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Leslie Wilcox CP

DECISION

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

FILE: B-190575 DATE: May 1, 1978

MATTER OF: Relationship of Fly America Act to Vessel Travel

DIGEST: Where vessel transportation is authorized and where vessel of U.S. registry cannot provide transportation services required, Government-financed transportation may be obtained aboard vessel of foreign registry although certificated U.S. air carrier may be available. The purpose of 49 U.S.C. § 1517 is to counterbalance unfair practices and bring about fairer distribution of revenues within international air transportation market more favorable to U.S. air carriers. It does not limit selection of mode of travel or transportation to air travel.

By letter dated September 22, 1977, the Per Diem, Travel and Transportation Allowance Committee requests clarification of the relationship between the requirement for use of vessels of U.S. registry imposed by 46 U.S.C. § 1241(a) (1970) and the requirement of 49 U.S.C. § 1517 (Supp. V, 1975), for use of certificated U.S. air carriers in connection with Government-financed commercial foreign air transportation. Specifically, we are asked whether there is a relationship between the two provisions that would preclude reimbursing an employee for use of a foreign vessel where transportation by vessel of U.S. registry is unavailable, but where the transportation services could have been furnished by a certificated U.S. air carrier.

The requirement for use of vessels of U.S. registry in connection with the travel and transportation requirements of Government officers and employees is set forth at 46 U.S.C. § 1241(a) as follows:

> "(a) Any officer or employee of the United States traveling on official business overseas or to or from any of the possessions of the United States shall travel and transport his personal effects on ships registered under the laws of the United States where such ships are available unless the necessity of his mission requires the

> use of a ship under a foreign flag: Provided, That the Comptroller General of the United States shall not credit any allowance for travel or shipping expenses incurred on a foreign ship in the absence of satisfactory proof of the necessity therefor."

By section 5 of the International Air Transportation Fair Competitive Practices Act, Pub. L. No. 93-623, 88 Stat. 2104, the preference concept previously applicable only to vessel travel was extended to air travel. As now codified at 49 U.S.C. § 1517, the "Fly America Act" provides:

> "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 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 1371 of this title 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 1371 of this title 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 chapter."

Section 1517 of title 49 of the United States Code requiring the use of certificated U.S. air carriers applies to 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. Literally construed, the requirement to use certificated U.S. air carriers arises only after the determination has been made that the transportation services required are to be obtained by air carrier, and imposes no obligation to use certificated U.S. air carriers when there has been a determination to use surface transportation. A review of the legislative history of Pub. L. No. 93-623, supra, indicates that the purpose behind the fair competitive practices provisions, including section 5, is to counterbalance the various discriminatory and unfair practices of foreign governments, such as providing for subsidies and preferences with respect to their own airlines, that have resulted in a diminution in U.S. air carriers' share of the foreign air transportation market. The law was passed with the expectation that it would improve the competitive position of U.S. airlines and enable them to recapture their fair share of the international air transportation market.

The following excerpt from S. Rep. 93-1257, 93d Cong., 2d Sess., on S. 3481, explains the Act's overall purpose:

> "We believe the time has come to recognize, as a matter of national policy, the need for removing the competitive imbalance in international air transportation which, either by accident or design, favors foreign airline competition.
>
> "The International Air Transport Problem
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> "The size of the problem can be measured in terms of the imbalance in the value of air transport services provided by U.S. and foreign flag airlines to and from the United States.

In 1973, the U.S. flag airlines sold approximately $1 billion in air transport services to citizens of other countries. This represented a substantial contribution to the export trade of the United States and, therefore, to the U.S. balance of payments. At the same time, however, Americans bought air transport services from foreign flag airlines at a value of $1.7 billion. This imbalance was in part the result of discriminatory and unfair competitive practices affecting U.S. flag airlines operations, thereby causing an overall deficit in the transportation account of our balance of payments.

"Fifty seven foreign flag airlines presently are authorized to provide scheduled service to and from the United States. In seeking to market their product in this country, these airlines are granted complete competitive equality with U.S. flag airlines serving the same international markets. They sell openly to the American public. They deal freely with travel agents, travel wholesalers, retailers, tour operators, freight forwarders, U.S. domestic carriers, and others engaged in the transportation business in this country. There are no limitations on currency use, conversion or remittance, on sales and advertising, or on any other facet of the effort to sell their airline product in this country. This open opportunity to compete is illustrated by the fact that foreign flag airlines were able to capture 51 percent of European destined scheduled traffic originating in the U.S. during 1972.

