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96-56 INTERNATIONAL AIR TRANSPORTATION COMPETITION

GOVERNMENT

ACT OF 1979

DOCUMENTS

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON AVIATION
OF THE
COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE
NINETY-SIXTH CONGRESS

FIRST SESSION

ON

S. 1300

TO AMEND THE FEDERAL AVIATION ACT OF 1958 IN ORDER
TO PROMOTE COMPETITION IN INTERNATIONAL AIR TRANS-
PORTATION, PROVIDE GREATER OPPORTUNITIES FOR
UNITED STATES AIR CARRIERS, ESTABLISH GOALS FOR DE-
VELOPING UNITED STATES INTERNATIONAL AVIATION
NEGOTIATING POLICY, AND FOR OTHER PURPOSES

AUGUST 21 AND 22, 1979

Serial No. 96-56

Printed for the use of the
Committee on Commerce, Science, and Transportation



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CONTENTS

Opening statement by the Chairman-----	Page 1
Text of S. 1300-----	3

CHRONOLOGICAL LIST OF WITNESSES

AUGUST 21, 1979

Cohen, Marvin S., Chairman, Civil Aeronautics Board; accompanied by Phillip Bakes, General Counsel; Peter Schwarzkopf, Assistant General Counsel, International Affairs; and Michael Levine, General Director, International and Domestic Aviation-----	28
Prepared statement-----	51
Questions of the committee and the answers thereto-----	79
Cooper, Richard N., Under Secretary for Economic Affairs, Department of State; accompanied by James R. Atwood, Deputy Legal Advisor; and Irving Williamson, Assistant Chief, Aviation Policy Division-----	86
Attachment-----	100
Kam, Linda Heller, General Counsel, Department of Transportation; accompanied by Jeffrey Shane, Assistant General Counsel for International Law; Edward Oppler, Deputy Director, Office of Air Transportation; and Rosalind Knapp, Acting Assistant General Counsel for Legislation-----	112
Supplemental statement-----	120
Kutzke, William A., Washington vice president, Northwest Airlines; accompanied by John Campion, vice president of regulatory proceedings-----	144
Prepared statement-----	154
Supplemental statement-----	160
Waltrip, William H., executive vice president, marketing and services, Pan American World Airways, Inc.; accompanied by Elliot Shatt, senior vice president, international regulatory services; and John Krimsky, vice president of Federal affairs-----	128
Attachments-----	134

AUGUST 22, 1979

Baldwin, George, chairman, Guam Chamber of Commerce, Agana, Guam--	213
Dingivan, Edward A., vice president, National Air Carrier Association----	216
Prepared statement-----	221
Hammarkjold, Knut, director general, International Air Transportation Association; accompanied by Floyd Hall, chairman, executive committee; Geoffrey Lipman, director, governmental affairs and policy coordination; Charles Stuart, head, commercial planning, British Airways; and Bert Rein, general counsel-----	176
Prepared statement-----	181
Lindner, William G., president, Transport Workers Union of America----	229
Attachments-----	231, 232
Meyer, C. E., Jr., president, Trans World Airlines, Inc-----	165
Attachment-----	169
Phillion, Norman J., executive vice president, Air Transport Association of America; accompanied by James E. Landry, senior vice president and general counsel; and Donald C. Comlish, vice president, international affairs-----	189
Prepared statement-----	199
Letter of September 21, 1979-----	210

IV

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

	Page
Aviation Consumer Action Project, statement-----	250
Danielian, Ronald L., executive vice president and treasurer, International Economic Policy Association, letter of June 1, 1979-----	239
Haffer, Louis P., executive vice president and counsel, Air Freight For- warders Association of America, letter of August 17, 1979-----	248
Hoffman, Herbert E., American Bar Association, letter of August 17, 1979--	244
Reilly, J. Donald, executive vice president, Aircraft Operators Council International, Inc., letter of August 24, 1979-----	249
Waldman, Raymond J., Schiff Hardin & Waite, letter of August 17, 1979--	242

INTERNATIONAL AIR TRANSPORTATION COMPETITION ACT OF 1979

TUESDAY, AUGUST 21, 1979

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON AVIATION,
Las Vegas, Nev.

The committee met at 9:35 a.m. in courtroom No. 2, U.S. District Court, 300 Las Vegas Boulevard South, Las Vegas, Nev., Hon. Howard W. Cannon (chairman of the committee) presiding.

OPENING STATEMENT BY THE CHAIRMAN

The CHAIRMAN. The hearings will come to order.

Today we begin hearings on S. 1300, the International Air Transportation Competition Act of 1979. Together with Senator Kassebaum, I introduced this bill to institutionalize a competitive international aviation negotiating policy.

I regard S. 1300 as companion legislation to the Airline Deregulation Act of 1978 and its unparalleled success of demonstrating the effectiveness of marketplace economics in aviation. The bill is pro-competitive and encourages the expansion of international aviation into new points which demonstrate market potential. There are many such communities, including my own city of Las Vegas, which just last week dedicated a new international arrivals building. At the same time, the bill takes careful notice of the important differences that exist between the domestic airline industry and the international one.

I have been generally pleased to observe the recent group of liberal bilateral agreements that have been attained by our negotiators. This shows that some of our foreign friends recognize that the international aviation industry has matured, and they have become receptive to a more competitive system and the benefits it brings. I am equally disappointed that some of our major international aviation partners continue to actively pursue a restrictive policy with respect to aviation, but at the same time, I realize that they are sincere in pursuing what they believe is in their best public interest.

I must admit in all candor that I am looking forward to these hearings in the hope that they will clear up my confusion about our current bilateral policy. Allow me to explain my dilemma by recounting the events of one morning last month.

I arrived at the office at 8:30 in the morning. At 9, I had a meeting with the CEO's of several U.S. airlines. They explained to me, in detailed fashion, how the U.S. Government representatives were "giving

away the farm" by agreeing to aviation bilaterals that gave everything to foreign airlines without obtaining commensurate benefits for the United States. By the time they left, I was livid and ready to straighten out our State Department.

I had to wait, though, because I had a 10 o'clock meeting with several foreign government officials and their national airline representatives. They proceeded to explain to me the very serious consequences of the United States pursuing its unilateral aviation policy that would jeopardize their airlines' rights to exist. They presented an impressive case that they cannot openly compete with the more efficient, better equipped U.S. airlines whose route systems provide an insurmountable traffic flow advantage. In short, they told me that the current U.S. bilateral negotiators were benefiting the U.S. carriers at the expense of the world community. The U.S. negotiators were "taking away their farm" and giving it to U.S. carriers. By the time they left, I was ready to call back the U.S. airline executives, but I had to wait because I had a meeting with the members of the Las Vegas Chamber of Commerce at 10:45.

My friends from Las Vegas complained that the U.S. bilateral negotiations weren't giving them away to anybody and that they wanted some international route awards for Las Vegas—either domestic or foreign airlines would do, they said. By this time, I was ready to lie down on my couch until the room stopped spinning, but I had to wait because I had a meeting at 11:30 with the CAB, State Department, and DOT representatives.

To give the Reader's Digest version of that meeting, they assured me that if we consider cabotage rights for foreign airlines in the United States, show-caused outlawing IATA rate setting agreements, bid all limited-designation routes, and insisted on "open skies" agreements, everything would be fixed.

By the end of that meeting, I knew exactly what to do. I took two aspirin for the splitting headache I had by this time, and called down to my staff on the Aviation Subcommittee for a thorough analysis and investigation of what I had learned that morning. However, now being 12:30, I was told that one staff member was having lunch with ATA and the other was having lunch with IATA.

That day I decided to return my attention to the less controversial issues of energy and SALT II, but I trust that today's and tomorrow's witnesses will be lucid in their explanation of how the current U.S. policy can manage to simultaneously destroy U.S. airlines with foreign competition and foreign airlines with U.S. competition.

[The bill follows:]

96TH CONGRESS
1ST SESSION

S. 1300

To amend the Federal Aviation Act of 1958 in order to promote competition in international air transportation, provide greater opportunities for United States air carriers, establish goals for developing United States international aviation negotiating policy, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 7 (legislative day, MAY 21), 1979

Mr. CANNON (for himself and Mrs. KASSEBAUM) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend the Federal Aviation Act of 1958 in order to promote competition in international air transportation, provide greater opportunities for United States air carriers, establish goals for developing United States international aviation negotiating policy, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "International Air Trans-
4 portation Competition Act of 1979".

5 SEC. 2. Section 102(a) of the Federal Aviation Act of
6 1958 (49 U.S.C. 1302(a)) is amended to read as follows:

1 "DECLARATION OF POLICY: THE BOARD

2 "FACTORS FOR INTERSTATE, OVERSEAS, AND FOREIGN

3 AIR TRANSPORTATION

4 "SEC. 102. (a) In the exercise and performance of its
5 powers and duties under this Act, the Board shall consider
6 the following, among other things, as being in the public in-
7 terest, and in accordance with the public convenience and
8 necessity:

9 "(1) The assignment and maintenance of safety as the
10 highest priority in air commerce, and prior to the authoriza-
11 tion of new air transportation services, full evaluation of the
12 recommendations of the Secretary of Transportation on the
13 safety implications of such new services and full evaluation of
14 any report or recommendation submitted under section 107
15 of this Act.

16 "(2) The prevention of any deterioration in established
17 safety procedures, recognizing the clear intent, encourage-
18 ment, and dedication of the Congress to the furtherance of
19 the highest degree of safety in air transportation and air com-
20 merce, and the maintenance of the safety vigilance that has
21 evolved within air transportation and air commerce and has
22 come to be expected by the traveling and shipping public.

23 "(3) The availability of a variety of adequate, economic,
24 efficient, and low-price services by air carriers and foreign air
25 carriers without unjust discriminations, undue preferences or

1 advantages, or unfair or deceptive practices, the need to im-
2 prove relations among, and coordinate transportation by, air
3 carriers, and the need to encourage fair wages and equitable
4 working conditions for.

5 “(4) The placement of maximum reliance on competitive
6 market forces and on actual and potential competition (A) to
7 provide the needed air transportation system, and (B) to en-
8 courage efficient and well-managed carriers to earn adequate
9 profits and to attract capital, taking account, nevertheless, of
10 material differences, if any, which may exist between inter-
11 state and overseas air transportation, on the one hand, and
12 foreign air transportation, on the other.

13 “(5) The development and maintenance of a sound regu-
14 latory environment which is responsive to the needs of the
15 public and in which decisions are reached promptly in order
16 to facilitate adaption of the air transportation system to the
17 present and future needs of the domestic and foreign com-
18 merce of the United States, the Postal Service, and the na-
19 tional defense.

20 “(6) The encouragement of air service at major urban
21 areas in the United States through secondary or satellite air-
22 ports, where consistent with regional airport plans of regional
23 and local authorities, and when such encouragement is en-
24 dorsed by appropriate State entities encouraging such service
25 by air carriers whose sole responsibility in any specific

1 market is to provide service exclusively at the secondary or
2 satellite airport, and fostering an environment which reason-
3 ably enables such carriers to establish themselves and to de-
4 velop their secondary or satellite airport services.

5 “(7) The prevention of unfair, deceptive, predatory, or
6 anticompetitive practices in air transportation, and the avoid-
7 ance of—

8 “(A) unreasonable industry concentration, exces-
9 sive market domination, and monopoly power; and

10 “(B) other conditions;

11 that would tend to allow one or more air carriers or foreign
12 air carriers unreasonably to increase prices, reduce services,
13 or exclude competition in air transportation.

14 “(8) The maintenance of a comprehensive and conve-
15 nient system of continuous scheduled interstate and overseas
16 airline service for small communities and for isolated areas in
17 the United States, with direct Federal assistance where ap-
18 propriate.

19 “(9) The encouragement, development, and mainte-
20 nance of an air transportation system relying on actual and
21 potential competition to provide efficiency, innovation, and
22 low prices, and to determine the variety, quality, and price of
23 air transportation services.

24 “(10) The encouragement of entry into air transporta-
25 tion markets by new air carriers, the encouragement of entry

1 into additional air transportation markets by existing air car-
2 riers, and the continued strengthening of small air carriers so
3 as to assure a more effective, competitive airline industry.

4 “(11) The promotion, encouragement, and development
5 of civil aeronautics and a viable, privately owned United
6 States air transport industry.”.

7 SEC. 3. (a) Section 102(c) of the Federal Aviation Act
8 of 1958 (49 U.S.C. 1302(c)) is repealed.

9 (b) That portion of the table of contents contained in the
10 first section of the Federal Aviation Act of 1958 which ap-
11 pears under the side heading

“Sec. 102. Declaration of policy: The Board.”

12 is amended by striking out

“(a) Factors for interstate and overseas air transportation.

“(b) Factors for all-cargo service.

“(c) Factors for foreign air transportation.”

13 and inserting in lieu thereof

“(a) Factors for interstate, overseas, and foreign air transportation.

“(b) Factors for all-cargo service.”.

14 SEC. 4. Sections 401(d)(1) through 401(d)(3) of the Fed-
15 eral Aviation Act of 1958 (49 U.S.C. 1371(d)(1) through
16 (d)(3)) are amended to read as follows:

17 “ISSUANCE OF CERTIFICATE

18 “(d)(1) The Board shall issue a certificate authorizing
19 the whole or any part of the transportation covered by the
20 application, if it finds that the applicant is fit, willing, and
21 able to perform such transportation properly and to conform

1 to the provisions of this Act and the rules, regulations, and
2 requirements of the Board hereunder, and that such transpor-
3 tation is consistent with the public convenience and necessi-
4 ty; otherwise such application should be denied.

5 “(2) In the case of an application for a certificate to
6 engage in temporary air transportation, the Board may issue
7 a certificate authorizing the whole or any part thereof for
8 such limited periods as is consistent with the public conve-
9 nience and necessity, if it finds that the applicant is fit, will-
10 ing, and able properly to perform such transportation and to
11 conform to the provisions of this Act and the rules, regula-
12 tions, and requirements of the Board hereunder.

13 “(3) In the case of an application for a certificate to
14 engage in charter air transportation, the Board may issue a
15 certificate to any applicant, not holding a certificate under
16 paragraph (1) or (2) of this subsection on January 1, 1977,
17 authorizing interstate air transportation of persons, which au-
18 thorizes the whole or any part thereof for such periods, as is
19 consistent with the public convenience and necessity, if it
20 finds that the applicant is fit, willing, and able properly to
21 perform the transportation covered by the application and to
22 conform to the provisions of this Act and the rules, regula-
23 tions, and requirements of the Board hereunder.”.

24 SEC. 5. The first sentence of section 401(e)(2) of the
25 Federal Aviation Act of 1958 (49 U.S.C. 1371(e)(2)) is

1 amended by striking out the words “, insofar as the operation
2 is to take place without the United States,”.

3 SEC. 6. Section 401(g) of the Federal Aviation Act of
4 1958 (49 U.S.C. 1371(g)) is amended by inserting “(1)” im-
5 mediately after “(g)” and by adding at the end thereof the
6 following new paragraphs:

7 “(2)(A) The Board may, upon application or on its own
8 motion, review the authority in any certificate of public con-
9 venience and necessity granted under this section, and may
10 suspend such authority and grant such authority to an alter-
11 native air carrier, in the event that it should find—

12 “(i) that restrictions arising from the provisions of
13 a bilateral air transport agreement or other agreement
14 or understanding with a foreign country, or otherwise
15 imposed by a foreign country, preclude or make it im-
16 practicable for the Board to authorize an additional
17 carrier in a particular foreign air transportation market
18 or markets;

19 “(ii) that a qualified applicant has demonstrated
20 that it can and will provide substantially improved
21 service, substantially lower fares or rates, or a substan-
22 tially improved combination of service and fares or
23 rates in the market or markets; and

1 “(iii) that suspension and grant of such authority
2 to the applicant would otherwise be consistent with the
3 public convenience and necessity.

4 “(B) The Board shall process the suspension and alter-
5 native certification proceeding provided for in subsection
6 (g)(2)(A) of this section pursuant to the simplified procedures
7 under subsection (p) of this section, unless the holder of such
8 certificate requests an oral evidentiary hearing or the Board
9 finds that, under all the facts and circumstances, an oral evi-
10 dentiary hearing is required in the public interest.

11 “(C) The Board may dismiss any application for suspen-
12 sion and alternative grant of certificate authority under sub-
13 section (g)(2) of this section, if it is not satisfied from the
14 materials submitted with the application (i) that the applicant
15 is qualified, (ii) that it is probable that the applicant could and
16 would provide substantially improved air service in a restrict-
17 ed market, or (iii) that proceeding with consideration of the
18 application would otherwise be in the public interest.

19 “(3) Notwithstanding the provisions of subsections (g)(1)
20 and (g)(2) of this section, the Board may suspend or revoke
21 authority to serve any point authorized in a certificate issued
22 under this section, upon notice and with a reasonable oppor-
23 tunity for the affected carrier to present its views, but with-
24 out hearing, if the carrier has notified the Board in accord-
25 ance with paragraph (j) of this section or any regulation of

1 the Board that it proposes to suspend all service provided by
2 that carrier to such point, or if the carrier has failed to pro-
3 vide any significant service to the point for 90 days preceding
4 the date of the Board's notice to the carrier of its proposed
5 action."

6 SEC. 7. Section 402(b) of the Federal Aviation Act of
7 1958 (49 U.S.C. 1372(b)) is amended to read as follows:

8 "ISSUANCE OF PERMIT

9 "(b) The Board is empowered to issue such a permit if it
10 finds (1) that the applicant is fit, willing, and able properly to
11 perform such foreign air transportation and to conform to the
12 provisions of this Act and the rules, regulations, and require-
13 ments of the Board hereunder and (2) either that the appli-
14 cant is qualified, and has been designated by its government,
15 to perform such foreign air transportation under the terms of
16 an agreement with the United States, or that such transpor-
17 tation will be in the public interest."

18 SEC. 8. The third sentence of section 402(d) of the Fed-
19 eral Aviation Act of 1958 (49 U.S.C. 1372(d)) is amended by
20 striking out "Such application shall be set for public hearing
21 and the" and inserting in lieu thereof "The".

22 SEC. 9. Section 402(f) of the Federal Aviation Act of
23 1958 (49 U.S.C. 1372(f)) is amended by inserting "(1)" im-
24 mediately after "(f)" and by adding at the end thereof the
25 following new paragraph:

1 “(2) Whenever the Board finds that the government,
2 aeronautical authorities, or foreign air carriers of any foreign
3 country have, over the objections of the Government of the
4 United States, impaired, limited, or denied the operating
5 rights of United States air carriers, or engaged in unfair, dis-
6 criminatory, or restrictive practices with a substantial ad-
7 verse competitive impact upon United States carriers, with
8 respect to flight operations to, from, through, or over the
9 territory of such country, the Board may, without hearing but
10 subject to the approval of the President of the United States,
11 summarily suspend the permits of the foreign air carriers of
12 such country, or alter, modify, amend, condition, or limit op-
13 erations under such permits, if it finds such action to be in
14 the public interest. The Board may also, without hearing but
15 subject to Presidential approval, to the extent necessary to
16 make the operation of this paragraph effective, restrict oper-
17 ations between such foreign country and the United States by
18 any foreign air carrier of a third country.”.

19 SEC. 10. Section 407(a) of the Federal Aviation Act of
20 1958 (49 U.S.C. 1377(a)) is amended by inserting the phrase
21 “or foreign air carrier” immediately after the words “air car-
22 rier” each time those words appear therein.

23 SEC. 11. Section 412 of the Federal Aviation Act of
24 1958 (49 U.S.C. 1382) is amended by—

25 (1) striking subsections (a) and (b) thereof;

1 (2) redesignating subsections (c), (d), and (e) as
2 subsections (a), (b), and (c), respectively;

3 (3) striking the words "affecting interstate or
4 overseas air transportation and" in subsection (a)(1), as
5 so redesignated by this section; and

6 (4) inserting the words "affecting interstate or
7 overseas air transportation," immediately after the
8 word "agreement," in paragraph (a)(2)(A)(iii), as so re-
9 designated by this section.

10 SEC. 12. (a) The center heading for section 412(a) of the
11 Federal Aviation Act of 1958, as redesignated by section 11
12 of this Act, is amended by striking out

13 "AFFECTING INTERSTATE OR OVERSEAS AIR
14 TRANSPORTATION".

15 (b) That portion of the table of contents contained in the
16 first section of the Federal Aviation Act of 1958 which ap-
17 pears under the side heading

"Sec. 412. Pooling and other agreements."

18 is amended to read as follows:

"(a) Filing and approval of agreements.

"(b) Proceedings upon filing.

"(c) Mutual aid agreement."

19 SEC. 13. Section 416(b) of the Federal Aviation Act of
20 1958 (49 U.S.C. 1386) is amended by adding at the end
21 thereof the following new paragraph:

1 “(7) The Board may by order, to the extent it finds that
2 such action is required in the public interest, exempt any for-
3 eign air carrier from the requirements or limitations of this
4 Act, to the extent necessary to authorize the foreign air car-
5 rier to lease or charter aircraft, with or without crew, to a
6 United States direct air carrier for the performance of service
7 in interstate, overseas, or foreign air transportation by or on
8 behalf of such air carrier under an agreement approved by
9 the Board, subject to such safety regulations as may be pre-
10 scribed by the Secretary for such operations.”.

SEC. 14. Section 1002(j)(1) of the Federal Aviation Act
of 1958 (49 U.S.C. 1482(j)(1)) is amended to read as follows:

13 "SUSPENSION AND REJECTION OF RATES IN FOREIGN AIR
14 TRANSPORTATION

15 “(j)(1) Whenever any air carrier or foreign air carrier
16 shall file with the Board a tariff stating a new individual or
17 joint (between air carriers, between foreign air carriers, or
18 between an air carrier or carriers and a foreign air carrier or
19 carriers) rate, fare, or charge for foreign air transportation or
20 any classification, rule, regulation, or practice affecting such
21 rate, fare, or charge, or the value of the service thereunder,
22 the Board is empowered, upon complaint or upon its own
23 initiative, at once, and, if it so orders, without answer or
24 other formal pleading by the air carrier or foreign air carrier,
25 but upon reasonable notice, to enter upon a hearing concern-

1 ing the lawfulness of such rate, fare, or charge, or such clas-
2 sification, rule, regulation, or practice; and pending such
3 hearing and the decision thereon, or in the case of a tariff
4 filed by a foreign air carrier if such action is in the public
5 interest, the Board, by filing such tariff, and delivering to the
6 air carrier or foreign air carrier affected thereby, a statement
7 in writing of its reasons for such suspension, may suspend the
8 operation of such tariff and defer the use of such rate, fare, or
9 charge, or such classification, rule, regulation, or practice, for
10 a period or periods not exceeding 365 days in the aggregate
11 beyond the time when such tariff would otherwise go into
12 effect. If, after hearing, the Board shall be of the opinion that
13 such rate, fare, or charge, or such classification, rule, regula-
14 tion, or practice, is or will be unjust or unreasonable, or un-
15 justly discriminatory, or unduly preferential, or unduly preju-
16 dicial, or in the case of a tariff filed by a foreign air carrier if
17 the Board concludes with or without hearing that such action
18 is in the public interest, the Board may take action to reject
19 or cancel such tariff and prevent the use of such rate, fare, or
20 charge, or such classification, rule, regulation, or practice.
21 The Board may at any time rescind the suspension of such
22 tariff and permit the use of such rate, fare, or charge, or such
23 classification, rule, regulation, or practice. If the proceeding
24 has not been concluded and an order made within the period
25 of suspension or suspensions, or if the Board shall otherwise

1 so direct, the proposed rate, fare, charge, classification, rule,
2 regulation, or practice shall go into effect subject, however,
3 to being canceled when the proceeding is concluded. During
4 the period of any suspension or suspensions, or following re-
5 jection or cancellation of a tariff, including tariffs which have
6 gone into effect provisionally, the affected air carrier or for-
7 eign air carrier shall maintain in effect and use the rate, fare,
8 or charge, or the classification, rule, regulation, or practice
9 affecting such rate, fare, or charge, or the value of service
10 thereunder, which was in effect immediately prior to the
11 filing of the new tariff (or if seasonal which was in effect for
12 the preceding corresponding season). If the suspension, rejec-
13 tion, or cancellation is of an initial tariff, the affected air car-
14 rier or foreign air carrier may file for purposes of operations
15 pending effectiveness of a new tariff, a tariff embodying any
16 rate, fare, or charge, or any classification, rule, regulation, or
17 practice affecting such rate, fare, or charge, or the value of
18 service thereunder, that may be currently in effect (and not
19 subject to a suspension order) for any air carrier engaged in
20 the same foreign air transportation. The board may decline to
21 take any action authorized if it concludes that such action
22 would not be in the public interest or would be inconsistent
23 with obligations of the United States under an agreement or
24 understanding with a foreign country.”.

1 SEC. 15. Section 1002(j)(2) of the Federal Aviation Act
2 of 1958 (49 U.S.C. 1482(j)(2)) is amended to read as follows:

3 “(2) With respect to any existing tariff of an air carrier
4 or foreign air carrier stating rates, fares, or charges for for-
5 eign air transportation, or any classification, rule, regulation,
6 or practice affecting such rate, fare, or charge, or the value of
7 the service thereunder, the Board is empowered, upon com-
8 plaint or upon its own initiative, at once and, if it so orders,
9 without answer or other formal pleading by the air carrier or
10 foreign air carrier, but upon reasonable notice, to enter into a
11 hearing concerning the lawfulness of such rate, fare, or
12 charge, or such classification, rule, regulation, or practice;
13 and pending such hearing and the decision thereon, or in the
14 case of a tariff filed by a foreign air carrier if such action is in
15 the public interest, the Board upon reasonable notice, and by
16 filing with such tariff, and delivering to the air carrier or
17 foreign air carrier affected thereby, a statement in writing of
18 its reasons for such suspension, and the effective date thereof,
19 may suspend the operation of such tariff and defer the use of
20 such rate, fare, or charge, or such classification, rule, regula-
21 tion, or practice, following the effective date of such suspen-
22 sion, for a period or periods not exceeding 365 days in the
23 aggregate from the effective date of such suspension. If, after
24 hearing, the Board shall be of the opinion that such rate,
25 fare, or charge, or such classification, rule, regulation, or

1 practice, is or will be unjust or unreasonable, or unjustly dis-
2 criminatory, or unduly preferential, or unduly prejudicial, or
3 in the case of a tariff filed by a foreign air carrier if the Board
4 concludes with or without hearing that such action is in the
5 public interest, the Board may take action to cancel such
6 tariff and prevent the use of such rate, fare, or charge, or
7 such classification, rule, regulation, or practice. If the pro-
8 ceeding has not been concluded within the period of suspen-
9 sion or suspensions, the tariff shall again go into effect sub-
10 ject, however, to being canceled when the proceeding is con-
11 cluded. For the purposes of operation during the period of
12 such suspension, or the period following cancellation of an
13 existing tariff pending effectiveness of a new tariff, the air
14 carrier or foreign air carrier may file a tariff embodying any
15 rate, fare, or charge, or any classification, rule, regulation, or
16 practice affecting such rate, fare, or charge, or the value of
17 the service thereunder, that may be currently in effect (and
18 not subject to a suspension order) for any air carrier engaged
19 in the same foreign air transportation.”.

20 SEC. 16. Section 1002(j)(5) of the Federal Aviation Act
21 of 1958 (49 U.S.C. 1482(j)(5)) is amended by (1) striking the
22 word “and” at the end of subparagraph (E) thereof, (2) strik-
23 ing the period at the end of subparagraph (F) and inserting in
24 lieu thereof “; and”, and (3) by adding at the end thereof the
25 following new subparagraph:

1 “(G) reasonably estimated or foreseeable future
2 costs and revenues for such air carrier or foreign air
3 carrier for a reasonably limited future period during
4 which the rate at issue would be in effect.”.

5 SEC. 17. Section 1102 of the Federal Aviation Act of
6 1958 (49 U.S.C. 1502) is amended by inserting “(a)” imme-
7 diately after “SEC. 1102.” and by adding at the end thereof
8 the following new subsections:

9 “GOALS FOR INTERNATIONAL AVIATION POLICY

10 “(b) In formulating United States international air
11 transportation policy, the Congress intends that the Secre-
12 tary of State, the Secretary of Transportation, and the Civil
13 Aeronautics Board shall develop a negotiating policy which
14 emphasizes the greatest degree of competition that is com-
15 patible with a well-functioning international air transporta-
16 tion system. This includes, among other things:

17 “(1) freedom of air carriers and foreign air carri-
18 ers to offer fares and rates which correspond with con-
19 sumer demand;

20 “(2) the fewest possible restrictions on charter air
21 transportation;

22 “(3) the maximum degree of multiple and permis-
23 sive international authority for United States air carri-
24 ers so that they will be able to respond quickly to
25 shifts in market demand;

1 “(4) the elimination of operational restrictions to
2 the greatest extent possible;

3 “(5) the integration of domestic and international
4 air transportation;

5 “(6) an increase in the number of nonstop United
6 States gateway cities;

7 “(7) opportunities for carriers of foreign countries
8 to increase their access to United States points if ex-
9 changed for benefits of similar magnitude for United
10 States carriers or the traveling public with permanent
11 linkage between rights granted and rights given away;
12 and

13 “(8) the elimination of discrimination and unfair
14 competitive practices faced by United States airlines in
15 foreign air transportation, including excessive landing
16 and user fees, unreasonable ground handling require-
17 ments, undue restrictions on operations, prohibitions
18 against change of gage, and similar restrictive
19 practices.

20 “INTERNATIONAL AVIATION ADVISORY COUNCIL

21 “(c) To assist the Secretary of State, the Secretary of
22 Transportation, and the Civil Aeronautics Board in develop-
23 ing such an international aviation negotiating policy there is
24 hereby created an International Aviation Advisory Council
25 which shall be comprised of representatives of the President's

1 Domestic Council, the Department of Commerce, the De-
 2 partment of Defense, airport operators, scheduled air carri-
 3 ers, charter air carriers, airline labor, consumer interest
 4 groups, travel agents and tour organizers, and any other
 5 groups or institutions which the President deems to be appro-
 6 priate. The Secretaries of State and Transportation and the
 7 Civil Aeronautics Board shall consult with the International
 8 Aviation Advisory Council on a regular basis. The Council
 9 shall advise the Secretaries of State and Transportation and
 10 the Civil Aeronautics Board on both broad policy goals and
 11 individual negotiations, when appropriate.

12 "OBSERVER STATUS FOR CONGRESSIONAL
 13 REPRESENTATIVES

14 "(d) The President shall grant to at least one repre-
 15 sentative of each House of Congress the privilege to attend
 16 international aviation negotiations as an observer if such
 17 privilege is requested in advance in writing."

18 SEC. 18. (a) The center heading for section 1102 of the
 19 Federal Aviation Act of 1958 is amended to read as follows:

20 "INTERNATIONAL AGREEMENTS

21 "ACTIONS OF THE BOARD AND SECRETARY OF
 22 TRANSPORTATION".

23 (b) That portion of the table of contents contained in the
 24 first section of the Federal Aviation Act of 1958 which ap-
 25 pears under the center heading

"TITLE XI—MISCELLANEOUS"

1 is amended by striking out

"Sec. 1102. International agreements."

2 and inserting in lieu thereof

"Sec. 1102. International agreements.

"(a) Actions of the Board and Secretary of Transportation.

"(b) Goals for international aviation policy.

"(c) International Aviation Advisory Council.

"(d) Observer status for Congressional representatives."

3 SEC. 19. Section 1104 of the Federal Aviation Act of
4 1958 (49 U.S.C. 1504) is amended by striking the words
5 "international negotiations and adversely affect the competi-
6 tive position of any air carrier in foreign air transportation."
7 and inserting in lieu thereof the following: "international ne-
8 gotiations. In making that determination, the Board or the
9 Secretary, as the case may be, shall consider the effect of the
10 proposed withholding on competition in air transportation."

11 SEC. 20. The third sentence of section 1108(b) of the
12 Federal Aviation Act of 1958 (49 U.S.C. 1508(b)) is amend-
13 ed by inserting immediately before the period at the end
14 thereof the following: ", unless specifically authorized under
15 section 416(b)(7) of this Act".

16 SEC. 21. Section 1117 of the Federal Aviation Act of
17 1958 (49 U.S.C. 1517) is amended to read as follows:

1 "TRANSPORTATION OF GOVERNMENT-FINANCED
2 PASSENGERS AND PROPERTY

3 "TRANSPORTATION BETWEEN THE UNITED STATES AND A
4 PLACE OUTSIDE THEREOF

5 "SEC. 1117. (a) Except as provided in subsection (c) of
6 this section, whenever any executive department or other
7 agency or instrumentality of the United States shall procure,
8 contract for, or otherwise obtain for its own account or in
9 furtherance of the purposes or pursuant to the terms of any
10 contract, agreement, or other special arrangement made or
11 entered into under which payment is made by the United
12 States or payment is made from funds appropriated, owned,
13 controlled, granted, or conditionally granted or utilized by or
14 otherwise established for the account of the United States, or
15 shall furnish to or for the account of any foreign nation, or
16 any international agency, or other organization, of whatever
17 nationality, without provisions for reimbursement, any trans-
18 portation of persons (and their personal effects) or property
19 by air between a place in the United States and a place out-
20 side thereof, the appropriate agency or agencies shall take
21 such steps as may be necessary to assure that such transpor-
22 tation is provided by air carriers holding certificates under
23 section 401 of this Act to the extent authorized by such certi-
24 ficates or by regulations or exemption of the Civil Aeronau-

1 ties Board and to the extent service by such carriers is avail-
2 able.

3 "TRANSPORTATION BETWEEN TWO PLACES OUTSIDE THE
4 UNITED STATES

5 "(b) Except as provided in subsection (c) of this section,
6 whenever persons (and their personal effects) or property de-
7 scribed in subsection (a) of this section are transported by air
8 between two places both of which are outside the United
9 States, the appropriate agency or agencies shall take such
10 steps as may be necessary to assure that such transportation
11 is provided by air carriers holding certificates under section
12 401 of this Act to the extent authorized by such certificates
13 or by regulations or exemption of the Civil Aeronautics
14 Board and to the extent service by such carriers is reason-
15 ably available.

16 "TRANSPORTATION PURSUANT TO BILATERAL
17 AGREEMENT

18 "(c) Nothing in this section shall preclude the transpor-
19 tation of persons (and their personal effects) or property by
20 air carriers that do not hold certificates under section 401 of
21 this Act if such transportation is provided for under the terms
22 of a bilateral or multilateral air transport agreement between
23 the United States and a foreign government or governments,
24 and if such agreement provides reciprocal rights for the
25 transportation by air carriers holding certificates under sec-

1 tion 401 of this Act of passengers or cargo financed by such
2 foreign government or governments.

3 "DISALLOWANCE OF IMPROPER EXPENDITURE BY
4 COMPTROLLER GENERAL

5 "(d) The Comptroller General of the United States shall
6 disallow any expenditure from appropriated funds for pay-
7 ment for personnel or cargo transportation in violation of this
8 section in the absence of satisfactory proof of the necessity
9 therefor. Nothing in this section shall prevent the application
10 to such traffic of the antidiscrimination provisions of this
11 Act."

12 SEC. 22. That portion of the table of contents contained
13 in the first section of the Federal Aviation Act of 1958 which
14 appears under the center heading

"TITLE XI—MISCELLANEOUS"

15 is amended by striking out

"Sec. 1117. Transportation of Government-financed passengers and property."

16 and inserting in lieu thereof

"Sec. 1117. Transportation of Government-financed passengers and property.

"(a) Transportation between the United States and a place outside
thereof.

"(b) Transportation between two places outside the United States.

"(c) Transportation pursuant to bilateral agreement.

"(d) Disallowance of improper expenditure by Comptroller
General."

17 SEC. 23. Section 2 of the International Air Transporta-
18 tion Fair Competitive Practices Act of 1974 (49 U.S.C.
19 1159b) is amended by redesignating subsections (b) and (c) as

1 subsections (c) and (d), respectively, and adding a new sub-
2 section (b) as follows:

3 “(b)(1) Whenever the Civil Aeronautics Board, upon
4 complaint or upon its own initiative, determines that a for-
5 eign government or instrumentality, including a foreign air
6 carrier (1) engages in unjustifiable or unreasonable discrimi-
7 natory, predatory, or anticompetitive practices against a
8 United States air carrier or (2) imposes unjustifiable or un-
9 reasonable restrictions on access of a United States air carri-
10 er to foreign markets, the Board may take such action as it
11 deems to be in the public interest to eliminate such practices
12 or restrictions. Such actions may include, but are not limited
13 to, the denial, transfer, alteration, modification, amendment,
14 cancellation, suspension, limitation, or revocation of any for-
15 eign air carrier permit or tariff pursuant to the powers of the
16 Board under the Federal Aviation Act of 1958.

17 “(2) Any United States air carrier or any agency of the
18 Government of the United States may file a complaint under
19 this section with the Civil Aeronautics Board. The Board
20 shall approve, deny, dismiss or set such complaint for hearing
21 within 30 days after receipt of the complaint. In considering
22 any complaint, or in any proceeding under its own initiative,
23 under this subsection, the Board shall (1) solicit the views of
24 the Department of State and the Department of Transporta-
25 tion and (2) provide any affected air carrier or foreign air

1 carrier with reasonable notice and such opportunity to file
2 such written evidence and argument as is consistent with
3 acting on the complaint within 30 days of receiving the com-
4 plaint.

5 “(3) Any action proposed by the Board pursuant to this
6 section shall be transmitted to the President pursuant to sec-
7 tion 801 of the Federal Aviation Act of 1958 (49 U.S.C.
8 1461).”.

The CHAIRMAN. Before calling the first witness, I want to comment on a timely aviation issue which is not directly related to S. 1300, but which has been a major topic of conversation among the participants in this hearing—the reauthorization of the Airport and Airway Development Act. I want to be sure that the industry groups interested in this important legislation harbor no misconceptions about my position on ADAP. I am committed to pursuing the “defederalization” of airports, as introduced in S. 1648 and S. 1649. I believe the conceptual foundation of that legislation is thoroughly sound and highly preferable to the administration’s alternative proposal. This legislation would eliminate Federal Government meddling in the business affairs of large and medium hub airports and reduce airline fares by \$5 billion over the next 5 years, even after accounting for a \$2 billion increase in charges at the larger airports over the same period. I am, of course, flexible on the details of this legislation, but I want to leave no doubt about my intent to work toward enactment of airport defederalization with my colleagues and the bill’s cosponsors, Senators Packwood, Inouye, and Schmitt.

The first witness this morning is Chairman Marvin Cohen of the Civil Aeronautics Board and from our neighboring State of Arizona. Chairman Cohen, we are happy to have you here.

STATEMENT OF HON. MARVIN S. COHEN, CHAIRMAN, CIVIL AERONAUTICS BOARD; ACCOMPANIED BY PHILLIP BAKES, GENERAL COUNSEL; PETER SCHWARZKOPF, ASSISTANT GENERAL COUNSEL, INTERNATIONAL AFFAIRS; AND MICHAEL LEVINE, GENERAL DIRECTOR, INTERNATIONAL AND DOMESTIC AVIATION

Mr. COHEN. First, I appreciate your bringing me so close to home. It’s great to breath the dry, desert air again. I would like to introduce my companions at the table. To my left, Phillip Bakes, General Counsel of the Civil Aeronautics Board, and his Assistant Counsel for International Affairs, Peter Schwarzkopf, next to him. To my right, Mike Levine, General Director of International and Domestic Aviation for the Civil Aeronautics Board.

Mr. Chairman, this is a 30-some page document. Let me summarize my testimony. I’m not going to try to read the entire document, since there are others here who would like to testify, from whom, I am sure, you would like to hear.

I will try to go through and hit the highlights and concentrate on a few of the issues raised and discussed here.

Also attached to my testimony is a section by section analysis of S. 1300. I would ask that both my formal testimony and the section by section analysis be made part of the record.

The CHAIRMAN. It will be made part of the record. You may summarize as you see fit.

Mr. COHEN. I am pleased the committee has taken the lead as it has in proposing amendments to the Federal Aviation Act to insure competition and expansion of the competitive objectives adopted for domestic aviation last year in the Airline Deregulation Act. As you know, the Board is a strong advocate of introducing a more competitive environment in international, as well as domestic aviation. We

believe S. 1300 will contribute very substantially to our obtaining that objective.

The bill, Mr. Chairman, is, we believe, a fine piece of legislation. One need only glance at the goals for international aviation policy set forth in section 17 to recognize the importance of this bill in contributing to a competitive environment in international transportation. It emphasizes the greatest degree of competition that is compatible with a well-functioning international air transportation system, including freedom of both U.S. and foreign carriers to offer fares and rates which correspond to consumer demand; the fewest possible restrictions on charter air transportation, the maximum degree of multiple and permissive international authority for U.S. air carriers, so they will be able to respond quickly to shifts in market demand; the elimination of operational restrictions to the greatest extent possible; the elimination of discrimination and unfair practices faced by the U.S. airlines in foreign air transportation; and other similar objectives which leave no doubt the United States will not waiver from the objective of establishing a competitive environment in the international marketplace.

The declaration of policy in section 102 adopts for international air transportation those procompetitive provisions which were applicable to domestic aviation in the Airline Deregulation Act. We have one minor suggestion. There is a phrase in section (a) (3) proposed for section 102, the phrase, "The need to improve regulations among and coordinate transportation by, air carriers * * *." We suggest that this be deleted. Although it's in the domestic bill, it could be misconstrued in an international aviation context as providing congressional support for collective carrier arrangements, for scheduling and pricing, or other arrangements that are inconsistent with a competitive marketplace.

We recognize that the goal of achieving a truly competitive international environment will not be achieved easily or rapidly. Many countries don't share our views, and the process of persuasion, aided by the demonstration of the advantages of competition in markets where we have been successful, will necessarily take time. But the time to start, we believe, is now. This bill will help the Board and executive departments in pressing forward with an admittedly relatively long-term and difficult process of education and persuasion.

Also significant is the clear message that the bill transmits to foreign governments and carriers that the U.S. Government will not sit idly by while U.S. carriers are subjected to unfair competitive practices or unjustifiable restrictions inconsistent with bilateral agreements or comity and reciprocity. We believe the new tools provided in the bill to assist in these areas will be very helpful. We have one procedural concern, which I will discuss later in my testimony.

The other provisions, Mr. Chairman, which we feel will be helpful and contribute to the achievement and maintenance of an international competitive environment, deal with standards in evaluating agreements I think adoption of the Bank Merger Act standard in the international area, as was adopted in the domestic area, is quite appropriate. We believe the new fare suspension powers are also helpful.

As the chairman pointed out in his opening remarks, we are pleased to report that we have been successful to date in the past—really in the past year—I guess it was just a year ago, August 1978, when the first

real procompetitive agreement was reached with the Government of Israel. In the time since that agreement last August, we have entered into liberal competitive bilateral air transport agreements with the Netherlands, Belgium, Germany, Jamaica, Korea, Israel, Singapore, Thailand, and Papua, New Guinea; and last Friday with Costa Rica, our first agreement in Latin American-Central America.

In the past year, we have been partially successful in obtaining liberalized pricing and charter provisions in the relatively restrictive agreements in effect with the United Kingdom, Australia, Jordan, and Syria. On the other hand, as you pointed out, we have had little success with other major international aviation partners.

We think the procedural tools and the policy directives set forth in S. 1300 should enable us to make greater progress in the future. Our success in these several major international traffic centers has and will result in significantly improved service at lower prices than would normally exist in those markets where restrictive bilaterals are in effect. As this occurs, we believe that the nonparticipants will find it to their advantage to seek the same benefits for their citizens as are being experienced by countries adopting a more competitive structure. The provisions of the act should help to achieve this process.

As you know, Mr. Chairman, when domestic competition was introduced by the Airline Deregulation Act of 1978, prior to that time, most of the carriers expressed strong skepticism, if not outright opposition, to the introduction of liberalized competition in domestic aviation. Foreign countries and carriers are expressing the same skepticism and opposition today; yet, domestically, the cries have dwindled to a mere whisper as public benefits have become obvious and carriers' profits last year soared.

Moreover, some countries have looked at the U.S. domestic experience and concluded they would like to give it a try. We think that trend will grow, particularly with the help of this legislation.

There are, nevertheless, a number of foreign carriers and governments which have urged that competition simply will not work for international air transportation. Their arguments are varied, but in our view, they are supported far more by the vehemence of their assertions than the logic of their substance. The detail of those arguments and our responses are contained in my testimony. I won't belabor you with them here.

Enough to say that our domestic experience over the past 1½ years or so has shown that these arguments have no merit in actual practice.

One argument I would like to touch on briefly is the argument that competition won't work in the international environment simply because so many foreign governments are opposed to the concept and will not accept it. The fact that many have accepted it; and as low fares proliferate and improved service proliferates into international markets, we believe it will be only a matter of time before the current objectors seek the same competitive benefits for travelers to and from their countries. We believe public opinion will slowly move this pattern across the world.

Just as examples of what's happened over the past year, we have some detail in our testimony of precisely what's been going on in terms of profits and traffic. One thing I would like to point up here is how the profits in 1978 of the five U.S. scheduled carriers in the North

Atlantic during this period maintained a healthy 12½-percent return on investment. But at the same time the fares were going down; discount fares available from the United States to the United Kingdom, the Benelux, and Germany. Today, the lowest fares available are in the 4.6- to 4.8-cents-per-mile range.

In contrast, our fares to Paris, Rome, and Madrid, where we don't have liberal bilateral arrangements, are in the 5.9- to 6.2-cents-per-mile range, a significant difference in the costs to travelers.

In the New York to London market, the average discount fare for the year ended June 1979 declined from \$204 to \$159 over the previous year, a 22-percent decline in the discount fares. This is at a time when the Consumer Price Index was rising by more than 10 percent. We calculate that the savings to travelers by reason of this decline in cost to travelers was about \$47.5 million.

Between New York and Amsterdam, the average discount fare declined 27½ percent; to Frankfurt, it declined 26½ percent. These declines to liberal trading partners saved travelers \$8.7 million.

In other areas in Europe, there were some declines, but they were very small declines, in the range of 1.7 percent. You can see the effect of our liberal policies with our trading partners in liberal bilaterals on some fares to other countries who haven't entered into competitive agreements.

The fares to Paris, Madrid, and Rome declined in the range of 2 percent to 8 or 9 percent while the fares to the United Kingdom and Amsterdam and Frankfurt were declining above 20 percent.

I might point out that, as you are aware, our agreement with the United Kingdom doesn't fall among those liberal competitive agreements we have reached in the past year; but we have been able to reach some liberal arrangements on fares the past two summers with the British that have enabled these savings to be realized for travellers.

In the Pacific area, we made some progress on fares with Australia, the result being that the fare to that continent is 5.6 cents per mile while the fare to Japan is 6.6 cents per mile, a significant difference there.

With our new liberal agreement with Korea, the Korean Airline fares are down in the range of 20 to 29 percent and Braniff has proposed even lower fares in that market.

Now, if I may, Mr. Chairman, I will turn to some specific sections of S. 1300. As I stated, we are very pleased and strongly support the bill as a whole. Really, we have three suggestions in connection with the bill.

First, we strongly support, of course, section 6 dealing with suspension and alternative certification provisions, section 401(g). We have one procedural concern with the proposal which I will discuss in a moment.

Our second section concerns emergency fill-up exemption for foreign carriers to deal with situations such as we faced during the United strike with Hawaii last spring. I will discuss that in more detail in a moment.

Our third suggestion is again a procedural concern with the Fair Competitive Practices Act provisions here. We think the 30-day limitation will cause some problems for us in the realities of international negotiations. I will discuss that in more detail in a moment.

First, I would like to deal with section 6. Mr. Chairman, in your statement on introduction of the bill, you expressed concern that the section 6 provision amending section 401(g) to provide clearly a procedure for suspension of outstanding certificate authority and certification of an alternative carrier in limited designation markets might make it easier to live with anticompetitive bilaterals and could create unintentional incentives to accept such an agreement in the negotiating process. I hope to alleviate your concern.

The Civil Aeronautics Board is and will, as long as we regulate international air transportation, continue to be devoted to negotiating liberal air transport agreements as rapidly as possible.

The executive departments share this objective. Nevertheless, as you recognized, Mr. Chairman, in reality the process of achieving a generally competitive international aviation environment is likely to be long delayed. Continued resistance to liberal concepts may be anticipated for many countries, and indeed, many of the largest international markets are the subject of restrictive bilateral provisions or practices.

Thus limitations upon multiple designations of carriers are contained in our bilateral agreements with the United Kingdom, Canada, Mexico, and many other countries in practice limit the number of carriers which may have access to their markets despite bilateral provisions permitting multiple designation.

In several countries, the foreign governments have made it clear they will not grant permission for additional U.S. carriers to enter the market.

Where competition exists, the ability of the public to choose between alternative services furnishes a powerful incentive for carriers to provide the public with the optimum combination of service and prices.

Even in markets where only a single carrier is providing service, if there are no restrictions upon entry of a new carrier, that threat can act as an incentive to maintain fares and service responsive to public demand. The availability of the proposed section 401(g)(2) procedures, by which an alternative carrier could gain access to the market in lieu of the incumbent, would provide a competitive incentive similar to the threat of entry. With such an incentive, the incumbent carrier will be induced to maintain prices and services which provide the maximum benefit for the traveling public and shippers.

The alternative of close governmental supervision of the carrier's operations could, therefore, be avoided.

The provision would also provide an incentive for the incumbent carrier to promote removal of the bilateral restrictions which can often be of great help to us.

I admit, Mr. Chairman, that the board currently has the authority under section 402(g) to suspend the operating rights of a U.S. carrier if required by the public convenience and necessity. We believe, however, that the greater specificity of the proposed provision will serve an important function in making it clear that Congress shares the Board's view that the right of the public to the quality of services and prices that would and could be provided in the market with adequate competitive incentives must be paramount to the privilege of the carrier in providing monopolistic route authority in a limited designation market.

The provision will avoid the challenge to Board action under its existing but historically underutilized powers, that this concept might be contrary to the intent of the Congress. For the incentive for quality, low-priced service by incumbent carriers in limited designation markets to be effective, procedural barriers to potential implementation of alternative service must be minimized.

Mr. Chairman, the provision is narrow in scope. It applies only in markets where the foreign restrictions or the bilateral agreement prevent the Board from providing necessary incentives by certificating additional carriers. The suspension and alternative certification would apply only where it's established that the new applicant's proposed service would be a substantial improvement in terms of both quality of service and level of fares or a combination of both. The Board would not be certificating a new carrier for merely minor improvements in services or fares or where the ability and the intent of the applicant to provide substantially improved service was not clearly demonstrated.

Finally, the applicant would have to establish that the grant of the new authority and the suspension of the old would "otherwise be consistent with the public convenience and necessity." We would look closely in the process at such factors as the length of time the incumbent has had to develop the market, the difficulties that might be anticipated in obtaining the licensing of the applicant by the foreign government, and the fitness of the applicant, the potential service dislocations, and all of the matters that ordinarily would concern us in the broad public interest in considering this sort of application.

The act recognizes that we would have to make an initial determination on looking at the application before even proceeding with any kind of process. We would have to look closely at the application to be assured that the improvement in service would be substantial and that the requirements outlined above would be met.

A primary significance of this provision of the bill is the existence of the procedure with the possibility of its implementation as an incentive to the incumbent carrier to maintain service and prices at an optimum level for the benefit of travelers and shippers. As the gap widens between the service and fares actually offered and those that realistically could be provided by an alternative applicant in the market, the potential for Board implementation of the procedures would obviously increase. We feel the very existence of the procedure would itself establish a significant competitive incentive in the form of the threat of entry of an applicant proposing alternative and substantially improved service. We would therefore anticipate using the power sparingly. The existence of the power would have the major effect, we believe as a surrogate for competition in these limited designation markets.

We have one serious and fundamental problem with the procedural requirements set forth in paragraph (B) of the provision. That paragraph directs the Board to process the proceeding pursuant to the simplified procedures of section 401(p) unless the holder of such certificate requests an oral evidentiary hearing or the Board finds that under all the facts and circumstances an oral evidentiary hearing is required in the public interest.

We believe this paragraph should be either deleted or modified. In its present form, it is inconsistent with the concepts adopted in section

401(p) by the Airline Deregulation Act of 1978 and could seriously detract from the competitive incentive for an incumbent carrier that the alternative certification procedure is designed to produce.

It's apparent that the incumbent would benefit from maximizing delay in an alternative certification proceeding. It could be anticipated, therefore, that the incumbent would request an oral evidentiary hearing in virtually every case. Under the provision the Board would have no option to use other procedures even though all requirements of due process and fairness to the incumbent carrier could be achieved by something short of an oral hearing. It has been increasingly recognized in modern administrative law and procedure that trial-type requirements, because of the inevitable delay and costs to all parties involved, could result in a deprivation of rights much greater than the privileges sought to be protected. This is particularly true here since there would be no evaluation of the facts and circumstances to determine whether trial-type procedures were required. Just the mere request for them would trigger the trial-type procedures.

The Deregulation Act rejected the idea of oral evidentiary hearings, the idea that they should be necessarily required. That doesn't mean that we have never provided for oral evidentiary hearings. I think we have been very careful and prudent in going through the matters that come before us to determine which proceedings require evidentiary hearings and which do not. On matters of fitness of carriers, we have been holding evidentiary hearings, referring them to administrative law judges.

In the *Wild Card Route* case, for instance, involving the selection of a new city and new carrier to the United Kingdom, we are having an oral evidentiary hearing. We are concerned that if the incumbent can automatically get an evidentiary hearing, it substantially weakens the threat of potential entry that would be the great accomplishment of this section because it would require delays of 1 or 2 years and make that threat somewhat ineffectual.

In addition, I would point out that besides the process before the Board under 401(g), there is Presidential review under section 801 and judicial review of the Board's action, including a judicial stay if warranted. So there's lots of processes available to carriers without changing the concepts of 401(p) adopted in the Airline Deregulation Act and adding the mandatory requirement of an oral evidentiary hearing.

The second area, Mr. Chairman, in which we have concerns deals with section 13. We strongly support the leasing exemption which is proposed for addition to the act in section 13. We would suggest that section 13 be broadened by the addition of language which would add a power in the CAB to make emergency exemptions for foreign carrier operations in interstate and overseas air transportation.

The need for such a provision was strongly shown last spring when United Airlines went on strike. United provided about half the carriage between the mainland and Hawaii. When it was struck, there were hundreds and thousands of travelers, mostly tourists, vacationers—close to Easter—stranded in Los Angeles on their way to Hawaii, stranded in Hawaii, or in the unhappy situation of having reserved space in Hawaii, established vacation times, paid for rooms and hotels, and left—although they held confirmed reservations on United—left without any means of traveling back and forth to that State.

Our Director of the Bureau of Consumer Protection, exercising his prosecutorial discretion, advised foreign carriers that he would not prosecute them for violation of the law during this emergency period when U.S. carriers were full, when people were stranded, and foreign carriers were flying with empty seats between Hawaii and the mainland.

We think that it's an absurd situation to leave the public, thousands of American travelers stranded in situations in which they have no responsibility and no fault. It would be very much in the public interest to provide in the law the discretion for the Civil Aeronautics Board, upon a finding of an emergency situation, to authorize—when U.S. carriers are unable to carry traffic during that emergency—to authorize foreign carriers to fill up their empty seats with people who otherwise would be stranded.

We have suggested—and I won't try to read the language here—we suggested in our testimony the precise language that would accomplish this as an addition to section 13.

Our final area of concern, Mr. Chairman, deals with section 23, the procedural requirements for action under the international air transportation Fair Competitive Practices Act of 1974.

My testimony deals with our concern in some detail. I would just highlight it here. The provision, the proposal in amended section (b) (2) is that the Board approve, deny, dismiss, or set such complaint under this provision for hearing within 30 days after the receipt of the complaint.

We believe the 30-day limit is unduly restrictive. In dealing with foreign governments, it's not possible to resolve many of the problems we have with them within 30 days, that the threat of counteraction, the threat itself, is probably our most effective tool in resolving problems.

Often, if we use counteraction immediately, the result is not to solve the problem but to get the foreign country to counterretaliate against our carriers. We have seen a number of instances of this. We have been more effective in resolving problems of our carriers in international markets by threatening action and by negotiating and dealing with the foreign governments to resolve them. We have been more effective that way than by actual use of retaliatory measures against foreign governments. They merely tend to escalate. Thirty days doesn't give us or the State Department time to work with the foreign governments and try to work out problems.

We would suggest that this time be extended to 90 days and that on a finding of good cause for extensions beyond that, that we would have to make, that we be allowed to extend the time further.

I don't want to give the impression that we never use retaliatory measures against foreign governments who have been violating bilaterals and acting against our carriers in violation of agreement. We have used them, and we will use them in the future. We find that it's more effective to use them as a last resort than to use them in the first few days after the incident or the incidents occurring.

The other area of procedural concern is that the proposed amendment says "approve, deny, dismiss, or set such complaint for hearing." We think that is intended to encompass such matters as an order to show cause, or an investigation; but it's not entirely clear that we

would have the flexibility to set an investigation or to institute other proceedings proposing remedial action. We would ask that this language be added to clarify the intent to give us a broader latitude to take action to protect American carriers.

We, therefore, strongly urge that the committee leave to the Board the determination of time period or periods for implementation or deferral of implementation of this threat. We believe that that was the intent of this provision that we have this broad latitude. We ask that the language be clarified.

In concluding—and I apologize, Mr. Chairman, for taking more time than I intended to—let me state that with the three exceptions I have noted here, you have produced a very fine piece of legislation which the Board wholeheartedly supports. We urge you consider our proposals for modification as an effort to make it even better and to enable the Board to proceed as rapidly and effectively as possible to implement the international aviation goals that you so well set forth in section 17 of the bill. Specifically, the achievement of a competitive international air transportation environment.

That concludes my prepared comments. I and my colleagues are available for questions.

The CHAIRMAN. Thank you very much, Chairman Cohen.

What is the Board's view of a change in the law which would permit the United States to exchange cabotage rights in international negotiations?

Mr. COHEN. Well, Mr. Chairman, we think stepping back and viewing this problem of cabotage in a long range and objectively, we think it would be very helpful to the U.S. Government and in the long run to the U.S. carriers and certainly to the U.S. public if the U.S. Government had the ability to negotiate with other governments and groups of governments to obtain valuable new rights for U.S. carriers by exchange of rights to foreign carriers to serve between U.S. points.

For instance, perhaps in an exchange of cabotage rights in the United States for common market—dealing with Europe as a common market and inter-European, full inter-European rights.

We think if we had this kind of power that we could make a lot of progress in the long run—it would take some time. We think there is a real potential long range for much more open skies around the world.

We would, if we had such power, use it sparingly and only when we received commensurate rights in return.

My understanding—I wasn't around when all of this started—my understanding is that the origin of the concept of cabotage, of limiting foreign carriers and transporting U.S. traffic within the United States was a national defense or security concern and concern for protecting our own carriers.

With regard to national security, we would clearly have the right in the event of a national emergency to stop any kind of foreign intra-U.S. carriage. We probably would be able to confiscate airplanes in such event and have even more airlift available to the United States possible.

But with regard to U.S. carriers, we are in sort of the same dilemma you are, Mr. Chairman. We hear from U.S. carriers how tough it is that we are giving away all these rights to U.S. points and how hard

it is on the U.S. carriers. Then we travel around the world and listen to foreign governments say, gee, our carriers just can't compete with U.S. carriers. If we have open competition, the U.S. carrier will wipe us out. They will control air traffic. We are accused of trying to achieve U.S. hegemony, as they say, for U.S. air travel all over the world.

Actually, we are concerned. We know foreign governments, particularly those with national carriers, have strong interests in maintaining the health of those carriers. We know that they will keep them alive. Our view of these two arguments is that U.S. carriers are pretty good businessmen and that they have done pretty well around the world and that they can compete well throughout the world.

We think they can compete well in this country. We think that there are no significant dangers to them if we were able to give them new rights internationally in exchange for new rights here. If this is viewed as perhaps going too far, perhaps as utopian, there is a middle ground, a middle road in this area of cabotage that seems to me deserves some attention.

Many international carriers travel to the United States and have now to travel between, for instance, from Honolulu to San Francisco with half-empty airplanes. We recognize in the Airline Deregulation Act, the economic inefficiency of denying fill-up rights to carriers and we eliminated that restriction for domestic carriage. You did in the act.

One way to approach cabotage in a moderate way, to move some distance in the direction toward more freedom in international air travel, would be to give us the right to exchange with other governments these fill-up rights so that foreign carriers could get rid of some of the competitive disadvantage that they have with U.S. carriers and have the same kind of fill-up rights that U.S. carriers have in their existing international markets, and then we could, we believe, negotiate for significantly expanded fifth-freedom rights with other countries which we believe on balance would greatly benefit U.S. carriers. The actual amount of foreign international air carrier travel and fill-ups would be miniscule in this country compared to our general domestic traffic.

We think that on balance the U.S. interests would benefit from having this kind of flexibility in our negotiating.

We don't think that the record shows that we have been giving away the store. We think we have obtained lots of valuable new rights for U.S. carriers. You might ask Braniff about what they're doing in Europe this year compared to what they did last year, for instance, and how well they're doing at it. We think the U.S. carriers benefit greatly from our being reasonably tough at the negotiating table.

The CHAIRMAN. Sections 14 and 15 of the bill amend the foreign rate powers of the Board to permit the Board to suspend the rate or fare of a foreign air carrier if it is in the public interest rather than being limited to the traditional rate grounds. Now, under what circumstances would the Board contemplate using this broader rate suspension power; and why not retain the traditional rate considerations?

Mr. COHEN. Mr. Chairman, I am a little hesitant. We might have the power under the existing provisions to do this kind of thing, because we have been doing it; but we want to make sure that it's not subject to question. We have situations, for instance, like with Canada, as a perfect example. Lots of our carriers have filed discount fares with Canada for travel for the United States to Canada. The Canadian Government

has rejected them without giving very many reasons for it. Over the past 1½ years, they have rejected, I think, more than 10 such filings.

Last spring, Air Canada, the Canadian Government—Air Canada filed with us their proposed discount fares. We are in a real quandary. We want to see more discount fares for travel between the United States and other countries, but we can't really live with the idea that only the other guy's fares are the ones that are going to be used in this bilateral marketplace.

So what we did with that was we told Canada we suspend the fare but we stay that suspension to see how the Canadian Government will react to the next discount filing of one of our carriers.

Well, that discount fare terminated—the Canadian discount fare terminated—I think it was 45 days. During that 45 days, there wasn't any U.S. filing of a discount fare with Canada to be considered. The Canadian Government got their discount fare for Air Canada for 45 days.

Since that time, we have had six filings of discount fares with Canada. Five of them have been suspended. Now, Air Canada has filed a new discount fare with us. We gave them a notice of dissatisfaction last week. We think we should have the power to go ahead and suspend that fare if necessary to assure that we get equal consideration from the Canadian Government that they want us to give to their discount fares. We had a similar situation with France this past spring. We suspended the Vacances fare. We were able to work out significant reductions for American fares, not as much as the reductions those carriers wanted. They were significant. We negotiated to get better fares for U.S. travelers to France before we would go ahead and approve the Vacances fare. We would like to have the power to do this clearly stated in the act.

The CHAIRMAN. The Canadian filings, did that involve the same city fares in many instances?

Mr. COHEN. Some. I will ask Mike to speak to that.

Mr. LEVINE. A number of our filings were systemwide. For example, the ability to use the supersaver discount to and from Canadian points. Our American system doesn't always exactly overlap with Air Canada's service to and from the United States—the points aren't exactly the same. Many of them are similar. In some cases, there were specific city fares. United had a very attractive Toronto-Honolulu fare. The Canadians apparently feared the competition. They provide service to Honolulu over Vancouver; and so they suspended it; but Air Canada's proposals aren't always exactly parallel. That's the point. It's their perception of what the market needs and the carriers' perception may be different. It's not clear who's right. The best way to find out is let the customers determine it.

Often because of system characteristics, it will be different for their carriers than for ours. Their carriers may have a trough at a different time of a year than our carrier does. They want a sale in October; we want one in February.

Mr. COHEN. This past spring, our carriers wanted to have a sale early in the year and their carrier late in the year. Our carriers didn't get theirs, but we allowed Air Canada to have its sale in the hope that by moving toward them they would reciprocate. We will continue to have discussions with them.

The CHAIRMAN. But so far they haven't really reciprocated?

Mr. COHEN. Not very much, Mr. Chairman.

Mr. LEVINE. We have notified them their current fare filing is subject to suspension. The significance of this provision is that it would remove any need to characterize a low fare as unreasonable just in order to get at it, to suspend. Right now we do—we have a few moves that we use to make the orders come out right, but it would be nice if the statute were a little clearer on the point.

The CHAIRMAN. Under the proposed new section 401, a procedure is proposed under which the Board could suspend the authority of a U.S. carrier in a limited designation market in order to grant authority to a new applicant that proposed a lower fare. Realistically, wouldn't a foreign government which restricted entry of the carrier either under the bilateral agreement or otherwise also reject new lower fares proposed by the alternative applicant?

Mr. COHEN. Mr. Chairman, there is such a problem, obviously, as we said, with Canada.

We can't move toward lower fares in international air transportation unless our carriers file those fares; and in many instances, where our carriers have chosen to file low fares, even though the other government reacted negatively to begin with, we have been able to work out some improvements for American and foreign travelers. The Vacances situation is a good example. None of that can happen if the carrier doesn't file the fare in the first place. If we have a carrier that doesn't want to file low fares, we can't make them do it.

For example, a couple of years ago at the beginning of this era of low fares to the United Kingdom, Braniff filed low fares from Dallas-Fort Worth to London. The Board backed up Braniff. We had a little eye-to-eye confrontation with the United Kingdom. They were initially disapproved. Eventually by our negotiating and working those out with the United Kingdom, those fares were made available to travelers. While this can be a problem, we think it's a problem which in many markets is soluble and in which real improvements can be achieved.

The CHAIRMAN. Several other witnesses will testify that the proposed provision for suspension of incumbent carriers and certification of alternative carriers in limited designation markets will result in a deterioration of service in these markets by disrupting patterns of the feeder services to the interior points. Also, that the costs of service increases as a result of increased financing costs as the risk of the potential loss of certificate authority in these markets. Now, would you comment on that?

Mr. COHEN. Yes, Mr. Chairman.

First of all, on the question of feeder services, in considering a new application, we would certainly be considering what the benefits to American travelers are including feeder patterns; and we have in this country, particularly as a result of domestic deregulation, lots of feed by lots of carriers to lots of places. This is one of the factors that we would take into account in considering new applications.

With regard to financing, we don't see that there's going to be any real problem. These are the same kinds of arguments I think some of them made on domestic deregulation. Airplanes can be moved to anywhere; and a carrier that loses one route because it's not acting as if it had competition on that route is not going to go out of business.

We think it's a gross exaggeration to talk about increased financing costs and difficulty in obtaining financing when you are dealing with large U.S. carriers with hundreds of stations and hundreds of routes. We are talking here about an occasional application of this, where it's really in the public interest to apply it so that carriers know that we are serious about it. But we think it will be sparingly used. It's the potential of it and the fact it's there as a threat that will have the most effect.

We think that these concerns about financing are grossly exaggerated and that they are not at all realistic. Do you want to supplement that?

Mr. BAKES. I was going to say if the argument is you need a franchise to get financing, the Congress put the light to that argument. There are no domestic franchises. The complaint they have is they have to wait so long for planes that they have ordered and put money down for.

Mr. COHEN. I might also add, for instance, when we enter into a new competitive agreement, bilateral agreement with a country that previously had limited designation, that means there's new competition on that market. Does that destroy the old incumbent carrier who used to be there, who now faces competition when he had a monopoly market? That kind of argument that financing would be hurt if carried to its logical point would say that we shouldn't negotiate any new liberal bilaterals and throw competition on these monopoly markets.

The CHAIRMAN. I remember we listened to the argument on financing on the deregulation bill, that if this were to go through this would eliminate all the prospective financing because of the uncertainties of what was likely to happen. I heard that argument put forth by the financial community, I might add, initially rather than the carriers.

Mr. COHEN. Of course, you read what the financial community is now saying about the airline industry. Looking at this spring, for instance, Mr. Chairman, here we had the most traumatic 6 months in recent history for domestic air transportation, I guess. For 8 weeks 24 percent of our domestic air fleet grounded by the United strike; for 5 weeks 14 percent of our fleet grounded by the DC-10 groundings. Yet our carriers were able to make profits. We were able to accommodate an increase of 16 percent of traffic during this period. Could the carriers have been—reacted so flexibly and dealt with this serious problem under a rigid regulatory system? I doubt it. I think the financial community realizes this and that they now have recanted on much of their early concerns to the committee.

The CHAIRMAN. I am not at all persuaded by the Board's case for permitting removal of an incumbent carrier's authority without an oral evidentiary hearing. I agree that in the past due process at the Board has sometimes been carried to the extreme, but if we are taking something away from someone based upon the promises of other carriers and the opinions of Government officials about services and fare levels, I believe the least the incumbent is entitled to is a right to cross-examination.

I wonder if you could give us an example of one case where the Board has awarded a contested limited designation route without an oral evidentiary hearing?

Mr. BAKES. There was the Bermuda case that was litigated without knowing whether or not it—the final decision by the Board would be based upon multiple permissive awards or limited awards. That is one of the things litigated. That was litigated without an administrative law judge, litigated mainly on paper; but in addition, with oral argument by the parties before the Board.

I think in one of these situations, the Board may very well set the entire case for an oral evidentiary hearing, if very difficult fact questions predominate the decisional process.

There may be cases where there may be just one or two fact questions that have to be asked. For example, if there's a proposal by a particular carrier to offer particularly attractive low fares and there's a serious and substantial question of whether that is in the capability of that carrier with its cost structure. If you need fact determinations on that I am sure the Board would send it to an administrative law judge for determination. That doesn't mean the entire case in the traditional sense has to go before an administrative law judge. Modern administrative law recognizes all kinds of flexible procedures by which the Board could litigate on paper and with oral argument before themselves, but that one fact question might be sent to an administrative law judge for a 2- or 3-day hearing instead of a 9-month or 1-year hearing.

It's that flexibility that the current draft of the bill takes away and that we ask that you give back.

The CHAIRMAN. Of course, it seems to me that in order to be fair when it's a matter of selection of a carrier, you grant authority by a full proceeding. You grant that authority to a particular carrier. Then you could take it away without giving him that same full consideration.

Mr. BAKES. Well, there's no doubt we will be giving full consideration. I don't think the debate is over that. I think there's total agreement between the chairman and us at the Board that they should have full consideration. The question is what is "full consideration?" I think what we are objecting to is the assumption written rigidly into the law that whenever the airline that is the incumbent determines that full consideration means a full oral evidentiary hearing for every conceivable issue, that that is the kind of consideration that should be given.

There are all kinds of procedures that can be used, partly on paper, partly oral, partly before the Board, some before an administrative law judge.

To turn your question around, if I might, is that you won't find many cases where we are taking very difficult fact questions, even though we have the statutory power to do so, and do it without oral evidentiary hearings.

We are very careful in applying what is unlimited statutory authority. We just ask that that same kind of faith be given in the future, as it's been given in the past, given the track record we have and given that flexibility is very important in this situation.

The proper procedures, always giving full consideration, are used.

The CHAIRMAN. Certainly, if you have a matter that is in dispute and a carrier doesn't have the right of cross-examination, that is certainly a loss of due process, it seems to me.

Mr. COHEN. Mr. Chairman, I guess it depends upon what kind of a matter is in dispute. If the matter in dispute is what happened on such and such a day, and you need witnesses to testify to that, if it's a fact question of that nature, certainly cross-examination is probably appropriate. If as Mr. Bakes said, if the issue is whether the carrier that promises low fares can deliver on them, and what is its structure, what is its financial position, what has it done in the past, those are fact questions that are probably appropriate for cross-examination.

If there's a policy issue, and we find we get very much involved in policy issues—what's the appropriate policy in a particular situation—when policy issues are involved, cross-examination doesn't in many instances establish anything.

The CHAIRMAN. Proposed section 402 permits the suspension of foreign permit authority under circumstances where a foreign government or carrier has impaired or denied rights of U.S. carriers or where they have engaged in unfair, discriminatory, or restrictive practices. This section also permits the Board, subject to Presidential approval, to the extent necessary to make that effective, to restrict the operations between such foreign country and the United States by any foreign air carrier of a third country. Is the latter provision applicable to third country carriers necessary? Under what circumstance might it be invoked by the Board?

Mr. COHEN. I will ask Mr. Levine to comment on that, Mr. Chairman.

Mr. LEVINE. Would you clarify the question?

The CHAIRMAN. I said that section also permits the Board subject to Presidential approval, to the extent necessary to make that authority effective to restrict the operations between such foreign country and the United States by any foreign air carrier of a third country. My question is, is that provision applicable to third country carriers necessary, and under what circumstances might it be invoked by the Board?

Mr. COHEN. I guess, Mr. Chairman—if I might, then I will ask Mr. Levine to supplement—the kind of concern we would have in this situation would be in dealing with a group of countries that are in a pool, for instance.

For instance, one country that is in a pool with other nations acts against our carriers, and we think it's appropriate to restrict that country's rights, but a third country that is in the same pool gets to travel the United States, the first country can continue to share, the country we are trying to retaliate against can continue to share in the benefits and can act through the pool, through other third countries, because of the existence of the pool.

They can continue to get all the benefits of travel to and from the United States while they are restricting the U.S. carriers and continuing with the anti-U.S. carrier activity that caused us to act against them in the first place. It is the existence of these agreements among other countries that concerns us.

Are there other areas, Mike?

The CHAIRMAN. Are any of those kinds of pooling arrangements that you are aware of now that could have given rise to this situation?

Mr. LEVINE. Well, I can't think of a specific situation. Pools are not filed with us, because they are agreements usually between foreign air carriers relating to operations offshore.

What we know about the pools is mostly secondhand. Some of them are very detailed revenue exchanges. They are not price-fixing. They are cross-transfers of payments so that if carrier A carries a passenger it pays a tax or share of the revenue to carrier B. It's the existence of that that gives rise to the possibility that you might have to worry about it.

I can't think offhand of a situation we have had recently in which that would have been important, but I guess it's an attempt at prophylaxis, that is, at getting at somebody's defensive move to our move.

The CHAIRMAN. Well, I must say that the basic principle I am completely in accord with. I think that you have got to have some kind of authority to take action when we have unfair, discriminatory, or restrictive practices against our carriers. My question was only in relation to that part as to the third-country carriers.

Mr. COHEN. We don't think it's a life or death situation, that provision. Of course, there's Presidential review on any action of this nature.

The CHAIRMAN. IATA will propose several amendments to the bill, which I think you are familiar with, dealing primarily with approval of anticompetitive agreements under section 412. Would you comment on those proposals?

Mr. COHEN. Well, there are six proposals, I believe, Mr. Chairman, that they are making. Five of them we have very serious problems with. I think in a broad sense—maybe some of my companions here would like to comment in detail—in a broad sense, with the exception of the one provision that deals with whether immunity ought to be granted to foreign carriers when the United States is not a party to the agreement, on that issue we do not have a position. We can see both sides of that issue.

As to the other five suggestions that they make, first, that they want to put in the purposes or statement of purposes, the need to cooperate with other nations, and they want to substitute the public interest standard for the Bank Merger Act standard in dealing with agreements.

They want Presidential approval required for any actions in relation to agreements where the Secretary of State certifies that modifying or canceling an agreement involves substantial commity or foreign relations questions.

They want automatic antitrust immunity for approved agreements.

They want—this is the one that I think gives the key to what their purpose is with others—they want United States antitrust laws to apply only when the rest of the world agrees to it on an internationally agreed basis.

This whole trust—

The CHAIRMAN. Of course, you know the State Department and DOT agree with IATA on that provision of section 412.

Mr. COHEN. I don't think they go quite as far as that.

The CHAIRMAN. Not that far, maybe.

Mr. COHEN. They go part of the way, and we disagree with State and DOT on some of those issues. I would comment on the individual

issues in the context of the proposals by State and DOT. I think it's a little different.

I view the IATA suggestions as a package that have an overall intent to allow competition to occur only when all foreign governments agree in advance that competition should occur. The proposals are just fundamentally inconsistent with the very thrust and purpose of S. 1300. The United States, we believe, is entitled to pursue its legitimate interests and its policy goals. We can't always agree with other countries on everything.

Sometimes confrontations or lack of agreement is in the public interest in certain instances. Just as foreign governments pursue their policy goals, we should be free to pursue ours. I think the thrust of the IATA proposals is to tie our hands and make us subject to foreign governments.

Perhaps these other gentlemen would like to comment on that. I would go ahead and deal with the questions raised by State and DOT about Presidential approval or foreign antitrust immunity separately, if you would like, Mr. Chairman.

The CHAIRMAN. Why don't we finish the other one up. That was going to be my next question.

Mr. LEVINE. I think the chairman has stated the most important points. There is one that I think needs to be stressed. All governments in the world pursue a foreign policy which is a mixture of cooperation and sometimes not so much cooperation; and the boundaries are, on the one hand, your desire to pursue your own national interests. On the other hand, you need to get along with other countries in the world. The international arena permits a certain amount of confrontation as well as cooperation, all within boundaries.

These amendments are designed on the antitrust and competition issue to, in effect, tie one hand behind our back while leaving other countries free to use both of theirs.

The intent is clearly to limit us to what we can achieve by cooperation while other states are free to pursue both tools of policy, to pursue their own interests. That doesn't seem sensible.

The CHAIRMAN. Do you want to comment on the other point, that the act be amended, or section 412 be amended, to permit the Board to approve agreements and grant antitrust immunity under section 414 where the agreements are solely between foreign carriers?

Mr. COHEN. Yes, Mr. Chairman. As I said, we can see both sides of that question. We have not taken a final position, really. We have had some internal debate on the question.

First, we recognize that there have been and will be in the future some negotiating difficulties because of the absence of this power. We think on the one hand that if we had the power to grant this immunity, it is possible that we could achieve more procompetitive agreements with certain other governments by rather sparing and selective use of this immunity.

On the other hand, if we had the power, it might be that foreign governments would all hold out for immunity which otherwise we wouldn't want to give. They could take actions against our carriers to try to force us to give immunities which otherwise wouldn't be appropriate. So it's a mixed bag and it seems there's enough arguments on both sides of that issue—and, in fact, we have a number of other con-

siderations that I would like to supplement this answer in writing at a later date.

Mr. Chairman, I might also ask for permission to supplement these answers in writing and perhaps to comment on some of the other testimony at a later date, if I might.

The CHAIRMAN. Very well.

Mr. COHEN. It's a close enough question that we haven't come down on one side or the other.

Now, with regard to Presidential review, the question of whether agreement should be added to the list of things in international aviation which the President must review. We have looked at this and given it some thought, Mr. Chairman. We think Congress might want to step back and take a broader view of this entire issue. Probably the most appropriate way to deal with the question of Presidential review is to set a standard regardless of type of procedure that is involved, to set a standard that where important foreign policy or security issues are present, and their presence is certified by the Secretary of State or the National Security Adviser, those kinds of actions by the Board should be subject to Presidential review, regardless of what form they take; and in that kind of a setting, when such a certification is made by the Secretary of State or the National Security Adviser with the grounds for the certification, a report could be made for Congress so Congress would know and have oversight over the importance of the items that are being made subject to Presidential review.

We think it might be advisable for the committee and Congress to take a look at section 801 from that point of view; but in the absence of such a reevaluation or reexamination of 801, we question whether the existing list of procedural things that the President reviews should be just expanded by adding agreements to them. At the present time, the President has to review licensing, routes; should we add agreements to that?

Most of that is stuff that really has very little foreign policy or national security impact or importance and probably shouldn't take up the President's time anyway. We think in most instances agreements would not be subjects that would interest the President.

Mr. Bakes advises me——

The CHAIRMAN. I lean in the direction of taking away right of review rather than granting additional right of review. I am aware of the history in the past where in carrier selections the right of the President to review has been abused, in my judgment, by various Presidents, not just one.

Mr. COHEN. Yes, Mr. Chairman. I think the Congress went a step in the right direction, of course, in the Airline Deregulation Act in limiting the review to foreign policy concerns and security or defense concerns. It occurs to us when this was proposed by State and DOT about Presidential review—it occurred to us that perhaps it might be appropriate to take a look at this whole 801 area and focus in on what is the executive department's concern. Where there are important foreign policy or security issues, regardless of the proceeding that happens to be involved, that probably should be reviewed by the President, and perhaps it would be appropriate to go to that and have such a certification process rather than just listing certain types of proceedings to be reviewed or not reviewed by the President.

The CHAIRMAN. ATA has taken the position that authorization for foreign carriers to carry domestic traffic in emergencies should be confined to a narrow definition of emergencies, and that the authority should be exercised only following a finding by the Secretary of Transportation that such an emergency exists. Would you comment on that?

Mr. COHEN. Yes. Let's see how that would apply, would have applied last spring. Here we have on a particular day in the year hundreds of people stranded.

We took action we were hesitant to do, but I think in any situation like this, any responsible public official should do. We took action to allow foreign carriers to pick up these people where the seats were empty. To do anything else, in my judgment, would be absurd. What happened? The Secretary of Transportation sent us a letter saying we shouldn't have done that.

If we leave this kind of a finding to the Secretary of Transportation, subject to the various political pressures of public office, from carriers, from labor unions when disputes exist, it is hard to tell whether the public would be stranded or wouldn't be stranded.

I was rather surprised to find the Secretary of Transportation opposed to taking these people up from Hawaii back to the mainland, from the mainland to Hawaii, who otherwise would have suffered grave hardship, financial losses, and in many instances real physical problems of being stranded where they were.

I just don't understand the controversy over this issue. It seems too obvious to me that when you have an emergency situation and when there is no—this is restricted, Mr. Chairman, to where there is no U.S. capacity or carriage available and where the people are stuck and where there are empty seats on foreign planes that are flying anyway. It just doesn't make sense to me not to do it.

Yet, actually, the Secretary of Transportation said we shouldn't have. What will he say the next time around?

Phil has a comment or two.

Mr. BAKES. I want to add one thing. I am not going to throw myself into the great debate between Brock Adams and Marvin Cohen.

Just a small administrative point. If you are talking about where the factual determination has to be, think of it on an hour-to-hour basis. That's how it works. You don't have 2 weeks to figure out whether somebody is going to be stranded in Hawaii or on the mainland to get back and forth. These are flights going at a certain time. We had calls from political officials, letters from political officials in the Pacific, including Hawaii, asking for immediate action. How do you make that determination if the determination is made at a different agency that doesn't have the investigative power which we use to check the airport situation in San Francisco, in Hawaii, see what the list was that was available. That's phone call work. That's getting on the phone and working it out and making a quick decision.

I think a suggestion that in principle is good, but yet hamper it with so much administrative difficulty that it might not ever occur, you are better off not having a provision that is so hampered with administrative difficulty that the people you want to benefit will never get benefited.

The CHAIRMAN. I think it's been adequately answered.

The State Department and the DOT have taken the position that the grant of power to require the filing of reports and agreements of contracts by foreign carriers could raise serious diplomatic difficulties. Would you give us the Board's view on that point?

Mr. COHEN. I will ask Mr. Bakes to deal with this.

Mr. BAKES. This is another one that is not a live and die issue on 407. There is authority now in the act to get information from foreign carriers. Sometimes it's been complied with informally on a negotiating basis. We have subpoena power which has been challenged which has also been upheld in the courts. Eventually, after it was upheld, the bureau that was subpoenaing it backed off because there was no need for that data anymore. That was a dispute with Lufthansa.

Since 407 is written only in terms of air carriers rather than foreign carriers, we are always faced with the argument that you don't have authority to get data from foreign carriers. Often that is a delaying tactic when there are legitimate reasons to get data.

Now when you are trying to get data from foreign air carriers, obviously, you have to do it very cautiously. One of the arguments we end up making in bilateral negotiations or consultations is to try to reduce the degree of reporting that foreign governments require of our airlines. That in our view is unnecessary and sometimes open to question of why it's needed on an economic basis; and we wouldn't jeopardize the ability to argue that, because we think it's a proper argument, by using 407 (a) too expansively.

If there's concern about it, I think one—it can be alleviated by applying the principle that you have applied in other areas where you are getting things directly—when dealing with foreign governments and foreign carriers, in the Fair Competitive Practices Act, where there is a problem there of bilateral relations with the government, and you have put a role in a Presidential review if there's a confrontation.

That would lessen the concern, that might be appropriate, consistent with how you've used 801 in this act itself; but it's not a major issue. It's one we think would be useful but would be mostly useful in a negotiating context and not in one where it would have to be used.

The CHAIRMAN. Aren't you really going to need this authority if you can determine that discriminatory actions have taken place and where you want to take retaliatory action.

