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BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

The Critical Role Of Government In International Air Transport

There should be a specific U.S. Government official to see that international aviation problems are considered promptly and that differences among Federal agencies are resolved as prescribed by the President for such matters as formulating international aviation policies, resolving positions for international negotiations, and administering legislation affecting international aviation.

More equitable arrangements for U.S. carriers could be obtained by (1) modifying and more effectively using the International Air Transportation Fair Competitive Practices Act of 1974 and (2) securing common methods for assessing payments by airlines for use of airways and airport facilities in bilateral and multilateral agreements.

The United States should seek in the bilateral agreements adequate and equitable arrangements in line with its policy of equality for U.S. scheduled and supplemental carriers.

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MARCH 17, 1978

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-138942

To the President of the Senate and the
Speaker of the House of Representatives

This report describes the pervasive role of U.S. and foreign governments in international air transportation matters, and U.S. Government efforts to implement the provisions of the International Air Transportation Fair Competitive Practices Act of 1974 to respond to discriminatory and unfair practices that are disadvantageous to U.S. carriers. We trust that the information discussed in this report will assist the Congress and the executive agencies in considering legislative and administrative matters relating to international aviation.

Our review was made pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), and the Accounting and Auditing Act of 1950 (31 U.S.C. 67).

Copies of this report are being sent to the Secretaries of State and Transportation; the Attorney General; the Chairman, Civil Aeronautics Board; and the Acting Director, Office of Management and Budget.

Comptroller General
of the United States

COMPTROLLER GENERAL'S REPORT TO THE CONGRESS

THE CRITICAL ROLE OF GOVERNMENT IN INTERNATIONAL AIR TRANSPORT

D I G E S T

The pervasive involvement of U.S. and foreign governments in international airline operations affects route rights, tariffs, charter arrangements, and airport services.

U.S. international carriers are privately owned. Foreign international carriers generally are owned and/or financially supported by their governments. Although most international airlines are operated for profit, other objectives affect international aviation operations--increased tourism, foreign exchange earnings, and national prestige.

The U.S. Government tries to help its international carriers to earn profits and eliminate unfair competitive practices and/or discrimination. This is becoming increasingly important because the competitive position of U.S. international carriers has been declining.

NEED FOR MORE STRUCTURED ORGANIZATIONAL APPROACH

A specific Government official should be designated to see that international aviation problems are considered promptly and that differences among Federal agencies are resolved as prescribed by the President.

This focal point is needed because of the diverse interests of the agencies--the Department of Transportation is responsible for aviation's economic and safety policies; the Department of State is concerned with foreign policy and negotiations with foreign governments; the Department of Justice is interested in antitrust matters, and the Civil Aeronautics Board is interested in the economic regulation of international air transport.

These diverse interests inevitably lead to differing positions in formulating international aviation policies and in resolving negotiating positions with other countries. It is important that the views of the public, the airlines, the executive agencies, and the Civil Aeronautics Board be considered.

Consistent with the Secretary of Transportation's statutory role as the chief aviation advisor to the President and responsibility to foster the development of air commerce in the United States and abroad, GAO believes the Secretary of Transportation should be the focal point for coordination of international aviation matters. In assigning responsibilities there is a need to recognize the Department of State's role in negotiations with foreign governments and the Civil Aeronautic Board's responsibilities under current legislation.

The parties consulted had differing views about coordination and the location of a focal point.

--The State Department noted that, while there have been periods of time when interagency coordination may not have operated as smoothly as it should, the process of coordination and consultation, both formal and informal, does work. (See app. VI.)

--The Transportation Department agreed on the need for a focal point and felt that it should be the Secretary of Transportation. (See app. IV.)

--The Chairman of the Civil Aeronautics Board advocates a cabinet-level council.

--The Air Transport Association agreed that a focal point is needed, preferably in the Office of the President or, barring this, in a higher level of the State Department than the level at which air transport is presently handled. (See app. VII.)

--The National Air Carrier Association, Inc., believes that the President should designate a high-level cabinet officer, preferably the Secretary of Transportation, as an assistant for international aviation. (See app. VIII.)

IMPLEMENTING THE INTERNATIONAL AIR TRANSPORTATION FAIR COMPETITIVE PRACTICES ACT OF 1974

More equitable arrangements for U.S. carriers could be obtained by (1) modifying and more effectively implementing the International Air Transportation Fair Competitive Practices Act of 1974 and (2) securing common methods of assessing user charges (payments by airlines for use of airways and airport facilities) in bilateral and multilateral agreements.

The act requires the agencies involved to eliminate discriminatory and unfair competitive international aviation practices. Section 3 specifically provides for compensatory charges in response to unreasonably excessive or otherwise discriminatory foreign charges for use of airways and airport facilities.

Unfair practices have increased and foreign user charges have escalated. While the United States has obtained relief in some instances, it has never imposed compensatory charges.

Section 2 of the act covers a wide range of other unfair or discriminatory practices. It should be revised to require formal findings where these practices exist.

The Department of State generally supports GAO's recommendations for legislative changes but notes that the remedies available from legislation can only be a partial answer to the complex question of negotiating equitable aviation arrangements with foreign governments. The Air Transport Association supports legislation to keep

user charges down and to prevent discrimination. The Association adds that the retaliatory provisions of such legislation should be used as a last resort remedy when other means fail in getting foreign governments to change their ways. Except for the Civil Aeronautics Board, other respondents to the report were generally in agreement with the conclusions and recommendations regarding unfair competitive practices. See pages 38 to 41.

INTERNATIONAL CHARTER TRAVEL

Charter traffic on U.S. international routes grew about 240 percent between 1968 and 1976. On the major North Atlantic routes, the charter share of the total market rose from about 13 percent in 1968 to 28 percent in 1977. This growth helped to offset a declining U.S. share of the scheduled traffic.

The United States seeks to reduce foreign restrictions on charter travel and thereby make available more low-cost services to the traveling public. It helped to liberalize the charter policies of some European countries. However, some governments have taken a more restrictive position on charter travel to or from their countries.

In the bilateral agreements, the United States should seek for its charter carriers, scheduled and supplemental, adequate and equitable arrangements. The concept whereby each country would accept the charter rules of the other on flights originating in the other's country appears to provide an equitable basis for such agreements.

The Civil Aeronautics Board agreed on the need for long-term charter arrangements. The National Air Carrier Association, Inc., noted that the Government should recognize the proposition that all rights for both scheduled and charter travel should be negotiated simultaneously and that no agreement should be concluded without both rights being obtained. GAO concurs that this approach should be considered in future negotiations.

The Department of Justice commented that only low-cost charter service provides a competitive check on the rate-setting cartel of the scheduled carriers and suggested that the United States should be uncompromising in pressing for liberal rules.

RECOMMENDATIONS TO AGENCIES

GAO recommends that:

--The Acting Director, Office of Management and Budget, give the Secretary of Transportation responsibility for coordinating U.S. international aviation matters. The Secretary of Transportation should recognize unresolved differences among Government agencies regarding policy formulation and negotiating positions and seek timely resolutions in a manner prescribed by the President.

--The Secretary of State, in coordination with the Secretary of Transportation, strive to have provisions for common methods of assessing user charges incorporated into existing and future bilateral agreements.

--Whenever user charges in a country substantially exceed those of the United States, the Secretary of Transportation consider such charges unreasonable unless the foreign government can demonstrate or available evidence indicates that such charges reflect economic costs.

--The Secretary of State, in coordination with the Secretary of Transportation, (1) seek an amendment to the Convention on International Civil Aviation that would permit only just and reasonable user charges based on economic cost or negotiate a separate multilateral agreement concerning user charges and (2) seek adequate and equitable arrangements for U.S. charter carriers in bilateral agreements.

RECOMMENDATIONS TO THE CONGRESS

GAO recommends that (1) the Congress amend the International Air Transportation Fair Competitive Practices Act of 1974 to provide for more timely and effective Government response to all types of unfair competitive practices and (2) reporting responsibility under the act be transferred to the Department of Transportation.

See appendix I for GAO legislative proposals.

Contents

ABBREVIATIONS

CAB	Civil Aeronautics Board
GAO	General Accounting Office
Pam Am	Pan American World Airways, Inc.
TWA	Trans World Airlines

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CHAPTER 1

INTRODUCTION

> "Historically, the United States has had a leadership role in the development of international air transportation. Our continued effective participation is important to the national interest." (International Air Transportation Policy of the United States, September 1976)

The pervasive involvement of U.S. and foreign governments in international airline operations affects route rights, tariffs, charter arrangements, and airport services. The U.S. Government tries to help its international carriers earn profits and eliminate unfair competitive practices and/or discrimination by foreign governments. Because of this involvement, U.S. agencies share with the privately owned and managed airlines the responsibility of providing the public with efficient and consumer-responsive services at prices that are economically justified. This is becoming increasingly important because the competitive position of U.S. international flag carriers has been declining.

INTERNATIONAL AVIATION POLICY

In October 1974 the Secretary of Transportation announced a Federal Action Plan to assist U.S. international airlines. The plan included (1) revising the rate structure, (2) reducing excess capacity, (3) enforcing tariffs (4) fostering a "fly U.S.-flag" policy, (5) adjusting postal rates, (6) reducing foreign discrimination, and (7) rationalizing route structures. The International Air Transportation Fair Competitive Practices Act of 1974 (Fair Competitive Practices Act), which became effective in January 1975, gave increasing recognition to protecting the U.S. competitive position in aviation and incorporated points 3 through 6 of the Action Plan. (See app. II.) The Civil Aeronautics Board (CAB) reviewed the rate structure and approved major route exchanges for U.S. carriers.

The essential features of the Action Plan have been incorporated in the President's statement of "International Air Transportation Policy of the United States" issued in September 1976. The statement makes it clear that the United States intends to continue its historic leadership role in developing international air transportation and addresses four fundamental concerns.

--The public is interested in obtaining low-cost, readily available air transportation on both scheduled and charter services.

--The industry needs to achieve a profitable international aviation system, and private enterprise U.S. carriers need to compete on equal terms in foreign markets.

--Regulatory policies that inhibit meeting these two concerns and the need for flexibility to meet changing market conditions need reform.

--The United States recognizes the need to cooperate with other sovereign nations to bring about constructive change for the benefit of the air travelers, shippers, and carriers of all countries.

The President, in a letter dated October 6, 1977, to the cognizant agencies, further clarified these concerns as follows.

"Two related problems face international aviation today: empty seats and high fares. Both problems can be resolved if we work to remove restrictions on low and innovative fares in both chartered and scheduled service. I am convinced that increased competition can make convenient, low-cost transportation available to many people who cannot now afford it, while at the same time bringing greater prosperity to the international aviation industry.

"Our central goal in international aviation should be to move toward a truly competitive system. Market forces should be the main determiner of the variety, quality and price of air services.

"We should seek international aviation agreements that permit low-fare innovations in scheduled service, expanded and liberalized charter operations, non-stop international service, and competition among multiple U.S. carriers in markets of sufficient size. We should also avoid government restrictions on airline capacity. While keeping in mind the

importance of a healthy U.S. flag carrier industry, we should be bold in granting liberal and expanded access to foreign carriers in the United States in exchange for equally valuable benefits we receive from those countries. Our policy should be to trade opportunities rather than restrictions."

SCOPE OF REVIEW

This report discusses the pervasive involvement of U.S. and foreign governments in international airline operations and evaluates U.S. Government efforts to respond to unfair competitive practices, as required by the Fair Competitive Practices Act, and to reduce foreign restrictions on charter travel.

We obtained information for this report through discussions with U.S. Government agencies, particularly the Departments of State and Transportation; the Civil Aeronautics Board; the major U.S. international air carriers and their trade associations; and through reviewing agency files, documents, reports, and regulations. Internationally, we visited Western Europe, Mexico, Japan, and the Philippines, and met with representatives of U.S. and foreign airlines and U.S. Government and host-country officials.

Formal comments on this report were obtained from these agencies and the airline associations and are incorporated where applicable. (See apps. III through VIII.)

CHAPTER 2

PERVASIVE GOVERNMENT ROLES IN INTERNATIONAL AIR TRANSPORTATION

> "Private U.S. companies must compete with state enterprises in most markets; competition in international air transportation is limited by government policy in almost all other countries." (International Air Transportation Policy of the United States, September 1976)

The stated U.S. policy for international air transport recognizes the substantial differences that exist between the international and domestic air transportation operating environments. This recognition acknowledges the sovereign control--accepted by all nations--that each country has over its own air space. The policy statement notes that, although the governments of other nations may share the U.S. objective of efficient transportation service, many differ sharply as to how such transportation should be organized, financed, regulated, and promoted.

Questions of competition in international aviation are difficult to resolve. The U.S. Government and the government of every nation to which U.S. airlines fly must first reach agreement on the nature of the relationship, including such considerations as (1) which cities can be served, (2) how many airlines will participate from each country, (3) how charters will be handled, (4) what service can be provided from each country's airports to third countries, and (5) in some instances, how frequent the service will be; for example, the 1977 agreement between the United States and the United Kingdom discusses flight frequency. The final results depend on negotiating positions and skills and on the bargaining advantage of each country. The negotiating position depends on a mix of factors including traffic generation, strategic location, destination attractions, and visitor spending. In this regard, the United States has major economic leverage with most countries through its control of access to the densest intercontinental routes and largest total market in the world.

CONTROL OF INTERNATIONAL AIRLINES

U.S. policy supports a privately financed, economically viable industry as the best means of furnishing efficient air services. U.S. international carriers are privately owned while foreign international carriers are

generally owned and/or financially supported by their governments through subsidies, loans and loan guarantees, special tax treatment, and government-provided goods and services.

Although U.S. and foreign international airlines are operated for profit, other objectives (increased tourism, foreign exchange earnings, national security, and prestige) also influence decisions affecting international aviation operations.

During the recent recession when some U.S. carriers were forced to sell aircraft and cut back on routes and personnel, foreign carriers were able to buy new equipment, expand service, and even operate with supersonic service through government subsidies.

DECLINE OF U.S. DOMINANCE IN INTERNATIONAL AVIATION

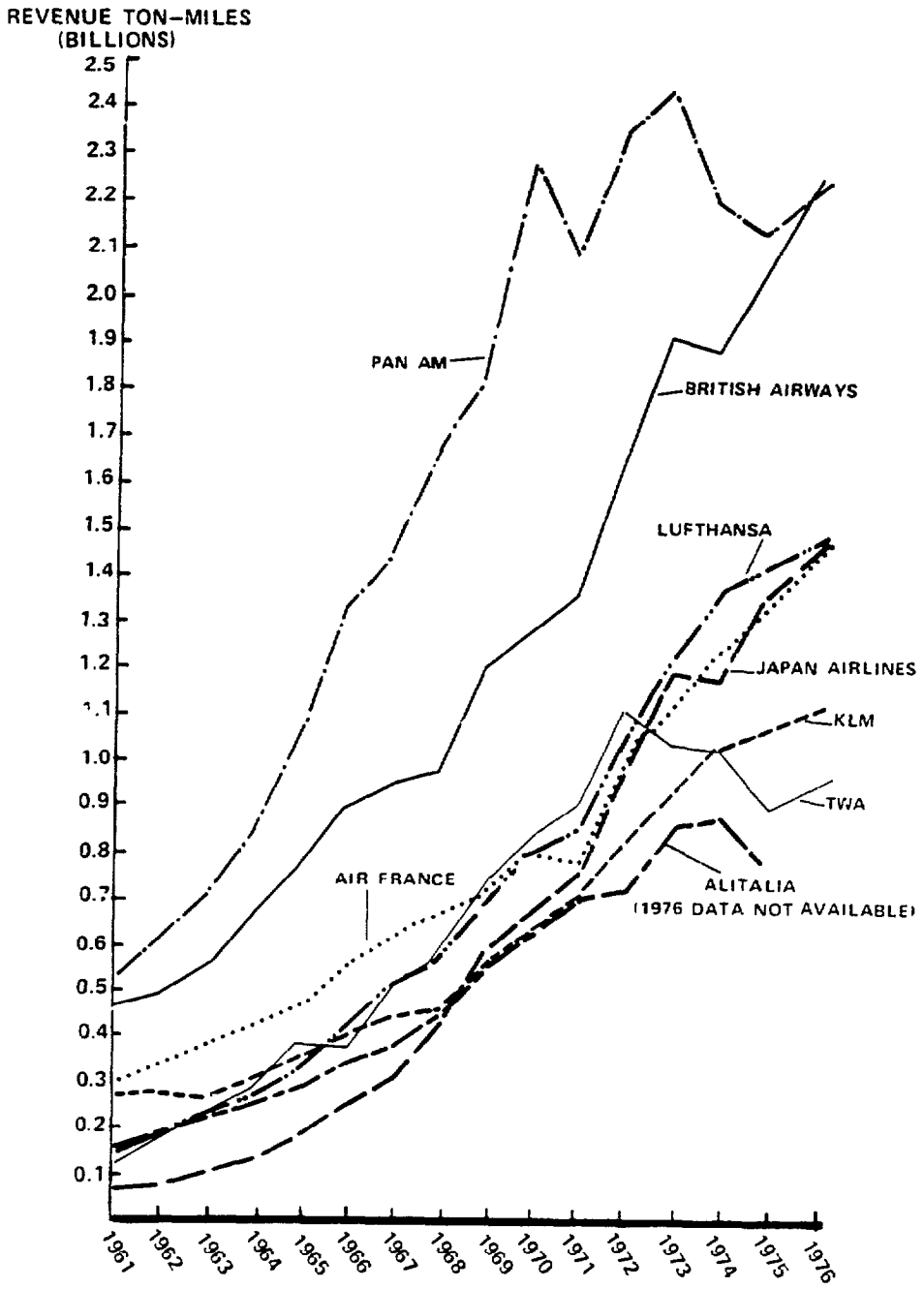
Only a decade or so ago, U.S. dominance in international air transport was more or less taken for granted. Today it is being increasingly challenged by a number of rapidly expanding foreign airlines.

Chart 1 compares the traffic of Pan American World Airways, Inc. (Pan Am), and Trans World Airlines (TWA), the two principal U.S. international carriers, with that of foreign competitors during 1961-1976. U.S. air carrier traffic has declined even though U.S. carriers remain among the most efficient in terms of cost per revenue ton-mile 1/ and the most productive in terms of employees per revenue ton-mile. The attempts by certain governments to negotiate predetermined and larger market shares for their national airlines at the expense of U.S. carriers will, if successful, accelerate this decline.

1/One ton of revenue traffic transported one statute mile, including passenger and nonpassenger revenue traffic. The passenger weight standard for both domestic and international operations is 200 pounds.

