STATEMENT OF SECRETARY OF TRANSPORTATION BROCK ADAMS BEFORE THE SENATE COMMERCE COMMITTEE, SUBCOMMITTEE ON AVIATION, CONCERNING INTERNATIONAL AVIATION, AUGUST 22, 1978

Mr. Chairman and Members of the Committee:

The complexities of domestic aviation policy, which you have been a leader in addressing, have benefited greatly from Congressional scrutiny. I believe that the improvements we are beginning to see in air service domestically can also be achieved internationally. The International Air Transportation Act of 1978 which you have introduced will promote understanding of the issues involved in international aviation and focus attention on the international aviation policy of the United States Government.

As you are aware, the President has given high priority to aviation policy - both domestic and international. It is something in which I have taken a personal interest and to which we have devoted some of the best resources of the Department of Transportation. I look forward, with you, Mr. Chairman, to the enactment of a strong aviation regulatory reform bill before Congress adjourns. A lot of effort on the part of the Congress and the Executive Branch has gone into that bill. It has been effort well spent. The aviation consumer - and the aviation industry both labor and management - will reap benefits from this new effort in the years to come.

While we have been working to achieve domestic regulatory reform, we have also been trying to match this on the international front. Since the beginning of this Administration, we have concluded new or significantly modified agreements with some of our major aviation partners, including the Netherlands, Belgium, Great Britain, Israel, Mexico and Singapore.

During the coming months, we will be negotiating with Germany, Japan, South Korea and several other nations. As a nation, we can be proud of our negotiating efforts. The results have been the expansion of service opportunities for American business and labor and increased travel opportunities for American citizens.

Even more importantly, we have developed within the Administration a comprehensive statement of the U.S. Government's policy for the conduct of international air transportation negotiations. This policy will provide basic guidance for U.S delegations engaged in negotiating the many bilateral agreements which are now pending. This formal statement of policy - which is strongly pro-consumer and pro-competitive - embodies those principles which have guided our negotiations over the past year. We recognize that when we deal in the international arena, we deal with other sovereign governments who may be pursuing ends or working from premises which are somewhat different from our own. We believe, nevertheless, that the citizens and the carriers of all nations will benefit from this new look and we are firmly pursuing these policy goals.

Against the background of what we have already accomplished in the area of international aviation policy, I would like to discuss the specifics of S. 3363.

Mr. Chairman, you indicated in your statement introducing the bill that the concepts it contains should be thoroughly discussed and debated. The complexities of international aviation deserve and require careful consideration and thorough discussion, and I appreciate the open

minded approach you are taking with these hearings. I welcome this opportunity to share with you and the members of the Committee my thoughts on the provisions of S. 3363.

Section 2. Section 2, which provides policy direction for international aviation, is good and we can accept it. This Administration, in developing its formal statement of international aviation policy, has stressed the development of greater competition among airlines. Competition is the key to assuring the availability of affordable, safe, convenient and efficient air transportation for the consumer. This same theme is contained in the proposed Policy Declaration of S. 3363. We believe that this policy direction will be best achieved when reliance is placed on competitive market forces to achieve the greatest level of benefits in international air transportation.

I would like to express two concerns about proposed subparagraph (4), which speaks of providing "expedited treatment" to carriers from nations with whom we have "least restrictive" air agreements. First, the CAB does not select foreign air carriers. They are designated by their governments. This should be recognized by providing for expeditious issuance of permits to such carriers as they are properly designated. Second, I foresee a great deal of controversy in determining which agreements are the "least restrictive", unless considerably more direction is given on what are the criteria and how they are to be weighted.

Mr. Chairman, I do not believe subparagraph (4) adds materially to the policy declaration and I would hope that you would consider deleting it.

Section 3. Section 3 would permit air carriers to sell foreign charter trips directly to the public, with the percentage of trips that can be directly marketed increasing in steps to 40 percent of a carrier's total charter operations. This section raises several issues which we feel will require further thought and analysis.

Clearly, a large segment of the aviation industry engaged in operating charter trips would welcome the opportunity to market their product directly to the public. And that opportunity would be consistent with this Administration's aviation regulatory philosophy. In addition, by being able to market charters directly to the public, carriers would presumably gain greater efficiency; productivity would increase and prices could be lowered.

