

# The UPDATE Report



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## EASA Task to Address Supplier Oversight

The European Aviation Safety Agency (EASA) has indicated to ASA that they plan to address the oversight of suppliers of aircraft parts in the near future.

Examining the oversight of suppliers is tentatively scheduled by EASA to be addressed in 2010.

Europeans remember the PanAviation incident, in which an Italian distributor received significant media attention because of a perception that there could be improper identification of aircraft parts. Because of PanAviation, the oversight of suppliers in Europe remains an issue lodged in the minds of the public.

Meanwhile, since PanAviation, a significant number of European distributors have adopted the FAA AC 00-56A accreditation program. Since the widespread adoption of AC 00-56A programs by European distributors in the post-PanAviation world, there do not seem to have been any significant complaints of improper distribution behavior in Europe. 

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## MESSAGE FROM ASA'S PRESIDENT

### THE UPDATE REPORT

is the newsletter of the Aviation Suppliers Association.

### OUR COMMITMENT

ASA is committed to providing timely information to help members and other aviation professionals stay abreast of the changes within the aviation supplier industry.

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Dear Members,

Last week I attended the ISTAT meeting in Arizona. The discussions during the meeting were fascinating and at times left you feeling good for a moment and then concerned two minutes later. As with everything we know and hear, access to capital is key. The overriding observation was 2009 and 2010 may be weak due to operators not being able to pull together the necessary capital for airplane purchases, but with the long and diverse nature of future orders that Airbus and Boeing have made for a strong outlook. Having said that, all the financial and economic analysts called for production cut-backs from both manufacturers and also stated that the manufacturers and Ex-Im Bank will have to finance a large portion of aircraft this year.

There was a discussion regarding the large number of planes being parked and which planes will be brought back into use. One economist talked about the impact on spare parts market and to watch the number of aircraft being disassembled, because certain fleet types will have a large supply of parts which will bring down the price and demand. At the ASA Annual Conference there will be speeches about the parts market and the future forecast for parts demand and supply.

This month we are starting a series of articles regarding importing issues, with the first article discussing parts that do not fall within the "Aircraft, Spacecraft, and Parts Thereof" category of the Harmonized Tariff Schedule of the United States (Tariff Schedule). This series on importing issues supports our goal of providing usable information on subject matter that is requested by the members.

As mentioned in the cover article, EASA has moved the discussion of distributor oversight from this year to 2010. ASA will be watching for any new developments in Europe and advocating on behalf of the members.

Take care,  
Michele

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## ASA Training Schedule

ASA members should consider sending their employees to the following upcoming training sessions. More information about ASA training is available on ASA's website.

TOPIC	DATE	CITY
Export Workshop	April 20	Dallas, TX
Hazmat Training	June 17-18	Miramar, FL
ASA Annual Conference	July 11-14	Orlando, FL
Export Workshop	TBA	Newark, NJ
Regulatory Workshop	TBA	Seattle, WA
Hazmat Training	TBA	Los Angeles, CA
Hazmat Training	TBA	Kansas City, MO

Due to popular demand, ASA is also investigating dates for additional regulatory training workshops in the Fall. 

## Do Your Imports Fit Into the Aircraft Parts Harmonized Tariff Code?

As an importer, you are responsible for the proper characterization of the articles that you are importing. Many times companies importing aircraft parts and accessories assume that their shipments fit into the "Aircraft, Spacecraft, and Parts Thereof" category of the Harmonized

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Tariff Schedule of the United States (Tariff Schedule). This is a popular category because aircraft parts are imported into the United States duty-free.

However, this exception is not nearly as broad as the title would lead you to believe. Just because something is ultimately destined for incorporation into an aircraft does not always mean that the US government will consider it an aircraft part for the purpose of the Tariff Schedule. In this series of articles, we will be discussing parts that ASA members may handle that do not fall into this exception. Armed with this information, ASA member companies should be better prepared to avoid getting legal trouble when importing aircraft parts.

