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

In the Matter of

Aerolineas Argentinas, S.A.

Docket OST-2003-15092 - 32

Served: December 22, 2003

NOTICE

On November 19, 2003, the Department issued a final order in the above-captioned proceeding. Order 2003-11-26.

On December 4, 2003, Aerolineas Argentinas filed a motion to stay all proceedings in this matter. On December 15, 2003, the Department issued a notice calling for answers to be filed by December 17, 2003, and replies by noon, December 19, 2003.

On December 19, 2003, the Government of Argentina submitted comments, through diplomatic channels, requesting that we rescind our decision. Since no parties were served with the submission of the Government of Argentina, we are placing this document in the above-referenced docket and will afford interested parties in this proceeding an opportunity to submit responses to the Government of Argentina's comments within three business days (*i.e.*, by December 29, 2003).

For the convenience of the parties, we are attaching to this Notice a copy of the Government of Argentina's comments.

Therefore, acting under authority assigned in 14 CFR 385.3, we establish December 29, 2003, as the response date for comments on the submission by the Government of Argentina.

We will serve this notice by email or facsimile on all parties to this proceeding, and we authorize responses to be served by facsimile or email.

By:

PAUL L. GRETCH
Director, Office of
International Aviation

(SEAL)

Dated: December 22, 2003

Attachment

*An electronic version of this notice is available on the World Wide Web at
http://dms.dot.gov/reports/reports_aviation.asp*

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12/19/03



**Embajada de la República Argentina
Embassy of the Argentine Republic**

1600 New Hampshire Ave., N.W.
Washington, D.C. 20009

Tel. (202) 238-6425
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Fecha / Date:	December 19, 2003
Para / To:	State Department
Atención / Attention:	Office of Aviation Negotiations Att. Ms. Marianne Myles
De / From	Embassy of the Argentine Republic
Fax N°:	202-647-9143

Páginas / Pages: 14 (Incluida esta Carátula/Including this Cover)

Mensaje / Message:

Please find attached Diplomatic Note 506/03 with corresponding unofficial translation and annexes.

Sincerely,

**Alejandro Casiró
Minister**

**Embajada
de la
República Argentina**

Nro.: 506/03
Letra: DE

La Embajada de la República Argentina en los Estados Unidos de América presenta sus atentos saludos al Honorable Departamento de Estado - Oficina de Negociaciones Aéreas-, y se refiere a los procedimientos suscitados a raíz del reclamo de las empresas estadounidenses de transporte aerocomercial American Airlines, United Airlines, Federal Express y U.S. Parcel Service ante el Departamento de Transporte de los Estados Unidos (DOT).

Sobre el particular, cabe recordar la Orden 2003-11-26, emitida el 25 de noviembre de 2003 por el Departamento de Transporte de los Estados Unidos de América (DOT), bajo la Sección 413102(c)(2) de la Ley de Prácticas de Competencia Leal en el Transporte Aéreo Internacional, en el asunto de "Aerolíneas Argentinas S.A."

En virtud de dicha orden, el DOT ha propuesto requerir a Aerolíneas Argentinas S.A. remitir a una cuenta de garantía ("escrow account"), sobre la base de cada uno de los vuelos, la "diferencia entre lo que actualmente paga por servicios en el Aeropuerto Ezeiza de Buenos Aires y los montos más altos que estaría pagando si no se beneficiara de un tratamiento discriminatorio en relación con transportistas de los EEUU".

Sobre el particular, cabe señalar que, con fecha 27 de noviembre de 2003, la Sala II de la Cámara Nacional de Apelaciones en lo Contencioso Administrativo Federal, ha modificado los alcances de la medida cautelar dictada en la causa "Aerolíneas Argentinas S.A. c/EN-PEN-Dto. 577/02 s/Proceso de Conocimiento", estableciendo que la actora deberá abonar a Aeropuertos Argentina 2000 y Fuerza Aérea Argentina, el total de las tasas debidas, a valor dólar (conforme con los decretos actualmente en vigor), e ingrese a sus patrimonios sólo las sumas equivalentes al tipo de cambio uno-a-uno. La diferencia deberá ser depositada judicialmente por Aeropuertos Argentina 2000 y la Fuerza Aérea Argentina, hasta que se resuelva la cuestión de fondo.