CHART 1

SCHEDULED SERVICES OF SELECTED U.S. AND FOREIGN AIRLINES 1961–76



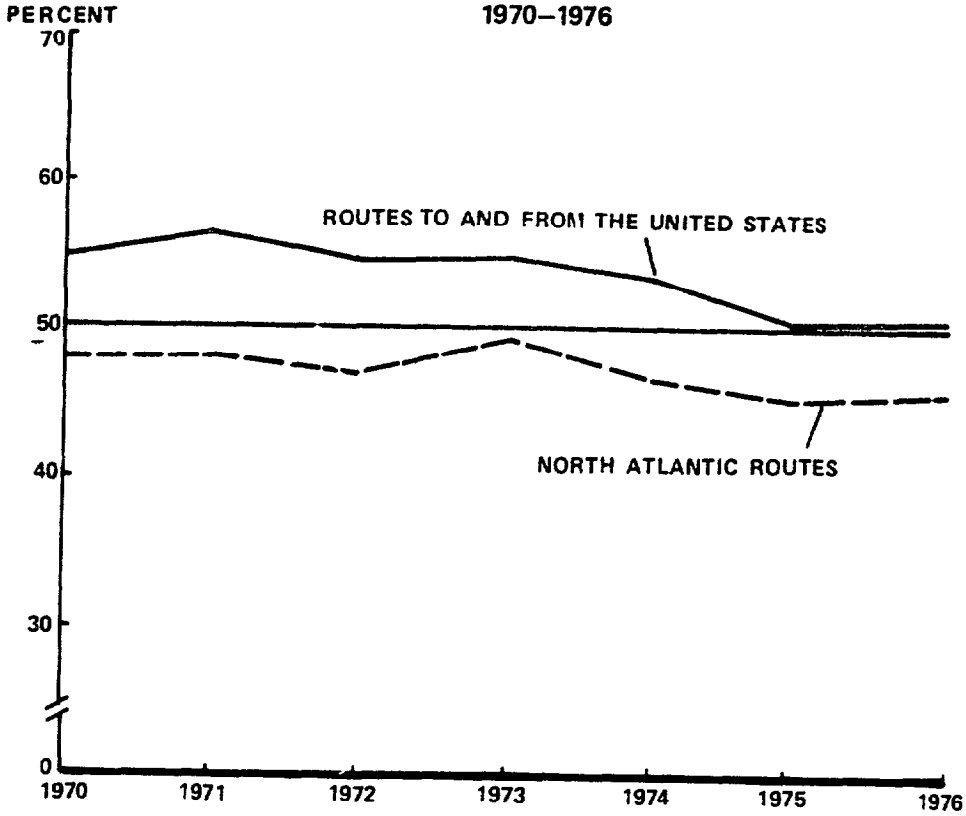
Because U.S. international carriers receive less assistance than most foreign government-owned airlines, they were more seriously affected by the (1) worldwide economic recession during 1973-75 which contributed to the financial losses for both U.S. and foreign international carriers and (2) increased operating costs due to the cartel pricing of oil by the oil exporting countries. Jet fuel, which has tripled in price since 1973, now constitutes more than 25 percent of the operating expenses of U.S. international air carriers.

The profitability of international airline operations has improved. For instance, the 1977 international operations of U.S. carriers were the most profitable since 1968.

The long-term growth in the market share of foreign international air carriers has been viewed as a natural emergence from postwar American dominance. As chart 2 shows, U.S. airlines' market share of passenger traffic is down to 50.3 percent of total traffic on international routes to and from the United States.

CHART 2

U.S. MARKET SHARE OF INTERNATIONAL PASSENGER TRAFFIC (SCHEDULED AND CHARTER) 1970–1976



In the important North Atlantic market, where the United States generated more than 60 percent of the passengers in 1975, U.S. carriers were able to gain only a 45-percent overall share of scheduled and charter traffic. If scheduled service alone were considered, the U.S. share drops to 38 percent. The growth of U.S. charter traffic has offset the decline in scheduled traffic to some extent, but U.S. charters are subjected to foreign restrictions which are impeding their growth. (See ch. 4.)

EXCESS CAPACITY

The economics of airline services depend upon three interrelated but independently established factors--routes, rates, and capacity.

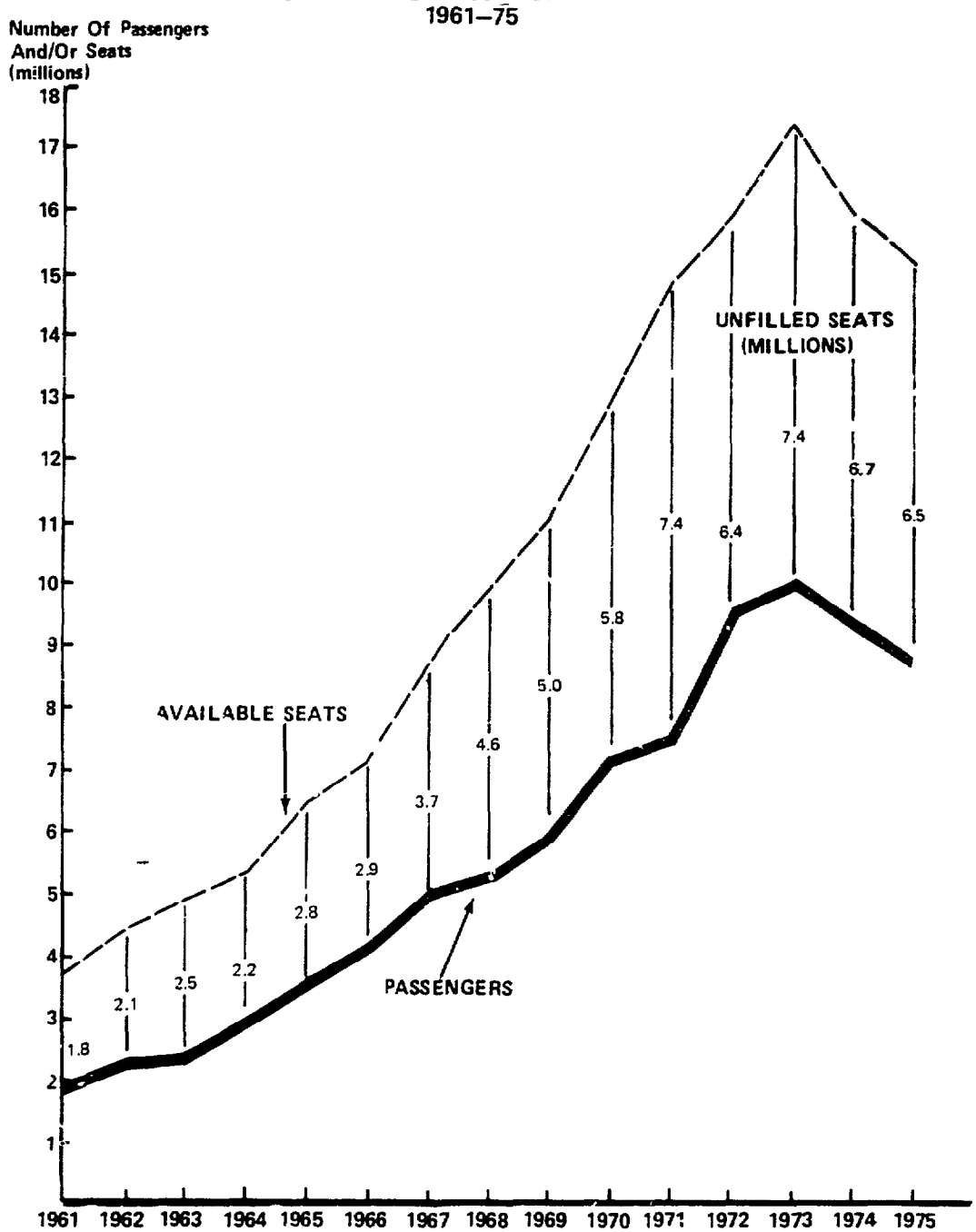
Excess capacity consists of airline seats furnished over and above the number needed to satisfy the public's demand for adequate scheduled service.

When the agreement between the United States and the United Kingdom (Bermuda I) was negotiated in 1946 the United States advocated a competitive market with essentially no controls on routes, capacity, fares, or traffic beyond their respective borders. The United Kingdom, fearing U.S. domination, sought control over all these factors. Both sides made significant concessions. The United States agreed to bilateral determination of specific routes and to fares being set by intercarrier agreement subject to Government review. The British gave up their desire for predetermined capacity. This left flight frequency the main competitive element. U.S. policy generally has been to avoid capacity management agreements when possible. The United States prefers that the carriers be responsible for dealing with problems of excess capacity in order to preserve the competitive concept underlying the Bermuda agreement. It maintains that having carriers or governments predetermine capacity because of market shares can introduce artificial restraints unrelated to carrier efficiency or traffic demand.

During negotiations for the Bermuda II Agreement, the British suggested target load factors as high as 70 percent. In 1974 the actual load factor on Canadian North Atlantic routes was 67.8 percent. On U.S. North Atlantic routes, load factors have averaged about 55 percent. As chart 3 shows, capacity on U.S. routes has always grown to meet increased demand, and in recent years has grown considerably faster than demand. Since 1961, unused seats on North Atlantic routes have increased from 1.8 million to 6.5 million.

CHART 3

U.S. NORTH ATLANTIC SCHEDULED PASSENGER SERVICE 1961–75



Excess capacity has been prevalent on the North Atlantic routes in years that airlines made money and in years they lost money. The years 1961 to 1970 were generally profitable for the airlines despite average scheduled load factors of only 54.6 percent. Since then, the carriers generally have operated at substantial losses although load factors averaged 56.5 percent. The reluctance of individual carriers to unilaterally reduce capacity is attributed to the expected permanent loss in market share.

Former CAB Chairman John E. Robson commented that capacity competition causes airlines to operate far more flights and offer more seating capacity than necessary, which lowers load factors and drives up costs, thereby creating pressure for price increases.

The U.S. Government, notwithstanding its position favoring capacity competition, has on occasion deemed it necessary to limit capacity. Due to the scarce supply and increased cost of aviation fuel in 1974 and 1975, CAB allowed U.S. carriers to enter into temporary capacity limitation agreements.

CAB also approved a route rationalization agreement between Pan Am and TWA. The agreement, implemented in March 1975 and due to expire in March 1978, provided for suspending certain unprofitable routes and exchanging others to eliminate some head-to-head U.S. carrier competition.

New innovative low fares for scheduled service recently approved between the United States and 14 other countries may generate new travelers and bring about higher and more stable load factors. Some of these fares (budget, standby, reduced-APEX, etc.) involve airline discretion in placing travelers on flights which would otherwise have empty seats.

A central issue in the discussions for a new air agreement between the United States and the United Kingdom was the latter's insistence upon capacity management by governments while the United States took the position that the principles of the 1946 Bermuda agreement must be preserved. The British noted that, by the early years of this decade, excess capacity had led to a serious waste of resources, considerable damage to the airlines' financial position, and higher passenger fares than would otherwise have been required.

On July 23, 1977, a new air services agreement, commonly known as Bermuda II, was signed by the two countries. According to congressional testimony, the capacity provision was the most difficult part of the negotiations. The United Kingdom insisted upon capacity management by governments, seeking a 50-50 split in capacity, equal market shares, and control of all elements which might give U.S. airlines a competitive advantage. The United States held that the capacity principles of the Bermuda I Agreement must be preserved, stressing that the public interest requires that the managements of privately owned companies have the freedom and flexibility to make prudent decisions in a free market. As a compromise, the standard capacity language of Bermuda I was retained and a special "annex" was added concerning capacity across the North Atlantic to:

> "* * * provide a consultative process to deal with cases of excess provision of capacity, while ensuring that designated airlines retain adequate scope for managerial initiative in establishing schedules and that the overall market share achieved by each designated airline will depend upon passenger choice rather than the operation of any formula or limitation mechanism."

Under the annex, each airline's proposed schedules will be subject to government review prior to each traffic season. When the governments cannot reach agreement, each airline will be entitled to increase its frequencies on the basis of the preceding year's schedule plus adjustment for the average growth forecast for the next year. In any case, a minimum of 20 additional summer round trips or 15 winter round trips will be permitted without question each year over the preceding year's allowance. The two governments are obligated to review the capacity annex in its fifth year of operation, with automatic termination after 7 years unless the governments decide to renew or revise its provisions.

After Bermuda II was signed, concern was generated in the United States that it restricts competition to a greater degree than Bermuda I. This and other difficulties prompted congressional hearings. Testimony was presented for and against the agreement, and comments relating to capacity include the following statements.

--Opening statement on September 29, 1977, of Congressman Glenn M. Anderson, Chairman, Subcommittee on Aviation, House Committee on Public Works and Transportation, "* * * On its face Bermuda II departs from the principles of competition which have been the basis for United States aviation policy since the predecessor agreement, Bermuda I, was signed in 1946. The general principal which has governed United States international aviation policy is that competition provides the best service for the public. We have resisted the desires of foreign airlines to move to a system where the government controls schedules, and revenues are pooled by the airlines serving a route. Our belief has been that capacity controls and revenue sharing encourage inefficiency and result in high fares for the consumer * * *. On the other hand, our experience, domestically and internationally, has been that competition encourages efficiency, imaginative marketing, and low fares. Bermuda II restricts competition to a much greater degree than Bermuda I * * *."

--In his opening statement on November 29, 1977, Senator Howard W. Cannon, Subcommittee on Aviation, Senate Commerce, Science and Transportation Committee, was critical that the United States had abdicated its long-standing policy against governmental control over airline capacity.

--Alfred E. Kahn, Chairman, Civil Aeronautics Board, "* * * Specifically, Bermuda II: (1) imposes a restriction on the number of U.S.-flag carriers that we may designate in United Kingdom markets; (2) establishes a mechanism that allows the British Government to control increases in frequency (and thus capacity) on the North Atlantic; (3) sharply limits the beyond points to which U.S. airlines can carry U.K. fill-up traffic, including stopover or inter-line connecting traffic, although the loss of these rights is partially offset by allowing our airlines to carry on-line passengers to any beyond points; and (4) provides for specific frequency restrictions on certain operations

in the Pacific and in round-the-world operations. These four provisions represent a very substantial intrusion of governments into what should in our opinion be the province of management decision-making constrained only by the forces of competition."

--Ambassador Alan S. Boyd, Special Representative of the President for Civil Air Service Negotiations with the United Kingdom. "* * * I must say that I do not believe that it [capacity mechanism] will operate in a way adverse to the public's interest in having ready access to transatlantic air services, nor in a way to restrain healthy competition. However, I believe it will cause the airlines to be a little more thoughtful in their capacity planning, and so increase the efficiency of their operations, which means, with independent initiative on the price side, relatively lower fares for the public * * *."

--Chester C. Davenport, Assistant Secretary of Transportation for Policy, Plans and International Affairs, "* * * In reaching 'fair' agreements--fair to consumers, fair to the nations involved, fair to the cities which are candidates for service, and fair to the airlines--difficult compromises must often be made * * *. It was our view--and it was the view that prevailed--that an airline's share of the market should be determined by passenger choice and not by a formula imposed by the governments. Flexibility for our airlines is preserved in Bermuda 2. * * * We are concerned with how the provision will work and hopeful that the mechanism will not be frequently invoked * * *. It is, as I said before, a fair agreement, as long as both the United States and the United Kingdom are prepared to act in a consumer responsive and pro-competitive manner * * *."

NEED FOR MORE STRUCTURED ORGANIZATIONAL APPROACH

A specific Government official should be designated to see that international aviation problems are considered promptly and that differences among Federal agencies are resolved as prescribed by the President.

This need for a focal point arises because of the diverse interests of the agencies involved--the Department of Transportation is responsible for aviation's economic and safety policies, the Department of State is concerned with foreign policy and negotiations with foreign governments; the Department of Justice is interested in anti-trust matters; and the CAB is concerned with the economic regulation of international air transport. These diverse interests inevitably lead to differing positions in formulating international aviation policies and in resolving negotiating positions with other countries. International aviation policy is a matter that requires a continuing effort for the establishment, modification, and review of long-term negotiating strategy and policy objectives. We believe it is important that the views of the public, the airlines, the executive agencies, and CAB be considered in formulating negotiations positions for international air agreements and in responding to unfair and discriminatory practices.

We believe that our position is supported by information disclosed in chapters 3 and 4 and views expressed in recent congressional hearings.

The general conclusions of the Office of Management and Budget's July 1970 report on its review of the roles of Federal agencies in international aviation follow:

> "Our general conclusion is that the recommendations of the 1963 Bureau of the Budget study of United States International Aviation Organization were based on a realistic appraisal of the organizational environment of that time. With the establishment of the Department of Transportation in 1966, there has been a significant change in the organizational environment that should be recognized. The various valid agency interests in international aviation should be represented in an effective manner, both within the executive branch and the overall Federal context. In addition, the aviation industry and other private interests should be assured that their views are given full consideration by executive agenices.

"Accommodation of agency and private interests and resolution of other problems identified to the international aviation process require the assignment of clearly defined roles to the agencies principally involved and understanding of those roles by all agencies and parties concerned with international aviation affairs. Further, the assignment of roles must be related directly to the fundamental processes that comprise aviation policy formulation.

"'International aviation policy' is not an easily defined area of governmental activity. It means different things to different people, and particularly to people in different agencies. For purposes of organizational analysis, we believe it is more useful to consider international aviation policy formulation in the context of its actual manifestations. Fundamentally, it takes two forms: (1) the implementation and administration of policy as it relates to international arrangements and agreements through the negotiations process, and (2) the need for broad policy and long range national objectives to provide a framework for all negotiations with foreign governments and for other U.S. Government activity in international aviation. The principal areas in the second category are the impact of international aviation activities on domestic transportation policy and their interrelationships, intermodel transportation issues at the international and national levels with accompanying cost-benefit considerations, studies of technical problems as they impact international aviation, broad international air transport policy (such as that contained in the Statement of International Air Transportation Policy approved by the President on June 22, 1970), and other policy areas having similar characteristics.

"Given this delineation between the requirement for coordinated U.S. Government positions in support of specific international negotiations and the need for broad policy and long range objectives, we would expect the individual negotiation positions to be formulated on the basis of technical aviation economic analysis and foreign relations considerations

within the context of broad transportation policy and other relevant national interests. Because of the essentially different orientations of the two forms of activity, we see no necessity or even desirability for a single agency to exercise the lead role in both areas. However, organizational arrangements must be administered in such a way as to provide for full and effective coordination between the two forms of activity. Without realistic interaction between short and long term requirements, policy can become unimplementable and implementation can lose sight of long term goals."

The scope of our review permits us to observe the continuing need for improved coordination of international aviation matters. We did not, as did the Office of Management and Budget, attempt to delineate in detail what the responsibilities of the concerned agencies should be. Consistent with the Secretary of Transportation's statutory role as the chief aviation advisor to the President and his responsibility to foster the development of air commerce in the United States and abroad, we believe the Secretary of Transportation should be the focal point for coordination of international aviation matters. In assigning responsibilities, there is a need to recognize the Department of State's role in negotiations with foreign governments and CAB's responsibilities under current legislation. Perhaps there may be some problems of agency layering of personnel in dealing with aviation problems or some responsibilities that should be modified or clarified. These problems should become apparent and, in part, may be dealt with by the Acting Director, Office of Management and Budget, in designating to the Secretary of Transportation responsibility for coordinating international aviation matters.

AGENCY COMMENTS AND OUR EVALUATION

Competitive position

The Chairman, CAB, disagrees with our opinion that U.S. international carriers are operating at a competitive disadvantage with foreign airlines or that their competitive position is declining. He asserted that the U.S. international carriers still carry over 50 percent of scheduled traffic and 60 percent of charter traffic.

