STRENGTHEN U.S.–INTERNATIONAL AIR TRANSPORTATION

HEARING

BEFORE THE

AVIATION SUBCOMMITTEE

OF THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

EIGHTY-NINTH CONGRESS

SECOND SESSION

ON

S. 3197

A BILL TO AMEND SECTION 416 OF THE FEDERAL AVIATION ACT OF 1958

AND

S. 3198

A BILL TO AMEND SECTION 402 OF THE FEDERAL AVIATION ACT OF 1958

MAY 13, 1966

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FRIDAY, MAY 13, 1966

UNITED STATES SENATE,
COMMITTEE ON COMMERCE,
AVIATION SUBCOMMITTEE,
Washington, D.C.

The subcommittee met at 10:15 a.m. in Room 5110, New Senate Office Building, Hon. A. S. Mike Monroney (chairman of the subcommittee) presiding.

Senator MONRONEY. The Aviation Subcommittee of the Committee on Commerce will receive testimony in the hearing this morning on S. 3197 and S. 3198. Both measures were introduced by Chairman Magnuson and are designed to strengthen the competitive position of U.S.-flag carriers in international transportation.

The first measure, S. 3197, would seek to amend section 416 of the Federal Aviation Act so as to broaden the exemption authority of the Civil Aeronautics Board with respect to U.S.-flag carriers. The bill would authorize the Civil Aeronautics Board to exempt a U.S.-flag carrier from enforcement of section 401, relating to authorization to engage in overseas or foreign air transportation, if the Board finds that the carrier would otherwise be placed at a competitive disadvantage in regard to foreign air carriers. The bill makes clear that the Board may not issue such an exemption without the affirmative approval of the President.

The second bill, S. 3198, would amend section 402 of the Federal Aviation Act of 1958 to clarify the authority of the Civil Aeronautics Board with respect to operating permits issued to foreign air carriers. The bill would authorize the Board to suspend a foreign-air carrier permit without notice and hearing and, after notice and hearing, to alter, modify, amend, cancel, or revoke a foreign-air carrier permit whenever it finds that the government or aeronautical authorities of any foreign country have, over the objections of the Government of the United States, taken action which impairs, limits terminates, or denies agreed-upon operating rights of any air carrier designated by the United States to conduct flight operations to, from, through, or over the territory of such foreign country.

Without objection, I would like to place in the record at this point the text of the remarks which Chairman Magnuson made when he introduced these bills and which sets forth in detail the background and objectives sought.

Staff counsel assigned to this hearing: William T. Beeks, Jr.

In addition, I would like to place at this point in the record the texts of both bills, together with comments which the committee has received from various Government agencies.

(The material follows:)

AMENDMENT OF SECTION 416 OF THE FEDERAL AVIATION ACT

Mr. MAGNUSON. Mr. President, I introduce for appropriate reference a bill to amend section 416 of the Federal Aviation Act. The need for this amendment is urgent in order to protect and promote the U.S. international air transportation system and to eliminate a built-in procedural advantage enjoyed by foreign airlines serving the United States.

The speed and flexibility of the jet airplane has brought about miraculous changes in the air commerce of the world, none of which were envisaged when the Civil Aeronautics Act was first enacted in 1938 or when it was reenacted in the Federal Aviation Act in 1958. Unfortunately, however, our statutory procedures have not kept pace with these changes and as a result our U.S.-flag carriers are often placed at a serious disadvantage in seeking to compete with foreign airlines for traffic to and from the United States.

To meet the eruption of foreign air travel brought on by the jet plane, the United States, acting through the State Department and the Civil Aeronautics Board, has granted numerous foreign countries important air routes to and through the United States in exchange for reciprocal routes for American-flag carriers. These exchanges are made through bilateral air transport agreements negotiated between the United States and foreign governments. Once an agreement is signed calling for an equitable exchange of routes, a procedural anomaly takes place. Under the present act, the foreign government is able to implement its route promptly whereas the United States, because of its own internal procedures, must often delay years before permitting an American-flag carrier to operate the reciprocal route.

In order to place in operation the route granted by a bilateral air transport agreement, a foreign airline must file with the CAB an application, under section 402 of the act, for a foreign air carrier permit. This is a simple proceeding involving only the one foreign air carrier applicant. Since the route applied for has already been included in a bilateral agreement, the hearing is pro forma and generally uncontested. The President approves the Board's recommended decision almost as a matter of course and a foreign air carrier permit issues promptly, often within a matter of 60 to 90 days after the filing of the original application. Once the permit is issued, the foreign airline is free to start operations.

No such simple or expedited procedure is presently available to permit an American-flag carrier to operate the reciprocal route. Under the present act, the President is often required to wait years, notwithstanding the important foreign relations or national defense considerations which may be involved, before the CAB is able to submit to him for approval a recommended decision covering certification of an American-flag carrier over the route in question. It is this situation to which the bill I have introduced is addressed.

Under the existing law, American-flag carriers may obtain new operating rights by one of two methods:

First. By a lengthy certificate proceeding under section 401 of the act, including notice and hearings, or

Second. By an exemption under section 416 of the act, applicable in certain very limited situations.

Under the certificate method, the Civil Aeronautics Board has adequate power to grant the necessary operating rights, but the decision in *Ashbacker* v. *F.C.C.* 326 U.S. 327 (1945) has been held to control CAB certificate proceedings. *Delta Air Lines* v. *Civil Aeronautics Board*, 228 F. 2d 17 (D.C. Cir. 1952). This requires all applications seeking the same or similar rights to be heard in the same proceeding. As a result, the certificate proceedings involve numerous applicants and they are necessarily slow and cumbersome, normally consuming several years before completion.

Under the exemption method, the proceeding can be fast enough but the present statutory provision as interpreted by the courts severely restricts the power of the Civil Aeronautics Board to grant relief. The requirements in the statute that the Board find "an undue burden" on the air carrier applying for relief "by reason of the limited extent of the operations of such air carrier" or "by reason of unusual circumstances affecting the operations of such air carrier," is interpreted by the courts to require a showing of something more than loss of potential

revenue pending completion of the certificate proceeding. *American Airlines* v. *Civil Aeronautics Board*, 235 F. 2d 845 (D.C. Cir. 1956), *Pan American World Airways* v. *Civil Aeronautics Board*, 261 F. 2d 754 (D.C. Cir. 1958). Whatever may be said for the wisdom of this result in a domestic route situation where the competition consists only of other U.S. carriers—the situation for which the provision was primarily designed—the result is clearly undesirable where the traffic is lost to foreign competition and where the development of the U.S. flag international air transportation system is accordingly delayed. The present exemption provision gives neither the Board nor the President authority to act in cases where public interest considerations alone require temporary authorization of one or more U.S. air carriers pending the completion of certificate proceedings. As a result, the U.S. carriers are relegated to lengthy certificate proceedings as the only method of relief.

A few examples are in order. Years ago two American-flag carrier—Braniff and Panagra—applied to have their routes extended to New York so as to provide the first U.S.-flag one-carrier through-service between New York and the west coast of South America. These applications, together with those of numerous other applicants were later consolidated in the United States-Caribbean-South America case. After 4½ years this case is still at the examiner hearing stage. In the meantime, two foreign carriers—BOAC and Lufthansa—already are operating, by virtue of permits issued by the CAB and the President under section 402, the only one-carrier through-services between the United States and the west coast of South America. The two U.S. carriers are at an obvious competitive disadvantage and can obtain no relief until the United States-Caribbean-South America case is decided some years hence.

A second example occurred some years ago when Trans Canada Airlines started operating a through-service between Cleveland and Europe via Toronto. TWA, which serves Cleveland on its domestic network, did not at that time have effective authority to operate through-service between Cleveland and Europe on its transatlantic service. An amendment of its certificate was necessary, but this could not be accomplished until the so-called Cleveland-New York nonstop case was finally decided. This case involved a large number of domestic carriers and took several years before TWA finally obtained the necessary authority to compete with Trans Canada for Cleveland-Europe passengers. The point is that, solely as a result of the CAB's and the President's lack of authority to cope with the problem expeditiously, Trans Canada obtained a several-years lead on TWA in this purely U.S. traffic market.

Another example is found in the current Transpacific Route case in which the CAB is confronted with the enormous task of passing upon the applications of 23 U.S. airline applicants for routes throughout the Pacific Basin area. The current proceeding is a continuation of a proceeding which first began in 1959 and after suspension in 1961 was reopened in 1965. It will take years for the Board to sort out these conflicting applications. Meanwhile, two foreign carriers—Qantas and BOAC—by virtue of the expeditious section 402 procedures are already providing transpacific services to and through the United States identical to those which are in issue in the Transpacific Route case. In December 1965 the United States concluded a new air transport agreement with Japan whereby a Japanese airline was granted the right to operate from Japan across the Pacific to California and across the United States to New York and beyond to Europe and around the world. JAL has now applied for a section 402 permit for this route. No American-flag carrier is permitted at present to offer such a service, although the national interest in providing it was recognized by the CAB as long ago as 1960. Nor will any be able to operate it—even on a temporary basis—until the Transpacific Route case is decided years from now. Thus, the national interest is frustrated by procedural deficiencies.

The problem presented is not a temporary one. The cases mentioned are a portent of the future. They indicate that the same type of competitive disadvantage is likely to arise when new equipment requires changes in the international route pattern, and when new international routes are exchanged by bilateral agreement between the United States and foreign governments. Under present procedures, the foreign-flag carriers will be able promptly to secure operating rights under section 402, whereas the U.S. air carriers will again be involved in lengthy and cumbersome certificate proceedings.

Obviously some revision in the controlling statute is needed. The bill which I have introduced is intended to provide this relief.

The bill broadens the exemption power of the CAB to permit it to cope with situations such as I have described. It authorizes the CAB, pending decisions on

applications by U.S.-flag carriers under section 401 of the Federal Aviation Act, to exempt a carrier from enforcement of section 401—thus permitting it to operate—for a temporary period if the CAB finds that the carrier "is placed at a competitive disadvantage" with respect to foreign carriers and that the national interest is thereby "adversely affected." The Board's action is subject to approval by the President which assures that the President's constitutional prerogative in the conduct of foreign policy is fully respected.

If enacted, the present procedural inequity will be removed, the CAB and the President will be able to grant interim operating rights to U.S. air carriers in timely fashion to enable them to compete on even terms with foreign air carriers who receive rights under the expedited procedures now available to them, and the sound development of the U.S.-flag international air transportation system will be promoted.

In short, the bill will permit the CAB upon a proper showing to clear away some of the procedural underbrush which has been allowed to frustrate the national interest. The effect will be to put the CAB and the President in a position promptly to place U.S.-flag carriers in a position of competitive equality and permit them to make their full contribution to the commercial interests of the United States and the important balance-of-payments objectives which must be attained.

The bill also provides that any exemptions involving overseas or foreign air transportation and which may be granted by the CAB under the existing section 416 shall also be subject to approval by the President. This is consistent with section 801 which requires approval by the President of any certificate authority granted by section 401 involving overseas and foreign air transportation.

Amendment of Section 402 of Federal Aviation Act of 1958

Mr. Magnuson. Mr. President, there has been much discussion in recent years, both at home and abroad, about the authority, or lack of authority, of the Civil Aeronautics Board to deal directly and appropriately with foreign air carriers when and if their governments arbitrarily restrict U.S.-flag air carriers' operations to, from, through or over their territories. Since the problem has arisen in the past, and undoubtedly will arise again in the future, any question about the Board's authority to respond in kind ought to be settled.

There are many who believe that the Civil Aeronautics Board now possesses adequate authority under section 402 of the Federal Aviation Act to condition or otherwise limit foreign air carrier operating permits where required by the public interest in such cases. But questions and debate about the extent or limitation of the present authority have depreciated its value and usefulness. In fact, the publicly expressed differences of opinion here about this authority probably have weakened our bargaining position abroad, and may even encourage the imposition of restrictions on U.S.-flag air carriers by foreign governments in their absence of concern over the objections of, or retaliation by, the U.S. Government.

This bill is introudced to stimulate the necessary discussion and review of the Board's authority in this connection. Its purpose is to amend the Federal Aviation Act of 1958 if it is found necessary to make clear that the CAB has the authority to take action against foreign carriers when their governments arbitrarily restrict or limit U.S.-flag airline operations.

Scheduled international air service is conducted by U.S. and foreign-flag airlines largely pursuant to one of two foundations—bilateral agreements or the principle of reciprocity. In either case, the right to provide this vital communication between any two nations requires the agreement, written or tacit, of both sovereign governments. And once agreement has been reached and rights granted, such rights should be fully and faithfully recognized. This Government should have powers over foreign air carriers no less than other governments have over our carriers, both to insure adherence to the letter and spirit of the rights granted, and to permit the taking of action short of actually terminating air service.

This bill would clear the air in that area once and for all. It would spell out the power of the Board, in section 402(f) of the act, to take reciprocal action against carriers of foreign nations whose governments impair, limit, terminate, or deny the agreed-upon operating rights of U.S. airlines to fly to, from, through, or over the territory of those countries. Moreover, this bill would deal with another problem mentioned in the past by some who believe the existing statutory machinery contemplates a hearing process too long and too involved to be effective.

In the face of swift, arbitrary unilateral action with little or no notice by foreign governments, they have felt our present machinery is unwieldy and ineffectual. This bill eliminates the notice and hearing requirement to permit the suspension of foreign air carrier permits for these extraordinary circumstances.

Lastly, this bill will preclude avoidance of the intent and effects of the authorized sanctions by such devices as the substitution of service by a foreign air carrier of a third country in the guise of a polling or similar intercarrier cooperative arrangement.

Early discussion of, and settlement of, any questions of doubt about the authority of the Civil Aeronautics Board over foreign air carriers would be most beneficial. Perhaps the future would then hold fewer and fewer instances of arbitrary unilateral action being taken against our airlines, and a healthier atmosphere for the continued growth of international air transport in the public interest.

I ask unanimous consent that an analysis of the bill, together with the text of the bill, be printed at the conclusion of my remarks.

The analysis presented by Mr. Magnuson is as follows:

ANALYSIS OF A BILL "TO AMEND SECTION 402 OF THE FEDERAL AVIATION ACT OF 1958"

Section 402 of the Federal Aviation Act pertains to the requirements for, and the issuance, terms and conditions, validity, modification and revocation of foreign air carrier permits. Under subsection (f), the Civil Aeronautics Board is authorized to alter, modify, amend, suspend, cancel or revoke foreign air carrier permits, after notice and hearing, whenever such action is found to be in the public interest.

The amendment would authorize the Board to suspend a foreign air carrier permit without notice and hearing and, after notice and hearing, to alter, modify, amend, cancel or revoke a foreign air carrier permit whenever it finds that the Government or aeronautical authorities of any foreign country have, over the objections of the Government of the United States, taken action which impairs, limits, terminates, or denies agreed-upon operating rights of any air carrier designated by the United States to conduct flight operations to, from, through or over the territory of such foreign country. The amendment further provides for the restriction of operations between such foreign country and the United States by any foreign air carrier of a third country in order to preclude avoidance of the intent and effects of the authorized sanctions by substitute foreign air carrier service brought about by foreign air carrier pooling or similar foreign intercarrier cooperative arrangements.

[S. 3197, 89th Cong., 2d sess.]

A BILL To amend section 416 of the Federal Aviation Act of 1958

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Federal Aviation Act of 1958, as amended, is hereby further amended as follows:

SEC. 2. In subsection 416(b) relating to exemption of air carriers, amend paragraph 1 by adding at the end thereof the following: "In addition, if an air carrier has filed an application under section 401 to engage in overseas or foreign air transportation, the Board may exempt the carrier from the enforcement of section 401 with respect to air transportation covered by the application, for a temporary period to continue not longer than sixty days after the final decision by the Board on the application filed under section 401, if it finds that pending hearing and final decision on its application under section 401 the carrier is placed at a competitive disadvantage with respect to a foreign air carrier or carriers serving the United States pursuant to permits issued under section 402 and approved by the President under section 801, and that the development and promotion of the United States flag international air transportation system is thereby adversely affected. No exemption shall be issued under this paragraph (1) which involves overseas or foreign air transportation without the affirmative approval of the Board and the President."

[S. 3198, 89th Cong., 2d sess.]

A BILL To amend section 402 of the Federal Aviation Act of 1958

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (f) of section 402 of the Federal Aviation Act of 1958 (49 U.S.C. 1372(f)) is amended by inserting "(1)" immediately after "(f)" and adding at the end thereof the following new paragraph:

"(2) Whenever the Board finds that the government or aeronautical authorities of any foreign country have, over the objections of the Government of the United States, taken action which impairs, limits, terminates, or denies agreed upon operating rights of any air carrier designated by the United States to conduct flight operations to, from, through, or over the territory of such foreign country, the Board may, without notice or hearing, suspend and, after notice and hearing, cancel or revoke the permits of foreign air carriers of such country, or alter, modify, amend, or limit operations under such permits, for the purpose of imposing sanctions of like or similar nature, if it "finds such action to be in the public interest. The Board may also, without notice or hearing, to the extent it determines necessary to make the operation of this paragraph effective, restrict operations between such foreign country and the United States by any foreign air carrier of a third country notwithstanding the provisions of any permit or agreement."

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., May 13, 1966.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: We have your letter of April 11, 1966, in which you asked for our comments on S. 3197.

S. 3197 proposes to amend section 416(b)(1) of the Federal Aviation Act of 1958, 49 U.S.C. 1386(b)(1), to give the Civil Aeronautics Board discretionary authority to exempt temporarily from the enforcement of section 401, 49 U.S.C. 1371, an American flag air carrier-applicant for a certificate to engage in overseas or foreign air transportation. The grant of the exemption. limited to no more than 60 days after the Board's final decision on the application, would be conditioned upon (1) a finding by the Board that the applicant-carrier, pending hearing and final decision, would be competitively disadvantaged as against permitted foreign carriers serving the United States; (2) a finding that the American flag international air transportation system would be thereby adversely affected; and (3) affirmative approval by the Civil Aeronautics Board and the President of the United States.

The purpose of this bill is to rectify a situation created by the procedural requirements of the Federal Aviation Act as interpreted by the Federal courts. This situation works an economic hardship on American flag carriers wishing to engage in foreign and overseas air transportation and thus operates to obstruct the development of the American flag international air transportation system. Participation of American flag air carriers in foreign and overseas air transportation has its inception in bilateral air transport agreements between the United States and foreign governments; these agreements customarily provide for the granting of air routes to, from, and through the United States for the use of foreign air carriers in exchange for the grant of reciprocal routes to American flag air carriers. A foreign air carrier then makes an application for a permit to operate over the granted route under section 402 of the act, 49 U.S.C. 1372. Generally only one foreign carrier applies and there is no opposition to the application so the hearing provided in section 402 is usually *pro forma.*

The issuance of the foreign air carrier permit is not subject to judicial review because the act requires that it be approved by the President, 49 U.S.C. 1461. See *Trans World Airlines* v. *Civil Aeronautics Board,* 184 F. 2d 66, certiorari denied 340 U.S. 941 (1950); *U.S. Overseas Airlines* v. *Civil Aeronautics Board,* 222 F. 2d 303 (1955); *Pan American-Grace Airways, Inc.* v. *Civil Aeronautics Board,* 342 F. 2d 905 (1964). An American flag carrier, however, making application under section 401, 49 U.S.C. 1371, for a certificate to operate in foreign air transportation over a reciprocally-granted route, is subject to all the procedural due process implicit in the enforcement requirements of section 401. Thus all American flag carrier-applicants for the same or similar rights, all protestants and all intervenors are required to be heard in the same proceeding, *Delta Air Lines*

v. *Civil Aeronautics Board*, 228 F. 2d 17 (1955); *id.* 275 F. 2d 632, certiorari denied 362 U.S. 969 (1959).

The effect of S. 3197, if enacted, would be to permit the Civil Aeronautics Board and the President to place American flag carriers in a position of competitive equality and permit them to make their full contribution to the economic interests of the United States. The requirements of procedural due process would be complied with while the America flag carrier was operating under the temporary certificate.

If enacted, S. 3197 would not directly affect the functions and operations of our Office. It seems to be in the public interest, however, and we have no objection to its favorable consideration by your Committee.

Sincerely yours,

FRANK H. WEITZEL,
Assistant Comptroller General of the United States.

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, D.C., June 7, 1966.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of Defense with respect to S. 3197, 89th Congress, a bill to amend section 416 of the Federal Aviation Act of 1958.

S. 3197 would permit the Civil Aeronautics Board to grant an exemption authorizing a U.S. air carrier to engage temporarily in overseas or foreign air transportation covered by a pending application under section 401 of the Federal Aviation Act of 1958, if the Board found that, pending its hearing and final decision on the application for the operating certificate, the air carrier who filed the application would be placed at a competitive disadvantage with respect to a foreign air carrier serving the U.S. Any such exemption to a U.S. air carrier would require approval of the Board and the President.

The Department of Defense generally supports measures which would facilitate the operation of U.S. flag international air carriers and to the extent that legislation along the lines of S. 3197 would enhance the ability of the Civil Aeronautics Board to provide appropriate operating authority to the U.S. air carriers, the Department of Defense favors its enactment.

The Bureau of the Budget advises that there is no objection to the presentation of this report for the consideration of the Committee.

Sincerely,

L. NIEDERLEHNER,
Acting General Counsel.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., May 24, 1966.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR SENATOR: This is in response to your request for the views of the Department of Justice on S. 3197, a bill "to amend section 416 of the Federal Aviation Act of 1958."

The bill expands the authority of the Civil Aeronautics Board to grant exemptions from statutory or administrative requirements governing United States air carriers involved in overseas or foreign air transportation.

Under this bill, the coverage of section 416(b)(1) is enlarged to include temporary exemptions to air carriers from the enforcement of section 401 with respect to overseas and foreign air transportation covered by application under that section, if the Board finds that the carrier "is placed at a competitive disadvantage" with respect to foreign carriers and that "the development and promotion of the United States flag international air transportation system is thereby adversely affected." Such exemption involving overseas or foreign air transportation will continue to require the approval of the President under section 801.

Under existing law, American flag air carriers may obtain new operating rights to foreign countries only through lengthy certificate proceedings under section

401, including notice and hearing, or by an exemption, under section 416 applicable in very limited conditions. Section 416(b)(1), as it now reads, requires that the Board find "an undue burden" on the carrier applying for exemption "by reason of the limited extent of, or unusual circumstances affecting the operations of such carrier." The Board's authority to grant relief under this provision has been restricted by court decisions to require a showing of something more than loss of potential revenue pending completion of the certificate proceeding. *American Airlines* v. *C.A.B.*, 235 F. 2d 845 (D.C. Cir. 1956); *Pan American World Airways* v. *C.A.B.*, 261 F. 2d 754 (D.C. Cir. 1958).

It is the view of this Department that the bill enhances the Board's authority to protect and promote the United States flag international air transportation system and is consistent with the objectives of encouraging competitive conditions in industry.

The Department of Justice recommends enactment of this legislation.

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

Sincerely,

RAMSEY CLARK,
Deputy Attorney General.

FEDERAL AVIATION AGENCY,
Washington, D.C., May 18, 1966.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for the views of this Agency with respect to S. 3197, a bill "To amend section 416 of the Federal Aviation Act of 1958", and to S. 3198, a bill "To amend section 402 of the Federal Aviation Act of 1958".

Procedures concerning the granting of economic authority under Title IV of the Federal Aviation Act of 1958 are within the purview of the Civil Aeronautics Board, and not the Federal Aviation Agency. Therefore, the FAA defers to the views of the Board on the subject bills.

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,

WILLIAM F. MCKEE, *Administrator.*

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., May 13, 1966.

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Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce, U.S. Senate.

DEAR MR. CHAIRMAN: We have your letter of April 7, 1966, in which you asked for our comments on S. 3198.

S. 3198 proposes to amend section 402(f) of the Federal Aviation Act of 1958, 49 U.S.C. 1372(f), to authorize the Civil Aeronautics Board to suspend without notice or hearing and to cancel, revoke, or modify by way of imposing sanctions, after notice and hearing, the permits of foreign air carriers whose Government, over the objections of the United States, has taken action which denies or infringes agreed-upon rights of American flag carriers designated by the United States to operate to, from, through, or over the territory of the foreign country. The Board also would be permitted, if necessary, and without notice or hearing, to restrict operations between the United States and the said foreign country by a foreign air carrier of a third country.

Section 402(f) of the Federal Aviation Act of 1958 now authorizes the Board to alter, modify, amend, suspend, cancel or revoke any foreign air carrier permit upon a finding that such action is in the public interest. This action must be preceded by notice and hearing, and any interested party may file with the Board a protest or a memorandum in support or opposition. The hearing procedure may be protracted, particular since all of the requirements of due process must be observed, and undue delay may serve to dilute the effectiveness of the action taken.

S. 3198 would permit prompt retalitory action by authorizing the Board to suspend a foreign air carrier permit prior to notice and hearing.

We have no direct or special knowledge of the need for legislation such as that proposed in S. 3198 which reflects policy matters within the responsibility of Congress. If the bill is enacted, it would have no material effect upon our functions and operations. We have, therefore, no recommendation to make concerning its consideration by your Committee.

Sincerely yours,

FRANK H. WEITZEL,
Assistant Comptroller General of the United States.

Senator MONRONEY. We are very pleased to welcome the very able Undersecretary of Transportation, Department of Commerce, and the former Chairman of the CAB, the Honorable Alan S. Boyd.

STATEMENT OF HON. ALAN S. BOYD, UNDER SECRETARY OF COMMERCE FOR TRANSPORTATION; ACCOMPANIED BY ROBERT M. O'MAHONEY, OFFICE OF THE GENERAL COUNSEL, DEPARTMENT OF COMMERCE

Mr. BOYD. Thank you, Mr. Chairman. I am accompanied by Mr. Robert M. O'Mahoney of the Office of the General Counsel, Department of Commerce.

The Department appreciates this opportunity to appear in regard to two bills which would amend the Federal Aviation Act of 1958. S. 3197 would amend section 416 and S. 3198 would amend section 402 of the act.

Since these two bills address themselves to different sections of the act, I will first discuss S. 3198 and then S. 3197.

The Department favors enactment of S. 3198, which would authorize the Board to suspend a foreign air carrier permit without notice and hearing whenever it finds that authorities of any foreign country have taken action against a carrier of the United States counter to agreed-upon operating rights, and over objection of the U.S. Government. Further, this bill if enacted would apply equally to any foreign air carrier of a third country if the United States felt such action would preclude avoidance of the intent and effects of the authorized sanctions by substitute foreign air carrier service via the country taking action against the U.S. carrier.

The growth of the passenger and cargo markets and the investment necessary on the part of the airlines' management make it increasingly important that service not be interrupted by problems arising as the result of this Government finding itself in a position whereby it is unable to assist U.S.-flag carriers to counteractions taken against them by other governments. Even of larger moment is the overall importance of air transportation to international commerce. The role of aviation in international commerce is of such magnitude that everything possible should be done to assure a dependable transportation network to meet the increasing demand of passenger and cargo development.

Since, in the last analysis, it is the governments concerned that control international commerce, the United States should have the necessary authority to take positive action in protecting its carriers against

the actions of other countries that may be in conflict with operating rights of U.S.-flag carriers and the public interest generally.

In the past there has been some question as to whether the United States has the authority under section 402 of the Federal Aviation Act to protect its carriers if it is determined that another government arbitrarily restricts or limits U.S.-flag carrier operations. The Civil Aeronautics Board has taken the position that section 402 of the Federal Aviation Act does not give it the authority to condition or otherwise limit foreign air carriers' operating permits where required by the public interest in such cases.

This Department takes the position that the proper U.S. authority, in this case the CAB, should have the authority it deems necessary to carry out its statutory responsibilities. The Department supports the proposition that the United States should have authority over foreign air carriers equal to that other governments have over carriers of the United States. This bill, if enacted, would accomplish this objective by making clear beyond any doubt what the Board's authority is and would remove the possibility for misunderstanding or curtailment of agreed-upon operating rights of U.S. carriers. It is our understanding, however, that the bill is intended primarily as a standby proposition and it is contemplated that the authority would not have to be utilized except in rare situations.

Commercial aviation has as its chief purpose the stimulation and facilitation of trade and travel. It is the opinion of this Department that amendment of section 402 of the Federal Aviation Act, as outlined in S. 3198, would remove a possible barrier, or at least an area of misunderstanding, that might limit the beneficial impact of commercial aviation in the area of developing world trade.

I would now like to comment on S. 3197. This bill would broaden the exemption authority under section 416 of the Federal Aviation Act by making it possible for the Board, pending a final decision on applications by U.S.-flag carriers, to exempt a carrier from enforcement of section 401. S. 3197, as presently written, would authorize the Board to grant a U.S.-flag carrier the right to operate for a temporary period if the Board finds that such carrier has been placed at a competitive disadvantage with respect to a foreign air carrier or carriers serving the United States and that the development and promotion of the U.S.-flag international air transportation system is thereby adversely affected.

The Department is well aware of the protracted time requirement for final resolution of major route cases. This delay is a product of the procedures which apply to granting a certificate of convenience and necessity to an American air carrier. Although the legislation before this committee concerns foreign air transportation, there are also problems of delay in domestic route cases.

In a domestic case, when all the applicants are American air carriers and thus subject to the same delays, the cost is merely time lost before the carrier finally chosen can begin to fly the route. In international cases, where the routes are served by an American and foreign carriers, the situation is not the same. Foreign states can choose promptly the carrier to exercise their rights—frequently a single state-owned airline—and certify this selection to the United States. The CAB can then issue a foreign air carrier permit under section 402 and there is usually relatively little delay before a foreign air carrier

is able to begin service. Selection of the American carrier, on the other hand, must await completion of procedures under section 401.

Thus, on international routes it is possible for a foreign carrier to enjoy a head start which subjects U.S.-flag air transportation to a significant competitive handicap. An American carrier may be forced to enter a market already exploited by a foreign competitor.

The problem of delay is common to domestic and international cases. While there is an underlying need to speed up the procedures leading to final decisions in both areas, we view as a constructive measure legislation aimed at correcting the inequitable situation now existing in international cases.