Mr. LEVINE. It obviously helps. In a way the present imbalance makes it easier to discriminate. We keep the best and most public data system in the world in air transportation. Foreign governments use our data and they often use it against us. I'm thinking of a particular negotiation—I'd rather not name the country—in which that country is using our data, but will not respond to our requests for data from their carrier which we believe would demonstrate the difficulties in their position. When you get into that kind of a situation, it obviously helps a great deal to be able to get the data.

I think one would not routinely try to become a world data bank reporting system, but there are specific instances in which an argument is being made to you that you know—or at least feel in your guts the fact might be refuted, but that you can't get the numbers for, because you have simply no access to the foreign carriers data.

The CHAIRMAN. Why have you precluded fare increases in limited designated markets?

Mr. COHEN. That was, Mr. Chairman, not an easy decision. As you know, the Board was split on the question. It was a difficult question.

First: The distinction between limited designation markets and multiple designation, procompetitive agreement markets, we believe that where numbers of carriers are authorized to serve a market, that the competitive marketplace will properly deal with the pricing and delivery quality of air service. Where you have limited designation markets, and you have monopolies or duopolies, that's the classic kind of situation in which regulation is necessary or required to protect the public interest.

We looked at the whole issue—and we have allowed some fares to increase. We've allowed the discount fares to increase. We have held the lid on the standard economy fare, the coach fare. We have allowed the first-class to increase.

We think that in the area of discount fares, there is some competition from charters that tends to act as an economic brake on the size of discount fares. There's also some destination competition; for instance, in our travel to and from Mexico, the bilateral with Mexico is based on a concept of limited destination. Vacation travelers who use discount fares can choose between competing routes and therefore competing carriers.

We would rather have multiple designation, but this is some distance down the road. This provides some degree of competition as to discount fares.

In the area of economy fares—and that's what we have been holding the lid on—we know in monopoly markets, the normal economy fares have for years generally been unreasonably in excess of the cost of providing that service. They were set at high levels by IATA and they stayed at the high levels that IATA set them at. One of the reasons they are high is they have stopover allowances. Every one who pays a normal international fare for international travel in monopoly markets pays for a number of stopovers whether he uses them or not. He pays for a lot of circuitry in the routing whether he uses it or not.

We have tried to regulate to protect consumers where competition was not regulating. We would prefer, Mr. Chairman—and that's what 401 (g) is all about—we would prefer to have a realistic threat of losing a certificate as a chastening factor and a substitute for competition, so we don't have to closely regulate. The history of the CAB and I think of much of the economic regulation is that nobody is very good at real close price regulation; but since there isn't competition, and since there are monopolies and duopolies in many of these markets, we think the public interest requires that we regulate; and it is our best judgment on the economy-fare that we have been holding the lid on it despite the increases in the cost of fuel.

The fuel increase costs have caused us to allow increases in discount fares and first-class fares. We are right now taking a close look at applications for economy fare increases in limited designation markets. I think we should in the next couple weeks be acting on an order that deals in some detail with this subject.

The CHAIRMAN. Pan Am will suggest that a zone of reasonableness be created in S. 1300 for foreign air transportation tariffs. Their pro-

posals will be patterned after the domestic bills tariff sections. What is the CAB's view on this?

Mr. COHEN. Mr. Chairman, first, the whole idea of a zone of reasonableness—it is probably not necessary to have a legislative change to achieve this. A zone of reasonableness can be instituted by Board action without a change in the legislation; but I might comment on why we haven't done so to date, and what our concerns are with the concept of zone of reasonableness.

When a zone of reasonableness was established—the whole concept was established domestically where we had a baseline. The DPFI provided a baseline from which to work. In international travel, there is no such baseline.

In the Airline Deregulation Act, it is my recollection there isn't any upward flexibility in a zone of reasonableness to increase the fare if it is a monopoly market. The zone of reasonableness for any upward flexibility is in markets where there's competition. Here we are dealing with monopoly markets, limited designation markets.

The CHAIRMAN. I know the Board is aware of the controversial request of Icelandic Airlines to fly direct from the United States to Luxembourg. First, comment on the merits of this proposal for the committee. Also, because of the primary concern about granting Iceland's request is the bilateral precedent it would set, I would like to know if the Board has considered permitting the Icelandic application of exemption, and thereby avoiding a permanent grant as an international precedent.

Mr. COHEN. I am in a ticklish place to discuss this. We have a pending application which we will have to consider on the merits.

It appears—and I think since it is under our consideration, I don't want to go too deeply into it—it appears that this is something of a real special case. Here is a carrier who serves Luxembourg which no U.S. carrier serves, where as I understand it, part of the proposal is new service from a U.S. city which now has no direct service to Europe from any carrier. So we are dealing with a situation where there's no U.S. competition to Luxembourg; there would be additional service from a U.S. city that doesn't have any direct service to Europe; and this would be done for—considered for rather limited purposes; and we would be considering a time limit, and doing the whole matter by exemption.

With all of the factors that are involved here, the physical location of Iceland, the other foreign policy and security considerations, I don't see that anything we do here would create any precedent for any other bilaterals.

The CHAIRMAN. I am aware of the background of the situation; but I do share the concern of some of the carriers that this may be viewed as a precedent. So this is the reason that I suggest it here, that you might be able to do it by exemption; and to make it absolutely clear if you grant the authority, in the pending case, to make it absolutely clear that it could not be considered as a precedent because of those unique circumstances.

Mr. COHEN. Mr. Chairman, we will seriously consider the use of the exemption as a means of dealing with it. In any event, if any such powers are granted, I think we would make it quite clear that this is a special situation which would not be a precedent.

The CHAIRMAN. NACA will recommend that if U.S. airlines are permitted to lease foreign aircraft, the CAB policy statement should be amended to remove the restrictions on leases to foreign air carriers.

Would you agree such a change would be equitable?

And, why does the Board restrict U.S. leasing to foreign airlines under existing conditions?

Mr. COHEN. Mr. Chairman, you are talking about something I know nothing about. I will turn to my companions.

Mr. BAKES. I am asking Peter because I don't know what 399.19 does. I will let Peter answer that.

Mr. SCHWARZKOPF. Mr. Chairman, as I recall, section 399.19 requires an important need for revenues by the leasing U.S. carrier, and there are some other severe restrictions on these types of leasing operations. I think if the statute were amended—as we noted in our testimony, there are some very important public interest benefits in such amendments—that the Board certainly would be reviewing these standards.

I would think that they would be revised to be in accordance with the objectives of the proposed statutory changes.

The CHAIRMAN. Why don't you take a look at that question and submit a response for the record?

Mr. COHEN. Certainly, Mr. Chairman.

The CHAIRMAN. ATA will recommend that the public interest finding be retained for issuance of a 402(b) permit, even in the instances where the foreign government has designated an airline under a bilateral agreement. Do you have any comment on that proposal?

Mr. BAKES. I don't think I fully understand why they—let me approach it another way by saying one of the reasons we support the idea of taking it out is that the very fact that there would be bilateral trades in a bilateral agreement is itself a finding of the public interest of reciprocity and a deal that is acceptable to both governments.

We might take a look at what that suggestion says. They may be concerned—and I am just guessing—they may be concerned that all the rights negotiated under the bilateral aren't being fully implemented in the spirit and intent of how the bilateral was originally negotiated. If it's that particular situation, where there isn't real reciprocity, even though the routes have been established for reciprocity, that a public-interest determination to take account of that issue or fact, then that might be appropriate.

I would rather look at exactly what the provision is. Maybe we could comment in writing.

The CHAIRMAN. All right. The AFL-CIO airline coordinating committee will testify as to press accounts following the United Airlines strike that indicated that the foreign airlines carried more passengers westbound to Hawaii than from Hawaii during the emergency cabotage period. Is that a fact? Do you have any comment on it, if it is?

Mr. COHEN. Yes; altogether there were about 19,000 people carried by foreign carriers during this period; and there were more carried westbound than eastbound. I don't have the exact percentage. It wasn't a huge number.

My comment is this was a timing, Mr. Chairman, where this occurred just before Easter. I think there were a lot of people who had plans for vacations during the Easter period who had traveled to Los Angeles or who had made reservations and—hotel reservations, perhaps had paid for them. We determined not to try to fine-tune this:

activity to create new hardships for people other than the hardships of being stranded physically. We thought it was appropriate to allow this activity to continue. We continue to feel the same way.

I don't see why someone who has made a vacation plan for some months and has made his reservations and made his arrangements to leave should be the innocent victim of a labor dispute, if there is available foreign carriage to take care of it.

The labor dispute is between the labor union and the carrier. Each of them has pressures against each other. It seems to me one of our duties as public servants is to assist the general public in these situations and not to allow artificial barriers to cause harm to the public.

Mr. LEVINE. I think that this is essentially a labor neutral question. Neither the struck carrier nor the union received any particular benefit by this carriage of passengers between Los Angeles and Honolulu. The reason they may both oppose the provision is that, obviously, their dispute remains, shall we say, hotter, as long as the public can be held hostage, as well; but it seems to me this is a dispute between labor and management. To artificially drag the public in any more than the hardship that always results from this kind of strike, seems unnecessary.

The CHAIRMAN. Some parties favoring a provision for emergency cabotage will testify that they would favor it only if it's limited to stranded passengers holding confirmed reservations only. Do you agree with imposing that kind of restriction on an emergency cabotage?

Mr. COHEN. Not at all, Mr. Chairman. It doesn't make sense. Why should the public be held hostage to these situations? A person who has made a reservation, made plans, paid for things, is just as much as the person who is stranded.

Why should the public be interfered with this way unnecessarily? I just don't see any benefit to such a narrow limitation? Who's to benefit? What does it accomplish? All it does is hurt the public.

Mr. BAKES. You know, Mr. Chairman, there is one difficulty with it. I remember during the United strike we had trouble finding out who had confirmed reservations on United. They erased the computer tapes. The fact of the matter is it seems like a very artificial restriction. How about charter passengers? That's not "in legal terms" a confirmed reservation. I just come back to the point I made earlier when we talked about who should make the certification.

This has to be a commonsense approach. After the finding is made that lift isn't available, there are no U.S. carriers, the essential thing the Board has to look at is whether important air transportation services are being jeopardized and whether there are people on both sides of the water that can't cross it irrespective of whether computer tapes have been erased and whether you can confirm whether they had confirmed reservations.

The CHAIRMAN. Thank you very much, gentlemen. We appreciate your being here with us this morning.

We will take a 5-minute recess.

[The statement follows:]

STATEMENT OF HON. MARVIN S. COHEN, CHAIRMAN, CIVIL AERONAUTICS BOARD

Mr. Chairman, and Members of the Subcommittee, at the outset I would like to say how gratified I am that this Committee has taken the lead in proposing amendments to the Federal Aviation Act that will insure a continuation and

expansion to international aviation of the competitive objectives that were adopted for domestic aviation in the Airline Deregulation Act of 1978. As you are aware, the Board is a strong advocate of introducing a more competitive environment in international, as well as domestic, aviation. S. 1300 will, we believe, contribute very substantially to our obtaining that objective.

Attached to my prepared testimony is a section-by-section analysis of the bill in which we have detailed the bases for our support of its various provisions and, in the few cases where we have problems or suggestions, reasons for our proposed revisions. In light of its many provisions, I will not attempt to discuss all of them in my statement, but will rather concentrate on the highlights, and our very limited suggestions for modifications. I do hope you will recognize, nevertheless, that my failure to discuss a provision of the bill in this statement does not indicate lack of support for the provision but rather a necessity to budget my time to those aspects of the bill where comment is particularly warranted.

The bill is, Mr. Chairman, a fine piece of legislation. One need only glance at the goals for international aviation policy set forth in section 17 (section 1102(b) of the Act) to recognize the importance of this bill in contributing to a competitive environment in international air transportation. It emphasizes the greatest degree of competition that is compatible with a well functioning international air transportation system, including: freedom of both U.S. and foreign air carriers to offer fares and rates which correspond with consumer demand; the fewest possible restrictions on charter air transportation; the maximum degree of multiple and permissive international authority for United States air carriers so that they will be able to respond quickly to shifts in market demand; the elimination of operational restrictions to the greatest extent possible; the elimination of discrimination and unfair competitive practices faced by United States airlines in foreign air transportation; and other similar objectives which leave no doubt that the United States will not waiver from the objective of establishing a competitive environment in the international marketplace.

The Declaration or Policy in section 102 adopts for international air transportation those pro-competitive provisions which were made applicable to domestic aviation in the Airline Deregulation Act of 1978. Paragraphs (4) and (9) reiterate the import of the goals for international aviation policy in declaring that the Board shall follow a policy of "placement of maximum reliance on competitive market forces and on actual and potential competition . . .", and "the encouragement, development, and maintenance of an air transportation system relying on actual and potential competition to provide efficiency, innovation, and low prices, and to determine the variety, quality, and price of air transportation service."

We urge nevertheless, that the phrase, "the need to improve relations among and coordinate transportation by, air carriers, . . ." be deleted from subsection (a) (3) of section 102. This phrase could be misconstrued as providing Congressional support for collective carrier arrangements for scheduling and pricing, or other arrangements inconsistent with a competitive market. It is an anachronism for a competitive statement of policy. Rather it could be said to represent a carryover from the previous protectionist philosophy flatly rejected by this Committee in its Report on S. 2493 (No. 95-631) (p. 52). The provision in subsection (a) (4) for consideration of special circumstances affecting international air transportation should be adequate to permit any necessary accommodation of international realities that may require special approaches.

Significantly, both the policy goals in section 1102 (section 17 of the bill, paragraphs 1, 2, 3, 4, 6 and 7), and the section 102 Declaration of Policy (section 2 of the bill, paragraphs 3, 4, 9 and 10), place emphasis on the two essential ingredients of a more competitive international aviation environment; namely, liberalized entry and freedom in pricing for carrier managements. Ease of entry is also encouraged by adoption of the 1978 Airline Deregulation Act standard of "consistent with the public convenience and necessity" for the grant of U.S. carrier authority in foreign air transportation (section 401(d) of the Act, section 4 of the bill), as well as the minimization of procedural impediments for the licensing of foreign air carriers under section 402(b) and (d) (sections 7 and 8 of the bill).

We recognize that the goal of achieving a truly competitive international environment will not be achieved easily or rapidly. Many countries do not share our views, and the process of persuasion, aided by the demonstration of the advantages of competition in markets where we have been successful in introducing competitive agreements, will necessarily take time. But the time to start is now.

This Bill will help the Board in pressing forward with an admittedly relatively long term and difficult process of education and persuasion.

Also significant is the clear message that the bill transmits to foreign governments and carriers, that the United States Government will not sit idly by while U.S. carriers are subjected to unfair competitive practices or unjustifiable restrictions inconsistent with bilateral commitments, or comity and reciprocity. The new section 402(f) (2) authorizes the Board, subject to approval of the President, to take summary action to condition, amend, suspend or revoke a foreign air carrier permit where the Board finds that a foreign government or carrier has, over the objections of the United States Government, impaired or denied U.S. carriers' operating rights, or has engaged in unfair, discriminatory or restrictive practices with a substantial adverse competitive impact on U.S. carrier operations (section 9 of the bill). A similar provision in section 23 of the bill amends the International Air Transportation Fair Competitive Practices Act of 1974 to grant the Board specific powers to take such action as may be necessary to eliminate unjustifiable or unreasonable discriminatory, predatory or anti-competitive practices against United States air carriers, or unjustifiable or unreasonable restrictions on access of a United States air carrier to foreign markets.

The Board welcomes these new powers to deal with unfair competitive practices. In a competitive market it is particularly important to assure our carriers the ability to compete on an equal basis with their foreign competitors. If expanded rights are to be granted to foreign carriers to serve U.S. markets, it is critical that U.S. carriers not be denied equal access to foreign markets. The Board will, in cooperation with the Executive Departments, protect the rights of U.S. carriers to compete on a fair and equal basis, and thereby protect the traveling consumers of all Nations.

In the past year we have challenged a number of unjustified restrictions imposed upon U.S. carriers. Specifically, we have maintained, over the bargaining table, our strong objections to ground handling restrictions and user charge inequities imposed by the United Kingdom. We confronted the Government of Ireland this spring over their refusal to permit our charter carriers to operate low-cost charters into their country during this summer and early fall. An interim settlement permitted these services to operate. We are currently developing a strategy to deal with some continuing problems in the Pacific Rim area, and have strengthened some of our model bilateral language to obviate possible future competitive-market access problems. I believe the Committee is aware that we have made a particularly strong effort in the pricing area, and we are pleased to report that mutual disapproval bilateral pricing provisions are working well. We will continue to refine our current approaches to these competitive problems. With the cooperation of our carriers, and particularly with the tools provided in the bill, we believe we will be able to make greater progress in the future in alleviating these vexing problems. We do have some serious procedural problems, which I will discuss later.

Other provisions adopt revised standards which will contribute to the achievement and maintenance of an international competitive environment. A prohibition against approval of anticompetitive agreements in the absence of a finding of a serious transportation need or important public benefits (including foreign policy benefits), and the unavailability of any less anticompetitive alternative, is applied under section 412 to agreements affecting foreign air transportation (section 11), as it is domestically. And the amendments to section 1002(j) will permit the Board to suspend the fares and rates of foreign air carriers as the public interest may require (sections 14 and 15).

The Board and the Executive Agencies, in accordance with the President's International Aviation Policy, are already working to achieve the competitive goals of this bill in international air transportation. We have been successful in negotiating new liberal competitive bilateral air transport agreements with The Netherlands, Belgium, Germany, Jamaica, Korea, Israel, Singapore, Thailand, and Papua New Guinea. We have been partially successful in obtaining some liberalized pricing and charter provisions in the relatively restrictive agreements in effect with the United Kingdom, Australia, New Zealand, Jordan and Syria. On the other hand, we have, so far, had little success with several other major international aviation partners. The procedural tools and policy directives set forth in S. 1300 should enable us to make greater progress in the future.

Our success in several major international traffic centers has and will result in significantly improved service at lower prices than would normally exist in

those markets where restrictive bilaterals are in effect. As this occurs, we believe the non-participants will find it to their advantage to seek the same benefits for their citizens, as are being experienced by countries adopting a more competitive structure. The provisions of the International Air Transportation Competition Act of 1979, should help to achieve this process.

At the time domestic competition was introduced by the Airline Deregulation Act of 1978, most of the carriers expressed strong skepticism, if not outright opposition. Many foreign countries and carriers are expressing that same skepticism and opposition today. Yet domestically the cries have dwindled to a mere whisper. Moreover, some countries have looked at the United States' domestic experience and concluded that they would like to give it a try.

There are, nevertheless, a number of foreign carriers and governments which have urged that competition simply will not work for international air transportation. Their arguments are varied, but in our view they are supported far more by the vehemence of their assertions, than the logic of their substance. Let me digress a moment to examine a few of these arguments.

First, it is argued that competition and unregulated pricing in international markets would inevitably lead to a decrease of convenient available air transportation service for the business traveler. The argument is that with lower prices carriers will reduce their schedules to create high load factors. Service will decline, and the availability of seats will be inadequate for the needs of the business community. However, competition does not mean service geared exclusively to the demand of the vacation traveler. Rather competition means that carriers will be free to meet the requirements of both the vacation and business market. There is simply no need or justification for a controlled regulatory environment which requires that the vacation traveler pay a substantial premium in order to produce the inefficient low load factors that will leave room for the business traveler to be accommodated on the spur of the moment. The demands of the business traveler can and will be accommodated in a competitive environment by a separate class of service at a proportionately increased price to reflect the inefficiencies of the low load factors. Indeed, first class service has for years served this function, as does the relatively high basic economy fare. And recently new international business class fares have been proposed which should be helpful to further assure availability of service for the business community. In terms of service, our experience so far indicates that the increased traffic demand generated by low fares far exceeds the additional traffic necessary to produce the higher load factors required for profitable low fare service, and the net frequency of service has markedly increased.

Another argument is that with the current fuel shortages, airport congestion, and limitations of air traffic control, the world simply cannot afford the increased traffic which results from the low fares offered in a competitive environment. But artificially maintaining high prices which encourages operations with low load factors and inefficient equipment will not resolve the fuel or airport congestion problems, and while not resolving them will exact a terrible price from the traveling public. I do not mean to understate the seriousness of the current fuel and airport congestion problems. Indeed, it must be recognized that fuel shortages will inevitably produce fuel cost increases, and airport congestion may create higher landing fees. These increased costs will require competitive airlines to find more efficient ways to carry a larger number of passengers with fewer flights and more fuel efficient aircraft. The substitution of jumbo-jet aircraft for older, less efficient aircraft, will inevitably be encouraged by these cost increases. On the other hand, if governments maintain artificially high prices or artificial capacity controls, this will only encourage utilization of less efficient aircraft. We are simply not persuaded that the maintenance of artificially high prices or capacity limitations by government regulation would be a productive form of fuel conservation, or a desirable alternative for relief of airport congestion.

Our foreign friends also argue that while competition may look impressive in periods of economic prosperity, the picture may be substantially different in periods of economic recession. Certainly it may be anticipated that the profits of the airlines will not be as high during periods of economic recession as during periods of economic prosperity. But, in a free competitive environment air carriers will have the flexibility to adjust to inevitable recession periods. Historically, government regulation of capacity and pricing, precisely because of its lack of flexibility to meet changing needs, has proved to be a very inept means of providing the optimum relationship of service and pricing. Frequently government

regulatory reaction will be precisely opposite that of informed carrier managements in a competitive environment; raising prices in a period of declining traffic, instead of lowering prices to maintain load factors and maximize revenues.

Finally, it is argued that competition will not work in the international environment simply because so many foreign governments are opposed to the concept and will not accept it. The fact is that many foreign governments have, as I noted, already accepted the concept. With low fare and improved service existing in markets where competitive bilateral agreements have been negotiated, we believe that it will only be a matter of time before the current objectors seek the same competitive benefits for travelers to their country.

In short, competition will work in international markets. Indeed, in domestic markets competition has worked even better than its proponents had hoped. And although new to international markets, the clear import of the evidence we have to date is that it will work equally well in international markets. Let me briefly continue my digression to give you a few figures.

The domestic markets are our most striking examples of success, since the competitive process commenced earlier in these markets, and we have more information by which to judge the results. Consumers have benefitted from significantly lower fares and better service, while the airlines have enjoyed the highest profit levels in history.

The savings began with restricted "Supersaver" discounts that cut as much as \$250 off the price of some transcontinental round-trip flights, for those who qualified. As competition has intensified in the last few months, however, the restrictions on discount fares have lessened. The New York-Los Angeles traveler can now take advantage of an unrestricted \$108 one-way fare, where the fare three months ago was at least \$220. The average fare on certificated trunk carriers declined by three percent in 1978, while the consumer price index, during the same period, rose nine percent.

These substantial consumer benefits did not occur at the expense of the airlines. To the contrary, the airlines' profits increased dramatically due at least in part to the tremendous response to lower fares. Profits on domestic operations increased 84 percent over 1977 from \$481 million to \$885 million.

Traffic growth far exceeded any carrier's expectation. Domestic traffic on certificated carriers increased 16.6 percent compared with a 7.8 percent growth in 1977. We estimate that overall the 254 million passengers who boarded on domestic flights in 1978 saved more than \$2 billion due to the Congressional and Board actions that increased competition.

While some critics were concerned that low fares would force the airlines to decrease service in order to raise load factors, this has not taken place. The response to lower prices has been so great that U.S. carriers actually increased scheduled departures by 8.9 percent between April 1978 and April 1979.

We have witnessed the same impressive effects of competition in several international markets. Prices have dropped dramatically while many carriers' profits have been maintained at high levels due to the load factors produced by record traffic levels.

The percent of travelers who took advantage of deep discount fares in the North Atlantic increased from 21 percent in 1977 to 51 percent in 1978 when new competitive service first had its impact. The average price for the trip dropped by 7.1 percent. Diversion from charter operations was, of course, substantial, but after taking this into account, these markets still showed a 15.2 percent total traffic increase during 1978. Scheduled traffic was up 21.7 percent.

For the year 1978, the profits of the five U.S. scheduled international carriers in the North Atlantic (Braniff, Delta, National, Pan American and TWA, as a group, maintained an impressive 12.5 percent return on investment, only slightly lower than the peak 1977 returns. During the first six months of 1979, the international traffic of these carriers showed a 19.4 percent increase compared to the first six months of 1978. For the first quarter of 1979 profits were comparable to those earned during the first quarter of 1978.

Between the U.S. and the United Kingdom, four new entrants, Delta, Braniff, British Caledonian and Laker, have begun service. The lowest individual discount fare in the U.K. market is now about 4.6 cents per passenger mile. The new low fares produced average load factors on U.S. carrier U.S./U.K. flights of 81.8 percent in 1978, in contrast to the 62.8 percent average load factor in 1977, despite the tremendous increase in available capacity.

Comparable low fares were experienced in other markets where liberal bilateral agreements are in effect. The lowest individual discount fare per passenger mile between New York and Frankfurt is now about 4.8 cents. The Benelux agreements have resulted in a discount fare between New York and Amsterdam that is 4.7 cents per passenger mile. These low fares may be compared with those available to countries where we do not have competitive or low fare bilaterals in effect. The per passenger mile discount fare between New York and Paris is 6.3 cents, between New York and Rome it is 5.9 cents, and between New York and Madrid it is 6.2 cents.

These discount fare reductions translate into substantial consumer savings. In the New York/London market, the average discount fare for the year ended June, 1979, declined from \$204 to \$159 over the previous year, or 22 percent, in the year ending June 30, 1979, a year in which the consumer price index rose by more than 10 percent. Multiplied by the number of travelers who actually flew at these average discount fares, a total consumer savings of about \$47.6 million was realized. Between New York and Amsterdam the average discount fare declined from \$240 to \$174 or 27.5 percent, with a total consumer savings of almost \$2 million. Between New York and Frankfurt, the average discount fare declined from \$252 to \$185 or 26.5 percent, generating \$6.7 million in consumer savings. The discount fare reductions in the Paris, Rome and Madrid markets (the less competitive markets) during this period were far less significant; 1.7 percent for Paris, 9.0 percent for Rome, and 4.7 percent for Madrid. We estimate total consumer savings from lower discount fares to these six European cities to be on the order of \$60.8 million, of which 92 percent is accounted for by traffic from New York to London, Amsterdam and Frankfurt.

We have also negotiated liberalized pricing provisions in our bilateral agreement with Australia. The lowest individual discount fare per passenger mile from Los Angeles to Sydney is now 5.6 cents. While the fare to Australia does not compare favorably to those available to Europe, it does compare very favorably to the 7.1 cents per mile fares previously available across the Pacific, the lowest APEX fare of 6.6 cents per mile that is currently in effect to Tokyo; and the 6.9 cents per mile lowest available fare in the Los Angeles/Auckland market.

Only recently we finalized a new liberal bilateral agreement with Korea. Korean Air Lines now offers a normal economy fare of \$840, down from the previously effective fare of \$1162, a 28 percent reduction. Korean Air Lines is also offering a round trip 14/21 day excursion fare of \$800 between Los Angeles and Seoul, down from \$995 offered last year, for a savings of \$195, or 19.6 percent. Braniff has proposed even lower fares in the market.

I turn now to some specific sections of S.1300.

SECTION 6—SUSPENSION AND ALTERNATIVE CERTIFICATION PROVISION (§ 401(g)(2))

Mr. Chairman, in your statement upon introduction of the bill you expressed concern that the section 6 provision, amending section 401(g) to provide a procedure for suspension of outstanding certificate authority and certification of an alternative carrier in limited designation markets, might make it easier to live with anticompetitive bilaterals, and could create unintentional incentives to accept such agreements in the negotiating process. I would hope to alleviate your concern.

The Civil Aeronautics Board is and will, as long as we regulate international air transportation, continue to be devoted to negotiating liberal air transport agreements as rapidly as possible. The Executive Departments share this objective. Indeed, some governments have even accused us in international forums of forcing United States economic philosophy upon our unwilling international aviation partners. Although I think the facts demonstrate the inaccuracy of that accusation, our advocacy and forceful negotiation will continue. The provisions of this bill should contribute significantly to the achievement of our objectives.

Nevertheless, as you recognized, Mr. Chairman, in reality the process of achieving a generally competitive international aviation environment is likely to be long delayed. Continued resistance to liberal concepts may be anticipated from many countries, and indeed, many of the largest international markets are the subject of restrictive bilateral provisions or practices. Thus, limitations upon multiple designation of carriers are contained in our bilateral agreements with the United Kingdom, Canada and Mexico. Many other countries in practice limit the number of carriers which may have access to their markets, despite bilateral provisions permitting multiple designation. And in many countries where bilateral

agreements are not in effect the foreign governments have made it clear that they will not grant permission for additional U.S. carriers to enter their markets.

Where competition exists the ability of the public to choose between alternative services furnishes a powerful incentive for carriers to provide the public with the optimum combination of service and prices. Even in markets where only a single carrier is providing service, if there are no restrictions upon entry of a new carrier, that threat can act as an incentive to maintain fares and service responsive to public demand. The availability of the proposed section 401(g) (2) procedures, by which an alternative carrier could gain access to the market in lieu of the incumbent, would provide a competitive incentive similar to the threat of entry. With such an incentive the incumbent carrier will be induced to maintain prices and services which provide the maximum benefits for the traveling public and shippers. The alternative of close governmental supervision of the carriers operations could, therefore, be avoided. The provision will also provide an incentive for the incumbent carrier to promote removal of the bilateral restrictions.

I admit, Mr. Chairman, that the Board currently has authority under section 402(g) to suspend the operating rights of a U.S. carrier, if required by the public convenience and necessity. We believe, however, that the greater specificity of the proposed provision will serve an important function in making it clear that Congress shares the Board's view that the right of the public to the quality of services and prices that would and could be provided in the market with adequate competitive incentives, must be paramount to the privilege of the carrier in providing monopolistic route authority in a limited designation market. The provision will avoid the challenge to Board action under its existing but historically underutilized powers, that this concept is contrary to the intent of Congress. For the incentive for quality low priced service by incumbent carriers in limited designation markets to be effective, procedural barriers to potential implementation of alternative service must be minimized.

The provision is very narrow in scope. It applies only in those markets where restrictions imposed by foreign governments or bilateral agreements prevent the Board from providing the necessary incentives by certification of additional carriers in the market. The suspension and alternative certification would apply only where it is established that the applicant's proposed service should be a substantial improvement in terms of the quality of the service or the level of the fares offered, or a combination of both. The Board would not certify an alternative carrier for minor improvements in service or fares, or where the ability and intent of the applicant to provide substantially improved service were not clearly demonstrated.

Finally, the applicant must establish that the suspension and grant of alternative authority to the applicant would "otherwise be consistent with the public convenience and necessity." Thus the Board would not implement the provision in circumstances where the benefits of improved or lower fare service were outweighed by other considerations, such as:

(1) The length of time which the incumbent carrier has held the certificate authority. (If the carrier certificated for service in the market were changed too rapidly, without an adequate opportunity to develop the market, optimum service to the public might not result.)

(2) Difficulties that might be anticipated in obtaining the prompt licensing of the applicant by the foreign government, as well as the foreign policy negotiating implications in designating an alternative carrier for service in the market.

(3) The fitness of the applicant; the service dislocations on the subject route or other routes inherent in replacing one carrier by another; the equipment utilized; and the long term prospects for retention of a desirable low cost service representing a substantial improvement in terms of public benefits over that which was previously provided by the incumbent.

The Board recognizes that such considerations could offset proposed limited or temporary service improvements. In this respect paragraph (C) of the provision provides that the Board may dismiss an application for alternative service, "if it is not satisfied from the materials submitted with the application (i) that the applicant is qualified, (ii) that it is probably that the applicant could and would provide substantially improved air service in a restricted market, or (iii) that proceeding with consideration of the application would otherwise be in the public interest." Therefore, it is not to be anticipated that the Board would institute a proceeding every time an applicant proposed an improvement of service, even if the improvement could be categorized as substantial.

A primary significance of the provision is the existence of the procedure, with the possibility of its implementation, as an incentive to the incumbent carrier to maintain service and prices at the optimum level for the benefit of travelers and shippers. As the gap widens between the service and fares actually offered and those that realistically could be provided by an alternative applicant in the market, the potential for Board implementation of the procedures would obviously increase. But the very existence of the procedure would itself establish a significant competitive incentive in the form of the threat of entry of an applicant proposing alternative and substantially improved service. We would, therefore, anticipate utilizing the power sparingly.

We do have a serious and fundamental problem with the procedural requirements set forth in paragraph (B) of the provision. That paragraph directs the Board to process the proceeding pursuant to the simplified procedures of section 401(p), "unless the holder of such certificate requests an oral evidentiary hearing, or the Board finds that, under all the facts and circumstances, an oral evidentiary hearing is required in the public interest." We believe this paragraph should be either deleted or modified. In its present form it is inconsistent with the concepts adopted in section 401(p) by the Airline Deregulation Act of 1978, and could seriously detract from the competitive incentive for an incumbent carrier that the alternative certification procedure is designed to produce.

It is apparent that the incumbent would benefit from maximizing delay in an alternative certification proceeding. It could be anticipated, therefore, that the incumbent would request an oral evidentiary hearing in virtually every case, and, under the provision, the Board would have no option to use other procedures, even though all requirements of due process and fairness to the incumbent carrier could be achieved by something short of an oral hearing. As has been increasingly recognized in modern administrative law and procedure, trial-type procedural requirements in licensing, because of the inevitable delay and costs to all parties involved, can result in a deprivation of rights much greater than the privileges sought to be protected. This is particularly true since there would be no evaluation of the facts and circumstances to determine whether trial-type procedures were required.

The Airline Deregulation Act of 1978 rejected the notion that "oral evidentiary hearings" should necessarily be required in cases of suspension of a certificate under section 401(g). Thus, section 401(g) (the authority to modify or suspend a certificate) was amended to specifically permit utilization of "the simplified procedures under subsection (p) of this section." Subsection (p) reiterates that the simplified procedures may be utilized for the suspension of a certificate, and requires only that such simplified procedures provide "for adequate notice and an opportunity for any interested person to submit appropriate written evidence and argument, but need not provide for oral evidentiary hearings."

Giving the Board discretion to utilize written procedures does not imply that oral evidentiary hearings would not be held where circumstances warranted them. Thus, despite the liberal language of existing section 401(p), the Board has retained the option of setting down oral evidentiary hearings under its new Subpart Q procedural rules. Indeed, the Board has just directed that oral hearings be held in the *Wild Card Route Case*, to explore the factual issues involved in selecting a new city and carrier for service to London, under a bilateral authorization to become effective in July, 1980.

Moreover, even where the Board decided that oral hearings were not required, the carriers would be granted a full opportunity to present their case. We would anticipate that in a section 401(g)(2) suspension and alternative certification proceeding, this would include, at a minimum, oral argument before the Board.

We do recognize that the provision would not require oral evidentiary hearings for all issues, and indeed that the Board would not be required to hold oral hearings for the resolution of legal and policy issues, where there were no genuine issues of material and relevant facts in dispute. However, even where there are factual disputes, in many circumstances these issues can be resolved just as fairly, and certainly more expeditiously, by written submissions, without the necessity for oral cross examination.

Finally, it may be noted that any action of the Board under these procedures, if not disapproved by the President under section 801, would be subject to judicial review, and a judicial stay if warranted. Thus, the incumbent carrier has adequate remedies to insure that fundamental due process requirements are met. There is no necessity for a mandatory oral evidentiary hearing in order to protect the privileges of the incumbent.

We are particularly concerned that the mandatory requirement for an oral evidentiary hearing, which could cause delays of perhaps more than a year, would seriously detract from the incentives created by the provision for an incumbent carrier to maintain optimal service and fares. That incentive will be only as strong as the realistic possibility that the alternative certification could be promptly implemented. If Congress includes a provision which results in lengthy procedural delays, the risk that an incumbent carrier would exercise its monopoly power to charge unreasonably high fares, or provide inferior service, would be enhanced. It may well be that the greater the obstructions to alternative certification, the greater the likelihood that the Board would find it necessary to invoke the procedure.

In light of the limited scope of the proposed suspension, the absence of any real need for mandatory oral evidentiary hearing procedures, and the very strong public interest considerations which might be seriously impaired by such a mandatory oral evidentiary hearing requirement, we urge that the Committee reconsider this provision. Subparagraph (2)(B) could easily be deleted in its entirety, leaving the procedure to be applied in the manner specified in the provisions of the Airline Deregulation Act of 1978.

SECTION 13—EMERGENCY EXEMPTION FOR FOREIGN CARRIER OPERATIONS IN INTER-STATE AND OVERSEAS AIR TRANSPORTATION (SECTION 416(b)(7))

Our second suggestion is that an emergency power be granted to the Board under section 416(b)(7), to permit foreign carriers to carry local traffic between U.S. points in unusual circumstances where such traffic cannot otherwise be accommodated by U.S. carriers. We believe that such a provision would, like the wet and dry lease provision included in the Bill, fulfill a significant public need with no real public detriments. First let me say a word about the lease provision.

Section 13 includes a new exemption power (section 416(b)(7)), under which foreign registered aircraft would be permitted to operate by or on behalf of a U.S. air carrier for service between U.S. points in accordance with an agreement approved by the Board. The exemption power is necessary since the restrictions against domestic operations by foreign aircraft under sections 402(a) and 1108(b) would otherwise preclude such operations. These prohibitions simply do not make sense when applied to situations never intended to be within their scope.

The leasing exemption is important. With the very high cost of modern wide-bodied jet aircraft (\$50-\$60 million for a Boeing 747, with spare parts), mobility of such aircraft, as a means of achieving full utilization, becomes increasingly necessary for efficient operations. It is particularly important for new entrants with limited financial backing who may be dependent upon the leasing of aircraft in order to enter the market with competitive equipment. The provision is also important for foreign carriers who may not be able to achieve an efficient utilization of competitive aircraft in the absence of such arrangements. Unless foreign air carriers are able to operate competitive aircraft to the United States, foreign governments will inevitably impose equipment restrictions on U.S.-carrier operations to their territory.

The provision will also avoid the ridiculous situation where Braniff was able to operate the Concorde interchange arrangement only by a change of registration of the aircraft each time the aircraft arrived or departed Washington. The difficulty is that the section 1108(b) preclusion of domestic operations is worded in terms of nationality of the aircraft rather than the nationality of the operator. While aircraft registration does affect the rules applicable to the safety of the operation of the aircraft, the bill obviates this problem by providing that operations under the exemption provision shall be "subject to such safety regulations as may be prescribed by the Secretary for such operations."

Our proposed authorization for foreign air carriers to carry local traffic between U.S. points in unusual circumstances constitutes another area where the restrictions against domestic operations by foreign aircraft just make no sense. We can understand the U.S. carriers' desire to preserve domestic traffic and revenues for themselves. But there is no justification whatsoever for leaving U.S. passengers stranded, businesses disrupted, and creating great loss to shippers of perishable commodities, where U.S. carrier capacity is not available because of an emergency, and such traffic could be accommodated on foreign aircraft. We recently experienced a dramatic example of the need for such a

provision with the grounding of the DC-10 aircraft, and shortly before that, the United strike. In such emergencies, much of the stranded traffic simply cannot be accommodated on U.S. carriers. On the other hand, a large amount of available capacity exists on foreign carriers operating between U.S. points for the very reason that they are precluded from carrying domestic traffic. In addition, particularly in overseas air transportation, foreign carriers which directly overfly U.S. points may be willing to make an unscheduled stop to carry U.S. overseas traffic stranded in an emergency. (An example, is Qantas' Honolulu service, regularly overflying Pago Pago, American Samoa.) The purpose of the prohibitions, to protect U.S. carrier markets, is irrelevant to emergency situations where stranded traffic cannot be accommodated on U.S. carriers. There is a great need for flexibility to allow reason to prevail over the blind and unreasonable application of these restrictions to situations never intended to be encompassed within the prohibition.

We have no objection to inclusion in the provision of limitations which assure that the exemption power will be confined to its purpose. Limitations of this sort might more explicitly provide that implementation and continuance of the exemption would depend on a finding or findings of truly unusual circumstances, like a crippling strike, the grounding of the DC-10's, etc.; that the traffic cannot otherwise be reasonably accommodated on U.S. carriers or other forms of transportation because of the emergency; and the existence of a hardship to passengers or shippers if the exemption is not granted. We would urge you to avoid limitations which preclude grants on the basis of geographical limitations or narrow definitions of the type of emergencies in which the provision may be invoked. Where actual hardship exists that cannot be cured by recourse to U.S. carriers, the Board should have the flexibility to call upon foreign carriers.

We would suggest amending section 13 to include a narrow exemption provision, by renumbering the leasing provision (the language following, "... to authorize the foreign air carrier:") as subparagraph (i), and adding a new subparagraph (ii) which would read:

"(ii) To carry passengers, cargo or mail in interstate or overseas air transportation, where the Board finds that such authorization is necessary to avoid undue hardship with respect to traffic which cannot otherwise be accommodated because of unusual circumstances: *Provided*, That no such authorization shall extend more than five days after those circumstances have ceased."

SECTION 23—PROCEDURAL REQUIREMENTS FOR ACTION UNDER THE INTERNATIONAL AIR TRANSPORTATION FAIR COMPETITIVE PRACTICES ACT OF 1974 (SECTION 2(b)(2))

As I previously stated, the Board considers that the proposed amendments to the International Air Transportation Fair Competitive Practices Act of 1974 will provide a valuable tool for the Board to insure that U.S. carriers have a fair opportunity to compete in international markets. We nevertheless are concerned by the procedural requirement in the amended section (b)(2) that the Board "approve, deny, dismiss, or set such complaint for hearing within 30 days after receipt of the complaint." We feel that this provision could be counter-productive and defeat the very objectives that the provision is attempting to achieve.

We recognize that there is considerable frustration over the inability of the United States to promptly secure the removal of restrictive, discriminatory or anticompetitive practices of foreign governments or foreign carriers. The power given in this section to act promptly and decisively to counter such practices is a step in the right direction. But the section must be considered in its proper context. It is in essence a retaliatory tool. Ultimately, the problem will have to be resolved by negotiations.

The threat of counteraction is frequently a decisive factor in bringing a foreign government to the negotiating table. However, it must be used with great caution. Its usefulness is largely dissipated once it becomes necessary to actually implement the threat. This does not mean that when the threat is made the United States is not prepared to carry through in the event that the dispute cannot be resolved by negotiations. But implementation generally means that the efforts to resolve the dispute have largely failed. The almost inevitable reaction of a foreign government, once the threat is in fact implemented, is not capitulation, but rather counter-retaliation. This has the unfortunate result of escalating the dispute into a matter of much greater proportions.

The difficulty we have with the proposed requirement that the Board act on a complaint within 30 days, is two-fold. First, the very shortness of the time

period is insufficient to permit even preliminary negotiations in an effort to resolve the dispute, and to determine whether a threat of counteraction is necessary. Unfortunately, foreign governments, just like the U.S. Government, need time to react, and time to investigate the situation and formulate an acceptable solution. This is particularly true in the case of many types of unfair competitive practices (such as currency restrictions) which, although they have a major impact on U.S. carrier operations, are normally implemented to meet general policy objectives of the country involved, having nothing to do with aviation. We would therefore suggest that, as a minimum, the length of time for Board action on the complaint be extended to at least 90 days, with a procedure for extension of the time period upon a Board finding that action within the 90 day period would be counter-productive to resolution of the complaint through negotiations.

Our second problem arises from possible confusion as to the nature of the action which the Board is required to take within the specified time period, namely, "to approve, deny, dismiss or set such complaint for hearing." Since resolution of the dispute necessarily must ultimately depend on a negotiating process, the desirable action may well be the implementation of a threat at some future period if negotiations fail to resolve the dispute. Specifically, the Board might issue a show cause order proposing amendment of the permit to delete authority or to attach conditions or restrictions similar to those imposed on a U.S. carrier. Or the Board might implement Part 213 of its Regulations to restrict the foreign carrier's schedules in the event of failure of resolution of the dispute by a future date. There could be some confusion, nevertheless, whether the existing language was intended to cover action in the nature of a proposal for future action. We would therefore urge, again as a minimum, that the provision specifically include, in addition to the alternatives of approval, denial, dismissal or setting for hearing, the options of setting for an "investigation," other than a hearing, or "instituting other proceedings proposing remedial action."

A construction which would exclude these options clearly was not intended and might leave the Board with the undesirable alternatives of either dismissing the proceeding as premature (since it cannot be determined at that time that negotiations would be unsuccessful) or setting the matter for hearing. A case involving foreign policy issues normally would not be appropriate for a hearing. To set such a case for hearing would merely provide an unnecessary built-in time delay for institution of the threat, and could be counter-productive. Premature implementation of the threat, another alternative, would in many cases merely escalate the dispute and make resolution even more difficult. The negotiation process simply cannot be conducted under general rules as to time limitations. Indeed, to deprive the Board of the flexibility to defer such matters as the exigencies of intergovernmental negotiations may require, could sabotage the potential negotiation of far more critical issues, such as a new liberal bilateral regime, over a minor discrimination or unfair practice incident.

This is particularly true where the rule is attempted to be applied to such a wide variation of types of situations. In this connection, we would point out that a problem involving currency restrictions, which has its foundation in the general monetary policies of a foreign country, obviously cannot be resolved in the same time context as problems involving imposition of a new direct restriction on U.S. carrier operations.

We therefore strongly urge that the Committee leave to the Board the determination of the time period or periods for implementation, or deferral of implementation, of the threat. We believe that was the intent of the provision, although a clarification in language would avoid any confusion on this point.

In concluding, Mr. Chairman, let me state that, with the three exceptions we have noted, we believe that you have produced a fine piece of legislation which the Board wholeheartedly supports. We would urge that you consider our proposals for modification as an effort to make it even better, and to enable the Board to proceed as rapidly and as effectively as possible to implement the international aviation goals that you have set forth so well in section 17 of the bill—specifically, the achievement of a competitive international air transportation environment.

That concludes my prepared statement. I will be happy to answer any questions.

SECTION-BY-SECTION ANALYSIS OF THE INTERNATIONAL AIR TRANSPORTATION COMPETITION ACT OF 1979

DECLARATION OF POLICY

(Sections 2 and 3 of the International Air Transportation Competition Act of 1979, amending section 102(a) of the Federal Aviation Act)

Provisions of S. 1300

Section 2 would amend the current declaration of policy for interstate and overseas air transportation (Section 102(a)) to make it applicable to foreign air transportation as well. Subparagraph (4) of the Policy Declaration would be revised to add a provision that the Board, in the "placement of maximum reliance on competitive market forces and on actual and potential competition," may take account "of material differences, if any, which may exist between interstate and overseas air transportation, on the one hand, and foreign air transportation, on the other." In addition, subparagraph (6) (the encouragement of air service at major urban areas through secondary or satellite airports) and subparagraph (8) (Federal assistance for service to small communities) would be limited in scope to "the United States" (Subparagraphs 6 and 8) and "interstate and overseas airline service" (Subparagraph 8). Finally, a new subparagraph (11) would be added to the policy declaration directing "the promotion, encouragement, and development of civil aeronautics and a viable, privately owned United States air transportation industry."

(Section 3 would repeal the separate provisions applicable to foreign air transportation and amend the table of contents to reflect these amendments.)

Comments

The Board strongly supports this proposed amendment. Section 102 of the Act was amended by the Airline Deregulation Act of 1978 (P.L. 95-504, October 24, 1978) to place major emphasis on "competition to provide efficiency, innovation and low prices, and to determine the variety, quality, and price of air transportation services" in interstate and overseas air transportation. The application of that standard to foreign air transportation will establish a clear Congressional mandate to effect a permanent liberalization of international aviation and will assist immeasurably in achieving that goal.

The modification of subparagraph (4) is obviously not intended to diminish the objective of establishing maximum competition in international markets, but is simply a recognition that special circumstances, including the necessity of obtaining the concurrence of foreign governments, may be applicable in certain foreign air transportation markets. Except for the addition of subparagraph (11), the expanded application, and the consideration of special circumstances in foreign air transportation, there is no substantive change to the policy declaration.

Subparagraph (11) retains a provision of the current policy declaration for foreign air transportation (Section 102(c)(6)) and adds language to emphasize our country's belief in the free enterprise system. The subparagraph is consistent with the objectives described in the policy declaration.

We would suggest that the phrase, "the need to improve relations among and coordinate transportation by, air carriers, . . .", be deleted from subsection (a) (3) of section 102. The phrase is susceptible to an interpretation that Congress desired to promote anticompetitive arrangements between carriers, such as price fixing or scheduling agreements. While we believe it is clear that this was not the intent, since the phrase is subject to an anticompetitive interpretation, we believe it is out of place in an otherwise procompetitive declaration of policy.

LICENSING OF U.S. AIR CARRIERS

(Section 4 of the International Air Transportation Competition Act of 1979, amending sections 401(d)(1) through (d)(3) of the Federal Aviation Act).

Provisions of S. 1300

Section 4 would amend sections 401(d)(1) through (d)(3) to apply the same licensing standard for foreign air transportation ("consistent with the public convenience and necessity") that was adopted by the Airline Deregulation Act of 1978 for interstate and overseas air transportation. The Airline Deregulation

Act of 1978 retained the 1958 Federal Aviation Act standard ("required by the public convenience and necessity") for foreign air transportation. There is no substantive change other than the extension of the "consistent with" standard to foreign air transportation.

Comments

The Board supports this amendment. This provision would be a significant element in relaxation of entry requirements, an essential ingredient of a competitive international aviation environment.

CERTIFICATE CONDITIONS

(Section 5 of the International Air Transportation Competition Act of 1979, amending section 401(e) (2) of the Federal Aviation Act).

Provisions of S. 1300

Section 5 would amend section 401(e) (2) to permit the Board to specify the general routes to be followed in a certificate issued to a U.S. air carrier for foreign air transportation, without specifying "terminal and intermediate points" in the United States. The section previously authorized a general route description "insofar as the operation is to take place without the United States," but required specification of terminal and intermediate points within the United States.

Comments

The Board fully supports this amendment. It permits the grant of authorizations more in line with the authority granted under most bilateral air transport agreements, which normally read, "from a point or points in the United States." As bilateral air transport agreements are amended to grant increasingly liberal route and multiple designation rights to the carriers of both countries, it is important that the Board have flexibility to authorize U.S. carriers to make full use of the new authority granted under a bilateral. The amendment would have particular application under the recent bilaterals granting very broad reciprocal competitive opportunities (*i.e.*, Netherlands, Belgium, Germany, Israel, Jamaica, Korea, Singapore, and Thailand) where multiple permissive authority has been or is likely to be granted by the Board. It obviously would not be applied in cases where a bilateral restricts the number of carriers in any particular market.

SUSPENSION AND REVOCATION OF CERTIFICATE AUTHORITY OF U.S. AIR CARRIERS

(Section 6 of the International Air Transportation Competition Act of 1979, amending section 401(g) of the Federal Aviation Act).

Provision of S. 1300

Section 6 would make two amendments to section 401(g) of the Federal Aviation Act (Authority to Modify, Suspend or Revoke Certificates). The most significant amendment would add a provision allowing (but not compelling) the Board to suspend the certificate authority of a carrier authorized to provide foreign air transportation in a limited designation market, and certificate an alternative carrier which demonstrates that it can and will provide substantially improved service, or lower fares or rates, or both, if the Board finds that such alternative certification would otherwise be consistent with the public convenience and necessity. These new suspension/alternative certification proceedings would be conducted pursuant to the simplified procedures established under section 401 (p), unless the incumbent requests an oral evidentiary hearing or the Board finds that an oral evidentiary hearing is required in the public interest. The Board would be authorized to dismiss a suspension/alternative certification application on the basis of written submissions if it was not satisfied that the applicant was qualified, that the applicant probably would and could provide substantially improved price and/or service options in a restricted market, or that it would otherwise be in the public interest to consider the application.

Section 6 would also allow the Board to suspend or revoke a certificated carrier's authority to serve a point (foreign or domestic) if the carrier notified the Board that it proposes to suspend all service to the point, or if it had failed to provide any significant service to the point for 90 days. Procedurally, the Board would be required to give the carrier notice and a reasonable opportunity to present its views, but a hearing would not be required.

Comments

As more fully explained in Chairman Cohen's prepared testimony, the Board believes that the suspension/alternative certification provision represents one of the most significant proposals for encouraging a competitive international aviation environment. By providing a procedure for certificating an alternative carrier in a limited designation market, this section will provide a competitive incentive similar to the threat of entry in unrestricted markets. It will act as an inducement to incumbents to maintain prices and services which will maximize the benefits available to the travelling and shipping public. We believe, however, that the incentive would be enhanced if proposed section 401(g)(2)(B) were deleted or revised to eliminate the provision allowing an incumbent to compel a time-consuming and costly oral evidentiary hearing merely by requesting one.

Suspension/Alternative Certification

In the Board's view, the suspension/alternative certification procedures which would be established under the proposed section 401(g)(2) would serve an important, if not critical, public need. U.S. international aviation policy has emphasized the necessity for obtaining rights from foreign governments for multiple competitive designations in foreign markets, and freedom of carrier management initiatives in pricing. This is in accord with the policy declaration and goals proposed in the bill and previously adopted by the Airline Deregulation Act of 1978 for interstate and overseas air transportation, i.e., "the encouragement, development, and maintenance of an air transportation system relying on actual and potential competition to provide efficiency, innovation, and low prices, and to determine the variety, quality and price of air transportation service" (Section 102(a)(9)). The ability of the public to select among carriers providing alternatives in air transportation services provides the best assurance that the service offered will be the most efficient and lowest cost that can be economically achieved in the marketplace. We have, over the past two years, devoted ourselves to achieving these goals in the international area, and we will continue to do so. These efforts have had remarkable success in achieving liberal air transport agreements with several countries (e.g., Netherlands, Germany, Israel, Belgium, Jamaica, Korea, Singapore, Thailand and Papua, New Guinea).

However, several foreign countries impose restrictions on multiple carrier entry. Indeed, our bilateral agreements with the United Kingdom, Canada, and Mexico, include significant restrictions, including a limitation on designations to a single U.S. carrier in most significant markets, and the right of unilateral suspension of proposed fares. Moreover, even where our bilateral agreements authorize multiple-designation of carriers, the United States has, in the past, upon the designation of an additional carrier, encountered problems securing entrance of a second carrier in the market. Also, there are countries with which we do not have a bilateral agreement, that have made clear that they will accept only one U.S. airline on their routes. The Board and other U.S. Government agencies are making and will, of course, continue to make every effort to liberalize these and all other restrictions. Unfortunately, our views on the benefits of a competitive marketplace are not fully shared by other countries, and prospects for the near term elimination of single designation restrictions (whether imposed by agreement or practice) are not bright.

Under these circumstances, while our efforts to achieve more freely competitive bilaterals will continue unabated, it is highly desirable to develop some means of creating a more competitive environment in limited designation markets. Since even our most restrictive bilateral partners do not usually object to substituting one U.S. carrier for another, section 401(g)(2) represents a method by which the benefits of competition can be achieved in limited designation markets where the alternative of removing the limitations cannot be achieved in the short term. It is based on the general proposition that, where only a single carrier is permitted to provide service in a market, a permanent monopoly right should not be granted to any carrier. To protect the consumer in a limited designation market, an incumbent carrier's authority should be based on a continuing requirement that it provide a better and lower fare service than a potential competitor who proposes to institute service in the market. The very threat of the potential entry of an alternative carrier who might provide better or lower fare service in the market should help to insure that the incumbent carrier is providing the best service that can be economically furnished to the public.

The Board currently has authority to suspend the operating rights of a U.S. air carrier, if required by the public convenience and necessity. Moreover, it was specifically authorized to do so without an oral evidentiary hearing under the

simplified procedure provisions of section 401(p), added by the Airline Deregulation Act of 1978. Nevertheless, the process of carrier selection and substitution of an alternative carrier could be fraught with procedural difficulties and delay, in the absence of a more specific expression of intent by Congress. The greater the procedural difficulties and delay in effectuating remedial action, the less will be the incentive of an exclusive U.S. incumbent carrier to provide innovative low fare service to the traveling public. Section 6 would provide a specific Congressional authorization leaving no question as to Congressional intent and objectives. The procedural barriers would, therefore, be significantly reduced, and the threat of entry of an alternative carrier would become very real. The essential element of a competitive market could, in this way, be created, despite the bilateral limitation on multiple entry.

The new section 401(g)(2) would permit the Board to review authority held by any air carrier, and suspend such authority and grant it to an alternative air carrier, in the event that the Board finds that restrictions arising from a bilateral agreement, or otherwise imposed by a foreign government, prevent the Board from authorizing an additional carrier in the particular market involved, that a qualified applicant has demonstrated that it can and will provide substantially improved service and/or lower fares in that market, and that the suspension and alternative certification of the applicant would otherwise be consistent with the public convenience and necessity. The section would only apply in those markets where the ability of the Board to designate an additional competitive carrier in the market is restricted under the terms of an agreement or by reason of foreign government restrictions; if a competitive carrier could be licensed and designated for service in the market, the provision would not apply. The section provides for the certification of an alternative applicant only where it is established that the applicant's proposed service would be a substantial improvement in terms of the quality of the service or the level of the fares offered, or a combination of both. The Board would not certify an alternative carrier for minor improvements in service or fares, or where the ability and intent of the applicant to provide substantially improved service were not clearly demonstrated.

The Board would, moreover, be required to find that the suspension and alternative certification were otherwise consistent with the public convenience and necessity. The latter provision would take into account various considerations other than the quality and price of the service. For example, whether the incumbent has had its certificate authority long enough to have had an adequate opportunity to develop the market, the feasibility of obtaining prompt licensing of the alternative applicant by the foreign government, the foreign policy and negotiation implications of replacing the incumbent, the fitness of the applicant, the nature of the equipment utilized, and the long term prospects for retention of a desirable low cost service representing substantial improvements in terms of public benefits over that which was previously provided by the incumbent.

In many cases, these considerations would offset the benefits to be achieved by certifying an alternative carrier. The bill anticipates the likelihood that this will occur. Thus, it includes a provision (proposed section 401(g)(2)(C)) which would permit the Board to dismiss an application for suspension and alternative certification if it is not satisfied from the materials submitted with the application, that the applicant is qualified, that it is probable that it would provide substantially improved air service in the restricted market, and that proceeding with consideration of the application would otherwise be in the public interest.

The oral evidentiary hearing requirement

The suspension/alternative certification procedure is a power which would not be used lightly. Indeed, we would anticipate that in most cases the mere existence of the provisions would provide a sufficient threat of potential entry that it would be unnecessary to employ it. However, the effectiveness of the provision as an incentive is dependent on the ability to employ prompt procedures for implementation. To the extent unwarranted procedural impediments are imposed, the threat of entry, and thus the incentive to maximize service and pricing benefits, would be proportionately reduced.

In its current form, the section 401(g)(2)(c) provision, would require an oral evidentiary hearing simply upon the request of the incumbent. This would, we submit, be inconsistent with prompt action. By using this provision, an incumbent could delay the alternative certification proceeding by a year or more, and impose a significant cost burden on the potential applicant. Thus, the inclusion of this

provision in the bill would significantly lessen the threat of potential entry, not only because of the incumbent's ability to slow down the process, but by having a chilling effect on potential applicants who might be deterred from applying because of the long delayed and costly proceeding. The practical effect of this provision would be to compel oral evidentiary hearing procedures in every case, even where clearly not warranted by the facts of the case.

The Airline Deregulation Act of 1978 (Public Law 95-504) deliberately removed the cumbersome oral evidentiary hearing requirements for all certificate proceedings (including section 401(g) suspension proceedings). It did so because it believed such procedures to be an unnecessary impediment to prompt Board action. Modern administrative law concepts recognize that the delays and costs of formal requirements for an oral evidentiary hearing frequently result in a greater deprivation of rights than the privileges which the procedures were designed to protect. This is particularly true in a proceeding, such as here proposed, where it is the paramount rights of the traveling and shipping public which are at stake. These procedural requirements would be a retrogressive step, inconsistent with the procedural concepts incorporated in the Airline Deregulation Act of 1978.

There may well be cases in which oral evidentiary hearing procedures may be required under the circumstances of a particular proceeding. The problem lies in the indiscriminate application of such procedures by section 401(g) (2) (B) to all cases. The procedural determination should, we submit, be made by the Board after evaluating the nature of the contested issues and the comments of all of the parties.

Moreover, there are adequate procedural safeguard's for the incumbent without this provision. Any Board action under these procedures, if not disapproved by the President under section 801, would be subject to full judicial review, including a stay if warranted. We therefore urge the committee to reconsider this provision and either delete it entirely or amend it so that the public's right to good service at reasonable fares is not subordinated to the carrier's interest in retaining authority in a limited designation market which it is serving poorly.

Suspension or revocation of dormant authority

Section 6 of the bill would also add a new section 401(g) (3) which would permit the Board to suspend or revoke authority contained in a U.S. carrier certificate, by summary procedures, if the carrier has served notice that it proposes to suspend all service to the point in question, or where it has not in fact provided any significant service to the point for a 90 day period. This provision is a logical concomitant to the section 401(j) amendments in the Airline Deregulation Act of 1978, which granted air carriers the right to suspend service subject only to submission to the Board and affected communities of advance notice. Particularly where small or limited traffic points are involved, there is little justification for permitting the outstanding existence of unused or dormant authority to act as a disincentive for new entrants to establish service. Also, at foreign points where the right of U.S. carrier multiple designation may be restricted by the terms of an agreement, or by the practicalities of restrictions imposed by a foreign government, there is no justification for continuing unused authority which would create an additional hurdle that could discourage a new applicant from instituting service. The Board may implement the suspension or revocation by summary procedures, without hearing, but with notice and an opportunity for the affected carrier to present its views. Where the authority in question is not being provided by the carrier, a hearing, or even a lesser simplified procedures requirement, would invite procedural delays which would impair the ability of the Board to encourage an alternative carrier to institute service to the point, and would not be justified by reasons of fairness or "due process." This suspension or revocation authority is, nevertheless, permissive, since, at many points, multiple permissive authority, with no obligation for any carrier to provide service, may be the best means to encourage and maintain the maximum competition. The Board has granted such multiple permissive authority, interstate, overseas, and foreign, on several occasions.

LICENSING OF FOREIGN AIR CARRIERS

(Section 7 of the International Air Transportation Competition Act of 1979, amending section 402(b) of the Federal Aviation Act.)

Provisions of S. 1300

Section 7 would amend section 402(b) to authorize the issuance of a foreign air carrier permit to a fit applicant either upon a finding that the applicant is qualified, and has been designated by its government, to perform such foreign air transportation under the terms of an agreement with the United States, or (2) upon a finding that such transportation will be in the public interest. Currently the latter is the only criterion.

Comments

The Board supports this amendment. The negotiation of a bilateral agreement itself represents a determination by the Government of the United States that the grant of route authority provided for under the bilateral is in the "public interest." It is possible that the present standard could, on occasion, result in lengthy proceedings for determination of a contested question of the public interest in circumstances where that question had previously been determined in the bilateral negotiations. This provision would avoid an unnecessary relitigation of the public interest question. Since the Board is empowered, but not required, to issue a permit upon such a finding, it would still retain the power to withhold a permit where issuance would not be in the public interest—for example, where the foreign government was not complying with its obligations under an international agreement.

NOTICE OF PERMIT APPLICATION

(Section 8 of the International Air Transportation Competition Act of 1979, amending section 402(d) of the Federal Aviation Act.)

Provisions of S. 1300

Section 8 would amend section 402(d) to delete the present requirement for notice and hearing on a section 402 permit application.

Comments

The Board strongly supports this amendment, which is consistent with the provisions of section 402(h) already added by the Airline Deregulation Act of 1978. Section 402(h) provides for the Board to promulgate rules establishing simplified procedures involving notice and/or opportunity for all interested persons to file the appropriate written evidence and argument, but which explicitly does not require an "oral evidentiary hearing." The questions involved in the grant of or conditioning of foreign air carrier permits are primarily matters of foreign policy as to which an oral evidentiary hearing is unnecessary and merely results in unwarranted delay. The amendments do not preclude the holding of an oral evidentiary hearing if the Board considers that procedure to be appropriate, but the statutory requirement that the Board do so is eliminated. In effect the amendment merely clarifies the intent of the already adopted section 402(h) "simplified procedures."

SUMMARY SUSPENSION OF PERMITS

(Section 9 of the International Air Transportation Competition Act of 1979, amending section 402(f) of the Federal Aviation Act.)

Provisions of S. 1300

Section 9 would add a new section 402(f), which would grant the Board authority, subject to approval by the President, to summarily suspend, modify, condition or limit the operating rights of a foreign air carrier if the Board found that the government, aeronautical authorities, or foreign air carrier of any foreign country had, over the objections of the U.S. government, impaired U.S. carrier operating rights or engaged in unfair, discriminatory, or restrictive practices having a substantial adverse competitive impact upon U.S. carriers. In addition, the Board would, subject to Presidential approval, be authorized to restrict operations by a third country carrier between the offending country and the United States if necessary to make the provision effective.

Comments

The Board strongly supports this amendment. The new summary suspension provisions of section 402(f) (2) will significantly contribute to the Board's ability to protect U.S. carriers' interests against anticompetitive actions by foreign governments. It is to be anticipated that as the United States moves toward a more competitive international aviation regime there will be occasions where further-

ance of the United States international aviation policy will require confrontations with foreign nations who are determined to maintain restrictive controls on capacity and rates, with governmentally prescribed divisions of the market between the carriers of the two countries. If such a regime is legal under the existing bilateral, negotiation (not confrontation) will be the course to pursue. But, in many cases the imposition of restrictions are contrary to the bilateral, and it may be that negotiation, arbitration, or other means cannot satisfactorily resolve the matter. In those circumstances, to accede to the pressures of foreign governments which are attempting to impose such a regime could seriously jeopardize our ability to maintain the rights we have under bilateral agreements and to achieve the U.S. goals of a competitive international market. However, most foreign governments possess the power to impose by government edict whatever restrictions on operations to their territory they choose. If the United States Government is unable to move effectively to counter such restrictions, the result is likely to be a tightly governmentally controlled capacity and rate regime with virtually no competition in the marketplace. To successfully counter the restrictive moves of such governments, it is essential that the U.S. Government have available to it the same powers which foreign governments have, and in fact exercise. Too often the United States is faced with an inability to cope with such foreign government restrictions because the delays inherent in our procedural processes render U.S. counteraction, or threats of counteraction, untimely and, therefore, ineffective.

The Board has developed procedures under Part 213 of its regulations (14 CFR Part 213, which was adopted as a condition to all foreign air carrier permits) that allow it to limit foreign air carrier schedules, subject to disapproval of the President within 10 days, in the event of foreign government impairment of U.S. carrier operating rights over the objections of the United States Government. Experience under Part 213 has demonstrated that an effective retaliatory power can and does act as a persuasive deterrent against foreign government restrictions. Moreover, the right of the United States to take proportional countermeasures in response to restrictive action by a foreign government in violation of a bilateral agreement (even when such countermeasures would, in the absence of the foreign government violation, themselves constitute a violation of the agreement) has recently been sustained by an international arbitration tribunal as consistent with recognized international law principles. Award of Arbitral Tribunal in the International Arbitration between the United States and France, December 9, 1978. Whether or not these internationally sanctioned countermeasures be construed as a justified violation of a bilateral, or action which because internationally sanctioned would not constitute a violation of a bilateral, we believe it is clear that any such authorized countermeasures would in no way be inconsistent with the requirement of section 1102 of the Act, that the Board act "consistently with any obligation assumed by the United States . . ." in an intergovernmental agreement.

The Part 213 procedures, although a useful and effective remedy in the absence of other Board authority to take prompt retaliatory action against foreign government restrictions, is itself limited. It permits limitations on the foreign carriers' schedules, but does not authorize other types of restrictions which might be more effective as a retaliatory deterrent. For example, the Board could, under the section 402(f) (2) amendment, summarily impose various limitations, conditions, or other restrictions which might automatically become effective upon the foreign government's implementation of restrictions against U.S. carriers. If foreign governments alone have the power to summarily revoke or modify license authority granted to U.S. carriers, while the United States Government is unable to exercise equivalent powers over the license authority granted to their carriers in a timely fashion, the foreign governments will, in effect, be able to unilaterally dictate the terms and extent of competition in international markets.

The amendment would grant the Board the power to take reciprocal summary action against a foreign carrier's license, but subject to specific safeguards. The action would be authorized only where the foreign government, aeronautical authorities or carriers, over the objections of the Government of the United States, impaired or denied operating rights of United States carriers, or engaged in unfair, discriminatory, or restrictive practices with a substantial adverse competitive impact upon U.S. carriers. Moreover, the Board's action would not become effective in the absence of Presidential approval. Similarly, since the Board is required under section 1102 of the Act to act consistently with

obligations assumed by the United States under an air transport agreement, such action, to the extent inconsistent with the provisions of a bilateral air transport agreement, would be undertaken only as a countermeasure against a prior violation, or threatened violation of the agreement by the foreign government, i.e., in a manner consistent with principles of international law as recently affirmed in the U.S.-France arbitration.

This subsection would also permit the Board, to the extent it finds necessary to make the operation of its summary retaliatory suspension or amendment powers effective, to restrict, without hearings, operations between the offending foreign country and the United States by any foreign carrier of a third country, notwithstanding the provisions of any permit. This provision would be important in the event that a confrontation should escalate to a mutual suspension of operating rights between the two countries. Particularly in view of the prevalence of pooling arrangements between foreign carriers, situations could arise where suspensions of rights of only the carriers of the two countries involved, with the traffic simply being diverted to third country carriers, could result in a much more severe impact on U.S. carriers than on the foreign government's carriers. With effective statutory procedural remedies to prevent such a result, this government would be in a position to minimize the risk that such escalation would actually take place.

FILING OF REPORTS

(Section 10 of the International Air Transportation Competition Act of 1979, amending section 407 (a) of the Federal Aviation Act.)

Provisions of S. 1300

Section 10 would empower the Board to require reports from foreign air carriers to the same extent that it may now require them from U.S. air carriers under section 407 (a). Specifically, the Board would have the power to require periodic or special reports from U.S. air carriers or foreign air carriers, to require them to answer questions upon which the Board considers information to be necessary, and to require them to file copies of any contract, agreement, understanding or arrangement between an air carrier or foreign air carrier and any other carrier or person in relation to any traffic affected by the provisions of the Act.

Comments

The Board supports this amendment. In a competitive international marketplace, it will be particularly important that the Board have a means to obtain financial, traffic, or other information which may be of critical significance in resisting foreign government pressure to impose restrictions on the freedom of carrier managements to increase capacity or lower fares. If a competitive international environment is to be maintained, the Board should have power to secure information as to the existence of potential anticompetitive agreements which could place U.S. carriers at a significant competitive disadvantage. While we recognize that such authority must be exercised with great discretion, the Board should have statutory tools to obtain knowledge of financial, traffic, or other data, or of contracts or agreements not subject to section 412. The Board does have general investigatory, subpoena and deposition powers (sections 1002 and 1004), and can require foreign carriers to file information and data under its general regulatory powers (section 204(a)), or as a condition to a foreign air carrier permit (section 402(c)). Further, the failure to comply with the requirements under these other powers may be enforced by withholding or withdrawal of authority or dismissal or adverse presumptions in a pending proceeding. We believe it is clear that the proposed section 407(a) provision would not in any way supplant or limit the exercise of these other powers. However, the distinction drawn between U.S. and foreign carriers in section 407(a) has the unfortunate effect of unnecessarily generating resistance among foreign carriers to the legitimate exercise of the Board's information-gathering authority under other sections of the Act.

AGREEMENTS AFFECTING FOREIGN AIR TRANSPORTATION

(Sections 11 and 12 of the International Air Transportation Competition Act of 1979, amending section 412 of the Federal Aviation Act.)

Provisions of S. 1300

Section 11 would eliminate separate provisions dealing with agreements affecting foreign air transportation, and would apply to all agreements those standards adopted in the Airline Deregulation Act of 1978 for agreements affecting interstate and overseas air transportation. Only the provision that currently precludes Board approval of capacity and rate agreements (the present section 412(c) (2) (A) (iii)) would be limited in its application to agreements affecting interstate and overseas transportation.

The substantive effect would be that the filing of foreign agreements would become permissive rather than mandatory. Of course, all agreements, domestic and international, would remain within the enforcement jurisdiction of both the CAB and the Department of Justice.

The Board's approval of anticompetitive agreements would also be made subject to the so-called "modified local cartage" standard, which precludes approval of an agreement which substantially reduces or eliminates competition unless the Board finds that the agreement is necessary to meet a serious transportation need or to secure important public benefits, and that these needs and benefits cannot be secured by reasonably available alternative means having materially less anticompetitive effects. The burden of establishing the reduction of competition and the availability of less anticompetitive alternatives would be placed upon the parties opposing the agreement, while the burden of proving a serious transportation need and important public benefits (including foreign policy considerations) would be placed upon the parties defending the agreement. Findings on these matters would be included in any order approving or disapproving the agreement.

(Section 12 would amend the headings and table of contents of section 412 of the Federal Aviation Act to reflect the amendments made in section 11.)

Comments

The Board supports this amendment. The modified local cartage standard for approving anticompetitive agreements has already been applied under Board precedents to agreements affecting foreign air transportation, as well as to those affecting interstate and overseas air transportation. It should therefore be incorporated into the statute for all agreements. Under the existing law, antitrust immunity is granted only after Board approval coupled with a specific grant of immunity under section 414. Thus, the antitrust laws remain fully applicable to any agreement not filed with the Board (or even to approved agreements for which no specific section 414 exemption is granted). We believe the protection of the antitrust laws is sufficient to support permissive filing of agreements affecting foreign air transportation in the same way that Congress concluded it would be for agreements affecting interstate and overseas air transportation in the Airline Deregulation Act of 1978. It may be noted that under section 10 of the bill, amending section 407(a) of the Act, the Board would have the power to require foreign carriers to file any such agreement for information.

U.S. AIR CARRIER LEASES OF FOREIGN AIRCRAFT AND EMERGENCY FOREIGN AIR CARRIER OPERATIONS IN INTERSTATE AND OVERSEAS AIR TRANSPORTATION

(Section 13 of the International Air Transportation Competition Act of 1979, amending section 416(b) of the Federal Aviation Act.)

Provisions of S. 1300

Section 13 of S. 1300 would add a new paragraph 7 to section 416(b) of the Act ("Exemptions") which would permit the Board to authorize foreign air carriers to lease aircraft (with or without crew) to U.S. air carriers for use in interstate and overseas (i.e., between two points in the United States), as well as in foreign, air transportation. Section 20 of the bill makes a corresponding amendment to section 1108(b) of the Act to permit such operations if authorized under this section.

Comments

For the reasons set forth below, the Board strongly supports this proposal. However, we would suggest that an additional subparagraph be included in this section to permit the Board to grant emergency fill-up or substitute service authorizations to foreign carriers where necessary to avoid hardship with respect

to interstate or overseas (i.e., between two points in the United States) traffic which cannot otherwise be accommodated because of unusual circumstances.

Under section 1108(b) of the Act (which generally requires Board approval for navigation of foreign aircraft in U.S. airspace) the Board is precluded from granting authority for foreign aircraft to "...take on at any point within the United States persons, property or mail carried for compensation or hire and destined for another point in the United States." The section currently precludes a U.S. air carrier from operating foreign registered aircraft in interstate and overseas air transportation (i.e., between two points in the United States), even where the only foreign involvement is the lease of the bare hull of the aircraft (i.e., without crew).

Section 402(a) of the Act also provides a limitation upon the lease of foreign aircraft with crews by U.S. air carriers for domestic air transportation operations. The section authorizes the Board to grant a foreign air carrier permit only for "foreign air transportation." Under traditional concepts (see Part 218 of the Board's Regulations, 14 C.F.R. 218) a lease of an aircraft with crew—even where the service is performed on behalf of another direct air carrier which alone holds itself out as conducting the operation, and which exercises control over most phases of the operation—is considered to be a charter of the aircraft by the foreign air carrier to the U.S. air carrier. The operation would, therefore, constitute a charter by the foreign air carrier in interstate or overseas air transportation (i.e., between two points in the United States), and hence would be precluded by the limitation of the current provisions of section 402(a) to authorizations for "foreign air transportation."

If we are to achieve our objective of competitive air service with the lowest fares and rates which can be economically provided, it is important that arbitrary and unnecessary restrictions on the utilization of aircraft (i.e., solely from the fortuitous circumstances of the country of registration) be avoided. Moreover, with the extremely high cost of modern aircraft (\$50-\$60 million for a B-747 with spare parts) maximum efficiency of operations may well be dependent upon a relatively free exchange of aircraft between U.S. and foreign air carriers. Modern (but very expensive) wide bodied aircraft permit efficiencies unobtainable with older narrow bodied aircraft, but only if the aircraft are fully utilized. Therefore, removal of artificial barriers to U.S. carrier leases of foreign aircraft, with or without crews, can contribute significantly to more efficient, lower cost operations. The reduction of such barriers may be particularly important in facilitating the entry, or potential entry, of small U.S. air carriers in domestic markets utilizing equipment which can compete effectively with their more powerful and well-financed competitors.

The addition of the new paragraph 7 provided for in section 13 of S. 1300, would permit the Board, to the extent it finds that such action is required in the public interest, to exempt a foreign air carrier from the requirements or limitations of the Act, including sections 1108(b) and 402(a), to the extent necessary to authorize a foreign air carrier to lease or charter aircraft, with or without crew, to a U.S. direct air carrier for the performance of services by or on its behalf in interstate and overseas air transportation, as well as in foreign air transportation, pursuant to an agreement approved by the Board under section 412 of the Act.

The Section 13 amendment also provides that the leased aircraft would be "subject to such safety regulations as may be prescribed by the Secretary for such operations." This would permit the Secretary of Transportation to apply standards of safety applicable to U.S. registered aircraft to any foreign registered aircraft operated in U.S. domestic air transportation by or on behalf of a U.S. air carrier. Under the Convention on International Civil Aviation (the Chicago Convention, 61 Stat. 1180) foreign registered aircraft are required to meet minimum safety standards set forth in Annexes to that Convention. In certain respects the safety standards applied to U.S. registered aircraft under the regulations of the Federal Aviation Administration may be higher than the minimum standards prescribed by the Convention on International Civil Aviation. The Secretary of Transportation may conclude that a foreign registered aircraft operated on behalf of a U.S. air carrier in domestic air transportation should comply with the higher standards applied to U.S. registered aircraft. On the other hand, foreign aircraft of various countries may be subject to different but equally stringent safety standards. With respect to aircraft registered in the latter countries, the Secretary may conclude that the foreign registered aircraft

could be safely operated under the safety standards of their country of registration.

We believe that the Board should be given additional exemption authority to authorize foreign air carriers to carry traffic between two points in the United States in other unusual circumstances. Recently we have encountered severe disruptions of the domestic and international air transportation system by reason of the grounding of the DC-10 aircraft and the United Airlines strike. When such emergencies occur, thousands of passengers may be stranded, sometimes for days, and an even greater number have their vacation or business plans disrupted because of the inability to find seat capacity on U.S. aircraft. Similarly, perishable cargo may stack up and businesses may be severely disrupted because of the absence of air freight capacity in such emergencies. Even the mail may be disrupted. It just makes no sense for passengers to be stranded and businesses disrupted while foreign aircraft are flying half empty between U.S. points, but are unable to carry the traffic because of the absence of an authorization for local transportation. Similarly, particularly in the case of overseas air transportation, foreign aircraft overflying a U.S. point (i.e. Qantas regularly directly overflies Pago Pago, America Samoa) would be more than willing to make an unscheduled stop to accommodate standard passengers or backlogged cargo in emergencies.

What we are proposing is a permissible authorization, very narrow in scope. The Board would be permitted to exempt foreign carriers from the provisions of the Act (including the limitations of section 402(a) and 1108(b) as necessary to enable them to carry traffic in interstate or overseas air transportation (i.e., between two points in the United States), but only where the Board finds that the following pre-conditions are met:

- (1) The existence of unusual circumstances;
- (2) The necessity for the exemption to avoid undue hardship arising out of those circumstances;
- (3) The inability to otherwise accommodate the traffic (i.e., no U.S. carrier is able to carry the stranded traffic);
- (4) The authorization would, by its terms, be limited to a period not in excess of five days after those circumstances have ceased.

Where these conditions are not met; for example, where U.S. carriers could, with appropriate authorizations or exemptions, accommodate the traffic, the Board would not be authorized to grant the emergency exemption.

Specifically we propose that the authorization currently in section 13 of S. 1300 ("to lease or charter aircraft, with or without crew, to a United States direct air carrier—") be included as a subparagraph (i), and a new subparagraph (ii) be included, reading:

"(ii) to carry passengers, cargo or mail in interstate or overseas air transportation, where the Board finds that such an authorization is necessary to avoid undue hardship with respect to traffic which cannot otherwise be accommodated because of unusual circumstances: *Provided*, That no such authorization shall extend more than five days after those circumstances were ceased."

As amended, in accordance with our proposal, Section 13 would read in its entirety as follows:

"SEC. 13. Section 416(b) of the Federal Aviation Act of 1958 (49 U.S.C. 1386) is amended by adding at the end thereof the following new paragraph:

"(7) The Board may by order, to the extent it finds that such action is required in the public interest, exempt any foreign air carrier from the requirements or limitations of the Act, to the extent necessary to authorize the foreign air carrier:

(i) to lease or charter aircraft, with or without crew, to a United States direct air carrier for the performance of service in interstate, overseas or foreign air transportation by or on behalf of such air carrier under an agreement approved by the Board subject to such safety regulations as may be prescribed by the Secretary for such operations.

"(ii) to carry passengers, cargo or mail in interstate or overseas air transportation, where the Board finds that such an authorization is necessary to avoid undue hardship with respect to traffic which cannot otherwise be accommodated because of unusual circumstances: *Provided*, That no such authorization shall extend more than five days after those circumstances have ceased."

FOREIGN RATES

(Sections 14 and 15 of the International Air Transportation Competition Act of 1979, amending sections 1002(j) (1) and 1002(j) (2) of the Federal Aviation Act).

Provisions of S. 1300

Section 14 would make four technical changes in the Board's authority with regard to proposed tariffs under section 1002(j) (1) of the Federal Aviation Act: (1) it would allow the Board to suspend, reject, or cancel a new rate or fare proposed by a foreign air carrier, with or without hearing, under a simple "public interest," standard; (2) it would delete a provision precluding the suspension, rejection or cancellation of an "initial tariff" filed by a U.S. or foreign carrier, and add a provision allowing a carrier whose initial tariff is suspended, rejected or cancelled to file a tariff embodying the currently existing, unsuspended rate of any U.S. air carrier engaged in the same foreign air transportation pending the effectiveness of a new tariff; (3) it would modify the provision (section 1002(j) (1)) that, during the suspension or after the rejection or cancellation of a proposed tariff, the carrier shall use the rate in effect immediately prior to the filing of the new tariff, to provide that, if the suspended, rejected or cancelled tariff were seasonal, the tariff to be used is the one in effect for the preceding corresponding season; and (4) it would add a provision that the Board may decline to suspend or cancel a rate or fare under the section if it concludes that such action would not be in the public interest or would be inconsistent with obligations of the United States under an agreement or understanding with a foreign country.

Section 15 would amend section 1002(j) (2) to allow the Board to suspend or cancel an existing tariff of a foreign air carrier, with or without hearing, if such action is in the public interest.

Comments

The Board wholeheartedly supports the proposed amendments, with the exception of the amendment listed as number (3) above.

Sections 1002(j) (1) and (2) would be amended to permit the Board to suspend a proposed or existing tariff of a foreign air carrier if such action is found to be in the public interest. Further, the Board would be able to cancel any such tariff, without hearing, on the same grounds. The proposed amendments will avoid a possible construction that the Board's authority to suspend a tariff proposed by a foreign air carrier would be limited to a tariff found to be unlawful, or potentially unlawful, under traditional rate concepts, i.e., unreasonable, discriminatory, preferential or prejudicial. Under most currently effective bilaterals, foreign governments are entitled to prevent the inauguration of proposed fares of U.S. carriers with relatively few restrictions which are not, in many cases, confined to traditional concepts of unlawful rates. If the United States is to be successful in encouraging an international environment where there is greater freedom for carrier managements to propose innovative low fares with a minimum of government intervention, it is essential that the United States Government possess the same power held by foreign governments to exercise fully the rights under bilateral rate provisions which have relatively few restrictions on rate suspension. The very existence of the power will provide an effective tool to encourage acceptance of innovative low fares proposed by U.S. carriers, and hopefully will result in less need for rate suspensions.

The provision in section 1002(j) (1) which currently prohibits suspension of an "initial tariff" is intended to avoid a preclusion of service as a result of the suspension of a tariff, because no tariff would be in effect after the suspension. However, in section 1002(j) (2) (applicable to existing tariffs), the same problem is resolved by providing for the carrier to file any rate, not suspended, of a U.S. carrier in the market. S. 1300 would adopt the latter solution for section 1002(j) (1), and eliminate the prohibition, thereby giving the Board the added flexibility to suspend an "initial tariff."

