960 it was 5.3; in 1961 it was 3.2; in 1962 it was 8.8; and in 1963, 12.3. I believe that this improvement in finances of our international and territorial carriers tends also to support the conclusion that it is possible through our present machinery to achieve not only rates that will develop traffic, but also, that will protect the financial integrity of the carriers.

Mr. BROTZMAN. May I ask a question, Mr. Chairman?

Mr. WILLIAMS. Were you through, Mr. Moss?

Mr. MOSS. Yes.

Mr. WILLIAMS. Mr. Brotzman.

Mr. BROTZMAN. Mr. Tipton, relate this to your testimony yesterday—as I recollect your general discussion we were talking about the IATA agreement which also gave rise to the prices with the United Kingdom. As I recollect, also, you had entered into an agreement which caused a modest rate increase and that this agreement was not ratified or approved by the Civil Aeronautics Board. This is correct, is it not?

Mr. TIPTON. Yes.

Mr. BROTZMAN. The question I have specifically is this: At the time of the disapproval by the CAB, did they take testimony or were you afforded an opportunity for hearing? Was this rejection of the agreement predicated upon a sort of rate determination on their part that you were receiving just compensation for your investment and all those different factors, or was this rejection predicated on some other reason? Do you understand my question?

Mr. TIPTON. As far as the hearing is concerned, I should point out that—as far as the Air Transport Association is concerned, we did not participate in that. The three American-flag carriers that operate on the North Atlantic were individually involved. They, however, did not receive a hearing in the sense we usually think of it, with an examiner and cross-examination and the like. There were discussions between the Board and these carriers at various times during this rate-making process.

Prior to the time the carriers went to the IATA conference they discussed their views and the Board's views with the Board, but it was discussion and submission informally of information. After the Chandler conference, discussions were held, but no hearings.

Mr. BROTZMAN. The reason for my question—I think the gentleman from Florida, Mr. Rogers, asked a perceptive question yesterday about whether this is a negative way to set rates, versus a positive way to set rates.

But the question that I have is, would it really be the same if the carriers were not afforded the opportunity to present testimony in behalf of rate increases, you see?

Mr. TIPTON. Yes; I understand your point. The bill before you provides for the same notice and hearing requirements that we are accustomed to having in the domestic ratemaking process. All of the procedure is made available. And while this may seem like an odd thing for me to be saying, that is one reason why this bill won't work. The hearings are so time consuming and so difficult to complete, that it would never be possible to meet the time requirements involved in reaching agreements with all of the foreign governments and foreign carriers involved.

Mr. BROTZMAN. Could I ask you this question right there? But it seems to me, Mr. Tipton, that you are in a sense being denied an opportunity for a rate increase without a hearing under the present circumstances. If you enter into another agreement that calls for an increase in rates, and then once again, for whatever reason, without hearing, the CAB does not approve that agreement, then are you in

essence without a forum where you could present the kind of evidence that would substantiate a rate increase?

Mr. TIPTON. The important thing to understand is the difference between the results which would be achieved by this bill in which you would have the hearing and the result which would be implicit in the present situation. That difference is as follows: You hold the hearing, the Board enters an order, fixes a rate, and if the carrier fails to charge that rate, he has violated the law. The Government has ordered him to do that. In our present situation the Board disapproves this agreement, the carrier still is free to file with the Board and charge whatever rate he pleases.

Now, he is still free to do that as far as our Government is concerned. But when he operates abroad, the foreign government may prevent him from charging that rate. The situations in international and domestic ratemaking, as well as other things, are so completely different from each other that you cannot apply the same principles or the same legislation to them. The big difference is the fact that our Government does not have sovereignty over anything except the United States.

Mr. ROGERS of Florida. Did I understand you to say that the CAB could object to it and the carriers still go ahead, but that the foreign government could object to it and the carrier could not?

Mr. TIPTON. That is right.

Mr. ROGERS of Florida. In other words, we are in a situation where we can allow regulation by some foreign government of our carriers where our own Government does not have this right.

Mr. TIPTON. It is not a question of allowing it. We operate to their country and—

Mr. ROGERS of Florida. They may operate to ours.

Mr. TIPTON. That is right. And our Government—these rights are reciprocal—our Government can also under the existing powers affect the rates of foreign-flag carriers as well. Each has sovereignty over its own country and the operations to and from it.

Mr. MOSS. That is not precisely right. H is in effect under certain conditions depending upon the authority of the country and contains a provision that comes into effect under other conditions depending upon authority.

Mr. TIPTON. F is the one that is in effect now for our country and for all others, as far as I know.

Mr. ROGERS of Florida. Let me ask you this. There is no control over the rates, for instance, with British carriers—it is a governmental affiliated carrier so I presume their government has considerable control.

Mr. TIPTON. My guess would be that they would have a great deal of informal control. As far as their law is concerned, it does not give the British Government power to fix BOAC rates. But since they own a substantial part of it, I would guess they do.

Mr. ROGERS of Florida. What about when we had the difficulty with Britain this last time, who actually made the objection or rather, who held out for the American position? Was it the CAB or was it the three carriers, flag carriers?

Mr. TIPTON. The CAB held out for the position and our carriers continued to file the rates they had had before. In other words,

they did not file the increase in accordance with the agreement which had been disapproved. At that point the United Kingdom objected—United Kingdom and other governments objected to our continuing our existing rates.

Mr. Moss. What happened to the Canadian oceanic traffic? Did not they also object?

Mr. TIPTON. Canada, I believe, joined with the United States in opposing, objecting, to the increase that had been agreed to by IATA.

Mr. Moss. Any threat to seize Canadian aircraft?

Mr. TIPTON. Not that I know of.

Mr. Moss. Did the Canadian Government have different authority?

Mr. TIPTON. The Canadian Government is one of the four governments that has the power to fix international rates.

Mr. Moss. We had a crisis on one hand but we did not on the other because that Government did have the authority and was acting in accordance with the agreement in rendering its objection and making it effective.

Mr. TIPTON. I don't think it was that simple. The Canadian Government has power to fix rates, that is true. They also have a different agreement with the United Kingdom and I am not familiar with the difference, but I am not at all sure how long that favorable Canadian position would have continued. You must remember that all eyes were focused on this contest between the United States and the United Kingdom, Germany, France, and others. And negotiations were going on in that form. That is what the contest was. Had Canada been standing alone—it would have been difficult—

Mr. Moss. We would have looked to our agreement.

Mr. TIPTON. Yes, we would have looked to our agreement, but even then—even then you could not anticipate the reaction of these governments that were opposing us even though they were prepared to accept the agreement.

Mr. Moss. They had the alternative to operate under the agreement or they had the alternative to not.

Mr. TIPTON. Denouncing the agreement, that is right. This gets a little delicate, but I would rather say it. These governments object strongly to the rates the U.S. carriers were charging—if our agreement had been in effect and they would have had those rates shoved down their throats, I would guess that they would have permitted those rates to go into effect but they have endless other methods which they are free to use to manifest their displeasure with what we are doing.

Mr. Moss. And we have retaliatory powers to counter any manifestations that occur outside the agreement.

Mr. TIPTON. We do, indeed, and we should use them. The important thing, I think—the important thing that I think has been recognized—I think that in order to continue progress in ratemaking, we have to focus our attention on the agreement and not upon unilateral action. That is the basis for our objection to putting E into effect.

Mr. Moss. That is not unilateral action any more than that of Britain in threatening to confiscate or suspend our operations would be unilateral action. If action is permitted under international agreement it is agreed to in advance; it is appropriate action, is it not?

Mr. TIPTON. What I am referring to as unilateral—

Mr. MOSS. You and I have a contract and I have certain rights under it and I exercise those rights, it might be very offensive to having agreed to it. You are usually going to let them go ahead.

Mr. TIPTON. That is right, for a period, at least.

Mr. MOSS. For a period.

Mr. TIPTON. These agreements can be denounced. Other action can be taken.

Mr. MOSS. Of course there is other action contemplated in another agreement—in the agreement and that is taking it to arbitration.

Mr. ROGERS of Florida. Let me ask you this, Mr. Tipton. As I understand it, the IATA agreement was that they would go up under it.

Mr. TIPTON. Yes.

Mr. RODGERS of Florida. And CAB objected. Assume CAB had not objected, what would have been the status?

Mr. TIPTON. If CAB had not objected and if no other government had objected, the rates would have gone into effect.

Mr. ROGERS of Florida. So our carriers would then have been forced to charge a rate higher than they evidently had been charging—and evidently from the record you have given us here of increased revenue, total revenue passenger-miles flown, the tremendous increase in 1963, the 12-percent return, et cetera, this has not been hurtful to our lines. Would this be a fair statement?

Mr. TIPTON. The rate reduction has not. I would say it has not. What they would have had to do—what our carriers would have had to do is come back at it as they had been coming back at it for a long time and press for their rate reduction. There is no doubt about it, it is combined pressure by the U.S. Government and U.S. carriers, along with, and we must not leave the impression that all foreign-flag carriers want to keep their rates high, along with other carriers that have the same points of view, to seek agreements on rate reductions, rate adjustments of all sorts. One of the reasons that chart is a pretty complicated one is that this has been a long period of experimentation, trying excursions, tourist service, economy service, a variety of ways of getting rates that will attract the maximum amount of people.

Mr. ROGERS of Florida. Let me ask you this: Could the carriers themselves have entered the objection which would have held up the increase in price?

Mr. TIPTON. Our carriers could have refused to agree to it—to any increase in rates and have prevented IATA from reaching an agreement.

Mr. ROGERS of Florida. But they chose not to?

Mr. TIPTON. Their judgment was that they had reached as good an agreement as they could get at that time and they went along with it.

Mr. ROGERS of Florida. Could you recall offhand what the increase would have been?

Mr. TIPTON. As I recall, it was on a round trip to London and it was \$28.

Mr. ROGERS of Florida. Actually, it has worked out to the advantage of our carriers now, you feel, because of the position the Government has taken?

Mr. TIPTON. I think it has. My point continues to be that it has worked to our advantage, that no further legislation is necessary.

They accomplished that without legislation. They could not have accomplished it any easier or better if they had had legislation.

Mr. Moss. Will you yield?

Mr. ROGERS of Florida. Yes.

Mr. Moss. As I recall in thinking this over, at the time the Senate committee met—they were very indignant, there were very indignant statements that were issued by members of that committee. Do you suppose their voices had any impact on some of these governments and then concurrently was not the Canadian Government continuing to have a very aggressive pursuit of its rights under its agreement to maintain its position?

Mr. TIPTON. My guess would be that attention was paid to comments in the Senate and I cannot answer on what the Canadians were doing at the time.

Mr. Moss. The Congress is in a different position than the CAB. They have voiced their objections under the agreement and that left the United States free to do as it pleased. The Congress could move beyond that point and the Canadian Government could, of course, under its agreement maintain its position legally and so there were many pressures brought at that point on the other governments.

It is difficult to isolate the major pressure.

Mr. TIPTON. It is difficult to isolate these pressures, of course. But the idea that the Civil Aeronautics Board is helpless under these circumstances, I can't concur with, because their power to disapprove the IATA agreement and thus in effect destroy that agreement is a tremendous power. These carriers, all of them, have a great stake in the maintenance of the IATA agreement because it solves their problem once it is finally approved. It solves their problem with the governments.

Mr. Moss. That is not precisely true. CAB has no power to destroy that agreement. The Government of the United States, which the CAB is not, has certain reservations under the agreement for it to act. But the CAB has no such power. Its disapproval is the extent of its authority at that point under the agreement. This approval has the effect—

Mr. TIPTON. Maybe I used too strong a term in saying "destroyed." It has the effect of making that agreement of no further effect.

Mr. Moss. No disapproval. It did not do that. The agreement continued until it was modified.

Mr. TIPTON. Well, I am not quite sure that—

Mr. Moss. It is an assumption it might have had that effect. The agreement could not provide for it to have that effect.

Mr. TIPTON. We are not talking about the agreement. We are talking about the statute. The Civil Aeronautics Act where their power comes from—

Mr. ROGERS of Florida. Let me ask you this. Do you believe CAB had present authority to act to protect the rights we may need? Now, can they assert this objection and did they assert this objection without a hearing to our airlines?

Mr. TIPTON. They provided no hearing prior to their disapproval. There was no hearing.

Mr. Moss. Should there be a hearing or should CAB be able to come in without even hearing testimony from our lines as to whether they

are going to approve or disapprove what international rates are? Suppose this was forcing our airlines to operate at a loss? Now, without any hearing is it your position you want CAB to act without giving our carriers a chance to be heard on this rate?

Mr. TIPTON. The statute under which they operate does not require a hearing, because it is the disapproval of an agreement. It is not the fixing of a rate.

Mr. MOSS. In effect, you told us it is the fixing of a rate because we have the right to refuse to agree. This is what concerns me, that they can take a negative approach and accomplish what this legislation you say would accomplish and that is the reason you, as I understand it, your position is this is not needed.

But now, you would allow them to take this approach presently without hearing from our own carriers as to whether this is a proper rate for them to operate on. This seems to be a very dangerous position.

Mr. TIPTON. Let me make the distinction again, because it is a hard one. The disapproval of this Chandler agreement did not require Pan Am or TWA or Seaboard to do anything. They could have at that point filed any rate they felt like.

Mr. MOSS. Except for antitrust.

Mr. TIPTON. If they complied—after the Board's disapproval if all those carriers that had agreed had continued to carry out that agreement, then they would have been subject to whatever antitrust penalties should be visited upon them. If they abandoned the agreement after the disapproval they were free as far as this Government is concerned to file any rate they cared—

Mr. ROGERS of Florida. All right. Take that a little further here. What happens when they try to file this rate with the international agreement? Suppose they do not agree with that?

Mr. TIPTON. At that point if they feel any—they have the right as far as our law is concerned to file any rate they care to. By the same token, since there is no agreement a foreign government is entitled to complain to the Civil Aeronautics Board, to arbitrate and pending arbitration to cause them to suspend that rate and use another.

Mr. ROGERS of Florida. If you had a disagreement with the international group you would eventually have to get another?

Mr. TIPTON. If this bill were to pass and the Board in some fashion were to fix a rate, then you would have the same process to go through, and no better.

Mr. ROGERS of Florida. So you allow, under the present procedure, the Board to act without a hearing, and this bill would require them to do this before they could act, is that true?

Mr. TIPTON. That is true.

Mr. MOSS. The Board does not have to fix the rate to undertake this. (The following letter was received in connection with the above:)

AIR TRANSPORT ASSOCIATION,
Washington, D.C., July 14, 1964.

HON. OREN HARRIS,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. HARRIS: In the course of my recent testimony before the House Interstate and Foreign Commerce Committee regarding proposed international rate legislation (H.R. 1716, H.R. 6400, and S. 1540), there was some discussion

of the powers which the Civil Aeronautics Board possesses under the existing statute. I promised Mr. Moss that I would submit a list of those powers for the record. Such a list, in outline form, is attached.

Cordially,

S. G. TIPTON.

OUTLINE OF POWER OF CIVIL AERONAUTICS BOARD TO DEAL WITH FOREIGN CARRIER RATES

I. THE CAB HAS AMPLE POWER UNDER THE FEDERAL AVIATION ACT TO CONTROL FOREIGN CARRIER RATE PRACTICES

A. Section 402—Foreign carrier permits

1. CAB may properly consider reasonableness of rates as a factor in deciding whether to issue or renew such permit under section 402(b).

The CAB has held that an intervenor may show that a foreign air carrier is unfit to hold a permit by virtue of its rate policies and practices. CAB Order No. E-17912, January 8, 1962, page 7.

See 1955 *Transatlantic Charter Policy*, 20 CAB 782, 784-85 (1955) ("reasonableness of the rate will be a factor" in determining whether to grant authority).

And see CAB Policy Statement, 14 CFR 399.36: "In passing upon applications" for exemption authority to conduct MATS charters, CAB "will give great weight" to whether the rate is "fair and reasonable."

2. CAB may attach conditions and limitations "as the public interest may require" to the foreign carrier permit. Section 402(e). An existing permit may be amended for this purpose. Section 402(f).

(a) Section 402(e) is a "broad grant of authority" to attach to foreign carrier permits such conditions as the Board finds in the public interest. Congress did not intend to limit the Board's regulatory powers over foreign air carriers except to the extent that accommodation with international, political, or defense considerations is provided by section 801 (Presidential review of permit issuance and conditions) and section 1102 (consistency with international agreements). CAB Order No. E-17235, July 27, 1961, pages 4, 7-8; affirmed on reconsideration, Order No. E-17537, October 4, 1961.

(b) CAB has conditioned authority to engage in foreign air transportation under MATS contracts on observance of specified minimum rates.

See CAB Economic Regulations, section 208.30, 14 CFR 208.30 (condition on authority under sec. 7, Public Law 87-528).

And see CAB Economic Regulations, section 288.7, 14 CFR 288.7 (condition on exemption authority).

(c) CAB has recognized that it has power to "call a halt" to "undesirable rate practices" of supplemental air carriers by attaching conditions to exemptions to engage in foreign air transportation. *Large Irregular Air Carrier Investigation*, 22 CAB 838, 845, No. 14 (1955).

(d) Imposition of a rate condition on certain foreign air carriers was proposed in a series of section 402 permit proceedings in 1962. While the CAB did not find that the record in the particular cases warranted imposing such a condition, it clearly implied that it had the power to take such action when the public interest so required in an appropriate case. See orders Nos. E-17912, January 8, 1962; E-17952, January 24, 1962; E-17981, February 5, 1962.

(e) Where there is no bilateral agreement, CAB authority is plenary.

(f) Where there is a bilateral, permits are already conditioned upon the foreign carrier's complying with the terms of the bilateral.

Standard bilateral provides for United States objecting to foreign carrier's proposed rates and preventing service at such rate by "such steps as necessary." (See II.A.1. below.)

Also, permits have standard provision that CAB may provide further limitations, as required by public interest.

Only restraint is that CAB not attach a condition or impose a limitation which would defeat the basic purpose of the bilateral (sec. 1102).

B. Section 403—Observance of tariff fare

Foreign air carriers are required to file and observe tariffs. It is unlawful for them to collect a lesser fare by refunds, rebates, or special privileges outside the tariff.

C. Section 404—Discriminatory rates unlawful

Foreign carriers' rates are forbidden to be either unduly or unreasonably discriminatory or unduly or unreasonably preferential. The CAB may issue cease-and-desist order for violations. Section 1002(f).

D. Section 411—Unfair practices and unfair method of competition

CAB may issue cease-and-desist order against foreign carriers for unfair practices and unfair methods of competition in their rate practices.

1. Foreign carrier fares in violation of IATA agreement would appear to be unfair method of competition. *In The Matter of Pan American World Airways, Inc.*, Order No. E-12791 (July 15, 1958).

2. Where foreign carrier is non-IATA, rate cutting might still be held unfair method of competition under facts of a given case.

E. Section 412—Approval/disapproval of agreed rates

Any agreement between foreign carriers and U.S. carriers as to rates or rate practices (e.g., IATA rate resolution) must be filed with CAB for approval or disapproval. If contrary to public interest, or if it violates the Aviation Act, CAB must disapprove.

1. An agreed rate violating section 402 (permit, and any conditions thereof including bilaterals incorporated by reference); section 403 (extra-tariff charges, rebates, etc.); section 404 (discriminatory or preferential rate); section 411 (unfair practice or method of competition); can and must be disapproved by the CAB.

2. An agreed rate violating an applicable bilateral would clearly seem to be contrary to public interest, as well as a violation of the act (i.e., one or more of the foregoing sections and section 1102).

3. The CAB can—and has—disapproved as "adverse to the public interest" an IATA agreement upon a rate which it regards as unreasonable.

4. If CAB disapproves the agreed rate, the foreign carrier could not use the rate, since it has a duty to observe any CAB order "affecting" it. (Sec. 1005(e)).

5. In approving a section 412 agreement (e.g., an IATA rate), the CAB may impose conditions subsequent to continuing approval. *McManus v. Civil Aeronautics Board*, U.S. Ct. App. 2d Cir., February 6, 1961 (docket Nos. 25802-3).

6. Where CAB approves a section 412 agreement (e.g., an IATA rate), it has "retained jurisdiction" to continue to police it, *In the Matter of the ATC Agency Resolution Investigation*, Order No. E-16977 (Nov. 1, 1960).

F. Enforcement procedures

If foreign carrier violated permit condition or CAB order, under A through E above, CAB could take appropriate action directly against the carrier for violation of the act:

Enforcement proceeding to order compliance with the permit and the act, section 1002(c).

Judicial enforcement, as appropriate, section 1007.

Civil penalties, section 901(a).

Criminal penalties, section 902(a).

Revocation or suspension proceeding under section 402(f).

II. THE CAB'S REMEDIES AGAINST UNREASONABLE RATES OF FOREIGN CARRIERS CAN BE ADEQUATELY IMPLEMENTED INTERNATIONALLY

A. Bilateral situations

1. Under paragraph (f) of the present standard form rate article, CAB has power to prevent the inauguration or continuation of an objectionable new rate proposed by a foreign air carrier for use between the United States and the country of the foreign carrier, in accordance with the following procedures:

(a) Within 15 days, notify foreign carrier's government of U.S. dissatisfaction with proposed rate.

Normally through diplomatic channels.

(b) During 30-day period United States and foreign government attempt to agree on appropriate rate.

(c) If no agreement, at end of 30 days United States may take "such steps as necessary" to prevent service at the rate objected to.

It is quite possible that no formal show-cause proceeding or hearing would be required, but CAB could simply notify foreign carrier that its rate was unsatis-

factory under the rate article, and the carrier should cease providing service at the objectionable rate.

There would be no show-cause, hearing or specific legal process required since the two governments had agreed to reservation of complete national power as "such steps as necessary."

As matter of comity, CAB might allow reasonable period to achieve compliance.

In any event, CAB could proceed under section 402(f) to suspend or revoke foreign carrier permit.

Or enter cease-and-desist order, and then take enforcement action. (See I. F. above.)

2. The above power to prevent inauguration or continuation of an objectionable foreign carrier rate applies only so long as the CAB does not have statutory authority to fix rates in foreign air transportation.

3. If the CAB were to receive such power to fix international rates, paragraph (e) of the standard form rate article would come into effect. Under paragraph (e), the nations involved are obligated, in successive steps, to consult, to seek a third party advisory opinion, and to use their best efforts to put such third party advisory opinion into effect. Thus, the disputed rate could remain in effect indefinitely.

4. Under the new (revised) standard form rate, the power to prevent continuation of an unreasonable foreign air carrier rate would not be limited to proposed rates—as in present paragraph (f)—but would extend to objections lodged "upon review of an existing rate."

B. Nonbilateral situations

1. Nonbilateral permits usually contain a condition that CAB may challenge a foreign carrier practice "inimical to sound economic conditions" (see, e.g., *Aerolineas Argentinas Permit*, 30 CAB 153, 155 (1959)).

(a) This would appear to extend to unreasonable rate practices.

(b) The foreign carrier itself must confer with CAB to modify its permit to correct the practice. It is not a diplomatic matter between governments.

(c) CAB could revoke, suspend, or amend the permit under section 402(f).

2. Nonbilateral permits also provide (as in bilateral situations) for future imposition of limitations in the public interest. Accordingly, CAB could attach to such permits a further express condition as to rate practices pursuant to appropriate proceedings under section 402(f) to modify the permit.

The CHAIRMAN. Will the gentleman suspend?

Off the record.

(Discussion off the record.)

Mr. NELSEN. Have the airlines asked for this legislation?

Mr. TIPTON. No. We oppose this legislation.

Mr. NELSEN. The other question, the chart shows a downward trend in rates. Has this been brought about by the competitive factors of the airlines or has there been any influence by CAB to drive the rate down?

Mr. TIPTON. It has been a combination of both, Mr. Nelsen. The U.S. carriers have pressed for these rates over these years and as you can see, have gotten them. The Civil Aeronautics Board has also supported their efforts. So that it is a combination of both. And the achievement has been made without any change in the law.

Mr. BROZMAN. I just wanted to ask one question. Do you have a position relative to the other measure, that is, 1540, I think is the number?

The CHAIRMAN. 1716.

Mr. BROZMAN. Thank you, 1716.

Mr. TIPTON. We support that legislation and if legislation is felt to be necessary—if the Board needs more negotiating tools than they have now, then that bill is one that would provide those tools for it. It permits them to suspend a rate by an American-flag carrier or foreign-

flag carrier for 365 days a year. And that bill applies to both American-flag and foreign-flag carriers, so our Government could take action, direct action against a foreign-flag carrier if the legislation were passed.

As I have explained, if this legislation is passed, the Board can take action with respect to American-flag carriers, but cannot take action against foreign-flag competitors. And that bill we think—if legislation seemed to be needed—that bill will give the Board the tools they need.

Mr. BROTZMAN. I thank the gentleman from Minnesota.

Mr. WILLIAMS. Will the gentleman yield?

First, according to you, no legislation is needed, and second, if the committee determines that the legislation is needed, then you support that approach?

Mr. TIPTON. 1716, that is right.

The CHAIRMAN. Should it develop that action along this line would be desired, would you be available for the consideration of some means of approach, something in between what the Board asked—H.R. 6400—and this proposal—1716?

Mr. TIPTON. Certainly. We would be glad to discuss that.

The CHAIRMAN. It seems to me that neither proposal here, from what little I know about it, I do not understand all there is about it yet—it seems to me that there has not been enough consideration given to the existing agreements that we have had all these years. I did not hear you this morning but I did hear you yesterday, and I believe there is a great deal of confusion, and certainly in my mind, about consideration given to the approaches here. This has not been thoroughly analyzed and pursued as yet. I would want to do that myself as we go along.

I assumed if something along the line clarified what the present situation is with reference to the agreement that you would be at least willing to discuss it and see what could be worked out.

Mr. TIPTON. Certainly.

The CHAIRMAN. Do you have any questions, Mr. Curtin?

Mr. CURTIN. No question.

The CHAIRMAN. Mr. Devine?

Mr. DEVINE. No questions.

The CHAIRMAN. If it is agreeable, and members can come back tomorrow, we will ask you to come back tomorrow.

Mr. TIPTON. We will be glad to.

The CHAIRMAN. The Chair would like to at this time in behalf of all the committee and all of us acknowledge the presence of the newest member of the committee and extend a welcome to our colleague, Mr. Watson from South Carolina. We want to say that this first attendance in the committee I am sure has given you sufficient light that the problems are all very easily resolved and understood.

We want to tell you how glad we are to have you as one of us and that you are now a member of what we think is the best committee in the House.

Mr. WATSON. Thank you very much.

The CHAIRMAN. We know that you will enjoy working with us and we will be glad to work with you. We look forward to a pleasant and enjoyable association.

The committee will adjourn until 10 o'clock in the morning, at which time Mr. Tipton will be back.

(Whereupon, at 11:10 a.m., the committee adjourned to reconvene at 10 a.m., Friday, May 22, 1964.)

RATES, FARES, AND PRACTICES IN FOREIGN AIR TRANSPORTATION—1964

FRIDAY, MAY 22, 1964

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee met, pursuant to recess, at 10 a.m. in room 1334, Longworth House Office Building, Hon. Oren Harris (chairman of the committee) presiding.

The CHAIRMAN. The committee will come to order.

I am not sure just where we were when we closed out yesterday. I think Mr. Rogers of Florida had been asking some questions on Mr. Moss yielding to him.

If I am correct, Mr. Moss, you are recognized.

Mr. Moss. Mr. Chairman, I had been asking some questions on Mr. Rogers' questions.

The CHAIRMAN. Is that the way it was?

I think, Mr. Tipton, you had not completed your presentation that you intended to make, had you?

STATEMENT OF STUART G. TIPTON, PRESIDENT, AIR TRANSPORT ASSOCIATION OF AMERICA—Resumed

Mr. TIPTON. That is right, Mr. Chairman.

The CHAIRMAN. I want to hear your story on this thing, and I hope, I will say to my colleagues, that we can permit you to go ahead and present what you intended to give to the committee without interruption and then we will raise these questions.

Mr. TIPTON. Very well, Mr. Chairman. I will proceed and it will not take me long.

I had presented a number of charts indicating the extent to which rates in the Atlantic and in the international service generally had gone down. I had one final chart to refer to briefly which is about the best way that you can express the effect of rate reductions; that is, how much work does it take to get yourself a ticket from New York to London? We prepared just for illustrative purposes this chart which shows a production worker in 1946 had to work $7\frac{1}{2}$ weeks to travel from New York to London. Just to compare it with another product that is often bought—that was enough to buy 22 percent of a car.

In 1954 he worked 3 weeks to get his trip from New York to London, but that time period only permitted him to buy only 8 percent of a car.

In 1964 he worked for a week and a half to get from New York to London, and he could only buy 5 percent of a car with that week and a half of work, illustrating the extent to which air fares have come down in the Atlantic, and the extent to which that performance in getting prices down has not been matched by automobiles which are another factor in our economy.

So that the fares have come down. They have come down drastically over these years.

Another factor that I did want to stress, and we haven't discussed up to now, is exactly how a rate proceeding under this bill works. What are the standards that are to be applied; what is the procedure that is to be observed?

We have been concentrating primarily up to this time on the effect of paragraphs (e) and (f) of Bermuda upon this legislation and upon the fixing of rates, but I don't believe that I have discussed how this piece of legislation works.

It is a traditional domestic ratemaking statute and imports the traditional methods of doing it. This is how it would work in this process: If the carrier and the Government, of course, are in agreement, then there is no necessity to fix rates; no necessity to have a rate-fixing statute for that matter.

If the carrier and the Government are in disagreement, and that is unquestionably bound to happen, then the process is quite a difficult and long-term one. The Civil Aeronautics Board at that point, if they had a rate philosophy that they wished to advocate and pursue in the international field, would have to start a rate proceeding addressed to the carriers on the service concerned. The rate proceeding would not involve a determination of whether the carrier is wise in having the rate it has or whether the Board's judgment should prevail over the carrier, the issue in that proceeding would be: Is this rate that the carrier proposes illegal? and that is the basic issue in the proceeding.

Again, following the statutory and constitutional traditions of such a ratemaking proceeding, it would involve determining whether the carrier's rate is fair and reasonable. "Fair and reasonable" is a very general term, of course, but it includes endless judicial decisions—

The CHAIRMAN. It may mean the same thing but, just so the record reflects the words used, it is "just" and "reasonable."

Mr. TIPTON. Just and reasonable; I am sorry.

This involved and imports endless judicial decisions—decisions of regulatory agencies as to how that determination is made. The process would go something like this, and I will sketch it in a few moments just as an illustration of the studies, the work that would have to be conducted.

A hearing, of course, would have to be held with examination and cross-examination of witnesses, and if foreign carriers were affected, they would be entitled, as of right to intervene. If this were the North Atlantic particularly, for example, the 19 carriers on the North Atlantic which would be affected by a decision of the Board, for example, reducing the American carriers rate, would be entitled under the Board's rules, and the Administrative Procedure Act to intervene and participate as parties in the case.

It would be necessary to determine the expenses and revenues of the carrier, and the operating profit of the carrier as a system. That would be the first step in the process.

Then, allocate those expenses, revenues, and profits properly to the service for which the rate is applicable. That is an arduous process because there is endless room for dispute not only as to what expenses have actually been incurred but also as to how they shall be allocated to the service that in that proceeding is being examined. That same thing goes for revenues and level of profit determined.

The next thing would have to be the determination of the investment of the carrier, again, as we have seen in many proceedings; an area where endless dispute can take place as to what is the investment used and useful in the carrier's business on that service.

Once that is determined, it would have to be allocated to the service for which the rate is applicable.

Then, the proper rate of return to be paid on the service would have to be determined, involving, of course, a large number of considerations particularly the degree of risk, the cost of capital, the prospects of the carrier, the necessity for revenues in order to get a profit. Those determinations would have to be, after full argument by all the parties concerned, presented in the Board's findings.

They cannot be, they could not be vague about it. In order to hold a rate illegal they would have to find why it is illegal, and at the end of the proceeding, after making those findings, would have to make their determination, as I said, not that the carrier was unwise or used poor business judgment, but that his rate was illegal, in accordance with these standards.

That is subject to judicial review. In the case of the Civil Aeronautics Act, it is subject to judicial review in the court of appeals, and thence to the Supreme Court if the Supreme Court wishes to grant certiorari.

Now, that kind of a proceeding is the one that will take place under this statute in order to fix a rate. It will be highly complicated, it will be highly long in term. To us it is not realistic to expect that this kind of domestic rate fixing can be done in the international field, and it is for that reason, among others, that we have felt either that the present system under which we are operating is adequate to deal with the problem in view of the record it has made, or that the Board's power should be limited to the suspension of rates.

In the case of suspension it has been regarded as constitutionally proper to suspend a rate without the elaborate procedure that I have described, and thus we have suggested in recommending to the committee H.R. 1716, that the Board's power to deal with these rate problems be confined to the suspension of rates, of disputed rates, whether presented by a foreign-flag carrier or an American-flag carrier, rather than go this further step with the additional complications involved in the actual rate fixing.

Now, this leads to a concluding point: That we regard as a further, I can almost say disastrous result of the rate fixing bill is it does deprive the Board of the power to act against a foreign carrier's rate during the long period which may prevail while we are going through consultation and arbitration.

I think that in the future we would find that result to be a very bad one. I think that the Board must maintain the power to deal with foreign carriers and not be thrust in a really helpless position in the event that destructive rate cutting were to become the strategy of aggregations of carriers from abroad.

We feel that the committee must take into account here the future and the possibility that before too many years have passed, that will be the problem rather than the problem of getting American-flag carrier rates down. We feel that H.R. 1716 protects the U.S. carriers and the U.S. Government in either circumstance—whether the rates are too high, in which event the Civil Aeronautics Board is prepared to suspend a too high rate, or if they are too low the Board is prepared to suspend a too low rate. Thus, the Government maintains its flexibility which is absolutely essential in dealing with the future in air transportation, which no one can forecast with any degree of precision or confidence.

That concludes my statement, Mr. Chairman.

The CHAIRMAN. Mr. Williams?

Mr. WILLIAMS. Mr. Tipton, during the course of the hearings reference has been made to the fact that our most recently negotiated bilateral agreements with several countries contained a new rate article.

Are you familiar with that new rate article?

Mr. TIPTON. Yes.

Mr. WILLIAMS. And the countries involved?

Mr. TIPTON. Yes.

Mr. WILLIAMS. What does it provide?

Mr. TIPTON. It provides the identical procedure in the event of a disputed rate—consultation between the governments, arbitration and a conclusion of arbitration.

Mr. WILLIAMS. Is that about the same procedure that is provided for under paragraph (f) of the Bermuda agreement?

Mr. TIPTON. Yes; I was just going to say in dealing with a question of what rate should be maintained during the long period of this consultation and arbitration, paragraph (e) that we have been talking about has been dropped out, and paragraph—a paragraph virtually identical to paragraph (f) has been retained, and the effect of that is that while all of the discussion and arbitration is going on either government is—can suspend the rate, the disputed rate. Both governments have that power. That is the current, as I understand it, that is the current rate article that the U.S. Government advocates.

Mr. WILLIAMS. Do you know whether that represents the current policy of our Government in this regard?

Mr. TIPTON. I had thought it did. I had thought it did, which I also think is to a certain degree in conflict with the position the Government is taking here, because the effect of the bill that they are supporting here is to prevent, is to take away from the United States the right to suspend a foreign carrier's disputed rate, and to take away from the foreign government the same right.

It seems to me that they are taking conflicting positions there.

Mr. WILLIAMS. How did we get into these bilaterals?

Mr. TIPTON. How did we get into the bilaterals to begin with?

Mr. WILLIAMS. Yes, sir.

Mr. TIPTON. I'll try to give you a very brief history.

Always it has been regarded in aviation, unlike shipping, that each government has sovereignty over its airspace and can refuse to permit an air carrier to come to its country or any other airplane, for that matter, but we are talking about air carriers now.

Consequently, some kind of an agreement has to be made between the two governments before they can exchange air transport rights.

We tried to do that at an earlier time in 1964 multilaterally by having a great big agreement including everybody and which would exchange those rights.

That did not work. It could not be sold. Consequently, we had to go back to the bilateral method of getting it done.

The major bilateral in that era right after World War II was ironed out with the United Kingdom at Bermuda, and the various problems that had been plaguing everyone and that had been discussed were ironed out with the British at that time.

Those bilaterals were then, the bilateral we worked out with the United Kingdom then became the pattern of negotiation with foreign governments during the next few years and, as I recall, we now have at least 47—there are about 50 bilaterals, not all identical with Bermuda but generally following the same pattern.

Mr. WILLIAMS. In the report submitted by the Department of State on H.R. 6400, Assistant Secretary of State Dutton had this to say:

It should be noted that under the so-called new rate article which appears in the bilateral air agreement with Mexico and the agreement with the United Arab Republic now awaiting signature the situation would be reversed. Under this article which is to be the model for future bilateral air negotiations both countries would have the right to suspend an objectionable rate. Thus under the new rate article suspension action by the CAB pursuant to amended section 1002(g) would be consistent with our international obligations and at the same time all the countries would be in equal position unlike the situation relating today.

Would you care to comment on that?

Mr. TIPTON. It seems to me that confirms what, and very strongly confirms, what I had thought was the official position of the United States, that the new rate article was going to be a model for future development of bilaterals, that it contemplated the retention of the suspension power on the part of both parties during the disputes over rates, and that is the position that we are contending for here, and that is one of the reasons why we think that H.R. 6400 is unsound.

I think the Government is going in two directions at the same time.

Mr. WILLIAMS. It is your feeling that that should not be disturbed?

Mr. TIPTON. I feel that the ability of both governments to suspend should not be disturbed.

Mr. WILLIAMS. I believe that is all, Mr. Chairman.

The CHAIRMAN. At the right time I want to pursue that some myself with the other matters previously discussed.

Mr. Cunningham?

Mr. CUNNINGHAM. I have no questions.

The CHAIRMAN. Mr. O'Brien?

Mr. Moss?

Mr. MOSS. Yes, I have some questions, Mr. Chairman.

I want to first comment on the statistics and again observe as I did yesterday, that they are relatively meaningless in the manner in which they are submitted.

In the first place we would have to have statistics on what has happened to the average wage of this average worker if it is to be meaningful. It is of far greater significance when we relate it to other modes of transportation, and air carriage itself than it is when we relate it to the manufacturing worker, particularly in the area of manufacture

where we have had a very substantial increase in the cost of material, and in the costs of manufacture, and a consistent rise in prices.

If we want to take a commodity where we have had a different pattern, say the price of a kilowatt of electricity, then we might find that this statistical exercise produced an entirely different result.

So, that it is relatively of no significance in this discussion to bring this type of statistic into the picture.

It illustrates something and that in itself is interesting but conclusively demonstrates nothing.

Mr. Tipton. May I comment on that?

Mr. Moss. Certainly.

Mr. Tipton. It illustrates this—it illustrates that air transportation has gotten its prices down.

Mr. Moss. The automobiles have gotten theirs up.

Mr. Tipton. And they have gotten theirs up. We buy in the same markets. We buy airplanes, we buy materials, we buy the service of people, we do the same things they do.

Mr. Moss. What would be the validity then of comparing the deal with a kilowatt of electricity? There we have had a downward price trend, rather sharp downward price trend in the same period.

Would it, if it showed a different result be equally valid?

Mr. Tipton. I have no doubt that there are other industries like ours that by improvements and efficiencies have managed to overcome the effect of high labor prices and high material prices.

But here we are talking about air transportation, and we are talking about the question as to whether it has been possible to get prices down for the people of the United States. I say we have, and I say the chart shows it.

Mr. Moss. We could stipulate the prices of transportation have come down.

Mr. Tipton. Good.

Mr. Moss. Whether they have come down as much as they should have and have been reduced to the point where the volume of earnings could be increased, I don't think anybody has determined, and that is the significant factor when discussing rates.

Mr. Tipton. That is the significant factor and the prices have come down about as much as we felt safe to put them down and they have increased volume.

Now, there are risks in all this, of course, every one recognizes.

Mr. Moss. Now, the matter of this rate proceeding, had H.R. 6400 been law a year ago, it would not have been necessary for the CAB to have undertaken a ratemaking procedure in order to deal with the problem that developed with the United Kingdom.

Mr. Tipton. We can't assume that, Mr. Moss.

Mr. Moss. We can assume it would not have been necessary.

Mr. Tipton. No. We can't assume—

Mr. Moss. Why should we assume as you have that it would have been necessary.

Mr. Tipton. It would have depended upon the question as to whether U.S. carriers would have opposed the rate that the Board was trying to fix for them.

If they opposed it—

Mr. Moss. Which they themselves sought in the IATA conference.

Mr. TIPTON. Not the exact rate that ultimately turned up there.

Mr. MOSS. The rate they were operating prior to the IATA conference.

Mr. TIPTON. The rate that they currently had on file they continued to use. Whether or not they would have agreed to go lower and have their rates fixed one cannot assume and even in that case—

Mr. MOSS. But then must we assume as you have in your discussion the upping.

Mr. TIPTON. You cannot assume either one.

Mr. MOSS. That is fine.

Mr. TIPTON. That is the point.

Mr. MOSS. I think that is very good.

Mr. TIPTON. In considering this legislation you cannot assume either one, either that the carriers would accede to the government's insistence or that they would oppose it.

For that reason you must anticipate in considering this legislation that many times you will have the procedure that I just described, and this legislation is for a long future covering lots of different circumstances.

Mr. MOSS. You could have the procedure or you could not have the procedure, depending on the conditions that prevailed in the industry, the willingness to accede to the position of the CAB which I understand is normally discussed with the carriers in advance of participation in an IATA conference. I raise the point because you were clearly assuming that it would have required a ratemaking procedure, and I merely want the record to reflect that that is not necessarily so.

Mr. TIPTON. On the assumption that they are prepared to accede you don't need rate-fixing legislation. On the assumption that the carriers do not accede you do need it, presumably, and you get all the procedure that comes with it.

Mr. MOSS. My position that it would not have produced it, necessarily would not have produced it, is as valid as yours that it would.

