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AVIATION

GLENN H. MITCHELL*

BRITAIN WITHDRAWS FROM BERMUDA AGREEMENT

On June 22, 1976, Britain announced that it would withdraw from the 1946 Air Service Agreement (Bermuda Agreement) signed with the United States in Bermuda. The withdrawal will take effect in June 1977, United States and British negotiators agreed to renegotiation sessions in 1976 and 1977.

The Bermuda Agreement, which designates airline routes flown by British and American carriers and regulates airline operations, was enacted to settle disagreements between wartime allies over peacetime air commerce. However, British officials have indicated that the Bermuda principles no longer correspond to present day realities. These realities include the proliferation of subsidized national airlines and a growing demand by Britain for a new agreement which will provide each country with an equal share of passenger revenues.

The negotiators will seek a cutback in the number of North Atlantic flights between the nations. The British maintain that restricting the flights would enable each nation's airlines to fly more profitably. However, the Ford Administration, in September 1976, issued an international air transportation policy statement reaffirming the United States' position of free competition by the airlines in the international air market. Although not specifically mentioned in the policy statement, the British withdrawal from the Bermuda Agreement could adversely affect future landing rights of the supersonic Concorde passenger plane.

CUBA WITHDRAWS FROM ANTI-HIJACK AGREEMENT

On October 15, 1976, the State Department received formal notification that Cuba will cancel the United States—Cuba Anti-Hijacking

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Agreement of 1973. The agreement will remain in effect during a mandatory cancellation period of six months which ends April 15, 1977. The Cuban action is in retaliation for alleged CIA involvement in the crash of a Cuban passenger plane in Barbados on October 6, 1976.

The 1973 agreement provided that the governments would return hijackers for prosecution to the country where the hijack occurred and would also return the aircraft and passengers. Cuban officials indicated that on April 15, 1977, the passengers and crew of any hijacked U. S. airplane would be returned to the United States; however, the hijackers would not be extradited. Since the signing of the agreement, there has been only one aircraft hijacking which occurred in February 1973. The Cuban government has stated that similar agreements with Canada, Mexico, Colombia, and Venezuela will remain in effect.

IATA PROPOSES NEW RATES FOR TRAVEL AGENCIES

The Civil Aeronautics Board (CAB) announced that it has begun an investigation of a proposal by the International Association of Travel Agents (IATA) to set the commission paid by the airlines to travel agents at 8%. The CAB investigation is directed at preventing another rate war for travel agency business between international airlines serving the United States. In April 1975, the airlines ceased paying the uniform fee of 7% set by IATA and began to pay more to agents. The CAB, which has jurisdiction over international flights to and from the United States, has refused to approve the IATA proposal without an assurance that the airlines would not resume paying higher commissions in the future.

The CAB also announced that it will strengthen its policing system by requiring the airlines to make public the commissions paid to travel agents. The ultimate effect of the disclosure would be to assure that the airlines respect the IATA rate agreement when it is approved by the CAB.

CONGRESS SEEKS AIRLINE REGULATION REFORM

Several recent developments indicate that Congress will seek to reform regulatory legislation in the airline industry in 1977. At the request of the Chairman of the Senate Commerce Subcommittee, the Department of Transportation is drafting legislation which would curtail CAB regulation over domestic airline service. The legislation is directed at giving the airlines more freedom to set fares and making CAB procedures more efficient.

In the House of Representatives, the Public Works and Transportation Subcommittee on Aviation filed a bill, HR 14604, 93rd Cong., 1st Sess. (1976), which would allow the airlines more flexibility in changing their rates and in entering additional markets without CAB review.

EPA SETS FUTURE EMISSION CEILING FOR SUPERSONIC AIRCRAFT

The Environmental Protection Agency (EPA) set emission ceilings for future supersonic aircraft well below those of the current Concorde supersonic aircraft. The limits are as much as 77% below those of today's Concorde for supersonic aircraft built after January 1, 1980, and 88% less for those supersonic aircraft certified for flight after January 1, 1984. These new ceilings are approximately four times higher those which subsonic aircraft must meet under 1980 EPA standards.

FEDERAL PLAN TO MAKE AIRCRAFT QUIETER

The Ford Administration prepared legislation that would divert tax dollars into a fund to help the airlines purchase quieter aircraft. The plan, drafted by the Secretary of Transportation, provides for a fund financed by the earmarking of 2% of the current 8% federal tax levied on airline ticket sales. The funds would be used to pay for approximately 20-33% of the price of new aircraft.

The 2% portion of the airline ticket tax allocated to the proposed fund would be diverted from the existing airport-airways trust fund. The trust fund is currently used to help finance airport-runway projects and to pay for improvements in the Federal Aviation Administration's air traffic control system. A similar diversion would also be made on a portion of the proceeds from a federal tax on air cargo shipments. The air cargo tax also helps finance the trust fund. The plan will require Congressional approval before it becomes effective.

UNITED STATES TREATY INFORMATION*

Convention for the suppression of unlawful seizure of aircraft, Hague, December 16, 1970. Entered into force October 14, 1971. TIAS 7192.

*Treaty information compiled from DEPARTMENT OF STATE BULLETINS (1976).

Notification of succession: Bahamas, August 13, 1976. Ratification deposited: Indonesia, with a reservation August 27, 1976.

Protocol relating to an amendment to the convention on international civil aviation (TIAS 1591)—New York, March 12, 1971. Entered into force January 16, 1973. TIAS 7616. Ratification deposited: Iraq, February 10, 1976.

BILATERAL TREATIES WITH THE UNITED STATES

BRAZIL

Agreement relating to reciprocal acceptance of airworthiness certifications. Effected by exchange of notes at Brasilia, June 16, 1976. Effective June 16, 1976.

CANADA

Agreement relating to the purchase by Canada of 18 Lockheed P-3 long-range patrol aircraft, with related note. Effected by exchange of letters at Washington, July 6 and 7, 1976. Effective July 7, 1976.

RECENT CASES

Westside Property Owners v. Schlesinger, 415 F. Supp. 1298 (D. Ariz. 1976). The owners of real property adjacent to an Air Force base sued the Secretary of Defense alleging damages as a result of noise and air pollution, and aircraft accidents. The Court held that the interests of the public in the maintenance of a viable Air Force outweighed the mild inconvenience to the residents from the noise created by the take off and landing of the F-15 aircraft.

Davis v. Northeast Airlines, Inc., 365 A.2d 208 (N.H. 1976). An airline passenger brought suit against the airline for damages to the passenger's animals caused while they were being carried as excess baggage. An exculpatory clause in the airline's tariff provided "(1) the owner assumes all risks for injury, sickness or death of any pets accepted for transportation and (2) if the passenger declares a value and pays the

valuation charge, the airline's liability shall not exceed the declared value, limited to \$500." The Court struck down the exculpatory clause as unlawful.

C.A.B. v. United Airlines, Inc., 45 U.S.L.W. 2170 (7th Cir. 1976). The Civil Aeronautics Board sought a literal construction of §407(e) of the Federal Aviation Act. 49 U.S.C. §1377(e)(1975). That section gives the C.A.B. the right of access to "*all* documents . . . kept or required to be kept by air carriers," where the investigative demand is reasonably relevant to some proper purpose. (emphasis added) The Court found that the legislative intent was not to give the C.A.B. a power of general warrant, but rather to authorize the C.A.B. to make an initial determination of the document's relevancy. The Court held that the Board must disclose its investigative purpose to enable a court to make the relevancy determination.