When a proposed tariff is suspended under section 1002(j) (1), the applicable fare or rate is the one in effect immediately preceding the suspension. The bill proposes to modify this provision to apply the tariff for the immediately preceding corresponding season, when a suspended tariff is seasonal. On reflection, we believe it would be best to delete this modification from the legislation. Our bi-

lateral agreements generally provide that when a proposed fare or rate is suspended, the existing fare or rate will continue in effect. No provision is made for seasonal fares. Thus, the amendment could result in the anomolous situation of a different fare being applicable under the statute than under the bilateral agreement. We would, therefore, suggest that the current provision be modified to provide a specific exception where "otherwise provided by an intergovernmental agreement," to avoid any possible inconsistency with such agreements or section 1102 of the Act.

Moreover, the need for the seasonal provision is more apparent than real. The Board is concerned with fares or rates that are unreasonably high. As the summer peak season fares are higher than off-peak winter or shoulder fares, the primary impact of the fare provision would relate to suspension of a peak season summer fare. Under the current provision, the carrier would apply the immediately preceding lower shoulder or winter fare pending an acceptable filing, and air transport consumer would benefit.

Finally, we wholeheartedly support the concept in the final sentence of section 14 (section 1002(j)(1)) amendment which is intended to leave no doubt that international agreements providing for mutual agreement for the suspension of a tariff are not in any way inconsistent with the Act. We have recently concluded such agreements with Israel and Belgium. However, the objective might better be achieved by including the provision in section 1002(c), which could be construed as obligating the Board to take action against an unlawful rate despite bilateral provisions to the contrary. It is clear that under section 1002(j) the Board's rate suspension power is wholly discretionary, and that pursuant to section 1102 the Board is not only entitled, but obligated, to exercise its rate powers only in accordance with U.S. obligations under an international agreement. But by amending section 1002(c) of the Act to read in pertinent part as follows, any possibility of a contrary construction would be removed:

" * * * the Secretary of Transportation or the Board shall, *subject to section 1102 of this Act*, issue an appropriate order to compel such person to comply therewith." [Italic portion represents language added by this proposed amendment.]

RATEMAKING CONSIDERATIONS IN FOREIGN AIR TRANSPORTATION

(Section 16 of the International Air Transportation Competition Act of 1979, amending section 1002(j)(5) of the Federal Aviation Act.)

Provisions of S. 1300

Section 16 would amend section 1002(j)(5), which sets forth the factors which the Board is to consider in rejecting or cancelling rates in foreign air transportation, to add a new subparagraph:

"(G) The reasonably projected future costs and revenues of the carriers for a reasonably limited future period during which the rate would be in effect."

Comment

The Board endorses this amendment. In the Airline Deregulation Act of 1978, Congress amended section 1002(d)(4) to include language which is virtually identical to that proposed in this bill as an amendment to section 1002(j)(5). This was consistent with the Board's policy of considering projected costs in deciding whether to allow domestic fare increases. The Board's policy represented an effort to limit the frequency of fare-increase requests which we found posed a considerable administrative burden for the carriers and travel agents, constituted an unnecessary drain on the Board's time and resources, and resulted in considerable confusion for the traveling public. (See Order 77-9-94, September 22, 1977.) We believe the same concept should apply to foreign air transportation.

INTERNATIONAL AGREEMENTS

(Sections 17 and 18 of the International Air Transportation Competition Act of 1979, amending section 1102 of the Federal Aviation Act.)

Provisions of S. 1300

Section 17 would add three new subsections to section 1102. The first, "Goals for International Aviation Policy", directs the Secretaries of State and Transportation and the Board to develop an international negotiating policy which "emphasizes the greatest degree of competition that is compatible with a well-

functioning international air transportation system." Among other things, this policy would include the freedom to offer fares that correspond to demand, minimizing charter restrictions, maximizing multiple permissive entry for U.S. carriers, eliminating operational restrictions, the integration of international and domestic air transportation, increasing nonstop U.S. gateways, increased access to U.S. points for foreign carriers if exchanged for and permanently linked to benefits of similar magnitude for U.S. carriers or the traveling public, and the elimination of discrimination and unfair competitive practices faced by U.S. airlines in foreign air transportation.

The second creates an International Aviation Advisory Council to assist in developing such an international negotiating policy. The Council would be made up of representatives of the President's Domestic Council, the Departments of Commerce and Defense, airport operators, scheduled and charter air carriers, airline labor, consumer interest groups, travel agents and tour operators, and others which the President deems appropriate. The Council would advise the Secretaries of State and Transportation and the Board on both broad policy goals and individual negotiations when appropriate.

The third would require the President to grant observer status at international aviation negotiations to at least one representative of each House of Congress if requested in advance in writing.

(Section 18 would merely amend the table of contents of the Federal Aviation Act to reflect the amendments made in section 17.)

Comments

The bill's Goals for International Aviation Policy will firmly establish for the United States a procompetitive policy for the conduct of international air transportation negotiations. This Congressionally stated policy should aid the U.S. Government and the Board in their efforts to stimulate effective competition in foreign air transportation.

While we wholeheartedly support the objective of seeking the views of the private sector as to major international negotiating policy we question the necessity for the formal statutory machinery established by the proposed International Aviation Advisory Council. The Board and the Executive Agencies participating in the international aviation committee which coordinates U.S. positions for international negotiations currently go to great lengths to insure that private sector views are known and considered. To formalize this procedure may, however, run counter to the objective, since it could reduce the flexibility, and therefore make more cumbersome, the obtaining of such views. Certainly all the specified groups would not have an interest in all negotiations. We would suggest, therefore, that if a requirement is included at all it be general rather than specific, and it be made clear that consultation is only required "where appropriate" and not for each individual negotiation. Otherwise the negotiation process could be come so cumbersome that the objective of fostering international competition could be seriously impaired.

The Board welcomes the participation of Congressional observers at international negotiations, although we do not perceive a need for a statutory provision to that effect.

WITHHOLDING INFORMATION FROM PUBLIC DISCLOSURE

(Section 19 of the International Air Transportation Competition Act of 1979, amending Section 1104 of the Federal Aviation Act.)

Provisions of S. 1300

Section 19 would delete the phrase "and adversely affect the competitive position of any air carrier in foreign air transportation", from the second sentence of section 1104 (dealing with the withholding from public disclosure of information prejudicial to the formulation and presentation of U.S. positions in international negotiations). This section would, however, require that "the effect of the proposed withholding on competition in air transportation" be considered.

Comments

The Board endorses this proposal. The Airline Deregulation Act of 1978 amended section 1104 to authorize the Board, the Secretary of State, or the Secretary of Transportation, to withhold information from public disclosure, "if disclosure of such information would prejudice the formulation and presentation of the positions of the United States in international negotiations and adversely

affect the competitive position of any carrier in air transportation." It appears that both criteria, the prejudice to positions in international negotiations, and the adverse effect on the competitive position of U.S. carriers, may have to be met before the Board would be authorized to withhold such information from public disclosure. There could well be situations where disclosure of information would prejudice the formulation and presentation of U.S. positions in international negotiations, without adversely affecting the competitive position of any air carrier in air transportation.

One reason this difficulty arises is that there is no necessary link between the "formulation and presentation" of U.S. positions and the competitive position of U.S. air carriers. Many U.S. interests, including those of our carriers, are taken into account before the ultimate U.S. position is reached. It is even possible, given an overriding foreign policy consideration, that a U.S. position in international aviation negotiations would be contrary to the economic interests or competitive postures of U.S. carriers. Thus, there is a need to protect information relating to the "presentation and formulation of U.S. positions" which is not linked to the competitive position of the carriers. An example would be unsolicited information from a public interest or consumer group which is not participating in the delegation. The information, if disclosed, could seriously prejudice the U.S. in its negotiations, but, nonetheless, absent the proposed modification of section 1104, there might be no available Freedom of Information Act exemption which would permit withholding it.

Another problem is that foreign governments may refuse to release information relating to their carriers unless the information were withheld from public disclosure. The release of such information might not adversely affect the competitive position of U.S. air carriers under some circumstances, but would certainly prejudice negotiations for the mutual exchange of such traffic information. Being deprived of competitively useful information might be construed as not the kind of affirmative harm contemplated by the statute's standard of "adversely affect the competitive position." Such information may be important as a prelude to international negotiations of traffic rights, or even as a necessary precedent to a liberal form bilateral agreement with the removal of rate and capacity restrictions. It would seem that, under such circumstances, the Board should have authority to withhold information as the only means to acquire the traffic data of the foreign government's carrier for the benefit of all air carriers and the public. For these reasons, the Board endorses the deletion of the second criteria, "and adversely affecting the competitive position of any air carrier in air transportation".

At the same time, the bill properly recognizes that there may be situations where the withholding of legitimate "negotiation-related" information could have an adverse competitive impact. For example, new entrants to a market who are denied protected data which established carriers already possess might be at a significant competitive disadvantage. This difficulty is wisely avoided by providing that, in making the determination as to whether information should be withheld from public disclosure, "the Board or the Secretary, as the case may be, shall consider the effect of the proposed withholding on competition in air transportation." This provision should be sufficient to avoid circumstances where the withholding of information from full public disclosure would be detrimental to only certain carriers such as new entrants in a market. An insignificant impact on competition would not prevent the Board from withholding information from public disclosure, where a significant adverse impact might. Each withholding would be done on a case-by-case basis.

OPERATION OF FOREIGN REGISTERED AIRCRAFT IN INTERSTATE AND OVERSEAS AIR TRANSPORTATION

(Section 20 of the International Air Transportation Competition Act of 1979, amending Section 1108(b) of the Federal Aviation Act.)

Provisions of S. 1300

Section 20 amends the prohibition of Section 1108(b) precluding the carriage of commercial traffic between two U.S. points by foreign aircraft to provide an exception to the extent authorized by the Board under the proposed new section 416(b) (7).

Comments

This amendment is a corollary to Section 13 of the bill which would amend section 416(b) by adding a new section (7) to permit the Board to authorize

foreign air carriers to lease aircraft, with or without crew, to U.S. carriers for utilization by or on behalf of the U.S. air carriers in their interstate and overseas air transportation services (between two points in the United States). We have, in addition, proposed that the new section 416(b)(7) also authorize the Board to permit foreign carrier carriage of traffic in interstate and overseas air transportation in unusual circumstances, where necessary to avoid hardship with respect to traffic which cannot otherwise be accommodated. This amendment would merely make explicit the exception from the section 1108(b) domestic traffic prohibitions which would be granted by the section 416(b)(7) exemptions (section 13). The exception is limited strictly to situations in which a section 416(b)(7) exemption was granted, and would not authorize foreign carriers to carry commercial traffic between U.S. points under any other circumstances.

AMENDMENTS TO THE "FLY AMERICA ACT"

(Sections 21 and 22 of the International Air Transportation Competition Act of 1979, amending section 1117 of the Federal Aviation Act.)

Provisions of S. 1300

Section 1117 currently requires that official U.S. Government air travel between a place in the U.S. and a place outside the U.S., and between two places both of which are outside the U.S., be by a U.S. certificated carrier "to the extent service by such carriers is available." The Comptroller General is directed to disallow any expenditure for transportation on a noncertificated carrier "in the absence of satisfactory proof of the necessity therefor."

Section 21 of the bill would modify this prohibition in two respects: The standard for use of certificated carriers between two points both of which are outside the U.S. would be relaxed to provide, "to the extent service by such carriers is reasonably available," instead of "... is available," although the previous standard would remain applicable for transportation between the U.S. and a point outside the U.S. A new provision would also be added creating an exception to the requirement that U.S. carriers be used exclusively for official U.S. Government transportation in situations where a bilateral or multilateral air transport agreement provides reciprocal rights for U.S. certificated carriers to provide transportation for foreign government official travel or shipments.

Finally, a technical change would be made to the directive to the Comptroller General. In light of the above amendments, transportation "in violation of this section" is substituted for transportation "on an air carrier not holding a certificate."

Comment

The Board believes the proposed amendments to the "Fly America Act" (Section 1117 of the Federal Aviation Act) is a step in the right direction, although we would prefer to see section 1117 deleted in its entirety. A statutory provision which arbitrarily funnels a significant portion of one country's air travel to the carrier of that country's nationality is discriminatory, can result in a less efficient overall air transportation system than might otherwise be the case, and makes it very difficult for the United States to resist similar provisions imposed by foreign governments which discriminate in favor of their own carriers. To the extent that it encourages the perpetuation of similar laws in other countries, the "Fly America" provision may be detrimental, since U.S. carriers would seem to have more to lose than foreign carriers when such provisions are generally in effect for all countries. Although official U.S. government travel and shipping represents only a small portion of U.S. originating air traffic, for many foreign countries such traffic will represent virtually the entire market, and laws such as these could entirely eliminate U.S. air carriers from participation in such foreign originating traffic. Even where foreign government traffic does not constitute the entire market, the existence of a number of foreign quasi-governmental business corporations, whose personnel are required to use their flag carrier, could represent a major proportion of the foreign originating traffic. The proposed exception to the "Fly America" provision, when an agreement reciprocally lifts such restrictions, will partially remedy the situation, but in our view the very limited benefits of the provision for our carriers cannot justify the wholly disproportionate resulting inconvenience and expense for government travelers and shippers and the negative discriminatory aspects of the provision.

The liberalization of the standard requiring the use of certificated carriers between points in foreign countries is also an improvement, although unnecessarily limited in scope. While the current standard obviously incorporates a con-

cept of reasonableness of availability, an even more relaxed standard for transportation between two foreign points clearly seems warranted. This is particularly true since U.S. carrier service between two foreign points, even if it exists, may be very limited, thereby unnecessarily aggravating the wholly disproportionate inconvenience and expense for official government travel.

INTERNATIONAL AIR TRANSPORTATION FAIR COMPETITIVE PRACTICES ACT OF 1974

(Section 23 of the International Air Transportation Competition Act of 1979, amending section 2 of the International Air Transportation Fair Competitive Practices Act of 1974.)

Provisions of S. 1300

Section 23 would add a new paragraph (b) to section 2 of the Fair Competitive Practices Act of 1974, which gives the Board broad powers to devise effective retaliatory measures against unfair, discriminatory, or restrictive practices of foreign governments or carriers. U.S. air carriers and government agencies could file complaints with the Board, or the Board could act on its own initiative, in applying remedial measures. The Board would be required to act on any complaint within 30 days, by approving it, denying it, dismissing it, or setting it for hearing. Any affected air carrier or foreign air carrier would be entitled to reasonable notice and whatever opportunity to submit written evidence and argument is consistent with the 30-day time limit. The Board would be required to consult with the Departments of State and Transportation before taking final action, and the action would be subject to Presidential review under section 801 of the Federal Aviation Act. Board action would be predicated on a finding that the foreign government or carrier (1) engages in unjustifiable or unreasonable discriminatory, predatory, or anticompetitive practices against a United States air carrier, or (2) imposes unjustifiable or unreasonable restrictions on access of a United States air carrier to foreign markets.

Comments

The Board supports this amendment in principle, but we do have serious reservations about the timing for action on complaints. We feel that expanded powers to adopt countermeasures against discriminatory practices would be useful, but that hasty, ill-timed action could be counterproductive and unwise.

The bill provides that, upon a finding of unfair, discriminatory, or restrictive practices, the Board may take such action as it deems to be in the public interest to eliminate the practices, including actions against a foreign carrier's permit authority. The provision would, as we construe it, act as a jurisdictional base for specific Board action even if not otherwise specifically included under the various provisions of the Federal Aviation Act. The grant of additional power to take specific action will, we believe, constitute a valuable tool to combat unfair competitive practices or unreasonable restrictions.

The amendment would give government agencies and U.S. carriers an effective forum through which to initiate proceedings which could ultimately enhance the ability of the U.S. Government to resolve their competitive practice disputes through negotiations. The institution of such proceedings will be particularly useful in clearly advising foreign governments of our serious concern over an existing situation and our intent to remedy the unfairness. Ultimately, however, the problem must be resolved by negotiation.

The threat of action of the nature here authorized is primarily useful as a step toward resolution of the dispute by negotiations. It does not represent a solution in itself. Once implemented, such action frequently will lead to escalation of the dispute through countersanctions, not to capitulation. Thus, such authority, while a vital asset in negotiations, must be applied with great caution. Otherwise a minor infraction could escalate into an intergovernmental confrontation of major proportions.

There are several steps that must be taken between the time an unfair practice complaint is filed and a counteraction is initiated against a foreign carrier. A determination must be made whether the alleged practice in fact exists and whether the practice is indeed discriminatory or unfair. If it is concluded that an unfair practice does exist, preliminary informal communications with foreign governments must be made to determine if the problem can be settled amicably. Only if these measures are unsuccessful should consideration be given to involving procedures leading toward the countermeasures provided for under the bill. A procedure must then be adopted which will provide for imposition of effective countermeasures, but only at some future specified date,

and then only if negotiations fail to resolve the dispute in the interim. Time must be given for effective negotiations, for only upon failure of such negotiations would the countermeasures be implemented, and then only if it is clear that further negotiations would not represent a constructive approach. While this Government must always be prepared to carry through with the threatened countermeasures, the necessity to do so inevitably means that the threat has failed in its purpose, and the dispute will be escalated.

The bill would require the Board to "approve, deny, dismiss or set [the] complaint for hearing within 30 days after receipt of the complaint." We interpret this to mean that the Board must, in that time period, decide whether an unfair practice exists and, if appropriate, propose some form of remedial action, although necessarily for implementation at a future date. A hearing may on occasion be useful to resolve factual and policy issues where the problem is unusually complicated and controversial, but normally the institution of hearing procedures would simply delay the initiation of the threat of countermeasures, and could therefore merely prolong negotiations.

We believe that 30 days is too short a period for deciding whether countermeasures should be initiated. Following preliminary investigation and consultations with the State and Transportation Departments time will be required for contact with the foreign government, and that government must be given time to react in an orderly and thoughtful manner. Governments simply are not capable of reacting in very short time periods. And the problem is compounded where the time limits are imposed by a general provision which must cover a broad variety of situations, some of which (such as currency restrictions) have a purpose wholly unrelated to aviation, although frequently with major impact upon aviation. Only if the response is negative should the procedures for institution of proposed countermeasures go forward.

In 1978, the General Accounting Office suggested a 90-day period for making factual findings and recommending appropriate eventual action, and a 1-year period for taking final action (resolving the problem or carrying through with the countermeasures.)¹ We urge that the time period for initiating procedures be not less than 90 days, and that the time for ultimate action remain flexible. Moreover, we believe that it is particularly important that the Board have the flexibility to extend any time period if it finds that such action would be constructive in resolving the dispute. Flexibility is necessary to avoid premature retaliatory action which in many instances would frustrate a negotiated settlement and merely escalate the controversy. Precipitous action, without a full opportunity to negotiate, would not be helpful to U.S. carriers in the long run, and could be seriously counterproductive. Indeed, the absence of flexibility to determine when and if a threat of countermeasures should be instituted could seriously jeopardize international negotiations which might involve a far more important issue (for example the negotiation of a new liberal bilateral agreement) than the unfair or discriminatory practice in question.

In sum we would suggest that if the time limit in paragraph (b) (2) is retained, that it be modified to a period of at least 90 days; that the section be clarified to leave no doubt that only the initiation of proceedings proposing action be required in that time period (i.e. that the Board shall approve, deny, dismiss, set such complaint for hearing or investigation, or institute other proceedings proposing remedial action, within 90 days); and that the Board be authorized to extend this time period if it finds that action within the prescribed time period would be counterproductive to resolution of the complaint through negotiations. The Board, of course, could and would act in a shorter time period if considered useful in resolving the problem.

[The following information was subsequently received for the record:]

CIVIL AERONAUTICS BOARD,
Washington, D.C., September 28, 1979.

HON. HOWARD W. CANNON,
Chairman, Aviation Subcommittee, Committee on Commerce, Science and Transportation, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In my responses to your questions at the August 21 hearings in Las Vegas on the International Air Transportation Competition Act of 1979 (S. 1300), I promised to submit additional written comments with respect

¹ "Report to the Congress: The Critical Role of Government in International Air Transport," Mar. 17, 1979, pp. 41-42.

to NACA's suggestion that section 399.19 of the Board's Policy Statement be revised to conform to the liberal wet lease policy provided for in section 13 of the Bill, and ATA's suggestion that a public interest standard be retained for grant of foreign carrier permits under section 402(b), even when a bilateral agreement is applicable. My written responses to those two questions are attached. In addition, I believe it may be useful to amplify certain of my responses to other questions posed by you.

If we can be of any further assistance please do not hesitate to call upon us.

Sincerely,

MARVIN S. COHEN, *Chairman*.

Enclosure.

Question 1. NACA will recommend that if U.S. airlines are permitted to lease foreign aircraft, the CAB Policy Statement should be amended to remove the restrictions on leases to foreign air carriers. Would you agree a change would be acceptable? Why does the Board restrict U.S. leasing to foreign airlines under existing conditions?

Answer. We agree with NACA's position. As we detailed at pages 27-28 of our written testimony, and at page 29 of the section-by-section analysis attached to that testimony, we believe that the freedom of air carriers to lease aircraft with or without crew will provide an important role in creating a more competitive international aviation environment. Section 399.19 of the Board's Policy Statements contains several restrictions on the ability of U.S. carriers to lease aircraft to foreign carriers. We believe that several of these restrictions are inconsistent with the current competitive objectives of the Board, and the remaining restrictions (such as the prohibition on sharing of revenues) would be adequately encompassed within the standards for approval of agreements under section 412 of the Act. The Board currently has this Policy Statement under review by its staff with a view toward deletion of the section. We would anticipate that a revision will be issued very shortly.

Question 2. ATA will recommend that the public interest finding be retained for issuance of a 402(b) permit, even in instances where the foreign government has designated an airline under the bilateral agreement. Do you have any comments on that proposal?

Answer. Section 7 of the Bill would authorize the issuance of a foreign air carrier permit to a fit applicant simply upon a finding, "that the applicant is qualified, and has been designated by its government to perform such air transportation under the terms of an agreement with the United States." The public interest standard is retained for applications other than pursuant to designation under a bilateral agreement. The objective of the amendment is to avoid perhaps lengthy relitigation of questions of the public interest, where that question has previously been determined in the negotiation of the bilateral agreement.

ATA is concerned that there may be occasions where the foreign government is not complying with its obligations under the bilateral agreement, and, therefore, despite the provisions for grant of authority under a bilateral, it may not be in the public interest to grant the permit authority. We agree entirely with ATA that the violation of the bilateral provisions by a foreign country could very well relieve the United States of its obligations under the bilateral to grant foreign permit authority to the designated airline of the foreign country. Indeed, as was recently affirmed in the international arbitration between France and the United States (Arbitral Award of December 9, 1978), the violation of a bilateral agreement by one party will justify, under international law principles, proportionate countermeasures by the other party, which themselves might be inconsistent with the bilateral provisions. Such countermeasures could include not only the withholding of permit authority under a bilateral, but the revocation of outstanding permit authority as well. Many bilaterals include a specific provision to that effect. Indeed, section 9 of the Bill represents a statutory recognition of this power.

Despite our agreement with the ATA objective, we do not believe that it is necessary to revise section 7 to include a public interest criteria for grant of permits where the carrier is designated under a bilateral agreement. Section 402(b) is in terms permissive rather than mandatory. It provides only that the Board "is empowered to issue such a permit" if it finds that the statutory criteria are met. If the Board were to find that issuance of the permit were inconsistent with the public interest because of violations of the bilateral by the other government, it would have ample authority under the Act to withhold

issuance of the permit, and such action would not be inconsistent with either section 1102 of the Act or the obligations of the United States under the bilateral.

Question 3. What is the Board's view of a change in the law which would permit the United States to exchange cabotage rights in international negotiations?

Answer. We believe that in the long run and in proper circumstances it could be very advantageous to the public and the carriers for this government to have the statutory authority to negotiate cabotage rights with other governments or groups of governments. I recognize that, since at the present time we are just starting down the road of a transition from a very protective environment to competition in international markets, it may be some time before the circumstances would be ripe for a general grant of cabotage rights in exchange for equally valuable rights for U.S. carriers. But we must remember that we are talking about a statutory prohibition which may survive for many years. We are talking about the power of the Board to grant such authority, not whether it would be in our interest to grant such authority in the immediate future.

Let me assure you about one matter as to which there may be some concern. The Board would neither advocate, nor with it grant, cabotage rights in the absence of fully reciprocal rights granted to U.S. carriers by other countries, and certainly not in the absence of the establishment of a fully competitive environment in the markets involved.

Let me elaborate on what I mean by fully reciprocal rights. I do not mean merely reciprocal cabotage rights, for we recognize that the vast domestic area of the United States makes the grant of cabotage rights within the United States a far more valuable concession than many countries in the world could reciprocally grant to us if the exchange were limited to cabotage rights. Thus, at a minimum, cabotage exchanges would require removal of all restrictions on intermediate and beyond service, and presumably the grant of multi-national rights within and between countries in an entire region.

I look forward one day to the possibility of multi-national exchanges of air transport rights which would eliminate artificial restrictions on services, thereby assuring to the traveling public the maximum service, provided in the most efficient, lowest cost manner. One could foresee, for example, an open exchange of rights between European countries, on a regional basis, and the United States, perhaps including Canada and Mexico. One could foresee open competitive rights between Canada and the United States. If we look this far ahead, at what presently may appear somewhat unrealistic, we can understand why the inclusion of statutory restrictions on the grant of domestic rights to foreign carriers may be a mistake.

We may also consider the cabotage restrictions on a more immediately realistic basis. The basic objective of our current efforts to establish competition in international markets is to achieve the best possible service at the lowest prices for the traveling and shipping public. This competitive objective represents a shift in policy from protection of carriers (a policy adopted when aviation was an infant industry) to freedom for carriers to compete on the basis of service and low prices. Basically, we are seeking to avoid the very high price to the aviation consumer that was a product of the protectionist philosophy.

If the grant of general cabotage rights is considered too utopian, we submit that Congress should consider the possibility of the grant of domestic fillup rights to foreign carriers. Even limited to domestic fillup rights, the advantages for passengers and shippers would be considerable. From the consumer's standpoint, there would seem to be little justification for the traveler or shipper to pay the excessive costs of operating a foreign aircraft half empty between United States points simply because the statute precludes the foreign carrier from carrying available fillup traffic between such points. While the immediate answer will be that the disadvantaged consumer could easily utilize a U.S. air carrier which is not subject to the local traffic prohibition, this response represents an over-simplification. For if we are to achieve our objective of a truly competitive environment, we must persuade foreign governments to lift restrictions which are imposed upon the international operations of U.S. carriers. It will be difficult to persuade foreign governments to lift these restrictions where the result will be that U.S. carriers would maintain a competitive advantage in their international operations by reason on an unshared access to domestic fillup traffic. Inevitably foreign governments will attempt to balance these advantages of U.S. carriers with restrictions on the U.S. carriers' foreign operations in their own geographical areas. Ultimately the aviation consumer will have to pay the costs of the inefficiencies generated by these mutual restrictions.

A genuinely competitive international market is going to have to provide foreign carriers with the same access to traffic as U.S. carriers have in their operations to foreign points. The consumer will benefit most if access to such traffic can be exchanged on a regional, rather than a country-by-country or point-to-point basis. Specifically, international carriers should have broad flexibility in serving many points on a route both intermediate and beyond the points in the territory of the parties to a bilateral air transport agreement. In this way carrier managements, both U.S. and foreign, can provide through services with maximum efficiency and the least costs to the traveling and shipping public. But if regional authorizations of this nature are to be granted, in those cases where there is a significant competitive impact, it will be very difficult for the United States to reserve for its own carriers local traffic within the vast geographical expanse of the United States, at least to the extent of fillup authorizations.

It is important to recognize that the negative impact upon U.S. carriers in permitting foreign carriers to carry such fillup traffic is relatively insignificant, since the local traffic which would be carried only on international flights of a few foreign air carriers would represent a miniscule portion of the total domestic air transportation traffic in the U.S. The extent of this local fillup traffic becomes even more insignificant when it is recognized that these rights would be exchanged only upon the negotiation of a truly competitive international agreement, with a major negotiating concession on the part of the foreign government. The same considerations which led Congress in the Airline Deregulation Act of 1978 to adopt the provision which assures U.S. international carriers the right to carry local domestic fillup traffic on their international flights (section 401(d)(6)) would seem to support the grant of such limited authority to foreign air carriers where essential to achieve major negotiating objectives.

Question 4. IATA will propose several amendments to the Bill which I think you are familiar with, dealing primarily with approval of anticompetitive agreements under Section 412. Would you comment, or some of your people comment, on those proposals?

Answer. As we understand it, IATA's proposals substantively include the following:

1. A new paragraph 12 to the Declaration of Policy providing that the Board's actions shall be directed toward the greatest benefit to travelers and shippers, but only to the extent "consistent with the need to cooperate with other sovereign nations through bilateral and multilateral forums."
2. A provision which would permit foreign carriers to file and receive antitrust immunity for agreements which do not include U.S. carrier parties.
3. A proposal to substitute in general "public interest" standard, for the so-called "local cartage" or banking act standard for approval of anticompetitive agreements, where the Secretary of State or Defense certifies in writing that the agreement involves substantial issues of international comity, foreign relations, or national defense.
4. A requirement of Presidential approval, as an amendment to a U.S. air carrier certificate or foreign air carrier permit, where the Secretary of State or Defense certifies that the agreement, or its modification or cancellation, involves substantial issues of international comity, foreign relations, or national defense.
5. The grant of antitrust immunity for agreements where the "local cartage" or banking act standards for approval of anticompetitive agreements have been met.
6. A revision of the goals for international aviation policy to provide for the application and enforcement of U.S. antitrust laws in international air transportation only on an internationally agreed basis.

We have serious problems with four of the six IATA proposals. We obviously feel more strongly about some than others. On the whole, we believe the proposals are fundamentally inconsistent with S. 1300's goal of fostering competition in international markets. Essentially, the IATA proposals are founded upon a concept that we should attempt to secure and maintain competition in international air transportation only to the extent that the United States is able to secure advance agreement of foreign governments to such a course. This is not the current law under the Federal Aviation Act, and we believe that adoption of that philosophy would almost never help, and often seriously hinder, us in establishing competition in international markets.

Where international air transport operations involve important U.S. interests, the U.S., like any foreign nation, is entitled to pursue them. We need not lay aside our preference for competition solely because foreign governments have different interests or philosophies. If foreign governments' carriers wish their flag carriers to operate to the United States, they should do so in terms which

reflect our sovereign interest in preserving competitive markets for the public benefit. U.S. antitrust laws and concepts are an important expression of those sovereign interests, and the U.S. should vigorously seek to apply them where possible. To the extent an accommodation must be made by reason of a different philosophy of a foreign government, the proposed provision in section 102(a) (4)—Declaration of Policy (section 2 of the bill) that the Board should take account of "material differences, if any, which may exist between interstate and overseas air transportation, on the one hand, and foreign air transportation, on the other," should be sufficient to permit that accommodation. The Act of course makes no attempt to apply the United States competitive antitrust philosophy to operations of foreign air carriers which do not affect foreign air transportation to and from the United States.

Our problems with the IATA proposal may be exemplified by looking at its specific provisions. The proposed additional paragraph (12) to the Statement of Policy appears to require us to abandon the vigorous pursuit of our interest in benefits to travelers and shippers to the mercy of other sovereign nations in multilateral forums. We recognize that if international air transportation is to operate at all there must be cooperation with foreign governments. But in our view, that cooperation should be a means of achieving the greatest benefit to travelers and shippers. On occasion, the U.S. may be able to achieve greater public benefits by pressing its views, despite foreign government opposition, than by conceding in the name of "cooperation." If we are to succeed in establishing a competitive international environment, confrontation, however regrettable, may on occasions be necessary.

We believe our negotiators and aeronautical authorities should be free in pursuit of U.S. policy goals to use all the tools available to their foreign counterparts, and this means freedom to use the same mix of cooperative and not-so-cooperative strategies that all nations use in pursuit of their sovereign goals.

We do not take a position on the proposal that we be given jurisdiction to approve and grant antitrust immunity for agreements between foreign carriers which do not include a U.S. carrier as a party. We have encountered occasional negotiating difficulties by reason of its absence, and it is possible that there are circumstances in which we could achieve more of our procompetitive goals by sparing and selective use of such immunity than we could without the power to grant it. However, there is the danger that if such authority were included, diplomatic and other pressures may be imposed by foreign governments to secure approval of anticompetitive agreements which would not be approved under an impartial evaluation of the agreement and which were not compensated by concomitant achievement of other procompetitive goals. Such pressures and our ability to grant desired immunities may increase the number of occasions on which such restrictions are applied for tactical reasons by foreign governments.

We would strongly urge, nevertheless, that all the protective standards proposed in the Act for approval of anticompetitive agreements, particularly the modified *Local Cartage* or *Banking Act* standard in the proposed section 412 (a) (2) (A) (i), be retained for agreements affecting international, as well as interstate and overseas air transportation. We strongly oppose substitution of the public interest standard for agreements affecting international air transportation, whether or not the State Department has certified that issues of international comity or international foreign relations are involved. We recognize that foreign relations issues may have a bearing upon whether there is a serious transportation need or important public benefits which would justify approval of an anticompetitive agreement. But the existence of such factors certainly does not justify eliminating the standard itself. Again, we note that the objective of the bill is to avoid anticompetitive arrangements in international air transportation unless such arrangements meet a serious transportation need or produce important public benefits.

While we would have no serious objection to Presidential approval of Board actions on agreements affecting international air transportation and involving issues of international comity or foreign relations, we see no real need for such a provision. Any such changes should be based directly on a reevaluation of the circumstances under which Board actions have foreign policy consequences serious enough to require presidential review, rather than on a redefinition of what affects carriers' certificates or permits. We perceive no relationship between approval of such agreements and amendments of certificates of air carriers or permits of foreign air carriers.

We do have some qualms about the proposed provision, since the bill generally seems to be aimed at decreasing the prevalence of anticompetitive arrange-

ments between carriers, whereas the proposal seems to be aimed at increasing their number. We note that the Executive Departments can participate in any agreement proceeding before the Board relating to approval of anticompetitive agreements, and we think that deviation from a competitive standard which does not favor such agreements would not ordinarily raise matters of foreign policy which require Presidential approval.

We have no real objection to automatic antitrust immunity for agreements which meet the *Local Cartage* or Banking Act standard for approval of anticompetitive agreements, although we see no real need for the provision. If the Board concluded that an anticompetitive agreement (i.e., in violation of the Clayton Act antitrust provisions) met the *Local Cartage* or Banking Act standard for approval under section 412(a)(2)(A)(i) of the Act, it would obviously grant antitrust immunity under section 414 in order to make its decision effective.

We very strongly oppose the proposal for addition of paragraph (8) to the section 1102(h) international policy objectives, which would permit application an enforcement of U.S. antitrust laws to international air transportation only to the extent agreed by a foreign government. It is a regressive step, since this limitation on antitrust application has never been the law in the past. For reasons similar to those we raised with respect to the similar proposed limitation on competition policy, we think this provision would effectively sabotage the pro-competitive thrust of the bill. Given the frequent identity of interest between foreign carriers and their government owners, this provision would allow foreign carriers to engage in flagrantly anticompetitive practices even in markets where U.S. sovereign interests are indisputable.

Question 5. Why have you precluded fare increases in limited designation markets?

Answer. The Board has permitted fare increases in discount and first class fares to take account of the major increase in fuel cost. In markets where competition does not act as a sufficient incentive to maintain fares at reasonable levels, the Board has, in many cases, refused to permit increases in the basic economy fare. The discount fares have competition from charters, and because geared to the vacation traveler, there is also competition from other vacation destinations and modes. The normal economy fare, on the other hand, is generally used by a different kind of traffic; typically the businessman, the immigrant, someone traveling on a family emergency, or some other relatively price inelastic traveler.

The problem which has troubled us with normal economy fares is the fact that for many, if not most, passengers required to utilize these fares, the fare level has been unreasonably in excess of the cost of the service provided. The normal economy fares have until quite recently been continued uniformly at levels which were historically set by the IATA cartel. Discount fares, which have been utilized by the carriers to meet the competition provided by charters and other non-IATA fares, are subject to numerous restrictions. The normal economy passenger is unable to take advantage of the discount fares because of these restrictions. He is, therefore, subjected to a fare which was derived largely free from competitive pressures to maintain those fares in a reasonable relationship to the costs of service. Moreover, to repeat, the typical economy fare passenger is not very price conscious.

The Board has, in my opinion, reasonably worked hard to prevent the exploitation of this passenger. After all, the prime justification for economic regulation is to protect consumers where competition is ineffective. In contrast, in those markets where recently negotiated bilaterals have resulted in reasonably competitive regimes, competition controls fare levels, and we have relaxed our scrutiny of normal economy fares. The more rigorous approach in limited designation markets is, therefore, perfectly logical. It simply represents a straightforward application of traditional regulatory principles. The policy of holding normal economy fares down is over four years old now.

Our studies show that the prime reason many normal economy fares are too high for most passengers is that they frequently include charges for unlimited stopover service and extensive circuitous routings which many, if not most, of the economy fare passengers do not utilize. Thus, the normal economy passenger on a ticket from New York to Athens can stop over in over 20 different places and transfer among almost as many airlines. All these airlines must then divide the normal economy fare amongst them. Of course, the fare may be a very good deal for passengers who utilize all these services. But, the more typical passenger who utilize all these services. But, the more typical passenger who wishes to proceed to his destination more directly is, in fact, subsidizing the circuitous passenger. That is where the real subsidy in international fares is.

The Board long ago concluded that such a fare structure was highly discriminatory and should not be permitted to rise above present levels which, as I have said, already exceed the costs of providing service to the direct traveler.

I would add that Board policy toward the normal economy fare is undergoing the most rigorous and thorough review in our history. The recent rise in fuel costs has undoubtedly brought costs more in line with the fare. We have recently issued orders relating to major fare packages of Pan American and Trans World Airlines which began the public phase of this reassessment. These orders have resulted in fares which are more in line with costs, and which, in our opinion, are also more remunerative to airlines. Our efforts toward this end are continuing.

Question 6. Pan American will suggest that a zone of reasonableness be granted in S. 1300 for foreign air transportation tariffs. Their proposals will be patterned after the domestic bill's tariff sections. What is the CAB's view on this?

Answer. Initially let me point out that a statutory amendment would not be necessary for the Board to implement a zone of reasonableness concept for international fares. While the Board, as you are aware, is an ardent proponent of fare flexibility, and normally would support a zone of reasonableness concept for international fares, there are significant difficulties in implementing such a concept in international air transportation which would point toward caution against a precipitous movement toward the zone of reasonableness fare concept. The basic problem is that most international markets are not currently price competitive, and may not become full price competitive for a considerable period of time. Moreover, unlike the circumstances in domestic markets, where the Domestic Passenger Fare Investigation provided a means for establishing a base from which the zone could be created, there is no base in international markets which would reflect fares established on a competitive or even regulatory basis.

We assume that Pan American would propose a fare flexibility provision which would be similar to that adopted by the Airline Deregulation Act of 1978 in section 1002(d)(4), (5), (6) which precludes suspension of proposed fares not in excess of a 5 percent increase or a 50 percent decrease from a "standard industry fare level." Particularly, with respect to fare increases, the crucial element of such provisions would be the establishment of a standard foreign fare level which would be based on fares as they would be under competition. Simply put, the Board has long believed, and recent studies tend to confirm, that existing normal economy fare levels are too high. We perceive major difficulties in attempting to establish such a standard foreign fare level, since it could be anticipated that there would be substantial objections to a fare level set on the basis of fares in competitive markets, or on any other methodology the Board might adopt. These objections would have to be carefully considered. The difficulty would be particularly pronounced in non-competitive markets, where such a competitive market standard foreign fare level could well be below the level of current fares. Therefore, if the proposal is to be adopted, it would be essential that a period of not less than one year be provided for the establishment of the standard foreign fare level, and implementation of the provision, at least with respect to fare increases.

If based on a standard foreign fare level derived from fares and costs in competitive markets, we would not have serious objections in permitting carriers to file, without threat of suspension, fares not in excess of 5 percent above the standard foreign fare level. We, of course, would wholeheartedly support fare flexibility with respect to lower fares, and in this connection would support a 50 percent reduction, free from the threat of suspension, as contained in the domestic legislation.

One caveat is, nevertheless, very important. Most governments have the power, both under their domestic laws and under applicable bilateral agreements, to suspend U.S. carrier proposed fares without any particular justification. If the U.S. Government is to retain the negotiation leverage necessary to achieve the acceptance of U.S. carrier lower fares, it must have authority to suspend foreign carrier proposed fares, even though clearly within a reasonable zone of reduction. Indeed, this was the purpose of the proposed amendments to section 1002(j) of the Act (sections 14 and 15 of S. 1300) to permit suspensions of fares proposed by foreign carriers if in the "public interest." (See, in this connection, our comments contained in the section-by-section analysis attached to the Board's testimony, pp. 35-37.) We therefore urge that any fare flexibility

provision give the Board authority to suspend any proposed fare, even within the zone of reasonableness, if required because of unreasonable regulatory actions by a foreign government with respect to fare proposals of an air carrier.

Also, as is the case under the domestic provisions, the Board should retain the power to deal with fares which are predatory, unduly preferential, unduly prejudicial or unjustly discriminatory. Because existing bilateral arrangements with some countries may be construed to preclude annulment of an existing fare after investigation, the Board's existing suspension powers over discriminatory foreign fares should be retained.

[Recess.]

The CHAIRMAN. The hearing will come to order.

We will next hear from Mr. Richard N. Cooper, Under Secretary for Economic Affairs from the Department of State.

STATEMENT OF HON. RICHARD N. COOPER, UNDER SECRETARY FOR ECONOMIC AFFAIRS, DEPARTMENT OF STATE; ACCOMPANIED BY JAMES R. ATWOOD, DEPUTY LEGAL ADVISER; AND IRVING WILLIAMSON, ASSISTANT CHIEF, AVIATION POLICY DIVISION

Mr. COOPER. Mr. Chairman, it is a pleasure to appear before the subcommittee today to discuss the U.S. international aviation policy and S. 1300, as introduced by you and Senator Kassebaum.

I have with me James Atwood, Deputy Legal Adviser for the State Department, and until last week Deputy Assistant Secretary for Transportation Affairs.

And on my left is Mr. Irving Williamson of our Office of Aviation.

In addition to my oral testimony, I have provided two addenda, one giving the Department's position on S. 1300 in some detail, and one giving a detailed account of some of the difficulties we have been having with the Fly America Act.

With your permission, Mr. Chairman, I would like to add these to the record.

The CHAIRMAN. All right, sir.

Mr. COOPER. To generalize our comments on S. 1300, we think that the legislation is a most helpful effort, and we support virtually all of it.

My testimony today will focus on some principal points concerning the bill; and, in particular, I will note changes or additions we would suggest. But, as I hope a full reading of the addendum makes clear, the State Department encourages the subcommittee to press ahead vigorously in the legislative process with this excellent bill.

It was just 1 year ago that I appeared before this subcommittee to discuss our international aviation policy. Since that time, much has happened in this dynamic industry.

Domestically, Congress enacted the Airline Deregulation Act of 1978, which has resulted in an unprecedented surge of activity within the domestic industry. We on the international side have tried to follow closely these developments, because the perceived success or failure of deregulation domestically will be a major factor in our ability to extend competition into the international markets.

So far, of course, we are pleased with the extent to which domestic deregulation has yielded obvious benefits to both the traveling public and to the airlines.

There have been important developments internationally as well. The administration has been able to negotiate new liberal bilateral agreements with Belgium, the Federal Republic of Germany, South Korea, Singapore, Thailand, and Jamaica. Combined with earlier liberalized agreements secured in 1978, these agreements have opened important international markets to the fresh stimulus of competition.

Entry of new airlines, innovative fares and services, and freer charter operations have confirmed that competition works and that the public is ready to respond to new and better service in international aviation.

As for profitability on international routes, experiences will of course vary depending on many factors and particularly on the efficiency of the airline in question. I was pleased to note though that the most recent annual report of the Airline Traffic Association announced that its member carriers earned profits on their international operations in 1978 that exceeded 1977 levels by 45 percent, despite a decline in the average passenger yield.

For 1979, there are some clouds on the horizon. Soaring fuel prices and the grounding of DC-10 aircraft have hurt some carriers seriously. Physical constraints at airports, a subject to which I will return, have also increased airline costs.

But still there are many positive signs that the airlines are showing the flexibility and skills needed to take advantage of the new competitive environment and to be successful even under the adverse impact of some of these unforeseen problems, which in their origin are unrelated to our new agreements.

Debates have continued for decades about what form of international aviation system best suits the needs of travelers and shippers, and the requirements of safe and economical carriers.

Near the close of World War II, the United States proposed at Chicago a multilateral open-skies approach to international aviation, but other countries feared the competitive strength of the war-vitalized U.S. aviation industry and pressed for a world authority to impose "order in the air."

When no agreement could be reached, we pursued a liberal approach on a bilateral basis, but again other countries were more conservative than we. The resulting Bermuda-style agreements were an uneasy compromise between competition and regulation, with carriers given a fair degree of freedom on the frequency and level of service, but not on the pricing. Also, services were limited to narrowly drawn and agreed routes.

The results of the Bermuda agreements should have been relatively easy to predict. The mixture of controlled pricing and routes, with relative freedom on levels and frequencies of service, resulted in large amounts of high-quality, high-priced services being channeled over a few routes. This pattern was not wholly debilitating for international aviation, but neither did it foster maximum development, profitability, or innovation.

Large-scale charter services in the 1960's and early 1970's added a new, invigorating element. And in time the scheduled carriers responded with charter-competitive fares, thereby expanding somewhat the market to which they were appealing.

The United States' new aviation policy—to place greater reliance on competition—thus has historical roots going back to Chicago in 1944. And perhaps one of the reasons we are having such success now in implementing the policy is the growing recognition that the Bermuda compromise had somewhat perverse results—high fares, frequently capacity in excess of that required for optimum service, and too much competitive energy channeled into trivial areas such as the thickness of meat slices and the dryness of martinis.

We are now trying to open the full range of airline service factors to competition—pricing, routes, frequency, and style of service, et cetera. As we make progress, we see airlines becoming more efficient, more responsive to consumer demands, and often more profitable. The international aviation system is, in very real terms, becoming better and more rational.

In framing our approach to international aviation, it is important to appreciate the enormous diversity in world civil aviation today. Some markets, such as those over the North Atlantic, are characterized by high density, high volume services, similar to those found in the better developed U.S. markets.

At the other extreme, we also find many international markets that are essentially in their infancy, much like some of our domestic markets were 30 years ago except that now high-technology aircraft are available.

In addition, we have to deal with the state-controlled aviation markets of the communist countries. Our negotiating framework must be sufficiently broad and flexible to accommodate this wide diversity. Our interest in greater competition applies to all these markets, but the techniques in each case must be tailored to the prevailing circumstances and potential development of these markets.

Our objective must be to provide the best possible transportation service to the public, including reliability, comfort, and lost cost, and in all cases a high degree of safety.

Let me turn now to the provisions of S. 1300, which is an excellent contribution toward the U.S. efforts to improve the international aviation system. The bill sets forth sensible and positive goals and statements of policies, both for the United States in negotiating international aviation agreements, and for the CAB in its regulatory functions.

It would streamline a number of CAB procedures and eliminate various rigidities and gaps in the present law. The range of options open to the United States in dealing with restrictive and unfair practices against American airlines would be increased, so that our responses can be quicker and more refined.

The bill would also insure that U.S. airlines enjoying operating rights in limited-designation markets would offer price-service options more closely approximating those that would be offered under more competitive conditions. Other important features of the bill are a much needed liberalization of the Fly America Act and a modest step toward allowing foreign aircraft the opportunity—through leasing arrangements with U.S. carriers—to carry local U.S. traffic.

Let me turn to some of these points in more detail. Relating to bilateral negotiations, sections 17 and 18 of the bill would provide a clear

set of competitive goals for bilateral negotiations and for our international aviation policymakers.

We support the incorporation of these principles into the Federal Aviation Act, for they effectively codify President Carter's international aviation policy announced just 1 year ago. Enactment of this portion of S. 1300 would send a clear signal to our bilateral partners that our commitment to competition is not merely a passing fancy.

We would, however, recommend against those provisions of sections 17 and 18 that would provide statutory rules on the structure of our negotiating process. As you were kind enough to say in your statement introducing S. 1300, the administration has functioned well as a negotiating and coordinating unit. President Carter has reaffirmed the role of the Interagency Committee which I chair as the focal point for development of our negotiating strategies and priorities. This is a constantly evolving structure; as changes are perceived to be needed, they are made.

We do not feel that statutory provisions of these structural and procedural aspects of negotiations, however well phrased for the current day, are worth the risk of unnecessary rigidity tomorrow.

Another important feature of S. 1300 is its proposed amendment to section 412 of the Federal Aviation Act, governing CAB review of interairline agreements. The State Department supports bringing international agreements under the same standard now applied to domestic agreements, particularly since any foreign policy considerations can be taken into account by the Board under the proposed "Local Cartage" test.

We recommend, however, that the subcommittee seriously consider two other points relating to section 412.

First: As developed more fully in the addendum to my testimony, we would support an amendment to section 412 that would permit the CAB to treat agreements solely among foreign carriers equally with agreements that include a U.S. airline as a party. U.S. carrier participation should not be a *sine qua non* of CAB review and possible antitrust immunity.

A second, and perhaps more difficult, issue is the question of Presidential review of CAB decisions under section 412. For better or worse, international aviation has consequences that at times go far beyond commercial considerations, and thus Congress has wisely provided for Presidential review of a variety of decisions which the Board, an independent agency, may make in the international field.

CAB review of interairline agreements is not subject to Presidential review, but as the current IATA proceeding indicates, some issues under section 412 can have important foreign policy implications.

We therefore think that the subcommittee should consider a new provision in S. 1300 which would permit the Secretary of State to certify, in any section 412 case, that the issue in question has important foreign policy consequences, in which case the Board would submit its final decision to the President for his review.

We would expect that such a process would be used only rarely, but I think it clear that matters importantly affecting the foreign policy of the United States should be subject to final review by the executive branch of government.

A somewhat related point, but not addressed in S. 1300, is the question of Presidential review of CAB decisions granting operating authority on international routes. Section 801(a) of the act gives the President narrowly defined review authority where the Board grants operating rights via a new certificate or permit, but not where the authority is in the form of an exemption. Given the wider use of the exemption power now practiced by the Board, this discrepancy in review power should be eliminated.

Another feature in S. 1300 is its authorization of leasing arrangements between foreign and U.S. airlines that would permit foreign aircraft, subject to CAB approval and adequate safety controls, to carry domestic U.S. traffic.

More broadly, I was pleased to see your invitation in your introduction of the bill for a "calm, level-headed" discussion of our current laws prohibiting cabotage, the carriage by a foreign airline of domestic traffic. We think such a discussion is long overdue.

I should like to stress that my comments on this issue represent the position of the Department of State and not necessarily those of the administration as a whole.

It is important to recognize the central implications of the procompetitive international aviation policy of the United States, a policy that is endorsed and advanced by S. 1300. International airlines, both U.S.-flag and foreign-flag, must develop new attractive services, balancing reliability, comfort, and price in a manner attractive to travelers.

It is a simple fact that our present absolute ban on cabotage limits the ability of some foreign airlines to meet these challenges of our policy. On international routes to multiple U.S. points, segments of an airline's operation are forced by our laws to be inefficient; the airline must close its doors to prospective customers and fly empty seats.

Pan American complained bitterly for years, with substantial justification, about the denial of domestic fill-up rights on its international routes. Fortunately, the CAB and Congress have combined to eliminate that economic irrationality. But foreign carriers still face it, and yet are in competition with U.S. airlines that do not.

If the U.S. negotiators had flexibility on the cabotage issue, we would have an important new bargaining chip with which to persuade foreign governments and airlines to accept competitive liberalizations and new route rights for U.S. airlines.

We would be able to eliminate obstacles that now prevent efficient operations for foreign carriers, thereby increasing their willingness to accept more competition from U.S. airlines. A side benefit would be some additional services for the U.S. domestic markets.

What are the arguments against a liberalization of our cabotage laws?

One is legal. Article 7 of the Chicago Convention contains a commitment that a state will not "enter into any arrangements which specifically grant any—cabotage—privilege on an exclusive basis to any other state." Some have claimed that this provision would require a state granting any cabotage rights to open automatically its doors to all other foreign airlines interested in cabotage. We strongly disagree with that interpretation.

In our view, the clear meaning of this provision, taking both its text and policy into account, is that two states may not conclude explicit agreements that particular cabotage grants are to be exclusive. But the provision does not intrude on the rights of a state that makes a cabotage grant to exercise its sovereign, unilateral judgment whether, and under what circumstances it will make additional grants.

The more frequently heard argument is that cabotage would lead to the ultimate destruction of the U.S. aviation industry. This position is difficult to understand, given the proven ability of our industry to compete against international carriers.

In any case, I am not here endorsing unlimited grants of authority to foreign carriers. It is perhaps true that the logic of complete deregulation, except on matters of safety, would extend to total elimination or restrictions on cabotage, treating aviation no differently from other sectors of the economy where foreign enterprises compete on equal terms with U.S. companies.

But in the absence of reciprocity abroad, we are very far from that point. We would suggest, however, that language be included in S. 1300 giving U.S. negotiators the flexibility, in exchange for valuable opportunities abroad for U.S. airlines, to grant particular and limited cabotage rights that would be specified in the bilateral agreement.

It would be most helpful, at least, to be in a position to accord fill-up rights for foreign airlines on the domestic segments of their international routes. The extent of additional competition this would inject into domestic markets would be modest, whereas the positive consequences it would have for the development of U.S. aviation policies internationally are large.

Finally, I wish to commend the subcommittee for its proposal to liberalize the Fly America Act. When I appeared before this subcommittee 1 year ago, I urged a relaxation of that statute. I stated then that there were three good reasons for such action.

First: The condition of the U.S. industry has improved greatly since the Fly America provisions were adopted in 1974.

Second: The provisions have proven more costly than originally anticipated, in terms of extra expense for circuitous travel, personal hardships, and loss of valuable working time to the Government.

Finally: The Fly America provisions are glaringly inconsistent with the philosophy of competition and nonprotectionism that we are fighting so hard to foster internationally.

I mentioned earlier a second addendum to my testimony which develops these points in detail, but I did want to emphasize the importance to the U.S. Government and to our aviation policies of modernizing or, preferably, eliminating the Fly America provisions.

Before concluding, I want to return to an issue touched on earlier, the growing constraints at our international airports. These problems warrant increasing attention from many segments of the U.S. Government and of the international community. Many of the problems are physical and real, while others can be alleviated by new procedures and regulations.

In any event, we must find solutions. Foreign spokesmen often point to these constraints as an argument against a liberal aviation policy. Regardless of the short-term focus of such an argument, the United

States should be in the lead in working toward solutions. The continued efforts of this subcommittee in this area are appreciated.

Again, Mr. Chairman, I offer my thanks to you and Senator Kassebaum for an excellent piece of legislation. We look forward to working with you and your staff in the coming weeks in moving the bill forward.

Also, I wanted to extend my personal thanks to you for the excellent assistance you have provided the Department in a variety of ways, on our efforts to advance U.S. aviation policies in the international sphere.

The CHAIRMAN. Thank you very much, Mr. Cooper, for a fine statement.

You would like to see section 412 of the act further applied to permit the Board to treat agreements solely among foreign carriers equally with agreements that include a U.S. airline as a party. Wouldn't this open up a host of new problems which would encompass issues beyond aviation?

For example, what is to prevent a foreign government from making a lease renewal for a U.S. Air Force base conditional upon approval by the United States of an anticompetitive affiliation agreement with another foreign country?

Mr. COOPER. I will ask Mr. Atwood to address that point in detail, since he has been personally involved in many of the international aviation negotiations which we have had during the last couple of years, but more generally, we have found that other countries have not linked issues such as base lease renewals, or indeed other foreign policy issues, to specific aviation questions.

By and large, aviation has been kept on its own track, so to speak, but within a broad framework of foreign policy. It is in those broadest possible terms, I think, impossible to separate from foreign policy.

We would not anticipate specific linkage of the type that you suggest. We haven't had it in the past. We would not anticipate it in the future.

Other governments know enough about the U.S. Government to have some feeling for its pluralistic nature and its inability to make trade-offs of that specific nature.

Perhaps Mr. Atwood would like to comment further on that.

Mr. ATWOOD. I will make just two points, briefly.

Even under present arrangements, there have been some instances where foreign governments have urged favorable consideration of what we may regard as an undesirable aviation package in a broader foreign policy context.

We think we have been able to resist those in the significant cases in the past. As Mr. Cooper says, we do not see any reason why we shouldn't be able to resist those in the future in what is a rather modest extension of the CAB's power to review intercarrier agreements.

Also, I think it is important to underscore that the new IATA procedures which the Board has now provisionally approved allow, much more so than was the case in the past, the U.S. airlines to disassociate themselves from agreements that we would ordinarily regard as anticompetitive.

I think we want to encourage that process in the future; and if the CAB is in a position where it is unable to review agreements where

U.S. airlines have pulled out, we anticipate very serious pressure on us to keep U.S. airlines in those arrangements.

In that situation the pressure would be to push U.S. airlines back into anticompetitive arrangements, which is obviously counterproductive.

I think the solution we suggest will alleviate these problems rather than exacerbate them.

The CHAIRMAN. In your rebuttal of cabotage, you don't mention labor. Subsequent witnesses will testify as to those concerns.

How do you respond to the argument that granting cabotage rights would harm U.S. labor?

Mr. COOPER. I would respond in two ways, I think.

One is that that involves implicit assumptions about the amount of total U.S. carriage within the States, which implicit assumptions may well be wrong. To the extent that total air carriage within the United States increases as a result of cabotage, American employment within the United States is increased, not reduced.

There are all kinds of ground handling services, booking services, and all of the many other activities associated with airline travel which would be enhanced.

Second, however, in my statement I underline the point that we do not favor granting cabotage rights in the abstract, so to speak. This would be a possibility that we would have in our international negotiations. In every case, we would be attempting to enlarge the possibilities for U.S. carriers abroad in the negotiating process.

In that respect also, the possibilities for American labor would be enhanced, not reduced.

The CHAIRMAN. You have described a series of liberal procompetitive, bilateral agreements that have been successfully negotiated recently.

One of the strong criticisms that has been leveled during this time is that our negotiators have been trading away permanent market rights in exchange for low fare provisions which have no guarantee of permanency. How would you respond to that statement, particularly the point of what happens if the lower fare benefits do not remain?

Mr. COOPER. Well, I think we have to keep in mind that what we are trying to negotiate here is a framework in which low fares are possible, fares that are as low as consistent with efficient and safe operations of the airlines.

The agreements are structured to encourage that kind of competition. If our theories about competition are correct, it means that we should have—continue to have low fares; and where they don't now exist, fares should come into being which are as low as the basic economic and safety considerations of international travel permit.

In that respect, the time dimension involved in the low fare regime is exactly the same as the time dimension involved in the additional route rights and so forth given in the agreements.

We have to recognize—and that was implicit in some of your questions early this morning—that we do live in an inflationary environment. A fare that's high in one period in nominal terms might be low in another given what's happened to costs and other factors affecting the economics of airlines.

What we are looking for is a regime which makes fares as low as economically possible.

The CHAIRMAN. What is the current status of the proposal by the Government of Iceland to allow their airline to operate between the United States and Europe without service to Iceland?

Mr. COOPER. We have made a counterproposal to the Government of Iceland which accepts the principle that certain numbers of flights involving Icelandic Airlines might fly directly between specified points in the United States and Luxembourg without touching Iceland; but imposing a number of restrictions and limitations on that service.

At the moment we have not yet heard a response from the Icelandic Government.

The CHAIRMAN. Are you at liberty to say what those limitations are?

Mr. COOPER. Yes; we have suggested that, first, the agreement be limited in time to 1 year.

Second: That half of the Icelandic Airline flights departing from the United States or arriving in the United States would have to touch Iceland; that assures continued service to Iceland which only Icelandic Airlines provides among scheduled carriers today.

Third: The landing point in Europe would only be Luxembourg.

Fourth: They would have to fly from a new point within the United States, either Cleveland or Detroit, both of which cities do not now have direct, nonstop service to Europe.

They would be able to choose between those two points. They could alter their choice after a 6-month period.

The CHAIRMAN. Have you considered also the possibility of recommending that the Board grant an exemption for the service? You already said for a limited time; you proposed 1 year. Have you considered the fact that it be treated as an exemption?

Mr. COOPER. Yes; we would assume that if this arrangement were to be offered, it would be in a note of understanding between the United States and Iceland; and that as far as the record is concerned, it would be handled by exemption.

The CHAIRMAN. So there would not have to be an amendment of the bilateral?

Mr. COOPER. That is correct.

The CHAIRMAN. Now, the Department testified in favor of the elimination by reciprocal bilateral agreement with other countries of the requirements pertaining to use of U.S.-flag airlines for Government-paid transportation.

How would State determine the provisions and benefits for which to exchange those rights?

Mr. COOPER. From a formal point of view, the United States has the most severe restrictions of any country on travel by government employees and government contract employees where government funds are involved; but that tends to be true in many areas, that the United States commits to paper practices which, in fact, are widespread, though unwritten, in other countries.

That is the case also in carriage of government employees by foreign carriers; other countries have administrative rulings or guidelines which stipulate that government employees should, insofar as possible, travel on the national-flag carrier.

This affects the government employees in many countries. We would have to do an assessment in our framing negotiation, as we do now

when we look at routes and fare provisions and so forth, of the balance of benefits and costs associated with any particular negotiation and then approach the foreign government for a reciprocal exchange of rights in this particular regard.

On quick inspection, the benefits would be greatest in areas of the world such as Africa, where there is relatively little U.S. carriage, but a great deal of carriage by countries like Britain and France.

On the other hand, in Latin America, where there is much more U.S. carriage, and some but relatively little carriage by the British and French, obviously from the point of view of the passengers, ours would gain in Africa; the British and French would gain in Latin America. The effects on the airlines flying routes in those two regions would tend to be offsetting.

As I bring out in the addendum to my testimony, there are instances of extreme inconvenience and high cost associated with the Fly America provision and we would prefer to see it eliminated. If this is not possible we would urge some relaxation of it in any case, and the authority to negotiate full relaxation on the basis of reciprocity.

The CHAIRMAN. One of the criticisms by the carriers, particularly TWA, of the current negotiating strategy that you have adopted is the absence of a quid pro quo normally inherent in the negotiating processes.

Specifically, they say the Belgian Government was given four additional major U.S. terminals in exchange for greater access to Belgium by U.S. carriers, an access already guaranteed under presently existing bilateral agreements.

Further, such access to a market the size of Belgium was not terribly significant to U.S. carriers. TWA will further testify that the same approach was taken with Jamaica.

I would like your response to this and also the general question of how seriously you take consultations with U.S. carriers prior to negotiations?

In the Belgian case, it seems that you and the carriers were never in touch.

Mr. COOPER. I will ask Mr. Atwood to comment on the last point since he's the one who has much of the contact.

More generally, though, I would defend our record in balancing the benefits and the costs associated with our international aviation negotiations.

In particular, in connection with the Belgian negotiations, let me note that while it is true that the Belgian market itself is a very small one, it is also true that Belgium is a natural entry point to many other countries in Europe. Some of those countries follow policies or have policies which are not wholly harmonious, to put it in terms of understatement, with our current aviation policies.

We sought ways to introduce greater competition into the European market as a whole, not merely Belgium. Our approach to particular countries, therefore, does not always or even typically look to bilateral markets between those two countries, but the possibilities for introducing more competition into the larger markets that are served by those countries.

That was a factor in the Belgian negotiations and has been a factor in some of our other negotiations. One cannot look at it simply in terms of the bilateral countries.

The CHAIRMAN. Mr. Atwood?

Mr. ATWOOD. First: I want to say we do value and try to foster contacts with the industry prior to negotiations. One point made in the addendum to Mr. Cooper's testimony, for example, is our desire to assure that financial and other confidential information the carriers provide us prior to negotiations will be protected from public disclosure.

We think this kind of protection is necessary if the carriers are to freely convey to us their views.

The Belgian negotiations were more than 1 year ago. I was surprised to hear the charge that we had not consulted with the carriers in that negotiation. I do not believe that was the case; particularly, I do recall specific requests we had from some U.S. carriers to expand their beyond rights, beyond Brussels.

Also the cargo carriers were interested in cargo charters and combination charters into Brussels. I do recall a number of important carrier contacts. Mr. Cooper's point about the strategic importance of Belgium in the European scene is, of course, a very important one.

Even looking at Belgium in isolation, it is worth noting that traffic between the United States and Belgium has essentially doubled over what it was 1 year ago, if you look at the recent months; and also the U.S.-flag percentage in that market has increased, as well as a doubling of traffic overall.

So certainly Sabena has benefited from that arrangement. We think the U.S. carriers have also benefited and certainly the public has benefited.

The CHAIRMAN. You make several proposals to expand the President's 801 authority in your testimony. I think you may be aware of my past statements on 801 authority. Although we put some limitations on 801 in the Airline Deregulation Act, I would still be inclined to restrict 801 authority, if we make any change in that section.

I certainly do not support expanding Presidential review.

Am I correct in assuming that you feel the President might some day want to disapprove Pan Am's participation in an international pooling agreement and substitute Braniff instead?

Mr. COOPER. You are correct in suggesting that in two respects we urge a broadening of the Presidential review authority. It is not our intention in so doing to indicate that he would exercise it along the lines that you just suggested.

I think, though, first, as I said in my statement, given the more extensive use by the CAB of exemption authority, whereas in the past permits were issued, that it would be consistent with the CAB's greater use of that authority to hold out the possibility for Presidential review.

Second: It is not our intention in providing for the possibility of presidential review that the President actually review each and every case. That is to say, it would not be a normal part of the procedure. Where foreign policy considerations suggested that a review by the executive branch of the Government seemed to be warranted, we think that it should take place.

Such proposal or suggestion for Presidential review might be done by the Department of State to indicate that there were important foreign policy or national security considerations involved in the particular case.

It seems to me that there are a number of actions which the CAB might take which at least potentially have a profound foreign policy impact. Although foreign governments recognize to some extent the pluralistic nature of the U.S. Government, they do not do so to the extent that an action taken by an independent agency of the United States is seen by them as being completely divorced from the executive branch of the U.S. Government. It becomes extremely difficult under these circumstances for us to separate actions of such agencies from broader foreign policy considerations, because the affected countries cannot make that separation.

I think under those circumstances, we should have at least the possibility of Presidential review of actions that might have such an effect.

The CHAIRMAN. How do you respond to the often-stated charge that the United States is unilaterally forcing its policies on the rest of the world? I am sure you are aware of that charge.

Mr. COOPER. Well, how to do this diplomatically? I think there is some merit in that charge. I think we have to accept that.

From a formal point of view, it is not unilateral, because it is done through a series of bilateral negotiations; but it is true that we come to the bargaining table, so to speak, with a view of how international aviation should be structured which is sometimes radically different from what the other party at the bargaining table believes.

As I said in my statement, we have to recognize the diversity of views and circumstances in other countries; and our own bargaining position has to be tailored accordingly. Nevertheless, there is a common thrust to it which is reflected in the President's statement and in your proposed bill. It is a thrust which is not welcomed by many other countries. We have to recognize that as a fact. We are going out into this domain with a particular view of how it should be organized; and we look for possible ways to move ahead in that direction.

The CHAIRMAN. In later testimony, DOT will oppose cabotage arguing that most foreign countries would insist on cabotage rights virtually as a condition for serious negotiations; thus becoming the pivotal issue rather than an additional issue.

Further, they say some foreign governments might be prompted to request renegotiation of existing agreements, including already pro-competitive agreements.

In view of your favoring cabotage, would you comment on that position?

Mr. COOPER. Yes; there is a fine point on whether it pays as a negotiator to tie your own hands in terms of your negotiating instrument. Certainly, there are occasions when that is the case; but in general, it is not the case. In general, the greater the freedom a negotiator has, the more instruments he has at his disposal, the better he can pursue his own objectives.

We believe strongly that having, as I suggested in the testimony, at least limited negotiating flexibility in this area, would be helpful. We do not think that there would be a stampede of renunciation of negotiations in order to get this right.

We would make it very clear that we would use it only when we stood to gain something at least as great. The obvious way to do that most of the time—and even those occasions are limited—is to grant cabotage rights on a strictly reciprocal basis. That would exclude most countries from consideration, because cabotage then is not an issue.

There might be rare occasions in which fill-up rights might be extended for rights we do not now have in particular bilaterals. Where we think it would be useful to have the possibility of negotiating for fill-up rights in exchange for things of value to us, just having this in our negotiating tool kit, so to speak, does not automatically make us patsies as far as our negotiating partners are concerned.

The CHAIRMAN. Northwest, in their testimony, will point out a number of problems with the Korean agreement which do not so much reflect on the exchange of rights, but, rather, on the implementation of the new bilateral.

For example, Korea approved operation of a Northwest inaugural nonstop flight, but not subsequent flights. The flight has operated normally only three times.

The Koreans gave Northwest the agreed amount of space for cargo handling, but in a shape that does not permit room to maneuver a lift truck. There are other examples.

Meanwhile, we lived up to our end of the agreement without any problems. Is this true? Are we adequately overseeing the implementation of the new agreement?

Mr. COOPER. I am not familiar with the case. I will ask Mr. Atwood to comment on it.

Mr. ATWOOD. I have not seen Northwest's testimony. We have had a number of contacts with them on the problems they have been having in Seoul. We have been working with our Embassy and with the Korean Government. We feel at this point we are making progress on these problems. We are not ready to conclude that the Koreans have violated the agreement in any respect thus far. There are some close judgmental calls. We are continuing to monitor it, and the problems seem to be alleviated. Thus far, I do not think it is a case where the Koreans have not lived up to their side of the bargain.

Mr. COOPER. Let me make a more general observation, though, just to get it on the record. We are not negotiating in these bilateral agreements for empty principles. The point is to establish a framework in which real things can happen; more competition, better service, and so on. If we find that we are being diddled systematically by the other partner, we have ways to deal with that within the framework of the agreement, including ultimately renunciation of the agreement. But we could do some diddling on our own.

If we find that there is systematic violation of an agreement, we can get tough in the enforcement on our side.

The CHAIRMAN. Can we assume that you will get tough?

Mr. COOPER. Yes. We have done it in a number of cases. As Mr. Atwood said, the Korean thing is really too new to see whether this is systematic. You can be assured that we will continue to attend to it closely.

The CHAIRMAN. In the State Department's section-by-section addendum, you oppose the provision allowing observer status for congressional representatives in bilateral negotiations. You say, and I quote, "to mandate observer status by law seems unnecessary and may even run counter to the separation of powers established by the Constitution."

First: I would point out that this clause was considered necessary because the State Department has in the past refused observer status to some members or their staff representatives.

Second: I find your constitutional interpretation most intriguing. The provision calls for observer status. I would assume from the position you have taken—and I would like to ask you if that is correct—that you feel we are constitutionally obligated to close off the Senate galleries to employees of the Department of State.

Mr. COOPER. I will ask Mr. Atwood to comment on the legal and constitutional aspects of this provision. While he is thinking about it let me make a general observation. Not so much about the Members of Congress—that problem is not, in fact, an acute one—but about staff members of congressional committees. I speak now not of the aviation negotiations, but more generally of our international negotiations where we receive frequent requests that staff members from congressional committees attend not as observers, but as members of the U.S. Government team.

The numbers very quickly become large. That is not necessarily the case in the aviation area, but we have a problem here of principle; one that I got into. It happened to involve debt renegotiation, involved no fewer than 10 congressional committees that had a legitimate interest in the issue. We fielded a three-man delegation from the executive branch if each of the 10 committees had sent observers—5 on the House side, 5 on the Senate side—they would have overwhelmed the delegation.

I think there is a general problem with congressional staff members participating, even as observers, in international negotiations.

Let me make one further observation. Again, the distinction is very clear to us as Americans, but our system of government is really unique in the world. The distinction between the legislative branch and the executive branch, the sharp distinction which we make, is more blurred in many other countries. It is very difficult for representatives from other countries to separate comments made by one or the other member of an American delegation in the field.

Having said all of that, let me make clear that we want to participate as cooperatively as we can with the relevant congressional committees, including keeping them informed of every step of negotiation and the considerations that go into it. I will let Mr. Atwood comment on the legal aspects.

Mr. Atwood. There has been a long debate between the State Department and the Congress on this subject. I do not profess to be intimately involved with it. There is a continual tension here, of course, between the powers of the President to conduct foreign relations and the very important powers of the Congress in the area of commerce regulation and oversight.

I am not sure I would argue that the point in the paper truly rises to a legal point. It is more a question of policy and practicality.

Concerning the particular disputes we had from time to time in the past, fortunately they have been limited. The principal problem has arisen when the staff member in question is not acting as a representative of a committee with aviation jurisdiction, but, rather, wishes to appear on a delegation because the Congressman or Senator in question is from a locality which may be affected by the negotiation.

Particularly, we have had cases where foreign air lines expressed an interest to serve a particular city and where there have been contacts with people on the Hill to try to develop support for including that new point for the foreign carrier.

It seems to us that it does raise a concern about negotiating tactics and the credibility of our negotiators if the U.S. delegation includes a representative of the Congressman or Senator in question who has indicated publicly a strong desire for service by that particular foreign airline to his city.

I think it throws askew the negotiations. It may send wrong signals to the foreign side. It may suggest to them that the particular city is in the bag and they do not have to negotiate hard in order to get it.

This is where most of the requests have come. It does raise questions about where you draw the line and it does raise questions about whether it is going to send false signals in the course of the negotiations.

The CHAIRMAN. Well, I think the language in the bill here would not be overly restrictive. I refer you to page 19, line 14,

The President shall grant to at least one representative of each House of Congress the privilege to attend international aviation negotiations as an observer, if such privilege is requested in advance in writing.

Do you find any problem with that?

Mr. COOPER. As far as the point I made earlier about the staff as opposed to the Member of Congress, this provision deals with that, it seems to me, assuming that "representative" refers to Members rather than staff. The point I mentioned earlier is not pertinent as far as Members of Congress are concerned. It does, of course, have the problem that Mr. Atwood mentioned of possible skewing the negotiations or the perception of the foreign side about what is really in the bag and what is on the negotiating table for which they have to make a major concession in order to get it. That obviously depends on the selection process for the particular Congressman involved.

The CHAIRMAN. You mentioned the fact you have attempted to keep Members of Congress informed. I must say that I must agree with that. I can relate back to Bermuda II, where I was kept very carefully informed of things that were going on just immediately after they had been agreed upon.

Mr. COOPER. Let me just say, Senator, in connection with Bermuda II, a number of us in Washington found ourselves in exactly the same position.

The CHAIRMAN. Well, thank you very much, gentlemen. We appreciate your being here.

[The attachments referred to follow:]

THE INTERNATIONAL AIR TRANSPORTATION COMPETITION ACT OF 1979 (S. 1300)
ADDENDUM TO THE TESTIMONY OF RICHARD N. COOPER, UNDER SECRETARY FOR
ECONOMIC AFFAIRS, DEPARTMENT OF STATE

SECTION-BY-SECTION ANALYSIS AND POSITION OF THE DEPARTMENT OF STATE

Sections 2 and 3

Sections 2 and 3 would amend the declaration of policy set forth in section 102 of the Federal Aviation Act by extending to foreign air transportation the same pro-competitive guidelines Congress adopted in the Airline Deregulation Act of 1978 for interstate and overseas air transportation. The Department supports these changes. We note that the revised section 102(a)(4) wisely would instruct the Civil Aeronautics Board to take account of any material differences between interstate and overseas air transportation on the one hand and foreign air transportation on the other. Some material differences obviously do exist, primarily because many foreign governments—each of which exercises control over its airspace—view international aviation quite differently than we do. But

this need to take differences into account does not detract from the central thrust of proposed section 102, which is to foster a strongly competitive international system.

The Department also supports the addition of the new subparagraph 102(a) (11) to stress the importance of a viable, privately-owned U.S. air transport industry. This same aim was reflected in President Carter's international aviation policy statement of August 21, 1978. A healthy U.S. industry is important for our national defense and to ensure continuation of the competitive stimulus which many U.S. airlines have given to the international aviation system over the years.

The CAB has urged the deletion from proposed section 102(a) (3) of the phrase "the need to improve relations among, and coordinate transportation by, air carriers." The Department has no objections to the CAB proposal. Some coordination among air carriers is essential for an efficient and smoothly functioning air transportation system, but other provisions of section 102 are sufficient to cover this point, and there is danger that the present wording of subparagraph 3 could be read as undercutting the basic pro-competitive thrust of section 102.

Section 4

Section 4 would extend to foreign air transportation the less stringent public convenience and necessity language now applicable to domestic air transportation under section 401(d). This means that the Board would be required to issue section 401 certificates if such transportation is consistent with (rather than required by) the public convenience and necessity. The Department supports this provision, as it is in keeping with the more liberal and flexible thrust of U.S. aviation policy and with the purposes of S. 1300.

Section 5

Section 5 would eliminate the present requirement that the Board specify U.S. terminal and intermediate points in section 401 certificates issued to U.S. carriers engaged in foreign air transportation. The Department supports this provision, for it would aid in more effective U.S.-carrier utilization of the expanded route and designation rights obtained in our recent liberalized bilateral agreements. It is understood, of course, that the Board would have to act consistently with our bilateral agreements in implementing the new section 5.

Section 6

Section 6 would enhance the Board's powers to suspend a U.S. airline's certificate authority and to grant such authority to another in limited designation markets (i.e., markets in which only a limited number of U.S. airlines may be designated for service as a result of restrictions imposed by the foreign government in question). The provision was described by Chairman Cannon as establishing "a mechanism for competitive bidding and rebidding of limited designations on international routes." The Department supports the aim of section 6, which is to ensure that a U.S. airline granted access to a protected market provides a range of services that best approximates that which would be provided in a more competitive environment. The Department takes no position on the procedural issues which have been raised in connection with the proposed provision.

Section 7

Section 7 would amend section 402(b) to empower the Board to issue section 402 permits not only under the present two criteria—fit, willing and able, and in the public interest—but also if the foreign carrier in question is fit, willing and able and has been designated for the service by its government in accordance with a bilateral agreement with the United States. The Department supports this provision, for it bolsters the requirement of section 1102 of the Act that the Board act consistently with our international agreements and it will enable the United States to provide firm assurances to foreign governments that their carriers will be able to enjoy promptly route rights which they have bargained for. The provision will be most helpful in eliminating a dilemma previously faced on occasion where a service by a foreign carrier was authorized by a bilateral agreement but nevertheless attacked before the CAB as not being in the "public interest." The provision, in effect, creates a conclusive presumption that a service authorized by a bilateral agreement *is* in the public interest.

Section 8

Section 8 eliminates the requirement in section 402(d) for a public hearing in connection with Board consideration of applications for section 402 permits. The Department supports this provision as a desirable means of streamlining CAB procedures. Since most section 402 permits are issued on the basis of bilateral agreements, public hearings are frequently unnecessary.

Section 9

Section 9 would add a new subsection 402(b) designed to strengthen the ability of the United States Government to counter unfair, restrictive or discriminatory practices of foreign governments or foreign airlines which adversely affect U.S. carriers. Such retaliatory action could include summary suspension, amendment, modification, or limitation on section 402 permits if the Board finds such action in the public interest. The Board would also have the authority to restrict operations between an offending country and the United States by airlines of a third country. Any actions under this section would not require a hearing but would be subject to approval by the President.

The Department agrees that the United States should have enhanced authority to take effective and well-tailored countermeasures against governments or foreign airlines which take unjustified action against our own carriers. Our right under international law to take such action was unanimously upheld last winter by the arbitral panel that resolved (in the U.S. Government's favor) an aviation dispute with France. It is therefore desirable that we put our domestic law into shape so that we can take full advantage of our international rights and have the same flexibility of action as foreign governments. Retaliation is never desired and in fact has been used only rarely by the United States. With proper and credible legal tools, it should be used even less in the future.

Section 9 is properly drafted to include three important safeguards against excessive CAB action. First, the United States Government must first have objected, presumably through diplomatic channels, concerning the foreign-imposed restraint or practice. Second, since the new provisions is in the form of an amendment to the Federal Aviation Act, it would be limited by section 1102's requirement that the Board honor the international agreements of the United States.¹ This is particularly important in the case of section 9's reference to third-flag airlines; one government's action against U.S. carriers would not justify the United States Government's abrogation of a third-flag airline's bilateral rights. Finally, section 9 explicitly provides for Presidential review of Board actions under the provision, similar to that now exercised by the President under Part 213 of the Board's economic regulations.

Section 10

Section 10 would subject foreign airlines to section 407(a) of the Act, thus empowering the Board to require them to file reports and information on any subject the Board deems appropriate, as well as copies of all agreements and understandings in relation to any traffic affected by the provisions of the Act.

The Department opposes this provision in its present form. Without additional safeguards, it would be subject to possible abuse that would create unnecessary foreign policy disputes. If the Board were to launch broad requests for foreign documents which the airlines or their governments regarded as confidential, jurisdictional and policy clashes would result. This would be particularly so if it were thought that one purpose of the request was to develop information for the U.S. side for forthcoming intergovernmental negotiations. For the same legitimate reasons that section 19 of S. 1300 seeks to ensure the confidentiality of U.S. Government negotiating documents and of commercially sensitive business data of U.S. carriers, we would expect strong foreign reactions and confrontations from the implementation of section 10.

Another concern about section 10 is one of consistency in U.S. policy. Frequently in the past the United States has objected to various filing requirements which foreign governments have attempted to impose on U.S. airlines. We have insisted—except in routine or minor matters—that the foreign government make its request to the U.S. Government, and we then discussed the issues with the carrier and the foreign government to ensure that all legitimate interests were

¹ Section 1102 should, of course, be construed in accordance with the rules of customary international law, under which one party to an agreement which has been breached by another party may respond by taking proportionate countermeasures which may relate to the breaching party's rights under the agreement. This principle was reaffirmed in the U.S.-France arbitration of last year.

taken into account. We believe that most U.S. carriers agree that such a process is far preferable to their being subject to direct filing requirements by foreign governments.

The broad scope of section 10 should also be evaluated in terms of need. In most situations the Board does have the information-gathering resources necessary to conduct its business. And in a climate of deregulation and competition, the need of regulatory agencies for extensive filing requirements should be diminishing rather than expanding.

The Department therefore recommends that section 10 be revised to provide for Presidential review of filing demands to be made on foreign airlines. This would provide the Board some extra residual authority while also ensuring an opportunity for the Executive Branch to avoid unnecessary foreign policy disputes.

Sections 11 and 12

Sections 11 and 12 would make intercarrier agreements affecting foreign air transportation subject to basically the same filing requirements and review standards as intercarrier agreements affecting interstate and overseas air transportation. The filing of such agreements would be permissive rather than mandatory, and the *Local Cartage* test which is found in the present section 412(c) (2) (A) (i) would be applied to agreements affecting foreign air transport as well. The burden of proof on various issues is also specified. The prohibition in section 412(a) (2) (A) (iii) (as redesignated by the bill) against CAB approval of capacity and price agreements would continue to be limited to interstate and overseas services.

The Department supports sections 11 and 12, although we urge two other amendments to section 412. The overall affect of the provisions would be to increase the burden on air carriers seeking approval (under section 412) and antitrust immunity (under section 414) for intercarrier agreements affecting international services, and this is a proper development in light of our pro-competitive policies. Nothing in our international agreements prevents these changes (although they will not be welcomed by our bilateral partners). Finally, the standards of the *Local Cartage* test are sufficiently flexible to allow the Board to take foreign policy and international economic considerations into account in revising intercarrier agreements.

One of the two additional amendments we urge is to allow agreements solely among foreign air carriers to receive equal treatment under sections 412 and 414. The present language of section 412 has been construed as allowing for CAB review of intercarrier agreements only if one or more U.S. carriers are parties to the agreement. This is an unfortunate (and perhaps unintended) limitation on the scope of those sections, and indeed subjects the United States to the charge of discrimination. The problem is particularly important now in light of new IATA rate conference procedures, which give individual airlines the option of participating in IATA facilitation agreements but not rate agreements. A number of U.S. airlines have now elected to withdraw from the IATA rate conferences, thereby putting in jeopardy the ability of foreign carriers to develop a proper jurisdictional basis in seeking CAB review of their agreements. Nor in the present environment is there any substantial policy basis for making U.S.-carrier participation a *sine qua non* of CAB review and ultimate antitrust immunity.

The second amendment relates to the question of Presidential review of CAB decisions under section 412. International aviation has consequences that at times go far beyond commercial considerations, and thus Congress has wisely provided for Presidential review for a variety of decisions which the Board—an independent agency—may make in the international field. CAB review of inter-airline agreements are not subject to Presidential review, but as the current IATA proceeding indicates some issues under section 412 can have important foreign policy implications. The Department therefore urges the Subcommittee to consider a new provision in S. 1300 which would permit the Secretary of State to certify in any section 412 case that the issue in question has important foreign policy consequences, in which case the Board would submit its final decision to the President for his review. We would expect such a process to be used only rarely, but that matters significantly affecting the foreign policy of the United States should be subject to final review by the Executive Branch of government.