Cabe señalar que la referida decisión judicial "alcanza a todas las tasas devengadas y pagadas por Aerolíneas Argentinas S.A. a partir del pronunciamiento de la señora juez de primera instancia que otorgó la cautelar (3-9-02)".

**AL HONORABLE DEPARTAMENTO DE ESTADO
OFICINA DE NEGOCIACIONES AEREAS
WASHINGTON D.C.**

**Embajada
de la
República Argentina**

Al adoptar tal decisión, la Cámara ha adecuado la medida cautelar dictada por el juez de primera instancia en la causa promovida por Aerolíneas Argentinas, al criterio seguido en la causa "Lufthansa Líneas Aéreas Alemanas S.A. -Inc Med c/EN -Dto 577/02 s/Medida Cautelar (Autónoma). Como consecuencia de la medida judicial anteriormente expuesta, Aerolíneas Argentinas S.A. debe abonar, en concepto de tasas aeroportuarias, los mismos montos que todas las restantes empresas de transporte aerocomercial que operan en la Argentina (ambas sentencias se adjuntan a la presente).

Esta circunstancia permite reafirmar los conceptos ya expresados por el Gobierno de la República Argentina, en la Nota Verbal presentada por esta Representación el 16 de mayo ppdo. y en el documento anexo, en las consultas que tuvieron lugar en esta capital los pasados días 11 y 12 de septiembre, en el documento presentado el 30 de septiembre por esta Representación y en la Nota Verbal del 29 de octubre de 2003. En esas oportunidades, se había señalado que la medida cautelar tenía un carácter transitorio y revocable, y que la cuestión estaba pendiente de resolución en el marco de los recursos internos previstos por el orden jurídico argentino.

Cabe concluir, pues, que los supuestos fácticos invocados por el DOT para la imposición de sanciones contra Aerolíneas Argentinas S.A. han desaparecido.

Por ello, se solicita al Honorable Departamento de Estado tenga en cuenta lo anteriormente expresado, y lo decidido por la justicia argentina sobre el asunto. Asimismo se agradecería tenga a bien comunicarlo al DOT a efectos que disponga las medidas necesarias para que se deje sin efecto la Orden 2003-10-18, emitida el 15 de octubre de 2003, y las sanciones propuestas, al tiempo que se cierren los procedimientos iniciados el pasado 2 de mayo, disponiendo el archivo de las actuaciones.

La Embajada de la República Argentina en los Estados Unidos de América aprovecha esta oportunidad para renovar al Honorable Departamento de Estado -Oficina de Negociaciones Aéreas-, las seguridades de su más alta y distinguida consideración.

Washington D.C., 17 de diciembre de 2003.



UNOFFICIAL TRANSLATION.

*Embassy
of the
Argentine Republic*

No.: 506/03
Letter: DE

To the Department of State
Air Negotiations Office
Washington DC

The Embassy of the Argentine Republic in the United States of America presents its compliments to the Department of State - Air Negotiations Office, and refers to the proceedings filed in connection with the complaint filed before the US Department of Transport (DOT) by the US commercial air transport companies American Airlines, United Airlines, Federal Express and US Parcel Service.

In this regard, reference should be made to Order 2003-11-26, issued on November 25, 2003, by the United States Department of Transport (DOT) under Section 413102(c)(2) of the International Air Transportation Fair Competitive Practices Act in the matter of "Aerolíneas Argentinas S.A."