As we understand the purpose of the bill, it is to bring into closer relation the time necessary for awarding a certificate to a U.S.-flag carrier to the time necessary in issuing a foreign air carrier permit, and it is not concerned in setting standards for selecting one U.S.-flag carrier over another. We feel, however, that S. 3197, in its present form, is too narrowly drawn and that the authority it gives to the CAB should be broadened. Specifically, we object to the requirement in the bill that the Board, in order to grant an exemption, must find that the carrier who is to be granted the exemption is placed at a competitive disadvantage with respect to a foreign air carrier.

We believe that the bill should be amended to give the Board the right to grant an exemption under section 416 to the carrier applicant it determines most appropriate without the limiting requirement of finding that that particular U.S.-flag carrier is competitively disadvantaged. The requirement for finding that a carrier is placed at a competitive disadvantage would have the effect of unduly limiting those carriers eligible for such exemption authority. Such a requirement might very well in turn disadvantage other U.S. carriers that may have an application on file for the identical service.

The Department takes the position that the Civil Aeronautics Board should have the right to grant a carrier exemption from the provisions of section 401, on the basis of a finding that operation under such authority would be in the national interest and that absent such grant, the development and promotion of U.S.-flag international air transportation would be adversely affected. As the bill provides, such decision by the Board should be subject to the affirmative approval of the President.

We further recommend that the bill be amended to provide that the grant of temporary authority through an exemption under the proposed section will not be construed as prejudicing in any way the rights of any applicant in formal proceedings under section 401.

There is the question of how much a truncated procedure such as might be possible under the bill would undercut the regulatory system as it now exists. This is a valid concern but in my opinion it is well within the CAB's powers to develop a procedure which will afford adequate safeguards for interested parties but at the same time shortcut many of the procedures which now produce a very long proceeding in many cases. This would require imagination and initiative on the part of the Board, but I am sure that is not too much to expect of such an able body.

Without doubt there is need for procedural reform in all three of the regulatory agencies. The need will become more critical as the economy grows and technology advances. Private enterprise, the

general public, and the Government itself all have a right to expect final resolution of major issues within a reasonable time period. This is not the result which obtains under present law and many situations.

The intent underlying S. 3197 as it benefits the public interest is commendable but measures of this type which are in their nature expedient and deal with only part of the problem, should not divert our attention from more fundamental issues.

The executive branch, the Congress, the regulatory agencies, and the industry should all be encouraged, in fact they should be urged, and if necessary prodded, to focus on the fundamental issue and develop alternative solutions to improve what is in my opinion an unacceptable situation now.

In conclusion, the Department would support this legislation if it were amended along the lines suggested above. Thank you for this opportunity to present the Department's views on these bills.

Senator MONRONEY. Thank you very much, Mr. Secretary, for your testimony.

You would not agree to a bill that did not provide for some hearings before the exercise of the exemption authority, is that correct?

Mr. BOYD. That is correct.

Senator MONRONEY. Would you outline to the committee how these would be handled? What you are trying to avoid is the 4- or 5-year delay and to work out a better solution.

Mr. BOYD. Yes, sir. If I might finesse that question, Mr. Chairman, it seems to me the CAB is in a much better position to discuss the procedures.

Senator MONRONEY. As a former Chairman of the CAB, and as Under Secretary of Commerce for Transportation, I think it would be important to also get the benefit of your thinking on this.

In other words a "quickie" decision without any hearings at all could lead to maybe prejudicing the rights of two or three or four carriers to the advantage of one, all being American-flag carriers, could it not?

Mr. BOYD. Yes, sir. I think, however, that the CAB has had considerable experience in granting exemptions in various areas permitted under section 416, and in some cases, which obviously would not have the importance that a matter of this type has, a carrier has applied for an exemption and the Board has telegraphed notice of that application to other interested carriers and requested by a date certain response and objections to the exemption application. This may be a little bit too simple a procedure, but something along this line would have to be worked our because otherwise the Board would find itself in a full scale route case on an exemption, and that of course would prevent the sense of this bill being carried out.

Senator MONRONEY. I think what concerns the committee, is what is a fair hearing on the part of the petitioner seeking the exemption, and who could properly, with vital interests involved, also intervene in the request for exemption so their case could also be heard?

Mr. BOYD. I should think, Mr. Chairman, that the CAB should be given the broadest flexibility in this area because in other situations which I would consider to be somewhat parallel, there has been over the years a very high degree of commonsense and responsibility displayed on the part of both the carriers and the Board in trying to develop ways and means of accomplishing the desired result within a reasonable time period.

Senator MONRONEY. You do not feel there would be any chance of a pooling arrangement so that all the American carriers involved might be certified, say for a certain number of flights per week over the route, and so that each applicant could share, pending completion of the hearings?

Mr. BOYD. As a practical matter I doubt that that would work, Mr. Chairman, because my guess is that that would in a number of cases—obviously I don't have any particular routes in mind—my guess is that in a number of these situations traffic would be fairly thin to begin with. To go into a pooling situation among American carriers would be a decision contrary to what has so far been our basic policy in connection with revenue pooling.

Also my guess is——

Senator MONRONEY. I am not suggesting it. I was just exploring ways, where you have competitive American interests involved, of doing equity to each party having legitimate rights.

Mr. BOYD. I doubt if it would be possible to do absolute equity because among other things my experience has been that many carriers who seek route authorizations are not prepared to undertake operation of the route immediately in any event, that they don't have the equipment at the present time.

You have the other situation of how one handles ticket sales and terminal handling and things of that nature, which could well be a bar to permitting all applicants to participate.

Senator MONRONEY. Assuming there were several American-flag carriers involved in a petition, would you not then feel that the shortening of the hearing time is consumed, say, a 6-year period, to reach an earlier conclusion within 6 months or a year under expedited hearings would be possible?

Mr. BOYD. Do you mean to have the case itself on permanent certification?

Senator MONRONEY. Yes.

Mr. BOYD. I don't believe that is possible without probably some changes in the procedural act. I just doubt that it is going to be possible under the existing procedures to cut that time down for a full section 401 certification to 6 months or so.

Senator MONRONEY. For the record could you give us cases that might be involved that would illustrate the need for legislation at this time?

Mr. BOYD. I think probably the case that generated thinking about this legislation has to do with Quantas, BOAC, and in the near future Japan Airlines operating on round-the-world routes from the west coast and California market to or through New York to Europe.

Senator MONRONEY. Is there any way to reach that situation other than by legislation of this kind?

Mr. BOYD. I know of no other way.

Senator MONRONEY. I am asking particularly about the application that has been forwarded to the CAB for determination of coterminous operations to the Pacific to permit one international operator to serve the west coast and on the east coast for both Atlantic and Pacific operations?

Mr. BOYD. I think as a matter of law—

Senator MONRONEY. I understand that has been referred to the CAB I believe by the President with an urgent request that consideration be expedited.

Mr. BOYD. I think as a matter of law the CAB has the authority to render an advisory opinion to the President that would permit that. My impression is that the problem involved there is one of due process involving the rights of other applicants. But that is merely an impression. I have not followed that case closely enough.

Senator MONRONEY. Going back to the other bill on the right of the U.S. aviation authorities to take action where our rights are prejudiced by other official bodies of governments which had extended aviation rights to us, could you give the committee for the record some examples of this? We had one about 2 years ago, I believe it was.

Mr. BOYD. Yes, sir. There was considerable interest evidenced in the spring of 1963, I believe, at the time when the International Air Transport Association agreed in effect to increase its rates, its fares across the North Atlantic. The Civil Aeronautics Board disagreed with that procedure and did not approve the participation of U.S. carriers in that tariff agreement. Our flag carriers attempted to comply with the instructions of the Civil Aeronautics Board and retain the old rate structure at a lower level. The U.S.-flag carriers and their managements operating to and through various countries in Europe were threatened with such things as confiscation of their aircraft and criminal penalties for failures to charge the increased fare level, and it was the considered opinion of the Civil Aeronautics Board that we were powerless to take retaliatory action by virtue of the juxtaposition of the statute, the Federal Aviation Act, and the so-called Bermuda agreement, the bilaterals we have with these various countries.

Senator MONRONEY. So we could not take collateral action in impounding their planes or holding them, even though they were violating the American rate that we had established as a ceiling?

Mr. BOYD. It is a very complicated situation, Senator. We had no power to establish the rate. Our power was limited under section 412 of the act, I believe, to either grant our carriers antitrust immunity in connection with agreements they made on fares, or to refuse to grant that immunity.

We refused to grant that immunity, which as we understand it left the carriers in the position of either being in violation of the antitrust laws or being required to continue their then preexisting fares. They attempted to comply with that situation.

One other thing I forgot to mention in terms of——

Senator MONRONEY. Our carriers wanted to comply with the CAB order but were fearful of loss of their equipment.

Mr. BOYD. That is right.

Senator MONRONEY. Or at least impounding of it.

Mr. BOYD. Yes, sir. And the criminal penalties which were indicated would be taken against them.

Also certain countries, as I recall, indicated that they would refuse our carriers permission to land; in effect, take away their operating rights. In one particular case one country, without any notification to the United States or to the carrier involved, by fiat, as we see it, one afternoon advised this carrier that its permit to operate to and

through that country had been amended, imposing conditions which we did not think were consonant with the bilateral agreement.

Senator MONRONEY. This doesn't affect ordinary safety conditions, operating conditions with which we are familiar and have agreed to, and the bilateral agreements, does it? They are all written down and not susceptible to change.

Mr. BOYD. That is correct. This bill is aimed all together at the economics of the operation.

Senator MONRONEY. It has nothing whatever to do with safety.

Mr. BOYD. No, sir.

Senator MONRONEY. Equipment, or anything of that kind.

Have there been any other instances of this kind other than the one we speak of?

Mr. BOYD. That is the only one I recall at the moment. I have some recollection that our carriers from time to time have had restrictions imposed upon their operations to and through South America by various countries. I think before I came to the Board our carriers were operating under some restrictions to and through India, which we felt were counter to the bilateral.

Senator MONRONEY. Thank you very much for your very helpful testimony, Mr. Boyd, and for giving us the advantage of your experience.

Mr. BOYD. Thank you, Mr. Chairman.

Senator MONRONEY. Our next witness is the distinguished Chairman of the Civil Airlines Board, the Honorable Charles S. Murphy.

I might say that the chairman of the full committee and the author of these bills is unavoidably detained, presiding over an executive committee meeting. He wished me to state, in his behalf, that he is not wedded, necessarily, to the language of the bill S. 3197, and that he encourages and welcomes suggestions as to alternate or other avenues of approach.

You may proceed to give us any suggestion that you might have on this subject or for redrafting of legislation that might help us to meet this problem.

STATEMENT OF CHARLES S. MURPHY, CHAIRMAN OF THE CIVIL AERONAUTICS BOARD; ACCOMPANIED BY JOSEPH GOLDMAN, GENERAL COUNSEL OF THE BOARD

Mr. MURPHY. Thank you, Mr. Chairman.

In my statement, I have some suggestions with respect to amendments.

I am accompanied this morning by Mr. Joseph Goldman, who is the General Counsel of the Board.

The Board welcomes this opportunity to present its views on S. 3197 and S. 3198. These bills are designed to remove certain competitive disadvantages now suffered by U.S.-flag air carriers in international air transportation.

Over the past 10 years, U.S.-flag carriers have sustained a substantial loss in their share of the international air travel market. In 1955, U.S. carriers' share in passenger travel between the United States and foreign countries was over 68 percent; by 1965, this had fallen to 49 percent. This is in spite of the fact that the United States provided 62 percent of the passengers for this travel in 1965.

In the important North Atlantic market, U.S.-flag carriers' share has fallen from 53.8 percent in 1955 to 44.6 percent in 1965. In this market, the United States provided 67 percent of the passengers in 1965.

The adverse consequences are not limited to our air carriers alone. The implications with respect to the balance of payments are apparent. If U.S.-flag air carriers had shared in the international air travel market in 1965 in the same proportion that the United States provided passengers for that market, this would have reduced our balance-of-payments deficit by about $171 million.

The causes of the decline in the U.S. carriers' share of the international market are many and complex. Part of it is due to increasingly effective competition by the foreign carriers. We accept this competition, believing that healthy competition will best serve the public interest. At the same time, we must see to it that our own carriers are given a fair chance to compete.

At present, our carriers are subject to a number of disadvantages that should be removed. Some of these are the result of our own procedures; some are the result of actions and policies of foreign governments.

The bills you now have under consideration will help correct two parts of this problem. S. 3197 will remove some shackles we have imposed upon ourselves. S. 3198 will enable us to deal more effectively with problems created by actions of other governments.

The CAB wholeheartedly supports the objectives of these two bills. We do suggest some changes in their specific provisions.

S. 3197: The purpose of S. 3197 is to authorize the Board to grant temporary operating authority to U.S. carriers on international routes as promptly as we grant operating authority to foreign air carriers on routes to the United States. This is especially timely and necessary at present because of several recently concluded important bilateral agreements containing reciprocal route exchanges with other countries. Under these agreements, U.S. air carriers can provide service over new routes granted by the foreign country, and the air carriers of the other country can provide service over new routes of equivalent value granted by the United States. These are good agreements. They were negotiated very ably by the U.S. delegations. They can be mutually beneficial to the air carriers of both countries and to the traveling public.

However, unless our law is changed, foreign carriers will usually get the jump on U.S. air carriers in instituting new operations; and it will usually be no one's fault but our own. This results from the relative ease with which a foreign carrier can obtain a permit for its operations from the CAB under section 402, as contrasted with the complex and protracted procedures which the Board must follow before it can award a certificate of public convenience and necessity to a U.S. carrier under section 401.

While section 402 requires notice and hearing before the Board may issue a foreign air carrier permit, these proceedings are as a general rule very simple. There are no competing applicants and the application is rarely challenged. Thus applications for foreign air carrier permits can be, and normally are, disposed of in a very short period of time. Once a permit is issued, of course, the foreign air carrier is free to commence operations.

In contrast, any proceeding of major significance under section 401 is extremely complex. There are generally numerous competing applications all of which must, under applicable statutes and court precedents, be given comparative consideration. As a result, it is not uncommon for a number of years to elapse between the institution of the proceeding and the time of final decision. In the meantime, the foreign carrier has had the market to itself. Not only have U.S. carriers been deprived of revenues during this period, but the foreign carrier or carriers may have become so identified with the market as to make it more difficult for any U.S. carrier utlimately certificated to break in.

This problem is not limited to route exchanges under the recent bilateral agreements, but these agreements do accentuate the urgency of the problem.

Let me give you a few illustrations. At the present time, BOAC—a British carrier—holds a foreign air carrier permit authorizing operations over a London-New York-San Francisco-Honolulu-Tokyo-Hong Kong route. Quantas—an Australian carrier—has a route extending from Sydney through Honolulu and San Francisco to New York. These carriers can thus provide single-carrier service between the east coast of the United States and the Orient or the South Pacific, including stopovers in California and Hawaii. Moreover, the routes operated by BOAC and Quantas permit single-carrier, round-the-world operations, with stopovers in New York, as well as in California and Hawaii. No single U.S. airline can provide these services today. To be sure, there are applications for such authority presently pending in the *Trans-Pacific Route* case. That, however, is a highly complex proceeding involving dozens of applications for service between numerous points in the United States and the Pacific area. I would estimate that final decision by the Board and the President is almost certainly several years off.

Recently, the United States entered into a new Air Transport Agreement with Japan under which a Japanese airline was granted the right to operate from Japan to California and New York, and beyond to Europe and around the world. Japan Airlines has been designated by the Japanese Government to operate this route and has applied for a permit under section 402. Assuming that it is granted, there will then be three foreign airlines with authority to provide single-carrier service from the Pacific to the east coast of the United States, and beyond, around the world, without any U.S. carrier having authority to provide such service.

Under existing law, it is possible in certain limited circumstances to authorize new services without following the often complicated and protracted procedures involved in a major certificate proceeding under section 401. Section 416 empowers the Board to exempt a carrier from most of the economic regulatory provisions of the Federal Aviation Act, including the certificate requirement. In order to grant such an exemption, however, the Board must find that enforcement of the certificate requirement would be "an undue burden" on the carrier because of the "limited extent of, or unusual circumstances affecting," its operations. Section 416 also required the Board to find that enforcement of the certificate requirement "is not in the public interest."

The courts have generally construed these standards very strictly, a view endorsed by various congressional committees just a few years ago (H. Rept. No. 1950, 87th Cong., 2d sess.).

S. 3197 would amend section 416 by specifically empowering the Board to authorize a U.S. carrier to engage in overseas and foreign operations pending disposition of its application for a certificate covering such operations. The Board could grant such an exemption upon finding that the carrier would be placed at a competitive disadvantage with respect to foreign carriers holding permits to serve the United States and that the development and promotion of the U.S.-flag air transportation system would thereby be adversely affected during the pendency of the certificate proceeding.

The bill is thus designed to remedy the problems which are attributable to the practical differences in proceedings under sections 401 and 402. Through exercise of the exemption power, the Board would be able to eliminate the operational advantage which foreign air carriers have over U.S. carriers while they run the gauntlet of a long, complicated certificate proceeding. The Board believes that this is a step forward and should enhance our carriers' position vis-a-vis the foreign carriers in the international air travel market.

We do recommend, however, that the specific provisions of S. 3197 be amended to—

(1) Provide that notice be given of the Board's intention to consider granting such an exemption and that interested parties be given an opportunity to present their views to the Board;

(2) Provide that the exemption authority may be exercised when the United States and its air carriers collectively are placed at a competitive disadvantage;

(3) Provide that the exemption shall be granted only if the Board finds it to be in the public interest after taking into account its effect upon interested parties and all other relevant factors;

(4) Provide that the requirement established by this bill with respect to Presidential approval shall be applicable only to actions taken under this bill and not alter existing law as to exemptions granted under other provisions of section 416; and

(5) Provide that any temporary operating authority granted by exemption under this bill shall not be a factor constituting an advantage to the carrier providing such operations in selecting a carrier for certification pursuant to section 401.

S. 3198: The purpose of S. 3198 is to strengthen the Board's authority to take reciprocal action with respect to foreign air carriers when their governments restrict or limit U.S.-flag air carrier operations.

The United States follows relatively liberal principles in international air transportation, believing that healthy competition will best serve the public interest. Some foreign countries follow similar liberal principles; others do not. Those that do not follow liberal principles frequently impose restrictions on our U.S. airlines to limit our ability to compete. The United States has not undertaken to reply in kind and now has no effective procedures for doing so. This one-way-street policy on restrictions is a standing invitation to other countries to impose controls on U.S. airlines—and the tendency appears to be growing. Undoubtedly, this is one of the factors—although by no means the only factor—accounting for the fact that

while the United States provides 62 percent of the passengers in the air travel market between the United States and foreign countries, our airlines carry less than 50 percent of them. To the extent we correct this problem, it will help correct the imbalance. In order to promote liberal principles and insure healthy competition, we must equip ourselves with more effective means to prevent airlines of other countries from having an unfair advantage over U.S. airlines.

The conditions and restrictions imposed by foreign governments are of various kinds, including requirements for filing traffic data, filing of schedules, prior approval of schedules, limitations on flight frequencies, and limitations on capacity. These requirements can be and are imposed without notice or hearing, and the U.S. carrier has little choice except to comply, or have its operating authority suspended or terminated entirely.

Our U.S.-flag carriers are required to file traffic data in some form in about 50 foreign countries and are required to file schedules in almost as many foreign countries. By contrast, the United States does not require any foreign carriers to file schedules, and requires them to file traffic data in only two cases where, because of special circumstances, the requirement was made a condition of permits recently issued. The civil aeronautical authorities of some foreign countries refuse to approve proposed schedules of U.S.-flag carriers in order to protect the competitive positions of their own carriers; in other cases, delays in granting approval appear to be used for bargaining purposes. On some occasions, other countries appear to be trying to get additional concessions from the United States before allowing our carriers to exercise rights to which they are already entitled.

Some of the restrictions imposed by the foreign governments are in our opinion in contravention of agreements with the United States, others are not. This is true because of the varied nature of the restrictions and the variation in the provisions of agreements which the United States has with different countries. We also have similar problems with some foreign countries with which we have no bilateral air transport agreements.

To meet this situation, we need a variety of available measures so we can make the remedy first fit the problem. Only in this way can we expect to be able to hold our own in the international air transportation competition. Other governments make it their business to enhance the opportunities of their airlines. We should do the same. This will require day-to-day actions taken on a business-like basis to maintain fair competitive opportunities.

Part of this problem can be dealt with under existing law. The Board already has authority under existing law to impose, after notice and hearing and with the approval of the President, various types of conditions or limitations upon foreign air carrier permits and operations thereunder. These conditions could be such as to combat improper restrictions or limitations imposed by foreign governments on our air carriers. However, the procedural requirements for this kind of action under existing law are so cumbersome that this approach does not provide the necessary flexibility to deal promptly with the problems that arise from day to day.

The difficulties with existing procedures are indicated by the proceeding pending before the Board in the foreign air carrier permit

terms investigation, docket No. 12063. This proceeding was instituted by the Board in 1961 for the purpose of determining whether all foreign air carrier permits should be subjected to a general regulation under which the Board could, when it so determined, require any foreign carrier to furnish traffic data to the Board and to submit its schedules for approval by the Board. This proceeding has not yet been concluded. If it is brought to a successful conclusion, it will provide a means for acting promptly with respect to matters within the scope of the regulation, namely, the filing of traffic data and the filing and approval of schedules. However, it will still be desirable to enact legislation such as S. 3198 to provide for other types of remedial action by the Board, including authority for the suspension or termination of permits, in appropriate cases.

We recommend that S. 3198 be amended—

(1) To provide that action to alter, modify, amend, or limit operations under the permits of foreign air carriers may be taken without notice and hearing as the bill now provides with respect to the suspension of such permits:

(2) To provide that the sanctions authorized to be imposed shall not be limited to those of a "like or similar nature," but might be of any "appropriate" nature; and

(3) To make clear that the powers conferred will extend to any circumstances in which operating rights of a U.S.-flag carrier in a foreign country are involved, and not be limited to the rights of a designated U.S. carrier under a formal bilateral agreement.

If S. 3198 should be enacted in accordance with our recommendations, the Board would interpret it not only as permitting immediate action without notice and hearing, but as confirming and expanding the Board's substantive powers to combat unwarranted restrictions imposed against our carriers by foreign governments by imposing similar restrictions upon their carriers. We believe that the special provisions conferring power to impose "appropriate sanctions" or to take "like" action for retaliatory purposes would enable the Board to take all steps necessary to cope with unwarranted restrictions imposed by foreign nations even though the precise action might not now be permissible under the present section 402. The provisions would permit action relating to routes and points to be served, or frequencies or types of equipment to be operated, depending upon the nature of the restrictions imposed upon the U.S.-flag air carriers. They also would permit denial of entry to this country of the carriers of a foreign nation improperly utilizing its rate powers to impose unilateral rate changes upon our carriers, or would permit the imposition by this Nation of conditions relating to the rates to be charged by foreign carriers. If, for example, legislation of this nature had been available at the time of the "Chandler" controversy over rates in the North Atlantic, it could have been used as a means of combating various actions then threatened with respect to the operations of our carriers.

Thus, the Board believes that enactment of legislation of this nature would result in the United States being equipped with more effective means for preventing air carriers of other countries from having an unfair advantage over U.S.-flag air carriers. Indeed, the mere possession of such authority by the Board, even if never exercised, might well result in fewer arbitrary unilateral actions being taken against U.S.-flag carriers.

Subject to the changes we have suggested, the Board urges the prompt enactment of S. 3197 and S. 3198.

Senator MONRONEY. Thank you. Will you submit the language to enact the recommended changes in these two bills?

Mr. MURPHY. We will be happy to.

Senator MONRONEY. In the bill, S. 3198, would this apply to rate structures, primarily, that other countries might put in to seek to elevate their rates or to bring us into conformance with the rates agreed to by IATA?

Mr. MURPHY. We think it would apply to rate structures, Mr. Chairman, but not primarily. We think, primarily, it would apply to matters other than rates.

The difficulty we run into more frequently is related to restrictions in frequency of operation and things of that nature.

Senator MONRONEY. Outline some of these things that have happened that you had to straighten out, if you will.

Mr. MURPHY. I will be glad to mention some of them. We had mixed success in straightening them out.

Senator MONRONEY. Have efforts been made to reduce our frequency of schedules? I think you mentioned that.

Mr. MURPHY. Yes, and that, I think, is the most usual kind of problem we have.

I would ask, at least for the time being, from being excused for not mentioning the names of specific countries, because we haven't checked that out and I don't know whether that might not create difficulties.

Senator MONRONEY. Certainly.

Mr. MURPHY. I can think of 8 or 10 situations currently, where other countries are undertaking to limit the number of frequencies that U.S.-flag carriers can provide. In some cases, rather clear violations of existing agreements and, in other cases, whether it be a violation of an agreement or not, under this bill, as we have suggested it be changed, we could take reciprocal action.

I could name eight. I just think perhaps I should not at the present time.

Senator MONRONEY. I am not interested in the countries but more in the types of obstructionism that occurs against us. The schedule is one. Do we limit, in our bilaterals, the number of schedules a foreign carrier can fly into our country?

Mr. MURPHY. We do not. The bilaterals do not limit the number of schedules either way.

There is, in the bilaterals, a general provision to protect against excessive schedules, but it does not, as we see it, contemplate approval of schedules, but requires review.

Senator MONRONEY. By the CAB?

Mr. MURPHY. By the aeronautical authorities of both countries, in claims of excessive schedules. In the instance we have used it here, prior approval of schedules, we have felt that bilateral agreements do not provide for this.

In a good many cases, nevertheless, countries, with which we have bilateral agreements, do exercise the prior approval of schedules. It frequently is not done in a clear-cut fashion, but you sort of edge up to this.

They suggest that they might have some difficulty with these new schedules, if they are added, and ask that they not be added. And

our carriers make a strong argument that the schedules are justified, and these arguments sometimes stretch out for a good many weeks.

In other cases, where there is no bilateral agreement, I take it that we would not challenge their authority and certainly have no behavior founded on an agreement to claim that it is improper for the other country to limit schedules, but, at the same time, it seems to us that this ought not to be a one-sided bargaining situation.

If they are going to bargain this is the case where there is no bilateral agreement and no question of a violation of an agreement. But we think there should be no reason why this should be a one-sided bargaining situation. We might very properly have the same kind of authority in a fashion that is readily available.

Senator MONRONEY. In the impasse that we had a few years ago over the rate structure of IATA, and our determination under the order of the CAB to insist that the rates not be raised, if with the oncoming of these superseded jets that we are building, the big Boeing and also the larger Douglas, we would be powerless, would we not, to institute lower tourist rates for these planes without IATA approval? Undoubtedly we will have these aircraft in operation at an early time across the North Atlantic or the Pacific.

Mr. MURPHY. Yes. I think the answer to that question is, "Yes," but I would like to add a comment or two about it if I could.

Senator MONRONEY. I wish you would. This involves strictly economics, you agree, as Secretary Boyd said?

Mr. MURPHY. In the first place the Board does not have authority to order any carrier, United States or foreign, to reduce rates in international air transportation.

Senator MONRONEY. You can approve the rates as submitted.

Mr. MURPHY. They are not subject to our approval except in an indirect fashion. They usually are agreed upon in IATA. This is by way of agreement among the carriers. In that situation the agreement must be submitted to our Board for approval, and we can disapprove it rather than approve it.

Senator MONRONEY. Which is what you did in the earlier case.

Mr. MURPHY. That is what happened in the *Chandler* case, I am told, although I was not there at the time.

But apart from an agreement of that kind, our foreign carriers can file changes in tariff with our Board and we do not have authority to disapprove them except a limited authority in the case of discrimination—discriminatory rights.

First we would not have authority to order the reduction. I think I should say that generally speaking our U.S.-flag carriers tend to favor lower fares and to reduce fares when the economics of the industry permit it. I wouldn't say they are a hundred percent on that but I would say they are very good.

We can get into problems where they are quite willing to reduce international fares and the governments at the other end are not willing to agree to the reduction. It is my impression that in such a situation as that that the bilateral agreements, if there are bilateral agreements, cover the situation specifically and unfortunately I simply don't remember how it is covered. I don't know if Mr. Goldman knows or not.

Mr. GOLDMAN. Yes. Under the standard type Bermuda bilateral, it is my understanding that if our carriers were to propose a new, lower

rate, the foreign country has authority to suspend the effectiveness of that rate.

Senator MONRONEY. So we would be powerless to put forth the rate that you had approved unless we had power to take some economic reprisal against their operations here.

Mr. GOLDMAN. Yes.

Senator MONRONEY. Could this be used in that kind of case?

Mr. MURPHY. If their action with respect to a rate or tariff filed by our carriers was authorized by bilateral agreement, I hardly see how that would provide a basis for retaliatory action.

We have been thinking of this primarily in connection with matters other than rates.

Senator MONRONEY. However, I think you should think ahead on rates, because if we have the equipment as has been declared by one of the presidents of the leading airlines, we could reduce fares by perhaps 33⅓ percent. I just wonder if this would help us get those rates into being, or if there is a chance that because of their drastic reduction they could be blocked by the other carriers.

Mr. MURPHY. I have not thought this through enough to give you a really meaningful answer on that question. I do not readily see how it might be used for that purpose.

Senator MONRONEY. If they chose to limit beyond what is now permitted, the frequency of schedules, for example, we could then limit the frequency of their schedules as I understand it.

Mr. MURPHY. Yes, sir; we can do that.

Senator MONRONEY. You can't do it without this proposed legislation?

Mr. MURPHY. It is possible to do it under existing law after notice and hearing, and with the approval of the President. As I have indicated in my statement, the Board instituted a proceeding designed for that purpose, among others, in 1961, and that proceeding has not yet been concluded.

It is certainly my belief that this does not provide the kind of machinery that is necessary if the action is to be timely and effective.

Senator MONRONEY. To the powers that you do not now have.

Mr. MURPHY. Yes, sir.

Senator MONRONEY. Otherwise most of the things that you might desire would have to wait until renegotiation of the bilaterals; is that correct?