The aircraft parts exception is contained in Chapter 88 of the Tariff Schedule. The notes that discuss Chapter 88 are the notes to Section XVII of the Tariff Schedule (the section containing Chapter 88). These notes are useful in deciphering what is and is not covered by the aircraft parts exception.

The notes to Section XVII state that the terms “parts” and “parts and accessories” do not include certain listed items. In this article, we will be discussing the first two listed item categories not covered by the aircraft parts and accessories exception. These are:

1. joints, washers, or the like of any material, or other articles of vulcanized rubber
2. certain parts of general use of base metal or plastic

Note that while this article examines these two exceptions, these are NOT the only exceptions! This article is part one of a series that will investigate the breadth of the exceptions to the harmonized tariff code category for aircraft parts.

### *Joints, Washers, and Articles of Vulcanized Rubber*

For the first section of the first category of parts not included in the aircraft tariff exception, “joints, washers, or the like of any material”, the notes to Section XVII indicate that this includes parts “classified according to their constituent material or in heading 8484.” What does this mean? Examining the Tariff Schedule shows that heading 8484 covers articles described as “Gaskets and similar joints of metal sheeting combined with other material or of two or more layers of metal; sets or assortments of gaskets and similar joints, dissimilar in composition, put up in pouches, envelopes, or similar packings; mechanical seals.”

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The notes to Section XVII are thus advising the reader that joints, washers, and the like are not included in the aircraft parts exception whether they fall into a section of the tariff code due to material from which they are made, or when they fall within the scope of heading 8484 (gaskets), as discussed in the paragraph above. Essentially, this means that all joints, washers, and mechanical seals of any sort, made of any sort of material, are potentially excluded from the aircraft parts category, and must be described as something other than an aircraft part when they are imported in the US.

The second section of the first category of parts not included in the aircraft tariff exception is listed as “other articles of vulcanized rubber, other than hard rubber (heading 4016).”

Heading 4016 includes a comprehensive list of items of vulcanized rubber other than hard rubber covered by that chapter. This list includes some items that you may currently think of as an aircraft part or accessory subject to the exception, including items of cellular rubber:

- floor coverings and mats
- gaskets
- washers and other seals
- containers of the kind used for marketing, packing, or transporting merchandise
- caps, stoppers, lids, seals, and other closures

Parts on this list are also excluded from the aircraft parts category, and must be declared for import under heading 4016. It is important to keep this list handy when determining what things may not be covered by the aircraft parts category in the Tariff Schedule.

**Certain “Parts of General Use”**

The second category of parts not included in the aircraft parts and accessories category in the Tariff Schedule are certain parts of general use, made of base metal or plastic. To see what parts of general use made of base metal are not included in the exception, the reader is referred by the notes of Section XVII to note 2 of Section XV. That note (note 2) defines “parts of general use” by referring to a variety of other headings and chapters – anything in that list is a “part of general use” Perusal of the list reveals a vast number of parts of general use that are not covered by the aircraft parts category.

These parts of general use (those that are not considered aircraft parts) include a wide variety of things, many of which are of the nature of the things that come to mind when one hears the phrase “general use”.

A partial listing of components that fall under this definition as “parts of general use” but that may be used in aircraft include:

- springs and leaves for springs made of base metal, other than clock or watch springs, as covered by heading 9114
- tube or pipe fittings, in heading 7307
- stranded wire, ropes, plaited bands, slings, cables and the like of iron or steel, not electrically insulated, in heading 7312
- chains and parts therefore of iron or steel, in heading 7315
- screws, nuts, screw hooks, rivets, bolts, coach screws, cotters, cotter pins, washers including spring washers, and similar article so of iron or steel, in heading 7318

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## REGULATORY UPDATE

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- padlocks and locks of base metal, clasps and frames with clasps incorporating locks of base metal, keys of base metal, in heading 8301
- base metal mountings or fittings for doors or windows, base metal automatic door closers, in heading 8302
- clasps, frames with clasps, buckles, hooks, eyelets, etc. of base metal, of the kind used for purposes including awnings or travel goods or other made up articles, tubular or bifurcated rivets of base metal, and beads and spangles of base metal, in heading 8308
- frames and mirrors of base metal, in heading 8306

The items in this list, above, are *excluded* from the aircraft parts category because they are considered to reflect “general use.”