U.S. international airlines operate at a competitive disadvantage because most foreign international carriers are owned in whole or in part by their governments and receive financing and support not available to U.S. airlines. The degree of government support received by foreign airlines was extensively documented in CAB's own study of the subject. It was further documented, along with the unfair competitive practices, in congressional hearings that led to the International Air Transportation Fair Competitive Practices Act of 1974.

The Department of Transportation agreed that the U.S. competitive position has been declining and that this is a cause for concern. It also pointed out, however, that the profit prospects for U.S. carriers through 1978 look good.

Coordinating Government actions

The Department of State commented that there are diverse views, as there should be, but also remarkable frequency of agreement. Although acknowledging that interagency coordination has not always worked as well as it might, State stresses that it has worked. It commented that the draft report confused the responsibilities of the agencies, which, the State Department suggests, are adequately defined.

Apparently, we had unintentionally implied that there should be a substantial change in the State Department's negotiating role with foreign governments under section 802 of the Federal Aviation Act of 1958. Because of the State Department's comments, we modified our recommendations to make it clear that we did not intend to change the Department's role in negotiations with foreign governments.

We still believe there should be a more structured approach for formulating international aviation policies and planning negotiations with foreign governments and that the Secretary of Transportation should be the focal point for coordination. The Department of Transportation agreed with this recommendation and, with some reservations, so did the National Air Carrier Association. The National Air Carrier Association believes that the President should designate a high-level cabinet officer, preferably the Secretary of Transportation, as an assistant for international aviation. The Air Transport Association preferred that the focal point be in the Office of the President but, if not, felt it should be in the State Department, though at a higher level than at present.

In congressional hearings on September 29, 1977, the Chairman of CAB commented that, to secure the necessary integration and continuity of effort and to develop the policies and proceed systematically to effectuate them, a permanent cabinet-level council is necessary. Such a council, the Chairman said, would be responsible for coordinating U.S. international air policy and establishing the specific objectives that will ultimately form the U.S. national position in individual negotiations. This position was reiterated by him in testimony on November 29, 1977, before the Subcommittee on Aviation of the Senate Commerce, Science and Transportation Committee.

We hesitate to recommend adding yet another Government level of involvement and were also aware of the President's preference not to have additional operational responsibilities within his Office. We concluded that one individual would be more accountable for coordinating responsibilities than would a council or interagency task force.

The comments on this report generally raised a number of objections to alleged implications that existing agency functions would be transferred to the Department of Transportation. Thus, the Air Transport Association objects to the transfer of responsibilities from CAB's Bureau of International Aviation to the Department of Transportation. The State Department and CAB both object to the Department of State's removal from the negotiation process. We did not intend to imply that such organizational realinements would necessarily take place if a focal point was designated for dealing with international aviation matters.

The Subcommittee on Aviation of the House Committee on Public Works and Transportation held hearings during September and October 1977 on the recent U.S. air agreement with the United Kingdom. In testimony before that Subcommittee there was a general consensus with the views reached in this chapter. The Chairman of CAB testified that the agencies' roles in international aviation policy are not clearly defined and that collaboration among them has been largely ad hoc, negotiation by negotiation. Further, the lack of a structured approach to international aviation negotiations is self-defeating because it deters full participation by agencies that could make important contributions to the overall U.S. effort and fails to marshal a coordinated programmatic effort that would best serve U.S. interests.

The testimony of the Assistant Secretary of Transportation for Policy, Plans and International Affairs generally agreed with that of the CAB Chairman and suggested that the designation of clearer agency roles and responsibilities for international aviation activities would improve the situation.

Former Under Secretary of Transportation John W. Barnum testified that the crux of the organizational problem is leadership and the solution is for the President to put someone in charge. That is essentially what we have recommended.

John E. Robson, the former CAB Chairman, in a published article in October 1977, noted that the future interests of our airlines, the traveling public, and our national economic objectives require a full dress examination of international aviation. Unless this is done, the current fragmentation of responsibilities within the Government, procedures having their origins in much earlier and different times, and vacillating policy and timid diplomacy to protect the interests of American carriers and consumers will continue to plague America's capacity to operate in international aviation. He recommends streamlining Government organization, policies, and procedures for international aviation.

Senator Howard W. Cannon, Chairman, Senate Subcommittee on Aviation, in his opening statement on November 29, 1977, commented that the central question we hope to explore is how U.S. policy is made, by whom it is made, and how it is implemented in bilateral negotiations with other countries. In further hearings in early 1978, the Subcommittee plans to review the executive branch structure to determine how policy is made and implemented with a view toward possibly strengthening the executive machinery and providing congressional input to the policy development process.

In testimony before this Subcommittee, Alan S. Boyd, a former Secretary of Transportation and Chairman, CAB, commented on the desirability to assign responsibility and authority to a clearly identified agency and official for the development of strategy within U.S. international aviation policy objectives and for adequate coordination and follow through. While noting that the Department of State or White House staff might fill this role, he favored the Department of Transportation.

We believe that a more specific delineation of U.S. international air policies and a Government commitment to more expeditious decisionmaking is needed.

CAB ajudicative role

CAB contends that our recommendations for closer coordination between it and the executive branch fail to recognize existing legal requirements relating to its quasi-judicial role. To the extent that CAB is restricted in its activities by it quasi-judicial role, it would be expected to fulfill that role.

We concur that many issues concerning routes, rates, and competitive practices must be decided by CAB after adversarial hearings where all interested parties are free to present evidence and arguments in support of their positions.

RECOMMENDATION TO THE AGENCIES

We recommend that the Acting Director, Office of Management and Budget, give the Secretary of Transportation responsibility for coordinating international aviation matters. The Secretary of Transportation should recognize unresolved differences among Government agencies regarding policy formulation and negotiating positions and seek timely resolution in a manner prescribed by the President.

CHAPTER 3

IMPLEMENTING THE INTERNATIONAL AIR TRANSPORTATION FAIR COMPETITIVE PRACTICES ACT OF 1974

> "* * * The International Air Transportation Fair Competitive Practices Act of 1974 specifically directs Departments and Agencies of this Government to seek elimination of these [unfair, discriminatory, or restrictive] practices [by foreign countries]. This policy will be pursued vigorously." (International Air Transportation Policy of the United States, September 1976)

The operating rights of international carriers usually stem from air agreements or other reciprocal arrangements negotiated between two countries and should provide a balance of economic benefits to the carriers.

More equitable arrangements for U.S. carriers could be obtained by (1) modifying and more effectively implementing the International Air Transportation Fair Competitive Practices Act of 1974 (Fair Competitive Practices Act) and (2) securing common methods for assessing user charges (payments by airlines for use of airways and airport facilities) in bilateral and multilateral agreements. The Fair Competitive Practices Act responds to a variety of foreign discriminatory and unfair competitive practices against U.S. international air carriers.

In the 3 years since the passage of the act, the unfair practices have increased and foreign user charges have escalated. While the United States has obtained relief in some instances, it has never imposed compensatory charges. Our comparison of worldwide user charges indicates that U.S. carriers are paying much more than foreign carriers pay in the United States.

Overall user charges for most international carriers rose 14 percent from calendar year 1975 to 1976. During 1975, U.S. airlines paid $116 million to foreign authorities for airport and enroute facilities and services. In 1977, navigation charges alone cost Pan Am $17.7 million, an increase of 532 percent since 1970.

Section 3 of the act requires the Secretary of Transportation to determine whether foreign user charges unreasonably exceed comparable U.S. charges or are otherwise discriminatory.

When the charges are so determined, the Secretary of State, in collaboration with CAB, is required to negotiate to reduce or eliminate the excessive or discriminatory charges. Failing that, the Secretary of Transportation, with approval of the Secretary of State, is directed to impose compensatory charges on the carrier of the country imposing such charges. The charges collected are to be used to fully compensate U.S. carriers for the excessive or discriminatory charges which they incur abroad. In the few instances where actions were initiated, only marginal results were achieved and no compensatory charges were assessed.

In administering section 3, emphasis has been placed on the discriminatory aspect of user charges--whether U.S. carriers are charged more than others. More attention should be given to insuring the reasonableness of user charges when they substantially exceed U.S. charges. In such cases, we believe the charges should be considered unreasonable unless evidence is made available that they reflect economic costs. 1/ If, after a reasonable time, negotiations to rectify discriminatory or excessive charges are unsuccessful, compensatory charges should be imposed and U.S. carriers fully reimbursed for the amount determined to be discriminatory or excessive.

Since the passage of the Fair Competitive Practices Act, the general level of foreign user charges has increased, as shown in the following examples.

--Australia, which in January 1975 had the highest user charges in the world raised them 32 percent during 1976. Also, air port space rents at Sydney have increased six-fold.

--A U.S. carrier representative informed us that Argentina's user charges in dollar terms doubled during 1972-76. In 1976, Argentina began billing in dollars rather than pesos because of the devaluation of its currency.

1/Economic costs apply to the use of real resources such as capital, labor, and energy.

--The United Kingdom, which now has the highest user charges in the world, increased them three times since the beginning of 1975. Since the beginning of 1976, landing fees have risen 53 percent and navigation fees 38 percent.

--Japan began assessing international carriers a noise charge on September 1, 1975. This charge, which is still being contested by the carriers, represents a 45-percent increase in total user charges and would cost Northwest Airlines and Pan Am roughly $4 million a year. The charge is now being paid into an escrow account by most airlines pending a court ruling on its legality. User charges proposed for a Japanese international airport scheduled to open in early 1978 would constitute the highest charges in the world.

--European air navigation charges, collected by a common European agency, increased about 50 percent in April 1977 and now amount to about $300 million a year for international air carriers. The agency's charges have risen more than 1,100 percent since its inception in 1971.

COMPARISON OF U.S. USER CHARGES WITH 13 MAJOR COUNTRIES

Since the types of user charges vary greatly from one country to another, we examined average user charges for a typical Boeing-747 passenger flight in 13 major countries, and compared them with those of the United States. This comparison is shown on the following page in U.S. dollars as of April 1, 1977, using exchange rates in effect on that date.

	Foreign charge	U.S. charge	Difference	Percent of difference (note a)
United Kingdom	$4,334	$1,317	$3,017	229
Australia	3,876	885	2,991	338
Germany	3,171	1,408	1,763	125
Japan	2,881	746	1,535	206
France	2,602	1,216	1,386	114
Columbia	1,587	967	620	64
Mexico	889	502	387	77
Israel	2,282	1,980	302	15
Venezuela	1,045	965	80	8
Canada	662	1,227	-565	b/85
Spain	1,065	1,635	-570	b/54
Portugal	1,001	1,995	-994	b/99
Italy	780	1,988	-1,208	b/155

a/All percent calculations were made using the lower charges as the base.

b/United States charges higher than foreign.

Calculations were made using a Boeing-747 at 50-percent capacity. Foreign charges were determined by weighting the individual airport costs by frequency of use for scheduled services. All user fees paid by the airlines associated with the entry, landing, and departure of a typical flight, such as navigation, landing, and ground-handling fees, were included.

U.S. charges to individual foreign carriers vary considerably, reflecting a difference in the level of charges among U.S. airport authorities. For example, the average cost to Portugal's carrier in the United States is high because it uses Boston's Logan airport and New York's Kennedy airport, two of the highest cost airports in the United States. By contrast, Mexico's carriers use lower cost airports in the western and southern United States. Nevertheless, we believe this comparison is meaningful in the context of the bilateral exchange of economic benefits that normally govern international air transport agreements. In these terms, 9 of the 13 countries charged U.S. carriers more than their national carriers paid in the United States, and 6 of those 9 charged more than the highest U.S. charges to any foreign carrier.

This comparison by itself does not establish that the foreign charges are unreasonably excessive within the meaning of the Fair Competitive Practices Act. In fact, it can be maintained that U.S. authorities undercharge because (1) they do not recover full costs, including investment, as is the policy of many foreign governments and (2) they do not include navigation charges to the carriers, a major element in most foreign charges. Costs of the U.S. air navigation system are defrayed by a combination of general tax revenues and aviation user tax revenues. The latter revenues fund specific costs of Federal airport and airway programs. Aviation user tax revenues do not equal the combined total costs of all Federal airport and airway programs. Only a portion of these revenues was appropriated for airway programs and the remainder was appropriated for airport programs or carried as a surplus in the Airport and Airway Trust Fund. Therefore, in fiscal year 1976 general tax revenues were used to defray an estimated 87 percent of total Federal airway system costs.

Wide variances in charges among airport authorities do not necessarily mean that those with higher charges are unjustified. The charge to any single carrier may be influenced by the use of the facility, concession and rental revenues, airline participation in the construction and operation of an airport, the fiscal policy of the airport authority, and government funds that may cover air navigation facilities and services. In most cases, too little is known about the basis of foreign charges to judge their reasonableness.

Charges can be unreasonable or discriminatory when they are not based on the economic cost of services rendered, when they are used to cross-subsidize airports not used by the carrier charged, and when they are inequitably distributed so that some carriers pay more than others for the same service.

EXAMPLES OF QUESTIONABLE CHARGES

United Kingdom

User charges to U.S. carriers in the United Kingdom are the highest in the world and exceed those paid by British carriers in the United States by about 229 percent. This is partly because the British charges are designed to achieve full cost recovery, including an inflation factor and a 15.5-percent return on investment. The method for determining the charges indicates a cost-allocation system that charges transatlantic flights a disproportionately high share of the total costs.

The navigation charges are based partially on aircraft weight, even though it bears no relation to the cost of navigation services. U.S. transatlantic flights use mostly large, wide-bodied aircraft, while intra-European flights use lighter aircraft. British carriers, by contrast, pay no navigation charges in the United States.

Landing charges which, logically, should be based on weight, are based instead on weight and distance flown. Distance flown does not affect the actual cost of landing, but does result in much higher charges to nearly all U.S. flights, with the added anomally that landing charges for flights from Miami, for example, are as much as $300 higher than those from New York. British carriers in the United States pay no more in landing fees than comparable domestic carriers, since distance is not a factor in the U.S. charges.

Finally, there is a peak-hour charge in effect during the 7 most heavily traveled months of the year, which amounts to about $1,500 over the normal charge for each Boeing-747 useage. The peak-hour charge is levied on all flights landing at the main London airport between 6 a.m. and 9 a.m. or departing between 10 a.m. and 2 p.m. This charge has the greatest effect on transatlantic flights which land and depart mostly during those times and whose passengers have the least flexibility in their schedules. Intra-European flights can avoid the peak-hour charges by scheduling arrivals and departures at other times without adversely affecting public convenience.

As a consequence, although U.S. air carriers perform less than 5 percent of total aircraft movements at the airports in the London area and carry 6 percent of the passengers that move through terminals at these airports, the airport user charges they pay represent over 17 percent of the British system-wide revenue from traffic.

The United Kingdom was one of three countries against which the Secretary of Transportation made a finding of discriminatory user charges under section 3 of the Fair Competitive Practices Act. His finding, made on July 30, 1975, addressed the discriminatory methods by which landing and navigation fees were assessed against international flights as opposed to domestic flights with no apparent differences in cost. The Bermuda II Agreement signed July 23, 1977, did resolve these matters, but its provisions take a stance against discriminatory or non-cost-related charges. These provisions should encourage U.S. negotiating efforts to eliminate the discriminatory or unreasonable charges described.

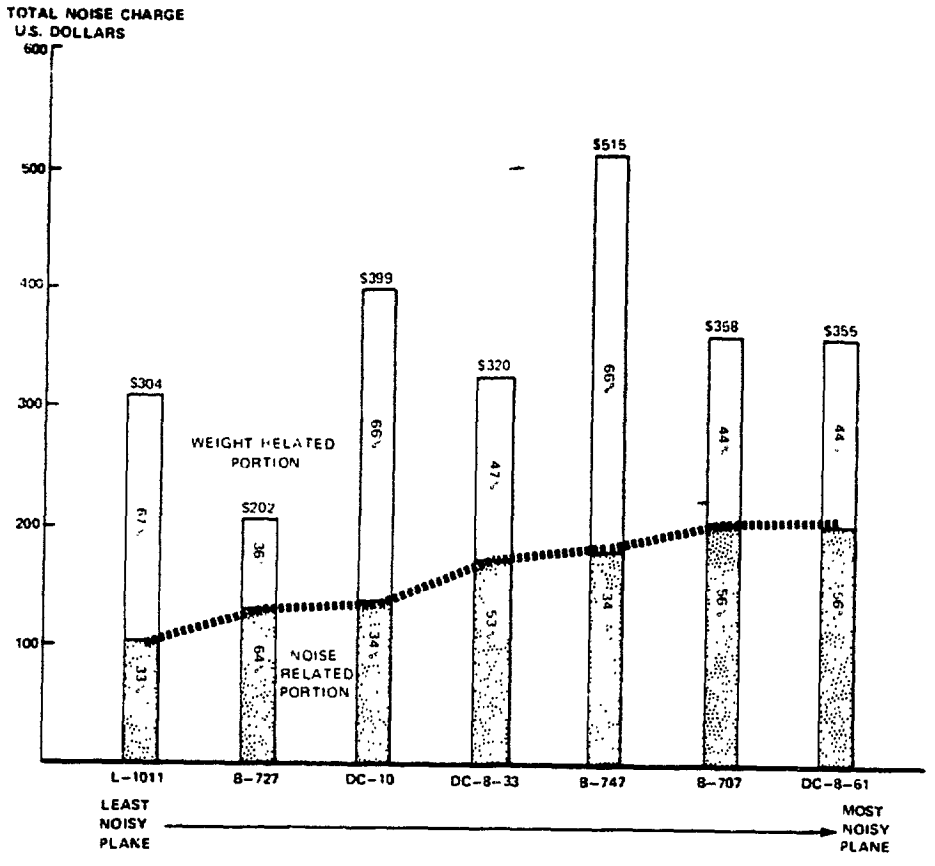
Japan

User charges paid by U.S. carriers in Japan are 206 percent higher than those paid by Japanese carriers in the United States. A noise charge imposed in mid-1975 on jet aircraft, averaging $515 per landing for a Boeing-747, makes up about 24 percent of the total Japanese charges and will cost the principal U.S. carriers $4 million a year.

The method used to impose this charge has the effect of placing a significant emphasis on weight, as shown in chart 4. Consequently, the charge falls heavily on wide-bodied aircraft such as the U.S. Boeing-747s and DC-10s, even though these planes are quieter than some of the small, narrow-bodied aircraft. Since wide-bodied aircraft carry more passengers, they reduce both flight frequencies and total noise.

CHART 4

JAPANESE NOISE CHARGE FOR SELECTED AIRCRAFT



The U.S. scheduled carriers serving Japan have joined a group of 26 other international carriers which are testing the legality of the noise charge.

Australia and other countries

Australian user charges are second only to those of the United Kingdom, and are about four times what Australian carriers pay in the United States. The Secretary of Transportation did investigate the Australian charges and, in October 1975, found them to be discriminatory under section 3 of the Fair Competitive Practices Act. Subsequent negotiations which began in February 1976 resulted in a more equitable allocation of navigation charges, amounting to a 20-percent reduction in total user charges to U.S. carriers.

No reduction was achieved in airport rentals, and the reduction in navigation charges was later consumed by a 32-percent increase. 1/ The principal U.S. carrier initiated legal action in the Australian courts against the six-fold increase in Sydney's airport space rent. This increase was upheld and further efforts are dependent on U.S. Government action.