Mr. MURPHY. Not renegotiation of the bilaterals, but notice and hearing. We can, after notice and hearing, impose restrictions upon operations under the foreign air carrier permit, or we can amend the permit, or suspend it.

We could take the necessary action after notice and hearing, but that is a very time consuming requirement.

Senator MONRONEY. You will submit amendments to us on this matter of suspension of changing of the rights?

Mr. MURPHY. We will be very happy to do that, yes.

Senator MONRONEY. Going back to the U.S. carriers who could be collectively placed at a competitive advantage, as opposed to one carrier being so disadvantaged, I think you make that as one of the conditions for passage of the bill, S. 3197.

Mr. MURPHY. We would recommend that change, Senator. I don't believe we would state it in terms of a condition for requirement of

passage. We think it would be an improvement in the bill. I do not think we would withdraw our support if the change were not made.

Senator MONRONEY. You say:

We do recommend, however, that the specific provisions of the Bill S. 3197 be amended to, (1) provide that notice be given of the Board's intention to consider granting such an exemption and that the interested parties be given an opportunity to present their views to the Board.

Mr. MURPHY. Yes, sir.

Senator MONRONEY (continuing):

(2), to provide that the exemption authority may be exercised when the United States and its air carriers collectively are placed at a competitive disadvantage.

Mr. MURPHY. Yes, sir.

Senator MONRONEY (continuing):

(3), provide that the exemption shall be granted only if the Board finds it to be in the public interest after taking into account its effect upon interested parties and all other relevant factors.

(4), provide that the requirement established by this bill with respect to Presidential approval shall be applicable only to actions taken under this bill and not alter existing law as to exemptions granted under provisions of 416; and

(5), provide that any temporary operating authority granted by exemption under this bill shall not be a factor constitution advantage to the carrier providing such operation in selecting the carrier for certification pursuant to section 401.

That would be permanent certification?

Mr. MURPHY. Yes, sir; that is correct.

Senator MONRONEY. I would point out that you do, in paragraph 2, provide that the exemption authority may be exercised when the United States and its air carriers collectively are placed at a competitive disadvantage.

Mr. MURPHY. Yes, sir. And we do recommend such a change in the bill. We think that it would be a better bill. But I do not believe we would withdraw our support if the amendment is not made.

Senator MONRONEY. If two or three other American carriers were not disadvantaged, and one was, would that require this amendment that you are suggesting?

Mr. MURPHY. It seems to me this amendment would be desirable for at least two reasons. One, I think it might be apparent that the situation where the United States is at a disadvantage, where you are not able, by reason of the facts, to tie this disadvantage down to one particular carrier and make the case that it is one particular carrier itself that is disadvantaged.

It might be that no U.S. carrier has a route or authorization to serve that is closely enough parallel to the authorization of the foreign carrier to associate this with any particular U.S. carrier, although it might be rather clear that the U.S. carriers as a whole are at a disadvantage.

It would seem to us that it would be desirable to be able to act in that situation.

Then there is the other point which I believe Mr. Boyd referred to, and that is in making the decision as to what carrier or carriers should be granted an exemption, that perhaps the authority of the Board should be somewhat broader than it would be under the bill as it was introduced.

I might say that so far as I know, Mr. Chairman, the other amendments which we suggest are likely to be noncontroversial. I think

this one, No. 2, very nicely does get into an area where there is a difference of opinion among our air carriers.

Senator MONRONEY. You mentioned in 3:

provided the exemption shall be granted only if the Board finds it is to the public interest after taking into account its effect on interested parties.

And then you state:

* * * and other relevant factors.

What factors do you contemplate would be considered?

Mr. MURPHY. I think we have the question of the balance of payments, for one thing. We would have the question of the service provided to the traveling public. In an improvement in service could be provided by an exemption, it seems to me that would be a relevant factor.

There are a number of factors in the present law that are specified for the purpose of determining what is in the public interest, and all of them would be included.

Senator MONRONEY. Section 102:

In the exercise of the performance of its powers and duties under this Act the Board shall consider the following among other things as being in the public interest in accordance with the public convenience and necessity: (*a*), the encouragement and development of an air transportation system properly adapted to the present and future needs of the foreign and domestic carriers of the United States and the coastal service and the national defense.

That is one section.

Section (b): for the regulation of airt ransportation in such a manner as to recognize and preserve the inherent advantages of and assure the highest degree of safety in and foster sound economic conditions in such transportation and to improve the relations between and coordinate transportation by air carriers.

(c), the promotion of adequate economical and efficient service by air carriers at reasonable charges without unjust discriminations, undue preference or advantages or unfair or destructive competitive practices.

(d), competition to the extent necessary to assure the sound development of an air transportation system properly adapted to the needs of foreign and domestic commerce of the United States, coastal service, and the national defense; and

(e), the promotion of safety in air commerce, and

(f), the promotion and development of civil aeronautics.

You would say all of those would probably be relevant factors that you would probably consider in the granting of this exemption?

Mr. MURPHY. Yes, sir; I think that is part of the public interest standard which we would think should be written into this bill. So far as I know, there is no objection to including a public interest standard in the bill expressly.

Senator MONRONEY. In the type of hearings that you mentioned in the paragraph labeled 1, at the bottom of page 6, "provide that notice be given of the Board's intention, instead of granting such exemption, and that the interested parties be given an opportunity to present their views to the Board."

Who would this include?

Mr. MURPHY. It would include certainly other air carriers that might be substantially affected by this action, and that is principally I think the parties that would be included. It would include civic parties.

Senator MONRONEY. It would include what?

Mr. MURPHY. Civic parties, States, and cities that might have an interest in the air transportation and in getting better service.

I can readily visualize a case where some States would have enough of an interest that they would want to come in and advocate that an exemption be granted.

Senator MONRONEY. The bill, section 2, says, subsection 416(b), relating to exemption of air carriers, amends paragraph 1 by adding at the end thereof the following:

> In addition, if an air carrier has filed an application under Section 401 to engage in overseas or foreign air transportation, the Board may exempt the carrier from the enforcement of Section 401 with respect to air transportation covered by the application, for a temporary period to continue not longer than sixty days after the final decision by the Board * * *

Does that mean that anybody could be considered by just filing an application for the exemption?

Mr. MURPHY. First——

Senator MONRONEY. As I understand it, it doesn't give any particular rights to carriers now flying the route, or who would be disadvantaged by the foreign competition.

Mr. MURPHY. Any air carrier, Mr. Chairman, can apply for a route. We have now pending in the *Transpacific* case, and as I recall we have 23 or more air carriers——

Senator MONROENY. Twenty-three or more now.

Mr. MURPHY (continuing). Who have applied for authority to provide service across the Pacific Ocean. Just because they can apply doesn't necessarily follow that they can establish a compelling claim or compelling case for exemption.

I think the Board, in considering whether or not to grant an exemption, and in selecting a carrier for exemption, would take into account the same kinds of things that it takes into account now when it awards a certificate. It would do it in a more expeditious fashion and it would do it, I think, only when there is a rather clear case that prompt action is necessary as distinguished from letting the formal proceeding run its full course.

Senator MONRONEY. How are you going to determine the length of the hearings if you have 23 applicants for the route and they don't have to demonstrate any prior rights to fly that area or to service that area?

Mr. MURPHY. This I think gets us into the question of the difference between the existing law and the proposal that is now before you. Under the existing law, so far as I know, there is nothing we can do except to give each of these carriers full opportunity in an evidentiary hearing and consider the applications on a comparative basis and at length.

The proposal here is that some of those procedures be omitted. We would not recommend that a hearing be required before granting an exemption. When I say hearing for this purpose I mean to use that world in a technical sense and to say that we would not suggest that the full evidentiary hearing before a hearing examiner be required.

We would draw a line between that and giving interested parties notice that the matter is under consideration and giving them an adequate opportunity to present their views to the Board.

Senator MONRONEY. Each applicant would have that right?

Mr. MURPHY. Each applicant.

Senator MONRONEY. And the right to appear and to be heard?

Mr. MURPHY. To appear and—I think normally, if there were a request for oral argument, that we would grant the request. I would think it is quite possible that there would be some cases that would arise that would be of little enough significance and little enough controversy involved that we might decide that oral argument is not justified. But some machinery would be provided so that every interested party, including all the interested carriers, could get their views before the Civil Aeronautics Board.

Senator MONRONEY. You are trying to shorten the time, of course, which has been about 6 years, has it not, in an international case?

Mr. MURPHY. Trying to do two things simultaneously. One to shorten the time and the other to provide fair play.

Senator MONRONEY. The 6-year case will still be going on?

Mr. MURPHY. It will still be going on.

Senator MONRONEY. For permanent certification. But how long would you anticipate this exemption authority hearing to take?

Mr. MURPHY. I would think that we might do a case of this kind in 3 or 4 months.

Senator MONRONEY. It would depend on the number who had filed applications, I suppose.

Mr. MURPHY. That is true. And we could provide procedures under which they would file arguments, including affidavits, as to the facts that they would like the Board to take into account, and they could file briefs to the Board, and we could set this down for oral argument. This might go on for a couple of days.

Senator MONRONEY. On foreign cases, do you have requirements where you can grant coterminal authority for a foreign line to serve more than one location in the United States?

Mr. MURPHY. We would be authorized to authorize a coterminal.

Senator MONRONEY. This is done by a rather rapid consideration of the Board.

Mr. MURPHY. That is true.

Senator MONRONEY. Under essentially existing authority; is that correct?

Mr. MURPHY. Usually the points to be served by a foreign air carrier are agreed upon in the negotiations that result in a bilateral agreement. Those negotiations are followed by applications of the foreign air carrier to the Civil Aeronautics Board for permit. The Board has to find that granting such permit would be in the public interest.

One very important factor, and usually a controlling factor, is that if this has been agreed to between the United States and the foreign country, that it is in the public interest to grant it.

So I think my answer would be first that this is usually covered by the bilateral agreement and then it is almost a matter of course. The foreign government designates the particular carrier to whom it wants the authority to be given. So you don't have the question of competing applicants.

Senator MONRONEY. You mean the particular carrier?

Mr. MURPHY. Yes. So you don't have competing carriers to give consideration to. Occasionally you have objections from U.S. carriers for one reason or another who contend that, notwithstanding the agreement, it would not be in the public interest to grant the

operating authority, or asking that some conditions are imposed upon it. And that slows things down some, but usually not very much.

Senator MONRONEY. Would not the purposes sought by this bill be met by the Board considering, as it I think now has, the request of the President for expedited action on the coterminal for the transatlantic, which of course also would apply to the transpacific. Would you explain why?

Mr. MURPHY. I will try. This matter is divided into two parts. The first part is the coterminals. This case, as I remember, involves just one U.S.-flag carrier in connection with operation of its transatlantic routes. That is a matter which the President has asked the Board to consider on an expedited basis, because it was at issue in the transatlantic route case. This case was decided by the Board over a year ago, as I recall, with respect to which the President took this action a few months ago.

When he acted on this case he approved some of the Board recommendations. In this particular matter he sent this question back to the Board for reexamination and asked that it be done expeditiously.

This is coterminals, east coast and west coast, associated with transatlantic routes.

The other part of the same question is coterminals, east coast and west coast, associated with transpacific routes. We cannot do that in this same proceeding, because this question was not at issue in the transatlantic route case. It was at issue several years ago in the last Pacific route case. In 1959 or 1960, or thereabouts, the Board did recommend to the President that this coterminal authority ought to be granted, but that decision was disapproved by the President, not on that particular ground, but the whole situation. This is the same transpacific route case that we have only within the last few months managed to get started on again for a fresh start.

It is, I would say, conceivable that an exception under existing law might be granted for this kind of authority. But we think it most likely that this exemption would not be defendable if it were challenged in the courts.

We think it very doubtful, I would say, that the exemption authority under existing law would be broad enough to provide the coterminal authority in connection with the transpacific routes.

Senator MONRONEY. For a number of years you have had foreign competition on the west coast, from the west coast to Europe, haven't you?

Mr. MURPHY. Yes, sir.

Senator MONRONEY. Particularly over the poles and over the surface. How many foreign airlines have that?

Mr. MURPHY. I will have to ask for some help on that.

Senator MONRONEY. There are several.

Mr. MURPHY. There are three, four, five, or six.

Senator MONRONEY. Yet you have never finished the case to where other than the TWA, I believe, has west coast to Europe rights.

Mr. MURPHY. That is true. I think other U.S. carriers have west coast to Europe rights by the polar route.

Senator MONRONEY. But not through the New York gateway.

Mr. MURPHY. I think that is correct.

Senator MONRONEY. So we are meeting the competition, you feel, on the North Atlantic by the polar route?

Mr. MURPHY. Not completely; no, sir.

Senator MONRONEY. This legislation would apply anywhere, to Latin America traffic——

Mr. MURPHY. It would apply anywhere. It happens that in the case of the west coast to Europe question, that we do have the proceeding to which you referred earlier. The President has asked us to decide on an expedited basis, so we can consider that quickly. I do not mean to imply here, because I do not think it would be appropriate, what I think the result might be, but at least we have the procedure available to consider this question very promptly. That is an unusual situation in that respect.

Senator MONRONEY. If one carrier is selected for the route under an exemption, a preferred position, the other applicants would not be prejudiced when the final decision is made in the full certificate proceeding.

Mr. MURPHY. It is my view that they should not be in a preferred position, and that other applicants should not be prejudiced.

I think people argue indefinitely about whether or not it actually would work that way. I think it would. I think that if this provision were written into the law, that the Board in effect, and in fact, would observe the following.

Senator MONRONEY. Is there any additional language that you could suggest that would provide for adequate hearings for all those who are eligible to be taken care of under this bill, but still not make them so long that it would defeat the purposes of the act? We would like to have your suggestions. We think if there is some intermediate type of hearing, that these people could be assured of adequate time, without undue delay, this might eliminate some of the fears raised about the bill.

Mr. MURPHY. The suggestion we made here would provide adequate procedural steps. However, we will be glad to give it further thought.

I think the very thought we want to avoid is reestablishing the full requirements relating to hearings and formal procedures because if we were to do that we would be exactly where we started.

Senator MONRONEY. We thank you very much, Mr. Chairman, for your very helpful testimony. We appreciate your appearance before us.

Mr. MURPHY. Thank you, sir.

Senator MONRONEY. The next witness if Mr. Frank E. Loy, Deputy Assistant Secretary, Transportation and Telecommunications, Department of State.

Mr. Loy, we are glad to have you here.

STATEMENT OF FRANK E. LOY, DEPUTY ASSISTANT SECRETARY OF STATE FOR TRANSPORTATION AND TELECOMMUNICATIONS, DEPARTMENT OF STATE; ACCOMPANIED BY MICHAEL STYLES, OFFICE OF AVIATION, DEPARTMENT OF STATE

Mr. LOY. Mr. Chairman, I am accompanied today by Mr. Michael Styles of the Office of Aviation of the Department of State.

Senator MONRONEY. You may proceed in your own way.

Mr. LOY. I am Frank Loy, Assistant Deputy Secretary of State for Transportation and Telecommunications.

I appreciate the opportunity to testify on behalf of the Department of State in support of S. 3197 and S. 3198. Both of these bills are of interest to the Department of State.

I would like first to direct my testimony to S. 3198, which affects the conduct of U.S. civil aviation relations with foreign countries in a most critical fashion. This bill proposes to amend section 402 of the Federal Aviation Act to permit the Civil Aeronautics Board to act against foreign air carriers whose governments are impairing U.S. airline operating rights abroad.

Since the inception of the international air age in 1946, the United States has consistently and all around the world put forth the view that it is wise to permit airlines to make their own management decisions on the volume of services that should be provided on international routes. We have further maintained that this is the basic pattern contemplated by our many bilateral air transport agreements. We hold that, in these agreements, the airlines' rights are limited only by the requirement that the services actually operated conform to certain standards.

Thus, for example, an airline should not operate a volume of service which is patently excessive in terms of the public need for air transportation, nor should it offer services designed principally to attract traffic moving wholly between foreign points. The provisions in our bilateral agreements dealing with volume of services are generally known as the Bermuda capacity principles.

In 1962, a major study was undertaken by the administration to review U.S. international civil aviation policy. The unequivocal conclusion was reached—and endorsed by President Kennedy in 1963—that the basic path the United States had been following in supporting the Bermuda capacity concepts was sound and should be continued.

This conclusion is even more valid today. International air transport is thriving and the prospects for further growth are boundless. The U.S.-flag carriers are playing a leading role in this success story in large part because of U.S. insistence upon the international acceptance of the concept of managerial freedom which lies behind the Bermuda principles. U.S. airline success in the future may well depend on how well and extensively the United States can persuade foreign countries to follow this approach. We do not think it is good for international aviation or for international airlines—both United States and foreign—to drift toward the alternative to this approach, that is, a system in which governments would periodically determine the volume of service to be provided by the carriers of the countries concerned.

It is, however, true that the United States has been unable to obtain universal acceptance of the Bermuda capacity principles. A few countries consistently restrict U.S. airlines in the belief that their own national carriers need protection. Others impose unilateral restrictions from time to time when they believe they are threatened by a particular airline proposal or for bargaining purposes.

These instances of restrictions have probably not affected the overall growth of U.S. airline services abroad to a significant degree. But each individual case is harmful to the U.S. airline concerned and there is a constant danger that restrictionism will spread if not effectively combated. Capacity restrictions have probably been one of the most

serious recurrent problems facing the orderly growth of U.S. international aviation.

When foreign countries impose unilateral capacity restrictions, the United States attempts to remove them through consultation and negotiation with the foreign government, as provided for in bilateral air transport agreements. Sometimes, consultation and negotiation prove successful in removing restrictions, other times not. Ultimately, the weapon of denouncing the agreement is available where other means fail, but this kind of medicine may kill the horse. What we need is a remedy short of denunciation which can be used when the normal recourses available in bilateral agreements have failed to remove the unilaterally imposed foreign restrictions.

The Department believes that S. 3198 fills this gap. It would make the extent of U.S. powers crystal clear and serve as notice to all that the United States is not defenseless when a foreign country is acting unilaterally to impair U.S. airline operating rights. The legislation would reinforce the basic direction of U.S. international civil aviation policies and preserve the freedom of U.S. airlines to use managerial initiative.

The Department of State notes that the authority contemplated by the bill must be exercised consistently with the international obligations of the United States, as provided for in section 1102 of the act. The United States would, therefore, continue to emphasize resolution of disputes through the remedies available in bilateral air transport agreements, that is, principally through consultation and negotiation. This is as it should be.

The Department also notes that action under the proposed amendment could only be taken with the approval of the President, as provided for in section 801 of the act. We believe that this step is absolutely essential, since an action taken to restrict a foreign air carrier is likely to have foreign policy implications at least as serious as those raised by other actions which are subject to Presidential review under section 801 of the act.

The Department would like to suggest a few changes in the text of S. 3198 to remove what may be ambiguities and anomalies.

First, we believe that the phrase "agreed upon" in lines 10 and 11 on page 1 should be eliminated because it appears to limit the applicability of S. 3198 to situations where operating rights are derived from bilateral air transport agreements. There is no reason why the powers of the United States should not be exercised equally where existing U.S. airline rights are impaired in the absence of a bilateral agreement. For the same reason, the words "designated by the United States" in line 11 on page 1 and line 1 on page 2 should be eliminated, since air carriers are designated only pursuant to bilateral agreements; that is, that the term is really one that is used in relevance to bilateral agreements.

Secondly, the Department believes that a phrase such as "in whole or in part" should be inserted after "suspend" in line 3 on page 2 to make it clear that the Civil Aeronautics Board can, without notice or hearing, take an action less than complete suspension of the foreign airline's services, such as limit the frequency of service in proportion to the nature of the restriction imposed by the other country against U.S. airlines.

Third, the Department has some concern over the last sentence of the bill which appears in lines 8 to 13 on page 2. The Department appreciates that the practical effects of any initial action taken by the United States against one foreign airline might be minimized or even negated through a cooperative arrangement between that foreign airline and an airline of a third country operating on the same route. However, it would appear necessary in such a situation to establish the existence and nature of the cooperative arrangement before any action could properly or wisely be taken against a third-country airline.

The Department believes, therefore, that provision should be made for notice and hearing before enforcement action by the Board is undertaken against a third-country airline. This change, as well as some other textual changes to bring the last sentence more in line with the rest of the paragraph, are reflected in the following suggested revision of the last sentence:

> The Board may also, after notice and hearing, alter, modify, amend, or limit operations between such foreign country and the United States under the permit of any foreign air carrier of a third country to the extent it determines necessary to make the operation of this paragraph effective.

My statement with regard to S. 3197 will be brief.

Basically, the Department believes that the administrative procedures established to consider application by U.S. carriers for route authority under section 401 of the Federal Aviation Act—including open hearings, cross examination, and the like—are soundly conceived. S. 3197 would, as we see it, provide for an exception to these procedures in a special situation and in a limited area.

It is our interpretation that the proposed legislation would, in suitable cases, help U.S. carriers compete effectively and without undue delay with foreign carriers on routes which the carriers of both countries may serve under bilateral air transport agreements or operating permits. From this viewpoint, the Department would support the enactment of S. 3197.

The Department makes no judgment, however, on whether or not the powers contemplated by the bill are desirable from the viewpoint of the regulatory concepts of the Federal Aviation Act. Nor does the Department consider it appropriate to comment extensively on such questions as the effect of the bill on the competitive balance among U.S.-air carriers. These are properly questions which should be left to others to consider, and indeed have been considered here this morning.

Senator MONRONEY. Thank you, Mr. Loy. We appreciate very much your statement. I wish for the record you would help us out on how the third party airline would be able to step in and negate the action that we might take against a second party airline.

Mr. LOY. Mr. Chairman, imagine the situation where we have a bilateral agreement with country X, and country X restricts the operations between the United States and "X" by U.S. carriers. It limits the frequency.

And then we say under the proposed bill "All right, if you do that, we will likewise restrict your carriers."

If country X has an agreement with a carrier of country Y, who under rights obtained by the United States and the other countries involved, operates between the United States and "X," then it could

be possible to sort of shift the traffic to the carrier of country Y. While the U.S. carriers would be limited and the foreign carrier of country X would be limited, the carrier of country Y would gain the traffic and under some arrangement with country X share the in profits and revenues from that.

I think that is the intent of the last sentence of this bill.

Senator MONRONEY. You favor hearings?

Mr. LOY. On this point.

Senator MONRONEY. Would you favor hearings at all on the broad general principle of implying sanctions?

Mr. LOY. Well, sir, as we say, we basically think that the full hearing is very valuable to the President and to us in making decisions as to route cases, but we would not favor a hearing under S. 3198 in the general part of it, except for the third country effect that we were talking about, because it seems to us that that would negate the entire purpose.

We think that the ability to be heard as outlined by Chairman Murphy makes sense. But certainly not a full hearing under the Administrative Procedure Act.

Senator MONRONEY. Your Presidential review, which you suggested would be to keep the CAB from interfering unnecessarily and unknowingly with foreign policy, is that correct?

Mr. LOY. Yes, and——

Senator MONRONEY. I wish you would elaborate on it.

Mr. LOY. We think that the purpose of 801 is to make certain that the actions taken by the Board don't have an effect on foreign policy which the President would consider undesirable, and the kind of action contemplated by this bill, in a particular case, could have such effect. We think it is wise for him to pass on it.

Senator MONRONEY. In other words, a delicate relationship between ourselves and our allies could be interfered with by precipitous action if not well founded, and suddenly taken where negotiations or continued effort might be able to remove the objectionable discrimination.

Mr. LOY. That is right. In a particular instance this could be a very hard medicine. It is intended to be a hard medicine in several instances. It ought to be subject to the President's ability to control in the event that it might affect relations between the United States and one of its allies at a time when that is not desirable.

Senator MONRONEY. Senator Cannon?

Senator CANNON. You say on line 11, page 1, and line 1, page 2, "designated by the United States" should be eliminated. Wouldn't you want to make that clear that it was a U.S. airline? We are not attempting to get into economic action here involving any other airline, in favor of any other airline, isn't that correct?

Mr. LOY. That is correct, Senator.

The change I had proposed dealt with the word "designated" which is used in bilateral agreements. Our thought was that this power ought to be available to the United States to assist U.S. international carriers even in the absence of an agreement. In that case there is no United States designated carrier. That term simply doesn't appear.

There are several wording changes that one could suggest. I don't believe that proposed change is a controversial one.

Senator CANNON. If we just made it, perhaps after the word "any"—"operating rights of any United States air carrier" and then your

elimination "designated by the United States, to conduct flight operations, to, from, or over the territory of such foreign country." Would that seem to be a good change in your opinion?

Mr. LOY. I think that would work, although I think actually as defined in the act the term "air carrier" is a defined term and does mean a U.S. air carrier. A term such as that would work.

Senator CANNON. If that is designated in the act perhaps it would not be necessary. There is no dispute, is there, about the applicability of section 801; is there any controversy about that? You refer to it in your statement on page 6, that you believe that that is absolutely essential. What I am trying to find out is whether there is any divided opinion as to whether the applicability——

Mr. LOY. I believe not, but I didn't want to leave our views on that in any doubt. I believe that there is unanimity on that point.

Senator CANNON. Have you reviewed the amendments proposed by Chairman Murphy to S. 3198? On page 11 he has three proposals. Have you had opportunity to go over those and state whether or not you concur with his suggestions?

Mr. LOY. I saw those for the first time really this morning. I believe the amendments to S. 3198 that Chairman Murphy suggested are essentially satisfactory to the Department.

Senator CANNON. In other words, in the first one he refers to making it clear that the action to alter, modify, amend or limit operations under such permits could be taken without notice or hearing.

Mr. LOY. That is correct.

Senator CANNON. And the second, that would not limit the imposing of sanctions to a like or similar nature, but change it to the word "appropriate" so that there might be a determination to impose some other type of sanction which was not considered of a like or similar nature than that imposed against us.

Mr. LOY. That is right. You could have a situation where an exact mirror restriction, or mirror reaction, wouldn't work, wouldn't be effective. "Like" or "similar" is satisfactory to us. I don't think we would have any difficulty with "appropriate."

Senator CANNON. I think you are already in accord, I believe, on his third suggestion, to make clear that the powers conferred will extend to any circumstances in which operating rights of a U.S.-flag carrier, which the point you were talking about before, in a foreign country are involved and not limit the rights of a designated U.S. carrier under a formal bilateral agreement. That was the thrust of your proposed amendment, was it not?

Mr. LOY. That is correct.

Senator CANNON. That is all that I have, Mr. Chairman.

Senator MONRONEY. Thank you, Senator Cannon.

Thank you, Mr. Loy, for your very helpful testimony on this matter.

Mr. LOY. Thank you, Mr. Chairman.

Senator MONRONEY. Our next witness, Mr. Norman J. Philion, vice president, international affairs, Air Transport Association of America.

Mr. Philion, we appreciate very much your appearance here today, speaking for the ATA. You may proceed in your own way.

STATEMENT OF NORMAN J. PHILION, VICE PRESIDENT, INTERNATIONAL AFFAIRS, AIR TRANSPORT ASSOCIATION OF AMERICA; ACCOMPANIED BY JAMES LANDRY, AIR TRANSPORT ASSOCIATION

Mr. PHILION. Thank you, Mr. Chairman.

I have with me Mr. James Landry, of the Air Transport Association.

Mr. Chairman, we appear in support of S. 3198. Our members wholeheartedly endorse the objective of the bill, and we appreciate this opportunity to present you with views in their behalf.

In addition to the 19 member airlines which conduct regularly scheduled international operations, our membership includes the trunk and local service airlines, Alaskan and Hawaiian airlines, the helicopter operators, and an all-cargo airline. This represents almost all of the certificated scheduled airlines of the United States, and together they form a vital national air transport network linking all segments of the American community with commercial and cultural centers abroad. Because of the highly regulated nature of international air transportation, and the way in which governments exchange air transport rights and opportunities, most of these airlines can be, and many have been affected by the problem to which the bill, S. 3198, is directed.

The purpose of the bill is to make indisputably clear the power of the Civil Aeronautics Board to take retaliatory action against foreign airlines operating to this country whenever the home governments of such airlines arbitrarily restrict or limit U.S.-flag airline operations to their countries. We have had a lot of discussion in the past about the existence or absence of that power in the present statute. We of the U.S.-flag airline industry have been among those who have thought that the Board had sufficient statutory power on which to base a full measure of retaliation, where required by the public interest. But, questions and debate about the extent or limitation of the present authority have depreciated its value and usefulness. And, the necessarily complex and time-consuming notice and hearing process contemplated by the present provisions of section 402 in any event would prevent the immediate retaliation which might be necessary or desirable.

The amendment to section 402 as proposed by S. 3198 would remove any such doubts and hindrances in this area once and for all. It would make clear the Board's power to take reciprocal action against airlines of foreign countries whose governments impair, limit, terminate, or deny rights granted to U.S.-flag airlines to operate to, from, through, or over the territory of those countries. Moreover, since the existing statutory machinery requires a hearing process really too long and too involved to be effective in the face of swift action taken with little or no notice by foreign governmenst, S. 3198 eliminates the notice and hearing requirement at least to permit the suspension of foreign airline permits for these extraordinary circumstances.

I. THE PROBLEM AND ITS BACKGROUND

A. The basic foundation of scheduled international air service is governmental agreement, written or tacit.

All U.S.-scheduled air transportation, domestic and international, is regulated. Quite aside from our own regulatory requirements in this country, international regulation prevails, because each nation is recognized to have complete and exclusive sovereignty over its own airspace. This was an accepted principle of international law as long as 50 years ago, and it has consistently been a cornerstone provision of appropriate treaties and national statutes ever since. In our case, the Chicago Convention of 1944 to which we are a party, and the Federal Aviation Act of 1958 both spell it out.

Accordingly, in order for an airline of one country to operate to another country, it must have that other country's approval. Some form of mutual agreement or understanding between nations is necessary. And, in turn, because the public interest and sound aviation economics require operation of through routes linking many countries, there is an interrelationship among the agreements or understandings involved—an interrelationship which calls for a broad level of freedom within the overall regulation.