Mr. TIPTON. Last year.

Mr. MOSS. Last year.

Mr. TIPTON. I agree with you. They are equally valid but looking down the future, and this legislation would be in effect for a long time, I don't have any doubt—

Mr. MOSS. To do that you would have to agree upon certain hypothetical circumstances. There could be many.

Mr. TIPTON. They could be many, and this legislation has to be framed for them, and the legislation here—

Mr. MOSS. The principal effect at that time of 6400 would have been that with the CAB disapproving and the carriers not disagreeing with that disapproval, the rate would have become provisionally effective, would have gone then to an arbitration procedure, and we would not have been faced with the rather harsh actions of the United Kingdom against American carriers if they were going to abide by their own solemn agreement.

Am I correct?

Mr. TIPTON. With all those assumptions that is the way it would have worked. But—

Mr. MOSS. Well, that is the way it would have worked with those assumptions.

Mr. TIPTON. But there are an awful lot of assumption in there that might well not have turned out the way they did, and one thing I hope I can persuade the committee to do is look not solely at last year's occurrence, but look toward the future where there are an endless variety of circumstances that will be faced and it is preferable to be prepared to face them with a flexible statutory situation than it is to get frozen.

Mr. Moss. Well now, if there is a conviction on the part of a person viewing this problem that it is better to arbitrate these disputes in an orderly fashion rather than to leave it to each nation to exercise its own judgment as to the steps it might take, then bringing paragraph (e) into full force and effect can be accomplished by granting the Board powers enumerated in paragraph (e), powers which it may not necessarily have to exercise. But by the mere having of those powers disputes can then be submitted to arbitration.

In other words, the Board would not have to undertake international ratemaking cases. It would not have to, even though it had the power.

Now, the power that is required under this agreement in order to bring paragraph (e) into effect does not necessarily have to be the same powers as those held in regulating domestic rates. They would be reasonably comparable, but they wouldn't have to be precisely the same.

Is that correct?

Mr. TIPTON. As I recall the term, and I haven't it here before me—

Mr. Moss. "In a manner comparable to that" is the term used.

Mr. TIPTON. Yes.

Excuse me, let me look at that because you are asking a very important question here. It would not have to be identical with the domestic law.

Mr. Moss. Then there is an area of discretion here where the committee could exercise its judgment to take cognizance of those special characteristics and problems of international rates.

Mr. TIPTON. Except for this: If it is the objective to bring (e) into effect, and I need not repeat, I guess, that is not our objective. Our objective is to prevent (e) from going into effect.

Mr. Moss. As I said the other day, it seems to me the CAB has far more confidence in the ability of its free enterprise carriers to compete than you have.

Mr. TIPTON. We have a great deal of confidence but we also want to maintain a position where we can flexibly deal with these international problems and not be stuck with a firm position. But let me finish my answer to your question.

If you want to bring (e) into effect, and want to be sure to do it then I wouldn't deviate much more than a jot or a tittle from the domestic law for this reason: Foreign governments are going to be awfully anxious to wiggle their way out of (e), there is no doubt about that.

As a matter of fact, the United Kingdom has already abandoned (e) long since. They will try to wiggle out of (e) so if there is any way that they can argue that this first sentence of (e) has not been met they will make that argument, and in dealing with these foreign govern-

ment positions over these 20 years since 1944, I have often been amazed at their ingenuity in construing their way out of what seems to be a reasonably clear provision of an agreement.

So, that if (e) is to be put into effect I don't think that much change can be made from the domestic law to accommodate its application to international.

Mr. Moss. Well, the very fact of the diligent attitudes of governments would lead me to conclude that the use of "comparable" rather than "identical" gives us the place to wiggle in and keep them firmly tied to the agreement.

I think that each word there was probably weighted with great care before it was included in the language of the agreement.

Mr. TIPTON. I have no doubt; I have no doubt.

Mr. Moss. And we did not bind ourselves to an identical authority.

Mr. TIPTON. That word "comparable" is in itself subject to endless interpretation.

If we deviate substantially or to hardly any degree from our domestic law—

Mr. Moss. I wouldn't want us to deviate substantially. I would want us to deviate reasonably.

Mr. TIPTON. If we deviate what we have then is another dispute. We have a dispute with a foreign government as to whether our rate-fixing law is comparable, and that can be debated endlessly, and during that debate, what happens? The same thing that happened before. I just don't believe, Mr. Moss, that we ought to contemplate if (e) is going to go into effect and that is the objective that we ought to contemplate any, I guess I should put it this way, any significant change in our domestic law because I can see what would happen then.

Mr. Moss. I would observe that in my judgment a system of agreed upon arbitration is preferable to one which invites chaos and could under extreme conditions, and we almost approached extreme conditions a year ago, where we agree that any government can lawfully do anything which in its judgment might be necessary to prevent a rate from going into effect.

Now, if we are going to go on the assumption that an international agreement has any validity, that governments are going to in good faith honor it, then under those conditions, and under those assumptions, I think the arbitration route is far preferable to one of naked power.

Mr. TIPTON. I am not clear on your point.

Mr. Moss. Those are the two alternatives; (e) is arbitration.

Mr. TIPTON. Both are arbitration. This is a question of what happens during arbitration.

Mr. Moss. But prior to arbitration one says, "We can go ahead and put our rate into effect."

Now, if we assume, as the Board apparently has, that in most instances it is going to be our industry seeking the lower fare, we are not going to—if we go on your assumption that it is the other country seeking the lower fare we are going to hedge.

I think our carriers for some time in the future will be the more efficient and that these other governments are going to want to earn our dollars and I would rather have during that period of arbitration our rate in effect.

Now, granted that there is arbitration provided in (f) but in the interim period we sanction any action, even the seizure of our aircraft, if the other government disagrees.

Mr. TIPTON. Sanction?

Mr. MOSS. Until an arbitration is awarded—an award is made.

Mr. TIPTON. Sanction. I don't think we sanction it. We have similar power of our own.

Mr. MOSS. Yes; we have similar powers of our own and when governments reach the point, the mere fact of sovereignty gives each government that power without an agreement. But here we have narrowed it down, and we have agreed to it.

We are not relying then on the sovereign rights of a nation to do whatever it wants, but we are approving doing whatever it wants as part of a very solemn agreement between this Government and the United Kingdom.

Mr. TIPTON. We give away rights in order to get what appear to be rights. We are not in favor of giving away rights. We are in favor of keeping what we have even if that means that a foreign government keeps what it has and I think that is a better inspiration to negotiation than to have one nation be able to, under the construction put on this by Chairman Boyd and the construction followed by you, it would follow that the United States would make the rates for the world, and I don't think that they are going to—

Mr. MOSS. Let me say, Mr. Tipton, you are misstating my position 100 percent.

I am only saying that in this ratemaking that the United States not have to go down as it did a year ago and accept the other nation's decision under an agreement it is party to. I am not advocating that we set the rates of the world.

Mr. TIPTON. If I misstated your position—

Mr. MOSS. I am far too much of a realist to ever assume that any nation is going to take that route, and expect to survive.

Mr. TIPTON. Well, that—

Mr. MOSS. This agreement provides for things; I am not conjuring up anything here. The agreement clearly provides for them.

Now, I assume that you feel that you would get better arbitration in a more constructive atmosphere; such as, that produced under (f) last year with the United Kingdom than would occur under (e).

Mr. TIPTON. Unquestionably.

Mr. MOSS. There we reached the point of crisis.

Mr. TIPTON. Unquestionably, Mr. Moss.

Mr. MOSS. You mean under that highly emotional atmosphere that emerged because of their threat to seize and to suspend our carriers that we had a better atmosphere in which to negotiate an agreement than we would have had, had our rate become effective and these threats against each other not have been made?

Mr. TIPTON. Unquestionably. The atmosphere—

Mr. MOSS. I respectfully disagree with you absolutely.

Mr. TIPTON. I think that our disagreement results from my belief that the application of (e) which really for this period during arbitration and negotiation sets the rates for the world by the United States, that is what it does during that period—

Mr. Moss. I sets the rates for those countries which have a comparable agreement.

Mr. TIPTON. Yes; that is right.

Mr. Moss. It doesn't set the rates for the world.

Mr. TIPTON. For the air-transport world.

Mr. Moss. It sets it on the specific rate that is then in dispute.

Mr. TIPTON. But when that event happens, the explosion—whatever the agreement provides, the explosion is going to be tremendous and far more violent than the one that resulted from the discussion of last year; to be sure there was emotion.

Mr. Moss. I am not sure that I agree on that. The Canadian Government didn't have a comparable problem.

Mr. TIPTON. The fight was with the United States.

Mr. Moss. Now, that is a conclusion you can draw.

Mr. TIPTON. It is an inevitable conclusion from the facts.

Mr. Moss. I would be happy to yield.

Mr. ROGERS of Florida. You say if we were to enact this, Mr. Tipton, this would allow the United States to set a rate for the world?

Didn't we in effect set the rate for the world in the action we took by the CAB?

Mr. TIPTON. After a lot of negotiation, discussion, accommodation of points of view, the U.S. position prevailed, but it is—

Mr. ROGERS of Florida. So we did it anyway.

Mr. TIPTON. But it is the way it was done that is important.

Mr. ROGERS of Florida. Well, we just said, "We won't agree to the rates you want to put in," didn't we?

Mr. TIPTON. We did a lot of talking. To bring this illustration I am making closer to home, in the Congress, if fixed positions were observed by the Members who have their own philosophies and their own interests and their own responsibilities to their district—if the fixed positions were observed, the Congress of the United States would come to a shuddering halt. The way legislation is passed is the way rates are made—by discussion; by accommodation; by meeting the problems of others in one way or another, ultimately coming out with a sound result.

That is what happened with the discussion last year. Much saber rattling; much transatlantic hollering; ultimately meetings—there was no alternative to negotiation; they were completely at odds.

Meetings of governments; meetings of carriers; ultimately IATA developed as a result of both government meetings on a higher level and a more general level; IATA dealing with details; they came out with a result to which they all agreed. That is the way it has to be done.

Mr. ROGERS of Florida. But nevertheless the action of the Federal Government determined the outcome, did it not?

Mr. TIPTON. You can't really say that without knowing what went on in the United Kingdom or what went on in France.

Mr. ROGERS of Florida. Well, let's say, just looking at the results, you can say that.

Mr. TIPTON. Well, the United States started out to achieve a result.

Mr. ROGERS of Florida. Yes.

Mr. TIPTON. And I thought they handled it well, and they got that result.

Mr. ROGERS of Florida. Yes.

Mr. TIPTON. Now, what influences caused people to change their mind. I don't know. Of course, none of us know.

Mr. ROGERS of Florida. Under the agreement, they had the right and took this course and got the thing desired?

Mr. TIPTON. Yes, sir.

Mr. Moss. At this point we could engage in a very interesting exercise in semantics of how you can characterize the things that would occur under (e) as fixed and inflexible positions is something I cannot for the life of me understand. It is a position taken in accordance with an international agreement. At the moment it is taken the issue goes to arbitration where the governments in disagreement agree in advance to do their best to put into effect the final award from arbitration.

How you can characterize that as fixed and inflexible I can't understand.

Mr. TIPTON. I did not characterize that process.

Mr. Moss. You did. You then went on to bring in the Congress and you say if each of you had a fixed and inflexible position that the Congress would come to a grinding halt.

Now, clearly you intended what I concluded you intended, and I say that I cannot for the life of me understand how you can interpret what would occur under (e) as fixed and inflexible.

At that point of disagreement one or the other rate is to go into effect, and the British Government using its rights under (f) threatened, and at that point theirs did go into effect, not ours.

Who was fixed and inflexible?

Mr. TIPTON. I don't think that this is semantics at all.

Mr. Moss. Well, I always understood when you got into a discussion of the meaning of terms you were in a discussion of semantics.

Mr. TIPTON. You and I are talking about two different things, that is my problem.

Your description of the process of arbitration, no one would characterize that as fixed and inflexible, but what we were talking about was not the arbitration process. We were talking about what rate would go into effect pending the arbitration, a much narrower thing, and the reason I said—

Mr. Moss. I was talking about both.

Mr. TIPTON. Then we passed each other, because I was talking about what happens during the arbitration and discussion. And the reason I said it was fixed and inflexible is that the United States would say to a carrier, "Charge this rate" and the carrier would charge that rate.

The other governments wouldn't like it. Nevertheless, the United States would force that rate into effect under (e).

Mr. Moss. At that point you were going to say just charge this arbitrarily. The CAB, if it was going to say charge this one arbitrarily, would first have to go through some ratemaking procedure.

Mr. TIPTON. Right.

Mr. Moss. So again we haven't fixed and inflexible positions. We have lawful positions arrived at after an appropriate proceeding involved.

Mr. TIPTON. The point there involved is that the U.S.-supported rate is fixed and settled, notwithstanding what the foreign government wants during that period we are talking about.

And there is no deviation from it, no discussion, no attempt to, during that period, extend the period some, discuss it and try to work out the problem with these foreign governments rather than insisting upon having the rate in effect.

Mr. ROGERS of Florida. If the gentleman would yield.

Mr. MOSS. I do yield.

Mr. ROGERS of Florida. I would think there would be some possibility of discussion and some flexibility according to paragraph (e) where it says:

If the agreement has not been reached at the end of the 30-day period referred to in paragraph (c) above the proposed rate may unless the aeronautical authorities of the country of the air carrier concerned see fit to suspend its operation into effect provisionally.

So there is a 30-day period of time in the agreement and then of course, they can perhaps talk the suspension authority into being exercised so I would think there is a great deal of flexibility but the flexibility is within this country for a decision on our carriers rather than transferring that decision to a foreign government as would be called into play in (f) and then, of course, arbitration after that.

Wouldn't that be true?

Mr. TIPTON. There is a period for discussion there.

Mr. ROGERS of Florida. Yes.

Mr. TIPTON. And the United States does not have to assert its rights, but we have been discussing it here in support of this legislation as if the United States would assert its rights.

Mr. ROGERS of Florida. Well, this is a decision our Government would make in each particular, I presume, and it is so set forth in the agreement, a very specific one.

Mr. TIPTON. If the United States does not propose to take advantage of the rate-fixing legislation, then it is better off to have the power to suspend as set forth in 1716.

Mr. ROGERS of Florida. Well, they have this right to suspend here, they can do either. They have flexibility, the very point you were arguing for.

Mr. TIPTON. But the only difficulty with this bill is, as I repeat at the time, it takes away our power to suspend a foreign carrier's rate.

Whatever it may be, it takes away that power. We don't retain the power, not only to suspend our own carriers' rates but to suspend a foreign carriers' rates.

Mr. ROGERS of Florida. How does it take away that rate?

Mr. TIPTON. The right to suspend a foreign carrier's rates. By the operation of (e) if we pass legislation which fixes, which fixes rates, provides for the fixing of rates, then (e) says that we lose our power to take action against foreign-flag carriers during this period of dispute.

Mr. ROGERS of Florida. During the period of discussion, but it triggers (g) which then puts you into arbitration.

Mr. TIPTON. Yes, and during the period of arbitration you lose your power to regulate the rates of foreign-flag carriers, during the period of discussion and arbitration, and I have been using the period of

about 2 years for one of those arbitrations, and I think that is probably considerable—

Mr. MOSS. It takes away the same power from the other government.

Mr. TIPTON. That is right. It does. Paragraph (f) leaves both governments with equal power and that is fine.

Mr. MOSS. It takes us off the course where we sanctioned either government doing whatever in its judgment might be necessary and puts us into the position where these disputes are first arbitrated.

Mr. TIPTON. The fact of both governments having the same power is the most powerful influence toward negotiation and sensible determination, sensible and friendly determination that you can have.

Mr. MOSS. When the dispute started last year, the powers of the United Kingdom and the powers of the United States were equal.

We could have said to the British, "All right, you seize our planes and we will seize yours."

Mr. MOSS. Then we could have had a merry game and I have no doubt it would have been most constructive.

Mr. TIPTON. It would have indeed. Right there and then they would have negotiated because at that point neither—

Mr. MOSS. It might have been.

Mr. TIPTON. It unquestionably might have, indeed.

Mr. MOSS. It might have.

But there might have been a few days where we were seizing each other.

Mr. TIPTON. Because neither the United States or United Kingdom have any intention of stopping any service.

Mr. ROGERS of Florida. Won't they have to go into arbitration under paragraph (f)?

Mr. TIPTON. The assumption here is we are only actually talking about what happens during the period when you are arbitrating. Our whole discussion is limited to what action can be taken while you are arbitrating.

That is presumably going on.

Mr. ROGERS of Florida. Then this is the only period you are concerned about?

Mr. TIPTON. Yes, not the only period—

Mr. ROGERS of Florida. This period of disagreement and the arbitration.

Mr. TIPTON. We have no objection to arbitration and consultation that goes on. What we are objecting to is the effect of the legislation in taking away for this period of time—

Mr. ROGERS of Florida. This period of time.

Mr. TIPTON (continuing). The Board's power to do anything about a foreign-flag carrier's rate.

Mr. MOSS. You know, on your premise we on this committee made a great error last year. We had a railroad dispute, a messy railroad dispute and under the Railway Labor Act the parties had reached an area where each could bring into play naked power.

This committee concluded that was not in the interests of the Nation and assumed projecting it into a broader stage we would have reached the same conclusion that it was not in the interest of the international situation involved.

So, we provided something short of that final test of naked strength, and I submit that (e) provides something short of that final test.

At least delays the day when that test will be made. In my judgment it offers a better and more reasonable course.

That is all I have, Mr. Chairman.

The CHAIRMAN. Do you have any further questions, Mr. Rogers?

Mr. ROGERS of Florida. Just a question or two, Mr. Chairman.

It seems to me that the decision the committee must make is whether under this legislation it is better for us in negotiations to proceed under paragraph (e) or paragraph (f), that is really the basic question, whether we should give the CAB the authority to set a rate which would trigger (e) during which time a foreign government could not take unilateral action against our carriers before arbitration is complete, or by not passing the legislation then we couldn't under paragraph (f) which then allows Britain to take whatever action she may want and we could take whatever action we may want to prevent this rate going in before arbitration or during arbitration, and this basically is the question this committee must decide, isn't it?

Mr. TIPTON. It is. That is one of the questions the committee must decide and a very important one.

Mr. ROGERS of Florida. Well, isn't this the primary question we must decide, the procedure we want to use?

Mr. TIPTON. I was trying to think of the various issues that arise in this, the character of the legislation itself, the procedure involved in it and a variety of other things, and I wouldn't want to say that was the only issue but it surely is a major one, on which the committee must exercise its judgment.

Mr. ROGERS of Florida. Yes.

And it is simply you feeling, as I understand it, it is better to allow a government to act unilaterally, to prevent, take whatever action it may desire to prevent, a rate from going in, a rate change.

Mr. TIPTON. It is our judgment that it is far wiser, looking down the road, for our Government to retain its power during this period over foreign-flag carriers. We think that is advisable.

Mr. ROGERS of Florida. Let me ask you this: Suppose Britain under the authority of paragraph (f) had decided she would suspend a permit because they tie the rate to the permit, what could we do?

Mr. TIPTON. We could suspend the British carrier's permit. And the net effect of that would be that neither carrier could operate to the other's country.

Mr. ROGERS of Florida. And then would you go into arbitration on this or what? What would be the procedure?

Mr. TIPTON. No, you would go into negotiation on this and you would go into negotiation reasonably quickly because it would be very damaging for British Overseas Airways to lose its U.S. market. And, it certainly wouldn't do us any good to lose our British market.

The net effect of that is the two countries would negotiate, and arrive at a solution.

Mr. ROGERS of Florida. Why would it be necessary—it wouldn't be necessary to go through that procedure to come to negotiation and arbitration through paragraph (e).

Mr. TIPTON. It would not be necessary to do that?

Mr. ROGERS of Florida. No.

Mr. TIPTON. The difficulty with paragraph (e) is that our Government could take no action against a foreign-flag carrier under any circumstances during this period.

Mr. ROGERS of Florida. It would mean we would go into arbitration.

Mr. TIPTON. I must emphasize this again because it is a real problem. If the problem changes from one in which the U.S. Government and its carriers are urging lower rates to one in which foreign-flag carriers want to use competitively destructive rates on our carrier, then our Government would be stuck. It could not prevent the institution of those rates.

Mr. ROGERS of Florida. Other than to go into arbitration.

Mr. TIPTON. Yes, but during the period of the arbitration our Government would be completely helpless to prevent the institution of those rates. So for a period of 2 years we would have to meet destructive foreign competition without being able to do a thing about it. And that, I think, is a place where the Government would need all the power it has.

Mr. ROGERS of Florida. Well now, under the present setup Britain had this power to stop our destructive rate.

Mr. TIPTON. They had it. And threatened to use it.

Mr. ROGERS of Florida. But didn't. They went into agreement.

Mr. TIPTON. I beg your pardon, I am sorry, I missed what you said.

Mr. ROGERS of Florida. Under this last fracas, Britain had this great power that you speak of but they were less successful in using it, so what was the advantage.

Mr. TIPTON. What they did was to say, "We have the power to prevent you from charging us a lower rate to serve the United Kingdom."

Mr. ROGERS of Florida. But they didn't.

Mr. TIPTON. But they will and did for a period. Then they stopped it, they stopped our use of the lower rate, and said, "We will negotiate" and they did negotiate, and all the other governments concerned negotiated, and they finally wound up satisfied with the rate that is now in effect for 1964, which is a rate that we regard as a satisfactory one.

Mr. ROGERS of Florida. How much change is that from the rate we were charging?

Mr. TIPTON. It is a reduction from, and there is a wide variety of these rates but for this purpose let me say that the rate level in economy class came down from \$240 to \$210 off season.

Mr. ROGERS of Florida. Was this the rate we were charging at the time?

Mr. TIPTON. No.

Mr. ROGERS of Florida. I thought the proposal was to increase the rate. This brought our rate down, too.

Mr. TIPTON. Yes. It did.

Mr. ROGERS of Florida. This was brought without a hearing before the CAB?

Mr. TIPTON. Without a hearing?

Mr. ROGERS of Florida. The airlines put it in themselves.

Mr. TIPTON. Without a hearing but it was a discussion in the sense I am talking of.

Mr. ROGERS of Florida. A discussion. Was there a showing before the CAB that this reduced rate would be hurtful to our carriers?

Mr. TIPTON. I don't think there was any such showing. However, I don't know what data were put forward by foreign governments and foreign carriers in these roundtable discussions that the governments and the carriers had.

Mr. ROGERS of Florida. Thank you.

The CHAIRMAN. Mr. Hull?

Mr. Pickle?

Mr. PICKLE. Mr. Tipton, what would be your position if machinery were established where a government, ours or a foreign government, would want to change their rates, either raise them or lower them, and said, "This is our announced new rate," and serve that officially by way of notice to IATA or whatever group should know it, and provide a period of time of 30, or 90 days or a reasonable time for any negotiation before the rates would go into effect?

Now, I have a feeling, just generally speaking, that what we have done pretty well in letting our Government and the other governments, through IATA, work these things themselves rather than through government. If one government is going to change the rates, the other government is going to change the rate.

At the same time I don't like to see the United States be held impotent and can't change the rates under any circumstances.

The British situation worked out after 11 months' time and we finally won our point and you say this is a better procedure because it gave everybody a chance to speak back and forth.

But it could have turned out the other way that our point had not been won and we hadn't prevailed, and I don't like to see our Government left for an indefinite period of time, impotent and powerless.

My question is, How do you feel about a situation where you served notice on a rate change and allowed a set time for this arbitration and at that point let (e) go into effect?

Mr. TIPTON. Well, you are stating the basic problem of international ratemaking. We are pretty much accustomed in the United States where we are serving our own territory, to filing a rate, any carrier filing a rate saying "That is what I am going to charge."

The Civil Aeronautics Board can move in and say, "You can't." But that is, generally speaking, what is done and no one has anything to say about it and you charge it. That is the most comfortable way of making rates and it is the best reflection of management's judgment.

But in the international field we are faced with the fact that each foreign government to which you go has the right to say that "We don't agree to that rate. You can't charge it here."

We have that right, and the foreign governments have it. So, it has been necessary to set up IATA, the conference of carriers, to meet and agree on these rates, and if they are in agreement and the Government approves it then the rates can go into effect.

An individual carrier, for example, a nonmember of IATA can put a rate into effect, announce a rate, as you have described, but his problem then is he must convince each government to which he goes that that rate is all right.

Mr. PICKLE. Yes, but this might stretch out over a period of months or years.

Mr. TIPTON. It might, that is right.

Mr. PICKLE. I am trying to close that time where it would not be an endless possible discussion, or arbitration and set a fixed time where, at the end of that period, a government could do whatever they wished.

Mr. TIPTON. Well, this Government is not in a position to put time limits on other governments.

The problem is the endless time that it takes to do anything such as I have described of going from government to government and selling them on this rate. That was the reason, one of the reasons, for the creation of the IATA traffic conference where the carriers got together, engaged in this complex process of setting up a rate structure, the governments themselves approved it and then each government would receive it, without squawking.

Mr. PICKLE. I understand that right would still be reserved to a government as to whether they wanted to agree or disagree.

Mr. TIPTON. That is right.

Mr. PICKLE. But what would be your feeling, we are talking in generalities, do you think IATA, as a group, would be willing to establish a machinery where you could have a hearing for rates just like we do on domestic rates and give a reasonable time to have it arbitrated and discussed; would they come together or agree on a fixed time?

Mr. TIPTON. It is about what they do.

Mr. PICKLE. Yes, but there is no time limit on it. It goes on and on and we are caught, we are held up short, and look bad in the process.

Mr. TIPTON. No, I don't think a time limit can be put on it actually because it is a process of seeking agreement, and you can't put a time limit on making people agree to things. It is just like selling a house, if the parties won't agree you can't force them to.

That is the problem. It is not an easy one.

Mr. PICKLE. You don't think then that the IATA organization, as such, would set up machinery voluntarily, nation by nation, to provide for a set arbitration period with time limitation on it?

Mr. TIPTON. I don't think so. I don't think so. I would think they would want to keep their present freedom of action.

Mr. PICKLE. It would seem to me like that would be desirable.

Mr. TIPTON. It would be good to have, to be able somehow to cut down the time required in working out these rate problems but I just don't think that there is any way of doing it since, as I have said, the only way you can successfully make rates is by negotiation and getting agreement of the governments and carriers concerned.

Mr. PICKLE. I don't want to prolong the question. I approve generally of the government by government operation through IATA. I think probably we have done pretty well with it. I believe at the same time it would be desirable for them to set up some kind of machinery for arbitration and set a definite time where after that any nation could do whatever they wanted to and just let it seek its own level.

But that is just a personal feeling. That is all I have at this time, Mr. Chairman.

Mr. TIPTON. May I just add one further thought to that?

If IATA does not agree on a rate structure then you have got what they call an open rate situation. What that means is that any carrier

can then do as it pleases as long as it gets the approval of the government to which it is going to operate.

That is what happens then.

Mr. PICKLE. Well—

Mr. TIPTON. It doesn't help much.

Mr. PICKLE. That is just like saying, your wife can do whatever she wants to do if it meets your approval.

Mr. TIPTON. Yes, that is right. Theoretically that is the case.

Mr. PICKLE. Yes. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Keith; any questions?

Mr. KEITH. No questions.

Mr. MOSS. Mr. Chairman, I wonder if I might ask an additional question?

The CHAIRMAN. Mr. MOSS.

Mr. MOSS. Mr. Tipton, assuming your position under (f), who in the Government of the United States has the power and what type of power is possessed, to do whatever is necessary, who would make the judgment?

Does the CAB have any power there?

Mr. TIPTON. The powers presently in force are these: The disapproval of an agreement, IATA agreement, which is an important power here is possessed by the Board solely. There is no approval by anyone else. They make their determination and that is that.

The other power that I have referred to, section 402 of the Civil Aeronautics Act, which provides for the issuance, amendment, suspension, and the like of a foreign air carrier's permit. That power is possessed by the Civil Aeronautics Board subject to the approval of the President.

Mr. MOSS. As I recall, at the time of the dispute it was contended by the CAB that they were without power.

Mr. TIPTON. They have contended that before this committee—that they have no power under 402 to deal with rates in connection with the foreign air carrier's permit. We have disputed that. We think the power is there, and I have put in the record earlier in this hearing an opinion by the Civil Aeronautics Board dealing with a capacity dispute that they were involved in which, it seems to me, argues very strongly that they have the power to do this on rates.

As a matter of fact, we have taken that position that they had adequate power under that, and having received no agreement on the part of the Board over a long time, it is the reason that we recommended and suggested H.R. 1716, the suspension bill as a compromise, as a method of solving this problem. We didn't think that that legislation was necessary either, but if the Board was so convinced that it was, that some additional legislation was necessary, that is the reason we put forth 1716 as a compromise.

Mr. MOSS. In other words, under (f) it is your contention that the Board then had the power to suspend permits?

Mr. TIPTON. Yes; they do.

Mr. MOSS. Did it have any other powers?

Mr. TIPTON. Amend permits.

Mr. MOSS. It could amend permits. Could it seize planes?

Mr. TIPTON. The seizure idea is not a power in itself.

Mr. MOSS. It was advanced by the British, wasn't it?

Mr. TIPTON. There was much talk about seizing airplanes. That was the assumption. The assumption was that they were going to suspend our permit to operate in the United Kingdom but notwithstanding that we were going to operate in the United Kingdom and if we operated to the United Kingdom without a permit, then they were going to seize our airplanes, that was the process.

I am not sure that a seizure power exists in the Civil Aeronautics Board with respect to the violation of a permit, I don't know. But there are plenty of other powers that would make it unwise for a foreign carrier—

Mr. Moss. I would be interested in having you submit all of the powers you feel they possess, and who would exercise it.

Mr. TIPTON. May I do that. I think I have the paper right in my hand here that covers it in detail, but I want to—

Mr. Moss. Do it later, I wouldn't want to delay the committee.

Mr. TIPTON. Yes, I would want to review it before putting it forward.

Mr. Moss. That is all, Mr. Chairman.

Mr. ROGERS of Florida. Mr. Chairman, could I have just one more question.

Mr. Tipton, it appears to me it boils down to the fact that it is your feeling probably that the rates to be charged can more easily be determined by negotiation through IATA rather than having a hearing before CAB because it would be difficult for CAB to determine a reasonable and fair rate in the international field.

Mr. TIPTON. Exactly.

Mr. ROGERS of Florida. And you would rather not go through a hearing?

Mr. TIPTON. Rather not have all this procedure, because it will yield nothing.

Mr. ROGERS of Florida. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Tipton, there are a great many questions which occur to me. I think I could very easily boil down the difference of opinion between the position of an airline industry and the Civil Aeronautics Board. I think that is an oversimplification of the problem, however.

Are you altogether satisfied that we have adequate provisions today to arrive at a just solution of international air rates, wherein our carriers are involved and the foreign carriers are involved, and the air traveling public are concerned?

Mr. TIPTON. The answer is "Yes," Mr. Chairman. I think our legislation at present and the powers of the Board and the rest of the Government are adequate.

The CHAIRMAN. What concerns me is that the industry, and I say this in all candor, that the industry apparently takes the position that the status quo should be maintained, and we will not tackle the subject to improve the procedures.

Now, I do not say that as applicable only to your regulated industry. The same thing is true, in my judgment, of industry in other fields of transportation, where rates are involved.

It disturbs me somewhat. We are supposed and we try to maintain free enterprise based on competitive procedures, and over a long

period of time traditionally, rates become established. Because of the competitive position and the reluctance on the part of the industry as to changing procedures of regulation, we will insist upon the status quo being maintained even at the expense of no real solution to the problems.

When we reach that stage I am fearful that we have arrived at a point where it is almost impossible to bring about improved procedures on ratemaking and arriving at rates under present conditions. Conditions today are quite different from what they were even 5 years; certainly 10 or 20 years ago.

I have come to the conclusion that we have got a high level of rates regardless of the volume involved, and it becomes very difficult to give the public a break, even though lower rates could be effectuated.

I did not start out to give a lecture. I don't want you to think that I am an expert in this field, or that I am more knowledgeable than you people who have been giving it all your time for years.

But I see some inadequacies in these procedures, and contrary to what you have said here for the record and which I know you should state because of your position, and the general philosophy of your industry, I cannot believe that you are altogether a hundred percent satisfied that the procedures are completely adequate because I do not believe you would have ever recommended an alternate solution, if you didn't have some doubt somewhere along the line.

I know it is human nature for us to get into a position where we have mixed feelings over a problem, and I must say that I am at the point right now where I am somewhat uncertain about what should be done.

Before I ask some more specific questions let me ask you if you agree with the position of the Department of State that our position on bilateral agreements with other nations should be improved.

Mr. TIPTON. Yes.

The CHAIRMAN. You agree with that statement?

Mr. TIPTON. Yes, I do.

The CHAIRMAN. Second, do you agree with the Department of State that in their governmental conferences the hand of our Government should be strengthened?

Mr. TIPTON. Yes.

The CHAIRMAN. Well, keeping those two premises in mind, and before we go any further, I will—Mr. Moss and Mr. Rogers raised the question, I want you to point out to me where there is any authority for arbitration under (f) of the bilateral agreement.

Mr. TIPTON. The provision for arbitration is in a previous—it is in (g) in Bermuda. All (e) and (f) purport to deal with is what happens during arbitration.

The CHAIRMAN. What is a provisional international civil aviation organization?

Mr. TIPTON. In 1944, the Chicago conference wrote a treaty governing all this which was to be submitted to our Senate for ratification, and other legislative bodies.

While that was going on, while that treaty was being submitted they set up what they called a "provisional international civil aviation organization" to act while the process of ratification in the various legislative bodies was going on.

I believe it met twice before it was succeeded by the international aviation organization which was authorized by the treaty itself.

The CHAIRMAN. Is that ICA?

Mr. TIPTON. ICAO.

The CHAIRMAN. Is PICAQ its successor?

Mr. TIPTON. That is right.

The CHAIRMAN. All right.

Now, you interpret that as giving authority for arbitration.

Mr. TIPTON. Yes.

The CHAIRMAN. Is it not true that under paragraph (g) that it has only an advisory responsibility?

Mr. TIPTON. That is right. It provides for an advisory report and then each party will use its best efforts under the powers available to it to put into effect the opinion expressed in a report.

The CHAIRMAN. All right.

Now, that then gets down to where our authority is. Then the Board has no authority to do anything about it under the Federal Aviation Act. The Board has no authority except to disapprove whatever is done.

Mr. TIPTON. Let's be sure I understand this. This is after the matter has gone to arbitration and an advisory report has been made, and the question is "What can the Board do then?" That is the question.

The CHAIRMAN. Yes.

Mr. TIPTON. At that point it has, in my opinion, only the indirect power that it necessarily exercises over U.S. carriers. It does not have a direct power to say to them you must put into effect the arbitrarily award.

The CHAIRMAN. That is not what I am saying.

Mr. TIPTON. I am sorry.

The CHAIRMAN. 402 says, the Board, if it does not agree can disapprove.

Mr. TIPTON. 412 says.

The CHAIRMAN. 412.

Mr. TIPTON. The agreement provision.

The CHAIRMAN. Yes.

Mr. TIPTON. It says if they don't like the rates, the IATA rates, then it may disapprove.

The CHAIRMAN. In other words, the only authority that it has, direct authority, that it has under the law or the act itself is disapproval.

Mr. TIPTON. That is right. Plus, of course, the authority under 402 to amend and suspend permits of foreign-flag carriers. Which in itself—

The CHAIRMAN. All right.

Now, getting down to the technical opinions then of 402. You take the position that the Board has some wide latitude or authority under that provision?

Mr. TIPTON. We do.

The CHAIRMAN. The Board takes the position that it does not have the authority to take any action that would result from a matter of rates.

Mr. TIPTON. Right. And that is the reason we put forward H.R. 1716 which gives the power to suspend.

The CHAIRMAN. Would that power be to suspend the rates of our own carriers and also to foreign carriers?

Mr. TIPTON. Yes, both foreign- and American-flag carriers.

The CHAIRMAN. First, let me say this: It seems to me that it should be the responsibility of this committee and your own industry, if the Board, which is charged with the responsibility of administering this program, contends that it does not have the power to act and, therefore, it won't act in this deal, even though you contend it does, if they, the people, who have got to carry out the program, administer the program, say they do not have it, then wouldn't it be the advisable thing to give it authority where we would say to them they do have the power?

Mr. TIPTON. I think that is sound, Mr. Chairman.

The committee, I hope, after this argument and discussion, will determine whether the Board has power under 402 to deal with rates, and if the committee determines no, then it would be possible for the committee, if they so determine, to amend 402 to permit the Board to deal with rates under—

The CHAIRMAN. In other words, virtually to direct the Board to do it if they say they do not have power, or refuse to act if they do have the power, then to give them the power and make it abundantly clear they do have the power or else direct them to do it.

Mr. TIPTON. Yes.

The CHAIRMAN. Wouldn't that be a reasonable thing?

Mr. TIPTON. Yes. It would be a reasonable thing. I don't have the terms of the legislation in mind but in dealing with foreign-flag carrier rates, if the committee decides that this is necessary, I think it could be done that way.

The CHAIRMAN. If they contend they don't have it and, therefore, cannot be expected to do anything about it, under the provisions of the act, but on the other hand use the strong arm as they did in the incident we have referred to with Britain, it seems to me a most unusual procedure to have to pursue just to say, "We don't have authority but we are going to do it anyway."

That is what they did, it is a crude way of putting it but that is actually what happened.

Mr. TIPTON. An amendment, I think the committee might well consider an amendment, to section 402. We sought to solve that problem by giving the Board the power to suspend both American-flag and foreign-flag rates which comes at it in another way.

The CHAIRMAN. But Mr. Williams brought up the question of the so-called new rate as contained in the agreements with Mexico and with somebody else, United Arab Republic.

Mr. TIPTON. United Arab Republic.

The CHAIRMAN. If we just pursue this matter on the basis of the broad language contained in paragraph (f), and if this so-called new form that you have mentioned were to become the model—and you indicated earlier that you thought it was the one the Government would use in future negotiations—then we are right back where we started.

Mr. TIPTON. If that is left just as (f) is, the situation could be improved in the way you have just referred to, amendment to 402, or the approval of H.R. 1716. Because that provision of the new

rate article contemplates that both governments during the period of arbitration will be able to suspend the disputed rate, whatever it is, whoever it is.

The CHAIRMAN. Well, pursuing that then, the Bermuda-type agreement which was referred to and this new form are somewhat similar as to paragraph (f), it provides that as you reach a certain point, and an objection is raised, each country may take such steps as it may consider necessary to prevent the inauguration or continuation of service in question at the rate complained of.

Now, that is the language under which the British proceeded to take action.

Mr. TIPTON. Yes.

The CHAIRMAN. I assume under the authority of the laws of the United Kingdom that they had the authority to confiscate the plane if they thought it necessary?

Mr. TIPTON. I have to assume so, too. They have the power, as I understand it, to suspend rates, they don't have the power to fix rates. They have the power to suspend and amend a foreign air carrier permit which corresponds to ours and it was the latter power they were then exercising.

The CHAIRMAN. But then does our Board or our laws give our Board the authority to take similar action, even though drastic it might be, even to confiscation of a plane?

Mr. TIPTON. This is the dispute between the Board and the industry that you just referred to.

In our judgment under 402 they could have suspended or threatened as the British did, could have suspended BOAC's permit, and I am not sure whether they could confiscate airplanes if their suspension was violated.

In other words, if BOAC continued to serve without a permit. Needless to say—

The CHAIRMAN. That is what I wanted to pursue.

Suppose we give them the power of suspension, what powers do they have of carrying out the action of the Board?

Mr. TIPTON. It would be a criminal offense for a foreign air carrier to operate to this country without a permit under 402.

The CHAIRMAN. Then it strengthens my position that I mentioned a moment ago that we probably had better clarify, at least if nothing else, we had better clarify the authority of the Board in this regard.

I am somewhat concerned about the Board's request for the rate-making authority comparable, Mr. Moss used the word "comparable," I believe, similar to that on domestic ratemaking, which is based on a long-established term "just and reasonable."

Now, the reason I am is because I cannot see how on international rates the Board could arrive at a decision on the same basis, cost of service, and so forth, as they do on domestic rates where they have complete control and authority, when on the international rates they would have no authority or no way, as I can see, to obtain information to base their judgment on what a just and reasonable rate would be insofar as a foreign carrier is concerned.

Certainly they could go through all these procedures with reference to our own carriers, but I can't see how they can arrive at a just and reasonable rate under the same procedures without taking into con-

sideration what the neighbors do, what the competitors do, what the other man is doing.

We have to recognize, also, that whatever rate is established, consideration must be given to what the other man does. I can't see from a practical basis that we can take out, you called it a moment ago, what was it, open rate. I can't see how we can operate in the international aviation field on open rates, meaning that everybody charges the rate they want to all over, because we shouldn't consider this thing as to what is taking place today or tomorrow; this may be 5, 10 years, maybe 20 years.

We may be in a much better position now on efficiency than somebody else, but who knows what is going to happen 10 years from now, they might be in a better position than we are.

I hope not, and I don't believe so, because I have faith in our system and in our industry.

Mr. TIPTON. At that point, Mr. Chairman, I think we must recognize it is not always efficiency that governs the setting of rates. These carriers get great help from their governments.

The CHAIRMAN. That is the point. Suppose we arrive at the point where the other governments—they are mostly government owned, I suppose, most of them—where they give up any idea of efficiency and economical operation and say, "We are going to do it anyway. Subsidize it from another position," and then we get into a ratemaking situation, and we obviously are going to come out on the little end, because it may be that we will do the same thing, and that is no way to run an airship the way I see it.

Mr. TIPTON. That is exactly correct.

The CHAIRMAN. So that does bother me with reference to giving the Board the authority where under the law they will be required, under the just and reasonable procedure, after hearings and so forth, to arrive at a rate where that rate is fixed and based on that hearing.

