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MONTREAL PROTOCOL NO. 4

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Mr. HELMS, from the Committee on Foreign Relations, submitted the following

REPORT

[To accompany Treaty Doc. 95–2 B (old Treaty Doc. Ex. B. 95–1)]

The Committee on Foreign Relations, to which was referred the Montreal Protocol No. 4 to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on October 12, 1929, as amended by the Protocol done at the Hague on September 8, 1955 (hereinafter, Montreal Protocol No. 4), having considered the same, reports favorably thereon with one declaration and two provisos, and recommends that the Senate give its advice and consent to the ratification thereof as set forth in this report and the accompanying resolution of ratification.

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I. PURPOSE

The primary purpose of Montreal Protocol No. 4 to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on October 12, 1929, as amended by the Protocol done at the Hague on September 8, 1955 (hereinafter, Montreal Protocol No. 4), is to amend and update the cargo provisions of the Convention for the Unification of

Certain Rules Relating to International Transportation by Air of 1929 (the Warsaw Convention).

II. BACKGROUND

The Warsaw Convention was adopted in 1929. The United States became a party to it in 1934. The Warsaw Convention establishes uniform rules as to the rights and obligations between air carriers and users of international air transportation and creates uniformity with respect to transportation documentation—passenger tickets, baggage checks, and air waybills. It also establishes uniform rules relating to the liability of an air carrier to its passengers in cases of death or injury from an accident or delay.

Montreal Protocol No. 4, as well as the Additional Protocol No. 3 to the Warsaw (hereinafter Montreal Protocol No. 3), have been pending before the Foreign Relations Committee since 1977. The Committee, as well as the full Senate, have debated the protocols several times over this period.

In 1977 the Committee held hearings on the protocols but took no action. In 1981 the Committee again held hearings on the protocols and reported them favorably with certain provisos requiring the establishment of a Supplemental Compensation Plan to make additional compensation available to passengers under the protocols.

In 1983 the Committee once again ordered the protocols favorably reported. This time they were taken up by the Senate, which failed to approve the Protocols by a 50 to 42 vote, falling short of the two-thirds majority needed for advice and consent to ratification. During the debate, opponents argued that whatever may have been the justification for limits on airline liability for death or injury of passengers in 1929—at a time when the airline industry was in its infancy—there was no possible justification for such limits in a day and age when many international airlines have substantial financial resources and carry substantial amounts of liability insurance. The opponents, who were able to block Senate approval, objected to any limit on airline liability.

Following the Senate's negative action in 1983, the Department of Transportation revised the draft Supplemental Compensation Plan in order to make it more generous to passengers in air accidents. The Foreign Relations Committee held hearings on the protocols and the revised Supplemental Compensation Plan in 1989 and 1990 and again reported them favorably. The Senate adjourned in 1990 without taking any action on the protocols. In 1991 the Committee again took favorable action on the protocols, but the Senate again took no action.

In response to governmental inaction, the International Air Transport Association (IATA) recently drafted two inter-airline agreements on international passenger liability. They were approved by the Department of Transportation in January 1997. In these agreements international airlines agree to waive the limits of liability in the Warsaw Convention for death or injury of passengers. The first of these agreements is the IATA Intercarrier Agreement on Passenger Liability which, as of June 12, 1998, had 105 airline signatories. The second is the Agreement on Measures to Implement the IATA Intercarrier Agreement which as of June

12, 1998, had 66 airline signatories, including all or most American international airlines as well as the major foreign international airlines.

Such waiver does not nullify the entire Warsaw Convention. Rather, Article 22 of the Warsaw Convention permits the carrier and the passenger, "by special contract," to agree to a higher limit of liability than that contained in the Convention. Thus, although the liability limits of Warsaw have been waived by the Intercarrier Agreement, the remainder of the Warsaw Convention remains in effect.

There appears to be some question whether or not these agreements are self-executing. If they are not self-executing their implementation would be left up to each airline in its conditions of carriage and/or its tariffs filed with the Department of Transportation. The major U.S. international carriers have filed tariffs implementing the agreements, thus waiving the Warsaw Convention's passenger liability limits. As of June 12, 1998, 51 carriers officially had waived their liability limits by filing tariffs or by other means.

III. SUMMARY

While the Senate always considered Montreal Protocol No. 3 and Montreal Protocol No. 4 as a single package, opposition in the Senate was focused solely on Protocol No. 3. No opposition was expressed to Protocol No. 4, which updates and modernizes the Warsaw Convention's cargo provisions. Protocol No. 4 is divided into three major topics: documentation required in relation to cargo; the system of liability in relation to cargo; and the unit of account in which liability limits are expressed.

Documentation in Relation to Cargo. Article III of the Protocol No. 4 amends Articles 5 to 16 of the Warsaw Convention to improve and update the rules on cargo documentation and carriage. Amended Article 5 allows an air carrier to substitute computer entries of necessary cargo information for the air waybill, provided that the shipper consents. The shipper may then request from the carrier a receipt for the cargo which permits identification of the shipment and access to the carrier's computer records. These provisions will allow carriers to expand the electronic processing system which they already use for domestic cargo shipments.

Amended Article 6 will simplify in important respects the existing cargo documentation system to allow air shipments to commence even before documentation has been completed. It will no longer be necessary for the air waybill to accompany the goods. Though signatures on air waybills will still be required, these can now be printed or stamped, allowing them to be entered by computer.

System of Liability in Relation to Cargo. Article IV of Protocol No. 4 amends Article 18 of the Convention to provide that the carrier shall be subject to strict liability for destruction, loss, or damage to cargo occurring during carriage, though the carrier shall not be liable if he proves that the damage, destruction or loss was due *solely* to one of the following:

- inherent defect, quality or vice of the cargo;

- defective packing of the cargo performed by someone other than the carrier or his employees or agents;
- an act of war, armed conflict, or civil disturbance;
- an act of a public authority carried out in connection with the entry, exit or transshipment of the cargo.

The word "solely" in this provision makes these defenses unavailable whenever the carrier or some other factor is partially the cause of the damage.

Article VI of Protocol No. 4 updates Article 21 of the Convention with a comparative negligence scheme for cargo. Thus, if the claimant contributed to the damage to cargo, this will not wholly exonerate the carrier. The responsibilities of the parties will be apportioned and compensation adjusted accordingly.

Article VII of Protocol No. 4 amends Article 22 of the Convention to increase the limits of carrier liability and to restate the new limits in terms of Special Drawing Rights (SDRs) of the International Monetary Fund. The limit of liability for cargo is set at 17 SDRs per kilogram (about $23.65 at present conversion rates), unless a shipper makes appropriate declaration of special value and pays any necessary supplementary fee at the time of delivery of the cargo to the carrier. Unless damage to a portion of the cargo affects the value of the entire shipment, the weight to be considered is that of the damaged packages. Nations that are not members of the International Monetary Fund and whose law does not permit application of the SDR formula are allowed to use liability limits expressed in gold.

Article VIII of Protocol No. 4 amends Article 24(2) of the Convention to make it clear that the liability limits in connection with the carriage of cargo are maximum limits and may not be exceeded.

The Unit of Account. One of the important changes made by the Montreal protocols was to change the unit of account in the Warsaw Convention from the Poincare gold franc to SDRs. In 1934, after the devaluation of the dollar to $35 = 1 troy ounce of gold, a Poincare franc was equal to about $0.0666. However, in 1973 the global system of fixed exchange rates for currencies was abandoned and a new system of "floating" exchange rates evolved. Gold, no longer linked to the U.S. dollar, fluctuated widely and no longer served as an anchor to which a fixed price—or limit of liability—could be tied. Meanwhile the International Monetary Fund in 1970 began issuing a new asset, known as Special Drawing Rights, eventually fixing its value in terms of a "basket" of 16 currencies. At the suggestion of the United States government, the 1975 Montreal conference decided to change the limits of liability in the Warsaw Convention from Poincare francs to SDRs.

IV. Entry Into Force and Termination

A. ENTRY INTO FORCE

Montreal Protocol No. 4 enters into force on the 90th day following the deposit of the 30th instrument of ratification. The treaty entered into force on June 14, 1998. The Protocol enters into force for Parties ratifying after entry into force of the Protocol 90 days after the deposit of instruments of ratification with the Government of Poland.

B. TERMINATION

Parties may withdraw from the Convention upon written notification to the Government of Poland. The withdrawal shall take effect six months after the date the notification is received.

V. COMMITTEE ACTION

The Committee on Foreign Relations held a public hearing on the proposed Protocol on May 13, 1998 (a transcript of the hearing and questions for the record can be found in the appendix to this report). The Committee considered the proposed protocol on June 23, 1998, and ordered the proposed Protocol favorably reported by voice vote, with the recommendation that the Senate give its advice and consent to the ratification of the proposed protocol subject to one declaration, and two provisos.

VI. COMMITTEE COMMENTS

The Committee on Foreign Relations recommends favorably the proposed Protocol. On balance, the Committee believes that the proposed Protocol is in the interest of the United States and urges the Senate to act promptly to give its advice and consent to ratification. Several issues did arise in the course of the Committee's consideration of the Protocol, and the Committee believes that the following comments may be useful to Senate in its consideration of the proposed Convention and to the State Department.

A. ECONOMIC BENEFITS OF STREAMLINING AIR CARRIAGE RULES

The Warsaw Convention is one of the most widely adhered to treaty systems in the world. Since its inception the treaty has brought uniformity to the rules governing international air carriage, providing shippers and carriers worldwide with a predictable set of rules with which they can conduct business. However, this treaty system badly needs to be modernized. The cargo liability rules of the Warsaw Convention were developed in the middle and late 1920s, before the first DC-3 flew, and they reflect requirements that were developed even earlier by surface carriers.

The Committee supports the goal of Montreal Protocol No. 4 to make more efficient the uniform air cargo rules and believes the revisions required by the Protocol will benefit the economy of the United States. U.S. industry estimates that compliance with the outdated rules contained in the Warsaw Convention cost U.S. companies nearly $1 billion annually. Given the high volume of cargo shipments and widespread automation in the airline industry, the present paper-based system required by the Warsaw Convention inhibits the free flow of international air commerce. The proposed Protocol would thus benefit carriers, shippers, forwarders, and customers by streamlining and modernizing the air cargo rules.

First, Montreal Protocol No. 4 will eliminate the Convention's archaic requirement that the carrier provide a paper air waybill. Montreal Protocol No. 4 amends Article 5 of the Warsaw Convention to allow the substitution of an electronic record for the written air waybill. This amendment will permit carriers to expand to

international air cargo the electronic record-keeping systems already practiced by domestic air cargo transportation.

Second, Montreal Protocol No. 4 will eliminate antiquated rules that require the use of paper documents containing numerous entries of commercially insignificant information. For example, Article 8 of the Warsaw Convention currently requires the air waybill to list the agreed stopping places. At the time the waybill is completed, however, a carrier often does not know the routing of the shipment, yet the failure to include this information may keep the carrier from enforcing the Warsaw Convention's cargo liability rules. In a working environment characterized by high-volume activity, multiple possible routings, and the commercial need for timeliness, many of the current documentation requirements are not necessary.

Third, uniform international cargo rules that avoid conflicts and uncertainty will facilitate international trade. Uniform international rules are particularly important in the case of transportation services where the product being offered is, by its very nature, transnational. Shippers, in particular, need to know what their rights and responsibilities are with respect to the cargo they ship, so they can price their products accordingly and protect themselves against risks.

B. REQUIREMENT TO RETURN MONTREAL PROTOCOL NO. 3 TO THE PRESIDENT

For more than 20 years, the Senate has considered ratification of Montreal Protocol Nos. 3 and 4 together as a package. President Ford first transmitted the two protocols together to the Senate in 1977, and many attempts have been made since then to gain Senate advice and consent for both protocols. The delay in obtaining the advice and consent of the Senate resulted from the controversy concerning retention of the passenger liability limits of Montreal Protocol No. 3. Montreal Protocol No. 4, which reforms and modernizes the Warsaw Convention's cargo liability rules, is not, and never has been, controversial.

Air carriers and governments have now effectively abandoned efforts to bring into force Montreal Protocol No. 3. Efforts to reform passenger liability instead have taken the form of an industry initiative to waive the Convention's passenger liability limits by special contract under Article 22 of the Warsaw Convention. In particular, the October 1995 IATA General Meeting endorsed a proposed IATA Intercarrier Agreement on Passenger Liability (IIA), which requires signatory carriers to waive liability limits for passenger injury and death. Passenger carriers have now developed special contracts, approved by the U.S. Department of Transportation, to implement the IIA. Major U.S. carriers and many foreign carriers have now waived those limits by revising their tariffs or conditions of carriage.

As a result the Committee has included in its resolution of ratification a provision that requires that upon submission of this resolution of ratification to the President, the Secretary of the Senate will also return Montreal Protocol No. 3 to the President.

C. FAILURE OF STATE DEPARTMENT TO COORDINATE ITS TESTIMONY

In testifying before the Committee on May 13, Assistant Secretary of State for Economic and Business Affairs Alan P. Larson stated that the Administration strongly urged the Senate to take favorable action on Montreal Protocol No. 4. In doing so, Assistant Secretary Larson recommended that ratification of the treaty be subject to a declaration permitted by Article XXI of Protocol No. 4. That article allows countries to opt-out of the Warsaw Convention in cases involving the carriage of persons, baggage, and cargo for military authorities on aircraft registered in that country, the "whole capacity" of which has been reserved by or on behalf of such authorities.

Two days later, in unofficial communication the Department of State notified the Committee that the "Administration wishes to amend the written testimony" of Assistant Secretary Larson. Specifically, it expressed its desire to withdraw the proposed declaration, and urged that Montreal Protocol 4 be approved without any reservation. (A letter was subsequently sent to the Committee by Assistant Secretary of State Barbara Larkin on June 22, formally requesting this declaration be withdrawn. The letter and other related questions for the record are reprinted in the annex to this report.)

Subsequent questions for the record revealed that the Department of State's testimony before the Committee on May 13 had not been cleared through the normal inter-agency process by the other Executive Branch departments. Indeed, prior to the May 13 testimony, the Department of State had not even contacted the Department of Defense, the cabinet department most directly affected by the proposed declaration. The State Department's error might never had been discovered but for the presence at the hearing of aviation industry representatives, who, immediately following the hearing, questioned the State Department concerning the proposed declaration. When the Department of State contacted the Department of Defense, it learned that, in fact, the Defense Department preferred that no such declaration be made.

No harm was done in this instance, as the mistake was discovered before the Committee acted on the proposed Protocol. The error did, however, delay the Committee's consideration of the proposed Protocol. The Committee wishes to express its deep concern with the failure of the State Department to adequately prepare for the Committee hearing on the Protocol. The making of a treaty is a solemn undertaking, entrusted by the U.S. Constitution to the President, by and with the advice and consent of the Senate. The Senate is an equal partner in the treaty process, but it cannot properly perform this function unless it can rely upon the Executive Branch to provide authoritative testimony in presenting a treaty to the Senate. Unfortunately, on this occasion, the Executive Branch—specifically the State Department—failed to ensure that it was providing authoritative testimony. This failure led the Department of State representative to request action by the Committee that was directly contrary to the position of the Department of Defense. This blunder easily could have been prevented had the State

Department taken the time to contact the Defense Department in advance of the hearing.

If the Committee cannot rely on the State Department to coordinate its testimony with other Executive Branch departments, the Committee will have to undertake the time-consuming task of contacting each agency that might be affected by a particular matter before the Committee. The Committee strongly urges the Department of State, the lead agency on treaties, to review its processes for coordinating Executive Branch testimony to ensure that this error does not recur.

VII. Article by Article Analysis

Pursuant to Article XIX of Protocol No. 4, if the United States ratifies Protocol No. 4, it also will accede to the Hague Protocol of 1955. That Protocol modifies several provisions of the underlying Warsaw Convention. Most of these changes are minor technical amendments to the Warsaw Convention. The analysis below describes the Warsaw Convention, as amended by Protocol No. 4, and the Hague Protocol (the integrated text is contained in the annex of this report).

ARTICLE 1

Article 1 defines the international air carriage to which the Warsaw Convention applies. The new text substitutes "international carriage" for "international transportation" and "agreement between the parties" for "contract made by the parties."

ARTICLE 2

Article 2(2) brings carriage by air of postal items within the scope of the Warsaw Convention, but makes the carrier liable only to postal authorities. Carriers are not liable to the addressee or sender of postal items because the carrier has no control over the contents of the mail bags and, hence, cannot determine the value of individual shipments to take out the necessary insurance. The Convention of the Universal Postal Union governs the liability of postal authorities to individuals making use of the mails.

ARTICLE 3

Article 3 makes it possible for airlines to adopt efficient, modern passenger ticketing procedures. Paragraph 1 reduces the complexity of passenger tickets. Article 3 still requires the carrier to deliver a ticket as evidence of the contract of carriage. While Article 3 denies the carrier the right to invoke the liability limits if it does not deliver a ticket, it provides flexibility to the industry to determine what constitutes a ticket for these purposes, and it will allow the industry to continue to modernize its ticketing practices.

Paragraph 2 provides that the ticket shall constitute *prima facie* evidence of the conclusions and conditions of the contract of carriage.

ARTICLE 4

The revised provisions on registered baggage documentation in Article 4 parallel the new ticketing rules in Article 3. Paragraph 1 substantially reduces the number of entries required on each baggage check. These changes clear the way for more efficient check-in procedures.

Paragraph 2 provides that the baggage check shall constitute *prima facie* evidence of the registration of the baggage and the conditions of the contract of carriage.

ARTICLE 5

Paragraph 1 of Article 5 retains the Warsaw requirement that the cargo shipper deliver an air waybill to the carrier. This document is described in the articles that follow.

Paragraph 2 allows an air carrier to substitute computer recordation of necessary cargo information for the air waybill, if the shipper consents. The shipper may request from the carrier a receipt for the cargo that permits identification of the shipment and access to the carrier's computer records. These provisions will allow carriers to expand the electronic processing systems that they already use for domestic cargo shipments.

Paragraph 3 provides that the absence of electronic processing facilities at certain airports does not entitle a carrier to refuse cargo shipments.

ARTICLE 6

Article 6 will simplify the existing cargo documentation system; it will permit air shipments to commence even before documentation has been completed. The old requirement that the air waybill "be handed over with the goods" is specifically omitted from paragraph 1, and the old requirement that the document "shall accompany the goods" is likewise omitted from paragraph 2. In his final statement to the 1975 Montreal Conference, the U.S. delegate emphasized that it is no longer necessary for the air waybill physically to accompany the goods.

Although Article 6(2) still requires signatures on air waybills, Article 6(3) allows these signatures to be printed or stamped. This permits electronic recordation.

ARTICLE 7

Article 7(a) repeats the Warsaw requirement that the carrier can require a shipper to make out separate air waybills when there is more than one package. The new material in Article 7(b) corresponds to the provisions for electronic recordation of cargo documentation of Article 5(2). Article 7 currently provides for separate cargo receipts in those situations where separate air waybills could be required.

ARTICLE 8

New Article 8 simplifies cargo documentation. It applies to air waybills and cargo receipts. Instead of the long list of particulars formerly required on an air waybill, Article 8 contemplates a brief

waybill or cargo receipt which sets out only the weight of the consignment and the information necessary to give notice that the carriage comes within the scope of the Convention (as defined in Article 1).

ARTICLE 9

Article III of No. 4 deletes language in Article 9 of Warsaw that formerly precluded a carrier from availing itself of the Convention's liability limit if the air waybill was either not made out or the list of particulars was not completed as required by Article 8 in the original Convention.

ARTICLE 10

Paragraphs 1 and 2 of Article 10 restate the provisions of the old article with additional language allowing for electronic records, and paragraph 1 now refers to cargo receipts. These paragraphs make the consignor of cargo responsible for the correctness of information that he or she furnishes for cargo documentation. They are revised to make clear that the air waybill or the data for electronic recordation can be supplied on behalf of the consignor by some other party. The consignor is required to indemnify the carrier under paragraph 2 for damages arising from deficiencies in the information furnished by or on behalf of the consignor under paragraph 1.

An added provision, paragraph 3, requires the carrier to indemnify the consignor for deficiencies in the entries on cargo documents made by or on behalf of the carrier. This provision does not affect the consignor's responsibility to furnish complete and correct information to the carrier.

ARTICLE 11

Article 11(1) is amended to provide that cargo receipts, as well as air waybills, are *prima facie* evidence of the carrier's acceptance of the goods, the contract between the parties, and the conditions of carriage specified in the receipts or waybills. In Article 11(2), statements regarding the weight, dimensions, and packing of the cargo in airway bills and cargo receipts are *prima facie* evidence of those facts. Statements regarding the quantity, volume, and condition of the cargo are not *prima facie* evidence unless they have been checked by the carrier in the shipper's presence and the air waybill or alternative cargo documentation authorized by Article 5 so states, or the conditions to which they relate are apparent. This does not hold true for cargo receipts.

ARTICLE 12

Paragraph 1 of Article 12 reserves to the shipper the power to withdraw or redirect the cargo shipment, subject to his obligations to the carrier and other consignors. The Protocol does not significantly change this paragraph. The words "to a person other than the consignee named in the air waybill" in the Convention have been replaced by "to a person other than the consignee originally designated." This change reflects the possibility that if computer recordation is used for the movement of cargo, no documentation

may be issued and the consignee may be "designated" in the computer only. Paragraph 2 of the article, also unchanged, requires the carrier to notify the shipper promptly whenever execution of the instructions given under paragraph 1 is impossible.

Paragraph 3 is also basically unchanged, except for adding a reference to cargo receipts as a consequence of the changes made in Article 5(2). Paragraph 3 makes the carrier liable for damages to any person lawfully holding the shipper's part of the air waybill or cargo receipt, if the carrier obeys the shipper's instructions under paragraph 1 without requiring production of the shipper's part of the air waybill or the receipt for cargo.

Paragraph 4 likewise contains only minor changes. This provision terminates the shipper's power under Article 12 at the moment when the consignee's rights under Article 13 commence. The shipper may retain control of the cargo, however, if the consignee either refuses delivery or cannot be found.

ARTICLE 13

This article defines the consignee's rights to receive cargo. Except for minor drafting changes, the article is unchanged.

Article 13(1) provides that, subject to the shipper's power under Article 12, the consignee is entitled to delivery of the cargo on its arrival at the destination. The shipper will not be able to withdraw the cargo unless his instructions reach the carrier before the consignee takes delivery. In addition, Article 13 deletes the reference to the handing over of an air waybill.

Paragraphs 2 and 3 require the carrier to notify the consignee promptly of the cargo arrival, unless it has been otherwise agreed. If the carrier admits loss of the cargo or if the cargo has not arrived within seven days of the date on which it ought to have arrived, the consignee may proceed to enforce his contractual rights against the carrier.

ARTICLE 14

This article is substantially unchanged. The clarifying phrase "of carriage" was added after the word "contract" in the last clause.

ARTICLE 15

Article 15(1) declares that Articles 12, 13, and 14 do not affect the basic contractual relations between parties interested in a cargo shipment. Article 15(2) is amended to make the cargo receipt an alternative vehicle for varying the provisions of Articles 12, 13, and 14.

A paragraph added to this article by The Hague Protocol declared that nothing in the Convention prevented the use of negotiable air waybills. The 1975 Montreal Conference decided that such a provision was unnecessary and the paragraph was not retained given that nothing in the Convention prevents use of negotiable air waybills.

ARTICLE 16

Paragraph 1 of Article 16 obliges the shipper to provide the documents needed for customs, tax, or police procedures. The requirement that these documents accompany the cargo is deleted to accommodate the revisions in Article 6. Paragraph 2, a restatement of the Warsaw Convention, absolves the carrier of any obligation to check the accuracy or sufficiency of Article 16 documentation. The carrier is not relieved of its responsibility with respect to the proper classification of cargo under its tariffs for rate purposes.

ARTICLE 17

Article 17 is unchanged from the Warsaw Convention.

ARTICLE 18

Paragraph 1 of Article 18 makes the carrier liable for destruction, loss, or damage to any registered baggage occurring during the carriage by air, as defined in paragraphs 4 and 5. Paragraph 2 makes the carrier strictly liable, subject to certain exceptions, for destruction, loss, or damage to cargo occurring during the carriage by air, as defined in paragraphs 4 and 5.

Paragraph 3 provides that the carrier is not liable in those cases where it proves that the destruction, loss, or damage to cargo resulted solely from inherent defect, quality or vice of that cargo; defective packing of that cargo performed by a person other than the carrier or his servants or agents; an act of war or an armed conflict; and an act of public authority carried out in connection with the entry, exit, or transit of cargo. The word "solely" in paragraph 3 makes these defenses unavailable if the carrier or some other factor is partly responsible for the damage. Articles 18(3) and (4) of the Warsaw Convention are renumbered as Articles 18(4) and (5), and are adopted without change.

ARTICLE 19

Carriers continue to be liable for the results of delay. This provision is unchanged from the Warsaw Convention.

