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Order 2000-11-30

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**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on 30th day of November, 2000

Served: December 5, 2000

Complaint of

NORTHWEST AIRLINES, INC.

Against

**THE COUNCIL OF THE EUROPEAN
UNION AND THE GOVERNMENTS OF
THE 15 EU MEMBER STATES**

under 49 U.S.C. § 41310

Docket OST-99-5011 - 38

ORDER GRANTING WAIVER

On January 15, 1999, Northwest Airlines, Inc. (Northwest) filed a complaint under 49 U.S.C. § 41310 against the Council of the European Union and the Governments of the 15 EU Member States (referred to as the EU and the Member States) regarding EU regulations that would restrict the use of hushkitted aircraft. Northwest states that the regulation would unreasonably restrict U.S. operators' access to Europe in contravention of U.S. rights under the Chicago Convention and bilateral air services agreements. Northwest urges the Department to take action to redress the economic harm caused by the EU regulation, which it argues constitutes an "unjustifiable or unreasonable...practice against an air carrier" and "imposes an unjustifiable or unreasonable restriction on access of an air carrier to a foreign market," warranting action under the statute.¹

By Order 99-1-10, the Department invited all interested persons to answer Northwest's complaint in Docket OST-99-5011. British Airways PLC and Virgin Atlantic Airways Limited (filed jointly); Lufthansa German Airlines; the Cargo Airline Association; Societe Air France; Quiet Technology Venture, Ltd.; the National Air Carrier Association; Pratt & Whitney; the Air Transport Association of America; AvAero; Federal Express Corporation; Fine Air Services,

¹We summarized the complaint more fully in Order 99-1-10.

Inc.; Intrepid Aviation Partners, L.L.C.; United Air Lines, Inc.; Delta Air Lines, Inc.; Kitty Hawk Aircargo, Inc. and American International Airways, Inc. (filed jointly); the Nordam Group, Inc.; Burbank Aeronautical Corporation and ABS Partnership and Duganair Technologies, Inc. (filed jointly); ABX Air, Inc.; and the Association of European Airlines filed answers. Northwest filed a reply to the answers. The Cargo Airline Association filed an additional response.²

By a series of actions the Department has extended the deadline for action on Northwest's complaint in order to facilitate a negotiated resolution to the issues raised.³ The latest extension runs through December 1, 2000. On March 14, 2000, the U.S. Government invoked the dispute resolution procedures provided for under Article 84 of the Chicago Convention and filed a complaint with the International Civil Aviation Organization (ICAO).

On November 29, 2000, Northwest agreed to a further limited waiver of the statutory deadline, specifically through July 1, 2001, in light of the U.S. Government's involvement in proceedings before ICAO to resolve this dispute. Northwest states, however, that it retains the option to withdraw its consent to a waiver of the deadline, particularly if the EU fails to participate in good faith in proceedings before ICAO.

After careful consideration of Northwest's submission and other relevant factors, we believe that the public interest is best served by granting Northwest's waiver, and deferring the deadline for action on the complaint through July 1, 2001.⁴

ACCORDINGLY,

1. We grant the request of Northwest Airlines, Inc. for a waiver of the statutory deadline in order to defer through July 1, 2001, the period for taking action on its complaint in Docket OST-99-5011; and
2. We will serve this order on all parties to the complaint of Northwest Airlines, Inc., in Docket OST-99-5011; the Ambassadors of the Delegation of the Commission of the European Communities, the Federal Republic of Germany, France, and the United Kingdom in Washington

² The additional response was accompanied by a motion for leave to file an otherwise unauthorized document. We granted the motion by Order 99-5-7.

³ See Orders 2000-7-34, 2000-2-2 and Order 99-5-7 and orders cited therein at 2.

⁴ Under the Department's regulations, answers to Northwest's request would not be due until seven business days after its filing, *i.e.* December 8, 2000. As that would be after expiration of the current deadline, December 1, 2000, we have decided to act on Northwest's request without awaiting expiration of the period for answers. Should any answers be filed, we will address them in a subsequent order.

D.C.; the U.S. Department of State (Office of Aviation Negotiations); the Assistant U.S. Trade Representative (Office of the United States Trade Representative); and the U.S. Department of Commerce (Office of Service Industries).

By:

FRANCISCO J. SANCHEZ
Assistant Secretary for Aviation
and International Affairs

(SEAL)

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