I just can't altogether agree with my colleague from California. If we do make it mandatory, that they determine a just and reasonable rate, I think they will have to come up with a decision on that basis. I don't believe they can be flexible because the courts are going to decide later on if anybody takes it that far.

I would like to see some approach to this thing where the Board can take into consideration, and that would be through negotiation and arbitration, I guess, you mentioned a moment ago.

Tell me how did the Board arrive at the rate that they finally brought about?

Mr. TIPTON. I can't give a precise answer to that because I wasn't—I didn't participate in that but, based upon past experience—

The CHAIRMAN. They didn't have a hearing?

Mr. TIPTON. They had no hearings; they made no findings and made no economic studies of a company that they usually make in a rate determination.

I guess they looked at the material before them, the facts on the carrier's operation, and made a general judgment as to what they thought would be a good rate based on the carrier's economy and the attractiveness to the traffic, and that is about as precise as it was.

I think that in pointing out that you can't do that under a rate-fixing statute is exactly right, because you can't. That would not—the courts

would not in any respect sustain an informal kind of judgment game of that sort.

The CHAIRMAN. Well, should we—just asking for your comment, should the Congress decide to make clear the Board's authority on suspension of rates, should we not then give some affirmative authority to the Board to enter into negotiations that would carry with it legal authority of the Board to pursue discussions with foreign nations on the settlement of rates, or should we leave it wide open, and let the Chairman, as happened this time, go over there and say, "I have come to settle it. I have no legal authority to do it but I am going to do it anyway."

Mr. TIPTON. I think there is adequate legal authority for the Board to participate in these negotiations. I must say right at the moment I can't think of exactly where it is, except in the case of section 802.

Let's see, section 802 of the Federal Aviation Act may be where they get that authority. It actually vests that authority in the Secretary of State, as follows:

The Secretary of State shall advise the Administrator of the Board and the Secretary of Commerce and consult with the Administrator, Board, and Secretary, as appropriate concerning the negotiation of any agreement with foreign governments for the establishment or development of air navigation including air routes and services.

That is, I believe, the basic provision under which the Board acts in these negotiations.

The CHAIRMAN. Well, that authority gives it to the Department of State.

Mr. TIPTON. That is right. And their arrangements are worked out informally between them.

The CHAIRMAN. I still think, as indicated by other members of the committee, that the Board itself—as far as the authority of law is concerned—is handcuffed as to what it can do.

I know we get into a constitutional question with reference to the authority of the President on foreign affairs—foreign relations.

Mr. TIPTON. It is a subject that the committee should consider because, as you point out, it is in the Secretary of State. But many years ago when 802 was enacted, as I recall, it provoked a considerable constitutional debate because the provision then on the floor of the Senate did give increased power to the then Civil Aeronautics Authority.

The CHAIRMAN. You are aware of the fact that the Secretary of State strongly supports H.R. 6400.

Mr. TIPTON. Yes.

The CHAIRMAN. That means the Secretary of State; that is, the State Department, apparently is of the opinion that there should be additional direct authority given to the Board, strengthening its hand and its position.

Mr. TIPTON. That is right; that is their position, and that is what surprised me about the letter they wrote—the letter that was quoted here today in which they said, in effect, that the current U.S. policy was to permit both governments to retain the power to suspend a disputed rate.

The CHAIRMAN. Well, thank you very much, on behalf of the committee. We regret in detaining you so long.

Mr. Moss. Mr. Chairman, I wonder if I may make one further comment?

The CHAIRMAN. Yes.

Mr. Moss. I am disturbed with reference to the probability or the possibility or the potential at least that some time in the future under these agreements these nations having governmentally owned airlines setting rates that will not permit profitable operations. As I read the agreement, and I think in the context of these hearings we must take cognizance of this, it clearly states that:

The rates to be agreed in accordance with the above paragraphs shall be fixed at reasonable levels, due regard being paid to all relevant factors; such as, cost of operation, reasonable profit, and the rates charged by any other air carriers.

I submit that any rates proposed by a government which denied reasonable profit would be an abridgment of this agreement.

Mr. TIPTON. That is one of our problems because, unquestionably under those circumstances, the United States would protest the rate and say that it violates (h) at which point the foreign government or governments would say that it does not. They would arbitrate it. But under (e) if this bill is passed, those destructive rates would be in effect for—

Mr. Moss. This is not submitted for arbitration.

Mr. TIPTON. The rate is submitted to arbitration.

Mr. Moss. The rate is submitted to arbitration but if we conclude that "You have violated the agreement in the fixing of the rate," then I think our Government is free and not bound by this agreement to act because there is nothing here that I see that submits any further arbitration question of that type which go to the violation of the agreement itself.

Mr. TIPTON. Then that negatives (e) because last year or any other year—

Mr. Moss. That is right. At the point in any agreement where the governments refused in good faith to honor them for all practical purposes you have no agreement.

Mr. TIPTON. I don't want to prolong this, but if that is—

Mr. Moss. I think we should; I think we need clarification.

Mr. TIPTON. I do not agree with that conclusion. I think to reach a conclusion as to whether a rate violates (h) you submit it to arbitration. But during the arbitration, while you are arguing about that, the low rate remains in effect under (e).

Mr. Moss. Well, we can argue on that one for a long time and I think I can probably produce some precedents to support my position.

Mr. TIPTON. I have no doubt I could, too, Mr. Moss.

Thank you.

Mr. Moss. I have no doubt you could, too.

Mr. TIPTON. Thank you, Mr. Chairman, for the opportunity to spend this long time before the committee. We always appreciate your attention to the problems that we are faced with.

The CHAIRMAN. We appreciate your efforts to be helpful to the committee and certainly your efforts to submit the views of your industry and as usual you have done another good job—

Mr. TIPTON. Thank you.

The CHAIRMAN (continuing). In behalf of your industry. We regret to delay you for this length of time over the last 3 days.

Mr. TIPTON. I have nothing more important to do than this, Mr. Chairman.

The CHAIRMAN. Thank you very much.

The committee will adjourn until 10:30 on Monday morning at which time we will have Mr. Chayes, of the Department of State.

Now, it will be the purpose of the Chair to try to conclude Mr. Chayes' testimony Monday morning and very likely we will ask Mr. Boyd to come back Monday a week if we can work out a schedule.

Thank you very much.

The committee will adjourn until Monday morning.

(The following letter and attachment were subsequently received for insertion into the record at this point:)

AIR TRANSPORT ASSOCIATION,
Washington, D.C., June 5, 1954.

HON. OREN HARRIS,

Chairman, Committee on Interstate and Foreign Commerce, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: In the course of my testimony on H.R. 1716, H.R. 6400, and S. 1540, I referred to a number of exhibits which demonstrated how effectively the international ratemaking process has worked over the past 18 years. Copies of the exhibits referred to are submitted herewith for the record (exhibits 1-6). In addition, I am submitting certain supplemental exhibits (exhibits 1A-6A), which are responsive to questions asked by members of your committee. An explanatory statement is included as an introduction to the exhibits.

The basic process of international air rate negotiation through conferences of carriers, subject to governmental approval, has worked effectively to reduce fares, develop traffic, and promote a sound air transport system. On the other hand, the rate-fixing machinery proposed in H.R. 6400 and S. 1540 could not work and would imperil the conference system. In our opinion, concentration by some on the recent crisis which is unique in the history of international air ratemaking, has tended to obscure the success of the historical approach in which existing powers of the Civil Aeronautics Board and other Government agencies have played a substantial role.

We will be glad to furnish any additional information the committee may desire and to cooperate with the committee in any way in which we can be helpful.

Cordially,

S. G. TIPTON.

STATISTICAL DATA AND SUPPLEMENTARY MATERIAL USED BY STUART G. TIPTON,
PRESIDENT, AIR TRANSPORT ASSOCIATION OF AMERICA

INTRODUCTION

These exhibits are designed to show that the IATA ratemaking machinery has been a success, that the cost to the American public of international air transportation has gone down dramatically, that more and more people are making use of the bargain, and that the achievements in lowering fares, increasing capacity, and maintaining economically sound organizations have been hard won in an area of constantly rising prices.

Exhibit 1 shows that revenue passenger-mile yields—the average cost to the passenger to fly 1 mile—in international and territorial operation of U.S.-flag carriers has been trending downward for the years 1946 through 1963. In 1946 the yield was 8.3 cents per mile; in 1963 it was only 5.8 cents. Similar data for domestic operations of U.S. certificated carriers is shown in exhibit 1-A for comparison.

Exhibit 2 shows a trend of lower yields for the carriage of freight traffic in international and territorial operations by U.S.-flag airlines. From a high of

75.7 cents per freight ton-mile in 1946, the average yield has come down to only 24.8 cents in 1963.

Exhibits 3 and 4 show the passenger and freight traffic respectively generated by U.S. carriers in international and territorial operations. The charts illustrate for selected years how this traffic has grown and they are supplemented by the detailed data for each of the years 1946 through 1963.

Exhibit 4-A correlates the available seating and ton-mile capacity with the use made of it in terms of the passenger load factor and ton-mile load factor for the years 1946 through 1963.

Exhibit 4-B is a presentation of total United States-North Atlantic traffic carried by IATA carriers and the percent carried on U.S.-flag airlines for the years 1950 through 1963.

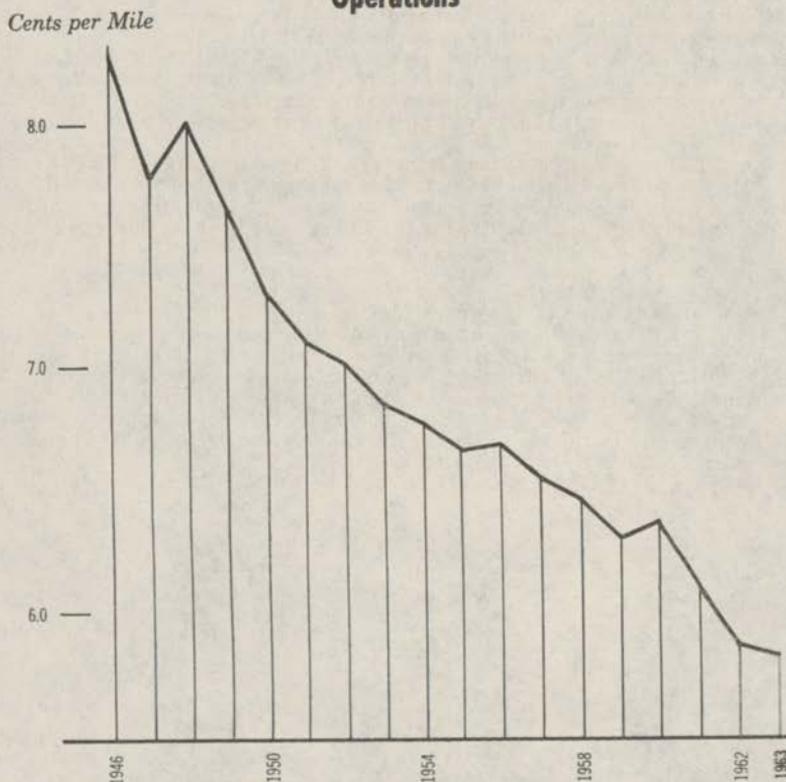
Exhibit 5 shows how specific fares in the New York-London market have come down over the years since the end of World War II. The data is arranged by peak season and off season and grouped by time periods, 1946-51, 1952-57, 1958-present to indicate the range of fares offered during those years and the lowest fare which was generally available to a purchaser of a transatlantic ticket.

Exhibit 5-A presents the overall operating revenue generated in international and territorial operations of U.S.-flag carriers and the corresponding expenses incurred by such carriers. These items are then expressed as units per ton-mile to show the downward trend of operating expenses per ton-mile and the corresponding downward yield per revenue ton-mile. These data are shown for the years 1946 through 1963. Exhibit 5-B sets out total aircraft operating expense, the cost per hour and the cost per plane-mile incurred by the passenger/cargo carriers in international and territorial operations for the year 1963.

Exhibit 6 shows that the average weekly wage of a U.S. production worker has more than doubled in the years 1946 to 1964 and the lowest cost of a New York-London ticket has been cut in half so as to increase the purchasing power of the worker's salary. As a comparison there is also shown the cost of an average automobile which has almost doubled in the same period of time. Exhibit 6-A is directed to the same point that the Consumer Price Index has gone up 56 percent between 1946 and 1963 while the yield per passenger-mile—the average cost to the passenger to fly 1 mile—has declined by 30 percent in international and territorial operations.

DOWNWARD TREND OF REVENUE PASSENGER MILE YIELDS SCHEDULED SERVICE—U.S. FLAG CARRIERS

International and Territorial Operations



*Average passenger revenue per passenger-mile, scheduled service,
U.S.-flag carriers*

INTERNATIONAL AND TERRITORIAL OPERATIONS

Year:	<i>Cents per mile</i>	Year—Continued	<i>Cents per mile</i>
1946	8.31	1955	6.66
1947	7.77	1956	6.68
1948	8.01	1957	6.55
1949	7.72	1958	6.46
1950	7.28	1959	6.29
1951	7.10	1960	6.35
1952	7.01	1961	6.08
1953	6.84	1962	5.87
1954	6.76	1963	5.82

Average total passenger revenue per revenue passenger-mile, scheduled service, U.S. carriers

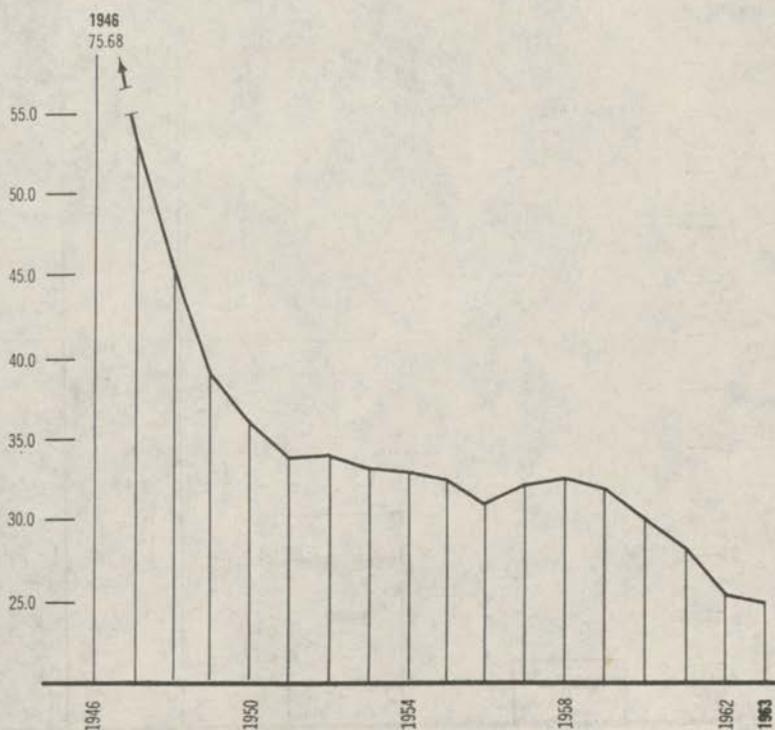
DOMESTIC OPERATIONS

Year:	Cents per mile	Year—Continued	Cents per mile
1946	4.63	1955	5.36
1947	5.05	1956	5.33
1948	5.76	1957	5.31
1949	5.78	1958	5.64
1950	5.56	1959	5.88
1951	5.61	1960	6.09
1952	5.57	1961	6.28
1953	5.46	1962	6.44
1954	5.41	1963	6.17

DOWNWARD TREND OF FREIGHT REVENUE TON MILE YIELDS SCHEDULED SERVICE—U.S. FLAG CARRIERS

International and Territorial Operations

Cents per Mile



Average freight revenues per freight revenue ton-miles—scheduled services—U.S.-flag carriers

INTERNATIONAL AND TERRITORIAL OPERATIONS

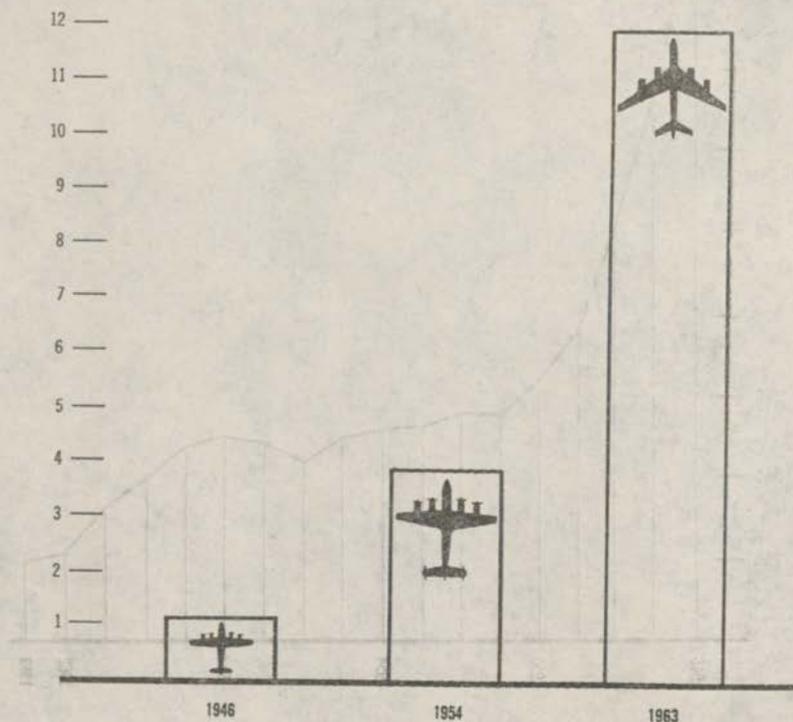
Year:	Freight cents per mile	Year—Continued	Freight cents per mile
1946.....	¹ 75.68	1955.....	32.34
1947.....	¹ 53.31	1956.....	30.88
1948.....	¹ 45.67	1957.....	31.94
1949.....	39.25	1958.....	32.31
1950.....	35.80	1959.....	31.66
1951.....	33.76	1960.....	29.92
1952.....	33.86	1961.....	27.83
1953.....	33.10	1962.....	25.04
1954.....	32.81	1963.....	24.80

¹ All reported freight and express revenues prior to 1949 have been included with freight.

TOTAL REVENUE PASSENGER MILES FLOWN SCHEDULED SERVICE—U.S. FLAG CARRIERS

International and Territorial Operations

*Billions of
Passenger Miles*



Total revenue passenger miles—Scheduled service

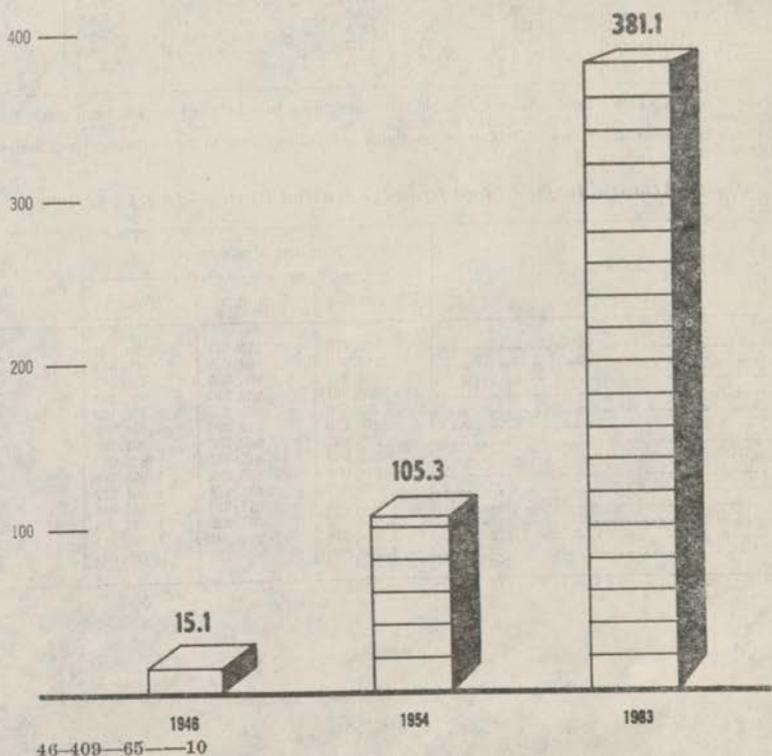
INTERNATIONAL AND TERRITORIAL OPERATIONS

Year	Revenue passenger-miles (thousands)	Annual rate of growth (percent)	Year	Revenue passenger-miles (thousands)	Annual rate of growth (percent)
1946	1,103,771	145.2	1955	4,498,851	18.1
1947	1,814,243	64.4	1956	5,226,210	16.2
1948	1,893,627	4.4	1957	5,882,036	12.5
1949	2,059,879	8.8	1958	6,123,948	4.1
1950	2,214,028	7.5	1959	7,064,211	15.4
1951	2,613,842	18.1	1960	8,306,348	17.6
1952	3,065,043	17.3	1961	8,768,501	5.6
1953	3,450,808	12.6	1962	10,137,777	15.6
1954	3,810,447	10.4	1963	11,905,430	17.4

TOTAL REVENUE TON MILES OF FREIGHT FLOWN SCHEDULED SERVICE—U.S. FLAG CARRIERS

International and Territorial Operations

Millions of
Ton Miles



Total revenue ton-miles of freight flown—Scheduled service—U.S.-flag carriers

INTERNATIONAL AND TERRITORIAL OPERATIONS

Year	Freight revenue-miles (thousands)	Annual rate of growth (percent)	Year	Freight revenue-miles (thousands)	Annual rate of growth (percent)
1946.....	¹ 15,096	¹ 73.0	1955.....	115,277	9.5
1947.....	¹ 32,904	¹ 118.0	1956.....	152,596	32.3
1948.....	¹ 45,603	¹ 38.6	1957.....	157,430	3.2
1949.....	56,082	23.0	1958.....	163,382	3.8
1950.....	60,265	7.5	1959.....	195,447	19.6
1951.....	77,624	28.8	1960.....	225,918	15.6
1952.....	86,079	10.9	1961.....	260,325	15.2
1953.....	93,539	8.7	1962.....	330,467	26.9
1954.....	105,278	12.5	1963.....	381,111	15.3

¹ All reported freight and express revenue ton-miles prior to 1949 have been included with freight revenue ton-miles.

Historic load factors—U.S.-flag international and territorial carriers

SCHEDULED SERVICE

Year	Revenue ton-mile load factor ¹ (percent)	Revenue passenger load factor ² (percent)	Year	Revenue ton-mile load factor ¹ (percent)	Revenue passenger load factor ² (percent)
1946.....	64.5	70.7	1955.....	63.3	62.5
1947.....	57.0	61.8	1956.....	63.1	62.9
1948.....	56.6	57.3	1957.....	62.1	63.2
1949.....	55.5	56.6	1958.....	58.8	58.9
1950.....	58.6	59.6	1959.....	63.4	65.2
1951.....	62.0	59.8	1960.....	59.0	62.2
1952.....	61.5	61.9	1961.....	54.1	55.6
1953.....	61.5	61.4	1962.....	54.3	54.1
1954.....	61.6	59.0	1963.....	52.1	52.7

¹ Revenue ton-miles flown divided by available ton-miles flown in scheduled service; from CAB handbook of airline statistics and CAB air carrier traffic statistics.

² Revenue passenger-miles flown divided by available seat-miles flown in scheduled service; source as noted in footnote 1.

North Atlantic traffic to and from the United States—IATA carriers

Year	Number of passengers			Percent U.S. flag of total
	Foreign flag	U.S. flag	Total	
1950.....	119,770	175,021	294,791	59.4
1951.....	143,879	164,608	308,487	53.4
1952.....	223,922	206,663	430,585	61.5
1953.....	276,891	229,710	446,293	51.5
1954.....	230,856	255,297	486,153	52.5
1955.....	270,179	314,326	584,505	53.8
1956.....	328,892	362,702	691,594	48.4
1957.....	439,665	412,415	852,080	41.6
1958.....	616,903	438,582	1,055,485	41.6
1959.....	723,203	481,174	1,204,377	40.0
1960.....	923,264	611,076	1,534,346	39.8
1961.....	1,043,072	611,232	1,654,304	36.9
1962.....	1,256,078	725,337	1,981,415	36.6
1963.....	1,266,886	898,158	2,165,044	41.5

DOWNWARD TREND OF TRANSATLANTIC FARES

**Lowest One Way Fare
New York-London
Peak Summer Season**

Dollars

400 —

1946-1951

RANGE \$325-375

MOST PREVALENT \$350



1952-1957

RANGE \$270-290

MOST PREVALENT \$290



300 —

1958-1964

RANGE \$240-255

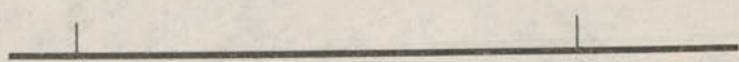
MOST PREVALENT \$250



200 —

1946

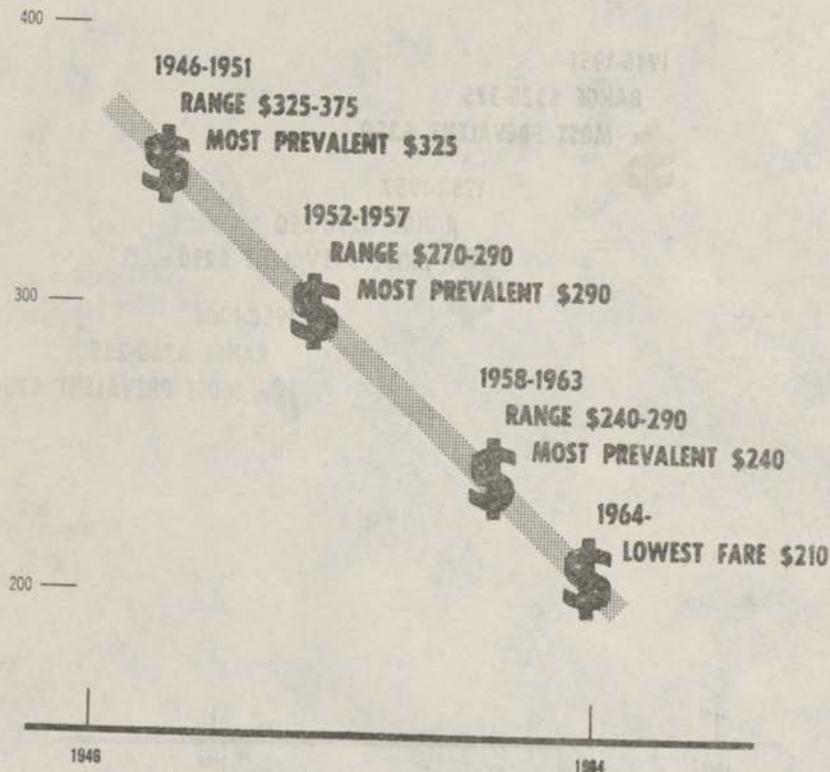
1964



DOWNWARD TREND OF TRANSATLANTIC FARES

**Lowest Available One Way Fare
New York-London
Includes Off Season**

Dollars



Comparison of overall operating revenues and expenses, U.S.-flag international and territorial carriers, calendar years 1946 through 1963

Year	Total operating revenues	Total operating expenses	Total revenue ton miles	Operating revenue per ton mile	Operating expenses per ton mile
	<i>Thousands</i>	<i>Thousands</i>	<i>Thousands</i>	<i>Cents</i>	<i>Cents</i>
1946.....	\$147,240	\$140,338	\$137,025	107.5	102.4
1947.....	209,557	209,865	244,213	85.8	85.9
1948.....	249,840	235,890	273,814	91.2	86.2
1949.....	274,947	253,664	300,926	91.4	84.3
1950.....	261,486	249,927	326,746	80.0	76.5
1951.....	294,812	276,737	396,365	74.4	69.8
1952.....	325,242	314,829	455,462	71.4	69.1
1953.....	350,727	332,399	504,556	69.5	65.9
1954.....	372,741	347,176	574,334	64.9	60.5
1955.....	404,974	386,421	705,474	57.4	54.8
1956.....	498,102	463,764	888,575	56.1	52.2
1957.....	531,973	504,525	944,173	56.3	53.4
1958.....	550,751	542,353	999,943	55.1	54.2
1959.....	610,086	596,265	1,159,200	52.6	51.4
1960.....	705,938	665,660	1,291,336	54.7	51.6
1961.....	758,703	736,201	1,495,522	50.7	49.2
1962.....	850,083	760,735	1,797,400	47.3	42.3
1963.....	965,394	828,642	2,028,234	47.6	40.9

Analysis of direct aircraft operating expenses international and territorial operations of U.S.-flag passenger/cargo carriers, calendar year 1963

	<i>All aircraft types</i>
Aircraft operating expenses:	
Flying operations.....	\$208,344,000
Maintenance.....	107,491,000
Obsolescence, spares.....	2,822,000
Depreciation, flight equipment.....	69,848,000
Total aircraft operating expense.....	388,505,000
Cost per hour.....	807.33
Cost per aircraft mile.....	1.92
Other operating expense.....	382,576,000
Total operating expense.....	771,081,000
Cost per hour.....	\$1,602.35
Cost per mile.....	\$3.81
Total aircraft hours.....	481,220
Total aircraft miles.....	202,124,638

INTERNATIONAL AIR TRANSPORTATION A BETTER BUY

**Lower Air Fares Increase the Buying Power
of a U.S. Production Worker's Salary.**

In 1946

**he worked 7.5 weeks
to travel from New York to London or buy 22% of a car**

In 1954

**he worked 3 weeks
to travel from New York to London or buy 8% of a car**

In 1964

**he worked 1.5 weeks
to travel from New York to London or buy 5% of a car**

International air transportation is a better buy—Lower air fares increase the buying power of a U.S. production worker's salary

Year	Average weekly wage ¹	Lowest cost of New York to London air fare	Number of weeks pay received to make trip	Average automobile selling price ²	Percent New York to London air fare of automobile price
1946.....	\$43.32	325	7.5	\$1,498	21.7
1954.....	70.49	³ 212.50	3.0	2,620	8.1
1964.....	100.00	⁴ 150	1.5	⁵ 2,860	5.2

¹ 1946-63 figures from the 1964 Economic Almanac.

² Based on data supplied by National Automobile Dealers Association.

³ $\frac{1}{2}$ the roundtrip thrift fare of \$425.

⁴ $\frac{1}{2}$ the roundtrip excursion fare of \$300.

⁵ Actual 1963 average selling price.

Comparison of downward trend of international revenue passenger mile yield with upward trend of consumer price index, selected years

Year	Consumer price index ¹		Air carrier revenue passenger-mile yield ²	
	All items	All transportation	Domestic	International
1946.....	68.0	58.3	4.63	8.31
1954.....	93.6	90.8	5.41	6.76
1963.....	³ 106.2	107.0	6.17	5.82
Percent change, 1946 to 1963.....	+56.2	+83.5	+33.3	-30.0

¹ Source: Bureau of Labor Statistics: 1957-1959=100.

² Scheduled services U.S. certificated carriers.

³ January-June average.

(Whereupon, at 12:15 p.m., the committee adjourned, to reconvene at 10:30 a.m., Monday, May 25, 1964.)

Reference is made to the report of the Committee on the Administration of the Government, dated July 1, 1947, and to the report of the Committee on the Organization of the Government, dated July 1, 1947.

Item	Amount	Source	Destination	Remarks
1. Office of the Secretary of State	\$1,000,000	General Fund	Office of the Secretary of State	
2. Office of the Secretary of Defense	\$1,000,000	General Fund	Office of the Secretary of Defense	
3. Office of the Secretary of the Navy	\$1,000,000	General Fund	Office of the Secretary of the Navy	
4. Office of the Secretary of the Army	\$1,000,000	General Fund	Office of the Secretary of the Army	
5. Office of the Secretary of the Air Force	\$1,000,000	General Fund	Office of the Secretary of the Air Force	
6. Office of the Secretary of the Coast and Geodetic Survey	\$1,000,000	General Fund	Office of the Secretary of the Coast and Geodetic Survey	
7. Office of the Secretary of the Bureau of Lighthouses	\$1,000,000	General Fund	Office of the Secretary of the Bureau of Lighthouses	
8. Office of the Secretary of the Bureau of Marine Fisheries	\$1,000,000	General Fund	Office of the Secretary of the Bureau of Marine Fisheries	
9. Office of the Secretary of the Bureau of Oceanography	\$1,000,000	General Fund	Office of the Secretary of the Bureau of Oceanography	
10. Office of the Secretary of the Bureau of the Census	\$1,000,000	General Fund	Office of the Secretary of the Bureau of the Census	
11. Office of the Secretary of the Bureau of Economic Warfare	\$1,000,000	General Fund	Office of the Secretary of the Bureau of Economic Warfare	
12. Office of the Secretary of the Bureau of the Budget	\$1,000,000	General Fund	Office of the Secretary of the Bureau of the Budget	
13. Office of the Secretary of the Bureau of the Census	\$1,000,000	General Fund	Office of the Secretary of the Bureau of the Census	
14. Office of the Secretary of the Bureau of the Census	\$1,000,000	General Fund	Office of the Secretary of the Bureau of the Census	
15. Office of the Secretary of the Bureau of the Census	\$1,000,000	General Fund	Office of the Secretary of the Bureau of the Census	

The above information is being furnished to you for your information and for the information of the Bureau of the Budget.

Very truly yours,
 [Signature]

Item	Amount	Source	Destination	Remarks
1. Office of the Secretary of State	\$1,000,000	General Fund	Office of the Secretary of State	
2. Office of the Secretary of Defense	\$1,000,000	General Fund	Office of the Secretary of Defense	
3. Office of the Secretary of the Navy	\$1,000,000	General Fund	Office of the Secretary of the Navy	
4. Office of the Secretary of the Army	\$1,000,000	General Fund	Office of the Secretary of the Army	
5. Office of the Secretary of the Air Force	\$1,000,000	General Fund	Office of the Secretary of the Air Force	
6. Office of the Secretary of the Coast and Geodetic Survey	\$1,000,000	General Fund	Office of the Secretary of the Coast and Geodetic Survey	
7. Office of the Secretary of the Bureau of Lighthouses	\$1,000,000	General Fund	Office of the Secretary of the Bureau of Lighthouses	
8. Office of the Secretary of the Bureau of Marine Fisheries	\$1,000,000	General Fund	Office of the Secretary of the Bureau of Marine Fisheries	
9. Office of the Secretary of the Bureau of Oceanography	\$1,000,000	General Fund	Office of the Secretary of the Bureau of Oceanography	
10. Office of the Secretary of the Bureau of the Census	\$1,000,000	General Fund	Office of the Secretary of the Bureau of the Census	
11. Office of the Secretary of the Bureau of Economic Warfare	\$1,000,000	General Fund	Office of the Secretary of the Bureau of Economic Warfare	
12. Office of the Secretary of the Bureau of the Budget	\$1,000,000	General Fund	Office of the Secretary of the Bureau of the Budget	
13. Office of the Secretary of the Bureau of the Census	\$1,000,000	General Fund	Office of the Secretary of the Bureau of the Census	
14. Office of the Secretary of the Bureau of the Census	\$1,000,000	General Fund	Office of the Secretary of the Bureau of the Census	
15. Office of the Secretary of the Bureau of the Census	\$1,000,000	General Fund	Office of the Secretary of the Bureau of the Census	

The above information is being furnished to you for your information and for the information of the Bureau of the Budget.

Very truly yours,
 [Signature]

RATES, FARES, AND PRACTICE IN FOREIGN AIR TRANSPORTATION—1964

MONDAY, MAY 25, 1964

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee met, pursuant to recess, at 10 a.m., in room 1334, Longworth House Office Building, Hon. Oren Harris (chairman of the committee) presiding.

The CHAIRMAN. Today, as we continue the hearings on H.R. 6400 and other bills on the subject of international aviation rate practices, we have as our witness Mr. Abram Chayes, Legal Adviser to the State Department.

I believe you have Mr. Ferguson with you, Mr. Chayes?

Mr. CHAYES. Yes, Mr. Ferguson is here. He is the Coordinator of International Aviation Policy in the Department; and I have Mr. Allan Mendelsohn, in my office, who works on aviation matters.

The CHAIRMAN. Very well. We will be glad to have your statement.

STATEMENT OF ABRAM CHAYES, LEGAL ADVISER, DEPARTMENT OF STATE; ACCOMPANIED BY ALLEN R. FERGUSON, COORDINATOR OF INTERNATIONAL AVIATION; AND ALLAN I. MENDELSON, IN OFFICE OF THE LEGAL ADVISER, DEPARTMENT OF STATE

Mr. CHAYES. Mr. Chairman and members of the committee, my purpose in testifying before you today is to give unqualified support to H.R. 6400 and to comment on H.R. 1716 and S. 1650. I should like to emphasize that in our opinion the passage of H.R. 6400 would enable the United States to take a far more constructive role in the area of international air fares than is possible at present.

The absence of legislation such as H.R. 6400 leaves the United States vulnerable and defensive in rate matters around the world. You all recall the circumstances of the international air fare dispute just 1 year ago this month. At that time, we were working against the threat of a coalition of European governments. All of them said they would close their airports to U.S. carriers if our carriers did not raise their rates in accordance with the so-called Chandler IATA agreement. As you remember, we advised our carriers that they could raise their rates if this proved to be the only way to continue flying.

We were in this position, as I testified before the Senate last year, because the Civil Aeronautics Board did not have power to fix inter-

national rates for either foreign or U.S. carriers. H.R. 6400 would fill this gap.

I. H.R. 6400 AND OUR BILATERAL AIR AGREEMENTS

Mr. Boyd has already analyzed the effects of H.R. 6400 and H.R. 1716 on the jurisdiction of the Civil Aeronautics Board. I shall therefore restrict my comments only to those aspects of the proposed legislation which touch upon our foreign relations and which will have an effect upon the more than 50 bilateral air agreements to which the United States is a party.

Fundamentally, the interests of the United States are served by the lowest international rates which yield a reasonable rate of return to our airlines. The U.S. citizens traveling abroad are entitled to reap the full benefits of the great economies of modern air technology. The American aircraft industry stands to gain from rates which are low enough to exploit fully the potential demand for transport aircraft. Our overall policy objectives of achieving a prosperous, peaceful and free world are served by international air rates which encourage a maximum of travel. Finally the competitive advantage of U.S. airlines, which are the world's most efficient, can only be fully exploited if it is possible to set rates which reflect that efficiency.

Our ability to deal with international rate matters depends on both the statutory powers of the Civil Aeronautics Board and the rate articles in our bilateral air transport agreements with other countries. Ideally we would like to be in a position to suspend any rates which the Civil Aeronautics Board determined were destructively low. At the same time we should like to have the power to set rates low enough to serve American interests and to see these rates put into effect even in the face of opposition by foreign airlines and foreign governments.

At present, the United States has one of two types of rate articles in most of its air transport agreements. The first is the so-called Bermuda type and the second is what I shall call the 1960 standard form article, although I should make it clear that further consideration of the 1960 standard form article has led to a view that we should not try to use that article in every future agreement, but we have it in three agreements that have been negotiated since 1960.

The Bermuda-type article is, in substance, composed of two alternative provisions. The critical factor in determining which provision shall apply is whether the CAB has, by law, that is, by domestic statute, the same power to control international rates as it has to control domestic rates. If, as is the situation today, the Board does not have this power, the first alternative is in effect, providing that either country may, if it objects to a proposed rate of a foreign carrier, "take such steps as it may consider necessary to prevent the inauguration or continuation of the service in question at the rate complained of."

As I have said, this article applies only when the Board does not have the power to fix and to suspend rates. Thus, the present effect of the Bermuda rate article is to confer power on the other country to suspend our rates if that other country thinks those rates are too low. Our only recourse was to consult in the hope that we could argue them out of their position.

The second alternative provision comes into effect if and when the CAB does have power to fix and to suspend international rates. It provides that once this power is available, a rate to which there is an objection shall go into effect provisionally pending settlement of the dispute by consultation or arbitration. Thus, instead of the foreign government suspending our lower rate pending the outcome of any consultation we may wish to invoke, the lower rate would go into effect, and it would be up to the foreign government to invoke consultation and try to argue us out of our position. This is the situation that will prevail if H.R. 6400 is enacted.

The second general type of rate article, as I mentioned earlier, is the 1960 standard form article, although that name "standard form article" is something of a misnomer. It provides that either of the contracting parties may prevent operation under a rate which it finds objectionable. But like the first alternative provision of the Bermuda-type article, this article at present confers a power only on the foreign country, since the CAB does not now have ratemaking powers. The 1960 standard form article has been negotiated with only three countries, New Zealand, Mexico, and the United Arab Republic. The effect of H.R. 6400 would be to give the U.S. Government powers of suspension equal to those enjoyed by the foreign governments with whom this form of rate article is in force.

As we have frequently pointed out, both in our letters and in testimony before the Senate Commerce Committee, from the U.S. point of view, the optimum situation in most cases would be to have a situation where U.S. carriers or the CAB could decide upon a rate and put it into effect without the possibility of its being suspended by a foreign government. The U.S. carriers, as evidenced by their conduct during the rate dispute of last year, generally support lower rates for international air transportation.

On the other hand, many European carriers generally have supported higher rates, particularly on the North Atlantic, in order to be able to subsidize their less efficient routes. If our lower rate could go into effect provisionally, we would then be in a position to avoid any repetition of the rate dispute of last year. For if our lower rate goes into effect, the force of competition would compel the carriers of the other countries to meet our lower rates. And this is precisely what would happen with the enactment of H.R. 6400. It would bring into effect the alternative provision of the Bermuda-rate article which permits a rate to go into effect provisionally even if it is objected to by the authorities of the other country.

In short, vis-a-vis this Western European countries, who so avidly sought to increase rates last year, it would be our lower rates, not their higher rates which would prevail.