Section 13

Section 13 would permit foreign airlines, upon CAB approval, to lease or charter their aircraft, with or without crews, to a U.S. airline for services in interstate, overseas, or foreign air transportation. At present such arrangements

are possible only for U.S.-registered aircraft, but section 13 together with section 20 of S. 1300 would allow an expansion of this practice. The Department supports these provisions, for they will allow more efficient use of aircraft in a variety of situations and may provide a means by which smaller U.S. carriers can open new routes, both domestic and international. Safety considerations can be satisfied by section 13's provision authorizing the Secretary of Transportation to prescribe any necessary safety regulations.

The Department also supports the CAB proposal that it be given authority to authorize foreign air carriers to carry local traffic between U.S. points in emergency situations.

Section 14

Section 14 amends section 1002(j) (1) of the Act (suspension and rejection of proposed fares in foreign air transportation) in four respects. First, the Board would be permitted to suspend or reject proposed fares of foreign carriers, with or without a hearing, under a simple "public interest" standard, i.e., without regard to traditional tariff concepts (unreasonable, discriminatory, preferential or prejudicial). Second, the Board for the first time would be empowered to disapprove an initial tariff filing of a carrier, in which case the carrier may charge any fare currently in effect for any airline engaged in the same transportation. A third provision relates to what fare an airline may charge when the suspended fare is not an initial tariff. Finally, section 14 provides that the Board may decline to act under the section if it concludes that such action would be in the public interest or would violate U.S. international agreements.

The first two of these provisions are substantively important and the Department supports them. We would hope that there will be little need for "public interest" suspensions by the CAB, but at times when foreign governments reject the fares of U.S. airlines it is necessary for the CAB to respond even where the foreign carrier's fares are otherwise unobjectionable. Section 14 will enable the United States to respond promptly if U.S. carriers are being unfairly treated on tariff issues, so that—if necessary—we can place the dispute in a negotiating context with a semblance of fair leverage on each side. Of course, the relevant bilateral agreement may impose some limitations on the Board's flexibility to disapprove foreign carrier fares, but the "public interest" standard of section 14 and section 1102 of the Act effectively incorporate any such limitations by reference).

The section's provision on initial air fares would similarly give the United States parity in regulatory power. The Board's present lack of authority in this area is an unnecessary regulatory gap, and the provision guaranteeing a carrier the right to meet any outstanding competitive fares will ensure against unfairness.

As for the third feature of section 14, that dealing with fall-back fares in the event a proposed fare is rejected by the Board, we suggest one revision. Our bilateral agreements contain varying provisions on this subject, and a flat legislative rule does not therefore appear desirable or necessary. We therefore recommend that the provision in the bill be modified to allow other fares to replace the suspended one if the applicable bilateral agreement so specifies. We would propose the following phrase be inserted at the end of the sentence which ends on line 12 of page 14 of the bill: "or any other fare specified by an applicable bilateral agreement."

The last feature of section 14 deals with the relationship of the section to international agreements of the United States. Section 1102 of the Act and the "public interest" standard itself in section 14 guarantee that CAB actions under the provisions of section 14 will be consistent with U.S.G.'s international obligations, and, in the event of unwarranted action, the Presidential review powers under section 801(b) are available to cure the problem. The suggestion in section 14 that the Board "may" decide not to act when such action would be contrary to U.S. international obligations creates an unnecessary inconsistency with section 1102. We therefore recommend the deletion of the last sentence of section 14. We believe that the reason behind the sentence was to indicate Congressional approval of the dual disapproval rate article in several bilateral air transport agreements. This type of rate article precludes unilateral rate regulation and provides instead for rejection or suspension only upon mutual agreement of the parties. We think the purpose behind the sentence would be better served by amending section 1002(c) to clarify that the Board shall not issue any order which would violate the international obligations of the United States. We propose that the last phrase in 1002(c) should read as follows ". . . the Secretary

of Transportation or the Board shall, subject to section 1102 of this Act, issue an appropriate order to compel such person to comply therewith."

Section 15

Section 15 would amend section 1002(j) (2) of the Act to allow the CAB to suspend an existing tariff of a foreign air carrier under the "public interest" standard, during which period the carrier would be entitled to match any currently effective fare of a competing carrier. The Department supports this provision, for the same reasons it supports the comparable provisions of section 14.

Section 16

Section 16 amends section 1002(j) (5) of the Act by setting forth an additional factor the Board must take into account in performing its responsibilities under section 1002 with respect to the rejection or cancellation of rates for the carriage of persons or property, namely the estimated or foreseeable future costs and revenues for the air carrier or foreign air carrier for a limited future period during which the rate would be in effect. The added criterion is a useful one, and the Department therefore supports section 16.

Sections 17 and 18

Sections 17 and 18 would provide a clearly elaborated set of competitive goals for bilateral negotiations and international aviation of policymakers. The proposed new section 1102(b) directs the Secretaries of State and Transportation and the Board "to develop a negotiating policy which emphasizes the greatest degree of competition that is compatible with a well-functioning international air transportation system" and, in this regard, sets forth eight major policy objectives that are similar in substance to those in the President's policy statement for the conduct of international air transportation negotiations announced August 21, 1978.

Sections 17 and 18 also add a new subsection (c) to section 1102 which would establish an International Aviation Advisory Council to advise the Secretaries of State and Transportation and the Board on both broad policy goals and individual negotiations, "when appropriate." The Secretaries of State and Transportation and the Board would be required to consult on a regular basis with this Council, which would be comprised of representatives from the President's Domestic Council, the Departments of Commerce and Defense, airport operators, scheduled and charter air carriers, airline labor, consumer interest groups, travel agents, and tour organizers.

Finally, sections 17 and 18 would add a new subsection (d) to section 1102 which would require that the President grant observer status at international aviation negotiations to at least one representative from each House of Congress if the request for participation is made in advance in writing.

The Department supports the statement of negotiating goals set forth in section 17, and sees value in incorporating them into the Federal Aviation Act. Such actions will ensure that our pro-competitive aviation policies do not fade from the scene. International negotiations require flexibility on both sides, but the Department believes that section 17 is well phrased to make clear basic objectives without creating unnecessary rigidities.

We do question, however, the need for a statutorily constituted International Aviation Advisory Council. President Carter last year reaffirmed the role of the International Aviation Policy Committee, chaired by the Under Secretary of State for Economic Affairs, as the coordinator and developer of our negotiating strategies. The participating agencies in this committee (which include the Department of Justice and the staff of the National Security Council as well as those listed in section 17² also spend considerable time and effort consulting with private sector representatives, and of course industry, consumer, and labor representatives serve as valued members of the negotiating delegations. While intragovernmental and governmental/private sector coordination can always be improved, the present structure for our negotiations has been working well and retains flexibility for needed improvement. We therefore believe that adoption of a statutory advisory council is unnecessary.

As for a provision on Congressional observers at negotiations, the Department welcomes and fosters the closest, continuing consultation with the Congress on international aviation matters, and particularly with this subcommittee. Indeed,

² The Department of Defense currently participates only in matters particularly affecting its interests.

such consultation is part and parcel of the consultative process described above. The Department from time to time has invited Congressional participation in international meetings. There may very well be cases in the future when the President would invite Members of Congress to attend international aviation negotiations, and we would certainly welcome any expression of interest in such participation. However, to mandate observer status by law seems unnecessary and may even run counter to the separation of powers established by the Constitution.

Section 19

Under section 1104 of the existing law, the Secretaries of State and Transportation and the Board must withhold from disclosure information which would (1) prejudice formulation and presentation of U.S. positions in international negotiations and (2) adversely affect the competitive position of U.S. carriers in foreign air transportation. Section 19 amends section 1104 by deleting the second of the aforementioned requirements. Under the proposed revisions, the Secretaries of State and Transportation and the Board would, instead, be required to "consider the effect of the proposed withholding on competition in air transportation."

The Department supports a revision of section 1104 to provide greater protection of negotiating positions and confidential airline information than is provided by the present provision. For example, cases can be found where a particular disclosure would damage the U.S. negotiating position but not any particular U.S. carrier, or vice versa. As now written, section 1104 would not be a basis for refusing disclosure in such cases.

Section 19 represents one improvement of section 1104, for it would not make carrier damage a prerequisite to nondisclosure. However, the section may not provide sufficient protection to competitive information of U.S. carriers, and—as we are all aware—the trade secrets exemption of the Freedom of Information Act (5 U.S.C. 552(b)(4)) has been narrowly construed by the courts. The result could be unfortunate injury to a carrier or carriers, as well as a reluctance on the part of U.S. industry to provide governmental negotiators the background information needed for them to do their job effectively. The Department proposes, accordingly, that section 1104 be retained in its present form, but that non-disclosure be authorized where the U.S. negotiating position *or* (rather than *and*) a carrier's competitive position would be harmed. Such an amendment would afford needed protection both to the U.S. negotiating positions and to the competitive standing of U.S. airlines in foreign air transportation.

Section 20

Section 1108(b) of the Act prohibits foreign civil aircraft from carrying U.S. domestic traffic. Section 20 would amend section 108(b) to permit such operations where specifically authorized under the proposed new section 416(b)(7) (section 13 of S. 1300). For the reasons indicated in the discussion of section 13, the Department supports section 20 as well.

Sections 21 and 22

Sections 21 and 22 represent an attempt to modernize and liberalize the "fly America" provisions contained in section 1117 of the Act. Under existing law, U.S. Government financed transportation of passengers and cargo between points in the United States and in foreign countries and between points in foreign countries must be provided by U.S. carriers "to the extent service by such carriers is available." Sections 21 and 22 amend section 1117 of the Act by establishing less stringent criteria in the case of transportation between points outside the United States. Use of U.S. carriers in that case would only be required "to the extent service by such carriers is reasonably available" (new section 1117(b)). The proposed amendment would also permit use of foreign carriers where such transportation is provided for under the terms of a bilateral or multilateral U.S. air transport agreement which provides reciprocal rights for transportation by U.S. carriers of passengers or cargo financed by the foreign government or governments parties to such agreement.

The Department would welcome a relaxation of section 1117. Since that section was enacted in 1974, three developments support its liberalization or, indeed, repeal. First, the condition of the U.S. industry has improved greatly since 1974; the semi-emergency conditions which favored enactment of the Fly America Act are now history, for despite some difficulties the U.S. industry is in good financial condition. Second, the burdens on U.S. Government employees and on taxpayers of

section 1117 have been considerably more substantial than originally foreseen. The personal hardships, extra expenses of circuitous travel, bookkeeping and bureaucratic costs, and lost official time mount up to very serious levels. Finally, the United States has now adopted a new international aviation policy favoring a more competitive and less protective aviation system; the Fly America Act of 1974 is a glaring departure from those principles. The Department is therefore pleased that S. 1300 would effect improvements in this area.

In principle, the Department would be inclined to go further and advocate complete elimination of the Fly America provisions. They are too obviously and glaringly contrary to the basic thrust of our international aviation policy, and the bureaucratic apparatus required to implement them are clumsy and inefficient. In short, the case can be made that we ought to practice what we preach and deregulate this vestige of protectionism.

At the same time, we have to recognize that other governments, through a variety of means, also have practices akin to our Fly America restrictions. In most cases, this appears to be accomplished not by legislation as in the United States but by regulations, fare discounts for official travelers, or even by silent understandings and encouragement. None of the systems we are aware of, however, are as rigid as our own or put a personal penalty on government employees for errors in the Act's administration. The proposed section 1117 would be a means of eliminating similar practices in other countries and would give us the leverage which might make it possible to do so through the time-honored principle of reciprocity. The Department welcomes this provision.

The Department also welcomes the amended section 1117 under which travel between points outside the U.S. would have to be on U.S. airlines only if service by such carriers is reasonably available. Such a provision, if sensibly administered in accordance with the intent of Congress, would go a long way toward eliminating extreme and often ludicrous interpretations of the present statute. We urge, however, that this same standard of reasonableness apply as well for travel between the United States and foreign points.

Section 23

Section 23 would amend the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 1159n). Under existing law, concerned federal departments and agencies, including the Board, are directed to keep under review all forms of discrimination or unfair competitive practices to which U.S. carriers are subject in foreign air transportation and to take appropriate action to eliminate such adverse conditions. Section 23 introduces an additional provision, which authorizes the Board, upon finding that a foreign government or instrumentality, including a foreign carrier, (1) engages in unjustifiable discriminatory, predatory or anticompetitive practices or (2) imposes unjustifiable restrictions on access by U.S. carriers to foreign markets, to take actions to eliminate such practices or restrictions. These actions may include but are not limited to denial, transfer modification, suspension or revocation of any foreign carrier permit or tariff pursuant to its powers under the Federal Aviation Act. Any U.S. carrier or federal agency may file a complaint for Board action under this provision which the Board must approve, deny, dismiss or set for a hearing within 30 days. Board proceedings under this provision, whether sua sponte or upon complaint, must provide affected air carriers or foreign air carriers with notice and an opportunity for written submission and the Board must solicit the views of the Departments of State and Transportation. Proposed Board action pursuant to this provision will be transmitted to the President pursuant to section 801 of the Federal Aviation Act.

The Department supports the effort in section 23 to establish a flexible and forceful deterrent under United States law to unfair or unreasonable practices against U.S. airlines. It is important to remember, however, that disputes in international aviation are frequently escalated to the government-to-government level and are not easily susceptible to solution by administrative action before the CAB. The provisions of section 23, and particularly the tight time-schedule for CAB actions, could therefore have the unfortunate effect of thrusting diplomatic disputes into the forum of a CAB administrative proceeding, thereby complicating resolutions of the problem.

This problem would be alleviated if proposed section 1159b(b)(2) were modified to allow for initial CAB action on a complaint to occur within 90 days rather than 30 days and also to allow for possible extensions of the 90-day period. Further, the initial Board action contemplated by the section should be expanded to include initiation of an investigation or referral of the matter to the Depart-

ment of State for attempted resolution at the diplomatic level. These changes will enhance the flexibility of the United States Government to address particular complaints of U.S. airlines in whatever manner seems most likely to result in a quick and practical solution.

THE INTERNATIONAL AIR TRANSPORTATION COMPETITION ACT OF 1979 (S. 1300)

ADDITIONAL MATERIAL IN SUPPORT OF THE POSITION OF DEPARTMENT OF STATE
ON SECTIONS 21 AND 22 ("FLY AMERICA ACT")

Statutory requirements for U.S. Government employees to use U.S.-flag airlines wherever available throughout the world date only from 1974. The so-called "Fly America Act", actually Section 5 of the International Air Transportation Fair Competitive Practices Act,¹ was enacted by Congress in 1974 to provide general aid and support to U.S. carriers, then facing severe financial problems. It was also specifically intended to counteract what was felt to be widespread use of fly national requirements by other countries to the detriment of U.S. airlines. The 1974 legislation was a significant extension of previous policy encouraging U.S. official travelers to use U.S. air and sea carriers, especially the 1962 concurrent resolution of Congress.² Whereas the 1962 resolution allowed exceptions to use of American carriers when essential to carry out official business or when necessary to avoid unreasonable delay, expense or inconvenience, the 1974 Act requires their use "to the extent [such] service is available." More importantly, the Act for the first time imposed personal financial penalties on the individual traveler who is found to have engaged in travel contrary to the Act.

Guidelines to implement the Act were issued by the Comptroller General in June 1975.³ The Comptroller General's guidelines very strictly define Congressional intent as to what American flag-service is "available" between two points. Service is "available" even if:

Foreign-flag service costs less;

Foreign-flag service is preferred by or more convenient for the agency or traveler;

Use of U.S.-flag service may add up to 12 hours to total trip time;

Trips that take three hours or less by foreign-flag carrier take no more than six hours by U.S.-flag carrier;

Connections in order to use U.S.-flag carriers take up to six hours;

Trips must be advanced, delayed or extended up to 48 hours in order to use U.S.-flag carriers; and

Travel must occur outside of normal work-weeks or sleeping hours in order to use U.S.-flag carriers.

Separate administrative regulations were promulgated by various agencies based on the Comptroller General's guidelines. In practice such regulations have proved difficult to write and administer. In the case of the Department of State, applicable sections of the Foreign Service Travel Regulations have been enlarged by over fifteen pages to reflect the requirements of Fly America.⁴ In addition, the Department constantly receives requests for guidance from administrative officers in the field who must make often critical decisions regarding official travel.

In reviewing the impact of the Fly America Act on the operations of the Department, the various administrative offices of the Department and all overseas posts were asked last year to estimate the additional costs they have experienced due to the requirements of the Act. The resulting estimate was that additional costs of over \$1 million annually, out of the Department's total travel and per diem budget of \$35 million, could be directly attributed to administration of compliance with the Act. These additional costs included:

Higher air fare due to round-about routings,

Increased per diem due to extended travel time,

Lost employee work time due to advanced and delayed travel requirements, especially for travelers on temporary duty assignments,

Lost opportunities to use excess currencies in place of dollars,

Increased administrative burden associated with planning and routing travel itineraries, and

¹ 88 Stat. 2104, 49 U.S.C. Sec. 1517.

² Sen. Con. Res. 53, 76 Stat. 1428.

³ Comp. Gen. Guidelines dated June 17, 1975.

⁴ Foreign Affairs Manual, Vol. 6, Sec. 134.

Increased cost of educating travelers to the Act and its restrictions.

Most of the additional costs, particularly in administrative planning time, were incurred in applying Fly America rules to routings between two points outside of the United States. The burden was most onerous in cases where unusual routings were required by the Act to use the farthest interchange point with an American carrier, both for ultimate destination in the United States and for partial carriage by U.S.-flag airline when both points were outside of the United States. The Department estimates that a very high percentage of the total additional costs to the U.S. Government from the Act are incurred through such routings, while the greatest benefit from the Act to U.S.-flag carriers occurs on routings where the departure or destination point is within the United States.

Some examples to support the claim of additional costs on non-U.S. routings may be appropriate.

Higher air fare.—The requirements of the Act often result in higher air fares in regions where U.S.-flag carriers operate but do not provide frequent, direct service between all major points. Such regions include the Western Pacific (Seoul-Manila, Manila-Bangkok, Jakarta-Tokyo) and the Caribbean (where many indirect routings must be made via San Juan from various Caribbean islands to Central and South American points). For example, between Santo Domingo and Caracas the Act requires travel via San Juan in order to use a U.S.-flag carrier between San Juan and Caracas. The additional cost compared to direct service by foreign-flag carrier is about 20 percent.

Greater per diem.—Per diem costs will be higher in almost any case in which connections to a U.S. carrier is required rather than use of direct foreign-flag service. Numerous examples exist of routings between European points which have no U.S.-flag service and those that have such service via intermediate points. For example, the routing between Belgrade and Paris required by the Act is via Frankfurt. This routing involves over twice the flight time of the direct foreign-flag service.

Lost employee worktime.—This cost is most significant in regions where a U.S.-flag carrier serves the point of departure or an interchange point but flights are available only a few times per week. For example, U.S.-flag service is available between Nairobi and several West African points twice a week while foreign-flag service is available on most of the remaining days of the week. Travelers may lose up to two days productive worktime by advancing or delaying their travel to accommodate the U.S.-flag carrier's schedule.

Increased administrative burden.—The burdens involved in interpreting fifteen pages of regulations and examples to maximize use of U.S.-flag carriers and at the same time to minimize inconvenience to the traveler and extra cost to the Government can often be staggering. The Fly America Act requires travel administrators to seek available U.S.-flag service over a wide range of possible itineraries between two given points, adjust travelers' desired travel times in order to use U.S.-flag service, take into account the exceptions for excessive travel time and sleeping hour restrictions, interpret rules for rest stops, and properly document any use of a foreign-flag carrier.

The most common aid used by official travelers and Department travel administrators is the *Official Airline Guide* (OAG). The OAG is the standard reference used by the travel industry to determine the availability of direct flights and connections between points. The international edition's over 1200 pages are designed to show all non-stop and single-plane service between two points, and, the most convenient alternative connections between the points. Since these connections are not constructed with the Fly America Act in mind, all possible connections to U.S. carriers are not shown. The OAG may list only foreign-flag connections between two points while U.S.-flag service is available on one leg of the connection via lesser-used or less direct interchange point. For example, the OAG lists connections between Tehran and Rome only on foreign-flag carriers via Damascus or Amman, while U.S.-flag service is available for half the journey to Rome by connection in Istanbul. Similarly, between Jiddah and Rome U.S.-flag service is available Rome-Cairo while the OAG shows only foreign-flag connections at Amman and Beirut. Although OAG-listed connections are usually those occurring at the most convenient times over reasonably direct routes, airlines also pay OAG's publisher to include more indirect connections utilizing their routes. However, U.S. carriers have done little to have connections shown in the OAG that would allow easier conformity with the requirements of the Fly America Act.

The financial penalties to the traveler under the Act and the heavy documentation requirements placed on the travel administrator prompts many to book U.S.-flag service even in cases where it is clearly impracticable and valid exceptions exist to use foreign-flag carriers. Travelers are often unwilling to face the financial uncertainty of using foreign-flag service, and administrators may wish to avoid the extra burden of preparing documentation. Considerable extra cost to the U.S. Government is often the result. The financial risk to the traveler remains whether he relies on his own skill as a travel agent, or that of his agency's travel administrator, a travel agency, or the U.S. airlines own representatives. In a General Accounting Office study of the Fly America Act, ticket agents of U.S. carriers were asked to prepare itineraries to various overseas points using U.S.-flag carriers as much as possible. In almost all cases, the agents' routings included use of foreign-flag carriers that violated the Fly America regulations. The agents probably used only the connections listed in the OAG under the origin-destination city-pair and did not attempt to construct their own connections by reference to more than one city-pair listing. The GAO concluded that the failure of travel professionals to respond to requests to use U.S.-flag service highlights the difficulty U.S. official travelers and their administrators have in complying with the Act.

In October 1978, Congress included in the Fiscal Year 1979 funding authorization of the Department of State and other foreign affairs agencies a provision to liberalize the Fly America Act as it applies to employees of those agencies.⁵ The provision allowed transportation aboard foreign-flag carriers between two places, both of which are outside the United States. However, in the Conference Report, addition comments on Section 706 indicate the intent of Congress was that the foreign affairs agencies continue to use U.S.-flag carriers "to the maximum practical extent."⁶ As a result, the Department of State undertook a review of its existing Fly America regulations and a draft of new regulations was released for comment. The proposed changes would somewhat simplify the regulations, shorten their length from 15 to 10 pages, including examples, and in general liberalize them slightly. The most significant liberalizations would eliminate the requirement that travelers in per diem status advance or delay their travel to use U.S.-flag carriers, cut in half the total delay required before foreign-flag carriers may be used, extend the sleeping hours exceptions by two hours, liberalize rest stop selection, allow travelers bumped by a U.S. airline to use foreign-flag service, and allow use of excess currency where the available U.S. carrier does not accept such currency. The revisions do not lessen a traveler's personal liability for violations of the Act or provide much liberalization if the traveler is not on per diem or is using an indirect or interrupted routing for personal reasons. The revisions also require for the first time that all use of foreign-flag carriers must be justified by the traveler on his travel voucher so that the voucher examiner can spot violations more easily. Previously only suspected violations of the Fly America regulations were documented.

The revised regulations are still under internal review at this time. They have therefore not gone into effect for the foreign affairs agencies and we have no experience in the field to judge their impact on cutting excess costs. At the present time, we are still operating under the regulations based on the Comptroller General's 1975 guidelines, the same as the rest of the U.S. Government.

The Department has recommended in its testimony that the Fly America Act be liberalized or preferably repealed. Such action would reduce or eliminate all the administrative burdens and excessive costs associated with the Act in practice. We believe that the conditions that originally prompted Congress to pass the Act—severe financial strain on U.S. international airlines and restrictive operating conditions around the world—in large part no longer exist.

Today the airlines are enjoying generally improved profit margins due to increased traffic, and we are involved in concluding more liberal air transport agreements with many of our major partners in civil aviation. The Administration's policies are aimed at lessening and eventually eliminating government regulation and interference in civil aviation. The presence of Fly America requirements may be in fact counter-productive to our efforts to gain more liberalization in international aviation by leaving us open to the charge that we continue government regulation where it suits our interests. In an inquiry to our major aviation partners, we found that none of them had a legislative requirement for their government employees to fly national carriers. Some had administrative

⁵ Sec. 706, P.L. 95-426, 92 Stat. 992.

⁶ House Report No. 95-1535.

requirements, but none were as strict as those of the United States. In only two cases, France and Germany, were travelers liable to be denied reimbursement for use of foreign-flag carriers, and in both cases only when directly-competing national-flag service was available. In several cases governments indicated favorably an interest in reciprocal waivers of fly national requirements, particularly the United Kingdom and the Netherlands.

If the Fly America Act is to be retained, the Department supports the position that official travelers be required to enter or leave the United States on U.S.-flag carriers, provided that such service is reasonably available. However, travelers should be able to use interchange points abroad which are reasonable and which would allow non-stop or single-plane service on U.S.-flag carriers to or from the United States. This change would reserve the lucrative long distance, across-ocean type of service to U.S.-flag carriers while freeing our official travelers from the problems the Act has created in purely foreign travel where U.S. carriers are not readily available.

The Department also supports, if Fly America is to be retained, the proposed authorization that reciprocal agreements may be concluded with foreign governments to waive fly national requirements. In the first instance, such authorization would enable us to pursue elimination of this type of government restriction through reciprocity. Secondly, agreements between the United States and countries whose airlines have large international networks, e.g. the United Kingdom, France, Spain, Switzerland, Japan and Brazil, would vastly improve and expend the availability of air service to our official travelers, particularly in Africa and Asia. Although most official travelers of the various countries with which we might have agreements would in the majority of cases continue to fly their own national carriers, either due to more convenient schedules to and from their home countries or personal preference. Many would likely use U.S.-flag carriers in areas where our airlines have a strong presence, such as in the Western Hemisphere and across the Pacific. Conversely, in Africa especially our travelers would often find use of the European carriers more convenient for trips within the continent and to Europe. We believe the end result would be neutral for all carriers with a tremendous increase in service availability for official travelers of all the nations who participated in the reciprocal agreements.

The Department would also recommend that the term "reasonable" be defined to include instances where service by a U.S.-flag carrier to a particular point does exist, but the quality of that service is judged to be so inferior (in terms of reliability, competency of staff, etc.) as not to be reasonably available as a practical matter. In such cases, after certification by the U.S. Government (perhaps by interagency review) of the substandard service of the carrier, official travelers could utilize foreign-flag service to the nearest interchange point where a U.S. carrier provided acceptable service. We are currently receiving complaints from several South American posts that the U.S. carrier which has a monopoly of U.S.-flag service in that area is providing substandard service. These complaints include charges of poor inflight service, dirty aircraft, excessive "bumping", and unannounced changes in schedule. The posts' most adamant complaints involved the carrier's handling of mail, including official correspondence, which they claim has been backlogged in warehouses awaiting flights as much as two months. The current restrictions of the Fly America Act effectively provide a captive clientele of official travelers for the U.S. carrier, thereby apparently decreasing the airline's incentive to provide good service to these passengers. Even less incentive would be afforded in the carriage of official cargo, which is not necessarily grouped with private cargo, as would at least the official traveler. The use of foreign-flag carriers for short flights to connecting points served by another U.S.-flag airline would reduce this monopolistic lack of incentive.

New Fly America provisions should be sufficiently flexible to provide for a slightly different example of unavailability of service and facilities. For example, U.S.-flag service is available to an overseas point where connection can be made with a foreign-flag carrier to the city of ultimate destination. However, because the foreign-flag service is so notoriously unreliable and well-known for overbooking, other than U.S. Government travelers select interchange points which avoid use of this carrier. Also, our travelers have experienced great hardship changing planes at certain overseas airports. Rome, Italy, seems to strike horror into the hearts of travelers whenever they are required to interchange there. Labor stoppages occur with great frequency without any advance notice. Examples of lost baggage directly attributed to Rome airport's handling are well-documented. The Department needs flexibility to deal with these types of problems.

In the absence of some waiver flexibility, the Department is forced to advise our employees, as we did recently to Ambassador White in Paraguay, that "if the post believes that (the airline's) service * * * falls in the unavailable category, it may decide to route travelers by foreign-flag carriers to the next closest interchange point with American-flag service. Travelers should be furnished statements to attach to their travel vouchers which justify the reasons for their routings. However, post must bear in mind that * * * the voucher certifying officer must be convinced by the strength of the justification * * * that American-flag service was not available out of Asuncion." The traveler, therefore, must take the risk in advance that he can convince a nameless, faceless auditor in Washington who has probably never experienced the travail of overseas travel that his use of a foreign-flag carrier was justified. Under these case-by-case circumstances, moreover, one auditor may approve a voucher based on an employee's statement, while another might disapprove the next identical case.

Employees and their families are authorized shipment of a limited amount of airfreight to their next posts. This entitlement provides those essential items necessary to set up their households pending receipt of their household effects, which are transported by sea, truck or rail. As the Department is required to ship the airfreight under the same Fly America rules as employees and their dependents must use, the problems we have outlined are equally applicable to air cargo. The purpose behind shipment of effects by air is being undermined by the legal requirement to ship them by often next to impossible routings.

Any changes to the Fly America Act should apply to all U.S. Government employees, their dependents, accompanied and unaccompanied airfreight, and to travelers whose transportation is being funded by the Government. As it now stands, the 1978 liberalization of the Act applies only to employees, their families and accompanied baggage, of State, AID, USICA and ACADA.

In addition, an exception should be made in coverage of the Act to exclude travelers funded through accounts set up with the U.S. Government by foreign governments for reimbursable programs. The Fly America Act currently applies to "funds under the control of the U.S. Government". In the case of many reimbursable programs, foreign governments deposit funds in the United States in accounts controlled and administered by the U.S. Government. The Act requires that travelers funded by such accounts, including nationals of the foreign country involved, fly on U.S. carriers. We do not believe it to be an appropriate function of the Act to force other governments to pay for use of our airlines with their money.

The CHAIRMAN. The committee will stand in recess until 1:30. We will start with DOT witness Linda Kamm.

AFTERNOON SESSION

The CHAIRMAN. The next witness will be Linda Kamm, General Counsel, Department of Transportation.

STATEMENT OF LINDA HELLER KAMM, GENERAL COUNSEL, DEPARTMENT OF TRANSPORTATION; ACCOMPANIED BY JEFFREY SHANE, ASSISTANT GENERAL COUNSEL FOR INTERNATIONAL LAW; EDWARD OPPLER, DEPUTY DIRECTOR, OFFICE OF AIR TRANSPORTATION; AND ROSALIND KNAPP, ACTING ASSISTANT GENERAL COUNSEL FOR LEGISLATION

Ms. KAMM. Thank you very much.

I would like to introduce the people at the table with me.

On my right is Jeffrey Shane, the Assistant General Counsel for International Law.

On my left, Edward Oppler, the Deputy Director of the Office of Air Transportation; and Rosalind Knapp, the Acting Assistant General Counsel for Legislation.

Mr. Chairman, as you know, I am Linda Kamm, the Acting Deputy Secretary—we have a lot of actings here today—and General Counsel of the Department of Transportation.

The CHAIRMAN. By the way, I just announced today that we would hold a hearing on the nominee on September 5.

Ms. KAMM. Very good. I am delighted to hear that.

The CHAIRMAN. All right.

Ms. KAMM. I am very pleased to be here today to present the DOT's views on S. 1300, the International Air Transportation Competition Act of 1979. I would like to compliment you, Mr. Chairman, for having developed comprehensive and thought-provoking legislation in this vitally important area.

I am well aware of your longstanding interest in international aviation, and I am glad to know that you will be bringing to this subject the same depth of concern, knowledge, and leadership which were so important to the success of our efforts to reform and revitalize domestic air transportation.

Just 1 year ago, Mr. Chairman, you held initial hearings on U.S. international aviation policies. Since that time, we have witnessed the beginnings of a fundamental change in international aviation. I was most pleased, Mr. Chairman, to note that your remarks in introducing S. 1300 expressed approval of the administration's actions in the last year in seeking competitively oriented, bilateral aviation agreements. The Department of Transportation has devoted considerable resources to this effort.

We take very seriously our responsibility for leadership in the development of long-term international aviation policies. The institutional arrangements that have been worked out between DOT, the Department of State, and the CAB for the conduct of individual bilateral negotiations are working well. We believe that the success of our recent negotiations is ample demonstration that the efforts of these three agencies can be melded effectively.

It was just over 2 years ago that the administration, in an unprecedented move, supported Laker's competitive low-fare offerings across the Atlantic. Shortly thereafter, in the fall of 1977, the President overturned the CAB's rejection of British Airways', Pan American's, and TWA's competitive responses to Laker's new low fares. As a result, low and innovative fares were off and running in the international marketplace. They are almost a commonplace, at least in the North Atlantic.

A primary objective of those decisions early in this administration was to create a more competitive environment in international markets wherever it was feasible. With the continued development of this competitive environment, we have seen a dramatic increase in the variety of fare and service options available to the public.

In DOT's testimony at your hearings last year, we noted that we had recently concluded a new bilateral agreement with the United Kingdom, Bermuda II. While that agreement is in fact less liberal than we might wish, its impact on air service in the United States-United Kingdom market has nonetheless been dramatic. Nine United States and British airlines now serve this market, four of which have begun service only within the last year. Standby, budget, and APEX fares as low as 60 percent less than the standard economy fares have

been regularly offered over the past 18 months. Average summer fares between the United States and the United Kingdom have declined 14 percent, all at a time when carrier costs have risen significantly. And scheduled traffic has shot up 41 percent.

Since the signing of Bermuda II, the United States has entered into new or significantly modified agreements with other of our major aviation partners. As a result, we have witnessed a further proliferation of new services, low fares, and strong traffic growth throughout Europe. Ten U.S. cities enjoyed new direct service to Brussels, Amsterdam, or Frankfurt this summer, while transatlantic fares have been slashed, and a variety of price and service options have been made available.

For example, the passenger traveling one-way, nonpeak, from New York to Brussels—a major gateway to all of Europe—has the following options:

One: A reservation on a charter-configured, narrow-body aircraft, Wednesday through Sunday, can be purchased for \$125.

Two: A reservation on a wide-body aircraft, where the airline picks the departure day, can be purchased for \$143.

Three: An economy-class seat, with no restrictions, can be purchased for \$339.

By contrast, the lowest reserved seat fare available in this market in July 1978 was \$477. The \$339 fare being offered today represents a reduction of almost one-third below the standard economy fare in effect 1 year ago, despite rising costs of fuel and other rising costs.

These examples do not by any means reflect the full range of innovative price and service options currently available. Others would include standby, super APEX, and no-frill fares.

This administration has consistently sought bilaterals which provide for flexibility in pricing, routing and capacity, multiple-carrier competition, and liberal charter rules. The "Statement of Policy for the Conduct of International Air Transportation Negotiations," issued in August 1978 embodies these principles.

Since the issuance of that statement, we have continued to move forward by concluding new or significantly modified agreements with Germany, the Netherlands, Korea, Jamaica, Belgium, Thailand, and Singapore. Significant benefits were achieved in the signing of the Israeli agreement, which was concluded and signed recently. The benefits of these agreements are being realized in the form of lower fares, a variety of new service options, and greater convenience for the traveling public.

Mr. Chairman, I believe it is quite clear that our procompetitive policies, where they have been implemented, are succeeding. More people are traveling by air than ever before, and they are paying significantly less for the service. This is especially true in the U.S. domestic aviation market, where deregulation—thanks in large part to the efforts of this committee—is now a matter of law.

However, we recognize that our policy cannot be implemented unilaterally in foreign markets. International aviation is based on partnership. Many countries remain reluctant to replace a long tradition of close government regulation with the dynamics of the marketplace.

It is the administration's hope that the demonstrated success of increased competition in our domestic markets and in those international markets where U.S. policy has been implemented will persuade the more cautious governments to consider our proposals more favorably. We are continuing to work, along with the other interested Federal agencies, to achieve a wider acceptance of our aviation policy through the process of bilateral negotiation.

It is against this background that I would like to comment on S. 1300. The Department enthusiastically supports the greater bulk of the bill, and particularly those provisions which would abolish outmoded differences between the CAB's treatment of foreign and domestic air transportation.

In addition, the bill would expand the U.S. Government's range of responses to unfair treatment of U.S. carriers abroad, would enable U.S. carriers to expand fleet capacity more readily in times of need, and would relax excessively rigid restrictions on air travel paid for with U.S. Government funds.

We feel, in general, that the bill will promote the implementation of U.S. international air policy and thus enhance the quality and variety of the service available.

I would like now to discuss several specific provisions.

On carrier substitution, section 6 would allow the Board to remove an incumbent U.S. carrier and substitute another in a foreign air transportation market governed by a bilateral which restricts the entry of additional U.S. airlines. The new carrier would have to demonstrate in advance "that it can and will provide substantially improved service, substantially lower fares or rates," or both. The Board would also have to find that the substitution is otherwise consistent with the public convenience and necessity.

The underlying objective of this proposal is one which the DOT shares: To promote lower fares and/or better service, even in markets where competition is limited. Undoubtedly, in some restricted markets, incumbent carriers are immune from the normal competitive pressures to improve fare and service offerings. Although the CAB has authority in existing section 401(g) to revoke an operating certificate, a lengthy procedure is involved and the applicable standard is vague and invites legal challenge.

By authorizing substitution on the basis of a relatively objective finding, and by authorizing the use of simplified procedures under 401(p), the bill would make the prospect of such substitution far more real, thus creating competitive pressures even in presently monopolistic markets. For these reasons, we believe this provision is worthy of serious consideration.

On the other hand, it should be recognized that the substantial improvements contemplated by this section can be realized most readily on the high-traffic routes between major U.S. gateways and major foreign destinations. Because it is possible that a displaced incumbent may not be able to continue providing service on all of the remaining marginal routes in its system, there is a potential danger that this provision could have an adverse impact on the integrity of the overall U.S.-foreign air transportation system, including less lucrative but nevertheless essential feeder routes.

We also have some concern that the U.S.-air carrier industry might suffer overall if, as a result of frequent carrier substitution under this provision, U.S.-carrier identity in particular markets were destroyed. In general, we feel that a provision of this sort must be implemented with sensitivity to the need for order and stability in the international air transportation arena, even in a more competitive environment.

We think the proposed provisions on intercarrier agreements are among the bill's most important innovations. That section would amend section 412 of the Federal Aviation Act to bring under a single regulatory regime intercarrier agreements affecting domestic air transportation, on the one hand, and agreements affecting foreign air transportation, on the other.

Under the amendment set forth in section 11, the filing of agreements affecting foreign air transportation would become permissive rather than mandatory. The Board would be permitted to approve an agreement which "reduces or eliminates competition" when it finds that the agreement is not otherwise adverse to the public interest and that it is necessary to meet a serious transportation need or to secure important public benefits which cannot be achieved in a materially less anticompetitive manner. These changes would permit greater flexibility in the Board's regulatory surveillance of inter-carrier agreements. The Department therefore supports them.

The prohibition currently found in section 412 against Board approval of any agreement affecting domestic transportation which limits capacity, or which fixes rates, fares, or charges between air carriers, would continue to apply only to agreements in domestic air transportation, and not to agreements affecting foreign air transportation. By leaving this provision unaltered, the bill recognizes that our bilateral aviation partners often insist upon capacity and frequency restrictions. While we do not ourselves support those restrictions, we think these practical realities of the aviation world cannot be ignored.

We believe, however, that the bill might go further in accommodating section 412 to the current realities of international air transportation. For example, we note that, while the filing of agreements affecting foreign air transportation would be discretionary under the proposed amendment, the rewritten section would continue to authorize such filing only by U.S. carriers. We believe that foreign carriers should also have the clear right to file intercarrier agreements with the Board for approval and that the act should be amended to permit this.

Also, under the present statutory scheme of the Federal Aviation Act, the President is not authorized to review CAB actions regarding intercarrier agreements affecting foreign air transportation. We believe that the President should have such authority whenever the Secretary of State certifies that an intercarrier agreement has significant foreign policy implications.

We believe that the Presidential review provision of section 801 should be amended in one additional respect. Right now, although any Board decision affecting the terms of an operating certificate is subject to Presidential review, the grant of 'exemption authority' is not. We believe that Presidential review of such awards should be required whenever the Secretary of State certifies that significant foreign policy issues are at stake.

I would add here, Mr. Chairman, that this view is not meant to deal with the issue of carrier selection, which the Congress addressed in last year's bill. It is designed to look at real foreign policy concerns.

I would like to turn now to cabotage, which has been one of the more controversial areas that the committee has asked us to take a look at.

Although S. 1300 does not specifically address it, you have asked that we give our attention to this subject. The administration has not, as you know, established a position on this issue. So the comments herein reflect only the views of the DOT.

The cabotage question has been the subject of extensive debate in recent months. Particularly, the debate has focused upon whether foreign air carriers should be permitted to engage in cabotage during a period of emergency, such as that which occurred for a short period during the United Airlines strike. A second issue is whether permanent cabotage rights should be exchanged on a reciprocal basis in bilateral or multilateral negotiations.

The cabotage provisions found in the Federal Aviation Act are not unique to the United States, but have been long recognized in the aviation and maritime laws of the world's major commercial nations. Section 7 of the Chicago Convention specifically recognizes the concept, moreover, and provides that no contracting State shall enter into arrangements which specifically grant cabotage rights on an exclusive basis to any other State or its airlines.

The DOT recognizes, of course, that there may be periods of genuine emergency in which travelers holding reservations are stranded without means of alternative transportation. Under such conditions, we would favor the establishment of a mechanism for permitting foreign air carriers to alleviate any capacity shortage that may exist, subject to specific criteria.

In any event, any cabotage rights should be granted only when no other U.S.-carrier capacity is available and should be specifically limited to the emergency period. We would be pleased to work with the committee staff in drafting an appropriate amendment.

The DOT does not believe, however, that there is any compelling reason to modify our current law on cabotage in a more fundamental way. It has been argued that trading cabotage rights to foreign governments in exchange for economic rights will further the implementation of U.S. international aviation policy. We disagree.

First, we believe that the United States is uniquely endowed with attractive markets, and that we normally come to our bilateral negotiations with an ample supply of bargaining chips. More important, however, we believe a softening of our cabotage policy would actually inhibit the implementation of U.S. policy. As a practical matter, we think a repeal of the present prohibition would mean that most countries would insist on a grant of cabotage rights virtually as a condition for serious negotiations on the more controversial elements of our current model agreement.

Cabotage would not be one extra chip; it could become the pivotal issue. It might well distort the dynamics of our current bilateral negotiations, and might even prompt some foreign governments to request the renegotiation of existing agreements—even those which are fully in keeping with our procompetitive policy.

Even if it were possible to treat cabotage rights as one additional bargaining chip, the value of those rights is such that U.S. carriers would rarely obtain any comparable benefit in a reciprocal exchange. Nor would the admission to U.S. markets of foreign competitors provide important consumer benefits. We doubt seriously that the vigorous competition which already characterizes U.S.-air transport would be enhanced in any significant respect by the entry of foreign carriers.

I know that the subcommittee's time is limited, and I have therefore kept my remarks brief. Appended to my statement is a full discussion of the Department's views on all of the provisions of S. 1300. I look forward to working with the subcommittee and its staff in the weeks ahead on the specifics of this legislation.

That completes my prepared statement, Mr. Chairman. I would be pleased to answer any questions you may have.

The CHAIRMAN. Well, thank you for your statement.

In your statement favoring a mechanism for emergency cabotage, you would require provisions for a formal determination that an emergency does in fact exist. Yet the essence of meeting an emergency is timely response. What kind of a formal determination do you have in mind in terms of time consumption?

Ms. KAMM. Mr. Chairman, we are interested in avoiding a repetition of the situation that occurred in the United Airlines strike last year, where it seemed to us, the Government did not have its act together and that the CAB, while it went forward to approve the cabotage rights, did so in a fashion that was not coordinated with the FAA. We had some concerns about being out of sync, so to speak, with some of the FAA requirements which also prohibited cabotage.

I think it can be done quickly. I think whoever the certifying officer is, be it the Chairman of the CAB, the Board itself, the Secretary of Transportation, or the President, can easily assess the situation where a genuine emergency exists.

I can conceive of a situation such as the DC-10 grounding, where certain markets were not receiving service as in the Guam situation—that one could move forward quickly.

I do not think you would need a long proceeding to make such a determination.

The CHAIRMAN. Well, apparently, you do agree then that when a situation like that arises, it is something that should be acted on very fast.

Ms. KAMM. Absolutely. Immediately.

The CHAIRMAN. If you have a lot of people being inconvenienced, as we heard the testimony this morning, not only going one way, for example, returning, but both ways, because of the unfortunate situation that occurred.

Ms. KAMM. That is right. I think cabotage is appropriate only where it is providing a consumer service that is not otherwise available. We would hope that in such a circumstance, the American carriers would first be polled to ascertain whether they had the capacity to provide the service; and, if they do not, then we could move directly forward with permitting—on a time-limited basis—emergency cabotage.

The CHAIRMAN. You favor the right of foreign carriers to file inter-carrier agreements with the Board for approval, noting that this would accommodate section 412 to the current realities of international air transportation.

It isn't clear what the benefits would be of having the Board approve, for example, a pooling agreement between two foreign carriers for a market which a U.S. carrier competes in, but is not a party to the agreement.

What benefits do you see from that?

Ms. KAMM. A situation is presented, Mr. Chairman, in looking at the IATA show-cause proceeding, which posed the real prospect that as an example, U.S. carriers might not participate in some of the rate or other agreements. In such a case, foreign carriers ought to have the opportunity to find out in advance if the specific arrangements that they are going forward with will violate U.S. law, so as to avoid some of the difficulties which we have had, for example, on the maritime side where indictments went forward, for agreements that violated U.S.-antitrust laws.

It is a question of giving the foreign carriers basically a comparable right to U.S. carriers to ascertain in advance whether their actions are going to violate U.S. law. It is not our object by any means to encourage pooling or other arrangements that are not consonant with our own laws, if they have a compact and are covered by our antitrust laws.

The CHAIRMAN. Have there been any antitrust agreements filed on any of those pooling agreement cases?

Ms. KAMM. I really do not know.

The CHAIRMAN. Your testimony on section 6 of the bill, carrier substitution in limited entry market, gives us not much of an answer. Can you support section 6 of the bill or do you not?

Ms. KAMM. We do support section 6, but we have some concerns and would like the legislative history to indicate that this is not intended as a device to frequently turn over carriers in the market.

I heard the testimony this morning from Chairman Cohen and his associates. I am persuaded that the Board as now constituted does not intend to use that power in any profligate manner, but to permit change when necessary. I think it should be understood that there really has to be a clear benefit such as would justify the downside risks of changing the carrier in a market.

The CHAIRMAN. What is DOT's opinion of the airlines' charge that the United States has been giving away more than it is getting in bilateral agreements?

Ms. KAMM. I do not think that is the case, Mr. Chairman. I think that we have been very careful not to trade away temporary or permanent advantages in return for temporary benefits. We have tried to negotiate mutual disapproval fare articles which give us the opportunity to keep a clear watch on rates by our carriers so that we can get low-priced competition in the markets. In many cases, we have not traded a point in the United States for a point in a foreign country traded exactly reciprocal rates. We have not traded a point in the United States for a point in a foreign country because geography does not really lend itself to that. We have gotten valuable rights, new ground handling provisions, other benefits that we feel are of enormous value to U.S. consumers and to the airlines.

The CHAIRMAN. You say DOT is opposed to the wet lease arrangements with foreign aircraft; but I do not understand your statement that it would complicate safety issues.

Many U.S. citizens are currently flying in foreign owned and operated airlines throughout the world. How would safety be compromised by a U.S. airline wet leasing a foreign aircraft?

Ms. KAMM. I do not think we meant to imply that the safety would be compromised. It would greatly complicate the safety enforcement which is to say that when dealing with the pilots who ordinarily work for foreign air carriers, who are not subject in all respects to the same kind of reporting and logging requirements as ours, the amount of time they spend flying has to be checked.

You have to be able to upgrade their certifications and all that. It can be done, but it is an additional burden.

I think that our concerns with the wet leasing also go to the fact that it creates an environment in which there is a tendency by air carriers to lease aircraft with the foreign crews because of the lower labor costs and other issues and that you may see a trend in that direction. While there is no great demand right now for wet leasing, it may become very economically viable if it is permitted on a large scale.

The CHAIRMAN. Well, this is only under the exemption powers of the Board. So do you think that is really a serious consideration?

Ms. KAMM. Yes, we do think so. The exemption power is not limited as I am aware, but I think the Board could use that power frequently.

The CHAIRMAN. It would seem to me, though, that it would be up to the leasing carrier to make absolutely certain that all safety requirements were met. I am sure there is no way they could permit an operation under any circumstances if they were not complying with all the safety requirements.

Ms. KAMM. Well, I think that is right. We did not mean to imply that the U.S. carriers would try to circumvent the safety requirements.

The CHAIRMAN. Thank you very much, Ms. Kamm. We appreciate your being here.

[The material referred to follows:]

SUPPLEMENTARY STATEMENT OF THE DEPARTMENT OF TRANSPORTATION ON S. 1300:
"INTERNATIONAL AIR TRANSPORTATION COMPETITION ACT OF 1979"

Section 2: Factors for Interstate Overseas and Foreign Air Transportation

This section basically combines in a single list the factors for interstate, overseas, and foreign air transportation which the Board would be required to consider as being in the public interest, and in accordance with the public convenience and necessity, whether it was considering interstate and overseas air transportation, on the one hand, or foreign air transportation on the other. The Department supports this concept. The amendment would acknowledge the importance of competitive market forces and of actual and potential competition in both domestic and foreign air transportation, and would thereby furnish a more accurate reflection of current U.S. Government policy. The addition of language which specifically acknowledges differences which may exist between interstate and overseas transportation, on the one hand, and foreign air transportation, on the other, and the importance of promoting "a viable, privately-owned United States air transport industry," are laudable. The language that establishes the objective of preventing specified destructive or anti-competitive practices in foreign as well as domestic air transportation is also important.

Section 4: Issuance of Certificates

This provision would amend Sections 401(d)(1) through 401(d)(3) of the FAA Act to eliminate the double standard which currently exists with respect to the certification of U.S. carriers to perform domestic air transportation, on the one hand, and foreign air transportation, on the other. Currently, the Board must base air carrier certification on a finding that the applicant is fit, willing,

and able to perform such transportation and that: (1) in the case of interstate or overseas air transportation, such transportation is *consistent* with the public convenience and necessity (PC&N); and (2) in the case of foreign air transportation, such transportation is *required* by the PC&N.

We support this provision. The changes this Section seeks to bring about would provide a clearer statutory basis for Board awards of multiple permissive authority to U.S. airlines in international air transportation. Based upon authoritative Administrative Law Judge and Board decisions, DOT has long been of the view that multiple permissive authority in foreign air transportation is fully consistent with the present statute and U.S. international air transportation policy.

Section 5: Terms and Conditions of Certificates

This provision would amend Section 401(e) (2) of the FAA Act. Under Section 401(e) (1) of the FAA Act, U.S. air carrier certificates to perform domestic air transportation must specify all terminal and intermediate points. Under the present wording of Section 401(e) (2), when granting authority to air carriers to perform foreign air transportation, the Board has discretion to designate general routes (*i.e.*, without listing terminal and intermediate points and a foreign point or points). Thus, the present statute appears to require the Board to specify intermediate points within the U.S. which lie on route from the U.S. to a foreign point if the air carrier intends to serve those intermediate points. With respect to a certificate authorizing a U.S. carrier to provide service from San Francisco to London, for example, the Board is arguably precluded from issuing a certificate which gives the carrier open intermediate rights within the U.S. on the San Francisco-London route. The proposed amendment would make it clear that the Board's authority to specify intermediate points within the U.S. in connection with foreign route awards is wholly discretionary and that the Board may grant open intermediate rights (and thus free up domestic entry) through U.S. points with respect to routings in foreign air transportation.

This provision paves the way for more permissive Board certification of U.S. air carriers under increasingly liberal bilateral civil aviation regimes, and it would appear to be fully consistent with the general goals and objectives of the bill, with which DOT agrees. However, it should be recognized that the proposed amendment would have the effect of permitting air carriers to serve domestic markets which they do not otherwise possess authority to serve merely by linking such service to a foreign route. Given the economics of foreign air transportation, we do not feel that this possibility is likely to result in any serious distortion of the domestic route structure.

Section 6: Carrier Substitution in Limited Entry Markets

This provision would amend Section 401(g) of the Federal Aviation Act by empowering the Board to review and suspend the certificate authority of a U.S. air carrier to engage in foreign air transportation and to grant that authority to another U.S. air carrier when, (1) restrictions in a bilateral agreement or other restrictions imposed by a foreign country prevent the Board from designating an additional carrier in the market; (2) an applicant demonstrates that it can and will provide substantially improved service, lower fares or a combination of improved service and lower fares; and (3) suspension and grant of the authority would otherwise be consistent with the public convenience and necessity. Further, the Board is directed to process the suspension and alternative certification proceeding pursuant to simplified procedures (spelled out in the present statute) unless an oral evidentiary hearing is either required by the public interest or requested by the certificate holder. Finally, the new provision would authorize the Board to suspend or revoke the authority of a carrier to serve any point if the carrier (1) has notified the Board that it proposes to suspend such service, or (2) has failed to provide significant service to the point for 90 days. The carrier must receive notice and have a "reasonable opportunity . . . to present its views." A hearing is not required in this last situation.

The underlying objective of this proposal is one which the Department of Transportation shares: to promote lower fares and/or better service, even in markets where competition is limited. Undoubtedly, in some restricted markets, incumbent carriers are immune from normal competitive pressures to improve fare/service offerings. Although the CAB has authority in existing Section 401(g) to revoke an operating certificate, a lengthy procedure is involved and the existing standard of public convenience and necessity is vague and invites legal challenge. By author-

izing substitution on the basis of a relatively objective finding, and by authorizing the use of simplified procedures under Section 401(p), the bill would make the prospect of such substitution far more real, thus creating competitive pressures even in presently monopolistic markets. For these reasons, this provision warrants serious consideration.

On the other hand, it should be recognized that the "substantial improvements" contemplated by this section can be realized most readily on the high traffic routes between major U.S. gateways and major foreign destinations.

Because it is possible that a displaced incumbent may not be able to continue providing service on all of the remaining marginal routes in its system, there is a potential danger that this provision could have an adverse impact on the integrity of the overall U.S. foreign air transportation system, including less lucrative but nevertheless essential feeder routes. We also have some concern that the U.S. air carrier industry might suffer overall if, as a result of frequent carrier substitution under this provision, U.S. carrier identity in particular markets were destroyed. In general, we feel that a provision of this sort must be implemented with sensitivity to the need for order and stability in international air transportation, even in a more competitive environment.

Section 7: Issuance of Permit

At present, the Board is empowered to issue a foreign air carrier permit if it finds the applicant fit, willing, and able to perform such transportation *and* that such transportation will be in the public interest. This provision adds a third criterion which would allow the Board to substitute for the public interest test in the present statute a finding that the applicant has been properly designated by its government pursuant to a bilateral agreement with the U.S. The provision is designed to facilitate Board processing of foreign air carrier permit applications. To the extent that applications are made for operating permits by foreign carriers pursuant to bilateral civil air transport agreements, pursuant to proper designation by their governments, the applications should be granted on a simplified and expedited basis. DOT supports this provision. We suggest, however, that the language of Section 7 might be modified to indicate that, when an applicant has been properly designated by its government, a presumption is created that the transportation is in fact in the public interest.

Section 8: Notice of Application

This provision would amend Section 402(d) of the FAA Act by eliminating the requirement that foreign air carrier permit applications be set for public hearing. Like Section 7 of this bill, this proposal would further facilitate the issuance of foreign air carrier permits, and we support it.

Section 9: Authority to Modify, Suspend, or Revoke

This provision would amend Section 402(d) of the FAA Act by eliminating the existing statute a new subsection empowering the Board, without hearing, but subject to Presidential approval, to suspend summarily the permits of foreign air carriers of countries found to have impaired the operating rights of U.S. carriers or to have engaged in unfair, discriminatory, or restrictive practices with a substantial adverse competitive impact upon U.S. air carriers. The Board is further empowered, subject to Presidential approval, to restrict operations between such foreign country and the U.S. by any foreign air carrier of a third country to the extent necessary to make this provision effective.

The basic thrust of this paragraph seems to recognize what many, including the CAB, have recognized to be a statutory deficiency regarding CAB power to retaliate effectively against many forms of unfair competitive practices imposed upon U.S. air carriers by foreign governments. Of course, the lack of a clear statutory mandate has not prevented the Board from promulgating regulations which establish and define the substantive and procedural scope of CAB retaliatory power (14 CFR Part 213); nor has it prevented the Board from exercising those powers. Nevertheless, a statutory basis for the exercise of retaliatory power would both alert the international community to Congress' increased concern about the need to combat unfair and discriminatory practices against U.S. air carriers and to remove any lingering doubts about the propriety of such action under U.S. law.

Therefore, DOT supports this provision in principle. However the proposed amendment raises one question. It would *inter alia* empower the Board to retaliate against country A by taking action against the airlines of country B.

In many cases, Board exercise of this authority against a third country airline may place the U.S. in violation of its bilateral agreement with that third country. The wisdom of this latter provision is therefore questionable.

Section 23: International Air Transportation Fair Competitive Practices Act of 1974

This Section of the bill is treated out of turn because it is a corollary of Section 9, treated immediately above.

This provision would amend Section 2 of the International Air Transportation Fair Competitive Practices Act of 1974 (FCPA) (49 U.S.C. 1159B) by adding a new subsection empowering the Board to take such action as it deems to be in the public interest, including the denial, transfer, amendment, suspension, etc., of a foreign carrier permit, to eliminate discriminatory or anticompetitive practices by foreign governments against U.S. airlines. In acting upon a complaint filed against a foreign government pursuant to this provision, the Board is required to approve, deny, dismiss or set such complaint for hearing within 30 days after receipt of the complaint. In considering any complaint, or in any proceeding pursuant to this provision commenced under its own initiative, the Board is further required to solicit the views of State and DOT. Finally, any action proposed by the Board pursuant to this provision must be transmitted to the President in accordance with the provisions of Section 801 of the FAA Act.

Our experience under the FCPA has not been wholly satisfactory. Presently, Section 2 of that statute requires State, Treasury, DOT and the CAB to keep under review all forms of discrimination or unfair competitive practices to which U.S. air carriers are subject in providing foreign air transportation. Further, each of the respective agencies is required to take all appropriate actions within its jurisdiction to eliminate any discrimination or unfair competitive practices found to exist. However, Section 2 of that statute gives no further guidance to the agencies as to how the jurisdictional lines are to be drawn, or as to the appropriateness or inappropriateness of retaliatory action taken pursuant to the statute. As a result, the Board to date has steadfastly refused to exercise its retaliatory powers under Part 213 in response to all but a very narrow range of circumstances involving foreign government restrictions against U.S. airline operations. This proposed amendment of the FCPA would encourage the Board and to use its Part 213 powers more broadly in combating such practices.

As stated above, this provision would serve as a complement to Section 9 of this bill and like Section 9, we support this provision. We do not object to the Department of State's suggestion that proposed Section 1159(b)(2) be modified to allow for initial CAB action on a complaint to occur within 90 days rather than 30 days. However, we feel that an extension of more than 90 days could excessively delay a resolution of the problem.

Section 10: Accounts, Records, and Reports, Filing of Reports

This provision would amend Section 407(a) of the FAA Act to empower the Board to require U.S. air carriers and foreign air carriers to submit under oath periodic and special reports, and the manner in which such reports are to be made, and to answer specific questions put to them and deemed necessary by the Board. The Board is further empowered to require any U.S. air carrier and foreign air carrier to file with it any contract, agreement, etc., between such carrier and any other carrier or person, in relation to any traffic affected by the provisions of this Act.

There is an increasing awareness that the U.S. Government would be better able to carry out the policy objectives for the conduct of international air transportation negotiations if the policy makers and negotiators had access to better information. This proposed amendment seems to be designed to help us get at some of the needed data.

There would appear to be serious obstacles, however, to the efficacy of this provision. It is known, for example, that many foreign governments and airlines are disinclined to provide U.S. authorities with requested information, even when such information is considered vital to the settlement of a specific dispute. Further, the thrust of our recent bilateral agreements is to minimize the burden to airlines of having to respond to government requests for information about agreed services.

Finally, the Board's exercise of the authority proposed by this amendment could subject the U.S. to the criticism that it is on an extraterritorial and unjustified fishing expedition. This last observation could be particularly important since there appears to be only ambiguous limits to the Board power to

require foreign air carriers to file the requested reports or to answer the interrogatories (i.e., the only stated limitation is the nebulous one that such agreement, etc. be related to "any traffic affected by the provisions of this Act").

Furthermore, even if foreign airlines cooperate with the Board by filing the requested information, the requirement could become a double-edged sword. Foreign governments would likely respond to such a request by the Board with requests of their own directed to U.S. airlines. Foreign governments might use the opportunity to engage in genuine fishing expeditions and there would be no way to guarantee the confidentiality of any competitive, or otherwise commercially sensitive, information obtained from U.S. airlines.

Therefore, it is our opinion that this committee reconsider amending the FAAAct in a manner which could open up airlines to additional and perhaps unnecessary requests for reports and records and possibly lead to retaliatory fishing expeditions and paper wars.

Section 11: Pooling and Other Agreements

Section 412 of the FAAAct is presently divided into two main parts: subsections (a) and (b) establishing mandatory filing requirements and criteria for approving intercarrier agreements affecting foreign air transportation; and subsections (c), (d), and (e) establishing permissive filing requirements and criteria for approving intercarrier agreements affecting interstate or overseas air transportation. Subsections (1), (2), and (3) of this section of S. 1300 would amend Section 412 in such a way as to collapse its two parts into one, thereby making the filing of intercarrier agreements affecting both foreign air transportation and interstate and overseas air transportation permissive, not mandatory.

Further, the proposed legislation establishes the same criteria for Board approval of intercarrier agreements affecting foreign air transportation as presently exist for Board approval of intercarrier agreements affecting interstate or overseas air transportation. In deciding whether or not to approve intercarrier agreements affecting foreign air transportation, the Board would be required to perform a public interest test, and to apply the so-called *Local Cartage* test under which it could approve an agreement which substantially reduces or eliminates competition when the agreement is necessary to meet a serious transportation need or to secure important public benefits which cannot be met or secured by a reasonably available alternative means having materially less anticompetitive effects. The Department supports these changes.

Subsection (4) of this section of the bill would amend the Section 412 in a way which recognizes that by collapsing the two main parts of Section 412 into one, an anomaly is created. If uncorrected, the Board would be prevented from approving any contract or agreement that limits the levels of capacity among U.S. air carriers in markets (domestic or foreign) in which they compete, or that fixes rates, fares, or charges between or among air carriers (except for joint rates, fares, or charges). Therefore, the proposed amendment takes cognizance of the Board's needs to retain authority to approve capacity-fixing and rate-fixing agreements involving U.S. air carriers engaged in foreign air transportation and limits the prohibition against approving such agreements to agreements affecting interstate and overseas air transportation. DOT supports this provision also.

We believe, however, that the bill might go further in accommodating Section 412 to the current realities of international air transportation. For example, we note that, while the filing of agreements affecting foreign air transportation would be discretionary under the proposed amendment, the rewritten section would continue to authorize such filing only by U.S. carriers. Thus, there would be no occasion for a foreign air carrier to file an agreement which a participating U.S. carrier has not filed, and there would certainly be no occasion for a foreign air carrier to file an agreement to which no U.S. air carrier is a party. We believe that the section should be revised to correct this anomaly by permitting foreign carriers to file intercarrier agreements whether or not a U.S. carrier is participating.

The Department also urges that the Federal Aviation Act be amended to provide for Presidential review of any CAB action regarding an intercarrier agreement which is certified by the Secretary of State to have significant foreign relations or national defense implications. The Department believes that such an amendment should be enacted as part of a broader revision of Section 801 which would also require Presidential review of CAB awards of "exemption authority"—allowing a carrier to serve a new market without first obtaining an operating certificate—where the Secretary of State certifies that foreign policy issues are at stake.

Finally, we would also suggest the following technical amendment. Section 412(a) (2) (A) (iii), as redesignated by Section 11 of this bill, should be further amended by adding the word "or" after the word "compete." This would give the paragraph the meaning it was intended to have as originally reported out of Conference (see Airline Deregulation Act of 1978, Conference Report, at 77) and would eliminate a grammatical error in the present statute.

Sections 13 and 20: Chartering and Leasing Foreign Registered Aircraft

Present law (Sections 401, 402, 101, 501, and 1108 of the Federal Aviation Act) provides restrictions on the operations of foreign air carriers and foreign aircraft in the United States. These "cabotage" provisions reserve domestic air transportation to 1) U.S. air carriers and 2) U.S. registered aircraft. Section 13 would amend Section 416(b) of the Act to authorize the Board, by exemption and to the extent required by the public interest, to permit a foreign air carrier to lease or charter aircraft with or without crew to a U.S. direct air carrier for operation in interstate, overseas or foreign air transportation. Section 20 would amend section 1108 of the Act to permit the use of foreign aircraft for charter/lease operations authorized by the Board under section 13 of the bill.

The Department supports the leasing of foreign-registered aircraft to U.S. air carriers, but opposes the use of foreign crews under such arrangements. The leasing of foreign-registered aircraft to U.S. air carriers might well be of benefit to our carriers, our consumers, and even our airframe manufacturers. For example, many of the aircraft leased to U.S. carriers would undoubtedly be of U.S. manufacture, and this provision might thus create new sales opportunities for our aircraft industry. In addition, the authority provided in this section would probably benefit U.S. air carriers and the travelling public by making additional aircraft available during peak traffic periods or at other times when it may be more economical for a U.S. carrier to lease rather than purchase an aircraft.

There are safety considerations involved in leasing, however, which must be examined with some care. For example, U.S. air carriers must comply with the stringent requirements of Part 121 of the Federal Aviation Regulations, some of which are addressed to the airworthiness of aircraft which U.S. air carriers may lawfully operate. Under the Chicago Convention, foreign-registered aircraft currently being operated to and from the U.S. by foreign carriers are required only to meet minimum ICAO airworthiness standards, in many cases different from the requirements of Part 121. A U.S. air carrier, however, would not be exempt from Part 121 requirements merely because an aircraft that it proposed to operate carried a foreign registry. As a result, the stringent requirements of Part 121 would continue to apply to all aircraft leased by U.S. air carriers pursuant to this provision. Thus, at the present time, there may be practical limits on the extent to which foreign-registered aircraft may be operated by U.S. air carriers, even though the same aircraft may be lawfully operated by foreign carriers.

The bill also contemplates the use of a foreign pilot and crew in an aircraft leased from a foreign carrier. We oppose this provision, which would further complicate the safety issue, and constitute what we believe is an unnecessary shift of crew responsibilities to foreign nations.

Section 14: Suspension and Rejection of Newly Filed Rates in Foreign Air Transportation

This provision would amend Section 1002(j) (1) of the FAA Act which presently sets forth the substantive and procedural guidelines for Board consideration of new tariff filings (excepting an initial filing) by U.S. and foreign air carriers for foreign air transportation. The Board's review may result in action first to suspend and then to reject or cancel such tariff. Several changes in the present statutory scheme are contemplated.

First, in the Board's initial consideration, and in its final determination, respecting such tariff filings, Section 14 would establish different substantive bases for approving and disapproving tariff filings of U.S. air carriers, on the one hand, and foreign air carriers, on the other. Specifically, while S. 1300's proposed amendments to the FAA Act's procedures for Board suspension and rejection of rates in foreign air transportation would leave the criteria for suspending and rejecting the rates of U.S. air carriers unamended, it would change the procedure for Board suspension and rejection of foreign air carrier rates. The change is significant. The Board would be empowered to suspend or reject foreign air carrier rates for reasons unrelated to the legality or economic justification of the proposed tariff.

Secondly, the changes proposed in this Section of the Bill would for the first time empower the Board to suspend temporarily or reject initial tariff filings of

rates in foreign air transportation. Related to this proposed change is another provision which would permit a U.S. or foreign air carrier affected by the suspension, rejection, or cancellation of its initial tariff to file, for purposes of operations, and pending the effectiveness of a new tariff, a tariff embodying any rate that may be currently in effect for any U.S. air carrier engaged in the same foreign air transportation.

Finally, this Section of the Bill would give the Board a "safety valve" mechanism to decline to take any of the actions authorized authority if it concludes that such actions would not be in the public interest or would be inconsistent with bilateral obligations of the U.S.

With respect to this Section of the Bill, DOT supports it in part, and seek clarification of the remainder. First, we should support the notion of empowering the Board to consider and take action against initial tariff filings by U.S. and foreign air carriers. We also support giving affected U.S. and foreign air carriers the ability to substitute, for operational purposes, an existing and effective tariff for the same air transportation during the period of suspension of its initial tariff. We would not limit such affected carriers, however, to temporarily substituting only those fares in effect for U.S. carriers (and not those in effect for foreign air carriers) for the same transportation.

Finally, we support, in part, the "safety valve" provision, insofar as it allows the Board to decline to take any action found not to be in the public interest. However, this provision should be modified to clarify that the Board is under a mandatory obligation to decline to take any action which would be inconsistent with U.S. bilateral obligations. To this end, we propose amending the final sentence of Section 14 of the Bill by deleting the word "or" the first time that word appears therein and substituting for it the words "and the Board shall decline to take such action if it."

We seek clarification on those provisions in this Section of the bill which establish different substantive criteria for the approval and disapproval of tariff filings of U.S. and foreign air carriers. Ideally, we believe that the same substantive criteria (e.g., a public interest standard, or a required finding that the fares under consideration will be unjust or unreasonable, or unjustly discriminatory, etc.) and the same procedural requirement (e.g., public hearing) be applied by the Board in its consideration of both U.S. and foreign air carrier tariff filings.

However, we recognize that there may be instances in which the CAB would want to respond to an unreasonable rejection of U.S. carrier's tariff filing by a foreign government. In such instances the CAB is constrained by the present statute which only permits suspensions or rejections of foreign air carrier tariffs for reasons limited to the economics of the proposed fare. Therefore, we support this provision which would give the CAB and the U.S. the leverage to seek to bring about a fair, negotiated solution.

It should be recognized that the dichotomous scheme which this provision would create could leave the U.S. open to charges of discrimination by foreign governments and U.S. airlines open to retaliation by foreign aeronautical authorities. Furthermore, the spirit of this provision which would allow the Board to suspend or reject foreign air carrier rates in international air transportation for reasons unrelated to the appropriateness of the rate under review runs counter to one of the principal tenets of U.S. international aviation policy and is at odds with all of the new liberal bilateral air transport agreements which encourage individual airlines to develop and implement competitive prices and which obligate the U.S. to limit governmental intervention in airline rate decisions.

Therefore, we would hope that the legislative history of this provision will reflect Congressional intent that the CAB exercise "public interest" suspension only where necessary to respond to unfair treatment of U.S. carriers on tariff issues by foreign governments.

Section 15: Suspension and Rejection of Existing Rates in Foreign Air Transportation

This provision would amend Section 1002(j) (2) of the FAA Act which presently sets forth the substantive and procedural guidelines for Board consideration of existing tariffs of U.S. and foreign air carriers for foreign air transportation.

This proposed amendment of the FAA Act largely raises the same problems discussed above in connection with Section 14 of the bill with respect to the creation of a dichotomous scheme for Board consideration and suspension or rejection of existing tariffs for U.S. and foreign air carriers. DOT supports this provision for the same reasons and subject to the same concerns set forth in our analysis of

Section 14. We would also point out that the "safety valve" mechanism built into Section 14 was not incorporated into this Section. We can see no logical reason for including such a mechanism in a provision dealing with new or initial tariff filings and omitting it from a provision dealing with existing tariffs. For that reason, we recommend that the last sentence in Section 14 of the bill, as we would amend it, be added at the end of Section 15.

Section 16: Factors to be Considered with Respect to the Rejection or Cancellation of Rates in Foreign Air Transportation

This provision would amend Section 1002(j) (5) of the FAA Act, which currently enumerates factors to be considered by the Board in suspending and/or rejecting rates for foreign air transportation. This Section would add an additional factor to those already enumerated, requiring the Board to consider "reasonably estimated costs and revenues for a reasonably limited future period during which the rate at issue would be in effect."

This provision only states the obvious fact that the Board should factor into its consideration of whether to suspend or cancel a rate in foreign air transportation future costs and revenue data and analysis before rendering its decision. Reasonable costs and revenue estimates would seem so important to a review of air carrier rates that, with or without legislation, they would be a *sine quo non* to a valid decision under Section 1002(j). In an era of increasingly uncontrollable, inflationary costs and of unprecedented sales and revenues, we believe that these factors deserve increasing attention and analysis by the Board. DOT supports the proposed amendment.

Section 17: Goals for International Aviation Policy; International Advisory Council; Observer Status for Congressional Representatives

This section would amend Section 1102 of the Federal Aviation Act to require the Secretary of State, the Secretary of Transportation and the Civil Aeronautics Board to develop an international aviation negotiating policy "which emphasizes the greatest degree of competition that is compatible with a well-functioning international air transportation system." The section then goes on to list eight elements which should be included in such a policy, and would essentially codify the results of the exhaustive interagency effort undertaken last year, led by DOT, to formulate the United States Policy for the Conduct of International Air Transportation Negotiations (Policy Statement).

Thus, it is fair to say that Section 17 represents an accurate summary of current U.S. international aviation policy. Subparagraph 7 of the proposed legislation, however, would add an additional goal not set forth in the Policy Statement. This provision would require "permanent linkage between rights granted and rights given away." We are concerned that this language may be subject to extremely restrictive interpretation requiring negotiators to exactly tie exchanged rights to one another. Agreements are not usually negotiated in such a stringent fashion; instead they are more likely to be the negotiated exchange of "package."

Because the goals delineated otherwise reflect an accurate summary of current U.S. international aviation policy, we support them. On the other hand, we have reservations about whether it is appropriate in legislation to address matters of "negotiating policy." Our concern is not with the content of the section, but rather with its potential implications, both practical and legal. The development of a negotiating strategy is often a difficult and sensitive business, and requires careful tailoring to the motivations and concerns of the other side. In certain cases, our position may be dictated by a desire to solve a particular set of problems peculiar to the markets in question.

Accordingly, we feel that, if the principles spelled out in Section 17 are to be retained in the bill, they should be listed in a general statement of Congressional policy. In that form, they would serve as general guides to the conduct of international aviation negotiations, without creating artificial and possibly inappropriate constraints on the effective conduct of such talks.

Section 17 would also provide for the formation of an International Aviation Advisory Council and for observer status for Congressional representatives at international aviation negotiations.

We believe the process of determining international aviation policy should be an open one. We wish to note, however, that currently, to the best of our knowledge, all parties interested in international aviation bilateral negotiations are being given ample opportunity to express their views. Interested groups have ready access to the Department and prior to negotiations, meetings are regularly held at the CAB to obtain the views of industry. For Government parties, interagency policy meetings are held whenever controversial issues arise. Finally,

scheduled and charter carrier industry representatives and labor and consumer group representatives may, and often do, attend pre-negotiations and negotiations sessions. Therefore, we do not believe a statutorily established Advisory Council is necessary.

The Department has established an excellent working relationship with the Congress and this subcommittee and we would expect that this rapport will continue in the future. For this reason, we do not believe that it is necessary to statutorily mandate Congressional observer status.

Section 19: Withholding of Information

This provision would amend Section 1104 of the FAA Act. Section 1104 presently provides that any person may make written objection to the public disclosure of information contained in any document obtained by the Board, the Secretary of State, or the Secretary of Transportation, and that such information shall be withheld from public disclosure if disclosure would prejudice the formulation and presentation of positions of the U.S. in international negotiations and adversely affect the competitive position of any air carrier in foreign air transportation. The proposed amendment would provide for the withholding of such information if disclosure merely adversely affects international negotiations; and it would drop the additional requirement of a finding that disclosure adversely affect the competitive position of any air carrier in foreign air transportation. The proposed amendment would also require the Board, State and DOT, as the case may be, in making a determination under the new and less burdensome criteria, to consider the effect of the proposed withholding on competition in air transportation.

This provision is a step in the right direction. However, we believe that in order to encourage the maximum cooperation between the U.S. government and the air transport industry, especially with respect to the exchange of commercially sensitive information, we would recommend adoption of the proposal by the State Department. That proposal would authorize non-disclosure where the U.S. negotiated position or a carrier's competitive position would be harmed.

Section 21: Transportation of Government-Financed Passengers and Property

Section 21 would amend in two respects the Federal Aviation Act's "Fly America" provision governing foreign air transportation paid for by the U.S. Government. The Department supports the amendments. The bill proposes to change the absolute requirement for transportation on a U.S. air carrier between two points outside the United States, by instead requiring transportation upon a U.S. air carrier to the extent such service is "reasonably available." This provision would facilitate the transportation requirements of U.S. Government employees and reduce inefficient and costly waiting periods.

Section 21 also would permit the use of foreign carriers for air transportation paid for by the U.S. Government in all instances where reciprocal rights have been granted to U.S. air carriers for the transportation of foreign financed cargo and passengers by the terms of a bilateral agreement. This provision will eliminate a source of criticism made by foreign countries at aviation bilateral negotiations that the "Fly America" provisions are inconsistent with U.S. competitive policies.

The CHAIRMAN. The next witness is Mr. William H. Waltrip, executive vice president, Pan American World Airways.

STATEMENT OF WILLIAM H. WALTRIP, EXECUTIVE VICE PRESIDENT, MARKETING AND SERVICES, PAN AMERICAN WORLD AIRWAYS, INC.; ACCOMPANIED BY ELLIOTT SHAAT, SENIOR VICE PRESIDENT, INTERNATIONAL REGULATORY SERVICES; AND JOHN KRIMSKY, VICE PRESIDENT OF FEDERAL AFFAIRS

Mr. WALTRIP. My name is Bill Waltrip, executive vice president, marketing and services. I am a member of the board of directors of Pan American World Airways of New York.

In beginning, I would like to take this opportunity, if I could, to introduce the colleagues who are with me at the table.

On my right is Elliott Shatt, senior vice president of International Regulatory Services; and on my left John Krimsky, our vice president of Federal affairs, based in Washington.

I would like to express the regrets of Bill Seawall, who had a long-standing commitment out of the country and could not be here to testify. He does send his regards. I know you are well aware of his interest in these proceedings. He does regret not being able to be in attendance.

I appreciate certainly the opportunity to comment on S. 1300 and to address some of the fast-moving issues that confront the international airlines today.

First: I would like to say, if I may, that Pan American shares with many others a profound respect for the leadership you have manifested throughout your years in the Senate in introducing and getting passed legislation having a significant and constructive effect in the industry.

Since we were early supporters of regulatory reform, we are particularly cognizant of the significant role which you played in obtaining legislation applicable domestically and we welcome your interest and concern in supporting legislation needed now in the international field.

Pan Am favors the procompetitive thrust of this and previous legislation which this committee has sponsored. Freedom for airline management to price and market its service, to schedule its flights, to add capacity, and to introduce new equipment is vital to airline survival in today's world and is the only basis for the lowest possible prices to the public.

We support the passage of S. 1300, but we do believe that there is a need for some important revisions. We endorse the position being taken in these hearings by the Air Transport Association. In that regard, this committee should be aware that there was an unprecedented degree of agreement among the member airlines of the association.

Here more than is usually the case when dealing with a broad range of international issues, the ATA has received a strong endorsement from its members of the positions it is taking. Our comments will be limited to a few issues which we would like to emphasize and are intended to supplement the positions being taken by the association.

In my oral presentation, I would like to concentrate, if I can, on what I believe is the most critical issue facing U.S.-flag international air carriers today. That is pricing.

If there is any single issue in today's environment of skyrocketing fuel prices and the escalation of nonfuel cost that threatens the very fiber of our industry, it is clearly the inflexibility provided to airline managements in the pricing of its product.

We have all prospered in a more competitive environment both domestically and internationally. The consumer has reaped enormous benefits. We at Pan American certainly want to see this continue. We firmly believe it is a healthy environment for everyone concerned. I think there are some danger signs on the horizon which must be met with creative policies, policies designed to assure that the procompetitive environment we have been successful in establishing is given a chance to survive.

Therefore, I would like to spend the next few minutes, if I can, concentrating in examining section 16 of the bill which deals principally with fares and rates.

As you know, section 16 provides that in exercising its rate powers, the Board shall take into account reasonably estimated or foreseeable future costs and revenues.

This is an important and useful provision because in a rapidly changing cost environment mere extension of historical cost trends into the future could seriously misstate future costs. Currently, this is likely to be the case with respect to one major cost category—labor.

In the case of our second largest cost category—fuel—misstatement will be absolute and of critical magnitude. It is thus only fair and sensible for the Board to accept reasonable estimates based upon expectations rather than historical cost trends.

While this provision should be useful in establishing fares at the compensatory levels necessary for continued good and continued public service, the airlines require still further relief for international services, relief which has already been provided for domestic operations in the Airline Deregulation Act of 1978.

This is the mandate to the Board to establish a base-fare level, to make periodic cost adjustments to that level, and to permit appropriate fare adjustments reflecting cost changes.

Further, in domestic service, the airlines have discretion to increase fares up to 5 percent, and to decrease them up to 50 percent, without Board authority to suspend or reject such changes as unjust or unreasonable. This concept is as fully applicable and necessary for international operations as it is and was for domestic operations.

Currently, the major cost problem facing Pan Am and other international operators is the unprecedented explosion in the cost of fuel. I emphasize the word "unprecedented," because the cost increases we and the industry are now experiencing are even greater than those experienced in the 1973-74 period when, as you know, fuel cost increases almost sent Pan Am to the bankruptcy court.

Let me give you a few of the basic facts in very simple terms.

First: When I talk about price per gallon of fuel, it is important to understand that an increase of just 1 cent means an expense increase of over \$9 million a year for Pan Am, because we use somewhat over 900 million gallons a year.

Pan Am's cost per gallon was relatively stable in 1978, averaging 43.6 cents per gallon, with December 1978 cost at only 44.5 cents per gallon.

Never did I think I would see the day when I called 44.5 cents "only."

During the first quarter of 1979, cost per gallon began to increase at a faster rate, reaching 47.2 cents per gallon in March. But from then on, as a result of a tight supply situation triggered by the difficulties in Iran, the OPEC April 1 price action, and the leapfrogging surcharges imposed by most OPEC members, we began to experience extremely serious cost increases. Our average actual monthly cost per gallon in 1979, and the percentage increase over the same month in 1978 are as follows:

	Cost per (cents) gallon ¹	Percent increase over same 1978 month
January 1979.....	45.8	6
February.....	46.4	8
March.....	47.2	10
April.....	49.5	16
May.....	53.6	23
June.....	56.9	32
July.....	70.9	63

¹ These costs include tax, and generally exceed fuel cost reports filed with the Civil Aeronautics Board, which do not include tax, by about 1 cent per gallon.

² This excludes a retroactive cost increase for prior months.

The increase from July 1978 to July 1979 was 27.3 cents per gallon. Even if prices were to stabilize at July levels, which will clearly not be the case, a 27.3 -cent-per-gallon cost increase means a 12-month Pan Am expense increase of \$250 million. In contrast, our total fuel cost increase from 1973 to 1974 was \$169 million.

It is also disheartening to compare this minimum 12-month fuel cost increase of \$250 million with Pan Am's \$149 million operating profit in 1978. And this was the best year in Pan Am's history, caused by a boom year for airline travel and also, in no small measure, by Northwest Airlines' strike. Yet, we now estimated that our fuel expense for the second half of 1979 will be at least \$150 million more than for the same period in 1978.

I mentioned previously that fuel prices will surely increase beyond the July 1979 levels. Our present estimate is that 1980 will come in at an average of about 84 cents per gallon. This is almost double the average price that we paid in 1978 and, for the same consumption, would mean that Pan Am's 1980 fuel expense would exceed its 1978 expense by more than \$350 million.

Needless to say, while fuel is our No. 1 problem at the moment, all other categories of expense continue to increase despite rigorous systemwide cost control.

We have, of course, been seeking some increases in fares and have received limited relief. It was limited for two reasons. First: We ourselves did not perceive the severity of the problem as it grew from month to month. We were not alone. Our Government, I think, was surprised and shocked by the OPEC action in late June.

In any event, when we filed for our first fare increase in late March this year, we thought we had about a \$65 million fuel cost increase problem for the year. For reasons which I will shortly describe, the CAB disapproved about half of our proposed fare increases.

Although by then we knew that our problem was bigger than we had first thought, we stayed with the same fuel cost estimates and made a second restructured filing with the CAB in May, to recover the dollar equivalent of the disapproved portion of our first filing.

