



ASSEMBLY — 36TH SESSION

ECONOMIC COMMISSION

Agenda Item 40: Regulation of international air transport services

**IMPACT IN THE SPHERE OF CIVIL AVIATION OF THE U.S. ECONOMIC TRADE AND
FINANCIAL EMBARGO ON CUBA**

(Presented by Cuba)

EXECUTIVE SUMMARY

The aim of this working paper is again to bring to the attention of the international civil aviation community, with up-to-date information and evidence of the extraterritorial nature of the sanctions, the infractions of the Chicago Convention involved in the U.S. economic, trade and financial embargo on Cuba. It also describes the impact of these sanctions on the development of Cuban civil aviation, reflecting obstruction of participation by Cuban airlines in international air transport activity.

Action: The Assembly is invited to:

- a) review the information contained in this working paper and attachments, relating to the impact of the U.S. economic, trade and financial embargo against the Republic of Cuba in the sphere of civil aviation;
- b) take note that the unilateral measures taken by a party state against another party state affect the latter's aeronautical development and constitute a blatant infringement of the principles and aims of the Chicago Convention, while establishing negative precedents that may affect other member states of the international aeronautical community;
- c) urge the Organization's Secretary General to continue informing the UN Secretary-General of the damage suffered by Cuban civil aviation under the U.S. economic, trade and financial embargo on the Republic of Cuba, in the context of the Organization's response to the resolution submitted to the UN every year calling for the elimination of the embargo mentioned; and
- d) request the President of the Council to submit reports to the Council on an annual basis for as long as these effects prevail.

<i>Strategic Objectives:</i>	
<i>Financial implications:</i>	Not applicable.
<i>References:</i>	

¹ English and Spanish versions provided by Cuba.

1. BACKGROUND

1.1 The government of the United States has imposed an economic, trade and financial embargo on Cuba since 1960. From that year onwards, all sectors of the Cuban economy - including that of civil aviation - have been affected.

1.2 The embargo breaches the principles embodied in the preamble to the Chicago Convention.

1.3 The UN General Assembly has passed every year since 1992 (the 47th session) up to 2006 (the 60th), by an overwhelming majority, resolutions entitled "The need to end the economic, commercial and financial embargo imposed by the United States against Cuba". At the latest session on 8 November 2006, the resolution with this title (No. 61/11) received 183 votes in favour and four against, with one abstention.

1.4 At the ICAO Assembly's 35th session, during discussion of agenda item 27 relating to external factors affecting civil aviation, working paper 251 was submitted for review by the Commission. After an intense debate, the Commission referred the question to the President of the Council, whose good offices had been involved in this connection on previous occasions. Following the recent appointment of a new Council President, we are today submitting this revised working paper covering the latest events and impacts of this criminal embargo, since the 35th session to date, for review by the Assembly and to help clarify to what extent the good offices of the President can be brought to bear in the Council's new term in office.

2. ANALYSIS OF THE EFFECTS

2.1 **Impacts demonstrating the extraterritorial nature of the U.S. regulations and hence that the embargo is not a bilateral affair**

2.1.1 Effects directly demonstrating the extraterritoriality of Washington's measures include delays and denials affecting dealings concerned with purchases of technical aviation supplies, in the cases of parts, spares, engines and equipment with more than 10% U.S.-made components.

2.1.2 A similar case arising in this period, as in earlier years, was the purchase or lease of Pratt & Whitney aero engines for our fleet. This proves impossible, even indirectly via triangular transactions. U.S. transnational GE Transportation-Aircraft Engines applies Washington's sanctions as regards these engines by classifying Cuba under Group E:2 of the Export Administration Regulations (EAR), Part 740 Supplement 1. (11/7/05) as a country that supports terrorists and is subject to an embargo controlled by the Treasury Department.

2.1.3 Refusal by Exxon Mobil Aviation Lubricants, in February of this year, to authorize the supply to Cuba of three tons of Mobil Turbo 319-A-2 Oil for use in our civil aircraft, via Spain's Saisa Aircraft Support, S.A., involving a financial impact of some U.S. \$100,000. (Evidence: see e-mail from Saisa Aircraft Support, S.A attached as Document No. 1 at Appendix A).