II. H.R. 1716 AND OUR BILATERAL AIR AGREEMENTS

By contrast, if H.R. 1716 were enacted, it would give the Civil Aeronautics Board only the power to suspend rates. Since it would not give the CAB any authority to fix rates, the provision of the bilateral that now applies would remain in effect. Either country would be permitted to suspend the rates of the other country's carriers. This would mean that if the European governments wished to introduce a higher rate than that proposed by our carriers, we could suspend

that rate. But by the same token, the Europeans could, as they did last year, prevent our lower rates from going into effect. Thus, the best we could get would be a deadlock. We would not really be much better off than we were last year. Unlike H.R. 6400, H.R. 1716 would give the United States, at best, only a defensive power. H.R. 6400 on the other hand, would permit, when necessary, an affirmative demonstration of U.S. leadership.

III. THE LOW-RATE PROBLEM

In the chairman's letter of August 8, 1963, almost a year ago, he asked what the outcome would be in the event a foreign carrier proposed a rate lower than that proposed by the U.S. carriers. As we view it, the question in a practical sense is not just a possible lower rate but rather a destructively lower rate. Since our carriers are among the most efficient in the world they should be able to meet any lower foreign rate which is not of a destructive nature. Only in a situation in which the carriers of a foreign country engaged in destructive rate cutting would we face a serious problem. For if such rates were to go into effect over our objection, they would make the affected services uneconomic for our carriers.

We believe this to be a theoretical and not a real problem to the enactment of the proposed legislation. First, as I have said, the basic problem today and for the foreseeable future is not the danger of excessively low rates but of unjustifiably high rates. Virtually all important international rates are unanimously agreed upon by the carriers which are members of IATA. The unanimity rule tends to prevent destructively low rates. Among all the carriers which fly into the United States, only four (those of Argentina, Iceland, Ecuador, and Peru) are not members of IATA. Since destructive rate cutting in any case could only be expected from non-IATA carriers, these carriers are the only ones who might represent a genuine threat. But in the bilateral agreements with these countries there is no Bermuda article.

If H.R. 6400 were enacted, the CAB would then, and for the first time, be in a position to suspend permanently any destructive rate which might be introduced by carriers of these countries.

We have looked at this legislation not only from the standpoint of what our bilaterals are today but from the longer run perspective of what they will be like in the years to come. Our conclusion is that once the legislation is passed, the United States will be in a position of maximum flexibility to consider the question of which particular rate article would best serve the interests of the United States in a particular negotiation. In negotiations with major European countries, all of whose carriers are members of IATA, it would probably most further our interests to continue the principle of the Bermuda rate article, whereby rates would go into effect provisionally pending settlement.

In the case of negotiations with countries whose carriers are not members of IATA and have a history of destructive rate cutting, it would most further our interests to negotiate an article along lines of the 1960 standard form, which with H.R. 6400 would permit either country to suspend a rate which it finds objectionable. In any case, I should like to stress that we need to have both these alternatives

available if the United States is to be able to respond with a flexible and forceful approach to the rapidly changing world of aviation affairs. We cannot have the required flexibility unless H.R. 6400 is enacted.

IV. PRESIDENTIAL REVIEW

I should like, finally, to comment for a moment upon the amendment made by the Senate to the administration bill. This amendment is the only difference between H.R. 6400 and S. 1540. Its purpose is to remove the requirement of review and approval by the President, pursuant to section 801 of the Federal Aviation Act, of any Board order issued under the proposed ratemaking and suspension authority. The amendment would substitute simply a requirement that the Board report such order to the President prior to publication. We are opposed to this amendment.

As President Kennedy wrote in his letter to the Secretary of State dated June 22, 1963, "international aviation policies necessarily affect our overall relations with other nations," and are, he said, and I quote again "a vital area of foreign policy." The authority to make or suspend international rates is clearly an important aspect of our international aviation policy.

Many foreign airlines are owned in whole or in part by their governments. Many others receive direct financial support. Virtually all foreign air carriers operating to the United States are considered by their governments to be instruments of national policy. Hence, their financial vitality is of direct concern to their governments. Actions which influence airline revenues are subject to direct high-level governmental action. Consequently, any controversy over air fares is likely to rise to the diplomatic level and to spill over into areas of broad international political concern, which are the constitutional responsibility of the President alone.

While it is in some respects true, as the Senate Committee on Commerce stated in its report (S. Rept. 473, pt. 2; 88th Cong., 1st sess.) that ratemaking is essentially technical in nature, the history of last year's rate dispute shows how quickly "technical" questions can take on serious foreign policy aspects. The foreign offices of France and Italy have recently become involved in aviation matters whose economic effect is far less than that of even a minor change in rates. We can expect that foreign governments will react at the political level to any controversial ratemaking action the CAB may take. Any governmental action which may lead to international political reaction must be subject to the overall policy direction of the President.

The Senate Commerce Committee in supporting the amendment stated that it was "in no way intended to affect the constitutional powers of the President in matters affecting the conduct of foreign affairs." Putting aside the constitutional issue, however, the amendment would certainly impinge on the President's freedom to conduct foreign policy and would be inconsistent with the allocation of powers between the regulatory agency and the executive branch that has been traditional in this field.

We believe it is inappropriate to require an independent regulatory agency not under the control of the executive branch to take full responsibility for decisions which potentially have impact far beyond its area of competence and jurisdiction. We note that Mr. Boyd in his

testimony disclaimed any desire on the part of the Civil Aeronautics Board to assume any such responsibility.

Finally, we believe that the knowledge that international rates are insulated from the overall policymaking of the United States and that Civil Aeronautics Board orders lack explicit approval of the President would weaken the power and influence of the United States in international negotiations either in IATA or at the governmental level. Thus, the amendment would defeat one of the principal purposes of the bill.

In short, we believe that the Senate amendment to the administration bill is inconsistent with our aviation interests, with our overall foreign policy interests, and with our traditional concepts of allocation of powers. As the Supreme Court said in the *Waterman* case, in the field of international aviation, legislative and executive powers must be pooled, "to the end that commercial strategic and diplomatic interests of the country may be coordinated and advanced without collision or deadlock between the agencies."

V. CONCLUSION

In conclusion, I would like to reiterate the State Department's unqualified support for H.R. 6400. We believe that this bill deals adequately and effectively with both the long-run and short-run problems of international air transportation. Passage of this bill would finally put us on a par with the other major aviation countries all of which appear to have similar ratemaking and suspension authority, and permit us to defend U.S. aviation interests in our discussions and negotiations with them.

That is the conclusion of my statement, Mr. Chairman. I, of course, would be happy to answer any questions you or members of this committee may have.

The CHAIRMAN. Thank you very much, Mr. Chayes, for your statement on this important matter.

I believe you testified in the Senate on 1540, did you not?

Mr. CHAYES. I did not testify in the Senate on this legislation, Mr. Chairman. I testified in the Senate last year, on May 15, 1963, before Senator Magnuson's committee when the air fare controversy broke out last year, and I testified then on behalf of legislation generally similar to that which is before you today, H.R. 6400.

The CHAIRMAN. You, of course, know the position of our own industry?

Mr. CHAYES. Yes, sir. I heard some of the testimony here by Mr. Tipton, and they, I think, oppose legislation entirely, and if there is to be legislation, I think they don't support this bill but would support a different kind of approach.

The CHAIRMAN. Well, they support, if there is legislation needed, according to their views, they would support legislation that would give suspension—

Mr. CHAYES. Yes, sir.

The CHAIRMAN (continuing). Authority.

Mr. CHAYES. I have commented a little bit on the problems we see with that approach in my statement. It seems to me that the problem with that approach is that if you get into a situation like we got

into last spring, why, both sides suspend the rates and we are in negotiation in a deadlock; whereas if you have the administration bill, H.R. 6400, we can require our rate to go into effect pending consultation and arbitration.

Now, to us this has two advantages. In the first place, it has the advantage that pending a settlement of the matter by negotiation or arbitration the traveling public and, particularly, the American traveling public, is getting the benefit of the lower fare because that would be in effect instead of suspended.

Secondly, it seems to us also that the experience generated through the use of the lower fare would be helpful either to the negotiators or the arbitrators in coming to a conclusion whether the lower fare is or is not harmful; whereas again if both fares are suspended, the negotiators or the arbitrators are essentially required to speculate on what the consequence of the lower fare would be.

Therefore, in our view, suspension is half a loaf, because of the special provisions of the Bermuda article, and we would like the whole loaf if the committee and the Congress see the situation as we do.

The CHAIRMAN. Well, it raises several questions in my mind that we have reached at this stage in our experience. In the first place, I suppose our Government has adhered pretty much to the policy of IATA conferences or similar conferences.

Mr. CHAYES. That is correct, sir; and I should say, Mr. Chairman, that I do not anticipate, and I do not think anyone in the executive branch or in the CAB anticipates, that under the proposed legislation the ratemaking process will be any different in general, from what it has been in the past; that is our belief is that our carriers will, as in the past, attend IATA conferences, and that the conference will agree on the rates, and if the rate is a satisfactory one, as we have usually been able to work out in the past, why, those rates will go into effect without any further problems or activities by the Board, just as they do under the present system.

The new rate authority will be used only in the case where our people, the CBA, consider that the IATA rate is an inappropriate one, as it did last spring.

I may say then it had the general concurrence of the carriers in thinking that the IATA rate was too high even though the carriers had gone along with the conference for the sake of agreement. But only in such a situation would the Board use the authority that is now being granted.

In general, the ratemaking process would be exactly the same. It would operate through the IATA conference and, of course, everybody understands that in a conference like that acting basically on a unanimity principle you cannot have everything your own way. But we would like to be in a position to exercise the full force of the bargaining power of the United States through our carriers in those conferences.

The CHAIRMAN. As a matter of practical application, if this power were given by the U.S. Government to the CAB, would it not actually transfer certain power and authority of the U.S. Government into the IATA conference where rates were being determined?

Mr. CHAYES. No, sir. I think that if the statute is changed only in the respects that are suggested in H.R. 6400, it is clear that the statute still contemplates conference agreements, because it still gives the

Board authority to approve or disapprove those conference agreements, and I would think that, as I say, in the—

The CHAIRMAN. But the Board does not now and, I think you have said so, the Board does not, have any affirmative authority with reference to fixing of rates.

Mr. CHAYES. Yes, that is correct, sir.

The CHAIRMAN. If they did have then that affirmative authority would ordinarily go right into the ratemaking conference; is that not right?

Mr. CHAYES. Well, I do not think so.

The CHAIRMAN. Why wouldn't it?

Mr. CHAYES. Well, Mr. Chairman, I think that ratemaking conferences would act pretty much as they do now. The carriers would go into the conferences. They would get some form of advice from the CAB as to the general position which the CAB was prepared to approve.

If the conference came to a result within that general position, why, the CAB would simply approve the conference rate as it does now, and there would be no need for resort to the powers conferred in this legislation.

The CHAIRMAN. Did the CAB participate or give its expression of views with reference to the Chandler conference?

Mr. CHAYES. I think it did, Mr. Chairman. I think the CAB always gives policy advice to American carriers going into those conferences.

The CHAIRMAN. Was there anything that went into that conference to indicate that the CAB was opposed to the rates that they agreed to in that conference?

Mr. CHAYES. I have the recollection that there was an indication that the CAB was not satisfied with those rates. But if you will permit me to check with my colleagues here I can give a more precise answer.

Well, let me say that the CAB policy direction of this kind is not made public, and my colleagues tell me they don't recollect either whether there was a specific direction on those rates.

On the other hand, it was generally known that the CAB was looking for, as were the carriers, lower rates rather than the higher rates which came out of the Chandler conference.

The CHAIRMAN. We have had, I think, divergent views, and we might as well get you into it. What other government that you know of has similar powers to fix international rates?

Mr. CHAYES. Almost all of the major governments have it in one form or another. That is, not every government has the same system of regulatory agencies that we have developed for ratemaking but, as somebody pointed out the other day, in cases of wholly owned government airlines, the rates are, in effect, governmentally set. The Canadians have, I think, ratemaking authority of the kind that would be sought here. So each government works it out through its own peculiar institutions, its own special type of institution. Ours happens to be a regulatory agency.

The CHAIRMAN. Does any government that you know of have authority, after the IATA conference has met and agreed on the rates, if they do agree on the rates, then to disagree and suspend that rate and to fix a different rate?

Mr. CHAYES. Surely. The Canadians did so last year and, I think, the Irish went along with them. So there just wasn't any question about that.

The CHAIRMAN. You have discussed at some length the two provisions of the articles, the agreements under the Bermuda-type agreement, paragraph (e) and paragraph (f).

Mr. CHAYES. Yes, sir.

The CHAIRMAN. Now, (e) and (f) were in effect and no doubt were the vehicle used last year in the controversy over the United Kingdom.

Mr. CHAYES. Well, that is in general correct. Paragraphs (e) and (f) were both in the agreement that subsisted between us and the United Kingdom. But because of our situation, the fact that the CAB did not have ratemaking authority, (f) was the one that was applicable; yes, sir.

The CHAIRMAN. All right.

Now, we had not given the power to take steps to protect ourselves, had we?

Mr. CHAYES. I do not think we had. I testified at that time that we did not have power to protect ourselves. We wished we did.

The CHAIRMAN. Could the State Department have done so?

Mr. CHAYES. I do not think so. I testified then that we could not, that there was no authority in domestic law even under paragraph (f) where the contemplated action is a suspension, that we had no authority in domestic law to suspend. The agreement authorized us to do so insofar as our international obligations were concerned. The agreement says that if we do suspend, why, the British could not have objected. But, as I said last year, that did not give us domestic authority, did not give the President or the CAB or the Secretary of State or anybody else authority under our domestic constitutional system to suspend, and so we didn't have power to suspend under subparagraph (f) of the agreement.

The CHAIRMAN. If that is the case, the Board did not have authority, under what authority did Chairman Boyd proceed to bring about such negotiations?

Mr. CHAYES. Well, we simply had to acquiesce in flying at the other rate, at the higher rate, until a settlement was negotiated out. It is my personal belief, although others may have a different view of this, that we could have negotiated out a better settlement if we had this authority of H.R. 6400.

The CHAIRMAN. But you did that under the present article (f) in effect, did you not?

Mr. CHAYES. Yes, that is what happened. We had to fly at the higher rate through most of the summer.

The CHAIRMAN. It has been testified here that the Board or we got what we wanted finally.

Mr. CHAYES. Well, we got a compromise between what we wanted and what the Europeans wanted, and we got it after a whole summer in which American tourists were flying to Europe at rates which we thought were too high and which our carriers thought were too high. There was no difference, as you recall, between the Government and the carriers on this point last year. The carriers had agreed to the Chandler conference rate schedule because, as they said, they had bargained as hard as they could, and they went along for the sake of agreement. But they were prepared and interested in flying at the

lower rates. So there was not any disagreement between us and the carriers that the lower rate was the proper one.

The CHAIRMAN. Well, suppose we had gone along—say we had 6400—

Mr. CHAYES. Yes, sir.

The CHAIRMAN. And we had gone along with the agreements, such as the Chandler agreement and the IATA agreement, and they were filed with the Board, and the Board approved them. Now what happens to 6400?

Mr. CHAYES. Well, that is exactly what I am saying, Mr. Chairman. In the ordinary case, which has really been the case year in and year out, up until last year, where the conference, the IATA conference, is able to reach a rate agreement that is satisfactory to the Board and to American interests, the Board will exercise its authority under the act to approve that IATA conference agreement, and there will be no occasion for the exercise of the authority granted by H.R. 6400.

The CHAIRMAN. I do not understand that H.R. 6400 is a bill that says that the Board may proceed if it wants to and if it wants to ignore it it can do so.

Mr. CHAYES. Well, that is correct.

The CHAIRMAN. How then can you say, on the one hand, Mr. Chayes, that the agreements can be carried out, as has been experienced in the past, and filed and approved, and then forget about a law that requires the Board to fix rates?

Mr. CHAYES. Because, for two reasons, Mr. Chairman. No. 1, H.R. 6400 is only an authorization. It is not a direction.

No. 2, the statute—

The CHAIRMAN. What is an authorization by law if it is not a direction to the agency to carry it out?

Mr. CHAYES. It gives the Board that power. But, secondly, the law will still contain the section which permits the Board, if it chooses, to approve conference rates, so it has two authorities. It can proceed in either of two directions. It can proceed under the authority granted by H.R. 6400 to set rates in an ordinary ratemaking procedure or it can exercise its authority under the other portion of the act to approve a rate agreed upon by the IATA conference.

The CHAIRMAN. Let me read this to you, paragraph (2) of H.R. 6400:

It shall be the duty of every air carrier and foreign air carrier to establish, observe, and enforce just and reasonable individual and joint rates, fares, and charges, and just and reasonable classifications, rules, regulations, and practices relating to foreign air transportation.

et cetera.

Mr. CHAYES. Yes, sir; and it can discharge that duty by filing an IATA conference rate schedule that the Board approved, that is all; and as you know, section 412 of the act says exactly the same thing:

Every air carrier shall file with the Board a true copy of every contract or agreement affecting air transportation relating to the establishment of transportation rates, fares, charges or classifications or—

and so on.

And then:

The Board shall by order disapprove any such contract or agreement if it finds it to be adverse to the public interest or in violation of this act, and shall by order approve any such contract or agreement that it does not find to be adverse to the public interest.

The CHAIRMAN. I just have never thought about any provision of a bill giving the Board the ratemaking authority to fix rates, that they could ignore carrying their duty on a just and reasonable basis or fair and reasonable, I believe, was the term used before.

Mr. CHAYES. That is correct, Mr. Chairman.

The CHAIRMAN. And I think you had better take another look at this thing and find out what our courts have held with reference to the authority of the regulatory bodies in ratemaking proceedings and the requirement that the ratemaking agency, whatever it may be, has to carry out its duty and responsibility. After all, I think the courts should have decisions as to whether the duties are fulfilled and whether they are carried out, and I just do not understand the position that you take here as to ratemaking procedures. I am going to follow up with some further questions, but I do not want to take all the time, or get into an argument. I do think that we have got to direct these questions and to get answers.

Now, proceeding in another direction—

Mr. CHAYES. Could I just make one comment on your last point, Mr. Chairman?

I agree with you that if the Board should choose to exert the authority granted by 6400 regardless of what IATA says it can do so. But it also can fulfill the statutory requirement established in 6400 through the exercise of its approval authority under 412(b) which says that it may approve any contract or agreement affecting rates that it finds not to be adverse to the public interest or in violation of this act. So that if it finds that the rates established by IATA are just and reasonable or whatever the words are, it can approve that contract and then without any further ratemaking procedure the conference agreement will go into effect, and that is—I think I speak for the administration when I say this—what is contemplated as the ordinary approach.

You cannot throw out a procedure and a tradition that has operated in this industry from the beginning and put in a brandnew one. Other countries have regulatory authority as well, ratemaking authority as well, but they still in the ordinary case act through the IATA conference machinery and that is what is contemplated.

The CHAIRMAN. That is what disturbs me, very frankly, about this whole thing. Here we are in the field of ratemaking, and we have long since in this country established procedures for ratemaking and ratemaking authority, and it can be carried out as we have developed it on a domestic or interstate basis. But when we get involved with international competitors, we have an entirely different situation.

I do not see how, as it has been testified to here, you can apply the same rules where you have got international rates to deal with as you would, say, here, on a similar basis as we deal with domestic rates.

It is just not in the books, as I see it, and I do not see how you can say that, "We give you the authority. Don't do it if you don't want to."

I just do not believe that is what the language in this bill provides. I want to explore that a bit further.

But the Department, on its own, has started out in a new direction, and you have the new form that you testified you have agreed to with Mexico.

Mr. CHAYES. Yes, sir; one or two other places.

The CHAIRMAN. Three places, I believe.

Mr. CHAYES. Yes, sir.

The CHAIRMAN. Now, in that agreement you have set a new formula, have you not?

Mr. CHAYES. Well, we, in consultation with the CAB and others, have developed this form. As I said in my testimony, consideration of the new form in the light of developments since 1960, when it was first worked out, have led us to believe that it is not as widely applicable as we had thought before; that with the major commercial air countries, members of IATA, we ought to stick pretty close to the Bermuda form. But that the standard form is a valuable addition in the case of countries that are not members of IATA where we face the problem of destructive rate cutting.

The CHAIRMAN. In other words then, this program under this bill would be applicable to countries where you have the Bermuda-type agreements, and with countries you have no agreements at all.

Mr. CHAYES. No. It would also be applicable in every case and to all kinds of agreements, because it gives suspension authority, and that could be exercised under the new form.

It gives rate-fixing authority or suspension authority. Both of those could be applicable under the Bermuda-type agreement, and it gives ratemaking or suspension authority which could be applicable where we do not have any rate article at all. So this bill would give us the necessary authority to deal no matter what kind of rate article we would have.

The CHAIRMAN. You do not consider the new form agreement with Mexico, the United Arab Republic, and the other one—

Mr. CHAYES. New Zealand, I think.

The CHAIRMAN. New Zealand, I think, you don't consider that to be a different policy from what we have adhered to, the Bermuda-type agreement all these years?

Mr. CHAYES. It is a change in the Bermuda-type rate article and, as I say, we have reconsidered the consequences of that change, and we do not believe now that the new form has as wide applicability as we did some years ago. We still think there is a lot of room to maintain the Bermuda article with certain countries, and the new form with others, depending on their general position in international civil aviation, their practices, the history of their competitive activities, and so on.

The CHAIRMAN. I have taken entirely too much time.

Mr. NELSEN. Mr. Chairman, this IATA agreement, some of us are not familiar with the background of the IATA agreement. By what authority did this thing get started up, and I wonder if it would not

be a good idea to give us a little background, some of us who did not live with the history of it.

(Discussion off the record.)

The CHAIRMAN. Mr. Springer?

Mr. SPRINGER. Mr. Chayes, what all is included under the conduct of foreign policy?

Mr. CHAYES. Well, I would suppose that is a very general kind of category. It includes all matters affecting our relations with other countries in the world when used generally in that way, I would think.

Mr. WILLIAMS. It is like trying to define interstate commerce.

The CHAIRMAN. Under the civil rights bill. [Laughter.]

Mr. SPRINGER. You say consequently any controversy over air rates is likely to arise through the diplomatic level and spill over into areas of broad political concern.

Mr. CHAYES. Yes, sir.

Mr. SPRINGER. Well now, what are the areas of broad international political concern?

Mr. CHAYES. Well, I think I tried to state at the beginning of my statement what we thought were the sorts of foreign policy interests that are at stake in our civil commercial international air policy. I did so at page 2 of the statement, in which I said that the—

interests of the United States are served by the lowest international rates which yield a reasonable rate of return to our airlines. The U.S. citizens traveling abroad are entitled to reap the full benefits of the great economies of modern air technology. The aircraft industry stands to gain from rates which are low enough to exploit fully the potential demand for transport aircraft. Our overall policy objectives of achieving a prosperous, peaceful, and free world are served by international air rates which encourage travel.

Mr. SPRINGER. You are talking about very, very general things. What I am trying to pin down is how do you expect to use these in a diplomatic way?

Mr. CHAYES. Well, I think the point is that it is very difficult for us to pursue these objectives effectively, as last year's rate controversy showed, unless the Executive and the CAB together have the authority to act and to set these rates.

Mr. SPRINGER. Let us assume that the CAB does have the authority, suppose they have it now. How would you be interested in it?

Mr. CHAYES. We would be interested to make sure that the action of the CAB itself did not in one way or another adversely affect our relations with a particular foreign partner involved.

Mr. SPRINGER. Suppose it did, suppose it did adversely affect it. You are interested, but do you have any powers to do anything with rates even though it does adversely affect it?

Mr. CHAYES. Not the State Department itself, but the President, yes.

Mr. SPRINGER. It might embarrass the President, but when you fix a rate, isn't that supposed to be an economic matter which determines whether or not that airline can fly, and whether or not it can act under the benefit, we will say, of the law which is set up?

Mr. CHAYES. Well, it is, in general, an economic matter, just as the question of whether a route should be granted or a permit should be granted is, in general, an economic matter. But it may have foreign

policy overtones, and the President is not allowed under section 801 to fix rates; he simply—

Mr. SPRINGER. Let me ask you, you touched on a very sensitive point here, and I did not mean to interrupt you, but I wanted to touch on this point, the granting of routes. Do you consider that a diplomatic matter or an economic matter?

Mr. CHAYES. It can have important diplomatic aspects.

Mr. SPRINGER. Well, suppose it has a very important diplomatic aspect, the granting of a route. Should that overcome the economics of the situation?

Mr. CHAYES. It may be important enough to overcome—

Mr. SPRINGER. Even though those who are operating over that route may be at a terrific economic disadvantage?

Mr. CHAYES. Well, nobody is forced to operate over any route that he does not want to operate over.

Mr. SPRINGER. Well, let us just say you have here a U.S. line which is flying from New York to Mexico, which is a perfect example. If you make it uneconomic for them and we get off the route and let the foreign line operate—

Mr. CHAYES. Well, I do not think the President's decision has in any case that I know affected that. But in any event, as I was about to say earlier, the power of the President under 801 is not to grant routes or grant permits or specify what they shall contain, but simply to approve or disapprove action by the Board. So that the essential action, the essential responsibility for analyzing the economic—

Mr. SPRINGER. Let us stay with the granting of routes for a moment.

Mr. CHAYES. Yes.

Mr. SPRINGER. Who grants the routes?

Mr. CHAYES. The Board grants the permit with the approval of the President.

Mr. SPRINGER. With the approval of the President?

Mr. CHAYES. Yes, or the Board's action is subject to the approval of the President.

Mr. SPRINGER. Yes. Who helps negotiate that? Do you and the Board?

Mr. CHAYES. The State Department negotiates bilaterally air agreements with the assistance of the Board and with the assistance of the carriers concerned. The State Department negotiates bilateral agreements which establish a route framework; yes, sir.

Mr. SPRINGER. All right.

Now, the State Department is very much in the middle of this, is it not?

Mr. CHAYES. Oh, yes, sir.

Mr. SPRINGER. Right. When, we will say, Air France applies to you that becomes a diplomatic matter, does it not?

Mr. CHAYES. Well, the practice has been all over the world that both the Foreign Office and the carrier or the regulatory authority dicker these things out together; that is, on our side we will have our department, we will have the CAB, we may have carrier advisers. On the other side, let us say, there would be the French Foreign Office, Air France, and maybe some others.

Mr. SPRINGER. All right.

Now, when you negotiate those, do you get anything in return?

Mr. CHAYES. We get reciprocal considerations from the other side.

Mr. SPRINGER. What are the reciprocal considerations?

Mr. CHAYES. Well, in the basic air agreement with France, for example, we have rights to fly to Paris and beyond that—

Mr. SPRINGER. Did you have those already at the time?

Mr. CHAYES. We negotiated them in 1946 on a reciprocal basis.

Mr. SPRINGER. Did you have all those rights before one was granted with Air France for Mexico to New York City?

Mr. CHAYES. There have been changes in the routes since then. There has been a lot of back and forth for that.

Mr. SPRINGER. Let me ask you what did you get for that?

Mr. CHAYES. I did not participate in the 1958 negotiations.

Mr. SPRINGER. What did you get for that?

Mr. CHAYES. But I know there were U.S. contentions made, and I think some of them were resolved favorably, if I can consult a moment.

Well, I am reminded, which I should have remembered, that the 1958 negotiations took place in the context of a situation in which the French had denounced the agreement, and the agreement would have expired entirely at the end of a year, so in effect it was a renegotiation of the entire agreement.

We got some additions in connection with Middle Eastern routes and elsewhere in return for some of the considerations.

Mr. SPRINGER. Could you name some of those Middle Eastern routes that you got in return?

Mr. CHAYES. Could I submit for the record an exact statement on that because I'm sorry, Mr. Springer—

Mr. SPRINGER. Let us assume that is true. I want to see what that protocol was. You put it in the record.

Mr. CHAYES. Yes, sir.

(The information referred to follows:)

STATEMENT OF THE DEPARTMENT OF STATE REGARDING THE GRANTS OF CERTAIN ROUTES TO FRANCE AND AUSTRALIA

I. FRANCE'S ROUTE TO MEXICO CITY

France's right to operate a service to New York and beyond to Mexico City dates from the original postwar agreement signed on March 27, 1946. In the same agreement, the United States obtained all of its basic rights to France. The United States also obtained the "beyond rights" from the French Government that now form the core of our international air transportation system. In the agreement, eight major routes were granted to the United States as opposed to five routes granted to France. The text of these route exchanges is attached as exhibit A.

Air France obtained authorization from the Civil Aeronautics Board to operate this route under Order E-5947, dated December 14, 1951. But it did not actually inaugurate service on the route segment to Mexico City until 1954, some 8 years after the agreement was signed.

II. AUSTRALIA'S (QANTAS) ROUTE TO NEW YORK AND BEYOND TO EUROPE

The 1946 United States-Australia Air Transport Services Agreement gave the United States a route to Sydney via Honolulu, Canton Island (United States), the Fiji Islands (United Kingdom), and New Caledonia (French) (optional). The United States also obtained the right to continue from Sydney to Melbourne, if and so long as third country carriers had this right. Australia obtained a route to San Francisco and beyond to Vancouver via New Caledonia (optional), Fiji, Canton, and Honolulu.

At various times during the early 1950's, the Australian Government, asked for rights to operate to Europe via the west coast and New York. Australia's request was formalized in an agreement dated August 12, 1957, following consultations in May and June of that year.

Australia showed that an Australian air route to Europe via the United States was justified on strictly aviation grounds. The statistical evidence which was submitted indicated that the volume of third and fourth freedom traffic between Australia and Europe via the United States was adequate to justify granting the route under the traditional Bermuda standards. Furthermore, there was a reasonable expectation of significant growth of this traffic. The evidence was considered persuasive by both the Department of State and the Civil Aeronautics Board.

These considerations for the route grant were reinforced by the continuing uncertainty of conditions prevailing in the Middle East following the Suez crisis and by the desirability of assuring improved communications between Australia and the North Atlantic Community.

A copy of the original and amended route exchanges is attached as exhibit B.

EXHIBIT A

ROUTES TO BE SERVED BY THE AIR CARRIERS OF THE FRENCH REPUBLIC

(Points on any of the routes may, at the option of the air carrier, be omitted on any or all flights.)

1. France via intermediate points over the North Atlantic to Boston, New York and Washington, and also the site of the United Nations Organizations; in both directions.
2. France via intermediate points over the North Atlantic and Montreal to Chicago; in both directions.
3. France via intermediate points over the North Atlantic to New York and beyond to Mexico; in both directions.
4. Martinique via Guadeloupe and via intermediate points to Puerto Rico and beyond via the Dominican Republic to Haiti; in both directions.
5. Indochina via points in China and Hong Kong to Manila; in both directions (provided that this route is subject to the approval of the Government of the Philippine Islands).

NOTE—For the purposes of the present Schedule, the term "North Atlantic" shall mean that part of the North Atlantic Ocean north of a line from Key West, Fla., to Bermuda, the Azores and Lisbon, including these points.

ROUTES TO BE SERVED BY THE AIR CARRIERS OF THE UNITED STATES

(Points on any of the routes may, at the option of the air carrier, be omitted on any or all flights.)

1. The United States via intermediate points over the North Atlantic to Paris and beyond via intermediate points in Switzerland, Italy, Greece, Egypt, the Near East, India, Burma and Siam to Hanoi, and thence to China and beyond; in both directions.
2. The United States via intermediate points over the North Atlantic and Spain to Marseille and beyond via Milan, Budapest, and points south of the parallel of Budapest to Turkey and thence via intermediate points to a connection with route 8 and beyond on said route; in both directions.
3. The United States via intermediate points over the North Atlantic, and Spain to Algiers, Tunis, and beyond via intermediate points to Egypt, and beyond via route 1; in both directions.
4. The United States via intermediate points to Dakar, Pointe Noire, Brazzaville, and beyond via intermediate points to the Union of South Africa; in both directions.
5. The United States via intermediate points to Guadeloupe, Martinique, and beyond via intermediate points to French Guiana, and beyond in South America; in both directions.
6. The United States via intermediate points in the Pacific Ocean to New Caledonia and beyond on one or more routes to Australasia (including Australia and New Zealand); in both directions.
7. The United States via intermediate points in the Pacific Ocean and Manila to Saigon, and beyond to Singapore and Batavia; in both directions.

8. The United States via intermediate points in the Pacific Ocean, Manila, Hong Kong, Macao, and China to Hanoi and beyond via Siam, Burma, to India and beyond; in both directions.

NOTE 1.—For the purposes of the present Schedule, the term "North Atlantic" shall mean that part of the North Atlantic Ocean north of a line from Key West, Fla., to Bermuda, the Azores and Lisbon, including these points.

EXHIBIT B

AUSTRALIAN-UNITED STATES ROUTE EXCHANGES

AGREEMENT OF DECEMBER 3, 1946

AMENDED, AUGUST 12, 1957

United States

Section I:

The airline of the United States of America designated pursuant to the present agreement is accorded rights of transit and of stop for non-traffic purposes in the territory of Australia as well as the right to pick up and discharge international traffic in passengers, cargo, and mail at Sydney, on the following route:

The United States via Honolulu, Canton Island, the Fiji Islands, New Caledonia (optional), to Sydney; in both directions.

It is agreed that, if and so long as the airport at Melbourne is used as a terminal of an international air service operated by an airline other than the designated airline of the United States of America, the designated airline of the United States of America may proceed beyond Sydney to Melbourne and may in addition enjoy at Melbourne the rights conveyed herein in respect to Sydney.

Australia

Section II:

The airline of Australia designated pursuant to the present Agreement is accorded rights of transit and of stop for non-traffic purposes in the territory of the United States of America, as well as the right to pick up and discharge international traffic in passengers, cargo, and mail at Honolulu and San Francisco, on the following route:

Australia via New Caledonia (optional), the Fiji Islands, Canton Island, Honolulu, to San Francisco, and (optional) beyond to Vancouver; in both directions.

United States

Section I:

The designated airline of the United States of America shall be entitled to operate air services on each of the air routes specified via intermediate points, in both directions, and to make scheduled landings in Australian territory at the points specified in this Section:

1. The United States via Honolulu, Canton Island, American Samoa, the Fiji Islands, New Caledonia, and New Zealand to Sydney; and beyond to—

(a) Darwin and points in south-east Asia, including the Republic of the Philippines, and beyond;

(b) Melbourne and Perth, Cocos (Keeling) Islands, and beyond to points in south Asia and Africa and beyond; and

(c) Melbourne and New Zealand and beyond to Antarctica and beyond.

2. The United States, including Alaska, via points in Canada, Alaska, the Kurile Islands, Japan and south-east Asia, including the Republic of the Philippines, to Sydney and Melbourne.

Points on any of the specified routes may at the option of the designated airline be omitted on any or all flights.

Australia

Section II:

The designated airline of Australia shall be entitled to operate air services on each of the air routes specified via intermediate points, in both directions, and to make scheduled landings in United States territory at the points specified in this Section:

1. Australia via New Caledonia, the Fiji Islands, American Samoa, Canton Island, Honolulu, to San Francisco and beyond to

(a) Vancouver and

(b) New York and beyond to points in the British Isles and beyond to Europe and beyond.

Mr. SPRINGER. Let us go to Qantas.

Mr. CHAYES. Yes, sir.

Mr. SPRINGER. Qantas wanted to go the other route from Australia to London, didn't it, through the United States?

Mr. CHAYES. Yes, sir.

Mr. SPRINGER. And you granted that route after persistent effort on the part of the Australian Government; you granted it.

Mr. CHAYES. That is correct.

Mr. SPRINGER. What did you get in return for that?

Mr. CHAYES. I think that route decision was made essentially on the ground that with the Middle East crisis and so on, it was desirable that there be a connection between Australia and London that was not subject to the hazards of interruption by Middle East crises, subject to the vicissitudes of that unstable part of the world, and I think that route was given on that basis.

Mr. SPRINGER. There has never been an interruption of a route from Australia to London at all.

Mr. CHAYES. That is correct.

Let me say again, Mr. Springer, I came into this office in 1961, and I have not participated in this earlier proceeding.

Mr. SPRINGER. Mr. Chayes, I am not trying to blame you for what took place before, but I want to get to these things on the record. We did not get anything.

Mr. CHAYES. No, but the judgment was made in light of the 1956 crisis in the Middle East, which was a serious one.

Mr. SPRINGER. Now, actually that was not granted until quite long after 1956, was it?

Mr. CHAYES. That is correct.

Mr. SPRINGER. There wasn't any danger of anything, was there?

Mr. CHAYES. No.

Mr. SPRINGER. And you do not know what the U.S. Government got?

Mr. CHAYES. No. I think there was very little quid pro quo there except the assurance that the Australians who are, after all, an ally of ours, and are way out in a remote part of the world—the assurance that they would be more strongly and more effectively connected up with the rest of us up here in the Atlantic part of the world.

Mr. SPRINGER. All right.

Now, then, what you are saying, sir, is what I am trying to get to, that what the State Department wants is the leadway and the flexibility to use airline rates and routes for diplomatic purposes not associated with airlines; isn't that true?

Mr. CHAYES. But not at the expense of the economic viability of the route or the carrier. I don't think that the—

Mr. SPRINGER. Just a moment. Aren't you contradicting yourself? You said a moment ago if they didn't want to fly the route and wanted to get off it, to get off it.

Mr. CHAYES. What I said was in an extreme situation, and the facts bear that out. None of these situations have, in fact, compromised the economic viability of our carriers. They continue to be the most effective competitors and the most effective carriers in the world.

I do not mean to say that if it was not for some of these things they would not be carrying more passengers, sure they would. But it is

quite a different thing to go to the point of saying it would affect the economic viability of the carrier. I do not think the Department is interested in undermining the effectiveness of our carriers which we regard as an immense asset overall to the U.S. foreign policy.

Mr. SPRINGER. I asked you about the routes and I think you have come out, and you have said that you were using airlines for other purposes than the routes themselves—you are using them for other purposes, diplomatic purposes.

I want to come to rates. Isn't that exactly what you want now? To be able, at the White House level, to make decisions? And this is really you, for you will make the decisions and they will be recommended to the President. The President probably is not going to know what is going on, except your decision is going to be sent up there and he will be advised of it. But isn't what you actually are going to do is to use this bargaining for rates at the State Department level for the purpose of getting leverage in some form of diplomacy?

Mr. CHAYES. Well, Mr. Springer, again I would say that is an exaggerated statement of what is involved here.

Mr. SPRINGER. I do not want to argue with you, but what you said about Qantas is exactly what I think you want to use this for, and there you said you wanted to make Australia a stronger ally of ours—something to that effect.

Have you traveled abroad and seen communiques on desks abroad?

Mr. CHAYES. Oh, yes.

Mr. SPRINGER. Now, isn't this what they say in many instances, "The Government of France" or "the United Kingdom is pressing us hard on this issue. Now it will make it much easier for me in this office to get an agreement on something else that is here on my desk at the same time if we can get a favorable decision on this matter?"

Mr. CHAYES. Well, I do not believe, Mr. Springer, that you find all of us as sensitive as that. I think you will find that in the controversy last summer, for example, the State Department, as I then testified, as I reiterate now, was in favor of the lower rates and would have, if we had this authority, would have gladly and enthusiastically concurred in its exercise.

I do not mean to say, Mr. Springer, and I do not want to lack candor in talking with you, I do not mean to say that there may not be times when a rate decision so adversely affects the foreign policy interests of the United States that there ought to be a presidential review to see whether it does or not.

On the other hand, these decisions are primarily economic, primarily based on economic considerations. That is why the initial responsibility for developing these considerations is placed in the CAB. I know of no case in the past, and I can really hardly conceive of a case in the future where the President's decision would be at the expense of the economic viability of the airlines.

Mr. SPRINGER. What purpose would the President want this power for?

Mr. CHAYES. Well, I think we have gone over pretty clearly what purpose he would want it for. That is why the Federal Aviation Act of 1958 put the power in with respect to routes and permits, because people understood that international aviation, although it is largely a commercial venture and largely dictated by commercial and economic considerations, has these important political consequences.

Other countries deal with their airlines in the same way and with their route decisions, and it would be inappropriate, we think, and so did the Congress in 1958, to deprive this country of the power to protect its interests in this way.

Mr. SPRINGER. What we are afraid of is that you are not going to protect them. We are afraid this is going to become a diplomatic matter, and thus far we have been trying to keep the question of rates out of the diplomatic field. This has been the very purpose of them, and this is why the law was drawn in such a way.

But let us say we assume you give it to the CAB, and the CAB makes a decision based on all the factors. Should there be any reason any more of why the President should make a decision, we will say, counteracting all the findings of the CAB than he should of the Interstate Commerce Commission or the Federal Communications Commission? Don't they take into consideration all of the facts that you have with reference to rates?

Mr. CHAYES. The difference is that the Interstate Commerce Commission is dealing with internal matters as to which, as the chairman said, all of the considerations are within our own power; whereas here you are dealing with foreigners who also have jurisdiction in the matter.

In other words, there is a situation that does not apply in the internal field, and also the President's authority in the foreign field is rather different.

Mr. SPRINGER. So you would substitute whatever judgment the State Department wants to make from the diplomatic standpoint for the considered judgment based on the economics and all the facts available of the CAB that it would have?

Mr. CHAYES. I would not substitute anybody's judgment, and again I must insist, Mr. Springer—

Mr. SPRINGER. What do you do then if you would change it? Would you substitute your judgment if you made a change in the rate?

Mr. CHAYES. I would like to say again that it is not the State Department's judgment. It is the President's judgment, and the notion that the President acts without really understanding what is involved, I think, is not a very accurate picture of what has happened. These matters are considered very carefully by the President on the basis of a very full explanation to him of the facts involved, and a very full inquiry by him into the facts.

Mr. SPRINGER. But, be that as it may, Mr. Chayes, you are going to substitute, whether it be the President or the State Department, and I will assume what you say is true, although I doubt it because I have had a lot of experience with the State Department and I know what happened all during the 1950's at the White House level with reference to the State Department, because 90 percent of it was heard and decided in the State Department, and the recommendation was made to the President, and the reason was sent up there. Somebody in the White House OK'd it, and the President finally signed them.

But the point I am trying to make is, somewhere along the line you are going to substitute your judgment, although you are not experts in the field, for the CAB in the decision they finally make based on all the economics that they believe are in the public interest. You are going to substitute it based upon some diplomatic maneuver that you feel you have to make.