Today, most scheduled international airline service is conducted pursuant to air transport agreements between two contracting nations under which specific routes and operating rights of roughly equivalent economic value bilaterally are exchanged. In addition, for various reasons, some air services are conducted without the benefit of formal agreements. In such cases, air services of this type rely on the operating authority issued by one nation and the approval of the second nation, usually based on the general principle of reciprocity. In either event, the right to provide international air service between any two nations requires the agreement, written or tacit, of both sovereign governments.

U.S.-flag airlines presently operate scheduled services between this country and the territories of about 80 sovereign states. Air services to and from 52 of these sovereign states are operated under the terms of bilateral air transport agreements wherein, in addition to reaching agreement on routes and operating rights, the United States and each other contracting nation have agreed to certain principles which govern airline operations between the two countries.

Most U.S. air agreements are modeled on the Bermuda agreement of 1946 between the United States and the United Kingdom. The Bermuda agreement contained broad principles which were intended to provide a regulatory farmework as free from restriction as possible. Rejecting the extreme proposals previously considered by various governments, ranging from competely unregulated freedom of the skies at one extreme, to rigid mathematical formulas for regulating air transport volume, or capacity, at the other extreme, the Bermuda agreement negotiators instead adopted a more practical statement of the principles governing, among other things, the amount of capacity to be operated over a particular route.

The Bermuda principles proceed on the assumption that any government, in arranging its air transport relations, has a particular interest in the traffic between its homeland and other countries, and the airlines designated by that country have a particular right to develop and move that traffic without unilateral restriction. They retain for airline management substantial business incentive and the opportunity for a considerable degree of business judgment in promoting and operating air services. They prohibit predetermined or

other arbitrary restrictions on the capacity offered by the airlines over the agreed-upon routes. They do permit a bilateral review of capacity offered in the light of the traffic experience, and do contemplate an obligation on both sides to make adjustments when necessary, but only on an ex post facto basis.

These principles, which are embodied in most of the air transport agreements of the United States, and which constitute a basic element of U.S. aviation policy, become extremely important in a review of the problem which the bill, S. 3198, is designed to overcome because they illustrate both the opportunities and the related obligations of the two contracting parties.

B. The problem has been in insuring the observance of these written or tacit agreements.

The Bermuda-type agreements have served the nation, the public, and air transport development in general exceedingly well. So, too, have the unwritten understandings, largely founded on the principle of reciprocity, which underlie other international operations. However, the problem has been in insuring the observance of the agreements and understandings by some of our partners.

The U.S. carriers have been subject to a variety of restrictions imposed by foreign governments in various parts of the world for many years. This has occurred both where bilateral agreements were in force and where operations were being conducted under authority granted unilaterally by the governments concerned. Some of the restrictions involved what the United States believed to be outright violations of the relevant agreements; others involved differences of interpretations. Some of the restrictions have been exceedingly onerous; others while relatively minor have involved significant harassment or inconvenience to the carriers and to the traveling and shipping public. All of these restrictions had a common thread. They were motivated by a desire to give an artificial advantage to the national carrier or to improve a bargaining position for a contemplated negotiation, or a combination of both purposes.

It would be impossible without trying your patience to relate in detail a full list of the restrictions which have been imposed. U.S.-flag services have been prohibited at times and on days when competitive services were being offered by the national carrier. Mandatory stops at intermediate points have been imposed on U.S. carriers, leaving the competing national carrier free to operate nonstops between the major terminals. Limitations have been placed on the number of U.S.-flag airline flights operated to or through a particular country. Schedules which have been filed by U.S. carriers which involved changes or increases in capacity and frequency or in the type of equipment used have been rejected. U.S. carriers have been prohibited from carrying certain categories of passenger traffic or of cargo traffic on some sectors of their authorized routes.

These restrictions and limitations have achieved the intended effect of diverting significant volumes of traffic to the national carrier by reducing the relative attractiveness and even the availability of U.S.-flag services to the traveling and shipping public.

They have also had an even more serious effect; because flights in international air transportation normally serve several countries, and in some cases many countries on the same route, requirements that landings be made in one country at certain hours or on certain

days, mandatory routing and landing requirements, limitations on the number of frequencies or on the amount of capacity or on the categories of traffic which may be carried, all have a cumulative effect well beyond the particular country which imposes them. Schedule planning and planning for efficient allocation of equipment has been made extremely difficult. The result is that arbitrary controls exercised in only a few countries have handicapped U.S. airline operations on major sectors and have adversely affected the overall quality of service afforded to the public.

In all of the above cases, the United States has sought by consultation and negotiation to relieve the U.S. carriers from the arbitrary burdens imposed upon them. While it has met with varying degrees of success and failure, it has been inhibited by a lack of certainty, which on occasion has been publicly expressed, as to whether the United States even possssed authority under U.S. law to retaliate in kind against the national carriers for whose benefit the foreign restrictions were being imposed.

We are reluctant in a public forum to air old disputes. Some of these disputes, after many years had passed, were settled on a mutually satisfactory basis despite the handicap under which our negotiators labored. Eventually, however, some had to be resolved by granting to the other country traffic rights for its carriers well in excess of those which could be justified on the basis of an equitable exchange of economic opportunities.

These experiences illustrate the nature of the problem to which S. 3198 is directed. Unless the United States itself is sure of its legal power and makes it clear to other governments that in the last analysis it is prepared if necessary to take strong countermeasures when its own carriers are improperly restricted, it must expect in the future a continuation of these practices which some countries have employed with impunity—and indeed with profit. For the record for others to see is that there are a number of instances in which foreign governments, having sucessfully harassed or restricted U.S.-flag services without retaliation on the part of our own Government, have emerged with foreign air carrier permits or new or revised bilateral agreements conferring on their carriers highly advantageous grants of route rights in exchange for little more than relief from the burdensome restrictions.

These lessons have not been lost on others.

Mr. Chairman, I don't hesitate to mention four specific cases, since these are public knowledge today and several of them have appeared in the press. First, despite the unusually clear provisions of the United States-Venezuela Bilateral Air Transport Agreement, the Venezuelan Government currently, as it has for many years, restricts the frequency and capacity of U.S.-flag carriers. Introduction of jet service was delayed and then permitted only when piston services were canceled. Schedule approval is required and frequencies are subject to curtailment. The result is that it is not possible to make long-term plans for patterns of service with any certainty that all of the planned frequencies can be operated. Meanwhile, adhering strictly to the requirements of the very same bilateral agreement, the United States permits the Venezuela carrier, and a third-country carrier closely associated with it, to plan, schedule and operate frequencies and capacity as they wish.

Similarly, in a nonbilateral situation, the Philippine Government strictly controls the frequencies of U.S.-flag carriers and in recent

months has actually curtailed the numbers of frequencies which it allows Pan American World Airways and Northwest Airlines to operate to the Philippines, while at the same time the Philippine carrier—without restriction by the U.S. Government—continues to operate as its management desires and has progressively increased its service to the United States, the last such increase having been inaugurated only 2 weeks ago.

New problems are also arising. In recent weeks both the Spanish and Portuguese Governments have refused to approve increases in the frequencies of U.S.-flag service to and through those countries, increases which the carriers are entitled to make under the terms of the bilateral and which are justified by traffic experience and by the rate of growth in the market. These frequency increases were essential parts of planned patterns of service and allocation of equipment and crews which are highly complex, and cannot be reprogramed at short notice.

We do not suggest that S. 3198 is a panacea which will automatically solve all problems. In all candor, it must be recognized that, even if the Government had felt certain of its authority to take retaliatory action it might not have done so in many instances in the past because the United States prefers to work such problems out by consultation and negotiation and also because in some cases—notably where no foreign carrier was operating services to the United States—this remedy would have been inappropriate or unavailable. But there have been cases and there will be cases in the future where the mere fact that the United States was in a position to retaliate, if need be, would have tended to prevent problems from arising in the first place and would have strengthened the hands of our negotiators in the event they did arise.

I have not attempted to give you a full listing of the problems we have faced in this area. All of the restrictions I have cited have curtailed or will curtail justifiable and needed air transportation. The fact that our carriers suffer thereby is self-evident. But equally evident is the damage to the traveling and shipping public which flows from these restrictions. They are in the purest sense contrary to the public interest. S. 3198 offers the machinery to cope with them.

II. THE NEED FOR THIS LEGISLATION

A. Foreign governments have recognized the limitations on the extent of U.S. actions in response to arbitrary restrictions.

From the beginning, U.S. aviation policy has had two basic objectives—to secure the extensive U.S.-flag airline international route structure required in the national interest and, in exchanging rights bilaterally in this connection, to achieve a balance of economic benefits. For this reason, and because it has been considered necessary from time to time to grant rights somewhat more than otherwise justified in order to gain foreign acceptance of the important Bermuda principles, the United States has granted foreign airlines generous access to the extremely valuable U.S. air transport market. Once granted, these foreign airlines have not had any unilateral restrictions imposed by the U.S. Government on operations within the scope of their authorized rights. This is, of course, completely in accord with air transport agreement principles as well as reciprocal air transport understandings.

One might assume, therefore, that our bilateral air transport agreements and the general principle of reciprocity foreclose the possibility of arbitrary restrictions being placed on U.S.-flag airlines. But, as the situations I cited demonstrate, that has not always been the case. There are two basic reasons for this.

First, without the clear and acknowledged power to retaliate immediately, it is difficult, if not impossible for the U.S. Government to act quickly enough and be sufficiently persuasive to have the unauthorized and damaging restriction lifted by the other party on a timely basis, if at all. The formal intergovernmental consultations and negotiations of the type required are difficult, complex and time-consuming at best. And frequently such discussions will lead the other party, as they have in the past, to demand and expect some additional right or concession from the United States as the quid pro quo for conforming to the agreement. And, of course, the granting of such additional concessions means diversion from U.S. carriers, both international and domestic.

Second, as things now stand in the eyes of those who question the scope of the present provisions of section 402 of the act, the only existing weapon holding any promise at all of being persuasive in an effort to remove arbitrary restrictions imposed in violation of the agreement is the ultimate weapon—complete termination of air services between the United States and the country ignoring the agreement. But even that course of action requires 1 year to take effect in most cases which gives the other party at least a temporary advantage if it decides to remove the restrictions and abide by the agreement some time before the 1-year period expires.

There is an understandable reluctance generally to discontinue vital air services altogether, however, in view of pertinent questions involving foreign relations, and because of the increasing requirement for maintaining needed international communications and trade. Moreover, it is general knowledge abroad that questions have been raised in this country concerning the authority or lack of authority of the U.S. Government to retaliate against arbitrary restrictions or to take any other effective action short of terminating air services. Armed with this knowledge, it is small wonder that foreign governments have not hesitated to reject the efforts of U.S. negotiators to secure fair treatment of U.S. carriers.

B. S. 3198 represents legislation which would clearly authorize the Civil Aeronautics Board to take quick and responsive action.

S. 3198 is not a proposal designed to restrict foreign-flag airlines or to protect U.S.-flag airlines from foreign competition. Neither foreign governments nor foreign airlines can call this protectionism. Nor should they have any concern about changing U.S. policy except to the extent that this Government intends achieving fully reciprocal air transport rights and adherence to bilateral agreements. The proposal is intended merely to provide clear legislative authority to take steps against those who restrict us improperly—not simply for the sake of being able to impose counterrestrictions, but rather, by equalizing bargaining positions, to remove impediments to the settling of disputes through the essential intergovernmental process.

The proposed amendment to section 402 also contains another ingredient necessary to deny the possibility of foreign airlines thwarting Board actions in this regard. That possibility clearly exists in the

form of the many pooling or other intercarrier cooperative arrangements in effect, and increasingly being concluded between two or more foreign airlines. To forestall a foreign airline from avoiding the intent and effects of an appropriate sanction authorized by S. 3198 through the substitution of air service by another foreign airline under the guise of such an intercarrier arrangement, the bill provides for the similar restriction of such other foreign airline, in its operation between the United States and the country to which the original sanction was directed, to the extent necessary to make the particular sanction effective.

The authority envisaged by S. 3198 could be exercised only after a finding that another country by its action has not lived up to its obligations under an applicable bilateral air transport agreement or the general principle or reciprocity. And since the President of the United States has the final responsibility for foreign relations, any action of the Civil Aeronautics Board under the proposed amendment to section 402 would require, as do other Board actions under that section today, Presidential approval. In short, the demonstration of need and the requirement of Executive approval would safeguard against any possible inappropriate exercise of authority. At the same time, it would put the total Government solidly behind action needed to confirm U. S. rights.

CONCLUSION

It would be far better, of course, if all governments fully and faithfully observed their international commitments and obligations. Unfortunately, however, the history of the world has shown that to be somehow beyond anticipation. But there is little reason to tempt fate by stimulating nonobservance through hesitancy or a lack of means to act.

The users of international air transportation ought to have the right to expect the most efficient and convenient air service possible under the prevailing regulatory framework. The U.S. Government ought to have the right to expect adherence to the agreements it has negotiated with other governments for this purpose. And the U.S.-flag airlines ought to have the right to expect they will be able to utilize fully the opportunities which both they and their foreign airline competitors have been granted by such agreements.

None of these expectations are being met completely today. Nor will they be met until all parties are convinced that our Government has the effective means to combat arbitrary unilateral restrictions. S. 3198 would provide the clarification needed and we urge the committee to give the bill favorable consideration.

Thank you.

Senator MONRONEY. Thank you very much, Mr. Philion, for your statement and advice to the committee.

Do you agree that the United States, in the exercise of its sovereign powers, could now accomplish the objectives which are sought in the bill, S. 3198?

Mr. PHILION. Without this proposed legislation?

Senator MONRONEY. Yes. We have argued, as this matter was up before, that the CAB had this authority—Chairman Magnuson, myself, and others, in earlier hearings—and that the legislation, which might be desirable, merely puts it out in front for the world to

see, before an action takes place; that we have specifically granted that power to the CAB to take corrective action, if necessary.

Mr. PHILION. Mr. Chairman, that is the position that the air transportation industry has maintained over the years.

Two comments: First, I think enactment of this legislation is both needed and desirable at this stage, because of the discussion about the power or lack of power in the past and in order to focus attention on what we consider to be a need to seek adherence to solemn agreements.

Secondly, there is this question of the notice and hearing requirement in the present statute, which we think there is good reason at least for something short of total cessation of foreign carrier operations, to permit without notice and hearing a suspension in whole or in part of some of their operations.

Senator MONRONEY. Do you anticipate as a part of the spectacular growth in air cargo certain new developments that perhaps were not adequately covered in the bilaterals but which may result in adverse action being taken against us on movement of cargo, schedules, particularly, that make this bill even more necessary than before, when it would have applied primarily to passenger traffic?

Mr. PHILION. Mr. Chairman, as to the first part of your question, my answer would be no. We, at least the members of our association, believe the bilateral agreement adequately covers cargo operations. That has been, I think, fairly well confirmed by a recent arbitral decision between the United States and Italy.

As to the second part of your question, my answer is yes. There are going to be—and there have been—increasing cargo problems, and I think this legislative amendment would be extremely useful in that area.

Senator MONRONEY. Senator Cannon?

Senator CANNON. Thank you, Mr. Chairman.

Your testimony directs itself in part to one of the amendments proposed by Chairman Murphy. What is your position with respect to his other two suggestions?

Mr. PHILION. Senator Cannon, we have not focused on changes to the bill in our prepared statement. We do want to submit something for the record.

I would say this: We generally agree with the amendments proposed by Chairman Murphy. I would like to express one note of caution with respect to changes proposed by both Chairman Murphy and the previous witness, having to do with the term, or the words, "agreed operating rights." The reason I say that is this: The purpose of this bill, as we view it at least, is to put the United States in the position to take reciprocal action against those who restrict us. We are not proposing, at least I don't think we are proposing, to go out and restrict others unilaterally.

That being the case, that being the principal purpose of the bill, to get back at those who restrict us, those essentially who are ignoring their bilateral agreements with us, I don't think we would want to see a formal amendment developed which intentionally, or otherwise, would have the effect of directing the Board to go beyond that. That might be done, if a form of words were developed, which had the effect of authorizing sanctions against foreign scheduled carriers, even though their governments may not have taken any action contrary to the agreement.

We have a suggestion to make in that regard, and I will give it to you now or submit it for the record later.

Senator CANNON. Is that just in relation to the agreed-upon operating rights?

Mr. PHILION. I think that was Chairman Murphy's third point, and I think the previous witness had a specific recommendation, both of which, I think, we have to treat—we would recommend that you treat—with quite a lot of care.

We have a specific recommendation to make, which we can give you now or submit for the record.

Senator MONRONEY. Because of the lateness of the hour, if you will submit it for the record, we would appreciate it.

(Subsequently the following letter was received:)

AIR TRANSPORT ASSOCIATION OF AMERICA,
Washington, D.C., May 20, 1966.

Hon. A. S. MIKE MONRONEY,
Chairman, Aviation Subcommittee, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In the course of the hearings before the Aviation Subcommittee of the Senate Committee on Commerce on S. 3198, several amendments to the bill were proposed by various witnesses. As I indicated at the close of my testimony, the Air Transport Association is in general agreement with most of the amendments proposed by Chairman Murphy of the Civil Aeronautics Board. However, we suggested that caution be exercised in one area touched on by Chairman Murphy and Deputy Assistant Secretary of State Loy.

Mr. Loy suggested altering the language "agreed upon operating rights" on page 1, lines 10 and 11, by deleting the words "agreed upon." We believe such an amendment might exceed the intent of the legislation. As I stated in response to Senator Cannon's questions, such an amendment might go beyond the retaliatory concept and equip the Board with power to restrict unilaterally and arbitrarily. The bill was designed to make it clear that the Civil Aeronautics Board is empowered to take retaliatory action against foreign airlines in the event their home governments violate the written or tacit agreements which underlie the international operations of U.S.-flag carriers.

In our opinion, the legislation should be confined to granting power of retaliation to our government where an existing agreement or understanding has been violated by a foreign government. It should not be so broad as to authorize sanctions against foreign scheduled carriers when their governments may not have taken any actions contrary to an agreement.

We do agree with Mr. Loy and Chairman Murphy that the bill as it now reads is not clear in covering both written and tacit agreements. Accordingly, we suggest that an appropriate amendment of this phrase, in keeping with the intent of the bill, might read:

". . . taken action which impairs, limits, terminates, or denies rights of any air carrier designated by the United States pursuant to a bilateral Air Transport Services Agreement or of any air carrier authorized by the United States and possessing a permit from such foreign government to conduct air services to, from, through, or over . . ."

Again, we wish to thank you for having afforded us the opportunity to express our views on this important legislation. We will be glad to cooperate with the Subcommittee in any way in which we can be helpful.

Sincerely,

N. J. PHILION,
Vice President—International.

Senator MONRONEY. Do you have any further questions, Senator Cannon?

Senator CANNON. I would comment on that. According to Mr. Murphy's testimony, he, as I understand it, was trying to make it clear that this would not be limited to the rights of a designated U.S. carrier and a formal bilateral agreement.

In other words, he was referring to the formal-agreement position rather than where operating rights had been agreed on, other than by a formal bilateral agreement. That was my understanding.

Mr. PHILION. We agree with that, Senator. We would recommend specific language to deal, as we have in our testimony, with both the agreement situations and the nonagreement situations.

Senator CANNON. That is all that I have, Mr. Chairman.

Senator MONRONEY. Thank you very much, Mr. Philion, for your testimony.

Mr. PHILION. Thank you, sir.

Senator MONRONEY. The hour is growing late. The committee will stand in recess for the noon recess.

I would include in the record a letter from the United Air Lines, signed by Mr. E. O. Fennell, senior vice president, law; and a letter from Seaboard World Airlines' attorneys, Fisher, Sharlitt, Gelband & Green, signed by Mr. Joel H. Fisher, Washington counsel for Seaboard Airlines.

Those will be included in the record.

(The documents referred to above follow:)

UNITED AIR LINES,
EXECUTIVE OFFICES,
Chicago, Ill., May 12, 1966.

Re S. 3197.

Hon. A. S. (MIKE) MONRONEY,
Chairman, Subcommittee on Aviation, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR SENATOR MONRONEY: We have been informed that the Subcommittee on Aviation will hold hearings on the above-entitled bill on Friday, May 13, 1966. We respectfully request the Subcommittee give consideration to the following views of United Air Lines on this legislation.

S. 3197 is a bill to amend Section 416 of the Federal Aviation Act of 1958. The bill would authorize the Civil Aeronautics Board to permit an air carrier, by exemption, to engage in overseas or foreign air transportation for a temporary period pending the hearing and Board decision on applications for certificates of public convenience and necessity to provide such overseas or foreign air transportation. Before issuing the exemption the Board would be required to find that the air carrier is placed at a competitive disadvantage as a result of foreign air carrier service on the route and that the development and promotion of the United States flag international air transportation system is thereby adversely affected. The bill would also require approval by the President of the temporary exemption issued by the Board.

In introducing S. 3197, Senator Warren G. Magnuson stated that U.S. flag carriers are often at a disadvantage in seeking to compete with foreign airlines in that period after a bilateral air transportation agreement is consummated. This disadvantage arises from the different procedural requirements of the Federal Aviation Act. The foreign air carrier need only file an application with the Board for a foreign air carrier permit. These permits are usually issued promptly. The foreign air carrier is then in a position to begin service on the route. On the other hand, the American flag carriers are required to go through lengthy certificate proceedings under Section 401 of the Act before they are able to compete with the foreign air carrier on the reciprocal route. The purpose of the bill, therefore, is to remove an advantage enjoyed by foreign air carriers.

It is difficult to argue with the purpose of the bill. Clearly there is an advantage to a foreign air carrier that has the opportunity to become firmly entrenched on a route before a U.S. flag carrier is authorized to compete on that route. Conversely, there is a disadvantage to the U.S. flag carrier that must wait an appreciable length of time before it is authorized to compete with the foreign carrier on that route. The underlying reason for the advantage lies in the basic difference between the air transportation system of the United States and that of most foreign countries. The foreign carrier is usually a chosen instrument of the nation with which the bilateral agreement has been concluded. The foreign carrier faces no competi-

tion from other carriers of the same nation and, therefore, is not required to prosecute a route case before its government.

After the bilateral is consummated, the foreign carrier is designated by its government and then need only secure a permit from the Civil Aeronautics Board. On the other hand, the U.S. Government follows a policy of regulated competition. After the bilateral is completed, one or more U.S. carriers may be applicants for the route. In order to properly evaluate the applications, the Board is required to hold a hearing. The length of the proceeding varies with the complexity and number of applications involved. We are of the opinion, therefore, that the problem is more than procedural. The advantage enjoyed by the foreign air carrier is attributable to the difference in systems of air transportation. Any bill to remove the foreign air carrier's advantage should recognize this fact. This, S. 3197 does not do.

While the purpose of the bill is clear and probably desirable, its operation would create a problem as serious as the problem the bill purports to solve. This would arise when more than one U.S. flag carrier is an applicant for the same route. It is impossible for the Board to make a choice among several applicants without prejudicing the other applicants unless it follows a normal hearing procedure. If the Board should grant a temporary permit to one applicant, that applicant will have an unfair advantage over the other applicants by virtue of its becoming established on the route. Furthermore, granting a temporary permit to an applicant may be unfair to the defensive position of U.S. flag carriers or combinations of U.S. flag carriers already serving the route. Thus, S. 3197 may create competitive disadvantages while attempting to offset the advantage of a foreign carrier, or, to say it another way, the bill creates new inequities while attempting to solve existing inequities.

In our opinion, the bill should be amended in accordance with the views expressed. We regret that, at this time, we cannot be more constructive. In the time available we considered amendaments to the bill, as well as amendments to Section 402 and other sections of the Act. We were unable to find a solution, but we will continue our study of the matter. The Chairman and the Committee know, however, that we will assist the Committee in every possible way.

Respectfully submitted,

E. O. Fennel,
Senior Vice President—Law.

Law Offices of Fisher, Sharlitt, Gelband & Green,
Washington, D.C., May 12, 1966.

Re S. 3197.

Hon. A. S. (Mike) Monroney,
Chairman, Senate Subcommittee on Aviation,
U.S. Senate, Washington, D.C.

Dear Senator Monroney: This is to advise the Subcommittee of the views of our client, Seaboard World Airlines, Inc., the schedule U.S. flag trans-Atlantic carrier for cargo and mail, with reference to S. 3197.

In essence, this bill adds an additional basis for granting an exemption from the Federal Aviation Act upon a finding by the Civil Aeronautics Board that a U.S. air carrier is at a competitive disadvantage with a foreign air carrier or carriers on a route for which that U.S. air carrier has filed an application for a certificate. The bill provides further that the grant of this exemption and all exemptions involving foreign or overseas transportation shall be subject to approval of the President.

For reasons set forth below, it appears that this bill could be entitled "A Bill for the Private Relief of Pan American World Airways, Inc., so as to Grant Pan American Co. terminal Rights between the U.S. West Coast and East Coast on Pan American's Transpacific Route." If the bill is passed in its present form, Pan American will have managed to have enabling legislation passed that would permit the CAB and the President to give to Pan American, and Pan American alone, an exemption and thus to steal the march on about 15 other U.S. air carrier applicants in the *Transpacific Route Investigation Case* which is about to commence at the CAB.

Under the terms of the bill, once the Board has found that a U.S. carrier is at a competitive disadvantage with a foreign air carrier or carriers, it may recommend the exemption to the President. As presently drafted, the bill does not permit the Board, in reaching its decision, to consider public interest factors set forth in Section 102 of the Federal Aviation Act, including, *inter alia*, encouragement and

development of an air transportation system to meet present and *future* needs of our foreign and domestic commerce; to foster sound economic conditions in the regulation of air transportation; and the fostering of competition to the extent necessary to assure the sound development of an air transportation system. It is Seaboard World's view that the public interest is broader than the interest of any one U.S. airline, regardless of whether that one carrier is at a competitive disadvantage with a foreign air carrier or carriers.

It is understandable that the Congress should wish to deal with the subject of competitive disadvantage of U.S. air carriers with foreign air carriers and to consider broadening the exemption power of the Board to meet this problem. However, in dealing with the problem, this Congress should consider that it is the *U.S. air carrier industry* which is at a competitive disadvantage with the foreign air carriers on a given route and *not any one* U.S. carrier. What is good for Pan American is not necessarily good for the United States, but what is good for the United States is always good for Pan American and all other U.S. international flag carriers.

For this reason, Seaboard World Airlines would support legislation which would permit the Board, upon the finding that a U.S. air carrier/or carriers is/are at a competitive disadvantage with foreign air carriers, to grant in the public interest an exemption either to that carrier or carriers or to any other carrier applicant for Section 401 authority. The Board should not be bound to grant the exemption only to the one carrier meeting competitive disadvantage with the foreign air carriers.

Seaboard World believes also that the bill should include procedural safeguards to assure that other U.S. air carriers are on notice of an exemption application by an air carrier for a route on the basis of a competitive disadvantage with a foreign air carrier or air carriers, and that the other U.S. air carriers should have an opportunity to present their views. The bill as presently drafted permits the Board to grant an exemption on its own motion provided it is approved by the President.

Seaboard World believes further that exemptions granted under present Section 416 of the Federal Aviation Act should not require Presidential approval. These exemptions are often granted to meet emergency conditions and the courts have carefully circumscribed the limitations of the Section. To require the President to consider each such exemption application would add considerable tasks to the Presidency and because of the additional clearance procedure involved might interfere with efficient airline operations.

Finally, since this Subcommittee is considering the broadening of the exemption power in Section 416 of the Federal Aviation Act in one limited aspect, we of the all-cargo industry would like to urge that the Section be amended so as to permit the Board to grant exemptions from the provisions of the Federal Aviation Act upon the public interest finding that the exemption would further the development of U.S. flag all-cargo international air transportation. As the Subcommittee knows, the development of cargo requires as flexible all-cargo operations as possible. Cargo often originates not at major U.S. gateways, but at a variety of points within the U.S., and its foreign destination varies widely with the particular type of shipments. As the capacity of all-cargo aircraft becomes larger and as the development of U.S. foreign trade requires prompt and efficient distribution of U.S. products abroad by air, the CAB should be empowered to grant appropriate exemptions to permit the routing of all-cargo flights from initial origins to final destinations with the authority in the all-cargo carrier to make sufficient stops en route to permit an economically viable operation. Many foreign carriers already have this authority, or claim this authority; e.g., there are three foreign flag carriers operating all-cargo aircraft from Europe to New York via Montreal. The Board should have the power to give the U.S. all-cargo carrier the same type of flexible authority. Not only will this help increase U.S. exports with the consequent beneficial effect on the U.S. gold flow position.

Seaboard World appreciates this opportunity to make its views known to the Subcommittee and trusts that this letter will be printed in the hearings of the Subcommittee on S. 3197. An identical letter is being sent to Chairman Magnuson of the Senate Committee on Commerce.

Respectfully yours,

JOEL H. FISHER,
Washington Counsel, Seaboard World Airlines, Inc.

Senator MONRONEY. The committee will stand in recess until 2 o'clock this afternoon.

(Whereupon, at 12:30 p.m., the subcommittee was recessed, to reconvene at 2 p.m. the same day.)

AFTERNOON SESSION

Senator MONRONEY. The Subcommittee on Aviation of the Commerce Committee will resume hearings on the bills S. 3197 and S. 3198.

Our next witness is the distinguished legislative representative of the Air Line Pilots Association, Mr. James E. Meals. Will you come forward, Mr. Meals? We are happy to have you testify.

STATEMENT OF JAMES E. MEALS, LEGISLATIVE REPRESENTATIVE, AIR LINE PILOTS ASSOCIATION; ACCOMPANIED BY CAPT. CURTIS OLSEN, PILOT

Mr. MEALS. Thank you, Senator.

The Air Line Pilots Association thanks the chairman and members of the Senate Committee on Commerce for the opportunity to comment on the amendments proposed in S. 3198.

My name is James Meals, and I am director of governmental and legislative affairs. I am accompanied by Capt. Curtis Olsen, a long-time pilot for one of our major international carriers, who will stand ready to answer any questions that the chairman and members of this committee may have at the conclusion of our statement.