Pursuant to such order, the DOT has suggested that Aerolíneas Argentinas S.A. be required to remit into an escrow account, on a per-flight basis, the "difference between what is actually pays for services at Buenos Aires Ezeiza Airport and the higher amounts that it would be paying if it were not benefiting from discriminatory favourable treatment vis a vis US carriers".

In this regard, it should be noted that on November 27, 2003, Division II of the Federal Administrative Appeals Court modified the scope of the injunction granted in the proceedings "Aerolíneas Argentinas S.A. c/EN-PEN-Dto. 577/02 s/Proceso de Conocimiento", providing that Plaintiff must pay to Aeropuertos Argentina 2000 and to the Argentine Air Force the total amount of fees due, at dollar value (pursuant to the decrees currently in force), and to that only the amounts reflecting the one-to-one exchange rate be taken. The difference is to be deposited in court by Aeropuertos Argentina 2000 and the Argentine Air Force until the substantive issue has been resolved.

It should be noted that this court decision "applies to all fees accrued and paid by Aerolíneas Argentinas S.A. as from the judgment entered by the lower court judge that granted the injunctive relief (September 3, 2002)".

Upon adopting the decision, the Appeals Court has adapted the injunction granted by the lower court in the proceedings commenced by Aerolíneas Argentinas according to the standard applied in the case "Lufthansa Líneas Aéreas Alemanas S.A. -Inc Med c/EN - Dto 577/02 s/Medida Cautelar (Autónoma)". As a result of the above judicial order, Aerolíneas Argentinas is compelled to pay the same airport fee amounts

as all other commercial air transport companies operating in Argentina (both rulings are attached hereto).

This goes to support the position held by the Government of Argentina in the Verbal Note submitted by this Embassy on May 16 and in the attached document, in the consultations that were held in this city on September 11 and 12, in the document submitted by this Embassy on September 30 and in the Verbal Note of October 29, 2003. On such occasion, it had been pointed out that the injunction was on a temporary and revocable basis, and that the matter was still awaiting resolution within the framework of the domestic provisions foreseen for by the Argentine legal system.

It can therefore be concluded that the factual assumptions invoked by the DOT for the purpose of imposing sanctions on Aerolíneas have disappeared.

The Department of State is therefore requested to take the above into account, as well as the Argentine judicial decision on the matter. It would also be appreciated if this could be transmitted to the DOT in order for it to reverse Order 2003-10-18, issued on October 15, 2003, and the proposed sanctions, upon the closing of the proceedings commenced on May 2, and that an order be made for the proceedings to be filed.

The Embassy of the Argentine Republic in the United States of America avails itself of this opportunity to renew to the Department of State - Office of Air Negotiations, the assurances of its highest consideration.

Washington D.C., December 17, 2003.



THE JUDICIARY

Case file: 183.000/02 "Aerolíneas Argentinas SA c/EN - PEN-Dto. 577/02 s/Proceso de Conocimiento"

Buenos Aires, November 27, 2003

WHEREAS

1. At p. 466 (verso), the First Division of the Appeals Court forwarded the records of the proceedings arguing that the issues raised in the above-referenced case are to be examined and decided upon by this Division.

It was stressed that these proceedings were turned over to the Appeals Court for it to decide on the appeals filed by Aeropuertos Argentina 2000 S.A. and the Argentine Government against the injunctive relief granted by the lower (first-instance) court, which suspended the executory effects of Decrees 577/02 and 1910/02 in respect of the international aeronautic service fees to be paid by Aerolíneas Argentinas S.A. until judgment is entered or the proceedings provided for in Decree 1535/02 are concluded, whichever happens first.