However, some argue that authorizing air carriers to sell charters directly to the public will have a serious adverse effect on many of the nation's tour operators. The views of those who fear their interests could be severely affected should be carefully assessed before determining whether the overall public interest would be served by this provision.

The traffic limitations contained in the bill should also be examined. We do not necessarily object to the specific percentages, but it is not clear by what rationale they were selected and, without that background knowledge, they appear somewhat arbitrary. In our view, it might be more appropriate not to place any statutory limitations upon direct sales, but to permit the Board to raise or lower the number of direct sales that would be allowed as warranted by market conditions.

Finally, although I recognize that the focus of this bill is on international aviation, we should expect the same principles to be applied to direct sale of charter trips whether they be foreign or domestic. I am not certain differential treatment is necessary or desirable.

Section 4. Section 4 would automatically permit the major supplemental carriers to provide scheduled service in five foreign markets. While we support the principle of automatic entry, we have several reservations about this provision.

We realize that supplemental carriers have been prevented from entering scheduled service for many years. However, a number of recent or anticipated developments should be borne in mind. The courts have recently ruled that the Board was incorrect in refusing to consider granting scheduled authority to supplemental carriers, and the Board is now considering applications from several supplemental carriers to enter scheduled service. And the domestic aviation regulatory reform legislation now before Congress would clearly spell out the right of the supplementals to perform scheduled service as well. Thus, the past inequities to supplemental carriers which this provision seems to address are already being corrected.

We have two further concerns about the provision: one philosophical and one practical. First, to the extent that an automatic entry provision is enacted for foreign air transportation -- and we are in agreement with the concept -- we believe it should be open

to all qualified carriers, rather than being restricted to just the supplementals or any other particular class of carrier.

Second, there is also a problem from a practical standpoint: we do not yet have sufficiently liberal bilateral agreements with enough countries to open entry into very many markets.

For these reasons, we would not support Section 4 in its present form, although I should emphasize that we are in agreement with this entry concept and we will be glad to work with you on this issue.

Section 5. Section 5 deals with CAB issuance of permits to foreign air carriers and would authorize issuance when the CAB has found that the carrier is fit, willing and able and that either the transportation to be provided is in the public interest or that the applicant carrier has been designated by its government to provide the service under the terms of an agreement between that government and the United States. The Department of Transportation believes that, to the extent that foreign air carrier applications for operating permits are made pursuant to bilateral Civil Air Transport Agreements, by airlines duly designated by their governments, the applications should be granted on a simplified and expedited basis. Therefore we support this provision.

Section 6. Section 6 would establish a rebuttable presumption that consolidations or mergers of supplemental and scheduled air carriers are in the public interest. DOT does not believe this is the best way to proceed at this time.

We recognize that in the present environment the competitive balance between the scheduled and supplemental air carriers is under strain. However, the authority to offer scheduled service, rather than a liberalized merger policy, at this time is the best way to approach the problems confronting the supplemental carriers. The objective should be to put supplemental carriers in a position where they can compete effectively with scheduled carriers, not simply have them disappear.

The domestic aviation regulatory reform bill would permit supplemental carriers to apply for scheduled authority. That bill also would change the standard for approving consolidations and mergers by requiring that the Board not approve transactions which would result in, or would be in furtherance of, a conspiracy or combination to monopolize the business of air transportation in the United States. We believe that approach is preferrable to the proposed section 6.

Section 7. Section 7 would prohibit CAB approval of capacity or pricing agreements affecting foreign air transportation. The domestic regulatory reform legislation recently passed by the Senate would outlaw domestic capacity and price fixing agreements and impose tougher antitrust standards on other agreements approved by the Board. We believe this is proper. However, the international air transportation system is not the mirror image of our domestic transportation system, and we believe that we should fully consider the implications of a unilateral act by the United States which would prohibit U.S. carriers' participation in the International Air Transport Association rate making machinery.

The success of the Administration's international aviation policy depends upon our bilateral and multilateral civil aviation relations. We cannot achieve results in a vacuum. We cannot even land our planes in a foreign State without the agreement of its Government.

On June 9, the Civil Aeronautics Board instituted a show cause proceeding to review its approval of U.S. carrier participation in IATA rate agreements.