Half of this second filing was disapproved. By June it was obvious that we faced an extremely critical problem, far worse than anybody had previously anticipated. We, therefore, began to prepare a third filing, and these filings require extensive work and documentation.

This filing was made on July 16 for effectiveness on September 15, although we had hoped that we could implement it sooner. September

15 is what we will have to live with. As of the time of preparation of my written statement, we have had no indication of what action CAB will take.

The Board disapproved portions of our two prior filings for three basic reasons.

First: The Board keeps saying that international normal economy fares are too high. For several years, therefore, it has routinely disapproved increases in those fares. In fact, however, except for a few markets, continuing inflation—even before our current fuel cost crisis—has overtaken those fares and they are generally below comparable domestic standard industry fare levels.

But be that as it may, except with respect to a few countries like Belgium and the Netherlands with which the United States has bilateral agreements that provide for pricing freedom, all increases in normal fares were disapproved.

Our second problem is that the Board applies the 12-percent domestic rate-of-return cap to international operations, and applies it to subareas. Thus, although Pan Am's system operations as a whole cannot possibly earn anything close to 12 percent in 1979, the Board disapproved all increases to South America because that particular subarea had earned, and was initially forecast to earn, more than 12 percent.

The Board does not make that kind of subarea separation in the domestic system. Further, the 12-percent rate of return is in our view too low in the light of the greater risks of international operations.

A third type of problem is that the Board holds fare increases hostage to the willingness of foreign governments to liberalize restrictive aviation relations. Japan, where no fare increases have been permitted, is a case in point. It is true that Japan Airlines is being hurt just as we are, but the 1973-74 experience demonstrates that foreign carriers do not face the same concern about really serious financial distress that U.S. carriers must worry about.

I should add, in fairness, that the Board has not rejected any of our cargo or charter rate increases, and we have been permitted to increase our domestic fares along with the industry.

But in our case, the vast bulk of our service and expense is in the scheduled international passenger service area.

Although I have already painted a very gloomy but entirely realistic picture, there is one other aspect that warrants comment. That is the problem of timelag. We knew in June that we needed substantial fare increases, and needed them promptly, if we were to earn a reasonable profit in 1979. Were we truly deregulated, or had we any significant degree of management discretion in pricing, we would have made meaningful fare adjustment in June.

June through September is our peak traffic period and the market would certainly have accepted the increases. The timelag built into the regulatory system—weeks of work to prepare a filing, and the 60-day filing requirement—will cost us more than \$50 million that we will never recover, even if the Board acts and approves our complete filing in the very near future.

I think I have said enough about the critical problem faced by international airlines. The real question is how to free us up to manage our businesses, so that we—and I mean all the U.S. airlines with signifi-

cant international operations—can afford to maintain and expand U.S. flag international services, at least without cross-subsidy from domestic fare increases.

In the critical 1973–75 period, while Pan Am and other U.S. airlines were furloughing employees and cutting back international services to survive, many of our foreign competitors were expanding, made possible by subsidies paid in one form or another by their government owners. When Bill Seawell testified before you last year, he presented quite a packet of material on that subject.

There are things that Congress can do, and I hope will do, to enable us to cope somewhat better than we can today.

Stripped to its essentials, the task is to get into place a system that will permit the promptest possible pass-through of these unavoidable cost increases in providing international air transportation. This is what Congress did for domestic air transportation in the 1978 Deregulation Act, and we believe it is applicable just as well internationally.

The reduction of regulatory blocks to management discretion in this area does not mean that airlines would automatically pass through fuel cost increases; we would be constrained by market conditions and elasticity, and by what is now a very large amount of competition, including price competition, in international services.

But at least we would have the option, which we do not now have, to make and to try to implement in the marketplace our own decisions. We think the marketplace is the appropriate forum to judge whether our policies or anybody else's are correct or not.

Again referring to the system set up by Congress in the domestic arena, we need as a starting point international-base fare levels, similar to the domestic standard industry fare level required by section 37 of the 1978 Airline Deregulation Act.

Carrying the comparison one step further, this would be CAB accepted, normal economy fare levels. Here we run into the problem that I mentioned earlier: The CAB, without ever having had a hearing, believes that normal economy fares are too high, while we are convinced that in most cases they are too low.

But we can bleed to death in the interim, if we have to wait for a lengthy investigation to resolve this basic problem of philosophy. We have to have some way of recovering these unprecedented fuel costs we are now experiencing.

We would therefore urge that something be done promptly to get the system into place. One suggestion has been to accept the normal economy fares as of December 31, 1978, as a proper base. Subsequent cost increases could then be translated into permissible fare increases. This could be done as a temporary measure, with instructions to the CAB to establish a permanent base no later than, let us say, June 30, 1980.

There is another approach which might be better. That is to use the July 1, 1977, starting point established by the Deregulation Act for domestic service and build from that an international standard industry fare level using international costs during the period 1977–79, and reflecting an SIFL for each division, transatlantic, Pacific, and Latin America for international pricing. That could be done and done rapidly. It follows a methodology which is already established and which is being used at the CAB.

I guess my main plea, Mr. Chairman, is that whatever the base, so long as it is within a range of reasonableness, the CAB should allow periodic and sufficiently frequent fare adjustment to reflect cost changes which have occurred or are reasonably predicted.

One other feature in the 1978 domestic law should also be made applicable to international fares—the flexibility provided by section 37 to make a 5-percent upward or 50-percent downward adjustment in the base fare level without CAB review for reasonableness.

That is particularly important at this critical time, to help meet timelag problems and to give some measure of management discretion. Indeed, it is sufficiently important that if for any reason base fares are not quickly established, each carrier's particular fares should be temporarily treated as a base for the 5-percent and 50-percent flexibility I have described.

There is one other change in law that would be very helpful in alleviating the timelag problem—a reduction in statutory filing requirements for international tariffs from 60 to 45 days.

We would, of course, be more than happy to submit proposed language, and to work with your staff and anybody else with respect to any and all of these suggested changes.

Finally, I would like to emphasize that the CAB has discretion right now to help the international carriers cope with the extraordinarily critical cost explosion problem. We sincerely hope that it will respond to the emergency, but we do want and, I believe, are entitled to a mandate from Congress on a policy to deal with this problem in the future.

That concludes my oral testimony. In the written testimony submitted for the committee, we addressed a number of other issues which will be addressed by the ATA and other airlines later on. I will not take the time of the committee to do so.

The CHAIRMAN. Your full statement will be made a part of the record.

[The attachments referred to follow:]

SUBSTITUTION OF CARRIERS

I believe that it is concern about fares, which I have just discussed at some length, that has prompted the Civil Aeronautics Board to advocate a procedure for the suspension of outstanding certificate authority and certification of an alternative carrier in markets in which foreign governments limit the number of United States carriers that can be designated. This is reflected in the proposed amendment to Section 401(g), which you included at the Civil Aeronautics Board's request.

We are convinced that the Board's proposed cure is far worse than the illness. There can be no doubt that the public would receive poorer service as a result of this kind of threat to an incumbent carrier, not the better service that is the Board's aim. The reason is that the proposal is simply too contrary to basic airline economics. I appreciate that limited entry is also contrary to normal American business practice, but in this case two wrongs make a worse wrong, not a right.

In domestic airline service, airline managements must be prepared to face new competitors who choose to enter the market. It is one thing to make business decisions knowing that you may be joined in the market by one or more newcomers. It is quite another thing to make management decisions knowing that at any time your business could be closed down by government order. I note that in Chairman Cohen's testimony he would deny the incumbent carrier the right to an oral hearing because it would prolong the process in which a change in carriers could take place.

The establishment of scheduled airline services is a long-term undertaking, and under the Board's proposal neither the incumbent carrier nor the applicant would have any assurance that it would retain its license for more than a relatively short period.

Lead time for the purchase of new wide-bodied aircraft today is on the order of 24 to 30 months. Planning time in selecting the best available aircraft and arranging financing will take place many months before the order is placed. Leases on ticket offices are generally for a five to ten year term. To order and position some of our larger specialized ground equipment at a foreign point can take 10 to 18 months. Schedule planning alone begins 9 to 10 months in advance of the introduction of a schedule change. In many foreign countries new employees require more extensive training, and foreign labor laws are much more protective of employment rights, than is the case in the United States. In these countries management is cautious about adding new staff because training expense and severance provisions make staff changes costly. Thus, staff expansion abroad has more long-term implications than is the case in the United States.

There are other complicating factors. I understand that the Board feels that it is a simple matter to delete one point on a route without affecting other points that the carrier serves. Take the Seattle-Tokyo and the San Francisco-Tokyo routes as examples. The aircraft that today are best suited to serve, and are operating on, those routes do not have the range to operate nonstop to Hong Kong. Or take the case of Pan Am's New York-Rome-Istanbul schedules. If we lost our New York-Rome certificate, there would be insufficient traffic to support nonstop New York-Istanbul service. There are relatively few international markets that can be dealt with independently of one or more other markets.

The management of an incumbent airline will be faced with most difficult choices. On the one hand it will be trying to guess—and I emphasize guess—what fare levels and what level of service will be persuasive to the Board in some future decision on the continuation of its certificate. On the other hand it must decide where to make the long-term allocation and commitment of its resources; to a route where its authority is vulnerable to short-term cancellation, or to one that has more permanence? I am convinced, Mr. Chairman, that if the threat of certificate cancellation is as strong as the Board says it must be to achieve its goals, then airline management will have no alternative but to emphasize its more permanent service. The net result on the limited access routes will be poorer service to the public, not better.

Or look at it from the viewpoint of the applicant. The Board will want an expedited procedure. Once the Board has decided to terminate the incumbent carrier, that carrier's service will inevitably begin to deteriorate for many reasons. Thus the Board will want a quick replacement of carrier. To meet this timetable, the applicant carrier will have to have its operation literally ready to begin before it files its application. Even if it plans to lease all of its equipment and sub-contract all of its services, assuming its American unions will permit it do so, it must have these commitments confirmed in advance. In my opinion that rules out any possibility of a new airline being established for the purpose of providing service over a challenged route. It means that only already existing airlines could seriously consider being applicants.

In this case we are contemplating a game of musical chairs among already operating airlines. But even here, the commitment is not easy for managements of existing airlines to make. Depending on the degree of competition in a market, start-up advertising and promotional costs can run as high as ten times a normal year's expenditures. Total start-up costs including station expenses and the allocation of employee time away from other assignments can be very costly. These are expenses that are many times what any airline can afford to spend during normal ongoing operations. An airline would want a Civil Aeronautics Board commitment that it could retain its license at least long enough to recover its start-up costs, and possibly its shut-down costs which can also be substantial. If the Board granted a license that would grant the needed duration, it would have to be for a longer period than the airline could commit itself to a given fare level or a given level of service. Hence an incumbent carrier would be forcibly removed from a route to make way for a new carrier that could not realistically be held to the fare and service levels that won that carrier the new authority in the first place.

I have heard that the Board's staff cites Braniff's quick introduction of service between Seattle and Honolulu as a demonstration of the practical feasibility of this proposal. I frankly do not see the relevance of this example. Braniff was already serving both cities and was well established there. When it entered the

market, Braniff knew that it could continue to operate for as long as it wanted without fear of having its authority suspended and without fear that it would be forced to continue if the service proved uneconomic. It was operating in a domestic market not a foreign one, and finally, of its own choice, Braniff has announced its intention to suspend service. Airline managements can't always predict accurately the success of a new service. There is a risk which investors and management take. Suppose that one airline had been forcibly removed from the market to make room for a carrier that a short time later finds the service hadn't met its expectations. Who will provide the service then, and will it be superior to that of the former incumbent's?

Let us look at the proposal from the viewpoint of the foreign government that is involved. It is assumed that the existing situation is one in which the foreign government will insist upon limiting the number of U.S. airlines that can serve a given route, but will be willing to permit total pricing and scheduling freedom. The United States has no such bilateral agreements today, and I doubt that the United States could negotiate any. Foreign governments that are restrictive in one aspect of a bilateral agreement don't usually become ultra-liberal in other aspects, especially if the United States makes it a practice to use the liberal provision to circumvent the restrictive provision. Unless, of course, if a foreign government saw an opportunity for mischief, and decided to let the United States weaken its services to the point of domination by its own permanently authorized airline.

I have mentioned the heavy expense involved in the termination of service by an existing carrier and the institution of service by a replacement carrier. But much more than expense is involved. The development of a strong market position, which requires public recognition of the service and development of relationships with agents and tour operators for future business, involve long lead times. Replacement of carriers is bound to leave the United States airline in a very poor market position for a substantial period.

Whatever the viewpoint, incumbent carrier, the new applicant, the foreign government, or the U.S. flag market share, there is nothing in this proposal that will lead to improved service or lower fares to the consumer. It will do just the opposite. Not only would this proposal fail to solve whatever short term problem may exist, but we also share the concern you expressed, Senator Cannon, that it could divert the efforts of our negotiators away from finding an acceptable long term solution to aviation policy differences with foreign governments.

FOREIGN AIRLINE SERVICE UNRELATED TO ITS HOMELAND

In conclusion, Mr. Chairman, I would like to speak to an issue which I understand that you requested be addressed in these hearings, that is the proposal to grant to Iceland the right to operate scheduled airline services from the United States to Europe without the necessity that the carrier serve its homeland.

I would like to take the liberty of quoting a telegram that was addressed to you and other members of this Committee, and to other government officials, from our Chairman, Bill Seawell. It states clearly our position in the Icelandic request.

HOWARD W. CANNON,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: We have been advised that the Government is considering its response to a request from the Government of Iceland for new air transport rights that would permit Icelandic Airlines to operate scheduled air services between points in the United States and a point in Europe without the traditional requirement that the flight even stop in Iceland. The proposal may appear to be simply a further step in the evolution of the pro-competitive aviation philosophy of the United States, with which we agree. In fact, however, the requested right would be a radical departure from the policy of all nations of the world since the beginning of international air transportation. This is the policy, grounded on international law, that each sovereign nation retains control over air traffic rights to and from its territory, and grants such rights only on a basis which adequately protects the opportunities of its own airlines. This has been achieved in part by requiring international airlines to originate or terminate their flights in their homelands.

"The requested deviation from basic policy could not logically or politically be confined to Iceland. Other airlines, particularly those with low labor costs,

or financial support of their governments, would quickly press for similar rights to milk the traffic-rich U.S. market. To grant Iceland's requests would effectively start the United States, alone in all the world, on a 'flag of convenience' path, with all the adverse consequences experienced in the maritime industry.

"We understand the appeal of another lowfare transatlantic operator, but in recent months the United States has already successfully authorized a large number of U.S. airlines to provide lowfare transatlantic service.

"We feel strongly that to grant Iceland's request would represent a major policy change which would seriously damage major U.S. national interests. It should certainly not be undertaken without the most serious consideration of all its implication by the highest levels in Government, including the Congress."

W. T. SEAWELL,

Chairman,

Pan American World Airways.

I would like to supplement one of the points made in the wire. Each government has its own reasons for wanting its own flag airline system. Some want it to promote tourism to their country, some want to provide employment for their citizens, some need to earn convertible currencies, some seek prestige, some seek to facilitate and expand their foreign trade. These are all acceptable objectives in the eyes of the world community. The United States, too, has its reasons for having its own flag airline system, not the least of which is the absolute necessity of a viable American flag system if a vigorous competitive regime is to exist on the routes to and from the United States. The global airline system of today is based on the unchallenged right of a country to have service to and from its territory provided by its own international airline, and that system is established on the universal requirement that all scheduled airline services begin or end in the airlines' homeland. There are no airline flags-of-convenience among the nations of the world, but there probably are a handful of foreign governments who would gladly accept the opportunity to exploit such a destructive system to their own advantage. One has only to look at the state of the maritime industry to see why this would not benefit the United States. United States aviation legislators and policy makers have wisely chosen a different course for air. We must not undermine that historic position with what might superficially appear to be a minor concession.

Mr. Chairman, I thank you for this opportunity to express our views.

The CHAIRMAN. As a matter of information, what are you paying for fuel right now?

Mr. WALTRIP. We anticipate August will be somewhere in the neighborhood of 74, 75 cents a gallon.

The CHAIRMAN. Do you have certain markets that the fuel is much higher in than others?

Mr. WALTRIP. Yes.

The CHAIRMAN. What are some of your highest markets today?

Mr. WALTRIP. We are paying as high as \$1.50 a gallon for fuel in some places in the world today. Johannesburg is one area. That is caused really by a contract price that exists in South Africa because of the energy problem they find themselves in.

More importantly than that, we are also in some supply situations around the world today where the oil companies are not able to give us our fuel requirements for fuel that we need to conduct our operation.

In those situations, we are required to go to the spot fuel market and buy fuel to supplement the allocation the oil companies give us.

In those cases—we have a number of those—we pay anywhere from \$1.06 a gallon to \$1.45 a gallon to cover those requirements.

It is representing now in total somewhere approximately about 6 to 7 percent of our total uplift where we have to buy that kind of fuel to conduct the operation.

Mr. SHAAT. May I supplement that, Bill?

The CHAIRMAN. Yes.

Mr. SHAAT. The spot fuel situation is likely to become more serious as we go through the next 12-month period, because we have just—with most of our major suppliers—entered into something that you could call a contract; it is not really a contract, but in which they tell us how much of our requirements they think they will be able to meet. In major locations, like New York, London, the west coast, that is not our full requirement.

Beyond that, from month to month, they tell us what portion of that so-called contract commitment they will meet that month. That is going to mean a further reduction. At London, Kennedy, the west coast, we know we are going to be buying a pretty large percentage of our fuel at these higher spot prices and have entered into forward contracts to protect ourselves for a few months at a time.

The CHAIRMAN. Pan Am and the other U.S. airlines have criticized our country's negotiators for giving away U.S. market opportunities to foreign airlines because those foreign countries did not have commensurate new market opportunities to offer the U.S. carriers. However, Pan Am also states that they support the current international aviation policy, and specifically the effort to get a more open competitive international aviation system.

If you object to offering foreign airlines new U.S. markets in return for removing restrictions on U.S. carriers, their operations and fares, how would Pan Am go about getting the kind of international system that you say you support?

Mr. WALTRIP. Well, Mr. Chairman, I would like to respond to that in two ways, if I can. If we had the kind of environment internationally that we do within the confines of the United States where in every respect you can be assured that you had total freedom and the marketplace and market forces would operate without interruption and without severe restrictions being placed on them by foreign governments, I think that you have one situation.

If, in fact, though, you deal with the kind of environment that we deal with internationally in many cases, I think where we have quarreled with the policy in the past or in the negotiating strategy in the past, if you will, is where we are trading route rates like new cities in the United States in a bilateral negotiation for the freeing up of some restrictive constraints that are being placed on us such as in market access areas or ground handling agreements or things of that nature.

We are trading a valuable route right for some kind of an assurance on the part of a foreign government that they are going to let through-market forces operate in their particular country; and there is no real mechanism established at that time nor is there any followup that we can see at this point in time that the U.S. Government can and will assure that what the government—foreign government agreed to is in fact going to be in place.

We think there is certainly every opportunity for the U.S. Government to negotiate a more competitive environment internationally. We would support that. In trading route rights for route rights, for example, there is a way to balance the bilateral negotiating process so that you can assure that the benefits flow to both sides.

The CHAIRMAN. Isn't it a fact, though, that when they grant a route right to a foreign carrier in one of these bilateral agreements, that that same right is also offered to a U.S. carrier?

Mr. WALTRIP. It generally speaking is, yes; but if you look at most of—well, I shouldn't say most. If you look at the Belgian and Holland situation, there hasn't been anybody yet who has chosen to exercise any of that authority with any degree of force.

The CHAIRMAN. No, but that's a matter of choice.

Mr. WALTRIP. Yes.

The CHAIRMAN. In other words, our carriers are not precluded. They are offering reciprocal rights there as I understand it.

I understand your point of view from Pan Am's standpoint; but from the Government's point of view, we can't look at bilateral negotiations as precluding any consideration except equivalent exchanges of market opportunities for each country's airline.

For example, in this recent agreement, if Air Jamaica is willing to fly from Kingston to Detroit nonstop and no U.S. carrier is willing to fly that route, how can we justify denying that service to the citizens of Detroit?

Mr. WALTRIP. Well, I don't know how you could not give Detroit that service. I hope as the agreement is balanced, there are offsets to the Detroit situation where there could be a U.S.-carrier service to some point in the United States that somebody might be willing to serve.

The CHAIRMAN. In your testimony, you point out that we must take the differences among nations in the international market into account in pursuing our bilateral negotiating policy and the need for flexibility in implementing that policy.

Then again you state that if we grant Icelandic's request which would deviate from our general policy, we could not confine that exception to Iceland.

I would point out that Iceland is quite different from other nations in geographic locale alone, that other European countries can service a much more lucrative United States-London market direct simply because of their geographic advantage over Iceland.

Finally, flexibility in our basic policy means the ability to make agreements which exceed our general policy as well as the ability to make agreements which fall short of that policy. Isn't a new restrictive bilateral with the People's Republic of China, if that occurs, just as much a precedent that we do not wish to perpetuate as it is Icelandic's request?

Mr. WALTRIP. Well, I would respond to that, I guess, in this way, Mr. Chairman.

I think first of all we really need to examine what our objectives are in those two cases. If, for example, in the case of Iceland we as Pan Am could be assured that that wasn't going to be a precedent that was going to be expanded to other parts of the world—and I could give you a few examples, I think, on how that might be expanded—you know, you can take KLM, for example. There is nothing to say that KLM could see an opportunity to provide nonstop service from a point in the United States to an Eastern European destination, as an example, and fit in the same kind of mold as Icelandic; so that there are many opportunities for people once that precedent is established to come in and ask for route rights.

Now in the case of China, I think that it is important for the U.S. Government to establish international air relations with the People's

Republic. If because of philosophical differences that exist between the two governments on the basis of how international aviation policy ought to be implemented we can't implement air transportation, then I think that, you know, both governments have got to back off and compromise a little bit and we will end up with probably what would be a restrictive agreement in order to get that relationship established.

Certainly, once it is established we ought to have the opportunity then to see it grow in the future on a less restrictive basis if our policies prove to be correct. I think they ultimately will.

The CHAIRMAN. Do you think that our arrangements with China ought to be on the basis of a bilateral between China and the United States or between Pan Am and China?

Mr. WALTRIP. I think they ought certainly to be on the basis of the United States and the People's Republic of China, Mr. Chairman.

The CHAIRMAN. Do you have any comments to give the committee on the status of our current negotiations with China at this time?

Mr. WALTRIP. Well, that's a very sensitive issue, sir.

For a lot of reasons; but let me just say this, and then I will ask Mr. Shaat if he would like to further expand. He has been a little more involved than I have.

We have seriously abided by what we understand are the instructions that were given to us in terms of our relationship with the People's Republic of China and have seriously tried to avoid what might give the appearance of a negotiation going on between Pan Am and the People's Republic of China. We certainly do not want to get in that position, and will not.

You know, we continue to believe, as an airline, that it is important that we establish a relationship with that country. We would hope that the U.S. Government would do that and do that as soon as practical.

The negotiation we have had has dealt with charters and charters only. We do have freedom to conduct that kind of negotiation, which we did with the airline of China and have an agreement now which will go to the CAB for their review and approval.

It contemplates the operation of six charters, three on behalf of China Airline and three on behalf of Pan Am between the United States and Shanghai.

The CHAIRMAN. Does that involve the leasing of equipment?

Mr. WALTRIP. Yes, that is a wet lease on our part to the China Airline. It would be our airplane, our operation.

The CHAIRMAN. Did you have anything you wanted to add?

Mr. SHAAT. Well, I think Bill has covered it pretty well. It is just the three roundtrip charter flights, public charter flights. The Chinese airline will operate them. We contemplate operating three reciprocal flights. They need CAB approval for their charter operations; we need CAB approval for our wet lease agreement. Those applications have been filed.

The CHAIRMAN. Does Pan Am oppose or favor the wet lease provision in the bill?

Mr. WALTRIP. We haven't really responded to it in any detail in our testimony. I don't think that we have any basic problem with it, provided that—which will happen if this legislation is adopted, as we get all the rules and regulations established under which it is to be done.

The CHAIRMAN. I must say I am quite concerned, as you are, about the Icelandic situation from a precedent standpoint. That's the reason we tried to make it very clear here that if it is approved, it would not be treated as a precedent. I am wondering if Pan Am would object to the Board granting Icelandic an exception to provide service nonstop to Luxembourg, since that would be temporarily and not a change in the bilateral, simply through the exemption process?

Mr. WALTRIP. Well, if I understand the conditions upon which that exemption would be granted, as was described in earlier testimony this morning, with a 1-year duration and all the other conditions that it was granted, I think we certainly would want to take another review of it in that context.

Again we are worried about the precedent and we would not like to see a legislative change at this point in time that would permit the CAB to do such. We don't see any need for a statute change.

If the Board can use its exemption powers, as was described, for a limited test period, we think that would be an appropriate way to go.

The CHAIRMAN. We have certainly not proposed any statutory change in that area. As a matter of fact, we suggested that if they were going to do it, that they ought to do it by the exemption route, as you know.

I am sympathetic with the philosophy behind your call for a zone of reasonableness in foreign air transportation with respect to the pricing. However, as you also note, there are a number of practical problems with such a provision.

The major question is how can we permit upward flexibility in any limited designation market? As you will recall, in the domestic bill, we only permitted upward flexibility in markets which had both actual competition and the threat of potential entry. It would seem that both of these would be essential ingredients for providing a market policeman on upward flexibility.

Do you have any comments on that?

Mr. WALTRIP. I would make two, Mr. Chairman, if I might. First of all, when we talk about restricted markets, you know, there are a lot of comments thrown around from time to time about restricted markets. I am not sure that I yet understand exactly what the definition of a restricted market is.

I doubt that anybody—anybody else does in the context of what the true market forces are; but in the United States-United Kingdom, for example, where we now have five or six U.S. airlines and three British airlines and any number of charter carriers, it seems to me that the first thing that we ought to try to do, as a policy and a negotiating ploy, is to get country-of-origin pricing principles established between ourselves and the United Kingdom or ourselves and Japan or any other place where we have so-called "restrictive" markets.

With country-of-origin pricing, we then put the U.S. carriers and the CAB in the position for that portion of the market that originates in the United States. After all, it's those consumers that we principally are interested in, to have a pretty free and free-flowing pricing environment. I think you would see much the same thing happen in Australia. You know, under most people's definition, the Australian market today would be a restrictive market, I guess, because it has

two U.S.-flag carriers, ourselves and Continental, and Qantas. We did get established in the Australian market, country-of-origin pricing.

There have been dramatic changes in the structure of the fares to Australia and also the levels, providing a much greater access to the product on the part of the public, our traffic on that route as experienced by both the other competitors has grown on the range of 30 to 50 percent in the past 6 to 9 months.

That is a restrictive market, but it has—you know, by certain people's definitions—but it has pricing freedom and with pricing freedom, I think we can police these markets very successfully.

The CHAIRMAN. How do you account for the big increases that you've had in the Australian market? Is that just an increase in traffic that's been—

Mr. WALTRIP. It's newly generated traffic as a result of new pricing.

The CHAIRMAN. Generated as a result of new pricing policies?

Mr. WALTRIP. Yes, sir.

The CHAIRMAN. How much differential is there in prices there, generally? Over what was charged previously?

Mr. WALTRIP. Oh, it's in the range of 30-percent discount on—30 to 40 percent on certain segments of the discretionary travel passenger.

The CHAIRMAN. In your statement, you complain about the Board's division of ROI's and ratemaking calculations to subareas internationally. You also said that the world is not a homogenous market that exists in the United States, and pointed out the need for flexibility in our approach to the international system.

But in the 12 months ending in March 1979, Pan Am had a 5-percent ROI for its Atlantic services, a 19.8-percent for its South American services, and an impressive 31.9 for its Pacific services.

Do you think it would be equitable to raise those specific fares in order to bring up the Atlantic service ROI?

Mr. WALTRIP. I think what we are trying to argue here is that if there are some rules of the game, Mr. Chairman, under which a methodology can be established that is going to govern the pricing on international routes, you will not have situations, such as you just pointed out, occur as they do occur today.

One of the reasons why they occur is that the system has grown up over the years with some very stiff price regulation, which is, in my opinion, one of the worst things that we can have today. It creates the kind of situation that you are just describing. If we could establish, for example, a standard industry fare level concept internationally, those kinds of inequities would be self-correcting, because you would be using—and the only differences would be as cost by division happened to differ, and they are not significant; so that you would have, over time, an evening-out of those kinds of inequities; and ROI today is really an outdated regulatory technique in a lot of respects, because one of the reasons why our South American ROI is so high is that we have such a low investment base.

We are principally operating 707's down in that area. Those are fully depreciated airplanes. They have a high cost of operation. They are fuel burners, as you know. When you go through the ROI analysis on an airplane that's on your books for \$1.5 million, it doesn't take too much to get an ROI way up there.

In the case of the Pacific, which you just cited, you have to remember, too, that the Pacific numbers for the 1978 time frame that you are talking about included the Northwest strike. We obviously ran up our ROI during that strike in the Pacific.

The CHAIRMAN. How long was Northwest on strike during that period?

Mr. WALTRIP. About 4 months; $3\frac{1}{2}$, 4 months.

The CHAIRMAN. I am inclined to agree with some of your criticisms of the route section of the bill; however, I don't agree with the premise you put forth that the bidding is unsound. A typical example is a restaurant concession at any airport. Only one operator can be permitted, the airport operator seeks out the best bid of all qualified applicants and awards the concession for a limited time period, at the end of which the operating rights are again bid.

Now this type of a procedure is economically sound in my limited market situation, despite the difference among industries.

Disregarding specific provisions, which has its flaws, does Pan Am oppose time-limited awards which, of course, are permissible under existing law?

Mr. WALTRIP. In what kind of a situation, sir?

The CHAIRMAN. For the award of—a specific award to a carrier. Do you oppose a time-limiting award, in a limited nation market?

Mr. WALTRIP. Well, let me respond, first of all, to the first part of that and then I will attempt to answer the question.

I think, you know, in the comparison to restaurant operator in an airport, who is in a little different situation than we are, we don't think that in today's current situation we are playing the game in a so-called "limited market" with a full deck of cards; and that in those situations where there is not pricing flexibility or where, in those situations where there isn't opportunity because of policy reasons for the U.S. Government to make additional route awards to get the competitive level up to a level which they would be satisfied with from the standpoint of market policing, that we should be, as an incumbent carrier, penalized because those policies aren't enforced.

I would like to go back to something I said before. We think that if the governmental policy of the United States is to accomplish the objectives of a procompetitive environment, then the United States certainly has the leverage as a country to implement, if nothing else, country-of-origin pricing; and I think if country-of-origin pricing is implemented, you then can at least fairly judge the pricing behavior of a carrier like Pan Am, TWA, Northwest, or anybody else.

We would think, before we go to something as drastic as a decertification, which is proposed to be implemented even without an evidentiary hearing, that we ought to try some other avenues first and install a system, or try to have installed a system, at least in the pricing area, that gives us some freedom to demonstrate what our creativity is.

The CHAIRMAN. Of course, limited designation markets are by the agreement itself limited to one carrier each—for each of the two countries.

Mr. WALTRIP. I'm not sure that's true, and I don't know how that's interpreted. For example, in the recent fare filing in which we had included some increases to Japan, that was really turned down on the basis there was a limited restricted market. We have ourselves and

Northwest operating over most of the routes, in addition to Japan Airlines, and about nine other Pacific carriers.

Mr. BARCLAY. Mr. Waltrip, how would you get the country-of-origin pricing you say you seek from foreign countries, if you are not willing to negotiate market opportunities, which is the main ingredient that other countries want from us? If you were in Mr. Atwood's shoes, how would you go about getting that kind of pricing policy?

Mr. WALTRIP. Well, I think we are starting off with the assumption that we have to give away something for the country-of-origin pricing. I don't know that we necessarily have to give away anything for country-of-origin pricing. It is a concept that is rapidly growing around the world, and it has some very proven consumer benefits in those places where it's been installed.

If you take countries which are becoming as consumer-oriented as the United Kingdom, Japan, and other places, I think there are ways to install country-of-origin pricing without giving anything away.

Mr. BARCLAY. One other thing. You noted, as other people have, that the Belgian agreement is one where you think we gave away more than we got. How do you respond to the State Department's analysis that the Belgian agreement, No. 1, was a breakthrough for Europe; No. 2, the market has doubled; No. 3, the U.S. carriers' share of the market has gone up?

Mr. WALTRIP. As a negotiating strategy, if you were a U.S. negotiator, I would certainly think and agree that the Belgian agreement was good from that standpoint. It was an effort to drive a wedge into the so-called ECAC nations. I think that really was its intended purpose, more so than any balance of benefits that have flowed from that agreement.

There, no doubt, have been some traffic increases to Belgium; but if you look at the overall transatlantic market, per se, including both schedules and charters, it certainly is not experiencing the kind of growth that would suggest that there's been any great generation of traffic as a result of these bilateral agreements. It's growing as the total market size, including scheduled and chartered operators in the 6- to 7-percent growth this year. That is not the type of growth we are seeing in the rest of the world or in the U.S. domestic transportation.

The CHAIRMAN. Thank you very much, gentlemen. We appreciate your being here.

The next witnesses are Mr. John W. Campion and William A. Kutzke from Northwest Airlines.

STATEMENT OF WILLIAM A. KUTZKE, WASHINGTON VICE PRESIDENT, NORTHWEST AIRLINES; ACCOMPANIED BY JOHN CAMPION, VICE PRESIDENT OF REGULATORY PROCEEDINGS

Mr. KUTZKE. I want to apologize for Mr. Lapensky. He was delayed in getting back from Europe and couldn't quite get here.

I am William A. Kutzke. I am the Washington vice president for Northwest Airlines. I am accompanied by John Campion, our vice president of regulatory proceedings.

I am hopeful that the two of us can take the place of Mr. Lapensky, who would have undoubtedly appeared by himself.

The CHAIRMAN. All right. I won't comment one way or the other. I don't want to get in the middle of that fight.

Mr. KUTZKE. I am delighted to testify on S. 1300 in one of the newest cities on Northwest's system. Our new Las Vegas service connects at Seattle to our Orient services. Northwest can now more effectively market tours in the Orient that include a stop in Las Vegas. The demand for Las Vegas in the Orient is strong, and this service has a bright future.

The CHAIRMAN. May I say I flew your Seattle service to Las Vegas just a few weeks ago.

Mr. KUTZKE. I hope it was satisfactory.

The CHAIRMAN. Very good.

Mr. KUTZKE. We have another immediate objective: To operate single-plane, Las Vegas-London service via Minneapolis-St. Paul by July of next year, the earliest date possible under the Bermuda II agreement. Our proposed London fares would be the lowest U.S.-flag normal economy and first-class fares offered by any U.S.-flag airline between the United States and Europe. Of course, the fares and our service proposals are subject to Government authorization.

Northwest has a deep interest in S. 1300. Since 1947, Northwest has been a domestic and trans-Pacific airline. Today, Northwest operates to Europe as well as the Orient; and both are linked to our growing domestic system. This year we added four new countries to our route system: The United Kingdom, Denmark, Sweden, and the Netherlands. Next year we plan to add Norway.

We have already opened new European stations at Glasgow, Copenhagen, and Stockholm, and will shortly open stations at Manchester and Amsterdam.

We have purchased eight new Boeing 747's at a cost of about \$400 million to provide both these Atlantic and additional Pacific services. Northwest has applied for reissuance of its certificate, which would permit resumption of its service to the People's Republic of China as soon as the United States signs a new bilateral agreement.

We have applications pending to serve four additional countries. Thus, legislation such as S. 1300 would have a vital effect on a growing Northwest Airlines.

Northwest favors the broad competitive objectives in S. 1300.

However, the CAB "in and out" proposals on suspension of international operating authority, if adopted, would be highly detrimental to the U.S.-flag system, U.S. investors, and airline employees.

As I shall discuss, existing law is adequate to deal with any problem that develops. We urge that the CAB's proposal be rejected.

We think Congress needs to reassess the way the United States is negotiating bilaterals, particularly to the Pacific. This is important in light of any new legislation. The United States is negotiating new agreements at high prices without compensatory advantages for U.S. airlines, and some of these agreements are not working well.

More emphasis needs to be placed on tough trade bargaining instead of giving rights to foreign airlines in return for "principles."

The Fair Competitive Practices Act improvements proposed in S. 1300, with respect to operating restrictions by foreign governments, are badly needed.

The U.S. domestic airline system should not be opened to foreign airlines. No similar rights of value or similar competitive opportuni-

ties can be obtained anywhere in the world, comparable to the rights and opportunities given away.

Because Northwest supports increased opportunities for U.S. airlines to compete in both domestic and international markets, we support the objectives of S. 1300. Generally, airlines that have good service quality, are well-managed, have strong balance sheets, and have made wise decisions on equipment, will succeed in the new environment.

We have added new cities to our domestic route system and begun to take advantage of the pricing flexibility in the Airline Deregulation Act. For example, Northwest recently announced price cuts of 40 percent on our services between Seattle and Fairbanks and Anchorage and 25 percent on our services between Los Angeles and San Francisco and Seattle. We are currently studying other possible pricing changes.

While we would prefer a freer and more openly competitive environment in international markets, and support the overall objectives of the bill, we have serious concerns about several provisions of the bill as drafted.

Let me turn to some specifics. S. 1300 contains a provision that would permit the CAB to suspend or revoke the authority of the incumbent U.S. airline if it determines that another airline might, in its judgment, provide lower fares or better service. The underlying theory, I suppose, is an attempt to develop regulatory procedures and standards that would duplicate the results of a free and open marketplace where foreign government or bilateral restrictions preclude free entry and unregulated pricing.

The most fundamental defect is that the provision does not create a means for injecting competition; it only provides a much easier opportunity for the CAB to revoke an airline's operating rights on an arbitrary basis. Yet, the terms for revocation and the procedures would bear no relationship to the working of a free market.

In the long run in the competitive market, an airline's quality of service, the strength of an airline's balance sheet, and the quality of management will determine which airline or airlines survive. That is competition.

But it is quite another thing to force an airline out of a market by regulatory fiat—on an arbitrary basis and without the adequate procedural protections that produce tolerable regulatory decisions.

The hard fact is that in the American economic system there is no alternative to regulation, where open competition is impracticable. But the need to resort to regulation requires that regulation be intelligent, fair, and consistent with the practicalities of providing international air transportation.

The proposal to make the revocation of operating rights an everyday event, without the procedural protections in current law, totally ignores the real world requirements of competing successfully with foreign flag carriers.

The suspension concept totally ignores the dedication of resources required to provide foreign air transportation successfully. A successful international operation requires the commitment of large amounts of capital, large number of highly skilled employees, and experience doing business overseas.

Increasing fuel and labor costs leave no economic alternative but that an airline must have a fleet of long-range, wide-bodied aircraft,

each of which cost \$40-\$50 million. In order to maintain its current Orient service, Northwest has committed at today's prices an investment approximating \$650 million in flight equipment alone. Withdrawal of the right to serve our Pacific markets would cause a crippling loss to Northwest, its employees, and the traveling public.

Northwest has also invested \$200 million in flight equipment to support its new Scandinavian and United Kingdom services. We have hired new employees, including pilots, flight attendants, reservation agents, and sale personnel, et cetera, to make this operation go. Operating expenses, based on our current schedules, are \$7 million per month.

Northwest is willing to make this investment in the Pacific and Atlantic because we are confident of our judgments on price and service, and that we can compete successfully in the long run.

If, on the other hand, we had to decide once a year whether "to bid" or "to rebid" on a major foreign route, or that 1 year or 2 after we had made the investment in airplanes and employees, we could be ousted—not by competition in the market, but by a paper application filled with unsubstantiated promises—it would be imprudent to commit the resources we have committed to our Pacific or our new European markets.

Competition doesn't force a carrier out of a route because another carrier "claims" it can do better for the public. The incumbent can choose to stay and compete on the terms it judges best. Only heavy-handed regulation can force a complete withdrawal.

There is absolutely no reason to expect that an openly competitive system would always produce substitution. With open entry, the incumbent carrier obviously could stay to compete with a new entrant. If the new entrant did offer more frequency of lower fares, the incumbent might well maintain a satisfactory market position by matching or lowering fares and providing different or even more frequent service. Or it could try some other combination of service and price that may be acceptable to the public.

For numerous reasons, the incumbent might prevail, or the two airlines might continue to operate. But no government agency can predict the result in a competitive system.

Furthermore, simple substitution of airlines will not bring better service or lower fares no matter what an applicant promises.

Our experience in Japan offers a pointed example. Substitution, which is at the heart of the proposal, isn't going to produce more frequent service or lower fares between the United States and Japan. Northwest already operates under tight capacity and pricing restrictions. The same restrictions would apply to any new or additional U.S. airline or airlines.

There is virtually no possibility that Northwest, or any other carrier, can obtain additional "slots" in the next several years, because Japan imposes severe slot limitations on operations at its basic international airport.

In addition to slot limitations, the fuel supply at Narita Airport limits capacity. Even if the Japanese were not so protective of JAL, any expansion of service would be impossible until fuel supply problems are solved. In short, Japan simply will not increase slots for the total number of U.S. airlines no matter how many airlines have authority or which ones they are.

Substitution won't help bring new fares to the United States-Japan market either. Northwest has had a low fare package—its "Orient Express" fares—on file in the United States and Japan since March 1, 1978. That package proposes reductions in economy fares of as much as 35.3 percent and offers even deeper cuts for excursion fares. The Japanese have twice refused to let these fares become effective. Our Government has not requested formal consultations with the Japanese on the "Orient Express" fares, even though Northwest has asked it to do so.

Substitution does not address the real problem in international markets; namely, foreign government attitudes.

There is no substitute for intelligent, informed regulation where foreign relations constraints preclude open entry and unregulated pricing. It is, frankly, disappointing to see the CAB shrinking from the task.

But the damage to U.S. interests is far too great to let the Board avoid the task or regulation in favor of a substitution scheme built on promises alone. And the damage to the interests of the incumbent airline and its employees would be too great to permit revocation on paper promises without a searching and admittedly difficult inquiry into the economic facts of life.

The arbitrary regulation that could result from the provisions of S. 1300 is already surfacing at the CAB. Two recent proceedings have produced widely varying positions from the CAB's staff on the issue of selection of airlines for international route awards.

These inconsistencies will have free play under the provision of S. 1300, especially if the provision of an oral evidentiary hearing is not kept intact. The CAB will be free to pick and choose when to substitute new airlines for incumbents with virtually no restraints on its power.

Don't overlook the fact that substitution can be and has been accomplished—with intelligence, care, and searching scrutiny—under existing law. In the trans-Atlantic route case the CAB replaced Pan American with Northwest in United States-Scandinavian markets.

If there are pricing problems, the United States must sit down with the foreign government, go through the cost data, the revenue data, and try to convince them to make changes. In this process foreign governments often have different economic policies than our own, a fact we can't wish away.

For reasons which make sense to them, they are pursuing a different economic course. Compromise is necessary; the United States can't and shouldn't impose a view of the one right economic system on the rest of the world.

I would now like to turn to the area of operational restrictions. One feature of your bill we particularly like is the strengthening of the Fair Competitive Practice Act provisions. There are far too many restrictions on U.S. airlines operating overseas. They give real competitive advantages to the foreign airlines.

For example, SAS works our arrangements to truck in the United States from the airport it serves to the ultimate destinations of the shipments. Northwest has been frustrated in our desire to do the same in Scandinavia. Except for Malmo, in Sweden, SAS operates all of the custom-bonded warehouses.

SAS argues either we should turn all freight bound for interior destinations over to it or pay exorbitant prices to SAS for warehousing at the interior point. SAS, therefore, has been permitted to create a most difficult, competitive situation for us in Scandinavia. No restrictions are imposed on SAS's operations in the United States.

In Scandinavia we are also confronted with ground-handling monopolies operated by SAS at Copenhagen. In this situation Northwest will not receive the same priority as an SAS flight. Moreover, SAS has access to Northwest customer information because they handle all our cargo. We have no similar access to SAS customer information. This is an unacceptable competitive situation.

Similar problems exist in almost every country we serve, excessive landing fees, restrictions in operations at the airport, and problems in selling transportation in a system dominated by the national airlines. Each of these problems drives up costs to consumers and has an adverse impact on U.S. airline market shares.

The answer, it seems to us, is a far more careful survey of local operating problems in the foreign country, prior to reaching new aviation agreements. We may need a series of bilateral agreements on airlines services similar to the recently negotiated MTN agreement on goods. We also need more attention by U.S. agencies to these operating restrictions and a willingness to impose sanctions on foreign airlines if problems are not resolved promptly. These problems need Government attention every bit as much as gaining paper commitments to multiple permissive entry and fare flexibility.

Agreements containing new, broad principles are meaningless if foreign countries can continue restrictive practices at the operating level.

You also asked to comment on cabotage. There have been various proposals to permit foreign airlines to compete in U.S. domestic markets. The theory is that permitting such services would benefit consumers and would give the United States more flexibility in international negotiations.

By offering access to U.S.-domestic markets, in theory, the United States could obtain more access to foreign routes. Northwest strongly disagrees with this view. The United States has always taken the view that the U.S.-domestic transportation system should be owned, operated, and managed by U.S. citizens. In time of war that system is available to support U.S.-defense interests. In time of peace the system functions without interruption resulting from strife or unrest in foreign countries.

If a strike or other work stoppage slows the U.S.-domestic system, the Government can take steps to order emergency services. Foreign operations in the United States would not necessarily be subject to these rules.

With respect to current bilateral negotiations, there are various long-term problems. There are serious long-term problems for the U.S. airlines with respect to the tack the United States is taking in certain recent negotiations, and some of the new U.S. agreements.

The Korean agreement, hailed as a breakthrough, is an example. In return for a broad package of valuable new U.S. routes Korea agreed to accept any number of airlines designated by the United

States; eliminate controls over price; remove restrictions on ground-handling, and generally permit unlimited operations by U.S. airlines.

About 1 week after the agreement was signed Northwest announced new nonstop service from Seattle to Seoul effective July 1, 1979, and filed reduced fares.

I might point out in testimony this morning, Chairman Cohen, in his prepared statement, referred to an \$840 economy fare filed by Korean Airlines from the United States to Seoul. That fare was first filed by Northwest Airlines. The Korean fare is a matching fare, not an initial filing by Korean Airlines.

With respect to fares, the Koreans delayed introduction of the fares—ex Korea—until the last minute, something they were entitled to do—but hardly an auspicious beginning to a new open competitive regime.

With respect to our nonstop service to Korea, the Koreans refused approval until June 27. On that date the Koreans approved one of the two weekly flights. With respect to the second flight, Korea permitted operation of the inaugural, but refused to permit subsequent operations unless Northwest modified its schedule. The Korean reason for the refusal has been that there is inadequate space on the field to park the airplane overnight, an assertion which we have not been able to verify. The Koreans have allowed the flight to operate normally only twice in addition to the inaugural.

Under continuing State Department pressure, the Koreans have indicated they will now permit the flight to operate normally.

The Koreans gave us this word on Saturday morning, U.S. time.

I might say the problem Northwest has had with this is that every Saturday morning we wait to see if the flight on Monday can operate; if it can't, we have to chase down 200 passengers and either get them rerouted or make accommodations for them in Seattle as they wait for the trip to depart a day late.

Another problem for Northwest in Korea is cargo handling. The agreement spelled out in detail the space we are to receive for self-handling of cargo based on historical traffic shares. The Koreans honored the letter of the agreement, but the space assigned to Northwest is shaped like a bowling alley without room to maneuver a lift truck. The State Department made numerous representations on our behalf.

I only cite these problems to point out that it is easy to sign a wide-open agreement if the agreement confers substantial route rights and benefits on the foreign airline. However, if it appears to the foreign government that the U.S. airline may impinge the national airline operations, the foreign government is likely to find ways of restricting the U.S. airlines regardless of what the agreement says.

The economic policies of many of the countries in the Far East are not based on free trade but on maximizing the export of locally produced commodities, products, and services. They will allow import of foreign-produced products and services but only to the extent necessary to facilitate their own exports. One only need review the trade situation with Japan to understand the scope of the problem in United States-Korea, United States-Hong Kong, and United States-Philippines and apparently eventually United States-Japan traffic. In trade terms, this is not much of a deal.

That is one reason we have been following closely your proposals for establishment of a Department of Trade. Given traditional trade terms, some of these recent agreements in the Pacific may not have been signed.

In summary, we think much more needs to be done in evaluating the hard economic benefits achieved for U.S. firms against the benefits available to foreign firms. Failure to do this may well result in the U.S.-airline industry going the way of the maritime industry. This is not to say we oppose competition. We don't. We compete head-to-head against the giants of the U.S. airline industry such as United Air Lines and the biggest foreign airlines, including British Airways and Japan Air Lines. Rather, we must assess whether the framework established permits real competition or instead is balanced more heavily in favor of the foreign airlines.

The CHAIRMAN. Thank you for your statement.

What is your position on the section 412 provision which IATA, DOT, and the State Department have proposed to grant antitrust immunity to agreements between foreign carriers to which U.S. carriers are not a party?

Mr. KUTZKE. I think I would prefer to defer to the industry position which will be discussed tomorrow.

Northwest Airlines for a long time was one of the first U.S. carriers to withdraw from IATA, well before the current controversy. It may well be that in certain areas of the world there is a need for foreign airlines to be able to work out agreements that impact U.S. transportation.

The CHAIRMAN. I don't believe the industry has taken a position on that particular point. You might want to submit something for it for the record.

Mr. KUTZKE. We will.

The CHAIRMAN. You were critical of the Board in the transpacific low-fare route proceeding in that the CAB staff proposed that there be no critical evaluation of carrier proposals. They were to be accepted at face value.

However, is it not true that in awarding the route to United, the Board stipulated United would be held to their fare proposal for as long as they provided the service?

Mr. KUTZKE. Let me pass that question to Mr. Champion, who is our expert on that case.

Mr. CAMPION. I'm a little bit confused by the question, Senator. You are talking about the transpacific, low-fare investigation? There is nothing that's out of the CAB as yet in the transpacific, low-fare investigation other than the Bureau of International Affairs. It's the Portland/Seattle-Japan investigation in which the Board awarded the certificate to United and conditioned it upon its filing initial tariffs at the level specified as a condition of certificate; and it does permit them to raise those fares, after they file them, based upon going-known inflationary factors. I hope that answers your question.

The CHAIRMAN. Well, I next would ask you then: Is there anything wrong with an obviously able carrier being selected and then held to their proposal?

Mr. CAMPION. No. There really is nothing wrong with that, that I see. There will have to be adjustments made on an inflationary basis.

The CHAIRMAN. It seems that that would prevent irresponsible or irrational proposals, would it not?

Mr. CAMPION. If you have the opportunity to demonstrate those are irresponsible and irrational proposals through the normal hearing processes. We are in one right now, for example, in the transpacific low-fare investigation, to go back to it, Senator, which is not at the Board level. Our proposal is being downgraded because we only operate 138 movements per week to Japan, and 1 of the carriers in that case proposed 180 movements. Therefore, they have a lot better service proposal than we do, because they propose more flights.

In addition, they propose lower fares than our Orient Express, so they get a lower quota for that. Those are, to me, irrational proposals. Yet they are not being evaluated at that point.

It's the acceptance of the proposal as filed. There isn't a critical evaluation being made of it at that time. This is at the staff level.

The CHAIRMAN. How would Northwest go about getting the kind of an international system that you say you support? In other words, what would you suggest we offer in return for competitive bilaterals?

Mr. KUTZKE. Well, I think you have to approach the—any given negotiation with a country on a fairly pragmatic basis. Certainly, what we have to pay a great deal more attention to is that there are things that we don't charge, if you will, foreign governments for now—they get free, up front, in the negotiations.

In other words, if they come into the U.S. market, they don't have to face monopoly, ground-handling situations. They don't have to face problems with subscribing to a single national reservation system.

We have not in the past historically demanded that the fabric—that there be an evaluation of competition in the foreign country and that the foreign country take measured steps to bring their system either into conformance with ours or to make adjustments in the agreement reflecting that the access is not the same.

That's one of the reasons that we suggested looking at really a type of bilateral agreement, MTN-type, bilateral agreement on services.

I think that's going to become increasingly important. I think that will be a major issue in your hearings on the Department of Trade and various proposals from the Department of Trade.

That would almost certainly be something they would be looking at early, whether it covers aviation or not.

A second—clearly, a second problem is that I think with many of these countries, they have themselves begun to recognize that fare flexibility has a value on its own; but the United States has generally announced that in order to obtain fare flexibility, it's willing to pay the price in route awards. So foreign governments are demanding it.

I think in many cases, because there is already quite a fabric of these agreements in place now, that you have fare flexibility, the price really ought to be going, if you will, ought to be going down for traditional agreements. Instead the number of routes that we are offering for fare flexibility seems to be increasing.

The CHAIRMAN. Does Northwest share ATA's position of being opposed to permitting U.S. airlines to wet lease foreign aircraft?

Mr. KUTZKE. Yes; we do. I think it's basically a version of cabotage. It's a way of getting into the cabotage thing.

The CHAIRMAN. I would think, with the expansion you indicated you are undergoing, that you would welcome that added flexibility as a company.

Mr. KUTZKE. Well, perhaps Bill Campion should speak to this, but Northwest has traditionally purchased and owned its own airplanes and operated its own fleet. Even today, where many U.S. carriers will lease airplanes from leasing companies, Northwest doesn't do that.

The CHAIRMAN. But it leaves it up to the carrier to form that judgment.

Mr. KUTZKE. Yes; it does.

The CHAIRMAN. It's up to the carrier to exercise its management judgment in that respect. It would seem to me that you are opting for more, rather than less, regulation as we have been trying to move toward—

Mr. KUTZKE. I am not sure our labor contracts allow us to use a foreign crew; would they, Bill?

Mr. CAMPION. I doubt very much we could use anybody else's crews on our airplanes to fly over our routes.

The CHAIRMAN. That would give you an opportunity to have something to negotiate for the next time.

Mr. CAMPION. We have a great deal of that.

The CHAIRMAN. I think maybe you lack for subjects there on occasion.

Northwest opposes the route-bidding mechanism contained in the bill. Do you object to the award of time-limited certificates which is permitted under current law?

Mr. KUTZKE. I don't think we do. It depends on the time of the certification and what the conditions were when we originally got it. It's one thing to—for us to look at a route to Amsterdam and make an informed judgment about whether we want to operate that route with the condition that it's a 3- to 5-year certificate, or a 5-year certificate and will be renewed at the end of that time. That's traditionally the way North Atlantic certificates have been written. There have been 3- and 5-year authorizations reviewed under traditional CAB regulatory proceedings.

You make the judgment at that point. When you drop to about 1 year, or you drop to these very short-term things where you are rebidding it, that's a whole other matter.

The CHAIRMAN. In your written statement, you mention that you are following closely congressional proposals for the establishment of a Department of Trade. What potential advantages do you see for Northwest in that legislation?

Mr. KUTZKE. We have no position on it yet. We have been discussing the matter inside the company, looking at the question of whether if you move to a trade type, negotiators that are looking at trade deals of the kind that have been done on a number of commodities, whether that offers advantages to the airline industry. At this point I don't think we have any specific views.

I suspect by the time we get to hearings on it, we will have worked out a position either with the ATA or independently.

The CHAIRMAN. Do you support ATA's position on emergency cabotage?

Mr. KUTZKE. We don't like any kind of cabotage, but we can live with the industry position.

The CHAIRMAN. Thank you very much, gentlemen. We appreciate your being here.

[The statement follows:]

STATEMENT OF M. J. LAPENSKY, PRESIDENT AND CHIEF EXECUTIVE OFFICER OF
NORTHWEST AIRLINES

Mr. Chairman, my name is M. J. Lapensky. I am President and Chief Executive Officer of Northwest Airlines.

I am delighted to testify on S. 1300 in one of the newest cities on Northwest's system. Our new Las Vegas service connects at Seattle to our Orient services. Northwest can now more effectively market tours in the Orient that include a stop in Las Vegas. The demand for Las Vegas in the Orient is strong, and this service has a bright future.

We have another immediate objective: to operate single-plane Las Vegas-London service via Minneapolis-St. Paul. We have asked the CAB for authority to begin London service via Minneapolis-St. Paul by July of next year, the earliest date possible under the Bermuda II agreement. Our proposed London fares would be the lowest U.S.-flag normal economy and first class fares offered by any U.S.-flag airline between the United States and Europe. Of course, the fares and our service proposals are subject to government authorization.

Northwest has a deep interest in S. 1300. Since 1947 Northwest has been a domestic and transpacific airline. Today, Northwest operates to Europe as well as the Orient; and both are linked to our growing domestic system. This year we added four new countries to our route system: The United Kingdom, Denmark, Sweden and The Netherlands. Next year we plan to add Norway. We have already opened new European stations at Glasgow, Copenhagen and Stockholm and will shortly open stations at Manchester and Amsterdam. We have purchased eight new Boeing 747's at a cost of about \$400 million to provide both these Atlantic and additional Pacific services. Northwest has applied for reissuance of its certificate which would permit resumption of its service to the People's Republic of China as soon as the United States signs a new bilateral agreement. We have applications pending to serve four additional countries. Thus, legislation such as S. 1300 would have a vital effect on a growing Northwest Airlines.

SUMMARY OF TESTIMONY

1. Northwest favors the broad competitive objectives in S. 1300.
2. The CAB "in and out" proposals on suspension of international operating authority, if adopted, would be highly detrimental to the U.S. flag system, U.S. investors, and airline employees. As I shall discuss, existing law is adequate to deal with any problem that develops. We urge that the CAB's proposal be rejected.
3. We think Congress needs to reassess the way the United States is negotiating bilaterals, particularly in the Pacific. This is important in light of any new legislation. The United States is negotiating new agreements at high prices without compensatory advantage for U.S. airlines. And some of these new agreements are not working well. More emphasis needs to be placed on tough trade bargaining instead of giving rights to foreign airlines in return for "principles."
4. The Fair Competitive Practices Act improvements proposed in S. 1300 with respect to operating restrictions by foreign governments are badly needed.
5. The U.S. domestic airline system should not be opened to foreign airlines. No similar rights of value or similar competitive opportunities can be obtained anywhere in the world comparable to the rights and opportunities given away.

INCREASED COMPETITIVE OPPORTUNITIES

Because Northwest supports increased opportunities for U.S. airlines to compete in both domestic and international markets, we support the objectives of S. 1300. Generally airlines that have good service quality, are well managed, have strong balance sheets and have made wise decisions on equipment will succeed in the new environment. We have added new cities to our domestic route system and begun to take advantage of the pricing flexibility in the Airline Deregulation Act. For example, I recently announced price cuts of 40 percent on our services.

between Seattle and Fairbanks and Anchorage and 25 percent on our services between Los Angeles and San Francisco and Seattle. We are currently studying other possible pricing changes.

While we would prefer a freer and more openly competitive environment in international markets and support the overall objectives of the bill, we have serious concerns about several provisions of the bill as drafted. Some portions would not create more competitive opportunities, but would in fact undermine U.S. flag carriers ability to compete successfully. Others might well complicate efforts to maintain our bilateral aviation negotiations in a practical and professional state—one akin to the framework in which other U.S. trade negotiations take place. Let me turn to some specifics.

SUSPENSION OF INTERNATIONAL OPERATING AUTHORITY

S. 1300 contains a provision that would permit the CAB to suspend or revoke the authority of the incumbent U.S. airline, if it determines that another airline might in its judgment provide lower fares or better service. The underlying theory, I suppose, is an attempt to develop regulatory procedures and standards that would duplicate the results of a free and open marketplace where foreign government or bilateral restrictions preclude free entry and unregulated pricing. Northwest is prepared to compete in any truly open competitive system. But the certificate suspension provisions of S. 1300 would not create a model for a competitive system; in fact they are likely to produce much more arbitrary, intrusive, and impractical regulation than under present law.

The most fundamental defect is that the provision does not create a means for injecting competition; it only provides a much easier opportunity for the CAB to revoke an airline's operating rights on an arbitrary basis. Yet, the terms for revocation and the procedure would bear no relationship to the working of a free market. In the long run in the competitive market an airline's quality of service, the strength of an airlines balance sheet, and the quality of management will determine which airline or airlines survive. That is competition. But it is quite another thing to force an airline out of a market by regulatory fiat—on an arbitrary basis and without the adequate procedural protections that produce tolerable regulatory decisions.

The hard fact is that in the American economic system there is no alternative to regulation, where open competition is impracticable. But the need to resort to regulation requires that regulation be intelligent, fair and consistent with the practicalities of providing international air transportation. The proposal to make the revocation of operating rights an everyday event—without the procedural protections in current law—totally ignores the real world requirements of competing successfully with foreign flag carriers.

The suspension concept totally ignores the dedication of resources required to provide foreign air transportation successfully. A successful international operation requires the commitment of large amounts of capital, large number of highly skilled employees and experience doing business overseas. Increasing fuel and labor costs leave no economic alternative but that an airline must have a fleet of long range, wide-bodied aircraft each of which cost \$40 to \$50 million. In order to maintain its current Orient service, Northwest has committed at today's prices an investment approximating \$650 million in flight equipment alone. Withdrawal of the right to serve our Pacific markets would cause a crippling loss to Northwest, its employees and the traveling public.

Northwest has also invested \$200 million in flight equipment to support its new Scandinavian and U.K. services. We have hired new employees including pilots, flight attendants, reservation agents and sales personnel, etc., to make this operation go. Operating expenses based on our current schedules are \$7 million per month.

Northwest is willing to make this investment in the Pacific and Atlantic because we are confident of our judgments on price and service and that we can compete successfully in the long run. If, on the other hand, we had to decide once a year whether "to bid" or "to re-bid" on a major foreign route or that a year or two after we had made the investment in airplanes and employees, we could be ousted—not by competition in the market, but by a paper application filled with unsubstantiated promises—it would be imprudent to commit the resources we have committed to our Pacific or our new European markets. Competition doesn't force a carrier out of a route because another carrier "claims" it can do better for the public. The incumbent can choose to stay and compete on

the terms it judges best. Only heavy handed regulation can force a complete withdrawal.

It also defies business sense to develop the kinds of long term relationships with tour operators, hotels and airport operators necessary to conduct a successful overseas operation, if an airline has no certainty of the ability to continue in a market if it wishes. An airline perhaps could, using old depreciated equipment and contracting for ground service, operate a limited program. It could not as a business matter commit the financial resources necessary for a major scheduled operation such as Northwest has in the Orient and in Scandinavia.

There is absolutely no reason to expect that an openly competitive system would always produce substitution. With open entry, the incumbent carrier obviously could stay to compete with a new entrant. If the new entrant did offer more frequency or lower fares, the incumbent might well maintain a satisfactory market position by matching, or lowering fares and providing different or even more frequent service. Or it could try some other combination of service and price that may be acceptable to the public. For numerous reasons, the incumbent might prevail, or the two airlines might continue to operate. But no government agency can predict the result in a competitive system. For example, the Laker equipment in no-reservation service in the Los Angeles-London market has simply not proved attractive enough to the traveling public to be economically sustainable. For that reason Laker is now moving to a higher fare reservation service in addition to the standby service.

Furthermore, simple substitution of airlines will not bring better service or lower fares no matter what an applicant promises. In those markets where the suspension provisions would apparently apply, lower fares or more service would not necessarily result. The provisions would only be effective in achieving the apparent objective if the foreign government which precluded open entry nevertheless permitted unregulated pricing and unregulated changes in capacity. But the very protection that restricts entry goes hand-in-hand with controls on pricing and capacity.

Our experience in Japan offers a pointed example. Substitution, which is at the heart of the proposal, isn't going to produce more frequent service or lower fares between the United States and Japan. Northwest already operates under tight capacity and pricing restrictions. The same restrictions would apply to any new or additional U.S. airline or airlines. As of July 1, 1979 Northwest's operations at Tokyo's Narita Airport consisted of 116 arrivals and departures with combination aircraft and 20 arrivals and departures with all-cargo equipment each week. Northwest has been held to these levels for some years. (Northwest would, if slots were available, immediately expand its Tokyo operation.) There is virtually no possibility that Northwest—or any other carrier—can obtain additional "slots" in the next several years, because Japan imposes severe slot limitations on operations at its basic international airport. Because of operating constraints at Narita, Japan is not likely to increase the slots allocated to U.S. airlines regardless of the number of U.S. airlines flying between the United States and Japan. Indeed, there are 33 nations that have approached Japan on the issue of opening air service to that nation that Japan to date has not been able to accommodate. In addition to slot limitations the fuel supply at Narita Airport limits capacity. Even if the Japanese were not so protective of JAL, any expansion of service would be impossible until fuel supply problems are solved. In short, Japan simply will not increase slots for the total number of U.S. airlines no matter how many airlines have authority or which ones they are.

Substitution won't help bring new fares to the U.S.-Japan market either. Northwest has had a low fare package—its "Orient Express" fares—on file in the United States and Japan since March 1, 1978. That package proposes reductions in economy fares of as much as 35.3 percent and offers even deeper cuts for excursion fares. The Japanese have twice refused to let these fares become effective. Our government has not requested formal consultations with the Japanese on the "Orient Express" fares, even though Northwest has asked it to do so.

Substitution does not address the real problem in international markets: namely, foreign government attitudes. It would accomplish *none* of the results of a competitive market and at the same time it would deprive U.S. flag airlines of the continuity that is absolutely essential to competing successfully in foreign markets.

There is no substitute for intelligent, informed regulation where foreign relations constraints preclude open entry and unregulated pricing. It is frankly

disappointing to see the CAB shrinking from the task. It is, of course, hard to make informed judgments about whether fares are just and reasonable. (Northwest would prefer these decisions to be made in the market place not by regulators.) No doubt it is much easier to say: someone else promises to do more for less so let's deprive the incumbent who has served the public well, learned foreign customs, and developed strong business relationships of the right to do business in a foreign country. But the damage to U.S. interests is far too great to let the Board avoid the task of regulation in favor of a substitution scheme built on promises alone. And the damage to the interests of the incumbent airline and its employees would be too great to permit revocation on paper promises without a searching and admittedly difficult inquiry into the economic facts of life.

The arbitrary regulation that could result from the provisions of S. 1300 is already surfacing at the CAB. Two recent proceedings have produced widely varying positions from the CAB's staff on the issue of selection of airlines for international route awards. In the Transpacific Low Fare Route Proceeding, the CAB's staff proposed that airlines be selected to serve limited designation markets based only on the price and service proposals put before the CAB. In addition, if a carrier proposed a lower price or higher frequency service than an incumbent, it would replace the incumbent if the incumbent did not match the offer. The staff proposed that there be no critical evaluation of carriers proposals—they were to be accepted at face value. The fact that a carrier proposed more service at Tokyo's Narita Airport than could be operated was not even to be considered in evaluating the applicant's proposal.

Two months later, in the *Yucatan Service* case, the same CAB staff proposed the opposite. Fare and service proposals were not to be taken at face value. Instead, route integration was to be a primary carrier selection factor because it was a better indication of a carrier's abilities than its actual proposal. In addition, a new carrier selection factor surfaced—carrier interest in developing a market. Presumably, these factors would be used to replace incumbents, too.

These inconsistencies will have free play under the provision of S. 1300, especially if the provision of an oral evidentiary hearing is not kept intact. The CAB will be free to pick and choose when to substitute new airlines for incumbents with virtually no restraints on its power.

Don't overlook the fact that substitution can be and has been accomplished—with intelligence, care and searching scrutiny—under existing law. In the *Transatlantic Route* case the CAB replaced Pan American with Northwest in U.S.-Scandinavian markets. But, it made the substitution after a careful review of Pan American's performance in the markets over a period of years, the economics of those markets, and the relative operational and economic capabilities of Northwest and Pan American. Pan American had a fair opportunity to demonstrate its willingness and capability to meet public needs in the market, and Northwest had to make a convincing showing it could do better. The result, we think, is a more competitive lower priced U.S. flag service to Scandinavia. But the decision was studied, thoughtful and made after fair and open procedures. Not only were the parties due process rights preserved, but the decision was undoubtedly a better one because all points of view were adequately heard. In the end even Pan American conceded that Northwest could replace Pan American service.

Letting Northwest and Pan American fight it out in the United States-Scandinavian marketplace might have been more desirable. We think current section 401(g) was the next best alternative.

If there are pricing problems, the United States must sit down with the foreign government—go through the cost data, the revenue data and try to convince them to make changes. In this process foreign governments often have different economic policies than our own—a fact we can't wish away. For reasons which make sense to them they are pursuing a different economic course. Compromise is necessary—the U.S. can't and shouldn't impose a view of the one right economic system on the rest of the world.

In the case of Japan the United States has not held detailed price and cost consultations. The United States has simply not pursued all of the available procedures under the United States-Japan bilateral. However, we must be realistic. We should not expect a country which will not accept unlimited exports of U.S. agricultural products to accept unlimited U.S. airline services. Rather, compromises are necessary if trade is to prosper. In short, there are no quick and easy solutions in international air transportation. The theoretically pure path—the one that eliminates the need for difficult, but thoughtful regulatory process—simply isn't available in every market.

OPERATIONAL RESTRICTIONS

One feature of your bill we particularly like is the strengthening of the Fair Competitive Practice Act provisions. There are far too many restrictions on U.S. airlines operating overseas. They give real competitive advantages to the foreign airlines. For example, SAS works out arrangements to truck in the United States from the airport it serves to the ultimate destinations of the shipments. Northwest has been frustrated in our desire to do the same in Scandinavia. Except for Malmo, in Sweden, SAS operates all of the custom bonded warehouses. SAS argues either we should turn all freight bound for interior destinations over to it or pay exorbitant prices to SAS for warehousing at the interior point. SAS therefore has been permitted to create a most difficult, competitive situation for us in Scandinavia. No restrictions have been imposed on SAS's operations in the United States.

In Scandinavia we are also confronted with ground handling monopolies operated by SAS at Copenhagen. In this situation Northwest will not receive the same priority as an SAS flight. Moreover, SAS has access to Northwest customer information because they handle all our cargo. We have no similar access to SAS customer information. This is an unacceptable competitive situation. Similar problems exist in almost every country we serve—excessive landing fees, restrictions on operations at the airport, and problems in selling transportation in a system dominated by the national airlines. Each of these problems drives up costs to consumers and has an adverse impact on U.S. airline market shares.

The answer, it seems to us, is a far more careful survey of local operating problems in the foreign country, prior to reaching new aviation agreements. We may need a series of bilateral agreements on airlines services similar to the recently negotiated MTN agreement on goods. We also need more attention by U.S. agencies to those operating restrictions and a willingness to impose sanctions on foreign airlines if problems are not resolved promptly. These problems need government attention every bit as much as gaining paper commitments to multiple permissive entry and fare flexibility. Agreements containing new, broad principles are meaningless if foreign countries can continue restrictive practices at the operating level.

CABOTAGE

There have been various proposals to permit foreign airlines to compete in U.S. domestic markets. The theory is that permitting such services would benefit consumers and would give the U.S. more flexibility in international negotiations. By offering access to U.S. domestic markets, in theory, the U.S. could obtain more access to foreign routes. Northwest strongly disagrees with this view. The United States has always taken the view that the U.S. domestic transportation system should be owned, operated and managed by U.S. citizens. In time of war that system is available to support U.S. defense interests. In time of peace the system functions without interruption resulting from strife or unrest in foreign countries. If a strike or other work stoppage slows the U.S. domestic system, the government can take steps to order emergency services. Foreign operations in the United States would not necessarily be subject to these rules.

In any event, while I believe the present rules on cabotage should continue, there are several other considerations which are also relevant.

1. Wage rates and working conditions for foreign airlines are different than U.S. provisions. If foreign airlines are to operate in the U.S. domestic system it could have serious impact on U.S. jobs and pay scales on certain routes.

2. Access to cabotage routes in foreign countries has extremely limited value for U.S. airlines. If Korean Airlines were permitted to operate Honolulu-Los Angeles, what would the trade be for Northwest, Seoul-Pusan?—not much of a trade in our view.

3. Most foreign governments have not permitted development of internal airlines routes that match the type of development fostered in the United States. They have not built the airport or airway facilities to permit multiple international gateways. In some cases, the gateways built have been restricted. In Japan, most international traffic must use Narita because it is the only airport with a sufficient runway to accommodate long range Transpacific service. The second major international airport is severely restricted. For these reasons competition in the domestic transportation system of foreign countries has very little long-term advantage to U.S. airlines.

4. It is difficult to conceive of a situation where the United States has so little bargaining leverage that it cannot obtain reasonable agreements without giving

up domestic rights. Either we have bad negotiators or we are putting excessive value on the rights we seek.

ASSESSMENT OF CURRENT BILATERAL NEGOTIATIONS

There are serious long term problems for the U.S. airlines with respect to the tack the United States is taking in certain recent negotiations, and some of the new U.S. agreements.

The Korean agreement, hailed as a breakthrough, is an example. In return for a broad package of valuable new U.S. routes Korea agreed to accept any number of airlines designated by the United States; eliminate controls over price; remove restrictions on ground handling and generally permit unlimited operations by U.S. airlines. Before the agreement was even signed the CAB authorized the start of all-cargo service to New York by Korean Air Lines. Five days after the agreement was signed the CAB authorized Korean Air Lines to begin direct service from New York to Hong Kong via Seoul.

About one week after the agreement was signed Northwest announced new nonstop service from Seattle to Seoul effective July 1, 1979 and filed reduced fares. With respect to the fares the Koreans delayed introduction of the fares (ex Korea) until the last minute (something they were entitled to—but hardly an auspicious beginning to a new open competitive regime).

With respect to our non-stop service to Korea the Koreans refused approval until June 27. On that date the Koreans approved one of the two weekly flights. With respect to the second flight Korea permitted operation of the inaugural but refused to permit subsequent operations unless Northwest modified its schedule. The Korean reason for the refusal has been that there is inadequate space on the field to park the airplane overnight—an assertion which we have not been able to verify. The Koreans have allowed the flight to operate normally only twice in addition to the inaugural. Under continuing State Department pressure the Koreans have indicated they may soon permit the flight to operate normally.

Another problem for Northwest in Korea is cargo handling. The agreement spelled out in detail the space we are to receive for self-handling of cargo based on historical traffic shares. The Koreans honored the letter of the agreement, but the space assigned to Northwest is shaped like a bowling alley without room to maneuver a lift truck. The State Department made numerous representations on our behalf.

I only cite these problems to point out that it is easy to sign a wide-open agreement if the agreement confers substantial route rights and benefits on the foreign airline. However, if it appears to the foreign government that the U.S. airline may impact the national airline operations, the foreign government is likely to find ways of restricting the U.S. airlines regardless of what the agreement says.

The economic policies of many of the countries in the Far East are not based on free trade but on maximizing the export of locally produced commodities, products and services. They will allow import of foreign produced products and services but only to the extent necessary to facilitate their own exports. One only need review the trade situation with Japan to understand the scope of the problem.

With strong central governments, monopoly controls at local airports supervised by the national airline, and strong ties between the national airline and central government, U.S. airlines do not have the same market access or ability to compete effectively that we have in Billings or Minneapolis/St. Paul. For that reason trading valuable routes to foreign nations for statements that, in principle, the foreign governments will not restrain the U.S. airlines ability to compete doesn't make much sense. Rather we should be negotiating tough trade deals to reflect a balance in route and market opportunities that can be realistically exploited. For example, the United States obtained rights to one point in Singapore (that's all it has) for access to six cities in the United States through a number of valuable intermediate points in the Pacific. Total United States-Singapore traffic is no more than a handful of passengers a day. No matter how you slice it or stimulate the traffic, that volume won't support much direct widebody service by U.S. airlines, nor will it support Singapore Airlines. Thus, the rights really given to Singapore are to participate in United States-Korea, United States-Hong Kong, and United States-Philippines and apparently eventually United States-Japan traffic. In trade terms this is not much of a deal. That is one reason we have been following closely your proposals for establishment of a Department of Trade. Given traditional trade terms some of these recent agreements in the Pacific may not have been signed.

In summary, we think much more needs to be done in evaluating the hard economic benefits achieved for U.S. firms against the benefits available to foreign firms. Failure to do this may well result in the U.S. airlines industry going the way of the maritime industry. This is not to say we oppose competition. We don't. We compete head-to-head against the giants of the U.S. airline industry such as United Air Lines and the biggest foreign airlines including British Airways and Japan Air Lines. Rather we must assess whether the framework established permits real competition or instead is balanced more heavily in favor of the foreign airlines.

The CHAIRMAN. That concludes the hearings for today. We will resume at 9:30 in the morning.

[Whereupon, at 3:25 p.m., the hearing was adjourned, to resume at 9:30 a.m., Wednesday, August 22, 1979.]

SUPPLEMENTAL MATERIAL SUBMITTED BY M. J. LAPENSKY

I. NORTHWEST'S CURRENT ROUTES AND OPERATIONS

Northwest began operation on October 1, 1926, flying airmail between Minneapolis/St. Paul and Chicago. Passenger service was inaugurated in July, 1927.

Northwest's existing route system extends from Asia to Europe and includes approximately 33,300 route miles (Attachment 1). In terms of U.S. flag lines, Northwest is the seventh largest carrier, approximately one-third the size of United Air Lines. Among the airlines of the world, Northwest ranks 13th in the number of passengers carried; 10th in passenger-kilometers; and 11th in air freight (Attachment 2).

A. Domestic routes

Northwest serves cities in 20 of the 48 contiguous states, as well as Alaska, Hawaii, the District of Columbia and Canada. Northwest's domestic routes have as East Coast terminals the northeastern cities of Boston, New York-Newark, Philadelphia and Washington and the southeastern cities of Miami, Fort Lauderdale, Tampa-St. Petersburg, Fort Myers and Orlando. Westernmost terminal of its domestic route is Honolulu, Hawaii. West Coast cities served are Los Angeles, San Francisco, Portland and Seattle-Tacoma. Other major cities served are Atlanta, Pittsburgh, Cleveland, Detroit, New Orleans, St. Louis, Chicago, Milwaukee, Madison, Rochester, Minneapolis/St. Paul, Fargo, Billings, Bismarck, Great Falls, Spokane and Las Vegas. Northwest also operates service to Fairbanks and Anchorage, Alaska and to Winnipeg and Edmonton, Canada.

Northwest also holds a "grandfather" all-cargo certificate. That certificate authorizes it to operate between any pair of points in the mainland United States and between any point in the United States and Puerto Rico or the U.S. Virgin Islands and between Puerto Rico and the U.S. Virgin Islands.

B. Transpacific routes

Northwest's Transpacific routes permit service between the United States and Japan, Korea, Taipei, Hong Kong and the Philippines. The scope of its Pacific operation is shown by the fact Northwest enplanes/deplanes more passengers at Tokyo's Narita Airport than any other carrier except Japan Air Lines.

Northwest's Orient route provides it with primary U.S. flag responsibility to serve China. Northwest was certificated in 1946 to serve six cities in China—Shanghai, Nanjing, Beijing, Luda, Shenyang and Harbin. By contrast, PAA was certificated to serve only Canton and Shanghai. In May, 1949, Northwest was forced to suspend service to the People's Republic of China. In the short time Northwest served Shanghai, that city accounted for 29 percent of Northwest's international traffic. However, the authorization to serve Shanghai, Beijing and other points in the People's Republic of China remain in effect although presently inoperative.

During the summer of 1979, Northwest operates 35 round trip passenger/cargo combination flights per week between the United States and the Orient (Attachment 3). Seven of these round trips operate between San Francisco and the Orient and seven operate between Los Angeles and the Orient. A certificate restriction requires a stop in Hawaii and Japan on those services.¹ Northwest also

¹ Northwest is seeking exemption authority eliminating this mandatory stop. Such elimination would permit more effective competition with foreign flag carriers that now operate non-stop between California and Japan.

operates seven nonstop round trips per week between Chicago and the Orient via Japan, eleven round trips per week between Seattle and the Orient of which nine are via Japan and two serve only Korea, and three round trips between Honolulu and Taipei via Japan. All of these services are operated with B-747 aircraft. In addition, Northwest operates five round trip all-cargo flights per week using B-747F cargo equipment.

C. Atlantic route

Northwest's Transatlantic route permits service between certain U.S. cities and the United Kingdom, Iceland, Scotland, Denmark, Norway, Sweden, and Finland. Northwest has also been exempted to serve the Netherlands on all-cargo flights.

Northwest began operations in the Atlantic on February 10, 1979 with an all-cargo service to Glasgow that was extended to Copenhagen on March 2. It began combination service on March 29, 1979 and is today providing two round trips per day with B-747 equipment between the U.S. and various European destinations. Northwest also provides all-cargo service to Glasgow which will be extended to Manchester and Amsterdam on September 11. (Attachment 4).

II. NORTHWEST'S FLEET

Northwest operates a fleet of 112 jet aircraft and has eight aircraft on order (Attachment 5). Of the aircraft on hand, 19 are B-727-100's, 46 are B-727-200's, 22 are DC-10-40's and 25 are B-747's. The B-747 fleet includes 4 B-747F all-cargo aircraft and 21 combination aircraft. It has on firm order 4 B-727-200's, 3 B-747 combination and 1 B-747F freighter aircraft.

There are certain features that should be highlighted about Northwest's fleet.

(1) Northwest, despite its relatively small size, has the second largest fleet of wide-bodied aircraft in the world (Attachment 6). Its fleet of wide-bodied aircraft is larger, for example, than Pan American's, American's or TWA's. And all of Northwest's wide-bodied fleet can be used on long over-water international segments.

(2) Northwest has the largest fleet of B-747F all-cargo aircraft in the world (Attachment 7).

Northwest's fleet acquisition program has recognized the importance of air cargo as well as passenger service. For example, the B-747F cargo aircraft in our fleet are specifically designed for cargo service. They do not have life-support systems or windows in the main cabin which permits greater cargo lift capability because of lower aircraft weight and greater structural strength. Cargo doors are located in both the nose and in the side of the aircraft (Attachment 8).

In addition, Northwest at the time it acquired its DC-10-40 wide-bodied aircraft placed the galley in the upper cabin, leaving the lower deck fully available for cargo. Further, the DC-10-40 aircraft were acquired with a cargo door that was 50 percent wider than the cargo door on the DC-10's used by carriers such as United, American and Western. This larger door permits the carriage of pallets and LD-7 cargo containers that will not fit through the cargo door of the DC-10's of the DC-10-10 carriers (Attachment 9). As a result, the long-range international characteristics and cargo lift capability of all of its wide-body fleet—DC-10-40's and B-747's—make it an important part of the nation's reserve aircraft defense program.

(3) Northwest's fleet acquisition program is designed to keep the most modern equipment in that fleet. Toward that end, it has already disposed of a fleet of 52 B-707/B-720's. TWA still has 80 of these now obsolete aircraft; American has 75. Northwest's fleet is so new that 72 of the aircraft that it has on hand were FAR-36 qualified at the time they were acquired. This is part of Northwest's program to be an environmentally conscious airline. For example, the National Organization to Insure a Sound-Controlled Environment (NOISE) has presented an award of merit to Northwest for distinguished achievement in the reduction of the effects of aircraft noise.

(4) Northwest has used its earnings to purchase its fleet. None of its aircraft are leased as is common practice among many of the carriers. For example, American leases 48 of its 79 B-727-200's.

The advantages of ownership in terms of a carrier's continuing financial strength are obvious. Tax advantages and cash flow accrue to the carrier and the public—not to a lending institution. To our knowledge, only Delta and National can make a similar claim of ownership.

(5) The quality of Northwest's fleet is demonstrated by its estimated replacement value. A study by Oppenheimer Company places the market value of Northwest's fleet at \$1.8 billion (Attachment 10). By contrast, that study values the fleet that Pan American owns at only \$834 million and TWA's at \$1.1 billion.

III. FINANCIAL STRENGTH

Northwest's role as only the seventh largest U.S. carrier belies its financial strength. One of the most unusual aspects of Northwest's operation is that it has been consistently one of the most successful airlines financially (Attachment 11). Northwest is perhaps the benchmark for the industry in terms of solvency (Attachment 12). It is important to understand that the reason for Northwest's financial results has not been any inherent advantage in its existing route structure.

Northwest has paid strict attention to detail and to operating efficiency. For example, it has simplified its operation so that it has only three aircraft types—the B-727, DC-10 and B-747—and two engine types in its fleet—JT-8D and the JT-9D. The commonality of its fleet permits economy in training, increased proficiency with economy in maintenance and reduced expenditures for spare parts. Many of its larger competitors have four different types of engines and even a smaller carrier such as Western has three different engine types. Northwest's efficiency is also the result of a conscious decision to control "overhead" costs which many of the major carriers have been unable to do. It has instead concentrated its attention on the acquisition of the most modern fleet available which combined with close attention to all areas of cost control would permit it to provide a service to the public in a highly competitive environment which would produce the financial results that have occurred.

The result of these efforts is that Northwest is far and away the industry's most efficient carrier. For example, based on an exhaustive record in the *Alaska Fares Investigation*, Judge Gross concluded that:

"Northwest Airlines costs are very low in comparison to those of most other carriers," and

"Indeed the low fares ordered here show the benefit to the public that can be achieved by certificating a carrier that is able to operate at low unit costs."