2.1.4 A change of commercial policy by the Polish aircraft factory PZL Mielec resulting in cancellation of orders from our firm for parts, spares and sub-assemblies worth around U.S. \$160,000 for AN-2 aircraft and their ASH 62-IR engines, following acquisition of the factory by the American Sikorsky Aircraft Corporation. (Evidence: See communication from the factory's commercial manager to Aviaimport's commercial office dated 16th February 2007, attached as Documents Nos. 2 & 3 at Appendix B).

2.1.5 Mathews, the manufacturer of conveyor belts for luggage and supplier of the conveyors at various Cuban airports (Havana, Varadero, Camagüey, Holguín and Santiago de Cuba), suspended commercial relations with our firm in 1998 following direct orders from the U.S. headquarters to its Canadian subsidiary. We are consequently unable to buy new Mathews equipment or special replacement parts for the systems installed in our airports. The results have included many interruptions of service among the installations concerned.

2.1.6 Other impacts from the application of this extraterritorial legislation include the fact that our pilots have to undergo simulator training twice a year, to maintain a high standard of safety. Simulators for ATR-type aircraft are installed in Canada, but because it is a subsidiary of a U.S. company we cannot carry out the training there, so that it has to be performed in Europe. This situation increases the length of the relevant visits and the cost of transport, causing extra expenditure of U.S. \$119,730.

2.1.7 The fleet of agricultural airplanes needs to be renewed and this must be done using aircraft with a guaranteed supply of spare parts, thus ruling out American machines.

2.1.8 We have been considering replacement with Brazilian Ipanema 202 type airplanes, which we regard as possibly the best choice for agricultural operations.

2.1.9 We have been negotiating with NEIVA's sales manager for the supply of five petrol-engined Ipanemas and have been advised as follows: "I have consulted our director in EMBRAER/NEIVA and they have told me that selling DIRECTLY TO CUBA is not permitted". (Evidence: See exchange of e-mails dealing with the enquiry and the reply, attached as Document No. 4 at Appendix C)

2.1.10 Other negotiations for the purchase of an air-traffic simulator, via - and ordered by - the ICAO, fell through when the Canadian supplier ADACEL refused the order following the tightening of U.S. sanctions against Cuba.

2.1.11 From the economic viewpoint, this means that every year our airport aeronautical services incur around U.S. \$250,000 on retraining air-traffic controllers abroad, for the lack of a simulator in Cuba. (Evidence: see Document No. 5 at Appendix D).

2.1.12 At the end of September 2004, the Swedish airline NOVAIR, with which our airline Cubana de Aviación had had since February 2003 an agreement to lease an A330 airplane, notified Cubana that its maintenance supplier, SR Technics, had reported problems over continuing to provide services in Havana, since it was breaching U.S. Commerce Department regulations (U.S. trade control laws, Licence Exception Aircraft and Vessels ("AVS"), 15 CFR 740.15a).

2.1.13 Finally, on 30th April 2005, the lease on the A330 terminated, which has meant that Cuba is obliged to lease another, more expensive aircraft in order to meet its commitments to the users, while its technical crews - trained for months at high cost on the airplane mentioned - cannot do their jobs. In

other words, over U.S. \$2, 000 000 was wasted, while the crews were left unemployed. (Evidence: Attachment No. 1 at Appendix E - letter from SR Technics to Novair).

2.1.14 Another example of Washington's extraterritorial application of the sanctions arose in November 2004, when the U.S. company ARINC warned that the Air Transat airline could not continue providing check-in service to Cubana using ARINC's iMUSE system, since this implied an indirect benefit to Cuba - a country subject to U.S. sanctions. It clarified that any "improper use" of the system in the future would result in "termination of service to Air Transat".

2.1.15 Finally, and despite repeated efforts by the manager of Cubana de Aviación in Canada, on 19th March ARINC unilaterally denied access to the agreed services destined for Cubana de Aviación by the Canadian company HANDLEX or by ADM (Aéroports de Montréal). (Evidence: Attachment No.2 at Appendix E - letter from Dean A. Siedleck, ARINC's chief contracts representative and Air Transat executive Alain Gendreau, explaining the situation. Attachment No. 3 at Appendix E similarly shows a letter from HANDLEX contract director Joe Di Rienzo to Nairy Chamelin, president of the CUTE Club at Dorval airport).