ARTICLE 20

Article 20 makes due care a defense to claims against the carrier relating to passengers, baggage, and delay of cargo. The carrier's due care defense is established if it can be proved "that he and his servants and agents have taken all necessary measures to avoid the damage or that it was impossible for them to take such measures." It is described as the defense of non- negligence; that is, the carrier has the burden of proving that it was not negligent.

ARTICLE 21

Article 21(1) retains the comparative negligence defense of the 1929 Convention for the carriage of passengers and baggage. Paragraph 2 updates the Convention by replacing the contributory negligence defense with a comparative negligence regime for the carriage of cargo. Thus, a contribution by the claimant damaging

cargo will not wholly exonerate the carrier. The responsibilities of the parties will be apportioned and compensation adjusted accordingly.

ARTICLE 22

Article 22 increases some of the carrier liability limits and restates the new limits in terms of the Special Drawing Rights (SDRs) of the International Monetary Fund (IMF). It also permits the carrier and passenger, by special contract, to "agree to a higher limit of liability."

Paragraph 1 raises the carrier liability limit for death or injury from about $8,300 per passenger to about $16,600 per passenger. This change is inapplicable to the United States, because, pursuant to a 1966 intercarrier agreement (similar to the intercarrier agreement described in Section II, supra), known as the Montreal Agreement, all U.S. carriers and carriers flying to the United States have established a limit of $75,000. Further, all major U.S. airlines and many major foreign airlines have now waived the Convention's passenger liability limit. For claims below 100,000 SDRs (approximately $130,000), carriers have also waived the defense under Article 20(1) of the Convention that they have taken all necessary measures to avoid the damage or that it was impossible to do so. To the extent claims exceed 100,000 SDRs, the carriers have retained the right to assert that defense.

By waiving the liability limit, the carriers have essentially agreed to pay all compensatory damages, without monetary limit, subject to the retained defense of non-negligence described above. Since the carriers have waived the limit, the level of the limit and the basis for breaking it are essentially irrelevant. The Committee expects that in the near future all airlines operating in the United States will have joined the major airlines, both U.S. and foreign, that have already taken that action, and urges the Department of Transportation to take all appropriate action to ensure that result.

Under paragraph 2(a), the carrier liability limit for registered baggage remains unchanged at $9.07 per pound, using current conversion factors, unless the passenger or shipper makes a special declaration of interest and pays the necessary supplementary fee at the time of delivery. In that case, the limitation becomes the declared amount.

Paragraph 2(b) provides that the liability limit for cargo will be 17 SDRs per kilogram (about $24.30 per kg. at present conversion rates), unless the shipper makes an appropriate declaration of special value and pays any necessary supplementary fee at the time of delivering the cargo. In that case, the limitation becomes the declared amount. A new provision states that, unless loss, damage, or delay to a portion of the cargo or registered baggage affects the value of the whole shipment, the weight to be considered is that of the lost, damaged, or delayed packages.

Montreal Protocol No. 4 specifies the new cargo liability limit in terms of SDRs rather than the gold standard used in the 1929 Warsaw Convention. The gold standard will still apply to baggage liability limits. The United States has not set an official price for gold since repeal of the Par Value Modification Act in 1978. However, the Department of Transportation regulations sanction the

use of the last official price of gold ($42.22 per ounce) as a conversion factor. (The SDR is defined as the average value of a defined basket of IMF member currencies; its current exchange value is published daily in major newspapers, including The Wall Street Journal.)

Paragraph 3 is unchanged from the original Warsaw Convention, and retains the current liability limit of 5,000 francs per passenger for "objects of which the passenger takes changes himself."

Paragraph 4 provides that the limits of liability will not prevent a court from awarding legal costs in accordance with the law of the jurisdiction and without regard to the limit of liability. However, if a settlement offer, offered within six months of the occurrence, is more than the amount awarded, the clause does not apply.

Paragraph 5 describes the process for converting gold into the national currency.

Paragraph 6 provides for those High Contracting Parties that are not members of the IMF to calculate the conversion into their national currency in such manner as they determine. These provisions allow certain nations not belonging to the 182-member IMF to become parties to the amended Convention.

ARTICLE 23

Paragraph 1, taken from the 1929 Convention, prohibits carriers from contracting to reduce their liability under the Convention. Under paragraph 2, however, carriers and shippers are permitted to make agreements that allocate responsibility for damage resulting from the inherent defect, quality, or vice of cargo.

Nothing in the Convention prohibits a carrier from making agreements with the passenger to increase its liability.

ARTICLE 24

Article 24 is redrafted to make it clear that the liability limits set out in the amended Convention are unbreakable for cargo, but not for passengers and baggage. Article 24 declares that all damage actions arising out of international air carriage governed by the Convention are subject to the conditions and limits of liability set out in the Convention. Paragraph 1 continues the existing rules of the Warsaw Convention for the carriage of baggage and passengers with additional language relating to prejudice.

Paragraph 2 of Article 24 makes clear that the liability limit cannot be exceeded for cargo. It is explicitly stated that the limits cannot be exceeded "whatever the circumstances which gave rise to the liability." It also clarifies that any actions for damages, whether based on the "Convention, or in contract or in tort or otherwise," can only be brought subject to the conditions and limits set out in the Convention.

ARTICLE 25

Currently, Article 25 applies only to passengers and baggage. Article 25 of the Convention currently states that a carrier's liability is limited to a stated amount, unless the plaintiff can prove that the carrier's actions constituted "willful misconduct" or its equivalent. The amended Article 25 adopts a similar standard that en-

ables a claimant to recover damages in excess of the Article 22 limits ″if it is proved that the damage resulted from an act or omission of the carrier, his servants or agents, done with intent to cause damage or recklessly with knowledge that damage would probably result.″

Unlike the protocol's adoption of strict liability for the carriage of cargo, Articles 25 and 25A allow the liability limits to be broken for carriage of passengers and baggage. Currently, Article 25 of the Convention applies to cargo, passengers, and baggage. As amended by the Protocol, Article 25 applies only to passengers and baggage.

According to the State Department, the substitution of this language for "willful misconduct" does not modify the scope of the standard. Instead, it is a clarifying response to the difficulties that arose from differing translations of the text in various languages. In a response to a Committee question for the record, the State Department stated: "Because the concept of willful misconduct came to have different connotations in the civil and common law systems, the drafters of Hague replaced the legal standard with a description of the conduct itself, that a jury would be able to understand. This standard has been identified as the common law definition of "willful misconduct"

ARTICLE 25A

Article 25A makes it explicit that the employees and agents of the carrier acting within the scope of their employment are covered by the Convention's limits of liability to the extent the carrier is entitled to invoke those limits.

ARTICLE 26

This article provides for the communication of complaints to the carrier. Paragraph 2 is amended to extend the time periods within which complaints must be filed.

ARTICLE 27

Article 27, allowing actions against the legal representatives of a deceased defendant, is unchanged.

ARTICLE 28

Article 28 establishes the fora in which a suit can be brought. It is unamended.

ARTICLE 29

Article 29 establishes a two-year statute of limitations for Warsaw suits. It is unamended.

ARTICLE 30

This article governs the respective liabilities of successive carriers that undertake parts of an undivided carriage (as defined in Article 1(3)). It is unchanged.

ARTICLE 30A

Article 30A is added to make it clear that the Convention is silent on the carriers' rights of recourse under local law against any parties who may have caused or contributed to the damages for which the carrier is liable.

ARTICLE 31

The provisions of this article, relating to intermodal carriage, are unamended.

ARTICLE 32

Article 32, which nullifies all agreements infringing the rules of the Convention, is unamended.

ARTICLE 33

The Convention itself does not require a carrier to enter into a contract for carriage, but Article 33 is amended to refer to the provision in Article 5(3) that makes absence of electronic processing facilities an impermissible reason for a carrier's refusal to accept cargo for carriage.

ARTICLE 34

The original Article 34 entirely excluded experimental or extraordinary air carriage from the Convention. The old text has been replaced by language that narrows the exception. Carriage performed in extraordinary circumstances outside the normal scope of the carrier's business are exempted solely from the Convention's provisions relating to documents of carriage set forth in Articles 3 through 8.

ARTICLE 35

The definition of the word "days" remains unchanged.

ARTICLE 36–40

These final clauses of the 1929 Convention are unamended.

ARTICLE 40A

This article defines the expressions High Contracting Party and territory.

ARTICLE 41

Unamended Article 41 permits any nation that is a party to the Convention to call for a new international conference to amend the treaty.

VIII. TEXT OF THE RESOLUTION OF RATIFICATION

Resolved, (two-thirds of the Senators present concurring therein), that the Senate advise and consent to the ratification of the Montreal Protocol No. 4 to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed

at Warsaw on October 12, 1929, as amended by the Protocol done at The Hague on September 8, 1955 (hereinafter Montreal Protocol No. 4) ((Treaty Doc. 95–2B) Executive B, 95th Congress, 1st Session), subject to the declaration of subsection (a), and the provisos of subsection (b).

(a) DECLARATION.—The Senate's advice and consent is subject to the following declaration:

(1) TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the constitutionally based principles of treaty interpretation set forth in Condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988, and Condition (8) of the resolution of ratification of the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe, approved by the Senate on May 14, 1997.

(b) PROVISOS.—The resolution of ratification is subject to the following provisos:

(1) SUPREMACY OF THE CONSTITUTION.—Nothing in the Treaty requires or authorizes legislation or other action by the United States of America that is prohibited by the Constitution of the United States as interpreted by the United States.

(2) RETURN OF PROTOCOL NO. 3 TO THE PRESIDENT.—Upon submission of this resolution of ratification to the President of the United States, the Secretary of the Senate is directed to return to the President of the United States the Additional Protocol No. 3 to Amend the Convention for the Unification of Certain Rules relating to International Carriage by Air, signed at Warsaw on October 12, 1929, as amended by the Protocols done at The Hague, on September 28, 1955, and at Guatemala City, March 8, 1971 ((Treaty Doc. 95–2A) Executive B, 95th Congress).

APPENDICES

C O N T E N T S

Appendix 1

THE PROVISIONS OF THE REVISED WARSAW CONVENTION APPLICABLE TO THE UNITED STATES IN THE EVENT OF RATIFICATION OF MONTREAL PROTOCOL NO. 4 [1]

CHAPTER I. SCOPE—DEFINITIONS

Article 1

1. This Convention shall apply to all international transportation of persons, baggage, or goods performed by aircraft for hire. It shall apply equally to gratuitous transportation by aircraft performed by an air transportation enterprise. (W-Art. 1)

2. For the purposes of this Convention, the expression *international carriage* means any carriage in which, according to the agreement between the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transshipment, are situated either within the territories of two High Contracting Parties or within the territory of a single High Contracting Party if there is an agreed stopping place within the territory of another State, even if that State is not a High Contracting Party. Carriage between two points within the territory of a single High Contracting Party without an agreed stopping place within the territory of another State is not international carriage for the purposes of this Convention. (H-Art. I)

3. Carriage to be performed by several successive air carriers is deemed, for the purposes of this Convention, to be one undivided carriage if it has been regarded by the parties as a single operation, whether it had been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within the territory of the same State. (H-Art. I)

Article 2

1. This Convention shall apply to transportation performed by the State or by legal entities constituted under public law provided it falls within the conditions laid down in Article 1. (W-Art. 2)

2. In the carriage of postal items the carrier shall be liable only to the relevant postal administration in accordance with the rules applicable to the relationship between the carriers and the postal administrations. (M4-Art. II)

3. Except as provided in paragraph 2 of this Article, the provisions of this Convention shall not apply to the carriage of postal items. (M4-Art. II)

[1] Margin notes give the source of the provision (W = Warsaw Convention; H=The Hague Protocol; M4 = Montreal Protocol No. 4).

CHAPTER II. TRANSPORTATION DOCUMENTS

SECTION I.—PASSENGER TICKET

Article 3

1. In respect of the carriage of passengers a ticket shall be delivered containing:

(a) an indication of the places of departure and destination;

(b) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place;

(c) a notice to the effect that, if the passenger's journey involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the Convention governs and in most cases limits the liability of carriers for death or personal injury and in respect of loss of or damage to baggage.

2. The passenger ticket shall constitute *prima facie* evidence of the conclusion and conditions of the contract of carriage. The absence, irregularity or loss of the passenger ticket does not affect the existence or the validity of the contract of carriage which shall, none the less, be subject to the rules of this Convention. Nevertheless, if, with the consent of the carrier, the passenger embarks without a passenger ticket having been delivered, or if the ticket does not include the notice required by paragraph 1(c) of this Article, the carrier shall not be entitled to avail himself of the provisions of Article 22. (H-Art. III)

SECTION II.—BAGGAGE CHECK

Article 4

1. In respect of the carriage of registered baggage, a baggage check shall be delivered, which, unless combined with or incorporated in a passenger ticket which complies with the provisions of Article 3, paragraph 1, shall contain:

(a) an indication of the places of departure and destination;

(b) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place;

(c) a notice to the effect that if the carriage involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the Convention governs and in most cases limits the liability of carriers in respect of loss of or damage to baggage.

2. The baggage check shall constitute *prima facie* evidence of the registration of the baggage and of the conditions of the contract of carriage. The absence, irregularity or loss of the baggage check does not affect the existence or the validity of the contract of carriage which shall, none the less, be subject to the rules of this Convention. Nevertheless, if the carrier takes charge of the baggage without a baggage check having been delivered or if the baggage check (unless combined with or incorporated in the passenger tick-

et which complies with the provisions of Article 3, paragraph 1(c)) does not include the notice required by paragraph 1(c) of this Article, he shall not be entitled to avail himself of the provisions of Article 22, paragraph 2. (H-Art. IV)

SECTION III.—DOCUMENTATION RELATING TO CARGO

Article 5

1. In respect of the carriage of cargo an air waybill shall be delivered.

2. Any other means which would preserve a record of the carriage to be performed may, with the consent of the consignor, be substituted for the delivery of an air waybill. If such other means are used, the carrier shall, if so requested by the consignor, deliver to the consignor a receipt for the cargo permitting identification of the consignment and access to the information contained in the record preserved by such other means.

3. The impossibility of using, at points of transit and destination, the other means which would preserve the record of the carriage referred to in paragraph 2 of this Article does not entitle the carrier to refuse to accept the cargo for carriage. (M4-Art. III)

Article 6

1. The air waybill shall be made out by the consignor in three original parts.

2. The first part shall be marked "for the carrier"; it shall be signed by the consignor. The second part shall be marked "for the consignee"; it shall be signed by the consignor and by the carrier. The third part shall be signed by the carrier and handed by him to the consignor after the cargo has been accepted.

3. The signature of the carrier and that of the consignor may be printed or stamped.

4. If, at the request of the consignor, the carrier makes out the air waybill, he shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor. (M4-Art. III)

Article 7

When there is more than one package:

a) the carrier of cargo has the right to require the consignor to make out separate air waybills;

b) the consignor has the right to require the carrier to deliver separate receipts when the other means referred to in paragraph 2 of Article 5 are used. (M4-Art. III)

Article 8

The air waybill and the receipt for the cargo shall contain:

a) an indication of the places of departure and destination;

b) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place; and

c) an indication of the weight of the consignment. (M4-Art. III)

Article 9

Non-compliance with the provisions of Articles 5 to 8 shall not affect the existence or the validity of the contract of carriage, which shall, none the less, be subject to the rules of this Convention including those relating to limitation of liability. (M4-Art. III)

Article 10

1. The consignor is responsible for the correctness of the particulars and statements relating to the cargo inserted by him or on his behalf in the air waybill or furnished by him or on his behalf to the carrier for insertion in the receipt for the cargo or for insertion in the record preserved by the other means referred to in paragraph 2 of Article 5.

2. The consignor shall indemnify the carrier against all damage suffered by him, or by any other person to whom the carrier is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements furnished by the consignor or on his behalf.

3. Subject to the provisions of paragraphs 1 and 2 of this Article, the carrier shall indemnify the consignor against all damage suffered by him, or by any other person to whom the consignor is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements inserted by the carrier or on his behalf in the receipt for the cargo or in the record preserved by the other means referred to in paragraph 2 of Article 5. (M4-Art. III)

Article 11

1. The air waybill or the receipt for the cargo is *prima facie* evidence of the conclusion of the contract, of the acceptance of the cargo and of the conditions of carriage mentioned therein.

2. Any statements in the air waybill or the receipt for the cargo relating to the weight, dimensions and packing of the cargo, as well as those relating to the number of packages, are *prima facie* evidence of the facts stated; those relating to the quantity, volume and condition of the cargo do not constitute evidence against the carrier except so far as they both have been, and are stated in the air waybill to have been, checked by him in the presence of the consignor, or relate to the apparent condition of the cargo. (M4-Art. III)

Article 12

1. Subject to his liability to carry out all his obligations under the contract of carriage, the consignor has the right to dispose of the cargo by withdrawing it at the airport of departure or destination, or by stopping it in the course of the journey on any landing, or by calling for it to be delivered at the place of destination or in the course of the journey to a person other than the consignee originally designated, or by requiring it to be returned to the airport of departure. He must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and he must repay any expenses occasioned by the exercise of this right.

2. If it is impossible to carry out the orders of the consignor the carrier must so inform him forthwith.

3. If the carrier obeys the orders of the consignor for the disposition of the cargo without requiring the production of the part of the

air waybill or the receipt for the cargo delivered to the latter, he will be liable, without prejudice to his right of recovery from the consignor, for any damage which may be caused thereby to any person who is lawfully in possession of that part of the air waybill or the receipt for the cargo.

4. The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with Article 13. Nevertheless, if the consignee declines to accept the cargo, or if he cannot be communicated with, the consignor resumes his right of disposition. (M4-Art. III)

Article 13

1. Except when the consignor has exercised his right under Article 12, the consignee is entitled, on arrival of the cargo at the place of destination, to require the carrier to deliver the cargo to him, on payment of the charges due and on complying with the conditions of carriage.

2. Unless it is otherwise agreed, it is the duty of the carrier to give notice to the consignee as soon as the cargo arrives.

3. If the carrier admits the loss of the cargo, or if the cargo has not arrived at the expiration of seven days after the date on which it ought to have arrived, the consignee is entitled to enforce against the carrier the rights which flow from the contract of carriage. (M4-Art. III)

Article 14

The consignor and the consignee can respectively enforce all the rights given them by Articles 12 and 13, each in his own name, whether he is acting in his own interest or in the interest of another, provided that he carries out the obligations imposed by the contract of carriage. (M4-Art. III)

Article 15

1. Articles 12, 13 and 14 do not affect either the relations of the consignor and the consignee with each other or the mutual relations of third parties whose rights are derived either from the consignor or from the consignee.

2. The provisions of Articles 12, 13 and 14 can only be varied by express provision in the air waybill or the receipt for the cargo. (M4-Art. III)

Article 16

1. The consignor must furnish such information and such documents as are necessary to meet the formalities of customs, octroi or police before the cargo can be delivered to the consignee. The consignor is liable to the carrier for any damage occasioned by the absence, insufficiency or irregularity of any such information or documents, unless the damage is due to the fault of the carrier, his servants or agents.

2. The carrier is under no obligation to enquire into the correctness or sufficiency of such information or documents. (M4-Art. III)

CHAPTER III. LIABILITY OF THE CARRIER

Article 17

The carrier shall be liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking. (W-Art. 17)

Article 18

1. The carrier is liable for damage sustained in the event of the destruction or loss of, or damage to, any registered baggage, if the occurrence which caused the damage so sustained took place during the carriage by air.

2. The carrier is liable for damage sustained in the event of the destruction or loss of, or damage to, cargo upon condition only that the occurrence which caused the damage so sustained took place during the carriage by air.

3. However, the carrier is not liable if he proves that the destruction, loss of, or damage to, the cargo resulted solely from one or more of the following:

a) inherent defect, quality or vice of that cargo;

b) defective packing of that cargo performed by a person other than the carrier or his servants or agents;

c) an act of war or an armed conflict;

d) an act of public authority carried out in connection with the entry, exit or transit of the cargo.

4. The carriage by air within the meaning of the preceding paragraphs of this Article comprises the period during which the baggage or cargo is in the charge of the carrier, whether in an airport or on board an aircraft, or, in the case of a landing outside an airport, in any place whatsoever.

5. The period of the carriage by air does not extend to any carriage by land, by sea or by river performed outside an airport. If, however, such carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transshipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air. (M4-Art. IV)

Article 19

The carrier shall be liable for damage occasioned by delay in the transportation by air of passengers, baggage, or goods. (W-Art. 19)

Article 20

In the carriage of passengers and baggage, and in the case of damage occasioned by delay in the carriage of cargo, the carrier shall not be liable if he proves that he and his servants and agents have taken all necessary measures to avoid the damage or that it was impossible for them to take such measures. (M4-Art. V)

Article 21

1. In the carriage of passengers and baggage, if the carrier proves that the damage was caused by or contributed to by the

negligence of the person suffering the damage the Court may, in accordance with the provisions of its own law, exonerate the carrier wholly or partly from his liability.

2. In the carriage of cargo, if the carrier proves that the damage was caused by or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he derives his rights, the carrier shall be wholly or partly exonerated from his liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage. (M4-Art. VI)

Article 22

1. In the carriage of persons the liability of the carrier for each passenger is limited to the sum of two hundred and fifty thousand francs. Where, in accordance with the law of the court seised of the case, damages may be awarded in the form of periodical payments, the equivalent capital value of the said payments shall not exceed two hundred and fifty thousand francs. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability. (H-Art. XI)

2. a) In the carriage of registered baggage, the liability of the carrier is limited to the sum of two hundred and fifty francs per kilogram, unless the passenger or consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum, not exceeding the declared sum, unless he proves that the sum is greater than the passenger's or consignor's actual interest in delivery at destination. (H-Art. XI; M4-Art. VII)

b) In the carriage of cargo, the liability of the carrier is limited to a sum of 17 Special Drawing Rights per kilogramme, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that the sum is greater than the consignor's actual interest in delivery at destination. (M4-Art. VII)

c) In the case of loss, damage or delay of part of registered baggage or cargo, or of any object contained therein, the weight to be taken into consideration in determining the amount to which the carrier's liability is limited shall be only the total weight of the package or packages concerned. Nevertheless, when the loss, damage or delay of a part of the registered baggage or cargo, or of an object contained therein, affects the value of other packages covered by the same baggage check or the same air waybill, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability. (H-Art. XI)

3. As regards objects of which the passenger takes charge himself the liability of the carrier is limited to five thousand francs per passenger. (H-Art. XI)

4. The limits prescribed in this Article shall not prevent the court from awarding, in accordance with its own law, in addition, the whole or part of the court costs and of the other expenses of the litigation incurred by the plaintiff. The foregoing provision shall not apply if the amount of the damages awarded, excluding court costs and other expenses of the litigation, does not exceed the sum which the carrier has offered in writing to the plaintiff within a period of six months from the date of the occurrence causing the damage, or before the commencement of the action, if that is later. (H-Art. XI)

5. The sums mentioned in francs in this Article shall be deemed to refer to a currency unit consisting of sixty-five and a half milligrams of gold of millesimal fineness nine hundred. These sums may be converted into national currencies in round figures. Conversion of the sums into national currencies other than gold shall, in case of judicial proceedings, be made according to the gold value of such currencies at the date of the judgment. (H-Art. XI)

6. The sums mentioned in terms of the Special Drawing Right in this Article shall be deemed to refer to the Special Drawing Right as defined by the International Monetary Fund. Conversion of the sums into national currencies shall, in case of judicial proceedings, be made according to the value of such currencies in terms of the Special Drawing Right at the date of the judgment. The value of a national currency, in terms of the Special Drawing Right, of a High Contracting Party which is a Member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund, in effect at the date of the judgment, for its operations and transactions. The value of a national currency, in terms of the Special Drawing Right, of a High Contracting Party which is not a Member of the International Monetary Fund, shall be calculated in a manner determined by that High Contracting Party.

Nevertheless, those States which are not Members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 2 b) of Article 22 may, at the time of ratification or accession or at any time thereafter, declare that the limit of liability of the carrier in judicial proceedings in their territories is fixed at a sum of two hundred and fifty monetary units per kilogramme. This monetary unit corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. This sum may be converted into the national currency concerned in round figures. The conversion of this sum into national currency shall be made according to the law of the State concerned. (M4-Art. VII)

Article 23

1. Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this convention shall be null and void, but the nullity of any such provision shall not involve the nullity of the whole contract, which shall remain

subject to the provisions of this convention. (W-Art. 23, designated as para. 1 by H-Art. XII)

2. Paragraph 1 of this Article shall not apply to provisions governing loss or damage resulting from the inherent defect, quality or vice of the cargo carried. (H-Art. XII)

Article 24

1. In the carriage of passengers and baggage, any action for damages, however founded, can only be brought subject to the conditions and limits set out in this Convention, without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights.