It was further pointed out that in the matter of "Aeropuertos Argentina 2000 c/E.N. -Jefe de Gabinete de Ministros- s/proceso de conocimiento-incidente de medida cautelar" (incidental proceedings regarding injunctive relief), the judge responsible for Court No. 3 admitted the requested injunction and ordered that ORSNA, as application authority, and notifying the Board of Airline Company Representatives, the air transport companies providing international air services, the *Asociación Civil Cruzada Civil para la Defensa de Consumidores y Usuarios de Servicios Públicos* (Civic Crusade for the Defence of Consumers and Public Utility Service Users, a civil association) and, generally, the users of airport services and other parties required to pay fees for international flights to refrain from hindering or hampering normal collection of fees for such services, pursuant to the provisions of Decree 577/02. It was also noted that the decision was notified to Aerolíneas Argentinas S.A. at p. 510.

It was stated that the appeal filed by the company Lan Chile (File No. 140,909/02), and as a result of notification of the injunctions to the air transport companies providing international air services, this Division held that appellant was right in that it was not a third party unrelated to the incidental proceedings and that it sought to be made a party to the proceedings in order to defend an interest of its own as another party thereto.

2. In the above-mentioned appeal, this Division also held that the air company made a voluntary filing in the proceedings and that the decision of Court No. 3 would have a direct impact on it as a result of the injunctive relief which was mainly directed against it.

3. As a consequence of the injunctive relief granted by the Court in this case and in the case "Aeropuertos Argentina 2000", Aerolíneas Argentinas S.A. secured the suspension of the effects of Decree 577/02 -here-, and on the other hand, it was obligated to refrain from hindering or hampering normal collection of fees for international flights, pursuant to the provisions of Decree 577/02 ("Aeropuertos" case).

4. Regardless of the provisional remedies mentioned in the preceding paragraph, it should be noted that the petition is not the same in both proceedings. In this case, the plaintiff simply initiated a declaratory action for Decrees 577/02 and 1910/02 to be ruled unconstitutional on the grounds of them violating Law 25,561 and to end the state of uncertainty as regards the payment of airport fees for international services. In the case "Aeropuertos" the plaintiff initiated a proceeding in connection with the contractual rights of which it seeks substantive recognition.

5. Subsequently, in the case "Aeropuertos", the plaintiff extended the scope of the complaint, reported that Decree 577/02 constituted a subsequent event to be taken into account, and requested that collection of international airport fees be declared to be excluded from Economic Emergency Law 15,561 and that these fees should be paid in dollars in view of the legal nature of international air transport contracts.

6. Therefore, the only issue the two cases have in common is the one related to the requested injunctive relief.

7. On these grounds, and bearing in mind that the case was turned over to Division I, as well as any consequences arising out of the above-referenced injunctive relief, for legal certainty purposes it is deemed advisable to cause both cases to be dealt with by the same Court of Appeals (this Division "*Sociedad Inversora de Trabajadores del Chaco c/BCRA*" of 02-12-02). In this regard, the Judge has the duty to avoid pronouncing contradictory judgments (Division I "*Bank Boston c/OSBA*" -*requil-* of 09-08-99), and since this Division heard the case "*Aeropuertos Argentina 2000 c/E.N. - Jefe de Gabinete de Ministros - dto. 163 s/proceso de conocimiento*" - Case file 19,483/2001, and related actions, this case can be validly adjudicated. IT IS SO DECIDED.

8. The issue to be resolved in this incidental proceeding is similar to the one resolved by majority vote on November 19, 2002 -explained on 02-20-03- in the case "*Lufthansa Líneas Aéreas Alemanas S.A. c/E.N. - dto. 577/02 s/medida cautelar (autónoma) - Inc.med.*" (on injunctive relief) which decision should be referred for the sake of brevity and for reasons of procedural economy.

THE JUDICIARY

Case file: 167.764/02 "Lufthansa Líneas Aéreas Alemanas S.A. - Inc Med c/EN -Dto. 577/02 s/Medida Cautelar (Autónoma)"

Buenos Aires, November 19, 2002

WHEREAS

1. At pages 129/131, the lower (first-instance) court dismissed the injunctive relief requested by the plaintiff seeking to suspend the effects of Decree 577/02, which, according to plaintiff, had converted all air fees paid for international flights into dollars, such as: landing fee (including over fee), airplane parking fees, telescopic walkway use fees, en route flight protection fees and landing support fees.

