

Posted: 3/15/99
3:30 p.m.

Order 99-3-10



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

Issued by the Department of Transportation
on the **15th day of March, 1999**

Served: March 17, 1999

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

ORDER

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). Northwest states that the EU is in the final stages of enacting a regulation that would restrict the use of hushkitted aircraft, and that, if enacted, 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

Section 41310 provides that the Department shall approve, deny, dismiss, or set a complaint for hearing, or institute other procedures proposing remedial action, within 60 days after receipt of the complaint. We may extend the period for taking action up to 90 days from the date of the complaint if we conclude that it is likely that the complaint can be resolved satisfactorily through negotiations. We may further extend the action deadline up to 180 days from receipt of the complaint, in 30-day

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

increments, if we find that intergovernmental negotiations have progressed to a point that a satisfactory resolution of the complaint appears imminent.

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; Societé 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, 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.

Since the filing of Northwest's complaint, there have been a number of intergovernmental contacts concerning the issues raised by Northwest, including consultations in Brussels on March 12, 1999, between the United States and the European Union. Those contacts are continuing. In addition, the Secretary of Transportation is scheduled to meet with EU Commissioner Neil Kinnock to discuss these issues later this month. Given these circumstances, we believe that the public interest is best served by extending for 30 days the deadline for action on Northwest's complaint to provide additional time to resolve this matter.

ACCORDINGLY,

1. We will extend through April 15, 1999, the period for taking action on the complaint of Northwest Airlines, Inc., 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 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:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

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