"U.S. flag airlines now provide scheduled service to some 85 countries. Their opportunity to compete fairly, however, is adversely affected by two different, but equally unjustifiable, forms of discrimination. The first involves the specific actions, policies, laws and regulations of foreign governments that seek, wherever possible, to give

preferential treatment to foreign government-owned and financed national airlines. These practices are catalogued in a recent CAB study which has been made available to this Committee. The Board's report recognizes the substantial negative effect that many of these practices have on the efforts of U.S. flag airlines to obtain a fair share of the world air transport market, and provides a detailed description of the difference between the competitive conditions faced by U.S. and foreign flag airlines here and abroad.

"The second form of discrimination, perhaps unintended, but nevertheless objectionable, results from actions of the U.S. government itself. Such actions include the offering of preferential financing arrangements to foreign flag airline competitors by the U.S. government for the purchase of U.S. aircraft. The Export-Import Bank has the laudable objective of promoting exports of U.S. manufactured products. While we support that basic objective, it must be pointed out that the largest single function of the Bank in recent years has been to support the sale of aircraft to foreign flag airlines, many of which are used in direct competition with U.S. flag airlines on services to and from the United States. There is, of course, merit in this support of U.S. aircraft sales abroad. However, the rate of interest charged the foreign flag airlines by Exim Bank is far below that which can be obtained by U.S. flag airlines purchasing the same equipment in the open market, adding further to their economic disadvantage. To indicate the magnitude of the interest cost differential involved, the airlines estimate that the cost of financing a $30 million aircraft, for example, could cost a foreign flag airline up to $7 million less than it would cost a U.S. flag airline.

"Although we recognize that the issue of preferential aircraft financing is not addressed in the legislation as we have no jurisdiction over

> it, it has been the subject of some discussion by the Senate Banking, Housing and Urban Affairs Committee.
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> "S. 3181 as amended addresses, however, a number of actions that the U.S. government can and should take to help improve the economic and competitive position of the U.S. flag airlines. * * *"

The purpose of 49 U.S.C. § 1517 is to bring about a redistribution of revenues within the foreign air transportation market more favorable to U.S. air carriers. We find no broader legislative intent to shift to U.S. air carriers a greater portion of the overall foreign transportation mark t or to limit selection of the mode of transportation to air travel. Thus, where travel by vessel is authorized and where a vessel of U.S. registry cannot provide the transportation service required, Government-financed transportation may be obtained aboard a vessel of foreign registry although a certificated U.S. air carrier may be available. However, we point out that the circumstances under which employees may perform official travel by vessel are restricted and afford an employee little opportunity to opt to travel by vessel rather than by air. Thus, the potential for Government travelers to effect a redistribution of revenues between the international sea and air transportation markets is minimal at best. In this regard, we refer to 2 Joint Travel Regulations, para. C2001-3, which provides that travel by ocean vessel will not be regarded as advantageous to the Government in the absence of sufficient justification that the advantages accruing from use of ocean transportation offset the higher cost associated with this method of transportation, including the cost of per diem, transportation and lost worktime. Also, see 2 JTR para. C2001-4 which provides that employees may be required to travel by air except when such travel is precluded by medical reasons.

Deputy Comptroller General
of the United States

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

B-190575

May 1, 1978

William E. Dyson, Colonel, USA
Executive
Per Diem, Travel and Transportation
Allowance Committee
Room 836, Hoffman Building #1
2461 Eisenhower Avenue
Alexandria, Virginia 22331

Dear Colonel Dyson:

This is in response to your letter of September 27, 1977, reference PDTATAC Control No. 77-29, forwarding a request for a decision concerning the relationship between the provisions of 46 U.S.C. § 1241(a) and 49 U.S.C. § 1517. By decision of today, copy enclosed, we hold that transportation by foreign vessel may be obtained when a vessel of American registry is not available although transportation by a certificated U.S. air carrier is available.

Sincerely yours,

Deputy Comptroller General
of the United States

Enclosure