MR. CHAYES. The act as it now stands on the matter of routes and as we hope it will stand on the matter of rates, provides the occasion for the President, if he so decides, in a particular case, that there are overriding considerations of foreign policy, it provides the occasion and the authority for him to give effect to those overriding considerations; and it may be—

MR. SPRINGER. That is all, Mr. Chairman.

THE CHAIRMAN. Mr. Williams?

MR. WILLIAMS. Mr. Chayes, following the line of interrogation initiated by the chairman, I would direct your attention to page 4 of H.R. 6400, beginning with the paragraph entitled "Rates and Practices in Foreign Air Transportation." Reading that more in the abstract, it says:

Whenever the Board shall be of the opinion that any individual or joint rate, fare, or charge demanded by any air carrier or foreign air carrier is or will be unjust or unreasonable—

And so forth—

the Board may alter the same to the extent necessary to correct such injustice.

It goes further and says that it may issue an order that the air carrier or foreign air carrier discontinue the practices.

It says further that the Board may in the aforesaid order set forth and prescribe the lawful rate, and so forth, thereafter to be charged and the practice thereafter to be made effective.

Now, the use of the word "may" leads me to believe that the provision places certain legal requirements on the Board, but also gives the Board the right to determine when they will enforce them and when they will not. Is that your construction?

MR. CHAYES. Well, I would not, Mr. Williams, want to—I think, may I say, that the Board and its counsel ought really to pronounce on this. My judgment would be a little bit different than that.

I would think whenever the Board determines that it is the case that there is an unjust or discriminatory rate, it has to take steps to correct it.

Now, the "may"—

MR. WILLIAMS. What is the difference in the Board's "determining" and "being of the opinion"?

MR. CHAYES. That is what I mean. Whenever after hearing, "it is of the opinion," that is a determination that the rate is unreasonable or discriminatory, I think it would have to correct it. I think that is right.

MR. WILLIAMS. You think where the word "may" is used it should be "shall"?

MR. CHAYES. Well, I think what it is saying is—I think it has to alter the rate to the extent necessary to correct such injustice, yes. And I think there is some section in the United States Code dealing with matters of this kind which says that you can read these things "may" or "shall" as the context requires.

MR. WILLIAMS. Should the Board determine, after notice and hearing—

MR. CHAYES. Yes.

MR. WILLIAMS (continuing). That certain rates are unjust and unreasonable, then doesn't the use of the word "may" leave it within

the Board's discretion as to whether they shall alter these rates or fix new rates?

Mr. CHAYES. Well, I would not—

Mr. WILLIAMS. In order to correct the situation?

Mr. CHAYES. I would not assume the Board had any discretion once it determined the rate was unreasonable, to leave an unreasonable or unjust rate in effect.

Mr. WILLIAMS. With that in mind, would you have any objection to changing that from "may" to "shall"?

Mr. CHAYES. I was going to say, Mr. Williams, that I think the Board would have a lot of discretion as to the method it chose to correct the rate, what kind of a plan or what kind of an order it might make. But I do not think it would have discretion, it is hard for me to see how the Congress would leave it with discretion, to permit an unjust rate to stay in effect.

Now, as to changes in the bill in this part, which is really the technical part of the bill, and primarily within the Board's authority, I think the Board and its counsel should be consulted rather than me on changes in the language.

But my understanding would be that here, just as in any other rate-making authority, once a determination has been made or an opinion has been rendered that the rate is unjust or unreasonable, it is kind of anomalous—

Mr. WILLIAMS. You would then, as a matter of policy, advocate, when a determination has been made, that it shall be the duty and the responsibility of the Board to take such action as may be necessary to correct it?

Mr. CHAYES. I think that is how this section would be read, sir.

Mr. WILLIAMS. All right, sir.

Now, in your statement on page 4, the second paragraph, speaking of the 1960 standard form article, you say:

It provides that either of the contracting parties may prevent operation under a rate which it finds objectionable.

And further in that same paragraph:

The effect of H.R. 6400 would be to give the U.S. Government powers of suspension equal to those enjoyed by the foreign governments with whom this form of rate article is in force.

Now, as I read H.R. 6400 it gives the CAB power to fix the rates of foreign carriers; isn't that correct?

Mr. CHAYES. Yes, and to suspend, I think, as well.

Mr. WILLIAMS. Yes. How would the bill work under the new rate article on the so-called non-Bermuda situations insofar as fixing rates on foreign carriers is concerned? How would you apply the rule of just and reasonable?

Mr. CHAYES. I think again the foreign carrier would simply file his rates as he is required to do under the bill, 6400—let me just read the section, it is the one that the chairman read—yes, section 1, sub (2):

It shall be the duty of every air carrier and foreign air carrier to establish, observe, and enforce just and reasonable individual and joint rates, fares, and charges, and just and reasonable classifications—

And so on. The foreign carrier would file his rates as he does now, and if the Board or anyone else thought that they were unjust or

unreasonable there would be a hearing, and the question whether those rates were reasonable or not would be determined at the hearing, and at the end they could be either altered or suspended or whatever it was, and there may be—

Mr. WILLIAMS. Would the Board have the authority to require that these foreign carriers bring their books before the Board so that they can make a determination as to whether it was a just and reasonable rate?

Mr. CHAYES. Well, we have, as you know, some difficulties in connection with the production of documents and books and records abroad, particularly involving the activities of foreign governments.

I think the situation would be somewhat easier here in the air situation where rate regulation and rate setting of this kind has been traditional, that it might be in some of the other cases that we have had to deal with. But I think the question might be the reverse, Mr. Williams. The carrier would be required to defend the reasonableness of the rates that it has filed and, therefore, it would bear the burden of establishing on the basis of documentation, economic evidence that the rates it had filed were just and reasonable.

Mr. WILLIAMS. Your statement, just the general context of your statement, leads me to believe that you suggest that suspension might be the more desirable power of the two; is that correct?

Mr. CHAYES. No, sir. I think that it depends on the situation whether suspension or rate setting will be the desirable power. Where the question is a destructively low rate imposed by the foreign carrier, then we need suspension. Where the issue is whether we can go forward at our own rate as it was last summer, then we need the rate-setting power. So we need both, depending upon what the situation that we are confronted with is.

Mr. WILLIAMS. I believe that is all, Mr. Chairman.

The CHAIRMAN. Off the record.

(Discussion off the record.)

The CHAIRMAN. The committee will adjourn until Monday morning, next Monday, at 10:30, at which time the members will be here and will be immediately recognized for questions.

We will have Mr. Boyd back at that time, too.

(The following statement was received for inclusion in the record:)

STATEMENT OF CLARENCE D. MARTIN, JR., UNDER SECRETARY FOR TRANSPORTATION

Mr. Chairman and members of the committee, my name is Clarence D. Martin, Jr., and I am Under Secretary of Commerce for Transportation. I appreciate the opportunity to appear before this committee and to speak on H.R. 6400 and S. 1540, bills which would amend the Federal Aviation Act of 1958 to provide for the regulation of rates and practices of U.S. international air carriers and foreign air carriers in foreign air transportation similar to the regulation of rates now in effect over domestic air transportation. My comments will be briefly summarized.

The Department of Commerce has broad responsibilities in the area of international commerce and would support legislative action to implement the powers of the Civil Aeronautics Board to set rates which are reasonable and which would encourage the growth and expansion of our international commerce and travel. The Department is on record as favoring S. 1540 by letter of May 23, 1963, addressed to the chairman of the Senate Commerce Committee, and included in the hearings before that committee on May 15, 16, and 20, 1963. The act now under consideration differs in only one respect from S. 1540 as introduced and supported by this Department. The language in the original bill provided

that the Civil Aeronautics Board's orders regarding rates for international transportation be subject to approval by the President. The act provides that the CAB orders regarding rates be reported to the President before publication. Action calling for approval by the President is in consonance with his constitutional responsibility in foreign affairs. Under the Federal Aviation Act of 1958, the Civil Aeronautics Board's proposed decisions in international route awards, both to U.S. international and foreign-flag carriers, are subject to the approval of the President. Logic would dictate that the President approve CAB action on international rates as well as on agreements on international routes. We would therefore support S. 1540 if amended to retain the Presidential approval clause.

You will recall that the President's international air transport policy, approved by him in April 1963, recommended that Congress adopt legislation which would give to the CAB the authority, subject to approval by the President, to control rates in international transport to and from the United States. This would be similar to the power presently residing in the CAB with respect to domestic carriers. Certain foreign governments now have the power unilaterally to control the rates of U.S. air carriers, but the power of the United States to control the rates of foreign carriers does not exist. The proposed legislation would remedy this inequity and would give the United States control over the rates and practices of both U.S. international air carriers and foreign air carriers operating into the United States similar to that now held by foreign countries in corresponding situations. In other words, the legislation, if enacted, would remove U.S. international air carriers from foreign control over their rates and practices and would give the Board discretionary authority to prescribe rates and practices as well as to suspend rates in foreign air transportation. These ratemaking powers would be parallel to those now applicable to domestic interstate transportation.

The Civil Aeronautics Board has been seeking rate legislation in foreign air transportation periodically over a considerable span of time. The legislation has been approved and recommended to the Congress by the President and the Department of Commerce has endorsed and continues to endorse S. 1540 if, as previously suggested, the act is amended so that CAB action in this area would be submitted for Presidential approval as provided for in the original bill and in H.R. 6400.

Again, thank you for the opportunity to express the views of the Department on this subject.

(Whereupon, at 12:05 p.m., the hearing was recessed, to reconvene at 10:30 a.m., Monday, June 1, 1964.)

RATES, FARES, AND PRACTICE IN FOREIGN AIR
TRANSPORTATION—1964

MONDAY, JUNE 1, 1964

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee met, pursuant to recess, at 10:30 a.m., in room 1334, Longworth House Office Building, Hon. Oren Harris (chairman of the committee) presiding.

Mr. Moss. The committee will be in order.

Mr. Schenck, I believe you have some questions.

Mr. SCHENCK. Thank you, Mr. Chairman.

I want to just review my own thinking on this because I have Mr. Chayes' statement here, and I have one or two questions.

Mr. Chairman, I believe, as we finished, Mr. Williams had asked him some questions and Mr. Springer had covered many of the points I had in mind so if you don't mind, I hope this will not be repetitious, Mr. Chayes.

I was particularly concerned about your statement beginning on page 8 referring to Senate bill S. 1540 which is identical to H.R. 6400, with the exception that the Senate removed requirement of review and approval by the President.

I understand that the President would like to have such authority and perhaps there is some justification for it: I would like to call your attention to the fact that we Members of the Congress, however, are constantly receiving mail from our constituents wanting to know whether we Members of the Congress can do this or that about some foreign policy situation, and while it gives us a very convenient out to say that the President is, under the Constitution, exclusively responsible for determining and administering foreign policy, that doesn't satisfy our constituents very well.

I noted that, for example, Congress has been abrogating its authority in this field on a number of matters through the years and this has put many of us in a very difficult position.

The question of tariffs and that sort of thing, which as I recall, long before I came to Congress was the responsibility of the Congress was turned over to the President and hence has been made a responsibility entirely at the discretion of the President, is that not so?

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STATEMENT OF ABRAM CHAYES, LEGAL ADVISER, DEPARTMENT OF STATE; ACCOMPANIED BY ALLEN R. FERGUSON, COORDINATOR OF INTERNATIONAL AVIATION; AND ALLAN I. MENDELSON, OFFICE OF THE LEGAL ADVISER, DEPARTMENT OF STATE

Mr. CHAYES. Well, I don't think that is so, Mr. Schenck.

The authority to negotiate reciprocal agreements has been delegated to the President subject to the limitations prescribed by statute. Within those limits the President has discretionary authority to act if he makes findings about the reciprocal character of the agreements, and about the need for them.

The power is granted at relatively short intervals—I think 5-year intervals have been traditional—so that Congress has a chance every 5 years to review the exercise of the authority, and to withdraw it if it chooses.

So that this system which has dated since 1934, under administrations of both parties has, I believe, proved to be a workable and satisfactory division of responsibility and authority between the Congress and the President in the field.

I recall that it was Senator Vandenberg who said after the Smoot-Hawley tariff which was the last tariff bill enacted by Congress that if he had to go through that again he would resign from the Senate.

So, I don't think this was any situation where the President took something from Congress or Congress gave up something against its will.

Mr. SCHENCK. What I was trying to point out, Mr. Chayes, is it not a fact that perhaps there is a difference in the problems which have changed since 1945 and with the expenditure of tremendous sums of money for the Marshall plan and other foreign aid programs improving the ability of other nations to compete with American labor through the building of modern plants and so on that this has created a very serious problem in the employment of people in this country.

Mr. CHAYES. Well, I would say two things, we are getting into a discussion of the trade program. It is true also that Congress has made provision for relief both for industries as a whole, which are damaged by excessive imports due to tariff cuts, and has also more recently in the Trade Expansion Act of 1962, made provision for assistance to particular plants or particular workers who may be displaced because of excessive imports due to tariff cuts.

So, that it seems to me Congress has had this in mind, has exercised its authority with respect to it, and has dealt with the problem. It has dealt with it legislatively in the traditional way.

Mr. SCHENCK. Well, I think some of what you say may be true so far as the Trade Agreements Act which made it possible to negotiate these various agreements with other nations.

We have current problems, however, such as the importation of huge and growing quantities of beef which is causing a substantial distress among a great many cattlemen for which they are seeking relief without too much success. We have had a number of bills introduced, I believe, and referred to this committee to label such imported beef so that the people would be made aware of the country of origin of the beef they were purchasing, and yet that presents many difficult prob-

lems because it would be intermixed with American-produced beef and other meats and so forth.

Now, back in 1961 when there were extensive considerations of the law having to do with the Shipping Act, amending the Shipping Act of 1916 one important question there was the authorization of the steamship carriers and conferences to enter into fair dual-rate contracts with shippers. That, I believe, that law, passed in 1961, Public Law 87-346 provided that the "Maritime Commission shall disapprove of any rate or charge filed by a common carrier on water in foreign commerce with the United States or conference or carriers which after hearing it finds to be unreasonably high or low as to be detrimental to the commerce of the United States."

Well now, when that shipping bill was before the Congress there never was any request by the President to be given power to veto over these maritime shipping rates, and for myself, I just don't understand why the President should have any authority to consider the matter of rates on aircraft.

Mr. CHAYES. Well, I would first argue that the tradition, of course, has been different in the air transport area.

In the 1958 act, and before, the Presidential review and approval power has always been included. I think that represents a recognition by the Congress that foreign policy elements may enter into air negotiations in a rather different way than they do into the maritime area.

As you know in the maritime area we start from a premise of an industry that is internationally, at least, unregulated. It operates on a regime of freedom of the seas. There aren't bilateral agreements governing the access of merchant marine to each other's countries, and so you had a quite different history than here.

Secondly, in most cases as far as aircraft are concerned, in most cases abroad, the airline in one way or another is a government corporation or a government agency, and is used by governments for governmental purposes in a rather different way than is the case on the maritime side.

In any event, it has seemed both to the Congress and the executive branch from the beginning that air agreements and permits under them were so intimately linked with foreign policy that an occasion should be preserved by statute, and Congress has done this, an occasion should be preserved for Presidential review of Board decisions to see that those decisions are not in conflict with overriding objectives of or of considerations of foreign policy.

Mr. SCHENCK. Well, I would suggest, Mr. Chayes, that under the very wise leadership of the former beloved Speaker of this House of Representatives, the late Speaker Sam Rayburn, the regulatory agencies were developed and set up. These regulatory agencies are arms of the Congress and it would seem to me they should be kept that way, and therefore, speaking for myself alone, I would certainly hope that this amendment placed in the bill by the Senate in its bill of 1540 would remain in the bill.

I think there is every reason why it should remain in the bill, and I certainly hope it will remain in the bill. Speaking for myself, I feel sure this will be my position. I think my friend and colleague, Congressman Springer, developed a great deal of information the other

day along this same line of thought, and was unable to procure what to me at least was a satisfactory answer as to what we get as the United States in exchange for giving in so many times on so many questions. After all we are interested in the United States first, what we in the United States get out of these so-called diplomatic negotiations and agreements.

That is all I have, Mr. Chairman.

MR. CHAYES. I would only say to that, Mr. Schenck, that I agree that the regulatory agencies have been established on the basis of delegations from the legislature and as independent regulatory agencies, which makes them independent of the executive branch. But the Congress has recognized from the beginning that in this case, where the agency is entrusted with dealing with matters having impact abroad, and potentially involving our foreign relations, Congress has established a cooperative arrangement between the executive branch and the regulatory agency so that the two sides can go forward together as they must in areas affecting foreign policy.

I don't think the Board has urged that its judgments on technical matters should be permitted to stand if the President on his much broader appraisal of the national interest, of the entire national interest, decides that those judgments might conflict seriously with the overall national interest.

I don't think the Board would put itself in the position of saying that its judgment should stand against that kind of decision of the President in this kind of situation.

MR. SCHENCK. Mr. Chayes, may I just make this one further statement: My position, as I have indicated, has no relation to any personality of any President or any party that the President might represent at any given time.

As a matter of policy, I think the Congress must retain the authority granted to it under the Constitution, and I think as long as the three separate coequal branches of the Government operate that way, that we will continue to have a great Government.

But just the minute that they begin to encroach upon one another we are in danger of losing much that has meant a great deal to many people.

Thank you, Mr. Chairman.

THE CHAIRMAN. Permit the Chair at this time to recognize the newest member of this committee, Mr. Fred B. Rooney, of Pennsylvania, who has recently become a member of the committee, and I believe this is your first visit, Mr. Rooney, isn't it?

MR. ROONEY. Yes, it is.

THE CHAIRMAN. At least during my attendance it is.

Let me on behalf of the committee extend to you a cordial welcome. We are honored and happy to have you become a member and to have you share with us the responsibilities, tremendous as they are, and in many instances our joy and pleasure.

MR. SPRINGER. May I say for the minority, we are glad to have Mr. Rooney with us.

MR. BROZMAN. I would like to welcome Mr. Rooney who is seated by me also.

THE CHAIRMAN. I think in view of this appropriate recognition, it would be proper to recognize our colleague, Mr. Rooney, for any ques-

tions that he might have at this point. I am sure my other colleagues on the Democratic side would not mind me skipping over them at this time.

Do you have any questions you would like to ask of this witness?

Mr. ROONEY. No, except, Mr. Chairman, I am very happy to have been appointed to this committee. This was my first choice when I was elected to the Congress in that special election in Pennsylvania last July, so I deem it a pleasure, and certainly an honor to serve on this committee, certainly with a fine and distinguished chairman such as yourself.

I would like to make one interesting side note here this morning. I chartered a plane to fly down to make this 10:30 committee meeting. So I might say that I am starting off with a chip on my shoulder with the air transportation service we have at the Allentown-Bethlehem Airport, so it will be interesting to watch the developments of this committee.

The CHAIRMAN. I am reasonably sure that the comment will get through to your transportation people.

Mr. Younger.

Mr. YOUNGER. Thank you, Mr. Chairman.

However, the hearing today is on international air traffic and I am sure that we cannot consider your State a part of the international field.

The CHAIRMAN. Oh, yes, it is, all States are part of it.

Mr. YOUNGER. Except Arkansas.

Mr. Chayes, the thing that bothers me in this whole procedure, and has for a long time, is the fact that the State Department used these situations as a part of their foreign policy, and this does not refer in any sense to politics, because the first introduction I had to this field was under the Eisenhower administration when the State Department had recommended, the granting of a route to the Mexican airlines from Mexico City to Los Angeles but refused to grant a line from Los Angeles to Mexico City for one of our carriers, and it wasn't until the entire California delegation, and our colleague, Mr. Moss, I think, will recall this, when we got the State Department up before our delegation that we finally prevailed upon the State Department to consider the granting of a route to an American carrier.

Now, that is the thing that has bothered me all the way through. Very frankly, now you can talk all you want to about the advise and consent of the President but the President can't make a decision on anything except on the information that comes to him from the State Department so far as the foreign policy is concerned.

So, he is tied in there. That is the thing I think is wrong with this whole situation is that the State Department has assumed unto itself the right to determine routes and everything else, and we allow the foreign governments to kick us all around as they did last year.

They can determine what we have to do, but we accede to anything that they want.

How are you going to prevent that without giving a full right to the regulatory agencies without tampering with the situation so far as the State Department is concerned.

Mr. CHAYES. Well, Mr. Younger, I, of course, would appraise the performance of the Department a little differently than you do. It is

true that the Department negotiates the route agreements, and in order to get routes from other people you have to give routes. That is the fundamental fact about the structure of our air route agreement. We can't have the French to agree to our flying to Paris, let us say, unless we agree to the French flying to New York.

So, we bargain with these other countries and although we head the delegations, the U.S. position at those conferences is not established by the State Department. It reflects consultation and agreement with the Board, and it reflects consultation with the carriers.

I have reason to believe, for example, that as to our French agreement, our agreement with France, the carriers are very satisfied with it and are very satisfied that we have a favorable agreement with France so far as our interests are concerned.

The same, I think, would be true in other parts of the world.

I think you have to recognize that when we bargain with other countries, we are bargaining not only for routes but we have certain principles particularly about capacity that we are interested in gaining acceptance for.

We are for, as you know, the freedom of the carrier to determine its own capacity offerings without the necessity of a prejudgment by any governmental body and especially by any governmental body abroad.

Most other countries are at least not as sympathetic to this kind of approach as we are. Since our carriers are better competitors, most other countries would like to impose capacity limitations. So we are bargaining not only for routes but we are bargaining for capacity principles which agree with our notions of competitive activity on these routes.

So that we have a lot of things that we have got to win from these partners that we have, and they are partners because you can't run an airline unless you have got someplace to run it to.

The other thing I would mention is last summer's controversy, and I would like to state there that the Department at the very end when the British said they would confiscate planes of our carriers if they landed contrary to the British order, we said we did not think it was necessary for our carriers to undergo that hazard of violating a foreign law and subjecting themselves to foreign prosecution in order to maintain our position.

Nonetheless, I think the record is very clear that the Department supported the Board and the U.S. carriers fully in their campaign for lower rates.

I testified before the Senate last year that if we had had rate authority of this kind we would have been prepared to use it no matter what the British said, and I testified that we had used every weapon that we then had, and that the Department and the Board were together right down the line in that controversy except we just ran out of ammunition because we didn't have this kind of authority.

Now, in candor I have to say there may be situations when some sort of foreign policy objective is so important that it ought to be given recognition in the pattern of our air routes or in other aspects of our international air policy.

I am sure just as the Congress would not want the President's judgment on technical issues substituted for the Board's so the Con-

gress would not deem that the Board had the expertise necessary to make those occasional foreign policy judgments in which one finds that foreign policy interests override the particular technical decision made by the Board.

Finally, I would like to comment about this point: You say that the President depends solely on the information he gets from the State Department.

Again, let me make clear that, as you said, this is not a partisan problem, it is a problem that goes through administrations under both parties. But it is not true that the President must rely only on the information he gets from the Department.

As you know, he will get information from the Board, he will get information from the carriers, he is likely to hear from his friends on the Hill, and so he has a pretty broad sense of what the problems and questions are, and at least during the period that I have had any experience with it, the President is not satisfied to take a package that is served up to him and just treat that as containing everything. He usually asks questions and sets new inquiries in train, and tries to inform himself actively instead of just sitting back and waiting to see what is served up to him.

So, I think the President has a pretty broad access to information about the considerations that affect his review authority.

Mr. YOUNGER. I am wondering if you want to leave a statement in the record that you made a while ago if I understood you, you said when the British notified this Government that they would confiscate any planes which landed in England at the time of the controversy last year that you advised the airlines that it was a hazard that they shouldn't take.

Is that a correct statement?

Mr. CHAYES. That is correct, sir.

Mr. YOUNGER. That is all in God's world that this country did in a case of that kind?

Mr. CHAYES. No, sir. We were engaging in constant pressures and constant negotiations.

Mr. YOUNGER. Now wait a minute.

Now, if any Government says to us if we land in their country and they have routes over here that our planes will be confiscated, you don't take a counterposition and say, "All right, if that is the way you want to do any planes that you send over here will be confiscated also."

Mr. CHAYES. Well, Mr. Younger, we were advised by the Board, and I think it is correct, that we do not have the domestic authority to do that. We don't have, the Board or the Department, or the President, doesn't have any delegated authority from Congress to confiscate the planes of a foreign carrier that lands here under those circumstances.

One of the effects of this bill will be to give us authority to suspend a rate under those circumstances.

Mr. YOUNGER. That goes beyond any power that is in this bill, in my opinion. You mean to say that the President doesn't have inherently the power to do those things?

Mr. CHAYES. No, sir, he does not have the power to seize private property when it lands in the United States.

Mr. YOUNGER. If our property is seized?

Mr. CHAYES. No, sir, he does not.

Mr. YOUNGER. And it has never been done in the history of this country?

Mr. CHAYES. I can't say that it has never been done but I believe that if it were done under circumstances of this kind, the owner of the property would be in court the next morning and get it released.

Mr. YOUNGER. And we couldn't go into England and get our property released?

Mr. CHAYES. No, because the British have both domestic authority and authority under the agreement to do so. We have authority under the agreement to act; that is, we have authority insofar as the British are concerned, but we have no authority in the executive branch or the CAB delegated from Congress under our constitutional system which authorizes us to suspend routes or to suspend flights and then enforce the suspension.

That is one of the things that this bill will give us.

Mr. YOUNGER. Did you say that we have, under special agreement with the British we do have, the authority?

Mr. CHAYES. No, sir; there are two problems. There is the problem of the authority at international law; that is, the authority vis-à-vis our foreign partner, what complaint can be made if we seize.

Now, under the agreement in the circumstances that prevailed last summer, where we were dissatisfied with the British higher rate, if we had had the domestic power to suspend the rate, the British could not have complained because the agreement in subsection (f) of the rate article says that that is the way each country may act in case it is dissatisfied with the rate. Each of us agreed with the other that if the other suspended our flights because it was dissatisfied with the rate we would not object, we would go into consultation or arbitration.

But as you know, we need more than that. We need some authority by which the President or the other members of the executive branch or the CAB can act domestically that our courts will recognize. This was exactly the discussion we had last year in the Senate committee when both the CAB and the Department and ultimately the committee, I think, agreed there was no authority under domestic law authorizing the President to do this and, therefore, there was no way in which we could have suspended those flights. Of course, seizure and action of that kind is really enforcement of a suspension order. That is the way it would have happened on the other side as well.

Mr. YOUNGER. So your position was that when the British issued that order then you said to our carriers, "That is a hazard you shouldn't take so don't make the trip."

Mr. CHAYES. Well, we didn't do that until the very last second because—

Mr. YOUNGER. It doesn't make any difference what time it was done, that is what you said, is that correct?

Mr. CHAYES. Well, I think it does make some difference, sir. We did say that, yes, but only after we had made very great efforts which came close to being successful, to break up this European combination and secure the ability of our carriers to fly to some European countries. Because notice, if the French had not gone along with the British, we could have flown to Paris at the lower rate, and the British

would have been out of it because they couldn't have maintained the higher rate if we were able to fly elsewhere in Europe at the lower rate.

But what happened in the end was that all the Europeans lined up in favor of the higher rate. We had hoped that we would be able to break up the group and until the last minute it looked like there was hope for that.

At the very last minute the European group solidified and we said, and I think rightly so, that under those circumstances, as you say, the carriers were under no obligation to accept the hazard of criminal penalties and heavy financial losses to fly in and test those regulations.

Now, if we had had this bill that situation would never have arisen, because then we would have been not under subparagraph (f) of the rate article but subparagraph (e) of the rate article in which we would have had the power to set the rate, we would have set it and they would not have had the international authority under the agreement to suspend the rate.

So, they would have had to let our planes keep flying and, as I testified last year, if we had had this authority last year, we would have used it.

Mr. YOUNGER. In your opinion on the suspension, is it more advantageous to the United States or to the British.

Mr. CHAYES. Well, in my judgment it is better if we can use the other weapon, that is the weapon to set our rates—

Mr. YOUNGER. Mr. Chayes—

Mr. CHAYES. Perhaps I don't understand your question, Mr. Younger.

Mr. YOUNGER. You do, but you want to go all around Robinhood's barn to answer it. I asked you a clear question: In your opinion, just your opinion, if you don't want to express it, that is all right, which country has the greatest advantage in the suspension, British or the United States?

Mr. CHAYES. If we both suspend, you mean if there is mutual suspension, and thus that kind of deadlock. That it is hard to say. There is a deadlock in that situation, and you have to go to arbitration or consultation as to an appropriate rate, and our carriers are unable to fly, since they have the greater part of the traffic, than the British do, it seems to me a mutual suspension might damage our situation worse than it does the British.

Does that answer your question, sir?

Mr. YOUNGER. I can well understand the confusion that the President has in basing his recommendations.

That is all, Mr. Chairman.

The CHAIRMAN. Mr. Moss?

Mr. MOSS. Mr. Chayes, as I read (f) we were not without authority last year, were we?

Mr. CHAYES. Well, I have tried to explain that before. Let me try to see if I can clarify it because there seems to be some confusion about it.

As you know, in our system we need both authority under domestic law to take action. The President seizes, or the CAB or the FAA seizes an airplane, the owner of the airplane can go into court—

Mr. Moss. I recognize the authority to seize or to confiscate property would be subject to review by the courts and there would be the question of taking the property without just compensation.

Mr. CHAYES. Or without legal authority to do so.

Mr. Moss. Or without legal authority.

But under (f) the contracting party raising an objection, and we did raise an objection—

Mr. CHAYES. That is right.

Mr. Moss (continuing). Is then free to take such action as may be necessary to prevent the rate from becoming effective.

Mr. CHAYES. It is free—

Mr. Moss. Therefore, we were under the agreement free to take action; the action we could take would be the action permitted by law.

Mr. CHAYES. That is exactly correct. We were free so far as the British were concerned to take whatever action the President was authorized to take under domestic law. That is exactly correct, sir.

Mr. Moss. And so that without necessarily wheeling into effect paragraph (e) we could vote authority to the Government to act when conditions arise under (f).

Mr. CHAYES. Yes.

Mr. Moss. That is a possible alternative here to any of the items being discussed at this point.

Mr. CHAYES. Yes; that is the alternative embodied in the alternative bill, H.R. 1716; yes, sir.

Mr. Moss. What you want is to have authority which conforms to the agreement itself and avoids these very extreme showdowns which appear to be about the only means of dealing with problems similar to last year's under (f).

Mr. CHAYES. Well, the problem is twofold. We want to try to avoid the showdowns by having the authority and we want to be in the strongest position to implement our policy and to support our own interests if the showdown occurs.

Now, if we only have what is in 1716, all we can do is make this mutual suspension. As I suggested to Congressman Younger, under those circumstances we have got a deadlock in which our rates are not in effect, our lower rates are not in effect, and our planes are not flying.

Under the authority provided in H.R. 6400, we would be able to be under (e) in which case we could set the lower rate and our planes would be flying at the lower rate pending the resolution of the dispute by consultation or arbitration or whatever.

The CHAIRMAN. Will the gentleman permit this interruption at this point?

Mr. Moss. Certainly, Mr. Chairman.

The CHAIRMAN. There has been a great deal of conversations and questions going back and forth and this record is getting pretty full with it.

It seems to me the implication is that there is no authority for anybody to act if that kind of a situation exists under the present law. Well, paragraph (f), I will reiterate it, has been said over and over and over again, of the Bermuda-type agreements as an example with the United Kingdom, provides should that condition arise that the

country objecting may take such steps as it may consider necessary to prevent the inauguration or continuation of service in question at the rate complained of.

Now, that is the situation, isn't it?

Mr. CHAYES. Mr. Chairman—

The CHAIRMAN. Well, is it or not?

Mr. CHAYES. It is not the situation that either confers authority on the President or the CAB to take any action.

The CHAIRMAN. I am not asking about what action to take. I am asking if that isn't a correct statement of what the existing agreement is.

Mr. CHAYES. That is the language of section (f) of the existing Bermuda rate agreement; yes, sir.

The CHAIRMAN. All right.

That being true, and should it develop that such a controversy between, as an example, the United Kingdom and the United States could occur, could not the Civil Aeronautics Board with the approval of the President, then cancel the authority of the foreign planes to serve the particular area or to continue service in this country?

Mr. CHAYES. Well, the only section under which it might is 402, and both the Board and the Department, other legal officers in the Government, have agreed that they couldn't act under 402 in these circumstances.

The CHAIRMAN. Why couldn't they act? Section 402 gives ample authority to the Board to modify or change.

Mr. CHAYES. Well, the argument that was made last year is that you couldn't use 402 as a sort of backhanded ratemaking authority, which is what would be involved here, when Congress had deliberately withheld direct ratemaking authority.

In other words—

The CHAIRMAN. I think you have got two things to consider here—Mr. Moss, I don't want to use your time—I think you have got two things to consider here. The question Mr. Younger asked you is one thing, and the question of rates is another thing.

Now, the question of rates comes into play under article (f) of the Bermuda agreement, and when it reaches the point that the contracting party raises such objection to the rate, then another authority comes into play. You may then take such steps that you consider necessary to prevent the inauguration.

Now those steps then give the authority, under section 402, if the Board felt that it wanted to do something about it, because paragraph (f) of 402 gives the Board the authority to modify, suspend, or revoke.

Mr. CHAYES. Well, Mr. Chairman, perhaps you had better—

The CHAIRMAN. You are familiar with that provision, aren't you?

Mr. CHAYES. I am familiar with it.

The CHAIRMAN. It seems to me you are getting this record full of information that is erroneous insofar as I am concerned about us not being able to act or having authority to act if we come down to it, under the present situation.

Mr. CHAYES. Well, Mr. Chairman—

The CHAIRMAN. Now, so far as going out and seizing an airplane and destroying it and all like that, I don't think that the Board or

anyone else, the President, would have authority to go out and just arbitrarily seize property and do something with it.

But if the Board could suspend, if it is necessary, could revoke, if necessary, and if the articles of agreement with the country provided for it, I don't know why you argue so much here you don't have what I think you ought to use and let the people know if they are going to impose on us then we have got a Board that is backed up by the State Department and the President, and that you are going to do something about it.

Mr. CHAYES. Mr. Chairman, I would like to respond briefly if I can but perhaps you had best examine the Board on this issue because they are the basic judges of their own authority.

The CHAIRMAN. Well, I don't want you to clutter this record up, though, with information that the Board doesn't have the authority to act, that is the point I am making as to what you are doing here.

Mr. CHAYES. I am saying only that the Board takes this position also, and gave us this advice with which I must say we concurred. Our reading of the statute is the same. The argument is that if you are going to use 402 to suspend a permit on the ground that you are dissatisfied with a rate, then—

The CHAIRMAN. No, sir; I don't want the record to say that I am indicating that it is being done on the basis that you are dissatisfied with the rate.

Mr. CHAYES. But that is the only authority that (f) gives you to do so.

The CHAIRMAN. No, sir; you are exactly wrong.

If I can read English then the matter comes to the point where the article or the agreement is broken, and when the agreement is broken over the rates, then the authority of the Government comes into play as to what it is going to do with reference to whether or not the agreement is in effect any more.

Mr. CHAYES. Well, no, sir—

The CHAIRMAN. When that comes into play you have got an entirely different situation.

Mr. CHAYES. No, sir; there is not question of denouncing the agreement.

The provision (f) says, if one of the contracting parties is dissatisfied with any new rate proposed by the carriers of the other party it shall so notify the other party, and they shall endeavor, to reach agreement on the appropriate rate.

In the event that no such agreement can be reached prior to the expiry of such 30 days, the contracting party raising the objection to the rate may take such steps as it may consider necessary to prevent the inauguration or continuation of the service in question at the rate complained of.

So that the argument—I believe it is the position that the Board takes, I think it is the position that we have taken—is that if you would suspend on the basis of dissatisfaction with the rate, which is all the authority that the Bermuda articles give you, it is a backhanded way of regulating rates.

The CHAIRMAN. I don't want to take any more of Mr. Moss' time but I didn't want to just sit here and let this record go on and on and on

through you that it was admitted by everyone we had no authority to do something about it.

I am inclined to think that the industry is correct in its attitude on it, that there is authority to do something about it. However, if the administering board takes the position it doesn't have, maybe we had better try to give them something to do it.

Mr. Moss.

Mr. Moss. Mr. Chairman, I find this rather a complex question myself. I think that (f) contemplates an action by any government and that is clearly authorized under the agreement, the question goes as to whether or not it is authorized under the laws of that nation and that is a consideration apart from the agreement, and it is that type of authority that we should examine here as it relates to the agreement.

It is your feeling that 402 was authority granted for the issuance of certificates and not for the fixing of rates, and that position is concurred in by the Board, and as a matter of fact, it was on the basis of the Board's interpretation of its authority under 402 that the Department of State agreed or at least that was the advice of the Board to the Department of State, that they did not under 402 have authority to act in the instance of last year because it was not intended by the Congress that that constitute a ratemaking authority.

The CHAIRMAN. Since we are discussing this, and we are talking about 402, I think if the gentleman will permit, I would like to read this provision of 402 into the record right here.

Mr. Moss. I think it would be important. Could I just proceed for a moment further?

The CHAIRMAN. Yes; all right.

Mr. Moss. Now, as to the action taken by the British Government, our Government would insist that that action be an action lawful under their laws, would it not?

Mr. CHAYES. Yes, sir.

Mr. Moss. If their laws did not permit confiscation of our aircraft under those conditions we would insist that it was an illegal act.

Mr. CHAYES. Yes; and we could contest it in the British courts.

Mr. Moss. As they could contest any action taken by us in the courts of the United States?

Mr. CHAYES. Yes, sir.

Mr. Moss. We are not here discussing the extreme power of a sovereign in a matter of international dispute but rather action consistent with an agreement, while preserving the agreement to continue in effect any benefits mutually received under the agreement.

Mr. CHAYES. Yes, sir. We are discussing an agreed way of resolving rate controversies between the two parties to the agreement. That is exactly what subsection (f) is.

Mr. Moss. If we should amend 402 or some other section of the act and say under conditions arising from a disagreement that the CAB or some other agency of government was authorized to then suspend a certificate for these reasons rather than for reasons of rates that would be appropriate under the agreement.

Mr. CHAYES. Yes. Then we could have acted under section (f) of the agreement or could act in the future in a similar situation to suspend service at a rate with which we were dissatisfied.

Mr. Moss. Now, Mr. Chairman, I yield to have 402 read.

The CHAIRMAN. The reason I think it is important is because of the position which Mr. Chayes takes as the position of the State Department, and the position that has been taken by Mr. Boyd, Chairman of the Civil Aeronautics Board. With reference to foreign air carriers 402 provides:

No foreign air carrier shall engage in foreign air transportation unless there is in force a permit issued by the Board authorizing such carrier so to engage.

(b) The Board is empowered—

This is (b)—

to issue such permit if it finds that such carrier is fit, willing and able properly to perform such air transportation and to conform to the provisions of this act and the rules, regulations, and requirements of the Board hereunder, and—

I say this with emphasis—

and that such transportation will be in the public interest.

(f) Any permit issued under this section may be altered, modified, amended, suspended, canceled, or revoked by the Board whenever it finds such action to be in the public interest.

It seems to me like that is pretty clean.

Mr. Moss. Of course, it contemplates a hearing of the suspension or revocation. We were faced in the crisis of last year with the need to move rather rapidly. I don't know whether it would permit suspension finding it was in the public interest to suspend because the other government had suspended, but that suspension would be outside of this agreement, it seems to me.

Mr. CHAYES. Well, there are exactly the kinds of difficult questions that arise. I don't want to state for a minute, Mr. Chairman, that I believe our interpretation of this is self-evident. It is obviously a matter about which competent lawyers can have differences of view, and these same differences of view emerged last year at the hearing in the Senate.

On the other hand, I think if you examine the section in the light of the legislative history of this act, where Congress deliberately withheld from the Board ratemaking authority of any kind in this area, you can see the basis for the interpretation which has been adopted both by the Board and ourselves as to the scope of the authority under 402.

Now, the hearing problem is another problem, although if you ever decided that you had this authority under 402, I can conceive that you would make another argument that you could suspend the permit perhaps against some kind of bond, and then let the hearing go forward. That it was not appropriate to let transportation which the Board had made a preliminary determination was against the public interest, it was not appropriate to let such transportation go forward during the long hearing process.

So, that with some arrangements to protect the interests of the party adversely affected, it might be that you could make a suspension by way of interim relief or whatever one might say.

Mr. Moss. And if the courts would permit.

Mr. CHAYES. All of this would be subject to full judicial review. There isn't any question about that.

Mr. Moss. On this matter of the authority of the President, whether or not the President would approve in advance a policy of the Board as

contemplated under 6400, if disagreement arises, then the executive branch has to move in and undertake negotiation.

Mr. CHAYES. I mean both of the subsections of the rate article, either (e) or (f), provide that the controversy will be resolved ultimately by consultation and if that fails by arbitration.

The difference between (e) and (f) is that it tells you what happens while that consultation and arbitration is going on.

Under (e), our rates prevail. Under (f), either there is mutual suspension or their rates prevail during this interim period while the controversy is being settled by consultation or arbitration.

Mr. MOSS. And that consultation necessarily is between foreign offices of the governments concerned.

Mr. CHAYES. Yes, it is. Traditionally and historically it has been so. And if we didn't want it we couldn't avoid it because the other foreign offices, the other government, would insist.

Mr. MOSS. I feel that the provisions under (e) are by far the more attractive and reasonable because it tends to avoid the extreme problems which were evident last year. Those are all the questions I have at this time, Mr. Chairman.

(Discussion off the record.)

The CHAIRMAN. Mr. Devine?

Mr. DEVINE. I have no questions, Mr. Chairman.

The CHAIRMAN. Mr. Rogers?

Mr. ROGERS of Florida. Thank you, Mr. Chairman.

Mr. Chayes, it was the argument of the industry, as I understand it, that they felt actual operation under paragraph (f), presently the case, will more easily bring about an agreement for a mutually satisfactory rate than in operating under paragraph (e).