2. In the carriage of cargo, any action for damages, however founded, whether under this Convention or in contract or in tort or otherwise, can only be brought subject to the conditions and limits of liability set out in this Convention without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights. Such limits of liability constitute maximum limits and may not be exceeded whatever the circumstances which gave rise to the liability. (M4-Art. VIII)

Article 25

In the carriage of passengers and baggage, the limits of liability specified in Article 22 shall not apply if it is proved that the damage resulted from an act or omission of the carrier, his servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result; provided that, in the case of such act or omission of a servant or agent, it is also proved that he was acting within the scope of his employment. (M4-Art. IX)

Article 25A

1. If in action is brought against a servant or agent of the carrier arising out of damage to which this Convention relates, such servant or agent, if he proves that he acted within the scope of his employment, shall be entitled to avail himself of the limits of liability which that carrier himself is entitled to invoke under Article 22. (H-Art. XIV)

2. The aggregate of the amounts recoverable from the carrier, his servants and agents, in that case, shall not exceed the said limits. (H-Art. XIV)

3. In the carriage of passengers and baggage, the provisions of paragraphs 1 and 2 of this Article shall not apply if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result. (M4-Art. X)

Article 26

1. Receipt by the person entitled to the delivery of baggage or goods without complaint shall be *prima facie* evidence that the same have been delivered in good condition and in accordance with the document of transportation. (W-Art. 26)

2. In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage,

and, at the latest, within seven days from the date of receipt in the case of baggage and fourteen days from the date of receipt in the case of cargo. In the case of delay the complaint must be made at the latest within twenty-one days from the date on which the baggage or cargo have [has] been placed at his disposal. (H-Art. XV)

3. Every complaint must be made in writing upon the document of transportation or by separate notice in writing dispatched within the times aforesaid. (W-Art. 26)

4. Failing complaint within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on his part. (W-Art. 26)

Article 27

In the case of the death of the person liable, an action for damages lies in accordance with the terms of this convention against those legally representing his estate. (W-Art. 27)

Article 28

1. An action for damages must be brought, at the option of the plaintiff, in the territory of one of the High Contracting Parties, either before the court of the domicile of the carrier or of his principal place of business, or where he has a place of business through which the contract has been made, or before the court at the place of destination.

2. Questions of procedure shall be governed by the law of the court to which the case is submitted. (W-Art. 28)

Article 29

1. The right to damages shall be extinguished if an action is not brought within 2 years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the transportation stopped.

2. The method of calculating the period of limitation shall be determined by the law of the court to which the case is submitted. (W-Art. 29)

Article 30

1. In the case of transportation to be performed by various successive carriers and falling within the definition set out in the third paragraph of Article 1, each carrier who accepts passengers, baggage or goods shall be subject to the rules set out in this convention, and shall be deemed to be one of the contracting parties to the contract of transportation insofar as the contract deals with that part of the transportation which is performed under his supervision.

2. In the case of transportation of this nature, the passenger or his representative can take action only against the carrier who performed the transportation during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.

3. As regards baggage or goods, the passenger or consignor shall have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery shall have a right of action against the last carrier, and further, each may take action against

the carrier who performed the transportation during which the destruction, loss, damage, or delay took place. These carriers shall be jointly and severally liable to the passenger or to the consignor or consignee. (W-Art. 30)

Article 30A

Nothing in this Convention shall prejudice the question whether a person liable for damage in accordance with its provisions has a right of recourse against any other person. (M4-Art. XI)

CHAPTER IV. PROVISIONS RELATING TO COMBINED TRANSPORTATION

Article 31

1. In the case of combined transportation performed partly by air and partly by any other mode of transportation, the provisions of this convention shall apply only to the transportation by air, provided that the transportation by air falls within the terms of Article 1.

2. Nothing in this convention shall prevent the parties in the case of combined transportation from inserting in the document of air transportation conditions relating to other modes of transportation, provided that the provisions of this convention are observed as regards the transportation by air. (W-Art. 31)

Chapter V. General and Final Provisions

Article 32

Any clause contained in the contract and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void. Nevertheless for the transportation of goods arbitration clauses shall be allowed, subject to this convention, if the arbitration is to take place within one of the jurisdictions referred to in the first paragraph of Article 28. (W-Art. 32)

Article 33

Except as provided in paragraph 3 of Article 5, nothing in this Convention shall prevent the carrier either from refusing to enter into any contract of carriage or from making regulations which do not conflict with the provisions of this Convention. (M4-Art. XII)

Article 34

The provisions of Articles 3 to 8 inclusive relating to documents of carriage shall not apply in the case of carriage performed in extraordinary circumstances outside the normal scope of an air carrier's business. (M4-Art. XIII)

Article 35

The expression "days" when used in this convention means current days, not working days. (W-Art. 35)

Articles 36 to 40.[2]

Article 40A

1. In Article 37, paragraph 2 and Article 40, paragraph 1, the expression High Contracting Party shall mean State. In all other cases, the expression High Contracting Party shall mean a State whose ratification of or adherence to the Convention has become effective and whose denunciation thereof has not become effective.

2. For the purposes of the Convention the word territory means not only the metropolitan territory of a State but also all other territories for the foreign relations of which that State is responsible. (H-Art. XVII)

Article 41

Any High Contracting Party shall be entitled not earlier than two years after the coming into force of this convention to call for the assembling of a new international conference to consider any improvements which may be made in this convention. To this end it will communicate with the Government of the French Republic which will take the necessary measures to make preparations for such conference. (W-Art. 41)

[2] Articles 36 to 40 govern participation in and withdrawal from the Convention. Montreal Protocol No. 4 would largely supersede these clauses for the United States and they are therefore omitted here.

Appendix 2

MONTREAL PROTOCOL NO. 4 TO AMEND THE CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO INTERNATIONAL CARRIAGE BY AIR. (EX.B, 95–1), AND OTHERS

MONTREAL PROTOCOL NO 4 TO AMEND THE CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO INTERNATIONAL CARRIAGE BY AIR EX B 95–1 AND OTHERS

WEDNESDAY, MAY 13, 1998

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC.

The committee met, pursuant to notice, at 10:15 a.m., in room SD–419, Dirksen Senate Office Building, Hon. Chuck Hagel, presiding. Present: Senator Hagel.

Senator HAGEL. Good morning. Mr. Secretary, welcome.

Mr. Larson: Thank you, sir.

Senator HAGEL. The committee meets this morning to consider five treaties that together ratified will have important and beneficial impacts on the economic interests of the United States. Each treaty on its own will facilitate different segments of the U.S. economy, particularly in the areas of international shipping and transportation, agriculture, intellectual property, trademark law and international trade.

The Montreal Protocol No. 4 will enhance the efficiency of the air cargo transportation industry by streamlining cargo documentation requirements. Internationally cargo tracking operates in the Dark Ages using paper tracking methods, requiring information that is commercially irrelevant in today's electronic age. This protocol will encourage the phaseout of paper airway bills in exchange for electronic processing systems which carriers already use domestically. This will bring both ease and cost efficiency to the industry.

The International Grains Agreement consists of two treaties, the Grains Trade Convention and the Food Aid Convention, both of which are strongly supported by U.S. farmers. The Grains Trade Convention reauthorizes U.S. membership in the International Grains Council, an intergovernmental organization of exporting and importing members that provides objective and timely statistical information. This information is used by farmers to plan crop demands and other market needs, thereby eliminating trade barriers involving these commodities and promoting market stability. Let me be clear, however, that the convention does not contain economic provisions and thus does not regulate levels of grain trade between countries or price ranges for grain sales.

In addition, the Food Aid Convention commits the United States to a minimum of 2.5 million metric tons of U.S. food aid which is

carried out by the P.L. 480 program and other bilateral aid programs. The convention permits donor countries to coordinate food aid commitments around the world and provides certainty regarding available food aid levels.

Another treaty before the committee this morning that is important to our farmers and the agriculture industry in the United States is the International Convention for the Protection of New Varieties of Plants. The United States exports over $6 billion in seed each year, largely in the form of cereal such as corn, wheat, oats, and other important food plants such as potatoes developed by agricultural and bio-tech companies.

The need for protection of intellectual property represented in these seed varieties cannot be understated. Approval of the revised UPOV Convention will increase the level of protection for businesses from unauthorized use or reproduction of plant varieties. Specifically, the UPOV convention grants certain property rights to breeders of new plants on a showing that a plant variety is distinct, sufficiently homogenous, stable, and new.

The Trademark Law Treaty will streamline and thereby facilitate international trademark registration. A myriad of rules and regulations for registering trademarks can cause both expense and delay for trademark owners. Key provisions of the treaty relate to the elimination of notarization requirements, general power of attorney requirements, single trademark applications for multiple goods, and a requirement that countries accept service trademarks in addition to trademarks on goods.

Finally, the committee is considering two technical amendments to the Convention on the International Maritime Organization, an intergovernmental organization that advances international shipping trade. One amendment would formalize the Facilitation Committee of the IMO by making it one of five standing committees of the organization. The second amendment would increase the size of the council from 32 members to 40.

The committee now will hear about these important treaties from Alan P. Larson our Assistant Secretary of State for Economic and Business Affairs.

Secretary Larson, welcome. We look forward to your testimony.

STATEMENT OF HON. ALAN P. LARSON, ASSISTANT SECRETARY OF STATE FOR ECONOMIC AND BUSINESS AFFAIRS

Mr. LARSON. Thank you very much, Mr. Chairman. I have a statement, a longer statement, for the record. Could I submit that?

Senator HAGEL. It will be included in the record.

Mr. LARSON. Thank you. With your permission, sir, I would like to make a short summary of that statement; all right?

Senator HAGEL. Please do.

Mr. LARSON. Mr. Chairman, we do appreciate very much the opportunity to present views of the administration regarding the five agreements under consideration today. I have never had the privilege before of testifying on behalf of five different treaties. I will have to say that in reviewing the background to these agreements I was struck about how each one of them relates in its own way to the boom in U.S. exports and commerce over the last 10 years.

Our prosperity is increasingly dependent on broadening and deepening our flow of exports overseas, and to facilitate that flow we do need to maintain, strengthen and update the international agreements that provide the rules of the road. I would agree completely with your characterization that these agreements deal with very important aspects of international trade including the transportation of goods, the protection of intellectual property and arrangements that really facilitate and create the right type of environment for our agricultural exports. If I could just briefly comment on each of the treaties.

Ratification of the International Grains Agreement will assist U.S. farmers by providing an independent source of information and an important marketing tool. As you noted, Mr. Chairman, the Agreement places absolutely no restrictions on the parties with regard to pricing, a position that is strongly supported by the United States. In addition, the Council's Food Aid Committee is helping to lay the necessary groundwork for the next WTO round on agriculture; because we believe that, if the United States is to gain broad support for further agricultural liberalization, it will be essential that we remain active in the Food Aid Committee.

The State Department's fiscal year 1998 contribution appropriation includes funding to pay our assessment to this organization, but that money can only be disbursed once the International Grains Agreement is ratified. If we are not in a position to pay that assessment by June 30, we will fall into arrears and will lose our vote and potentially undercut our leadership role in the organization.

The accession of the United States to the 1991 International Convention for the Protection of New Variety of Plants will help bring about stronger intellectual property protection in emerging markets for a crucial U.S. industry that, again as you indicated, exported over $6 billion worth of seed stock and plant varieties last year. We think that our accession to this agreement will send a very clear signal to our trading partners that their WTO commitment to implement intellectual property protection for plant varieties is best met through their prompt accession to the 1991 UPOV Convention.

Mr. Chairman, the Montreal Protocol No. 4 to the Warsaw Convention of 1929 reforms and modernizes in important ways the convention's rules governing air cargo liability and documentation. Protocol 4 does not contain controversial provisions and it has universal endorsement from the U.S. air transport industry.

With Protocol 4 due to enter into force in June, U.S. industry runs the risk of being significantly disadvantaged vis-a-vis international competitors, unless the U.S. is in a position to become a party. For that reason, we would encourage favorable and the promptest possible action and ratification of the Montreal Protocol 4 without any reservation. [1]

On a more general note, Mr. Chairman, I would draw attention to the fact that in my written statement I have submitted a consolidated text of the Warsaw Convention as it was amended at the

[1] After Secretary Larson's appearance before the Committee, changes were made in both his testimony and his prepared statement. For an explanation of those changes see the Department of State's letter of June 22, 1998, which has been reproduced in this report on page 45.

Hague by the Hague Protocol and by the Montreal Protocol No. 4, so the complete record is available.

Turning to the International Maritime Organization Convention, we believe that these two sets of amendments will ensure that the ships that visit our ports meet our high standards for safety and environmental protection. The International Maritime Organization plays an important part in establishing standards accepted by the international maritime community. Within the IMO, the U.S. Coast Guard is helping to ensure that all ships meet international standards that are on a level equivalent to our own. These two amendments to the convention on the International Maritime Organization will help the organization carry out its mission more effectively.

The 1991 amendments establish the Facilitation Committee as a standing committee. This committee will contribute to better operating efficiency for the maritime industry, and in that way I think assist our efforts to combat narcotics trafficking and the threat of maritime terrorism. The amendments also increase the size of the governing council from 32 to 40 members which will ensure that more members play a part in advancing the IMO's efforts to strengthen the maritime safety and environmental protection.

Finally, Mr. Chairman, the Trademark Law Treaty will, again as you indicated, help U.S. business by harmonizing many complex trademark application procedures that differ from country to country. In that way, we believe that the Trademark Law Treaty will help U.S. business file for and maintain trademark protection in more countries at lower cost.

Thank you once again, Mr. Chairman, for the opportunity to present views on treaties that we think are important for the U.S. economy that do modernize arrangements in important areas and that we believe enjoy broad support from the private sector.

Thank you, sir.

[The prepared statement of Mr. Larson follows:]

PREPARED STATEMENT OF ALAN P. LARSON

Mr. Chairman, the State Department appreciates the opportunity to present the views of the Administration regarding the five agreements under consideration today.

In reviewing the background behind each of these five agreements, I was struck by how they each relate to the boom in U.S. exports over the last ten years. Our economic prosperity is increasingly dependent on broadening and deepening the flow of exports overseas. To facilitate this growing flow of trade, we must maintain and strengthen the international agreements that provide the "rules of the road" for trade.

Each of these five agreements does exactly that. Ratification of the International Grains Agreement will ensure that the United States has a voice in an organization that will help pave the way for future agricultural liberalization agreements. Membership in the 1991 Convention for the Protection of Plant Varieties will strengthen intellectual property protection for over $6 billion in U.S. seed stock exports. By becoming a party to the Montreal Protocol Four, the U.S. will ensure that US air cargo carriers are not put at a competitive disadvantage. The amendments to the Convention on the International Maritime Organization will help ensure that the ships of other maritime nations meet the same high safety and environmental standards as our own. Finally, accession to the Trademark Law Treaty will facilitate trademark application and maintenance for U.S. trademark holders.

I would now like to make some brief comments on each of the five agreements, starting with the International Grains Agreement.

Ratifying the International Grains Agreement will advance several important American interests. The United States is the world's top grains exporter and the

Agreement enjoys strong support from American grains producer groups. The International Grains Council's data on international grains flows and prices provides our producers with an important source of information and a valuable marketing tool. The Agreement places no restrictions on parties regarding pricing, a position strongly supported by the United States.

In addition, the International Grains Council's Food Aid Committee is playing a pivotal role in laying the groundwork for the next WTO round. With Committee members having agreed to re-examine food aid levels, the Committee's work is viewed by less developed countries as part of a package which included their agreement to undertake agricultural reforms. The American farmer has been a major beneficiary of these reforms. We believe that if the United States is to gain broad support for further agricultural liberalization in the next round, it is essential that we continue our efforts in the Food Aid Committee.

Finally, it is important to note that the International Grains Council has demonstrated true fiscal restraint over the last several budget periods. Its overall expenditure budgets have remained virtually constant since 1995. The organization relocated to less expensive rental space and reduced both its professional and support staff, all the while maintaining a high quality product.

We need to move quickly on this Agreement. The State Department's FY98 Contributions to International Organizations (CIO) appropriation includes funding to pay our International Grains Council assessment, but this money can only be disbursed once the International Grains Agreement is ratified. If we do not pay our assessment by June 30, the U.S. will fall into arrears and lose its vote, undercutting the leadership role we have been taking in this organization.

I would now briefly like to talk about the 1991 UPOV Convention.

Mr. Chairman, implementation of the 1991 Act of the International Convention for the Protection of New Varieties of Plants has been a priority for the Administration. The 1991 UPOV Convention broadens the types of plant varieties entitled to protection, further defines the rights of plant breeders and farmers, and allows member countries greater flexibility in implementing patent and sui generis forms of protection.

U.S. ratification of the 1991 UPOV Convention is important for an American industry that exported over $6 billion in seed stock and plant varieties last year. The US is the world's leader in developing high tech, high yield seed strains of wheat, corn, and most of the world's other important crops. We believe the 1991 UPOV Convention will help protect our investment in this industry by setting a rigorous and comprehensive international standard of protection for those countries now seeking to implement their WTO obligation to provide seed and plant variety intellectual property protection.

With only two years to go before developing countries must fully implement their WTO intellectual property obligations, our ratification of the 1991 UPOV Convention will send a timely signal that protection for plant varieties is best accomplished through adherence to this Convention's standards.

In 1995, Congress unanimously passed implementing legislation for the obligations of the 1991 UPOV Convention. No further changes to our laws need be made. By safeguarding the sizable investment that US industry makes in developing new varietals, the UPOV Union helps assure that emerging markets have access to the latest high yield seed stock. Your advice and consent to this Convention will yield an immediate and tangible harvest for U.S. agriculture.

I would now like to comment on the Montreal Protocol.

Mr. Chairman, the Montreal Protocol 4 to the Warsaw Convention of 1929 reforms and modernizes the Warsaw Convention's rules governing air cargo liability and documentation. Protocol 4 does not contain controversial provisions, and it has the universal endorsement of the air transport industry. Among other things, Protocol 4 will simplify and modernize data processing requirements for air cargo waybills, resulting in millions of dollars in processing cost savings for the industry.

Under its own terms, ratification of Protocol 4 by a State, such as the United States, that is not a party to the Warsaw Convention as amended at The Hague, 1955, will have the effect of binding that State to the terms of Warsaw as amended at The Hague, as well as to Protocol 4. To assist the Committee on Foreign Relations and the Senate in its consideration of Protocol 4, the State Department submits as part of this testimony a consolidated text of the Warsaw Convention, as amended at The Hague, 1955, and by Protocol 4. This consolidated text reflects the treaty provisions to which the United States would be bound if it becomes party to Protocol 4.

In the past, Protocol 4 has been considered in conjunction with Montreal Protocol 3, which addresses passenger liability issues. Currently, the Administration is pursuing other avenues for modernizing the passenger liability system.

Accordingly, the Administration now advocates separate consideration of Protocol 4 on its own merits.

The Government of Poland, depositary for the Warsaw Convention, informed us very recently that the required 30 countries have ratified Protocol 4, and it will enter into force on June 14, 1998. U.S. industry may be significantly disadvantaged vis-a-vis its international competitors if the U.S. now fails to become a Party in timely fashion.

We strongly urge the Senate to take favorable action by ratifying Montreal Protocol 4, without any reservation. [2]

Finally, I would like to briefly speak about the two amendments to the Convention on the International Maritime Organization.

Maritime transportation is an integral part of our nation's transportation system and is essential to our economy. More than 95 percent of our exports and imports are shipped by sea, including the 9 million barrels of oil that we import every day. It is essential that ships carrying our foreign trade be safe and protect the environment. Large numbers of foreign vessels call on our ports and we must work with other maritime countries to ensure that all ships meet the highest standards. The International Maritime Organization (IMO) plays a major part in establishing standards accepted by the international maritime community. In the IMO, the U.S. Coast Guard has had a major role in bringing these standards up to a level that parallel our own.

The two amendments to the Convention on the International Maritime Organization we are discussing today are technical, noncontroversial changes that will update the basic mandate drafted in 1948 and help the organization carry out its mission more effectively. The 1991 amendments establish the Facilitation Committee as one of the IMO's standing committees. The Committee contributes to greater efficiencies and profits for the U.S. maritime industry, while assisting our efforts to combat narcotics trafficking and the threat of maritime terrorism. The 1993 amendments increase the size of the IMO's governing Council from 32 to 40 members. Increasing the size will ensure a more adequate representation of the more than 150 member states in vital maritime safety and environmental protection efforts around the world.

As the IMO celebrates its 50th anniversary, ratification of these amendments will contribute to our interest in facilitating cooperation among maritime nations. Therefore, the State Department respectfully requests the Senate to give its advice and consent to acceptance of these amendments.

Finally, the Trademark Law Treaty harmonizes a number of the requirements and procedures associated with the filing, registration, and renewal of trademarks. By enhancing standardization across countries, this treaty will reduce overall filing costs, thereby enabling U.S. business to register and maintain trademarks in more markets.

Senator HAGEL. Secretary Larson, thank you.

I have a few questions that I would like to ask, and then we have a number of questions that we will submit in writing for the record.

Mr. LARSON. OK.

Senator HAGEL. I suspect I have some colleagues that will be interested in submitting questions as well. The status of the Montreal Protocol No. 4 we are talking about this morning is that if all questions are answered satisfactorily then it would be the intent of the chairman to take this up at our business meeting. We will work with you to facilitate getting the questions to you. If you could, as you will I know, work with us on getting answers back and we will see if we can get this wrapped up at the business meeting next week.

Mr. LARSON. Excellent. We will work very hard to meet any requirements you have for more information.

Senator HAGEL. OK. Thank you. Now let me ask a couple of questions while you are here. You mention in your statement that the Food Aid Committee of the International Grains Council is

[2] *See* footnote 1.

playing a pivotal role in laying the groundwork for the next WTO round of agricultural liberalization. In that statement, you indicated the committee is engaged in some reform with regard to developing countries. Could you talk a little bit about what the nature of those reforms are, what food aid might be used to leverage those reforms, and then also who monitors those reforms?

Mr. LARSON. I think the basic idea, Mr. Chairman, is that as part of the negotiations that led to the built-in agenda on agriculture under the auspices of the WTO there were a number of compromises that needed to be made. One of the compromises represented the interest on the part of a number of developing countries, particularly food importing developing countries, to know that there was going to be a continuing commitment on the part of major grain and food exporters to continuing food aid. So in a broad political sense we believe that our continued interest, involvement, engagement, and leadership in the Food Aid Committee is an important demonstration of our commitment to the broad package of issues that are important to countries around the world when they think about agriculture.

Now we will be undertaking in the near future as part of this WTO built-in agenda efforts to make further progress to liberalize agricultural trade. Much of that agenda will be carrying on and trying to extend the agenda of the last Round, that is: reducing trade-distorting agricultural subsidies, and getting rid of agricultural barriers to our trade. We think that one of the big accomplishments of the Uruguay Round was the progress that was made on agriculture. We think that there is a lot more work to be done.

With respect to your specific question about how would these new undertakings be monitored, it would be through the WTO surveillance dispute settlement systems that are now in place.

Senator HAGEL. Thank you. You also mentioned in your statement that ratification of the UPOV Convention will send a timely signal to developing countries must meet with the WTO intellectual property obligations over the next 2 years. As you know, the president's 1998 trade policy agenda and annual report indicate that a number of these countries have been slow or uneven in their efforts to pass and enforce these tough intellectual property laws. In your opinion, will developing nations meet these targets?

Mr. LARSON. Mr. Chairman, I am not a very good forecaster sometimes, but I think what I can say that would be responsive to your question is that, first of all, we have made it a very high priority to see to it that countries do meet their commitments under the TRIPs, the "Trade related aspects of intellectual property" arrangement. One of the things that we did almost immediately after or very soon after the TRIPs Agreement came into force was to take some actions in the WTO under its dispute settlement system, to force the pace. We took those actions against some relatively important countries, and we were quite widespread in the type of enforcement-prodding actions that we have taken.

The second dimension of our effort to encourage protection of intellectual property rights around the world and early adherence to TRIPs commitments has been to work with countries to help them understand how it is in their own interest. I mean, we believe very sincerely that countries that have high intellectual property stand-

ards are contributing to their attractiveness as a place to invest and a place for trade. Because if intellectual property is not respected, then obviously businesses around the world will have a certain reluctance in going and doing business there. We have been working assiduously with countries around the world through or embassies and building up coalitions of private sector groups in those countries to help them understand why it is in their own interests.

Our accession to UPOV itself is going to make a contribution in this regard because we believe that many trading partners are waiting to see us move before they move. It in part would indicate our signaling that we believe that this is the most appropriate mechanism for meeting the TRIPs commitments in the area of the protection of plant varieties. So I think this is another one of a series of things that we can do and that we are trying to do to make sure that countries do live up to their commitments, they do it fully, they do it on time. To the extent that they do not do it, I think we have demonstrated a willingness to use the machinery of the WTO to push them to do it.

Senator HAGEL. Thank you. Let me take another facet of your statement regarding the U.S. military, particularly U.S. military aircraft. You mentioned that the U.S. would be seeking a declaration in the Senate resolution ratification for the Montreal Protocol that exempts U.S. military authorities from application of the treaty. What rules now govern U.S. military aircraft?

Mr. LARSON. Could you give me a second to double check?

Senator HAGEL. Sure.

[Pause.]