As shown in the table on p. 24, overall user charges in a number of other countries remain questionably high in relation to U.S. charges, even though most of these countries have much lower wage levels than the United States. No formal determinations have been made under section 3 of the Fair Competitive Practices Act and, in some cases, the cost data needed to substantiate them may not be made available by the countries concerned.

In Mexico, the centralized government agency that provides navigation services supports 42 separate airports, most of which are not used by international carriers. These airports are purportedly being subsidized through the higher rates charged at the few airports used by international carriers.

For Italy, the third country against which section 3 action was initiated, total user charges are fairly low, and the finding was based on the exemption from payment

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1/Partially offset to U.S. carriers by a 17-percent devaluation of the Australian dollar.

of the Italian carrier. This has now been resolved by the Italian courts which, in effect, overturned the Italian carrier's exemption.

In January 1977 the President of the Philippines instructed the Director, Civil Aviation Administration, to increase across the board the rates of landing and takeoff fees for all aircraft engaged in international air services, including the national carrier, and to reduce them across the board for domestic air services. He also directed that the net result of these charges accrue a profit for the government.

OTHER DISCRIMINATORY AND UNFAIR COMPETITIVE PRACTICES

Section 2 of the Fair Competitive Practices Act pertains to a wide range of discriminatory and unfair competitive practices. Such practices include currency restrictions, monopoly ground-handling, unfair taxes, cargo restrictions, charter discrimination, and overly restrictive fly-national policies. We believe section 2 should be revised to require formal findings where discriminatory or unfair practices exist.

Currency restrictions

Currency restrictions abroad range from prohibiting the sale of air services in local currencies to delays and outright blocking of converting or remitting funds earned overseas. These problems have existed for years, primarily in less developed countries. Despite some success by the U.S. Government in obtaining relief, 1/ they continue to be a financial drain on U.S. international airlines.

One U.S. carrier estimated delays of from 2 days to 15 months in converting currency in 16 foreign countries and 1975 losses of $6.8 million due to devaluation and interest costs. It had to write off another $340,000 in countries where its funds were blocked or where it was forced to suspend operations. The Air Transport Association of U.S. scheduled carriers estimated in 1976 that U.S. carriers have $20 million in revenue tied up in foreign countries.

1/One U.S. carrier recovered several hundred thousand dollars in blocked Egyptian pounds, and there has been significant easing but not complete relief from Indian currency restrictions.

By comparison, the carriers of countries that impose currency restrictions on U.S. carriers are able to market their services on an equal basis with U.S. carriers and have no restrictions placed on their revenues.

Monopoly ground-handling and unfair taxes

There has been a growing trend abroad toward monopoly ground-handling, often furnished by the military, another government agency, or the national flag carrier. This sometimes contributes to increased handling costs and poorer service. In some cases the U.S. airline itself must furnish the services that it is purportedly paying for. U.S. carriers are particularly concerned about the deterioration of service when the handler is a national-flag carrier because of the potential for preferential treatment.

The Secretary of Transportation made a finding under section 3 of the Fair Competitive Practices Act that the Italian handling charge in Rome was discriminatory because the Italian carrier, Alitalia, did not have to pay it. In our opinion, the principal concern with respect to Italian ground services is not cost, but the competitive advantage Alitalia enjoys by being the only carrier able to self-handle and, thus, to deal directly and efficiently with its customers. We observed in the Rome airport, for example, that only Alitalia maintains its own ticket counter and has signs indicating its presence by name. By contrast, U.S. airlines are not allowed to maintain their own ticket counters and their boarding facilities are located at the far end of the terminal. In the United States, Alitalia has complete freedom to self-handle or to contract for services.

National-flag carriers or other government-owned or designated entities also control ground-handling in all Communist countries, and in Argentina, Switzerland, Germany (in part), France, United Kingdom (Glasgow and Hong Kong cargo) and Yugoslavia.

In a number of countries, principally in South America, fuel for foreign carriers is subject to higher prices, service fees, or taxes than those charged to the national carrier. In one of these countries, U.S. carriers were paying higher aviation fuel prices than the national carrier. Through U.S. Government efforts an agreement alleviating the fuel price discrepancy was concluded in December 1977. Chile, Peru, Singapore, Turkey, Indonesia, Bolivia, and the Philippines impose other unfair taxes on international airlines

by either exempting or imposing lower tax charges on their own national carriers.

Cargo restrictions

In Brazil, foreign carriers must get approval to convert local currency paid for freight shipments, while discounts or credits are allowed on shipments by the national-flag carrier. Also, foreign carriers can handle only those freight shipments refused by Brazil's national airlines.

In India, because of governmental requirements, air freight shipments are usually offered first to Air India. Also, shippers receive foreign exchange advantages and, in some cases, government rebates when using Air India.

In the Federal Republic of Germany, air carriers were not allowed to truck air freight between airports not served by them, which gave an advantage to the German carrier. The U.S. freight carrier was effectively restricted to shipments to and from Frankfurt. The U.S. Government negotiated this matter and the carriers are now allowed to truck cargo within Germany but not across its borders.

In the United Kingdom, the U.S. freight carrier's cargo operations were restricted in 1974 to prevent carriage between Britain and other parts of Europe. The restriction was overturned by the British courts, but the British Department of Trade then rewrote the carrier's permit to include these restrictions, and to require the carrier to file proposed schedules 60 days in advance. It was not until Bermuda II was signed in July 1977 that this restriction was removed.

U.S. carriers serving Italy are prohibited from using wide-bodied freighters. Italy contends that the jets are not covered in the agreement; the United States disagrees. However, Alitalia does use a Boeing-747 in a half-passenger, half-freight configuration in its service to and from the United States.

Charter discrimination

Many foreign governments require prior approval of all U.S. charters operating into or out of their countries. This contrasts with the U.S. policy of blanket approval for most foreign charter applications and almost automatic

individual approval for the rest. As a result, foreign-flag carriers have sometimes had a competitive advantage over U.S. carriers on charter flights to and from the United States because of a greater degree of certainty in obtaining approval for these flights. This apparently has been the case for Japanese, French, and Italian carriers, among others. In Italy, where charter rules are highly uncertain and late in being announced, the Italian carrier has enjoyed a marketing advantage because of the uncertainty of approval for U.S. flights. It also enjoys an advantage in being the only carrier allowed to operate charters out of the main Rome airport. All other charter operators must use the alternate Rome airport which has a short runway which limits takeoff weight and, hence, the amount of fuel that can be carried. This precludes transatlantic flights from the alternate airport without an intermediate fuel stop. Additionally, the alternate airport has the marketing disadvantage of being less convenient and having fewer amenities for the passengers.

Fly-national policies

U.S. Federal employees or those traveling at Government expense are now required to fly on U.S. carriers whenever possible. 1/ However, they account for only a small portion of the total U.S. international market. In foreign countries that have smaller markets to start with, government travel restrictions are more significant. Sometimes the fly-national policies of foreign countries go far beyond direct government travel to include nationalized industry and even the private sector, thereby largely reducing the participation of the U.S. carriers in those markets.

The definition of a government entity that must use the national-flag airline covers 75 percent of the passenger traffic in Brazil and 70 percent in Austria. Rebates, tax credits, and reduced customs duties encourage use of the national-flag airlines even by private parties in Argentina, Brazil, Iran, India, and Greece. Indian citizens traveling on foreign airlines have more difficulty in obtaining visas and foreign exchange. In effect, the United States has opened its markets to these countries' carriers, but on an unequal basis.

1/The adequacy of the procedures and adherence to the U.S. fly-national policy is currently under separate review by us.

Other restrictive government policies

All Communist countries and many third-world countries prevent U.S. carriers from selling passenger tickets and freight space for local currencies and require that such ticketing be performed by the national carrier on a commission basis.

In other countries, the national carrier enjoys free and exclusive advertising on national networks, preferred airport treatment, and exclusive access to marketing information obtained by the government or by itself as the monopoly ground-handling agent.

GOVERNMENT RESPONSE TO RESTRICTIVE PRACTICES

Section 2 of the Fair Competitive Practices Act directs the Departments of State, Treasury, and Transportation and CAB and "other departments or agencies" to take all appropriate actions within their jurisdictions to eliminate all forms of unfair competitive practices found to exist. It also calls on them to propose additional legislation if they determine their current authority is inadequate. To date, no legislative proposals have been made. Except for the State Department's negotiating role, most of the authority to enforce section 2 is vested in CAB, subject in most cases to Presidential stay or disapproval.

Under the Federal Aviation Act of 1958, CAB is charged with preventing discrimination and unfair competitive practices, and issuing permits for foreign airlines to operate in the United States. CAB may attach any terms or conditions to the permits which it believes to be in the public interest, but has used this authority infrequently in retaliation against foreign carriers since passage of the Fair Competitive Practices Act. Permit conditions, other than for routine matters like safety and insurance, customarily have been applied only to Eastern bloc country carriers that have severely and permanently restricted U.S. carriers. This authority could be used, however, to retaliate against such foreign government practices as monopoly ground-handling and airport and currency restrictions.

Subject to Presidential stay or disapproval, CAB is authorized under its economic regulations 212 (for charters) and 213 (for scheduled service) to limit foreign carrier entries into the United States; i.e., to restrict their frequencies. This has been done in only a few instances to retaliate against severe restrictions on U.S. flights.

The Fair Competitive Practices Act, we believe, requires more concerted action to be taken in response to other significant types of market restrictions, such as cargo restrictions and fly-national or currency policies that effectively and unreasonably limit the freedom of U.S. carriers. Fear of foreign reprisals may inhibit U.S. carriers from seeking CAB action. Such efforts should be instituted by CAB on its own initiative or at the request of the Department of Transportation. We believe the authority to impose compensatory charges provided in section 3 of the Fair Competitive Practices Act should be expanded to cover other adverse financial practices against U.S. airlines.

A problem confronting the agencies in implementing section 3 is the possibility that imposing compensatory charges would violate Article 15 of the Chicago Convention, formally known as the Convention on International Civil Aviation (opened for signature Dec. 7, 1944, 61 Stat. 1180, T.I.A.S. No. 1591), the basic multilateral treaty governing international air transportation. Article 15 provides, in part, that charges imposed for the use of airports and facilities by aircraft of any other contracting state shall not be higher than those that would be paid by each nation's own aircraft engaged in similar international air services.

To the extent that a charge imposed on U.S. aircraft exceeds the charge imposed on the country's own aircraft, a compensatory charge pursuant to section 3 of the act would be permissible retaliation. The discriminatory charge could be considered a breach of article 15 and, consistent with generally recognized principles of international law, the United States could suspend the operation of article 15.

However, apparent difficulties arise in cases where the charge imposed by the other country is not greater than that paid by the country's own international aircraft. Article 15 does not clearly prohibit the imposition of unreasonable charges, although charges are subject to review by the Council of the International Civil Aviation Organization which may make recommendations for consideration by the countries concerned. Accordingly, when the user charge is merely excessive, the United States may not suspend the operation of article 15 on the ground that the other party has committed a material breach of the agreement. Imposition of a compensatory charge may be considered to violate article 15 in that the charges imposed would thus exceed charges paid by U.S. aircraft.

If it is not possible to interpret the language of a later enacted statute consistently with a treaty, the statute governs with respect to the municipal law of the United States. Nevertheless, to the extent that the execution of municipal law would be a breach of a treaty obligation, a violation of international law would occur.

The clear import of the language used in section 3 of the act is that the agencies are required to take action when user charges are unreasonably excessive, even though the charges are not greater than those paid by the nation's own aircraft engaged in similar services. This interpretation of the act is shared by the agencies charged with the implementation of the act.

The legislative history of the Fair Competitive Practices Act indicates that the Department of State opposed the enactment of section 3 for various reasons, including its legal opinion that the imposition of a compensatory charge on foreign carriers when their countries' user charges "unreasonably exceed comparable charges" in the United States violates article 15 of the Chicago Convention. The Department of Transportation expressed similar legal reservations.

The United States has entered into bilateral air transport agreements with many countries that, among other things, provide for just and reasonable charges for the use of airports and other facilities. These agreements provide recourse that would avoid the need for invoking article 15. Disputes concerning matters covered by the agreements that are not satisfactorily settled by consultation are, under most agreements, subject to arbitration. Accordingly, another country may contend that the United States should use the dispute settlement procedure provided for in the bilateral agreement rather than resort to unilateral action under the Fair Competitive Practices Act. It is our view that the agencies should make every effort to resolve user charges disputes through negotiation or the arbitration procedures provided for in our bilateral agreements. Nevertheless, the compensatory charge provision of the Fair Competitive Practices Act remains an important tool which may be resorted to should negotiation or arbitration prove unsuccessful.

When negotiation and arbitration procedures are unfruitful and compensatory charges are imposed, the possibility of a violation of Article 15 of the Chicago Convention is apparent. The Chicago Convention also provides a procedure

for settling disagreements over the interpretation or application of the convention. However, the probability of a resolution favorable to the United States would be substantially less than under the bilateral agreement provisions, since the issue would not necessarily be the reasonableness of the charges imposed but whether the compensatory charge violated the provision requiring that user charges shall not be higher than those that would be paid by each nation's own aircraft. Furthermore, imposition of compensatory charges might be considered by other parties as a material breach of the Chicago Convention and therefore, under generally recognized principles of international law, grounds for the other parties to suspend the operation of the Chicago Convention in whole or in part. The Chicago Convention contains rights essential to the operation of international aviation; such as the right of nonscheduled flights and the right to use airports and air navigation facilities under uniform conditions. Thus, its suspension would erode the legal structure upon which the operation of international air transportation is based.

The enactment of our proposals to expand the coverage of section 3 of the Fair Competitive Practices Act and provide for a time limit for negotiations prior to the determination of a compensatory charge might precipitate a confrontation arising over the relationship between the act and the Chicago Convention. Of course, the Secretary of State (or the President, if our legislative proposal is enacted) could withhold approval of the imposition of compensatory charges in the event that undesirable repercussions outweigh benefits.

Nonetheless, to avoid the possibility of a confrontation arising over the relationship between the act and article 15, we believe that the Secretary of State should seek an amendment to the Convention that would permit only just and reasonable charges based on economic cost or should negotiate a separate multilateral agreement on user charges.

CAB REPORTING REQUIREMENTS

The Fair Competitive Practices Act requires CAB to report annually to the Congress on steps taken to eliminate unfair practices. The reports issued to date include a summary of actions taken on user charges but generally do not indicate planned remedial actions where the steps were apparently ineffective; they conclude with such phrases as "they had still not responded," "the subject will be raised again in forthcoming consultations," "this matter continues to be kept

under consideration," or "this controversy remains to be settled." In only a few cases do the reports mention other discriminatory practices, such as monopoly ground-handling or currency restrictions, that appear to be as serious as the cases that are reported. We believe future reports should more fully disclose all unfair or discriminatory actions imposed on U.S. carriers by foreign countries and planned remedial action. It also would be useful to include industry views on the progress made under the continuing program to eliminate unfair practices.

Since these reports include the actions of a number of agencies, we believe they might better be compiled by the Secretary of Transportation, in accordance with our recommendation that he be given overall responsibility for coordinating Government air transport actions affecting foreign governments. The reports should reflect the views and input of the various agencies involved.

VIEWS OF FOREIGN CARRIERS ON DOING BUSINESS IN THE UNITED STATES

To obtain a balanced view of the practices faced by U.S. carriers abroad, we interviewed a number of foreign carrier representatives about their operating experiences in the United States. The only discrimination cited (by two carriers) was a letter from the Secretary of Commerce to American businessmen encouraging them to fly on U.S.-flag airlines, which was seen as a subtle form of pressure, denying their airlines an equal opportunity to compete in the U.S. market.

Several foreign representatives cited instances of unreciprocal treatment on user charges. They pointed out that the costs of security inspections and rental of post office and customs space in their countries' airports were furnished to U.S. carriers at no cost whereas they had to pay for these services in the United States. Also, foreign carriers are subject to a number of U.S. local sales and income taxes, although U.S. carriers are exempt from them in some foreign countries.

We concluded that these instances do not compare in magnitude with the discrimination and unreciprocal charges that U.S. carriers face.

AGENCY COMMENTS AND OUR EVALUATION

Discussion of the more important Agency disagreements with the conclusions and recommendations reached in this chapter follows.

Objective of seeking common methods of assessing user charges

The Chairman of CAB commented that it would be desirable to seek common methods of assessing user charges but largely not feasible under current U.S. law since the majority of U.S. international airports are State or locally controlled, and legislation permitting Federal control of U.S. international airports would be required to attain this objective.

We noted, however, that the Bermuda II Agreement does provide for a significant step in this direction under article 10, paragraph 3, which states that:

> "User charges may reflect, but shall not exceed, the full cost to the competent charging authorities of providing appropriate airport and air navigation facilities and services, and may provide for a reasonable rate of return on assets, after depreciation * * * User charges shall be based on sound economic principles and on the generally accepted accounting principles within the territory of the appropriate Contracting Party."

The impact of this provision on the unreasonable charges by the United Kingdom cited in this chapter is unknown, but probably depends on U.S. efforts.

We believe this language provides sound guidance for user charges inquiries and that present legislation provides the means for the Secretary of Transportation to determine the appropriateness of U.S. charges. Section 18 of the Airport and Airways Development Act of 1970 provides that, as a condition for approval of airport development projects, the Secretary of Transportation shall receive assurances that "the airport operator or owner will submit to the Secretary such annual or special airport financial and operations reports as the Secretary may reasonably request" and "the airport and all airport records will be available for inspection by any duly authorized agent of the Secretary upon reasonable request." (Underscoring supplied.)

If further legislation is needed to achieve the implementation of reasonable user charges based on cost for international flights, it should be sought. Such legislative efforts are encouraged under section 2(b) of the Fair Competitive Practices Act.

Consideration of the reasonableness of foreign user charges by DOT

CAB objected to our recommendation that whenever total user charges in a country substantially exceed U.S. charges, the Secretary of Transportation should consider such charges unreasonable unless the foreign governments can demonstrate or other available evidence indicates that they reflect actual costs. In CAB's opinion this recommendation is a simplistic solution which does not adequately consider that there are justifiable reasons for the wide variances in user fees. Further, CAB foresaw that the implementation of such a recommendation would lead to a breakdown in dispute resolution and ultimately work to the detriment of international travelers and shippers.

Recognizing that charges may justifiably vary significantly from airport to airport, it was not our suggestion to simply add an equalization fee in order to bring the level of U.S. charges up to the level that U.S. carriers must pay in foreign countries. Also, it can be maintained that U.S. authorities undercharge and that, therefore, the United States subsidizes all carriers--U.S. and foreign. Comparing the level of charges provides a first step in assessing the appropriateness of foreign charges and points to the countries where further investigation is merited. If it is substantiated that the charges are cost-based and properly distributed among the users of an airport facility, we believe this would satisfy the U.S. inquiry as to their appropriateness.

The Department of State commented that the report treats any practice different from that of the United States as unfair or discriminatory when, actually, some of the practices stem from the countries' economic, political, and social systems and are not designed to enhance the home carriers' competitive positions. State notes that in these instances the United States should seek to obtain an advantage in another aviation-related area to insure an overall equitable exchange of aviation benefits.