The Air Line Pilots Association (ALPA) is a nonprofit organization representing all the pilots on all U.S. scheduled domestic and international carriers, with one exception. These pilots necessarily represent the greatest pool of pilot skills available to exploit and develop the potential of U.S. air commerce. They also represent airlines fully competitive with one another yet responsible to circumscription placed on them by U.S. Federal regulatory agencies. That these pilot skills can be of incalculable value to this Government, outside the field of commerce, is undoubtedly demonstrated by the response of U.S. airlines to Department of Defense airlift requests for Vietnam.

Within this context the ALPA wishes to voice its approval of S. 3198 as a useful and needed amendment to the act.

In our view S. 3198 will arm the Board to match certain other countries. The weapon of suspension of a foreign airline's services to the United States can certainly combat the discrimination practiced against U.S. carriers in certain countries. As other witnesses have decribed the general problems vis-a-vis the United States and certain other nations in the operation and interpretation of bilateral air transport agreements, we will define certain examples where this new authority would be useful.

Recently the Portuguese Government applied restrictions upon the capacity of Pan American and Trans World Airlines to and from Lisbon. The timing of this move was certainly related to the Alitalia-TAP blocked-space/TAP air carrier permit applications; leads to a conclusion that Portugal hoped to speed the Board in its approval of TAP's application by this action.

The result is that many U.S. air travelers will be forced to revise their travel plans with probable diversion to foreign flags and a

doublefold disadvantage to the United States: a further deficit in payments and a reduced opportunity for U.S. pilots—not to mention the economic penalty to both airlines with their expenditures to provide the higher level of service anticipated before this sudden cutback.

Another example is in the situation of last year's decision by the Philippine Government to reduce the allowable frequencies of Pan American and Northwest Airlines to and from Manila. This action was intended, apparently, to force this Government to grant PAL Tokyo rights on the U.S.-Philippine route. Despite the conditioning of PAL's permit on maintenance of both U.S. flaglines' existing schedules, nothing has occurred to restore them to earlier frequency.

In France, Spain, Chile, Venezuela, and many other countries, legislation or regulations exist to regulate the operation of foreign airlines to and from such countries. "Air Laws and Treaties of the World," published under the direction of this committee, lists other examples. The operation of these restrictions hamper this country's attempts to correct the deficit in balance of payments, denies the U.S. air traveler a freedom of choice in air carrier, and derogates employment opportunities for pilots represented by the ALPA.

The Federal Aviation Act does not empower the Board to act except through full evidentiary hearings against a foreign-flag airline. The proposal suggested by S. 3198 will give the Board power to act instantaneously with an action discriminatory toward U.S.-flag air carriers. Had this power been available when the French Government restricted U.S.-flag carrier cargo services last year, action against Air France might have removed these restrictions. Instead, U.S. air carriers are faced with a continued limit without present hope of resolution. And the same could be said of Italy's restrictions in air cargo service—despite a favorable arbitration decision for the United States of the dispute.

The secret of equitable exchange of air services lies in proper bilateral air transport agreement descriptions and route annexes. But an authority vested in the Board to suspend a foreign-flag airline permit can be of equally pertinent and effective use. We therefore urge the passage of this amendment, S. 3198.

Senator MONRONEY. Do you have any testimony or position on S. 3197?

Mr. MEALS. No, sir. We did not prepare a comment for S. 3197.

Senator MONRONEY. Are your pilots divided on this?

Mr. MEALS. Yes, sir.

Senator MONRONEY. No unanimity of position?

Mr. MEALS. No, sir.

Senator MONRONEY. On this there is unanimity?

Mr. MEALS. Yes, sir.

Senator MONRONEY. What are the circumstances of the air cargo fight with Air France and Alitalia?

Mr. OLSEN. The French Government restricted the services of Pan American and TWA and Seaboard Airlines to and from Paris, limiting both frequency and capacity of the aircraft. In other words, regardless of the capacity of the aircraft, they were limited on the load that they could carry.

Senator MONRONEY. You mean it was an artificial limit below what the plane safely was capable of carrying?

Mr. OLSEN. Yes, sir. The 707 cargo airplane can carry something around 90,000 pounds total load. But the French Government restricted services to two per week per carrier, with a limit of 30,000 pounds or something of that order per flight.

Senator MONRONEY. Were there any conditions that they wanted met? Or were they simply restricting the U.S. service?

Mr. OLSEN. No, sir, the French were not restricted. At the time they imposed the restrictions this probably equaled the capacity of their 1049–G cargo aircraft. They were using Constellation cargo carriers, and at that time they had jets on board but had not taken delivery. Obviously the French company was trying to equate our airlift to Air France.

The restrictions were to be removed by 1966. This hasn't been done and U.S. carriers are still limited in frequency and capacity.

Senator MONRONEY. In other words, by terms of the bilateral agreement reached with France, the agreement that limited us in cargo capacity was to go off on what date?

Mr. OLSEN. Sometime the first part of 1966.

Senator MONRONEY. And although the time had arrived and they didn't have the equipment, they held us back to two flights a week?

Mr. OLSEN. They took delivery last September, I believe it was, of the first of their 320–C's, 707 cargo airplane. I think they have two cargo airplanes at the present time. I don't know the size of the total cargo fleet they have on order. But France, in addition to these restrictions, for a while had a diurnal restriction on service in and out of Orly. The restriction is still there. So that they can limit the time of service offered as well.

On certain flights, particularly the cargo flight northbound out of Italy, this could pose a problem. It might mean you would arrive in Paris and be unable to depart until the next morning. This is a very subtle form of restriction. Although it applies equally to all carriers.

Senator MONRONEY. How is that effective?

Mr. OLSEN. This is an airport restriction. This is something outside the bilateral.

Senator MONRONEY. A flight time delay.

Mr. OLSEN. Yes, sir.

Senator MONRONEY. So it would arrive in the evening and be held over until the next morning.

Mr. OLSEN. It could be held over until the next morning. I believe 2,300 hours local; 11:00 p.m. is the last departure you can make out of Paris in any case, with four-engine size. I think there is a midnight for the Caravelle. But for both Pan American and TWA, with a late afternoon cargo flight north out of Rome, through Paris to New York, this could pose an operational problem.

At that time, of course, Air France, at the time they put the restriction on, Air France was operating Constellations with no diurnal limitations on takeoffs or landings whatsoever.

Senator MONRONEY. That has been restored now so that normal takeoff time is allowed?

Mr. OLSEN. No, sir. The night restriction is still in effect at Paris. This applies to all carriers operating four-engine jets in and out of Paris.

Senator MONRONEY. You mean not just the United States?

Mr. OLSEN. Not just the United States.

Senator MONRONEY. How about Air France?

Mr. OLSEN. It applies to all carriers. This is an airport restriction. It is not the result of the French Government.

Senator MONRONEY. Is it for the purpose of traffic control or anything related to safety, or is it arbitrary?

Mr. OLSEN. The nighttime restriction is for purposes of having a peaceful night's sleep in the vicinity of the airport for the residents.

Senator MONRONEY. It is a noise factor.

Mr. OLSEN. It is; yes, sir.

Senator MONRONEY. Do you think it really is? Or is it a matter of giving unfair competitive advantages to Air France taking off at 6 in the evening?

Mr. OLSEN. It gave Air France a competitive advantage when they were operating piston flights, although it could be made up if they left very, very late at night and the jet could operate in time to catch it on the way. Air France could offer cargo departures then around the clock, whereas the U.S. carriers would obviously be penalized by having an 8-hour period in which they couldn't operate anything through Orly.

Senator MONRONEY. We are liable to face that problem here, the problem of noise suppression and complaints.

Are there any other examples of cargo discrimination to limit the capacities or numbers of flights?

Mr. OLSEN. Two years ago the Italian Government notified this Government that cargo fell outside the bilateral. The bilateral defines the carrier's principals as cargo, property and/or mail. This country I am sure has always taken the position that cargo and property are identical. But the Italian Government stated that their position is that the cargo was outside the bilateral and forced the U.S. Government into negotiations and arbitration. Over a year ago the arbitrating commission ruled in favor of the United States, that cargo fell within the bilateral and that the Italian Government could not properly restrict us offering cargo service to or from Italy, by U.S. carriers. I think both Panama and TWA are at the frequencies they had at that time.

Senator MONRONEY. Are these frequencies limited by the bilaterals?

Mr. OLSEN. No, sir.

Senator MONRONEY. It is just unlimited-cargo capability?

Mr. OLSEN. Yes, sir.

Senator MONRONEY. When they chose, they cut it down to maybe two flights.

Mr. OLSEN. The Italian Government notified us that they would allow us each two flights a week. I believe I am stating this correctly. Airlift into National operates Alitalia cargo flights. They operate four per week. Eventually Alitalia will buy its own cargo aircraft. If they increase their frequency, they may allow us to increase ours.

Senator MONRONEY. But on an equal basis?

Mr. OLSEN. This seems to be the Italian position.

Senator MONRONEY. You haven't had this same thing in passenger-space limitations?

Mr. OLSEN. No, sir.

Senator MONRONEY. You can run as many passenger flights as you desire?

Mr. OLSEN. That seems to be the case.

Senator MONRONEY. Except you have had trouble in Spain and Portugal.

Mr. OLSEN. Spain and Portugal at the present time; I believe they stated that the capacity offered couldn't be any greater than last year's.

Senator MONRONEY. Is it the Iberian Airline which has been picking up those flights?

Mr. OLSEN. I don't know. Iberian is more in competition with TWA than they are with Panama from Madrid. We serve Barcelona; as that is a DC–8 route and I am a 707 pilot, I only get down there on the oddest chance.

Presently there is a proceeding before the CAB involving both Alitalia and TAP-Portuguese Airways. Alitalia is to furnish the aircraft, and TAP will take the blocked-space aboard each of several Alitalia weekly flights to provide Portuguese air service to and from the United States, although Portugal, or TAP has its own 320—707/320 aircraft.

My feeling is that, and without any basis other than just emotion, this is a direct result of Panama's opposition to some of the terms under which this blocked-space agreement was to be run.

The Portuguese Government turned around and put the squeeze on us. This is why we feel this bill, giving the Board the same powers, could put the squeeze on them.

Senator MONRONEY. It would equalize the limitations on operations, is that right?

Mr. OLSEN. I think that is better put, sir.

Senator MONRONEY. Senator Cannon?

Senator CANNON. The interests of ALPA in this is strictly a personal one, isn't it, from the standpoint of you want to keep yourself in the best business position that you can from the standpoint of employment. Isn't that it?

Mr. OLSEN. Yes, sir.

Senator CANNON. You don't want to be forced out of the market by reason of the actions that these countries take.

Mr. OLSEN. That is right, sir.

Senator CANNON. There is no safety factor involved, or there are no undue restrictions from that standpoint imposed, are there?

Mr. OLSEN. The difficulty in stating that there are these covert applications is that these are absolutely unprovable. But any pilot flying internationally can tell you that—can cite instances.

Wednesday morning I had a nonstop flight, Rome to New York. Rome to New York might seem an easy route except we went north of 65 degrees, well over Greenland on this least-time track route we flew. It was a long flight, 9 hours and 20 minutes. We required practically full tanks for the flight fuel plus the reserve. We had a little available weight. This involved taking on an additional 6,000 pounds of fuel. It is nice to have it in the pocket when you go over New York in the middle of the afternoon where you will have an involved ATC clearance. We sat on the ground, and our 114 flight reported over the outer marker, reported over the beacon 9 miles from the airport. The tower refused to clear us for takeoff, sitting on the ground burning up fuel at the rate of 20 pounds per minute per evening. In 15 minutes you can eat up a fair amount of your reserve.

We actually had three delays. The first was in getting a clearance. They claimed they hadn't received it. This is one way they can delay an outbound flight. There is no way to prove that they do it intentionally but it is done too many times to be anything other than sloppy work on their part or an intentional delay. Particularly as you take off from Rome at this time of the year in almost clear weather, unlimited visibility and no clouds, any time you fly. To have to hold for an Alitalia flight in taking off, to have to hold again when Alitalia is coming in, more or less indicates to us that they are not particularly in a hurry to get us off the ground. We have to fight to get the altitude we want. They had already assigned it to another air carrier.

These are problems that always happen in an aircraft control system. But in this case, to hold us on the ground knowing we had a long flight, and where fuel could become critical, burned up an additional thousand pounds of fuel over that we had planned for our taxiing. These are the things for which there is no adequate defense.

Senator CANNON. This bill wouldn't really help that.

Mr. OLSEN. No, sir; this bill wouldn't help at all.

Senator CANNON. You can't say that, because they held you that time, we are going to tell one of our controllers to hold one of their airplanes.

Mr. OLSEN. I think the tower operators, if you asked one of them to do that in this country, would tell you to drop dead.

Senator CANNON. We agree occasionally you don't get clearances here as fast as you would like on occasions.

Mr. OLSEN. That is true.

Senator CANNON. In any event it may be at least some kind of an implied failure to cooperate, let's say, or they are really cooperating reluctantly, something of that sort.

Mr. OLSEN. I think you could say that without contradiction.

Senator CANNON. Thank you, Mr. Chairman.

Senator MONRONEY. Thank you very much for your testimony, Mr. Meals and Mr. Olsen. We appreciate your appearance here.

Mr. MEALS. Thank you, sir.

Senator MONRONEY. The next witness is Mr. John C. Leslie, vice president and assistant to the chairman, Pan American World Airways, Inc.

Mr. Leslie, we are happy to have you back before our committee. I remember when you were here in connection with hearings on the holding up of American landing rights in London some time ago. The situation was similar to the one which prompted the bill, S. 3198. We are happy to have you back again.

STATEMENT OF JOHN C. LESLIE, VICE PRESIDENT AND ASSISTANT TO THE CHAIRMAN, PAN AMERICAN WORLD AIRWAYS, INC.; ACCOMPANIED BY HUBERT SCHNEIDER, VICE PRESIDENT AND GENERAL COUNSEL, PAN AMERICAN WORLD AIRWAYS, INC.

Mr. LESLIE. Thank you, Mr. Chairman, for that very warm welcome. It is very nice to be appearing before you and Senator Cannon as well.

For the record my name is John C. Leslie. I am vice president and assistant to the chairman of Pan American Airways. I have

been associated with the company in various capacities since 1929, and since 1950 I have been a member of our board of directors.

With me is another member of our board, vice president and general counsel, Mr. Hubert Schneider. We do appreciate the opportunity to present our views with respect to both 3197 and 3198.

As a principal U.S.-flag international airline we are particularly cognizant of the urgent need to maintain for the U.S. carriers opportunities equivalent to those awarded to our foreign-flag competitors in competing for foreign traffic to and from the United States. Since so much of the traffic involved originates in the United States, there is an important balance of payments at stake in this equal opportunity.

Now, Mr. Chairman, there has been so much illuminating and constructive testimony this morning, with most of which we agree, though I have a prepared statement I wonder if you might prefer that I make some extemporaneous remarks and answer such questions as you might like, and simply submit my statement for the record.

Senator MONRONEY. You may do that, and the whole statement will be printed in full in the record, and then you can spotlight the key points.

Mr. LESLIE. I might hit some of the highlights as we see them and at the same time conserve the time of the committee.

Mr. Chairman, members of the committee, my name is John C. Leslie. I am vice president and assistant to the chairman of the board of Pan American World Airways. I have been associated with Pan American continuously since 1929 in various capacities and have been a member of the board of directors since 1950.

I appreciate the opportunity to present our views with respect to S. 3197 and S. 3198. As the principal U.S. international airline, we are particularly cognizant of the urgent need to maintain for U.S. carriers opportunities which are equivalent to those awarded by our Government to foreign air carriers in competing for international traffic to and from the United States. Since so much of the traffic involved originates in the United States, there is an important balance-of-payments stake in such equal opportunity.

In our view, these two bills if enacted into law will give to the United States some badly needed tools with which to deal with the ever-increasing competition from foreign airlines and to eliminate or minimize certain advantages which they enjoy under present laws of the United States. S. 3197 will enable our Government to take affirmative action on behalf of U.S. air carriers to eliminate route inferiority. S. 3198 will enable our Government to take defensive action against foreign air carriers whose governments improperly restrict U.S. carrier operations.

Referring first to S. 3198, I have had an opportunity to read the testimony being submitted by Mr. Philion of the Air Transport Association. I am intimately acquainted with the problems which he discusses, since they are part of my responsibilities at Pan American, and I concur fully in his statement. There is a very great need to eliminate any doubt that the U.S. Government has full authority to respond to improper foreign government restrictions against U.S. carriers, and I endorse S. 3198.

Turning next to S. 3197, the explanatory statement made by Senator Magnuson at the time he introduced this bill on April 6, 1966,

sets forth in considerable detail the underlying reasons for this legislation. We fully support this statement and I believe it shows why the national interest would be advanced by the passage of this bill. However, I would like to put before the committee certain additional thoughts particularly affecting Pan American.

In essence, S. 3197 would fill a serious gap which experience has shown to exist in our Government's present authority to establish the kind of U.S.-flag air transport system required by the public convenience and necessity.

It is well to recall that the Civil Aeronautics Act was first passed in 1938. Particularly in the light of the relatively undeveloped state of the air transport industry and of the art at that time, this proved to be remarkably effective and foresighted legislation. But experience and developments, of course, pointed out a need for some changes, which were accomplished by the Federal Aviation Act of 1958. It is now apparent that additional changes are required if the United States and its carriers are not to fall behind in international air transportation.

While the Federal Aviation Act prescribed what would appear to be virtually parallel procedures for granting certificates to U.S.-flag carriers (sec. 401) and permits to foreign air carriers (sec. 402), in fact these provisions operate very differently. Almost without exception foreign air carrier permit proceedings involve only a single carrier and frequently only a single route. Since typically such a route has already been provided for in a bilateral air transport agreement between the United States and the government of which the foreign air carrier applicant is a national, the proceedings before the Civil Aeronautics Board are little more than formalities. Rarely do they consume as long as 6 months from beginning to end.

In marked contrast, and particularly in more recent years, U.S. carrier international route proceedings which involve major areas have become more and more complex and time consuming. The recent *Transatlantic Route Renewal* case, for example, consumed three and a half years from the initiation of the proceeding to final decision—and even then the President found it necessary to remand two of the issues to the Board for further proceeding. The pending *U.S.-Caribbean-South America Route* case was initiated by the Board four and a half years ago and it has not yet reached the stage of an examiner's report. In practice, then, we have a double standard of procedure—simple and quick for foreign-flag carriers—complex and slow for U.S.-flag airlines. The *Transpacific Route Investigation*, which was instituted on June 15, 1965, provides probably the most frightening of all examples of procedural entanglements.

The geographic area of that case involves the entire Pacific basin; more than half the entire globe. It involves route patterns extending from Alaska on the north to Australia and New Zealand on the south, and from the Atlantic seaboard of the United States on the east to India on the west. Additionally, the case involves 24 separate airline applicants. Never in the 28-year history of the Board has there been a case involving so large a geographic area nor so many applicants. Every single domestic trunkline carrier is an applicant in this vast proceeding. A prehearing conference on this case—the first formal procedural step—was scheduled for March 29, 1966, but has been postponed pending decision by the Board on a multitude of mo-

tions filed by the various applicants with respect to the scope of the case and the issues to be litigated.

While we are confident that the Board will do what it can to confine that case to manageable proportions, it is severely limited by the so-called Ashbacker doctrine, under which the courts have held that all applications seeking the same or similar rights must be heard in the same proceeding. It is noteworthy, however, that this applies only to U.S. air carrier applications. U.S. air carriers do not have a like right to have their applications heard in the same proceeding with foreign air carrier applications.

There is very little prospect that the *Transpacific* case could be decided before 1970 or 1971. Thus, even if at the conclusion of that case there were established a true around-the-world service east-about and west-about to and from New York, the most important traffic center in the world, a total of 10 years will have elapsed from the time the Civil Aeronautics Board first found in 1960 that the public interest required this service.

It is informative to recall the sequence of events. The last time that the Civil Aeronautics Board heard an inclusive transpacific route proceeding was in 1959 and 1960. Included among the many issues in that proceeding was the question of permitting Pan American to include New York as a port of call on its transpacific and around-the-world service. At that time Pan American's transpacific routes dead ended in California. They still do. We have thus far been unable to carry our passengers and cargo through the gap between the east and west coasts of the United States, although there are now two and shortly will be three foreign airlines possessing this authority.

At the time the last *Transpacific* case was tried in 1959 and 1960, Qantas, the Australian airline, and British Overseas Airways Corp., commonly called BOAC, had been granted permits by the United States to operate between New York and California on their around-the-world services. Qantas was granted this right by the United States in 1959 and BOAC in 1946.

I want to emphasize that, in seeking to operate a true around-the-world service, we were not and are not asking for the right to carry local transcontinental traffic between New York and California. Three domestic airlines are not certificated to carry this local traffic. All we seek is the right to provide an around-the-world service serving both the east and west coasts of the United States in exactly the same manner as several foreign airlines have been permitted by our Government.

Following extensive hearings in the *Transpacific* case, the Civil Aeronautics Board recommended to the President that Pan American be granted the around-the-world rights sought by it:

> A prime reason for giving Pan American access to the New York gateway is the substantial public interest in authorizing U.S.-flag competition for foreign-flag carriers operating between the Pacific area and the East Coast. Under its foreign air carrier permit, BOAC is authorized to operate a London-New York-San Francisco-Honolulu-Wake-Tokyo-Hong Kong route. Pursuant to its permit, Qantas has a route extending from Australia and the South Pacific area through Honolulu, San Francisco, and New York, to Europe and beyond to Australia. Thus, BOAC and Qantas both are authorized to operate into the New York gateway without parallel competition from any American-flag carrier, and thereby tap the entire East Coast market moving to the Pacific area via a transcontinental route. * * * There is an additional factor which must be taken into consideration.

The routes operated by Qantas and BOAC are single-carrier round-the-world operations transiting the United States. On the other hand, in order for Pan American to provide round-the-world service, it must fly over a Polar route or through Latin America to link its Atlantic and Pacific operations. As indicated elsewhere in this opinion, the round-the-world market is growing rapidly and we believe that Pan American should be placed on at least an equal footing with foreign-flag carriers on competing for this market.

This recommendation was submitted to the President in late 1960.

On January 18, 1961, President Eisenhower returned the Board's recommended decision stating that, although he found the Board's study to be excellent and including much evidence to support the Board's recommendations, he had decided not to approve them "predicated solely on considerations of foreign policy." President Eisenhower was concerned that adoption of the Board's recommendations would "unsettle our international relations—particularly with Japan."

At that time no Japanese airline had the right to operate beyond California to New York and beyond to Europe and around the world.

On December 28, 1965, the United States concluded a new air transport agreement with Japan whereby a Japanese airline was granted the right to operate from Japan across the Pacific to California and east of California to New York and beyond to Europe and around the world. This effectively eliminated the particular "considerations of foreign policy" which had concerned President Eisenhower in 1961 and removed the basis for disapproving the Board's original recommendation that this right be granted to Pan American to place it on an equal footing with foreign airlines.

It is informative to review the procedures before the Civil Aeronautics Board following that new agreement with Japan. On March 15, 1966, Japan Airlines filed with the Board an application under section 402 for a permit covering the new route. The prehearing conference was quickly scheduled and held on April 6, 1966, and a short half day hearing was held before an examiner of the Board on April 20, 1966. Briefs to the hearing examiner were filed on May 11, 1966, and the further procedural steps leading to a decision by the Board and the President will doubtless follow the same simplified schedule, so that a decision can be anticipated by this summer. Japan Air Lines will then be free to inaugurate service and thereby obtain a 3- to 4-year headstart on a like U.S.-flag service.

The issue of permitting Pan American to provide a true around-the-world service came up again in the *Transatlantic Route* case which was recently decided by the Civil Aeronautics Board and the President. However, in that case Pan American, because of the limits placed by the Board on the scope of the case and the issues to be tried, was permitted only to apply for the right to operate east-about from California, and not west-about from New York, so that it dealt only with part of the problem.

On February 11, 1966, President Johnson returned to the Board its recommended decision in the *Transatlantic Route Renewal* case. He approved it in most respects but requested the Board to conduct further hearings:

I am returning to the Board for further hearing Pan American's request to convert its East and West Coast terminals into coterminals. The reopened hearing should enable the Board to assess the impact of coterminal status on our balance of payments. In addition, it will afford the Board the opportunity to

consider the desirability of placing Pan American on a comparable basis with foreign-flag carriers such as Qantas and BOAC (and any Japanese-flag carrier which may hereafter be authorized to serve New York and beyond to Europe) carrying international traffic between points in the Pacific and poi ts in Europe via California and New York. It is requested that this matter be processed on an expedited basis and that your decision be transmitted to me at the earliest practicable date.

Pursuant to the President's request, the Board on February 11, 1966, reopened the record of the *Transatlantic Route Renewal* case and directed that further hearings be held on this limited issue.

Should this decision be favorable, Pan American will then be able to operate from California eastbound to New York and beyond to Europe and around the world. However, Pan American would not be able to operate from New York westbound to California and beyond to the Orient and around the world. Similarly, Pan American will not be able to originate and terminate around-the-world flights in New York, the principal traffic generating point in the world.

A further 5-year delay in granting Pan American the right to provide a true around-the-world service will place it at an absurdly artificial disadvantage in competing with foreign airlines for traffic to and from the United States. Pan American is already experiencing this prejudicial effect in its service to Australia, where it pioneered transpacific air transportation in the 1930's.

Qantas, by reason of its superior rights from Australia across the United States to New York and beyond to Europe and around the world, is able to outschedule Pan American by a considerable margin between Australia and the west coast of the United States where Pan American's route dead ends. The result is that Qantas now carries substantially more passengers than Pan American between Australia and the United States. Prior to the time Qantas was awarded the right to operate across the United States, Pan American was the predominant carrier in this market. At the present time Qantas operates 10 flights between Australia and the west coast of the United States, whereas Pan American is able to justify only 4. The latest figures show that in 1965 Qantas carried 40,000 passengers between the United States and Australia, whereas Pan American carried only 14,000. This situation is bound to deteriorate with an ever-widening gap between the volume of Qantas and Pan American traffic until Pan American is placed on a basis of competitive equality with Qantas.

This same adverse effect on Pan American can be expected when a Japanese airline inaugurates its newly authorized service. It is no overstatement to say that if the present pattern continues, with foreign airlines enjoying rights superior to those possessed by Pan American, Pan American will be relegated to a second-rate status in the Pacific, an area in which Pan American's China Clipper pioneered transoceanic air transportation some 30 years ago.

The national interest requires that U.S.-flag air transportation be second to none, not solely from the standpoint of national prestige, but for many other reasons. First of all the public interest requires that a U.S. traveler and shipper be able, wherever possible, to choose a U.S. carrier and not be restricted to a foreign-flag carrier whose route authority is superior. Another important reason is the fact that the balance of payments is adversely affected so long as foreign-flag carriers with their superior rights can tap the U.S. travel market—and a large proportion of this traffic is U.S. originated—to a greater

extent than can the U.S.-flag international carrier operating in the same market. The amounts at stake are very substantial—more than $40 million per year, and well over $200 million over the 5-year stretch while the *Transpacific* case is processed.

We strongly endorse passage of S. 3197 for the reasons I have given. It has been suggested by some that S. 3197 is too narrowly drawn and would provide relief only for Pan American. We do not agree with this. Of course, if S. 3197 is enacted, we will seek relief under it for the reasons stated throughout my testimony. This is not to say, however, that relief cannot be sought by others. If American, TWA, or United should feel that they have been placed at a competitive disadvantage as a result of the grant of section 402 permits to several foreign air carriers and that some of the international traffic they now carry across the United States for connections in New York or in California will be diverted, they can seek relief under S. 3197. It will then be up to the Civil Aeronautics Board and the President to decide whether they have made a sufficient case to warrant the exercise of the exemption authority authorized by S. 3197.

Senator Magnuson in his explanatory statement pointed out other instances where this legislation would be beneficial. I would like to add one further instance. Varig, the Brazilian airline, possesses a permit issued to it by the United States authorizing it to operate from Brazil to the west coast of the United States via the west coast of South America. No American-flag carrier possesses that reciprocal right. However, a number of American-flag carriers have applied for this right and these applications are now bogged down in the *U.S.-Caribbean-South America* case which, as I mentioned earlier, was started by the Board four and a half years ago. It is anyone's guess as to when it will be concluded. An examiner's report has not even been issued as yet, not through any fault of his, but because of the numerous complexities involved in that case. As a result, Varig has been given several years headstart in this market and any American wanting to travel from California to the west coast of South America and desiring to avoid a change of carriers, is compelled to use his travel dollars buying a ticket on a foreign airline. Under S. 3197 this situation could be cured by the Board and the President. They could temporarily exempt a U.S. carrier to provide this service pending the outcome of the *U.S.-Caribbean-South America* case.

Down the road, other instances will arise where foreign air carriers will quickly obtain the necessary permits from the U.S. Government and American-flag carriers will have to wait years because of our cumbersome procedural machinery before they can provide the reciprocal service. It is well known, for example, that the British have been pressing hard for a South Pacific route via the east and west coasts of the United States. The United States can no longer afford to have its hands tied by obsolete procedures when such situations arise. It must be able, in an orderly way, to move promptly. S. 3197 will provide statutory authority for it to do so in those situations deemed sufficiently important to warrant its exercise.

I stopped reading at the point of balance of payments because in our view it is so terribly important, it is so terribly real, and that is why we were very much impressed and gratified to hear Chairman Murphy include it prominently in his testimony this morning.

On his particular assumptions which related to the loss of U.S.-flag participation in the market, he indicated a balance-of-payments loss which would not have occurred had we maintained our participation over that period at the rate of $171 million a year, I believe. And that is, in our mind, a very telling statement.

We would suggest a corresponding, not identical, but a corresponding estimate which likewise reaches very important proportions.

Were the United States not handicapped as it is today in the east-about, and west-about round-the-world routes across the United States and through New York, it is our view that the saving to the U.S. balance of payments would be of the order of $40–$60 million a year. And if we take Chairman Murphy's statement of this morning that one of these very large, modern, complex cases takes 6 years, the arithmetic is perfectly obvious, that there is a potential balance-of-payments effect of between $250 and $350 million in the course of one of these major cases. In this case, the combination of east-about, west-about around the world.