Mr. LARSON. Please allow me to divide your question into two parts. You asked what rules govern U.S. military aircraft. The applicable rules do not change for U.S. military aircraft. At the time it became a Party to the Warsaw Convention of 1929, the United States made a reservation which exempted state aircraft, which includes all flights on aircraft owned and operated by the U.S. military. This reservation remains effective.

However, it has been determined that the reservation under the Warsaw Convention does not extend to aircraft that are not actually military aircraft, but are chartered by military authorities. Accordingly, the declaration available under Montreal Protocol 4 was designed to permit these charter aircraft also to be exempted from the Convention.

The U.S. military has addressed liability issues for such chartered aircraft by negotiating special contracts with U.S. commercial airlines that provide the aircraft and crews. The U.S. military is able to meet its need through these special contracts, which modify the liability limits of the Convention. Because the contracts are based on the Convention, and because the U.S. military is able to meet its needs through these special contracts, the Administration does not seek the declaration available under Montreal Protocol No. 4. [3]

Senator HAGEL. OK. So nothing different or new that you are proposing?

[3] *See* footnote 1.

Mr. LARSON. That is correct.

Senator HAGEL. OK. The issue of Protocol 3, which you are aware of, let me ask for the record, does the administration support the Senate consideration of Montreal Protocol No. 4 without also considering the Montreal Protocol No. 3?

Mr. LARSON. Yes, we do.

Senator HAGEL. Is there any intent on the administration's part to request ratification of Protocol No. 3 at this time?

Mr. LARSON. No. There is not at this time. We are currently engaged in a multilateral effort to negotiate a new agreement to replace the Warsaw Convention and that in specific terms would replace these passenger-related provisions of Protocol No. 3. If we were successful, we would want to come back to the Senate with those arrangements. But at this time, we are not seeking any action on Protocol 3.

Senator HAGEL. Thank you. Regarding the IMO amendments, membership in the IMO, as you know, has increased I think by more than 30 states now, a total of 150 or 155 since the size of the Council was last increased in the early 1980's. Do you believe that this increase is the primary reason for increasing the size of the Council at this time?

Mr. LARSON. Well, it is my understanding, sir, that we have an increase to membership and we also have sort of increased involvement in international shipping. The way that this arrangement is organized there are different categories of members. There is a category of member that includes states that have the largest interest in providing shipping services. We find ourselves in that particular group.

There is a category of states that have the largest interest in seaborn trade, which includes another group of states, and then there are others who have special interests in maritime transport and whose representation on the Council we think will contribute to the effectiveness of the organization as being an authoritative organization in its areas of competence. So it is an effort to provide opportunities for participation and leadership on countries who have a stake in international maritime transport.

Senator HAGEL. Do you believe that increasing the size of the Council might complicate its operation?

Mr. LARSON. We don't believe that. As you know in other contexts, we look very, very hard at proposals to change the size, increase the size of groups that play important roles in international organizations. So this is something that is a serious concern for us always. It has been a judgment that this relatively modest increase in size based as it is on the stake that countries have in international maritime commerce is something that reflects our interest and would contribute to the effectiveness of the organization.

Senator HAGEL. The Facilitation Committee, which as you know was created by the Council in 1967, my understanding is now being made a permanent committee and only now. I guess for the record it would be important for us to get your sense of what in your opinion has this committee accomplished really.

Mr. LARSON. OK. We believe that the institutionalization of the committee will provide an important tool to promote the flow of trade and to provide updates of the IMO Convention, which was

originally drafted in 1948. We think that the work that the IMO does in terms of establishing recommendations and guidelines to simplify, to harmonize procedures for the movement of ships and cargo and passengers in and out of international ports is extremely important work, that it can be carried out more effectively by a full committee.

We envisioned this committee having a work program that would include a wide variety of issues including: electronic data interchange, customs formalities and interface between the ship and the port. For example, in this regard the IMO recently updated approaches for the prevention of drug smuggling on ships. We think that the committee will also be in a position to assist ports in making their operations more efficient.

I might add just on perhaps a slightly extraneous note these are obviously technical issues. One reads ones notes to make sure that one understands precisely what is going on. At the same time, I know from some experience last autumn with port practices issues with the country of Japan these are extraordinarily important issues. The efficient operation of ports and having good rules and standards and common approaches to how these issues are handled can be absolutely vital to commerce particularly in a day and age when "just in time inventory approaches" means that if you interfere—if there is a problem or a bottleneck in one place, it starts having repercussions all throughout the international trading system and the international maritime network. So I think that these issues although they can sound fairly technical at times are really quite important.

Senator HAGEL. Mr. Secretary, thank you. As I mentioned, I have other questions and my colleagues have other questions. We will keep the record open until close of business on Thursday. You have other issues to attend to, important business to deal with, and so I think for right now we have accomplished what we need to accomplish.

I appreciate very much you taking time to come up here. As I said, if we can get the questions, which we will do, to you and if you can get them back to us, and the chairman has assured us that we should be able to get on the regular committee work meeting schedule next weed, then hopefully we could get this accomplished.

Mr. LARSON. Great. Thank you.

Senator HAGEL. Would you like to add anything for the record, Mr. Secretary?

Mr. LARSON. Mr. Chairman, I would only want to reiterate my appreciation for having the opportunity to testify. I think we agree that these are important treaties and we really welcome the opportunity to be here to express our views on them. We pledge to work with you in particular in this Montreal Protocol 4 to get prompt answers to the questions you may have.

Senator HAGEL. Good. Thank you.

[Whereupon, at 10:40 a.m., the hearing was adjourned.]

HEARING APPENDIX

U.S. Department of State Letter of June 22, 1998, Requesting Changes to the Testimony of Assistant Secretary Alan P. Larson

U.S. DEPARTMENT OF STATE,
Washington, D.C.,
June 22, 1998.

Hon. JESSE HELMS,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN, At the request of the Senate Foreign Relations Committee staff, we wish to clarify for you and the other members of the Committee the Administration's position regarding the Montreal Protocol No. 4 to the Warsaw Convention, to which the Administration has urged the Senate to give its advice and consent.

Specifically, we wish to reaffirm that the Administration does not recommend the United States make a declaration upon ratification of Protocol 4 which would exempt from the Warsaw liability system the carriage of persons, baggage and cargo for its military authorities on aircraft registered in the United States, the whole capacity of which has been reserved by or on behalf of U.S. military authorities. This position represents a change from the verbal statement of Assistant Secretary of State for Economic and Business Affairs Alan P. Larson before the Committee at the May 13, 1998 hearing on Protocol 4 and four other treaties; it is consistent with, and confirms, Assistant Secretary Larson's amended written statement submitted to the Committee for the record on May 15, 1998, and with subsequent communications with the Committee staff on this issue.

The original testimony failed to represent the position of the Department of Defense (DOD) on making the declaration. We have since consulted extensively with them, and expressed the regrets of the Department.

Immediately following the May 13 hearing, aviation industry representatives questioned the State Department concerning the declaration. We promptly contacted Brigadier General Gilbert J. Regan, USAF, Chief Counsel for the U.S. Transportation Command at Scott Air Force Base, who worked with our office of the Legal Adviser to develop a position on the U.S. option to make a declaration exempting military charters. These efforts resulted in a letter from General Regan dated 15 May 1998, stating and explaining his view that no declaration should be made. We have since received a letter (enclosed) from James B. Emahiser, Principal Deputy Under Secretary of Defense (Logistics), confirming that this is the official position of the Department of Defense. This revised position has been reflected in Assistant Secretary Larson's amended statement and in the Administration's responses to the Committee's questions for the record.

We regret any confusion caused by this revision. Fortunately, the system worked to correct our position before the Government took any formal action relative to Montreal Protocol 4. As Assistant Secretary Larson testified on May 13, this Protocol offers very important benefits for the U.S. air cargo industry, and the Administration continues strongly to urge the Senate to take favorable action by ratifying Montreal Protocol 4 with any reservation.

We hope this information will be helpful to you. Please do not hesitate to contact us if we can be of further assistance.

Sincerely,

BARBARA LARKIN,
ASSISTANT SECRETARY,
Legislative Affairs.

Responses to Additional Questions Submitted by the Committee for the Record Regarding Montreal Protocol No. 4

QUESTIONS SUBMITTED BY CHAIRMAN HELMS

Question. In your opening statement you indicated that the United States is seeking a declaration in the Senate's resolution of ratification for the Montreal Protocol that exempts U.S. military authorities from application of the treaty. Please detail the effect of this declaration.

Answer. As will be reflected in the amended written testimony of Assistant Secretary Larson, the Administration does not recommend that the United States make a declaration upon ratification of Montreal Protocol No.4 for the purpose of exempting the carriage of persons, baggage and cargo for its military authorities on aircraft registered in the United States, the whole capacity of which has been reserved by or on behalf of U.S. military authorities.

At the time it became a Party to the Warsaw Convention, the United States made a reservation exempting from the Convention international air transport performed by the United States of America or any territory or possession under its jurisdiction. Accordingly, all flights on aircraft owned and operated by the U.S. military, among other entities, are exempted from the provisions of the Convention. The Administration does not propose withdrawing this reservation.

The reservation provided for under Montreal Protocol No. 4 would expand the reservation made with respect to the 1929 Warsaw Convention to exempt from the Convention U.S. registered civil aircraft chartered by the U.S. military, where the entire capacity of the aircraft has been reserved by or on behalf of the military authorities.

Currently, the liability of airlines operating aircraft under charter to the U.S. military is determined under the Warsaw Convention, as modified by special contracts between the U.S. Government and the airline providing the aircraft and crew. A sample "special contract" used for this purpose is attached as Appendix A. We understand that these special contracts, which are expressly provided for in the Warsaw Convention, meet the needs of the Department of Defense. Because the problem of passenger liability limitations is being revised by the intercarrier agreements, which would be incorporated into special contracts between the airlines and the military, there is no need to exempt charters to the military from the provisions of the Convention.

Question. Please detail the rules that govern U.S. military personnel.

Answer. Recoveries of U.S. military personnel in the event of an aircraft accident vary according to the circumstances of the flight. Because the Convention applies only to international flights, we address only international operations:

- When U.S. military personnel fly on aircraft owned and operated by the U.S. military, the Convention has no application and U.S.G. liability to injured military personnel is determined under U.S. law.
- When U.S. military personnel fly internationally on scheduled commercial airlines, whether U.S. or foreign, they are covered by the Warsaw Convention, entitled to the same recovery from the airline, under the same restrictions, as civilians. Relative to this category of flights, we note that military personnel are subject to the provisions of 49 U.S.C. 1517 ("Fly America Act"), which requires the use of U.S. flag air carriers to transport government-financed travel. Regulations implementing that statute are found at 4 CFR Sec. 51, *et seq.*
- When U.S. military personnel fly internationally on civil aircraft chartered by the U.S. military, they currently are covered by the Warsaw Convention, as modified by special contracts entered into between the U.S. Government and the airline providing the aircraft. Department of Defense rules generally require that only U.S. registered aircraft be chartered for such operations, in accordance with the provisions of 49 U.S.C. 1517 ("Fly America Act"), which requires the use of U.S. flag air carriers to transport government-financed travel.

Question. What rules govern U.S. military personnel on aircraft not registered in the United States?

Answer. As noted above, U.S. military personnel are subject to the provisions of the Fly America Act and, accordingly, are generally required to use U.S. flag air carriers for government-financed travel. There are, however, situations in which such personnel will fly on foreign registered aircraft. In such situations, they are covered by the Warsaw Convention, entitled to the same recovery from the airline, under the same restrictions, as civilians.

Question. Please explain the meaning of "the whole capacity of which has been reserved by or on behalf of such authorities."

Answer. This refers to a contract whereunder military authorities procure from another entity an aircraft and full crew to transport passengers or cargo, solely as directed by the military authorities. The Civil Reserve Air Fleet (CRAF) program is an example of the U.S. military reserving the whole capacity of civil aircraft. In contrast, if the U.S. military contracted with an aircraft operator to carry specified personnel or cargo, but permitted the operator to carry other passengers or cargo, the requirements of this provision would not be met.

QUESTION SUBMITTED BY SENATOR HAGEL

Question. There are a few provisions in Protocol No. 4 that deal with the carriage of passengers and baggage. The United States delegation at the Montreal Conference stated that, as authorized under Protocol No. 4, the United States would submit a reservation to these provisions to that Protocol No. 4 would apply only to the carriage of cargo. Why isn't such a reservation now necessary?

Answer. The reservation was proposed in a context where the United States would ratify both Protocol No. 3 and Protocol No. 4. Ratification of Protocol No. 3 is a precondition for making the referenced reservation under Article XXI of Protocol No. 4. As described previously, the Administration is pursuing avenues other than Protocol No. 3 for modifying the passenger liability regime. Accordingly, the Administration now advocates pursuing ratification of Protocol No. 4, independent of Protocol No. 3.

QUESTIONS SUBMITTED BY SENATOR BIDEN

Question. Article IX of Montreal Protocol No. 4 amends Article 25 of the underlying Warsaw Convention by deleting the "willful misconduct" standard for escaping liability and replacing it with an alternative formulation. Please explain the history of, and rationale for, altering this formulation.

Answer. As noted, under the Warsaw Convention, airlines lost the benefit of the limit of liability for harm to passengers if the airline activity constituted willful misconduct or a failure to act that, in accordance with the law of the court to which the case is submitted, is considered to be equivalent to willful misconduct. Under Protocol 4, the Convention's liability limits may be exceeded where "damage resulted from an act or omission of the carrier, his servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result."

The reason for the change derives from the fact that the Warsaw Convention was written in French and there is no authentic English text. The French standard was stated as, "dol ou d'une faute qui, d'après la loi du tribunal saisi, est considérée comme equivalent au dol." In translating that phrase, the United States adopted the then existing legal standard of "willful misconduct." However, other countries adopted different translations that lead to disparate results and, as a result, lead to confusion among lawyers and judges attempting to apply the Warsaw Convention.

Delegates at The Hague Conference adopted a standard that in all substantive respects was similar to the charge to the jury by a New York trial court in *Froman* v. *Pan American Airways* (Supreme Court of New York County, March 9, 1953). Because the concept of willful misconduct came to have different connotations in the civil and common law systems, the drafters of Hague replaced the legal standard with a description of the conduct itself, that a jury would be able to understand. The Hague Protocol standard has been identified as the common law definition of "willful misconduct."

Question. Does the Executive Branch regard this change as modifying the scope of the standard?

Answer. Recognizing that The Hague Protocol standard is merely an alternative interpretation of the original French text, developed to harmonize the various legal interpretations that had developed from the original, it is the Executive Branch's view that this change does not modify the scope of the standard.

Question. Assuming that the Executive Branch believes this change will not effect a substantive change, would the Executive Branch support the adoption of an understanding in the Senate's Resolution of Ratification stating that no change is intended?

Answer. The Executive Branch would not support adoption of such an understanding, believing that it would confuse, rather than clarify, the applicable standard. As noted above, the negotiating history of The Hague Protocol indicates that the standard was revised to promote uniformity among nations applying the Warsaw Convention.

Question. Article XXI of Montreal Protocol No. 4 permits a state to make a reservation that the Warsaw Convention, as amended by The Hague Protocol and Montreal Protocol No. 4, will not apply to the "carriage of persons, baggage, and cargo for its military authorities on aircraft, registered in that State, the whole capacity of which has been reserved by or on behalf of such authorities."

In your testimony, you indicated that the Senate take a "declaration" on this subject. Should it be a declaration or reservation?

Answer. As will be reflected in the amended written testimony of Assistant Secretary Larson, the Administration does not recommend that the United States make any declaration upon ratification of Montreal Protocol No. 4 for the purpose of exempting the carriage of persons, baggage and cargo for its military authorities on aircraft registered in the United States, the whole capacity of which has been reserved by or on behalf of U.S. military authorities.

Question. Why does the Executive Branch support the United States taking this reservation?

Answer. The Executive Branch does not support taking this reservation.

Question. If it were taken, would it apply to the Civil Reserve Air Fleet (CRAF) program?

Answer. Yes, the Civil Reserve Air Fleet (CRAF) program is an example of the type of operation described in Article XXI to which the reservation would apply.

Question. What is the current passenger liability scheme under the CRAF?

Answer. When U.S. military personnel fly internationally on civil aircraft chartered by the U.S. military under the CRAF program, they are covered by the Warsaw Convention, as modified by special contracts entered into between the U.S. Government and the airline providing the aircraft and crew.

Question. What does the term "whole capacity" mean?

Answer. This refers to a contract whereunder military authorities procure from another entity an aircraft and full crew to transport passengers or cargo, solely as directed by the military authorities. The Civil Reserve Air Fleet (CRAF) program is an example of the U.S. military reserving the whole capacity of civil aircraft. In contrast, if the U.S. military contracted with an aircraft operator to carry specified personnel or cargo, but permitted the operator to carry other passengers or cargo, the requirements of this provision would not be met.

Question. Several other allied nations, such as Canada and France, have yet to ratify Protocol No. 4. Why have they not yet done so?

Answer. We believe that, like the United States, many countries have not ratified Montreal Protocol No. 4 because of its linkage to passenger provisions of Montreal Protocol No. 3. We believe that with the recent changes in circumstances, including the intercarrier agreement and the imminent entry into force of Montreal Protocol No. 4 in June of 1998, these and other countries are likely to follow the United States in ratifying Montreal Protocol No. 4, to maintain competitiveness in international cargo services.

Question. If the United States ratifies Montreal Protocol No. 4, it will also, pursuant to Article XVII (or XIX) of Protocol No. 4, accede to The Hague Protocol of 1955. Has the Executive Branch ever submitted The Hague Protocol to the Senate as a separate document?

Answer. Upon ratifying Montreal Protocol No. 4, the United States would be bound by the provisions of the Warsaw Convention as amended by The Hague Protocol and as amended by Montreal Protocol No. 4. The Executive Branch did submit The Hague Protocol to the Senate for its advice and consent to ratification on July 24, 1959 (86th Congress, 1st Session, Executive H). However, because the proposed legislation providing for supplemental accident insurance for passengers, which was essential to the Administration's support for the Protocol, failed to be adopted, and because the passenger liability regime was improved by the 1966 intercarrier agreement, the Protocol was withdrawn from Senate consideration in 1967.

To assist the Senate in its consideration of Montreal Protocol No. 3 and No. 4, the Executive Branch submitted a consolidated text of the provisions of the revised Warsaw Convention applicable to the United States in the event of ratification of Montreal Protocols No. 3 and No. 4 following its submission of those two Protocols

to the Senate for advice and consent in 1977 (see 98th Congress, 1st Session, Executive Report No. 89–1, pp. 23–37). A consolidated text of the Warsaw Convention as amended by the Hague Protocol and Protocol No. 4 was presented as part of the testimony of Assistant Secretary Larson on May 13.

Question. Please discuss any significant changes to the Warsaw Convention that will result.

Answer. The provisions of The Hague Protocol will not have significant impact on the Warsaw Convention, as amended by The Hague Protocol and Montreal Protocol No. 4, as applied in the United States. The main purpose of The Hague Protocol was to double the limit of liability under the Warsaw Convention to the equivalent of approximately $16,600. This has no relevance in the United States today, because all airlines serving the United States are required to accede to the Montreal Agreement of 1966, an agreement among airlines whereunder the limit of liability was raised to $75,000. This limit has been further liberalized by the recent inter-carrier agreements, which a number of airlines have signed and implemented.

The Hague Protocol also provides that a court may award, in accordance with its own law, litigation costs incurred by the plaintiff; subject to the exception that such costs could not be awarded in excess of the limitations of the Convention if the defendant made a timely written offer to the plaintiff in an amount that exceeded the amount of the final judgment.

Another notable aspect of The Hague Protocol is that it replaces the willful misconduct standard of the Warsaw Convention with a standard that defines willful misconduct, based on the jury charge from a case in New York Supreme Court (trial court), which referred to acts "done with the intent to cause damage or recklessly and with the knowledge that damage would probably result." It was considered, at the conference, that adopting this interpretation of the original language of the Convention would help harmonize decisions around the world and would reduce interpretation problems.

Hague also made express the common interpretation of Warsaw that provided for the application of the limitations of the Warsaw Convention to suits against employees of an airline. (Article 25A).

Question. The language used in Article 18(1) and 18(2) of Warsaw (as modified by Article IV of Protocol No. 4) is similar, but there is a slight distinction. Specifically, paragraph 1 provides that the carrier is liable for damage to any registered baggage, "*if* the occurrence which caused the damage so sustained took place during the carriage by air." By contrast, paragraph 2 provides that the carrier is liable for damage to cargo "*upon condition only* that the occurrence which caused the damage so sustained took place during the carriage by air." Does the use of different words (in the language italicized) suggest that a different meaning is intended?

Answer. Yes. Protocol No. 4 established airline strict liability for damaged cargo. The referenced language, relative to cargo, emphasizes this strict liability standard by noting that the only condition that a shipper must establish is that the cargo was damaged during carriage by air. After stating this standard, Article 18(3), in Protocol No. 4, then sets out the four defined exceptions to airline strict liability for damage to cargo.

Question. Article 23(1) of Warsaw (as modified by The Hague Protocol) states that "Any provision tending to relieve the carrier of liability. . . ." Does this mean any provision of the contract of carriage?

Answer. Yes, this means any provision that affects the contractual relationship between the air carrier and the passenger. The provision is designed to prevent air carriers from effectively taking any action that would diminish the air carrier's obligations to the passenger or shipper pursuant to the Convention. This provision of the Warsaw Convention is not modified by The Hague Protocol.

Question. Why is there different treatment of baggage and cargo in Article VIII of Protocol No. 4 (inserting a new Article 24 into the Warsaw Convention)?

Answer. Baggage and cargo are treated separately in recognition of the fact that passengers may have control of baggage during the period of air transportation, whereas the air carrier has exclusive control over cargo during the transportation. Furthermore, the rights relative to cargo are definitively established by air waybills and other relevant contracts of shipment, whereas the persons entitled to recover in the event of death of a passenger and destruction of baggage are not so clearly established.

Question. What is intended by the phrase "In the case of delay" in the second sentence of Article 26(2) of Warsaw (as modified by Hague Art. XV)? In other words, delay by whom?

Answer. The provision refers to air carrier delay in delivering baggage or cargo.

Question. Why was Article XI of Protocol No. 4 (inserting Art. 30A into Warsaw) deemed necessary?

Answer. Article 30A was initially proposed in the Guatemala Protocol of 1971 to make clear that the Convention is silent on the carrier's rights of recourse under local law against any third parties who may have caused or contributed to the damages for which the carrier is liable.

Question. What would constitute "extraordinary circumstances outside the normal scope of an air carrier's business" in Article 34 of Warsaw (as modified by Art. XIII of Protocol No. 4)?

Answer. This provision allows for airlines to enter into contracts to provide some form of customized service, without having to abide by contracting standards developed for routine service. One example might be where an airline charters aircraft to operate into a war zone.

Question. Why is there a limitation on reservations in Article XXI of Montreal Protocol No. 4?

Answer. The principal purpose of the Warsaw Convention and all of the amendments thereto is to unify certain rules relating to international transportation by air that affect the carriage of persons, baggage and cargo. Because the Warsaw Convention was designed to create international uniformity with respect to contract documentation and liability regime applicable to international air transportation, the restrictions on reservations, which have appeared in each of the Warsaw Convention related treaties, are essential.

Question. Was there such a limitation in the original Warsaw Convention?

Answer. By way of reservations, the original Convention preserved only the right of a state to declare the inapplicability of the Convention to international air transportation provided by the State or subordinate authorities.

Question. Did the Executive Branch consult with this Committee before agreeing to this limitation?

Answer. This limitation on reservations is substantially similar to that found in The Hague Protocol. We have found no indication that the Executive Branch consulted with this Committee prior to the June 28, 1956, signing of The Hague Protocol or the subsequent protocols.

Question. Over 90 air carriers have pledged in the Intercarrier Agreement on Passenger Liability (IIA) to "waive the limitation on liability on recoverable compensatory damages in Article 22(1) of the Warsaw Convention." Signatories to the IIA pledged to implement it by November 1, 1996. As of last month, however, only 44 carriers had formally done so. As of today, how many carriers have formally waived the liability limits?

Answer. We were advised by the International Air Transport Association (IATA) that as of April 1, 1998, 49 carriers, including 13 U.S. carriers and 36 foreign carriers, have implemented the IIA Agreement. The implementing carriers represent most of the major world airlines, and a majority of the world's air traffic. Implementation of the IIA Agreement does not require formal tariff action. As of April 1, 1998, 103 carriers had signed the IIA Agreement Lists are attached as Appendix 2. [The lists referred to appear on page XXX.]

Question. What is the reason for the delay by signatories to the IIA in implementing it?

Answer. There are many reasons for delayed implementation. In some cases, delay is attributable to airline confusion and uncertainty regarding exactly how the waivers apply, where more than one air carrier is involved in a journey covered by the Warsaw Convention. Also, implementation requires negotiations with insurance companies and frequently with government officials. We believe that in most cases the delays are due to uncertainty and the complexity of the issues, rather than a reluctance to finalize the waivers.

Question. What options does the Executive Branch have to encourage or require carriers flying within or to the United States to implement the IIA?