As to the grounds for such decision, the Judge first pointed out that the exclusion of the fees herein dealt with and provided for in articles 8 and 9 of Law 25,561 (providing that prices and rates of public service concession contracts will be fixed in pesos at the one-to-one peso/dollar exchange rate, i.e. ARS1 = USD1, and ordering that a renegotiation be conducted) was expressly recognized by the Government granting the concession, in Decree 577/02, which rule is presumed legitimate and enforceable.

The court stressed that from the introductory paragraphs of the challenged decree it arises that aeronautic activities are international because of their characteristics, so the applicable amounts are communicated and established by the Argentine Republic and the rest of the world through the official communications system of the Argentine Air Force, known as AIC, and issued by the National Direction of Air Traffic of the Argentine Air Force. The court added that fees have been historically stated in US dollars, as the international nature of this activity requires the approval of a currency as reference value accepted by commercial air industry for international flights, all the more so when fees are collected by passenger carriers, generally upon issuing tickets, which are priced and collected in the same currency. In principle, this would constitute an unjust enrichment, if it is admitted that air carriers can collect fees from passengers -as collection agents- in the same currency in which tickets are paid, and that they subsequently pay them to the concessionaire and other recipient bodies (Air Force, Migrations, etc.) at the US\$1= ARS1 exchange rate.

As regards the existence of a potential danger in delay, the court affirmed that the plaintiff's allegations were unfounded because it had not been proved -even *prima facie*- that any financial loss that could be currently taking place due to fee collection was impossible to redress subsequently.

2. At page 130, the plaintiff filed an appeal which was granted at page 133 and the detailed grounds for appeal were stated at pages 164/172.

3. Injunctive relief seeks to prevent that during the period of time between the commencement of the process and the final pronouncement any circumstances arise that may hinder or hamper enforcement or nullify the effects of the final decision. (Division IV "Godoy" of 12-03-92). Taking into account that the granting of an injunctive

relief suggests that it is likely that a favourable judgement be entered, the admissibility of the right must clearly arise from the elements in the file case and from a thorough analysis of the relationship between the parties, the nature and extent of which will be subsequently clarified. (Division V "Correo Argentino S.A." of 03-16-01).

In order that the requested remedy may be granted it is necessary to furnish evidence of the danger of an irrevocable damage. Otherwise, no injunctive relief should be granted where the subject matter coincides totally or partially with that of the claim and exceeds the provisions of Section 230 of the Code of Commercial and Civil Procedure, whose purpose is simply protective and aimed at ensuring the effectiveness of the final judgement. Merely alleging potential damages will not suffice to grant injunctive relief.

4. Section 8 of Law 25,561 provides that, as from the enactment of such Law, in contracts concluded by the Public Administration pursuant to Public Law, including those related to public work and services, clauses providing for an adjustment in dollars or in other foreign currencies, and indexation clauses based on the price indexes of other countries and any other indexation mechanisms shall no longer apply. Additionally, it was established that price and rates arising from such provisions were fixed in pesos at a one-to-one peg to dollar (ARS1=USD1). Section 9 authorized the Executive Branch to renegotiate the contracts contemplated in Section. 8, and in the case of contracts for public services, it established that the following criteria should be taken into account: 1) the impact of rates on economic competitiveness and on income distribution; 2) quality of services and investment plans, where contractually provided for; 3) the interest of users and service access conditions; 4) system security and 5) company profits. For all purposes in connection with this law, a Bicameral Follow-up Commission was set up, charged with the duty of controlling, verifying and issuing a decision on the Executive Branch proceedings.

Law 25,561 declared state of public emergency and reformed the exchange system, providing a response to the urgent needs arising from the particular crisis situation experienced by Argentina. Within this framework -among other measures- the law introduced rules on the restructuring of obligations being performed which fell within the scope of the new exchange system established in Section 2.