So that where the chairman's statement would in the same interval approach something like a billion dollars, our estimate would be, confined to a particular case, about a quarter of a billion dollars, which impresses us as being a very important figure in this critical U.S. balance-of-payments situation no matter how you cut it.

This morning it seemed to me, and I have referred to the east-about, west-about around the world through New York, that perhaps there was a little ambiguity or at least something that required a little emphasis. I would dramatize it and illustrate it primarily first by referring to the public, and very much publicized, position of the Government of Japan in connection with their aspirations for additional bilateral rights from the United States. I think we would all recall an extremely vigorous press campaign. The Japanese insisted on one thing: they insisted on a route across the Pacific, across the United States, through New York, and across the Atlantic and thus around the world.

They were in that insistence recognizing, and using, a real fundamentally important fact of world air transportation today, that the round-the-world traffic itself is important, the round-the-world traffic through New York, the biggest single traffic center in the United States, is therefore of particular importance.

The United States today is in an extremely anomalous position. Today, from New York, no U.S.-flag carrier can operate either east-about or west-about, whereas in contrast, as we said this morning, Japan Airlines, BOAC, and Quantas can all do so.

It was also pointed out this morning that half of that problem is potentially capable of being remedied in the near future; namely, the east-about from California through New York and across the Atlantic, and thus around the world back to California.

The fact that that issue is potentially open to rectification now is in fact a sheer accident of timing. It only happens that the transatlantic case has been dealt with over a period of years and happened to come to a point now where the Board and the President are able to deal with it shortly after the Japanese have been granted the opportunity.

Senator MONRONEY. Could I interrupt?

Mr. LESLIE. If you please.

Senator MONRONEY. To be sure we understand it: In other words, you can take off from the west coast, fly to New York, the Atlantic, around through the East, and come in back to Los Angeles in the coterminus case when it is finally settled.

Mr. LESLIE. Mr. Chairman, if the President so decides the case.

Senator MONRONEY. I said when it is finally settled.

Mr. LESLIE. That would be the case.

Senator MONRONEY. But you cannot go the other way around?

Mr. LESLIE. Even after that decision by the President and the CAB, we could not go the other way. There is no U.S.-flag carrier system around the world west-about.

Senator MONRONEY. Some that go west would have to combine with other American-flag lines; is that correct?

Mr. LESLIE. That is correct; yes.

Senator MONRONEY. The coterminal idea then would not work the other way?

Mr. LESLIE. That is correct, Mr. Chairman; yes.

Senator MONRONEY. That was not clear from the testimony this morning. I am glad to get that straight.

Mr. LESLIE. Of course, as was pointed out, there is no—under present law—there is no procedural way of correcting this anomaly short of, I should think, 5 years. That is why S. 3197 is before you for consideration.

Senator MONRONEY. The 5 years you speak of would be the time since when the applications of these 23 we heard about were open to be received; is that correct?

Mr. LESLIE. That is it.

Senator MONRONEY. How far back does that go?

Mr. LESLIE. That was started about 3 months ago, the application we are in. There was supposed to be a prehearing conference I believe toward the end of March. That proved to be impossible because of the really very complex issues before the Board to decide—the motions for consolidation and separation, and all those things.

Senator MONRONEY. In other words, there are several tracks that will be sought to the Far East or back, the mid-Pacific——

Mr. LESLIE. The entire Pacific Ocean, Mr. Chairman; yes, North Pacific, South Pacific, and across the Pacific and beyond the Pacific to points west of southeast Asia.

Senator MONRONEY. This is the one that has 23 carriers in it?

Mr. LESLIE. I think it is 24.

Senator MONRONEY. Twenty-three was mentioned this morning.

Mr. LESLIE. It is an enormous number of issues.

Senator MONRONEY. That is predominantly passenger lines, but with cargo capability? Or are they all combination?

Mr. LESLIE. May I ask Mr. Schneider? I think there are at least one or two requests for all-cargo service.

Mr. SCHNEIDER. That is correct.

Mr. LESLIE. As you say, all the combination carriers are vitally concerned with the cargo traffic as well.

There we are with this anomaly.

Senator MONRONEY. Is there anybody from the CAB here? I was going to ask them a question. I will ask the staff to get a list of the applicants for the record.

Mr. SCHNEIDER. We will be happy to supply it. We have it.

Senator MONRONEY. If you would care to put them in.
Mr. SCHNEIDER. All right.
(The list of applicants follows:)

LIST OF APPLICANTS, TRANSPACIFIC ROUTE INVESTIGATION (CAB DOCKET 16242)

(NOTE.—All applicants seek passenger, cargo, and mail authority, except where otherwise specially indicated below.)

1. Airlift International, Inc. (cargo and mail).
2. Alaska Airlines, Inc.
3. American Airlines, Inc.
4. Braniff Airways, Incorporated.
5. Continental Air Lines, Inc.
6. Delta Air Lines, Inc.
7. Eastern Air Lines, Inc.
8. The Flying Tiger Line, Inc. (cargo and mail).
9. Hawaiian Airlines, Inc.
10. National Airlines, Inc.
11. Northeast Airlines, Inc.
12. Northern Consolidated Airlines, Inc.
13. Northwest Airlines, Inc.
14. Pacific Airlines, Inc.
15. Pacific Northern Airlines, Inc.
16. Pan American World Airways, Inc.
17. Seaboard World Airlines, Inc. (cargo and mail).
18. The Slick Corporation (cargo and mail).
19. Trans International Airlines, Inc.
20. Trans World Airlines, Inc.
21. United Air Lines, Inc.
22. Western Air Lines, Inc.
23. Wien Alaska Airlines, Inc.
24. World Airways, Inc.

Mr. LESLIE. As a result of the box the United States is in, not only do we have this balance-of-payments exposure, but from the viewpoint of certainly the carrier and certainly my company, also of the public who wish to travel and ship freely on American-flag carriers, we have a sort of a Chinese Wall. I would say we have a couple of balloons anchored offshore, off the Atlantic Coast and off the Pacific Coast, which today say, "For foreigners only." Obviously none of us want that. Nobody in this room would want that. The object of this exercise on everybody's part is to remedy that. And I can't overemphasize the importance that we in our company attach to it.

I think I would like to pass from there to what we do about it because a number of important questions were raised about how this S. 3197 would work.

I think the first thing to make clear, as we have in our written statement, is that in our view the criterion of competitive impact would clearly admit application for such exemptions by carriers directly exposed to that competitive impact, and we say in our statement that in our views this would apply to the transcontinental carriers—American, TWA, and United.

As to the procedure, the fairness, the equity that I think you were asking some questions about, Mr. Chairman, it seems to us it should go as follows: First, there would be a requirement by the CAB for a full and complete application, including all of the available supporting facts and statistics.

Secondly, that such an application for this new kind of exemption having been received, adequate notice will be given to all interested parties.

Next, that there would be a full opportunity to file answers.

Senator MONRONEY. This would all be on briefs. It would not be oral presentations or reports?

Mr. LESLIE. I will come to the next point, sir, which in our opinion would require oral argument before the Board if requested by one of the properly interested parties.

In fact, that provides every step except the full evidentiary hearing. It is the full evidentiary hearing which has to include, as we said this morning, the aspect of the doctrine that anybody interested must be entitled to a comparative hearing even purely on an application basis. That is the only difference, it seems to us. However, the practical difference is that many many years are eliminated and the procedure is reduced to the months that are required to match the issuance of a foreign air carrier permit to a foreign flag carrier.

Senator MONRONEY. What essential parts of a hearing, evidentiary hearing, would be eliminated or stricken from the process that you are now describing? Would it be the need for the service, the capability of the airline to extend it, the right of the airline to have it because of prior service in those areas, or what? What will it turn on if we have 24 applicants? What will be the evidence on which the CAB would grant an exemption to one of these 24?

Mr. LESLIE. If I may give you a layman's answer——

Senator MONRONEY. You are not a layman, but you might give the layman something to think about.

Mr. LESLIE. I am not a lawyer, sir. What obviously has to be proved in the full hearing is the public convenience and necessity, first of all. Secondly, the fitness, the willingness and ability of the applicant to conduct the service for which he is applying.

And assuming that the public convenience and necessity have been proved, and assuming further that more than one applicant has proved that he is fit, willing and able, and it is obviously then a problem of the CAB to advise the President in this case which of the applicants, or plural, which of the several applicants, in various combinations best strengthen and promote the air transport system of the United States.

I would like to ask Mr. Schneider if he would change that summary or supplement it.

Mr. SCHNEIDER. I would like to supplement it. Basically what is eliminated are the protracted hearings before the examiner, the array of sworn witnesses and their testimony, and long cross-examination on the exhibits, and the preparation of the examiner's report, the filing of exceptions to an examiner's report, the filing of briefs in support of exceptions and so forth.

In the case of an exemption, as present exemptions under existing 416, would be in effect a written submission to the Board of your complete case. I would assume that the Board would put out rules and regulations stating exactly what you have to put in your application for an exemption under this particular authority, the type of economic data you would have to include, about your company.

The same thing you might produce at one of these hearings.

What would be eliminated is the cross-examination on all of that. Having in mind that the Board is giving an interim authority pending of the outcome of a protracted hearing at the end of which they would do it quite differently, but having protected the country in the meantime. I think that is the basic thing. Four, five, or six years of hearings, and the many, many months you are in hearing, the many, many months in preparation of your briefs, of the record, a year or more to prepare an examiner's report, all that is eliminated based on this interim authority.

Senator MONRONEY. A protesting airline has been serving in the Pacific, foreign carriers from the west coast, for example, would they have a right to be heard as to the loss of this volume of business, that part due to foreign competition, that part due to American overflights?

Mr. SCHNEIDER. Could I answer that?

Mr. LESLIE. Please do.

Mr. SCHNEIDER. In the CAB 401 cases I know really of no case where a foreign air carrier has sought to intervene in opposition or been permitted to. It is conceivable that in this type of situation, under this exemption, CAB might permit a foreign air carrier to file an answer, as might any other protesting party. I couldn't predict what the CAB rules and regulations would be to implement this legislation.

Senator MONRONEY. I was thinking more in terms of American domestic air carriers who have served that point of arrival from the Pacific or departure from Los Angeles or San Francisco who may be protesting against the loss of a certain volume of their business and either carrying them on to New York from Los Angeles or carrying them to Los Angeles from New York to Chicago.

Mr. SCHNEIDER. There would be no doubt in my mind that the Board would and should grant them full opportunity to present all the points they could make in opposition, with all their facts and figures.

Senator MONRONEY. The question has been raised by some, I suppose, domestic carriers that are seeking route extensions beyond California.

Mr. SCHNEIDER. Indeed they might be applicants for relief under this legislation and opposing someone else's application for relief. There might be cross applications filed.

SENATOR MONRONEY. You I believe envisioned multiple as well as single certificates of a temporary nature?

Mr. SCHNEIDER. If the CAB and the President should find that meets the statutory standards.

Senator MONRONEY. In other words, the bill is not so drafted that it would be limited to one exemption?

Mr. SCHNEIDER. We do not so consider it.

Mr. LESLIE. Mr. Chairman, just a few weeks ago I read a statement attributed to an experienced diplomat of the American Foreign Service, quoted in Newsweek magazine, to the effect that diplomacy was like fencing. This is really the point that I would like to leave with emphasis today.

He went on to say that it may at one time be the quick stroke of the rapier, another time the clash of the saber. But the one thing certain was that you wouldn't stay long fencing if you had your shoes nailed to the floor.

I feel that we do have our shoes nailed to the floor by what has now become an obsolete procedure.

When you are fencing you have a certain fence within a certain strip. When you box you box within a certain ring. I don't for the moment suggest that this added flexibility should be outside closely and carefully defined limits. For that reason, if I may comment on one suggestion this morning, I would have considerable difficulty supporting the very broad criterion suggested in Mr. Boyd's testimony on page 5, simply because it would be too broad and would seriously in our view undermine the regulatory framework to which we think the industry should be kept.

Senator MONRONEY. Would you read it?

Mr. LESLIE. It reads, at the bottom of page 5 of Secretary Boyd's testimony:

> On the basis of a finding that operation under such authority would be in the national interest, and that absent such grant the development and promotion of U.S.-flag international air transportation would be adversely affected.

That is the end of the quoted excerpt.

In our view that removes tangible criteria to the extent of being something we would not be able to support frankly.

Something of the same kind, if I may continue in that vein, was touched upon in Chairman Murphy's statement, his item No. 2. In that one we have to find ourselves a little bit in trouble because of ambiguity. We are not sure what it means. We could welcome the opportunity to consult further as to the exact meaning and intention of that language.

As to all of the other proposals put forward by Chairman Murphy, we would be quite in agreement.

Mr. Chairman, if I may say——

Senator MONRONEY. This is No. 2, on page 7?

Mr. LESLIE. No. 2, page 7; yes, sir.

Senator MONRONEY. We raised the question I think when he was testifying. To quote:

> Provided that the exemption authority may be exercised when the United States and its air carriers collectively are placed at a competitive disadvantage.

Mr. LESLIE. That is the statement to which I was referring, yes, sir, which we find ambiguous.

Senator MONRONEY. As I read it it means that more than one carrier who would be disadvantaged.

Mr. LESLIE. I think we have several confusions about it. The way in which it couples the United States and its air carriers collectively. I at least don't quite know what that phrase means. I am reminded that in the oral explanation of it, the chairman may have said the United States or its air carriers, which compounds my difficulty a little bit. I think Mr. Schneider may wish to comment more on this.

Mr. SCHNEIDER. Yes. I think in response to a question this morning Chairman Murphy said that this would cover a situation where an air carrier or air carriers might not be placed at a competitive disadvantage but the United States itself might be, and this was to cover it. That led me to believe that perhaps he meant to use the phrase the United States or its carriers. What we would like to do is to consult with the Chairman and get a clarification and then submit for the record our statement in support of it if we can support it.

Senator MONRONEY. We may, before we finish these hearings, ask him to return for clarification if necessary.

Mr. LESLIE. I should like to avoid any ambiguity on our part. We would sincerely oppose any criterion which simply leaves the field wide open to the individual judgment on the part of the Board and the President and remove the strict regulatory criteria that have governed and should govern such decisions on the part of the Board and the President.

Senator MONRONEY. Could you amplify that criterion in your statement as to how you feel it should be used?

Mr. LESLIE. Yes. In our statement basically we say that Senator Magnuson's statement sets forth the considerations very clearly and well, and we support them. The only thing that is modified in that respect is that certain additional proposals were made this morning which we also support.

Senator MONRONEY. S. 3197, you say eliminates the evidentiary hearings in the case, but also doesn't it eliminate the public interest which is written into the law on the granting of permanent certificates—that the Board should consider as it takes up the question of granting what will be at least a rather lengthy operating period for an individual airline?

Mr. LESLIE. Chairman Murphy read that into his statement, item 3, page 7, as an added factor that he included in the ultimate legislation and with that we agree.

Senator MONRONEY. That public interest should be in there, and evidence should be taken as to the public interest of each of the services of the competitors for the certificate.

Mr. LESLIE. If I could just amend that phrase slightly. I think in this case it would not be taking evidence; it would be accepting submissions, including oral arguments.

Senator MONRONEY. Could consideration be taken as to the impact on competing U.S. carriers?

Mr. LESLIE. Yes, sir.

Senator MONRONEY. Even though they would have the right to file answers?

Mr. LESLIE. Yes, sir.

Senator MONRONEY. How do you get the hearings short enough and still broad enough to prevent injustice to some of the carriers who are legitimately entitled to compete for route authority on a temporary basis?

Mr. LESLIE. We quite agree, because we might be concerned on both sides of that ledger.

Senator MONRONEY. And the right to file an answer would seem to be a proper one, would it not?

Mr. LESLIE. Yes, sir.

I departed from my prepared statement, so I did not speak briefly to S. 3198. I would like to say that Mr. Philion covered the subject very thoroughly this morning. From my own experience, which is very largely in this area, I know that he is quite right in what he says. We strongly support it.

There is a need to clarify and remove any doubt of the U.S. Government's authority to act in the fashion required.

I think unless there are questions, I don't need to amplify that.

Senator MONRONEY. In other words you have been the victims of some of these "quickie" actions on the part of foreign aviation authorities in backing up their airlines on prices, rates, and things of that kind. Have you had trouble on cargo, as some of the others have had?

Mr. LESLIE. Yes. The facts are already in the record, the ones we have been exposed to. Some haven't been quickies. Some have been chronic for about 8 years, and we are still living with those restrictions.

In Venezuela, as was described this morning, and all the others that are current that affect us have already been described by other witnesses.

Senator MONRONEY. But you join all of the other witnesses who have testified in favor of giving to our own authorities the right to take reciprocal action when we have had these restrictions thrown against us.

Mr. LESLIE. Yes, Senator, and in doing so I would like to emphasize very much the point that was brought out, but perhaps not underlined. We don't think for a minute that the United States can or should throw its weight around indiscriminately and act like an intemperate disappointed child. The United States has to be very restrained, very reasonable in its actions.

More importantly, we think the United States has been the victim of some of these things because our foreign friends know or believe that we lack the power to retaliate. I am quite confident that with this power known to exist in our hip pocket, that we will have to exercise unpleasant and difficult measures much less than we do now.

Senator MONRONEY. The way the bill is drawn, S. 3197 would not require such a route as would be affected by a foreign grant. It would not require necessarily a domestic carrier to have already been certificated as a carrier; is that correct?

If a carrier has an application pending, it would have to be a certificated carrier to be considered, but he could merely have an application in for the route without ever having flown a portion of it.

Mr. LESLIE. That is not quite the way I would put it.

Senator MONRONEY. Would you describe your viewpoint of the bill.

Mr. LESLIE. My understanding of the bill as drafted in that respect is that the applicant would have to show that he was suffering a competitive impact due to the new grant to the foreign-flag carrier.

The mere fact that he had an application on file for an area which might be affected by the new foreign-flag route would not, as I understand it, be sufficient to qualify him to apply. But any carrier which could show a competitive impact, whether at home or abroad, would be an applicant in good standing for relief under this exemption. And the Board and the President would then have to decide which of those several applicants was most entitled to relief and which could best maintain the U.S. system against a new foreign-flag competition. Obviously on a temporary basis pending the full settlement of the case.

Senator MONRONEY. Isn't it a fact from the practical standpoint that the winner of the temporary certificate would have somewhat of a preferred position in the public thinking and otherwise for the permanent certification if you had 6 years of time pass and they had flown a satisfactory service in that area? Wouldn't it be reasonable to assume that they would be in a position to more favorably demonstrate their capability because of this experience?

Mr. LESLIE. Yes, this would be true. To the extent that exemptions are possible under the limited standards of the act now, this is true.

Certainly the fact that that particular line has been flying, comes into the case with more traffic data, more exhibits, and some better pleading. At the end of 6 years, however, it is impossible to foresee whether in addition to him there might be somebody else proving himself qualified, too.

Senator MONRONEY. You feel that the language on page 2 would not restrict this to necessarily resisting international carriers——

Mr. LESLIE. We are quite clear about that.

Senator MONRONEY (continuing). Suffering hardship, but domestic carriers such as United, American, or others, flying from the east coast to the west coast would also be disadvantaged by the direct service of foreign carriers.

Mr. LESLIE. That is correct, sir, and it is set forth in our prepared statement.

Senator MONRONEY. This, then, after the hearings which you have mentioned also, would permit an answer through oral argument. The hearing and decision would go from the Board to the President.

Mr. LESLIE. That is correct, sir.

Senator MONRONEY. And the President would have to affirmatively find that this is the case before the temporary certificate would become effective.

Mr. LESLIE. That is the temporary authority or exemption from the certificate requirement; yes, sir.

Senator MONRONEY. Senator Cannon?

Senator CANNON. Thank you, Mr. Chairman.

I am not sure that I completely understand this, Mr. Leslie, on page 2, where you refer to the competitive disadvantage of a specific carrier. Let me use an example.

Let's suppose in this recent go-around where Japan got a route from Tokyo to New York. The fact that your company has the route only to San Francisco, and then a connection there, would obviously make you disadvantaged. Is it your interpretation that you would then be at a competitive disadvantage under this language of the act so that you would be able to apply for relief under this provision?

Mr. LESLIE. That is correct; yes, sir.

Senator CANNON. Do I also understand that one of the reasons you support this is because of the long timelag you recently referred to, I think in the *Transpacific* case, where you thought that an undue time was involved?

Mr. LESLIE. Yes. We think it will be on the order of 5 years.

Senator CANNON. And you think that is of considerable concern?

Mr. LESLIE. We think that is of great concern, certainly, to us as a company. But we think it is also of great concern to the United States because it is in our opinion worth between $40 and $60 million a year in the balance of payments.

Senator CANNON. I wonder if you would explain for me, or reconcile, the position that you took before the court of appeals in that case with respect to Western's position wherein, as I interpret it, you took the position that in view of the complexity of the case that there was no basis to the charge for undue delay in that case, and that even undue delay would not justify the court in ordering the case decided in a particular way.

Also, I am referring now to a brief for your company, I believe, before the court of appeals, where you said:

> The fact that the Trans-Pacific route case took a long time, or that another hearing may yet be required to provide a domestic and international route pattern which would meet the objectives of the act, presents no reason which requires the court to reverse or remand the Board's order. Comprising the whole Pacific area and involving both the court and President, as it does, the Trans-Pacific route case was indeed an exceedingly complex proceeding. There has been no showing that there has been any undue waste of time in disposition of the involved matters presented or that the Board and the President have not acted as speedily as possible as required by Section 401(c) of the Federal Aviation Act or with reasonable dispatch as required by Section 9(b) of the Administrative Procedure Act.

It seems to me that you are sort of—maybe you have forgotten this case now. As I interpret it, you are arguing a completely different position than you took in that case.

Mr. LESLIE. I don't think so, Senator, for two reasons. First of all, the issue of Western in this case involved entirely a domestic route. Here we are not concerned with the U.S. balance of payments. And that is the thing I was searching for some way to illuminate in this proceeding today.

We are talking about a change in domestic law that affects domestic route authority, but we are doing it because the problem is international. No. 1, therefore, the point you raise as to Western in this case, I think is not involved because it is purely a domestic matter, the route to Hawaii.

Secondly, the statement is perfectly true that we do not think that any of these procedural steps required by the Board and the President that take so long are in any way improper or represent inefficiency, or as we said this morning are susceptible of any important change in the way of shortening the time radically. All we say is that while we are following our very carefully domestic processes of due process, that the United States should be free to take intermediate action to protect its own balance of payments, its own U.S.-flag system by a different kind of action confined to the international field.

Senator CANNON. As I interpret your answer, though, with respect to the applicability of the language on page 2 to your company, it seems to me that that is somewhat contrary to the position that Mr. Boyd and Mr. Murphy were suggesting this morning, that we should go the exemption route only when the interests of the Nation as a whole require such action and not just the interests of an individual air carrier.

It would seem to me, in the example used, that this is more related to the interests of an air carrier—whatever it might be.

Mr. LESLIE. I wouldn't really have thought that, Senator, from what has been said, because the criterion that was originally proposed by Chairman Magnuson was first of all competitive impact, and then an appropriate U.S.-flag air transportation system, to which has been added this morning, with which we agree, the criterion of public interest. Therefore, it seems to me it is not a matter of a single air carrier, whether it be Pan American or American or United or TWA in this case. It is a matter of the national interest ultimately expressed through the choice of an individual carrier.

Senator CANNON. I certainly would hope that that is the ultimate conclusion, that it would be the collective interests of the United

States that would be involved here, rather than solely the problem of one carrier being able to contend that it was placed at a competitive disadvantage because of the action that was taken.

Mr. LESLIE. My observation, Senator, is that your end is best accomplished, and we will agree with it, within our domestic system by the individual carrier who is privately owned and profit-motivated under our American system coming forward to make the best showing he can as to what he can accomplish if granted a certain route, and then by comparing the showings of the properly interested carriers. My observation over the years is that the United States comes out with the best possible result.

Senator CANNON. Do you interpret the public interest and the national interest as one and the same thing? Or do you distinguish between the two?

Mr. LESLIE. I am afraid, Senator, that I am going to have to say I don't know the answer to that question. I am afraid the two terms are perhaps one of the nonlegal nature and the other of a legal nature. To me the national interest is clear and tangible because I work with it in my small way every day of the year. The public interest I think has legal interpretations which I can't elaborate on.

Senator CANNON. If they are one and the same, then it would seem to me that the language in Mr. Boyd's and Mr. Murphy's recommendations is probably good. I am referring now to Mr. Murphy's statement, "Provided that the exemption authority may be exercised when the United States and its air carriers collectively are placed at a competitive disadvantage." That is the language that you don't like.

Mr. SCHNEIDER. No. No; we haven't said that.

Mr. LESLIE. No, Senator. I would not equate Mr. Murphy's statement and Mr. Boyd's. They are different and separate, I think. But what I am saying is in accord with my last preceding statement.

The way that large amounts of capital are dedicated to our American kind of air transportation, the public utility business, the kind of capital that Senator Monroney referred to this morning, a half billion dollars for a Boeing 707, the way that is dedicated and staked out to pasture, and a growing pasture, is because there is a regulatory system on which the rights of the carrier can depend. You don't invest a half billion dollars if you are completely unclear about how long you will have the opportunity to use that capital profitably. And, therefore, in my mind the interests of the carrier can quite validly be considered as being part of the national interest and part of the way we achieve the national interest in this country.

As I said before, when all the regulatory criteria are removed and it becomes simply the judgment of the national interest, I consider that the basis for heavy capital investment has been substantially damaged.

Senator CANNON. If I misinterpreted your position with respect to placing the air carriers collectively at a competitive disadvantage, would you explain again for me just what your position is on that?

Mr. LESLIE. My position on that is that it may be a very sound statement and a very good way of expressing it, but we don't understand it. We would like an opportunity to visit with the authors of it and see if they can illuminate our understanding of it.

Mr. SCHNEIDER. Could I amplify?

Mr. LESLIE. Please.

Mr. SCHNEIDER. Where it says "and the air carriers collectively," does that mean the sum total of the airlines in the United States, including a local service airline like Mohawk that has nothing to do with, shall we way, the Pacific route? That I am concerned about, for example.

Senator CANNON. That wouldn't relate to every carrier in the country that had no relationship to the problem at hand. I go back then to Mr. Boyd's statement here where he says:

> The Department takes the position that the Civil Aeronautics Board should have the right to grant a carrier exemption from provisions of Section 401 on the basis of a finding that operation under such authority would be in the national interest.

I think you have to equate the national interest here with the United States and its carriers collectively being placed at a competitive disadvantage.

Mr. SCHNEIDER. We have no problem with the public interest or national interest standard as stated in amendment 3 of Mr. Murphy's statement. We endorse that. We probably will be able to endorse the preceding one, which you have been reading, sir, too. If after I confer with Mr. Murphy's counsel as to does he really mean all when he says it is air carriers collectively—it is probably a question of simple draftsmanship. I would like to confer with Mr. Goldman, who was here this morning, as to just what was intended by that, and I think I will be satisfied and be able to advise you that we think this is a good idea, too.

Senator CANNON. And you think there is no inconsistency in your position now in the *Pacific* case, the position you take there, and the position your are taking here, so far as the time element is concerned. I want to read one more reference to one of the briefs:

> We note in passing that Western's allegations that it will take at least three to four years to process a complete rehearing of the domestic and international cases may represent a great exaggeration. In the earlier proceedings less than nineteen months elapsed between the Board's order defining the scope of the proceeding and the submission of its opinion to the President.

Do you feel that your position is entirely consistent in this presentation and that?

Mr. LESLIE. I think our position is consistent if it is interpreted in the light of each individual case, one distinguished from another. There are little cases and there are big cases. I can cite the ones that have been accomplished in 18 months which involved one or two carriers, and no contestants, and no opposition, and so on. But I do think I am right in estimating, I join more authoritative people in estimating the length of the *Pacific* case.

Senator CANNON. Thank you, Mr. Chairman.

Senator MONRONEY. Thank you, Senator Cannon.

We thank you for your testimony, Mr. Leslie, and for your appearance before the committee. We will be glad to consider it.

Mr. LESLIE. Thank you, Mr. Chairman.

Senator MONRONEY. Our next and last witness of the day is Mr. Brian A. Cooke, vice president and treasurer, World Airways, Inc.

We will be happy to have you come forward, Mr. Cooke.

STATEMENT OF BRIAN COOKE, VICE PRESIDENT, WORLD AIRWAYS, INC.; ACCOMPANIED BY HAROLD BAYNTON, WASHINGTON REPRESENTATIVE OF WORLD AIRWAYS, INC.

Mr. COOKE. I have with me our Washington representative, Mr. Harold Baynton.

Senator MONRONEY. He is not a stranger to these precincts. We are glad to have him here with you.

Mr. COOKE. Thank you.

Mr. Chairman and Senator Cannon, my name is Brian Cooke and I am vice president and a director of World Airways, a supplemental air carrier with headquarters at Oakland International Airport, Oakland, Calif. It is a particular pleasure to appear before this committee in support of S. 3198 because of the great role this committee, and its chairman, have played over the years in the development of air transportation in general, and of the supplemental air carrier industry in particular.

World Airways holds a certificate of public convenience and necessity to provide charter air transportation, issued by the Civil Aeronautics Board under authority granted by Congress in Public Law 87–528. That authority incidentally now extends to transatlantic authority and transpacific authority as well as domestic. Many members of this committee were instrumental in the passage of that important legislation and we believe it fair to state that the judgment of the supports of that law has been more than vindicated by the success of "charter specialists" since that time.

It is clear that Congress, having taken the lead in providing for a sound domestic and international air transportation system, has a legitimate interest in the treatment American carriers receive at the hands of foreign governments. It is obviously impossible for a truly viable system to be developed if there is give and take in the policies of this country, but no give and all take overseas. Inasmuch as some of the most serious problems in international air transportation presently relate to the supplemental industry, I wish to ask that the committee include in its consideration of S. 3198 some attention to the needs of the supplemental carriers.