Answer. The Executive Branch has many options to encourage or require implementation, including permit or certificate conditions and/or regulations. For the time being we are attempting to encourage implementation voluntarily. There are two reasons for this. First, the Agreement applies worldwide on a system-wide basis. Premature U.S. coercive action could detract from worldwide implementation on flights other than those to and from the United States. Second, the Legal Committee of the International Civil Aviation Organization is working on a new Convention, which would replace the Warsaw Convention. There is general consensus that the new Convention should eliminate passenger liability limits. However, other issues are controversial and it is too early to determine whether the process will result in a new Convention acceptable to the United States. A new Convention would have the advantage of applying a worldwide standard. Coercive action at this time could impair efforts to achieve broad support for the new Convention.

Question. What is the position of the industry associations, such as the Air Transport Association or the National Air Carrier Association, regarding the disparity in liability limits that has occurred because of the failure of several carriers (many of them foreign) to carry out the commitment made to IIA?

Answer. To the best of our knowledge, both ATA and NACA would support application of the IATA Agreements for all flights to and from the United States. They also understand our reasons for not taking coercive action at this time and they and their members have supported and assisted our efforts to achieve voluntary compliance.

Question. Since 1983, the Department of Transportation has required all U.S. and foreign direct air carriers serving the United States to be a party to the 1966 Montreal Intercarrier Agreement. Is similar action under consideration in order to assure that all U.S. carriers, as well as foreign carriers, adhere to the most recent intercarrier agreements?

Answer. As detailed in response to a previous question, regulatory action to universalize implementation of the IATA Agreements is one of the options being considered for meeting the Administration's objectives for enhancing passenger rights. For the reasons stated in that response, we believe such action would be premature at this time.

Question. On May 15, 1998, the Department of State requested that its testimony regarding Montreal Protocol No. 4 be amended. In the amended testimony, the Department withdrew a proposed reservation to the Protocol related to the application of the Warsaw Convention to the carriage of persons, baggage, and cargo for U.S. military authorities on aircraft registered in the United States, the "whole capacity" of which was reserved by or on behalf of such authorities.

Had this or a similar reservation been proposed by the Executive previously in testimony regarding Montreal Protocol 4?

Answer. The Administration has not previously testified regarding Montreal Protocol No. 4 alone. Rather, past testimony related to ratification of Montreal Protocol Nos. 3 and 4, together. In that testimony, no reference was made to the reservation. However, the reservation was proposed much earlier in testimony relating to the 1955 Hague Protocol to the Warsaw Convention.

Question. If so, why has the Executive's position changed?

Answer. We are unable to ascertain the precise reasons why the Administration previously held the view that aircraft chartered by the military should be exempted from the Warsaw Convention, consistently with the treatment of aircraft owned or operated by the military.

However, we confirm that at present, the Administration recommends that the reservation to Protocol 4 not be taken, and that aircraft chartered by the military should be subject to the Warsaw Convention, although U.S. military aircraft are not subject to the Convention. We note the following reasons for that position:

- Currently, provisions of the Warsaw Convention provide great predictability for military charters in terms of claims procedures, limits of liability, burdens of proof, choices of forums, statutes of limitations, and notice requirements. This predictability benefits both Department of Defense (DOD) passengers and DOD contractors. That certainty in procedures would be lost if the reservation were made—The current "strict liability" concepts contained in the Convention benefit DOD passengers. Without Warsaw Convention coverage, these concepts would be replaced by a requirement that the claimant prove fault.
- The Warsaw Convention does not impede the DOD's ability to contract with the carriers. In fact, DOD's current contracts contain provisions which are more demanding on the carrier than those in the Warsaw Convention.—It is the DOD's longstanding policy to maintain a bright line between DOD charter flights and "state" aircraft to avoid problems regarding diplomatic clearances, the law of armed conflict, and other "state" aircraft issues. Taking the reservation would blur that line.

Question. It is my understanding that the Department's testimony before the Committee on May 13 was not reviewed by other government departments. This inter-agency process is normally managed by the Office of Management and Budget.

Why wasn't the testimony cleared by the inter-agency process?

Answer. The portion of the testimony concerning Montreal Protocol 4 was cleared with the Department of Transportation prior to inclusion in the complete testimony on Protocol 4 and other treaties. Last-minute changes to the complete testimony just prior to the May 13 hearing, including addition of text on a fifth treaty beyond the four originally incorporated, regrettably did not allow sufficient time to clear the complete testimony through the Office of Management and Budget (OMB).

Question. Which office at the State Department is normally responsible for assuring that testimony is cleared by the inter-agency process?

Answer. The drafting office should seek input from other relevant agencies in preparing the draft testimony. The Bureau of Legislative Affairs is normally responsible for clearing the final draft testimony through OMB.

Question. Was Assistant Secretary Larson aware that the testimony was not cleared by the other departments?

Answer. Assistant Secretary Larson was not aware prior to the hearing that the testimony had not been cleared through OMB.

Question. Has the amended testimony, submitted on May 15, been cleared by the other departments?

Answer. The amended testimony was reviewed by representatives of the Departments of Justice and Transportation, and by the U.S. Transportation Command of the Department of Defense, prior to submittal to the Committee.

Question. It is my understanding that the Department of State did not contact the Department of Defense regarding the proposed reservation—a reservation affecting the Department of Defense—until after the Committee's hearing on May 13?

Question. Is that indeed the case?

Answer. Yes.

Question. If so, why did the Department of State fail to contact the Department of Defense prior to the Committee hearing?

Answer. The failure to contact the Department of Defense was simply a case of human error on the part of the various State Department offices involved. We have since consulted extensively with the Department of Defense and expressed to them our regrets.

Responses to Additional Questions Submitted by the Committee to Coordinated Departments of State and Transportation Regarding Montreal Protocol No. 4

Question 1. Warsaw Convention Article 25 provided that Article 22 liability limits would not apply if damage resulted from carrier "willful misconduct." As amended by Protocol 4, it would read "... if it is proved that the damage resulted from an act of the carrier, his servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result." What is the practical effect of this language change? Will the Administration testify that they are essentially the same?

Answer 1. Article 22 of the Convention defines the limits of airlines' liability in the event of an accident. Article 25 explains when an airline waives those limits, thereby permitting a claimant to collect more than the amount specified in Article 22. Under the 1929 Convention, Article 22 limits are waived upon a finding of airline "willful misconduct" with the common law definition of that standard. We believe that in practice, there will be no difference between the old and the new provisions.

Article 25 of the Convention reads:

> The carrier shall not be entitled to avail himself of the provisions of this convention which exclude or limit his liability, if the damage is caused by his willful misconduct or by such default on his part as, in accordance with the law of the court to which the case is submitted, is considered to be equivalent to willful misconduct.

The Convention, as amended by Hague and Montreal Protocol 4, reads:

> In the carriage of passengers and baggage, the limits of liability specified in Article 22 shall not apply if it is proved that the damage resulted from an act of omission of the carrier, his servants or agents done with intent to cause damage or recklessly and with knowledge that damage would probably result; provided that, in the case of such act or omission of a servant or agent, it is also proved that he was acting within the scope of his employment.

The change in Article 25 was intended to eliminate a discrepancy between common and civil law concerning the nature of conduct required to remove limits on liability. Because the concept of willful misconduct came to have different connotations in the civil and common law systems, the drafters of Hague replaced the legal standards with a description of the conduct itself.

U.S. courts have defined willful misconduct as:

> . . . the intentional performance of an act with knowledge that the performance of that act will probably result in injury or damage, or it may be the intentional performance of an act in such a manner as to imply reckless disregard for the probable consequences of the performance of the act; or
>
> . . . the intentional omission of some act, with knowledge that such omission will probably result in damage or injury, or the intentional omission of some act in a manner from which could be implied reckless disregard of the probable consequences of the omission, would also be willful misconduct. (*Pekeleis* v. *Transcontinental & Western Airlines. Inc.*, 187 F.2d 122 (2d Cir), cert. denied U.S. 951 (1951)).

It similarly has been defined as "a conscious intent to do or omit doing an act from which harm results to another, or an intentional omission of a manifest duty. There must be a realization of the probability of injury from the conduct, and a disregard of the probable consequences of such conduct." (*Grey* v. *American Airlines. Inc.*, 227 F.2d 282 (2d Cir. 1955)).

The restatement of Laws, Second, Torts Sec. 500, defines "Reckless disregard of safety," which standard is incorporated into the amended Article 25, as follows:

> The actor's conduct is in reckless disregard of the safety of another if he does an act or intentionally fails to do an act which it is his duty to the other to do knowing or having reason to know of facts which would lead a reasonable man to realize, not only that his conduct creates an unreasonable risk of physical harm to another, but also that such risk is substantially greater than that which is necessary to make his conduct negligent.

In light of the understanding that the change to Article 25 was intended merely to replace the term "willful misconduct" with its common law definition, and in light of the above-quoted definitions, it is our view that the amendment to Article 25 will have no practical effect on the rights of claimants in cases under the Warsaw Convention.

Question 2. What is the meaning of the term "Octroi," as it appears in Article 16, para. 1, line 2 of the amended Convention?

Answer 2. "Octroi" is a French term that refers to a branch of the French customs authorities.

Question 3. What is the meaning of Article 18, para. 5 of the Warsaw Convention as amended? Why was this amendment necessary?

Answer 3. The referenced paragraph provides:

> 5. The period of the carriage by air does not extend to any carriage by land, by sea, or by river performed outside an airport. If, however, such carriage takes place in the performance of a contract for carriage by air, for the purposes of loading, delivery or transshipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air.

This provision is not new; it is a reiteration of Article 18, para. 3 of the unamended 1929 Convention, which stated:

> 3. The period of the transportation by air shall not extend to any transportation by land, by sea, or by river performed outside an airport. If, however, such transportation takes place in the performance of a contract for transportation by air, for the purpose of loading, delivery or transshipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the transportation by air.

Because the entire Article 18 was restated in Montreal Protocol 4, this provision had to be restated. The only notable change to the 1929 text was the replacement of the word "transportation" with the word "carriage," a conforming change for consistency with amendments introduced by the Hague Protocol, and for consistency with the U.K. English translation of the Warsaw Convention's official French text.

The provision recognizes that a contract for transportation of cargo that anticipates air shipment, often involves other modes of transportation as well. This is due in part to the consumer's expectation of door-to-door, rather than airport-to-airport, service. Appropriately, the referenced provision specifies the circumstances under which the terms of the Warsaw Convention will apply to intermodal transportation in the event of damage or loss.

Pursuant to Article 18, para. 5, the terms of the Convention will not apply to overland or overwater transportation outside an airport. However, the transportation was incidental to the contract for carriage by air; that is, for the purpose of loading, delivery, or transshipment, the provision creates a presumption that any claim for

loss occurring during performance of a contract for carriage by air will be subject to the rules of the Convention. In the case of concealed damage, the rules and limits of the Convention would apply unless the carrier proved that the damage occurred on the surface portion of the transport.

The only substantive change in Article 18, as amended by Montreal Protocol 41 is the addition of an exclusive list of four situations under which a carrier may be relieved of liability for loss during the period of carriage by air, in paragraph 3.

Question 4. There are two reservations specified in Article XXI of Montreal Protocol 4.

(a) Are these reservations new, or are they carryovers from either 1929 Warsaw or 1955 Hague?

(b) Has the USG taken either of these two reservations to Warsaw? Will the Administration recommend that we take either of them in conjunction with ratification of Protocol 4?

Answer 4. The first reservation dates back to the Hague Protocol. The second is new. Neither has been formally considered by the United States to date. The Administration will recommend taking the first reservation, in connection with ratification of Montreal Protocol 4.

The two reservations are:

(a) that the amended convention shall not apply to traffic carried for the state's military authorities on aircraft registered in that state, where the entire capacity of the aircraft has been reserved by or on behalf of the military authorities;

(b) on or after the state's ratification of Montreal Protocol 3, the state may declare that it is not bound by the provisions of the Warsaw Convention, as amended by Hague and Montreal Protocol 4, that concern the carriage of passengers and baggage.

The 1929 Convention provided for only one reservation. It enabled the contracting parties to declare the inapplicability of the Convention to international carriage by air performed directly by the States of governmental entities under the State. The United States took that reservation, declaring in writing at the time of ratification:

Article 2, paragraph 1, of the present Convention shall not apply to international air transport which may be effected by the United States of America or any territory or possession under its jurisdiction.

The first reservation in Montreal Protocol 4, noted above, dates back to the Hague Protocol of 1955. It effectively extends the reservation available under the Warsaw Convention to include aircraft serving military purposes, even when they are not operated directly by the State.

The Administration would recommend that the United States deposit, with ratification, a reservation declaring the non-application of the provisions of the Warsaw Convention to the carriage of persons, baggage and cargo for U.S. military authorities on aircraft, registered in the United States, the whole capacity of which has been reserved by or on behalf of such authorities. This reservation would have direct application to the Civil Reserve Air Fleet (CRAF) program, whereunder U.S. flag air carriers agree to provide aircraft to supplement military aircraft in transporting U.S. troops and supplies in certain situations.

The second reservation provided for in Montreal Protocol 4 has relevance only for States ratifying Montreal Protocol 3. The reservation originates with Protocol 4. Inasmuch as the Administration is not pursuing Senate advice and consent to ratification of Protocol 3 at this time, the second reservation presently is not at issue.

Correspondence Pertaining to Montreal Protocol No. 4 from the U.S. Department of Transportation

U.S. DEPARTMENT OF TRANSPORTATION,
Assistant General Counsel for International Law,
400 Seventh St., S.W., Washington, D.C. 20590.

BRIAN P. MCKEON,
Minority Counsel, Committee on Foreign Relations,
U.S. Senate, Washington, D.C. 20510–6225.

DEAR MR. MCKEON: You have asked that we compare the baggage liability limitations in the event that Montreal Protocol No. 4 (relating to cargo) is ratified, with domestic baggage liability limitations.

Domestic liability limitations are governed by Part 254.4 of the Department's Regulations (14 C.F.R. Part 254.4), which precludes airline limits on liability for passenger baggage below $1250 per passenger.

If Protocol No. 4 (which includes the 1965 Hague Protocol) were ratified, the baggage liability limit would remain unchanged from that applicable under the currently effective Warsaw Convention. That liability is equal to 250 gold francs per kilogram, which the Civil Aeronautics Board concluded in Order 74–1–16 (39 F.R. 1526, January 10, 1974) was equivalent to $20.00 per kilogram, or $9.07 per pound. In addition, liability for carry-on baggage under Warsaw is 5,000 gold francs, or up to $400 per passenger.

A direct comparison of the domestic baggage liability limit with the Warsaw limit is difficult, since the domestic baggage limit is a total per passenger limit, while the Warsaw limit is based on the weight of checked baggage lost or damaged plus a per passenger limit on carry-on baggage. In actuality, for U.S. origination passengers, baggage is not weighed, but is limited to a set number of pieces and restricted by the size of the baggage. Carriers have adopted tariffs that provide an assumed 70-pound weight limit for lost baggage, the maximum weight of baggage permitted under the piece baggage system applicable for passenger transportation from the United States.

Using this formula, and assuming one lost bag, the maximum liability of the carrier under Warsaw would be 70 lbs. times $9.07 per pound, or $634.90, plus the $400 unchecked baggage limit, for a total of $1034.90. If two bags were lost (the maximum number of bags which may be checked under the piece baggage system), the liability would be $1,269.80 (2 X 70 X $9.07), plus the $400 for unchecked baggage, for a maximum total of $1669.80. Accordingly, the current baggage liability limit under Warsaw, which is the same as the baggage liability limit if Montreal Protocol No. 4 were ratified, is similar to the $1250 domestic baggage liability limitation permissible under Section 254.4 of the Department's Regulations.

If I can be of further assistance, please do not hesitate to call on me.

Sincerely,

DONALD H. HORN,
Assistant General Counsel For International Law.

List of Carriers Signatory to the IATA Intercarrier Agreement on Passenger Liability, As at 12 June 1998

1. Aer Lingus plc
2. Aerolineas Argentinas S.A.
3. Aeromexpress
4. Aerovias de Mexico, S.A. de C.V. (Aeromexico)
5. Air Afrique
6. Air Aruba
7. Air Baltic Corporation SIA
8. Air Canada
9. Air Excel Commuter
10. Air France
11. Air Jamaica Limited
12. Air Mauritius
13. Air New Zealand
14. Air Pacific Limited
15. Air UK Group Limited
16. Air Vanuatu
17. Alaska Airlines
18. Alitalia
19. All Nippon Airways Co., Ltd
20. Allegheny Airlines, Inc.
21. America West Airlines, Inc.
22. American Airlines
23. American Trans Air, Inc.
24. Asiana
25. Augsburg Airways GmbH
26. Austrian Airlines
27. Avianca
28. Azerbaijan Hava Yollary
29. Braathens S.A.F.E.
30. British Airways p.l.c.
31. Canadian Airlines International
32. Cathay Pacific Airways Ltd.
33. Central Mountain Air Ltd
34. Cimber Air A/S
35. Compagnie Air France Europe
36. Continental Airlines Inc.
37. Continental Express
38. Continental Micronesia
39. Croatia Airlines
40. Crossair
41. CSA—Czech Airlines
42. Delta Air Lines, Inc.
43. Deutsche BA Luftfahrtgesellschaft mbH
44. Deutsche Lufthansa AG
45. Egyptair
46. Emirates
47. Eurowings Luftverkehrs AG
48. Finnair OY
49. Garuda Indonesia
50. GB Airways
51. Hawaiian Airlines
52. Heli Air AG
53. Heli-Linth AG
54. Iberia
55. Icelandair
56. Intermpex-Avioimpex

57. Japan Air Charter (JAZ)
58. Japan Air System Co. Ltd
59. Japan Airlines Co. Ltd.
60. Japan Asia Airways (JAA)
61. Jet Airways (India) Pvt Ltd.
62. Kenya Airways
63. Kiwi International Air Lines
64. KLM Cityhopper B.V.
65. KLM Royal Dutch Airlines
66. Korean Air Lines Co., Ltd.
67. LAPSA Lineas Aereas Paraguayas
68. Landa Air Luftfahrt AG
69. Luxair
70. Maersk Air A/S
71. Maersk Air Ltd.
72. Malaysia Airlines
73. Malex—Hungarian Airlines Public Ltd. Co.
74. Martinair Holland N.V.
75. Midwest express Airlines, Inc.
76. Northwest Airlines, Inc.
77. Pakistan International Airlines (PIA)
78. Piedmont Airlines, Inc.
79. Polskie Linie Lotnicze—Polish Airlines
80. PSA Airlines, Inc.
81. Qantas Airways Limited
82. Reeve Aleutian Airways, Inc.
83. Regional Airlines
84. Royal Air Maroc
85. SABENA
86. Saudi Arabian Airlines Corp.
87. Scandinavian Airlines System (SAS)
88. Singapore Airlines Ltd.
89. Sobelair
90. South African Airways
91. Swissair
92. TACA
93. TAP Air Portugal
94. TAT European Airlines
95. Trans World Airlines Inc. (TWA)
96. Transavia airlines C.V.
97. Transbrasil S/A Linhas Aereas
98. Trinidan & Tobago BWIA International
99. Turk Hava Yollari A.O. (Turkish Airlines)
100. Tyrolean Airways—Tiroler Luftfahrt AG
101. United Airlines
102. UPS Airlines
103. US Airways, Inc.
104. Varig S.A.
105. VIASA

List of Carriers Signatory to the Agreement on Measures to Implement the IATA Intercarrier Agreement, As at 12 June 1998

1. Air Afrique
2. Air Baltic Corporation AIA
3. Air Canada
4. Air France
5. Air New Zealand
6. Air Pacific Limited
7. Alaska Airlines
8. Allegheny Airlines, Inc.
9. America West Airlines, Inc.
10. American Airlines
11. American Trans Air, Inc.
12. AMR Combs BJS, Inc.
13. AMR Eagle, Inc
14. asiana
15. Austrian Airlines
16. Avianca
17. British Airways p.l.c.
18. Canadian Airlines International
19. Cathay Pacific Airways Ltd.
20. Central Mountain Air Ltd
21. Compagnie Air France Europe
22. Continental Airlines Inc.
23. Continental Express
24. Continental Micronesia
25. Crossair
26. CSA—Czech Airlines
27. Delta Air Lines, Inc.
28. Deutsche BA Luftfahrtgesellschaft mbH
29. Deutsche Lufthansa AG
30. Finnair OY
31. GB Airways
32. Hawaiian Airlines
33. Heli Air AG
34. Heli-Linth AG
35. Icelandair
36. Kenya Airways
37. Kiwi International Air Lines
38. KLM Royal DutchAirlines
39. Korean Air Lines Co., Ltd.
40. Lauda Air Luftfahrt AG
41. Luxair
42. Maersk Air A/S
43. Maersk Air Ltd.
44. Midwest Express Airlines, Inc.
45. Northwest Airlines
46. Piedmont Airlines, Inc.
47. PSA Airlines, Inc.
48. Qantas Airways Limited
49. Reeve Aleutian Airways, Inc.
50. Royal Air Maroc
51. SABENA
52. Scandinavian Airlines System (SAS)
53. Singapore Airlines Ltd.
54. Sobelair
55. Swissair
56. TAP Air Portugal
57. TAT European Airlines
58. Trans World Airlines Inc. (TWA)
59. Transavia airlines C.V.
60. Transbrasil S/A Linhas Aereas
61. Turk Hava Yollari A.O. (Turkish Airlines Inc.)
62. Tyrolean Airways—Tiroler Luftfahrt-AG
63. United Airlines
64. UPS Airlines
65. US Airways, Inc.
66. Varig S.A.

List of Airlines Having Waived Liability Limits, 15 April 1998

1. Air Canada[1]
2. Air France[1]
3. Alaska Airlines Inc.
4. All Nippon Airways[2]
5. America Trans Air[1]
6. American Airlines[1]
7. Asiana Airlines[3]
8. Austrian Airlines[4]
9. Avianca[1]
10. British Airways[1]
11. British Midland[5]
12. British Regional Airlines[5]
13. Canadian Airlines[1]
14. Cathay Pacific[1]
15. Continental Airlines[1]
16. Continental Micronesia[1]
17. Delta Air Lines[1]
18. Finnair[4]
19. GB Airways
20. Hawaiian Airlines[1]
21. Icelandair[4]
22. Japan Air Charter (JAZ)[2]
23. Japan Air System[2]
24. Japan Airlines[2]
25. Japan Asia Airways (JAA)[2]
26. KLM[4]
27. KLM City Hopper[4]
28. Korean Airlines[1]
29. Lauda-air
30. Loganair[5]
31. Lufthansa[1]
32. Maersk Air A/S
33. Malaysian Airlines System[1]
34. Martinair[4]
35. Manx Airlines[5]
36. Northwest Airlines[1]
37. Qantas
38. Royal Air Maroc
39. SAS[1] [4]
40. Singapore Airlines Limited
41. Swissair[1] [4]
42. Balair[1] [4]
43. Crossair[1] [4]
44. Tower Air[6]
45. Trans World Airlines[1]
46. Transavia Airlines C.V.[4]
47. United Airlines[1]
48. UPS
49. US Airways, Inc.[1]
50. El Al Israel Airlines
51. Braathens ASA

Notes:
[1] Filed tariff with US DoT in course of 1996/1997/1998.
[2] Have not signed MIA—filed tariffs in 1992.
[3] Government Approval—1 November 1997.
[4] By declaration of 25 November 1996.
[5] Have not signed ILA/MIA.
[6] Have not signed ILA/MIA, only filed tariff with US DoT waiving liability limits worldwide.

Responses to Additional Questions for the Record Submitted by the Committee to Assistant Secretary Alan P. Larson

QUESTIONS SUBMITTED BY SENATOR HAGEL

1991 Convention for the Protection of New Varieties of Plants

Question. The 1991 Plant Variety Protection Convention distinguishes between "varieties" of plants and "protectable varieties."

- What practical impact will this distinction have on the protection of plant varieties?

Answer. This distinction has no impact on protection. When the Convention refers to "varieties," it means those varieties that are eligible for protection, but where such protection has not yet been granted. When it refers to "protected varieties," it generally does so in the context of what the scope and limitations of the breeder's right are after protection has been obtained.

Question. Article 3 of the treaty requires the UPOV system to apply to all botanical genera and species. This will broaden commitments beyond those genera and species that are deemed to be of economic importance.

- How will this impact tropical plant species?
- Who will assert these rights if there is no economic interest at this time?

Answer. The answer to the first part of this question is that the broadening of the definition of plant varieties eligible for protection will benefit tropical species. To the extent that these species meet the four criteria for obtaining protection of distinctiveness, uniformity, stability, and novelty, they will now be eligible for protection in those countries that had previously limited protection to specific lists of genera and species. The United States has provided protection to all genera and species by way of the PVPA, the Plant Patent Act, and by utility patents under 35 USC 101.

The obtainment of rights can be distinguished from the assertion of rights. Even if there is no economic interest, a plant breeder may under the 1991 UPOV Conven-

tion obtain breeder's rights if the plant variety meets the criteria outlined above. If a plant breeder obtains a right to a variety, it is his choice whether to assert this right. If the variety is not commercialized and not infringed, it would not be necessary to assert a right.