In addition, Law 25,565 (General Budget of the Federal Administration for the year 2002) authorized the Executive Branch "to fix the values or, as applicable, rate schedules and amounts to be applied to airport fees to be collected by the Argentine Air Force as referred to in Decree N° 500 of June 2, 1997. In no event, may any such increases or reductions be higher than TWENTY PER CENT (20%) of the amounts currently in force..."

In exercise of the authorization granted by Law 25,561, the Executive Branch issued Decree 293/2002. The preambular paragraphs stated that the group of contracts to be renegotiated -including contracts for public works and services- included various areas containing various clauses and mechanisms governing execution, with respect to the rights and obligations assumed by the parties as well as in connection with rate schedules and with the impact they may suffer as a result of the exchange system reform. To that end, it was decided to centralize the contract renegotiation process in order to enable the application of consistent criteria for all cases. Section 1 of the

provision whereby the Ministry of Economy was instructed to renegotiate the contracts for public works and services falling within the scope of Section 8 of Law 25,561, considered that the airport national system was one of the areas to be renegotiated. Section 20 created the Commission for Renegotiation of Contracts for Public Works and Services, which is to provide advice and assistance to the Economy Ministry on this matter. The Renegotiation Commission was set up by Decree 1535/02.

5. That, based on the provisions referred to in the preceding paragraph and on a preliminary analysis and within the framework of the provisional remedy attempted, it would appear that the purpose of the legislator was to include within the renegotiation process all contracts for public works and services affected by the exchange rate modification provided for in Section 2 of Law 25,561, regard being had to the criteria taken into account for such purpose in Section 9 of the Law. The fees are therefore applied under a contract governed by public law that has been entered into by the administration. Among such contracts are the National Airport System concession contracts, which prima facie appear to fall within the scope of the provisions of the law. This having been said, it will only be at the time of the final judgment and not at this stage that it will be possible to conduct a more exhaustive review as to the nature of such contract, particularly as regards the complexity of the fee structure.

Subject to this caveat, the clarification provided by Section 2 of Decree 577/2002, which provides that "all aeronautic fees in the fee schedules applicable to international flights, including bordering countries, are denominated in United States dollars, which may be paid in the equivalent amount in pesos at the US dollar exchange rate prevailing at the time of payment", such exchange rate having been subsequently modified by "the sell exchange rate of the Banco Nación Argentina at the close of operations on the banking day immediately preceding that of payment (Section 2 of Decree 1910/02), would seem to involve a decision in advance on the contract renegotiation process undertaken by the Argentine Government for proper provision of the service that is the main subject matter of the activity and is currently being conducted to give all parties concerned an opportunity to be heard. Any interpretation to the contrary allowing only some of the latter to introduce changes into the prices and fees in advance, would prima facie deprive the legislator's guideline of its true sense. (Division IV "Asociación Vecinal Belgrano C y otros c/E.N.-PEN dto. 577/02 y otro s/amparo"-inc. medida- of September 24, 2003).

This conclusion could not in principle be understood as an impairment of the rights of concessionaire Aeropuertos Argentina 2000 SA and/or of the Argentine Air Force based only on the fact that in the fee structure under review, some of the fees to be paid by Plaintiff were stated in US dollars. In this regard, obligations arising out of government contracts governed by public law would have been fully amended in accordance with the emergency provisions adopted by the Argentine Congress. It would therefore not seem reasonable to admit exceptional grounds which would anchor unequal and unfair treatment involving undue preferences in favour of the company holding the airport service concession and/or the Argentine Air Force vis a vis the operators of other services, which, together with the rest of the Argentine population, suffered a similar impact as a result of the economic crisis in Argentina (cf. the above-mentioned decision).

6. The ratification of Decree 577/02 through emergency decree 1910/02 (Section 1) does not detract from the above considerations, since this provision could not in principle modify a law enacted by the Argentine Congress to deal with the emergency situation.