We believe it is desirable to obtain an adequate exchange for as many elements of a bilateral agreement as possible.

As evidenced by the recent hearings on the Bermuda II agreement, what constitutes an overall equitable exchange of aviation benefits is a very subjective and disputed determination. To the extent that there is a demonstratable exchange for the elements of an agreement, it would support the Department of State's objective of attaining an overall equitable exchange of aviation benefits.

The Department of State noted that the actual cost of providing air transport services in the United States should be the standard of comparability rather than what the airports actually charge since the United States does not seek to recover the full costs of aviation facilities from an air carrier. Increasing U.S. user charges from those actually charged international carriers to constructed per flight costs presents difficult analysis problems, but more importantly, would reduce the scrutiny of foreign user charges from the level we are suggesting. We are proposing that actual U.S. user charges be compared with those charged by foreign countries for the purpose of selecting those countries whose individual user charges should be examined further. This examination would determine whether the foreign user charges are fair and based on economic costs.

The Air Transport Association commented that the Fair Competitive Practices Act should be used as a last resort remedy when other means fail in getting foreign governments to change their ways. It noted that, in the normal course of business, persuasion through normal Government channels using the special expertise of the various agencies should be tried before implementing punitive steps under the statute. We agree that the first course of action should be negotiation, but believe that if this is unsuccessful, a unilateral response should be taken as was contemplated under the act.

Need for more timely Government responses

CAB commented that a 60-day time limit for making a formal finding as to whether a particular user charge or an act may be subject to retaliation was imprudent, unrealistic, and could lead to severe disruptions. Also, it believed that our recommendation for a 1-year time limit for appropriate action was impractical in view of its present workload. The Department of State also pointed to the need to analyze an anticipated increasing workload in light of the costs involved with additional staff-hours and other Government resources.

Working under definite time criteria may not be comfortable, but we believe it is needed to insure action and to establish the rapport with U.S. aviation partners which will enable complaints to be resolved expeditiously. In accordance with a suggestion from the Air Transport Association, we are recommending a 90-day limit rather than the 60-day limit for the Secretary of Transportation to make a finding as to whether a particular charge or act may be subject to retaliation.

We do not believe that the need for additional staff should override the need to accomplish the task since the congressional intent for such efforts is established.

RECOMMENDATIONS TO THE AGENCIES

We recommend that:

--The Secretary of State, in coordination with the Secretary of Transportation, strive to have provisions for common methods of assessing user charges incorporated into existing and future bilateral agreements.

--Whenever user charges in a country substantially exceed U.S. charges, the Secretary of Transportation should consider such charges unreasonable unless the foreign government can demonstrate, or other available evidence indicates, that they reflect economic costs.

--The Secretary of State in coordination with the Secretary of Transportation seek an amendment to the Convention on International Civil Aviation that would permit only just and reasonable user charges based on economic cost or negotiate a separate multilateral agreement on user charges.

RECOMMENDATIONS TO THE CONGRESS

We recommend that the International Air Transportation Fair Competitive Practices Act of 1974 be modified as follows. (See app. I for proposed legislative language.)

--That section 2 require the Secretary of Transportation to make formal findings concerning discriminatory or unfair practices and recommend appropriate actions to be

taken, failing diplomatic resolution of the matter.

--That both sections 2 and 3 contain specific time limits for implementing required actions. We suggest a 90-day limit for the Secretary of Transportation to make a finding as to whether or not a particular charge or act may be subject to retaliation and no more than an additional year to take appropriate action, if the matter cannot be resolved diplomatically.

--That section 3 be expanded to cover not only user charges but also other quantifiable charges or costs resulting from unfair practices.

--That section 3 explicitly provide that user charges or other quantifiable costs shall not be considered to unreasonably exceed comparable charges or other quantifiable costs where the foreign government demonstrates or available evidence indicates that the charges or other quantifiable costs are based on economic costs.

--That the reporting responsibility under section 2 be transferred from the Civil Aeronautics Board to the Department of Transportation. Also, that the Congress provide guidance to broaden the scope of the annual report to include an overall assessment of progress made and problems unresolved.

CHAPTER 4

INTERNATIONAL CHARTER TRAVEL

> "* * * The United States will [seek] * * * international air charter transportation * * * at as low a cost as is economically justified, recognizing that essential levels of scheduled service must be maintained * * *. In particular, the United States will use all appropriate means to prevent restrictions by foreign governments on the competitiveness of passenger charter operations by all U.S. carriers. * * * The United States will continue to insist that, in the provision of charter services, U.S. scheduled and supplemental carriers be treated equally." (International Air Transportation Policy of the United States, September 1976.)

U.S. policy supports a strong system of scheduled service as basic to air transport, but also recognizes the public's right to the inherently lower cost of charter service. It notes that the industry's primary responsibility is to adapt its air transport product to public demand and that governments should not stifle this effort or remove incentives to keep costs low.

Most foreign governments, on the other hand, give a higher priority to scheduled service and tend to discourage charter traffic. This has led to regulations that generally are more restrictive than those of the United States. Some progress, particularly in Europe, was made in liberalizing foreign charter rules, an effort we believe should receive greater emphasis.

RELATIONSHIP OF CHARTER TO SCHEDULED SERVICE

The essential characteristic of charter service is lower fares for passengers in return for advance commitments on flight dates and route schedules that allow for more effective use of planes. Scheduled service offers the flexibility of service on demand, but at the cost of lower load factors.

The air transport industry generally recognizes two kinds of charter carriers--supplemental and those operated by the regularly scheduled carriers. Supplemental carriers have no scheduled services over designated routes and

engage solely in charter operations. They have served as a competitive spur to the scheduled carriers, keeping scheduled fares down. Foreign country supplementals are usually subsidiaries of national-flag scheduled carriers. U.S. and foreign scheduled airlines 1/ operate charters both on and off their designated routes.

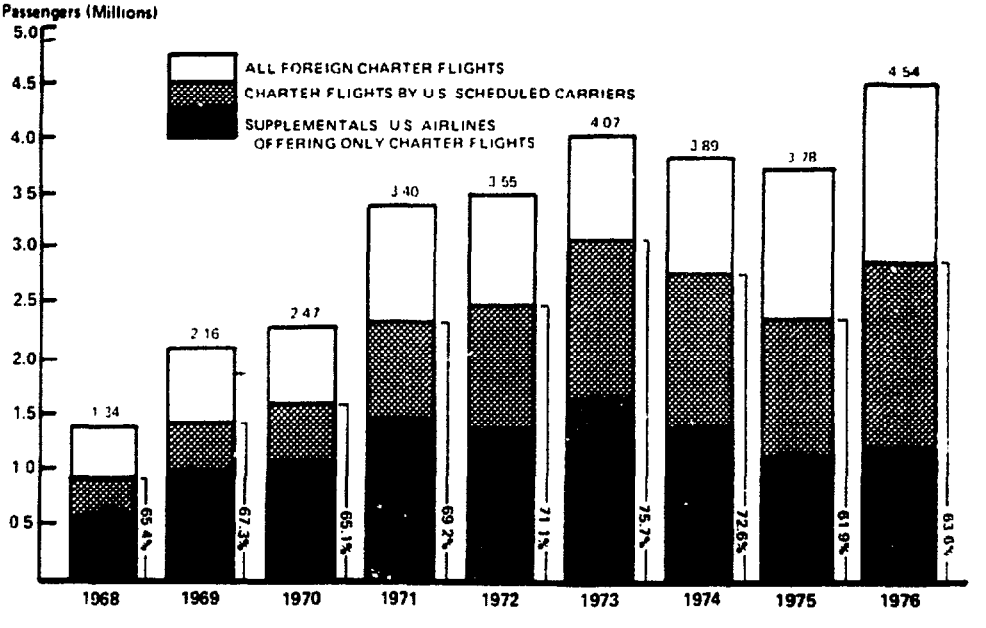
Charter load factors (the percentage of aircraft seats sold) typically are in the 80- to 100-percent range. By comparison, scheduled load factors on U.S. international routes have been about 56 percent.

SIGNIFICANCE OF CHARTER TRAFFIC

Charter traffic on U.S. international routes increased about 240 percent between 1968-76, from 1.3 million to 4.5 million, as shown in chart 5. Of particular significance is the rise in charter traffic during 1976. The charter flights of U.S. scheduled carriers were responsible for the majority of this substantial increase.

CHART 5

U.S. INTERNATIONAL CHARTER MARKET 1968-76



1/Volume limits for combination carriers are raised to 5 percent for the first 50 million, plus 2.5 percent of the remaining base revenue plane-miles.

On the major North Atlantic routes, 1/ the charter share of the total market rose from about 13 percent in 1968 to 28 percent in 1977. This growth in charter traffic helped offset a declining U.S. share of the scheduled traffic.

U.S. GOVERNMENT SUPPORT OF CHARTER GROWTH

In line with U.S. policy to maximize competition in international air service, the Government has sought to expand charter service through broader charter authority leading to subsequent charter growth, especially in Europe, and removing charter restrictions, such as group membership requirements and regulated itineraries at destination.

In an effort to attain these goals, the United States introduced the One-stop Tour Charter in 1975 and the Advance Booking Charter in 1976. During the first 6 months of 1977, these charters accounted for almost half the total charter passengers in the North Atlantic market and contributed to the rise in charter traffic. (See chart 6.)

Types of charters available are as follows:

--Advance Booking Charters, sold to the general public with no required package of ground accommodations, and at fixed prices with no minimum trip durations, except for nine European countries.

--One-stop Tour Charters, sold to the general public with ground accommodations at prices of at least $15 per night and fixed prices with minimum trip durations.

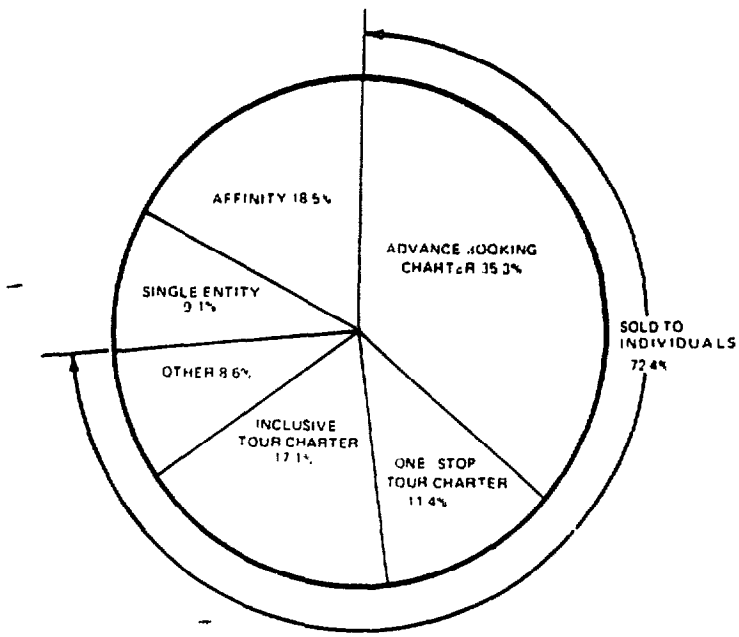
--Inclusive Tour Charters, sold to the general public with minimum trip durations and requiring ground accommodations and three overnight stops at minimum fares of 110 percent of the lowest comparable scheduled fare.

1/North Atlantic routes accounted for 67 percent of all charter traffic on routes to and from the United States between 1968 and 1975.

--Affinity Group Charters, available only to members of organizations that have been established for purposes other than travel at prices based on the cost of the flights divided equally among all the passengers.

--Single Entity Charters, for which the charterer pays the total cost of the flight and offers it without charge to the passengers of his choice.

CHART 6
BREAKDOWN OF MAJOR CHARTER TYPES OVER THE NORTH ATLANTIC (JANUARY–JUNE 1977)



With few exceptions, the rights governing international charter travel are outside the formal bilateral air transport agreements that control scheduled service. U.S. charters to most foreign countries are subject to both U.S. and foreign rules, with the most restrictive rules (usually foreign) governing the traffic. In the absence of formal country-to-country agreements, comity and reciprocity has been the basis for the exchange of charter traffic. CAB approval of foreign charter flights into the United States is supposedly based on findings of comity and reciprocity, although we found unreciprocal restrictions against U.S. charter flights.

FOREIGN CHARTER RESTRICTIONS

The restrictive charter policies of many foreign governments largely result from the lack of interest in charter flights by national flag carriers, which view expansion of charter traffic as a threat to scheduled service. Accordingly, some countries impose quotas on the number of charter flights allowed and supplemental carriers are largely excluded from the charter market. Also, some countries place more restrictive conditions on the types of charter service and impose minimum charter fares that remove much of the price incentive for passengers to use charter flights. These restrictive conditions occur in Asia, the South Pacific, and Latin America. Even in many European countries, where charter expansion is viewed more favorably, the policies are considerably more restrictive than those of the United States. Thus, U.S. charter groups originating in the United States are denied the advantages of the less restrictive arrangements permitted by CAB, and U.S. carriers lack full access to markets that some foreign governments have reserved for their scheduled carriers.

For example:

--Israel banned for more than 10 years all U.S. charter flights to and from Israel, even while its state airline, El Al, operated a substantial charter program over U.S. routes. Recently, El Al was required to obtain CAB's prior approval for charters on U.S. routes, and Israel has since granted U.S. carriers a limited number of U.S.-originated charter flights.

--Japan limits charter flights through controlling landing "slots" at the crowded Tokyo airport. Applications for charter slots are often disapproved. A U.S.-scheduled carrier was recently forced to cancel 15 round-trip charters worth $2.3 million. Some of these charters were then picked up by Japan Air Lines, which does not need prior approval to operate charters over its scheduled routes to the United States and has the necessary slots in reserve.

--Japanese restrictions against U.S. supplemental carriers certified by CAB to serve Japan have been especially severe. The two supplemental carriers certified by the United States to perform charter service to Japan are restricted to a combined quota of 70 flights each year, no more than one-third of which may originate in Japan. Under existing procedures, the supplementals are relegated to the bottom position for slots. As a consequence, they were able to operate no passenger flights into or out of Japan, and only 14 cargo flights in 1976 and a limited number of flights in subsequent years. Also, the Japanese prohibit the new U.S. charter types, such as the Advance Booking and One-stop Tour Charters. The Japanese limit the type of charters to affinity and single entity and openly favor scheduled carriers to supplementals.

--Ireland and Brazil generally prohibit operation of U.S. supplemental carriers over scheduled airline routes. One U.S. supplemental carrier attempting to operate in Brazil had quotas imposed and was forced to cancel a program of 6 flights worth $500,000.

--Australia and New Zealand favor scheduled carriers over supplementals. Approval is on an ad hoc basis with consideration given to the viability of the national carriers.

The European Civil Aviation Conference 1/ has attempted to present a united front on charter issues and has worked for a multilateral agreement with the United States on uniform charter rules. This approach was designed to prevent past practices of U.S. carriers bypassing those European

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1/Consists of 20 European countries and was formed for the stated purpose of promoting the orderly development of European scheduled and charter air transport. It is sponsored and partially paid for by the International Civil Aviation Organization, 25 percent of whose indirect costs are funded by the United States.

countries with restrictive charter rules and serving the ones with more liberal rules. Although these more restrictive rules have not been strictly adhered to by some Conference members, the European countries and Canada have used these rules during recent negotiations as the basis for their restrictive positions. The United States has attempted to reach some commonality on charter rules but has been reluctant to accept an approach that imposes uniform rules more restrictive than those previously individually agreed to by many of the European countries.

The United States has favored "country of origin" rules, whereby each country would accept the charter rules of the other on flights originating in the other's country. This would allow each country to adopt rules meeting the needs of its nationals. A few European countries have accepted U.S. rules on U.S. origin charters, but most traffic must fly under more restrictive rules than those of the United States. Examples of restrictions under European rules are as follows.

--Italy has imposed various restrictions on charter services. Before U.S. Advance Booking Charters were introduced, U.S. charter carriers used split affinities (those including more than one charter group) in Europe. These types of flights were prohibited in Italy except in 1975, the Holy Year. Even then, however, carriers complained that approval for these flights was frequently delayed by Italian authorities until they were almost ready to leave the United States. Until January 1977, the general One-stop Tour Charter from the United States was too expensive to market because of high Italian minimum price requirements. Italy continues to require Inclusive Tour Charters, to be filed with the Italian authorities 20 days in advance, but does permit 15-percent substitutions. However, since there is no advance filing requirement in the United States, this restriction causes the loss of significant prime marketing time.

--Poland offers liberal treatment to scheduled carriers that operate charters, according to the National Air Carrier Association, but imposes arbitrary restrictions on supplemental carriers, thus preventing the supplementals from offering low-cost charter programs.

--The Federal Republic of Germany limits the number of tour charters and maintains a uniquely rigid prohibition against mixing charter types or allowing charter passengers to enter Germany and then depart from another country. These rules have especially limited the use of wide-bodied planes which depend on larger groups. One tour operator was forced to cancel a charter program valued at $4.5 million from Los Angeles to Germany for lack of German waivers on mixed charter flights. Germany also imposes minimum charter fares on charters originating in the United States and Germany.

--Various European authorities have imposed restrictions on the U.S. Advance Booking Charter which seriously impairs the marketability of this popular charter type. These restrictions are related to the ability to make substitutions, the required duration of the trip, and mixing charter types. Finland, France, West Germany, Ireland, The Netherlands, Italy, and the United Kingdom are among the countries which apply one or more of the above restrictions on such charters promoted by the United States. Reportedly, one or two of the countries are also questioning whether some of these charters' prices are too low.

--Denmark, Norway, and Sweden refuse entry to all U.S. Advance Booking, Inclusive Tour, and One-stop Tour Charter flights.

In pointing out the restrictions on Advance Booking Charters, CAB notes that they "represent a considerable relaxation from the ones in effect when ABC flights began last January [1977]." The One-stop Tour and Advance Booking Charters have grown to represent almost half of the carriage in the charter market. According to the 1976 International

Air Transportation Policy of the United States, these charter types represent "two important steps in broadening the availability of low-cost travel opportunities" to the general public.

In cases where a foreign government has entirely banned or severely restricted U.S. charter flights, CAB has retaliated by requiring that country's carrier to obtain prior approval for individual onroute charters. This action resulted in the restriction or denial of charter flights against the scheduled carriers of Argentina, Ireland, Iran, Israel, and the Soviet Union.

Generally, foreign scheduled carriers enjoy blanket CAB charter authority for flights on scheduled routes. CAB has also routinely approved 95 percent of the charter applications of foreign carriers to fly off-route, including those between the United States and third countries. In October 1976, CAB issued blanket charter authority for flights on nonscheduled routes to more than 40 foreign scheduled carriers, including those of Italy and Germany whose restrictive charter practices were described above.

NEED FOR CHARTER AGREEMENTS

At present the United States has reached formal agreements regarding charters with Jordan, Yugoslavia, Mexico, Canada, Belgium, Singapore, Switzerland, Austria, the United Kingdom, Paraguay, and several African countries. The agreements with Jordan, Yugoslavia, Canada, and Belgium incorporate an exchange of traffic rights, while the others address the rules to be applied when permission is requested to conduct a charter program.

Also, most of the agreements contain termination dates and must be renegotiated at expiration unless extended by mutual agreement.