Before proceeding further, I should stress the World's position generally looks toward freedom of the skies in charter air transportation. That is to say, we would be happy to compete on an equal basis with the charter carriers of any foreign nation; it if happens that a nation has no charter carrier as we know them, we are happy to compete on equal terms with a foreign-flag carrier. However, if this country fails to reserve some power to protect against restrictive foreign air transport policies it will be impossible for such competition to evolve; the general objective of this bill, if expanded to embrace the supplemental industry, is therefore a far-sighted and wise step. It appears clear that the Civil Aeronautics Board badly needs a strengthened arsenal in assuring the fair treatment of American carriers overseas.

It may be helpful to explain at this point that whenever a supplemental carrier operates a charter to a foreign country it must obtain landing and uplift rights for the flights involved. In order to develop a sound charter operation it is necessary to put together a program of

several flights which may, and in fact, often will include more than one charter contract. Otherwise, the cost of ferrying empty aircraft over long distances causes prohibitive costs and eliminates one of the most important benefits of a charter flight. It is therefore necessary that foreign governments be willing, either through a standard policy or an early ad hoc consideration, to grant the necessary rights several months in advance of flight time. It is not unusual for a large charterer to request a firm contract as much as 2 years in advance of the date the flight is to be operated.

I should also describe briefly the charters we operate. The most important single source of charters for World comes from single-entity, sales-incentive programs now being offered by several large American corporations. Many American corporations have found free trips to some exciting foreign city an excellent incentive in encouraging increased efforts on the parts of employees and sales representatives; World has been a leader in developing this market.

We also operate many pro rata charters, in which each passenger pays for his fair share of the total cost. For example, as you all know, the Congressional Secretaries Club each year sponsors a trip to some faraway city; any member of the club may go by signing up and paying his fair share, but such flights are open only to members of the club or their immediate family. This is a perfect example of a typical pro rata charter.

In order that the committee may have some picture of the problems encountered by supplemental carriers the following examples of current difficulties may be illuminating.

Brazil

In 1965 World contracted with the Admiral Corp., to operate 13 round trip flights to Rio as part of a sales incentive program. The Brazilian Government refused to grant landing and uplift rights until it had checked with the Brazilian-flag carrier and the U.S.-scheduled carriers as to their capacity to operate the flights. Then after granting what amounted to a right of first refusal to Varig, Pan Am and Braniff on World's business, it forced us to pay a discriminatory fuel tax totaling several thousand dollars. This tax applied only to carriers which were not regularly certified into Brazil. In our view this action amounted to nothing less than extortion. The only alternative offered for future programs was to "form a consortium with a Brazilian carrier"—in other words, to cut in Varig for a major share of World-promoted flights.

Greece

Up until last year Greece had imposed strict limits on the operation of U.S. supplementals, but had, on a case-by-case basis, allowed a very small number of flights. During the bilateral negotiations conducted last fall between the United States and Greece there was some indication that a reasonable Greek policy toward supplementals was developing. However, after an agreement has been reached, a bilateral, giving the right to a Greek-flag carrier to operate scheduled service between Greece and New York via European points, the Greek Government, on December 30, banned absolutely any charter flight to Greece by any U.S. supplemental carrier. Due primarily to the intervention of World and other U.S. supplementals in the CAB proceedings on the permit application of the Greek-flag carrier,

the Greek Government later relented with a revised order which would allow approximately 22 round trip flights to Greece by all U.S. supplementals annually. It was by happenstance that the Greek permit was then being applied for that we were able to gain this reciprocity. While World has been encouraged by this sign of the Greek Government's willingness to continue consideration of the problem, 22 flights divided by 6 supplemental carriers is hardly a sufficient number to justify putting together a charter program to Greece.

Israel

The Israel situation is a good example of the unfair exchange possible between the United States and foreign countries. Israel's attitude thus far toward charter operations to Israel has been very simple. They simply ban all charters both to and from Israel from the United States and Europe, thus restricting all air travel to and from Israel to El Al and other scheduled carriers authorized to serve Israel. El Al, the scheduled flag carrier of Israel, is one of the most active foreign carriers in the transatlantic charter market—not just between the United States and Israel, a fairly limited yet potentially strong market—but between the United States and Europe, by far the most important market in the charter industry. Thus the Israel-flag carrier is allowed by our Government to skim the cream of the United States-Europe market, while U.S. carriers are forbidden by the Israel Government to even get some of the skim milk.

India

World's experience has been that uplift rights for charter flights from India have been conditioned on the payment of an amount to Air India equal to 5 percent of Air India's IATA scheduled tariff for the transportation in question. Since charter rates are substantially lower than schedule rates this assessment is well over 5 percent of the actual revenue for the flight and it is also over and above the 5-percent commission payable to the agent involved in the transaction. Without the payment of such "tribute money" no operating authority would be issued.

Japan

Two examples of problems World has experienced in the past year may serve to highlight the problems in that country.

In January 1965 World entered into its first contract for a round-trip charger under its transpacific authority. This was for the movement of Japanese student farmers on March 26–28, between Oakland and Tokyo. When it became evident that the Japan Civil Aviation Bureau was not favorably disposed to grant the required rights, World obtained the active support of the U.S. State Department, the U.S. Embassy in Japan, Japanese Farm Bureau officials, and the Japanese Minister of Agriculture. World's counsel brought the case directly to the Minister of Transportation as well as to the Director of the JCAB.

As the time for this charter flight approached, it became evident that a decision would not be forthcoming until almost the last minute, with no assurance that the decision would be affirmative. In order to avoid cancellation by the charterer to the contract prior to a JCAB decision, World voluntarily agreed to pay $6,000 damages to the

charterer in the event of a JCAB denial of rights forced World's cancellation of the contract. Two weeks before the scheduled departure, the authority was denied. The charterer moved via Japan Airlines at its higher charter tariff and World paid the damages. World was given no explanation of the JCAB action.

Subsequent to that time, bilateral negotiations over air rights were entered into by Japan and the United States and we hoped the Japanese attitude would be softened.

Shortly thereafter, however, an unfortunate experience again made clear the dim prospects for any relexation of the JCAB policy. World had made timely application in July 1965 to perform a round-trip charter between Seattle/Oakland and Tokyo, carrying scientists to the XXIII International Congress of Physiological Sciences in Tokyo. Initial inquiries of the Japanese officials by World during August indicated that the application would be approved. However, on August 25, 1965, 5 days before the scheduled departure of the flight, World was advised that landing rights would be granted only for the leg to Japan but would not be granted to bring the group back. Moreover, despite the fact that World's contract was based on a round-trip price, World was warned by Japanese officials that it was expected to operate the one-way leg and its failure to do so would be held against it.

It subsequently developed that the denial of the return leg occurred because Japan Airlines was ready to provide charter capacity itself. The terms offered by JAL to the group were considerably more expensive than those of World. Because of the last minute nature of the denial and since there was no other alternative available, the group was required to accept the terms offered by JAL at an additional cost of $9,000 or $55 per passenger.

During the negotiations last year, out of which Japan obtained rights for a Japan-flag carrier to operate from Tokyo to Honolulu to San Francisco to New York and beyond, Japan suggested a limitation on United States supplementals based on 2 percent of Japan Airlines' scheduled flights between the two countries. This would have meant 16 flights annually for all U.S. supplementals combined. While this policy was initially put forward as a bargaining proposal, there is indication that it remains the position of the Japanese Government today. World presently has on file with the JCAB requests to operate 22 round-trip charter flights between the United States and Japan this year. There is no present cause for any optimism over the likelihood of obtaining the necessary approval.

Mexico

Mexico offers an almost impossible situation. The Mexican Government has taken the position that any charter which will touch at a point served by a Mexican airline or in the zone of its operation can be operated only if approval of that airline is obtained. If this were even simply giving a Mexican airline a right of first refusal, there would be some glimmer of hope; however, in March 1965, World was asked to operate one round trip as a part of a series for which the charterer had attempted and failed to obtain capacity from the Mexican airline in the area. The Mexican Government took a sounding from the pilot's union, received a negative response, and denied the application. Just this past week Mexico has apparently denied authority to operate 8 out of 13 flights for which World made applica-

tion some time ago; the only apparent reason is the opposition of the local carriers.

We currently have 13 flights for which applications have been made for General Motors late this months, and we have yet no assurance of approval.

It is relevant at this point to stress one fact; any fear foreign carriers may have that liberalized policies toward charters may cause them to lose business is misplaced. In the very nature of the operations we conduct, diversion from scheduled services is virtually nil. For example, we have conducted this year a large sales incentive program for the Borg-Warner Corp., Norge Division, during which we flew over 2,000 Norge employees and sales representatives and their wives to Latin America. Not one of these passengers would have made this trip had the charter not been arranged. A high percentage had never even flown before. The trips taken by the Congressional Secretaries Club offer another good example; as you know, members of your staffs go on these trips because of the opportunity to participate as members of the group, and without those special arrangements would be unlikely to go at all. We therefore feel ourselves quite reasonable in pleading for increased Government support for our efforts toward developing our industry.

In conclusion, World wishes to make two proposals for consideration of this committee.

First, during the Mexican negotiations last year—bilateral—it was suggested by U.S. negotiators that an intergovernmental study committee be established to make recommendations on the charter issue; unfortunately, this proposal never got off the ground. We feel a program in which internation committees were set up for each of the countries I have mentioned, and others in which difficulties may be encountered, might have excellent potential for resolving differences. It is possible that this could not be done pursuant to any legislation, but we appeal to this committee and its chairman for any assistance possible in urging the State Department to seek such arrangements, or to take other steps to give charter carriers a fair chance abroad.

Secondly, we ask that S. 3198 be amended so as to include the supplemental air carrier within the protection it contemplates. In this regard I have attached to my testimony possible language for such an amendment.

Once again, many thanks for allowing me to appear today and for your continued interest in and support of our industry.

I would like to add that our proposed amendment to S. 3198 would remove the words "agreed upon" which has also been recommended by the representative of the State Department, Mr. Loy, for the reason that charter rights currently are not between the countries for the most part covered by any established agreement. They are rather on the basis of expected reciprocity.

We feel that there should be no language in this bill which would suggest that absent an agreement there would not be some means by which the CAB could use the foreign air carrier permit right as a means of assuring reciprocity.

Further, we propose that the words, "designated by the United States" be removed and the suggestion adopted by the Civil Aeronautics Board. The term "designated" is associated with bilateral agreement and charter rights and not covered by bilateral agreements.

I would like also, if I may, to comment on the suggested changes to the bill that were proposed by Chairman Murphy. First of all it proposed that the language permit, alter, modify, amend, or limit as well as suspend, is certainly one that we agree will. And as to the suggestion that the language "like or similar nature" be changed to "appropriate" is also one that we think is worthwhile.

Finally, he has suggested that the use of "designated U.S. carrier" be removed, and his suggestion would accomplish our objective, too.

As I previously stated, Mr. Loy's suggestion to remove the reference to "agreed upon" is something we feel is essential if the legislation is to assist the problem of the supplemental air carriers' rights.

With that, Mr. Chairman, I want to thank you again for the opportunity to state our problem.

(Attachment to prepared text follows:)

Amend S. 3198 by striking the words, beginning on page 1, line 10, "agreed upon" and on page 1, line 11, "designated by the United States" and insert in lieu thereof *Authorized by the Civil Aeronautics Board.*

Senator MONRONEY. Thank you very much, Mr. Cooke, for your helpful testimony.

These countries that you name, Brazil, Greece, Israel, India, Japan and one or two others, do we have anything in our bilaterals to provide for supplemental service? I know they tried to negotiate that with Japan when the bilateral was up and we were unsuccessful, as I recall.

Mr. COOKE. There is nothing in the bilateral dealing with the charter privileges.

Senator MONRONEY. How about the other countries?

Mr. COOKE. No.

Senator MONRONEY. Any country in the world?

Mr. COOKE. Not to my knowledge. In the case of Japan it was proposed that the charter issue be resolved as a side issue, not a part of the bilateral, but before settlement that this be resolved. Answering your question, I know of none.

Senator MONRONEY. Usually in most all of the countries, aside from a very few democracies and perhaps some Latin American countries, the government runs a chosen instrument line, does it not?

Mr. COOKE. Yes.

Senator MONRONEY. And they have not yet come to the charter field which we feel is a further advance of air transportation on a larger market and one that affords an opportunity for large numbers of people to travel. Do you feel that it would be possible to negotiate charter rights until those people also have similar flights on which they could bargain on an equal basis with us?

Mr. COOKE. I think that there is still good prospect that some advance could be made in developing an understanding that would open the door to a greater extent than now in that there needs to be explained more clearly than I think has been done thus far the action of the U.S. Government in establishing the supplemental industry to be the charter arm of the United States.

The attitude of Japan, for example, is that the rights that rest with the scheduled carrier for charter to Japan constitutes reciprocity with the rights that Japan Airlines may activate on charters to the United States. But in actual fact the U.S. Government has restricted very sharply the U.S. scheduled carrier on its off-route charter business,

so that actually there is a lack of reciprocity today. I think that this needs to be clearly communicated and I believe that there can be some gains achieved even in those cases where countries do not have a separate charter carrier.

Senator MONRONEY. In your proposed amendment, can you tell the committee how that would work?

Mr. COOKE. Yes. The proposed amendment would permit the Government—CAB—to impose restrictions or limitations on the charter operations of a foreign air carrier into the United States.

Senator MONRONEY. It would apply only to the charter and not to the scheduled.

Mr. COOKE. This would be out intent, that the power be given to achieve reciprocity in that area.

Senator MONRONEY. That is assuming there is mention of charter flights or negotiation on charter flights in the bilaterals, is that correct?

Mr. COOKE. Not so. Actually in our foreign air carrier permit granted to carriers, we include the privilege of on-route charter rights to the foreign air carrier. And in this way, by permitting the CAB to take some action to redefine that, or restrict it in those cases where reciprocity is not being granted to the U.S. supplemental carrier, there would be a means for showing the foreign government that unless reciprocity is granted there may be some restriction placed on their charter operations into the United States.

Senator MONRONEY. But only as far as their charter operations.

Mr. COOKE. I think this would be a matter for the CAB to determine.

Senator MONRONEY. In other words, you wouldn't penalize the scheduled services, regularly scheduled traffic, for their refusal—if they had no charter service or contemplated no charter service—to grant a charter into their country.

Mr. COOKE. We are not recommending that that particular means of action be employed.

Senator MONRONEY. It should be perfectly all right to negotiate for it.

Mr. COOKE. Yes, sir.

Senator MONRONEY. You would like to see us do that, as I understand your statement.

Mr. COOKE. That is correct.

Senator MONRONEY. But not to use their failure to have charter service and their unwillingness to observe our hours to cut off another type of service.

Mr. COOKE. I don't think that this would be our recommendation.

Senator MONRONEY. Senator Cannon?

Senator CANNON. Thank you very much.

Mr. Cooke, the language now that has been proposed for amending S. 3198 would seem to me to do the same thing that you are attempting to have done in your suggested amendment. I would like to ask you about it.

On line 10 it has been proposed to delete "agreed upon" which you point out is good. I suggested inserting "operating rights of any U.S. air carrier" to make it absolutely clear, and then eliminating "designated by the United States" so that that would simply read "whenever the Board finds that the government of the airline authorities of any foreign country have over the objections of the Government of the

United States taken action which impairs, limits, terminates or denies operating rights of any U.S. air carrier to conduct flight operations to. from, through or over the territory of such foreign country, the Board may" and so on.

With that language would that meet the objective that your amendment is pointed toward?

Mr. COOKE. Yes, it would, Senator.

Senator CANNON. In other words, that would satisfy you, you feel, to make it very clear that the supplementals would be included there if that language were adopted?

Mr. COOKE. Yes.

Senator CANNON. Thank you very much. That is all that I have.

Senator MONRONEY. Thank you, Mr. Cooke, for your appearance before the committee.

Mr. COOKE. Thank you very much.

Senator MONRONEY. The record will remain open for the submission of additional written statements or other material until 5 p.m. on May 20.

The committee will also consider requests made prior to that time to reopen hearings for the purpose of taking additional testimony from any person interested in appearing before the committee on these two bills.

We will stand in recess, subject to the call of the Chair.

(Whereupon, at 3:48 p.m., the subcommittee was adjourned.)

(The following statement and letters were received:)

STATEMENT OF B. CRAIG RAUPE, STAFF VICE PRESIDENT—FEDERAL AFFAIRS, EASTERN AIR LINES, INC.

Eastern Air Lines appreciates this opportunity to submit its views on S. 3197. This bill and S. 3198, on both of which this Subcommittee held a hearing on May 13, 1966, are designed to strengthen the competitive position of United States flag carriers in international air transportation. Eastern is in accord with this objective and through the Air Transport Association has urged the enactment of S. 3198. For the reasons stated herein, however, Eastern has concluded that broadening of the exemption power of the Civil Aeronautics Board as contemplated by S. 3197 will not provide a satisfactory additional tool with which that Board can fabricate a sounder competitive structure in international air transportation.

Eastern does not believe that the Board has been restricted under its existing exemption power in any way that has been deterimental to the national interest or the development of a great United States air transportation system. The Board has shown in numerous instances in the past, in both domestic and foreign air transportation, that it has sufficient flexibility under the existing Section 416 to deal with meritorious applications for exemptions that are actually susceptible of being handled under the abbreviated exemption procedure, which completely bypasses the evidentiary hearing process and other steps which are so essential to procedural due process.

In overseas and foreign air transportation, the CAB has granted exemptions when to do so was in the national interest (for Braniff, Eastern, National, Panagra and Pan American to conduct nonstop flights, through interchange agreements, overflying the route junction points of the interchange partners so that such nonstop flights could be made between the United States and points in South America, Order E–23267, February 17, 1966; for TWA and Pan American to operate to Nairobi, Kenya, Order E–22581, August 26, 1965; for Pan American to serve additional East African points, Order E–22977, December 7, 1965); when a United States carrier needed authority to meet foreign competition (for Braniff to operate nonstop between Miami and Bogota in competition with Avianca, Order E–20248, December 10, 1963; for Pan American to operate to St. Lucia, West Indies, Order E–19680, June 13, 1963; for Pan American to operate to Rock Sound in the Bahamas, Order E–21228, August 28, 1964); and when no

substantial competitive implications were present and the exemption sought would serve the public interest (for Eastern, American, Western and Braniff to operate to Acapulco, Order E–22698, September 28, 1965; for Trans Caribbean to operate to Aruba, Order E–14850, January 19, 1960; for Caribair to operate to Pointe-a-Pitre, Guadeloupe, French West Indies, Order E–14976, March 2, 1960; for Caribair to operate to Mayaguez, Puerto Rico, Order E–21717, January 26, 1965).

As the hearing on S. 3197 disclosed, although S. 3197 is couched in general terms, the specific area where the exercise of the new exemption power would be most immediately invoked would be to link New York by one United States carrier, rather than by connecting United States carriers, to points in the Pacific.

The question of direct one carrier service between Eastern United States terminals and points in the Pacific is at issue in the *Transpacific Route Investigation*, Docket 16242, now in progress before the CAB under Section 401 of the Federal Aviation Act. That proceeding was begun by a letter dated February 11, 1966, from the President to the Chairman of the CAB, followed by a Notice of Prehearing Conference dated February 17, 1966.

A final decision by the United States Court of Appeals for the District of Columbia Circuit had just previously been rendered on February 7, 1966, on an appeal from a portion of the CAB's decision in an earlier Transpacific route case that also embraced issues of service to both foreign and United States overseas and domestic points in the Pacific.

The new Transpacific Case is a complicated one involving a whole complex of related issues which are not susceptible to piecemeal treatment by the exemption process. As two participants in both the old and new Transpacific cases recognized, the old proceeding "involved a sensitive balancing of interests and equities . . ." and a new proceeding would be "*the only means* by which an adequate and up-to-date record can be developed, the rights of the parties protected, and a sound and comprehensive result reached." [Emphasis supplied.] (Pan American and United brief to United States Court of Appeals for the District of Columbia Circuit, *Western Air Lines* v. *CAB*, Docket 18,305, April 10, 1964.)

The Transpacific Case also involves a great number of applicants—nearly 25 in all. The difficulty and unfairness of separating out one of the issues in that proceeding and attempting to solve it by prejudging it in favor of one of the applicants through the grant of an exemption would be tremendous. In its long experience in dealing with exemption applications under Section 416, the CAB has almost uniformly found that when competitive considerations are involved they raise issues so complex and controversial as to preclude the grant of an exemption that would permit the conduct of new route operations. (See Appendix A.) Similarly, when the same route authority for which an exemption is sought is at issue in a certificate proceeding, the CAB has usually found that it should not grant an exemption to operate the route since that, to a certain extent, amounts to a prejudgment of the certificate proceeding. (See Appendix B.)

It is thus evident that the factors that have led the CAB in the past to deny exemptions are present in abundance in the Transpacific Case and as to transcontinental portions of possible new Pacific routes for which exemption authority would be sought if S. 3197 is enacted.

One further facet of S. 3197 deserves comment. That is the requirement for Presidential approval of all exemptions involving overseas or foreign air transportation, whether granted under the proposed new standard for such exemptions or under the existing standards of Section 416. Eastern believes that this requirement would impose a burden on the office of the President out of all proportion to the consequence of matters dealt with by most such exemptions. For example, during the period from December 28, 1964 through March 20, 1965, the CAB issued thirty-four orders dealing with overseas and foreign exemptions.

In summary, it is the position of Eastern Air Lines that S. 3197 should not be enacted since the short-cut it seeks to provide to certification of overseas and foreign air transportation services is pitted with substantive and procedural inequities and since in most instances susceptible of proper solution by the exemption process the CAB has demonstrated on repeated occasions that it has ample power to act under Section 416 as written. Eastern does not believe that it is in the overall public interest to expand the CAB's exemption power so as to allow the remaking of an important part of the world's air route pattern outside the normal certification process of the Federal Aviation Act with its requirements of public hearing, opportunity to cross-examine witnesses and other procedural safeguards.

The only virtue that has been urged before this Subcommittee for S. 3197 is that it would save time in getting a United States carrier in the air with authority equal to that of a foreign air carrier. The existence or extent of the necessity for such action is open to factual dispute.

Since the Second World War, the United States has obtained air rights around the world for its international carriers. Often the foreign countries from whom these rights were obtained have been compensated for these rights by the United States through the grant of rights to operate routes which divert traffic from United States domestic carriers not receiving any compensating benefit from the route-exchange. While these domestic United States carriers are not in direct competition with such foreign carriers, they have nevertheless suffered real economic losses. To grant a United States international carrier, which competes with such foreign carriers, rights across the United States would only compound the loss to the domestic carriers which have already borne the brunt of the diversion by the foreign carriers' transcontinental services. While there is an obvious dollar loss to domestic transcontinental carriers by the transcontinental operations of foreign air carriers, a carrier operating only international routes suffers a loss by such operations not through diversion from its existing services, but only in the sense of not having an additional route on which it would earn revenues diverted mainly from United States domestic carriers. It is thus not all clear that the authorization of a United States international carrier to fly across the United States would improve the balance of payments situation of the United States.

No catalogue of situations which involve competitive inequality between United States and foreign air carriers and which would be susceptible of solution by the power contained in S. 3197, has been documented before this Subcommittee. Nor has any showing been made, of which Eastern is aware, that where such apparent inequalities exist they are not being remedied on an interim basis by interchanges, connections or other arrangements between United States carriers. In addition, an unintended result of S. 3197 could be an extension of the time required for disposition of the very matters it is meant to deal with since it inevitably erect another procedural hurdle to the prompt dispositon of certificate proceedings under Section 401. On complicated matters the CAB would be forced to spend several months dealing with exemption applications before turning to the certificate proceeding.

For all of the above reasons, Eastern opposes the enactment of S. 3197.

Should this Subcommittee, however, be of the opinion that some legislation nevertheless is needed in this area, we would urge that as a minimum such legislation should not erect standards that can only be met by certain applicants.

Eastern would urge that consideration be given to language incorporating the suggestions outlined earlier in testimony by Under Secretary of Commerce, Alan Boyd. Such amendments to S. 3197 would at least offer fairer standards for a broadened CAB exemption power in the field of foreign air transportation. They would allow the CAB greater discretion in selecting the air carrier to receive the exemption. This discretion is quite important in view of the past rights that have been granted to foreign air carriers at the expense of American domestic air carriers in exchange for rights which only benefited existing international United States air carriers.

Eastern, as an ancillary point, sees no justification for extending the broadened exemption power to overseas air transportation since no foreign air carrier could be allowed to carry traffic in such transportation which is defined by the Federal Aviation Act as encompassing air service between points in the United States and points in its possessions and territories or between points in one territory or possession and points in another territory or possession. Carriage of such traffic by foreign air carriers would be "cabotage" and hence not permitted.

Appendix A

Cases Where Exemptions Denied by CAB Because Competitive Considerations Raise Issues Too Complex and Controversial To Be Decided by the Exemption Process

1. Applications of American Airlines, Inc., and Braniff Airways, Inc., Order E–23126, Jan. 18, 1966.
2. Application of American Airlines, Inc., Order E–22940, Nov. 29, 1965.
3. Joint Application of Lake Central Airlines, Inc., *et al.*, Order E–22787, Oct. 20, 1965.
4. Applications of Trans Caribbean Airways, Inc., and Eastern Air Lines, Inc., Order E–22631, Sept. 8, 1965.

5. Applications of Melbourne Airways And Air College, Inc., and Mackey Airlines, Inc., Order E–22497, Aug. 2, 1965.
6. Application of California Time Airlines, Inc., Order E–22387, June 30, 1965.
7. Application of Frontier Airlines, Inc., Order E–2265, June 3, 1965.
8. Applications of Trans Caribbean Airways, Inc., Caribbean-Atlantic Airlines, Inc., *et al.*, Order E–21414, Oct. 19, 1964.
9. Applications of Southern Airways, Inc., and Eastern Air Lines, Inc., Order E–21198, Aug. 17, 1964.
10. Application of Bonanza Air Lines, Inc., Order E–21055, July 10, 1964.
11. Application of Ozark Air Lines, Inc., Order E–20903, June 5, 1964.
12. Applications of Pacific Air Lines, Inc., and Bonanza Air Lines, Inc., Order E–20708, April 16, 1964.
13. Applications of American Airlines, Inc., and Trans World Airlines, Inc., Order E–20703, April 15, 1964.
14. Application of Trans-Texas Airways, Inc., Order E–19324, Feb. 27, 1963.
15. Application of Delta Air Lines, Inc., Order E–19076, Dec. 7, 1962.
16. Application of Pan American World Airways, Inc., Order E–18726, Aug. 21, 1962.
17. Applications of Delta Air Lines, Inc., and Trans-Texas Airways, Inc., Order E–18654, Aug. 1, 1962.
18. Application of North Central Airlines, Inc., Order E–18609, July 18, 1962.
19. Application of Trans-Texas Airways, Inc., Order E–18522, June 28, 1962.
20. Seaboard World Airlines, Inc., Order E–18249, April 24, 1962.
21. Applications of Central Airlines, Inc., and Trans-Texas Airways, Inc., Order E–17901, Jan. 4, 1962.
22. Application of South Pacific Air Lines, Order E–16650, April 12, 1961.
23. Application of TAG Airlines, Inc., Order E–16349, Feb. 8, 1961.
24. Applications of Pacific Northern Airlines, Inc., and Alaska Airlines, Inc., Order E–15864, Sept. 30, 1960.
25. Application of Continental Air Lines, Inc., Order E–15773, Sept. 14, 1960.
26. Applications of City of Albuquerque, N. Mex., and Trans World Airlines, Inc., Order E–15752, Sept. 8, 1960.
27. Applications of National Airlines, Inc., and Piedmont Aviation, Inc., Order E–15717, Aug. 31, 1960.
28. Application of Bonanza Air Lines, Inc., Order E–15216, May 10, 1960.
29. Applications of Southern Airways, Inc., Trans-Texas Airways, and Ozark Air Lines, Inc., Order E–14717, Dec. 7, 1959.
30. Applications of North Central Airlines, Inc., and Lake Central Airlines, Inc., *et al.*, Order E–14459, Sept. 16, 1959.
31. Application of Trans Caribbean Airways, Inc., Order E–14407, Sept. 1, 1959.
32. Application of Caribbean Atlantic Airlines, Inc., Order E–13600, March 11, 1959.
33. Application of the Flying Tiger Line, Inc., Order E–13541, Feb. 26, 1959.
34. Application of Lubbock, Texas, Order E–13525, Feb. 17, 1959.
35. Application of Braniff Airways, Inc., Order E–13388, Jan. 15, 1959.
36. Application of Wein Alaska Airlines, Inc., Order E–12735, July 2, 1958.
37. Application of Northern Consolidated Airlines, Inc., Order E–12576, May 28, 1958.
38. City of Fresno, California, *et al.*, Order E–12427, April 29, 1958.
39. Application of Southeastern Aviation, Inc., Order E–11870, Oct. 11, 1957.
40. Applications of Ozark Air Lines, Inc., and Central Airlines, Inc., Order E–11808, Sept. 20, 1957.
41. Application of Trans-Texas Airways, *et al.*, Order E–11450, June 14, 1957.
42. Application of West Coast Airlines, Inc., Order E–11445, June 13, 1957.
43. Application of Central Airlines, Inc., Order E–11124, March 13, 1957.
44. Application of Jonesboro, Arkansas, *et al.*, Order E–10962, Jan. 18, 1957.
45. Applications of North American Airlines, Inc., *et al.*, Order E–10463, July 16, 1956.
46. Applications of North Central Airlines, Inc., *et al.*, Order E–9881, Dec. 29, 1955.
47. Applications of Delta Air Lines, Inc., *et al.*, Order E–9755, Nov. 18, 1955.
48. Application of The Flying Tiger Line, Inc., Order E–9740, Nov. 14, 1955.
49. Applications of Central Airlines, Inc., *et al.*, Order E–9475, Aug. 9, 1955.
50. Application of Southern Air Transport Inc., Order E–9398, July 18, 1955.