They make the point that under paragraph (f) we can take some action ourselves. Under paragraph (e) we can't take action ourselves. But in effect we are letting the action of the foreign government control the setting of the rates of our own airlines particularly in a situation where you might find this situation.

If a foreign airline wanted to reduce rates below the operating costs that they would be to our airlines under paragraph (e) we are caught, they say, because our Government can't take any effective action, and we might be in negotiation for years.

Where under paragraph (f), which is presently existing, they say our Government can.

What is your comment on that?

Mr. CHAYES. Well, the comment is, first, that it is quite right that if the foreign government has the lower rate our best tactic is to suspend just as if we have the lower rate the foreign government's best tactic is to suspend.

The history of this, and it has been an unbroken history since the beginning of civil air activity, is that so far as the countries with whom we have Bermuda-rate articles with the alternative between (e) and (f) in them, so far as those countries are concerned, they have traditionally been, on the whole, higher rate countries and we have been exercising the pressure for lower rates on the basis of the superior competitive efficiency of our carriers.

Now, there are some countries who, on the basis of past experience are rate-cutting countries, that engage in activity which one might

sometimes regard as destructive ratecutting. They cut the rates to such a point that they are too low to operate at.

Of course, nobody benefits from that, not the airlines, not the traveling public and not the country. But with those countries, the countries that have shown themselves to be willing to engage in that kind of activity, we don't have a Bermuda-rate article. We either have no rate article at all or as we are moving forward we are getting our new rate article which provides only for suspension.

So, you have got really to tailor make your international agreement to the kind of situation you are expecting.

Where it appears likely that the foreign country, on the basis of past experience may be willing to engage in rate wars, destructive ratecutting, then you want to be able to suspend that rate, and you don't want him to be able to enforce his rate. The way you do that is by getting an international agreement with him that provides only for suspension.

Where, as is the case with major air powers, the major civil international air powers, Britain, France, and the others, where the situation has been that we have been the ones constantly pressing for lower rates, then we want to be able to enforce that rate, and not permit them to suspend.

In each case we then go to the bargaining table, the consultation table, in the strongest position, and maybe if we have this authority and it is known to be in the background, you never have the dispute because our negotiators in the IATA conference, our carriers, are strong enough in the positions they advance to win an agreement in the conference, and you never have a dispute of the kind which we had last year.

Mr. ROGERS of Florida. As I understand it, you are saying that your international agreements, bilateral or whatever they may be, are really the key to this.

Mr. CHAYES. Well, it takes both. These international agreements are executive agreements and they take implementation because they can't add to the President's or the executive branch's authority inside the country. So you have to have the full gamut of authority to implement any situation that may arise under either of these kinds of agreement. At least that is the position of the administration, and that is why we put forward this bill.

Mr. ROGERS of Florida. Can you foresee any possibility perhaps BOAC, which is subsidized, is it not, by the British Government, to perhaps start on a campaign of lower rates?

Mr. CHAYES. Well, of course, I suppose nothing is beyond the bounds of possibility. But if you look at the past history of these carriers and the governmental policies toward them which we now have observed over a period of almost 20 years, and you can see how that policy relates to the overall interests of the country and the overall ideas of the country, we find that most of the European governments have approached the whole problem of international civil air transport, from a rather restrictive view.

They have been afraid—maybe "afraid" is too strong a word—but they have been concerned about the competitive effectiveness of U.S. lines.

They have, in general, underestimated the size of the market for international air travel. And as it turned out, as air fares have

dropped, the size of the market has expanded enormously. So in general, all of the—I won't say "all," but almost all the pressure for lower rates has come from our side, from our side of the Atlantic, against the resistance of the major European countries.

Mr. ROGERS of Florida. Then you would feel where we are dealing with rate-cutting countries probably it would be better to operate under paragraph (f); for countries where we desire to cut rates and they don't particularly it would be better to operate under paragraph (e).

Mr. CHAYES. That is right, and that distinction is preserved by the different bilaterals that you develop with the different countries.

Mr. ROGERS of Florida. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Nelsen?

Mr. NELSEN. Mr. Chairman, and Mr. Chayes, I have been listening with great interest to the testimony, and the thing that disturbs me a little is the fact that I get the impression that there is a possibility that the State Department in negotiations might be using the airlines as a pawn.

There is that possibility which has been pointed out in other cases dealing with the State Department.

Now, the IATA agreement, the solution was finally reached under the terms set forth by the CAB, was it not, pretty much?

Mr. CHAYES. Well, there were no terms set forth by the CAB. When we came to the breakdown that we had last summer, about this time last year, both the CAB and the Department cooperated in trying to get together a general conference which could review the rate decisions made at Chandler, Ariz., and develop a new one that was more in line with our views of what was right.

Actually the CAB and the Department had a unified position going into that conference.

Mr. NELSEN. How long did it take to reach that agreement following the early deadlock?

Mr. CHAYES. I don't know exactly. Some change was made, some adjustment was made, within a matter of 60 days or something like that. A final adjustment was not made until after the tourist season was over. So our tourists had to take one season, at least of higher rates going to Europe.

Mr. NELSEN. You indicated that had the authority under 6400 been in your hands in your earlier agreement could have been reached. Sixty days is not a long time in the process of negotiation when dealing with governments.

Mr. CHAYES. It is not only an earlier agreement could have been reached. We could have required our rates to go into effect while these negotiations were going on; that is, instead of flying at the higher rates during the course of negotiations, which is what we did, we would have been flying at the low rates that we wanted, and our carriers wanted, during the course of the negotiations.

Mr. NELSEN. Normally do you feel that the ratemaking examination should be with the CAB?

Mr. CHAYES. Oh, yes, and there is nothing in this bill that changes that, sir.

Mr. NELSEN. In your statement on page 2 you say:

Ideally we would like to be in a position to suspend any rates which the Civil Aeronautics Board determined was destructively low and at the same time we would like to have the power to set rates low enough to serve the American interests and see that these rates are put into effect even in the face of the opposition of foreign airlines and governments.

Then on page 9 you say:

Consequently—

the first paragraph, quoting—

consequently, any controversy over air fares is likely to arise to diplomatic levels and to spill over into areas of broad international political concern which are the constitutional responsibilities of the President alone.

Now, it would seem to me that on page 3 you indicate the desire to have ratemaking authority and you also imply on page 9 that there could be instances where this particular controversy might have international repercussions and, therefore, you might want to be in a position to negate the position of the CAB.

Mr. CHAYES. Well, I think there is no reason for being for presidential review unless you believe that there might be situations in which the national interests in a particular case as seen by the President from his overall position would require such action.

After all, he sees all of the interests of the United States. He doesn't see it from a partial view. Because the President from that position might at some point determine that a particular rate or a particular route or a particular permit granted by the CAB conflicted with some overriding provision of national interest, I think that it is for that reason that the presidential review is in the act already, why it should be extended to rate authority if the Congress decides to grant rate authority.

Mr. NELSEN. Now, in the IATA difference of opinion our rates were lower and the other countries joined hands to try to force us to a higher rate.

Now, there is nothing we in this Congress can do, in my judgment, to, we will say, a foreign country that might want a rate higher in their country.

The only thing we can do is to exercise pressure in our country to gain the result, is that not true?

Mr. CHAYES. Well, no, because of the provision of the Bermuda rate article. The Bermuda rate article says if we have the authority to set rates, then when the other country objects to the rate our rate goes into effect over the objection of the other country during the period of consultation.

So, suppose this had happened last year, and we had had this authority. Our lower rate would have gone into effect. The consultations would have begun. The tourist season would have begun at the same time. Nobody would have flown BOAC at the higher rate when they could have flown PanAm at the lower rate during the same period.

Mr. NELSEN. When you say "our rate would have gone into effect," you mean it would have gone into effect internationally?

Mr. CHAYES. Internationally for the New York-London run, yes, sir.

Mr. NELSEN. Under the IATA agreement, if we are in the minority there how would a minority member of this group be in a position to say, "We don't like the rate, we want it to stay at this level," and this is done by legislation that we propose here.

How can we negate the IATA agreement by what we might arbitrarily say and their judgment arbitrarily say.

Mr. CHAYES. Because the IATA conference runs on a rule of unanimity. Unless there is a unanimous agreement approved by governments, all governments, then there is no agreement at all. That was the situation that existed after Chandler. Although our carriers went along reluctantly in the IATA conference it was not approved by governments and there was no agreement as to rates in effect at the time. There was simply what everybody, from his own point of view, thought the rates ought to be.

Mr. NELSEN. Now, this, of course, would create a wee bit of an international problem if we were to arbitrarily exercise power granted to us; so referring again to your statement on page 9, "This may spill over into areas of broad international political concern" as pointed out now, doesn't it follow that if the President and the State Department, if they had the authority to act under the terms of this bill, that every foreign government would immediately go to the President and the State Department and start crying on their shoulder about the problem and you would automatically inherit problems rather than discharge them by virtue of this bill.

Mr. CHAYES. No, sir; because it wouldn't be an arbitrary imposition of a domestic power. It would be the exercise of a domestic power in accordance with the terms of an international agreement to which the other side had already agreed and that would be the way paragraph (e) of the rate article would come into effect.

So, just as the British felt no compunctions about suspending our rate last year because they had that power under the agreement, we would feel no compunction generally about ordering our carriers to fly at our rate if we had the authority.

Mr. NELSEN. If this proposal is in the interests of our carriers as has been indicated, Mr. Boyd stated it would be very beneficial to the domestic carriers of our country, how does it happen the carriers are not in here asking for this bill?

Mr. CHAYES. Well—

Mr. NELSEN. If it is so good for them?

Mr. CHAYES. I don't want to make any statement about the carrier's position. They have stated their own position here. I believe it is in the best interests of the country and it would permit the country to act in these controversies more effectively to protect our interests.

Mr. NELSEN. I would like to draw the analogy that I happen to have voted for the Reciprocal Trade Act and at that time I was assured that the interests of agriculture would be protected in trade negotiations. We now find this assurance to have been questioned by Senator Aiken who pointed out in March of this year that England, wishing to become a member of the Common Market, was faced with the problem that they could not even take beef from the Commonwealth countries who then in turn were looking for a new market. Senator Aiken in a colloquy with Senator Mundt stated that our State Department intercedes and our State Department people promised

the Commonwealth countries that if they would support the effort of England to join the Common Market we would absorb the imports which previously had preference in the United Kingdom.

Now, I can sense the possibility that our State Department rather than battling for these low rates that you are talking about, that it could very conceivably put our airlines in a position of being the negotiating pawn in a whole field of international problems.

Mr. CHAYES. I suppose it could conceivably do so. I don't think it has in the past. I think on the whole, if you will inquire over the 20-year period in which these problems have been before us, the Department has pressed the interests of American air carriers around the world. I just last fall myself conducted an arbitration against the French under that agreement, and Pan American airlines, our carrier on that route, was the principal beneficiary of our arbitration.

Mr. Trippe was personally very complimentary about that performance.

We are going into other arbitrations and I think we have advanced the interest of our airlines.

Mr. NELSEN. One point more.

You mentioned in the instance where England threatened to seize aircraft belonging to our carriers that you were in no position to do anything about seizing their carriers.

Under the terms of this bill you could do so. Do you feel that you would want power to seize the plane of a foreign carrier?

Mr. CHAYES. Well, I think the point is this: We talk about seizure. The fact is that what happens first is that the permit is suspended. That is what the British did, suspend our permit or our authorization to land.

Then, if a plane lands without a permit or without authorization then enforcement procedures come into play including seizure. I don't think we would ever have to seize an airplane any more than the British had to seize an American airplane. Because when it comes to that point, when there is the suspension, operative under domestic law, sanctioned by the agreement, the other country won't fly just as we would not have flown last year.

Mr. NELSEN. This bill goes further than that, does it not? We will say, that a foreign government seized the planes and language in the law provided that you in turn could seize the plane of a foreign government, period.

But this goes much beyond that.

Mr. CHAYES. Yes. It goes to the point of making rates because, as I have said before, what we really want to do is get out from under article (f) in which the only weapon is retaliatory suspensions, to resolve the dispute, and get under our subparagraph (e) of the rate article where we can impose our rate and the other party can't suspend.

If we were under subparagraph (e) we could fly at our rate rather than have these mutual suspensions.

Mr. NELSEN. No further questions, Mr. Chairman.

The CHAIRMAN. Mr. Pickle, do you have questions?

Mr. PICKLE. Just one quick one, Mr. Chayes.

What is the objective of the Board in asking for this legislation other than the field of ability to fix rates?

Are you trying to push rates down? Do you think if this legislation, H.R. 6400, were passed, would it bring cheaper rates?

Mr. CHAYES. I think over time it would. Of course that has been the direction of air rates anyway and what we think is that it would help in this effort which we believe is in the interests of the U.S. traveler, the U.S. carrier and the U.S. Government.

Mr. PICKLE. If 6400 were passed then you think this would lower rates?

Mr. CHAYES. I think what would happen is that the IATA conference at which our carriers meet with other carriers to agree on rates would tend to agree on lower rates, yes, because they would know if they didn't we would still have the authority to enforce the lower rate.

Mr. PICKLE. Then this bill wouldn't help in any way to raise rates but could lower rates, and that is your objective?

Mr. CHAYES. I think it very unlikely that this would ever result in any increased rates except in the situation where we are faced with destructive rate cutting by a cutrate carrier.

Mr. PICKLE. Then your position is that you would let the Government or the CAB set the rates and thus set lower rates, in effect, rather than to leave it to the carriers and the IATA conference.

Mr. CHAYES. No. Our position is that the carriers should continue through the medium of the IATA conference to be the principal body for setting international rates. But that in the event of the breakdown of the IATA conference, which is what occurred last year, in the event of the failure of the IATA conference to agree to rates, we ought to have ratemaking authority so that we can get our views into play rather than be helpless, as we were last year which resulted in their views coming into play.

Mr. PICKLE. We were helpless for a period of time?

Mr. CHAYES. Yes.

Mr. PICKLE. It came out at the end of the deliberations, it worked out satisfactorily.

Mr. SPRINGER. Would the gentleman yield?

Wouldn't this have a tendency, counselor, if you want to make an agreement—I am talking about a diplomatic agreement—the best thing in the world you could indicate to Britain or France or anyone else involved is “Don't agree to anything in IATA and we will make the agreement between the two State Departments.”

Mr. CHAYES. No, I don't think, sir, that that is correct. I think the IATA conference machinery is so well established and so traditional among the carriers that it is just got to be the main ratemaking body. We couldn't possibly negotiate bilaterally rates all over the world. There just isn't any possibility of doing that.

Mr. SPRINGER. Certainly not. I would say 90 percent of the rates would be set by IATA, but at least 10 percent that were crucial, the easiest thing for Britain or France would be to say, “We are going to take it up with the State Department because we think we can get a better deal from the State Department than IATA.”

Mr. CHAYES. I think it would have worked differently.

If the IATA conference had known we had this authority and there was a real chance that the lower rate would have been imposed in default of an agreement, we would have gotten a better deal at Chandler than we got and the Board would have been able to accept that deal.

Mr. SPRINGER. All right. In that same vein, isn't it possible to exert pressure on your own carriers under those circumstances by virtue of the fact you have this diplomatic maneuver which could ultimately end in and which is power to do the very thing which those people may not want to do but you can force them into doing?

Mr. CHAYES. Well, in the end if you have ratemaking authority—and remember the initial ratemaking authority is to be made by the Board on the basis of a record after hearing of all interested parties, so it is not the State Department that makes rates under any circumstances or the President who makes rates; what happens is the Board develops a record, a rate emerges; at the end of that the President may or may not approve the rate if 6400 goes into law—well, if I were relying on this kind of a process, if I were a foreigner I would much prefer to stick to the IATA conference and that is what I think they will do.

Mr. SPRINGER. That is all, thank you, Mr. Pickle.

Mr. PICKLE. Well, the net effect of it is you want 6400 because you think that this would push the prices down?

Mr. CHAYES. We think it would reinforce—

Mr. PICKLE. And you would rather the State Department directly or indirectly to have that part in establishing those lower rates rather than leaving it to the IATA conference?

Mr. CHAYES. We would like the Board to have the power and we think that power in general would be directed in the direction of lower rates on a sound economic basis, of course.

Mr. PICKLE. And you want the Government to establish the rate rather than let the carrier establish it?

Mr. CHAYES. No, as I say, I still think that the way this would work out—and I think, it would be useful for the committee to question the Board about this—I think the way this would work out is that the IATA conference would continue to meet just as it did before. It would usually reach an agreement. When it reached agreement the Board would approve as it has in the past. If it failed to reach an agreement, or if because the situation as it has developed at Chandler there was no agreement or the agreement was outside the limit that the Board thought was appropriate then the Board could move in with this ratemaking power and establish the rate. But it would be a backup power, not a front line power, a backup power.

In general, the ratemaking process would be much like it is now except standing behind the American carrier at the IATA conference would be the Board with this authority.

Mr. PICKLE. Well, I venture it would be such a backup power that the threat of it would almost make negotiation pointless at times. But that is apart from the hearing.

That is all, Mr. Chairman.

The CHAIRMAN. I think Mr. Springer has a good many questions and Mr. Brotzman has some questions.

We will recess until 3 o'clock.

(Whereupon, at 12:15 p.m., the committee recessed to reconvene at 3 p.m., the same day.)

AFTERNOON SESSION

The CHAIRMAN. The committee will come to order.
Mr. Springer, you may proceed.

STATEMENT OF ABRAM CHAYES; ACCOMPANIED BY ALLEN R.
FERGUSON AND ALLAN I. MENDELSON—Resumed

Mr. SPRINGER. Mr. Chayes, do you now want to shift primarily from (f) to (e)—that is the legislation you are requesting?

Mr. CHAYES. We want to be able in those cases where we have Bermuda-type articles to operate under subsection (e); yes, sir.

Mr. SPRINGER. Let me read from (e):

If agreement has not been reached at the end of the thirty-day period referred to in paragraph (c) above, the proposed rate may, unless the aeronautical authorities of the country of the air carrier concerned see fit to suspend its operation, go into effect provisionally pending the settlement of any dispute in accordance with the procedure outlined in paragraph (g) below.

Now, let me ask you about these words:

Unless the aeronautical authorities of the country of the air carrier concerned see fit to suspend its operation.

What country does that refer to?

Mr. CHAYES. I think that means the country proposing the rate, not the country objecting to the rate.

Mr. SPRINGER. Are you sure?

Mr. CHAYES. Yes, sir. Otherwise, there would not be any difference between (e) and (f).

Mr. SPRINGER. It is not possible, then, in the instance in which you have the Chandler rates, for England to suspend those rates?

Mr. CHAYES. Not under (e), sir. If we had been operating under (e)—

Mr. SPRINGER. They cannot do it under (e). Can they do it under (f)?

Mr. CHAYES. They can do it in the situation in which we have to operate under (f); yes, sir.

Mr. SPRINGER. Now, under (f), it says:

It is recognised that if no such agreement can be reached prior to the expiry of such thirty days, the Contracting Party raising the objection to the rate may take such steps as it may consider necessary to prevent the inauguration or continuation of the service in question at the rate complained of.

Mr. CHAYES. Yes, sir. That means they may suspend, and they did.

Mr. SPRINGER. But you are not positive that England could not suspend under the words:

Unless the aeronautical authorities of the country of the air carrier concerned see fit to suspend its operation?

Mr. CHAYES. The way I read that agreement, sir, and I think the way everybody has read it up until this question has been raised at this moment, is that it gives a discretion to us—that is, the country proposing the rate—to insist on it or suspend it if it wishes, pending the arbitration. But it does not give any discretion to the other country.

Mr. SPRINGER. Is there any legislative history on that, under those words? There has not been any court interpretation of that?

Mr. CHAYES. No, sir. The only thing I would say is there is no basis for having an elaborate (e) and then an elaborate (f) if you are going to interpret (e) to mean the same thing as (f).

Mr. SPRINGER. Well, now, under (e), you suspend a rate, is that not true?

Mr. CHAYES. No, under (f). You take such steps as may be necessary, as it may consider necessary, to prevent the inauguration or continuation of the service in question at the rate complained of.

Mr. SPRINGER. They can do nothing else?

Mr. CHAYES. They can suspend. They can do anything they want.

Mr. SPRINGER. Under (e), the only thing they have is suspension of rates, is that correct?

Mr. CHAYES. Well, in fact, that is the only thing there is to do. All of the talk, for example, about confiscation and seizure and so on comes in as a means of enforcing a suspension, as a means of assuring that a carrier does not operate a service that has been suspended. So that it does not seem to me possible to construe the two sections on any other way that we presented here. And I must say nobody has raised any objections to the construction that we have advanced.

Mr. SPRINGER. Then assuming that that is true, let us go to (g) below. Just before I ask the question, though, I want to ask you, you say you have to have this ratemaking regulation. You say you do not have any other way of going about this except through a rate regulation, is that correct?

Mr. CHAYES. No, sir. It is obviously possible, and in the end it has to be worked out. A dispute of this kind has to be resolved either by consultation, negotiation, mediation arbitration, or something like that. The issue that is affected by this bill is whose rate is in effect during the period that that consultation or arbitration goes forward. Is it our rate or is it the other rate? And when (f) is operative, the other party suspends our lower rate so that either there is no service going on, or whatever service is going on is going on at their rate. Under (e), during this process described in subsection (g), the service is being provided at our rate. That is the difference. That is what gives us the strength in the consultations and negotiations.

Mr. SPRINGER. Now, does this mean this then becomes final?

Mr. CHAYES. Our rate?

Mr. SPRINGER. The negotiation.

Mr. CHAYES. Well, any modification of the rate that was agreed to in the course of negotiation or was arrived at on the basis of arbitration, I suppose, would supersede the rate set otherwise, yes, sir.

Mr. SPRINGER. Now, do you think, then, that under (g) you do reach a final rate?

Mr. CHAYES. You would reach a final rate, yes, sir.

Mr. SPRINGER. Now, let me read (g):

When in any case under paragraphs (e) and (f) above the aeronautical authorities of the two Contracting Parties cannot agree within a reasonable time upon the appropriate rate after consultation initiated by the complaint of one Contracting Party concerning the proposed rate or an existing rate of the air carriers or carriers of the other Contracting Party, upon the request of either, both Contracting Parties shall submit the question to the Provisional

International Civil Aviation Organisation or to its successor for an advisory report, and each Party will use its best efforts under the powers available to it to put into effect the opinion expressed in such report.

Is that final?

Mr. CHAYES. If the advisory report reported a rate, we would have to use our best efforts to enforce it, and if we had the powers under 6400, why, we could enforce it; yes, sir.

Mr. SPRINGER. Now, what you are asking for is power to further implement (g), is that not right?

Mr. CHAYES. No, sir. It would have that effect. That is, our best efforts under (g) could be a lot better than they are now if we had the power to set rates, yes, sir.

Mr. SPRINGER. Do you say that you do not have that authority to impose pursuant to this (g)?

Mr. CHAYES. No, I do not think we do.

Mr. SPRINGER. Do you know whether you do or not?

Mr. CHAYES. The Board does not have any ratemaking authority of any kind now. The report is, in its terms, an advisory report and not a binding one. So our authority would be limited to whatever powers of persuasion and discussion we could summon.

Mr. SPRINGER. Now, do the other countries involved have that power?

Mr. CHAYES. Most of them do, yes, sir.

Mr. SPRINGER. Do all of them have that power?

Mr. CHAYES. Well, I could not say all, but the major countries certainly have the power to fix rates for their carriers in one way or another.

Mr. SPRINGER. All right, now. If you are going to have these powers, what are you going to put as the test of whether or not this is a fair rate?

Mr. CHAYES. Well, I would suppose under this bill that if the ICAO advisory report recommended a rate that the Board thought was unjust and unreasonable, the Board would not have the power to enforce such a rate, because under 6400, it only has the power to enforce just or reasonable rates. But if the advisory report came out with a rate which the Board found was a reasonable one or was not unjust and unreasonable, then it would have the authority under the act and after appropriate procedures to give effect to the advisory report.

Mr. SPRINGER. Now, what do you think is just and reasonable?

Mr. CHAYES. It would depend at all times on the circumstances developed in a hearing before the Board.

Mr. SPRINGER. All right. Suppose in a hearing before the Board—are you going to apply the same rule that you do in domestic areas?

Mr. CHAYES. I take it the problems essentially are going to be much the same and the standards much the same, yes, sir.

Mr. SPRINGER. Are the standards much the same?

Mr. CHAYES. I think this is something you should ask the Board.

Mr. SPRINGER. This is something that is pretty important for you to know.

Mr. CHAYES. The standards essentially would be the same standards applicable in regulation of the domestic carriers.

Mr. SPRINGER. Would you say 6 percent, 9 percent, 10 percent, 12 percent—what?

Mr. CHAYES. I think that is a matter for consideration of the Board, based upon all the circumstances.

Mr. SPRINGER. Is it not a fact, Mr. Chayes, that you could not possibly impose a rate that could be just and reasonable, as the Board down there now imposes that, and get any carrier abroad that is Government-owned to accept that rate?

Mr. CHAYES. The problem is not necessarily to impose the rate on the foreign carriers. If our carrier is flying at the lower rate, the competitive force of the industry will require the other carriers to meet it. I think our problems with the foreign carriers are not so great in that sense. And under (e), of course, the foreign country, just as we, would have the right to require its carrier to fly at its rate. But if our carrier is flying at \$30 or \$40 less for the trip, or whatever it may be, nobody in his right mind is going to fly anything but our carrier. Then the rate on the other side is going to come down.

Mr. SPRINGER. Do you think by us imposing a rate, that we are going to compel England to accept it?

Mr. CHAYES. I think we are going to compel them to accept it or lose an awful lot of traffic; yes, sir.

Mr. SPRINGER. Do you think you can do that under (e) and (f)?

Mr. CHAYES. I think you can do it under (e); yes, sir.

Mr. SPRINGER. You think that you can compel them to accept the rate?

Mr. CHAYES. No, you can impose a rate for our carrier. Then the competitive situation will operate so that the people who are contemplating trans-Atlantic travel and have the choice of going on Pan-Am at x rate, or BOAC at x plus \$20, are going to take Pan-Am. Then either BOAC will lower its rate or it will not carry many passengers.

Mr. SPRINGER. I thought that was the very purpose that you had (g), to resolve these differences.

Mr. CHAYES. Well, ultimately, the difference would be resolved through either consultation or negotiation, or an advisory report if the consultation and negotiation fail to resolve the difference.

Mr. SPRINGER. Then you think that if you fail to resolve the difference, you can impose our rate?

Mr. CHAYES. No; I think if you fail to resolve the difference, you have to go through the procedure in (g). If the advisory report fails to resolve the difference, you have an arbitration procedure. In the end, that whole set of procedures ultimately conduces to an agreement.

Mr. SPRINGER. Are you talking about 6400 as you have—

Mr. CHAYES. Actually, Mr. Springer, as we saw last summer, even without 6400, ultimately, you reach an agreement because you have to reach an agreement to keep the services going. It is a question of two things: First, what rate is applicable during the period that you are trying to resolve this dispute, the lower rate or the higher rate? And secondly, it is a question of the bargaining strength that you have during the time that you are trying to reach the agreement. If you are under (f), the other fellow's rate is in effect, the higher rate is in effect, and your bargaining strength is by that much dimin-

ished, because he is flying at his rate and there is not much incentive for him to meet your problems, except that you may threaten to denounce the agreement or something like that. Whereas, if we are flying at our rate, then the incentive on him to agree is very great.

Mr. SPRINGER. All right, let us stay under (f) for just a moment. Now, a year ago, you said that you lacked the power to do anything about British flights to the United States.

Mr. CHAYES. We lack the domestic legislative authority, yes, sir.

Mr. SPRINGER. Well, did you feel that the Executive had no power at all?

Mr. CHAYES. Yes, sir. As I said this morning, both the CAB, which has the primary responsibility for interpreting this statute—it is their statute and they operate under it—the CAB certainly came to the conclusion that they had no authority under 402 to act, or under any other statute of the act. We concurred. This is the ordinary case of an agreement which needs some form of legislation to implement it. We have many agreements that we make which cannot be implemented unless Congress makes a legislative disposition.

Mr. SPRINGER. All right, now, let me ask you what this means. Who is the contracting party?

Mr. CHAYES. The contracting party is one country or the other.

Mr. SPRINGER. Now, who acts for the contracting party?

Mr. CHAYES. The U.S. Government acts for us or the British Government for them.

Mr. SPRINGER. The contracting party, raising the objection to the rate "may take such steps as it may consider necessary to prevent the inauguration or continuation of the service in question at the rate complained of."

Mr. CHAYES. Yes, sir. That is the British saying, "so far as we are concerned, it is OK." But as you know, the President or the executive branch cannot, by concluding an executive agreement—and that is what this is—without any approval by the Senate or any other legislative action by the Congress. The executive branch cannot increase its own authority; cannot grant itself power. So all that this does is settle the rights and responsibilities as between us and Britain. And it says that in the U.S. Government as a totality, there is the right to do his. But unless Congress authorizes the Executive or the CAB to exercise this right, gives it some form of authority to exercise this right, it does not come into effect.

Mr. SPRINGER. Mr. Chayes, this is a mystery to me. President Truman—and I backed him up in that although I am not of his party—went into Korea, on what authority I am not sure, but he exercised the authority of the U.S. Government to do that. You are saying now that they would not even have the authority in retaliation to say to the British merely, "until our ships can land in London, yours cannot land in New York."

Do you think the Congress would not back up the President had he said that?

Mr. CHAYES. I do not know. The same President seized the steel mills, and it was determined that he did not have the authority to do that. That was also in support of the Korean war.

Mr. SPRINGER. But did the Court not determine that for him?

Mr. CHAYES. I think this would be—

Mr. SPRINGER. Did not the Court finally determine for him that he did not have that authority?

Mr. CHAYES. Well, that is right. But the Executive is under a responsibility to try to interpret its powers as best it can. It is not supposed to go riding roughshod until the Court calls a halt. It is supposed to try to take a responsible view of its own authority under the law.

Mr. SPRINGER. Now, Mr. Chayes, let us stay on (f) for a second. You say you do not have any power to take such steps as we may consider necessary to prevent the inauguration and continuation of the service in question at the rate complained of?

Mr. CHAYES. I say Congress has not given the Executive or the CAB power.

Mr. SPRINGER. Now, what powers under (f) ought we to give you or the CAB?

Mr. CHAYES. If we were operating solely under (f), it would be sufficient to give the CAB power to suspend a service at a rate with which the CAB was dissatisfied. That would give it the authority to act under section (f) subsection (f), of the agreement.

Now, our view is, of course, that it is much more desirable to be acting under subsection (e) of the agreement where that is available. Therefore, we would like not only the suspension authority but the ratemaking authority.

Mr. SPRINGER. I think that is a complete revision of what you want and so some of us wonder about whether you ought to have it.

Suppose we gave you the power to suspend, and say you have this power to suspend for 6 months while you negotiate?

Mr. CHAYES. Then you would have what we had essentially last year. In effect, the British suspended and then we cajoled, we persuaded them to restore the service at the old rate. In this case, what would happen is we would mutually suspend and there would be some interim agreement which would probably be pretty close to the high rate, because nobody wants to cut off the service entirely. So we would have some interim agreement fairly close to the high rate, which would keep in effect while we negotiate.

Now, it is true—

Mr. SPRINGER. Why would it have to be the high rate?

Mr. CHAYES. Well, because everybody would know we do not have any power to impose the low rate, and the only way we can make our bargaining position felt is to cut off the service entirely. That is a very drastic remedy.

Mr. SPRINGER. Now, do you talk about that being any more drastic remedy than they would employ against us?

Mr. CHAYES. Well, no; it is not more drastic, except, in the end, nobody wants that to happen, neither they nor we nor our carriers. So that, in the end, the pressures to restore the service would be applied, and since the only rate we have is the high rate—

Mr. SPRINGER. Why do you only have the high rate? Why would you have just the high rate? You have already set a low rate; have you not?

Mr. CHAYES. Yes, we have to set a low rate, but nobody has ever operated at it. The argument that this is going to be a destructive rate or cause harm, it is a change in the status quo, is a strong one. It seems

to me—I do not mean to say this is black and white—but it seems to me very clear that our bargaining position to have the low rate in effect is much stronger when we have the rate-setting power than if all we have is this sort of massive retaliation option.

Mr. SPRINGER. Well, now, actually, your Chandler agreements were between the companies and you; were they not?

Mr. CHAYES. They were between the companies entirely. As you know, the rate conference is a conference of carriers.

Mr. SPRINGER. Then this rate which you put into effect is a rate agreed upon by our carriers?

Mr. CHAYES. No; in the case that happened last summer, the agreed rate, the rate that the conference agreed on, never went into effect because the conference agrees subject to approval by the governments; not only our Government but several others did not approve the conference rates, so that the conference rate agreed upon at Chandler never went into effect. There was not any agreed rate. The Europeans operated at the Chandler rates, but we wanted to operate at a lower rate. But there was not an agreed rate in effect last summer.

Mr. SPRINGER. Now, you say you want the power to suspend.

Mr. CHAYES. Yes.

Mr. SPRINGER. Now, what other power do you need that you do not have already?

Mr. CHAYES. Well, we would like to be able to shift the whole controversy from (f) to (e). In order to do that, we have to have rate-setting power.

Mr. SPRINGER. Well, now, what other powers do you want under (f)? Is suspension all you want?

Mr. CHAYES. Well, suspension is all you can do under (f). The problem is (f) and (e) are alternative sections. When (f) is in effect, (e) is not in effect. When (e) is in effect, (f) is not in effect. We believe we are in a stronger position when (e) is in effect, because then our rate operates during the period of negotiation and consultation. But in order for (e) to be in effect, we have to have ratesetting power. That is why we want the full range of powers in 6400.

Mr. SPRINGER. Now, under (f), still staying with (f), all you want under (f), is suspension?

Mr. CHAYES. That is all you can do under (f), is to suspend.

Mr. SPRINGER. That is the only thing. You just want to stop them from operating, period, under (f)?

Mr. CHAYES. Under (f), that is the only choice open to us, to stop them from operating.

Mr. SPRINGER. That is the only power you want under (f)?

Mr. CHAYES. It is the only power we have under (f). What we really want is to get out from under (f).

Mr. SPRINGER. I know what you want. What I want to know is is there anything else? You have been with us today because you have told us you do not have the power. I am trying to find out if suspension is the only power you want under (f).

Mr. CHAYES. Yes. If we had (f), we could do what we could not do last summer; that is, suspend the English rates.

Mr. SPRINGER. It would have been a much easier deal if you had said to them, "You cannot fly to New York until we can fly to London." Everybody would have been glad to sit down, but when they saw

they had the power and we did not have the power—at least we did not exercise it. I am not so sure that we do not have it. You say that in your opinion, we did not. I am willing to accept your opinion as a good lawyer. But I am not sure on my own.

Suspension is the only thing you want under (f).

Mr. CHAYES. I am not trying to evade the question. We would have been much better off under (f) last summer if we had had the suspension power. We would be still better off if we had the ratesetting power. It was the only thing we could do under (f). Unless we have the ratesetting power, we are under (f), and the only thing we could do or need is suspension.

Mr. SPRINGER. When you say "we," who are you talking about?

Mr. CHAYES. I mean we, the United States.

Mr. SPRINGER. And you are talking about the U.S. Government?

Mr. CHAYES. Yes, sir.

Mr. SPRINGER. You are not talking about the CAB?

Mr. CHAYES. When I say "we," in this sense, I mean the U.S. Government. Obviously, the suspension power or the ratesetting power would be exercised by the CAB; yes, sir.

Mr. SPRINGER. What about suspension?

Mr. CHAYES. I think that that ought also, in the first instance, to be exercised by the CAB.

Mr. SPRINGER. In other words, the suspension will be with the CAB?

Mr. CHAYES. Yes.

Mr. SPRINGER. In other words, when you are talking about all these powers to be exercised, you are talking about them to be exercised by the CAB?

Mr. CHAYES. Subject to Presidential review—

Mr. SPRINGER. That is a different thing. What you are asking for here now is these powers in the CAB, nobody else.

Mr. CHAYES. Power in the CAB to take action—

Mr. SPRINGER. You are asking also for a separate power. If the President of the United States does not agree with that, he can modify it or send it back, is that correct?

Mr. CHAYES. Yes, sir.

Mr. SPRINGER. All right. I think I understand what you want.

I think that is all I have, Mr. Chairman.

The CHAIRMAN. Mr. Younger, do you have any questions?

Mr. YOUNGER. Yes, Mr. Chairman.

I was intrigued by your answer, Mr. Chayes, giving as an example the President's seizure of the steel mill. Do you think that the President does not have more power over international affairs than he has over domestic affairs under the Constitution?

Mr. CHAYES. Well, I think he obviously has a broader power in the field of international affairs. Whether seizing a British airplane at Kennedy International Airport or preventing it from landing at Kennedy is purely a matter of international affairs, I do not know. I only used that as an illustration that you need some authority under our Constitution and laws before you can take action of this kind to prevent a foreign carrier from landing and to enforce that order. You cannot do it just by making an agreement with the British. You have to have some delegation from Congress, either to the Board or

to the President or to somebody before that can be implemented. I think it would be very dubious to suggest that the President, in this kind of a situation, where there is a rate dispute of this kind, has inherent power to prevent a foreign carrier from landing and then to seize it.

Mr. YOUNGER. Regardless of what the other country does?

Mr. CHAYES. There may be other situations. I suppose if the other country were a hostile country or something of that kind, there are obviously situations in which the President could act on the basis of his inherent power. But in this situation, it seems to me to be dubious.

At least, we examined the situation and came to the conclusion that there was no such power to act absent some congressional delegation.

Mr. YOUNGER. That is the difficulty I have. You talk about being a hostile power. It seems to me that for the time being, in this particular instance, Britain and the Commonwealth were a hostile power.

Mr. CHAYES. I do not think you should extend it to the whole Commonwealth anyway. Canada was acting on the same side we were.

Mr. YOUNGER. Take the British Isles, then.

Mr. CHAYES. Anyway, even there, the British after all, from their own point of view, and you have to recognize it, were exercising an authority that was granted to them under the agreement. Our situation was simply that we did not have the domestic authority to exercise the same power granted to us under the agreement.

Mr. YOUNGER. And that was the opinion of the State Department, that the State Department passed on to the President?

Mr. CHAYES. I have to say first that this statute and the operations under the statute are the primary responsibility of the CAB which, as you have already pointed out, or perhaps Congressman Schenck pointed out is an independent agency. They reached this opinion on their own. We concurred in it on the basis of an independent judgment, so that I do not think that the President was faced with the problem of conflicting judgments. All the lawyers who looked at it came to the same conclusion.

Mr. YOUNGER. How long have you been in the Department?

Mr. CHAYES. Three and a half years, sir.

Mr. YOUNGER. What was your business before you came to the Government?

Mr. CHAYES. Immediately before, I taught law at the Harvard Law School, sir.

Mr. YOUNGER. That is all.

The CHAIRMAN. Mr. Watson, do you have any questions?

Mr. WATSON. No questions, sir.

The CHAIRMAN. Mr. Friedel, do you have any?

Mr. FRIEDEL. No, thank you.

The CHAIRMAN. Mr. Nelsen, do you have any further questions?

Mr. YOUNGER. No. He is busy.

The CHAIRMAN. Mr. Chayes, would you identify for the record the countries that joined with the United Kingdom in its threat to suspend the authority of the U.S. air carriers last spring?

Mr. CHAYES. Yes, sir; I would be glad to do it. I should say that in the end, everybody signed up. There were people who did so less

enthusiastically than the others, and it may be that the Irish even held out until the end; but in the end, everybody lined up. I shall get the exact statement for the record.

The CHAIRMAN. Did our own carriers line up with them?

Mr. CHAYES. No. I think it is fair to say that our own carriers were prepared to go along with us to the limit of the authority that we had in order to try to fly at the lower rates. I think our own carriers, no less than anyone else, were interested in getting lower rates here. They agreed to the Chandler rates, but they only agreed to them after a long negotiation and for the sake of general agreement. I think that they were in general concurrence with both the CAB and the Department that lower rates were desirable and they cooperated very well.

The CHAIRMAN. The United Kingdom indicated that additional steps, including commandeering of aircraft, would be taken if the U.S. carriers performed flights at the lower than Chandler rates, is that right?

Mr. CHAYES. Yes. I think again, we ought to make clear that what is involved here is seizure as a way of enforcing the order. But they did say—

The CHAIRMAN. That is not what I am asking you. I am asking you if the United Kingdom indicated that additional steps would be taken?

Mr. CHAYES. I think they said they would take whatever steps, including commandeering, where necessary to enforce it.

The CHAIRMAN. That is what I am asking. They said they would do that?

Mr. CHAYES. Sure.

The CHAIRMAN. What other countries, if any, said that they would do the same thing?

Mr. CHAYES. I would have to consult the record on that.

The CHAIRMAN. Would you consult the record and supply the information?

Mr. CHAYES. Yes, sir.

The CHAIRMAN. Do you have any information as to the specific manner in which each or any of these countries intended to act under the broad provisions of paragraph (f) of the Bermuda-type bilateral agreement?

Mr. CHAYES. Well, I think they acted by way of orders directed to our carriers, and violations of those orders subjected our carriers to penalties. I should say that some of the countries were later in lining up than others, and we kept flying to any country so long as it did not announce or indicate to us in some way that it was giving our carrier an order not to fly. Wherever our carrier was not breaking local regulations and laws, it continued to fly at the lower rate.

The CHAIRMAN. In other words, the specific matter then was to give orders to our carriers not to fly at that rate?

Mr. CHAYES. I think that is so, in general. Again, I would appreciate the privilege, Mr. Chairman, of reviewing the record and supplying the precise information.

The CHAIRMAN. Will you do that?

Mr. CHAYES. Yes, sir.