7. Along these lines, and considering in the case under review that the greater the likelihood of the existence of the right alleged, the greater the need to be less demanding in terms of the conditions required for the damage to be deemed to have occurred, the appeal filed by Plaintiff is to be admitted.

Accordingly, the powers arising out of Section 204 of the Code of Civil and Commercial Procedure are to be exercised, in order to ensure protection of the rights of all parties to the issue. Consequently, it is ordered that the service providers - Aeropuertos Argentina 2000 S.A. and the Argentine Air Force - shall bill the airport fees specified in the first paragraph of 1) above at the peso/US dollar exchange rate resulting from the open exchange market, and take only the amount of one peso for each US dollar. Regarding the difference between this exchange rate and that of the open exchange market for such operations, a court attachment is hereby ordered, and the amount of such difference must be deposited in cash by the providers within twenty-four (24) hours in a dollar-denominated time deposit, automatically renewable every thirty (30) days, in the name of the caption of these proceedings and to the order of the competent judge, at the bank Banco de la Ciudad de Buenos Aires, branch office Sucursal Tribunales. This measure shall apply until a final administrative decision is made or until completion of renegotiation of the concession contract held by Aeropuertos Argentina 2000 S.A. in accordance with Laws 25,561 and 25,565.

This measure will make it possible, if the attempted proceedings succeed, for the funds to be returned to the user of the services. For such purpose, the concessionaire and the Argentine Air Force shall deliver a copy of the record of the amount paid in dollars or in pesos at the exchange rate prevailing on the date of payment recorded thereon, as well as the bank account or credit card in which the amount to be refunded to the user, if so decided, is to be deposited. To this end, the bank deposit slip, as well as a detailed report of each transaction of plaintiff, shall be submitted within five days, together with the exchange rate of the Argentine peso vis a vis the US currency taken as a basis to perform the calculations. SO RESOLVED.

Be it recorded, notified and communicated to the Argentine President's Office - Legal and Technical Secretariat-, Ministry of Production -Transport Secretariat- Argentine Air Force - Air Regions Command - Aeropuertos Argentina 2000 S.A., to the Banco de la Ciudad de Buenos Aires, Tribunales Branch Office, and to the Bicameral Follow-up Commission of the Argentine Congress (Section 20, Law 25,561) and returned.

(Signed) M. I. GARZON DE CONTE GRAND

(Signed) JORGE HECTOR DAMARCO

(Signed) CARLOS JOSE MASSIA, Secretary

(Signed) MARTA HERRERA

Dr. Marta Herrera said:

1) I agree with the opinion of my colleagues in 1) to 4) hereinbefore of the preceding vote.

However, I partially disagree with the garnishment of amounts resulting from airport fees for international flights – landing fees, aircraft parking fees, telescopic walkway operation fees, en route flight protection fees and landing support fees, which admit an ARS-USD relation transaction resulting from the free exchange market – according to which, for the moment, only one ARS per USD may be credited to their assets.

In my view, such decision would be tantamount to acting on the basis of conjecture, which is prima facie forbidden when it comes to a specific matter referred to the judiciary for decision.

2) The plaintiff filed this request for an injunction requesting the suspension of the effects of Decree 577/02, which converted into dollars all the airport fees of international flights, with respect to the fees the plaintiff pays: landing fees (surcharge included), aircraft parking fees, telescopic walkway operation fees, en route flight protection fees and landing support fees.

3) Before analysing the requirements for the remedy in question to be admitted, it must be pointed out that such preliminary injunction requires an innovative measure, because, as stated and proved by the plaintiff (see pp. 68, 73, 78, 86, 90, 92 and 93) the defendants had already billed the amounts using the open market exchange rate of the US dollar.