Recent charter developments

The Bermuda II agreement has been sharply criticized because of the failure of the United States to incorporate charter rights, among other things.

The Chairman of CAB, testifying on November 29, 1977, before the Subcommittee on Aviation of the Senate Commerce, Science and Transportation Committee, stated that:

"Aside from what Bermuda II does, our greatest concern is with what it does not do: it does not guarantee our supplemental air carriers, which have for fifteen years provided a vital stimulus to low-cost service, a fair and equal opportunity to compete in the U.S.-U.K. market. * * * It precludes liberalization of charter rules except by agreement of the British Government--an agreement that the British, having achieved much of what they wanted on scheduled service * * * have shown little interest in reaching."

The United States is also involved in negotiations with the Japanese. The President, in a letter to the cognizant agencies, noted that one of the objectives to be sought is inclusion of expanded and liberal charter operations in the bilateral agreement. The National Air Carrier Association noted in the November committee hearings that:

"* * * the United States has taken a firm position with regard to negotiations with Japan. * * * While little progress has been made with the Japanese to date, the issues between the two countries are clear; and the U.S. appears to be remaining resolute in insisting that unless a charter agreement is part and parcel of whatever agreement results from the aviation revision discussions, no additional rights to or from the United States or beyond will be granted to Japan."

One U.S. Government official noted that, in some instances, a foreign country may be more liberal in its allowance of charters when they are handled informally than if the rules were incorporated into a formal agreement. However, absence of an agreement has resulted in a pattern of harrassment and restrictions in others. Also, unilateral imposition of restrictions and approval of charter arrangements inhibits the ability to plan for trips since those preparations may take place months in avance of an actual trip. We believe that this uncertainty has a harmful effect on the promotion of charter growth.

Generally, the United States promotes country-of-origin rules and has obtained acceptance of some country-of-origin provisions with a few countries. However, since most countries are more restrictive, they are reluctant to accept this arrangement which, as one carrier put it, "amounts to signing a blank check." Since charter traffic is so important to a healthy carrier industry and since it comprises a significant share of the market, the United States, if unsuccessful in obtaining country-of-origin rules, should seek the most liberal charter agreement practicable and, where desired by concerned U.S.-flag carriers, incorporate it into the scheduled services agreement.

Criteria in absence of agreement

In the absence of bilateral agreements, U.S. Government agencies should insure that foreign charter approvals in the United States are based on comity and reciprocity. Subject to Presidential stay or disapproval, CAB can require prior approval for charters now granted on a blanket basis as incidental to a carrier's permit for scheduled service. It has authority to approve charter flights operated over other than a scheduled carrier's designated route.

CAB can qualify the carrier's permit (limiting its operations) in various ways and has the authority, again subject to Presidential stay or disapproval, to qualify a permit covering either scheduled or charter flights.

Since CAB approval of charters for off-route flights is based on a presumption of comity and reciprocity, we think CAB, on its own initiative or upon notification by either the Secretaries of State or Transportation should identify when such conditions are lacking with particular countries so approvals can be denied as appropriate.

RECENT DEVELOPMENTS

The President urged CAB to give serious attention to reforming present rules covering charter flights to permit those services to be more competitive with the new low-fare scheduled flights and more responsive to foreign economic policy reasons for encouraging low-fare passenger service. Otherwise, the low-fares offered by scheduled airlines will erode competition from charter airlines and remove competitive pressure on the scheduled carriers to maintain reasonable fares. The President commented that liberalizing charter rules will help to expand air travel markets and should

provide real benefits to consumers and carriers alike. In response to scheduled airlines' discount fares, in December 1977 CAB relaxed various charter restrictions. The principal changes are a reduction of the advance purchase period for Advance Booking Charters to 15 days, an allowance of 15 percent fill-up sales on Advance Booking Charters, elimination of minimum-duration restrictions on Advance Booking Charters and One-stop Tour Charters, and a reduction of the minimum charter group from 40 to 20 on Advance Booking Charters, One-stop Tour Charters, and Inclusive Tour Charters. Even though CAB passed these relaxed charter rules, their use is contingent on foreign country acceptance.

The Chairman of the Subcommittee on Aviation, House Committee on Public Works and Transportation, in hearings on September 29, 1977, concerning the Bermuda II Agreement, expressed concern over the failure to obtain more rights for our charter carriers, commenting that:

> "While scheduled operations are the subject of long-term bilateral agreements, charter operations are generally governed by short-term Memorandums of Understanding. In these Memorandums foreign governments frequently impose restrictions on the United States originating charters, even though the Civil Aeronautics Board would allow United States and foreign carriers to operate these types of charters. To insure full development of charter transportation, charters need to be the subject of long-term bilateral agreements in which each country accepts the types of charters which the other has authorized."

The Chairman of the Subcommittee on Aviation of the Senate Committee on Commerce, Science and Transportation in hearings on November 29, 1977, expressed his concern as follows:

> "Perhaps the biggest reason for change in the world order has been a failure of leadership by the United States over the past decade, a period which has seen a continual erosion of long established U.S. rights, lack of vigorous Executive

branch initiative in pursuing U.S. interests and continuing failure to establish an international acceptance of charter flights under country of origin rules."

AGENCY COMMENTS AND OUR EVALUATION

CAB agreed with the need for long-term charter arrangements. The National Air Carrier Association, Inc., noted that the Government should recognize the proposition that all rights for scheduled and charter travel should be negotiated simultaneously and that no agreement should be concluded without both rights being obtained. We concur that this approach should be considered in future negotiations.

CAB contends that progress has been made in liberalizing charter rules and cites the wide acceptance in Western Europe of U.S. rules with only limited reservations, such as on substitution and minimum trip duration. It noted that the United States now has charter understandings with Austria and Switzerland, a partial one with Argentina, and that understandings with Belgium and the United Kingdom incorporate operating rights as well as charter rules. We agree that some progress, particularly in Europe, has been made in liberalizing foreign charter rules. Less progress was made to mitigate the more restrictive practices that prevail in Asia, Latin America, and the South Pacific. We conclude that these efforts should receive greater emphasis.

CAB disagreed with many of the examples cited in this chapter. We reviewed them with Government agencies, airline associations, and air carriers and have revised and updated information in our report as appropriate.

In congressional testimony in September 1977, the Chairman of CAB testified that the conditions of charter flights in the United Kingdom are more restrictive than those of CAB and are an absolute barrier to further liberalization. He stated that this deficiency, along with recently approved promotional fares for scheduled service, poses a critical threat to the future viability of low-cost charter operations. We view the British charter rules as fairly typical of those prevailing in the major European countries, but they are by no means the most restrictive.

The Department of Justice commented that only low-cost charter service provides a competitive check on the rate-setting cartel of the scheduled carriers. It supports

bilateral charter agreements based on country-of-origin rules and suggested that the United States be uncompromising in pressing for liberal rules.

The Department of Justice cautions that retaliating against foreign charters may play into the hands of foreign governments that wish to restrict charters anyway. We believe that our bargaining position in providing access to the densest intercontinental routes in the world and greater efforts to reach either formal or informal agreements that include both scheduled and charter services would help mitigate this problem.

The Air Transport Association commented that the retaliatory provisions of the Fair Competitive Practices Act should be used only when other means fail in getting foreign governments to change their practices. Further, it advised that persuasion through the normal channels of various Government agencies should be tried before implementing punitive steps under the act.

We believe our recommendations in chapters 3 and 4 recognize these concerns and the provisions of the act. We view these provisions as needed to support negotiating positions and to provide for comity and reciprocity in the absence of formal bilateral agreements.

The Air Transport Association of America stressed the importance of maintaining scheduled service and the consequent need to distinguish between it and charter service. The National Air Carrier Association, Inc., suggested that criteria for a proper distinction be left to CAB.

In congressional testimony on October 3, 1977, John W. Barnum, former Deputy Secretary of Transportation, suggested that the United States include definitions of both scheduled and charter services in bilateral air services agreements. He said this is needed so that, in considering how skytrain-type services or low-fare services are to be treated, it can be known what rights and limitations are applicable. We concur with this suggestion.

RECOMMENDATION TO THE AGENCIES

We recommend that:

--The Secretary of State in coordination with the Secretary of Transportation seek

adequate and equitable arrangements for U.S. charter carriers in bilateral agreements. The concept whereby each country would accept the charter rules of the other on flights originating in the other's country appears to provide an equitable basis for such agreements.

LANGUAGE OF OUR LEGISLATIVE PROPOSALS

(Underscored language to replace language marked out)

INTERNATIONAL AIR TRANSPORTATION FAIR
COMPETITIVE PRACTICES ACT OF 1974

Sec. 2

DISCRIMINATORY AND UNFAIR COMPETITIVE PRACTICES

(a) United States air carriers operating in foreign air transportation perform services of vital importance to the foreign commerce of the United States including its balance of payments, to the Postal Service, and to the national defense. Such carriers have become subject to a variety of discriminatory and unfair competitive practices in their competition with foreign air carriers. The Department of State, the Department of the Treasury, the Department of Transportation, and the Civil Aeronautics Board, and other departments or agencies, therefore, each shall keep under review, to the extent of their respective functions, all forms of discrimination or unfair competitive practices to which United States air carriers are subject in providing foreign air transportation services. The Secretary of Transportation shall, within 90 days of the time the matter is brought to his attention, make a formal finding as to whether a discriminatory or unfair practice exists and shall recommend to the appropriate agency that actions be

taken to eliminate such discriminatory or unfair practices. Where such actions involve a decision of the Civil Aeronautics Board, the Secretary of Transportation shall petition the Board on behalf of the Government. ~~and each~~ Each of these departments and agencies shall within one year of the Secretary of Transportation's finding, take all appropriate actions within its jurisdiction to eliminate such forms of discrimination or unfair competitive practices found to exist.

(b) Each of these departments and agencies of Government shall request from Congress such additional legislation as may be deemed necessary at any time it is determined there is inadequate legal authority for dealing with any form of discrimination or unfair competitive practice found to exist.

(c) The ~~Civil Aeronautics Board~~ Department of Transportation shall report annually to Congress on the actions that have been taken under subsection (a) and on the continuing program to eliminate discriminations and unfair competitive practices faced by United States carriers in foreign air transportation. The Secretaries of State, and Treasury, and ~~Transportation~~ the Civil Aeronautics Board shall furnish to the ~~Civil Aeronautics Board~~ Secretary of Transportation such information as may be necessary to prepare the report required by this subsection.

Sec. 3

INTERNATIONAL USER CHARGES AND OTHER COSTS

"The Secretary of Transportation shall survey the charges made to air carriers by foreign governments or other foreign entities for the use of airport property or airway property in foreign air transportation. The Secretary of Transportation shall also survey other quantifiable costs incurred by air carriers in foreign air transportation as the result of actions by foreign governments or other foreign entities. If the Secretary of Transportation determines at any time that such charges or other quantifiable costs unreasonably exceed comparable charges or costs ~~for furnishing such airport property or airway property~~ in the United States or are otherwise discriminatory, he shall, within 90 days of the time the matter is brought to his attention, submit a report on such cases ~~promptly~~ to the Secretary of State and the Civil Aeronautics Board. ~~and~~ Such charges or other quantifiable costs shall not be considered to unreasonably exceed comparable charges or other quantifiable costs where the foreign government demonstrates or available evidence indicates that the charges or other quantifiable costs are based on economic costs. ~~the~~ The Secretary of State, in collaboration with the Secretary of Transportation and the Civil Aeronautics Board, shall promptly undertake negotiations with the foreign country involved to reduce such

charges or other quantifiable costs or eliminate such discriminations. If within ~~a reasonable period~~ one year such charges or other costs are not reduced or such discriminations eliminated through negotiations, the Secretary of State shall promptly report such instances to the Secretary of Transportation who shall determine compensating charges equal to such excessive or discriminatory charges or other costs. Such compensating charges shall, with the approval of the ~~Secretary of State~~ President, be imposed on the foreign air carrier or carriers of the country concerned by the Secretary of the Treasury as a condition to acceptance of the general declaration at the time of landing or takeoff of aircraft of such foreign air carrier or carriers. The amounts so collected shall accrue to an account established for that purpose by the Secretary of the Treasury. Payments shall be made from that account to air carriers in such amounts as shall be certified by the Secretary of Transportation in accordance with such regulations as he shall adopt to compensate such air carriers for excessive or discriminatory charges or other costs ~~paid~~ incurred by them ~~to the foreign countries involved.~~".

Public Law 93-623
93rd Congress, S. 3481
January 3, 1975

An Act

To amend the Federal Aviation Act of 1958 to deal with discriminatory and unfair competitive practices in international air transportation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

'nternational Air Transportation Fair Competitive Practices Act of 1974. 49 USC 1159a note.

SECTION 1. This Act may be cited as the "International Air Transportation Fair Competitive Practices Act of 1974".

DISCRIMINATORY AND UNFAIR COMPETITIVE PRACTICES

49 USC 1159b.

SEC. 2. (a) United States air carriers operating in foreign air transportation perform services of vital importance to the foreign commerce of the United States including its balance of payments, to the Postal Service, and to the national defense. Such carriers have become subject to a variety of discriminatory and unfair competitive practices in their competition with foreign air carriers. The Department of State, the Department of the Treasury, the Department of Transportation, the Civil Aeronautics Board, and other departments or agencies, therefore, each shall keep under review, to the extent of their respective functions, all forms of discrimination or unfair competitive practices to which United States air carriers are subject in providing foreign air transportation services and each shall take all appropriate actions within its jurisdiction to eliminate such forms of discrimination or unfair competitive practices found to exist.

88 STAT. 2102
88 STAT. 2103

(b) Each of these departments and agencies of Government shall request from Congress such additional legislation as may be deemed necessary at any time it is determined there is inadequate legal authority for dealing with any form of discrimination or unfair competitive practice found to exist.

(c) The Civil Aeronautics Board shall report annually to Congress on the actions that have been taken under subsection (a) and on the continuing program to eliminate discriminations and unfair competitive practices faced by United States carriers in foreign air transportation. The Secretaries of State, Treasury, and Transportation shall furnish to the Civil Aeronautics Board such information as may be necessary to prepare the report required by this subsection.

Report to Congress.

INTERNATIONAL USER CHARGES

SEC. 3. The International Aviation Facilities Act (49 U.S.C. 1151-1160) is amended by redesignating sections 11 and 12 as sections 12 and 13, respectively, and by inserting immediately after section 10 the following new section:

49 USC 1160, 1151 note.

"SEC. 11. The Secretary of Transportation shall survey the charges made to air carriers by foreign governments or other foreign entities for the use of airport property or airway property in foreign air transportation. If the Secretary of Transportation determines at any time that such charges unreasonably exceed comparable charges for furnishing such airport property or airway property in the United States or are otherwise discriminatory, he shall submit a report on such cases promptly to the Secretary of State and the Civil Aeronautics Board, and the Secretary of State, in collaboration with the Civil Aeronautics Board, shall promptly undertake negotiations with

49 USC 1159a.

Reports.

the foreign country involved to reduce such charges or eliminate such discriminations. If within a reasonable period such charges are not reduced or such discriminations eliminated through negotiations, the Secretary of State shall promptly report such instances to the Secretary of Transportation who shall determine compensating charges equal to such excessive or discriminatory charges. Such compensating charges shall, with the approval of the Secretary of State, be imposed on the foreign air carrier or carriers of the country concerned by the Secretary of the Treasury as a condition to acceptance of the general declaration at the time of landing or takeoff of aircraft of such foreign air carrier or carriers. The amounts so collected shall accrue to an account established for that purpose by the Secretary of the Treasury. Payments shall be made from that account to air carriers in such amounts as shall be certified by the Secretary of Transportation in accordance with such regulations as he shall adopt to compensate such air carriers for excessive or discriminatory charges paid by them to the foreign countries involved.".

Payments.

RATES FOR TRANSPORTATION OF UNITED STATES MAIL IN FOREIGN AIR TRANSPORTATION

SEC. 4. Subsection (h) of section 406 of the Federal Aviation Act of 1958 (49 U.S.C. 1376) is amended by inserting "(1)" immediately after "(h)", and by adding at the end thereof the following new paragraphs:

88 STAT. 2103
88 STAT. 2104

"(2) The Secretary of State and the Postmaster General each shall take all necessary and appropriate actions to assure that the rates paid for the transportation of mail pursuant to the Universal Postal Union Convention shall not be higher than fair and reasonable rates for such services. The Secretary of State and the Postmaster General shall oppose any present or proposed Universal Postal Union rates which are higher than such fair and reasonable rates.

22 UST 1056.

"(3) The Civil Aeronautics Board shall act expeditiously on any proposed changes in rates for the transportation of mail by aircraft in foreign air transportation. In establishing such rates, the Board shall take into consideration rates paid for transportation of mail pursuant to the Universal Postal Union Convention as ratified by the United States Government, shall take into account all of the ratemaking elements employed by the Universal Postal Union in fixing its airmail rates, and shall further consider the competitive disadvantage to United States flag air carriers resulting from foreign air carriers receiving Universal Postal Union rates for the carriage of United States mail and the national origin mail of their own countries."

TRANSPORTATION OF GOVERNMENT-FINANCED PASSENGERS AND PROPERTY

SEC. 5. (a) Title XI of the Federal Aviation Act of 1958 (49 U.S.C. 1501 and the following) is amended by adding at the end thereof the following new section:

"TRANSPORTATION OF GOVERNMENT-FINANCED PASSENGERS AND PROPERTY

49 USC 1517.

"SEC. 1117. Whenever any executive department or other agency or instrumentality of 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

APPENDIX II

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, or shall furnish to or for the account of any foreign nation, or any international agency, or other organization, of whatever nationality, without provisions for reimbursement, any transportation of persons (and their personal effects) or property by air between a place in the United States and a place outside thereof or between two places both of which are outside the United States, the appropriate agency or agencies shall take such steps as may be necessary to assure that such transportation is provided by air carriers holding certificates under section 401 of this Act to the extent authorized by such certificates or by regulations or exemption of the Civil Aeronautics Board and to the extent service by such carriers is available. The Comptroller General of the United States shall disallow any expenditure from appropriated funds for payment for such personnel or cargo transportation on an air carrier not holding a certificate under section 401 of this Act in the absence of satisfactory proof of the necessity therefor. Nothing in this section shall prevent the application to such traffic of the antidiscrimination provisions of this Act.". 49 USC 1371.

(b) That portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 which appears under the center heading "TITLE XI—MISCELLANEOUS" is amended by adding at the end thereof the following new item:

"Sec. 1117. Transportation of Government-financed passengers and property.". 88 STAT. 2104

88 STAT. 2105

PROMOTION OF TRAVEL ON UNITED STATES CARRIERS IN FOREIGN AIR TRANSPORTATION

SEC. 6. Section 2 of the International Travel Act of 1961 (22 U.S.C. 2122) is amended by striking out the period at the end of paragraph (5) and inserting in lieu thereof a semicolon and by adding at the end thereof the following new paragraph:

(6) encourage to the maximum extent feasible travel to and from the United States on United States carriers.".