In its Order, the Board noted that it was aware that alteration or withdrawal of its approval of the traffic conference mechanism would have far-reaching consequences for the international airline system, and appropriately the Board extended the normal comment period to 120 days.

DOT has also instituted a broad study to review U.S. carrier participation in IATA traffic conferences. While we believe that it is proper that the pro-competitive principles presently embodied in the domestic regulatory reform legislation be generally applied to foreign air transportation, we have not yet completed our review of IATA and we are not yet ready to either endorse or oppose this portion of section 7.

Section 7 would also prohibit Board approval of any agreement which limits capacity in competitive markets. We do not believe that a complete ban without any escape valve for extraordinary circumstances is necessarily desirable. It is long established U.S. policy to oppose capacity limitation agreements. Presently no U.S. carrier is a party to an agreement which limits capacity. However, we cannot preclude the possibility that a situation may arise in which an agreement among carriers for the purpose of allocating capacity might be necessary in unusual circumstances unique to international markets. Therefore, the Department of Transportation feels that the better policy is to leave unamended the present statutory scheme which gives the Board the power to approve such an agreement subject to a finding that it is in the public interest.

Section 8. Section 8 would amend section 801 of the Federal Aviation Act, which presently provides for Presidential review of certain CAB actions. In essence, the President's authority would be limited to reveiwing rates charged by foreign air carriers and to matters involving issuance of permits to foreign air carriers. The President's review authority over CAB decisions in proceedings involving U.S. carrier route or rate matters in foreign air transportation would be eliminated.

The Department of Transportation is opposed to these changes. We believe that, notwithstanding the intermittent assertions that section 801 gives rise to the politicization of the airline regulatory system, the present statutory scheme should not be altered. Past problems have been addressed by the issuance of Executive Order 11920. The scope of the President's review authority should not be curtailed.

We do not believe, Mr. Chairman, that we should assume because 801 review authority relates to foreign air transportation, only decisions concerning foreign carriers should be subject to review. The world of international relations is much more complicated than that. The United States Supreme Court recognized this fact in the Waterman case. The Court held, and after 30 years the law remains, that CAB orders that are subject to section 801 presidential approval are immune from judicial review. This is in recognition of the constitutional responsibility vested in the President for the supervision of national defense and foreign affairs.

We all know that the President has broad authority and responsibility under Article II of the Constitution to conduct the foreign relations

of the United States. The present statutory scheme, supported by judicial decisions, reflects this responsibility and provides the President with the power to approve or disapprove CAB orders involving the full scope of foreign air transportation that raises foreign affairs and national defense considerations. We believe that the President must have this broad review authority in order to effectively negotiate bilateral air transport agreements with foreign countries.

Foreign policy and national defense are inherently potential issues in all carrier selection and rate decisions involving international air transportation. Furthermore, it is the President and not the CAB that is entrusted with the responsibility to conduct the foreign policy and insure the national security. I am not now talking about an "Imperial Presidency." I am talking about the realities of the bilateral air transport negotiating process. A Presidential decision, based upon foreign policy considerations, in a matter regarding an U.S. carrier route or rate issue in international transportation, which is ignored by the CAB, will force the President to use the more cumbersome, and less sure, bilateral negotiating process to accomplish the foreign policy objectives. Since the agenda in formal bilateral negotiation cannot be unilaterally determined by the United States, legislation which forces the President to resort to that mechanism will surely be more costly to the U.S. than if the problem were resolved in the course of section 801 review of the CAB decision.

Recently, the U.S. was involved in a dispute with the United Kingdom involving low fare proposals by Braniff International Airlines. Although the CAB played a very important, aggressive, and constructive role in supporting Braniff's right to introduce the proposed fares, in the last

analysis it was the President, using his 801 powers in conjunction with his authority to negotiate bilateral air transport agreements, who was able to resolve the dispute with the British and ward off a potentially disruptive confrontation.

A slightly different scenario can be readily imagined where the proposed fare of a U.S. carrier is so objectionable to a foreign government that its implementation would threaten our civil aviation relations with that country. It would be unwise to make carrier management and the Civil Aeronautics Board the final arbiter of the appropriateness of these fares. We should not be in the position of tying the President's hands while one carrier, pursuing its own interest, is given the license to jeopardize an entire bilateral regime.

