民航處 Civil Aviation Department

香港金鐘道 66 號金鐘道政府合署 46 樓
46/F Queensway Government Offices, 66 Queensway, Hong Kong

檔案編號 OUR REF. 來函編號 YOUR REF. 電話 TEL. 圖文傳真 FAX. 專用電訊 TELEX:

(33) in SCTY/34/19C (852) 2867 4201 (852) 2501 0640 61361 CADHK HX

DEPARTMENT OF TRANSPORTATION
1999 APR -1 PM 12:
DOCKET SECTION

By Mail & e-mail
e-mail: 9-nprm-cmts@FAA.gov.

53234

22 March 1999

Federal Aviation Administration
Office of the Chief Counsel
Attn: Rules Docket (AGC-200)
Docket Number FAA-l 998-4758 -37
800 Independence Avenue SW
Washington DC2059 1
USA

OFFICE OF THE CHIEF COUNSEL RULES DOCKET
1999 MAR 25 P 2: 38

Dear Sir,

Security Programs of Foreign Air Carriers NPRM (Hatch Amendment)

Wc write to provide comments in accordance with the procedures set out in the above NPRM which is causing concern to the Government of the Hong Kong Special Administrative Region (HKSAR) and our registered airline operator Cathay Pacific Airways.

Our aviation security policy is that the HKSAR shall conform with the Standards and shall endeavour to conform with the Recommended Practices laid down in Annex 17 to the Convention on International Civil Aviation. We also subscribe to the ICAO concept of host state responsibility which puts an obligation on Contracting States to ensure that its own security requirements are being carried out by its airports and airlines serving these airports. Hence, all airline operators flying from the Hong Kong International Airport (HKIA) are required to conform with the requirements of the Government of the HKSAR, which will be adjusted in accordance with the level of threat assessment.

The proposed rule, however, is in violation of the above host state concept. Instead of relying on the host state to ensure that the aviation security measures required are performed by the airlines flying to US airports, it seeks to dictate the aviation security measures to be performed by these airlines outside the USA.

/P.2.....

We are unable to see any legal basis which justifies the Hatch Amendment to have extraterritorial effect over foreign airlines when they are outside the USA. The Hatch Amendment constitutes a serious encroachment upon the sovereignty of other jurisdictions. We regard it as utmost important that the autonomy of each jurisdiction to adopt its own aviation security measures should be duly respected.

On the other hand, we recognise that the Standard 3.2.2 of Annex 17 provides that "Each Contracting State shall ensure that request from other States for special security measures in respect of a specific flight or specified flights by operators of such other States, as far as may be practicable, are met." In line with this provision, we do not prevent airlines of others states from implementing additional aviation security measures, at their own discretion, providing that these do not conflict with aviation security measures required by the Government of the HKSAR. Where these changes relate to arrangements at HKIA, we maintain that the airlines shall need to agree these with the airport manager, viz. the Airport Authority Hong Kong, who is responsible for co-ordinating security arrangements at HKIA. Moreover, the provision does not allow the imposition of aviation security measures on the registered airline of the HKSAR flying from HKIA by another aeronautical authority.

ICAO Annex 17 has already set out the commonly accepted standard for implementation of aviation security measures. If all aeronautical authorities try to impose their own aviation security measures in other states, it will negate the overall aim of Annex 17 to provide a standardised level of security at airports world-wide for the operation of international flights.

Having regard to the above, we object to the unilateral imposition of security measures on our registered airline flying from HKIA. This is inconsistent with the spirit of the Article on aviation security in the current bilateral Air Services Agreement between the HKSAR and the US Governments. Indeed, if we likewise follow the FAA proposal to impose "identical security measures" requirement on foreign air carriers operating to and from HKIA, we have no doubt that such a policy will similarly create exceptional difficulties for many air carriers including US air carriers to comply.

I must therefore ask that due consideration be given to our concern in formulating the final rules under the above NPRM. If you need more information, we shall be happy to provide as appropriate.

Yours faithfully,

(Albert K Y Lam)
Director of Civil Aviation

cc Commissioner for Economic & Trade Affairs, USA (Fax : l-202-33 l-8958)