Question. Under the Convention, Member States must treat nationals and residents of other States no less favorably, for purposes of granting and protecting breeder's rights, than its laws accord its own nationals.

- Does this "national treatment" provision provide any private right of action? Any right of action before the WTC?
- How will be it be enforced in the United States?

Answer. All holders of breeder's rights may seek to exercise their rights to the extent permitted under domestic law to nationals of each UPOV member. Holders of breeder's rights do not have access to the World Trade Organization Dispute Settlement Mechanism. The provisions of the 1991 UPOV Convention will be enforced in the United States in accordance with The Plant Variety Act, as amended (7 USC 2321 et seq.) and the Plant Patent Act (35 USC 161 et seq.) and the Utility Patent Act (35 USC 101 et seq.).

Question. The TRIPs Agreement of the World Trade organization contains an obligation to provide adequate and effective protection for plant varieties.

- How does the 1991 UPOV Amendment interrelate with these requirements? Is compliance with UPOV understood to be "adequate and effective" protection in this area?
- Would compliance with the UPOV Convention, but not the 1991 Amendments to the Convention, be "adequate and effective" protection in this area?

Answer. The decision as to whether the 1991 UPOV Convention meets the requirements of the TRIPs Agreement has not so far been made by the TRIPs Council. However, it appears that implementation and enforcement of the provisions of the 1991 UPCV Convention should meet the TRIPs obligation outlined in Article 27: "Members shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof." On the other hand, it appears likely that membership in the 1978 UPOV Convention in and of itself cannot be considered as fulfilling TRIPs Article 27 obligations since the 1978 UPOV Convention does not require members to protect all botanical species or genera that are eligible for protection. In addition, the 1978 Act permits UPOV member states to discriminate against foreign breeders by limiting their rights of protection in the member State to those afforded in their own country. Under the 1991 Act, a Contracting Party must treat nationals and residents of another Contracting Party no less favorably, for purposes of granting and protecting breeder's rights, than itS laws accord its own nationals. Unlike the national treatment provisions in the 1978 UPOV Convention, The 1991 UPCV Convention national treatment provisions are compatible With TRIPS.

Question. These Amendments were signed by the United States in 1991 yet were never sent to the Senate for its advice and consent until 1995. Why was there such a long delay? Does this reflect a lack of priority by the State Department on this issue?

Answer. The delay in submission of the treaty package was directly linked to uncertainty as to whether implementing legislation would be passed by the Congress. Certain provisions of the implementing legislation—notably, language prohibiting farmers from selling protected seeds—were controversial at the time. The 1995 Supreme Court decision in *Asgrow Seed Co.* v. *Winterboer* laid to rest any uncertainty in this area. Implementing legislation entered into effect in April, 1995, and the treaty package was transmitted shortly afterwards.

Question. Under the UPOV Convention, how can U.S. farmers and seed businesses raise violations of the treaty? What is the procedure for enforcing the Convention and the new Amendments?

Answer. Private parties may seek all remedies available through the domestic legal system of a country not in compliance with UPOV commitments. Sovereign entities may be able to seek implementation of a WTO member's TRIPs obligations under Article 27 to provide "protection of plant varieties either patents or by an effective *sui generis* system or by any combination thereof" through the WTO Dispute Settlement Mechanism.

Question. The 1991 Amendment grants the European Union the ability to become a member of the Convention. Under the terms of the treaty, the E.U. as an organ may cast the votes of all E.U. members. Does this procedure ensure that the E.U. will control the agenda at the UPOV Council? If not, why not?

Answer. The 1991 UPOV Convention, Article 26(6)(b) states: "Any contracting Party that is an intergovernmental organization may, in matters within its competence, exercise the rights to vote of its member States that are members of the

Union. Such an intergovernmental organization shall not exercise the rights to vote of its member States if its member States exercise their right to vote, and vice versa."

UPOV currently has 38 members of whom 13 belong to the European Union. There currently are no intergovernmental organizations that are members of UPOV, including the EC. If the EC were to become party to the 1991 UPOV Convention and cast the votes of its member states as a bloc, the EU would still not constitute a majority within UPOV.

Trademark Law Treaty

Question. Do you support the implementing legislation for the Trademark Law Treaty, H.R. 1661? If not, what changes should be made in the implementation bill? Are you aware of any opposition to the implementation bill?

Answer. The Administration supports the implementing legislation in its present form. We are unaware of any opposition to H.R. 1661 The American Bar Association, the International Trademark Association, and the American Intellectual Property Lawyers Association have all given their unequivocal support for U.S. entrance into the Trademark Law Treaty. The latter two organizations testified in favor of H.R. 1661 during a House Committee on the Judiciary, Subcommittee on Courts and Intellectual Property hearing (chaired by Rep. Coble) held on May 22, 1997.

Question. The Trademark Law Treaty incorporates by reference detailed regulations and a standard trademark application form. Will these regulations impose any administrative burden on the United States? What changes will be needed in U.S. trademark applications? What is the phase-in time period?

Answer. The regulations will impose no additional administrative burdens on either the U.S. government or on trademark holders. Only minor changes will have to be made to the U.S. trademark application form. For example, the drawing will be incorporated onto the first page of the application form.

The legislation to implement the Trademark Law Treaty will become effective either one year after the date of enactment or upon entry into force of the Treaty, whichever occurs first. Article 20(3) of the Treaty provides that a Contracting Party shall be bound by the Treaty three months after the date on which it deposits its instrument of ratification or accedes to the Trademark Law Treaty.

Question. The Trademark Law Treaty eliminates several formalities in the registration process. Are you confident that the requisite proof of trademark will be available under this new regime?

Answer. The U.S. trademark bar has enthusiastically welcomed the U.S. becoming party to the Trademark Law Treaty and the incorporation of the Trademark Law Treaty obligations into U.S. law. The Administration is unaware of any circumstances in which accession to the Trademark Law Treaty would jeopardize the ability of trademark holders to demonstrate "proof of trademark."

Hearing on the International Grains Agreement, 1995 (Treaty Doc. 105–4)

Question. Have the Food Aid Convention and Grains Trade Convention been extended beyond June 1998, as permitted by the treaties? If so, to what date?

Answer. Yes. The Food Aid and Grains Trade Conventions have both been extended to June 1999.

Hearing on the International Grains Agreement, 1995 (Treaty Doc. 105–4)

Question. The Grains Convention attempts to set guidelines regarding concessional transactions. Concessional transactions are not supposed to interfere with normal commercial trade in these products.

- How is this monitored by the Council?
- What steps does the Grains Council take when Member States attempt to gain trade advantages through concessional sales?
- Are there any recent examples of countries "dumping" grain products at concessional levels to the detriment of other member states' commercial activities?

Answer. Guidelines regarding concessional transactions are established under the Food and Agricultural Organization's "Principles of Surplus Disposal and Consultative Obligations of Member Nations." The FAO's Committee on Surplus Disposal (CSSD), headquartered in Washington, is the organization that actually monitors concessional transactions to see that they do not interfere with normal commercial sales. It is also the organization that ensures, through its consultative mechanisms, that members do not gain trade advantages through concessional sales. International Grains Council data on grains trade is critical to this process. This data establishes the baseline of normal commercial activity against which any concessional sale must be judged to be an addition to commercial purchases rather than an alternative to such purchases -- the guiding principle of surplus disposal.

Accordingly, the Secretariats of the IGC and the CSSD remain in close contact and regularly exchange data. There are no recent examples of "dumping" of grains under such concessional transactions.

Question. The Food Aid Convention permits countries to specify recipients of their grains. Does the United States apply its laws that limit foreign assistance to certain rogue regimes to its commitments under the treaty?

Answer. Yes. The United States applies these laws and does not provide food aid assistance to proscribed destinations.

Question. Member states are permitted under the Food Aid Convention to make contributions in the form of cash grants as well as grain grants. What precautions are taken to ensure these grants are in fact used for food assistance?

Answer. When a member state seeks to meet its annual Food Aid Convention commitment in the form of a cash grant, it must provide information to the FAC Secretariat detailing precisely how that money was spent to purchase food aid for needy recipients. Moreover, it must demonstrate that the cash it provided—typically to the World Food Program—was sufficient to purchase the tonnage of food assistance required to meet its annual commitment, a commitment expressed in Article 111(4) of the FAC in tonnage rather than in value terms.

Question. If the International Grains Council reallocates votes because of "significant shift in world trading patterns," as provided in Article 11(4) of the Convention, is the reallocation to be treated as an amendment to the Convention? Will the Administration submit any reallocation of votes to the Senate for its advice and consent?

Answer. Pursuant to Article 11(4) of the Convention, if the Council decides that a significant shift in world grain trading patterns has occurred, it shall review, and may adjust, the votes of members. Such adjustments are regarded as amendments to the Convention, and thus are subject to the provisions of Article 32. As such, we plan to submit such adjustments to the Senate.

By contrast, routine adjustments to the votes of members may result from (1) review of the distribution of votes when the Convention is extended (Article 11(3)), or (2) countries either becoming or ceasing to be parties to the Convention (Article 12(7)). The Convention provides that such adjustments shall be handled by the Council, through the Rules of Procedure where applicable, rather than as amendments to the Convention. In these cases, we would not expect to submit the adjustments to the Senate.

Question. One of the Ministerial Decisions adopted as part of the Final Act of the Uruguay Round of Multilateral Trade Negotiations in April 1994 addresses the "possible negative effects" of the Uruguay Round agricultural reform program on least-developed and net food-importing developing countries. In the Decision, trade ministers agreed, among other things, to review the level of food aid established by the Food Aid Committee under the Food Aid Convention, 1986, to initiate negotiations "in the appropriate forum to establish a level of food aid commitments sufficient to meet the legitimate needs of developing countries during the reform programme," and "to adopt guidelines to ensure that an increasing proportion of basic foodstuffs is provided to least-developed countries in fully grant form and/or on appropriate concessional terms in line with Article IV of the Food Aid Convention, 1986."

- How has the World Trade Organization since interacted with the Food Aid Committee?
- Will these Uruguay Round commitments have an effect on the Food Aid Convention as a vehicle for international obligations in the area?

Answer. Since the meeting of the WTO Ministers in Singapore (in December 1996), when it was decided that the Food Aid Committee would play a key role in implementing the "Marrakesh Decision" described above, the Food Aid Committee and the World Trade Organization (WTO) have been in frequent contact. Renato Ruggiero, the Director-General of the WTO and Germain Denis, the Executive Director of the International Grains Council/Food Aid Committee, have corresponded concerning actions to be taken by the Food Aid Committee. (A copy of this correspondence is attached.) In addition, Mr. Denis has attended WTO Committee on Agriculture meetings to report on actions taken by the Food Aid Committee. Finally, the WTO's Paul Shanahan attends open Food Aid Committee sessions to monitor progress.

WTO Ministers at Singapore sought to encourage additional countries to provide food aid when they urged the FAC to establish a level of food aid commitments "covering as wide a range of donors and donable foodstuffs as possible." This commitment is having an important impact in Food Aid Committee discussions on renewal of the Food Aid Convention, with many members, including the United States, pushing to broaden both the list of food aid donors and the types of commodities considered food aid.

[The correspondence referred to above follows:]

Correspondence Concerning Actions to be Taken by the Food Aid Committee

FOOD AID COMMITTEE,
24 January 1997.

To: All members of the Food Aid Committee

From: G. Denis, Executive Director, International Grains Council

Subject: Informal meeting—31 January 1997

We are circulating under cover, for your information, a copy of the letter dated 20 January, 1997 (without its attachments) from the WTO director General conveying the formal outcome of the Singapore Ministerial Conference as it relates to the Food Aid Convention.

RENATO RUGGIERO,
DIRECTOR-GENERAL,
World Trade Organization,
20 January 1997.

Mr. Germain Denis,
Executive Director,
International Grains Council

Dear Mr. Denis,

At the first meeting of the WTO Ministerial Conference, which was held in Singapore from 9 to 13 December 1996, Ministers agreed to the recommendations of the WTO Committee on Agriculture relative to the Marrakesh Ministerial Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries.

As you are aware, one of these recommendations provides for action to be initiated in 1997 within the framework of the Food Aid Convention. I am therefore conveying to you under cover of this letter a copy of the Singapore Ministerial Declaration (WT/MIN(96)/DEC), paragraph 6 of which records the agreement of WTO Ministers in this regard. I also enclose a copy of the relevant report of the WTO Committee on Agriculture (G/L/125), paragraph 18(i) of which sets out the relevant recommendation. In so doing I would like to underline the importance which Ministers generally attach to this endeavour and would greatly appreciate it if you could continue to use your good offices to foster early and effective follow-up action as appropriate. In this regard it is encouraging to note that the Food Aid Committee has already taken the initiative in getting the process under way.

I would also like to take this opportunity to express my appreciation for the contributions made to the work of the WTO Committee on Agriculture by your Secretariat and to assure you and the Members of the International Grains Council and the Food Aid Committee of the WTO Secretariat's willingness to provide such assistance as may be required in implementing the recommendation of the WTO Ministerial Conference.

With my best personnel wishes for a happy and successful 1997.

Yours sincerely,

RENATO RUGGIERO

FOOD AID COMMITTEE,
13 June 1997.

To: All members of the Food Aid Committee

From: G. Denis, Executive Director, International Grains Council

Subject: Follow-up to the Singapore WTO Ministerial Conference

For the information of members, I attach a copy of a letter sent to me on 12 June 1997 by the Director-General of the World Trade Organisation (WTO).

RENATO RUGGIERO,
DIRECTOR-GENERAL,
World Trade Organization,
12 June 1997.

Mr. Germain Denis,
Executive Director,
International Grains Council

Dear Mr. Denis,

I am writing to you in connection with the follow-up to the recommendation of the Singapore WTO Ministerial Conference relating to implementation of the Marrakesh Ministerial Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries (the NFIDC Decision) on the level of food aid commitments and concessionality guidelines. This matter was the subject of discussion at an informal meeting in Geneva this week with representatives of developing country WTO Members. In the light of this discussion it appears to me that it would be useful if I were to enlarge on the general point made in my letter of 20 January 1997 concerning the importance which WTO Ministers generally attach to effective implementation of the recommendation of the Singapore Ministerial Conference.

The least developed and net food-importing developing countries attach very considerable importance to achieving a positive outcome to next weeks meeting of the Food Aid Committee in terms of implementing the recommendation in paragraph 18(i) of the report of the Committee on Agriculture (G/L/125, of 24 October 1996). This I believe is a legitimate and reasonable expectation on their part, not only given the fact that the Marrakesh NFIDC Decision is an integral part of the overall Uruguay Round results, but equally importantly because the Singapore Ministerial recommendation itself is the result of the carefully and extensively negotiated package that went to the Singapore Conference.

Representatives of the least developed and net food-importing countries will have the opportunity to register their positions and exchange views with Members of the Food Aid Committee at the information meeting convened for this purpose on Tuesday 17 June. This is obviously a constructive start to the process provided for in the recommendation to enable recipient countries to participate in the development of "recommendations with a view towards establishing a level of food aid commitments, covering as wide range of donors and donable foodstuffs as possible, which is sufficient to meet the legitimate needs of developing countries during the reform programme." no doubt Members of the Food Aid Convention will be giving consideration to arrangements which will enable an on-going dialogue to be maintained with least-developed and net food-importing developing countries with regard to implementation of the Singapore Ministerial recommendation.

The general interest on the part of WTO Members in the follow-up to the recommendation of the Singapore Ministerial Conference is also reflected by the fact that this subject will be on the agenda of the 26–27 June meeting of the WTO Committee on Agriculture. I would hope that a representative of the International Grains Council will be able to attend this meeting with a view to providing a report on the general outcome of the Food Aid Committee's deliberations.

I would be most grateful if arrangements could be made, as appropriate, for this letter to be brought to the attention of the Chairman and members of the Food Aid Committee together with my appreciation for the prompt and efficient manner in which the follow-up[process generally has been initiated.

With my best personal regards and best wishes for a successful meeting of the Food Aid Committee.

Yours sincerely,

RENATO RUGGIERO.

INTERNATIONAL GRAINS COUNCIL,
EXECUTIVE DIRECTOR,
17 June 1997.

Mr. Renato Ruggiero
Director-General
World Trade Organization

Dear Mr. Ruggiero,

I wish to acknowledge receipt of your letter dated 12 June 1997 concerning the Food Aid Convention and the interests of Net Food-Importing Developing Countries.

On Tuesday 17 June, FAC members initiated consultations on the matters covered by your letter with developing country representatives. The same day, FAC members also held preliminary discussions on the future of the Food Aid Convention beyond 30 June 1998.

In light of these developments, I will attend the meeting of the Committee on Agriculture in Geneva on Friday, 19 June 1997, and make an oral report on the situation.

Yours sincerely,

G. DENIS.

FOOD AID COMMITTEE,
11 July 1997.

To: All members of the Food Aid Committee

From: G. Denis, Executive Director, International Grains Council

Subject: WTO Agriculture Committee, Geneva, 26–27 June 1997

For information, attached is the text of a statement made by the ICC Executive Director at the WTO Agriculture Committee in respect of the Decision of the WTO Singapore Ministerial conference concerning the question of Net-Food Importing Developing Countries.

WTO Agriculture Committee: Statement by IGC Executive Director (27 June 1997)

I am pleased to provide you with a report on recent and planned activities by the Food Aid Committee in relation to the Decision of the WTO Singapore Ministerial Conference concerning the question of Net-Food Importing Developing Countries.

Background

To put the activities of the Food Aid Committee in some perspective, I would like briefly to recall a few points.

First, the present Food Aid Convention (FAC) came into effect on 1 July 1995, for a duration of three years, unless extended in its present form or otherwise modified.

Second, since then, there has been a number of developments which have taken place in the area of food aid:

- the role of food aid was discussed by the World Food Summit in the context of world food security objectives;
- the financial impact of world grain prices on the import bills of developing countries was drawn to the attention of international financial institutions by the WTO Singapore Ministerial Conference;
- food aid policies have been under review in a number of donor countries. These reviews are taking place in the light of broader longer-term food security concerns, the fact that an increasing proportion of food aid is going to emergency humanitarian assistance as opposed to program food aid, as well as mounting budgetary pressures on ODA's;
- world wheat prices are currently are in the U.S. $140–150 range, compared to a U.S. $250 peak about one and a half year ago.

Third, over the years, food aid levels have generally exceeded the minimum annual commitments under the FAC. Since that are now at about the minimum levels set it the Convention, this situation effectively increases the value of the international food safety net which is being guaranteed to food deficit and poor developing countries. Because the obligations are in volume terms (of wheat equivalents) not in value, this minimum level food aid is made available irrespective of world grain prices.

FAC Activities

In January 1997, I received a letter from the Director General of the WTO asking to inform members of the Food Aid Committee about the outcome of your Singapore Ministerial Conference, in respect of food deficit developing countries.

FAC members immediately started meeting to develop an approach, which would both respond to the WTO Decision and their own requirements bearing on the future of the Convention.

As a practical matter, FAC members have arranged meetings along four lines:

1. First, with potential new FAC members as food aid donors. On April 9, a meeting was held with some 16 non-FAC members. About one-third

have subsequently shown interest in follow-up activities. In the autumn, dialogue with all the 16 governments will continue.

2. Second, with relevant international organisations. On June 16, the Food Aid Committee held discussions with representatives of the WFP and FAO, on the basis of written submissions setting out their views on the current Convention as well as on elements that should be covered by a new Convention. Discussions will continue on certain matters of particular interest to FAC members. At the appropriate time, similar discussions will also take place with the World Bank, the IMF, as well as UNCAD and OECD.

3. Third, with food aid recipients. All representatives of countries and territories on the WTO list of Net-Food importing Developing Countries were invited to a meeting with the Food Aid Committee on 17 June. In attendance, there were eighteen representatives, ten from Africa, four from Asia Pacific, and four from the Caribbean and South America. The main elements of the Convention were explained and the views of recipients expressed on what a future Convention might include.

The immediate follow-up to discussions with food aid recipients include this briefing of the WTO Committee on Agriculture concerning FAC activities, and an information letter I will send shortly to participants on the outcome of the Food Aid Committee on the future of the Convention. If and when FAC members formally decide to open the convention to modifications, further discussions will take place on matters of mutual interest. It was agreed to maintain liaison in London through the High Commission of Mauritius.

4. Fourth, among members of the Food Aid Committee themselves. At its 17 June meeting, the Committee decided to maintain the momentum created by the activities of recent months. It agreed that a decision on whether to open the FAC for possible modifications on certain elements would be taken at its next regular meeting in December 1997. In the meantime, members will continue their examination of what the specific issues for possible modifications could be, the terms of reference for any review and the time-frame for completing it.

Areas of particular interest mentioned by some members include the list of potential FAC donors, the list of donable products, the list of eligible recipients, an strengthening of triangular and local transactions, improving the coordination and effectiveness of food aid, the terms of aid, the role and objectives of a new Food Aid Convention in the world food security and trade liberalisation context.

Members also agreed, in principle, that subject to a formal decision in December 1997, the FAC should be extended for one year. This would avoid any legal vacuum after 30 June 1998, when the Convention expires, and allow time for the necessary legislative approvals and ratification procedures by members.

Throughout these activities, liaison between the Secretariats of the IGC and the WTO is being actively maintained.

FOOD AID COMMITTEE,
26 November 1997.

To: Members of the Food Aid Committee

From: G. Denis, Executive Director, International Grains Council

Subject: Future of FAC, 1995: Letter from WTO Director-General

I am bringing to your attention a letter from the WTO Director-General, dated 25 November 1997, in which he strongly urges members of the Food Aid Committee, at their forthcoming meeting, to take the necessary decisions in order "to initiate negotiations" on the future of the current Convention, covering those "elements and objectives" established by member governments in the context of their WTO commitments to net-food importing developing countries.

RENATO RUGGIERO,
DIRECTOR-GENERAL,
World Trade Organization,
25 November 1997.

Mr. Germain Denis,
Executive Director,
International Grains Council

Dear Mr. Denis,

You will recall that in June this year I wrote to you, and through you to the Chairman and Members of the Food Aid Committee, in order to stress the importance which Members of the WTO, in particular the least developed and net food-importing developing countries, attach to an effective follow-up to the Singapore WTO Ministerial Conference recommendations on the implementation of the Marrakesh Ministerial Net Food-Importing Developing Country (NFIDC) Decision relating to food aid commitments and concessionality guidelines in the context of preparations for the renegotiation of the Food Aid Convention. These recommendations provide that: "in anticipation of the expiry of the current Food Aid Convention in June 1998 and in preparation for the renegotiation of the Food Aid Convention, action be initiated in 1997 within the framework of the Food Aid Convention, under arrangements for participation by all interested countries and by relevant international organizations as appropriate, to develop recommendations with a view towards establishing a level of food aid commitments, covering as wide a range of donors and donable foodstuffs as possible, which is sufficient to meet the legitimate needs of developing countries during the reform programme. These recommendations should include guidelines to ensure that an increasing proportion of food aid is provided to least-developed and net food-importing developing countries in fully grant form and/or on appropriate concessional terms in line with Article IV of the current Food Aid Convention, as well as means to improve the effectiveness and positive impact of food aid."

I would first of all like to express my appreciation and that of the WTO Members concerned for the effective and expeditious manner in which action has been taken by the Food Aid Committee to move matters forward on a basis which has enabled the least developed and net food-importing countries, as well as the relevant international organizations, to be consulted and make a contribution to the process.

I understand that the stage has now been reached where the Food Aid Committee, at its meeting in London next week, is to take decisions regarding the future of the Convention, in particular on whether a new or revised Convention is to be negotiated. having regard to the commitments undertaken by their governments in their capacity as members of the WTO under Article 16 of the WTO Agreement on Agriculture, I would, on a personal basis, strongly urge Members of the Food Aid Convention at next week's meeting of the Food Aid Committee to adopt a decision to initiate negotiations that embrace, *inter alia,* the elements and objectives provided for by Ministers in paragraphs 3 (i) and (ii) of the Marrakesh Ministerial NFIDC Decision and in the recommendations adopted at the Singapore WTO Ministerial Conference on food aid commitments and concessionality guidelines. To be perfectly frank I personally do not see how it would be possible for these commitments and recommendations to be implemented otherwise than in the context of renegotiation of the present Food Aid Convention.

In the event that a decision is taken to modify or revise the Convention, I would very much hope that provision could be made in the ensuing process for continuation of appropriate arrangements for co-operative dialogue and contacts with the least-developed and net food-importing developing countries.

I would be most grateful if arrangements could be made, as appropriate, for his letter to be brought to the attention of the Chairman and the Members of the Food Aid Committee.

With my best personal regards and wishes for a successful and productive meeting of the Food Aid Committee.

Yours sincerely,

RENATO RUGGIERO,

INTERNATIONAL GRAINS COUNCIL,
EXECUTIVE DIRECTOR,
3 December 1997.

