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# Dear Senator Hatch

by Philip Baum

**W**ell it actually began "Dear Mr. Chairman." I am, of course, referring to the letter The United States Secretary of Transportation, Rodney E. Slater, wrote to The Honorable Orrin G. Hatch, Chairman of the Committee on the Judiciary on June 12th 2000. The letter that signalled the death knell of the controversial Hatch Amendment.

**“ no single state can dictate security measures to another ”**

For those readers who, for some reason, have no knowledge of the Hatch Amendment, suffice it to say that it referred to the requirement for foreign carriers operating flights to the United States, on routes also operated by American carriers, to implement identical security measures to those the American carriers are required to adhere to.

The Secretary of Transportation outlines to Senator Hatch all the impracticalities of this Notice of Proposed Rule Making (NPRM) and even hazards a guess at the cost implication to foreign carriers and airports were the NPRM to be implemented – an estimated \$2 billion over 10 years. Furthermore, it was projected that a reduction of the number of flights operating to the United States would follow, with figures quoted being between 3% and 30%.

The Airports Council International, one of the most vocal opponents of the Hatch Amendment, was quick to write to its members, notifying them of the apparent American retreat and even circulated a copy of the Secretary of Transportation's letter.

The retreat (it would appear that the Americans are simply going to refrain from enforcing the Amendment rather

than cancel it) will be heralded by all as a victory for common sense, save those who drafted it. Had the spirit of good security been of paramount importance, there would have been some sympathy for its worthy objectives. It was, however, a piece of legislation that was economically driven, using security as a disguise.

It must have been appreciated early on that it would never have been enforceable. One side had to back down. And, all credit to the Secretary of Transportation for acknowledging the failings of the Amendment.

All credit also to those airports, airlines, and governments who stuck by their resolve to see the Amendment defeated. Many were quoted in an Attachment to the Secretary's letter, including:-

"Should the proposed rule be enacted, Switzerland takes this opportunity to already announce its refusal to implement the NPRM measures." This was a declaration made by The Swiss Federal Office for Civil Aviation. It was deemed to be influential on other European nations, particularly because of Switzerland's leadership of ECAC.

"The public interest will be harmed as service will be terminated and capacity will be lost" commented Lauda Air.

"The rulemaking is driven by commercially-motivated legislation that fails to take into account its potentially far-reaching and extremely detrimental consequences" was the joint statement of Sabena and Swiss Air.

British Airways meanwhile made it clear that it "is powerless to implement the proposed rule on any airport in the United Kingdom".

The Secretary of Transportation's final quote came from the International Air Transport Association itself: "The proposed rule is confusing and impossible to comply with."

The apparent death of the Amendment does however still leave the United States carriers competing on an uneven playing field. It's highly laudable to provide enhanced security procedures, but the general public are a fickle bunch. They are not tolerant of delays, regardless as to cause, and they object to the invasive passenger profiling techniques required. There will almost certainly be an even greater departure from the profiling principles the FAA brought in at the end of the 1980's, and computers will, no doubt, have a larger role to play in passenger vetting. Automated explosive detection systems, based on X-ray and CT technologies, combined with greater usage of trace detection equipment will provide some comfort to the legislators, and may enable the screening process to be completed quicker.

**“ a piece of legislation that was economically driven, using security as a disguise ”**

Ultimately, however, no single state can dictate security measures to another. It can recommend its citizens not to travel to a certain country. It can determine that the security programme of a given airline is unacceptable and then deny that airline permission from landing. It can inspect security overseas and decide whether to permit its own carriers to operate the route. And, it can voice its concerns about security in international forums. As much as a state would like to afford maximum security cover to its own nationals, the state also has to accept that the passenger also has the right to choose.

Sincerely