51. Applications of Southwest Airways Company and Bonanza Air Lines, Inc., Order E–9348, June 29, 1955.
52. Application of Caribbean-Atlantic Airlines, Inc., Order E–8952, Feb. 17, 1955.
53. Application of Eastern Air Lines, Inc., Order E–8597, Aug. 31, 1954.
54. Application of City of Aiken, South Carolina, Order E–8046, Jan. 19, 1954.
55. Application of Riddle Airlines, Inc., Order E–8007, Dec. 29, 1953.
56. Applications of North Central Airlines, Inc., and Lake Central Airlines, Inc., Order E–7899, Nov. 18, 1953.
57. Application of Alaska Airlines, Inc., Order E–6931, Oct. 30, 1952.
58. Application of European-American Airlines, Inc., Order E–6888, Oct. 17, 1952.
59. Application of Riddle Aviation Company, Order E–6881, Oct. 16, 1952.
60. Applications of Pioneer Air Lines, Inc., *et al.*, Order E–6267, March 28, 1952.
61. Application of California Helicopter Company, Order E–6052, Jan. 24, 1952.
62. Application of Northwest Airlines, Inc., Order E–6009, Jan. 5, 1952.
63. Applications of Robinson Airlines Corp., and Colonial Airlines, Inc., Order E–5713, Sept. 18, 1951.
64. Application of Pan American-Grace Airways, Inc., Order E–5581, Aug. 8, 1951.
65. Application of Northwest Airlines, Inc., Order E–5113, Feb. 12, 1951.
66. Application of Empire Air Lines, Inc., Order E–5103, Feb. 2, 1951.
67. Application of United Air Lines, Inc., Order E–4886, Nov. 29, 1950.
68. Application of Delta Air Lines, Inc., Order E–4833, Nov. 14, 1950.
69. Application of Northwest Airlines, Inc., Order E–4832, Nov. 14, 1950.
70. Application of Capital Airlines, Inc., Order E–4831, Nov. 14, 1950.
71. Application of Eastern Air Lines, Inc., Order E–4830, Nov. 14, 1950.
72. Application of U.S. Airlines, Inc., Order E–4794, Nov. 2, 1950.
73. Application of Los Angeles Air Service, Order E–4737, Oct. 17, 1950.
74. Application of Northwest Airlines, Inc., Order E–4733, Oct. 16, 1950.
75. Application of National Airlines, Inc., Order E–4717, Oct. 12, 1950.
76. Application of U.S. Air Coach, Order E–4312, June 15, 1950.
77. Application of Air Transport Associates, Inc., and Golden North Airways, Inc., Order E–4092, Apr. 20, 1950.
78. Application of United Air Lines, Inc., Order E–3288, Sept. 13, 1949.
79. Application of Pan American Airways, Inc., Order E–3139, Aug. 15, 1949.
80. Application of Colonial Air Lines, Inc., Order E–3121, Aug. 9, 1949.

Appendix B

Cases Where Exemptions Denied by CAB When Same Route Authority at Issue in a Certificate Proceeding

1. Applications of Caribbean-Atlantic Airlines, Inc., and Trans Caribbean Airways, Inc., Order E–20963, June 22, 1964.
2. Application of Seaboard World Airlines, Inc., Order E–20023, Sept. 19, 1963.
3. Application of Frontier Airlines, Inc., Order E–19578, May 14, 1963.
4. Application of Hi-Plains Airways, Inc., Order E–18889, Oct. 8, 1962.
5. Applications of City of Abilene, Texas and Central Airlines, Inc., Order E–16827, May 18, 1961.
6. Application of South Pacific Air Lines, Order E–15704, Aug. 26, 1960.
7. Applications of Piedmont Aviation, Inc., and Capital Airlines, Inc., Order E–13872, May 14, 1959.
8. Application of Central Airlines, Inc., Order E–13793, Apr. 27, 1959.
9. Application of Pacific Airlines, Inc., Order E–12882, Aug. 13, 1958.
10. Application of United Air Lines, Inc., Order E–6221, March 13, 1952.

AMERICAN AIRLINES, INC.,
Washington, D.C., May 20, 1966.

Re S. 3197 and S. 3198, bills to amend the Federal Aviation Act of 1958.

Hon. A. S. (MIKE) MONRONEY,
Chairman, Subcommittee on Aviation,
Senate Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR SENATOR MONRONEY: American Airlines, Inc., welcomes this opportunity to submit its views concerning S. 3197 and S. 3198, which would amend the Federal Aviation Act of 1958 to add to the provisions relating to international air transportation.

American is in complete sympathy with the objectives of S. 3197, which is designed to eliminate delay in implementing new foreign operating rights obtained in reciprocal route exchanges with other countries. However, we agree with the views of the Department of Commerce, as set forth in the statement of Alan S. Boyd, Under Secretary of Commerce for Transportation, and of the Civil Aeronautics Board, as set forth in the statement of Chairman Charles S. Murphy, that the bill should be amended.

As presently drafted the bill would unduly restrict the Board and the President in the selection of the airline to perform the services contemplated. Thus, for example, the bill as presently worded would seem to limit the selection of a carrier for temporary operation of the transpacific routes recently acquired in the Japanese bilateral agreement to only four of the many interested airlines—American Airlines, Pan American World Airways, Trans World Airlines and United Air Lines. (See Testimony of John C. Leslie, Vice President and Assistant to the Chairman, Pan American World Airways, Inc., p. 13). While this would be advantageous to American in this particular instance, we believe the public interest requires a broader standard than the present bill provides. The national public interest, rather than that of any particular carrier or group of carriers, should be the standard of carrier selection in the proposed new section as it is elsewhere throughout the Federal Aviation Act of 1958. And the determination of the national public interest in any particular case should be left in the hands of the Civil Aeronautics Board and the President of the United States here as elsewhere in the provisions of the Act relating to foreign air transportation.

In sum, we believe tha amendments suggested by Under Secretary Boyd and Chairman Murphy are necessary if this bill is to serve the public interest rather than private carrier interest, and would support the bill if it were so amended.

Insofar as S.3198 is concerned, American's views have been expressed by the Air Transport Association of America and others in support of the bill.

Respectfully submitted.

JAMES P. BASS,
Assistant Vice President.

FISHER, SHARLITT, GELBAND & GREEN,
Washington, D.C., May 16, 1966.

Re S. 3198.

Hon. A. S. (Mike) MONRONEY,
Chairman, Senate Subcommittee on Aviation, Washington, D.C.

DEAR CHAIRMAN MONRONEY: This is to advise the Committee of the views of our client, Seaboard World Airlines, Inc., the scheduled U.S. flag transatlantic carrier for cargo and mail, with reference to S. 3198.

Seaboard World Airlines, Inc. strongly supports the enactment of this legislation with the excellent tightening amendments proposed by Chairman Charles Murphy of the Civil Aronautics Board, Undersecretary of Commerce Alan S. Boyd, and Deputy Assistant Secretary of State Frank J. Loy. The passage of this legislation will permit the United States Government to have available for use on a reciprocal basis the same means and procedures in regulating foreign air carriers as are available to foreign governments in their regulation of United States flag air carriers.

Please find enclosed copy of an address given on January 20, 1966, by Mr. Richard M. Jackson, president of Seaboard World Airlines, Inc., before the International Aviation Club. Of particular interest in connection with S. 3198 are Mr. Jackson's remarks on the last paragraph of page 6 which reads as follows:

"There is another very critical point which has hamstrung our negotiators in the past. They have gone to the bargaining table without the ultimate weapon—

the authority to take commercial punitive action against the other party. Incredible as it may sound, our Government agencies involved believe that they do not have sufficient legal power, for example, to retaliate against a foreign carrier whose government has imposed arbitrary restrictions on U.S. carriers. It is obvious that someone in the U.S. Government has such authority—at least the President—but the delegation of appropriate authority to a lower level is apparently so fuzzy or nonexistent that our negotiators are forced to gum their way through these talks in a toothless condition."

It seems that enactment of S. 3198, with the amendments suggested, will give our negotiators the authority they need to protect U.S. flag air carriers.

We would appreciate the inclusion of this letter in the Record of Hearings of the Subcommittee, along with our previous letter dated May 12, 1966, on the subject of S. 3197.

Respectfully yours,

JOEL H. FISHER.

NATIONAL AIR CARRIER ASSOCIATION, INC.,
Washington, D.C., May 19, 1966.

COMMITTEE ON COMMERCE,
Aviation Subcommittee,
U.S. Senate, Washington, D.C.

DEAR SENATOR MONRONEY: On behalf of the member airlines of this Association, I am writing to support S. 3198. This Association further urges amendment of S. 3198 as outlined by the Honorable Charles S. Murphy in his testimony before your committee on May 13, 1966.

The Certificated Supplemental Air Carriers have been designated as charter specialists by the Civil Aeronautics Board. A particularly important aspect of the operating authority granted supplementals by the CAB is the overseas rights. Such authority is clearly necessary if the supplementals are to continue the solid growth and modernization evident since the Legislation of 1962. A further growth in civil business is essential if the supplementals are to continue to make important contributions to the Defense Department upon request. Furthermore, the expansion of supplemental participation in the civilian charter market between the U.S. and foreign points makes an important contribution to the U.S. economic posture since this traffic has largely been left to foreign airlines.

The supplemental airlines have faced serious barriers in certain foreign countries in obtaining the necessary landing rights to make the CAB awards meaningful. Latin American countries and Far Eastern areas, particularly Japan, have proven difficult in this regard. Additionally, a few European countries have prohibited or have placed obstacles in the way of supplemental landings. The State Department and the CAB have been most helpful to the supplemental airlines in overcoming these problems. Because of limited leverage their efforts, however, have met with only partial success.

The enactment of S. 3198, amended along the lines suggested by the CAB, might well improve the leverage of our Government in obtaining equitable landing rights for U.S. supplemental airlines in certain cases. As amended, S. 3198 would grant only discretionary power permitting the CAB to act where in its judgment the total circumstances demand specific counteraction. This authority would give our Government an additional useful tool and need not adversely affect the position of other U.S. airlines or U.S. bilateral aviation relations.

We respectfully urge, therefore, the passage of S. 3198 amended as suggested by the CAB.

Sincerely yours,

ROY E. FOULKE, *President.*

AIRLIFT INTERNATIONAL, INC.,
Miami, Fla., May 20, 1966.

Re S. 3197.

Hon. A. S. (MIKE) MONRONEY,
Chairman, Senate Subcommittee on Aviation,
U.S. Senate, Washington, D.C.

DEAR SENATOR MONRONEY: This concerns S. 3197 now pending before your Subcommittee.

Currently, the all-cargo carrier industry consists of Airlift International, Inc., The Flying Tiger Line, Inc. and Seaboard World Airlines, Inc. (since Airlift has

just signed agreements to buy all of the assets, including the certificate, of the Slick Airways Division of The Slick Corporation and the fifth carrier is now in bankruptcy). Airlift wishes to join in the substance of the positions advanced by Flying Tigers and Seaboard in their letters to you of May 18 and May 12, 1966, respectively. Thereby the certificated all-cargo industry is unified in favoring S. 3197 provided it is amended as proposed.

We agree with Tigers and Seaboard that in the area of concern covered by the proposed legislation, the all-cargo carriers are in need of no less assistance than is proposed to be given to the combination carriers. This is true not only in the most immediate circumstances arising out of the Transpacific Route Investigation Case now about to get underway at the Civil Aeronautics Board, but also in other areas of the world where new route investigations will probably be undertaken in the not too distant future.

For these reasons, it is respectfully requested that S. 3197 be carefully considered and at least amended to make appropriate provision for its applicability to the certificated all-cargo carriers.

Very truly yours,

J. B. FRANKLIN, *President.*

NORTHWEST AIRLINES, INC.,
St. Paul, Minn., May 19, 1966.

Hon. A. S. (MIKE) MONRONEY,
New Senate Office Building,
Washington, D.C.

DEAR SENATOR MONRONEY: Northwest Airlines, Inc. (Northwest), one of the principal U.S. flag air carriers in the Pacific, appreciates this opportunity to submit its views with respect to S. 3197.

While it is fully understandable that this Committee and the Congress should be concerned with the gap in time that sometimes exists with respect to the implementation of routes exchanged in the course of bilateral negotiations, and would wish to consider whether improvements in the procedures for authorizing U.S. air carriers to serve international routes thus made available are desirable, Northwest believes that the proposal embodied in S. 3197 would create more serious problems than those it would solve, and urges that it not be enacted by Congress.

As has been pointed out in Senator Magnuson's statement introducing the bill and in testimony before this Committee, there is sometimes a time gap as between proceedings to grant a foreign air carrier permit under Section 402 and those involving grant of certificates to U.S. flag carriers under Section 401 for related route authority, and this may give a foreign carrier a temporary advantage. It is important, however, to focus on the fact that the time necessarily consumed in certificating U.S. carriers (this obviously does not include avoidable delays of which there have been many in proceedings under the Act) is the necessary concomitant of the system of regulated competition of private enterprise which the U.S. has elected to employ in the development and maintenance of both its domestic and international air transport systems. The size and vigor of the U.S. system and the U.S. carriers testify to the soundness of that choice as the best means of accomplishing the national interest in a strong, economically sound, viable air transport system.

However, such a system inevitably entails recurring need to select among competing applicants for new or enlarged route authority. Grant of authority to one U.S. carrier applicant may, and frequently does, have a significant impact upon a competing U.S. carrier or carriers. Important and often difficult questions of balance of economic opportunity among the carriers concerned are required to be resolved in order to develop an integrated route structure which preserves adequate opportunities for effective competition.

In relation to the present subject it is particularly significant that under this multiple carrier system not every U.S. carrier will, by itself, possess authority fully matching that of foreign carriers with which it is required to compete, even though the total U.S. flag carrier authority may fully match or be greater than that of the foreign carriers. Questions of balance of competitive opportunity among U.S. carriers in order to maintain their maximum capacity to compete effectively with each other, as well as with foreign carriers, may loom lar e in determining where the national interest in a strong, economically sound route structure lies.

It is in the context of this basic national policy of reliance upon a competitive system to achieve the maximum development of our air transport system that

provision has been made in the Federal Aviation Act for observance of the administrative hearing process in both domestic and international air transportation in the award of route authority, except in the limited and extraordinary circumstances now covered by the exemptions provisions of Section 416(b). This hearing process provides the safeguards found appropriate through long experience to assure a full and fair hearing of all competing interests, and provide a reliable record upon which to make the required decision. This has been the established procedure for disposing of route applications, international as well as domestic, ever since the Civil Aeronautics Act was enacted in 1938, some 28 years ago. Despite understandable impatience at the time this process sometimes consumes, the vigor today of our air transport system as a whole, the quality of the equipment and services offered, and the strength of the carriers, is evidence that it has worked remarkably well over the long run.

S. 3197 as proposed would work a drastic change in the established procedures. It would short-cut the hearing process, and would call for decision upon significant route issues in the context of a narrow finding of competitive disadvantage of a given carrier with a foreign carrier, without any provision for considering the competitive impact of the proposed authority upon other U.S. carriers, and without any opportunity for the Board and the President to consider or to take action to maintain appropriate competitive balance with U.S. carriers adversely affected by the exemption authority being considered. The problems presented by the possible time gap in acting on a foreign air carrier permit and in considering related certificate authority for a U.S. carrier or carriers is not so great as to warrant this unprecedented departure from the established procedures.

The lack of need for the proposed revision in the long established procedures is well illustrated by cases now pending before the Board. In relation to the pending *Transpacific* case, Pan American has made it clear that it regards this legislation, if enacted, as laying the foundation for grant to it, by exemption, of an extension of its Transpacific route from San Francisco to New York upon a finding of competitive disadvantage with foreign carriers. Thus there would be singled out from the many complex and interrelated issues now pending in the *Transpacific* case for advance, isolated decision this one issue involving an important route addition to one of the applicants in that case. It would be decided on the narrow issue of competitive disadvantage with a foreign carrier, and wholly out of context of the interrelated and vitally important issues of competitive balance and economic opportunity of other U.S. carriers, including Northwest, the other established U.S. carrier serving the very Transpacific markets in issue. It would be a clear case of prejudgment of one of the important issues in that case.

It is of no avail, as a practical matter, that such an award, if made, would be temporary pending decision on the route application in the certificate proceeding. Nor would the addition of hortatory language in the legislation admonishing that the temporary award shall not prejudice the final decision or be an advantage to the carrier exempted in the final certification cure the problem. It simply is unrealistic not to recognize the inevitable preference which possession of authority and actual operation over a route (perhaps for three or four years) would inevitably create. Any other view would be contrary to human nature and fly in the face of the teachings of experience. There never was a situation of which it could be more truly said that "possession is nine points of the law."

The *Transatlantic Renewal Case*, likewise referred to in testimony before this Committee, also illustrates the problems involved in the exemption approach. There was a full hearing in that case, including the issue of co-terminals for Pan American on its Atlantic certificate. Oral argument was completed in October, 1964, and the case was then ripe for decision by the Board. Yet in February, 1966, some 15 months later, the President deemed it necessary to send the case back to the Board for further hearings on the co-terminal issue. No better evidence can be cited of the importance and complexity of the problems involved in the kind of issue which under S. 3197 would be decided by the foreshortened exemption process upon the narrow standard of the competitive disadvantage of one U.S. carrier with a foreign carrier or carriers. It is evident that the issues involved in the *Transatlantic* case are so important to the overall air transport picture and so difficult of decision, that further deferral of authorization was deemed warranted in the interest of a sound ultimate decision, despite the problem of competitive inequality with foreign carriers which was clearly present.

To discuss individually each of the examples cited in submissions to this committee to illustrate the need for this exemption authority would take unduly long. In general, analysis would show that interim solutions have been found

or that a deliberate decision not to duplicate foreign carrier authority has been taken. In relation to the *Transpacific* situation, which Pan American uses to illustrate its view of an appropriate application of the proposed exemption power, an examination of the record in the last *Transpacific* proceeding will show that the question of extension of Pan American's Transpacific route across the United States from San Francisco to New York was fully presented to the Board and the President in that case. The existence of unmatched foreign competition was definitely focused on, but the route amendments which would have removed the alleged competitive disadvantage of Pan American were, along with many proposed other changes, denied by President Eisenhower, a decision later affirmed by President Kennedy on reconsideration. What needs to be made abundantly clear is that, contrary to the implication left by Pan American, the recommended extension of Pan American from San Francisco to New York was only a small part of an integrated route package recommended by the Board, a package composed of many important route adjustments affecting other carriers as well as Pan American which was designed, in the Board's judgment, to maintain an effective competitive balance in the Pacific. All parts of the package were clearly interdependent upon each other, and no part could be isolated from the others, as Pan American seeks to do. Clearly, absent an effective opportunity for the Board and the President to consider counterbalancing authorizations to other carriers, there should be no advance decision upon the isolated issue of Pan American extension to New York solely to offset foreign competition, such as the proposed legislation would permit. The direct, adverse effect of any such extension upon Northwest as an established carrier in the Pacific providing through-plane service between New York and Tokyo is perfectly clear. In these circumstances the burden of curing the competitive disadvantage lifted from Pan American would obviously be transferred primarily to Northwest without offsetting authorizations even being considered. Such a narrow approach will not serve the national interest.

In summary, Northwest urges that upon full review of the factors involved, and in light of the firm commitment to a national policy of achieving our air transport goals through utilizing the advantages of competition among privately owned carriers, the Congress not enact S. 3197 as proposed. It further urges, however, that if any legislation of this nature is to be enacted, it is essential that it contain a clear and explicit requirement that before granting any new authority by exemption, the Board must find that so doing will not have an adverse economic effect upon any other U.S. carrier competing in the same markets as would be covered by such exemption, unless an equivalent, offsetting improvement in the route authority of such competing U.S. carrier is being currently granted it. Finally, any exemption legislation of the kind here under consideration must, if it is to be enacted, contain the procedural safeguards of public notice that the Board has the granting of such an exemption under consideration and a fair opportunity for all interested parties to present their views.

A relatively minor item, but one deserving attention in any further processing of this legislation, relates to the inclusion in the bill of authority to grant an exemption for "overseas" as well as "foreign" air transportation. Since "overseas air transportation is, by definition in the Federal Aviation Act (Section 1(21) (b)), between United States points, no foreign air carrier can engage in such transportation, and hence no U.S. carrier could be at a competitive disadvantage in respect thereto. It should be eliminated from any legislation dealing with this subject.

Northwest again expresses its appreciation for this opportunity to submit its views. It, of course, stands ready to supply such further information or to assist the Committee in any manner it deems useful in its further consideration of this legislation.

Very truly yours,

EMORY T. NUNNELEY, Jr.,
Vice President and General Counsel.

THE FLYING TIGER LINE, INC.,
Washington, D.C., May 18, 1966.

Re S. 3197.

Hon. A. S. (MIKE) MONRONEY,
Chairman, Senate Subcommittee on Aviation,
U.S. Senate, Washington, D.C.

DEAR SENATOR MONRONEY: S. 3197, which is presently before your committee, would permit the Civil Aeronautics Board to exempt air carriers who have filed an application under section 401 to obtain an exemption from that section when the failure to grant such an exemption would place them at a competitive disadvantage. The Flying Tiger Line offers no comment on the principle embodied in the bills. However, we believe all-cargo carriers currently are at a competitive disadvantage vis-a-vis combination carriers who fly the Trans-Pacific route for there is no all-cargo carrier on this route at the present time. We believe, further, that the bill would be strengthened by inclusion of specific reference to the public policy favoring development of international all-cargo carriage.

Today all-cargo carriers, despite the public interest in encouraging their full participation in overseas cargo service, suffer when foreign air carriers freely carry both cargo and passengers on overseas flights, including all-cargo services. While Seaboard serves the Atlantic and Airlift the Caribbean, there is no all-cargo carrier certificated to cross the Pacific. Although it is reasonably clear that the public interest requires an all-cargo carrier to serve the Trans-Pacific market, only upon a showing of hardship, as well as public interest, can an all-cargo carrier be permitted to serve the route in the near future, under present law. Judging by the number of parties involved, and the prior history of similar litigation, the pending Trans-Pacific Route case will probably take three to five years to decide. It is appropriate, I believe, to authorize the Civil Aeronautics Board to grant an exemption to an all-cargo carrier in advance of the final decision governing the combination carriers, whenever such an exemption would further the development of the United States flag international air cargo industry. There is no need to continue the competitive disadvantage faced by all-cargo carriers, while the passenger carriers litigate a route.

I would appreciate it if you would include this letter in the public record.

Very truly yours,

ROBERT W. PRESCOTT, *President.*

TRANS WORLD AIRLINES, INC.,
Washington, D.C., May 20, 1966.

Re S. 3197 and S. 3198.

Hon. A. S. (MIKE) MONRONEY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MONRONEY: At the conclusion of the hearing on Senate Bills 3197 and 3198 the record was left open to permit filing of additional statements by interested parties. TWA respectfully requests that this letter be made a part of that record.

Although TWA is fully sympathetic to the general objective of S. 3197, it believes that the Bill would create more problems than it would solve. Section 401 of the Federal Aviation Act, containing the certificate provisions and procedures of the Act, is the keystone of the regulatory system established by the Congress. These procedures for regulating our air transportation system carefully worked out by Congress when the Civil Aeronautics Act and the Federal Aviation Act were passed, should not be undermined by unduly broadening the exemption powers of the Civil Aeronautics Board. The hearing process now prescribed by the Act, in which all applicants and interested parties can be heard and the relative claims of competing applicants weighed, should not be lightly bypassed. The interest of no one carrier should be paramount to the public interest.

An exemption granted to a carrier in advance of hearings on a certificate application places such a carrier in a preferred position as against other applicants, no matter what statutory directives may be given to the Civil Aeronautics Board and no matter how well-meaning the Board may be in expressing disclaimers to the contrary. The exempted carrier necessarily makes an investment on the basis of an exemption, much as it would on the basis of a certificate award. It devotes equipment and personnel to the new route, including the establishment of stations,

if the points are newly authorized. Experience in operating the route is gained by the carrier. It would be unrealistic to assume that such considerations would or could be overlooked in a subsequent certificate case.

We believe that there are alternatives to amending Section 416, which would eliminate or at least sharply reduce any competitive advantage a foreign carrier might otherwise sometimes temporarily gain over U.S.-flag operators.

First and most importantly, bilaterals covering new authorizations that raise any problem of competitive disadvantage for U.S. carriers should and could be negotiated with the understanding that foreign carriers would not be authorized to commence new services, until a U.S.-flag carrier was designated to provide the same service.

Secondly, the great bulk of Section 401 cases, involving foreign or overseas air transportation could be handled on an expedited basis, as are the present *Los Angeles/Chicago-Toronto,Detroit/Erie-Toronto, Montreal-Tampa/Miami* and *Los Angeles/San Francisco-Vancouver* route cases now before the Board.

In many of those few instances where it might be desirable to authorize a U.S.-flag carrier more quickly, such a carrier would be able to make a sufficient showing to satisfy the current requirements of Section 416 and so obtain an exemption from the Board. The Board has utilized Section 416 on a number of occasions to grant operating authority in foreign air transportation because of certain exigencies or unusual circumstances which existed.

In short, we believe that this Bill would work to the serious competitive disadvantage of U.S. carriers competing among themselves for a route, in order to correct a foreign carrier's competitive advantage that could and should have been avoided in the first instance at the bilateral negotiating table.

Numerous witnesses appeared before the Committee in support of Senate 3198 which would authorize the Civil Aeronautics Board to suspend a foreign air carrier permit without notice and hearing whenever in its judgment it finds that the duly constituted aviation authorities of a foreign nation have acted in a unilateral manner to the detriment of U.S. airline rights and over the objection of the United States Government.

Mr. Norman Philion of the Air Transport Association appeared in behalf of the industry supporting that Bill. We wish to associate ourselves with and support Mr. Philion's statement.

Under Secretary of Commerce Alan S. Boyd also testified and his statement said in part "Since, in the last analysis, it is the Governments concerned that control international commerce, the United States should have the necessary authority to take positive action in protecting its carriers against the actions of other countries that may be in conflict with the operating rights of U.S.-flag carriers in the public interest, generally." Secretary Boyd's statement summarizes very briefly the real purpose of S. 3198 and we endorse his comments.

TWA also wishes to support the changes suggested by Deputy Assistant Secretary of State Frank E. Loy, with particular reference to the second and third points appearing on Page 7 of his prepared statement. TWA has been frequently confronted with restrictions on frequency of service and other capacity problems. The Civil Aeronautics Board should have the necessary authority to deal with these problems. We also agree with Mr. Loy's suggested revision which relates to third country carriers, for the reasons stated by him.

TWA thanks the Subcommittee for this opportunity to express its views and assures it of its cooperation and willingness to work towards a solution of the problems that are the subject of the Bills before it.

Sincerely,

J. WOODROW THOMAS, *Vice President.*

CLIFFORD & MILLER,
ATTORNEYS AND COUNSELORS AT LAW,
Washington, D.C., May 20, 1966.

Hon. A. S. "MIKE" MONRONEY,
Chairman of Aviation Subcommittee,
Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: As its Washington counsel, our firm has been asked by Continental Air Lines to advise you of Continental's views with respect to the bill, S. 3197, to amend Section 416 of the Federal Aviation Act.

Continental would favor broadening Section 416 to permit the Civil Aeronautics Board to grant temporary operating authority to U.S. carriers who are applicants for international routes. However, we believe that the proposed bill as introduced represents a basic and important departure from past Congressional policy which Continental strongly opposes, and which we believe will be strongly opposed by almost all U.S. carriers when it is fully understood.

In the Declaration of Policy contained in Section 102 of the Federal Aviation Act, Congress directed the Board to consider as being in the public interest; the development of an air transportation system adequate to the needs of commerce, the postal service, and the national defense; the promotion of adequate, economical and efficient service by air carriers; and the maintenance of competition between them. Furthermore, the Board is directed to apply these standards not just in proceedings under Section 401, but in the performance of all of its duties under the Act. We know of no statutory standard adopted by Congress in connection with a delegation of its authority to a regulatory agency which has more completely met the test of time and experience.

Our objection to the bill as introduced is that it substitutes for this comprehensive view of the national interest a narrow test as to whether a particular carrier is suffering a competitive disadvantage with a foreign carrier. We believe that the latter factor is a legitimate concern of the Board, but surely it cannot be its sole concern. This bill is designed to authorize the Board to grant a temporary exemption to Pan American World Airways to serve New York on its Pacific routes, on the grounds that foreign carriers have such rights. We suggest, by way of example, that such a problem can hardly be as important or as urgent as the provision of adequate scheduled air service in support of our present effort in Vietnam.

The Under Secretary of Commerce, is his testimony on this bill before the Subcommittee, properly urged that it be amended to make the public interest the test to be applied by the Board to the request for the exemption, thus importing into the exemption proceeding all of the basic objectives of the Act. However, we would point out to the Sub-committee that the way in which the public interest standard is stated in the bill will make a material difference in practice in the Board's use of the exemption authority.

If, as provided in the amendment suggested by the Civil Aeronautics Board, eligibility for the exemption must still depend upon a finding that a particular carrier is placed at a competitive disadvantage with respect to a foreign air carrier, then the conjunctive requirement that the Board find the exemption to be in the public interest, after taking into account its effect on interested parties and other relevant factors, would serve only to further limit the already limited eligibility for the exemption. The proviso suggested by the Board makes this even clearer. The language of the Board's amendment is more complicated than the original bill, but its application would produce identical results.

As the Under Secretary of Commerce for Transportation observed with respect to the original bill, such an amendment would not give the Board the right to grant the exemption to the carrier applicant it determines most appropriate and would unfairly limit the carriers eligible for such exemption authority. This, in turn, means that the Board could meet one kind of problem, but not another which might be far more serious. For example, in meeting the foreign competition the Board could not correct a much more serious competitive disadvantage which a smaller U.S. carrier might be suffering with respect to the very U.S. carrier which will receive the additional operating rights.

Continental therefore urges that Section 416 be amended to permit the Civil Aeronautics Board to grant temporary operating authority to U.S. carriers who are applicants for international routes if the Board finds, after giving notice and opportunity for interested parties to present their views to the Board, that it will be in the public interest to authorize such air transportation. Surely the fair and responsible course is to permit the Board and the President to judge in each case, how, on balance, the public interest is best served.

Sincerely,

THOMAS D. FINNEY, Jr.

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