Mr. Renato Ruggiero
Director-General
World Trade Organization

Dear Mr. Ruggiero,

Thank you for your letter of 25 November 1997 concerning the future of the Food Aid Convention, 1995 as it bears on the follow up to the WTO Singapore Ministerial Conference on the question of Net Food Importing Developing Countries.

I am pleased to inform you that, at their 2 December 1997 Session, FAC members decided:

- to open the current Convention for re-negotiation during 1998, in the expectation that a new Convention aimed at increasing the effectiveness of food aid and reflecting WTO and World Food Security considerations, would come into effect on 1 July 1999; and,
- to extend the life of the current Convention by one year to 30 June 1999, while the negotiations for a new Convention are being carried out.

FAC members also agreed that the dialogue already initiated with FAC recipients, potential new FAC members as well as with relevant international organisations, should be continued during the re-negotiations of the Convention.

WTO co-operation with the Food Aid Committee, as well as the IGC and its Secretariat is well appreciated.

Yours sincerely,

G. DENIS.

RENATO RUGGIERO,
DIRECTOR-GENERAL,
World Trade Organization,
11 December 1997.

Mr. Germain Denis,
Executive Director,
International Grains Council

Dear Mr. Denis,

Thank you very much for your up-date on the future of the Food Aid Convention 1995. I am very pleased that the recommendations of the Singapore Ministerial Conference regarding a re-negotiation of the Convention are now being put into practice. I also welcome very much that throughout the process of re-negotiation the dialogue with the net food-importing developing countries, potential new donors and the relevant international organizations will be further pursued.

I wish to take this opportunity to convey my season's greetings and best wishes for 1998.

Yours sincerely,

RENATO RUGGIERO.

QUESTIONS SUBMITTED BY SENATOR BIDEN

1991 Convention for the Protection of New Varieties of Plants

Question. In Article 1(iv), does the phrase "where the laws of the relevant Contracting Party so provide" apply both to a person who has employed the breeder and a person who has commissioned the breeder's work?

Answer. The wording of Article 1(iv) permits the national law of a member state to provide that a person may be considered to be the "breeder" if he is the employer of the actual breeder or if he commissioned the breeder's work. Accordingly, the phrase in question applies to both instances The Plant variety Protection Act provides that if an agent creates or develops a variety on behalf of a principal, the latter shall be considered to be the "breeder" (7 USC 2401(a)(2)).

Question. Article 12 permits a national authority in conducting an examination for compliance with the conditions under Articles 5 to 9 to "take into account the results of growing tests or other trials which have already been carried out." In the analysis submitted with the Convention, it is asserted that this provision "implicitly includes" tests conducted by the breeder.

• Is this understanding shared by the other signatories to the Convention?
• Was it discussed during the negotiations?

Answer. The answer to the both parts of this question is yes. In formulating the language of Article 12 quoted in the question, members, including the United States, discussed their domestic practices on numerous occasions during negotiations at committees of experts formulating the basic draft treaty proposal.

Question. What is the scope of the term "public interest" in Article 17(1)?

Answer. Each member of the 1991 UPOV Convention must make a sovereign determination of what it considers to be the "public interest." This language is unchanged from the 1978 UPCV Convention to which the United States is a member.

Question. Presuming that revisions to the Convention are adopted in the future by a conference conducted pursuant to Article 38, how would such revisions take effect?

• Specifically, how many States must ratify a revision for it to enter into force?

Answer. Revisions must be approved by a majority of three quarters of the members of the Union present and voting at a conference (Article 38). The Convention as revised in the future would then enter into force in accordance with the provisions of the revised text referring to the entry into force of the Convention. The present text and previous versions of the Convention provided that the Convention would enter into force one month after five States have deposited their instruments of ratification (Article 37 of the revised Act). No member country is obligated to become party to the revised Convention and may remain an adherent to previous versions of the Convention.

Question. Please elaborate on the meaning of Article 39(4).

Answer. If a State wishes to withdraw from the 1991 UPOV Convention, any rights which were acquired by a national of that state shall continue to exist. For example, if a member state granted a breeder's right for a term of twenty years and withdrew from the Convention in the 15th year of the protected right, the breeder (if a national of that country) would continue to enjoy protection for another five years.

Question. Article 35(1) of the Convention bars reservations, although an exception is provided for in Article 35(2).

• Why was Article 35(1) deemed necessary?
• Did the Executive Branch consult with this Committee before consenting to the inclusion of this provision in the Convention?

Answer. During the negotiations in 1991, the United States determined that the rights and obligations provided in this technical convention were very beneficial to the United States.

For example, unlike the 1978 UPOV Convention, the 1991 UPOV Convention requires UPOV members to protect all botanical genera and species that meet the four criteria of distinctiveness, stability, uniformity, and novelty, rather than just the species that are of economic importance in their own countries. For example, northern European UPOV members of the 1991 Act are now required to restrict the imports of pirated varietals of citrus fruit. Other revisions in the 1991 UPOV Convention provide greater protection against "cosmetic breeding" that borders on piracy, clarify and narrow the exception given to farmers for the hoarding of seed, and extend the period of protection to 25 years for trees and vines and 20 years for all other species.

The United States is the world's largest exporter of seed grains and other agricultural exports that would qualify for protection under the UPOV Convention. Negotiators felt that the revisions deepening and strengthening protection that are incorporated in the 1991 UPOV Convention were advantageous to the United States. As such, thus a "no reservations" clause secures the protection in these revisions for the United States by prohibiting UPOV Convention members from implementing only those revisions that were felt to be in that member's economic interests.

With regards to consultations, the United States delegation did not discuss a "no reservations" clause with the SFRC clause prior to negotiations. In addition to the considerations noted above, the United States considered the effect of such a clause in Article 35(1) with its notification exception in Article 35(2) was, for the United States, substantively identical to the 1978 Act (which also contains a "no reservations" clause)

Trademark Law Treaty

Question. The United States signed the treaty in October, 1994. It was submitted to the Senate in January, 1998. What was the reason for the delay?

Answer. The Administration did not wish to submit the treaty package to the Senate for advice and consent well in advance of Congressional consideration of implementing legislation. Trademark Law Treaty implementing legislation (H.R. 1661—

The Trademark Law Treaty Implementation Act) was introduced into Congress in 1997 following extensive consultations with U.S. bar associations on proposed amendments to domestic law.

Question. Is there a negotiating history or understanding as to what constitutes a "reasonable time limit" in Article 16?

Answer. This issue was discussed by delegates during the negotiations. It was understood by delegates that time limits would be consistent with the domestic law of their country, i.e. approximately one month to six months. The U.S. time limit is six months

Question. What is the legal status of the accompanying Regulations? Are they an integral part of the treaty?

Answer. Article 17 of the Treaty states that:

> "1(a) The Regulations annexed to this Treaty provide rules concerning (i) matters which this Treaty expressly provides to be "prescribed in the Regulations;
> (ii) matters which this Treaty expressly provides to be "prescribed in the Regulations";
> (iii) any administrative requirements, matters or procedures.
> (b) The Regulations contain the Model International Forms
> (2) In the case of conflict between the provisions of this Treaty and those of the Regulations, the former shall prevail—"

The Treaty therefore provides that the regulations set out specific direction as to the details useful in the implementation of the Treaty. Further, the Treaty provides that, where there is any conflict between the Rules and the Treaty, the language of the Treaty shall prevail. Inasmuch as there is no mechanism for amending the Rules set out in the Treaty, those Rules would have to be amended as a result of a Diplomatic Conference, as required by Article 18. We sent the Regulations for Advice and Consent, and consider them binding with the Treaty.

Question. Article 21(4) limits the reservations which a state may take. Why was this provision necessary? Did the Executive Branch consult with the Committee before agreeing to it?

Answer. In the case of this technical treaty, the provision limiting reservations was necessary in order to ensure that member states could not opt out of any of the treaties' simple procedures for establishing and maintaining trademark rights in favor of continuing their own more complex and cumbersome procedures.

For example, this treaty does not permit a member country to require the legalization, notarization, or other means of demonstrating the authenticity of a signature except under specific, limited circumstances. Trademark owners are often faced with months of delay, and must spend thousands of dollars to meet the legalization-of-signature requirements imposed by some countries. Permitting a potential member to "opt out" of such a provision would seriously undermine the purpose of the Treaty.

The Executive did not consult with the Committee before accepting the clause. While we are aware that the Senate has concerns over "no reservations" clauses, in the situation of this technical treaty, the Executive's view was that such a clause protected U.S. interests and was necessary to achieve the treaty's benefits.

Question. How will obligations under the treaty be enforced? Does the World Intellectual Property Organization have any mechanism for ensuring compliance?

Answer. When a country becomes party to the Trademark Law Treaty, it is expected to modify its rules and regulations to meet the requirements of the Treaty. There is no enforcement mechanism within the Treaty to ensure that member states are in compliance with its compliance. WIPO does not have an enforcement mechanism and does not administer any treaties that provide for action against member states that are not in compliance. To the extent that Trademark Law Treaty obligations are congruent with the intellectual property obligations of the Trade Related Aspects of Intellectual Property agreement (TRIPs), WTO member states may be able to pursue against other WTO member states implementation of trademark protection obligations through the WTO Dispute Settlement Mechanism.

Hearing on the International Grains Agreement, 1995 (Treaty Doc. 105–4)

Question. Has a member's voting rights ever been suspended under the provisions of Article 21 of the Grains Trade Convention?

Yes. At various times, Argentina, Bolivia, Ecuador, Iraq, Israel, the Russian Federation, Turkey and Yemen have had their voting rights suspended.

Question. Has the Council thus far complied with the requirement of Article 21(8) of the Grains Trade Convention to publish an audited statement of its receipts and expenditures?

Answer. Yes. The International Grains Council annually publishes an audited statement of its receipts and expenditures. We have attached copies of these statements.

Audited Statements of Receipts and Expenditures of the International Grains Council

FISCAL YEAR 1994/95

INTERNATIONAL GRAINS COUNCIL
Second Session
(7th December 1995)

20th November 1995

Agenda item 8: Financial situation of the Council:
(i) Audited accounts for the fiscal year 1994/95

The report by the Auditors of the Council showing receipts and payments for the year ending 30th June 1995 is attached. The Council will be invited to approve the report, which will be included as an appendix to the published version of the Report for the Fiscal Year (the draft of which has already been circulated to members of the Council as document GC2/5).

PRICE WATERHOUSE,
Chartered Accountants and Registered Auditors,
London SE1 9QL,
December 1995.

AUDITORS' REPORT TO THE MEMBERS OF THE INTERNATIONAL GRAINS COUNCIL
(FORMERLY THE INTERNATIONAL WHEAT COUNCIL)

In accordance with Article 21 (8) of the Wheat Trade Convention, 1986, we have audited the statement of receipts and expenditures on pages 2 to 5.

Respective responsibilities of the Executive Director and auditors

The Executive Director of the Council is required, in accordance with Article 21 (8) of the Wheat Trade Convention, 1986, to prepare a statement of the receipts and expenditures of the Council for each crop year. He is also responsible for keeping the accounts of the Council and for the maintenance of internal controls which ensure regularity in the receipt, disposal and custody of all funds and other resources of the Council and ensure conformity with the budget or other financial provisions approved by the Council. It is our responsibility to form an independent opinion, based on our audit, on the annual statement of receipts and expenditures and to report our opinion to you.

Basis of opinion

We conducted our audit in accordance with Auditing Standards issued by the Auditing Practices Board. An audit includes examination, on a test basis, of evidence relevant to the amounts and disclosures in the annual statement of receipts and expenditures. It also includes an assessment of the significant estimates and judgments made in the preparation of the annual statement of the Council's receipts and expenditures.

We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance that the statement of receipts and expenditures is free from material misstatement, whether caused by fraud or other irregularity or error. In forming our opinion we also evaluated the overall adequacy of the presentation of information in the statement of receipts and expenditures.

Opinion

In our opinion, the annual statement of the Council's receipts and expenditures for the year ended 30 June 1995 properly reflects the cash transactions of the International Wheat Council and presents fairly its bank and cash balances at 30 June 1995.

PRICE WATERHOUSE
Chartered Accountants and Registered Auditors

INTERNATIONAL WHEAT COUNCIL

Statement of Receipts and Payments for the Year Ended 30 June 1995

[Amounts shown are in British pounds]

	1995 £	1994 £
RECEIPTS		
Contributions, current year	1,274,320	1,220,792
Contributions, past years	101,965	296,514
Contributions, advance payments	3,400	2,300
Interest on deposit	56,665	38,153
Sale of publications and information services	75,133	73,409
Services to ISO	5,150	5,646
Total Receipts	£1,516,633	£1,636,814
PAYMENTS		
Staff		
Salaries (professional staff)	327,773	318,844
Salaries (general service staff)	280,869	296,566
Translators	25,281	23,774
Dependency allowances	9,004	8,282
Education allowance	18,396	17, 135
National insurance	36,400	34,631
Overtime	47	863
End-of-service benefit schemes	118,939	125,66
Staff group assurance	16,962	17,444
Home leave	612	1,778
Incoming/outgoing staff	10,824	—
Travel	147	1,242
	845,254	846,225
Accommodation		
Rent	157,700	155,800
Car park rent	6,000	6,000
Less: UK subsidy	(41,500)	(41,500)
Net rent	122,200	120,300
Rates	6,100	5,999
Electricity, cleaning & office maintenance	12,564	7,864
Insurance	5,315	6,768
Service charges	19,087	17,683
	165,266	158,614
Office		
Stationery and printing	23,465	25,528
Postage	21,434	20,685
Telephones and telefax	16,293	10,811
News wire services	8,732	7,247
Periodicals and information services	13,400	13,306
Hire and maintenance of equipment	10,143	14,296
Office equipment	4,600	4,249
Computer	18,711	18,069
Bank charges	1,571	1,004
Miscellaneous	2,349	2,332

Statement of Receipts and Payments for the Year Ended 30 June 1995—Continued

[Amounts shown are in British pounds]

	1995 £	1994 £
	120,698	117,527
Council and Committee		
Travel	5,342	5,627
Interpreters	14,229	14,690
Catering and entertainment	3,978	7,052
Miscellaneous	1,320	1,842
	24,869	29,211
Conference		
Travel	8,384	—
Interpreters	2,400	2,399
Catering and entertainment—94	676	10,285
Catering and entertainment—95	11,808	—
Advertising & promotion	450	926
Miscellaneous—June 93 conference	—	42
Miscellaneous—June 94 conference	231	2,723
Miscellaneous—June 95 conference	2,435	—
Receipts from delegates—June 93 conference	—	(252)
Receipts from delegates—June 94 conference	(2,439)	(27,745)
Receipts from delegates—June 95 conference	(28,338)	—
Sponsorship	(5,000)	—
	(9,393)	(11,622)
Professional services		
Freight consultants	5,250	5,250
Trustee	400	7,250
Audit fees	3,750	3,550
Trustee indemnity insurance	2,420	2,200
	11,820	18,250
TOTAL EXPENSES	1,158,514	1,158,205
Non-operating items		
Season ticket loans	678	245
BUPA/WPA/PPP	140	(1,020)
Refundable deposit—BT		(1,000)
VAT	(5,792)	(3,147)
Loss on exchange	2,117	454
	(2,857)	(4,468)
TOTAL PAYMENTS	£1,155,657	£1,153,737
EXCESS OF RECEIPTS OVER PAYMENTS	360,976	483,077
BALANCE BROUGHT FORWARD 1 JULY 1994	989,472	506,395
BALANCE CARRIED FORWARD 30 JUNE 1995	£1,350,448	£989,472

Statement of Receipts and Payments for the Year Ended 30 June 1995—Continued

[Amounts shown are in British pounds]

	1995 £	1994 £
Represented by:		
Bank balances		
Deposit accounts	1,339,571	981,179
Current accounts	10,687	7,132
Cash	190	1,161
	£1,350,448	£989,472
Reserve		
Operating reserve	700,000	600,000
Capital and contingency reserve	650,448	389,472
	£1,350,448	£989,472

Notes:

Approved by the Council on ————————/R. Mohler—Chairman, G. Denis—Executive Director

The International Wheat Council receives money from insurance companies, the Staff Provident Fund and the Cash Benefit scheme, on behalf of the beneficiaries of the insurance policies and funds, which is then paid out to those beneficiaries. These amounts are not included in the above statements of receipts and payments.

Under the Headquarters Agreement dated 22 November 1968 between the Government of the United Kingdom and the International Wheat Council, within the scope of its official activities as defined by the Agreement, the Council and its property and income are exempt from all direct taxes.

FISCAL YEAR 1995/96

INTERNATIONAL GRAINS COUNCIL
Fourth Session
(3 December 1996)

25 November 1996

Agenda item 8: Financial situation of the Council:
(i) Audited accounts for the fiscal year 1995/96

The report by the Auditors of the Council showing receipts and payments for the year ending 30th June 1996 is attached. The Council will be invited to approve the report, which will be included as an appendix to the published version of the Report for the Fiscal Year (the draft of which has already been circulated to members of the Council as document GC4/4).

PRICE WATERHOUSE,
Chartered Accountants and Registered Auditors,
London SE1 9QL,
December 1996.

AUDITORS' REPORT TO THE MEMBERS OF THE INTERNATIONAL GRAINS COUNCIL
(FORMERLY THE INTERNATIONAL WHEAT COUNCIL)

In accordance with Article 21 (8) of the Grains Trade Convention, 1995, we have audited the statement of receipts and expenditures on pages 2 to 5.

Respective responsibilities of the Executive Director and auditors

The Executive Director of the Council is required, in accordance with Article 21 (8) of the Grains Trade Convention, 1995, to prepare a statement of the receipts and expenditures of the Council for each crop year. He is also responsible for keeping the accounts of the Council and for the maintenance of internal controls which ensure regularity in the receipt, disposal and custody of all funds and other resources of the Council and ensure conformity with the budget or other financial provisions approved by the Council. It is our responsibility to form an independent opinion, based on our audit, on the annual statement of receipts and expenditures and to report our opinion to you.

Basis of opinion

We conducted our audit in accordance with Auditing Standards issued by the Auditing Practices Board. An audit includes examination, on a test basis, of evidence relevant to the amounts and disclosures in the annual statement of receipts and expenditures. It also includes an assessment of the significant estimates and judgements made in the preparation of the annual statement of the Council's receipts and expenditures.

We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance that the statement of receipts and expenditures is free from material misstatement, whether caused by fraud or other irregularity or error. In forming our opinion we also evaluated the overall adequacy of the presentation of information in the statement of receipts and expenditures.

Opinion

In our opinion, the annual statement of the Council's receipts and expenditures for the year ended 30 June 1996 properly reflects the cash transactions of the International Wheat Council and presents fairly its bank and cash balances at 30 June 1996.

PRICE WATERHOUSE
Chartered Accountants and Registered Auditors

INTERNATIONAL GRAINS COUNCIL

Statement of Receipts and Payments for the Year Ended 30 June 1996

[Amounts shown are in British pounds]

	1996 £	1995 £
RECEIPTS		
Contributions, current year	922,991	1,274,320
Contributions, past years	99,564	101,965
Contributions, advance payments	—	3,400
Interest on deposit	93,219	56,665
Sale of publications and information services	90,243	75,133
Services to ISO	4,306	5,150
Total Receipts	£1,210,323	£1,516,633
PAYMENTS		
Staff		
Salaries (professional staff)	377,092	327,773
Salaries (general service staff)	261,555	280,869
Translators	28,286	25,281
Dependency allowances	10,128	9,004
Education allowance	19,703	18,396
National insurance	35,990	36,400
Overtime	1,429	47
End-of-service benefit schemes	124,882	118,939
Staff group assurance	15,102	16,962
Home leave	2,790	612

Statement of Receipts and Payments for the Year Ended 30 June 1996—Continued

[Amounts shown are in British pounds]

	1996 £	1995 £
Incoming/outgoing staff	2,606	10,824
Travel	—	147
	879,563	845,254
Accommodation		
Rent	170,525	157,700
Car park rent	6,500	6,000
Less: UK subsidy	(49,000)	(41,500)
Net rent	128,025	122,200
Rates	11,768	6,100
Electricity, cleaning & office maintenance	14,912	12,564
Insurance	7,676	5,315
Service charges	26,418	19,087
	188,799	165,266
Office		
Stationery and printing	31,724	23,465
Postage	18,974	21,434
Telephones and telefax	14,452	16,293
News wire services	8,648	8,732
Periodicals and information services	14,608	13,400
Hire and maintenance of equipment	10,074	10,143
Office equipment	15,972	4,600
Computer	13,276	18,711
Bank charges	1,669	1,571
Miscellaneous	2,782	2,349
	132,179	120,698
Council and Committee		
Travel	11,601	5,342
Interpreters	15,080	14,229
Catering and entertainment	6,273	3,978
Miscellaneous	2,307	1,320
	35,261	24,869
Conference		
Travel	1,176	8,384
Interpreters	1,780	2,400
Catering and entertainment—94	—	676
Catering and entertainment—95	—	11,808
Catering and entertainment—96	17,694	—
Advertising & promotion	462	450
Miscellaneous—June 94 conference	—	231
Miscellaneous—June 95 conference	941	2,435
Miscellaneous—June 96 conference	9,799	—
Receipts from delegates—June 94 conference	—	(2,439)
Receipts from delegates—June 95 conference	(590)	(28,338)
Receipts from delegates—June 96 conference	(37,231)	—
Sponsorship 95	(2,227)	(5,000)

Statement of Receipts and Payments for the Year Ended 30 June 1996—Continued

[Amounts shown are in British pounds]

	1996 £	1995 £
Sponsorship 96	(4,200)	—
	(12,396)	(9,393)
Professional services		
Freight consultants	5,250	5,250
Trustee	500	400
Audit fees	3,950	3,750
Trustee indemnity insurance	2,481	2,420
	12,181	11,820
Installation of new Executive Director	8,911	
TOTAL EXPENSES	1,244,498	1,158,514
Non-operating items		
Season ticket loans	(587)	678
BUPA/WPA/PPP	(99)	140
VAT	18,523	(5,792)
Loss on exchange	(825)	2,117
	17,012	(2,857)
TOTAL PAYMENTS	£ 1,261,510	£ 1,155,657
EXCESS OF RECEIPTS OVER PAYMENTS	(51,187)	360,976
BALANCE BROUGHT FORWARD 1 JULY 1995	1,350,448	989,472
BALANCE CARRIED FORWARD 30 JUNE 1996	£ 1,299,261	£ 1,350,448
Represented by:		
Bank balances		
Deposit accounts	1,245,397	1,339,571
Current accounts	53,641	10,687
Cash	223	190
	£ 1,299,261	£ 1,350,448
Reserve		
Operating reserve	700,000	700,000
Capital and contingency reserve	599,261	650,448
	£ 1,299,261	£ 1,350,448

Notes:
Approved by the Council on 3 December 1996/L.H. Van Staden—Chairman, G. Denis—Executive Director

The International Grains Council receives money from insurance companies, the Staff Provident Fund and the Cash Benefit scheme, on behalf of the beneficiaries of the insurance policies and funds, which is then paid out to those beneficiaries. These amounts are not included in the above statements of receipts and payments.

Under the Headquarters Agreement dated 22 November 1968 between the Government of the United Kingdom and the International Wheat Council (now International Grains Council), within the scope of its official activities as defined by the Agreement, the Council and its property and income are exempt from all direct taxes.

FISCAL YEAR 1996/97

SHIPLEYS,
Chartered Accountants,
London WC2H 7DQ,
December 1997.

AUDITORS' REPORT TO THE MEMBERS OF THE INTERNATIONAL GRAINS COUNCIL

In accordance with Article 21 (8) of the Grains Trade Convention, 1995, we have audited the statement of receipts and expenditures on pages 2 to 5.

Respective responsibilities of the Executive Director and Auditors

The Executive Director of the Council is required, under Rule 26 of the Rules of Procedure under the Grains Trade Convention, 1995, to prepare a statement of the receipts and expenditures of the Council for the fiscal year. He is also responsible for keeping the accounts of the Council and for the maintenance of internal controls which ensure regularity in the receipt, disposal and custody of all funds and other resources of the Council and ensure conformity with the budget or other financial provisions approved by the Council. It is our responsibility to form an independent opinion, based on our audit, on the annual statement of receipts and expenditures and to report our opinion to you.

Basis of opinion

We conducted our audit in accordance with Auditing Standards issued by the Auditing Practices Board. An audit includes examination, on a test basis, of evidence relevant to the amounts and disclosures in the annual statement of receipts and expenditures. It also includes an assessment of the significant estimates and judgements made in the preparation of the annual statement of the Council's receipts and expenditures.

We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance that the statement of receipts and expenditures is free from material misstatement, whether caused by fraud or other irregularity or error. In forming our opinion we also evaluated the overall adequacy of the presentation of information in the statement of receipts and expenditures.

Opinion

In our opinion, the annual statement of the Council's receipts and expenditures for the year ended 30 June 1997 properly reflects the cash transactions of the International Grains Council and presents fairly its bank and cash balances at 30 June 1997.