2.2 Violations of the Chicago Convention

2.2.1 It remains the case that the anti-Cuba Torricelli and Helms-Burton legislation are causing substantial damage to Cuba's civil aviation. The banning of U.S. citizens from freely visiting Cuba and of our airlines from operating to the United States has a huge economic impact: the airlines are unable to serve this traffic, the volume of operations at our airports is reduced and the movement of passengers is restricted. Moreover, these laws ban the acquisition of latest-technology airplanes, equipment, parts, spares and other accessories.

2.2.2 The U.S. economic, trade and financial embargo imposed on Cuba breaches the principles embodied in the preamble to the Chicago Convention, according to which civil aviation should be "developed in a safe and orderly manner" and "established on the basis of equality of opportunity, and operated soundly and economically".

2.2.3 With its discriminatory measures, the embargo infringes also the rules and precepts of the Convention, notably the provisions of Article 44, sub-articles (a), (c), (d), (f), (g), (h) and (i) which include among the aims and objectives of the ICAO those of promoting the development of international air transport, meeting the needs of the world's peoples in this regard, ensuring full observance of the rights of the contracting states and avoiding discrimination among these, and generally promoting the development of international civil aeronautics in all its aspects. Also breached are Articles 77 and 79, which seek to facilitate the setting up of joint air-transport service organizations between contracting states, merging their services on any route or region, through action by government or by one or more airlines designated for the purpose. In this context, our problems have included reaching such agreements with other airlines.

2.3 Other impacts

2.3.1 The American monopoly position as regards the manufacture of commercial aircraft and components, spare parts and technology for aircraft manufacture and maintenance, and for those of European manufacture, makes their purchase by Cuban airlines prohibitive. (Evidence: Document No. 6 at Appendix F - negative response from Boeing, product of the embargo, to a request for maintenance of an airplane of their manufacture used by a Cuban airline). These obstacles have given rise to an economic

impact in terms of additional expenditure amounting to U.S. \$184,664,582.40 since the imposition of the embargo.

2.3.2 The Cuban delegation at the 28th (Extraordinary) session of the ICAO Assembly proposed the inclusion in Resolution A28-3/6 of a clause calling for support for airlines seeking to accelerate the process of modernizing their fleets and, hence, easier access by all states to leasing and purchase of aircraft that meet Chapter 3 requirements, including the provision of any relevant multilateral technical support. The clause was approved by the Assembly as part of the Resolution and remains in effect in Resolution A35-7 Appendix D point 6.25. Another substantial impact is the following: various U.S. airlines - including Miami Air, American Eagle, Gulf Stream and Sky King - operate regular charter services to and from Cuba. They fly these routes out of Miami, and the Cuban state provides them with all the passenger-related facilities needed for these operations. Nonetheless, the United States does not allow Cuba's airlines to access its territory, on the grounds of Section 515.201(a) of the Cuban Assets Control Regulations, 31 C.F.R. Part 515, according to which landing a Cubana airplane at Miami without a specific permit could constitute a prohibited act and the aircraft could be seized.

2.3.3 In addition, the banning of American citizens from visiting Cuba as tourists continues, so that Cuban and U.S. airlines are deprived of this traffic. In the period under review, the revenues foregone by reason of this ban, including those from airport and other services and the airport tax payable by passengers, amounted to U.S. \$171,375,090. The corresponding total from 1960 to date is \$2,376,064,261.

2.3.4 This unjust and discriminatory policy applied by Washington has had a substantial impact on Cuba's civil aviation. In financial terms, in 2007 alone it has amounted to \$189,384,919.8; over the last 49 years, it has totalled \$2,762,252,076, to a large extent inhibiting the development of air transport in Cuba.

3. CONCLUSION

3.1 While the measures described in this note, which have had a substantial economic impact on Cuban civil aviation over many years, have been aimed at curbing the development of Cuba's aviation, they have obliged us to redouble efforts to ensure that the services we provide to the international community meet the appropriate standards of quality and safety and comply with ICAO rules and regulations, and that all our operations are consistent with the principles embodied in the (Chicago) Convention on International Civil Aviation.

3.2 In the light of this evidence, the Cuban delegation feels honour bound to alert the international air community yet again to the improper application of unilateral measures by one state party to the Chicago Convention against another, breaching the Convention's principles and aims, while establishing negative precedents that may affect other member states of this community.