Finally, Mr. Chairman, I would direct your attention to one last example. The U.S. recently signed a bilateral agreement with Israel which, effective August 1, 1979, will require the approval of both governments before a fare proposed by a designated U.S. or Israeli airline for air transportation between the U.S. and Israel can be disapproved. The Administration is currently reviewing the desirability of extending this concept to other bilateral civil aviation regimes. Under the concept of mutual disapproval, it is essential that the President retain the right to review foreign and U.S. airline fare proposals in order to prevent the institution of fares which are predatory or otherwise violative of the public interest.

A similar need exists for Presidential power to review CAB decisions involving U.S. carrier selection for international routes. Under the procedures established in our bilateral Air Transport Agreements with other nations, a U.S. carrier which is certificated by the CAB to provide air transportation to a foreign State for the first time, must obtain the appropriate operating authority from the receiving State. If such certification is objected to by the receiving State, we cannot rule out the possibility that the President may, in order to preserve the viability of our civil aviation relations with the State, be required to disapprove or modify a CAB route award to a domestic carrier. Our bilateral civil aviation relations are replete with instances of disputes over issues involving carrier designations, and these disputes, upon occasion, threaten to erupt into major problems in our civil aviation relations with the objecting countries.

The essential point, Mr. Chairman, is that it is the President, and not the CAB or the courts, who is responsible for insuring that new carrier certification and new fare proposals by carriers will not be destructive of our bilateral and multilateral civil aviation relations. We believe, therefore, that retention of the President's current 801 authority is essential if the United States is to continue to be successful in international air services negotiations and in maintaining and strengthening ongoing relationships with other countries in aviation matters.

Section 9. Finally, Mr. Chairman, let me turn to section 9 of S. 3363. This section would establish, within the Executive Office of the President, an Office of International Aviation Negotiations, to be headed by a Director and Chief Negotiator appointed by the President. Special Counsel appointed from the State Department, DOT and the CAB would assist the Director.

I believe it is essential that the U.S. Government speak with one voice on international aviation matters. In doing this we must accommodate a multipicity of interests, and a variety of resources must be used effectively if our international aviation policy is to be successful.

Even with the appointment of Special Counsel, and the direction that DOT, State and the CAB cooperate with the new Office, the establishment of another separate office in the White House would significantly reduce the involvement and responsibility of these agenceis in the preparation and implementation of civil air transport bilateral agreements. We, therefore, oppose these provisions of S. 3363.

Over the last 12 months, we have worked hard to make interagency coordination successful. Competitive agreements stressing the elimination of restrictive practices have been reached with a number of countries. The new scope of recent agreements signed with the Netherlands and Israel, for example, reflect this.

The process which we have developed is working. We are concerned that a separate Office of International Aviation Negotiations would once again fragment respective agency responsibilities that today are being coordinated. I would stress, Mr. Chairman, that I am entirely in accord with the principal objectives underlying this provision of S. 3363. But I believe that these objectives are better achieved by what we are doing than by setting up another office that would be disruptive rather than helpful to our continuing efforts to assure successful and effective aviation negotiations.

The present system is producing satisfactory results and we are concerned that the proposed organization would actually be a step backwards. If a separate office were created, it appears that one of two scenarios would emerge. To perform its statutory functions adequately, the new office would either have to build a very large staff infrastructure within the Executive Office of the President - a policy clearly contrary to current bipartisan views on government reorganization - or it would maintain a relatively small staff and depend heavily on the agencies currently providing bilateral negotiations staff work. This layering effect not only would be costly in terms of money but also would reduce efficiency. Agency responsibility would be fragmented, and coordination efforts would have to increase. It is for these reasons, Mr. Chairman, that we oppose section 9 of the bill.

Conclusion. Mr. Chairman, let me reiterate in closing that I very much appreciate your efforts in introducing S. 3363 and in holding these hearings which focus on international aviation activities and provide them the attention they deserve. The issues are many and they are complex. S. 3363 addresses these issues in a very thoughtful manner, and I appreciate the opportunity to discuss them with you and the Committee.

This concludes my prepared statement. I would be pleased to answer any questions you or other members of the Committee may have.