SHIPLEY'S,
Registered Auditor

INTERNATIONAL GRAINS COUNCIL

Statement of Receipts and Payments for the Year Ended 30 June 1997

[Amounts shown are in British pounds]

	1997 £	1996 £
RECEIPTS		
Contributions, current year	800,640	922,991
Contributions, past years	402,294	99,564
Contributions, advance payments	—	—
Interest on deposit	74,252	93,219
Sale of publications and information services	77,237	90,243
Services to ISO	9,448	4,306
Total Receipts	£ 1,363,860	£ 1,210,323
PAYMENTS		
Staff		
Salaries (professional staff)	423,533	377,092
Salaries (general service staff)	261,202	261,555
Translators	26,642	28,286
Dependency allowances	8,102	10,128
Education allowance	10,506	19,703
National insurance	35,804	35,990
Overtime	475	1,429
End-of-service benefit schemes	120,903	124,882
Staff group assurance	7,904	15,102
Home leave	173	2,790
Incoming/outgoing staff	40,197	2,606
	936,501	879,563
Accommodation		
Rent	209,000	170,525
Car park rent	8,000	6,500
Less: UK subsidy	(86,500)	(49,000)
Net rent	138,500	128,025
Rates	(4,550)	11,768
Electricity, cleaning & office maintenance	22,291	14,912
Insurance	10,145	7,676
Service charges	35,024	26,418
	194,010	188,799
Office		
Stationery and printing	24,505	31,724
Postage	17,018	18,974
Telephones and telefax	13,964	14,452
News wire services	8,160	8,648
Periodicals and information services	11,595	14,608
Hire and maintenance of equipment	11,042	10,074
Office equipment	8,510	15,972
Computer	27,645	13,276
Bank charges	1,839	1,669
Miscellaneous	2,710	2,782

Statement of Receipts and Payments for the Year Ended 30 June 1997—Continued

[Amounts shown are in British pounds]

	1997 £	1996 £
	126,984	132,179
Council and Committee		
Travel	16,021	11,601
Interpreters	9,000	15,080
Catering and entertainment	10,691	6,273
Miscellaneous	5,370	2,307
Hire of Cabot Hall meeting room	3,000	—
	44,082	35,261
Conference		
Travel	989	1,176
Interpreters	3,300	1,780
Catering and entertainment—96	—	17,694
Catering and entertainment—97	18,217	—
Advertising & promotion	1,924	462
Miscellaneous—June 95 conference	—	941
Miscellaneous—June 96 conference	20	9,799
Miscellaneous—June 97 conference	14,477	—
Receipts from delegates—June 95 conference	—	(590)
Receipts from delegates—June 96 conference	(750)	(37,231)
Receipts from delegates—June 97 conference	(55,908)	—
Sponsorship 95	—	(2,227)
Sponsorship 96	—	(4,200)
	(17,731)	(12,396)
Professional services		
Freight consultants	5,250	5,250
Trustee	250	500
Audit fees	3,950	3,950
Trustee indemnity insurance	2,728	2,481
	12,178	12,181
Installation of new Executive Director	—	8,911
TOTAL EXPENSES	1,296,024	1,244,498
Non-operating items		
Season ticket loans	979	(587)
Private health insurance	333	(99)
VAT	18,523	18,523
Loss on exchange	2,007	(825)
	14,172	17,012
TOTAL PAYMENTS	£1,310,196	£1,261,510
EXCESS OF RECEIPTS OVER PAYMENTS	53,673	(51,187)
BALANCE BROUGHT FORWARD 1 JULY 1996	1,299,261	1,350,448
BALANCE CARRIED FORWARD 30 JUNE 1997	£1,352,834	£1,299,261

Statement of Receipts and Payments for the Year Ended 30 June 1997—Continued

[Amounts shown are in British pounds]

	1997 £	1996 £
Represented by:		
Bank balances		
Deposit accounts	1,305,000	1,245,397
Current accounts	47,723	53,641
Cash	211	223
	£1,352,934	£1,299,261
Reserve		
Operating reserve	700,000	700,000
Capital and contingency reserve	652,934	599,261
	£1,352,934	£1,299,261

Notes:

Approved by the Council on 1 December 1997/E. Di Emanuele—Chairman, G. Denis—Executive Director

The International Grains Council receives money from insurance companies, the Staff Provident Fund and the Cash Benefit scheme, on behalf of the beneficiaries of the insurance policies and funds, which is then paid out to those beneficiaries. These amounts are not included in the above statements of receipts and payments.

Under the Headquarters Agreement dated 22 November 1968 between the Government of the United Kingdom and the International Wheat Council (now International Grains Council), within the scope of its official activities as defined by the Agreement, the Council and its property and income are exempt from all direct taxes.

Question. What is the purpose of Article 22 of the Grains Trade Convention?

Answer. Article 22 of the Grains Trade Convention was included at the insistence of a small minority of members who wished to retain the right to raise the possibility of including economic provisions in a *future* Convention. It is important to emphasize that the current Grains Trade Convention places *no* economic requirements on members with respect either to pricing or to marketing grains, a position strongly supported by the United States and the vast majority of other members.

Question. Has the United States deposited a declaration of provisional application pursuant to Article 26 of the Grains Trade Convention?

Answer. No. The United States signed the International Grains Agreement on June 26, 1995. The Agreement entered into force July 6, 1995, on the basis of the mutual consent of those signatories which had deposited their instruments of ratification as provided for in Article 28(2) of the Grains Trade Convention. In accordance with Article 25 of the Grains Trade Convention, the United States requested and has been granted several extensions of time to deposit its instrument of ratification. The United States has been allowed to participate in the International Grains Council as a full member with voting rights and an expectation—but not an obligation—that it pay its annual dues pending deposit of its instrument of ratification. Authority to participate in and make payments to the International Grains Agreement prior to ratification of the treaty derives from section 5 of the State Department Basic Authorities Act.

Question. Has the United States deposited a declaration of provisional application to the Food Aid Convention, 1995 pursuant to Article XIX?

Answer. No. The United States signed the International Grains Agreement on June 26, 1995. The United States requested and has been granted several extensions of time to deposit its instrument of ratification. The United States has been allowed to participate in the Food Aid Committee as a full member pending deposit

of its instrument of ratification. Authority to participate in the Food Aid Committee prior to ratification of the treaty derives from section 5 of the State Department Basic Authorities Act. No separate dues are owed to the Food Aid Committee, which shares its Secretariat and its headquarters with the International Grains Council.

Appendix 3

AMR (AMERICAN AIRLINES),
P.O. Box 619616,
March 25, 1998.

Honorable JESSE HELMS,
Chairman, Committee on Foreign Relations,
Washington, DC 20510–6225.

Honorable JOSEPH R. BIDEN, JR.,
Ranking Minority Member, Committee on Foreign Relations,
Washington, DC 20510–6225.

DEAR CHAIRMAN HELMS AND SENATOR BIDEN: I understand the Foreign Relations Committee will soon hold a hearing on Montreal Protocol No. 4, a treaty that would modernize the international air cargo liability regime. I urge you to send this important treaty to the full Senate for its advice and consent.

American Airlines provides more than 100 million pounds of cargo lift every week to major cities in Europe, Canada, Mexico, the Caribbean, Central and South America, and throughout the United States. Through cooperative interline agreements, we can transfer shipments to virtually any country in the world.

Unfortunately, the growth of the air cargo industry has been slowed by its inability to use electronic waybills for international cargo shipments. The current air cargo liability system, established by the 1929 Warsaw Convention, requires paper waybills containing voluminous information that is irrelevant to shippers and carriers. In this electronic age, these requirements are burdensome and costly. The time has come to modernize.

Montreal Protocol No. 4 provides for electronic waybills and streamlined cargo documentation. Electronic waybills will reduce transit times, lower warehousing and staff costs, and enable the U.S. air cargo industry to offer its customers higher quality service.

Sincerely,

R. L. CRANDALL,
CHAIRMAN AND PRESIDENT.

NATIONAL CUSTOMS BROKERS & FORWARDERS ASSOCIATION OF AMERICA,
Washington, DC 20036,
May 12, 1998.

The Honorable JESSE HELMS,
Chairman, Senate Committee on Foreign Relations,
450 Dirksen Senate Office Building,
Washington, D.C. 20510.

DEAR CHAIRMAN HELMS: The National Customs Brokers and Forwarders Association of America (NCBFAA) is pleased to submit the following comments for the record of your Committee's May 13, 1998 hearing on the Montreal Protocol 4. NCBFAA is the national association representing licensed customs brokers and freight forwarders, including air freight forwarders.

The need for U.S. ratification of the Montreal Protocol 4 has never been greater. This treaty sets new standards for the air transport industry and will allow for the transmission of international air waybill information without the requirement of a paper document. Although it has been ratified by 26 nations, the treaty requires the approval of 30 countries to take effect. Ratification by the U.S. now would provide the impetus for other countries to sign on, allowing the treaty to formally take effect.

By allowing the electronic transmission of air waybills, the Montreal Protocol 4 will benefit all aspects of the air transport industry. Until now, international treaties dating back to 1929 required that liability limitations on air waybills must be on paper. This means that the large volume of electronic transactions in the air cargo industry must still be backed up with paper carbon copies containing the fine print about liability limits. This antiquated requirement is a huge impediment preventing the air freight industry from achieving a paperless environment.

The elimination of the paper air waybill requirement through the Montreal Protocol 4 will lower costs for the industry. It also will significantly enhance the efficiency

of the process, allowing electronic communications to flow more smoothly through the entire transportation chain.

NCBFAA urges the Senate to ratify this noncontroversial, but highly necessary, treaty at the earliest opportunity. Thank you for the opportunity to present our comments.

Sincerely,

PETER H. POWELL, SR.,
PRESIDENT.

EVERGREEN INTERNATIONAL AIRLINES, INC.,
McMinnville, Oregon 97128–9496,
March 16, 1998.

The Honorable JESSE HELMS,
Chairman, Committee On Foreign Relations,
United States Senate,
Washington, DC 20510.

DEAR MR. CHAIRMAN: I am writing to you on behalf Evergreen International Airlines, Inc. (Evergreen), to request your support for obtaining the advice and consent of the U.S. Senate to ratification of Montreal Protocol No. 4 to the Warsaw Convention of 1929. Evergreen believes that ratification of the Montreal Protocol No. 4 will create a modern cargo liability system for American air carriers and shippers.

As you may know, Evergreen has extensive authority to provide domestic and international scheduled and charter all-cargo services. Our fleet of 747–F aircraft currently operate scheduled and charter services to Australia, Hong Kong, Indonesia, New Zealand, Russia, Kenya, South Africa, Saudi Arabia, and other points in Europe and the Middle East.

We understand that the Foreign Relations Committee will hold a hearing in the near future to consider the Montreal Protocol No. 4. Evergreen hopes that the Committee will recommend favorably the U.S. Senate's advice and consent for ratification of this Protocol.

Changes in the rules governing international air cargo liability are long overdue. These rules were established even before the first DC–3 flew in commercial service, and they no longer meet the needs of carriers and shippers as we are about to enter the 21st century. In fact, these outdated liability rules impose unnecessary costs and burdens on air carriers and our customers.

It is time for international cargo liability rules to catch up with the technology advances in the air freight industry. Montreal Protocol No. 4 would streamline cargo documentation requirements for shippers. The Warsaw Convention requires that a paper waybill accompany every international air shipment. This requirement is an anachronism in the age of electronic transmission of shipping information. Montreal Protocol No. 4 would embrace electronic transmission of waybill information, and eliminate dependence on paper-based transactions.

The Warsaw Convention also requires information no longer necessary for today's shippers, such as precisely where an aircraft will stop and nature of the packaging of the shipment. If a carrier inadvertently omits any of such outdated information on a waybill, the cargo liability rules might not be enforceable in U.S. courts.

Evergreen believes it is extremely important that the U.S. Senate consent to ratification of Montreal Protocol No. 4. Ratification of the Protocol will result in significant cost savings for carriers, shippers and freight forwarders, will enhance competitiveness of U.S. carriers in promoting American exports, and will protect carriers' liability in U.S. courts.

Evergreen International Airlines requests your support, and hopes that the Foreign Relations Committee will consider favorably approval of the Montreal Protocol No. 4, to obtain the advice and consent of the U.S. Senate to ratification in the near future.

Sincerely,

RONALD A. LANE,
VICE CHAIRMAN.

UNITED AIRLINES,
Gerald Greenwald, Chairman and Chief Executive Officer,
March 26, 1998.

The Honorable JESSE HELMS,
Chairman, Committee on Foreign Relations,
450 Dirksen Senate Office Building,
Washington, D.C. 20510–6225.

DEAR CHAIRMAN HELMS: I am writing to urge that the Foreign Relations Committee take prompt action to ratify Montreal Protocol No. 4, a treaty that modernizes international air cargo liability rules by allowing for the transmission of electronic waybills.

United Airlines Worldwide Cargo serves 30 countries and two U.S. territories on five continents from eight U.S. gateways. We generated $892 million in cargo revenue in 1997, up 15.4 percent from 1996. Flying more than 2.8 billion cargo ton miles last year, United's cargo operations are the largest of any passenger/cargo combination carrier in the United States. Increasing international demand for our air cargo services is driving much of our growth. Unfortunately, outdated international air cargo liability rules established by the 1929 Warsaw Convention impair our ability to provide international air cargo services efficiently.

The Warsaw Convention requires that a paper waybill accompany each package. The waybill must include the following: the place and the date of execution; the places of departure and destination; the first carrier; the name and the address of the consignee; the nature of the goods; the number of packages; the method of packing and the numbers or marks upon them; the weight, quantity, volume or dimensions of the goods; a statement that the transportation is subject to the rules relating to liability established by the convention; the apparent condition of the goods and of the packing; the freight, the date and the place of payment and the person who is to pay it; the price of the goods if the goods are sent for payment on delivery and, if the case so requires, the amount of the expenses incurred; the amount of the value declared as the limitation of carrier liability; the number of parts of the air waybill; the documents to accompany the air waybill; and the time fixed for the completion of the transportation and a brief note of the route.

The vast majority of this required information is commercially insignificant and costly to produce. These antiquated requirements prevent us from using simplified, electronic waybills. Ratifying the Montreal Protocol No. 4 would eliminate these costly requirements and make our customers and us more competitive internationally.

Time for action on this non-controversial, cost-saving treaty is now. I appreciate your attention to this important issue, and would welcome the opportunity to discuss it further with you.

Sincerely,

GERALD GREENWALD.

JOHN H. DASBURG,
President, Chief Executive Officer,
Northwest Airlines. Inc.,
ST. PAUL, MN 55111–3034,
March 26, 1998.

The Honorable JESSE HELMS,
Chairman, Committee on Foreign Relations,
SD–450 Dirksen Senate Building,
Washington, D.C. 20510.

The Honorable JOSEPH BIDEN, JR.,
Ranking Member, Committee on Foreign Relations,
SD–450 Dirksen Senate Building,
Washington, D.C. 20510.

DEAR CHAIRMAN HELMS AND SENATOR BIDEN: Northwest Airlines seeks your support for advice and consent of Montreal Protocol No. 4, a treaty to amend the international air cargo liability regime established by the 1929 Warsaw Convention.

The existing international air cargo regime has glaring deficiencies, ranging from the antiquated cargo documentation requirements to requiring paper waybills. Ratification of Montreal Protocol No. 4 would not only streamline documentation requirements, but would also allow carriers and shippers to substitute an electronic

waybill for a paper waybill. Compliance with these outdated rules costs the U.S. economy nearly $1 billion annually.

Northwest Airlines, flying more than 2.283 billion cargo ton miles last year is one of the largest U.S. passenger/cargo combination carriers. We serve multiple foreign markets, including Tokyo, Osaka, Hong Kong, Taipei, Bangkok, Singapore, and Manila. Due to the recently announced U.S.-Japan aviation agreement, restrictions on Northwest's "Fifth Freedom" rights to carry passenger and cargo traffic between any city in Japan and any city in the Asia/Pacific region have been removed. As a result, we are anticipating growth in our international passenger/cargo service.

We would like our expansion into the Pacific/Asia region to be done in the context of a modernized air cargo liability regime. The rules from 1929 are a drain on our ability to efficiently provide service to our international customers, and adherence to these rules is costly. To maintain the U.S. leadership in providing air cargo services, the United States needs to join the growing list of nations that have already ratified the treaty.

I ask for your thoughtful consideration and support of this important issue. If you have any questions or need additional information, please contact me or Elliott Seiden, Northwest Airlines Vice President of Law and Government Affairs, at 202/842–3193.

Sincerely yours,

JOHN H. DASBURG.

cc: Senator Paul Wellstone

FDX CORPORATION,
2005 Coroporate Avenue,
Memphis, TN 38132,
March 18, 1998.

The Honorable JESSE HELMS,
Chairman, Committee on Foreign Relations,
450 Dirksen Senate Office Building,
Washington, DC 20510–6225.

The Honorable JOSEPH R. BIDEN, JR.,
Committee on Foreign Relations,
450 Dirksen Senate Office Building,
Washington, DC 20510–6225.

DEAR CHAIRMAN HELMS AND SENATOR BIDEN: I am writing to respectfully request that the Committee on Foreign Relations vote to report Montreal Protocol No. 4, an air cargo liability treaty, favorably to the Senate for advice and consent.

FedEx is the only major transportation company whose activities are devoted exclusively to express transportation, moving things which require fast, time certain, and information intensive handling. In 1997, we delivered more than 757 million packages in 211 countries. In recent years, we have experienced the greatest growth of our express shipments to and from international markets, with import growth at 30% compounded per year. and export growth rates approaching 40% for door-to-door express packages, documents, and freight shipments.

The liability rules and paperwork requirements established by the 1929 Warsaw Convention, however, are continuing impediments to FedEx's ability to efficiently service foreign markets and to take advantage of new international opportunities. Under the current liability regime, each international package must be accompanied with a paper waybill listing many details pertaining to the shipment that are not relevant to modern commerce. Producing these waybills can add up to $5 per shipment, costing us millions of dollars annually, but also burdens our ability to provide efficient express delivery overseas.

Ratifying Montreal Protocol No. 4 would streamline and modernize the cargo documentation requirements of the Warsaw Convention—allowing FedEx to omit irrelevant information from waybills and to substitute an electronic record for the paper waybill. It would bring international law into the 21st century. Furthermore, it would cut down on unnecessary administrative costs for carriers, as well as facilitate the growth of U.S. exports.

For these reasons, FedEx supports the immediate ratification of Montreal Protocol No. 4. appreciate your attention to this important matter.

Sincerely,

FREDERICK W. SMITH,
CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER.

UNITED PARCEL SERVICE,
March 13, 1998.

Honorable JESSE HELMS,
Chairman, Committee on Foreign Relations,
SD–450 Dirksen Senate Office Building,
Washington, DC 20510–6225.

Honorable JOSEPH R. BIDEN, JR.,
Ranking Minority Member, Committee on Foreign Relations,
SD–450 Dirksen Senate Office Building,
Washington, DC 20510–6225.

DEAR CHAIRMAN HELMS AND SENATOR BIDEN: I AM WRITING TO URGE YOU THAT THE COMMITTEE ON FOREIGN RELATIONS TAKE ACTION TO PROMPTLY RATIFY MONTREAL PROTOCOL NO. 4, A NONCONTROVERSIAL TREATY THAT WOULD REFORM THE INTERNATIONAL AIR CARGO LIABILITY SYSTEM.

UPS, as the world's largest package distribution company, transports more than 3.1 billion parcels and documents annually in more than 200 countries. As we move to expand our international service, the outdated liability rules of the 1929 Warsaw Convention are a tremendous barrier.

Ratifying Montreal Protocol No. 4 would update the Warsaw Convention, which currently requires the air cargo industry to record unnecessary information on paper waybills for each shipment. The antiquated requirements of the Warsaw Convention impose unnecessary burdens and costs on U.S. air cargo carriers and keep our industry from using electronic waybills for international shipments. Ratification of the protocol would eliminate these costly requirements and make U.S. cargo carriers, businesses and exporters more competitive in world markets.

Thank you for your attention to this very important matter. I urge the Committee to act promptly on this noncontroversial treaty that is in the nation's economic best interest.

Sincerely,

THOMAS H. WEIDEMEYER,
PRESIDENT,
UPS Airlines.

cc: Senator Wendell Ford
Senator Slade Gorton
Senator Ernest Hollings
Senator John McCain

THE AMERICAN ASSOCIATION FOR FAMILIES OF KAL 007 VICTIMS,
P.O. BOX 8189, NEW YORK, N.Y., 10116–8189,
September 10, 1997.

The Honorable JESSE HELMS,
Chairman, Senate Committee on Foreign Relations,
SD–450 Dirksen Senate Office Building,
Washington, D.C., 20510–6225.

MR. CHAIRMAN: Ever since our 269 loved ones perished with Korean Airlines Flight 007 on September 1, 1983—and as a result of the convoluted legal process the surviving family members have been subjected to for the last fourteen years—which is still ongoing—we have become involved in the needed changes to bring "The Warsaw Convention" system to 1997 standards.

In that process we have testified some years ago in favor of the ratification of "The Montreal Aviation Protocols No. 3 & 4." The Protocols were voted out of your Committee three times, but did not pass—for various reasons—through the Senate. In fact none of the updates of the Warsaw Convention have as yet been voted on by the Senate.

"The Montreal Aviation Protocols No. 4" are now before your Committee for its Advice and Consent.

Those Protocols were negotiated in 1975. Their approval is nevertheless of great importance. It would allow the civil aviation industry to modernize air freight documentation and update freight as well as luggage liability. (However, we remain opposed to the imposition of any liability cap, otherwise).

We support ratification of "The Montreal Aviation Protocols No. 4" and would be willing to so testify, if useful.

Respectfully,

HANS EPHRAIMSON-ABT,
CHAIRMAN.

INTERNATIONAL TRADEMARK ASSOCIATION,
1990 M Street, N.W., Suite 340, Washington, D.C. 20036,
May 12, 1998.

The Honorable JESSE HELMS
Chairman, Senate Foreign Relations Committee,
450 Dirksen Senate Office Building,
Washington, D.C. 20510.

Reference: Comments Submitted for the May 13, 1998 Hearing on the Trademark Law Treaty

DEAR CHAIRMAN HELMS, The International Trademark Association (lNTA) appreciates the opportunity to submit this statement in strong support of the Trademark Law Treaty (TLT). This treaty is critical to the success of U.S. companies as they operate in the rapidly expanding and ever increasingly competitive global marketplace.

INTA is a not-for-profit membership organization, which just this week is celebrating its 120th anniversary at our Annual Meeting in Boston, Massachusetts. Membership in INTA is open to trademark owners and those who serve trademark owners. INTA's membership is extremely diverse, crossing all industry lines and spanning a broad range of manufacturing, retail and service operations. It is equally important to note that not all of INTA's members are large corporations. Many of the Association's members represent small businesses which are looking to expand operations and contribute to the domestic economy by increasing their activities beyond the borders of the United States. Nonetheless, all of INTA's members, regardless of their size or international scope, share a common interest in trademarks and a recognition of the importance of brand identity to their owners, to the general public, to the economy of the United States and the global marketplace.

The objective of the Trademark Law Treaty is to streamline and harmonize the trademark office procedures of countries around the world. The myriad of requirements and formalities of the more than 200 trademark jurisdictions impose horrendous costs in time and money for U.S. trademark owners, not to mention the reams of paperwork they generate. The registration procedures in some countries are so onerous, they actually become an impediment to the protection of a company's trademarks. These cumbersome requirements are of particular concern to small and medium-size business owners wishing to sell their products in foreign markets, but who do not have the resources to overcome the complicated procedures to register their trademarks in these countries.

Recognizing the clear need for the TLT and the value it would bring to U.S. trademark owners, the U.S. government played an active leadership role in negotiating the TLT and leading it to a successful conclusion at a Diplomatic Conference in Geneva in October 1994. With the streamlined trademark office procedures that the TLT will create world-wide, U.S. trademark owners and practitioners will be able to focus on the protection and defense of marks and reduce, if not eliminate, unnecessary and time-consuming paperwork. Of equal importance, the TLT will significantly reduce costs. This is especially critical for small and medium-size business owners, who are working on limited budgets. The TLT will accomplish these objectives by:

- Setting a maximum list of requirements for trademark applications and registrations concerning such matters as filing dates, request for name and address changes, recordation of assignments and renewals.
- Standardizing forms for applications, powers of attorney, and changes of name, address and ownership.

- Prohibiting requirements for notarization or other certification of any signature, except in the case of surrendering a trademark registration and a certificate of merger.
- Making one request sufficient for changes of name, address or ownership of several registrations or applications.
- Requiring the acceptance of general powers of attorney.

Implementation of the TLT will require relatively minor, non-controversial amendments to the Lanham Act.

Leadership by the U.S. in ratifying and implementing the TLT will encourage other countries to adopt the requirements of the Treaty. In fact, the simplified system under the TLT will not begin to take shape until this nation has "stepped up to the plate" and demonstrated that the TLT can and will work to bring about needed harmonization in trademark procedures. We, therefore, urge the Subcommittee to give expedited consideration to the Trademark Law Treaty.

Thank you for your consideration of INTA's views.

Sincerely,

FRED MOSTERT,
PRESIDENT.

○