It is especially significant that Northwest comes out on top based on the criteria which other carriers use to show their efficiency. For example, the exhibits of Continental and Western Airlines in the *Continental-Western Merger Case*, while submitted to show the efficiency and productivity of those two carriers, actually demonstrate Northwest is far and away the most efficient carrier in terms of productivity factors such as operating revenues, revenue ton miles, and available ton miles on a per employee basis, and in terms of cost efficiency as shown by operating expense per available or revenue ton mile (Attachment 13).

Many other comparisons of carrier efficiency can be made. The most basic comparison—operating cost per available ton mile—demonstrates that Northwest's costs of production are well below the industry's average (Attachment 14) and that its route structure gives it no inherent advantage in controlling costs. Its efficiency cannot be attributed to monopoly traffic since as the exhibits in the *Continental-Western Merger Case* demonstrate Northwest operates in one of the most competitive environments of the U.S. domestic carriers (Attachment 15). And in the international arena, it competes with such giants as Pan American, Japan Air Lines, British Airways, and SAS among others.

(Attachment 16) using 1977 as an example, shows that Northwest's top-ranking profit margin is not achieved because of high load factors or high yield. The reverse is true. Its production cost efficiency (23.01¢/ATM vs industry average of 34.11¢) more than offsets its low load factors (42.1 percent vs industry average of 49.5 percent) and low yield (60.54¢ vs industry average of 71.93¢) by giving Northwest a very low operating breakeven load factor. In essence, Northwest's cost efficiency allows it to operate profitably far below the industry's average load factor or below a range indicated as reasonably attainable by carriers' past performance.

Finally, an industry economist has prepared a study which determines the relative cost levels of carriers unit line-haul costs against an index which is a reasonable reflection of the cost potential of the route structure being served

(Attachment 17). The equation eliminates the impact of length of hop and haul by factoring out the effects of these route characteristics. Page 1 of that study is a graph which highlights the above and below industry-average cost carriers. The overall unit cost of Northwest is well below the industry trend and compels the conclusion that Northwest is the lowest cost airline in the industry. Indeed, the independent analysis of Western and Continental (Attachment 13) corroborate this conclusion.

THE PROBLEMS OF IMPLEMENTING SERVICE OVER A NEW INTERNATIONAL ROUTE

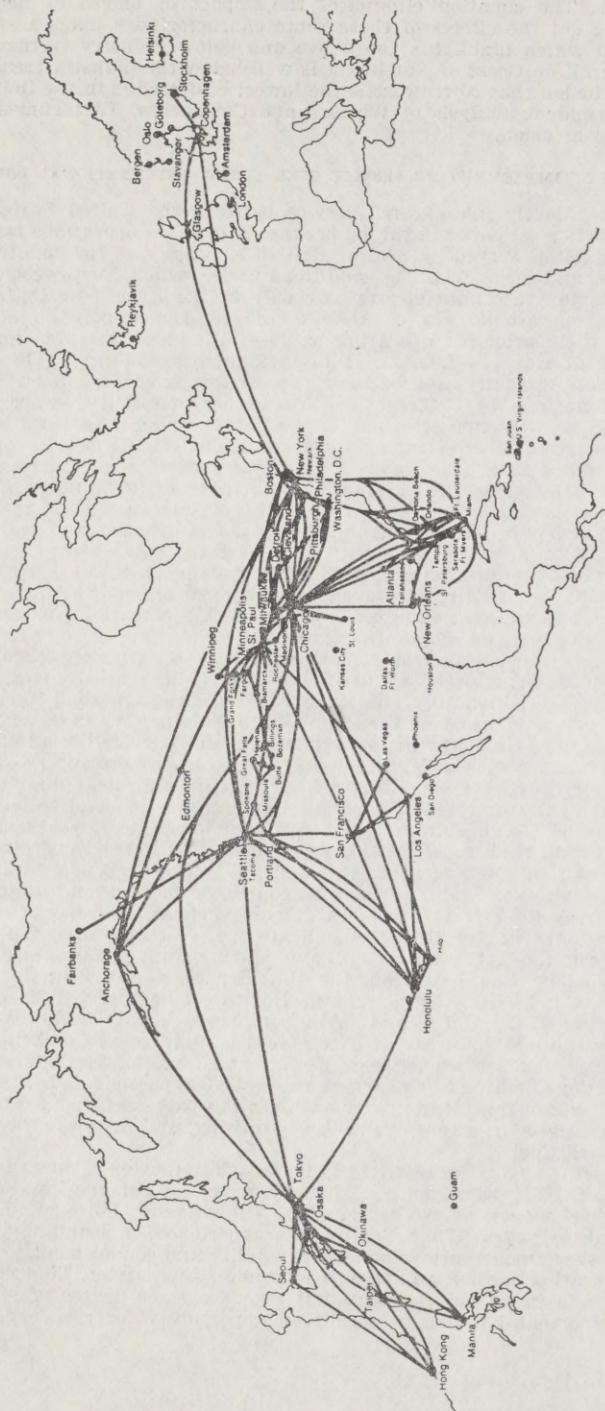
Northwest has recently inaugurated service between the United States and Scandinavia. This is a major undertaking because it involves operations between the principal U.S. cities served by SAS or British Airways and the countries of Scotland, Sweden and Denmark. The conditions under which Northwest operations in Scandinavia are conducted are markedly unlike Braniff or Delta's inaugural Atlantic operations. Those carriers enjoyed a monopoly on nonstop service between their principal operating bases—Dallas and Atlanta—and the premier gateway of Europe—London. High load factors and profitable operations were therefore virtually assured for those carriers from the outset.

Northwest's operations, by contrast, are in a highly competitive environment on a city-to-city basis with two principal Transatlantic airlines, SAS and British Airways. These carriers are owned by their governments; in the case of SAS by three governments. The U.S.-Scandinavia market consists to a large degree of foreign origin passengers, thus giving SAS an inherent advantage. Because SAS had a virtual monopoly on the U.S.-Scandinavia market for many years, (Attachment 18) it has acquired control of many travel agencies and tour operators throughout Scandinavia. The agents have over the years come to rely on SAS's reservations computers. As indicated in the testimony, SAS's control over the market extends to the airport warehouses through which Northwest's air cargo must move and ground handlings. Local airport operators have, however, been very helpful in a number of operational matters.

In order to begin service against a carrier such as SAS which operates 37 round trips per week, Northwest acquired four new B-747's at a cost of about \$50 million per aircraft. To fully challenge SAS will require that Northwest operates service between the West Coast and Scandinavia. Two more airplanes will be required at the time Northwest implements this service. In addition to purchasing equipment, people unfamiliar with Northwest's operating procedures have had to be hired and trained. Many of our new hires in Scandinavia were brought to Minneapolis for this training. A sales organization had to be established in both the U.S. and Europe which can over a period of years produce satisfactory operating results. All of this is expensive—it is not something that is turned on and off like a faucet as contemplated by the CAB proposal.

Northwest's operation to Scandinavia is, of course, of such recent vintage that success or failure is difficult to ascertain at this moment. However, the DOT U.S. International Air Travel Statistics indicate that Northwest carried 15,300 passengers between the U.S. and Scandinavia during June, 1979 compared to about 7,200 carried by Pan American, the U.S. flag carrier to Scandinavia in June, 1977. Indeed, in the first three months Northwest has carried 39,146 passengers between the U.S. and Scandinavia compared to only 44,200 for Pan American during the last full year of Pan American's service. In addition, Pan American had suspended service between the U.S. and Scotland. In the first three months of operation Northwest has carried almost 20,000 passengers to and from Scotland. This is a substantial improvement over the past performance by U.S. airlines. However, these are expensive routes to operate, and costs are escalating rapidly, particularly fuel.

Northwest's operations to Scandinavia in its first full quarter of operation, the second quarter of 1979, were not satisfactory from the financial standpoint. Northwest did lose money as we anticipated. Those losses, however, must be eliminated in future years. What Northwest's experience in Scandinavia does show is that it takes a substantial financial capability and commitment to mount a major new operation against an entrenched foreign flag carrier. That commitment must be made in an environment that provides some degree of stability during the developmental period to permit an opportunity for recovery of the investment.



NORTHWEST ORIENT 1979 SYSTEM ROUTE MAP

INTERNATIONAL AIR TRANSPORTATION COMPETITION ACT OF 1979

WEDNESDAY, AUGUST 22, 1979

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION,
SUBCOMMITTEE ON AVIATION,
Las Vegas, Nev.

The committee met, at 9:35 a.m., in courtroom No. 2, U.S. District Court, 300 Las Vegas Boulevard South, Las Vegas, Nev., Hon. Howard W. Cannon (chairman of the committee), presiding.

The CHAIRMAN. Today we resume our hearings on S. 1300, the International Air Transportation Competition Act of 1979.

Our first witness today will be Mr. C. E. Meyer, Jr., president of Trans World Airlines, Inc.

Mr. Meyer, we are happy to have you here with us this morning.

STATEMENT OF C. E. MEYER, JR., PRESIDENT, TRANS WORLD AIRLINES, INC.

Mr. MEYER. Thank you, Mr. Chairman.

Mr. Chairman, my name is Ed Meyer. I am president and chief executive officer of Trans World Airlines, a wholly owned subsidiary of Trans World Corp.

TWA is the largest transatlantic flag carrier. In 1978 we carried more than 2.2 million international travelers, approximately 22 percent of the market, and almost 40,000 tons of international freight.

I appreciate the opportunity to appear before this subcommittee during its deliberation on S. 1300; a bill recognizing the ever-increasing importance of international aviation and designed to insure continued expansion of this important element of international trade.

Mr. Chairman, I would appreciate the opportunity to comment very briefly on remarks which I reviewed with my staff last evening of Mr. Waltrip before this committee involving fuel prices and the need for prompt action on price increases.

The CHAIRMAN. All right, sir.

Mr. MEYER. In July of this year TWA's average international fuel price, internationally, was 77.76 cents. I believe that is some 3 cents above what was reported by Mr. Waltrip for Pan American yesterday. I think that difference can probably be accounted for stations which have very high fuel prices that we serve that they do not, and which further emphasizes the need for very prompt action.

In Athens we will pay, in the month of August, \$1.25 per gallon; in Cairo, \$1.09; in Lisbon, \$1.23; in Santa Maria, \$1.02; in Tuseria,

\$1.42; in Tel Aviv, \$1.22. Our average price for the month of August will be 56.3 cents, internationally.

In June, it was 59 cents. We anticipate that our fuel bill for the entire TWA system in 1980 will be approximately twice what it was in 1978, and will approach \$1 billion.

I think there is a clear need for establishing the machinery for very prompt fare actions.

I thank you for allowing me to make that comment. I will proceed.

The CHAIRMAN. All right, sir.

Mr. MEYER. At the outset, Mr. Chairman, I want to express TWA's full support of the purpose and intent of the bill. The promotion of competition in international air transportation, the provision of increased market opportunities for U.S. air carriers, and the establishment of objectives for developing our international negotiating policy are all important goals.

Before I address the specific provisions of the international bill, I would like to take a few minutes to outline TWA's current position regarding the concept of deregulation, based upon our experience.

As you know, I was not a supporter of domestic deregulation as it was defined in some of the earlier versions of the draft legislation. Since its introduction, however, I have had a firsthand opportunity to study the effects of deregulation on our domestic system, and I am frank to say that I see a number of important improvements in the way we are able to do business.

Of course, there are expected transitional problems, but I am confident these short-term problems will be resolved and that consumers and air carriers will benefit over the longrun.

Today, U.S. carriers operating in the domestic market are free to exercise significantly more judgment than before with regard to routes and rates. The results have been increased utilization of our fleet capacity, a restructuring of route systems, and a continuation of the discount fare philosophy.

On the surface, one could then conclude that, given the success of deregulation domestically, we should have similar changes in the international area. This is perhaps philosophically and even theoretically true.

However, there are a number of major factors which exist in the international marketplace that are not present domestically. These conditions dictate that we move toward deregulation in the international environment from a different perspective, and with a clear recognition of the realities of the international sociopolitical and economic environment.

There are a number of differences which dictate a more measured and controlled approach to international aviation. A principal distinction is that all U.S. carriers are privately owned. Accordingly, they are subject to all the economic checks and balances that the marketplace dictates.

In contrast, fully 75 percent of foreign-flag carriers are owned at least in part by the sovereign nations whose flags they fly. In addition, issues such as discriminatory practices, balances of payments, and international trade, and the resultant impact on jobs, must be considered when examining the international environment.

In this context, it is noteworthy that transportation and tourism services produced trade receipts of roughly \$20 billion, fully one-third of all private sector services receipts in 1978. Almost one-half of those receipts were generated by air transportation and travel to the United States by foreigners.

Cargo receipts, not included in the \$20 billion, produced an additional \$7.8 billion. In fact, the total services sector produced a net favorable trade balance of \$18.5 billion in 1977 and \$23 billion in 1978. Travel and tourism represent a significant portion of that surplus. It is questionable, under the current U.S. international negotiating policy, if this can continue.

All domestic carriers are subject to competitive market conditions dictated by the consumer, travel agencies, and tour operators. In addition, U.S. carriers are governed by stringent U.S. antitrust laws.

But in foreign commerce, discriminatory practices are frequent. They range from limitations on our ability to control our own distribution system to exorbitant airport user charges. Examples of these inequities are outlined in specific terms within a study, "Position Paper on U.S. International Aviation Policy," prepared by Raymond J. Waldmann, formerly Deputy Assistant Secretary of State for Transportation and Telecommunications. I would ask that this document be introduced into the record.¹

The importance of flag carriers to their respective sovereign nations is evidenced by the focus of their goals in the conduct of bilateral negotiations. Foreign governments often negotiate with the primary goal of providing economic advantages for their flag carriers, while the United States frequently concentrates exclusively on obtaining liberalized agreements.

Although it is true that the consumer should be of principal concern to our negotiators, it is equally true that the vitality of U.S.-flag carriers is of critical importance to the long-term well-being of the U.S. consumer and Government trade policy.

Fortunately, your draft legislation recognizes many of the problems I have outlined. In fact, I believe that the draft, with some minor modifications, will do much to improve the opportunity of U.S.-flag carriers to compete in foreign markets.

The declaration of policy clearly establishes the appropriate boundaries for detailed legislative language.

I am particularly pleased by the provisions of the bill dealing with predatory and discriminatory practices of foreign governments. The bill, as it exists, provides significant leverage for the CAB and State Department to insure that corrective action is taken when needed.

I am confident that after many years we finally are in a position to remove many of the restrictions which have limited our ability to operate competitively within foreign markets. But, let me add, the U.S. negotiators must be prepared to deal with these practices during bilateral negotiations. The problems will be easier to correct before the fact than after.

Moreover, I am encouraged by the fair competitive practices provisions recently incorporated in our bilateral agreements with certain Asian countries and the increasingly tough position the United States

¹ The document is in the committee files.

has taken of late relative to discriminatory practices by selected European countries.

I will, therefore, limit my direct recommendations to our major areas of concern: suspension and revocation of authority, and guidelines for negotiating international agreements.

Mr. Chairman, section 01(g)(2)(A) creates an impossible situation for U.S. carriers. This section outlines the procedure for bidding for international routes where restrictions arising out of bilateral agreements preclude designation of additional U.S. carriers in foreign markets.

In theory, if the CAB has the authority to remove an incumbent carrier and replace it with another that will offer lower fares, the consumer will benefit. The reality of the situation, however, belies that assumption. It is not the incumbent carrier problem that creates a limitation on market entry or lower fares. In point of fact, the United States has not been able to negotiate sufficiently liberal agreements with major foreign governments.

A good example is the United States/United Kingdom bilateral negotiated at Bermuda II. TWA is fit, willing, and able to compete against all carriers in any market. To remove us or any other carrier because they are incumbents and someone else has offered a promise of lower fares would be inappropriate.

The obligation to remove restrictions in international markets does not tie with the carrier but with the negotiating strength and skill of our Government.

I would add that efforts to reduce fares in international markets often meet with strong resistance from foreign governments. A good example of this is TWA's recent unsuccessful efforts to reduce fares and restrictions between Paris and New York.

During the negotiating process, the French were not at all concerned with new entrant carriers operating between New York and Paris on a less than daily basis. Nor were they particularly concerned with the low fare offerings by a new entrant in the Boston-Paris market.

On the other hand, they were extremely tenacious in protecting Air France from a low APEX fare with limited restrictions which TWA filed for introduction between New York and Paris, because it would provide true competition.

Unfortunately, they were successful in maintaining their position, with their government's support, and TWA's super APEX fare was pegged at a level 20 percent above the French "vacances" fare.

It is not difficult for a carrier to demonstrate that it can and will provide substantially improved service or lower fares. Historically, carriers wishing to gain entry into new markets or increase their market share have done just that for a limited period.

The practical problem is that as each new carrier comes into the market, some other carrier is waiting in the wings to do exactly the same. The real beneficiary is the foreign carrier which has established consistency in product, pricing, and marketing programs. There are many foreign carriers who would like nothing better than to see TWA removed from a major international market. We are their No. 1 competitor and they know it.

In addition, I know that, as the chief executive officer in an incumbent U.S. carrier, I will be reluctant to make the necessary capital

investment in fleet automated reservation systems, baggage systems, and other support activities which are necessary in order to effectively compete with a foreign-flag carrier, if there is doubt that we will be permitted to operate for a reasonable period of time.

On the other hand, I can offer lower fares and greater frequency over the long run if I do not have the fear of being removed by an administrative fiat during the period over which I would normally recover my initial capital investment.

The continual threat of removal is bound to create the type of atmosphere that will lead to an erosion of the U.S. market share. This leads to an increased outflow of dollars and a loss of U.S. jobs.

Mr. Chairman, I would suggest that the competitive concept could be strengthened by adding a dormant authority provision generally paralleling your domestic reform bill. This would facilitate the replacement of an incumbent carrier which elects not to operate in a given market, yet preserve for that carrier a certificate.

The new entrant would be aware that the former carrier will have the ability to reenter the market, thus stimulating that carrier to provide efficient low-cost service. Such a system has worked well domestically, and it could work equally well internationally.

Section 401(g)(3) should be structured to permit new entry on an unused route, but without the Board having the power to revoke or suspend the certificate to the incumbent carrier.

Permitting the Board to revoke a certificate would stifle the intent of the legislation; namely, to create more competition. Again, the Board has applied this method domestically, and it has proven to be quite effective. I have attached hereto suggested language.

[The attachment follows:]

PROPOSED LANGUAGE FOR THE INTERNATIONAL AIR TRANSPORTATION COMPETITION
ACT OF 1979 ON DORMANT AUTHORITY

In lieu of 401(g)(3) insert:

Any air carrier holding a certificate issued under this section may file an application with the Board seeking authority to provide nonstop scheduled air transportation between two points listed on a certificate issued under this section to any other air carrier if the incumbent carrier has failed to provide significant service between the points for 90 days preceding the date of the Board's notice to the carriers of its proposed action. The Board shall award such authority to the applicant air carrier if the Board determines such award is consistent with the public convenience and necessity. The Board, however, may not suspend or revoke the authority of the incumbent carrier.

Mr. MEYER. The second major point I would make deals with the bilateral negotiating strategies adopted by the State Department and the CAB. Today there is an absence of the "quid pro quo" normally inherent in the trading process. We find the U.S. trading perceived short-term consumer benefits for uncertain long-term gains. I believe this philosophy will lead to an increasing reliance on foreign-flag carriers to serve U.S. traffic.

To cite a few examples, the Belgian Government was given four additional major U.S. coterminals in exchange for greater access to Belgium by U.S. carriers, an access that was already guaranteed under previously existing bilateral agreements.

Moreover, access to a market the size of Belgium is not terribly significant to U.S. carriers. On the other hand, access to four additional coterminals is significant to Belgium. The balance-of-payments

implications are obvious. A similar approach was taken with the Jamaican Government. Although these countries individually present no serious problems, the principle is fraught with danger. I question how this practice helps the consumer, particularly in the long run.

We frequently trade away access to the U.S. market without regard to its impact on the U.S. companies that will be affected. Historically, U.S. aviation policy has been developed and carried out without regard to the impact of aviation on the U.S. trade policy on our balance-of-payments problems.

It would appear that corrective action will only occur by congressional mandate. Consequently, I would urge the committee to modify the section dealing with "goals for international aviation policy" to incorporate two critical elements.

First: A recognition of aviation as a significant factor in international trade. In order to accomplish this a representative from the STR office should be appointed to the Interagency Strategy Committee.

Among other things, this would insure that U.S. negotiators give full attention to the trading of similar market opportunities, the economic impact of various negotiating tactics on U.S. carriers, and the implications of those tactics on the broader U.S. objectives for international trade.

Second: The language in this section under (b) (7), which stipulates "opportunities for carriers of foreign countries to increase their access to the U.S. points if exchanged for benefits of similar magnitude for U.S. carriers or the traveling public, with permanent linkage between right given away" should be modified.

We would urge the committee to change the conjunction from "or" to "and." Thus, the language would read, "benefits of similar magnitude for U.S. carriers and the traveling public."

It is clear that if you accept the current language in this section, you have effectively eliminated one of the major goals of the overall legislation; that is, achieving equal market opportunities of U.S. carriers.

As section 7 now reads, the traveling public could be adequately served by foreign carriers with no increased benefits for U.S. carriers.

Mr. Chairman, members of the subcommittee, we have given a great deal of thought to this subject because of its extreme importance to TWA as a major international carrier. We have tried to concentrate on the public interest as well as on our own.

For the most part, we believe S. 1300 is a sound and desirable vehicle for implementing international deregulation. We are, of course, aware that the path to improvement will be gradual. We believe what we have proposed will produce a more completely oriented international air transportation system. It will also provide an effective method to deal with discriminatory and predatory practices by foreign governments.

In addition, it will insure that our future negotiations will be based on the sound principles of exchanging similar market opportunities.

Finally: We believe what we have proposed will provide equitable treatment for the consumer, for new entrants, and for those who developed the fine international air transport system that we have today.

Mr. Chairman, this concludes my statement.

The CHAIRMAN. Thank you very much, Mr. Meyer, for a very fine statement. We appreciate your suggestions.

In your statement you argue that the current U.S. policy is not a healthy one; and that if it is continued, it will negatively affect our trade balance.

In the last traffic report I read for May 1979, going into the peak season, U.S.-scheduled international traffic was up over 18 percent. What's more, the Board's most recent interim financial results report had your corporate ROI for international markets at over 23 percent.

How do you reconcile your statement with those results?

Mr. MEYER. Well, I think, first of all, we are looking toward the future, and you are quoting the present. That is what we are concerned with.

I would take the opportunity to perhaps take your statement with regard to TWA's profitability as indicating that perhaps our feelings on this subject might well have validity as benchmark in what can be done in the transatlantic markets on a profitable basis.

We have been, I think, on the record over the last 20 years the most profitable and probably one of the lowest cost major carriers in the transatlantic market. We have been in favor of low fares.

We have this deep concern I have expressed. On the question of the growth of the scheduled industry at 18 percent, I believe—and I don't have the figures before me—that we would probably see over the last 12 months the growth of the total transatlantic market has not been very large and has basically been flat in connection with originating U.S. passengers.

The CHAIRMAN. Does that agree with the fact that in May the U.S.-scheduled international traffic was up over 18 percent?

Mr. MEYER. I believe if you look at the 12-month period—and as I say, I don't have the figures in front of me—but if you include with the scheduled industry the charter industry, you will see a very low-growth rate or a flat-growth rate.

The CHAIRMAN. From what you have said today, one would assume that most foreign governments could hardly wait to get into a negotiating position with us because of our current negotiation policy and the way they are coming out with respect to the U.S. carriers, or at the expense of the U.S. carriers.

As I said in my opening statement, which you were not here then—

Mr. MEYER. I did read it, sir.

The CHAIRMAN. I said holds are coming from all corners of the world protesting our policy. How do you resolve that? In other words, the foreign carrier is saying we are getting the best of the deal; the U.S. carriers are saying we are getting the worst of the deal.

Mr. MEYER. I think that's probably normal statements on both sides.

The CHAIRMAN. Would you say it's a little puffer's talk on both sides of the ocean?

Mr. MEYER. Possibly, I think it is.

Let's go to the heart of the matter, which is what the intent of this bill is to do, which is to create a more competitive international situation. That's what we want to achieve.

I would submit that one of the quickest and most effective ways to bring about that condition is by creating and negotiating more equal

terms for the incumbent carriers in foreign markets rather than an introduction of new carriers.

A very key point in that was the failure to hold on to a negotiating position with the French in the Vacances versus the super APEX fare. Until we are willing to negotiate those particular hard issues, I think it will be difficult to fashion a truly competitive international situation.

My concern here, sir, is that if you introduce a new carrier into a foreign market, with the average that an incumbent foreign carrier will have 40 years being in the market, with the control of the distribution system that they have, with the ability to control the ground handling and a multitude of other things, there's a very significant disadvantage that that new carrier is going to have to overcome.

It would perhaps take, in my estimation, 5 to 10 years for a new carrier in a major or transatlantic market to reach the same position that an incumbent carrier already enjoys.

I don't think that's a quick way to bring about the competitive situation that we are trying to achieve.

The CHAIRMAN. I must say I am concerned about this issue of promises over performance. That disturbed me considerably, not only in this field, but in the communications field which my committee has jurisdiction over.

The tendency of the FCC has been for the promises of an applicant to be given higher weight on the scale than the performance of someone who has been doing a reasonably good job and is already in the marketplace.

That "going in" position does bother me.

Let me ask you a little about your French situation. What happened there? Are the French currently underbidding you now? Is that fare presently in effect; and did our—weren't our negotiators told to go back and negotiate that, or didn't the Board attempt to suspend that fare?

Mr. MEYERS. They did attempt to. I must, I think, give due credit to the Board and our negotiators for trying very hard to stand on that position; but eventually they did not stand, they backed off.

Why that came about, I do not know. I do know that the French, even by the time we got into that issue, had invested a large amount of money in already reconfiguring their airplanes and advertising that particular fare.

I would have to say that, to put the whole story on the record, you must recognize the French were offering a "Vacances fare" which was 20 percent, as I said in my testimony, below ours.

We would have put the super APEX fare in at the same rate with a higher level of service, which benefits the consumer.

The CHAIRMAN. It would have true competition in that sense?

Mr. MEYER. Yes; it would have been true competition. We have, for a long time, going back to 1971—before Freddy Laker's entry—pushed a low individual fare, the most easily ticketable fare, the most greatly advantageous fare to the individual for many years; and we have been consistently thwarted in our efforts, first by the supplemental industry and now the latest example, in France with the "Vacances fare."

The CHAIRMAN. I am inclined to agree with some of your criticism regarding the route-bidding section of the bill. I have some doubts

about your statement that, absent any threat of new entry, you can offer lower fares and greater frequency over the long run.

I think, you know, the cost of sole source supplies of any product or service will rise faster than where real competition exists I think. Would you agree with that?

MR. MEYER. I don't disagree with that. I guess my point is that the competition, in order to be equal and to be long lasting, has to be brought about through the bilateral negotiating process with that foreign carrier so that equal conditions for competition are created between the foreign air carrier and the U.S. carrier.

THE CHAIRMAN. Do you oppose time-limited awards that are permissible under existing law?

MR. MEYER. I would not oppose a time-limited award if there were sufficient time for the carrier to recover its capital costs and a fair return; if there were that opportunity. I am not sure that the time limit—the time limit would be a fairly substantial one, 10 years or more. It's very difficult in a service industry such as the airline industry to establish market identity and to compete effectively unless you can have a long period of serving the market.

THE CHAIRMAN. The dormant authority position allows the new entrants to remain in the market even if the former carrier reentered the market.

Applying your dormant authority proposal to a limited designation market, how would the dormant carrier ever be able to reenter the market considering the bilateral restrictions?

MR. MEYER. Well, I guess that would be something that would cause the carrier that was exercising the authority to think many times before withdrawing or losing out. I would think that would be a competitive prod for him to keep low fares and stay in the market.

It would be difficult for him to come back under many bilateral agreements.

THE CHAIRMAN. You said in your testimony that:

It is not the incumbent carrier problem that creates a limitation or market entry or lower fare. In point of fact, the United States has not been able to negotiate sufficiently liberal agreements with major foreign governments.

When our negotiators are successful in gaining a liberal bilateral, the carriers, including TWA, criticize it almost instantly. Considering your statement that you wholeheartedly support the effort to get a more open competitive international aviation system, how would TWA go about getting the kind of an international system you support without trading new market opportunities for foreign airlines?

MR. MEYER. I guess I would soften my statement somewhat. Senator Cannon, from what I have said in that testimony, to endorse the approach that has been taken in negotiations, if I can see evidence that it is followed up when we get to the hard points of truly creating international competition that we did not face up to with regard to Air France in the "Vacances" issue. It has to be followed through is what I am saying. I think the negotiations that have gone on so far are in the right direction. I do—I am not happy with the trading of unequal rights. I think that generally, within each negotiation that we have, there should be a trading of equal rights.

After a period of time, you tend to lose sight of whether or not, in the global picture of negotiations, equal rights have been really, truly gotten by the United States in return for what they have given.

I would rather see it be equal within each negotiation.

The CHAIRMAN. Of course, there is quite an argument, or could be, as to what equal rights consist of. You know, they say beauty is in the eyes of the beholder. I think it depends upon what your particular vantage point is as to whether you think the rights are being equal that are being traded for or traded away.

Mr. MEYER. I recognize that.

The CHAIRMAN. You proposed modifying section 17 which stipulates—and I quote:

Opportunities for carriers of foreign countries to increase their access to United States points in exchange for benefits of similar magnitude, for U.S. travelers or the traveling public, with permanent language between rights given away.

You propose changing the word "or" for "and." That certainly would be a material change. For example, your version would preclude granting a foreign carrier the right to provide services which no U.S. carrier is willing to provide.

Why would denying such an improved service to U.S. cities and their citizens be in the public interest?

Mr. MEYER. I guess in that instance one of the things that bothers me is the fact that here I would say that if there is not a market being served by a U.S. carrier between a U.S. point and a foreign point, it probably is basically because it's uneconomic, that a profit could not be made.

The foreign carrier, at this point in time, would probably come into that market willing to operate at below break-even load factors, being subsidized by their government for the large economic objectives of the country.

That would be basically what would bother me with regard to that.

The CHAIRMAN. You cited the Belgian bilateral as one where we gave away too much. We asked the State Department about that yesterday, and they defended the agreement, noting, first, that it was an important breakthrough for liberal European bilaterals; and, second, the United States-Belgian traffic has doubled; third, the U.S.-carrier market share of that increase has gone up.

Particularly in light of that last one, that the U.S. share has gone up, how can you maintain that the Belgian agreement was a bad deal even from the parochial view of benefits for the U.S. airlines?

Mr. MEYER. I think, first of all, I am concerned with the trading, as I said before, of unequal benefits—the access of the Belgians to a much larger market for a number of customers than the United States to the Belgian market, it being much smaller.

With regard to the increased share of U.S. carriers, I think there is becomes more difficult to define my criticism, because I think it probably will remain to be seen over the next 2 to 3 years as to whether or not that was just a short-term benefit of a long-term penalty we are accepting.

In my estimation, it probably would be a short-term benefit. Also, I think that what has been created here is a very substantial amount of diversion from other markets to the lower prices to Belgium.

The CHAIRMAN. Do you think it's just a diversion of passengers because of the added inducement of the lower rates through the Belgian gateway?

Mr. MEYER. Yes.

We made a very careful study when the standby fares were introduced into the London market of the European travel patterns during that period of time. We, at least established, to our satisfaction, on the numbers, that there was a large amount of diversion from other European capitals over London as a result of those low fares. I think the same thing is happening.

The CHAIRMAN. Of course, that might help us get more liberal bilaterals with some of the other European countries.

Mr. MEYER. Again, I don't stand—as I say, I would soften my position in my testimony if I can see the evidence of the followthrough in our negotiations to create more equal opportunities for incumbent U.S. carriers.

The CHAIRMAN. Does TWA support ATA's position opposing the wet leasing of foreign aircraft?

Mr. MEYER. I haven't had an opportunity to study that, Senator Cannon.

The CHAIRMAN. Have you ever wet leased to a foreign carrier?

Mr. MEYER. I believe we have in the past. In any event, we have been involved in several management contracts with foreign carriers. We presently do have in service in Saudi Arabia, under our management contract, TWA pilots. That's not essentially a wet lease.

The CHAIRMAN. Let me turn back to this fuel problem. Do you see any immediate action that the committee could take to be helpful in what I consider to be a very critical problem as far as the added fuel costs of all the carriers?

Mr. MEYER. The most important thing you could do, Mr. Chairman, is to urge every Government body involved in the ratemaking process, particularly the CAB, to act very promptly and to design guidelines that can react very swiftly, more swiftly to the fare increases that—the fuel prices increases that we are experiencing.

I urge this because I think the situation is going to continue to be extremely volatile for perhaps the next year and even longer. TWA, in further amplification of our situation, had three distinct, separate price increases in the month of July from one supplier. So I can only urge that we must take very prompt action to increase fares, have the machinery to do that, to recover these very rapidly escalating costs.

The CHAIRMAN. Well, you certainly have some very good points in that particular area. I know that was one of the ideas that impacted us in the domestic deregulation bill, when we provided for the fare flexibility, because of the long timelags, that you run into and the act as it was written before, having to go through the long procedural process, made it impossible for any carrier to get immediate relief or almost immediate relief.

Mr. MEYER. Let me add, not responding promptly to the increase of these fares act as a brake on implementing the Deregulation Act as it is intended. As our allocations come across to us, each carrier, it's primarily based on our 1978 usage at particular locations. So that as we expand and try to expand under the mandate of the deregulation bill into new markets, we are forced into the spot market, to buy at

much higher prices. So really, not responding promptly with price increases is putting a brake on, if you will, getting the benefits of deregulation.

The CHAIRMAN. But from what you say, I guess the traveling public had better start to realize that fares are going to go up? They are going to have to go up to take care of these added costs?

Mr. MEYER. They are going to go up very substantially, sir. I think they'll be up at least 25 percent in the fourth quarter of this year, as we estimate now, over the fourth quarter of last year. I am not really sure, based upon the current price quotes I am giving you, that it won't be higher.

The CHAIRMAN. Of course, that may give some impetus to my ADAP proposal to reduce the ticket tax from 8 to 6 percent.

Mr. MEYER. I think that's possible.

The CHAIRMAN. At least that would lessen the impact on the fare-paying passenger at least.

Mr. MEYER. It truly would.

The CHAIRMAN. Thank you very much, Mr. Meyer. We appreciate your testimony. It has been very helpful.

Mr. MEYER. Thank you, Senator Cannon.

The CHAIRMAN. Next we will hear from Mr. Knut Hammarskjold, director general of the International Air Transportation Association.

STATEMENT OF KNUT HAMMARSKJOLD, DIRECTOR GENERAL, INTERNATIONAL AIR TRANSPORTATION ASSOCIATION; ACCOMPANIED BY FLOYD HALL, CHAIRMAN, EXECUTIVE COMMITTEE; GEOFFREY LIPMAN, DIRECTOR, GOVERNMENTAL AFFAIRS AND POLICY COORDINATION; CHARLES STUART, HEAD, COMMERCIAL PLANNING, BRITISH AIRWAYS; AND BERT REIN, GENERAL COUNSEL

Mr. HAMMARSKJOLD. Thank you. It's the first time in Las Vegas.

My name is Knut Hammarskjold. I am director general of the International Air Transportation Association. I am accompanied today by Mr. Floyd Hall, chairman of the IATA executive committee; by Mr. Jeff Lipman, IATA's director of government affairs and policy coordination, on my left; Mr. Charles Stuart, head of commercial planning, British Airways, to the far right; Mr. Bert Rein, our Washington counsel.

We are pleased to have the opportunity to submit a statement for the record. And I also appreciate your giving me an opportunity to highlight that statement today.

The CHAIRMAN. Your statement will be made a part of the record. You may summarize or highlight from it, as you see fit.

Mr. HAMMARSKJOLD. Since the purpose of our organization is to foster an integrated interline airline system in an environment of differing and often conflicting government policies, we take no position on the objectives which the United States would set for itself under S. 1300. Our comments are, therefore, limited to the means by which the U.S. goals are pursued internationally in dealings with other sovereign nations, and we believe the bill would give useful guidance to the several agencies, insuring a coordinated U.S. aviation policy.

We have several suggestions to help the bill.

As you learned directly, at the Kingston seminar early this year, Mr. Chairman, U.S. free market policies do not yet enjoy worldwide acceptance.

The CHAIRMAN. I think that's quite an understatement.

Mr. HAMMARSKJOLD. This is also illustrated by the thoughtful comments of Mr. Stuart, which are appended to my testimony. In addition, foreign government concerns were certainly confirmed at the recent intergovernmental consultations initiated by the Department of State, on which verbatim transcripts will be available.

Moreover, we do not believe that this lack of acceptance is simply the product of economic ignorance abroad or unthinking attachment to the status quo. We see a number of conflicting interests at work which our experience tells us will lead to deep and persistent differences on aviation policy.

First: Many nations are as committed to economic planning as a development tool as the United States is to a free market.

Second: Many nations place primary emphasis on the role of their national carrier and an extensive network of flag carrier routes. They are concerned with the prospect of uneconomic operations, mergers, subsidy to small communities, and concentrated service patterns which could result in a free market.

In addition: They are not yet convinced that results of free market policies are as conclusive or lasting as some have suggested. In short, the majority of nations prefer to leave an agreed liberalization of the current international system, rather than its replacement by a new, untried one.

We believe that this situation will be a source of continuing tension between the United States, with its large, efficient carriers, substantial gateways, and ample financial resources, and other nations with different carriers, gateway, and resource potentials.

We are concerned, too, that this inevitable tension will be compounded by current fuel shortages, airport and airways congestion, and deteriorating general economic conditions.

Here I think that your bill, Mr. Chairman, can contribute to a coordinated policy which makes harmonization desired possible.

We, on our part, speaking about fuel, are at present developing guidelines for semiautomatic systems for rapid recovery of cost increases, which I think will be a great advantage to all carriers.

Bearing in mind these circumstances, Mr. Chairman, our basic message is simply that the United States, as the world's leading aviation power, must approach the task of exporting its domestic philosophy with patience and a willingness to negotiate. To seek to force its philosophy on unwilling aviation partners, no matter how useful the United States thinks it would be for them, would lead to an inherently unstable aviation system and, I fear, to a large dose of political ill will.

Mr. Chairman, here I speak as one whose entire professional life has been devoted to the promotion and the furthering of international relations and cooperation, economic and political as well as aviation, between all types of governments, and public and private enterprises.

International relations is the essence, I believe, of S. 1300. I would not be true to my conscience if I did not express my concern, and even grave concern, at an escalating political polarization between most

foreign governments and nations and the United States in aviation. That development must reflect on their relations in other areas, economic and political.

The curious aspect about all of this is that the reason for the deterioration of relationships is much less a difference of opinion on matters of substance, such as the merits of low competitive fares and of minimum government involvement; rather, it is the unilateral method being used in many aviation areas by individual agencies in the face of the international custom of consultation and negotiation, sometimes even in conflict with the letter or the spirit of bilateral or multilateral government commitments.

As already emphasized, I believe your committee would render a great service to your country, and indeed the whole international community, by affirming the sanctity of intergovernment commitments and by emphasizing the need to settle international conflicts and differences of opinion through negotiation, compromise, and agreement between equals.

Our specific suggestions on S. 1300 illustrate this basic message. Let me here review them very briefly.

First: In defining the public interest in international air transportation, we recommend that you include an express recognition of the need to cooperate with other sovereign countries through bilateral and multilateral fora.

Second: With regard to intercarrier agreements, we recommend certain changes which will facilitate smooth interline movements and assist carriers in sorting out commercial problems which might otherwise lead to governmental confrontation. Specifically, we believe that foreign carriers should be granted the same right to seek review of their agreements as U.S. carriers. We think that review of intercarrier agreements in cases involving substantial issues of international comity, foreign relations, or national defense, should be conducted under the full public interest standard of section 102, rather than under peculiarly domestic bank merger standards.

We also believe the President should exercise his limited section 801 safeguard powers in these cases, and that approval of such agreements should insure their antitrust immunity.

The CAB's current show-cause proceeding involving the airlines' tariff coordination activities is an excellent illustration of the foreign relations sensitivity of agreement methods.

Forty-eight separate governments have formally protested these proceedings, stressing that IATA's revised conference provisions help to bring policy differences and provide an essential commercial coordinating mechanism.

These foreign nations, including several who have signed liberal bilateral agreements, advocate the development of a record of experience under the new procedures, providing a foundation for a negotiated resolution of tariff coordination issues.

After the recent intergovernmental consultations, this is becoming a delicate foreign relations matter. Foreign governments perceive that—and here I use the words of the general counsel of CAB—that “an important foreign policy issue” is being decided unilaterally by domestic administrative process, even after government-to-government consultations and submission of diplomatic notes. As late as yesterday,

this point has been confirmed by the Department of State in a strong submission to the CAB.

Focusing on the show-cause proceedings also leads to my final comments on the issue of U.S. extraterritorial concepts. U.S. antitrust concepts make it difficult at times to hold conferences which are not only lawful, but are considered standard elements of a viable transportation market.

Extraterritorial enforcement of U.S. antitrust laws is, therefore, viewed as an effort to regulate, rather than deregulate, international aviation. It is a marked departure from the hands-off policy underlying recent U.S. liberal bilaterals.

We understand that, of course, issues of antitrust jurisdiction are not before your committee. Nevertheless, we would urge you to provide that any further extraterritorial extension of U.S. antitrust enforcement in aviation would be the subject of intergovernmental discussion.

In concluding, Mr. Chairman, the proposals that we put before you are not a package designed to tie U.S. negotiating hands, as was suggested yesterday. On the contrary, we believe they would be a constructive step toward international understanding, which I believe would help the United States to further its policy objectives.

Thank you, Mr. Chairman. We would be happy to address any questions which you may have.

The CHAIRMAN. Thank you, Mr. Hammarskjold. First, Mr. Stuart, your letter to Director General will be made a part of the record.

If you wish to add anything, we would be happy to hear from you, sir.

Mr. STUART. That is very kind, Mr. Chairman. I want merely to say thank you very much for allowing me to take part in your proceedings and to underline the obvious fact that I am not here to make any persuasion about your aviation bill, but merely to reflect for an opinion, should you wish to hear it, sir.

Thank you very much.

The CHAIRMAN. Do any of the other gentlemen with you desire to make any particular point?

[No response.]

The CHAIRMAN. Mr. Hammarskjold, what is the practical economic rationale of the United States conferring antitrust immunity on rate setting agreements, for example, between foreign carriers to which the U.S. carriers are not a party?

Mr. HAMMARSKJOLD. I think it would isolate the U.S. carriers from an important element or important aspect of international cooperation. I am sure that foreign governments would permit their carriers to continue to cooperate under their laws. The U.S. carriers, by their own Government fiat, would be excluded from that cooperation.

I think, in addition, it would be an expression of lack of confidence in the effectiveness of the supervisory function which the CAB has fulfilled so far in the public interest.

Mr. BARCLAY. What the chairman is really asking is, if you have a market from the United States to a foreign country and the U.S. carrier voluntarily decides he is not going to be part of that rate-setting agreement, you have asked the ability of foreign carriers to submit agreements for antitrust immunity to the CAB.

What would be the practical effect of granting antitrust immunity to that rate-setting agreement when the U.S. carrier was not a party to it?

Mr. HAMMARSKJOLD. I think it is very much a practical matter at present. A foreign carrier is not allowed to submit an agreement, any agreement, for instance, on the North Atlantic; it has to be submitted through the intermediary of a U.S. carrier.

Mr. BARCLAY. Right.

Mr. HAMMARSKJOLD. If there is no U.S. carrier, for instance, that would be practically impossible, which we think is wrong.

Mr. BARCLAY. But the rate-setting agreement is such that, unless everybody is a party to it, what is the reason for having a rate setting?

Mr. REIN. Perhaps it would be helpful to make two points. In the first place, foreign carriers may wish to enter agreements on route in which U.S. carriers do not participate, in which case, of course, the agreement might regulate trade as such. Of course, on routes outside the United States, where they still face the risk of some U.S. antitrust enforcement, in those circumstances there is a clear trade importance to those agreements. There is an importance to presenting them to governments in a coordinated way. In those circumstances, of course, you are almost certainly going to have agreements limited to foreign carriers which today cannot be presented to the CAB.

There is a difference between the ability to present them and a guarantee that they will be approved. In this instance, we are asking only for the right to present them to the CAB for review under the standards established.

The second important point is taking your direct example, a route on which you have some conference activity and some nonconference operators, that is not historically unknown. In fact, in the maritime trades, where conferences originated, it's very common to have conferences where there are coordinated commercial strategies competing with nonconference operators who have freedom of entry in the trade and choose their own commercial strategy.

Foreign carriers may find it of importance to coordinate their strategies in order to convince their governments to allow a structure of rates to go forward to be able to present a position to their governments which will facilitate changes to adjust to economic conditions.

In those circumstances, it may be of importance for them to have necessary immunity to carry that activity forward, even if the trade will ultimately also be affected by the choices made by nonconference operators.

I would say to you that many foreign governments conceive of a free market in international transportation as including both conferences and voluntary nonconference activity by those who have freedom of activity, but choose to operate on a nonconference basis.

That is a very common, internationally accepted means of having what is deemed to be, to the fullest sense, a free market. That, I think, would say why they would want to submit them. Whether they would be approved or not is a matter of application of the criteria.

The CHAIRMAN. Can you give us some examples where other countries approved anticompetitive behavior of foreign airlines when their national airline is not a party to that type of behavior?

Mr. REIN. Senator, when you say approved, in the first place, most other governments do not regulate conference behavior; therefore, they do not in any way restrict the ability of carriers to form a conference.

There are many states, particularly in the Asian area, which have flag carriers that do not participate in conference activity, but which in no way restrict the conference activities of other flag carriers of third party states.

We could give you a list of many, many countries which allow conference activity even though they have nonconference carriers as their own flag carriers.

The CHAIRMAN. Let me say that Mr. Hammarskjold knows that I am in agreement with him, somewhat, that the United States should not throw its weight around too much in these areas. I think we should proceed on the basis of negotiations rather than confrontation.

I agree with that statement, as you know. In particular I think I commented at the Jamaica meeting that I felt that this was an area they had to proceed rather carefully in and not proceed as if we were the ones—the only ones that knew what ought to be done and what was good for everybody. I do subscribe to that.

You have come out very strongly against the current United States negotiating strategies, yet both yesterday and today the U.S. carriers have come forth with equally strong comments against that same policy. This gives me a problem. Agreeing that our foreign friends are coming out so badly disadvantaged in this process and at the same time that our own carriers say they are coming out badly disadvantaged.

Can you explain that dichotomy for me?

Mr. HAMMARSKJOLD. I think Mr. Meyer gave you a very good answer.

From my position I have to try to be objective. I have members of my family on both sides. I come back to what you said. This is that the most effective way of resolving these conflicts is for governments to agree on general principles and then leaving the carriers alone and allowing them to operate within those rules. This is principally what we are fighting for.

The CHAIRMAN. Thank you very much, gentlemen. We appreciate your being here.

If any of you have any added additional comments we would be glad to have you make them. We appreciate very much your appearance.

Mr. HAMMARSKJOLD. Thank you.

[The statement follows:]

STATEMENT OF KNUT HAMMARSKJOLD, DIRECTOR GENERAL, INTERNATIONAL AIR
TRANSPORT ASSOCIATION

My name is Knut Hammarskjold and I am Director General of the International Air Transport Association (IATA). IATA is a cooperative, democratic association of 103 of the world's airlines. Our members include large and small carriers, government-owned carriers, carriers of mixed government and private ownership and pure private enterprise carriers. The members fly the flags of 85 individual nations, developed and developing, and the nations thus represented cover a wide spectrum of political, economic and social philosophies.

IATA's objectives, set forth in its charter, include the promotion of regular and economical air transport for the benefit of the public and the provision of means for cooperation among carriers to serve that purpose.¹ IATA also works with the International Civil Aviation Organization and other international organizations and, I think I can fairly say, is widely recognized as an international institution essential to the smooth, safe and economical operation of worldwide air transportation.

I am pleased that you have offered us this opportunity to address the proposed International Air Transportation Competition Act of 1979, S. 1300. IATA seeks to foster an integrated, multilateral interline airline system in an environment of differing, and often conflicting government policies, and accepts those differing policies as expressions of sovereignty contemplated by the Chicago Convention. We would, therefore, consider it inappropriate to comment on the goals which the United States wishes to set for itself in international aviation or U.S. objectives in international negotiations. Our comments are directed to the means by which the United States proposes to pursue its goals, rather than the goals themselves, and the proposition that the domestic aviation goals of all nations should be exported in a manner consistent with the maintenance of world harmony and an enhanced travel and communications system. We consequently suggest certain modifications to S. 1300 which will minimize disruption of international aviation services as the United States seeks to advance its free market policies.

I am sure you recognize that the free market policies set forth in S. 1300 do not yet enjoy worldwide acceptance. The Kingston, Jamaica seminars sponsored by the Department of State and the recent series of multilateral consultations on international aviation ratemaking make it clear that sharp differences of view persist on the proper role and reach of governments in regulating international aviation. In that connection, I am attaching for the record a thoughtful comment on this aspect of S. 1300 which I received recently from a senior executive of British Airways. While all his specific points do not necessarily represent IATA positions, I believe that the views expressed are representative of the feelings of a large number of airlines and their governments around the globe.²

United States policymakers, apparently drawing on domestic deregulation experience, seem to believe that international resistance to an aviation free market exists solely because other nations do not comprehend free market economics or are overly risk averse about removing the protective hand of government from the market. U.S. officials confidently predict that the free play of market forces will maximize carrier efficiency and reward responsive carriers, reduce fares commensurate with the costs of the most efficient carriers thus benefitting consumers and increasing traffic, and organize international aviation traffic flows to insure high load factors and efficient use of resources. They profess surprise that other nations reject these benefits and point out that resulting service deficiencies can be cured, as in domestic deregulation, by a subsidy program. They believe that increased opportunities to serve U.S. gateways will tempt foreign governments to try liberalized regulatory policies and that, having tried them, other nations will like them. They see the problems of implementing U.S. policy as relatively short run and foresee the goals of U.S. policy as soon becoming the principles governing all of international aviation.

There may be some governments whose doubts about a free market policy flow only from the question whether regulation is required to make the international aviation system work effectively. These governments may be persuaded to risk a free market policy by favorable experience under U.S. deregulation as time permits it to be better assessed and they may be induced to experiment more quickly by U.S. route concessions. If free market policies can serve their interests, these nations are likely to become adherents of the policies expressed in S. 1300.

¹ Airlines in IATA have, over the years, devoted worldwide common effort and millions of man-hours to the task of building an integrated global air transport network and system. This work, which provides a vital link between users, airlines and governments, includes developing safety standards, ensuring adequate airport facilities, exchanging information on engineering problems and operational experience, training of crews, reducing operating costs including fuel consumption, development of complex interlocked reservations systems, so that anyone can go anywhere in the world by virtually any routing on one ticket paid for in one currency, formulating processes for efficient passenger, baggage and mail handling, and speeding of their progress through the system, and from the outset actively assisting in the establishment of security standards and anti-hijacking procedures. As one integral part of these activities, with the approval of governments, IATA provides member airlines with a multilateral forum in which their individual tariff proposals are developed and blended for subsequent presentation and consideration by governments around the world.

² Appendix A to this statement.

However, my experience in international aviation, and my recent contacts with carriers and governments throughout the world, also persuades me that there are many nations which will not and cannot voluntarily accept U.S. free market policies, regardless of the outcome of the U.S. domestic deregulation experiment.

First, there are governments who are committed to a planned economy and who wish their international aviation services to develop in coordination with other planned growth in service sectors and infrastructures. For these nations, regulatory controls are an essential element of basic national economic policy and free market concepts are philosophically unacceptable.

Second, there are nations which are committed to the existence of a national carrier, heavily invested in a national carrier, and desirous of using that carrier for economic development. These nations may be unwilling to subject their carriers to the disciplines of a free market in which the inefficient must go to the wall, regardless of the social importance of their allegedly inefficient practices. Moreover, some of these nations may lack the means to provide direct subsidies to their carriers and may consider it fairer to sustain their carriers on a reasonable share of international revenues provided by relatively wealthy passengers than on subsidy provided by impecunious, indigenous populations. In addition, these nations are not prepared to see their national carriers merge with national carriers of other nations in order to compete more effectively as is possible within the domestic environment.

Third, there are nations which believe that their vital communications and security interests require a broad international network of direct flag services, many of them between points where demand is relatively limited. These nations may view with alarm, rather than approbation, the development of "networked" international services maximizing efficiencies through "hub and spoke" systems. They may perceive free market forces as efficiently reducing their international gateways to feeder spokes making their communications and security access dependent on hub states. They will view intense competitive pressure on their carriers' prime routes as a limitation on "national interest" routes.

In short there are very basic interests which persuade the vast majority of governments to support the present multilaterally accepted international regulatory scheme. While a number of these sovereigns believe that modernization is necessary to improve the results of the system, they are convinced that such modernization should be achieved only through multilateral consensus and through evolution of the present regime rather than its replacement by a new order.

For this reason alone, free market policies, even assuming that they work as their proponents claim, will have differing degrees of acceptance around the world. They will prove most attractive to countries whose flag carriers have the size, route access and commercial flexibility to maximize efficiency, whose gateways have the traffic potential to justify large, high density networks or whose resources are sufficient to subsidize national interest route operations. Nations whose carrier, or gateway or resource situations differ will have practical, as well as theoretical, reasons to take basic issue with a free market approach.

I think that you must also consider the further difficulties which scarce energy and infrastructure resources create for advancing a free market policy. Your domestic experience indicates that such a policy produces maximum benefits, and minimum dislocations, where there is rapid and sustained growth. But today fuel resources are becoming increasingly scarce and airport and airways congestion is rampant. With international growth prospects thus limited, the mix of and government actions and free market forces which will best be able to provide optimal distribution of air transport services is even more difficult to determine.

Shortages of jet fuel have already be experienced around the world and there is little foreseeable prospect for relief. Governments, including the U.S. Government, are limiting their oil imports for political reasons independent of free market demands. They are also intervening in the oil refining function to insure adequate supplies of home heating oil and other critical products which come, in part, at the expense of jet fuel.

Many governments believe that if allocation of scarce jet fuel supplies is left entirely to the free market, they will go to the highest bidders. They recognize that a carrier's ability to bid may partially reflect its efficiency but will also be determined by the density of its routes and the wealth of its passenger pool. Thus, in their view, free market allocation may simply permit developed routes and large carriers to maximize their access to scarce energy resources and to grow

at the expense of less developed routes and smaller carriers. Because many governments find this potential effect disturbing, I believe that they will wish to act to insure a balanced array of aviation services when coordinating their energy and aviation regulatory policies.

Airport and airways congestion is another factor which is rapidly limiting international aviation expansion as I have pointed publicly on other occasions. A free market philosophy, which would treat access to the aviation system as a scarce resource and permit carriers to bid for it, would, I believe, be viewed by many governments as an abdication of their responsibility for a public interest allocation of resources under their direct control and supervision. For example, the suggestion that a lottery system be used to relieve customs congestion is widely viewed as an inadequate response to the need for internationally coordinated movements at airports on differing continents under different sovereignties. Indeed, many governments consider that no market solution can meet the coordination and equity problems of airport slot scarcity.

The factors I have described, taken singly or together, demonstrate that international aviation policy differences between a United States committed to S. 1300 views and its partners are likely to be deep and persistent. While the existence of severe policy differences does not necessarily speak to the merits of any policy and does not mean that the U.S. should abandon vigorous advocacy of its position, it does compel patience and a willingness to negotiate and compromise. To impose one of the conflicting philosophies on unwilling nations, even if that were possible, would only lead to inherent instability and enormous political ill will.

Taking account of this background, I would now like to turn to some specific provisions of S. 1300 and to suggest means by which S. 1300 could be strengthened as a basis for future operational policy.

Section 102

S. 1300's revised Section 102 already recognizes differences between domestic and international aviation. I urge you to strengthen that recognition by including an express commitment to harmonizing policy differences through negotiation, rather than confrontation, and by acknowledging the importance of multilateral institutions which can serve as a forum for harmonizing conflicting policies. The U.S. has always looked to ICAO to harmonize technical and legal aspects of international aviation. It has looked to IATA as the forum where multilateral, intercarrier coordination of through transportation and standardization of carrier practices to facilitate interlining and informed consumer choice are to be achieved. In fact, the CAB has recently reaffirmed that position by endorsing a large number of IATA resolutions. A modest addition to Section 102, reconfirming the public interest in negotiated solutions and multilateral institutions would aid S. 1300 to be perceived as a useful policy clarification, rather than challenge, throughout the world.³

Sections 412 and 414

The complex and inherently fragmented nature of international aviation also requires a substantial degree of coordination between air carriers to achieve maximum public service benefits and to sort out, at a commercial level, problems which might otherwise lead to intergovernmental confrontation. We believe that Section 412's recognition of this need should be strengthened and that an unduly restrictive approach to carrier coordination should be avoided. In our view, IATA's own contributions best illustrate this point.

IATA's work on standardizing conditions of travel, solving currency problems, and unifying travel documentation and interline acceptance of through documents is universally recognized as essential to worldwide through movement. IATA's rate coordination activities similarly permit carriers to propose to governments tariffs which accommodate potentially conflicting sovereign interests while insuring that the aviation system remains workable and competitive.

An example of how IATA coordination can respond to conflicting government concerns is the most recent North Atlantic fuel agreement. That agreement provides for participating carriers to urge governments to permit tariff adjustments within a specified range related directly to increased fuel costs. At the same time, it permits each carrier to adjust its own tariffs to reflect its own cost experience and market position. The North Atlantic fuel agreement thus accommodates to

³ Appropriate language might read: "(12) The encouragement and development of an international aviation system providing the greatest possible benefit to travelers and shippers, consistent with the need to cooperate with other sovereign nations through bilateral and multilateral forums."

the views of the U.S. Government by maximizing market flexibility for individual carriers; responds to the needs of other governments for more specific guidance on the impact of fuel costs on airline operations; and provides consumers around the world with assurances that fuel burdens are being equitably distributed throughout the international system. Similarly, recent IATA cargo resolutions have developed new and more flexible concepts of maximum rather than minimum prices on certain routes to and from the U.S. and provide a possible means whereby the strong views of the CAB can be harmonized with equally strong positions of foreign governments.

We attribute these innovations to the spirit underlying the revised provisions for IATA rate activities which are just now being implemented and we expect further contributions of this type to governments and consumers as the new provisions take hold. Such approaches have the benefit of multilateral acceptance by participants in conferences which facilitates their acceptability to all concerned governments.

S. 1300 acknowledges the desirability of some inter-carrier coordination in revised Section 102. We are also pleased that S. 1300's proposed revision of Section 412 would permit the competent transportation authorities to review all types of agreements on the merits and would not foreclose any particular area of international agreement without full examination of the relevant facts and circumstances. Nevertheless, we would urge several further amendments to Section 412.

First, we recommend that Section 412 be clarified to permit foreign air carriers to seek approval and immunization of agreements which affect U.S. air transportation. We can see no reason for denying foreign air carriers access to the Section 412/414 regime, particularly when S. 1300 would amend Section 407 to include mandatory disclosure of foreign carrier agreements. Also, since a liberal aviation policy recognizes that services provided by foreign carriers can be beneficial to the public, and since agreements can contribute to that benefit, we see no rational basis for discriminating against foreign air carrier filings under Section 412.

Second, we recommend amendment of proposed Sections 412/414 in cases where the Secretary of State or Defense is prepared to certify that a particular agreement raises substantial issues of international comity, foreign relations or national defense. In such cases, we believe that the Board should be required to conduct a broad public interest analysis and not be bound to a weighing of U.S. antitrust concepts and narrowly defined transportation benefits. Where the public interest analysis leads to approval of an agreement, we think that Section 414 immunity must follow automatically. We also believe that the President should be permitted to review this narrowly defined class of cases pursuant to the limited safeguard system now established in Section 801 of the Federal Aviation Act.⁴

In considering Section 412/414 issues, we believe that this Subcommittee should be particularly sensitive to the international difficulties which arise from unilateral application of the U.S. antitrust laws to international transportation. U.S. antitrust concepts make economic crimes out of certain cooperative and conference activities which are not unlawful under the laws of U.S. bilateral partners and which, indeed, have been accepted throughout the world as standard elements of a free market in international transportation. In applying its antitrust laws extraterritorially to foreign persons, the U.S. is widely perceived as attempting to regulate the international aviation market in seeming contradiction to its announced policy of removing the hand of government from the market. In fact, those nations which have signed country-of-origin or double disapproval rate bilaterals with the U.S. honestly may question whether those bilaterals permit unilateral U.S. antitrust actions which are clearly an indirect form of U.S. rate regulation.

The CAB's Section 412 show cause proceeding with respect to the IATA Traffic Conference Provisions is a clear example of the foreign relations sensitivity of agreement cases and potential antitrust extension. Forty-eight nations have already protested the show cause proceeding and its objectives. Recent multilateral meetings, in my view, have amply demonstrated both the depth of foreign concerns and extreme foreign sensitivity to U.S. antitrust enforcement. Any rational resolution of this matter must include, as the CAB has indicated that it should include, consideration of foreign sovereign positions and a weighing of IATA's contributions to harmonization of international policy differences as well

⁴ Language illustrating these changes is attached as Appendix B to this statement.

as narrower antitrust oriented analysis. In our view, a broad public interest test involving all factors identified in revised Section 102 is the only standard which makes sense in a proceeding of this type and approval of the agreements at issue on 412 public interest grounds should necessitate 414 public interest immunity. In any case, Presidential review is essential to insure Board reconsideration where vital U.S. foreign relations or national defense interests can be threatened by an erroneous conclusion.

By modifying proposed Section 412 to permit broad public interest consideration and executive review of sensitive agreement matters, S. 1300 can signal U.S. willingness to give serious attention to the concerns of other nations. I believe that such a signal would be constructive and most welcome at this particular time.

Section 1102 (b)

The sensitivity of unilateral U.S. antitrust enforcement also raises serious questions about U.S. willingness to negotiate on this critical issue. Bilateral aviation agreements have generally been considered the proper means to cover all aspects of regulation save those governed by the Chicago Convention and the ICAO regime. U.S. resistance to discussing antitrust enforcement with other nations puts the U.S. outside this longstanding international consensus and forecloses possible intergovernmental agreement on the permissible scope of inter-carrier coordination. We do not believe that negotiation on the issues raised by carrier agreements in international aviation would be prevented by S. 1300. However, we think it appropriate for S. 1300 to state clearly that U.S. antitrust enforcement to the extent it would be extraterritorial, would be the subject of appropriate intergovernmental discussion and agreement.

I hope that this Subcommittee will consider the proposals we have advanced and the concerns which have prompted them. We appreciate the opportunity to appear and would be glad to try to answer any questions you may have.

Thank you.

APPENDIX A

TEXT OF LETTER TO KNUT HAMMARSKJOLD, DIRECTOR GENERAL OF THE INTERNATIONAL AIR TRANSPORT ASSOCIATION FROM CHARLES STUART, HEAD OF COMMERCIAL PLANNING AND PRICING, BRITISH AIRWAYS, DATED AUGUST 13, 1979

DEAR DIRECTOR GENERAL: I know that you intend to testify at Senate Hearing on U.S. International Aviation Bill, S. 1300, and I thought you might be interested to have general British Airways views on that proposed legislation.

British Airways key formal objectives are: safety, optimal profit, customer satisfaction and staff satisfaction. These key objectives inter-relate to form the principal criteria by which British Airways determines its business activities. They head a sub-structure of detailed objectives, covering markets, products, productivity, performance, and quality standards.

In many respects, therefore, British Airways goals parallel those described both in U.S. aviation policy statements and in the proposed U.S. international aviation bill, S. 1300. Fifty years of international aviation, which is British Airways predominant business (it is the biggest international carrier in the world) have therefore made British Airways specially sensitive to rights and obligations of international trading.

The comments on S. 1300 which follow are offered in the light of this experience, and should be taken to reflect a pragmatic approach to the common goal of improving the lot of users of civil air transport.

A. In certain areas the proposed legislation treats international aviation as though it were identical to and an extension of U.S. domestic aviation. It would appear that the CAB would acquire a worldwide statutory mandate to reconstruct national aviation policies—policies which currently reflect a multiplicity of racial, cultural, geopolitical and social interests—into the specific and limited criteria of U.S. domestic aviation policy. On two counts at least this is unacceptable: (1) It offends sovereignty, a more important and more durable concept than U.S. domestic aviation policy; and (2) it favors big carriers at the expense of the rest. In this respect some recognition of national sovereignty rights of foreign governments and of the distinction between United States and non-U.S. national carriers would help to remove potential confusion and possible confrontation. For example, specific reference to importance of maintaining bilateral agreements, rather than undermining them through unilateral administrative acts, would be useful if the international rule of law is to be pursued.

Such unilateral acts, however legislated, cannot be superior to treaty negotiation between sovereign nations.

B. Similarly suggestions for non-U.S. carriers to submit international economic information to CAB would put non-U.S. airlines at considerable disadvantage in two ways. First, they would have to build up an extremely costly bureaucracy to supply—and litigate—the wealth of information required by CAB relating to networks of greater operational and economic complexity—because they are substantially international—than the U.S. domestic networks for which CAB's information system was designed.

More important, they would seem to be required to disclose commercial arrangements legally and in some cases mandatorily established for services outside U.S. jurisdiction. Such information has no role in U.S. international regulation but its publication in the U.S. could breach confidentiality required by foreign governments and foreign airlines seeking such commercial arrangements for territories where their purpose is respected and their benefits are known.

C. Use of domestic standards for application of antitrust immunity to international agreements is not an appropriate approach for international routes. It is noted also that only a U.S. airline can presently file an agreement for approval. Non-U.S. carriers at least need positive immunity from operation of U.S. antitrust legislation if they are not to be faced with legal uncertainty which could gravely affect public enjoyment of international air services.

I am attaching, for your information and use, a copy of the formal position registered by the United Kingdom Delegation at the international consultation arranged by the United States Department of State on behalf of the CAB in furtherance of the show cause proceedings. Although its content is addressed explicitly to the show cause proceedings, it is directly relevant to sections of U.S. International Aviation Bill S. 1300 particularly as to sovereignty, extra-territoriality and antitrust immunity. By implication it confirms the importance Her Majesty's Government attaches both to IATA agreements and to a stay of proceedings to allow the new IATA arrangements to be assessed in light of practical experience. I am advising you of HMG's position with the authority and support of the leader of the United Kingdom Delegation to proceedings in Brussels.

SUMMARY OF OPENING STATEMENT BY THE UNITED KINGDOM DELEGATION

The United Kingdom Delegation speaks both as part of the ECAC Delegation and as a separate national delegation. We fully support the presentation made by M. Abraham on behalf of the ECAC member states. Our remarks are addressed to the United States Government, and our participation in these exchanges is not in any way to be construed as participation in any kind of hearing before the United States Civil Aeronautics Board.

We wish to make three main points. First, the show cause order, if implemented, would represent the unilateral enforcement of United States views on the rest of the world. Such an exercise of extra-territorial jurisdiction is quite unacceptable to the government of the United Kingdom. The exercise of extra-territorial jurisdiction by the United States authorities is a matter of serious concern to us in other contexts—for example shipping, where the Federal Maritime Commission appears to take a rather different view to that of the Civil Aeronautics Board, and some aspects of our trading relations.

Page 5 of the memorandum circulated by the United States in advance of this conference states that in the opinion of the Department of Justice "U.S. antitrust laws could not be enforced against IATA agreements applicable exclusively to local traffic moving between non-U.S. points." We find this statement imprecise, and would be grateful for elucidation.

Second, in the view of the United Kingdom Government more time is needed to allow the new IATA arrangements to be assessed in the light of practical experience. We would like to see a stay of proceedings for twelve months, as recommended by the Departments of State and Transportation; meanwhile, IATA agreements should continue to enjoy immunity. Further multilateral consultations, either at the ICAO special air transport conference next February or in some other international forum, will be needed before any final decision is taken by the United States authorities. We believe that it is as much for the United States to justify its case for disapproval of the IATA machinery as for other governments to justify its continuation.

Third, while we do not argue that IATA is a perfect institution, we believe that the reforms recently introduced are a significant step in the right direction. There has as yet been no serious attempt by the United States to explore what, if any, multilateral or regional arrangements it would be prepared to see replace IATA Traffic Conferences. We believe that the effect of withdrawal of anti-trust immunity from IATA Traffic Conferences would be a state of disorder far worse than the present position. The progressive reform of IATA, based on multilateral agreement, is a far better course.

APPENDIX B

IATA'S ILLUSTRATIVE REVISION OF SECTION 412(a) OF THE FEDERAL AVIATION ACT

FILING AND APPROVAL OF AGREEMENTS

SEC. 412(a). (1) Any air carrier or foreign air carrier may file with the Board a true copy, or, if oral, a true and complete memorandum, of any contract or agreement (whether enforceable by provisions for liquidated damages, penalties, bonds, or otherwise), or a request for authority to discuss possible cooperative working arrangements, affecting air transportation and in force on the effective date of this subsection, or thereafter entered into, or any modification or cancellation thereof, between such air carrier or foreign air carrier and any other air carrier, foreign air carrier, or other carrier.

(2) (A) The Board shall by order disapprove any contract, agreement, or request filed pursuant to paragraph (1) of this subsection whether or not previously approved by it, that it finds to be adverse to the public interest or in violation of this Act, and shall by order approve any contract, agreement, or request or any modification or cancellation thereof, that it does not find to be adverse to the public interest, or in violation of this Act, except that—

(i) The Board may not approve or, after periodic review, continue its approval of any such contract, agreement, or request, or any modification or cancellation thereof, which substantially reduces or eliminates competition, unless—

(I) It finds that the contract, agreement, or request is necessary to meet a serious transportation need or to secure important public benefits and it does not find that such need can be met or such benefits can be secured by reasonably available alternative means having materially less anticompetitive effects; or

(II) It has, upon its own initiative, or at the request of any air carrier or foreign air carrier party to the contract, agreement or request, obtained the written opinion of the Secretary of State that the contract, agreement or request involves substantial issues of international comity or foreign relations, or obtained the written opinion of the Secretary of Defense that the contract, agreement or request involves substantial national defense considerations.

(ii) The Board may not approve any contract or agreement between an air carrier not directly engaged in the operation of aircraft in air transportation and a common carrier subject to the Interstate Commerce Act, as amended, governing the compensation to be received by such common carrier for transportation services performed by it; and

(iii) The Board may not approve respecting interstate or overseas air transportation any such contract or agreement, or any modification or cancellation thereof, that limits the level of capacity among air carriers in markets in which they compete, that fixed rates, fares, or charges between or among air carriers (except for joint rates, fares, or charges).

(B) In any proceeding before the Board involving the application the standards set forth in subparagraph (A) (i) (I) of this paragraph, the party opposing the proposed contract, agreement, or request shall have the burden of proving the reduction or elimination of competition, and the availability of alternative means having less anticompetitive effects, and the party defending the proposed contract, agreement, or request shall have the burden of proving transportation need or public benefits.

(C) The findings required by subparagraph (A) (i) of this paragraph, shall be included in any order of the Board approving or disapproving any contract or agreement, or any memorandum of any contract or agreement, or any modification or cancellation thereof, or any request.

(D) Notwithstanding the provisions of Section 414, the Board shall, as part of any order which approves any contract, agreement or request or any modification or cancellation thereof and which includes findings required by sub-

paragraph (A) (i) of this paragraph, exempt any person affected by such order from the operations of the "antitrust laws" set forth in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12) to the extent necessary to enable such person to proceed with the transaction specifically approved by the Board in such order and those transactions necessarily contemplated by such order.

(E) Any order which approves or disapproves any contract, agreement, or request or any modification or cancellation thereof, after the filing of an opinion by the Secretary of State that such contract, agreement or request, or such modification or cancellation, involves substantial issues of international comity or foreign relations, or after the filing of an opinion by the Secretary of Defense that such contract, agreement or request, or such modification or cancellation, involves substantial national defense considerations, shall be deemed to amend the terms, conditions and limitations of the certificates air carrier and permits of foreign air carrier parties thereto for purposes of applying Section 801(a) of this Act.

The CHAIRMAN. Next we will hear from Mr. Norman J. Philion, executive vice president of the Air Transport Association of America.

STATEMENT OF NORMAN J. PHILION, EXECUTIVE VICE PRESIDENT, AIR TRANSPORT ASSOCIATION OF AMERICA; ACCOMPANIED BY JAMES E. LANDRY, SENIOR VICE PRESIDENT AND GENERAL COUNSEL; AND DONALD C. COMLISH, VICE PRESIDENT, INTERNATIONAL AFFAIRS

Mr. PHILION. Good morning, Mr. Chairman.

The CHAIRMAN. Good morning, gentlemen.

Mr. PHILION. Mr. Chairman, I am accompanied this morning by James Landry the association's senior vice president and general counsel on my right, and by Donald C. Comlish, the association's vice president of international affairs.

We have a rather extensive statement we would like to submit for the record with your permission.

The CHAIRMAN. It will be made a part of the record. You may summarize from it as you see fit.

Mr. PHILION. We would propose to briefly summarize our position on S. 1300 and offer comments on some of the more substantive questions raised by the bill or discussed during these hearings.

In particular, we would like to comment on route bidding, cabotage, the fly America provisions, intercarrier agreements, rate flexibility and the policy and principles contained in the proposed policy declaration of the bill.

Our prepared statement represents the views of our member carriers, 20 of which operate internationally. Briefly stated, these carriers fully support the promotion of competition in international air transportation, including the expansion of U.S. carrier opportunities abroad, although I suppose it will come as no surprise that they do not wholly agree with some of yesterday's witnesses on how to achieve that objective.

Our member carriers are in basic agreement with the purpose and the intent of S. 1300 and they endorse many provisions of the bill as those provisions are presently written.

They are seriously concerned about proposals which would authorize route bidding or the negotiation of domestic traffic rights or the negotiation of the right to carry U.S. Government financed traffic. They believe there are reasonable and practical solutions to problems

addressed in the bill concerning the fly America provisions as well as to problems involving stranded passengers in unique emergency circumstances.

Finally, Mr. Chairman, they believe it is appropriate to suggest several modifications of the bill, both of a clarifying and of a substantive nature. These suggested changes are discussed in our prepared statement and they appear in legislative form in the attachment to our statement.

With your permission I will begin our summary comments with the discussion of route bidding, of carrier decertification. The carriers are opposed to section 6 of S. 1300, which would allow the CAB to take away the operating authority of an incumbent U.S. carrier in a foreign market where the number of U.S. carriers is limited, either by a foreign government's action or by the terms of a bilateral agreement.

They oppose it for a number of reasons. First, it is certainly not the fault of the incumbent carrier if the market is restricted, particularly if the restriction has been agreed to by the U.S. Government in a bilateral agreement.

The CHAIRMAN. I must say I am certainly inclined to agree with you on that point. I think that Mr. Meyer made that point very well, in addition.

Mr. PHILION. We believe taking the incumbent carrier out of the market certainly does not address or solve the basic problem. The basic problem is limited designation.

Second: The decertification of an incumbent carrier and its replacement by another carrier is an admission, we believe, that the U.S. Government is unable or unwilling to use its negotiating muscle to bargain for or insist upon multiple designation and other more liberal bilateral agreement features.

Third: Because of its ability to use term certificates as a means of reviewing carrier performance, the authority to decertify is really unnecessary. Moreover, the Board already has adequate authority to alter, amend, modify, suspend or revoke a certificate of a carrier found to be charging exorbitantly high prices or rendering poor service.

Fourth: Mr. Chairman, perhaps unintentionally, section 6 has been perceived as more of the heavy hand of the Government. As the Board witnesses made clear yesterday, what seems to be sought is not better bilateral agreements, but rather, the right to make market-place judgments and to take away rights without due process.

We therefore respectfully urge you to reject section 6 of the bill. The next item we would like to comment on is cabotage.

Our member carriers are opposed to cabotage or fill-up rights for foreign airlines. We believe they are completely unwarranted and unnecessary. There is an abundance of domestic air transport competition in this country, competition that has been further enhanced by the airline deregulation act.

While the ability to trade domestic traffic rights in bilateral exchanges certainly would make the life of the U.S. negotiator more pleasant, there is simply nothing of equivalent value to trade for access to the U.S. domestic market.

Trading away U.S. cabotage and fill-up rights would represent, in our opinion, a massive, unjustified U.S. giveaway, and we are glad that S. 1300 does not propose to authorize it.

We do recognize, however, that emergencies may arise involving the cessation of all or a substantial portion of U.S. carrier services to isolated U.S. points or regions having no adequate alternative transportation.

These emergencies may cause hardship involving the standing of passengers. We would not object, therefore, to a change in the Federal Aviation Act to authorize limited, temporary operations by foreign air carriers to transport such stranded passengers in these circumstances.

Such a statutory change should be devised, we believe, with features assuring that the need is real and that the arrangement to transport stranded passengers is both limited and temporary.

Our prepared statement describes the conditions we believe would be in order, and we have suggested appropriate legislative language for this purpose.

Turning to the Fly America provisions, since the establishment of regulations implementing the 1974 Fly America element of the Fair Competitive Practices Act, some U.S. Government employees have experienced occasional difficulties, particularly in traveling between two foreign countries. Section 21 of S. 1300 would amend section 1117 of the act to deal with these special problems by permitting the use of foreign carriers between two points outside the United States if U.S. carrier services are not—in the words of the bill—“reasonably available.”

We have no objection to this proposal, but we question whether the term “reasonably available” will be subject to varying interpretations and additional difficulties in the future.

To avoid such a possibility, we urge that the report accompanying the bill make clear the intent of Congress continues to be that U.S. air carrier services should be utilized to the maximum extent practical.

We believe this to be important since one of the factors which influenced the development of the 1974 act was the U.S. balance of payments position. And the total deficit in our passenger transportation account last year was \$1.74 billion, an increase of 33 percent since 1974.

We disagree with the proposal in subparagraph (c) of section 21 of the bill contemplating the right to carry Government traffic may be negotiated in bilateral agreements.

U.S. Government traffic far exceeds that of any foreign government. The trading of traffic rights in such circumstances would inevitably be unequal, against U.S. interests we believe, and to the benefit largely of foreign operators.

Moreover, while some foreign governments do not have specific laws requiring travel on their national carriers, other methods have been adopted to accomplish that purpose. Some implement travel policies without enacting laws. Others simply enforce the requirement in a variety of subtle ways including the use of travel expense reimbursement procedures.

In short, not all governments operate in equal amounts of sunshine. The result is that even an apparently fair trade in a bilateral agreement will not help U.S. interests. We therefore urge that the proposal to bargain away the reasonable requirement that U.S. taxpayer financed traffic use American carriers be dropped.

With respect to intercarrier agreements, Mr. Chairman, we support two of the three proposals contained in section 11 of the bill to amend section 412 of the act. We oppose one of the proposals which would extend to foreign air transportation agreements, without modification, the local cartage modified bank merger test introduced by the Airline Deregulation Act for application to domestic agreements.

We believe this test, standing alone, is inappropriate for the international arena. We suggest the addition of an independent, alternative standard under which the Board would be empowered to approve agreements affecting foreign air transportation if that approval is necessary for international comity or foreign policy considerations.

We also suggest one further amendment also be made to section 412. When an agreement is approved by the Board after passing rigorous tests, that decision is the product of full consideration and deliberation over the competitive and other public interest consequences of the approval.

It is then an anomaly to suggest that further deliberations are required under section 414 before deciding to confer antitrust immunity upon an agreement which by definition requires immunity for its operation. We therefore urge the adoption of an explicit provision for automatic conferral of immunity upon approval of such agreements.

We support sections 14, 15, and 16, of S. 1300 addressing various tariff and pricing matters. However, we believe the ratemaking policy established for interstate and overseas transportation by the Airline Deregulation Act should be extended to foreign air transportation.

International air carriers should be permitted to adjust their rates and fares within a zone of reasonableness to meet the needs of the international marketplace without U.S. Government interference. The precise mechanism for offering that flexibility is still under study within the industry, and, therefore, we do not have a legislative suggestion to offer at this time.

The extent of the zone, the definition of the standard level from which adjustments may be made within a zone, and the inherent differences between domestic and international ratemaking are among the matters being considered in this connection.

We expect to be in a position to offer a specific recommendation for your consideration in the very near future.

The CHAIRMAN. When you arrive at a conclusion on that, will you promptly forward that to the committee?

Mr. PHILION. Yes; we will, sir.¹

The CHAIRMAN. Thank you.

Mr. PHILION. Lastly, Mr. Chairman, we believe the policy principles laid out in the policy declaration are essential. Accordingly, we endorse the proposal contained in section 2 of the bill. While we have a clarifying amendment to suggest, we believe there is a more substantive question relating to the policy principles which should be considered. That question is how can the necessary policy guidance and direction for interagency coordination and policy consistency best be insured over the long term.

Unlike the domestic situation, agencies of the Government other than the CAB are directly involved in international aviation policy

¹ See p. 210.

matters. Nevertheless, the very essential international policy principles embodied in the proposed policy declaration of section 102 apply only to the Board. We believe that those international policy principles should equally apply to the Departments of State and Transportation. This can be accomplished by incorporating such principles by reference in a new provision of section 1102 of the act. Our legislative suggestions in this respect are detailed in the attachment to our prepared statement.

That concludes our summary statement, Mr. Chairman. We would be glad to try to answer any questions you may have.

The CHAIRMAN. Thank you very much for a fine statement. Do either of you gentlemen wish to offer anything additional at this time?

[No response.]

The CHAIRMAN. First I want to correct for the record a factual error in the ATA testimony. On page 5 you say section 6 of the bill would allow the withdrawal of international operating authority without a hearing. However, on page 8 of S. 1300, the CAB is required to grant an oral evidentiary hearing at the request of the certificate holder.

Yesterday the Board explained at length about that requirement. Do you have a comment on that?

Mr. PHILION. First, Mr. Chairman, that was an inadvertant overstatement in our prepared statement. We were influenced to some extent by another provision in section 6 dealing with 90 days service suspensions, a provision which does permit the Board to decertify, in effect, without a hearing. We also understood what the Board was going to be proposing.

We are concerned, and as the Board witnesses indicated yesterday, I think we have a right to be concerned, because they made clear they do not want a hearing process for decertification.

The CHAIRMAN. What about the language, though, that we have in there? Do you think that is adequate protection, where the Board is required to grant an oral evidentiary hearing at the request of the certificate holder? Do you think that adequately provides protection?

Mr. PHILION. I think it does. I can't think of any carrier threatened with decertification not wanting to be heard.

The CHAIRMAN. I can't myself. I don't know that is too much to be concerned about if we do leave that language in there.

ATA opposes the authority for the Board to revoke the carrier's certificate when service is suspended for 90 days. If we could take carriers from service, disruption beyond their control, why shouldn't the Government withdraw the unused authority of dormant carriers in limited capacity controlled markets?

Mr. PHILION. The concern of the carriers, Mr. Chairman, is that that provision of section 6 is not very clear in terms of the matters beyond the control of the carriers.

If it had language assuring these actions were being initiated in cases only where it is within the control of the carriers, I think our view would be somewhat different.

The CHAIRMAN. You supported the changes in the FAA Act and the Fair Competitive Practices Act to allow the CAB to respond to unfair practices of foreign governments.

The CAB and State supported these but recommended a 90-day limit for action on the complaint in lieu of the Board's 30-day limit.

They make the case that the States should have the time to pursue diplomatic channels prior to any formal CAB action. Do you have a position on that?

Mr. PHILION. I think we are pulled in two directions. Mr. Chairman, Thirty days may not be adequate; on the other hand, the longer the period of time involved, the less faith we have that anything will be done. We are in favor of your recommendations to strengthen the Fair Competitive Practices Act provisions, but we do have some very good provisions on the law books today. They are not really being adhered to.

When you get down to negotiating with a foreign government on a whole list of items, including routes, lower rates, we have the impression that some of these restrictions, discriminatory practices that are of concern to us, are rather low on the priority list in the negotiating process. We see it every day.

The CHAIRMAN. In the effort to achieve a reasonable compromise, do you think if we settle on 60 days in that provision, that it might be reasonable?

Mr. PHILION. I think that would be reasonable.

The CHAIRMAN. I don't agree we should apply a different test for foreign air transportation agreements from that applied to domestic agreements. We have already made a substantial concession from last year's bill and from the requirements of domestic law by not outlawing pooling, capacity limiting, and rates in the agreements in foreign air transportation.

In addition, the modified bank merger test is clearly flexible enough to take into account the differences in foreign air transportation. How many domestic agreements has the CAB denied in the past year as a result of the change in section 412 contained in the Airline Deregulation Act?