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APPENDIX A

EVIDENCE - DOCUMENT NO. 1

[TRANSLATION OF AN ORIGINAL DOCUMENT IN SPANISH]

HECTOR DÍAZ [ILLEGIBLE HANDWRITTEN NOTE]

FROM: JUAN CARLOS BURGUERA (JCBURGUERA@SAISA.ES)

SENT: FRIDAY 9TH FEBRUARY 2007 4:58

TO: 'HECTOR DIAZ'

CC: APEREZ@SAISA.ES

SUBJECT: YOUR ORDER NO. 32/07

DEAR HECTOR

WITH REGARD TO YOUR ORDER 32/07.

WE HAVE CONTACTED THE MANUFACTURERS AND THEY HAVE CONFIRMED THAT THIS OIL CANNOT BE SOLD IF ITS FINAL DESTINATION IS CUBA, DUE TO THE RESTRICTIONS UNDER THE U.S. EMBARGO ON CUBA.

LET ME KNOW IF WE CAN HELP IN ANY WAY.

REGARDS

JUAN CARLOS BURGUERA

SAISA AIRCRAFT SUPPORT

TEL. ...

FAX ...

WWW.SAISA.ES

APPENDIX B
DOCUMENTS NO. 2 AND 3

DOCUMENT NO. 2

[Original document in Polish]

DOCUMENT NO. 3

[Translation of an original document in Spanish]

PZL Mielec ...

Mielec, 16 February 2007
PH-2/ 258/2007

Orlando Santana Gómez
Principal Specialist, Commercial Dept.
AVIAIMPORT S.A.

Dear Sir,

In reply to your letter of 9th February 2007, referring to the visit to our firm by AVIAIMPORT representatives, I regret to have to inform you that for reasons of a working trip we will not be able to meet within the period indicated.

According to the commercial policy of our new owners, SIKORSKY AIRCRAFT CORPORATION, the business practices of PZL Mielec have changed. Following redefinition of our marketing priorities, the decision has been taken to concentrate on a limited number of sales markets. In this connection, we have no plans for operating in the Cuban market.

Thank you for your custom to date.

Yours faithfully

Signed

Artur Wejtas
Member of the Board
Commercial Director

APPENDIX C
DOCUMENT NO. 4

[Translation of original messages in Spanish]

EXCHANGE OF E-MAILS

E-mailed enquiry from our aircraft purchasing company

----- Original Message -----

From: Roberto Tejuca

To: 'Pelopidas Bernardi' Sent: Tuesday, February 07, 2006 6:12 PM

Subject: RE: EMB 202

Pelopidas Bernardi:

Many thanks for sending us your e-mail and address. We are interested in purchasing aircraft of the EMB-202 IPANEMA-type used for agricultural purposes.

Our order is for:

5 EMB-202 IPANEMA planes (new)

Please quote inclusive of:

.Fire-fighting gear. .Solid fertilizer dispensing equipment.

.Assembly in Cuba and training of pilots (experienced in agricultural aviation) and engineers.

If this sale can be arranged, we need confirmation with a view to our visiting your establishment and assessing the airplane, its general technical and operational specifications, as well as the relevant terms of business.

Looking forward to hearing from you. Best regards,

Roberto Estrada Tejuca

Commercial Dept.

Aviaimport S.A

E. mail roberto.tejuca@aviaimport.avianet.cuTel:(537) 273-01-42,

Fax:(537) 273-62-34

E-mailed response from the manufacturer to the aircraft purchase enquiry:

From: Pelopidas Bernardi [mailto:pba@aviacaoagricola.com.br]
Sent: Friday 10th February 2006 8:19
To: Roberto Tejuca
Subject: Re: EMB 202

Dear Roberto,

I have consulted our director, in EMBRAER/NEIVA, and they tell me that we cannot sell DIRECTLY to CUBA.

As a aircraft salesman, what I think we can do is find a trading company in the Brazilian market that will BUY the EMBRAER/NEIVA planes and then SELL them to CUBA, without the EMBRAER/NEIVA name appearing as an EXPORTER TO CUBA. Understood?

In order to find a trading company in Brazil and start the negotiations, I would like to now how you would pay for the planes, how many you would buy and whether this would be a one-off transaction.