The analysis required to grant any such injunctive relief must be strict, as they alter the situation of fact or law existing before requesting them, and granting them would go beyond merely maintaining the state of affairs existing at the time of filing the complaint, as it is ordered, without there being any final judgment on the merits, that something be done or that someone refrain from doing something, as opposed to the existing situation (concurrently: Division I of this Chamber in the matter of *"Asociación Civil Cruzada Cívica para DCUSP (Inc. Med.) s/E.N. (Dtos. 1494 y 1167/97) Secretaría de RNAH (Res. 1103/98) s/proceso de conocimiento"* dated 07/13/00).

4) This having been said, and as regards the requirement of plausibility of the right asserted, it should be pointed out that the injunctive relief sought requires an examination of a complex set of rules issued at the time of the economic emergency declared by Law 25561, modifying, in this regard, the system of contracts entered into by the Public Administration under public law regulations. That was the framework within which Decree 293/02 was issued, which regarded the national airport service as falling within the scope of the contract renegotiation ordered by law 25561. Decree 293/02 was subsequently modified, supplemented and/or regulated by at least fourteen rules (information obtained at www.infoleg.gov.ar). Decree 577/02, ratified by emergency decree No. 1910/02, should especially be noted.

That although the analysis of the regulations as proposed exceeds, in my view, the limited scope of an injunction, in this case the likelihood of the existence of the right claimed, a requirement for admissibility of the injunction, has not been established.

It should be noted that in the case under review this standard should be applied even more stringently, bearing in mind that, as considered in the majority vote the contract renegotiation process conducted by the Federal Government with a view to enabling an adequate provision of the service that is the main subject matter of the activity is in the process of being carried out in order to give all parties concerned an opportunity to be heard.

Judicial intervention, in this state of affairs in which specifically competent agencies are acting without a final decision having been rendered, seems premature. This is so because a request is made for correction of the administrative steps taken within the framework of a preliminary injunction which requires requests to interpret a complex set of regulations without prima facie having established an evident violation of individual rights by the Executive Branch while carrying out its specific function of administering the State.

Agreeing to the request in the situation aforementioned would involve the risk of invading, for the time being without sufficient justification, the powers reserved to the public administration – see my vote in the case *"Petroquímica Cuyo SAIC – Inc Mea"*, of 11/12/02.

In this regard, it must be pointed out that the preambular paragraphs of Decrees No. 577/02 and 1910/02 state that the Executive Branch had specially taken into account the nature of the activities of the commercial air transport industry, whose fee schedule is consistent with international standards and is subject to rules contained in related contracts ruled by the standards on air fees issued by the specific international agencies (International Civil Aviation Agency, Latin American Civil Aviation Commission and International Air Transport Association) – see clause 7 of Decree 1910/02.

That, in this preliminary analysis of the matter, it would seem that the international character of air trade would define the decision adopted by the decree. Note, in this regard, the different arrangements provided for domestic air flights – article 1) Decree 577/02.

5) That regarding the danger in delay, the second essential requirement for admissibility of the requested measure, the plaintiff has stated that calculation and payment of fees in accordance with the challenged decree involves a monthly loss of ARS 700,000.

In this regard, it should be noted that the loss that could result if it was to be decided, at the appropriate procedural time, that the system implemented is contrary to law, is of a financial nature and can be redressed subsequently through the appropriate channels.

As to the rest, other than calculating the amount of the payment due, plaintiff has not demonstrated that it cannot pay, or that this would seriously impair continuation of its activities.

Therefore, I vote to uphold the resolution issued at p.126/128. SO RESOLVED.

Let it be entered, notified and returned.

ADMINISTRATIVE LITIGATION
DIVISION No.2
RECORD OF DECISIONS
Registered (illegible) 1279 Volume 2
BEFORE ME

Signed:
MARTA HERRERA.

Signed:
CARLOS JOSE MASSIA
Head Court Clerk

TRANSLATED FROM SPANISH. BUENOS AIRES, December 17, 2003.-
H:erec/asss4