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FEES FOR AIR TRAFFIC SERVICES FOR CERTAIN FLIGHTS THROUGH U.S.-CONTROLLED AIRSPACE

INFORMATION PAPER

(Presented by the United States of America)

SUMMARY

Pursuant to a provision in the Federal Aviation Reauthorization Act of 1996, the United States began charging "overflight" fees in May 1997 for aircraft flights that transit U.S.-controlled airspace but neither land within nor take off from the United States. On January 30, 1998, a U.S. Court of Appeals ruled that the costs upon which the fees were based were improperly allocated and set aside the fees. Nearly \$40 million in fees that had then been collected have been refunded. The statutory requirement to establish the fees remains in place, and the U.S. is currently developing a new schedule of fees that are expected to go into effect by mid-1999.

1. INTRODUCTION

- 1.1 Numerous countries throughout the world charge fees for the provision of air traffic and related services to the operators of aircraft flights through their airspace. Until recently, however, the United States has not charged for the air traffic and related services it provides to aircraft that fly through U.S.-controlled airspace but neither take off from nor land within the United States.
- 1.2 A provision in the Federal Aviation Reauthorization Act of 1996 directed the Federal Aviation Administration (FAA) to establish a schedule of new fees for aircraft, other than military or civilian aircraft of the U.S. government or a foreign government, that neither take off from, nor land in, the United States. The law directed that an initial fee schedule be published as an interim final rule, that public comment then be obtained, and a final rule issued.

2. DISCUSSION

- 2.1 The interim final rule establishing the "overflight" fees was published on March 20, 1997, and FAA began charging 60 days later, on May 19, 1997. Petitions for a stay in the imposition of the fees were denied, but the decision was appealed. FAA proceeded to impose the fees, and had collected \$39.5 million by the time the Court of Appeals issued its decision setting aside the fees. This occurred on January 30, 1998.
- 2.2 The court ruled that FAA had not acted improperly in employing an expedited procedure to establish the fees; and that the fees did not violate the anti-discrimination provisions of various international aviation agreements. The court did rule, however, that the method used by FAA to allocate fixed and common costs was in violation of Congressional intent regarding how costs were to be used to calculate fees.

- 2.3 Although the fees have been refunded, the statutory requirement for the FAA to establish **overflight** fees through the publication of an interim final rule remains law. Thus, the FAA is currently working as expeditiously as possible to issue another interim final rule that will reestablish overflight fees.
- 2.4 The reestablished fees will not employ the method of allocating fixed and common costs that was determined by the court to be improper. The fees will instead be derived from a cost accounting system that Congress directed the FAA to develop. The current expectation is that the cost accounting system will be in operation in time for the new fees to be effective by mid-1999.