OBSERVANCE OF TARIFFS BY TICKET AGENTS

SEC. 7. (a) The first sentence of section 403(b) of the Federal Aviation Act of 1958 (49 U.S.C. 1373(b)), relating to observance of tariffs and prohibition against rebating, is amended to read as follows: "No air carrier or foreign air carrier or any ticket agent shall charge or demand or collect or receive a greater or less or different compensation for air transportation, or for any service in connection therewith, than the rates, fares, and charges specified in then currently effective tariffs of such air carrier or foreign air carrier; and no air carrier or foreign air carrier or ticket agent shall, in any manner or by any device, directly or indirectly, or through any agent or broker, or otherwise, refund or remit any portion of the rates, fares, or charges so specified, or extend to any person any privileges or facilities, with respect to matters required by the Board to be specified in such tariffs except those specified therein.".

Inspection of accounts and property.

(b) The first sentence of section 407(e) of such Act (49 U.S.C. 1377(e)), relating to inspection of accounts and property, is amended to read as follows: "The Board shall at all times have access to all lands, buildings, and equipment of any air carrier or foreign air carrier and to all accounts, records, and memorandums, including all documents, papers, and correspondence, now or hereafter existing, and kept or required to be kept by air carriers, foreign air carriers, or ticket agents and it may employ special agents or auditors, who shall have authority under the orders of the Board to inspect and examine any and all such lands, buildings, equipment, accounts, records, and memorandums.".

PROHIBITION AGAINST SOLICITATION OR ACCEPTANCE OF REBATES BY SHIPPERS OF AIR FREIGHT

SEC. 8. (a) Section 403(b) of the Federal Aviation Act of 1958 (49 U.S.C. 1373(b)), relating to observance of tariffs and prohibition against rebating, is amended by inserting "(1)" immediately after "(b)" and by adding at the end thereof the following new paragraph:

"(2) No shipper, consignor, consignee, forwarder, broker, or other person, or any director, officer, agent, or employee thereof, shall knowingly pay, directly or indirectly, by any device or means, any greater or less or different compensation for air transportation of property, or for any service in connection therewith, than the rates, fares, and charges specified in currently effective tariffs applicable to such air transportation; and no such person shall, in any manner or by any device, directly or indirectly, through any agent or broker, or otherwise, knowingly solicit, accept, or receive a refund or remittance of any portion of the rates, fares, or charges so specified, or knowingly solicit, accept, or receive any privilege, favor, or facility, with respect to matters required by the Board to be specified in such tariffs, except those specified therein.".

(b) Section 902(d) of such Act (49 U.S.C. 1472(d)), relating to granting rebates, is amended by inserting "(1)" immediately after "(d)" and by adding at the end thereof the following new paragraph:

88 STAT. 2105
88 STAT. 2106

"(2) Any person who, in any manner or by any device, knowingly and willfully solicits, accepts, or receives a refund or remittance of any portion of the rates, fares, or charges lawfully in effect for the air transportation of property, or for any service in connection therewith, or knowingly solicits, accepts, or receives any privilege, favor, or facility, with respect to matters required by the Board to be specified in currently effective tariffs applicable to the air transportation of property, shall be fined not less than $100, nor more than $5,000, for each offense.".

(c) The subsection heading of subsection (d) of such section 902 is amended to read as follows:

"GRANTING OR RECEIVING REBATES".

(d) That portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 which appears under the side heading

"Sec. 902. Criminal penalties."

is amend by striking out

"(d) Granting rebates."

and inserting in lieu thereof

"(d) Granting or receiving rebates".

Approved January 3, 1975.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 93-1475 (accompanying H.R. 14266 (Comm. on Interstate and Foreign Commerce).
SENATE REPORT No. 93-1257 (Comm. on Commerce).
CONGRESSIONAL RECORD, Vol. 120 (1974):
Oct. 10, considered and passed Senate.
Dec. 13, considered and passed House, amended, in lieu of H.R. 14266.
Dec. 17, Senate concurred in House amendment, with an amendment.
Dec. 19, House concurred in Senate amendment.

APPENDIX III

CIVIL AERONAUTICS BOARD
WASHINGTON D.C. 20428

September 9, 1977

IN REPLY REFER TO B-1-39

Honorable Elmer B. Staats
Comptroller General of the
United States
General Accounting Office
Washington, D.C. 20548

Dear Mr. Staats:

On behalf of the Civil Aeronautics Board I submit our comments on the draft report to the Congress entitled "Assessment of Government's Critical Role in International Air Transportation." The Board and its staff have carefully reviewed the report and the specific recommendations it contains, and our comments are set out in detail below.

Before addressing myself to the individual recommendations, I believe it would be useful to summarize our overall impressions of the report:

(1) It incorrectly implies that U.S.-flag carriers are at a competitive disadvantage vis-a-vis foreign air carriers in international air transportation. For example, the report fails to note that despite the intense efforts on the part of many foreign governments to promote their aviation industries, U.S. carriers still carry over 50% of scheduled traffic and over 60% of charter traffic in foreign markets;

[See GAO note, p. 73.]

[See GAO note, p. 73.]

(4) It relies on many facts that are outdated or inaccurate. For example the report states that all U.S. charters into or out of France must abide by French restrictions. The French actually accept almost all of the U.S. charter rules and U.S.-flag carriers now have 85% of the market. I have enclosed staff comments as an attachment to the Board's comments, which discuss a number of areas where the report relies on incorrect facts or makes illogical assumptions based upon limited facts.

We now turn to our comments on the specific recommendations.

[See GAO note, p. 73.]

[See GAO note, p. 73.]

Charter Operations

-- The Secretary of Transportation, in cooperation with the Secretary of State and the Civil Aeronautics Board, in instances where U.S. carriers operate at a competitive disadvantage, seek negotiation of equitable and less restrictive charter rules into bilateral agreements.

Comment: We agree with the proposition that long-term charter arrangements should be established by bilateral agreements. The Board has advocated this view in many negotiations and continues to urge a concerted effort to obtain foreign acceptance of U.S. charters in agreements and through comity and reciprocity. In the recently negotiated U.S.-U.K. Agreement, however, the Board's recommendation to insist upon charter acceptance in the scheduled agreement as a non-negotiable demand was not followed. Contrary to the impression given by the report, the Board in conjunction with the Department of State has been highly successful in securing foreign acceptance of the vast majority of its charter rule conditions. This success is intimately linked to the Board's unique statutory responsibility and extensive experience in creating and enforcing charter rules. The task of obtaining foreign acceptance of charters should not be jeopardized by transferring responsibility for control of negotiation of charter agreements from the Department of State to an agency without regulatory responsibilities and without experience in the charter field. The draft report offers no justification or supporting evidence for the transfer of these responsibilities.

[See GAO note, p. 73.]

User Charges

-- The Secretaries of State and Transportation and the Civil Aeronautics Board seek to negotiate provisions for common methods of assessing user charges into bilateral agreements.

Comment: The negotiation of bilateral provisions for common methods of assessing user charges is a desirable, but largely not feasible objective under current law. Except for Dulles, which is under Federal control, international airports in the United States are all owned and controlled by state or local government units, and the systems and levels of charges vary from airport to airport. Enabling legislation would be required to allow Federal control of landing fees.

-- Whenever total user charges in a country substantially exceed U.S. charges, the Secretary of Transportation consider such charges unreasonable unless the foreign governments can demonstrate, or other available evidence indicates, that they reflect actual costs.

Comment: This recommendation is that the Federal Government impose a charge on carriers from countries where airport charges substantially exceed our own--even where the carriers of that country must pay similar fees. This a priori solution to the user fee problem is simplistic. It fails to consider adequately that the level of user fees at U.S. airports may be depressed by Congress' grant-in-aid approach to airport financing. In addition many unique local factors go into the ratemaking base of individual airports which cause wide variances in user fees. The recommendation contained in the report seeks to eliminate the discretion established by the Congress, which DOT needs to administer the Act, and would place the United States in the position of possibly making spurious accusations to foreign governments. This approach can only lead to a breakdown in the orderly process of dispute resolution, which will ultimately work to the detriment of international travelers and shippers.

Practices Act

-- GAO recommends to the Congress that the Fair Competitive Practices Act be amended to provide for more timely and effective Government response to all types of unfair competitive practices. As the Secretary of Transportation is the logical focal point for aviation policy, the reporting responsibility under the act should be transferred to the Secretary.

Comment: A sixty-day limit within which the Secretary of Transportation would have to make a formal finding seems imprudent and unrealistic in dealing with sovereign states. Establishing unilateral time limits may have a coercive effect domestically, but internationally could well prove counter-productive and perhaps lead to service disruptions. Similarly, the one-year time interval for obtaining the redress of discriminations, coupled with the continuing increase in our workload relating to U.S. consultations and negotiations, would impose an impractical time limit.

To request amendment of the Fair Competitive Practices Act (FCPA) to allow the Secretary of Transportation to petition the Board is unnecessary. The Secretary can now petition the Board on any subject.

We see no connection between the reporting function and the substantive activity required by the Act. We have, however, no objection to the transfer of the reporting function to the Department of Transportation.

Coordination

-- The Director, Office of Management and Budget, place responsibility with the Secretary of Transportation to coordinate all Government actions affecting U.S. international air relationships. Unresolved differences among government agencies regarding issues such as policy formulation and negotiating positions should be recognized by the Secretary of Transportation and timely resolution sought in the manner prescribed by the President.

Comment: We agree there is need for greater coordination of United States policy on international aviation issues. We think it essential that in bilateral negotiations the United States speak with a common voice, which integrates the expertise of governmental agencies and non-governmental interests. Whether the responsibility for this effort should rest with the Secretary of DOT or the Secretary of State is for the President to decide.

[See GAO note, p. 73.]

APPENDIX III

I am prepared, with other Members of the Board and my Staff, to discuss our comments with you and your Staff, if you feel such discussion would be helpful.

Sincerely,

Alfred E. Kahn
Chairman

Enclosure

GAO note: Deleted comments relate to matters which have been omitted or modified in the final report.

APPENDIX IV

OFFICE OF THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

ASSISTANT SECRETARY
FOR ADMINISTRATION

September 26, 1977

Mr. Henry Eschwege
Director, Community and
Economic Development Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Eschwege:

This is in response to your letter of July 18, 1977, requesting comments on the General Accounting Office (GAO) draft report entitled "Assessment of Government's Critical Role in International Air Transport." We have reviewed the report and have prepared a Department of Transportation (DOT) reply, and two copies are enclosed.

We support the general thrust of the report which recommends that the Secretary of Transportation be the focal point for coordinating and implementing United States international aviation policy.

[See GAO note, p. 78.]

In addition to the enclosed reply, we have editorial and technical comments to the draft report. You may wish to discuss these additional comments by contacting John B. Flynn, Director, Air Transportation Policy Staff (426-4428).

Sincerely,

William B. Saxbe

for Edward W. Scott, Jr.

Enclosures

APPENDIX IV

DEPARTMENT OF TRANSPORTATION REPLY

TO

GAO DRAFT REPORT

ON

ASSESSMENT OF GOVERNMENT'S CRITICAL ROLE

IN INTERNATIONAL AIR TRANSPORT

SUMMARY OF GAO FINDINGS AND RECOMMENDATIONS

The GAO assessed the roles of the Departments of State and Transportation and the Civil Aeronautics Board in international air transportation. The report discusses the involvement of U. S. and foreign governments in international airline operations and evaluates the U. S. Government's efforts to respond to unfair competitive practices, discrimination against U. S. airline charter flights, and the problems of excess capacity. Because of this involvement, the U. S. government agencies share with the U. S. privately-owned airlines the responsibility to provide the public efficient services at economically justified prices. This situation has great importance because of the declining competitive position of the U. S. international flag carriers.

GAO concludes that in order to deal effectively with our international aviation problems, there is a need for better coordination and more timely action by DOS, DOT, and the CAB. GAO believes that the Secretary of Transportation should be the focal point for facilitating closer coordination between executive agencies and the CAB.

The GAO found that, despite the increase and proliferation of restrictive and unfair competitive practices by foreign countries, little effective action has been taken under the Fair Competitive Practices Act.

The GAO also found that the U. S. policy to encourage the availability of lower cost charter travel is often blunted by the restrictive position of foreign countries on charter travel to and from this country. They conclude that, in instances where it lacks reciprocal charter arrangements, the U. S. should reach specific air charter agreements with foreign governments which provide for economically equitable benefits for U. S. and foreign carriers.

[See GAO note, p. 78.]

Specifically, the recommendations of GAO to the executive agencies are the following:

1. The Director, Office of Management and Budget, place responsibility with the Secretary of Transportation to coordinate all Government actions affecting U. S. international air relationships. Unresolved differences among Government agencies regarding issues such as policy formulation and negotiating positions should be recognized by the Secretary of Transportation and timely resolution sought in the manner prescribed by the President.

2. The Secretaries of State and Transportation and the Civil Aeronautics Board seek to negotiate provisions for common methods of assessing user charges into bilateral agreements.

3. Whenever total user charges in a country substantially exceed U. S. charges, the Secretary of Transportation consider such charges unreasonable unless the foreign governments can demonstrate, or other available evidence indicates, that they reflect actual costs.

4. The Secretary of Transportation, in cooperation with the Secretary of State and the Civil Aeronautics Board, in instances where U. S. carriers operate at a competitive disadvantage, seek negotiations of equitable and less restrictive charter rules into bilateral agreements.

[See GAO note, p. 78.]

The report contains the following recommendations to Congress regarding modification of the Fair Competitive Practices Act:

1. That section 2 require the Secretary of Transportation to make formal findings that discriminatory or unfair practices exist and recommend the appropriate actions to be taken, failing diplomatic resolution of the matter. That where such actions require a Civil Aeronautics Board decision, the Secretary of Transportation will petition the Board on behalf of the Government and request Presidential approval as required.

APPENDIX IV

2. That both section 2 and 3 contain specific time limits on carrying out the actions called for. We suggest a 60-day limit for the Secretary of Transportation to make a finding as to whether or not a particular charge or act may be subject to retaliation and no more than an additional year to take appropriate action, if the matter cannot be resolved diplomatically.

3. That section 3 be expanded to cover other than strictly user charges, when other charges or costs resulting from unreciprocal practices can be quantified with reasonable accuracy.

4. That the reporting responsibility under section 2 be transferred from the Civil Aeronautics Board to the Secretary of Transportation.

DEPARTMENT OF TRANSPORTATION POSITION STATEMENT

The draft report is timely and highlights one of the key problems of United States international aviation policy -- the need for closer and more coordination among interested government agencies. The Department of Transportation fully supports the general thrust of the GAO paper which is to recognize the Secretary of Transportation as the focal point for coordinating and implementing United States international aviation policy.

The following additional points supporting this recommendation would strengthen its justification and we suggest that GAO consider incorporating them in the final report. First, the Secretary of Transportation has a statutory role as the chief aviation advisor to the President and this recommendation would assist in the implementation of this authority. Second, in instances (the 1970 and 1976 policy reviews of international aviation and the Federal Action Plan) that the Department of Transportation has had a leadership role in coordinating policy, DOT has demonstrated its capability to effectively manage the projects with visible results. Third, reference should be made to the 1970 final report of the Office of Management and Budget on the "Role of the Executive Branch and the CAB in International Aviation." This report recommended that DOT should have policy leadership in developing and coordinating broad transportation policies and long-range national objectives.

We are in general agreement with the other recommendations and findings of GAO

[See GAO note, p. 78.]

APPENDIX IV

[See GAO note below.]

for Raymond A. Gross II
Assistant Secretary for Policy, Plans
and International Affairs

GAO note: Deleted comments relate to matters which have been omitted or modified in the final report.

ASSISTANT ATTORNEY GENERAL
ANTITRUST DIVISION

United States Department of Justice
WASHINGTON, D.C. 20530

August 10, 1977

Mr. Victor L. Lowe
Director
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Lowe:

This is in response to your request to the Attorney General for the comments of the Department of Justice on the Draft Report of the GAO entitled "Assessment of Government's Critical Role in International Air Transport."

In general, the Department views United States international aviation policy as an equilibrium of two opposing factors: On the one hand, the fundamental economic policy of the United States favors free competition among many independent firms, and free international trade. The best economic evidence indicates that this type of environment is desirable and economically achievable in international air transportation. On the other hand, most foreign governments do not share these fundamental policies and often impose various restrictions which discriminate in favor of their own flag carriers, or otherwise seek to protect their own interests at the expense of other nations, their carriers and travelers.

The Department of Justice finds this same bipolar view of international aviation reflected in the Draft Report, and thus is in basic agreement with the Draft's approach. The Draft Report's conclusions and recommendations generally reflect a well-researched and well-reasoned accommodation of the two philosophical viewpoints apparently aimed at suggesting ways in which the United States can minimize the discriminatory effect of foreign government restrictive practices.

To these general observations, we would add that there is a paradox evident in the current international aviation picture. While other governments and foreign flag carriers seem to have achieved remarkable success in promoting their own interests at the expense of international competition, it is the United States which has the superior bargaining

APPENDIX V

position. The foreign sector of the United States economy is much smaller in relative terms than that of other countries. The United States is also relatively less dependent on tourism and other activities complementary to air travel. In this light, it could reasonably be expected that United States views on appropriate international aviation policy would be more widely shared than they are. We therefore generally concur with the view expressed in the Draft that many U.S. objectives could be better met by increasing coordination among the executive agencies and the CAB.

The Department of Justice has no detailed comment to offer on Chapters 1-3 of the Draft Report. We would say only that the Department is in full support of the goal of eliminating the various discriminatory and restrictive practices enumerated, particularly those discussed in Chapter 3.

The views of the Department differ somewhat with those expressed in Chapter 4. Although we strongly agree that the free availability of low-cost charter travel is the right of every international traveler, we believe that a retaliatory approach to foreign charter restrictions may play into the hands of those foreign governments which take a restrictive approach to international aviation. The basis for this assertion is as follows:

International air travel is available from two groups of carriers, the IATA members and non-IATA members. The former group includes virtually all scheduled-service carriers, and the latter consists of the U.S. supplemental carriers and their foreign counterparts who offer only charter services. Many of the IATA scheduled carriers also offer their own charter services, and several foreign flag carriers offer charter services through wholly-owned subsidiaries. In addition, the IATA fare structure allows scheduled-service carriers to market certain restricted excursion and discount fares, many of which are charter-competitive.

The fundamental competitive structures of the scheduled-service and charter markets are radically different. The IATA carriers form a rate-setting cartel, with the result that scheduled-service fares are set substantially above costs, and competition takes place in the form of scheduling

APPENDIX V

competition, low density seating configurations, [illegible] in-flight amenities, extensive reservations syst[illegible] expenditures on advertising and promotion, trave[illegible] commissions, and in some cases rebating to ticket [illegible]sers. On the other hand, charter rates are set by supply and demand, with the result that ticket prices are more closely aligned with costs and non-price competition in the form of distended service parameters is nowhere apparent in the charter market.

Thus, maintaining a competitive charter market is vital. First, the availability of charter services provides price-sensitive consumers with the benefits of international air travel. Second, the availability of low-cost charter services provides the only competitive check upon IATA fares for charter-competitive excursion and discount travel, and to a lesser extent, upon IATA scheduled-service fares.