(The information referred to follows:)

STATEMENT OF THE DEPARTMENT OF STATE OUTLINING THE SPECIFIC FOREIGN COUNTRIES WHICH THREATENED TO SUSPEND THE OPERATIONS OF U.S. AIR CARRIERS DURING THE NORTH ATLANTIC RATE DISPUTE OF MAY 1963

UNITED KINGDOM

The British Ministry of Aviation, on May 8, initiated action to amend TWA's and PAA's operating authority so as to require them to operate at the Chandler fares. PAA and TWA received telegrams from the Ministry of Aviation, dated May 12, stating that failure to comply with your operating permit will render "aircraft liable to detention."

The British Government handed the U.S. Government an aide memoire on May 11. It stated that the Ministry of Aviation was shocked by the actions of the U.S. airlines; and that if diplomatic representations were unsuccessful, drastic action would be required.

FRANCE

On May 16, 1963, the French Foreign Office advised the U.S. airlines that operations at pre-Chandler fares would be subject to sanctions. The French were unable or unwilling to explain to our civil air attaché during a conversation on May 17 what specific sanctions were intended. A French aviation official during a later conversation advised that he objected to the use of the term "sanction." He stated that he had no power to punish U.S. airlines, but that operations contrary to French regulations would not be permitted.

GERMANY

In letters to U.S. airlines, dated May 17, 1963, the German Federal Ministry of Transport referred to article 11(F) of the United States-German bilateral air agreement and to certain sections of German civil aviation law. The letters stated that in view of an analogous legal situation with that of the United Kingdom and Switzerland, the U.S. carriers were instructed to apply immediately the Chandler rates in order to avoid legal consequences which might arise out of nonobservance of these legal provisions.

ITALY

Civilavia Inspector General Caruso, on May 17, requested PAA to apply Chandler fares as quickly as possible, otherwise "Civilavia would have to take measures it would rather not take." The specific measures were not clarified. Caruso informed PAA, on May 18, that if Chandler rates were not put into effect, Civilavia would be compelled to prevent PAA flights from departing Rome.

The U.S. Embassy in Rome received a note verbale from the Italian Foreign Office on May 22, advising that effective May 23, TWA and PAA were requested to operate at the Chandler rates and that in case of noncompliance, "consequent measures" would be taken.

The U.S. Embassy subsequently advised the Department of State that the Italians had made a decision to "ground" U.S. carriers as of May 25 unless the Chandler fares were applied.

SWITZERLAND

Effective May 1, 1963, the Swiss Federal Air Office amended TWA's permit so as to require operations at the Chandler fares. TWA was told to strictly observe the instructions and tariffs as they had been established by IATA at the Chandler conference. The Swiss advised TWA that should TWA not apply such tariffs, the procedures in the penal code of the Swiss Law of Aviation would be executed.

SWEDEN

On May 17, Mr. Soderberg, Swedish CAB official, advised the U.S. Embassy in Stockholm that PAA had until May 20, when its flight from New York arrived in Sweden, to comply with Swedish instructions to operate at the Chandler rates. If at that time PAA still violated these instructions, serious action would be taken.

SPAIN

On May 24, Spanish Under Secretary of Foreign Affairs Cortina advised the U.S. Embassy in Madrid that both U.S. carriers had been informed by note that passengers would be barred from embarking or debarking effective noon May 27 unless they could prove that they had charged the Chandler fares. Cortina concluded that the Government of Spain was convinced that it had every legal right to exact the new fares in Spain, just as the U.S. Government had the right to regulate fares in the United States.

IRELAND

On May 21, the Irish Minister for Transport and Power advised PAA and TWA that he had been empowered by the Government of Ireland to make an order providing for the control of air fares for the transport of passengers or goods to and from Ireland. He further advised that he proposed to use this power, if necessary, to insure that the Chandler fares were put into effect and that the penalty for failure to comply is set out in sections 13 and 16 of the Irish Air Navigation and Transportation Act of 1946.

[Section 13 provides for penalties, and section 16 provides for detention of aircraft.]

NORWAY

On May 20, the Norwegian Civil Aviation Inspector informed PAA that if PAA did not charge the Chandler fares immediately its operating concession would be suspended in Norway. A Norwegian Foreign Office official told our Embassy in Oslo that Norway thus far had been patient but that it had watched other countries which had taken hard attitudes and had obtained the desired results. He was unable or unwilling to give our Embassy assurances that Norway would not similarly act against PAA.

PORTUGAL

On May 10, the Portuguese Director General of Civil Aviation advised TWA by letter that if American companies were not in a position to apply the Chandler tariffs, the Portuguese Government would be forced to suspend the arrivals and departures of passengers whose tickets were not in accordance with the Chandler fare resolutions.

On May 13, TWA's Washington office received a message from its Lisbon office advising that if American carriers did not comply with the Chandler fares within 24 to 48 hours, the passengers aboard these aircraft would not be allowed to embark or disembark at Portuguese airports.

The CHAIRMAN. There was some rather harsh reaction from abroad, from the United Kingdom and other countries?

Mr. CHAYES. To our lower rate; yes, sir.

The CHAIRMAN. Now, that followed an exchange of communication; did it not?

Mr. CHAYES. Well, yes.

The CHAIRMAN. Was it between the Board and the Department of State?

Mr. CHAYES. Well, the Board announced that it would not support the Chandler agreement. This was—I do not have the exact—

The CHAIRMAN. I know that that is true. But did it then bring about an exchange of communications between the Department of State and the Board?

Mr. CHAYES. Yes, the Board and the Department worked very closely together. We were in constant touch at all times during the period from the first Board announcement.

The CHAIRMAN. That is precisely what I am asking in the question, if it did. Did that then lead to the CAB action rescinding the earlier disapproval, and allow the U.S. carriers to operate to foreign countries at the higher rate?

Mr. CHAYES. CAB asked us for advice when these orders were put in. It is my recollection that the Secretary of State wrote a letter to the CAB saying that we did not think it was appropriate for our Government to advise our carriers to break foreign laws and subject themselves to the risk of prosecution abroad to operate at the lower rate.

To that extent, then, the CAB changed its advice. That is, where a foreign order or foreign regulation was in effect that would have subjected our carriers to penalties or confiscations, it changed its advice to the carrier; yes, sir.

The CHAIRMAN. Then how long did that higher rate prevail?

Mr. CHAYES. Well, it prevailed—again, I would have to give you exact information from the records—I think there was some adjustment within about 60 days, and then a good deal later, some months later, a negotiated lower rate went into effect. But well after the tourist season was over.

(The information referred to follows:)

STATEMENT OF THE DEPARTMENT OF STATE REGARDING THE CHRONOLOGY OF EVENTS SURROUNDING THE NORTH ATLANTIC RATE DISPUTE OF 1963

- September 21, 1962: Board policy letter to U.S. carrier members of IATA.
 September-October 1962: IATA traffic conference at Chandler, Ariz., which set international fares, including a \$513 round trip economy fare between New York and London. The previous round trip fare was \$486.
 November 23, 1962: IATA Chandler resolutions filed.
 December 3, 1962: IATA fare tables filed.
 December 10, 1962: CAB staff met with U.S. carriers to request bases and support for fare increases.
 January 14, 1963: Pan American statement received.
 January 25, 1963: Northwest statement received.
 February 12, 1963: Tentative Board disapproval of transatlantic and transpacific round trip fare increase. (Order publicly released February 14, 1963.)
 March 18, 1963: Final Board disapproval.
 April 8-10, 1963: Informal discussions with British aeronautical authorities in Washington.
 April 16-17, 1963: Informal discussions with Canadian aeronautical authorities in Washington.
 April 24-26, 1963: Meeting with European and Canadian aeronautical authorities in London. No agreements reached.
 May 12, 1963: Announcement by British and some other European governments stating that they would take steps to prevent operations by U.S. carriers at pre-Chandler rates.
 May 13, 1963: Reply letter from Secretary Rusk to Chairman Boyd suggesting that CAB advise U.S. carriers to fly at Chandler rates insofar as was necessary to prevent the carriers from being subjected to penalties for violations of foreign laws and regulations.
 May 14-24, 1963: TWA and Pan American raise most but not all of their transatlantic fares under orders from European governments.
 May 15-18, 1963: IATA meeting in Bermuda. Tentative compromise worked out. Meeting adjourned, May 24, 1963.
 May 24, 1963: IATA meeting in Montreal. Compromise agreed upon permitting the \$513 fare to remain in effect until July 15. Thereafter the fare would be \$499.70 through March 31, 1964.
 July 15-18, 1963: International conference of national aeronautical authorities held in Ottawa. Conference dealt with subject of governmental relations with IATA.
 September 9-13, 1963: First Salzburg meeting of IATA. No agreement reached.
 October 22-26, 1963: Second Salzburg meeting of IATA. No agreement reached.
 November 1963: Informal discussions by Messrs. Ferguson and Boyd with European aviation authorities.

December 10, 1963: IATA meeting opens in Nassau. Majority agreement reached on summer or peak season rate of \$484.50 round trip from New York to London and \$399 for same trip off season. Special off-season 21-day excursion fare reduced from \$350 to \$300. Agreement to run from April 1, 1964, to March 31, 1966.

January 3, 1964: Mail vote by IATA fails to show unanimous agreement. Canadian Pacific, El Al, and Air Linte disapproved package proposal.

February-April 1964: All major airlines file Nassau rates with CAB. De facto agreement to be in existence to March 31, 1966.

The CHAIRMAN. Is it possible to equalize our power under paragraph (f) of the articles without resorting to legislation which would nullify paragraph (f) and bring paragraph (e) into effect?

Mr. CHAYES. Well, yes, sir; there is. If you give suspension power and nothing else. That will, as I just said to Mr. Springer, permit us to retaliate under section (f). But it will not bring (e) into play.

The CHAIRMAN. All right. Suspension power—would that be suspension power of our own carrier rate?

Mr. CHAYES. No; it would be power to suspend the other carriers' rates. That is the method of working it out that is contemplated under paragraph (f).

The CHAIRMAN. In other words, that is only half of the power that you want?

Mr. CHAYES. Yes, sir.

The CHAIRMAN. Now, since you support 6400, and thus would have the CAB's ratemaking actions in international and foreign aircraft situations, subject to Presidential approval, rather than merely have the requirement that the CAB submit them to the President prior to publication, would it not be more appropriate to make certain that the President, rather than the CAB, is invested with the power equivalent to that held by the ultimate authorities of the nations with whom we have Bermuda-type agreements?

Mr. CHAYES. No, sir, I think we have our own tradition and our own history and our own way of going about these things. Our basic philosophy, which I believe is the correct one, is that a regulatory agency of this kind, having special expert competence, operating according to procedures that we all understand and according to standards that we all understand, is the best method of achieving a sound rate structure. We do recognize that in the international field, unlike the domestic field, where we do have to consider what the reaction of foreign governments and foreign peoples are to our actions, in that field, there is the occasion for Presidential review. But essentially, the primary responsibility should be with the Board, because the primary problems are economic and technical. We in the Department believe that overall, the best interests of the United States are served by a strong, competitive airlines industry operating at competitive rates.

The CHAIRMAN. I want you to measure your answer to this question well, because it is important. Could we make certain that the United States is on an equal footing with other countries of the world under paragraph (f)—that is, those countries with whom we have the Bermuda-type agreement—under paragraph (f) of the Bermuda-type bilateral, instead of enacting legislation which would bring paragraph (e) into effect?

Do you understand the question?

Mr. CHAYES. You say could we put ourselves on an equal footing under paragraph (f)—

The CHAIRMAN. Could we not amend the law so that we would bring the United States on equal footing with other countries under paragraph (f) of the Bermuda-type bilateral instead of going further and amending the law to bring into play paragraph (e)?

Mr. CHAYES. Yes; if the Congress were to grant suspension authority, then we would have the authority to retaliate under paragraph (f), and we would, in effect, be in the same position that the British were last year when they suspended our rates. The decision for Congress to make, I think, is whether that way of resolving the dispute, by being on an equal basis under paragraph (f) is the best way, or whether, as we think, the best way is to shift the whole thing over to paragraph (e).

But you can, by giving solely suspension authority, equalize the situation under paragraph (f), yes, sir.

The CHAIRMAN. Does any country with whom we have the Bermuda-type bilateral have authority to set rates of their own carriers?

Mr. CHAYES. Well, yes, sir; most of them do. But as you will notice, paragraph (e) comes into effect only where the aeronautical authorities of the United States have rate-fixing powers.

The CHAIRMAN. No, where the aeronautical authority of the country—it does not just say the United States.

Mr. CHAYES. No, sir; if you look at paragraph (e), the fact that Great Britain has rate-fixing power does not bring paragraph (e) into effect at all. It requires that the United States have rate-fixing power before paragraph (e) goes into effect.

The CHAIRMAN. Well, of course, if the United States objected to it and did not have paragraph (e), they could act under (e).

Mr. CHAYES. No, sir. The operation of paragraph (e) depends solely on what the domestic law of the United States is. If the CAB has rate-fixing authority with respect to international air transport, then paragraph (e) is in effect. It does not matter what the situation is on the other side. All of the Bermuda agreements read that way. They are dependent on what happens in this country, what authority is available in this country, not what is available abroad.

The CHAIRMAN. It says property by air on international services—and to suspend proposed rates in a manner comparable to that in which the Civil Aeronautics Board at present is empowered to act—

And so on.

Mr. CHAYES. If you go back to the first phrase—

In the event that power is conferred by law upon the aeronautical authorities of the United States to fix fair and economic rates.

The fact that most of these countries have this power in one way or another has not brought (e) into play; (e) depends upon the U.S. authority to fix rates being comparable to our domestic authority.

The CHAIRMAN. Well, I suppose the difficulty in understanding the whole thing is because foreign airlines are wholly or in part owned by the governments themselves.

Mr. CHAYES. Yes, or else under very strong governmental control, that is right, sir.

The CHAIRMAN. Well, thank you very much, sir. We have kept you here much longer than we had intended or anticipated, but we do

want to thank you for your appearance and for your response to the questions.

Mr. CHAYES. Thank you. I hope I have been of some help to the committee.

The CHAIRMAN. Thank you very much.

Mr. Boyd?

STATEMENT OF ALAN S. BOYD, CHAIRMAN, CIVIL AERONAUTICS BOARD; ACCOMPANIED BY JOSEPH WATSON, JOHN WANNER, IRVING ROTH, AND AL STOUT—Resumed

Mr. BOYD. Yes, Mr. Chairman.

The CHAIRMAN. I apologize for the committee taking up so much of your time today, Mr. Boyd. I anticipated that it would take only a few minutes to conclude with Mr. Chayes, but we have been here at some length. I hope and I am inclined to think that it will not take very long. Some of the members have some questions.

In the meantime, in view of the testimony that has been presented since you first appeared, would you have any further comment to make before we start?

Mr. BOYD. No, sir; I do not believe so. I am delighted to be here and hope that I can throw some light on the subject. As it has been brought out, this is a terribly complicated situation.

I would say this, Mr. Chairman and members of the committee, we spent a great deal of time discussing powers to retaliate, and it seems to me that this misses the point completely, because if we get the rate legislation that is proposed under 6400, there will be no need to consider retaliation. I think the only reason one would consider retaliation or discuss retaliation, based on the assumption that we get the legislation sought, would be on the assumption that a foreign government is not going to act in good faith within the terms of its agreement. And I do not believe that there is any reason for us to make such an assumption.

So the point I would like to make as strongly as I can is that retaliation is not going to be a problem, given rate legislation, so long as other countries are willing to adhere to the terms of their agreement, and we have no reason to think that any country with whom we have bilateral agreements would not adhere to the terms of an agreement.

The CHAIRMAN. Mr. MOSS, you had some questions to ask.

Mr. MOSS. Yes, Mr. Chairman, I have.

Mr. Boyd, during the appearance of Mr. Tipton before the committee, great stress was laid upon the burden of ratemaking procedures involving international carriers under the flags of countries other than the United States. There was cited for the committee's attention the general investigation of rates undertaken domestically a number of years ago as a typical, I believe I place the correct emphasis on the statement, "example of the difficulties to be encountered in undertaking these ratemaking proceedings."

I wonder if you could comment on them?

Mr. BOYD. Yes, Mr. MOSS. I can truly say I am glad you asked that question.

In the first place, with all due respect to Mr. Tipton, the passenger fare, passenger rate, investigation to which he alluded was in no sense

a typical investigation of the Civil Aeronautics Board. On information and belief, I would say that is the first such case that came up in the 25-year history of the Civil Aeronautics Board.

In connection with that, I would like to point out to the committee that what we were dealing with in that case was rate of return and not fare level.

Mr. SPRINGER. And not what?

Mr. BOYD. And not fare level, f-a-r-e. I think there may be some confusion, because we mix the terms up with fares and rates of return.

Now, as I understand it, technically a rate is what is charged for the moment of commodities; that is, freight, express, and mail. Rates are charged for those. Fares are charged for the movement of passengers, and rate of return is the amount of profit that a carrier is enabled to earn on its investment, given reasonably efficient operation at the level of fares based on the amount of traffic that is generated. So I would like to get these terms straight here when we discuss them, and I am afraid that sometimes I tend to lapse into the use of the word "rate," where actually what I mean is "fares."

Now, bear in mind, please, gentlemen, that we are not dealing with any vacuum. There is a tremendous volume of international traffic today. There are fares and rates in effect today and they are felt to be generally acceptable and to generally permit the carriers operating under them, or with them, to earn reasonable profits, given reasonably efficient operation.

Mr. SPRINGER. Are you referring now to our domestic foreign carriers?

Mr. BOYD. No, sir; I am talking about worldwide, international air transportation.

Mr. SPRINGER. Thank you.

Mr. BOYD. So the point I want to make, Mr. Springer, is we are not dealing in a vacuum, and given the legislation we seek in 6400, we shall not be placed in the position of saying, "Let us start from scratch and build a structure of rates and fares," because we have a structure already which is generally satisfactory.

Now, the problems with which we are faced in international air transportation, and I guess probably also in domestic, although I have not thought about it in this light, are the relationships of fares to each other in terms of tourist fares to first-class fares, group fares, excursion fares, and things of that nature, and what the total fares should be and what the difference, percentagewise, should be among these fares. So we are not dealing with anything that you can say in finite, and we are not dealing with anything that you can say x cents a mile for excursion fares is going to be confiscatory to the carriers, or is going to permit them to earn an exorbitant rate of return. Because we can only take the historical data and project it forward to ascertain a judgment, this is where the so-called expertise comes in how much the carriers may be entitled to earn if they operate efficiently and if the traffic generation is as anticipated.

Now, I would like to point out that lower fares have been encouraged by the Civil Aeronautics Board and by the U.S.-flag carriers operating in foreign aviation because of a basic philosophy in the United States, that you can maximize your profits by increasing the volume

of your productive units, having those productive units utilized as a lower percentage per unit, than you can by taking what is, in effect, a captive market and soaking that market for more and more money. We have worked very diligently to try to persuade our European competitors of our airlines that they are far better off in the long run by lowering their fares and expanding the volume of the market.

Now, I do not think that it is at all necessary to point out to the gentlemen of the committee that the Civil Aeronautics Board has historically supported good earnings for the U.S.-flag carriers, and we have done everything we could to see that they earn good and sufficient profit. So I would like to allay any fears that the Board is trying to put anybody out of business or confiscate their property through refusing to permit a reasonable rate of return.

The U.S.-flag carriers today are carrying about 40 or 42 percent of the transatlantic traffic, North Atlantic traffic. The U.S.-flag carriers are therefore a major factor in that operation. The U.S. Government, through the Civil Aeronautics Board, has the best statistical data on air carrier operation that can be obtained through the reports that are filed by our carriers, who constitute approximately 40 percent of this total market.

Our approach to this matter is that if we can get H.R. 6400 enacted into law, then the shoe will be on the foot of those who desire higher fares to show that the fares we favor are not in fact fair and reasonable. And we have this mass of data which we may utilize to show that the fares are fair and reasonable. This is what it boils down to, as one man sees it.

That is a fairly long answer to your question, Mr. Moss, but I guess maybe I really did not answer it. The fact of the matter is that within the last 12 months on domestic fares, we have had 44 tariffs, passenger tariffs, brought to the Board for consideration; that is, suspension and/or investigation. I believe we voted to suspend and investigate 28 of those 44. All except seven of them have been cleared out, either through Board action or through carrier action by withdrawing the fare or by withdrawing and amending the fare. Because when we issue an order saying we are going to suspend and investigate, we set forth our reasons and we try to give an alternative as to what we think would be reasonable.

The cases that are pending are pending because they are related to other matters which are in the process of disposition. So you have this interlock on several of them, where we just have to wait until we get others decided to establish the principles which will be in effect in these cases. That is the case history of 44 of these items which have been handled in that manner.

So, getting back to Mr. Tipton's concern, I think that he is overly and unnecessarily concerned.

Mr. SPRINGER. Mr. Chairman, did you finish that? About what?

Mr. BOYD. Mr. Tipton, I understand, devoted a great deal of time to the period required for the Board to dispose of a fare investigation. I was just trying to point out that this was a rather abnormal situation. In fact, it was the first one that I know of that we have had in the history of the Board. There may have been one more prior to my coming, but I do not believe so.

Mr. Moss (presiding). At the present time, you meet informally with the U.S. carriers prior to an IATA conference, is that correct?

Mr. Boyd. Yes, sir.

Mr. Moss. Now, if the authority of 6400 is given to the Board, will the procedure change? Will you then have a ratemaking hearing and determine upon a rate which the carriers will then be bound to propose?

Mr. Boyd. That is not contemplated, Mr. Moss.

Mr. Moss. Would it be required?

Mr. Boyd. No, sir. As we understand this legislation, it would not be required, and we would not propose to change the existing procedure. We have no desire to bind our carriers into a straitjacket in terms of dealing with IATA. And we have no desire to impose our will willy-nilly upon the air carriers of the world. And in the area of ratemaking, establishing fares and rates, there is bound to be an area of what is called the area or the zone of reasonableness. There is not such thing as a mathematical calculation to say that 3.5 cents a seat-mile is the reasonable fare.

So we have historically felt, and continue to feel, that there must be flexibility on the part of our carriers. In the domestic field, a carrier can come in and file a rate within whatever area it wants to, but it has to be within what we consider the zone of reasonableness. This means that it cannot be so low that it is not compensatory and it cannot be so high as to be exorbitant. But this gives quite a bit of leeway, and we would anticipate that we would continue the same operation in the international area as we have before.

The legislation is purely and simply backstopping legislation, which I must say I agree with Mr. Chayes on. If we have it, I think our carriers will be more persuasive than they have at times in the past been in the IATA meetings.

But at the same time, we have no desire to blackjack anybody, because we have to live with each other. What we want to see is the general lowering of fares as the economies of the jet aircraft and of management efficiency are brought to bear on the market, while permitting the carriers to earn a reasonable rate of return.

Mr. Moss. Well, now, under the authority in 6400, if you should disapprove a rate, would you then have time to go through some ratemaking procedure to arrive at the rate which would be permitted by this Government and go provisionally into effect under paragraph (e)?

Mr. Boyd. No, sir, I do not believe so.

Mr. Moss. It is not intended to request this authority that you would have to do that, is that correct?

Mr. Boyd. No, sir. And bear in mind that what we are talking about so far as we can see at this moment is merely a change in an existing fare level which probably is not going to affect tourist, first, coach and whatever else. It is probably going to affect one or two of these segments, and not the total picture.

Mr. Moss. I am asking these questions because it seemed to me they were the basis for the statement presented on behalf of the Air Transport Association.

Mr. Boyd. Yes, sir.

Mr. Moss. And they were stressed very strongly.

Now, you gave a very large vote of confidence to the U.S. carriers in your appearance here, stating that it was your opinion that in the future, the problems would be as they have been in recent years, an effort by our carriers to reduce rather than increase fares. But again, the specter of injury to our carriers was raised on the hypothesis that at some point, a proposal which would not be in (e) would be made, and that under (e), it could go into effect by the Government.

Have you any comment on that?

Mr. BOYD. Yes, sir, that is clearly a possibility. There is no question but what it is a possibility. However, I think that it is also fair to say that the assumption on which this possibility is stated is that because the foreign competitors are heavily subsidized, this can happen.

Mr. MOSS. That would not meet the test of (h), would it?

Mr. BOYD. No, sir. And furthermore, it is a matter of fact which is certainly apparent in all of the aviation journals that the foreign governments are not happy about subsidizing their air carriers. This is not something that they do out of any desire to put the U.S. carriers out of business or to cripple them in any way. There is a tremendous amount of unhappiness over the amount of subsidy that is being paid now on the part of various countries to maintain their air carriers in operation.

Mr. MOSS. Well, that is a possibility, then—

Mr. BOYD. Yes, sir.

Mr. MOSS. If it occurs, at what point would the determinations as to the fare under (h) be made, and who would make them? (h) reads:

The rates to be agreed in accordance with the above paragraphs shall be fixed at reasonable levels, due regard being paid to all relevant factors, such as cost of operation, reasonable profit and the rates charged by any other air carriers.

Mr. BOYD. There is where the arbitration body would have to establish the standards. That is one reason why we are so anxious to get this 6400, so that we can say, "Gentlemen, we have a body of precedent for the establishment of fair and reasonable rates which has been built up first in our domestic sphere for 25 years, and these have been tested, they are similar to what the Interstate Commerce Commission uses, they have been tested in court." They are clearly the criteria that should be utilized by an arbitration body to establish what are fair and reasonable fares. That is one reason we want to get 6400 into existence.

Mr. MOSS. Mr. Springer?

Mr. SPRINGER. To stay right on that for just a moment, Mr. Chairman, first, last year, was there any foreign air carrier system such as the BOAC, Air France, which operated at a profit?

Mr. BOYD. Yes, sir. Now, are you limiting this to those two carriers?

Mr. SPRINGER. Let us just take those two of the big ones.

Mr. BOYD. My understanding is that BOAC in 1963 earned a profit for the first time in a number of years.

Mr. SPRINGER. How much?

Mr. BOYD. I do not have that figure, Mr. Springer, but it was in the millions of pounds.

Mr. SPRINGER. How much, then, did Air France make?

Mr. BOYD. My understanding is that Air France lost money last year.

Mr. SPRINGER. Now, this was the greatest year for air carriage over the North Atlantic ever in history, was it not?

Mr. BOYD. Yes, sir.

Mr. SPRINGER. And all of the aircraft, all of them I am talking about, that flew the North Atlantic in 1963 carried more passengers than ever before in history?

Mr. BOYD. Yes, sir.

Mr. SPRINGER. BOAC made a reasonable profit?

Mr. BOYD. Yes, sir.

Mr. SPRINGER. But Air France lost money?

Mr. BOYD. Yes, sir.

Mr. SPRINGER. Lufthansa did not make any money, did it?

Mr. BOYD. I think Lufthansa just about broke even.

Mr. SPRINGER. How about Alitalia?

Mr. BOYD. Alitalia earned a profit.

Mr. SPRINGER. It was not very much, was it?

Mr. BOYD. I think it was a fairly substantial profit.

Mr. SPRINGER. Now, how about Swissair?

Mr. BOYD. Nine percent.

Mr. SPRINGER. And SAS?

Mr. BOYD. I think SAS made a profit. KLM—I think they earned money, I am not sure. PIA, I am not sure of.

Mr. SPRINGER. This is the first time that any of these, KLM and SAS, made money?

Mr. BOYD. No, Swissair has been historically profitable.

Mr. SPRINGER. I take it back, Swissair usually makes money.

Mr. BOYD. SAS is generally profitable, generally speaking. Alitalia—this may be the first year they have made money, I am not sure.

Mr. SPRINGER. Well, let me get back to this, because I want to stay on my line of thought. Now, the Chandler agreements, had they gone into effect for this year, would have been approximately how much of a percentage below the rates that are charged this year in transatlantic service? Roughly, the percentage?

Mr. BOYD. You mean above? The Chandler fares were above the rates that are in effect now.

Mr. SPRINGER. Well, now, your proposed rates were lower, were they not?

Mr. BOYD. Yes, sir. You said, as I understood your question, how much would the Chandler rates have been below.

Mr. SPRINGER. Let us take your proposed rates. How much below the present transatlantic fares would they have been?

Mr. BOYD. I am sorry, I am lost, Mr. Springer, because we do not have any proposed rates.

Mr. SPRINGER. All right. Now, you did get an agreement to lower rates, did you not?

Mr. BOYD. Yes, sir.

Mr. SPRINGER. Very substantially.

Mr. BOYD. Yes, sir.

Mr. SPRINGER. Now, are those rates proposed last summer higher or lower than those presently in existence?

Mr. BOYD. Well, the rates that were proposed last summer were essentially the rates that were adopted. These are quite a bit below the Chandler rates.

Mr. SPRINGER. How much, then, are these rates below last year's transatlantic crossings between May and October?

Mr. BOYD. I shall have to provide that for the record, Mr. Springer.

Mr. SPRINGER. Roughly. Is it 5 percent, 10 percent, 15 percent, or 20 percent?

Mr. BOYD. Well, it would average out about 13 percent.

Mr. SPRINGER. All right, it is about 13 percent below last year?

Mr. BOYD. Yes, sir.

Mr. SPRINGER. Based last year on Britain's 9 percent, did you say?

Mr. BOYD. No, that was Swissair. I do not know what the British made.

Mr. SPRINGER. Well, based on that last year, what were our profits?

Mr. BOYD. Our profits last year?

Mr. SPRINGER. Take TWA and Pan-Am.

Mr. BOYD. Last year, TWA had a rate of return of 24.2 percent.

Mr. SPRINGER. And how much was Pan-Am?

Mr. BOYD. On Pan-Am, Pan-Am had a rate of return of 11.8 percent in its Atlantic division, and had a rate of 21.5 percent in its Pacific division.

Mr. SPRINGER (reading:)

The rates to be agreed in accordance with the above paragraphs shall be fixed at reasonable levels, due regard being paid to all relevant factors, such as cost of operation, reasonable profit and the rates charged by any other air carriers.

Now, that last paragraph is going to have a big part in negotiation, the rates charged by other air carriers, is that not correct?

Mr. BOYD. Well, it could. I would have to say, Mr. Springer, because I have been in a number of negotiations and it has always seemed to me that the things I thought were going to be important turned out to be side issues. But it certainly could.

Mr. SPRINGER. Now, this says "Fixed at reasonable levels." I take it that is the thing that you commonly call just and reasonable?

Mr. BOYD. Yes, sir.

Mr. SPRINGER. Now, ordinarily, in domestic business, our domestic carriers, you ordinarily figure just and reasonable to earn what kind of a rate?

Mr. BOYD. Average 10.5 percent.

Mr. SPRINGER. 10.5 percent?

Mr. BOYD. Yes, sir, return on investment.

Mr. SPRINGER. That is what you are allowing at the present time, roughly?

Mr. BOYD. Yes, sir. Now, of course, that has to be a broad average, as I said the other day, Mr. Springer. We have carriers earning 16 and 18 percent.

Mr. SPRINGER. I understand, and you have a couple that earn 22 percent, or so you told me.

Mr. BOYD. Yes, sir.

Mr. SPRINGER. Now, do you feel that if you keep on lowering these rates, you are going then to be able to have other foreign government operated carriers compete?

Mr. BOYD. Oh, surely, surely. We have had foreign people tell us that they could meet any rate and operate efficiently. But, and here

is what I wanted to get back to and interject a moment ago, if I may, when you look at the picture of the foreign air carriers, please bear in mind that most of these carriers, with the exception of Swissair and SAS have a great variety of national interest routes which they are operating and which has a drastic effect on their profit and loss statement. I refer you specifically to BOAC and its Commonwealth route system, to Air France and its efforts to hold together what used to be the French colonial empire—hold together through commercial ties. Alitalia, for example, is trying to get into Africa. When I say trying to get in, I mean they are moving their operations into Africa. Lufthansa is moving into South America. KLM is trying to maintain a worldwide route system when it no longer has Indonesia. These things cost money, Mr. Springer.

Mr. SPRINGER. I understand. And may I say that Pan-Am and TWA have the same thing, if you want to travel out through the Far East.

Mr. BOYD. Well, I cannot get too concerned about Pan-Am with its rate of return in the Pacific. But the point, which we have taken as the U.S. Government, is that the passengers across the North Atlantic specifically have no requirement to subsidize the national interest routes of any air carrier, whether it be United States, British, or any other. We have taken the position, and this is our international air transport policy, that national interest routes should be paid for by the government that wants the route, not paid for by the passenger who wants a holiday in England or in the United States, as the case may be.

Mr. SPRINGER. Well, I am in agreement with you on that, Mr. Boyd. I do not think we are down to the point yet. That point is simply this: You say you are going to get lower rates and you are asking for this, not elaborate but very overall thing here, to get at it. But the point I am making is I do not believe, from what I have seen, that those companies can compete with us. I have a feeling that TWA and Pan-Am any place could run them off the map.

Mr. BOYD. Well, now, on that, Mr. Springer, this is where the arbitration comes in. If the rates or the fares that the Board wants to see are not just and reasonable for the carriers operating the market, then they should go before the Board of Arbitration and say, "Look, we cannot do this because our costs are thus and so."

But I would want to say, "All right, gentlemen, break out your costs. How much of it is national interest?"

Then I would say to the Board of Arbitrators, "Gentlemen, this is a burden of the government, not a burden of the traveling public."

Mr. SPRINGER. But I do not believe you are going to be able to apply just and reasonable as you have to domestic carriers of 10.5 percent and still expect foreign governments to compete upon the same basis that we do with more efficient administration. Now, is that not about right?

Mr. BOYD. Well, no; I think the foreign carriers have the capability of operating as efficiently as ours. So I cannot agree with you.

Mr. SPRINGER. Do you believe that their government corporations do operate as efficiently as ours?

Mr. BOYD. Well, I cannot give you anything to support it. I would say insofar as some of them, and I'll have to use small ones, insofar as Aer Linte, the Irish line is concerned, for instance, I think it is

one of the most efficient ones I have even seen. Swissair, yes, sir. Pakistan International Airways, yes, sir.

Mr. SPRINGER. You are picking off the cream of the crop, I will admit. That is true.

The point I am trying to get is, if you are going to apply this criterion which you are now employing with reference to domestic air carriers, you are going to put a limitation of roughly 10.5 percent on them. If you are going to do that, you are going to drive fares down, because if somebody made 22.5 percent last year and somebody else made 12 or 13, or whatever it averages out, you are going to drive fares down under your formula.

Mr. BOYD. Yes, sir.

Mr. SPRINGER. Now, the point is can these other governments, and will they, concede and go along? This is not the point that in all your faremaking, you are going to get. This is the point, as I get your testimony, that you are driving toward.

Mr. BOYD. Let me say this: We have no specific fares in mind. We are not champing at the bit, Mr. Springer, to go out and say, "Boys, here are a series of fares that are all stepped down from the existing fares." We do not have any such concept.

Mr. SPRINGER. I understand that.

Mr. BOYD. However, please bear in mind now, that the fares are down from last year. The traffic is up far more than it costs to compensate for the reduction in the fare. So that the net earnings of the carriers should be up considerably this year, and it certainly should be a relative thing based on what they did last year. As the jets become more economical, we think the fares can go down, the carriers can earn their money, and we cannot say that BOAC has to be limited to 10.5 percent. But I will venture to say that the United Kingdom would be happy to have BOAC making 10 percent.

And bear this in mind, too, Mr. Springer. We are looking at this in terms of discussing legislation pretty much in a vacuum. The figures that I have are that the air fare represents just about one-third of what travelers spend in various countries. Aviation has as its major interest getting people to move from country to country, and the more people who go from here to Europe, the greater amount of dollars goes into the coffers of those governments. So lower fares are something which they are interested in, also, within reason.

Mr. SPRINGER. The point I am trying to get to here is whether or not—two points: You can do what you apparently intend to do, and that is to lower fares. Ultimately, that is what you have in mind.

Mr. BOYD. As conditions—

Mr. SPRINGER. I do not think that these companies can compete upon the same efficient basis that TWA and Pan-Am do. I have watched them in operation. If you want to name three that are, I will agree and I might throw SAS in on top of that. I am talking about the average government corporation, and we have them all over the world, that is operating at a deficit. Practically every country that wants any aid from us, the first thing they ask for is a steel plant: the second thing is an airline.

Mr. BOYD. Yes, sir.

Mr. SPRINGER. When you are talking about a rate of 10.5 percent. I take it this is the whole picture of what you think is just and reason-

able, and I do not know that I find any fault with that. It sounds to me like a fair rate of return. But the other carriers have not conceded this. It seems to me you are going to have to drive fares down.

The other point is, and this is the point I am not sympathetic to, and that is fares by negotiation at the State Department level. This is what I think you are going to get into under (g) and (h), rather than as it has been up to the present time, by IATA, which has not done a bad job.

The third thing I am coming to is that just watching Mr. Chayes, that is exactly the same thing they are going to do with fares, what they have done on routes, and that is work them on the basis of diplomacy. I do not think fares should be worked like this. It was true under Mr. Truman—I have seen this for the past 14 years. It was true under Mr. Truman, it was true under Mr. Eisenhower, and has been true under President Kennedy and President Johnson in the last 4 years. I do not believe this is the way you ought to give away somebody else's economics, as a card in diplomacy.

Mr. Boyd. Well, Mr. Springer, the thing that we believe is that if we get this legislation, in point of fact, it will seldom, if ever, be necessary to go through the procedural steps of lowering the fares. Now, this we believe. We cannot prove it to you, though. But this is why we want this legislation, and we have no desire to blackjack anybody, provided—well, in any event, we do not want to do that. But we think we can make a case that fares should be lowered, and we shall do that before we say we think fares should be lowered.

I have this backward. Let me say it this way: We think we are responsible at the CAB, and before we would say to our carriers, "Go to IATA and lower the fares," we would be able to present a case to show that (a) the carriers could earn as much or more money with lower fares, and-or (b), that the earnings of the carriers available to us were all exorbitant—I should not say all exorbitant, because you will always have some cripples, but that the carriers carrying the bulk of the traffic are earning exorbitant earnings.

Mr. SPRINGER. Mr. Chairman, I am inclined to agree with you, and I have been impressed with the way you are presenting this, and I feel you are telling the truth. What I am concerned about is when you go to IATA, it merely says, "Well, I have talked to somebody in the State Department, and they have said let IATA go on by, we shall work this out with you in December or next February."

Now, this is the kind of thing that went on in the air routes, because I know something of the history of air routes. This is another part of it that disturbs me, and I know that as far as you are concerned, you are going to do exactly as you say you are going to do, because I think the CAB is so wrapped up in this that this is what they are going to do.

I think this is exactly what Mr. Chayes was making out there, that this is an overriding concern in the art of diplomacy, to be able, in the end, to have control of this thing in their hands when they are handling the agreements.

Mr. Boyd. Well, I cannot allay your fears about the State Department, because I am sure there is nothing I could say that would change your mind. So I shall not try to do that.

But I will say this: Mr. Chayes said this morning that it would be impossible to set fares between two countries, and he is exactly right, because all of these fares are tied. You cannot set fares for two countries. They have to be set so that they cover the globe, in effect.

Actually, there are three conference areas for the world, and the fares all have an interrelationship, and you just cannot do it, one country with another country. There is no way for it to be done effectively.

The second thing is that if we had had this legislation last year, there would have been no reason for the State Department to be involved in it, because what we were talking about last year was not lowering fares at all, it was maintaining the status quo. What we were opposed to was an increase in fares. We were not trying to lower fares last year.

Mr. SPRINGER. All right, let me ask you this: Suppose you have the power of suspension under (f), with a limitation of time to negotiate?

Mr. BOYD. Yes, sir.

Mr. SPRINGER. Where are you with that?

Mr. BOYD. Well, I think you are at a dead end. You have a limitation of time, and you give us suspension power under (f) for a limited period of time so we can negotiate. You have just put a gun to the head of the U.S. Government.

That is exactly what you have done, because if we do not agree on fares by the time the suspension period is up, the other fares go in. So I say you have killed us with kindness.

The CHAIRMAN (presiding). Will the gentleman permit a question?

Mr. SPRINGER. Yes.

The CHAIRMAN. Suppose you had suspension powers under (f) with a limitation of time for a negotiation, at the end of which time, authority for (e) would come into being. How would that work?

Mr. BOYD. Well, I would say if it could be done, it would certainly be better than where we are today, and better than having suspension power alone. However, I am just at a loss as to the concern that the committee has over granting the Board powers in (e). I am at a complete loss to understand that. But I obviously have not thought about combining suspension and ratemaking powers, so that you would operate under (f) for a while and then (e) for a while.

I do know this, Mr. Chairman, that the Senate Commerce staff last year spent an incredible amount of time trying to combine the CAB concept and the ATA concept, and finally concluded that it could not be done.

Now, I do not know what that is authority for, but I do know that there was an effort made to do it and it was finally concluded that it was unworkable. I do not know their reasons for concluding that, but I do know they reached that conclusion.

Mr. SPRINGER. Well, suppose in this instance of a year ago that you had had the power of suspension. That did not put any gun at your head, did it?

Mr. BOYD. No, but you see, what would have happened would have been that we postponed the inevitable day when the fares went up. And bear in mind, the reason we did not want the fares to go up, and we felt the fares should come down, was that the economics of jet oper-

ation was such that the passengers, we felt and still feel, were entitled to part of the break.

Mr. SPRINGER. All right, may I ask you this, Mr. Boyd: They said you could not fly into Britain. You said you wanted lower fares.

Mr. BOYD. We wanted to maintain the status quo.

Mr. SPRINGER. All right. You wanted to maintain the status quo. They want it to go up, is that correct?

Mr. BOYD. Yes, sir.

Mr. SPRINGER. All right, what did you get out of it?

Mr. BOYD. Well, as it turns out, we got fare reductions that went into effect the first of April of this year that will, according to our projections, amount to a saving of about \$50 million for the American traveler.

Mr. SPRINGER. What percentage of reductions did you get? Did you say 13 percent?

Mr. BOYD. I think it averages out to about 13 percent.

Mr. SPRINGER. You did not have any of those powers at all and you get a 13-percent reduction. How do you account for that?