Mr. PHILION. I will ask Mr. Landry to respond to that specific question. Before he does, let me say that we are concerned not only about the number of agreements that may or may not have been disapproved by the Board under that test, but the signals that we get and the public statements that we get on what their potential action is going to be in the future. We are deeply concerned, for example, about the Board's attitude and its public statements on scheduling committee agreements.

Mr. LANDRY. I think, Mr. Chairman, that there have not been examples thus far in the actual decisions of the Board, but as Mr. Philion indicated, the public statements and allusions as to what could happen to scheduling agreements and perhaps to some of the travel agency program features have been a matter of great concern.

We'd have to check on exactly how many of the agreements filed, have been disapproved. We would be happy to submit for the record the number that have been disapproved under the modified bank merger test.¹

The CHAIRMAN. If you could submit that for the record?

I think your concern goes more to the implementation than to the test itself.

Mr. PHILION. That may well be the case, but we genuinely believe, Mr. Chairman, that, as I think you, yourself, have recognized, and

¹ See p. 210.

some provisions of the bill recognize, there is a distinction between domestic and international air transportation. Whether we like it or not, foreign governments do not always agree with us.

We think there are some special international comity and foreign policy considerations that ought to be taken into account. We don't think they will be with just that sole test involved.

We think it's worthy of your consideration. We would urge you to consider it.

The CHAIRMAN. If we follow your suggestion that the law provide automatic immunity for any approved agreement, that would preclude the Board's ability to immunize some parts of the agreement but not others. The lack of such an option would necessitate CAB disapproval of an entire agreement as their only means of limiting the antitrust immunity.

Have the airlines considered the possibility that such a change could damage the industry's ability to get needed agreements approved at all?

Mr. PHILION. I think we have, and we have greater concern about the separate need to seek antitrust immunity. Let me ask Mr. Landry again to respond.

Mr. LANDRY. Mr. Chairman, I want to point out that obviously all we are talking about there are the agreements that the Board has already found to substantially reduce or eliminate competition as to trigger the rigorous test which is now in the domestic law and which would be included in the international amendment.

We feel that as a consequence the Board will have already found that these agreements indeed cannot be implemented and carried out without antitrust immunity, because they do substantially reduce or eliminate competition. The Board will have made that finding before it triggers the test.

The CHAIRMAN. What about the point that I made, that only a part of an agreement may go?

In other words, the Board, if it put in a motion that that's going to be a final immunization, but yet they might have approved part of the agreement, isn't that going to damage your position?

Mr. LANDRY. Are you speaking, sir—if I could clarify that—are you speaking of the part of the agreement that would not substantially reduce or eliminate competition?

The CHAIRMAN. That's right.

Mr. LANDRY. I would imagine that it would be possible to have the decision so drafted that it would only immunize that portion that substantially reduces or eliminates competition. That is actually what we are seeking here, is to have that part automatic.

The CHAIRMAN. So that perhaps the decision of the Board could delineate this and, therefore, at least immunize that particular part?

Mr. LANDRY. Yes, Mr. Chairman. That's what we are seeking.

The CHAIRMAN. ATA opposes wet lease arrangements with foreign carriers because you claim that paper airlines might use this provision to operate domestic services.

First, a wet lease would be approved by temporary exemption. Second, the Federal Aviation Act contains a continuing, fit, willing, and able requirement of all 401 certificate holders. Such a continuing

requirement guards against dormant paper airlines operating indefinitely by exemption.

Is there any other reason that the airlines want to limit their own options under this provision?

Mr. PHILION. I think we stated it as well as we could in our prepared statement, Mr. Chairman. There is a concern that has been expressed to us by all of our members. I realize you have asked some airlines who were here earlier about the position on this issue, and maybe we ought to go back and discuss it with all of our members again.

But during our ongoing discussions in preparing for these hearings, there was expressed a deep concern about the implications to individual carriers of using foreign crews, particularly. I think some of the problems that some of the witnesses of Northwest raised yesterday about ability to use foreign crews might be overcome in some fashion. It wouldn't make labor negotiations any easier.

I think there is a deep concern in the industry about the implications of shell corporations, notwithstanding the regulations, with that broad an exemption authority.

The CHAIRMAN. I think we have safeguards there I would say that if the—this lies within the control of the air carrier, the carrier doesn't want to enter into an agreement, they don't have to.

Mr. PHILION. That's right.

The CHAIRMAN. So, they are really the ones who control the final triggering event. But be that as it may.

Mr. PHILION. We will review that particular provision with the industry again and come back to you.

The CHAIRMAN. ATA and its member airlines continually state their support for a competitive system; but then you oppose providing the possibility of negotiating "fly American" provisions.

I certainly don't support obviating "fly American" with bilateral partners who restrict the travel of the government employees and who are not willing to trade the lifting of that restriction for the benefits of equal value. But we certainly would have to admit that a "fly American" law is contrary to the sincere pursuit of an open, competitive market. Would you agree with that?

Mr. PHILION. No, sir, we would not.

The CHAIRMAN. Tell me why not.

Mr. PHILION. One of the threads that one could perceive in the hearings so far is the desirability of a number of people in government to have the ability to trade more and more generous bilateral exchanges. We see it in terms of a desire to negotiate cabotage right; a desire to negotiate "fly American" provisions. We see it in terms of the testimony of some of the government witnesses on the need to take action against the U.S. carriers in order to achieve what they consider to be more liberal bilateral agreements.

The thing that is not said is that the United States is the major international air travel market. I can't help but have the feeling, Mr. Chairman, in the years I have worked in the bilateral agreement area, that our friends abroad frequently must wonder why we are so generous. They don't admit it publicly. I am sure it compels them to seek more.

But we have the negotiating muscle, as a government, to negotiate better bilateral agreements and exchange routes, and gain multiple

designation, without having to trade away things like cabotage and fill-up rights and the transportation of government-financed traffic.

The CHAIRMAN. Well, would the bottom line then be that ATA wants a better competitive system internationally except for U.S. employees, is that right, except for the "fly American" provision?

Mr. PHILION. I think so, Mr. Chairman. I don't mean to be facetious. It's an element of an exchange that can hardly ever be equivalent or equal. It will contribute, in our opinion, to rather significant transportation account deficits. We don't think it's necessary.

The CHAIRMAN. Would your position likely change on that point if we made such an agreement subject to a congressional veto?

Mr. PHILION. It might. It might. We are concerned, of course, about lack of control. That might be some element of control.

The CHAIRMAN. I want to commend you on taking a constructive position on emergency cabotage. Why have you suggested that we have DOT evaluate and monitor emergency cases, rather than the CAB, who is already organized and staffed to collect information needed to evaluate such a case?

Mr. PHILION. There are several reasons, Mr. Chairman. Incidentally, I think the Secretary of Transportation was dealt with in a somewhat shorthanded way yesterday with reference to his lack of cooperation—alleged lack of cooperation—during the United strike. I am not in a position to defend the Secretary of Transportation, but as I understand, what he said at the time was that what the Board was doing was illegal and in violation of the law.

You propose in your legislation to amend the law. We support that. I am sorry. You didn't propose it in your bill. You asked for comments on it. We have indicated a willingness to go along with it.

It seems to us that, in situations of this kind, there has to be a clearly established need. There has to be someone doing it who knows whether or not there are alternative forms and means of transportation available. We think the Secretary of Transportation, the DOT, is better equipped than the Board is to know whether there is good surface transportation.

We are not talking here just about Hawaii or Alaska. This could apply in Wyoming, in Idaho. The Secretary of Transportation, we think, is better equipped to know what the alternative forms of transportation are.

The CHAIRMAN. I didn't know we had an international service in Wyoming or Idaho or those places.

Mr. PHILION. You are right.

The CHAIRMAN. I don't think that's a very good example.

Mr. PHILION. It's not. I agree.

The CHAIRMAN. I am sure you are not going to suggest that the Secretary of Transportation might take a look at the ship traffic between Hawaii and Los Angeles and say that that was adequate to take care of the job; are you?

Mr. PHILION. It ought to be examined.

The CHAIRMAN. Or the rail traffic across the United States between New York and Los Angeles, if that were to come up? I don't see that it would, but that might give Amtrak quite a boost, but I can't conceive of any passengers really being helped out by that.

Mr. PHILION. We've had—in connection with the DC-10 grounding—concerns expressed about routes such as New York-Miami; conceivably there is alternative transportation available for stranded passengers.

The CHAIRMAN. Now, I admit, between New York and Miami there may be. We are subsidizing those passengers on the trains to the extent of about \$126 a passenger on those Amtrak routes; so maybe that would be a means of taking care of boosting Amtrak's traffic between New York and Miami. That's a possibility.

I have suggested just the reverse: That we ought to do away with that train and buy them an airline ticket; that we'd save money for the Government by eliminating that kind of subsidy on that New York to Miami run.

Mr. PHILION. There is not only train transportation. There is bus transportation available. In short, Mr. Chairman, I think the most important part of our position is just what is a stranded passenger.

Clearly, in the Hawaiian case, with the United strike, it wasn't just stranded passengers. The CAB chairman yesterday began by talking about hundreds of thousands of passengers, as I recall. Then he said something like 19,000 were ultimately carried by foreign-flag carriers.

The best information we can develop is that many of these passengers were booked after the strike began. We don't consider that to be a stranded passenger situation.

The CHAIRMAN. Don't you consider it just as important on an emergency basis of that sort that you consider the passenger that has got his vacation, his 20-week vacation; he's arranged for it the previous year. He has his tickets bought, has his hotel rooms bought in Hawaii. He gets to Los Angeles and can't get there on his reservations.

The other U.S. carriers are filled. This man has a 2-week vacation. He's bought and paid for it, a number of hundreds of dollars, maybe saved for it for 5, 6 years.

Mr. PHILION. Mr. Chairman, a strike is an unfortunate thing, whether it occurs in the airline industry or in the trucking industry or in any other commercial way of life in the United States. The public suffers. It's unfortunate.

In the case of an airline strike, the airline doesn't want the strike. I am sure the labor union doesn't want the strike. But there has to be pressure on the two groups to resolve their differences.

That isn't to say the public should be ignored completely. In the case of the United strike, we do not believe the Board exhausted all of the remedies. There are a number of U.S. carriers serving Hawaii, but there were a number of other U.S. carriers that were not asked whether or not they would be willing to consider exemption authority.

We have to remember one other thing, Mr. Chairman: A carrier, most carriers are—have the same essential unions, and with one carrier on strike, it's a little awkward for another carrier to volunteer to go over its routes to serve the public.

In the past, the Board has issued broad exemption authority, which is an initiative by the Board trying to get other carriers to serve that market. The Board did not do that in the case of the United strike. It went right away to the foreign carriers.

The CHAIRMAN. Have you reviewed the CAB proposal for the provision on cabotage? And if so, do you have any comments on it?

Mr. PHILION. As I recall the provision, that is to negotiate?

The CHAIRMAN. I wondered if you have not reviewed their suggestion in full, I suggest that you do it. Then supply us a comment for the record.

Mr. PHILION. We will do that.¹

What we understand of the Board's position, we simply do not agree with them.

The CHAIRMAN. In your testimony, you state, incorrectly, that the proposed legislation recognizes the need to secure benefits of similar magnitude for U.S. carriers in bilateral exchanges.

Now, the bill really requires compensatory benefits for either U.S. air carriers or the traveling public. Isn't looking at bilateral as solely documents for the exchange of benefits for airlines rather a myopic view of the public interest?

Mr. PHILION. Yes, I guess, from a public point of view. We say not one or the other. We suggest, as I think Mr. Meyer indicated earlier, that the use of the word "and" should apply in these cases. We ought to look at both, not just one.

The CHAIRMAN. I think the problem there—and I must say I am not locked in on my position on this—but that would really mandate—if you change to the word "and" it would really mandate getting a benefit for the U.S. carriers.

Maybe the public interest benefit would be equally as valuable in a particular negotiating case. That's the thing that bothers me a little bit about it.

In other words, I think certainly that both ought to be considered.

Mr. PHILION. We agree with that, sir.

The CHAIRMAN. Maybe we could clear that up or clarify it in the report language.

I think—I don't think you should consider just one or the other.

Mr. PHILION. Right.

The CHAIRMAN. I think you should consider both of those interests and then make your final decision; but you may end up with negotiating a benefit that's either for the benefit of the traveling public but not necessarily for the benefit of the carrier.

Mr. PHILION. We agree with you. We think the legislative history could help that considerably.

One plea I think we would make, is that any international aviation policy established by this legislation—and we think it's important to do so—ought to recognize, in our view, the importance—in the commercial field—of benefits for U.S. carriers.

The CHAIRMAN. Thank you very much, gentlemen. We appreciate your being here.

Mr. PHILION. Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF NORMAN J. PHILION, EXECUTIVE VICE PRESIDENT, AIR
TRANSPORT ASSOCIATION OF AMERICA

My name is Norman J. Philion. I am Executive Vice President of the Air Transport Association of America, which represents virtually all of the scheduled airlines of the United States. I am accompanied by James E. Landry, the

¹ See p. 210.

Association's Senior Vice President and General Counsel, and by Donald C. Comlish, the Association's Vice President of International Affairs.

We appreciate the opportunity to comment on S. 1300, the proposed "International Air Transportation Competition Act of 1979." This important legislation addresses matters of deep interest to our member carriers, 20 of which provide regular scheduled service in foreign air transportation.

Our members fully support the promotion of competition in international air transportation, including the expansion of U.S. air carrier opportunities to provide service in the international marketplace. They are in basic agreement with the purpose of S. 1300. They believe such legislation would assure a progressive, more permanent U.S. international aviation policy. They also believe that the underlying principles of the bill would go far to fulfill goals which are in the overall national interest as well as in the interests of the traveling and shipping public and the U.S. air transport system. Our comments, therefore, will reflect industry views on the major provisions of the legislation, and we will suggest ways to clarify and revise S. 1300, in a constructive effort to make this important amendment of the Federal Aviation Act as effective as possible.

POLICY DECLARATION

Section 2 of S. 1300 would make the basic elements of the policy declaration established in the Airline Deregulation Act of 1978 for domestic air transportation applicable to international transportation. We endorse this proposal.

Section 2 also would add a new and, we believe, most important policy principle—"The promotion, encouragement, and development of civil aeronautics and a viable, privately owned United States air transport industry." The airlines believe that the need for strong and healthy airline companies should be recognized in the statute as proposed in subsection (a) (11), and we urge its adoption.

We would like to offer a clarifying amendment to subsection (a) (4). Additionally, in view of the need over the long term to assure government policy consistency and coordination, we suggest a way to make the international policy principles of the policy declaration applicable to agencies of government in addition to the Civil Aeronautics Board.

Subsection (a) (4) apparently is intended to reflect that there "may" be distinctions between domestic and international air transportation. Since those distinctions do in fact exist, we believe paragraph (4) should be more positive and should also recognize the need in some cases to tailor bilateral agreements accordingly. Our suggestions for making paragraph (4) more affirmative in this respect are contained in the attachment to this statement.

The policy declaration gives direction and guidance only to the Civil Aeronautics Board. We believe that those policy principles applicable to international air transportation should equally apply to all of the principal agencies of the federal government involved in international air transportation matters. The Departments of State and Transportation should, in our opinion, be given the identical direction and guidance. We recognize that to add those agencies to section 102 of the Federal Aviation Act would be difficult from a legislative drafting standpoint. We suggest, however, that this objective could be met by incorporating the international policy principals by reference in an addition to section 1102 of the Federal Aviation Act and by making that section applicable to these other agencies. Our suggestions in this respect are set forth in the attachment along with other suggested changes to section 1102 of the Act.

GOALS FOR INTERNATIONAL AVIATION POLICY

Section 17 of S. 1300 would establish rather specific policies for federal government officials responsible for negotiating international air transport agreements and conducting U.S. affairs in foreign air commerce. We believe that legislating such negotiating policies is unnecessary and could be counterproductive if they result in a lessening of the flexibility which is so essential at the negotiating table. Moreover, the very existence of separate policy principles in two different sections of the Federal Aviation Act will inevitably raise questions as to whether they have the same or a different purpose and as to which set of principles takes precedence.

International air transport agreements are undertakings between sovereign governments. Whether we like it or not other governments do not always agree with our negotiating objectives. Consequently, international agreements frequently require compromise and accommodation. The existence of separate

negotiating policies could inhibit a necessary and otherwise acceptable accommodation simply because the U.S. negotiator may feel obliged to pursue what is perceived to be a statutory negotiating instruction. We believe separately stated negotiating goals are unnecessary in the Federal Aviation Act in view of the clear congressional directive embodied in the policy declaration. In short, if there is a need for additional policy principles, they should be incorporated into Section 102 of the Act, and made applicable to the other federal agencies involved through the addition to Section 1102 of the Act which we suggested earlier.

While the industry sees no need for the separately stated "Goals for International Aviation Policy", and is concerned about their potentially adverse consequences, some airline views and comments on the specific goals proposed in section 17 are contained in the attachment to this statement.

ROUTE BIDDING

Section 6 of S. 1300 is a most troublesome provision. It would allow the Civil Aeronautics Board, without a hearing, to take the international operating authority away from an incumbent U.S. carrier in a foreign market where the number of U.S. carriers is limited, and award it to any other U.S. carrier making the assertion that improved service or lower prices can be provided. It would also empower the Board to suspend or revoke carrier authority where all service is suspended, or where no "significant service" is provided, for 90 days, even though the service in question may have been disrupted by strikes, civil strife, aircraft groundings, temporary facility inadequacies, and other similar events beyond the control of the carriers. Such a provision not only is uncalled for and unwarranted in both current and foreseeable circumstances, but its utility is highly questionable under the best of conditions. In fact, we believe it would actually hinder the development of competition in those cases where it might be used.

Perhaps of equal significance, enactment of section 6 could encourage government agency action to disenfranchise carriers without reasonable cause, without substantiation of any of the differing contentions involved, and without due process.

The purpose of S. 1300 is to promote competition in the marketplace. Yet section 6 of the bill would increase the authority of the Civil Aeronautics Board to determine the needs of the marketplace rather than allowing the marketplace to function on a competitive basis. It would substitute government marketing judgment for that of management in conflict with the fundamental objective of less government regulation. It represents the very kind of heavy and unnecessary governmental intrusion that is of increasing concern to all Americans.

As indicated at the outset, the airlines fully support the promotion of international competition, including the expansion of U.S. carrier opportunities. But section 6 of the bill would hamper, rather than help competition. The ability of U.S. carriers to compete would be severely weakened if at any given moment a U.S. carrier could be pulled out of an established market, and be replaced by a new carrier, while foreign airline competitors continue to enjoy the benefits of established market identity and service pattern continuity. New marketing programs would have to be designed, tested and adjusted in the fact of established and successful foreign carrier programs. The new carrier might have to begin operations with facilities and customer services less developed or desirable than those of foreign competitors. Other established services, such as on-line connecting services, would be disrupted. In short, unlike the initiation of additional U.S. carrier service in a given market, the replacement of an established U.S. carrier service will work primarily to the advantage of foreign carriers.

Equally important in the consideration of section 6 of the bill is whether or not it can work as intended. Will section 6 encourage or discourage airline management from seeking a new market entry with all of the risks entailed? And how will foreign governments react to carrier offers to provide better services or lower prices?

We believe airline management might well be discouraged from entering a market unless it is allowed to develop its own marketing strategies and to operate services over a reasonable period of time. Nor can the views of other governments be ignored, notwithstanding the good intentions of a replacement U.S. carrier or the efforts of the U.S. government to achieve more liberal agreements. While a potential replacement U.S. carrier may be able to convince our government of its willingness to offer better service or lower prices, the foreign government may not be convinced that such service and prices are in its overall

interests. We suspect that most foreign governments will act no differently than they have in the past on similar U.S. carrier initiatives. They will either reject them if that is considered necessary to protect their carriers' competitive position, or they will seek excessively generous U.S. concessions to offset any potential competitive disadvantage.

Finally, adequate means now exist for the replacement of carriers that are found to be charging exorbitantly high prices or rendering poor service. These means are available to the Board under present law in the form of term certificates and "back-up" route authority, and they are being utilized. Moreover, the Board has broad authority to alter, amend, modify, suspend or revoke a certificate for good cause shown after appropriate notice and hearing. No additional authority is required. And no diminution of the rights of a carrier to protect its interests should be permitted. There simply is no justification for the sweeping decertification powers proposed, and we respectfully urge that section 6 of S. 1300 be rejected.

FOREIGN AIR CARRIER PERMITS

Sections 7, 8 and 9 of the bill are intended to speed the issuance of foreign air carrier permits. We endorse this objective because it will undoubtedly reduce the frustrations of foreign airlines which lead some governments to place obstacles in the way of U.S. carriers abroad. We do, however, suggest some language changes to the proposal to assure fair treatment for all parties involved.

Section 7 of the bill would amend section 402(b) of the Act by allowing the Board to issue a permit to a foreign air carrier if it is fit, willing and able to perform and if it meets one of two other tests. One test would allow the issuance of a permit where the applicant is qualified and designated by its government under an agreement with the United States. The alternative test would allow the permit to be issued if the transportation is found to be in the public interest. We believe the public interest finding should be required in all instances because that evaluation affords a last opportunity to clearly establish that an underlying agreement is being fully honored. Secondly, in situations where there is no underlying agreement, the United States should allow the permit to be issued only if the other nation will treat U.S. carriers on a reciprocal basis, and we believe section 7 should be amended accordingly as set forth in our attachment.

Section 8 of S. 1300 would eliminate the requirement of a hearing on the issuance of a foreign air carrier permit. We believe that there may be issues such as foreign carrier ownership and control which can only be determined through the hearing process. While we agree there is no need for mandating a hearing, we do believe the option for a hearing should be preserved. This can be accomplished by changing the word "shall" in section 402(d) to "may" as shown in our attachment.

Section 9 of S. 1300 would codify section 213 of the Board's Economic Regulations which gives the Board the power to take action where restrictions against U.S. airlines or unfair competitive practices exist in a foreign country. We strongly endorse this proposal to help assure equal competitive opportunities for U.S. carriers. However, we would suggest that the scope of the proposal should be extended to include all "air transportation services", rather than be limited to "flight operations." Many of the problems airlines encounter in foreign countries involve ticketing, reservations, advertising, ground handling, currency exchange and remission and other similar restrictions which are not usually included within the definition of "flight operations." A suggested change of language is included in our attachment to accomplish this increase in scope.

AGREEMENTS BETWEEN AIRLINES

We support the proposed amendment contained in Section 11 of the bill which would amend Section 412 of the Federal Aviation Act by making the filing of agreements affecting foreign air transportation optional. The Airline Deregulation Act of 1978 introduced this option in the case of agreements affecting interstate and overseas air transportation, and we agree that this option should be extended to all Section 412 agreements.

We also support the continued limitation of the prohibition against capacity and price agreements between carriers to interstate or overseas air transportation, as contemplated by S. 1300. This limitation recognizes the latitude sometimes necessary to accommodate the policies of other sovereign nations in foreign air transportation matters. The end result of the negotiating process with other sovereign governments may well lead to the conclusion that agreements of this

nature, inconsistent though they may be with U.S. domestic philosophy, are on balance in the public interest internationally.

The same reasoning, however, leads us to oppose another feature of the bill's proposed amendments to section 412. Specifically, section 11 of the bill would extend to foreign air transportation agreements, without modification, the "Local Cartage/modified bank merger" test introduced by the Airline Deregulation Act for application to domestic agreements which substantially reduce or eliminate competition. We believe this test standing alone is inappropriate for the international arena. We suggest the addition of an independent, alternative standard under which the Board would be empowered to approve airline agreements affecting foreign air transportation if that approval is necessary for international comity or foreign policy considerations. The addition of this alternative test would provide appropriate recognition that the United States cannot in some instances immediately achieve the fully liberal competitive framework which it seeks and that international comity or foreign policy considerations may dictate acceptance of a compromise. The essential expertise on these unique considerations should come from the appropriate executive agencies, in the form of a written opinion of the Department of State or Transportation, as suggested in our attachment.

We also suggest that one further amendment be made to section 412, in the nature of a clarification. When an agreement which substantially reduces or eliminates competition is nonetheless approved by the Board after passing the rigorous tests applied to such agreements, that decision is the product of full consideration and deliberation over the competitive and other public interest consequences of the approval. It is then an anomaly to suggest that further deliberations are required under section 414 before deciding to confer antitrust immunity upon an agreement which by definition requires immunity for its operation. We therefore urge the adoption of an explicit provision for automatic conferral of immunity upon approval of such agreements.

The various amendments to section 412 necessary to effectuate our suggestions are set forth in the attachment to this statement.

LEASES OR CHARTERS OF FOREIGN AIRCRAFT

Section 13 of the bill authorizes the Board to approve long or short term leases or charters of foreign aircraft by U.S. carriers. We believe this proposal would assist some U.S. carriers to meet the needs of the marketplace. However, we suggest that such transactions be limited to aircraft without crews. To permit leases with crews would, in effect, permit foreign airlines, through or with shell U.S. corporations holding operating certificates, to gain access to domestic and international markets, outside the system of bilateral air transport agreements, a result contrary to the intent of the Federal Aviation Act as amended by the Airline Deregulation Act of 1978. Our suggestion for revising section 13 in this connection is contained in the attachment.

TARIFF AND PRICING CONSIDERATIONS

Sections 14, 15, and 16 of S. 1300 would amend Section 1002 of the Act by clarifying the handling of seasonal tariffs and by allowing for consideration of estimated foreseeable future costs and revenues. We fully support those changes.

We believe the ratemaking philosophy established for interstate and overseas air transportation by the Airline Deregulation Act of 1978 should be extended to foreign air transportation. In short, we believe that international air carriers should be permitted to adjust their rates and fares within a zone of reasonableness to meet the needs of the international marketplace without U.S. government interference. The precise mechanism for offering that flexibility is still under study within the industry and, therefore, we do not have a legislative suggestion to offer at this time. The extent of the zone, the definition of the standard level from which adjustments may be made within the zone, and the inherent differences between domestic and international ratemaking are among the matters being considered in this connection. We expect to be in a position to offer a specific recommendation for your consideration in the near future.

INVOLVEMENT OF INTERESTED PARTIES IN POLICY AND NEGOTIATIONS

Section 17 of the bill would create an "International Aviation Advisory Council". We do not see the need for, or any positive advantages in such a council.

The policy principles set forth in the policy declaration of S. 1300 can hardly be improved by the proposed council, nor would the council be in a position to establish any new policy without legislative consideration. What is required is adequate and timely consultation between U.S. negotiating teams and the affected parties, and a formally organized council is not the way to meet this requirement. We suggest there is a far better way to assure maximum policy coordination and the input needed by U.S. negotiating teams on issues directly affecting the private sector.

A second proposal contained in Section 17 of the bill would give observer status to congressional representatives on U.S. delegations. Although perhaps unintended, this proposal, plus the proposal to create a council, creates unfortunate implications concerning the way interested and affected parties become directly involved in the negotiation of commercial agreements. It is vitally important to our industry, and we believe other affected interests as well, to understand, react to, and comment on individual negotiations with foreign governments as they come up, and before the U.S. strikes an agreement. Foreign airlines are often owned by their governments and are instruments of government policy. As such they are represented at the bargaining table when commercial agreements and technical operating rights are negotiated. For thirty or more years U.S. airlines have been represented on the U.S. negotiating teams and this has been beneficial to the government, the public and the airlines. Recently U.S. delegations were expanded to include participation by consumer and labor representatives, and detailed participation rules also have been fashioned by the State Department to assure that the appropriate representatives will be allowed to participate, when necessary.

The evolution to the present stage has worked well. However, we are concerned that reference solely to congressional observer status, plus the creation of a council, may imply that participation on U.S. delegations by affected parties either is unnecessary or is being abandoned. We strongly urge that provision be made in this legislation for the continued participation on delegations by parties substantially affected by agreements, as observers or technical advisors, where such participation is not found by the Secretary of State to interfere with or impede the work of the Department of State. We have included language amending section 1102 of the Federal Aviation Act in our attachment which will accomplish this objective.

CONFIDENTIALITY OF DOCUMENTS

Section 19 of the bill would eliminate a part of the present statutory test for determining whether documents may be withheld from disclosure. The amendment in effect undermines the treatment presently given to highly confidential carrier documents involving competitive positions. Section 19 would allow the Civil Aeronautics Board or the Secretary of State to accord confidential treatment to such documents only when disclosure of the information would prejudice the formulation and presentation of the positions of the United States in international negotiations. We are opposed to this amendment.

The highly competitive carrier information that we are concerned about takes the form of carrier operating results, plans and forecasts, and advice and comments on international competitive positions to various agencies of the government. We believe that disclosure of this frank and useful information could damage its author from a competitive standpoint, regardless of whether it harms or hampers the negotiating posture of the United States. In short, each of the two tests of existing section 1104 of the Act should stand on its own as sufficient grounds for withholding information from disclosure. Consequently, while we oppose adoption of the amendment contained in section 19 of the bill, we do urge adoption of the amendment set forth in the attachment to our testimony which will extend confidential treatment to this competitive carrier information.

"FLY AMERICA" PROVISIONS

In enacting the International Air Transportation Fair Competitive Practices Act of 1974, Congress decided that government-financed air traffic would be required to use the services of U.S. air carriers. The underlying reason for this decision was a recognition that U.S. Government use of foreign carriers adversely affected the transportation account of our balance of payments. Also recognized was the fact that foreign governments routinely require their government-financed traffic to use the national carrier. These two considerations are of equal, if not greater importance, today. As a matter of fact, the total deficit in our

transportation account in 1978 was \$1.7 billion, an increase of 33 percent since 1974.

Since the establishment of regulations implementing the 1974 "Fly America" provisions, some U.S. government employees have experienced occasional difficulties, particularly in traveling between two foreign countries. Section 21 of S. 1300 would amend Section 1117 of the Federal Aviation Act to deal with these special problems by permitting the use of foreign carriers between two points outside the United States if U.S. flag carrier services are not "reasonably available." We have no objection to this proposal but question whether the term "reasonably available" will be subject to varying interpretations and additional difficulties in the future. To avoid such a possibility, we urge that the report accompanying the bill make clear that the intent of the Congress continues to be that U.S. air carrier services should be utilized to the maximum practical extent.

We disagree, however, with the proposal in subparagraph (c) of Section 21 of the bill contemplating that the right to carry government traffic may be negotiated in bilateral agreements. U.S. government traffic far exceeds that of any foreign government and the trading of traffic rights in such circumstances would inevitably be unequal, against U.S. interests, and to the benefit of foreign operators.

Moreover, while some foreign governments do not have written laws requiring travel on their own flag airline, other methods have been adopted to accomplish that purpose. Some implement their policies without enacting laws. Others simply enforce the requirement through the use of travel funding reimbursement procedures. Moreover, special, uneconomic, and discriminatory fares are often ordered by these governments, and accounting procedures, or lack thereof, often prevent factual proof of such approaches. In other words, not all governments operate in equal amounts of "sunshine." The result is that even an apparently fair trade in a bilateral agreement will not help U.S. interests at all.

We therefore urge that the proposal to bargain away the reasonable requirement that U.S. taxpayer-financed traffic use American carriers be dropped.

Section 1117 of the Act also requires that all property which the United States "... shall procure, contract for, or otherwise obtain for its own account or in furtherance of the purposes or pursuant to the terms of any contract, agreement, or other special arrangement made or entered into under which payment is made by the United States or payment is made from funds appropriated, owned, controlled, granted, or conditionally granted or utilized by or otherwise established for the account of the United States ..." and which is transported by air will use the services of U.S. air carriers. Due to a recent ruling of the Comptroller General, however, certain property procured or financed by the Export-Import Bank or by foreign military sales credits have been exempted from the terms of the statute, and are being transported by foreign air carriers.

While we believe the exemption is based on a technicality, Section 1117 of the Act should be amended to close this loophole at least to the extent provided for in our maritime statute for similar property shipments. Accordingly, we urge that Section 1117 be amended to provide that at least 50 percent of the property financed by the Export-Import Bank or by foreign military sales credits which is transported by air shall be required to use the services of U.S. air carriers. The language we have proposed is modeled after a similar provision for U.S.-flag carriage of ocean cargo procured, furnished or financed by the government, as set forth in the Merchant Marine Act of 1936, as amended. (46 U.S.C. § 1241)

PROPOSED CHANGES IN THE INTERNATIONAL AIR TRANSPORTATION FAIR COMPETITIVE PRACTICES ACT OF 1974

Section 23 of the bill would significantly strengthen the International Air Transportation Fair Competitive Practices Act of 1974 and we fully endorse this proposal. The American marketplace is open, but foreign markets frequently are not. It is not in the interest of the United States for foreign airlines doing business here to enjoy the benefits of an open market if U.S. airlines doing business abroad are hobbled by laws or practices inimical to competition. Yet that is often the case today, and it becomes an absolutely critical problem when we grant foreign airlines extensive new rights through the U.S. government effort to achieve more liberal air transport agreements. We urge that section 23 be adopted since it will enable our government to act decisively when foreign nations discriminate against U.S. carriers or restrict competition in their countries while their flag carriers operate free from such discrimination and restrictions here.

OTHER MATTERS NOT COVERED IN S. 1300

We understand that witnesses have been invited to comment on other matters not addressed in S. 1300, including cabotage and the recent route request of the Government of Iceland.

Foreign airlines should not engage in U.S. domestic air commerce. Cabotage rights are completely unwarranted and unnecessary. There is an abundance of domestic air transport competition in this country, competition that has been further enhanced by the Airline Deregulation Act of 1978.

Moreover, we believe it would be contrary to the best interests of the United States for the U.S. air transportation system to be influenced, even partially, by foreign airlines, most of which are foreign government-owned or controlled, with objectives alien to the present and future needs of the domestic and foreign commerce of the United States, the Postal Service, and the national defense. Nor should U.S. transport workers be displaced by foreign labor which would be a natural result of foreign airlines operating in U.S. domestic air commerce.

It has been said that there could be benefits in negotiating cabotage rights. But there simply is nothing of equivalent value to trade for access to the U.S. domestic market. Trading away U.S. cabotage rights would represent, in our opinion, a massive and unjustified U.S. giveaway.

We recognize, however, that emergencies may arise involving the cessation of all or a substantial portion of U.S. air carrier service to isolated U.S. points or regions having no adequate surface transportation. These emergencies may cause hardships involving the stranding of passengers. We would not object to a change in the Federal Aviation Act to authorize limited, temporary operations by foreign air carriers to transport such stranded passengers in these circumstances, provided it was not used as a device to influence a labor dispute or subordinate a labor negotiation. In our opinion, such a statutory change should embody the following features:

1. The transportation would be limited to emergencies found to exist by the Secretary of Transportation.
2. The Secretary would exhaust the possibilities of substitute transportation by other U.S. airlines and other U.S. transportation modes.
3. The traffic carried would be limited to stranded passengers who held confirmed reserved seats at the time the emergency began.
4. Arrangements for the transportation of the stranded passengers would be made by the U.S. air carrier or carriers involved.
5. The foreign air carrier would be allowed to carry the stranded passengers only during the period of emergency.

Our suggestions for the legislative language necessary to accomplish this change to the Federal Aviation Act are offered in the attachment.

Turning to the Icelandic question, the Government of Iceland has requested unprecedented rights for its airline to operate flights between the United States and Europe without serving Iceland. Iceland is a small, friendly nation, but there are many other nations—large and small, friendly and less friendly, which would be encouraged to demand similar treatment if this request is granted. We are certain that such demands will be made—demands which the U.S. government would be hard pressed to deny in considering the need for fairness and equity in the conduct of our foreign affairs and the implementation of our trade policies.

We fail to see how there would be any significant benefit to the United States in acceding to this request of the Government of Iceland, and certainly none that would justify either establishing a precedent for airline operations under flags of convenience, or granting additional operating authority to a bilateral partner which can offer no balancing opportunity for the U.S. airline industry.

The proposed legislation, itself, recognizes the need for the U.S. government to secure opportunities and benefits of similar magnitude for U.S. air carriers in bilateral exchanges. We submit there is nothing of similar magnitude for U.S. air carriers in any possible exchange with Iceland. Under these circumstances, we would strongly urge that the Congress take whatever action is necessary to assure that this unwarranted and unjustified request is denied.

CONCLUSION

The airlines fully support the promotion of competition in international air transportation, the underlying purpose of S. 1300. We hope our comments will

be of assistance in the development of this legislation, and we respectfully request that our suggestions concerning the bill be favorably considered.

ATTACHMENT TO ATA TESTIMONY ON S. 1300

A. ATA suggests the following changes in the text of S. 1300:

SECTION 2

Amendment to Section 102 (a) (4) of the Federal Aviation Act:

"(4) The placement of maximum reliance on competitive market forces and on actual and potential competition (A) to provide the needed air transportation system, and (B) to encourage efficient and well-managed carriers to earn adequate profits and attract capital, but with consideration being given to the material differences which exist between interstate and overseas air transportation, on the one hand, and foreign air transportation on the other, and which may require accommodation and compromise in order to maintain international bilateral agreements."

SECTION 7

Amendment to Section 402(b) of the Federal Aviation Act:

"ISSUANCE OF PERMIT

"(b) The Board is empowered to issue such a permit if it finds that (1) the applicant is fit, willing, and able properly to perform such foreign air transportation and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder and (2) either that the applicant is qualified, and has been designated by its government to perform such foreign air transportation under the terms of an agreement with the United States, or that, in the absence of an agreement, the government of the applicant will allow air transportation services by U.S. air carriers through comity and reciprocity, and that such transportation will be in the public interest."

SECTION 8

Amendment to Section 402(d) of the Federal Aviation Act:

"(d) Upon the filing of an application for a permit, the Board shall give due notice thereof to the public by posting a notice of such application in the office of the secretary of the Board and to such other persons as the Board may by regulation determine. Any interested person may file with the Board a protest or memorandum of opposition to or in support of the issuance of a permit. Such application may be set for public hearing and the Board shall dispose of such application as speedily as possible."

SECTION 9

Amendment to Section 402 (b) of the Federal Aviation Act:

Same language as S. 1300, except substitute "air transportation services" for "flight operations" in line 8 on Page 10 of the bill.

SECTION 11

Amendment to Section 412 of the Federal Aviation Act:

(1) Strike subsections (a) and (b);

(2) Redesignate subsection (c) as subsection (a);

(3) Amend subsection (a), (as so redesignated) to read as follows:

"(a) (1) Any air carrier may file with the Board a true copy, or, if oral, a true and complete memorandum, of any contract or agreement (whether enforceable by provisions for liquidated damages, penalties, bonds or otherwise), or a request for authority to discuss possible cooperative working arrangements, affecting air transportation and in force on the effective date of this subsection, or thereafter entered into, or any modification or cancellation thereof, between such air carrier and any other air carrier, foreign air carrier, or other carrier.

"(2) (A) The Board shall by order disapprove any contract, agreement, or request filed pursuant to paragraph (1) of this subsection whether or not previously approved by it, that it finds to be adverse to the public interest or in violation of this Act, and shall by order approve any contract, agreement, or

request, or any modification or cancellation thereof, that it does not find to be adverse to the public interest, or in violation of this Act, except that—

“(i) the Board may not approve or, after periodic review, continue its approval of any such contract, agreement, or request, or any modification or cancellation thereof, which substantially reduces or eliminates competition, unless it finds that the contract, agreement, or request is necessary—

“(I) to meet a serious transportation need or to secure important public benefits and it does not find that such need can be met or such benefits can be secured by reasonably available alternative means having materially less anticompetitive effects; or

“(II) for international comity of foreign policy considerations.

“(ii) the Board may not approve any contract or agreement between an air carrier not directly engaged in the operation of aircraft in air transportation and a common carrier subject to the Interstate Commerce Act, as amended, governing the compensation to be received by such common carrier for transportation services performed by it; and

“(iii) the Board may not approve respecting interstate or overseas air transportation any such contract or agreement, or any modification or cancellation thereof, that limits the level of capacity among air carriers in markets in which they compete, that fixes rates, fares, or charges between or among air carriers (except for joint rates, fares, or charges).

“(B) In any proceeding before the Board involving the application of the standards set forth in subparagraph (A) (i) (I) of this paragraph, the party opposing the proposed contract, agreement, or request shall have the burden of proving the reduction or elimination of competition, and the availability of alternative means having less anticompetitive effects, and the party defending the proposed contract, agreement, or request shall have the burden of proving transportation need or public benefits.

“(C) In any proceeding before the Board involving the application of the standards set forth in subparagraph (A) (i) (II) of this paragraph, the Board, upon its own initiative or at the request of the air carrier, shall take appropriate steps to obtain the written opinion of the Secretary of State or the Secretary of Transportation with respect to international comity or foreign policy considerations.

“(D) The findings required by subparagraph (A) (i) of this paragraph, shall be included in any order of the Board approving or disapproving any contract or agreement, or any memorandum of any contract or agreement, or any modification or cancellation thereof, or any request.

“(E) Notwithstanding the provisions of Section 414, the Board shall, as part of any order which approves any contract, agreement or request or any modification or cancellation thereof, on the basis of the findings required by subparagraph (A) (i) of this paragraph, exempt any person affected by such order from the operations of the “antitrust laws” set forth in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12) to the extent necessary to enable such person to proceed with the transaction specifically approved by the Board in such order and those transactions necessarily contemplated by such order.”

(4) Redesignate subsections (d) and (e) as (b) and (c).

SECTION 13

Amendment to Section 416(b) of the Federal Aviation Act:

“(7) the Board may by order, to the extent it finds that such action is required in the public interest, exempt any foreign air carrier from the requirements or limitations of this Act, to the extent necessary to authorize the foreign air carrier:

“(i) to lease or charter aircraft, without crew, to a United States direct air carrier for the performance of service in interstate, overseas, or foreign air transportation by or on behalf of such air carrier under an agreement approved by the Board, subject to such safety regulations as may be prescribed by the Secretary for such operations, or

“(ii) to temporarily engage in interstate or overseas air transportation if the Secretary of Transportation declares that an emergency exists as a result of a sudden and critical reduction in capacity by one or more U.S. air carriers which interrupts interstate commerce to a degree that deprives any section of the United States or its territories of essential air transportation service. Such temporary transportation shall be limited to those stranded passengers holding confirmed

reservations on the carrier or carriers suffering the sudden and critical reduction in capacity and arrangements for such transportation shall be provided by the carrier or carriers suffering the reduction in capacity. Before the Secretary of Transportation can declare that such an emergency exists, he must determine that other U.S. air carriers and other U.S. transportation modes are unable to accommodate those stranded passengers holding confirmed reservations on the U.S. air carrier or carriers whose reduction in capacity caused the emergency. When the air carrier or carriers whose reduction in capacity caused the emergency have restored essential air services, the Secretary of Transportation shall declare that the emergency no longer exists and the authority conferred by this provision shall terminate immediately."

SECTION 17

Amendment to Section 1102 of the Federal Aviation Act:

(1) Insert "(a)" immediately after "Sec. 1102,"

(2) Add the following new subsections:

"(b) In formulating positions for and in the exercise and performance of their powers and duties with respect to foreign air transportation negotiations of any treaty, convention, or agreement between the United States and any foreign country or countries, the Congress intends the Secretary of State, the Secretary of Transportation and the Civil Aeronautics Board to take into consideration the policies contained in Section 102 of this Act.

"(c) In connection with negotiations and consultations concerning routes, rates or services in foreign air transportation between the United States and any foreign government or foreign governments, the Secretary of State shall establish rules for the participation on U.S. delegations by at least one representative of each House of Congress, and representatives of U.S. air carriers, consumers and labor, as observers, provided, however, that such participation may be withheld or withdrawn if the Secretary of State finds that it will be a burden on or will impede the foreign policy duties of the State Department, and provided further that in the case of non-governmental parties such participation will not be paid for by the United States."

SECTION 19

Amendment to Section 1104 of the Federal Aviation Act (substitute the word "or" for the word "and" in the existing text):

"... if disclosure of such information would prejudice the formulation and presentation of position of the U.S. in international negotiations, or adversely affect the competitive position of any air carried in foreign air transportation..."

SECTION 21

Amendment to Section 1117 of the Federal Aviation Act:

(1) Same language as contained in Sec. 21 of S. 1300 for Section 1117 (a), (b) and (d).

(2) Delete caption and text of subsection "(c)" of S. 1300 and substitute new subsection "(c)", as follows:

"(c) At least fifty (50) per cent of the property procured, contracted for, or otherwise obtained in furtherance of the purposes or pursuant to the terms of any contract, agreement, or other special arrangement made or entered into by the United States, which is financed by the Export-Import Bank or by foreign military sales credits and which is to be transported by air, shall be transported by U.S. air carriers holding certificates under this Act to the extent authorized by such certificates or by regulations or exemption of the Civil Aeronautics Board to the extent service by such carriers is available."

B. the following are comments of some airlines on the "Goals for International Aviation Policy" in Section 17 of S.1300 (the industry unanimously opposes the codification of goals by federal law).

1. Caption: To better describe what the goals are, and to align the goals section with the rest of Section 1102, the caption could be changed to read: "Goals for International Aviation Negotiating Policy". The caption in Section 17 of S.1300 confuses policy with negotiating goals.

2. Goal number "(4)" could be expanded to include problems other than operational restrictions as follows:

"(4) the elimination of marketing and operational restrictions to the greatest extent possible."

This would recognize "doing business" problems faced by U.S. carriers in many foreign countries.

3. Goals "(5)" and "(6)" could have language "by U.S. carriers" added to the end of the proposed language. This would recognize that no U.S. domestic traffic rights are contemplated for foreign airlines. It would also prompt U.S. negotiators to seek more U.S. gateways, but not give the foreign negotiator the argument that U.S. law requires a grant of U.S. gateways to foreign operators even without U.S. carrier access and without having to negotiate for such access. In short, it does not appear appropriate that the U.S. should emphasize this kind of access, with inherent "giveaway" implications, even before negotiations begin.

4. Goal "(7)" could be rewritten. The proposal, as written, places primary emphasis on helping foreign carriers. It would seem that emphasis on obtaining opportunities for U.S. interests would be more appropriate. We would suggest the following language:

"(7) Operating rights and access to foreign markets for U.S. carriers equal in value to those granted in the United States for foreign air carriers."

5. Goal "(8)" could be rewritten in order to give it broader meaning and scope. We have added proration of fares and sales distribution problems to the examples, since these are costly areas on which U.S. carriers have experienced competitive disadvantages in a number of foreign markets. It would be better to word goal "(8)" as follows:

"(8) the elimination of discriminatory conditions, unfair competitive practices and excessive charges imposed upon air carriers in foreign air transportation in such areas as landing and user fees, ground handling, marketing, proration of fares between air carriers and foreign air carriers, sales distribution systems and aircraft and airport operations."

6. In addition to the proposed goals of Section 17 of S. 1300 if there are to be such goals (a proposal we oppose), it is suggested that the following three goals be added:

"(9) The economic growth of and full employment in the United States and the strengthening of economic relations between the United States and foreign countries through open and non-discriminatory world trade in international air transport services.

"(10) The harmonization, reduction and elimination of barriers to international air transport services on a basis which assures an equitable exchange of competitive opportunities.

"(11) The maintenance of a viable U.S. international aviation industry."

Goals numbered "(9)" and "(10)" take into consideration the concepts contained in the Trade Act of 1974 and are thought to be appropriate additions considering events which have and are happening in world trade. Goal number "(11)" aligns the text of Section 102 of the Act by requiring the other agencies to recognize the need for a viable U.S. international aviation industry. Assuming it is not incorporated by reference in Section 1102, Section 102 only explicitly applies to the CAB.

[The following information was subsequently received for the record.]

AIR TRANSPORT ASSOCIATION OF AMERICA,
Washington, D.C. September 21, 1979.

HON. HOWARD W. CANNON,
Chairman, Committee on Commerce, Science and Transportation, Subcommittee on Aviation, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In the course of the Air Transport Association's appearance before the Aviation Subcommittee at the August 22 hearing on S.1300, we undertook to submit the following additional material for the record:

(1) Summary information concerning the Board's administration of Sections 412 and 414 of the Act, since the amendments introduced by the Airline Deregulation Act of 1978 took effect.

(2) A review of the industry's position on U.S. carrier leasing of foreign air carrier aircraft with crews (wet leases).

(3) A statement of the industry's position on the CAB's suggestions concerning cabotage.

Since the hearing, we have conveyed our responses orally to the Subcommittee staff. They are set forth below for inclusion in the record.

SECTIONS 412 AND 414

Our review of carrier agreement actions taken by the Board since October 24, 1978, as reflected in the Bureau of Domestic Aviation's status files, indicated that only Order 79-8-187, adopted August 31, 1979, had been categorized as a "disapproval". In that order, the Board disapproved four carrier agreements concerning automated services provided to travel agents and commercial accounts, and tentatively decided (by order to show cause to withdraw its approval of the existing automated service rules contained in agreements and amendments approved by the Board over the previous ten years. The Board stated that it was prohibited from approving the agreements by the new test of section 412(c) (2) (A) (i), which it concluded had not been met by the carriers.

I would be misleading, however, to interpret the "approval"/"disapproval" categorization as full evidence of the Board's administration of these sections of the Act. The nature of carrier agreements is such that Board rulings do not often fall into a flat "disapproval" category. Rather, the Board frequently weeds out elements which it finds objectionable, by approving an agreement subject to the condition that those elements be deleted or modified.

This practice prevailed prior to last year's amendments of Sections 412 and 414, and continues to this date. Thus, for example, by Order 79-5-33, dated May 3, 1979, the Board conditioned continuation of its approval and immunization of organizational agreements of Airline Tariff Publishers Inc. upon removal of a particular section from one of the agreements. Similarly, since the Deregulation Act amendments, the Board has conditioned its approval of several commuter replacement agreements filed by Allegheny Airlines upon deletion of various sections of those agreements—features of the Allegheny commuter program which had previously been approved by the Board (Orders 79-2-108, 79-3-166, 79-4-143 and 79-7-138).

These actions are indicative of the Board's response to last year's amendments to Sections 412 and 414. So too, is the Board's inaction on such important questions as the future of the scheduling agreements, through which the airlines cope with FAA-imposed quotas at certain high density traffic airports. The Board has had this question under consideration for over a year now, and public pronouncements by Board officials have indicated that the unprecedented delay in processing the pending agreement extension applications has been occasioned by deliberations over the issues raised by section 412(c) (A) (i).

In seeking the addition of a separate, alternative standard for testing agreements under section 412(c) with particular applicability to agreements affecting foreign air transportation, we do not rely solely on the Board's post-Deregulation Act administration of the test for agreements affecting interstate and overseas air transportation. Rather, we submit that unqualified application of the domestic standards, grounded on U.S. antitrust principles, to agreements in the international area is inappropriate. For example, S. 1300 recognizes that a flat prohibition of capacity agreements in foreign air transportation, such as that applying domestically, is inadvisable. However, there is also important case law on the subject: When the Board was admonished by the Circuit Court of Appeals for the D.C. circuit to do its homework and subject domestic capacity agreements to the *Local Cartage* test, the Board concluded that the agreements failed to meet that standard and should be disapproved (Order 75-7-98, July 21, 1975). We do not suggest that this decision precludes future approval of a necessary international capacity agreement. However, against that background, we do believe that considerations of foreign policy or international comity should be specifically recognized as an additional, alternative basis for approval. This will assure the ability to accommodate inter-governmental understandings—sometimes temporary in nature—which must occasionally be reached in the national and public interest, despite basic conflicts with U.S. antitrust principles.

Our description of the Board's historic and continuing practice of approving agreements subject to deletion or modification conditions is also pertinent to another area of inquiry during the hearing. Specifically, the conditional approval technique continues to offer the means by which various elements of agreements may be effectively delineated for approval or disapproval. We believe this longstanding Board practice complements our proposal to amend Section 412 to provide for the automatic conferral of antitrust immunity upon agreements which trigger and pass either of the alternative tests which we propose for section 412(c) (2) (A) (i). In this regard, it should be noted that our proposed amendment only contemplates immunization to the extent necessary to enable the par-

ties to proceed with the agreement, a concept which further accommodates delineation.

Lastly, we urge the Subcommittee not to adopt the Board's proposal to delete the phrase "the need to improve relations among and coordinate transportation by, air carriers" from subsection (a) (3) of Section 102. There can be no question but what Congress intends competitive market forces and actual and potential competition to shape the national air transportation system (see § 102(a) (4)). However, the system remains an integrated network of services which will by definition require coordination by the competitors to ensure an efficient flow of traffic at the lowest possible cost. The phrase, therefore, remains both desirable and appropriate as policy guidance toward an unquestioned objective—the continued facilitation of air transportation for the traveling and shipping public.

WET LEASES

As requested, we reviewed our position on the proposed authorization of U.S. carrier leases of foreign aircraft with crews. Our conclusion was to continue our opposition to the proposal.

If a wet lease of a foreign carrier's aircraft were authorized between that carrier's U.S. gateway and other U.S. points, the foreign country involved would effectively gain access to interior U.S. points without having to negotiate for such points. The wet lease would not only give the foreign operator exposure in these markets, but would also give it a much more valuable operation than would coterminous rights because local traffic could be carried on, and help to sustain the viability of the added segment. Moreover, the foreign carrier would receive the benefit of the through traffic due to the single plane service and the proration of joint fares with the lessor company.

Further, as the Department of Transportation witness pointed out at the Subcommittee hearings, the operation of leased foreign aircraft by foreign flight crews and cabin attendants necessarily complicates the tasks of enforcing crew hours and training and equipment logs.

More importantly, from the labor relations point of view, we do not know of any operating U.S. carrier that could enter into a wet lease without incurring labor problems. Consequently, we have serious questions as to the use which would actually be made of the proposed authority. The phasing out of entry control under the Deregulation Act does suggest at least one scenario. We anticipate that shell companies would take advantage of the situation by leasing equipment with crews from other countries to operate services within the United States. The net effect would be a cabotage operation by subterfuge. Since such operations would not be limited to emergency situations, the end result of the sharing of domestic markets with disguised foreign operators would be a weakening of the U.S. carrier system.

In summary, we see little if any practical utility in the suggested authority for operating air carriers. Nor do we see potential benefits for the traveling and shipping public which cannot be achieved in the new free competitive environment for U.S. carrier operations. In our view, the ultimate, sole beneficiaries would be foreign flag carriers, as they would effectively add both foreign and domestic traffic right to their operating authority.

CABOTAGE

We also reviewed the CAB's position on "emergency cabotage" and its suggested amendment to Section 416(b) of the Act. As we indicated to the Subcommittee staff, we are deeply concerned over the extreme broadness of that proposal. We strongly favor an explicit limitation of the authority to emergency situations, with perimeters defined in the statute. Absent such circumscription, the Board will be prompted to expand the cabotage exemptions beyond circumstances when critical reductions in capacity may necessitate the temporary provision of transportation by foreign air carriers.

As we stated at the hearings, we do not believe that a shortage of seats during a peak season in a saturated market should in any event constitute an emergency if the incumbent carriers are operating in a normal pattern. While we appreciate that this is not in fact intended, we suggest that the statutory language itself be so drafted as to preclude it.

In general, if the marketplace requires additional carriers, the Board has ample power to give the necessary authority, by certificate or exemption, to interested U.S. carriers.

With regard to the emergency situations envisioned by this proposal, we urge that it be made clear that all U.S. flag airlines, and other U.S. modes where appropriate, would be offered the authority to operate the required services in the emergency period before foreign carriers would be contacted or given exemption authority.

As you know, the U.S. flag carriers have significantly moved from the position held for over 40 years that foreign air carriers should be prohibited from carrying local traffic between U.S. domestic points at any time. We believe the position which we have advanced meets the needs of the public when there is an air transportation emergency and offers a solution to a problem of potential public hardship which hopefully will rarely become a reality.

Respectfully submitted,

NORMAN J. PHILION,
Executive Vice President.

The CHAIRMAN. We will take a 5-minute recess before proceeding with Mr. George Baldwin, chairman, Guam Chamber of Commerce.

[Recess.]

The CHAIRMAN. We will next hear from Mr. George Baldwin, chairman of the Guam Chamber of Commerce.

STATEMENT OF GEORGE BALDWIN, CHAIRMAN, GUAM CHAMBER OF COMMERCE, AGANA, GUAM

Mr. BALDWIN. Thank you, Mr. Chairman. We are very pleased that we were invited. If I might read the testimony?

Thank you for affording the Guam Chamber of Commerce this opportunity to present testimony on S. 1300. The Guam chamber has followed national aviation developments for several years. This is a matter of necessity because of the distances involved for any traveling, whether for business or pleasure or both, that require residents of Guam to use available air transportation.

In addition, tourism is Guam's largest industry, and, therefore, there is total dependence on air transportation to provide Guam with visitors. Most importantly, however, Guam must be able to take advantage of its location in the western Pacific to serve as the air transportation hub for this part of the world.

Much has been said about Guam's dependence on the Federal Government. However, not enough is said about Federal legislation and regulations that hinder economic growth and development and necessitate large doses of Federal assistance. Guam desires only to be rid of Federal restraints and to take advantage of its unique location that will enable the island to fully utilize its resources. S. 1300, if enacted, could assist Guam to attain its objectives.

In the sections dealing with Board policy, section 102(a) (3), (4), (8), and (9) are of particular relevance to Guam's situation. I shall detail the relevance of these subsections in that order.

Until 1969, the direct Guam-Honolulu route was served by only one air carrier. In 1969, another carrier started to serve that route. Traffic and freight volume increased at rather impressive rates until 1975 when the newer carrier discontinued service, and Guam had to make do with only one carrier until last fall when temporary certification was awarded to several carriers, of which two are currently serving Guam.

During the period in which only one carrier served the Honolulu-Guam direct route, numerous complaints were made against that carrier. These complaints ranged from poor service onboard the aircraft

to the inconvenient hours for arrivals and departures which passengers were subjected to. High prices and the fact that this carrier rarely departed or arrived on schedule were also among the complaints.

Speaking to No. 4, Guam is, geographically, at the crossroads of the Pacific. Until very recently, however, Guam was served by long range carriers. These carriers have always maintained that there was little profitability on the route, but they were awarded the routes rather than the intermediate range carriers.

The same holds true for foreign carriers. International trunk airlines have been interested in passing through Guam, but it is the regional carriers who should be allowed, if a choice has to be made.

No. 8: This is very relevant to Guam because of its relative isolation from the mainland U.S.A. However, Guam need not be such a needy recipient to direct Federal aid if only restrictions were lifted and a more realistic aviation policy pursued.

No. 9: The Guam chamber has long maintained that if market forces were left alone, Guam would have more and better air service. Since the time when more carriers were certificated to serve Guam, service has improved, better hours for arrivals and departures have been scheduled, and fares have fallen. Although no figures have been released on volume of traffic, it must be on the increase for all the improvements to have occurred.

The Guam Chamber of Commerce support your bill but wishes also to address the issue of cabotage. Guam is a part of the United States but is not a port of entry, nor is it part of the customs territory. Many foreign air carriers wish to land on Guam but are constrained from doing so because of the cabotage rulings. Guam's relative isolation from the mainland U.S.A. and its proximity to Far East Asia and the newly emergent nations of the Pacific place us in a different set of circumstances from other American communities.

Guam needs to be allowed to compete for foreign business and tourists on a more competitive basis. Permitting foreign carriers to pick up the relatively small number of Guam-originating passengers will only make Guam more convenient to get to and should increase volume in the long run. At present, there are three foreign carriers who have transit rights but not pickup rights on Guam. As America searches for ways to cut the balance-of-payments deficit, it should be realized that Guam can be utilized optimally as a transportation, distribution, and administrative center for American corporations doing business in Asia and that one of the easiest and quickest ways to facilitate greater volume of trade within Far East Asia is to look on Guam for its strategic economic value.

Someplace in the United States must be allowed to cater to the growing need for export facilitation to Asia. Guam is in the same time zone and is within a few hours of East Asia's major cities: Bangkok, Taipei, Tokyo, Manila, Hong Kong, Singapore, and Jakarta. Unless cabotage is permitted, full utilization of Guam's potential is unlikely. The economic benefits will be great, but actions must be taken to insure that the competitive edge of Guam is employed.

The CHAIRMAN. Thank you, Mr. Baldwin, for a fine statement. You say that two U.S. carriers are currently serving Guam and that improved service and lower fares have resulted. Yet, you advocate cabotage as well for a relatively small number of Guam-originating

passengers. Would you more clearly explain the economics of what you see foreign air carriers doing that U.S. carriers do not or will not do?

Mr. BALDWIN. When we had the single carrier, we were really at its mercy in terms of a strike and that sort of situation, aircraft failure, and so on. We think that cabotage provisions are to be enhanced or that foreign carriers are allowed to bring passengers and freight into our island, not perhaps—at least for emergency situations.

The CHAIRMAN. I was going to ask you that. Would emergency cabotage rights solve your particular problem, because if you've got two carriers now and one of them happens to be on strike, there's probably no likelihood that they'd both be on strike at the same time?

Mr. BALDWIN. I am sure it would.

The CHAIRMAN. At least it would seem to me that if you had carriage for an emergency-type situation, that that would probably take care of you?

Mr. BALDWIN. It would help a great deal. Yes, sir.

The CHAIRMAN. You also mentioned Guam's potential to cater to a growing need for export facilitation to Asia. What do you mean by that? Would you explain in a little more detail?

Mr. BALDWIN. Well, Mr. Chairman, our position—because of the high cost of maintaining offices in foreign countries, particularly Asia with the tax situation that exists, with housing, with the schooling for American dependents, and so forth—we see Guam as ideally situated for those countries currently not doing business in Asia and perhaps some who are doing business there, for access to the Asian market.

We are 1,500 to 2,000 miles from almost all of the major cities. We are in the same time zone.

That's our principal objective. That's been the objective of the chamber for the last 5 or 6 years. It seems to be the objective of the Government. We work hand in hand. There aren't enough of us so that we can't afford not to. We see Guam as serving that kind of a role.

Additionally, we have a very strategic location for the U.S. military. We have a SAC installation, Polaris submarines there, that sort of thing.

From the other side of the coin, the Japanese tourist traffic to Guam has increased substantially in the last 4 or 5 years and continues to increase substantially, even with the problems that the foreign air carriers have in getting fuel. We still are seeing more and more tourists coming to Guam, because of access.

We understand the Koreans may come out in a year or so. We are looking at Guam as being both a place to service the Orient from as well as a place to provide American experience for Asians.

Right now, we are getting mostly honeymooners. The Japanese couples come to Guam, get married there, spend 4 or 5 days, and go back.

In the long run, we see our role as being a tourist attraction center for Asians as well as a place for U.S. business to operate from.

The CHAIRMAN. How many foreign carriers go through Guam now?

Mr. BALDWIN. Well, I guess there's about three or four. China Airlines goes through; Air Nauru; Japan Airlines comes in presently, carries passengers to and from Japan. PAL goes through from the Philippines. They are not allowed to pick up passengers.

The CHAIRMAN. Can those carriers carry passengers from Guam to Japan?

Mr. BALDWIN. Only JAL can.

The CHAIRMAN. Philippine Airlines can't?

Mr. BALDWIN. No.

The CHAIRMAN. What are the two U.S. carriers you have now?

Mr. BALDWIN. Pan Am, Braniff, and Continental. Braniff is a temporary certificate, I believe. I am not sure.

The CHAIRMAN. Continental services all through the Trust Territories?

Mr. BALDWIN. Air Micronesia does, yes. Air Micronesia, I guess, you would consider it a foreign carrier, even though it's an offshoot of Continental. They have done very well. Those carriers have been very good for our community. They've had our best interests at heart, I think, most of the time. Certainly they claim not to be profitable, but they have invested dollars in the Trust Territory and on Guam.

We'd like to see more airlines coming out. We would like to see more traffic to our part of the world.

The CHAIRMAN. Did TWA at one time when they serving the Pacific, did they serve through Guam? I can't remember.

Mr. BALDWIN. Yes. That was part of the air swap—the swap of air travel.

The CHAIRMAN. Thank you very much, Mr. Baldwin. We appreciate you being here and presenting your testimony.

Mr. BALDWIN. Thank you for inviting us.

The CHAIRMAN. Next we will hear from Mr. Edward A. Dingivan, vice president, the National Air Carrier Association, and Mr. Edward J. Driscoll, president and chief executive officer of NACA.

STATEMENT OF EDWARD A. DINGIVAN, VICE PRESIDENT, NATIONAL AIR CARRIER ASSOCIATION, WASHINGTON, D.C.

Mr. DINGIVAN. Thank you very much, Mr. Chairman. I am Edward A. Dingivan, vice president for the National Air Carrier Association. I wish to thank you for the opportunity to present our statement today.

Mr. Driscoll, who planned to be here as you know, regrets that he is unable to be here because of a previously scheduled meeting out of the country. I should like to request that our full testimony which we have submitted be made a part of the record. With your concurrence, I will present a summary of the pertinent portions of that testimony.

In addition to our views on S. 1300, our testimony also provides a brief overview of where our industry is today based primarily on the effect of the Airline Deregulation Act of 1978. As you are well aware, many of the provisions of the Deregulation Act, along with its general whole competitive character, have had a significant effect on the international aviation as well as the direct effect on the domestic scene.

An example is the manner in which the Board has proceeded in the granting of certificates through show-cause proceedings and exemptions. These expedited procedures have saved time, money, and manpower.

I am pleased to report that the Board, after your hearings on S. 3363 and the enactment of the Deregulation Act, utilized these expeditious procedures to grant schedule authority to charter carriers, the former supplemental carriers most recently.

This new authority is extremely broad in scope and covers both domestic and international routes. In this connection, we have appended to our statement a list of the new authority conferred upon Evergreen and National Airlines, Trans International Airlines, and World Airways.

I might also note that tomorrow on the Board's sunshine meeting agenda are two other important items that we have been awaiting decisions by the Board. That relates to the split-cargo and split-cargo passenger authority and also direct sales.

To the specifics of S. 1300, Mr. Chairman, we agree with section 4; however, we do recommend that S. 1300 be amended to provide for the issuance of indefinite certificates by the Board and further that any outstanding certificate be conformed to likewise make them indefinite.

The matter of having time-limited certificates and going through the processes of reapplication—even though you may be willing with improved procedures these days—still is a cost. We would like to see that eliminated. That does not mean permanent. It means indefinite. The Board does have the authority to make adjustments, should it have the basis for doing so.

With respect to section 13, we endorse the provisions which amend section 416(b) of the act. This provision will authorize the Board to approve wet leases or the charter of aircraft from a foreign carrier to a U.S. carrier.

As we indicated in our testimony, it is important to add to the legislation the authority for U.S. carriers to lease that charter aircraft to foreign carriers on the same basis.

As you noted yesterday when Chairman Cohen was present and asked the question about 399, I think that the Board staff will find that there will be a need for an adjustment there or an amendment to the legislation. They have indicated that they will take a look at it.

We also commented on the issue of cabotage, as we believe that the wet lease of aircraft for operation within the United States could function as a form of cabotage. But beyond that, we understand and accept the notion that there could be circumstances whereby the only capacity available to meet emergency transportation needs between two U.S. points may be that available from foreign carriers. Should these circumstances exist, we believe that under specific guidelines, subject to the Presidential findings—a Presidential finding that a transportation emergency exists—authorization for use of foreign capacity may be properly authorized.

We urge such a Presidential finding be based on the condition that the authorization would be for a temporary period, under precise and limited circumstances, that the public interest truly requires the service, and further that there is adequate proof that alternative transportation by U.S. carriers is not available.

We believe that recognition of a valid transportation emergency is a rational and prudent action. We suggest, however, that we must employ some sense of the traditional checks and balances so that one agency of the Government or one office within such an agency cannot make such an important determination unilaterally.

We do not, however, agree with the evident intent of the Board and the Department of State to use cabotage as bargaining chips.

I am not sure that we all understand the unknown unknowns in that particular situation, and we regard that with great concern.

We endorse the goals set forth in section 17 with respect to amendments to section 1102(b) (7) of the act, provided it is limited to third and fourth freedom traffic.

As presently proposed, subsection (7) would authorize fifth freedom traffic. Historically, the authorization of carriage by fifth freedom traffic has not been—with very few exceptions—a grant of rights but tied to the concept of comity and reciprocity.

Obviously, we are looking at the Icelandic situation when we make that reference.

Under subsection (8) as proposed, we strongly suggest that restrictions on operations because of limitations on available fuel or landing slots be considered under the overall umbrella of discrimination and unfair competitive practices.

Two of the principal examples of discrimination with which we—the charter carriers are faced are the United States-United Kingdom agreement known as Bermuda II and the current bilateral relationship between the United States and Japan.

We recognize, as you know, Mr. Chairman, that Bermuda II was constructed as an anticompetitive agreement designed to limit capacity, eliminate the concept of multiple designation, and in general restrict carrier freedom in the marketplace.

It is the antithesis of the principles set forth in S. 1300.

We suggest that the United States cannot have two such inconsistent and opposing policies. If the principles involved in S. 1300 are to prevail, then Bermuda II in its present form must be renegotiated or perhaps ultimately renounced. We hope the council would find such a proposal to be in the public interest and would recommend specific action for the United States to follow.

With respect to Japan, the United States seems to be completely frustrated in its attempt to negotiate a procompetitive agreement, notwithstanding several efforts which the United States has made to provide a basis for consultations.

The bilateral situation between the United States and Japan appears to be deteriorating rather than improving. With respect to our specific concerns, Trans International and World have all but totally been excluded from the Japanese market because of onerous restrictive conditions imposed on their operations.

With absolutely more exemption, we can no longer operate into Japan, and unless we operate to use air field stages or rather unless we attempt to use air fields that are totally unsuitable in meeting our operational needs to fly nonstop to Anchorage, Alaska; Norita, the airport in Tokyo, is actually forbidden territory for us today.

While we have been virtually excluded from Japan, the CAB with the encouragement of the Department of State continues to permit to move U.S.-originating traffic on on-route and off-route charter from the United States to Narita. Adding insult to injury, most of this traffic originally moved on U.S. air carrier aircraft. The United States must find a solution to this unacceptable situation or be prepared to retaliate in kind.

This may be the only language some countries understand and respect.

We endorse the establishment of an Industry Advisory Council as proposed in S. 1300. As you recall, it was necessary for the Congress in the form of the Smathers report in the mid-1950's to insist that industry advice be sought and that industry representatives be permitted to function as observers and advisors in bilateral negotiations. It is very likely that had industry advisors been able to function in the traditional sense during the negotiations of Bermuda II, the United States would have had a much more liberal and progressive and competitive agreement.

We cannot depend upon consistency of policy between administrations because personalities change, and when personalities change, so do policies.

Consequently, it seems essential to establish industry representation in bilateral negotiation through the legislative process. We are concerned, however, that the language in S. 1300 which states that the Council shall advise "when appropriate" may very well lead to industry or Council exclusion from a most important negotiation.

For the most part, when foreign governments participate in negotiations with the United States, their airlines are present because the foreign government is the airline and the airline is the government.

We therefore recommend that the legislation confer observer or technical adviser status on members of the Advisory Council, so that they cannot be excluded as observers from the central negotiations.

With respect to section 23, the Fair Competitive Practices Act, I believe agencies of the U.S. Government should be able to retaliate in kind when a foreign government or an airline takes discriminatory action against one or more U.S. carriers. Furthermore, we suggest that when it is appropriate for the United States to initiate action under the Fair Competitive Practices Act, action should be complete within 30 days and a report published at that time indicating what action has been taken or the status of the ongoing action, if not completed, or the reasons for failure to take appropriate action.

In this regard, Mr. Chairman, I have heard arguments about the 30-, 60, 90-days; and I would like to suggest that when the CAB is asked to initiate action, it's usually at the tail end of many consultations with the Department of State and the DOT and the CAB. It is not a new action.

Just recently I noticed that the Department of State has met with representatives of the Japanese Government again on situations. This has been going on for several years. The matter of the CAB taking action within 30 days is more or less on the tail end of a long, tedious procedure.

That really is the end of my statement, Mr. Chairman. I am prepared to answer questions.

The CHAIRMAN. Thank you very much, Mr. Dingivan.

On that last point, this bill would give the authority to any carrier to file a complaint. I think that would be the triggering mechanism, then, to require some action. That might occur earlier in the process than you were anticipating.

Mr. DINGIVAN. Well, we would still hope that—I guess we couldn't argue to much with 60 days. We would certainly hope that we would not provide a vehicle whereby you can get into a sequence of events

so that it becomes 30, 60, then extensions. Pretty soon we are dealing with a year, which is the situation which we are in.

Obviously, this tightens it up. We would endorse some variation on the theme. We still prefer 30 days, if possible.

The CHAIRMAN. You advocate renunciation where, as you say, a negotiation fails to produce the desired result. Do you have any specific agreements in mind where you believe today that negotiation has taken us as far as we can go and renunciation is the only step left?

Mr. DINGIVAN. I think Bermuda II is a potential example of that. We have been negotiating charter rights now with the United Kingdom ever since the agreement was signed, because it did not include charter rights. We are still in the process of doing that.

We met several months ago in April in London. Some papers were prepared. We had objections to them. Where that sits now, no one seems to know. It just sort of disappeared.

We have not resolved all the issues relating to the United Kingdom-United States position.

Furthermore, because of the limitation on designation, we cannot operate scheduled service; no other carrier can operate scheduled service, from the designated locations. Originally, we wanted to provide a service similar to Laker's, but we were prohibited from doing that.

The CHAIRMAN. Aren't you currently operating charters to the United Kingdom now?

Mr. DINGIVAN. Yes, we are operating charters to the United Kingdom. We still feel that the issue of designation is a major one that has to be addressed.

The CHAIRMAN. Do you agree with the scheduled airlines' complaints that our negotiators are giving away more than they are getting in return in the recent bilaterals which have been achieved?

Mr. DINGIVAN. For the most part, from the negotiations I have attended as an observer, we are granting rights into the United States primarily not in exchange of rights, but more for an exchange of tariff clauses, mutual disapproval. This does lead to lower fares, perhaps, for the consumer; and it might even lead to an increase in traffic. But I am not so sure that the grant of long-term traffic rights into various major cities in the United States can be guaranteed, or that the other governments, in fact, will guarantee that the things for which we are trading will remain in place.

They will have the rights to Los Angeles, for example, San Francisco, Atlanta, Chicago, Dallas, for a tariff clause. There is no guarantee that those tariffs will remain in effect, or will be as low or moderate as our negotiators anticipate, in the long term. We really have no way of taking those rights back, once we grant them.

The CHAIRMAN. Well, as you know, I am in agreement with you on Bermuda II. I took the position that they should have negotiated charter rights, which was not done on the basis that continuing discussions would be held, or continuing negotiations.

One of the important points that's been raised during the hearings is that the problems of implementing a new bilateral, liberal bilateral, is often as difficult as the problems of negotiating the bilateral.

Does NACA have any comment on this, based upon the experience of your member carriers?

Mr. DINGIVAN. We had a little difficulty in Korea after the bilateral was signed. That has to do with, again, the matter of slots and fuel. It's somewhat comparable to the Japanese situation, wherein we were informed they didn't have sufficient fuel and didn't have landing slots.

We eventually, through the State Department, put pressure on them and were able to get in. But I think they—in my judgment, they had every intent of attempting to frustrate some aspects of that agreement.

The CHAIRMAN. But you are still not able to get into Japan?

Mr. DINGIVAN. No, sir. We cannot get into Narita, even though JAL operates from the United States into Narita and manages to get sufficient fuel and slots.

We have been offered opportunities to operate from Fukioko, one of the other, smaller airports. Then we have to download in order to take the necessary fuel to cover the critical leg to Anchorage.

The CHAIRMAN. Are our scheduled carriers permitted to operate charters into Narita?

Mr. DINGIVAN. I believe they have been, but the U.S. carriers operating into Narita these days have not been doing very much in the charter area. Pan Am has done some, I believe. Tiger has done some in terms of cargo, but I don't believe Northwest has done very much in the way of charters at all.

I don't think the issue has been tested.

The CHAIRMAN. Thank you very much, Mr. Dingivan. We appreciate your being here.

Mr. DINGIVAN. Thank you, sir.

[The statement follows:]

STATEMENT OF EDWARD J. DRISCOLL, PRESIDENT AND CHIEF EXECUTIVE OFFICER,
NATIONAL AIR CARRIER ASSOCIATION

Mr. Chairman, my name is Edward J. Driscoll, President of the National Air Carrier Association. We appreciate this opportunity to present to this committee the views of the National Air Carrier Association and its member carriers with respect to S. 1300 and international air transportation generally.

You will recall that we have presented views to you before with respect to international air transportation. On November 29, 1977, we testified with respect to the aviation agreement between the United States and the United Kingdom and on August 23, 1978, on S. 3363. We also appeared and furnished comments with respect to regulatory reform in domestic air transportation and supported airline deregulation provided it was accomplished on an evenhanded basis and was applied to all segments of the industry in a nondiscriminatory manner.

We are therefore pleased at this opportunity to present our views on the instant bill which is designed to promote competition in international air transportation, provide greater opportunities for U.S. air carriers, establish goals for developing U.S. international aviation negotiating policy as well as to provide for other related purposes.

It is appropriate on this occasion to review where we are and what has been accomplished during the past year since the Airline Deregulation Act of 1978 was enacted. Such a review will provide a means of identifying areas that require specific attention in order to interrelate international air transportation with domestic deregulation so that the U.S. will have a compatible policy governing both.

You will no doubt recall that during our last appearance before this committee on S. 3363, we asked for an equal opportunity to compete and supported legislation that would authorize the then supplemental carriers to perform scheduled service between a proposed number of points. The hearings you conducted in connection with S. 3363 were indeed fortuitous and the plea of the supplemental carriers for an equal opportunity to compete were acknowledged by

you and this Committee and by the Civil Aeronautics Board through its actions. Under the authority conferred upon the CAB by the Airline Deregulation Act of 1978, the Board proceeded to grant the former supplemental air carriers scheduled individually-ticketed authority in both domestic and international markets.

The Board has used the exemption or show cause process in order to broaden the availability of scheduled service and especially, low-fare service, to the traveling public. The charter-only carriers received certificated authority for the performance of individually-ticketed scheduled authority through expedited procedures, and some have received authority through the dormant route procedure. I am appending, as Exhibit 1, a statement of the authority now held by Evergreen, Trans International and World. Needless to say, however, the development of scheduled authority has to be accomplished on a very deliberate basis in order to assure that low-cost service can be made available and sustained. I am sure you realize that prior to the grant of scheduled authority, the charter companies had booked a large part of their capacity in the charter mode and therefore, did not have substantial capacity to assign into scheduled service. World Airways, however, inaugurated transcontinental service and did so at the low one-way fare of \$108.00. This induced competitors to make the same fare available on a restricted basis; i.e., a limited number of seats, while marketing the remaining capacity of the airplane at higher rates and fares. Likewise, Trans International has inaugurated service from both Los Angeles and New York to the Netherlands—this also at one low fare. Evergreen has inaugurated domestic scheduled cargo service. All carriers are now looking at additional scheduled service in the areas that they have been granted authority and will be making decisions as to when such service will begin consistent with maintaining capacity to serve the international passenger charter market, which presently is the primary business of some NACA carriers.

You will recall that when the Airline Deregulation Act was considered by the Congress, we testified as to the rather unlimited competition that the charter-only operators were facing and had recommended limitations on the off-route authority of the scheduled carriers. Those limitations were not incorporated in the legislation. However, under Section 401(d) of the Act, the Congress did limit carriers holding 401(d) (1) and (2) certificates, prior to January 1, 1977, from being eligible for a charter certificate.

Notwithstanding this limitation, the Board has, through successive steps (one of which is still pending), eliminated all of the restrictions surrounding the operation of charters by scheduled carriers. Pending is a proposal to eliminate all volume limits on all-cargo carrier passenger charters and on all off-route charters by combination carriers and to lift frequency limitation on international charters. This, in essence, will give the scheduled carriers what is equal to a charter certificate notwithstanding the provisions contained in the Act.

Charters are still treated differently than scheduled service. For example, tour operators must purchase bonds and place funds in escrow to guarantee their performance to the public. We see no reason to burden carriers and tour operators with that requirement, the cost of which is always passed to the passenger. The industry has matured and such conditions should no longer be required. Bonding, escrow, etc., are not required for tours operated on scheduled flights. We recommend the deletion of the requirement with respect to charters.

As we stated in our earlier testimony, the NACA carriers favor price competition. We noted, however, that the Board needed authority to deal with predatory or discriminatory type rates. We pointed out at that time as follows:

"There is a vast potential for abuse in the establishment of scheduled air fares and when such abuse occurs, the Board should be able to do something about it. A common form of abuse is setting the normal coach or economy fares far above cost plus a reasonable return in order to cross-subsidize discount fares that are below cost."

We are still of that view and believe the Board should continue to exercise authority in that area in accordance with the provisions of the Airline Deregulation Act of 1978.

The Airline Deregulation Act also permitted the Board to grant authority to the charter carriers to transport mail. As of this date, no mail has been tendered for movement by the charter carriers, largely because of the prohibitions in Section 5402(a) Postal Reorganization Act. H.R. 2424 would amend that section of the Postal Reorganization Act, permitting the Postal Service to contract for movement of mail on the same basis that other departments of the Government

can contract for movement of cargo and passengers. We have submitted testimony in support of H.R. 2424, as we believe this to be in furtherance of the Airline Deregulation Act of 1978. I will be pleased to make a copy of my testimony on H.R. 2424 available for the record.

As you know, charter air transportation is still the major part of the charter-scheduled carriers' (formerly known as supplementals) operations. The Public Charter rules and regulations, adopted by the Board and affirmed by the Congress in the Airline Deregulation Act of 1978, have been helpful in expanding that mode of air transportation. Public Charters are now effective within the United States and between the United States and some foreign destinations, such as, Belgium, the Netherlands, Germany, Israel, Singapore and Korea. There are, however, major charter markets where the Public Charter rules are not accepted such as the United Kingdom and France. Likewise, they are not accepted by the Scandinavian countries, Italy, Japan, Australia, New Zealand and others. The Civil Aeronautics Board, the Department of State and the Department of Transportation have, through the negotiation process, supported the Public Charter concept but continue to run into roadblocks with some countries, which inhibit the effectiveness of the Public Charter concept. Thus, there are limitations on expanding this mode of air transportation internationally.

This brief overview provides, we believe, a helpful point of reference with respect to consideration of the "International Air Transportation Competition Act of 1979." S. 1300.

As we view it, S. 1300 would amend the Federal Aviation Act of 1958 in order to promote competition in international air transportation. The amendments to the Act would conform the declaration of policy in international aviation to substantially the same as that which governs domestic air transportation under the Airline Deregulation Act of 1978, placing maximum reliance on competitive market forces on actual and potential competition; the development and maintenance of a sound regulatory environment responsive to the needs of the public; the encouragement of air service through secondary or satellite airports; the prevention of unfair, deceptive, predatory, or anticompetitive practices that would permit air carriers unreasonably to increase prices, reduce services or exclude competition in air transportation; authorize the Board, without hearing, but subject to the approval of the President, to summarily suspend permits of foreign air carriers that have impaired, limited or denied the operating rights of the United States air carriers or where the foreign carrier has engaged in unfair, discriminatory or restrictive practices; authorize the lease of aircraft with or without crew to a U.S. carrier by a foreign carrier for the performance of service in interstate, overseas or foreign air transportation; empower the Board to hold hearings regarding the lawfulness of rates, fares or charges with the power to suspend the operation of tariffs and defer their use for periods not exceeding 365 days, both with respect to new and existing tariffs; establish goals for international aviation policy; establish an International Aviation Advisory Council; provide for observer status for Congressional representatives; provide for the transportation of government financed passengers and property on U.S. air carriers; amend the International Air Transportation Fair Competitive Practices Act to authorize the Board to take action against foreign air carriers who engage in unjustifiable or unreasonable discriminatory, predatory or anticompetitive practices against a United States air carrier.

The NACA carriers support international regulatory reform and support, in general, the provisions of S. 1300, subject to the following comments, suggestions and/or modifications:

Sections 4 and 6

We support the provisions of these sections. We believe an amendment would clarify the intent of Congress and the authority of the Board. We recommend inclusion of the words, "an indefinite" between the words "issue" and "certificate" and deletion of the article, "a" Section 4d(1) line 18, page 5.

Since the Board, under Section 6, has authority to suspend or withdraw any certificate, there would appear to be no reason why certificates should be time limited. If this proposed amendment is approved, we would expect the Board to conform existing certificates accordingly.

Section 13

The proposed Section 13 of S. 1300 which would authorize the Board to approve the lease of charter aircraft with or without crew to a United States direct

air carrier by a foreign air carrier for interstate, overseas or foreign air transportation is, as we view it, a substitution for a direct grant in the Federal Aviation Act to the Board to authorize cabotage operations. We support the proposed provision of 416(b) (7) of the Act, provided, a comparable provision authorizing U.S. air carriers to lease aircraft with or without crew to a foreign air carrier under similar conditions is included.

The existing rules of the Board, specifically Part 399.19, of CAB Policy Statements governing the wet lease of aircraft to foreign air carriers, is severely restricted. Part 399.19, is totally inconsistent with the proposed provisions contained in Section 13 of S. 1300. An extract of the provisions of Part 399.19, is set forth in Exhibit 2 hereto.