What, then, should be the response of the United States to foreign restrictions on U.S.-originating charter flights? To retaliate by preventing foreign-origin charters from operating to the U.S. would strengthen the IATA cartel by removing charter competition in the affected market. The Department of Justice believes that the U.S. should be uncompromising in pressing for liberal charter rules, and the Department enthusiastically supports the Draft Report's endorsement of the country-of-origin approach in bilateral negotiations.

[See GAO note, p. 82.]

The Department of Justice instead recommends the following two alternative strategies: (1) an uncompromising

insistence upon liberalization of foreign charter restrictions, which is a justifiable policy without regard to the inter-relationship between charter and scheduled service, and (2) strong United States support for increasing the variety of services which charter airlines may offer, including fewer restrictions as to advanced booking and purchase requirements, minimum/maximum stay requirements, cancellation penalties, and minimum charter group size. We must never lose sight of the fact that our fundamental national policy favors competition, and especially price competition, in international aviation. United States accession to the concept of capacity management, which many governments apparently and, we hope erroneously, perceive as having occurred in the negotiations leading to Bermuda II, would be inimical to United States interests and the interests of all air travelers.

Having stated these reservations, the Department wishes to repeat its fundamental agreement with the approach taken in the Draft Report, and to thank GAO for a valuable document containing much new information which seems to us both useful and well presented.

Sincerely yours,

Hugh P. Morrison, Jr.

Hugh P. Morrison, Jr.
Acting Assistant Attorney General

GAO note: Deleted comments relate to matters which have been omitted or modified in the final report.

APPENDIX VI

DEPARTMENT OF STATE

Washington D C 20520

August 22, 1977

Mr. J. K. Fasick
Director
International Division
U.S. General Accounting Office
Washington, D. C. 20548

Dear Mr. Fasick:

I am replying to your letter of July 18, 1977, which forwarded copies of the draft report: "Assessment of Government's Critical Role in International Air Transport".

The enclosed comments were prepared by the Assistant Secretary for Economic and Business Affairs.

We appreciate having had the opportunity to review and comment on the draft report. If I may be of further assistance, I trust you will let me know.

Sincerely,

Daniel L. Williamson, Jr.
Deputy Assistant Secretary
for Budget and Finance

Enclosure: As stated

GAO DRAFT REPORT: ASSESSMENT OF GOVERNMENT'S CRITICAL ROLE IN INTERNATIONAL AIR TRANSPORT

The draft report of the General Accounting Office on the government's critical role in international air transport sheds light on a number of important factors affecting international aviation. It is, we believe, a useful contribution to enhancing the role of the U.S. Government in this area.

In a number of areas, however, the report requires revision. Attached are a number of detailed comments which the Department of State believes must be taken into account in preparation of the final report.

We have four principal comments on the draft report.

First, the Department of State cannot support the recommendation that the Secretary of Transportation assume a central role in coordinating international aviation within the executive branch and with the Civil Aeronautics Board. The report makes this recommendation apparently because the GAO believes that U.S. Government actions in international aviation have not been as effective as they should be and that this ineffectiveness is caused by lack of coordination and confusion within the government. The report does not, in the Department's view, establish that U.S. Government actions have been ineffective or that there has been inadequate interagency coordination. Moreover, the report does not adequately deal with the question of what activities, if any, need better coordination. Specifically, it does not address the Department's role in negotiating international agreements. The Department believes that it is uniquely qualified not only to negotiate with foreign governments but also to coordinate negotiating positions by virtue of its long history of aviation negotiating experience, its direct lines to embassies abroad, and its ability to maximize US aviation advantages by placing aviation in the larger context of U.S. interests. Yet, the net result of the GAO's recommendation would be to establish the Department of Transportation as the central agency responsible for all U.S. international aviation activities, including in many cases negotiations with foreign governments. The Department believes that this result would decrease the effectiveness of the government in international aviation.

The responsibility for negotiating aviation agreements with foreign governments is vested in the Secretary of State under Section 802 of the Federal Aviation Act. In the Department's view, the role of the Secretary of Transportation in international aviation is (1) to coordinate and develop U.S. transportation policies, including broad international aviation policies; (2) to make recommendations to the

Secretary of State pursuant to Section 802 of the Federal Aviation Act regarding aviation agreements with foreign governments; and (3) to perform those responsibilities specifically assigned by statute, such as the Fair Competitive Practices Act. The GAO draft report confuses these responsibilities by focusing only on the alleged need to avoid confusion among U.S. agencies in international aviation issues.

The Department does not believe that there is any confusion. There are, as there should be, diverse views on a number of issues (although the frequency of agreement is remarkably great). While there have been periods of time when interagency coordination may not have operated as smoothly as it should, the process of coordination and consultation, both formal and informal, does work. Centralizing the coordination function in an agency which is not responsible for the implementation of policy (which takes place largely through the process of international negotiation) would not contribute either to better government or to the proper discharge of agency responsibilities. Moreover, since the State Department has not been deficient in discharging its aviation responsibilities (the draft report agrees on this point), there is no evident reason for changing current arrangements. (The cases cited on pages 12-15 and in Chapters 3 and 4 generally reflect differences of views on policy issues. There is no basis for assuming that better coordination would have produced different results.)

The Department, therefore, cannot support the recommendations which appear on page vii and the top of page viii insofar as they define organization responsibilities (with the exception of the third recommendation). The second recommendation would be acceptable if it read: "The Secretary of State, in coordination with the Secretary of Transportation and the CAB, seek to negotiate...".

[See GAO note, p. 86.]

Second, the draft report tends to treat all foreign practices and policies which are different from those of the U.S. as unfair or discriminatory and to assume that all such practices and policies can be changed through retaliation or reciprocal actions. The Department recognizes, of course, that many foreign practices and policies are designed to protect and enhance the position of the national airline. These should be countered by appropriate means. However, there are other cases where foreign government actions

stem from their economic, political and social systems, which are different from those of the United States. It is unrealistic for the U.S. to assume that it can, or even should, seek to change these systems (for example, in Eastern Europe). In such situations, the solution lies not in retaliatory or even necessarily reciprocal actions, but in taking the foreign situation as given and compensating for it by obtaining a U.S. advantage in another aviation-related aspect in order to assure an overall equitable exchange of aviation benefits. Thus, while the Department generally supports the recommendations for legislative changes, it wishes to point out that the remedies available from legislation can only be a partial answer to the complex question of negotiating equitable aviation arrangements with foreign governments.

Third, the Department believes that the recommendations for changes in legislation with regard to user charges are deficient in one respect and that the recommended changes with regard to expanding the treatment of discriminatory and unfair competitive practices be accompanied by an analysis to determine whether the additional benefits stemming from this expansion are warranted by the costs in terms of additional manhours and other government resources. Specifically, with regard to user charges, the correct standard for determining whether foreign user charges (or other quantifiable costs to US airlines) are unreasonable is whether they "unreasonably exceed comparable costs" in the United States. The standard should not be "comparable charges" in the United States, since in most cases, the Federal Government and state and local authorities do not seek to recover the full costs of aviation facilities from airline users.

[See GAO note below.]

Julius L. Katz
Assistant Secretary for
Economic and Business Affairs

GAO note: Deleted comments relate to matters which have been omitted or modified in the final report.

APPENDIX VII

Air Transport Association ata OF AMERICA

1709 New York Avenue, N.W.
Washington, D. C. 20006
Phone (202) 872-4000

DONALD C. COMLISH
Vice President
International Affairs

August 22, 1977

Mr. J. K. Fasick
Director, International Division
General Accounting Office
Washington, D. C. 20548

Dear Mr. Fasick:

This is in response to your letter of July 22, 1977 to Mr. Paul R. Ignatius, president of the Air Transport Association, asking for comments on your draft report entitled, "Assessment of Government's Critical Role in International Air Transport." We thank you for this opportunity to comment.

At the outset we should state that we have strictly followed the notice printed on the report restricting its distribution. Following that direction, no copies of the draft were made, and it was not given to our member airline companies. However, in order to be able to base our comments on the views of the airlines we summarized the findings of your report and discussed them with airline representatives. Thus, our comments do reflect scheduled airline views.

Our comments will follow the various broad chapters that are contained in the draft report.

Pervasive Government Roles in International Air Transport

We disagree with the recommendations and conclusions that you come to in this section. It is our view that the CAB does have both long experience and a statutory basis for leading government decision-making in the area of the economics of international air transportation. While the GAO study is quite critical of the work performance of the CAB, we believe that taking the Bureau of International Affairs or the international aviation economic function away from the Board would only serve to isolate the Board

in its role as the economic regulator of aviation. A decision to take this function and staff out of the hands of an agency which must be deeply involved in such activities will lead inevitably to decisions based on inadequate staff expertise, or duplicate staffing, or both.

With respect to the question of what agency should do the negotiating of international agreements, we believe that function should stay in the State Department. The Office of Aviation within the State Department has a long and basically satisfactory history of negotiating international aviation matters. While State has experienced and well qualified negotiators, we are not aware of any special negotiating experience in the Department of Transportation. State continues to develop competent people because of its international functions and because of its role as the foreign policy arm of the Executive Branch. We think that this invaluable experience would be lost if the negotiating role were to be shifted to some other department or agency, and we see no need for duplication.

In addition to economic analysis and negotiating skills, there is the question of policy coordination. In our view this is the most important problem. Because of the diversity of responsibilities among the Executive Branch departments, it would seem logical that the place to pull together all of the governmental views on international aviation matters is in the White House. If the White House is not the place where the role of coordinator can be placed at the present time, then we would suggest giving this role to the State Department as foreign relations are always deeply involved in international aviation agreements by their nature, and the State Department has the expertise in that area. Whatever is decided, we believe written descriptions of functions should be prepared and agreed so that there will be no question about where responsibilities lie among agencies and departments of the government.

We would also like to suggest that although the responsibility for the normal conduct of international aviation matters should continue as at present in the Office of Aviation and the Office of Transportation, Telecommunications and Commercial Affairs, a higher official in the Department of State be designated as the official having ultimate responsibility for these matters. We find the normal conduct of the Office of Aviation to be highly satisfactory, but it would

be desirable for those specific cases where a high ranking official is called for to have a particular individual who will have as a part of his duties to maintain a general familiarity in this area.

Implementing the International Air Transportation Fair Competitive Practices Act

As you may know, the scheduled airlines of the United States attach considerable importance to the matters of excessive charges and discriminatory practices which fall under the Fair Competitive Practices Act. Indeed, we believe that such charges and practices are proliferating at an alarming rate. We favor steps to strengthen the legislation designed to keep these costs down and to prevent discrimination. In terms of the proposed draft report, we agree that it would be useful for the Department of Transportation to take over the role of reporting to Congress on what has been accomplished under the Act.

We would like to add that the statute should be used as a last resort remedy, when other means fail in getting foreign governments to change their ways. In the normal course of business, persuasion through the normal channels of various government agencies utilizing the special expertise of such agencies should be tried before implementing legal and punitive steps under the statute.

We support the proposal that there be a time frame for action to take place in formal cases which have been filed under the Act. The period of 90 days seems an appropriate outside limit.

International Charter Travel

With respect to international charter travel, it should be borne in mind that scheduled services are essential for the conduct of business, for communications, and for foreign policy considerations. The policy maker should not allow the definition of charter services to become so blurred as to make them still less distinguishable from scheduled services and thereby lead to more diversion of traffic from scheduled to charter services.

[See GAO note, p. 90.]

[See GAO note below.]

We would appreciate it if you would allow us to comment further on revisions to the report, and we would appreciate receiving copies of the final report.

Sincerely,

Donald C. Comlish
Vice President
International Affairs

DCC:mw

GAO note: Deleted comments relate to matters which have been ommitted on modified in the final report.

APPENDIX VIII

National Air Carrier Association, Inc.

[illegible] 202-833-[illegible]

September 6, 1977

Mr. J. Kenneth Fasick
Director
International Division
U.S. General Accounting Office
Washington, D. C. 20548

Dear Mr. Fasick:

The following is in reply to your letter of July 22, which transmitted for comment a copy of your draft report entitled ASSESSMENT OF THE GOVERNMENT'S CRITICAL ROLE IN INTERNATIONAL AIR TRANSPORT.

We have reviewed this draft report in the light of existing conditions and their effect upon U.S. international air transport systems.

In general, we believe the report, except as noted herein, adquately assesses the current situation with respect to international air transport.

With regard to the organizational elements of government and their involvement in the international air transport process, we do not necessarily agree with the conclusion that the Director of the Office of Management and Budget should place responsibility with the Secretary of Transportation and vest the Secretary of Transportation with overall coordinating responsibilities. We believe that the role of coordinator of international air transport involves foreign policy aspects which are the prime responsibility of the President of the United States; and, therefore, the President should designate a high level Cabinet officer, preferably the Secretary of Transportation, as an assistant for international aviation. This has been done in prior administrations, either by designating a Cabinet or other high-ranking official or by designating a specific White House advisor to serve as a Presidential assistant for international aviation. This system has ensured that one individual, representing the President, has the authority among agencies to resolve conflicts or to refer such to the President. This system has aided in coordinating an overall U.S. Government approach.

APPENDIX VIII

We believe a section should be added to the Report which more clearly defines the roles of involved government agencies such as the Department of Transportation, the Civil Aeronautics Board, and the Department of State. We believe that a definition of these relative roles, based upon statutory authority, should be used as the basis for organizing the U.S. negotiating team with specific responsibilities of each agency delineated. A system for resolving difficulties, preparing positions and establishing a procedure for Presidential review where two agencies with fundamental responsibility for establishing positions arrive at a conflict, should be established. I specifically refer to the Civil Aeronautics Board and the Department of State. Basically, the Civil Aeronautics Board in its regulation of domestic and international air transport service has the fundamental responsibility for preparing what is considered to be the negotiating package. The Department of State, on the other hand, in line with its responsibilities in the foreign policy area, should counsel the Board on foreign policy alternatives. If the Board, however, develops a position which the Department of State considers to be non-negotiable because of foreign policy considerations, then they should advise the Board in writing that "paramount national interests" preclude acceptance of the CAB position and provide recommended changes in that position. If the Board, after reflection, is unable to accept such revisions, then the matter should be referred to the President and/or his designee for resolution.

COMBATING UNFAIR COMPETITIVE PRACTICES

We agree that eliminating unfair competitive practices has not been as actively pursued by the U.S. Government as it should have been. The increased cost cited in the report for air navigation services, landing fees, noise abatement, etc., are some examples which have resulted in increasing the ticket cost to the individual consumer. Monopoly ground handling situations in Italy and other places where they exist have a tendency to maintain higher charges than might be found if competition was permitted, or the carriers were authorized to serve themselves.

CHARTER GROWTH IMPEDED

The summary position of GAO is correct in that growth has been impeded in many markets by either restrictive actions of governments in the form of quotas, slotting problems, refusing to recognize country-of-origin rules, or by the imposition of restrictive rules and regulations. The U.S. Government has not always

been prepared to foster the development of charter travel, but recently has undertaken to liberalize rules and regulations at the request of Congress and is actively seeking to conclude charter understandings. Major negotiations involving charter bilaterals are presently before the United States. These are the negotiation of a charter bilateral with the United Kingdom and the negotiation of a charter agreement or bilateral with Japan, governing all charter operations. These two key negotiations should be given the maximum attention by all concerned government agencies and should be prosecuted on such a basis that unless we are able to conclude a reasonable charter bilateral, especially with Japan, that no additional authority be granted Japan. The Government should recognize the proposition that all rights for both scheduled and charter travel should be negotiated simultaneously at the negotiating table and that no agreement should be concluded without both rights being obtained. Unfortunately, in the bilateral negotiations with the United Kingdom charter services were accorded lower priority and in concluding the scheduled service agreement, no leverage was incorporated to assist in establishing or negotiating a charter bilateral. Hopefully, however, both governments will be able to reach a satisfactory agreement by year's end.

[See GAO note, p. 96.]

RECOMMENDATIONS TO CONGRESS

We agree with the recommendation that the Fair Competitive Practices Act be amended to provide for a more timely and effective government response to all types of unfair competitive practices. We believe, however, that the agency which has the greatest responsibility in the regulation of air transportation; i.e., the Civil Aeronautics Board, should be accorded a greater responsbility under an amended act and greater authority to take action against such unfair competitive practices. We do not object, however, to the Secretary of Transportation having an overall responsbility for reviewing what action has been taken and serving as an agency to prod other government agencies, such as, the CAB and State to fulfill their obligations.

CHAPTER I

We generally agree with the comments and discussion set forth in this chapter.

CHAPTER II

We agree with the conclusion that there is a lack of adequate coordination on a timely basis within government in establishing sound negotiating positions. We believe, however, that this matter can be more adequately focused on if the President does establish one of his Cabinet officers or another individual as his assistant for international aviation.

CHAPTER III

We agree with the discussion and basically the recommendations set forth in this chapter. However, we believe that the Act itself should prescribe the responsibilities of the Civil Aeronautics Board, the Department of State and the Secretary of Transportation in the field of international aviation so that it is clear who has the fundamental responsibility to act.

CHAPTER IV -- INTERNATIONAL CHARTER TRAVEL

This section is pretty much a documentary of the discrimination that has existed, as well as the inability to get foreign countries to recognize country-of-origin rules. Notwithstanding U.S. carriers' inability to operate in many foreign countries, carriers of these countries are accorded rights in the United States. I should note that we do not understand the reference on page 60 to the fact that agreements should maintain the distinctions between scheduled and charter flights. We believe the Civil Aeronautics Board is the agency that should determine what distinctions under the law are required to distinguish between scheduled and charter flights; and it may be that advanced booking as recommended by GAO might not be one of those criteria or might be at a less advanced booking period than is currently in effect. We do not understand the reference to the Secretary of Transportation advising the CAB when comity and reciprocity conditions are lacking with particular countries. We believe this is a fact-finding situation which the Civil Aeronautics Board is required to conduct on petition by any airline and that the Secretary of Transportation, as an interested party, can also call to the attention of the CAB. However, no procedure should be set up whereby only if the Secretary of Transportation calls attention to the lack of comity and reciprocity, would the CAB act.

[See GAO note, p. 96.]

APPENDIX VIII

[See GAO note below.]

We trust the foregoing will be helpful and stand ready to meet with you or your representatives to further discuss the comments contained herein.

Sincerely,

Edward J. Driscoll
President & Chief
Executive Officer

EJD:ra

GAO note: Deleted comments relate to matters which have been omitted or modified in the final report.

PRINCIPAL OFFICIALS RESPONSIBLE FOR ADMINISTERING ACTIVITIES DISCUSSED IN THIS REPORT

	Tenure of office From	To
DEPARTMENT OF STATE		
SECRETARY OF STATE:		
Cyrus R. Vance	Jan. 1977	Present
Henry A. Kissinger	Sept. 1973	Jan. 1977
DEPARTMENT OF TRANSPORTATION		
SECRETARY OF TRANSPORTATION:		
Brock Adams	Jan. 1977	Present
William T. Coleman, Jr.	Mar. 1975	Jan. 1977
CIVIL AERONAUTICS BOARD		
CHAIRMAN:		
Alfred E. Kahn	June 1977	Present
John E. Robson	Apr. 1975	June 1977
DEPARTMENT OF JUSTICE		
ATTORNEY GENERAL OF THE UNITED STATES:		
Griffin B. Bell	Jan. 1977	Present
Edward H. Levi	Feb. 1975	Jan. 1977

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