The parts of general use in the notes to Section XV also include parts of general use composed of plastics, as covered in Chapter 39. Chapter 39 defines the expression “plastics” in the Tariff Schedule to mean materials which “are or have been capable, either at the moment of polymerization or at some subsequent stage, of being formed under external influence (usually heat and pressure, if necessary with a solvent or plasticizer) by molding, casting, extruding, rolling, or other process into shapes which are retained on the removal of internal influence.” Plastics also include vulcanized fiber, though not textile materials. Essentially, any of the listed parts of general use that are composed of plastic, as opposed to base metals, are also excluded from the aircraft parts import category.

### Conclusion

One reason for excluding these parts is because the U.S. government does not want them to be imported into the United States duty-free (as aircraft parts) and then see them used as non-aircraft parts. The harmonized tariff code therefore errs on the side of caution and excludes all of these parts from the categories for “aircraft parts.” A good rule of thumb for questionable articles is that if the article can arguably fit into one of these categories and can possibly be used (or is used) in other industries, then it usually ought to be characterized in the exception (and not as an aircraft part).

As you can see, the aircraft parts and accessories exception to the Tariff Schedule is much less expansive than it may initially seem. It is important to know what is and is not an exception when you are importing goods. Next issue, we will take up two more of the categories of parts not included in this exception, with the goal of educating companies about their legal duties in regards to importing goods. 



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## ASA Files Large Aircraft Security Program Comments

ASA has filed comments in response to the Transportation Security Administration (TSA) proposal to implement security program requirements for large aircraft at general aviation airport.

The proposed rule would require security programs for all operators of aircraft with a maximum certificated takeoff weight of over 12,500 pounds. The rationale given for this requirement in the proposal is that TSA's security focus on the risks to commercial aviation may have increased the likelihood that terrorist would target general aviation (GA) operators.

Currently, the TSA requires security programs only for air carriers and commercial operators (with some exceptions). A security program is described by the introduction in the Notice of Proposed Rule-making (NPRM) as being a set of security procedures that would meet the applicable TSA recommendations (which could include such criteria as specific measures to screen cargo, to transport Federal Air Marshals, to use personnel identification systems, and to provide training to employees). The proposal specifically would require fingerprint-based criminal history records checks for flight crews, watch list matching of passengers, biennial security program audits, passenger and property screening, and checks onboard for unauthorized persons and for weapons.



The proposal would implement security programs at hundreds of general aviation airports that do not currently require such programs. This would stretch TSA's already strained oversight resources, and impose costs under circumstances where there is no demonstrated need for such programs. The costs, in turn, could cause some operations to cease.

ASA pointed out a number of technical and legal problems with the proposal, including:

- The TSA proposal seems to go well beyond the statutory authority given to TSA by Congress
- The TSA proposal establishes arbitrary thresholds with no technical basis
- The TSA proposal fails to address a real threat, and it would impose financial burdens with out correlative safety or security improvements

ASA's comments can be found on the ASA website.



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## With Open Skies II Talks Set to Resume, Foreign Ownership Laws Remain an Important Issue

Currently, U.S. law limits the foreign ownership of a domestic airline to 25% of the voting shares and 49% overall (thus permitting ownership of classes of non-controlling shares). U.S. law also requires that U.S. citizens must be in actual control of the airline as well as make up two-thirds of the officers and directors, including the airline's president.

Recently the chairman of the House Transportation Committee, Rep. James Oberstar (D-MN) expressed his support for enacting further foreign ownership restrictions. Chairman Oberstar has suggested inserting restrictive language on foreign ownership into the legislation to reauthorize FAA funding.