With respect to the issue of cabotage, we basically support the position that cabotage operations should not be authorized except where bona fide transportation emergencies exist. We can foresee a situation where the only service available between points within the United States, such as between Hawaii and California might be operations conducted by a foreign carrier because the existing capacity of U.S. air carriers is insufficient on a temporary emergency basis to satisfy a special need. We believe that under such unusual circumstances there should be power in the Executive Branch, upon a proper finding, to authorize for a limited period and under restrictive conditions, foreign air carriers to transport traffic that cannot be satisfied by U.S. carriers between points within the United States. We believe, however, that this authority must be subject to Presidential finding that a transportation emergency exists; the public interest requires the authorization of such service; and that no alternative transportation by U.S. carriers is available during such limited period to satisfy the public need.

Sec. 17—"Goals for international aviation policy."—We endorse basically the goals set forth but recommend that the proposed Section 1102(b) (7) be amended to include the phrase "to third and fourth freedom traffic" between the words "access" and "to" in line 8.

As written Subsection (7) would authorize fifth freedom traffic which historically has been the subject of comity and reciprocity and which we believe would continue to be subject to comity and reciprocity.

Likewise, we believe Section 1102(b) (8) should be made more specific by including after the word "operations" and before the word "prohibition" in line 17 "including limitations on fuel or limitations on landing slots".

Limitations on fuel and landing slots at many airports can inhibit access by U.S. carriers or can preclude some U.S. carriers from conducting operations while permitting others. We believe that no U.S. carrier, whether a charter or scheduled carrier, should be prohibited by reason of restrictions, such as fuel or landing slots, from conducting its operation when authorized to serve a foreign country. If limitations exist which require a reduction in service, due to lack of fuel and/or limitations on the operational capacity of an airport, such limitations must be shared on an equal basis by all users in a nondiscriminatory manner.

Goals for international aviation service are long overdue and are needed in legislative form to correct deficiencies that presently exist in bilateral arrangements between the U.S. and certain bilateral partners.

There are two outstanding examples of these deficiencies:

(1) The Bermuda 2 (so-called) Agreement between the United States and Great Britain; and

(2) The bilateral agreement between the United States and Japan.

The Bermuda 2 Agreement, as the Chairman recognized in his statement introducing S. 1300, is "the greatest step backward in 40 years in attempting to bring market oriented competition to international aviation." In our judgment, the capacity limitation provisions, coupled with the limited authority to designate multiple airlines, precludes the U.S. in its present form from achieving the goals set forth in S. 1300.

No new U.S. air carrier, except under very limited conditions, can be designated by the U.S. to perform service between the major traffic generating markets in the U.S. and Great Britain (such as New York, Boston, Los Angeles, and San Francisco.) Thus, notwithstanding U.S. CAB willingness and public interest requirements, no U.S. carrier can be authorized to operate scheduled services in those markets as they can between the United States, Germany, Israel, and the Netherlands. This presents the United States, in our judgment, with a serious conflict where we espouse the goal of S-1300 to encourage competitive market

forces in international aviation while at the same time we continue in force an agreement which conveys to others an opposite intent. It would appear to us that the U.S. must have one clear policy and not two inconsistent policies—one set forth in legislation—the other the result of continuing a bilateral arrangement which, in fact, is anti-competitive rather than pro-competitive. We believe it is self-evident that the U.S. cannot continue to espouse two diametrically opposed policies. If the policy of the United States is to be pro-competitive, then action must be taken to conform existing agreements with this pro-competitive policy; and if negotiation fails to produce the desired result, then renunciation may be the only solution. We would hope that with regard to Bermuda 2 the Congress would recommend specific steps and action for the United States to follow.

With regard to Japan, the existing bilateral arrangement has been the subject of negotiations for a protracted period of time. The U.S. has indicated time and time again its willingness to reform the agreement along the pro-competitive goals proposed in S. 1300 but instead of beneficial results, these endeavors have resulted in more restrictive actions by the Japanese Government against U.S. interests.

In prior testimony we have acquainted this committee with the difficulties of operating charters between the U.S. and Japan. The last time we advised you, a limited quota was in effect for charter operations performed by World Airways and Trans International Airlines, even though they were designated to perform charter operations by the United States Government. The quota had been unilaterally established by the Japanese. In the last two years the Japanese have failed to establish a quota for even limited operations. Except in the most unusual of circumstances, the Japanese have failed to accord authority for Trans International or World to conduct operations between the U.S. and Japan or through Japan for the alleged reasons, that fuel was not available at Narita, or that landing slots were not available, even though charter carriers from other countries were able to obtain slots. Here again is a situation that demands immediate attention, as the action of the Japanese Government in denying Trans International and World access to Japan is, in our judgment, clearly discriminatory. In view of the restrictions imposed upon Trans International and World by the government of Japan, these carriers have all but abandoned Japan as a market. This results in denial to the public of access to low-cost charter transportation.

At the same time, Japan Air Lines (JAL) continues to operate both passenger and cargo charters to and from the United States. In fact, JAL has succeeded in obtaining shippers, formerly utilizing Trans International or World to utilize Japan Air Lines by being advised that unless they do, their traffic will not move on charter service. Here again is a case for remedial action by the United States. We will comment more specifically on actions that could be taken in connection with Sec. 23 or S. 1300, the International Air Transportation Fair Competitive Practices Act.

The U.S. has faced many obstacles in its international aviation relationships. In several instances, especially in recent negotiations, the U.S. has been able to resolve differences with some governments, but difficulties still remain. For example, this spring there was a near confrontation with the Government of Ireland with respect to U.S. charter carrier rights. These issues were resolved on a temporary basis but a long-term formal agreement has not yet been reached.

Both Governments are again preparing to negotiate charter and scheduled service issues during the month of September 1979. The fundamental U.S. interests are clear. The U.S. must continue to pursue a pro-competitive policy. It must pursue the acceptance of public charter rules; the elimination of Irish Government imposed restrictions on U.S. charter carriers over Aer Lingus' routes to the U.S., and the immediate acceptance by the Government of Ireland of new designations, especially as a result of TWA's withdrawal from Ireland and the fact that Pan American has not exercised schedule rights to Ireland in several years.

INTERNATIONAL AVIATION ADVISORY COUNCIL

We agree with the establishment of an aviation advisory council by legislation. We believe, however, that that section should be broadened by deleting the words in line 11 "when appropriate", placing a period (1) after the word "negotiations" and adding a sentence as follows: "Each member of the Council shall be entitled to participate in all international aviation negotiations as an observer or technical advisor."

Section 23

The proposed amendments to the International Air Transportation Fair Competitive Practices Act would indeed be helpful but could be more specific so that the Board can, in addition to the actions recommended, permit retaliation in kind. For example, if fuel or landing slots are denied to any United States air carrier, the Board, without amendment of its permit or modification thereof, should, in addition to those actions, be authorized to deny the foreign carrier fuel and/or landing slots in the United States. We therefore propose an amendment to the last sentence starting on line 12, page 24, as follows: Insert after the word "to" in line 13 "retaliation in kind". We also recommend the inclusion of a provision within that section which provides: "Whenever the Civil Aeronautics Board, upon complaint or upon its own initiative, determines that a shortage of fuel and/or landing slots exists at a foreign airport which impinges upon U.S. carriers' operations, the U.S. Civil Aeronautics Board shall advise the foreign government concerned, that the U.S. requires nondiscriminatory treatment of U.S. air carriers and that all must share equally in any shortage."

The above provision is essential to preclude a foreign government from denying fuel or landing slots to one authorized U.S. carrier while permitting competing U.S. carriers to operate. Or, on the other hand, to deny such rights to a U.S. carrier, while furnishing fuel or landing slots to its own national carrier. The U.S. Government should be directed to seek inclusion of this provision by amendment to all existing bilaterals as well as inclusion in all future bilaterals.

In order to make the provisions of Sec. (b) (2) meaningful, we believe the following sentence should be added on line 4, page 25: "The CAB or the agency that is assigned action under this section shall proceed at the earliest practical date and thereafter, within 30 days issue a public report covering actions taken, or their reasons for failure to take such actions."

Mr. Chairman, this concludes our prepared statement. We trust you will find our testimony helpful in your deliberations on this legislation. I am sure that you are as gratified as we are pleased with the results that have been achieved to date under the Airline Deregulation Act of 1978. We hope that the Congress will act with the same dispatch on the International Air Transportation Competition Action of 1979 as it did under your able leadership and that of members of the House of Representatives in enacting the Airline Deregulation Act of 1978.

EXHIBIT 1

CHARTER AUTHORITY MEMBER AIRLINES OF THE NATIONAL AIR CARRIER ASSOCIATION,
EVERGREEN INTERNATIONAL, TRANS INTERNATIONAL AND WORLD AIRWAYS AS OF
JULY 31, 1979

By certificate authority

Domestic Passenger Charter Authority—Unlimited authority for Evergreen, Trans International, and World.

International Passenger Charter Authority—Unlimited world-wide authority for Evergreen, Trans International and World Airways except Evergreen does not have authority to serve Japan, Australia and New Zealand.

Domestic Cargo Charter Authority—Unlimited authority for Evergreen, Trans International and World except cargo charters may not be performed within the State of Alaska.

International Cargo Charter Authority—Except for transatlantic cargo charter authority which is held by exemption authority and for which applications for certificate authority are pending, unlimited worldwide cargo charter authority is held by member airlines except Evergreen which does not have authority to serve Japan, Australia and New Zealand.

By exemption authority

Transatlantic cargo charter authority on a paneload basis only (split charter authority is not permitted) is held by Evergreen, Trans International and World.

EVERGREEN INTERNATIONAL AIRLINES, INC.

Authorizations to Provide Scheduled Service for Persons, Property and Mail as
of July 31, 1978

DOMESTIC AND OVERSEAS ROUTES

By certificate authority

Between Houston and Los Angeles/Ontario/Burbank/Long Beach; San Francisco/Oakland/San Jose and New York/Newark; Miami/Fort Lauderdale.

Between Boston; Philadelphia, Washington, D.C./Baltimore and San Juan; Boriquen; St. Thomas; St. Croix.

Between Chicago and Philadelphia.

Cargo authority only between any points within the United States including Puerto Rico and the U.S. Virgin Islands except between points within Alaska and Hawaii.

By exemption authority-

None.

INTERNATIONAL ROUTES

By certificate authority

None.

By exemption authority

Cargo authority only between all United States and European points.

TRANS INTERNATIONAL AIRLINES, INC.

Authorizations to Provide Scheduled Service for Persons, Property and Mail as of
July 31, 1979

DOMESTIC AND OVERSEAS ROUTES

By certificate authority

Between New York/Newark; Washington/Baltimore and Los Angeles/Ontario/Long Beach; Oakland/San Francisco/San Jose.

Between Denver and Honolulu; Hilo.

Between Chicago; San Diego and Honolulu.

Between Chicago and Los Angeles/Ontario/Long Beach.

Between Honolulu and Los Angeles/Ontario/Long Beach; San Francisco/Oakland/San Jose; San Diego; St. Louis; Kansas City.

Between Las Vegas and Chicago; New York (JFK).

Between Houston and New York/Newark; Miami/Fort Lauderdale; Los Angeles/Ontario/Burbank/Long Beach; San Francisco/Oakland/San Jose; San Diego.

Cargo authority only between any points within the United States including Puerto Rico and the U.S. Virgin Islands except between points within Alaska and Hawaii.

By exemption authority

None.

INTERNATIONAL ROUTES

By certificate authority

Between Seattle; San Francisco/Oakland; Los Angeles; Chicago; Detroit; Miami/Fort Lauderdale; Dallas/Fort Worth; Atlanta; Washington/Baltimore; Philadelphia; New York/Newark; Boston and Zurich; Tel Aviv.

By exemption authority:

Between Chicago; New York/Newark and Vienna.

Between Los Angeles; Oakland/San Francisco; Chicago; New York/Newark; Bangor and Amsterdam; Paris (all cargo flights not permitted).

Between Los Angeles; Chicago; New York/Newark and Frankfurt; Amsterdam; Paris (all cargo flights not permitted).

Between Chicago and Amsterdam; Vienna.

Between Amsterdam; Vienna; Zurich and Tel Aviv provided a U.S. point is served.

Between Oakland; Los Angeles and Hong Kong; Taipei via Honolulu; Guam (all flights must serve Guam).

Between Los Angeles; San Francisco/Oakland; Seattle; New York/Newark; Niagara Falls; Chicago; Anchorage and Seoul; Taipei; Hong Kong (all flights must serve Seoul).

Cargo authority only between all U.S. and European points.

WORLD AIRWAYS, INC.

Authorizations to Provide Scheduled Service for Persons, Property and Mail
as of July 31, 1979

DOMESTIC AND OVERSEAS ROUTES

By certificate authority

Between New York/Newark; Washington/Baltimore and Los Angeles/Ontario/Long Beach; San Francisco/Oakland/San Jose.

Between New York and Newark and Washington, D.C. and Baltimore.

Between Los Angeles and Ontario and Long Beach and San Francisco and Oakland and San Jose.

Between Oakland; Los Angeles/Ontario/Long Beach and Tampa; Miami/Fort Lauderdale; San Juan.

Between Miami and San Juan.

Cargo authority only between any points within the United States including Puerto Rico and the U.S. Virgin Islands except between points within Alaska and Hawaii.

By exemption authority

None.

INTERNATIONAL ROUTES

By certificate authority

None.

By exemption authority

Between New York/Newark; Washington/Baltimore; Chicago; Detroit; San Francisco/Oakland, Los Angeles and Amsterdam.

Between Washington/Baltimore; New York/Newark; Chicago; Detroit; Salt Lake City; Los Angeles; San Francisco Oakland; Seattle and Hamburg; Dusseldorf/Cologne; Frankfurt; Stuttgart; Munich.

Between Los Angeles; Oakland; Honolulu; Guam and Hong Kong (all flights must serve Guam).

Between New York/Newark; Chicago; Anchorage and Seoul; Hong Kong (all flights must serve Seoul).

Cargo authority only between U.S. and European points.

EXHIBIT 2

[¶ 11,649a]

§ 399.19 Wet leases to foreign air carriers. (a) This policy statement sets forth the major factors which the Board will consider in acting upon applications for authorization of long-term¹ "wet-leases" (i.e., leases in which the lessor provides both the aircraft and the crew) by a United States air carrier to the holder of a foreign air carrier permit. The wet lease need not involve the exclusive use of an aircraft by the foreign air carrier-lessee for the entire period of the lease, but may involve use on an intermittent basis such as on certain days of the week.

(b) A wet lease of the type described in paragraph (a) of this section will be deemed to be in the public interest only if it meets the following criteria:

(1) The operations under the wet lease must not have a significant adverse competitive impact on any United States carrier. In making this determination, the Board will consider such factors as: The relative size and financial strength of the United States carriers and the foreign carriers operating on the route; whether the proposed operation will require any United States carrier to reduce its level of frequency on the route; and whether the proposed operation will render uneconomic any United States carrier's operations over the route.

(2) The United States air carrier-lessor must have an urgent need for additional utilization of its equipment, or have a compelling need to supplement

¹ The expression "long-term wet lease" refers to a wet lease which is to be performed over a period of more than sixty days or to a wet lease which is one of a series of wet leases amounting to a continuing arrangement to be performed over a period of more than sixty days.

operating revenue. In making this determination the Board will consider such factors as the size and financial strength of the lessor carrier relative to other United States carriers, and the need for strengthening of such carrier in terms of sustaining and promoting a healthy competitive system.

(3) The wet lease must not involve revenue or profit sharing by the United States air carrier-lessor.

(4) The wet lease arrangement must not impair the United States air carrier-lessor's ability to fulfill its certificate obligations.

(5) The United States air carrier-lessor must not be placing undue reliance on wet leasing as a source of revenue. In this regard the Board will consider the extent to which an applicant has acquired equipment which can be adequately utilized only if it can be wet-leased. If the applicant is a supplemental carrier, the Board will also consider the extent to which the wet lease will interfere with the applicant's ability to promote and perform civil charters. If the applicant is a combination or all-cargo carrier, the Board will consider the extent to which the wet lease will interfere with the applicant's ability to promote and perform on-route operations.

(c) Approval by the Board of a wet lease of the type described in paragraph (a) of this section will be subject to the following conditions:

(1) Where the foreign air carrier-lessee is an established international air service and possesses substantial equipment of its own, wet leasing arrangements with a single United States carrier may be approved for an initial period of one year. Approvals may be granted for additional periods extending up to a maximum of two years from the beginning of the wet lease arrangement. No wet lease will be approved unless the conditions set forth in paragraph (b) (1) through (5) of this section are met.

(2) Where the foreign air carrier-lessee is at an early stage of development and intends to place sole or primary reliance upon wet lease arrangements to support its international operations, wet leasing arrangements with United States carriers may be approved for a maximum period of two years. No wet lease will be approved unless the conditions set forth in paragraph (b) (1) through (5) of this section are met and unless the foreign carrier demonstrates that it will be in a position to establish an independent viable operation by the end of two years from the date it began wet leasing from United States carriers. During the period of approval there may also be periodic Board review to insure that the conditions set forth in paragraph (b) (1) through (5) of this section continue to be met.

(3) Where the sole purpose of the wet lease is to enable the foreign air carrier-lessee to replace equipment rendered nonoperable by an emergency beyond its control (e.g., by an accident), such a wet lease may be approved for a period not to exceed six months, it being presumed that during this period there will be no significant adverse competitive impact on any United States carrier. Such a wet lease may be approved whether the lessee is a well-established international carrier or at an early stage of development: *Provided*, The conditions set forth in paragraph (b) (2) through (5) of this section are met.

[§ 399.19 as added by Amendment No. 6, effective April 16, 1965, 39 F. R. 5625.]

The CHAIRMAN. Next we will hear from Mr. William G. Lindner, president, Transport Workers Union of America.

STATEMENT OF WILLIAM G. LINDNER, PRESIDENT, TRANSPORT WORKERS UNION OF AMERICA

Mr. LINDNER. I guess I can say good morning, Mr. Chairman. Just made it.

The CHAIRMAN. Just barely.

Mr. LINDNER. I am William Lindner, president of the Transport Workers Union of America. I am testifying on behalf of the Air Line Coordinating Committee of the AFL-CIO. I am pleased to have this opportunity to testify on S. 1300, the International Air Transportation Competition Act of 1979, which you and Senator Kassebaum introduced in June.

The Air Line Coordinating Committee is composed of five unions in the airline industry that represent nearly 200,000 airline employees

throughout the industry. Most U.S. airlines today have international routes. Consequently, we have a keen interest in our Nation's international aviation policies and practices.

I will begin by discussing the two subjects that you mentioned, Mr. Chairman, when you introduced your international aviation bill. The first is cabotage, the granting of domestic rights to foreign airlines. While cabotage is not specifically referred to in the bill, it is clearly, as you mentioned in June, a timely and pertinent subject for these hearings.

The second subject is the CAB's proposal to allow it to withdraw international route authority from one U.S. carrier and give it to another without public hearing.

Regarding cabotage, we are very concerned about the blatant contempt the Board exhibited—meaning the CAB—last spring for the provision of the Federal Aviation Act prohibiting cabotage. After United Airlines was shut down by a mechanics' strike, the CAB allowed foreign carriers to carry passengers between Hawaii and the U.S. mainland.

The Board ostensibly took this action to ease the hardship on visitors to Hawaii who were inconvenienced by the United strike. However, by allowing foreign carriers to enter this market, the Board overlooked the efforts of United and other U.S. carriers to return travelers in Hawaii to the mainland.

It was only after the Secretary of Transportation, airlines, and airline unions protested strongly that the Board found the situation regarding stranded travelers in Hawaii had eased enough, and therefore foreign carriers were no longer needed in the Hawaii-mainland market. Afterwards, while firm statistics were hard to come by, there were press accounts that indicated the foreign airlines carried more passengers westbound to Hawaii than they did in the other direction. So much for easing the hardship on travelers in Hawaii.

We are also concerned about what the Board may do in the future regarding cabotage since it has already demonstrated it will ignore the statutory prohibition. It appears to us that the CAB wants the authority to grant cabotage for use as a bargaining chip in bilateral negotiations. We wonder, however, what the CAB expects to gain from other countries in return for granting cabotage rights to their airlines.

We find it difficult to imagine what advantages U.S. airlines would gain in foreign countries that would be comparable to foreign carriers gaining domestic traffic rights within the United States. We point out again that the public interest in aviation involves more than just low fares for travelers; it also includes the real and legitimate interests of airlines and their employees.

Therefore, we conclude that the present prohibition against cabotage in section 1108 of the Federal Aviation Act is reasonable and justified. Consequently, we urge the subcommittee not to alter the present law on cabotage—either by striking the provision entirely or by allowing the CAB to use its exemption authority for granting cabotage rights.

Mr. Chairman, the subject of cabotage was discussed at the August meeting of the AFL-CIO executive council. The executive council took a strong position against the granting of cabotage rights and urged the Congress to reject any proposed change in the law which would grant such rights. For the information of the subcommittee, I have

attached a copy of the AFL-CIO executive council statement to my testimony.

[The article follows:]

STATEMENT BY THE AFL-CIO EXECUTIVE COUNCIL ON CABOTAGE RIGHTS FOR
FOREIGN AIRLINES

The AFL-CIO urges the Administration to reject the request of foreign airlines for permission to unfairly compete with U.S. carriers for purely domestic business in the United States and urges the Congress to oppose any change in the law that would permit the granting of these cabotage rights.

At the same time, we insist that the Administration enforce the Federal Aviation Act of 1958, as amended, which prohibits foreign airlines from carrying local boarding passengers, cargo and mail for compensation or hire between two points within the U.S.

In the past a number of foreign airlines have requested cabotage rights in negotiations with the U.S. government. Under current U.S. law this has been prohibited. However, a change in the U.S. law to permit the granting of such rights to foreign carriers is under active consideration within the Administration.

Granting of cabotage rights to foreign airlines would jeopardize the job security of U.S. airline workers, would threaten the stability and security of the international air transportation system, would further erode this nation's balance of payments position and would introduce wasteful and unnecessary flight operations in major domestic air transport markets.

There is no justification for any change in the law to permit cabotage.

Mr. LINDNER. Turning now to the Board's proposal regarding international route authority, section 6 of the bill would amend section 401 of the Federal Aviation Act to enable the CAB—either on the application of another airline or on its own initiative—to suspend the authority of a U.S. carrier in any international market and grant that authority to a replacement carrier. The Board could do so if it found, among other things, that a qualified applicant has demonstrated that it can and will provide substantially improved service, substantially lower fares, or both.

Naturally, this authority would be used only in markets where a bilateral agreement prohibits the multiple designation of U.S. carriers. In other markets, the Board would just grant route authority to any and all qualified carriers.

Furthermore, the Board would be able to withdraw route authority from one carrier and award it to another without a public evidentiary hearing unless the incumbent airline requested one. According to the trade press, the CAB believes that holding a public hearing would be too time-consuming.

If section 6 were to become law, it would destroy the meaning of permanent route authority, because no airline, its managers, stockholders, and employees, could count on being able to serve an international route. On routes with limited carrier designation, the CAB would be able to remove and add U.S. carriers as it wished.

We are disturbed by the possible effects implementation of this section of the bill could have on airline employees. By taking away a major revenue-producing route such as New York-London, the CAB could have a major adverse impact on an airline, particularly one that might be in financial difficulty. We would hope that, if section 6 is enacted, the Congress will take the necessary steps to protect the affected employees.

I would add that we have attached a copy of a resolution on the subject of employee protection to indicate our concern with the general

attitude of the CAB in recent proceedings regarding the necessity for employee protection.

[The article follows:]

STATEMENT BY THE AFL-CIO EXECUTIVE COUNCIL ON EMPLOYEE PROTECTIONS
IN AIRLINE MERGERS

Protection of employees affected by mergers in the transportation industry is a matter of longstanding federal policy. That policy recognizes that such mergers have an unsettling effect on wages, working conditions and the morale of employees, who face economic uncertainties, and can create the potential for disruption of transportation services.

The Civil Aeronautics Board has acknowledged responsibility for protecting airline employees as appropriate to the public interest requirements of the Federal Aviation Act. For almost three decades, the CAB has never failed to impose labor protection provisions in two-carrier mergers. A 1961 formula adopted by the Board specified several categories of employee protections which have been applied in more than 20 merger cases since that time.

Recently, however, as the result of the 1978 Airline Deregulation Act, the CAB has indicated it will disregard these labor protections in the misguided belief that it was the congressional intent to do so.

The AFL-CIO can discern no such intent in either the law or its legislative history. To the contrary, the law states as one of its declarations of policy "... the need to encourage fair wages and equitable working conditions." Further, the new law provides a long series of additional employee benefits to those workers economically injured by deregulation.

Abandonment of labor protections in airline mergers not only threatens the welfare of affected employees but could also unnecessarily delay consummation of mergers and a return to normal working conditions.

To avoid the divisiveness that can attend such mergers, as well as the potential for disruption in transportation services, the AFL-CIO urges the CAB to maintain and enforce its nearly 30-year policy of protecting workers affected by inter-carrier transactions such as acquisitions, mergers, route transfers and the like. Further, we will seek to maintain these standards when jurisdiction over airline mergers is transferred to the Department of Justice in 1983, as required by the Airline Deregulation Act.

Additionally, Congress should take appropriate legislative action to improve employee protection.

In testimony before the Subcommittee on Aviation of the House Committee on Public Works and Transportation the Congress was urged by airline unions affiliated with the AFL-CIO to amend the Deregulation Act by removing the existing trigger on which sets in motion protective provisions of the law only when 7½ percent of the employees are laid off, and by providing air transport employees the same protections Congress has afforded employees of other modes of transportation, namely rail transportation.

Such protection would not be restricted to "acquisitions, mergers, route transfers and the like" but would also protect employees against the effects of intra-carrier changes made possible by the Act such as route (point) abandonments and shifts of hubs from one point to another. It would also provide 100 percent instead of the 60 percent protection provided by CAB in mergers.

In addition, Congress was asked to make clear its intention not to remove from employees any protections they had theretofore enjoyed under the Federal Aviation Act.

Mr. LINDNER. When the CAB suggests that the requirement for a public hearing is too time-consuming and can be used as a delaying tactic, it overlooks major considerations of fairness and due process. For an airline to lose a route it has served for several years without so much as a public hearing clearly violates fundamental rights guaranteed under the Constitution.

In addition, Mr. Chairman, many of the important terms in the proposed section 6 are vague and undefined. For example, what is a "qualified applicant" or "substantially improved service"? The effect

of this section is to grant broad discretionary powers to the CAB and its successors. Granting this power without the requirement for a public hearing means that the agency could wield its broad authority with few checks. Exercise of such power should be done prudently, impartially and apolitically, but it has often not been done that way in the past.

In short, we do not see the need or justification for this section of the bill, and we believe the legislation would be significantly improved if section 6 were dropped.

And now, Mr. Chairman, I would like to comment briefly on several other sections of S. 1300.

Section 17 of the bill creates an International Aviation Advisory Council whose members would be representatives of government agencies, airlines, airline labor unions, consumer groups, airport operators, travel agents, and others with an interest in air transportation. The Council would advise the Secretaries of State and Transportation and the CAB both on broad policy goals and on individual bilateral negotiations. In addition, congressional representatives would have observer status in bilateral negotiations.

When read together, these two provisions could be construed as foreclosing the direct participation of airline labor in bilateral negotiations. Airline labor fought hard to obtain the right we now hold to participate as an observer in bilateral negotiations. Being relegated to membership in an advisory council would be a major step backward. Therefore, we suggest the need for clarifying language so that the right of airline labor and other interested parties to have observer status in bilateral negotiations is clearly established.

Section 16 of the bill would, for the first time, allow United States and foreign carriers to set fares on the basis of future costs. Heretofore, only past costs could be used in establishing fares. But soaring fuel prices since the beginning of the year have demonstrated that airlines can incur major losses before they are able to document the need for increased fares. This section provides a reasonable solution to this problem, and we support it.

The International Air Transportation Fair Competitive Practices Act of 1974 would be improved and strengthened by section 23 of this bill. It was largely through your initiative and leadership, Mr. Chairman, that this act became law 5 years ago.

Section 23 of S. 1300 would add teeth to the act by allowing the CAB to suspend or restrict the authority of a foreign air carrier when that carrier's government imposes arbitrary restrictions on U.S. airlines. This amendment to the Fair Competitive Practices Act would enhance our competitive posture and would give the force of law to part 213 of the CAB's economic regulations.

Overall, Mr. Chairman, S. 1300 represents a significant step forward in establishing a basic and permanent policy that the United States can follow in bilateral negotiations. The AFL-CIO Air Line Coordinating Committee supports the bill with the cautions and changes I discussed earlier. We hope the Senate will be able to consider this important piece of aviation legislation in the near future, and we are ready to work with you toward its enactment.

Thank you very much, Mr. Chairman, for this opportunity to present our views on international aviation legislation. That completes

our prepared statement, and we will be pleased to answer your questions.

I would also like to add a few amendments to our prepared statement in view of some of the comments offered here earlier.

The CHAIRMAN. All right, sir.

Mr. LINDNER. Concerning the proposal or provision on wet leasing of aircraft under section 13, we would be inclined to support the position taken by the Air Transportation Association for the very same reason. Frankly, we would consider it a backdoor approach to cabotage; likewise, in the area of fly America provisions, section 21, we feel likewise that that is an important consideration that should not be surrendered to foreign carriers except in the situations described by the ATA, where the practicality dictated a departure.

Finally, I would like to say that our primary concern in being here today is the very serious question of cabotage. We sometimes feel that the policymakers in the various agencies of Government tend to overlook the great differences in the markets that we are talking about, between the United States and Europe and other parts of the world.

In our belief, although we take pride in the proficiency and technology that we have developed in this country, I think we sometimes lose site of the source. Essentially, I believe the source of our technological progress and superiority in many fields, as well as our managerial capability, is the direct result of having the largest consumer market in the world and the largest qualified labor market in the world, operating unrestricted across the 50 States of this country.

There is no such market anywhere in the world. I think we should keep that in clear focus. To trade away that market for temporary advantages, I would submit, is a grave mistake.

We are particularly concerned about the attempts to use cabotage in specific situations. We are concerned that it represents not really a need for a change in policy, but an attempt to achieve a change in policy without the direct approach.

Finally, I would like to say that we have, of course, been very much concerned in labor about the effect of world trade, not only on the workers of this country but on the balance of trade, which affects all of us as taxpayers and citizens. We have watched what has happened to other industries, such as the electronics industry, the clothing industry, with the effect of the multinational movement of plants overseas.

We, of course, are very much concerned about what has happened in the maritime field. I would like briefly to quote an opinion other than my own on that subject. I refer to a statement by Senator Daniel Inouye of Hawaii concerning the Senate maritime bill. I'm trying to find the number.

In any event, the quotation is by Senator Inouye of Hawaii. He said:

The nation must be aware that our trading partners have long since forsaken free trade in favor of carefully-planned employment of merchant fleets designed to carry out national maritime policies, that are the product of close coordination of the national interest and commercial needs.

Furthermore, Senator John Warner stated on the same subject that in 1978 the United States, the world's largest trade, had only 4 percent of its trade, valued at \$196 million, carried by U.S.-flag ships.

We are very much concerned at any attempt to embark on a policy of cabotage which would lead us down that same trail.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you for a fine statement.

I am particularly pleased to note your basic statement of support for S. 1300 as a procompetitive bill. It's very easy for me to remember when I didn't have that support domestically.

Is it safe to assume now, in the face of the successes of domestic airline deregulation, including the dramatic increases in traffic, profit, and consumer benefits, that labor is no longer as quick to conclude that competition is axiomatically contrary to their interests?

Mr. LINDER. I would say yes, with qualifications, sir.

What we have found—certainly there is plenty of evidence to indicate that the industry has prospered in many respects as a result of deregulation. However, we withhold complete judgment on the pros and cons, because, as we are all aware, there are numerous mergers proposed and under consideration. There have been widespread abandonments of service in smaller markets and replacement by smaller carriers. Some of those are still to be born or put into operation.

What this represents to the airline worker is a threat to his personal status, his personal life. In every merger there is a disruption of home life as a result of relocation of facilities, relocation of personnel, in some cases loss of jobs, and a requirement that people go out and start a new career.

This is the kind of dislocation that no worker enjoys and, of course, no labor union would care to see happen too often.

For that reason, I say with qualifications, because we foresee there will be many dislocations in the near future.

The CHAIRMAN. Have there been any disruptions so far as a result of the act that have triggered the act into the labor protective provisions?

Mr. LINDNER. None whatever. At this point, of course, that 7 percent figure is a difficult one to reach. We hope, of course, we never reach it. We feel there should be adequate protection for the individual whether or not he is part of 7½ percent or any other percent.

People had been laid off; numerous people had been forced to relocate across the country. I think we are just beginning to see that development in full scope.

The CHAIRMAN. I have noted your objections to specific provisions of S. 1300. I wonder if the airline coordinating committee has any position on the overall U.S. policy of seeing procompetitive bilaterals with their foreign aviation partners?

Mr. LINDNER. Speaking for the coordinating committee, I would say, Mr. Chairman, that we're probably rather neutral on the question of procompetitive agreements. The reason I say that is that the trends in transportation modes are not too encouraging on that score. If you look at what has happened in the local transit field, city transit field, public transportation, we have gone through a long transition from private operation with competition to practically universal government operation by necessity. The railroads, of course, we are perhaps in the midstream of that conversion.

If we look at our friends overseas, they have all had a similar experience and, of course, have gone much further into operating government airlines.

From that standpoint, frankly, we can't be too encouraged that competition is going to be a permanent way of life in the international aviation field. We can't feel that it is something that we should tie our future to. I think we have to recongize it as an effective way of producing efficiency and economies in many respects; but there may be limits, particularly when you look at the fuel situation and the amount of waste that sometimes occurs as a result of competition in the use of fuel.

This sort of offsets the advantages that we see in terms of improved services engendered by the competition. Whether or not we will continue to have that kind of competition, I don't think we can really predict. We are not opposed to it. We are not afraid of it, provided that along with the competition we don't get wholesale disruption of workers' lives and their livelihoods.

The CHAIRMAN. Yesterday, one of the carrier witnesses testified that objected to the provision of S. 1300 to allow wet leasing of foreign aircraft.

One of the reasons given was that their labor contracts would prohibit that. Given the increased traffic and market potential of today's deregulated industry and with the industry facing such high costs of new aircraft, why would labor object to a provision that would allow their company the flexibility to quickly meet new demand and increase traffic and profits?

Mr. LINDNER. Essentially, we would object to it for the same reason that we object to the experiments or the dabbling with cabotage. It would be, in many cases, a back door approach to cabotage, or could be. We don't feel that it is—that there exists that kind of a pressing need that we should sacrifice that principle and open the door to that kind of a change of policy in isolated situations.

There are other ways of approaching the problem. A dry lease, of course, can work very effectively. I don't know that we have any problem with crews. Of course, with a wet lease we are possibly importing some very complicated labor problems in terms of labor law and enforcement and compliance.

The CHAIRMAN. From your testimony, I'm not sure whether I understand correctly your position on cabotage. Is it that you oppose cabotage generally, or do you include in that emergency cabotage?

Mr. LINDNER. We oppose cabotage completely and entirely. We urge the committee to keep the law intact as it is.

The reason for that is that we don't believe a case has been made for any need to tamper with the law. We think that the action of CAB was merely an attempt to float a trial balloon and get a foot in the door on a principle or policy change that has not been endorsed by the Congress.

The emergency concept, again we would look at that as merely another foot in the door. I can't conceive of any situation that has existed in recent years where this kind of departure from policy would be required to satisfy the reasonable needs of the traveling public.

The CHAIRMAN. Well, why would you have the public suffer as the consequence of a dispute and not give them the opportunity to have some reasonable relief?

Mr. LINDNER. Well, in any free economy—and this is what we are talking about—I believe—there are inconveniences to the public that

result from many private acts, acts of corporations as well as labor unions. The mere fact that a corporation decides to move a plant or go out of business can cause wholesale hardship to many people.

But still, that's the way of life in this country with private enterprise. I don't think that the traveling public should be guaranteed this sacrosanct right to travel at will and with convenience in spite of these other rights that we also try to balance.

I think, in effect, the CAB has looked for an issue, to look for an opportunity to raise an issue that really is not of substance.

The CHAIRMAN. Well, I may say I have been a supporter of the present cabotage laws, but I find myself really concerned about the type of emergency situation that can arise and disrupt the lives and the economies of a number of people throughout an airport where they don't really have any other choice.

Mr. LINDNER. Mr. Chairman, I think you are well aware that in other strike situations the CAB has arranged alternate service for many markets with very little concern expressed by anyone except perhaps the carrier involved in the dispute at the time.

But this was the first case where cabotage was resorted to in violation of the law.

The CHAIRMAN. Thank you very much, Mr. Lindner. We appreciate your being here.

That concludes our hearings at this point in time. The committee will stand adjourned.

[Whereupon, at 12:20 p.m., the hearings were adjourned, subject to the call of the Chair.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

INTERNATIONAL ECONOMIC POLICY ASSOCIATION,
Washington, D.C., June 1, 1979.

Hon. HOWARD W. CANNON,
*Chairman, Committee on Commerce, Science and Transportation,
U.S. Senate, Washington, D.C.*

DEAR SENATOR CANNON: You may remember that last year I testified before your Subcommittee on Aviation on S. 3363 and submitted for the record our report on *Services in America's International Trade: The Air Travel and Tourism Sector*. On August 31, 1978 I indicated in a letter to you that we were continuing to look at the complex aviation issues and considering the various alternatives which might be used for handling international aviation problems in the mix of U.S. trade policy. I indicated at that time that I would like to have an opportunity to report back to you with some more specific suggestions in this area. As I understand it, you contemplate holding additional hearings on the International Air Transportation Competition Act and amendments thereto. I would like to provide the enclosed attachment for your consideration and inclusion in any hearing record.

This Association, founded in 1957, has been intimately involved with international economic issues surrounding the U.S. balance of payments, trade, international investment, raw materials, and international taxation. Our perspective has been on a broader scale national interest venue with the central objective being a healthy U.S. international economy. Service industries, including aviation, are a major component of our commercial trade and we have maintained an active interest in this area since the mid-1960's.

The enclosure sets forth the importance of service exports including U.S. aviation's contribution to the international economic health of our country. The compatible nature of U.S. aviation and trade policies is highlighted as an integral part of maintaining an open international trading system. The United States is trying to reduce barriers to international commerce with congressional approval of the Geneva MTN accords, yet there appears to be some divergence with this objective in U.S. international aviation policies that do not negotiate a commercial balance of benefits using the principles of a liberalized system. In many cases, U.S. service industries are not afforded the same safeguards that the goods industries retain under U.S. trade legislation. However, in an effort to maintain a truly open trading system, the Congress has indicated its willingness to support export service industries. I would hope that your Committee can also support application of Trade Act principles which insure a balance in our present-day competitive world.

I hope that the enclosed will be of help in framing your deliberations on the proposed International Air Transportation Competition Act.

Sincerely,

RONALD L. DANIELIAN,
Executive Vice President and Treasurer.

Enclosure.

INTERNATIONAL ECONOMIC POLICY ASSOCIATION,
Washington, D.C., June 1, 1979.

SERVICE EXPORTS, TRADE POLICY, AND AVIATION

The disastrous dollar decline during 1978, and the ensuing inflation and disruption of international commerce have impressed upon U.S. policymakers the need to earn as much foreign exchange as possible to maintain our international political and economic commitments. We cannot expect to pay for our rising

imports of necessary goods and services, including the almost \$43 billion for petroleum and petroleum derivatives in 1978, without solidifying and expanding our export base. This base includes international aviation which should be viewed as an export of services and as a substantial contributor of foreign exchange.

Over the last three years, U.S. goods imports have totalled \$74.6 billion more than U.S. exports. And as Assistant Secretary of Commerce Weil recently testified before the Senate Foreign Relations Subcommittee on International Economic Policy, U.S. merchandise trade could be in deficit on a yearly basis by up to \$40 billion in the 1980's. If, on the other hand, we look at the balance of goods and services in the last 3 years, the United States has overspent itself by only \$22.5 billion.

Thus, over 3 years the services account has contributed \$52 billion worth of foreign exchange to help pay our debts. We are now facing an era of chronic balance of payments and trade problems. Since the cost we have to bear for imported petroleum will not decline in the foreseeable future, we must make some adjustment to our economic policies to pay for this and other necessary imports. We can, of course, reduce our consumption by substantially slowing internal growth (an unemployment scenario); we can also continue to pay for our oil and retain high growth (but only in the short run) by "printing the dollars we need" (an inflation scenario which must inevitably lead to an unemployment scenario); or we can concentrate on selling to the world those things in which we are proficient, including providing services, i.e., airline services, accounting, insurance, construction, engineering, among others, to earn our way.

In the last few years there has been one export sector that has been growing at a rate faster than the growth in world trade and has controlled substantial surplus to the U.S. balance of payments—and that export is services. Service receipts in the U.S. balance of payments have become a major component of the country's total international economic picture. They have risen from a level of \$7 billion in 1960 to \$17 billion in 1970 and finally to \$55.6 billion in 1978 and now represent 26 percent of total U.S. international exports of goods and services.

In gross terms the second largest contribution to our returns in the service sector has been generated by receipts in transportation and tourism at \$16.4 billion. More than half of that amount, or \$8.6 billion, represents air transportation and travel to the United States by foreigners. Obviously, not all foreign travelers came on U.S. carriers, but in 1978 U.S. aviation interests were directly responsible for \$1.6 billion spent on U.S. carriers by foreigners and roughly \$3.1 billion spent by those foreigners in this country after they arrived here. This does not include cargo shipments, the total of which for both sea and air equaled \$7.8 billion. Since air cargo is usually the higher value item, U.S. aviation probably accounted for a respectable portion of that sum. In effect, our international carriers are exporters earning foreign exchange and they are an important link in our international trade.

Services, as an important export, were first recognized by the U.S. Congress with the passage of the Trade Act of 1974. That Act, and specifically Sections 102, 135(b) (1), 163(a), 301, 405(b) (1) (a), and 601(10), all refer to services in U.S. international commerce. It is clear from reading the Report on the Trade Act of 1974 that Congress intended the Administration to negotiate the removal of barriers to U.S. service industries and particularly tourism and transportation. In the present legislative review of the Geneva MTN agreements, the Congress has reaffirmed its interest in safeguarding U.S. service industries in international commerce. The Congress has stated that the problems confronting international service industries should be addressed directly and not as an appendage to goods trade.

I would hope that this committee in the first instance would view its role as the overseer of U.S. international aviation interests from the greater perspective of the U.S. export performance. As such, the need to safeguard this business activity through the maintenance of fair competition without the encumbrances of tariff or nontariff barriers is as important as the same need which has existed in the international trade in goods.

For decades there have been tariff and nontariff barriers to trade which the industrialized nations have reduced in successive trade negotiations. One key to a liberalized trading order has been to let the economics of competition determine export success. However, nations must still be on guard for barriers which can impede commercial interests as the last Tokyo Round of trade negotiations has shown. As more commercial problems have developed, policymakers have had to identify and remove them, using established and acceptable rules. Some of the

problems existing today for international service companies and aviation are similar in nature to those in goods trade but the ability to apply accepted international trade principles to service industries and aviation does not seem to be getting similar consideration.

There are unfair *subsidies*, where a foreign nation gives a bounty or grant to a merchandise exporter which enables that exporter to effectively market his product in the United States. Among other laws, the Tariff Act of 1930 (Sections 303 and 516) provides for redress of these practices. A subsidy case might be made when a foreign government gives to its airline substantial additional financing at less than market rates (in effect, a subsidy) which enables the airline to maintain its level of operations on a money losing route to the United States.

The Dutch action of a few years ago regarding KLM refinancing wherein substantial additional cash was provided by the National Treasury (as outlined in the hearings on S. 3363 in August of 1978) might be a case in point. Another instance would be the recent British Concorde debt forgiveness of \$320 million which will enable British Airways to continue Concorde flights to the United States, and which tends to skim the cream of the first-class business air traveling market. Without this subsidy it is quite possible that market forces would have forced British Airways to curtail its Concorde service. Such curtailment would enable other carriers (including U.S. carriers) to compete for the first-class business traffic in an open and nonsubsidized environment. When Canadian government subsidies were given to Michelin to erect a new plant in that country to export tires to the United States, the U.S. Treasury was quick to complain on a diplomatic level about the unfair competition involved. In addition, U.S. industry was able to use the trade policy redress mechanisms to obtain a hearing which ultimately led to an appropriate correction. There is no reason why U.S. international aviation should not be able to get the same kind of public hearing and remedial action when the case warrants.

Restrictive standards have been used by many countries to either increase their own business or cut down on the ability of American companies to penetrate foreign markets. The Japanese, for instance, have been legendary in applying restrictive standards to trade in goods. In international aviation a restrictive standard would include the requirement that only a local (in some cases a specific) baggage handler is allowed to service international aircraft landing at the country's port of entry.

When the cost is more than it would be if baggage service were provided by the U.S. carrier itself, there is an added financial burden on the U.S. carrier which must be taken into account in its pricing policy. Similarly, when the landing and other on-route charges at foreign airports are based upon local domestic service requirements rather than just the international service provided, this could be considered a restrictive standard which effectively increases the cost of providing international air service. These types of restrictions encumber the marketing of U.S. international aviation interests.

The trade principle safeguards available to the goods industries in their pursuit of a liberal free trade environment must be available to service industries like international aviation. To help our U.S. international carriers compete openly and effectively as an export service industry, some modifications to the legislation previously considered are desirable.

Under the *Declaration of Policy* the Congress should include the promotion of economic and efficient air service without reasonable, unfair and destructive protectionist or anti-competitive practices. Furthermore, a maximum amount of competition should be stressed consistent with maintaining a healthy U.S. private international air transportation system and appropriate for the specific international environment concerned. This last point is extremely important because many nations view their government-owned or directed carriers as extensions of their foreign policies.

Under the section dealing with *foreign air carrier permits*, the Civil Aeronautics Board and its successor agency should issue an air permit only where the applicant does not unduly benefit from protectionist or anti-competitive practices or unfair practices which conflict with either the Federal Aviation Act or, in a trade sense, with the Trade Act of 1974.

Regarding the section in *international negotiations*, it is important that the Secretary of State have the advice of not only the Civil Aeronautics Board and the Secretary of Transportation, but also a high level input of trade policy considerations. The U.S. Congress will shortly revamp the existing governmental

structure for handling U.S. international trading relationships and this will presumably include the trade policy functions now the responsibility of the Special Representative for Trade Negotiations (STR). Therefore, Congress should stipulate that the development of a U.S. international air policy and the conduct of bilateral air transport negotiations be by the Secretary of State with the advice of the CAB, the Secretary of Transportation, and the agency of the government responsible for implementing trade policy. In addition, a service industry mechanism similar to the Industrial Sector Advisory Committee, established under the Trade Act of 1974, should be developed to advise U.S. negotiators on the possible effect of various U.S. negotiating positions in the relevant industry. If the STR should remain as a coordinative mechanism for U.S. international economic activities, then it, too, should be an integral part of developing a U.S. international aviation policy. All such advisors would develop a negotiating position emphasizing the health of the U.S. international aviation community. It should be clearly spelled out that access to foreign markets of equal value should be traded. This is an extremely important point as previous testimony before your committee has stressed. We cannot afford to grant unlimited foreign access to our market of some 50 million people while we gain access to a market of, maybe, some 11 million people. In addition, air bilaterals should trade rights between the primary markets concerned and not with third-party markets. Thus, in aviation we should adhere to the trade principle of reciprocity.

Under this section the Congress should stipulate the desire to eliminate discriminatory conditions; unfair competitive practices; restrictive marketing, sales distribution and ground handling practices; subsidies; and excessive charges imposed which are tantamount to a restrictive standard. There should be an automatic termination (after cause is shown) of any international aviation agreement when a foreign entity engages in anticompetitive, discriminatory, or predatory practices, or for blatant nonfulfillment of the agreement.

There also should be a separate section in the mechanism for presenting complaints about unfair practices possibly through amendment of the International Fair Competitive Practices Act of 1974 to include language similar to Section 301 of the Trade Act of 1974. This would allow the President and/or the aviation industry to take action when U.S. air commerce is burdened by discriminatory or anticompetitive practices. An extension of this Trade Act provision to international airlines could be expanded to provide for injunctive relief, revocation of air carrier permits, imposition of fees, levies or compensatory charges on the foreign air carrier, and withdrawal of previously granted trade concessions. In addition, the aviation industry should have a dual-track system to use when such practices are brought to the attention of the proper authorities for remedial action. Such dual track would consist of 1) the ability to file a complaint before the competent authority in the Executive and to have a hearing and, after cause is shown, remedial action on the complaint, and 2) the ability to seek independent judicial review of any denial of action on the complaint by the executive branch. This would be similar to certain rights retained by the goods industries under some of our trade laws in operation over the last 58 years.

One issue which has not been raised is that of adjustment assistance. Under the Trade Act of 1974 expanded adjustment assistance is provided to workers as well as companies that are injured by import competition. There is no reason why service industries, including international aviation and their employees should not be allowed to apply for adjustment assistance when seriously injured through a loss of revenue or employment caused by the extension of additional privileges within the United States by the U.S. Government. This should also apply when the U.S. Government is unable to provide adequate redress for proven unfair trade practices.

SCHIEF HARDIN & WAITE,
Washington, D.C., August 17, 1979.

Senator HOWARD CANNON,
Aviation Subcommittee, Senate Commerce Committee,
Washington, D.C.

DEAR SENATOR CANNON: I welcome this opportunity to comment on S. 1300, The International Air Transportation Competition Act of 1979. I served as Deputy Assistant Secretary of State for Transportation and Telecommunications from 1973 through 1975. During this period I had the opportunity to observe the international aviation system at close hand, participating in many

bilateral and multilateral aviation negotiations. In the intervening years I have consulted for several U.S. and foreign airlines, advised the Air Transport Association on international aviation policy, and acted for a foreign airline in a legal capacity. Based on this experience and a brief period of research, I prepared the study entitled "Position Paper on U.S. International Aviation Policy" which has been provided to Committee staff and has been offered for the record by TWA President C. E. Meyer, Jr.

I support the objectives of S. 1300 as I understand them. Those objectives are to increase the amount of competition between air carriers in international air transportation, and at the same time to provide the means for removing some of the obstacles in the way of achieving that increased competition. These are laudable policy objectives which deserve full support from both the public and the industry. I have read and agree with the points made by Mr. Meyer in his statement dated August 22d to the Committee. I agree with Mr. Meyer's statement that major changes are required in the provisions of S. 1300 dealing with the suspension and revocation of authority and with the negotiating guidelines. I will not repeat here the arguments offered by Mr. Meyer for those changes.

I am encouraged by the incorporation into recently negotiated bilateral agreements of provisions to deal with discriminatory practices. I found my own attempts to deal with such practices snarled in interagency rivalry between the CAB and the Department of Transportation under the existing provisions of the International Air Transportation Fair Competitive Practices Act of 1974. I trust that the bilateral route is both cleaner and more effective.

I would like to take this opportunity to focus on a point discussed in my study, but which has not been reflected in this draft legislation. In that study I mentioned five possible ways of achieving relief from foreign discriminatory practices: the multilateral approach, the bilateral approach, administrative action, regulatory action, and finally carrier action. I would like to emphasize here that in a deregulated environment which may evolve in the international market, the fifth way, carrier action, is the one to which increasing attention must be paid.

In the study I defined carrier action as a right of action by a U.S. carrier to seek judicial and/or regulatory redress for denial of equal economic market opportunity or for discriminatory or other unfair competitive practices. I point out the similarities of such a right with those rights enjoyed by U.S. workers and firms with respect to import competition and unfair trade practices under the Trade Act of 1974.

It is clear to me that as the new aviation environment unfolds, the U.S. government will be less and less inclined to "protect" the interests of U.S. carriers. And this is as it should be. The agencies must conclude that government has no place insuring the economic health of a particular carrier or even its survival. In the international arena, however, for good and valid reasons, this argument has its limitations. Foreign carriers are still going to be adequately protected, either overtly or covertly; it is therefore incumbent upon the United States to insure that at least in U.S. markets, U.S. carriers have a chance of redressing the balance.

In my study, I proposed a legislated right of a U.S. carrier to challenge before a U.S. regulatory body or court the practices of foreign organizations or governments which have the effect of denying equal economic market opportunity, however that might be defined. Remedies could be similar to those provided in the Trade Act and could include fines, compensatory payments, injunctive relief, operational limitations or even denial of landing rights. All of these remedies have precedents in the Trade Act.

Given the current stage of evolution of international aviation policy, this proposal may be premature. Foreign governments have not yet fully adopted the United States point of view; the U.S. government does not yet completely ignore the interests of U.S. carriers in bilateral agreements. Nevertheless, to fully deregulate international aviation, the United States should take some steps such as providing a "carrier action" solution. It is to be hoped that as international aviation policy evolves and as more countries come to accept the liberalized agreements, we will balance this liberalizing trend by allowing U.S. carriers to look after their own interests and to protect themselves against anti-competitive actions of foreign carriers or their governments.

Sincerely,

RAYMOND J. WALDMANN.

AMERICAN BAR ASSOCIATION,
Washington, D.C., August 17, 1979.

HON. HOWARD CANNON,
Chairman, Committee on Commerce, Science and Transportation, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: The Subcommittee on Aviation, which you chair, is now considering S. 1300, the International Aviation Competition Act of 1979. We understand that an amendment may be offered to the bill dealing with the right to allow cabotage traffic to non-U.S. carriers.

At the American Bar Association's Annual Meeting held earlier this week in Dallas, Texas, the Association's policy-making House of Delegates adopted the attached resolution on this subject. The report which accompanied the resolution, while not acted upon by the House of Delegates, is enclosed for your information.

We would appreciate your including the resolution and report in the record of hearings on S. 1300, which we understand are being held next week in Nevada. If further action is taken on the issue of cabotage traffic, including the scheduling of public hearings, or if you would like further information on this matter, please contact the undersigned.

I am pleased to provide you with this resolution of the 254,000-member American Bar Association which stands ready to work with you toward the implementation of this policy.

Sincerely,

HERBERT E. HOFFMAN.

Enclosure.

AMERICAN BAR ASSOCIATION SECTION OF INTERNATIONAL LAW REPORT TO THE
HOUSE OF DELEGATES

RECOMMENDATION

Be it resolved That the American Bar Association opposes the inclusion in S. 1300 or similar legislation of a provision dealing with the right to allow cabotage traffic to non-U.S. carriers and that consideration of any such rights be the subject of separate legislation and of separate and further hearings.

REPORT

The Section of International Law of the American Bar Association submits this report in opposition to inclusion in S. 1300 a provision dealing with the right to allow cabotage traffic to non-U.S. carriers. It is the Section's position, and it urges, that if specific proposals or justifications for allowing such rights to foreign flag air carriers are submitted for inclusion in the Bill or other similar bills they be rejected and instead be the subject of separate legislation and of separate and further hearings where they fully and fairly can be ventilated apart from other, extraneous considerations.

The remainder of this report by the Section of International Law of the American Bar Association (a) sets forth a number of concerns and considerations supporting such deferment and separate consideration and (b) shows how emergency situations involving shortages of U.S. air carrier capacity in international air transportation can be handled in a manner addressed by S. 1300 without allowing pure cabotage rights to foreign air carriers.

Cabotage—the carriage of local traffic between two domestic points for compensation or hire—has a long-standing status in international law, originally in maritime and subsequently in aeronautical. Such traffic has traditionally been reserved for a nation's own carriers. In maritime law, cabotage resulted from a recognition of a nation's right to control its own internal trade and had both economic and military overtones. Economic interests appear to have been predominant in that a nation's internal trade is its own, so coast-wise shipping was restricted to vessels of the home country. This not only reserved intra-national transportation revenues for local enterprises (and taxation) but also encouraged the construction and maintenance of a strong Merchant Marine fleet.

Cabotage in aviation matters was apparently first recognized in 1910. The French, who became concerned with German free balloons flying over French territory, convened what was probably the first diplomatic conference to consider flight regulation. While nothing came of the Conference at that time, the later Paris Convention of 1919 provided (Article 16) that contracting states could establish restrictions in favor of their national aircraft "in connection

with the carriage of persons and goods for hire between two points on its territory." While a number of nations signed the 1919 Paris Convention, the United States was not one of them.

The cabotage provisions of the 1919 Paris Convention did, however, form the basis for the cabotage reservation in Section 6(c) of the U.S. Air Commerce Act of 1926.¹ That legislation was the forerunner of what is now Section 1108(b) of the present Federal Aviation Act.

Section 6(c) of the Air Commerce Act was recognized in the 1938 Civil Aeronautics Act in that (a) provision was made in Section 402 for permits to foreign air carriers to operate in foreign air transportation, (b) existing permits issued under Section 6 of the Air Commerce Act were "grandfathered", (c) Section 501 precluded operation of foreign aircraft in U.S. airspace except as provided for in Section 6 of the Air Commerce Act of 1926, as amended, and (d) Section 6(c) of the Air Commerce Act of 1926 was amended to provide that "[n]o foreign aircraft shall engage in air commerce otherwise than between any State, Territory, or possession of the United States (including the Philippine Islands or the District of Columbia and a foreign country". Subsequent consideration, such as the 1953 Amendment to Section 6(c)²—which became Section 6(b)³, the responsibility for which was transferred from the Department of Commerce to the Civil Aeronautics Board—and Section 1108(b) the 1958 Federal Aviation Act⁴, all recognized and continued the cabotage restriction in U.S. domestic law. Reference is made to the following Congressional Reports involving the 1953 Amendment which speak particularly to the subject of cabotage: S. Rep. No. 1718, 82d Cong., 2d Sess. (1952); S. Rep. No. 512, 83d Cong., 1st Sess. (1953); and H.R. Rep. No. 941, 83d Cong., 1st Sess. (1953).

Internationally, the U.S. had participated in and ratified (in 1946) what is commonly known as the Chicago Convention of 1944. Article 7 of that Convention states as follows:

"Each contracting State shall have the right to refuse permission to the aircraft of other contracting States to take on in its territory passengers, mail and cargo carried for remuneration or hire and destined for another point within its territory. Each contracting State undertakes not to enter into any arrangements which specifically grant any such privilege on an exclusive basis to any other State or an airline of any other State, and not to obtain any such exclusive privilege from any other State."

There are two significant aspects to that article: cabotage traffic is recognized as reserved to each nation and to the extent a nation may be willing to allow foreign carriers to participate in purely cabotage traffic, such privilege may not be granted or obtained on an exclusive basis.

The 1953 Amendment to the Air Commerce Act of 1926 and the subsequent incorporation of that provision in Section 1108(b) of the 1958 Act, show an intent by Congress to take advantage of the cabotage reservation of Article 7 of the Chicago Convention and the Civil Aeronautics Board has, at least until recently, recognized the will and intent of Congress. A good exposition of the Board's understanding can be found in an Opinion and Interpretative Ruling in *Petition of Quantas Empire Airways Ltd. for Interpretative Rule*, 29 C.A.B. 33 (1959). That interpretation has remained the guiding precedent for the intervening 20 years.

In the past few months, however, there have been suggestions emanating from personnel at the Department of State and the Civil Aeronautics Board that the U.S. ought now to abandon its long-standing position on cabotage traffic and use it as a bargaining chip in bilateral air transport negotiations with other nations. The Section of International Law of the American Bar Association sees this as a major change inherently affecting more than just aviation, with possible ramifications which should be given the closest study before any change be made.

¹ "... no foreign aircraft shall engage in intrastate or interstate commerce."

² 67 Stat. 489.

³ "... Foreign civil aircraft permitted to navigate in the United States under this subsection may be authorized by the Board to engage in air commerce within the United States except that they shall not take on at any point within the United States, persons, property, or mail carried for compensation or hire and destined for another point within the United States."

⁴ "... Foreign civil aircraft permitted to navigate in the United States under this subsection may be authorized by the Board to engage in air commerce within the United States except that they shall not take on at any point within the United States, persons, property, or mail carried for compensation or hire and destined for another point within the United States."

In the first place, there has been no explication of the benefits which presumably would be received by the U.S. in return for the grant of pure cabotage rights. Furthermore, there is no apparent recognition that Article 7 of the Chicago Convention would preclude the U.S. from granting cabotage rights to the airline or airlines of one nation to the exclusion of others. For example, many foreign carriers hold permits allowing service to both Miami and New York. None may engage in the carriage of Miami-New York local traffic even though both points may be named on a linear route for such carrier. If the U.S. negotiators were to allow the carrier of Country A to carry purely local (cabotage) traffic between Miami and New York, could they, in light of the U.S. undertakings in Article 7 of Chicago, deny such rights to all other countries that hold existing route designations which include both points?

Would the U.S. seek an amendment to Article 7 to allow selective exchange of cabotage rights? If so, what changes to the Chicago Convention may other countries seek in any meeting convened to consider the U.S. proposals? Furthermore, if the U.S. determines not to reserve cabotage traffic in the aviation field, where is the validity of, and could the U.S. resist international requests for, cabotage rights in the maritime field? These questions require detailed study and resolution.

There are practical economic problems inherent as well. From a national transportation standpoint, does the Congress wish to make it possible for foreign carriers to dominate domestic U.S. transportation? Is it in our national interest to create a situation where the low fare offerings on one or several foreign air carriers combined could weaken or drive a U.S. carrier or carriers off a domestic route. For example, if a combination of all foreign air carriers holding permits which name U.S. east coast and west coast points in a linear route were to be able to offer low fares only to fill up traffic between the east and west coasts, such a situation could adversely affect World Airways in its attempt to develop its new transcontinental services. A combination of foreign air carriers between New York and Miami could force out our new entrant, Florida Air Lines. A proliferation of low fares properly constructed on an added cost basis by foreign air carriers, but whose flight and cabin crew wages may be less than those of their domestic competitors, is not beyond the realm of possibility. Not only is the U.S. promoting bilateral agreements that allow suspension of non-predatory fares only when both countries agree they are not desirable, but the control of domestic rates and fares is scheduled to be deregulated by 1983.

It is not being protectionist to suggest that the nation's domestic transportation system should be in the hands of U.S. nationals. That is just plain good economic sense and good national defense sense. The Declaration of Policy contained in S.1300 would establish, in subparagraph (5), a goal of U.S. regulation as "adaptation of the air transportation system to the present and future needs of the domestic and foreign commerce of the United States the Postal Service, and the national defense." Sound policy requires the basic domestic needs to be met by national carriers. Certainly no country wants to be dependent upon foreign air services for its internal transportation, and no Senator or Congressman would wish to rely, to use an extreme case, on Aeroflot for local transportation between Washington and his home state or district. Reliance on foreign air carriers for domestic transportation makes no sense in time of peace and even less sense in time of national emergency. No other nation relies on foreign transportation for domestic service⁵ and no arguments have been put forth that we know of as to why the U.S. ought to do so.

Should specific proposals or justifications for allowing pure cabotage rights to foreign air carriers be submitted to the Congress in connection with S.1300 or other similar bills, it is the position of the International Law Section that such proposals be the subject of separate legislation and further hearings where they fully and fairly can be ventilated. To paraphrase a portion of the marriage ceremony, if the U.S. approach to cabotage is to be changed, it should not be entered into lightly etc.

Apart from the general question of cabotage rights and their possible exchange for as yet undefined benefits from other countries, there remains Senator Cannon's request to address the possibility of allowing cabotage rights to foreign

⁵ The provision of local service between West Berlin and Western Germany by U.S., British and French carriers is an anomaly brought about by the terms of the Peace Treaty entered into after World War II.

air carriers in the event of an "emergency". In the view of the Section of International Law, S.1300 has already taken care of the problem.

In the past, while foreign air carriers could use U.S. registered aircraft (so long as their flight crews held licenses issued or rendered valid by U.S. aeronautical authorities) there has been no way a U.S. carrier could operate a foreign registered aircraft in interstate or overseas air transportation as those terms are defined in the Federal Aviation Act of 1958 and the Civil Aeronautics Act of 1938 before it. Section 13 of S.1300 would change the prohibition and allow U.S. carriers to operate foreign-registered aircraft on a wet or dry lease basis if the Thus, in appropriate circumstances and with prior Board approval, foreign aircraft could be used to meet emergencies. Looking at the two kinds of emergencies recently faced in the United States—grounding of a particular type of aircraft and a strike situation involving a major U.S. carrier—S.1300 would afford all necessary authority to deal with such problems.

Turning first to the aircraft grounding situation, U.S. carriers would be able to wet or dry lease available foreign-registered aircraft from a foreign air carrier to use on their routes pursuant to the new Section 416(b) (7). Should aircraft not be available, it seems clear—or could be made clear in Congressional Committee reports if there is any doubt—that a block space-type arrangement could be used by a U.S. carrier to utilize a portion of a foreign air carrier's lift for the benefit of the U.S. public. It would work as follows, using an actual situation: When the DC-10 was grounded, Continental, which served between American Samoa and Honolulu, was unable to operate over the route because the remaining aircraft in its fleet were not suitable. The Australian carrier Qantas, which directly overflew American Samoa on its flights between Australia and Honolulu and, which by law had no cabotage rights between American Samoa and Honolulu, had capacity available on its aircraft. Continental could, under the authority of proposed Section 416(b) (7), make an arrangement with Qantas to lease the available seats (or cargo space) for its own account. Qantas could then carry the traffic for the account of Continental but it would be Continental's traffic, the holding out of transportation would be by Continental, not Qantas, and the responsibility to the passenger or shipper would be that of Continental, not Qantas. There exists what might be called a "reverse precedent" for this type of arrangement wherein foreign air carriers have blocked space on U.S. carriers' services to and from the U.S. both in terms of passenger seats and cargo.

The proposed Section 416(b) (7) equally meets the "emergency" of a strike situation. Wet or dry lease of the full capacity of a foreign air carrier's equipment or block-space arrangements could be utilized either by the struck carrier or other U.S. carriers operating over the struck carrier's routes. Since the Board, in recent months, has granted exemptions on a liberal basis for other U.S. carriers to operate over the routes of a struck carrier, it would seem that if there is a valid economic need for air transportation in a particular market, normal market forces would encourage an entrant for the period of the strike, particularly if available lift from foreign air carriers could be utilized rather than "stealing" crews and flight equipment from the U.S. carrier's other domestic routes.

CONCLUSION

To summarize, the International Law Section believes that S. 1300 has foreseen the problems of emergency transportation needs and made provision for them without the necessity of changing the long-standing U.S. view on cabotage. It removes an impediment on the use of foreign-registered aircraft in appropriate circumstances by U.S. air carriers. It does so in a way that leaves the responsibility and accountability for their operation where it should lie, namely with the U.S. air carrier. And it sets up proper, legal control of those leasing practices with responsibility vested in the Civil Aeronautics Board. We believe this

⁶ Seaboard World-Deutsche Lufthansa Agreement 34 C.A.B. 847 (1961), Seaboard-Deutsche Lufthansa Agreements 37 C.A.B. 769 (1963), Seaboard and Pan American Blocked-Space Agreements 39 C.A.B. 832 (1963) and Air Afrique Foreign Air Carrier Permit 40 C.A.B. 759 (1964). It must be recognized that in each of these cases both the U.S. carrier and the foreign air carrier held route authority in each of the markets in which service was offered. In the case postulated herein, it is assumed that in the event of a wet lease or blocked space agreement where the U.S. carrier is utilizing the equipment of the foreign air carrier, the foreign air carrier would hold no local authority. This may require a modification of present Civil Aeronautics Board policy which has required both the lessee and lessor carriers to hold full traffic authority in the local market for a wet lease arrangement to be approved.

is a far more preferable route to follow, one fully in accordance with law and long-standing U.S. policy on cabotage, and one which will meet the legitimate needs of the U.S. air transportation system. We express this position with one caveat. With respect to the right to wet lease aircraft of a foreign air carrier, not only would the Civil Aeronautics Board have to modify its requirements that both the lessor and lessee hold local traffic rights—not an insurmountable problem—but there exists the possibility of abuse in that a U.S. “paper corporation” could conduct the whole of its operations with wet leased foreign aircraft. We believe this latter possibility can either be foreclosed by legislative drafting at this time (such as by limiting wet leases to the duration of an emergency) or controlled by legislative oversight in the event the Civil Aeronautics Board were to permit such practices through unwarranted exemptions under Section 416 (b) (7).

Respectfully submitted,

DON WALLACE, Jr. *Chairman.*

AIR FREIGHT FORWARDERS ASSOCIATION OF AMERICA,
Washington, D.C., August 17, 1979.

Hon. HOWARD W. CANNON,
*Chairman, Committee on Commerce, Science and Technology,
U.S. Senate, Washington, D.C.*

DEAR SENATOR CANNON: On June 12, 1979, we wrote to you expressing the views on the air freight forwarding industry on the proposed International Air Transportation Competition Act of 1979 (S. 1300). At this time we would like to *restate and elaborate on these points and to have our comments made part of the record in your August 21–22 hearings on this Bill.*

The members of the Air Freight Forwarders Association of America (AFFA) are today the largest single user of the international air freight transportation system. To highlight this fact, it should be noted that in calendar year 1978 the forwarders consolidated 628 million pounds and 2.4 million shipments of international air freight. This activity resulted in the collection of \$691 million in international air freight revenues and the payment of \$483 million to the international airlines. The forwarders, therefore, obviously have a great stake in the outcome of any legislation designed to insure fairness for U.S. transportation systems in competing in the international area.

As a general proposition, the AFFA membership supports the thrust of S. 1300 which would formalize the requirements of the United States international negotiating policy; would prevent discrimination against U.S. businesses by foreign governments; and would inject the maximum competition possible into the international air transportation marketplace.

At the same time, the AFFA does not believe that the proposed legislation goes far enough in certain areas and should therefore be modified.

1. Specifically, AFFA believes that Section 17(b) and (c) of the proposed Act should be amended to take into account the important international air freight role of the U.S. air freight forwarders, and that they can be and have been the subject of discriminatory action in their international operations. As presently written, the proposed section 17 would ban discrimination only against U.S. airlines. The legislation should be amended to ban discrimination and unfair practices against all carriers, whether direct or indirect.

For example, IATA Resolution 045 (a) has for years prohibited the chartering of aircraft to air freight forwarders. And, until recently, the Civil Aeronautics Board had not disapproved this type of anticompetitive agreement. In order to prevent this kind of agreement or similar discriminatory treatment from taking effect in the future in possible bilateral agreements or other U.S. “negotiating policies,” the members of the Air Freight Forwarders Association respectfully suggest the following amendment to section 17 (additions underscored):

Sec. 17 [Section 1102(b) of the Federal Aviation Act]—“In formulating United States international air transportation policy, the Congress intends that the Secretary of State, the Secretary of Transportation, and the Civil Aeronautics policy which emphasizes the greatest degree of competition that is compatible with a well-functioning international air transportation system. This includes, among other things: (8) the elimination of discrimination and unfair competitive practices faced by United States airlines and *indirect air carriers* in foreign air transportation, including *but not limited to* excessive landing and user fees, unreasonable ground handling requirements, undue restrictions on operations, prohibitions against change of

gauge, the prohibiting of charters by indirect air carriers of freight and similar restrictive practices...

2. AFFA also urges that section 13 of S. 1300 be modified specifically to permit foreign air carriers to charter aircraft to U.S. indirect, as well as direct, carriers. Since there is presently no ban on chartering by members of the forwarding industry, there is simply no reason to deny the forwarders access to the services of the foreign airlines. Therefore, AFFA respectfully suggests the following language addition to the proposed section 416(6) of the Act:

"(7) The Board may by order, to the extent it finds that such action is required in the public interest, exempt any foreign air carrier from the requirements or limitations of this Act, to the extent necessary to authorize the foreign air carrier to lease or charter aircraft, with or without crew, to a United States direct or indirect air carrier..."

3. Finally, we would urge that the proposed section 1102(c) of the Act be modified specifically to provide for representatives of the U.S. air freight forwarding industry on the International Aviation Advisory Council established by S. 1300. Such representation is necessary to insure that the views of the largest single user of the international air freight transportation system are fully considered before final U.S. policy is established.

We would deeply appreciate your consideration of these revisions to the proposed legislation.

Sincerely yours,

LOUIS P. HAFFER,
Executive Vice President and Counsel.

AIRPORT OPERATORS COUNCIL INTERNATIONAL, INC.,
August 24, 1979.

HON. HOWARD W. CANNON,
*Chairman, Committee on Commerce, Science and Transportation, U.S. Senate,
Washington, D.C.*

DEAR SENATOR CANNON: On behalf of the Airport Operators Council International's United States members, I wish to provide you with comments on S. 1300, which you recently introduced and on which hearings were recently held. I would ask that these comments be made part of the hearing record and that our views be considered as the Aviation Subcommittee proceeds on the legislation.

As you are no doubt aware, airport operators have, in recent years, become increasingly concerned about the impacts on airports of policies pursued by the United States government in bilateral and multilateral air services negotiations. A turning point in this regard was the ill-conceived and unresponsive policies and proposals that were pursued by the United States negotiators during the revision of the United States/United Kingdom bilateral agreement, better known as "Bermuda II." Those negotiations were conducted without consultation by the U.S. negotiators with AOCI or individual airport operators despite the fact that positions were being advocated that directly affected U.S. airport proprietors. Only at the "eleventh hour" of the negotiations, at AOCI's strongest insistence, were some of the potentially damaging and clearly unwarranted U.S. proposals withdrawn from consideration.

Since then, consultation between AOCI and the Department of State, the Department of Transportation and the Civil Aeronautics Board regarding negotiation policies has improved markedly. Such consultation, however, continues to be held on an *ad hoc* basis, as individual issues or problems arise and when each agency feels consultation is needed. Communication between U.S. negotiators and individual airport operators potentially affected by particular air service proposals in bilateral negotiations remains sporadic and insufficient.

It is from this history of irregular consultation and continuing concern that AOCI strongly endorses the proposal contained in S. 1300 for the creation of an International Aviation Council, with airport operator representation, to assist in developing negotiating policy. This is a positive step toward a greater recognition and understanding of airport circumstances involving capacity constraints, environmental concerns, user charges principles and air service considerations that are inherent in bilateral air services agreements. A formal body, such as that proposed in the bill, would institutionalize recognition of the variety of interests that relate to international aviation agreements and for-

malize the notice arrangements for matters of concern to the broad range of interests.

AOCI would welcome the creation of an International Aviation Advisory Council, on which would be represented airport operator interests. We would urge that the activities of the council be established so as to enable individual airport representatives to participate in the discussions involving circumstances or considerations involving their particular airport(s). The proposal contained in S. 1300 contemplates such a distinction between broad policy goals and individual negotiations, within which either AOCI or individual airport representatives could contribute to the deliberations.

Senator Cannon, allow me to commend you on this initiative to improve the workings of U.S. international aviation policy and negotiations. We hope that your proposal for a more formalized policy development process will be successful.

My sincerest thanks for your consideration of these comments.

J. DONALD REILLY,
Executive Vice President.

STATEMENT OF THE AVIATION CONSUMER ACTION PROJECT

Mr. Chairman, members of the Subcommittee on Aviation:

The Aviation Consumer Action Project (ACAP) welcomes the opportunity to submit its views on S. 1300, the International Air Transportation Competition Act of 1979. Hearings by this Subcommittee in 1977 and 1978 have focused attention on the need for legislation encouraging competition in international aviation, and ACAP hopes that such legislation will be enacted into law during this Congress.

ACAP has been concerned with improving the access of consumers to affordable international air travel since 1971. During the early 1970's, we opposed several unwarranted price increases sought by carriers participating in traffic conferences of the International Air Transport Association (IATA). We are presently involved in the Civil Aeronautics Board's IATA Review Case, which centers on whether the Board should discontinue its grant of antitrust immunity for carrier participation in ratemaking conferences, a step which could result in lower fares and expanded airline services. ACAP has also served on U.S. delegations negotiating bilateral agreements with a number of countries, including the United Kingdom, Belgium, the Netherlands, Italy, Israel, Japan and West Germany.

The Subcommittee's hearings come at a crucial time. Over the past year and one-half, the United States has made considerable progress in establishing a more competitive international aviation regime, most notably by signing liberal agreements with several countries around the world. These agreements generally permit greater pricing flexibility, increase the number of carriers which can offer flights and open up more U.S. cities to international travelers. In recent months, this policy began bearing fruit for travelers when several carriers inaugurated new low fare service to the European gateways of Amsterdam and Brussels. As more countries enter into such agreements, the possibility of extending the consumer benefits of price competition to other parts of the world will increase.

Even with this progress in recent months, there is still the need for legislation to help cement these gains and to insure that U.S. negotiators do not sign an anti-competitive agreement such as Bermuda II in the future. It is incumbent upon Congress to change the statutory framework in order to spell out explicitly U.S. goals and objectives for our negotiators and to facilitate the permanent establishment of a more competitive regime in international aviation. The experience domestically in the wake of last year's Airline Deregulation Act shows that a more competitive regime is both feasible and desirable, and Congress should now provide consumers with the benefits of greater competition in international air travel. In our appearance before you last year, ACAP testified on a number of proposals which could help bring this about, and we will confine this statement to those additional points which we believe should be addressed as the Subcommittee considers putting S. 1300 into final legislative form.

CABOTAGE

Existing law (section 1108(b) of the Federal Aviation Act) prohibits foreign carriers for engaging in "cabotage"—that is, picking up passengers at one point in U.S. territory and transporting them to another point in the United States. For example, Aerolineas Argentinas serves Miami and New York on the same flight from Buenos Aires. It can fly into Miami and discharge passengers, but it cannot pick up new passengers there and take them to New York. Similarly, Philippine Airlines flies every day from San Francisco to Manila via Honolulu, but it cannot carry passengers who simply want to go from San Francisco to Honolulu; it can only carry passengers who want to go from San Francisco (or Honolulu) all the way to Manila.

This restriction means that every day, foreign carriers are traveling between U.S. cities with empty seats they are forbidden to sell. This prohibition wastes fuel (which the airlines remind us is constantly rising in price); it also limits consumer choice, since passengers may not purchase tickets on these flights, even if all other flights are sold out. Inevitably, this ban also means that consumers pay fares which are higher than they would be if the airline could sell these empty seats.

Cabotage is not a giveaway. Lifting the statutory ban would not, by itself, allow foreign carriers to start service between U.S. cities. All it would do is give the United States a new bargaining chip in bilateral negotiations, allowing our negotiators to grant cabotage rights to foreign flag carriers in those instances where the foreign country is willing to grant new opportunities of comparable value, e.g., new route rights, removal of operating restrictions, greater pricing flexibility. Trading expanded opportunities in this fashion is the thrust of the Carter Administration's 1978 international aviation policy statement, and even if cabotage is rarely granted in practice, consumers can certainly benefit in those cases where it is negotiated successfully.

ACAP doubts that U.S. carriers would suffer from predatory price cutting by foreign carriers exercising cabotage rights, and we note that the domestic experience after deregulation has not been characterized by massive price cutting or predatory pricing.

We also doubt that cabotage would lead to any derogation of safety. It is true that foreign carriers are not now required to operate under the standards the FAA imposes on U.S. carriers; however, the foreign airlines which would most likely receive cabotage rights are now operating into some of the busiest airports in the United States. Some of them are also operating daily between U.S. cities even though they are forbidden to pick up and discharge local passengers. ACAP has seen on evidence that these operations are less safe than operations by U.S. carriers, and we note that the United States could, as a condition to the granting of cabotage rights, require foreign carriers to operate under that part of the Federal Aviation Regulations (14 C.F.R. Part 121) which applies to operations of U.S. carriers. We understand that this is the procedure in effect when Braniff leases the Concorde for flights between Washington, D.C. and Dallas, and the "wet lease" and "dry lease" provisions of S. 1300 contemplate that the Secretary of Transportation may impose special safety regulations when foreign carriers operate in the U.S. under such leasing arrangements.

Even if the Subcommittee does not believe that the current ban on cabotage should be abolished entirely, it should, at a minimum, give the CAB the power to authorize cabotage in emergencies. One such occasion arose last spring when the United Airlines strike stranded thousands of people in Hawaii, and foreign carriers were for a few days allowed to carry passengers between Honolulu and the West Coast, but only after all seats on U.S. carriers had been sold. The Board should have the statutory flexibility to deal with such emergency situations when they arise.

DECLARATION OF POLICY

ACAP is glad to see that S. 1300 proposes to extend the Declaration of Policy now governing domestic air travel to international air travel as well. The Declaration was embodied in last year's Airline Deregulation Act and contains important pro-competitive principles for the CAB to consider in formulating aviation policy.

One objection we do have is the addition of subsection (11), which directs the Board to consider the "promotion, encouragement, and development of civil aeronautics and a viable privately owned United States air transport industry." This language is not in the Declaration of Policy now governing interstate and overseas travel (section 102(a) of the Act), although the principle is contained in section 102(c) (6), which applies to international travel. ACAP is concerned that inclusion of this goal in a unified section 102 which governs domestic, overseas and international air travel could produce results inconsistent with the Deregulation Act domestically and the goals of greater competition internationally.

All too often in the past, the CAB has interpreted its mandate to promote the industry as a signal to shelter the airlines from the rigors of competition, and the consumer has suffered as a result. The Deregulation Act repealed section 102(f) of the Act, which gave the Board the job of an industry promoter in domestic travel. By resurrecting this function, S. 1300 could give the Board the means, in particular cases, of overruling the competitive principles elsewhere in the Declaration of Policy. The goals of a privately owned, economically healthy airline industry are unarguable in the abstract, but when one gets down to particular cases, the language could be used to limit competition and consumer choice.

REMOVING INCUMBENT CARRIERS IN LIMITED DESIGNATION MARKETS

One of the most undesirable features of the Bermuda II agreement concluded by the United States and the United Kingdom in 1977 was the limitation on the number of carriers which can serve London from various U.S. cities. Under Bermuda II, consumers can receive nonstop service from only one U.S. carrier at most cities (New York and Los Angeles are the only exceptions) while non-stop service is banned entirely at many other cities which could support such service (e.g., Tampa, Cleveland). Such anti-competitive restrictions prompted ACAP and others—including the city of Cleveland, various parties from the Tampa Bay area and a number of consumers from around the country—to challenge Bermuda II in court, arguing that the agreement violates U.S. law and is not valid unless ratified by the Senate as a treaty. That suit, discussed in our testimony last year in more detail, is pending before the U.S. Court of Appeals for the District of Columbia Circuit (No. 79-1123).

ACAP is glad to see that S. 1300 addresses the problem most dramatically presented by Bermuda II—what should the CAB do when anti-competitive pacts limit the number of carriers which can serve a particular route? We endorse the procedures in section 6 of the bill as a means of providing incumbent carriers with the extra incentive to respond to consumer demands. Route rights are not, after all, inalienable private property rights, but rather a license granted by a federal agency to a company which has demonstrated its ability to best serve the public interest. A credible threat of revocation would give consumers some of the benefits of genuine price competition in what are basically closed markets.

THE INTERNATIONAL NEGOTIATING PROCESS

ACAP is pleased to see that section 17 of S. 1300 incorporates as negotiating goals many pro-consumer objectives, including flexibility for airlines to price their product to meet consumer demand, the fewest possible restrictions on charter travel, multiple grants of permissive route authority for U.S. carriers, elimination of operating restrictions, integration of domestic and international air travel, an increase in the number of U.S. gateways, the exchange of benefits to foreign carriers in return for benefits to U.S. carriers, and elimination of discrimination and unfair competitive practices. ACAP believes it is important to spell out these goals in legislation so that negotiators will have statutory guidance as to what they can and cannot accept at the bargaining table. We believe that adoption of these principles will be useful in preventing future mishaps such as Bermuda II and provide consistency in U.S. negotiating policy, which has vacillated in the past. Adoption of section 17 would give statutory assurances that no future Administration will be able to undo the considerable progress made over the past two years towards lower fares and expanded service.

We are concerned with certain aspects of the proposed International Aviation Advisory Council, which would be composed of government and private-sector representatives who would advise the CAB and the Departments of State and

Transportation on international aviation policy. Advisory councils have a habit of writing reports which nobody reads and giving advice which nobody follows. We hope that this Council would not be a bureaucratically unwieldy substitute for the effective public participation which is now possible in the form of public meetings prior to negotiating sessions with particular nations and the inclusion of consumer and labor representatives (in addition to industry representatives) on U.S. negotiating delegations. While the Council may be helpful on broader policy questions, it is no replacement for the opportunity by private parties to comment on the effects of particular provisions of proposed agreements.

CONCLUSION

Passage of legislation containing the provisions we have outlined in our statements before the Subcommittee would, we believe, benefit consumers by providing guidance to U.S. delegations on negotiations of bilateral agreements which permit lower fares and expanded service. It would also facilitate the establishment of a competitive regime and make it unlikely that anti-competitive agreements would be concluded in the future. ACAP urges this Subcommittee to move swiftly on passage of such legislation.



