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

B-120751

October 11, 1979

The Honorable Glenn M. Anderson
Chairman, Subcommittee on Aviation
United States House of Representatives

Dear Mr. Chairman: [Recommendations on

We note that on September 28, 1979, you introduced H.R. 5481, a bill to amend the Federal Aviation Act and the International Air Transportation Fair Competitive Practices Act. The bill is intended in part to promote competition in international air transportation, provide greater opportunities for U.S. air carriers, and establish goals for developing U.S. international aviation negotiating policy.

Although our Office did not submit comments on the Senate companion bill (S.1300) for consideration by the cognizant Senate committee, we now have several recommendations with respect to sections 21 and 23. Accordingly, we are submitting the following comments for your consideration:

SECTION 21

Section 21 of H.R. 5481 modifies section 1117 of the Federal Aviation Act (the so-called Fly America Act) by relaxing the requirement to "fly-American" between overseas points so that it would apply only to the extent American-flag carriers are "reasonably" available.

On October 31, 1978, we issued a report to the Congress ("The Fly America Act Should Allow More Agency Discretion in Authorizing Use of Foreign-Flag Air Carriers to Conduct Business Overseas" (LCD-78-235)) which pointed out problems with the act. Our report discussed how the act was (1) causing excessive administrative work to plan and schedule travel, (2) resulting in higher transportation and travel expenses, and (3) lowering employee productivity. The report also addressed how the burden of complying with the act had fallen most harshly on the Government travelers even though they were often at the mercy of the instructions of their

travel offices or the advice of the American-flag carriers and were not knowledgeable of the ways to maximize the use of American-flag carriers and to avoid severe financial penalties if they did not. We recommended that the Congress amend the act to give agencies more flexibility in choosing carriers and reducing the travelers' risks for misusing foreign carriers.

We understand from language on page 23 of Senate Report No. 329, 96th Cong., 1st Sess. (1979), that the S. 1300 amendment to subsection 1117(a) of the act which is identical to the comparable section 21 provision in H.R. 5481 will permit us (by providing that the requirement to "fly-American" between points overseas applies only where American-flag carriers are "reasonably" available) to establish broader and more flexible standards of availability than those currently in force. Nevertheless, the Comptroller General is directed to disallow any expenditure for transportation on a noncertificated carrier "in the absence of satisfactory proof of the necessity thereof." We recommend that serious consideration be given to amending the law to relieve employees of the risk of personal liability posed by the act with regard to travel overseas. Even if amended as proposed by S.1300 and H.R. 5481, the act may harshly and unduly deny an employee recovery of his transportation costs simply because of his inability to fully comprehend the complexities of international air traffic management. Accordingly, we would urge that the disallowance penalty on travel between places overseas be eliminated by changing the proposed subsection 1117(c) of the act to read as follows:

"DISALLOWANCE OF IMPROPER EXPENDITURE BY

COMPTROLLER GENERAL"

"(c) The Comptroller General of the United States shall disallow any expenditure from appropriated funds for payment for personnel or cargo transportation in violation of subsection (a) of this section 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."

Implementation of this recommendation would leave the agencies with primary responsibility for enforcing the fly-American provisions as they relate to travel between points overseas. However, we would continue to monitor agency implementation of subsection 1117(b) to insure continued compliance with the fly-American policy. We would also report to the Congress about any problems in implementation.

We note that H.R. 5481 does not contain provisions comparable to the S.1300 language amending subsection (c) of section 1117. Bilateral agreements, and reciprocal arrangements were matters we did not contemplate in our previous October 1978 report. We understand the intent of that subsection, as it would be amended by S.1300, is to waive the fly-American requirement wherever foreign governments agree to waive their fly-national laws and policies under some type of reciprocal agreements. For example, if Belgium agrees to waive its "fly-Belgium" policies with respect to its official travelers and shippers and permit the use of U.S. carriers, the United States would waive its fly-American requirements with respect to the use of Belgian carriers.

We would not object to reciprocal agreement arrangements per se if provisions similar to the S.1300 version of subsection 1117(c) were included in H.R. 5481 at a later date. However, we would have problems with such a provision to the extent it required us to monitor and make legal determinations affecting the implementation of international agreements. Even if H.R. 5481's subsection 1117(c) were amended as we recommend above, the Comptroller General would remain responsible for disallowing expenditures for transportation between the U.S. and foreign ports in violation of subsection 1117(a). Since our decisions could ultimately affect international agreements and their implementation could conflict with the Secretary of State's interpretation of such agreements, we recommend that he be given the responsibility for making the legal determinations necessary to administer any reciprocal agreement exemption to the "fly-American" requirement. Since he would then be responsible for determining the effect of the bilateral agreements we recommend that if provisions similar to the Senate bill 1300 reciprocal agreement exemption are included in H.R. 5481 at a later date, they should direct the Secretary of State to issue regulations specifying those foreign air carriers which are exempt from fly-American restrictions under the terms of a bilateral or multilateral air transport agreement between the United States and a foreign government or governments.

Accordingly, appropriate amendments for subsections 1117 (a), (b), and (c), as they appear in S.1300, would be as follows:

Subsection (a)

--Deleting the words "Except as provided in subsection (c) of this section, whenever" and inserting the word "Whenever" in lieu thereof (line 5, p. 21).

--Inserting the words "air carriers designated pursuant to subsection (c) of this section or by" (after the word "by" on line 22, p. 21).

Subsection (b)

--Deleting the words "Except as provided in subsection (c) of this section, whenever" and inserting the word "Whenever" in lieu thereof (line 5, p. 22).

--Inserting the words "air carriers designated pursuant to subsection (c) of this section or by" (after the word "by" on line 11, p. 22).

Subsection (c)

--Revising the section to read as follows:

"Whenever a bilateral or multilateral air transport agreement between the United States and a foreign government or governments provides for reciprocal rights for the transportation by air carriers holding certificates under section 401 of the Act of passengers or cargo financed by such foreign government or governments, the Secretary of State shall issue regulations designating those air carriers that do not hold certificates under section 401 of this Act but which are authorized by such agreement to transport persons (and their personal effects) or cargo under subsection (a) and subsection (b) of this section."

SECTION 23

Section 23 amends the portion of the International Air Transportation Fair Competitive Practices Act of 1974 dealing with discriminatory and unfair competitive practices by redesignating the various subsections and adding a new subsection (b). Our March 17, 1978, report to the Congress

("The Critical Role of Government in International Air Transportation" (ID-77-50)) deals with this matter and recommends certain legislative proposals for amending and improving sections 2 and 3. Essentially these legislative proposals would:

--Require the Secretary of Transportation to make formal findings concerning discriminatory or unfair practices and, failing diplomatic resolution of the matter, recommend appropriate actions to be taken.

--Establish specific time limits for implementing required actions.

--Broaden the coverage in section 3 to include not only user charges but also other quantifiable charges or costs resulting from unfair practices.

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

Specific legislative language was contained as appendix I in our March 1978 report. We suggest that you review those proposals with the concerned agencies for inclusion in the amendments proposed by H.R. 5481. Our proposed legislation, like the sunset provisions of the Federal Aviation Act (Public Law 95-504), provides expanded authority for the Department of Transportation, in consultation with the Department of State, in the area of foreign air transportation.

We will appreciate your considering our comments.

Sincerely yours,

Comptroller General
of the United States

Comment Recipient List

Addressees: MCR# 2016

The Honorable Harold T. Johnson
Chairman, Committee on Public Works and Transportation HSE03100
United States House of Representatives

The Honorable Glenn M. Anderson
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United States House of Representatives

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