U.S. DEPARTMENT OF COMMERCE
Washington, D.C.

Statement of Alan S. Boyd, Under Secretary of Commerce for Transportation before the Aviation Subcommittee of the Committee on Commerce, United States Senate, on S. 3197 and S. 3198, bills to amend the Federal Aviation Act of 1958

May 13, 1966

Mr. Chairman and members of the Committee, the Department appreciates this opportunity to appear in regard to two bills which would amend the Federal Aviation Act of 1958. S. 3197 would amend section 416 and S. 3198 would amend section 402 of the Act.

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

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

The growth of the passenger and cargo markets and the investment necessary on the part of the airlines' management make it increasingly important that service not be interrupted by problems arising as the

result of this Government finding itself in a position whereby it is unable to assist U.S.-flag carriers to counter actions taken against them by other governments. Even of larger moment is the overall importance of air transportation to international commerce. The role of aviation in international commerce is of such magnitude that everything possible should be done to assure a dependable transportation network to meet the increasing demand of passenger and cargo development.

Since, in the last analysis, it is the governments concerned that control international commerce, the United States should have the necessary authority to take positive action in protecting its carriers against the actions of other countries that may be in conflict with operating rights of U.S.-flag carriers and the public interest generally.

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

This Department takes the position that the proper U.S. authority, in this case the CAB, should have the authority it deems necessary to carry out its statutory responsibilities. The Department supports the proposition that the United States should have authority over foreign air carriers equal to that other governments have over carriers of the United States.

This bill, if enacted, would accomplish this objective by making clear beyond any doubt what the Board's authority is and would remove the possibility for misunderstanding or curtailment of agreed-upon operating rights of U.S. carriers. It is our understanding, however, that the bill is intended primarily as a standby proposition and it is contemplated that the authority would not have to be utilized except in rare situations.

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

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

The Department is well aware of the protracted time requirement for final resolution of major route cases. This delay is a product of the procedures which apply to granting a certificate of convenience and

necessity to an American air carrier. Although the legislation before this Committee concerns foreign air transportation, there are also problems of delay in domestic route cases.

In a domestic case, when all the applicants are American air carriers and thus subject to the same delays, the cost is merely time lost before the carrier finally chosen can begin to fly the route. In international cases, where the routes are served by an American and foreign carriers, the situation is not the same. Foreign states can choose promptly the carrier to exercise their rights -- frequently a single state-owned airline -- and certify this selection to the United States. The CAB can then issue a foreign air carrier permit under Section 402 and there is usually relatively little delay before a foreign air carrier is able to begin service. Selection of the American carrier, on the other hand, must await completion of procedures under Section 401.

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

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

As we understand the purpose of the bill, it is to bring into closer relation the time necessary for awarding a certificate to a U.S.-

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

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

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

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

In conclusion, the Department would support this legislation if it were amended along the lines suggested above.

Thank you for this opportunity to present the Department's views on these bills.