Mr. BOYD. Well, a purely personal opinion, Mr. Springer. The governments of the other countries who were involved suddenly woke up and realized that they had taken a very strong and somewhat arbitrary stand, even though they were acting within the color of the law. And I think not only the color, but they also had the power to do what they did. They looked at the picture, and decided that we were going to be around a long time and it was not healthy for us to be bitter.

Another factor that enters into it is that our U.S.-flag carriers, Pan Am and TWA, were the recipients of a real bonanza, because a great many Americans like to travel on foreign-flag carriers and have been avoiding Pan Am and TWA. But these same patriotic travelers, when it became apparent that Pan Am and TWA preferred lower rates, started moving back on Pan Am and TWA. This scared the dickens out of the foreign carrier operators, I think.

Mr. SPRINGER. All right, Mr. Boyd. It seems to me the proof of the pudding, and what powers you need, is what has happened. Now, you have made a good case for lower fares. You presented a very good case, as I understand it. And you negotiated a 13-percent overall reduction in rates with no increased powers of any kind. Now you come back here and say that we cannot operate, we want lower rates, we cannot get lower rates because we do not have those powers.

That is in essence—you are saying, of course, our air carriers would not have been able to land, we would not have been able to keep BOAC off. But you have negotiated 13-percent lower rates without any additional power at all. It is very strange to me that you should come back and ask for these additional powers now in order to get lower rates.

I yield to the chairman.

Mr. BOYD. If I may comment on that, Mr. Chairman, I will say that we feel very happy that we are able to negotiate lower rates. But we think that you have to look at that as being in the context of the crisis that developed last year, and believe you me, Mr. Springer, here is one young man who does not want to go through that again, re-

ardless of what the ultimate benefits to the U.S. traveler are. What we are trying to do in seeking this legislation is to get into an orderly situation and not one where everybody gets their fists curled up and stands back and wants to fight. That is no way to do business.

Mr. SPRINGER. I yield to the chairman.

The CHAIRMAN. You say a 13-percent reduction. From what?

Mr. BOYD. Mr. Roth.

Mr. ROTH. I believe it was a 13-percent reduction from the fares that were in effect before the—no, from the Chandler fares, the Chandler agreement that went into effect for about 6 or 8 weeks, just about this time a year ago. Today's fares are about 13 percent below that, and we think they are about 10 or 12 percent below the fares that were in effect in the fall and this past winter.

The CHAIRMAN. Well, I think that still leaves the record uncertain. Are the fares higher than they were before the Chandler conference?

Mr. BOYD. They are lower than they were before the Chandler conference.

The CHAIRMAN. And the Chandler conference would have granted higher fares than they were at the time?

Mr. BOYD. That is right, an average 5-percent increase.

The CHAIRMAN. And the Chandler conference was an average 5-percent increase?

Mr. BOYD. That is right. The agreement at Chandler resulted in an average 5-percent increase in the then existing fares. The fares today are roughly 13 percent below the Chandler agreement; yes, sir.

The CHAIRMAN. Which is about 8 percent, then below what they were before the Chandler conference?

Mr. BOYD. That is about right, sir.

Mr. SPRINGER. They are about 8 percent below what they were in 1963.

Mr. BOYD. 1962. They are about 13 percent below what they were in 1963.

The CHAIRMAN. I wanted to be sure where the 13 percent came from.

Mr. Watson, do you have any questions?

Mr. WATSON. No questions, Mr. Chairman.

The CHAIRMAN. Mr. Younger?

Mr. YOUNGER. Yes, there is one question that disturbs me.

You say that this retaliatory right does not have any place in this business. I am quite sure that before too long, they are going to grant a route to the Russian fliers. Already, they are sailing the seas in commerce. They will not and do not join the conference and they will not observe conference rates. They are cutting the heart out of any rates that they want to, and that is, of course, what they will do if you grant them the route over here. That is their history.

Now, having granted the route and so forth, and then this thing happens, you say that there would be no advantage in any retaliatory rights.

Mr. BOYD. Mr. Younger, you have picked the exception to the rule.

Mr. YOUNGER. But those are the things that cause trouble.

Mr. BOYD. As you may recall, there is an agreement now between the United States and the U.S.S.R. on air transportation between Mos-

cow and New York. That agreement was initialed but has not been executed or signed.

That agreement has, as we understand it, precise provisions pertaining to fares. Here it is possible to have a bilateral situation because the Aeroflot is not a member of IATA and because the routings are terminal-to-terminal, Moscow to New York and no beyond rights. So there is no other carriage involved there. That agreement, I am advised, has very specific terminology about rates and fares which are completely satisfactory to the United States, including the U.S. carrier involved, and they are not in any sense related to the normal Bermuda-type agreement.

Mr. YOUNGER. Do you have any idea at all that having signed and initialed such agreements, they will observe them?

Mr. BOYD. Well, I can say only this, Mr. Younger. We have discussed with a number of countries and carriers who do operate to and from Moscow, and the information we get is that they have adhered religiously to the agreements they have made with these other countries.

Mr. SPRINGER. Would the gentleman yield for a question?

Mr. YOUNGER. Yes.

Mr. SPRINGER. Is this an executive agreement or is it a treaty?

Mr. BOYD. It is an executive agreement, Mr. Springer.

Mr. SPRINGER. And it will not be made public until such time as it is signed by the two parties?

Mr. BOYD. So far as I know, that is the case.

Mr. SPRINGER. And it has not been made public yet?

Mr. BOYD. Not to my knowledge.

Mr. YOUNGER. The feeling that I have in regard to these routes is they are going to be granted, and I think as soon as they are operative, you are going to have more problems than you have now. You may want some retaliatory powers.

Mr. BOYD. My understanding, Mr. Younger, is that the fares must be agreed among the two air carriers as a condition for either to operate to the other country.

Mr. YOUNGER. Well, I am one of those who feels that just having an agreement, I do not care what kind of an agreement is entered into between the air carriers, whenever it becomes the advantage of Russia to change the fares, they are going to do it, and we are going to be in the same position we were with Great Britain. They will kick us around and then threaten to cease our carriers and then we will go into long negotiations and come out the loser.

Mr. BOYD. I guess what I am saying, Mr. Younger, and I have not looked at this agreement for a couple of years, but I think what I am telling you is that in the agreement with the Russians, there is retaliatory language already stated, set forth.

Mr. YOUNGER. Then you will have to admit, Mr. Chairman, that somebody else has felt that there ought to be retaliatory procedures.

Mr. BOYD. Yes, sir; or, sure.

Mr. YOUNGER. You said a while ago that you did not think retaliatory provisions had any bearing on this whole negotiation of international rates.

Mr. BOYD. That is right, and I adhere to that in terms of the countries with whom we have the Bermuda agreements. My point is this,

that had we possessed the legislation in 6400 last year, there would have been no question of retaliation because there would have been no action taken in the first place that would have led to any desire or need for retaliation.

Mr. YOUNGER. And it was the attorneys of the Board that made the recommendations to the State Department and the President that the President had no power whatsoever of a retaliatory nature?

Mr. BOYD. No, sir.

Mr. YOUNGER. Then you disagree with—

Mr. BOYD. No; I do not disagree with what Mr. Chayes said.

Mr. YOUNGER. He said it came as a recommendation from your Board.

Mr. BOYD. No, sir; as I understand him, what he said was that the President had recommendations from the CAB and from the State Department as well as he figured from the carriers and others of the Congress.

My statement is this, Mr. Younger: The only thing the CAB has said along this line is the CAB does not have any such power. We have said this to the Senate; we have said this to everybody, and I adhere to it.

Mr. YOUNGER. We can check the record afterward, but I think the reference that you made about having the recommendations of the CAB and the State Department and the carriers was in the question of his decision when we raised the point as to what information did he have on which to make a decision other than some recommendations of the State Department. And Mr. Chayes said no, that the President has these three organizations to advise him so that he does have more than one recommendation. But when it came to quizzing him about where this recommendation came from, in regard to his inability to act, I think you will find that he stated that the recommendation came from your Board.

Mr. BOYD. Well, I have no desire to differ with Mr. Chayes. But if that is what he said, my testimony, regardless of what he said, is this: The CAB advised the President that the CAB had no power to retaliate. We did not nor do we arrogate to ourselves the right or the privilege to say what power the rest of the Government may have.

Secondly, my testimony is that I do not know what information the President has.

Mr. YOUNGER. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Nelsen?

Mr. NELSEN. I was interested in the reference made to the fact that Russia was not a member of IATA. Now, is the membership in this organization limited? What would a country do to become a member?

Mr. BOYD. It is my understanding, Mr. Nelsen, that any international carrier may become a member of IATA by applying therefor and paying the fee, which is based, I believe, on the route miles operated by the carrier. It is not an exclusive organization, and I believe—in fact, I can say with certainty that the IATA organization has made overtures to Aeroflot to become a member.

Mr. NELSEN. Going through this air service agreement, I have not carefully studied it, but the thing that strikes me is that in it are the various articles and also an appendix. It would seem to me that in the event that we enact the legislation that passes to the State Department

and the President the ratemaking and suspension authorities, to a degree, are we not negating the effectiveness of the IATA agreement and all of the contingencies that are contemplated by language in it?

Mr. BOYD. Our position, and this, I am sure, is the position of the State Department, is absolutely no, we are not negating in any sense the function of IATA.

Mr. NELSEN. Well, the language would indicate procedure for negotiation on rates and what the contracting parties are to do, and earlier you mentioned a reduction of 13 percent in rates.

Mr. BOYD. Yes, sir.

Mr. NELSEN. Now, this rate, the increased rate that was proposed, was that a rate that resulted from a conference of the IATA group?

Mr. BOYD. Yes, sir.

Mr. NELSEN. Then when it was all over with, you finally negotiated a rate that was even below the rate that previously existed prior to the increased rate by virtue of the IATA agreement?

Mr. BOYD. Yes, sir.

Mr. NELSEN. I want to compliment you for having kept your perspective on that.

Mr. BOYD. Thank you.

Mr. NELSEN. I have no further questions.

Thank you, Mr. Boyd.

The CHAIRMAN. You mentioned a moment ago that you could not understand the committee's concern over giving the Board ratemaking authority. You are familiar with the fact that the Board has been trying for the entire life of the Board, almost 25 years, to get this authority, aren't you?

Mr. BOYD. Yes, sir; and I have never understood it, so I am in no different position than the Congress is in not having passed it over 25 years.

The CHAIRMAN. Well, you should get one of those fine, capable young lawyers that you have down there with you to go back and read the record when the CAB was established. You will find out why we did not give them ratemaking authority.

Mr. BOYD. Well, I have, in fact, done that, Mr. Chairman. What I find is, as I recall, that there was discussion on international rate legislation at the time the Civil Aeronautics Act of 1938 was enacted. At that time there was little, if any, international air travel to and from the United States, and the consensus was that there was no need at that time for rate legislation.

However, at the time the legislation was enacted, the CAB was requested to make a study and to report back to the Congress as to whether or not there was a need for international rate legislation. This the CAB did, and in 1939 the Board reported back and said, essentially, the situation is as it was last year, and we do not have enough information to indicate that there is any need for international rate legislation.

In 1942, the Board came in and said to the Congress, "Gentlemen, we have changed our mind, and there is a need for that." That was during the period of the war. Nothing was done then, and since the war we have been trying more or less consistently to get legislation, and we have never gotten it, and nobody has said why "we ain't got it," but "we ain't got it."

The CHAIRMAN. Well, a man that is as knowledgeable and intelligent as you are and the Board could only just sit down for a few minutes and think through this thing, and it seems to me come up with the reason why. There is a principle that has been developed over the years and has grown up. The bilateral agreement, the Bermuda agreement recognized the organization that was established, already established under the law at that time. The 1944 conference out at Chicago recognized the international organization which became IATA, and that was the method that came up by which these rates would be determined.

The principle, of course, that developed was, would the carriers be permitted to do it, or would the governments be permitted to do it? Now that is precisely the reason that there has not been this authority. And that is the big issue here today. The carriers feel that they are operating in private enterprise and that they are responsible for sound management and operation. There is an international situation that is different from the domestic. I do not have to go through all that. You know it so much better than I do.

But that is the primary concern of this committee as to whether or not we are going to make a fundamental change in Government procedure with the establishment of regulation of the rates on international routes where, throughout the years, we have had an organization set up to come to a determination and agree among themselves.

Now, I am pretty strong for that procedure. What bothers me is when that procedure breaks down, where do we go? From my viewpoint, I think that is where the Board should be concerned, and that is the reason I asked a moment ago, suppose you let IATA work. It has been testified here that it was intended for it to continue to work. Well, now, I may not know very much, but I know this, that you cannot have two organizations set up with authority to do the same thing, because human nature works in every place. I do not care whether it is IATA or whether it is the Civil Aeronautics Board. And you cannot have two organizations set up to do the same thing unless the ground rules are laid down for them.

Now, what would be wrong with giving IATA a chance to work, let it proceed, and then if something goes wrong, the Board power could be invoked? Even if you had this authority, I do not see how it could change the situation you have with Mexico. You have entered into an agreement, I suppose—a treaty, is it not?

Mr. BOYD. An executive agreement.

The CHAIRMAN. Is it not one of those considered to be treaties approved by the Senate and therefore law?

Mr. BOYD. No, sir. It is not a treaty.

The CHAIRMAN. Nevertheless, why would not it be a good procedure to let these regular traditional procedures work if they would, and if not, when you get into a difficulty like you had with the United Kingdom, have the power to suspend and then say to them, "There is a certain length of time in which you can settle this thing, or, if not, the Board is going to have the legal authority to step in and say, under those circumstances, 'We fix the rates'?"

Mr. BOYD. Well, Mr. Chairman, we are just at a complete impasse, and either I have failed completely to make a case, or the committee

just completely disbelieves what we have said. Because the whole thrust of our testimony has been to the effect that IATA would continue to be the way to set rates. We have no interest, no desire, no facilities to start setting rates.

The CHAIRMAN. Well, you are asking for it here.

Mr. BOYD. We are asking for it as backup power, as an option. Because what you say leads me to wonder if we have not transcended the authority Congress gave us by in any circumstances disapproving an IATA agreement.

The CHAIRMAN. You certainly disapproved the one out at Chandler.

Mr. BOYD. And we have disapproved others, but from what you say now, it makes me wonder if we are not transcending the boundaries of our authority by doing that.

The CHAIRMAN. No, I do not think so at all because the Civil Aeronautics Act or the Federal Aviation Agency Act provides that you may disapprove; always has.

Mr. BOYD. The question then is, What happens after we disapprove?

The CHAIRMAN. Then the bilateral agreement comes into effect just like it did last year in the situation with whatever country was involved. But you say you are stopped there, you cannot even suspend.

Mr. BOYD. That is right, sir.

The CHAIRMAN. Well, if by not letting the procedure work as you want it, come up and we shall give you the power to suspend. Then if you cannot make it work by a negotiated conference, I believe as much power as the United States has—regardless of what other people say, I am still of the opinion that the United States has a lot of power throughout the world. I do not believe we are losing every time we turn around. Our plants and our industry, our exports, our commerce, our trade, could not keep on growing and expanding if all of these allegations that are made were true about how we are being defeated every time we turn around.

Mr. BOYD. I am certainly not a party to any of those allegations.

The CHAIRMAN. I think if there is a chance that it will work whenever there is somebody with authority behind it to see that it works, it will work.

Mr. BOYD. The thing I am talking about, Mr. Chairman, when you talk about giving suspension authority, you have something behind it. I would say, certainly we would rather have suspension authority than nothing. But all you are saying is you have the power to keep the status quo for *x* months or days, however you want to phrase it, and then, regardless of what happens, the other government, or the other carrier of the other government, goes ahead and puts its rates in.

The CHAIRMAN. How can they put the rates in if you have the power to suspend them?

Mr. BOYD. Because the suspension power has to be for a limited time. At least I presume it has. It should be for a limited time. Otherwise, you do not have a basis for reaching an agreement and the whole basis of the idea is to reach some sort of an agreement sooner or later.

The other thing I would like to point out is that IATA is the rate-making machinery effectively for the carriers of other governments. It does not seem to have inhibited the other governments from giving them the power, from providing themselves with the power, to fix rates in the event IATA did not function.

The CHAIRMAN. Well, I do not understand that, because you had your conference out here, and you disapproved it, and you had this confab with the United Kingdom, and then you came up with an 8-percent reduction in rates, and IATA did not meet again.

Mr. BOYD. Yes, sir; they met again. They met three times. The rate that we have today is an IATA rate. It is the result of two meetings—

The CHAIRMAN. Reached when?

Mr. BOYD. Well, it was reached about the time that the thing went into effect, about the 1st of April. But in the meantime, there had been—well, there were four meetings, actually. There was one in Montreal, two in Salzburg, Austria, and one in Nassau. After the Nassau meeting, a package was developed which was generally satisfactory except for a couple of items which involved the traffic between the United States and Israel, primarily. And the Israel carrier held out.

The CHAIRMAN. Has there been any meeting since the Salzburg meeting last October?

Mr. BOYD. Yes, sir; in Nassau.

The CHAIRMAN. When was that?

Mr. BOYD. It was held in December.

The CHAIRMAN. And did they come to a successful conclusion at that time?

Mr. BOYD. The fares in effect today are essentially the fares that were agreed at Nassau. However, as I said, there was a problem the Israel airline had which caused it to vote against the agreement. Subsequently, or or about April 1, by a mail vote, that disagreement with the Israelis was worked out, and they came along. So now there is unanimity, and there is an IATA agreement involving traffic over the North Atlantic, approved by the CAB as well as other governments.

The CHAIRMAN. Well, that report I did not know about. I knew they had the Salzburg meeting at which they disagreed.

Mr. BOYD. Yes, sir.

The CHAIRMAN. I knew they set up a committee to go back and try to work it out, and they got an agreement with the exception of a few of the Middle Eastern countries, two or three of them that would not go along.

Mr. BOYD. That was related to the Israel thing.

The CHAIRMAN. Then I was not aware that the Nassau Conference took place in December.

Mr. BOYD. Yes, sir.

The CHAIRMAN. And as long as Israel held out, the Nassau Conference could not become effective; is that right?

Mr. BOYD. That is right, sir.

The CHAIRMAN. But the governments did go ahead and put into effect the rates that were agreed to?

Mr. BOYD. That is right, sir.

Now, to be precise about this, the Israel objection was not related to fares, it was related to stopover privileges.

The CHAIRMAN. Well, I thought it was related to coach fares or all tour fares.

Mr. BOYD. No, sir; it was related to stopover privileges for group fare passengers.

The CHAIRMAN. Well, I knew it was related to group fares as against the higher rate. But I was not aware that it was related to merely stopovers.

Mr. BOYD. Yes, sir.

The CHAIRMAN. Well, since Mr. Springer pursued that, then, why would you be better off with the authority which the carriers object to?

Mr. BOYD. Well, all we can tell you is what we have, Mr. Chairman, and respectfully disagree with the carriers. We think the carriers would be better off.

The CHAIRMAN. If you had that authority, would not that supplement them, then? You say not. But under the law, would it not work? How could it keep from supplementing the IATA procedure? You could not ignore that if the law directed you to fix the rates; could you?

Mr. BOYD. Well, as I recall, the power expressed in 6400 is discretionary power.

Mr. SPRINGER. That is right, Mr. Chairman. That is the next question I want to ask him when you get through.

The CHAIRMAN. You may right now.

Mr. SPRINGER. S. 1540 purports to give the CAB power sufficient to activate subsection (e) of the Bermuda bilateral which becomes effective if the CAB gets power over foreign rates comparable to its power to fix domestic rates; yet, 1540 says the Board may alter the same foreign rates by the domestic laws under which the Board shall determine and prescribe a lawful rate.

Now, is it your opinion that those powers, "may" and "shall," are sufficiently comparable to activate (e)?

Mr. BOYD. May I read you an answer that I have had prepared, and I believe it will cover your question?

Mr. SPRINGER. All right.

Mr. BOYD. As the statement of purpose submitted with the bill shows, the intention of the Board in submitting the bill was to provide that the new rate powers will be discretionary rather than mandatory. Greater flexibility is required in the national interest in the field of international air transportation and, in addition, section 1102 requires that actions of the Board must be consistent with outstanding international agreements. The word "may" was used to indicate this intention. If there is any particular phraseology or language which would accomplish the purpose more aptly, the Board will of course have no objection to modification.

I should add that it was not our intention, however, to give the Board such complete flexibility that on completion of the proceeding, the Board could ignore the record in the proceeding in reaching a solution or dismiss the proceeding without explanation. The particular, indeed the sole, discretion which was intended was that of permitting the Board to take action or withhold action after taking into consideration the peculiar and difficult aspects of foreign ratemaking, especially the need to reach an agreement in one way or another, which it seems to me is an effort on our part to express our intention to the Congress and to the carriers that this would be a supplementary or second step proceeding, Mr. Chairman, one that would not be utilized unless other measures failed.

That is the whole purpose of this game.

The CHAIRMAN. In other words, you say that you have in mind carrying out exactly what I outlined awhile ago that I thought we should do.

Mr. BOYD. Absolutely, and we think that 6400 is the way to do that.

Mr. SPRINGER. Well, now, you may alter the foreign rate; is that correct?

Mr. BOYD. We may involve ourselves in ratemaking or we may not involve ourselves in ratemaking. The whole purpose of this, as I said—

Mr. SPRINGER. If you do involve yourself, what are you bound to?

Mr. BOYD. If we involve ourselves, we are bound to establish rates which we consider to be fair and reasonable consonant with the economic considerations with which the Board is familiar.

Mr. SPRINGER. Why are you not using the word "shall"?

Mr. BOYD. Because we do not want to get into the ratemaking business so long as IATA can function. That is the simple and straightforward answer, Mr. Springer.

The CHAIRMAN. Why could not we say it in the language that way?

Mr. BOYD. Well, I am sure that it could be worked out.

Now, I want to add one caveat here, and that is if we get into the situation where the IATA people want to raise the existing fares, and we do not think they should be raised, we will still disapprove them under section 412. Then we would be in a position of either sitting tight or going into a fare proceeding.

Now, our intention, I can assure you, Mr. Chairman, would be that we would not go into rate fixing on our own, that we would expect IATA to then reconvene and reach an agreement.

Mr. SPRINGER. You mean after you have already taken jurisdiction?

Mr. BOYD. Well, this is a different jurisdiction, Mr. Springer. This is under section 412 of the act which has to do with the approval of agreements. It is not a ratemaking section.

Mr. SPRINGER. I understand. I thought you were talking about the section which I was talking about here which says you may alter the foreign rate. That is not under 412, is it?

Mr. BOYD. No, sir.

Mr. SPRINGER. That is under 1540, is it not?

Mr. BOYD. Yes, sir.

Mr. SPRINGER. All right. But it says you may alter the foreign rate. The domestic says you shall determine and prescribe the law.

Mr. BOYD. Yes.

Mr. SPRINGER. You are saying, however, that after you put "may" into operation, then your duty is the same as on the domestic part. Is that correct?

Mr. BOYD. No, sir. What I am saying is this, that if we disapprove an IATA agreement under 412, we would then expect IATA to reconvene to try to reach an agreement consonant with what we state in our disapproval. If that could not be done, then we would expect to go into this.

Mr. SPRINGER. I am sure I missed it, because then you are at the point where it looks to me like you shall do something and you are still using the word "may." At the point where IATA has to act, then you want to use the words "may alter," and you do not say "you shall" do it.

Mr. BOYD. We put the "may" in so there would be flexibility. The

point here is that if we say "shall," then I think what the Chairman fears would be realized, that if we said "we shall," then I think we would be in a position where we would be forced to take action without regard to IATA. And that is not what we want to do.

Mr. SPRINGER. But the point you would make here is that you are going to give IATA a chance to work.

Mr. BOYD. Sure.

Mr. SPRINGER. But what you are saying is you would not use this language until after IATA had already failed to act. Then you come along with the word "may" at that point, after IATA has failed to act. Is that correct?

Mr. BOYD. No. The "may" is stated in such a way that the Board has the discretion to decide at what time procedures of ratemaking should come into effect.

Mr. SPRINGER. All right. Then you are saying something different. You are saying that you have the discretion to decide at what time. I did not understand that from what you said a moment ago. I thought you were taking this in three steps. You were taking first the disapproval of the previous agreement.

Mr. BOYD. Yes, sir.

Mr. SPRINGER. The second step will be, then, that you give IATA a chance.

That is not in the statute, is it? This is what you are saying to us that you intend to do as a procedural matter, correct?

Mr. BOYD. That is correct, sir.

Mr. SPRINGER. Then at the time that this begins to operate, you are using the word "may" at that point. That is something different from what I understood you to say a moment ago. You are saying this is a discretionary matter which arises immediately after the disapproval of the rate which IATA has agreed on.

Mr. BOYD. Well, I am not trying to confuse you, and I am certainly not trying to confuse myself here. If I may say this, in the normal situation we would expect that this statute would have no effect whatsoever. In other words, we expect IATA to reach agreements which come up with fares that are fair and reasonable and which the Board feels are within the zone of reasonableness. We can, therefore, approve them under section 412 of the act. We expect that to be the normal case, and 6400 would not be involved in any way, shape, or form under that circumstance.

Mr. SPRINGER. Just a moment. Let me say this to you. Suppose 10 years from now you are gone from the scene and all the rest of the members are gone. Would it be possible to disapprove IATA's agreement, we will say the Chandler agreement, and immediately enter a rate proceeding?

Mr. BOYD. Yes, sir.

Mr. SPRINGER. Without doing anything further?

Mr. BOYD. Yes, sir.

Mr. SPRINGER. This is just another step. I think you are sincere. I think you will do exactly what you say you will do. But I am just a little concerned about some of these eager beavers I see heading up some of these commissions, and the first thing they would do would be to land on this thing and say, "We will fix the rate" without any further discretion.

Do you see how these things arise? This is why I want to iron out whether this was a procedural step guaranteed to IATA or whether this is a discretionary step, and I think you have now explained it to me that it is a discretionary step. The logical thing in working it would be that if you were to disapprove the rate, you would start the proceeding immediately then.

Mr. BOYD. I think the Board would be perfectly willing to say that this would come into effect on IATA rates after IATA has had one or two chances.

However, I would hope that the committee would bear in mind that we do have some problems in some areas where we have no Bermuda-type bilateral and where there are carriers who do not belong to IATA. Actually, my guess is, and this is purely a guess, that we tend to have more problems in those areas today than we do with the IATA operation. So in any modifications that you may desire to make in 6400, I hope you will bear in mind that when we are talking about IATA, there are some carriers who are not going to be members of IATA and not tie our hands there, if that can be done.

Mr. SPRINGER. Just one thing. I am trying to cover fundamentals quickly. Do you feel that in the years IATA has been in operation, it has been a relatively successful operation?

Mr. BOYD. The only way I can answer that is "Yes."

Mr. SPRINGER. Has it had due consideration for the public interest, also, in setting rates?

Mr. BOYD. I would say more often than not, Mr. Springer. But not entirely, by any means.

Mr. SPRINGER. Now, let me ask you, has there been any other example that you can point to during your stewardship down at the CAB when you felt that you had to have this power that you are asking for other than a year ago?

Mr. BOYD. I do not recall any.

Mr. SPRINGER. Now, Mr. Chairman, may I cover just one further thing and I am through?

In 6400, you are requesting essentially a veto power by the President. Now, do you favor that as Chairman of the CAB?

Mr. BOYD. That is the CAB position, yes, sir.

Mr. SPRINGER. Why would you, as Chairman of the CAB, believe that you and you alone are not competent to set a fair rate in the public interest?

Mr. BOYD. Well, Mr. Springer, I do believe that I and the Board are competent to do that.

Mr. SPRINGER. And you would, would you not?

Mr. BOYD. Yes, sir.

Mr. SPRINGER. Now, once a fair rate is set in the public interest, and I am talking about not only our public interest, but flying generally for people who use it, either our citizens or citizens of other countries, why would it be necessary for anyone to either veto it, modify it, or send it back to you unless there has been some contradiction or violation of the law?

Mr. BOYD. Well, I think there would be no question, it seems to me, about the President saying to the Board, "The rates you set are not reasonable." The point that Mr. Chayes made, and one with which we certainly do not disagree, is that there may be occasions when,

particularly in a small country where the airline looms much larger than it does normally, the airline would consider the rate to have an adverse effect or that the government would consider it to have an adverse effect on its airline company. Under circumstances which I certainly cannot relate, this could conceivably create a problem in the national interest not related to aviation which would cause the President to say, "Boys, I do not think you had better do that now."

Mr. SPRINGER. Now, you said a moment ago, as I understood it, that all these rates had to be approved in a bundle.

Mr. BOYD. Yes, sir.

Mr. SPRINGER. Do you feel the President should have an opportunity to cut a piece out of the bundle and—

Mr. BOYD. As a practical matter, I do not see how it could be done.

Mr. SPRINGER. Then he cannot do that, is that correct?

Mr. BOYD. I do not know, but I cannot conceive of any one President or anyone else being able to cut out one country's rates.

Mr. SPRINGER. Let us take last fall as an example of what I am talking about, and that is what the President wanted after that because he was in an embarrassing situation. He wanted the ability at that point, because he was embarrassed by the fact that planes could not land in London and everybody was writing editorials, "Why in the hell can't our planes land in London?" He said, "I think this agreement ought to be modified. It ought to be changed in some way, suspended or sent back to the CAB for the hearing." That in essence is what he would have said if he had this power.

This is a fundamental point, Mr. Chairman, may I say, between us here who give this authority to you as part of our legislative power, that the President in the White House, I do not care whether he is Republican or Democrat—I had the same trouble with Mr. Eisenhower—to give him the power to say no down there after we have given you the power to do what we believe you ought to do and you have done what you believe ought to be done in the public interest, then somebody can use that as a bargaining power or leverage power in diplomacy to getting something done. This is the fundamental difference between many of us on this committee as to our fundamental belief, and I want to have your opinion about whether or not you felt they ought to have this.

Mr. BOYD. That is certainly the position of the Board, Mr. Springer.

Mr. SPRINGER. Did you arrive at this separately or did you arrive at this after discussion with the State Department?

Mr. BOYD. Oh, my recollection is that we did not discuss this with the State Department prior to the legislation.

Mr. SPRINGER. You mean prior to—I suppose you had a vote on this, did you? Or have you had a vote on this?

Mr. BOYD. Yes, sir. You mean the Board?

Mr. SPRINGER. Yes.

Mr. BOYD. Oh, sure. My statement is I do not recollect the Board discussing this legislation with the Department of State prior to submitting it.

Mr. SPRINGER. Not the legislation, just this question about the President. Did you have any discussion down at the Board about that?

Mr. BOYD. At the Board?

Mr. SPRINGER. Yes.

Mr. BOYD. Oh, sure we did.

Mr. SPRINGER. You came to the conclusion that this was in the public interest to do this kind of thing?

Mr. BOYD. Yes, sir.

Mr. SPRINGER. Now do you believe, asking you as Chairman, that you can justify abandoning this power, which you are in essence doing, to fix a rate that you say is in the public interest, and allow the President, which is another arm, at least he does not have the veto power over it normally, that he can set this rate aside?

Mr. BOYD. Well, you see, Mr. Springer, I have no way to judge what national interest implications might be involved, nor does anybody at the CAB. We can conceive that there might be a situation where the national interest would be adversely affected. We can conceive it as a possibility, and when we are talking about possibilities, I think you can say, yes, this is possible.

Now, the point I would like to make is that I have no concern about the President looking at a rate and saying "That is not a good rate." I do not have any concern about that at all.

The only thing I would feel that could happen is that the President would say, "Gentleman," to the CAB, "there is a national interest impact here which we cannot afford at this time." If he says that, I accept it, because I just have no way to disagree with him.

Mr. SPRINGER. Let me ask you this. Suppose the President had had this power last year?

Mr. BOYD. I think if the President had had this power last year, he would have said to the CAB, "go ahead."

Mr. SPRINGER. Go ahead and do what?

Mr. BOYD. And disapprove those rates and maintain the status quo.

Mr. SPRINGER. In other words, even though our planes could not land?

Mr. BOYD. Well, they could have landed, though, Mr. Springer, that is the point. They could have landed if we had had this legislation.

Mr. SPRINGER. The point I am trying to make is if he had had this power to disapprove a rate—are we at this point now?

Mr. BOYD. Yes, sir.

Mr. SPRINGER. Could he have done anything about it then last year, when this crisis arose if he had had just this power, to disapprove the rate or to modify it or to send it back to you?

Mr. BOYD. Could he have disapproved it?

Mr. SPRINGER. Yes.

Mr. BOYD. Yes, sir, he could have and it seems to me that what he did would have depended altogether on the representations that were made to him by foreign governments.

Mr. SPRINGER. That is exactly the point. It would be the representations of foreign governments rather than a fair and reasonable and just rate fixed by the CAB. This is the fundamental point I am trying to make, Mr. Chairman, that that is exactly what he would do, depend upon representations made by foreign governments rather than a rate fixed which you would have come to a conclusion is fair and in the public interest.

Mr. Chairman, I think that is all, unless you have something to add?

Mr. BOYD. No, sir. But I was going to say I do not believe these representations would be in the rate area. I do not think it would be a matter of whether the rates are good or bad.

Mr. SPRINGER. Well, do you think it would be?

Mr. BOYD. I think—well, I just do not know.

Mr. SPRINGER. It might be—you were here when Mr. Chayes was testifying, and in my examination, he said in exchange of the route which they got from Australia to the United States and over the United States to London was that they were our ally and there was a lot of good will to be obtained from it. I think, Mr. Boyd, your thinking is the same as mine, and this is exactly what happened. This is the thing we have been fighting, the giving away of these economic rights of our carriers for things not related to it at all, but some diplomatic move which the President may believe that he ought to make. And he may believe it earnestly, and I am not attacking either his integrity or anything else. He may believe he ought to because he has this right, but he gives away somebody's economic right for something unrelated to that right.

Mr. BOYD. Certainly, the position of the CAB is that there should be exchanges based on economic equivalents.

Mr. SPRINGER. Now you have certainly added a great condition there which you did not have before.

Mr. BOYD. I am talking now about routes. I thought we were talking about the route exchange.

Mr. SPRINGER. If you want to stay on routes, I can point out to you that when some of us were in Australia, Mr. Macdonald could tell you what they were offering us when we got down there. They were offering us a route from Sydney to Melbourne to Perth to South Africa. The only trouble was there was not anybody flying, nobody wanted to fly that route. When we came back, we found out what they had given away was a very substantial route for which we did not obtain anything.

That is all, Mr. Chairman.

Mr. YOUNGER. Mr. Chairman, do I understand that after IATA agrees to the rate, that is it? This power that you want does not come into being so long as IATA unanimously agrees on rates?

Mr. BOYD. No. I say normally, that is the case, Mr. Younger. But it is conceivable that we could have another situation such as we had last year, where the carriers wanted to raise the fares and we could see no justification for it. Then, under section 412 of the act, we would disapprove the agreement.

Mr. YOUNGER. Then you want to continue to have the right of vetoing the agreement of IATA?

Mr. BOYD. Yes, sir.

Mr. YOUNGER. That is all I want to know.

Mr. BOYD. Yes, sir.

The CHAIRMAN. You see, Mr. Boyd, some of us have been around here a little while and remember in the years past, when authorization was being requested which the Congress granted, the agencies who were asking it, and I could name three of them specifically, said what they were going to do, and then after they got the authority and the years intervened and completely new people who had nothing to do with the time when the authority was given came in, then they said that Congress had meant something different. In at least two instances, the Supreme Court said that they were right. That is what concerns us now.

Mr. BOYD. Yes, sir, I can understand that.

The CHAIRMAN. Mr. Springer, I think, hit it on the head awhile ago. In view of that and in view of this colloquy, I think probably you boys should put your thinking cap on a little bit and see if you cannot come up with something that we can agree on that would do what you say you would like to do.

Mr. BOYD. We will make our best efforts, Mr. Chairman.

The CHAIRMAN. As an example, Mr. Williams, with Mr. Chayes a few days ago, right here, developed from him, in accordance with what Mr. Springer asked of you awhile ago, he said that "may"—the word "may"—was about the same, or in other words he equated it with the word "shall." Now, he is the lawyer, too, talking. That does not mean to say that you are not.

Mr. BOYD. I got a degree. I do not know if that makes me a lawyer.

The CHAIRMAN. He has on the witness list here that he is the legal adviser. We would assume that in these hearings, his opinions probably would have some weight. I am not sure if Mr. Springer is not correct on this as to what some future Board might do, and I am not sure if Mr. Chayes is not correct that if this authority is given, the courts will hold that it was not necessary to have the flexible authority that the Board has. I do not know, if it is not spelled out in language—I do not mean a report, either, or a description as to what is meant—we might run into a situation such as the history of the National Gas Act which we are seeing publicized even now. It has been a state of frustration that I know of for 10 years or more.

I think we ought to know precisely what we are doing, or at least so we can all agree that what we are doing will have the same result.

Mr. BOYD. I am sure we are in accord with that, Mr. Chairman. We shall do our best.

The CHAIRMAN. Another thing that has happened around here, you talk about the example that Mr. Tipton brought up about rate proceedings, but it is a fact that a rate proceeding does take time, does it not?

Mr. BOYD. Why, sure it does.

The CHAIRMAN. There is no way under the Administrative Procedures Act that you can arrive at a conclusion without letting the regular procedures take effect. They could go on for some length of time.

Mr. BOYD. There is no question about that. If we go into notice and hearing, Mr. Chairman, it could take quite awhile, and it could take quite awhile because just as in this passenger case, the carriers want to keep filing information and documents in the record. So it can take quite awhile. I do not contradict that.

The CHAIRMAN. Well, your lawyers on one side and those on the other keep filing petitions and amending petitions and answering petitions. Then you have to come up with it under the regular procedure, because I believe it does say "as arrived at by domestic rates," does it not?

Mr. BOYD. Yes, sir.

The CHAIRMAN. Then you would have to determine what would be just and reasonable, would you not?

Mr. BOYD. Yes, sir.

The CHAIRMAN. So it would be based on that, so you would have to consider the cost of operation, the traffic that would be expected, and that would incur consideration of what would happen in the field with foreign carriers, would it not?

Mr. BOYD. Yes, sir.

The CHAIRMAN. So the question that gives me concern is how you can arrive at it. I just cannot see that what you have here would assist you in determining what would be a just and reasonable rate.

Mr. BOYD. Well, let me suggest that we try to give you the benefit of any thinking that we have about amending the legislation to clarify some of these problems.

The CHAIRMAN. Mr. Chayes was asked to identify for the record countries that joined the United Kingdom in a threat to suspend the authority of United States' air carriers last spring.

I suppose you would have the same information, would you not?

Mr. BOYD. Yes, sir, I am sure we would have the same information.

The CHAIRMAN. You may have somebody check to be sure you do have it so it can be supplied for the record.

Mr. BOYD. Right.

The CHAIRMAN. You were directly involved with it. Did you find out which of the countries indicated that additional steps would be taken if the U.S. carriers performed the flights at the lower cost?

Mr. BOYD. Yes, sir. I think we are talking about the same countries, Mr. Chairman. Actually, this confiscation has been broadened quite a bit. My recollection is that the majority of the countries merely invoked their penal laws and advised the carriers, the U.S. carriers, "If you operate, you will be in violation of the law of these countries and subject to penalty, civil and criminal." I do not know of any official statement that there would be confiscation of aircraft.

Now, I would have to check back to see whether there was an official statement. But if there was, my recollection is that it would have been only with one country.

The CHAIRMAN. That was the United Kingdom?

Mr. BOYD. Yes, sir.

The CHAIRMAN. Will you check the record to see if you have any more?

Mr. BOYD. Yes, sir.

But the bulk of it, I am clear, was statements from the governments to our carriers saying, "You are violating the law, and you will be subject to civil and criminal penalties if you persist." Now, what that comprehended, I do not know.

The CHAIRMAN. I asked this question of Mr. Chayes: Is it not possible to equalize our power under paragraph (f) without the authority of legislation which would nullify paragraph (f) and bring paragraph (e) into effect?

Mr. BOYD. My understanding, if I understand your question right, we could—if we were—

The CHAIRMAN. Can we amend the law to make paragraph (f) do the work?

Mr. BOYD. In my judgment, no.

The CHAIRMAN. Mr. Springer asked you a moment ago about the provision for Presidential approval. What would be your reaction

to permitting the President to approve or disapprove any decision that the Board might make only where the effect would be in fields other than the rates involved?

Mr. BOYD. Well, that is my impression, Mr. Chairman, of what effectively is involved in this legislation.

The CHAIRMAN. That is not what it says, though.

Mr. BOYD. I realize that there is no limitation on the President's power. But it is my understanding from Mr. Chayes' testimony that that would be the effect of it.

The CHAIRMAN. Well, I cannot see that that would be the effect of it if the President wanted to resort to the authority for ratemaking procedures or rates themselves.

Mr. BOYD. Well, I think under the terms of 6400, the President would have power to do just what you say. It is inconceivable to me that this would happen as a practical matter.

The CHAIRMAN. Well, it is conceivable to me that it could happen and very likely will happen as a practical matter when you get into a donnybrook such as you did with the United Kingdom, where somebody says we have something else going on somewhere else and these rates over here would not be very good for us; this rate ought to be disapproved. And without having the technical knowledge down at the White House, then they would place their judgment, trying to reach some other objective, using rates to do it with, overruling what you and your technical people would come up with in your decision. I cannot see that that would be a farfetched thing at all.

I commend you, as well as the Board, for your loyalty, however, in your efforts to carry out what is administration policy in this regard.

Mr. BOYD. Thank you, sir.

The CHAIRMAN. Any further questions?

Mr. YOUNGER. No.

The CHAIRMAN. Thank you very much, Mr. Boyd. I am sorry we have kept you here way overtime. You may have some other commitment, and I hope you make it if you do.

Mr. BOYD. Thank you, Mr. Chairman.

I would like to say in closing that we do not work an 8-hour day. We do not limit ourselves.

The CHAIRMAN. That concludes this hearing.

(Whereupon, at 5:55 p.m., the hearing was concluded.)