I look forward to receiving your comments,

APPENDIX D
DOCUMENT NO. 5

[Translation of an original document in Spanish]

ICAO OACI ...	INTERNATIONAL CIVIL AVIATION ORGANIZATION 999 UNIVERSITY STREET MONTREAL, QUEBEC, CANADA H3C 5H7
	FAX NO. (514) ... E-MAIL:
SENDER: TCB/PRO/MAB	DATE: 2 nd March 2006
TEL. 514	PAGES: 2 + 2
FILE REFERENCE: CUB/05/809, PRO59 121	PRIORITY:

For: Gnral. Rogello Acevedo González Fax No. +537 833 3082
President of the IACC (Instituto Aeronáutica Civil, Cuba)
Havana, Cuba

cc: Agimiro Ojeda Vives Fax No. +537 834 4450
Vice President of the IACC

cc: Amilcar Silviera Fax No. +537 834 4553
Vice President of the IACC

cc: Armando Fuentes Fax No. +537 833 2272
Corporate Director of Personnel CACSA

PRU3511MAB

Subject: Status of agreement 40591 for the purchase of a GECI simulator (Adacel)

With regard to agreement No.40591 for the purchase of a GECI simulator via ADACEL, be advised that no export licence is needed for exporting the simulator from the United States. However, subsequent to the submission of ADACEL's proposal to GECI for equipment of this type, the organization structure of the Adacel North America operating group, including Adacel Inc. Canada and Adacel Systems Inc. in the United States, has changed. Among specific changes are the appointments of an American general manager and an American finance manager, who jointly authorize all Adacel North America's business operations. Both are U.S. citizens and consequently, by law, cannot participate in or authorize any business with Cuba. Shortly after receiving the GECI purchase agreement, Adacel engaged the services of a John Barker of Arnold & Porter in Washington DC, an experienced and prestigious legal adviser, to help them with their application to the Office of Foreign Assets Control (OFAC) either to disallow the American citizens' participation or grant them a licence to proceed with this agreement.

As there is no guarantee, in either the short or long term, that OFAC will authorize shipment to Cuba, or even that it will reply at all, the ICAO is currently discussing with GECI alternatives for implementing this agreement. We will keep you informed of all developments in this connection.

Yours faithfully

Signed
A Sanchez
Director Technical Cooperation

Attachments:

- Proforma end-use certificate
- Proforma IACC Letter of Intent

[Footnote in English]

APPENDIX E

ATTACHMENTS NO. 1, 2 AND 3

ATTACHMENT No. 1

[Original document in ENGLISH]

[Traducción al español de Adjunto No. 1]

ATTACHMENT No. 2

HANDLEX

Date: 25th November 2004

Addressee: R. Valdivia

Company: CUBANA

Sender: J. Di Rienzo

No. of pages: 4 including this page

Ref: GATAN vs ARINC

Further to our conversation, I attach a copy of a letter from ARINC to Air Transat.

[Original document in ENGLISH]

[Traducción al español de Adjunto No. 2]

ATTACHMENT NO. 3

[Original document in ENGLISH]

APPENDIX F
DOCUMENT NO. 6

[Translation of an original document in Spanish]

Sky Service S. A.
Attn. Jurgen Paulmann
General Manager

Mr. José M. Rebolledo
Abogado Empresas JP

SUBJECT: REQUEST FOR BOEING'S SUPPORT

Ref: (a) Fax from S. Rebolledo dated 12th February 2002, requesting Boeing to provide technical data, replacement parts and technical support.
(b) Commerce Department regulations for the administration of exports, Section 740.15

Dear Sirs,

As regards reference (a), unfortunately Boeing will not be able to supply the products and services requested since Sky service S.A. operates charter flights to and from Cuba. Reference (b) bans U.S. companies from exporting items to support any aircraft registered in, owned by, controlled by or under charter or leasing terms in any country included in the 'D' group of countries: Cuba, Libya or any national of those countries. We are grateful for your interest in our products, but the Boeing Company is bound by these regulations.

Yours truly,

For the Boeing Company:
Millie Edmolnds
Contracts Manager
Attached: Export Administration Regulations, Section 740.15
c.c. Ron Farnsworth, Boeing field services representative.

GENERAL DIRECTORATE OF CIVIL AERONAUTICS
[Text in ENGLISH]

— END —