The stance taken by Congressman Oberstar and others like him is contrary to the requests of the European Union (EU). The EU has asked the U.S. to relax foreign ownership rules. Many believe that failure to accede to the international requests could limit U.S. ability to make aviation agreements with other nations. With Open Skies II talks to resume in May, many EU officials feel that the current U.S. rules on foreign ownership represent a roadblock to greater international aviation cooperation.

Generally, the U.S. disfavors a shift in foreign ownership rules at times when the U.S. dollar is weak (to prevent foreign ownership of U.S. carriers), and non-U.S. governments tend to disfavor rules that could permit U.S. ownership of their air carriers when the U.S. dollar is strong (to prevent U.S. ownership of their air carriers).

Many in the U.S. remain concerned about the possible negative impact of loosening the restrictions on foreign ownership. Organized labor has expressed dissatisfaction with the idea of foreign ownership because of a fear that airline jobs could be redirected to foreign citizens. President Obama is perceived by many to be extremely friendly to labor, and thus is unlikely to support a loosening of the ownership requirements for domestic airlines.

Although organized labor tends to capture the headlines, there are also historical strategic reasons for ensuring domestic ownership. Because the U.S. air carriers can be pressed into service for troop carriage in times of war, there is a perception that foreign ownership could subject an important domestic resource to foreign control – a foreign control that could be detrimental to national security interests.

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# REGULATORY UPDATE

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While those who support foreign ownership limits are labeled "protectionist," the fact is that the debate is far more complicated, and is rooted in part in the fundamental nature of aircraft regulations. The Chicago Convention established that air carriers would be "flagged" based on their home nations, and that the home nations would remain responsible for regulation of the air carriers. International ownership complicates this system and makes it more difficult for the home nation to effectively regulate the air carrier. Some experts have argued that the current push to relax foreign ownership rules contravenes the spirit of the Chicago Convention, and that watering-down the system established under the Chicago Convention is unwise without creating a new, more international, structure for the regulation of the global aviation community. But these theories remain wishful thinking without any serious efforts to restructure the form in which international aviation is regulated.

The balance to be struck between international cooperation and ensuring that domestic airlines remain domestically held (and effectively subject to domestic control) is a delicate one that could be re-examined in the coming months, although the examination is likely to be driven more by parochial interests than by global policy considerations.

In addition to the important effect that international traffic has on

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the desire for replacement parts, there is a more subtle effect on aircraft parts distributors. During times of openness to air traffic cooperation, other features of international cooperation also become more open, including the willingness to permit aircraft parts to freely move across borders. Although the Agreement on Trade in Civil Aircraft forbids tariffs on aircraft parts, there are nonetheless more subtle ways the government can and do inhibit aircraft parts trade. So free flight paradigms and promotion of international cooperation tend to work in the best interests of those who seek to sell aircraft parts across international boundaries, which can mean that more freedom among the foreign ownership laws could also have a positive (albeit indirect) effect on aircraft parts trade. 

## NextGen Task Force Gets Off the Ground


Implementation of the Next Generation Air Transportation (NextGen) system is an issue currently generating a lot of buzz in the aviation industry. As ASA previously reported in the Update Report, Former President Bush signed an executive order before leaving office that gave a time frame for the establishment of a NextGen support staff.

Now one of the first concrete steps towards NextGen implementation is being taken. At the behest of the Air Traffic Management Advisory Committee (ATMAC), the Radio Technical Commission for Aeronautics (RTCA) has formed a NextGen Task Force to forge consensus on NextGen operational improvements, including development of a business case to make equipage feasible.

The NextGen Task Force has been split in to two working groups, with one focused on operational capabilities (with goals such as determining the present level of equipage and determining which metropolitan areas would benefit most from NextGen) and the other focused on business strategies (with goals such as business risk mitigation strategies). The working groups, composed of aviation industry insiders, have committed themselves to working though the summer and to presenting final conclusions on NextGen implementation strategy up to the year 2018 to the ATMAC by August 31, 2009.

Though the Task Force will be addressing the implementation of NextGen through 2018, users of the system can expect to see the benefits of equipage earlier if everything goes according to plan. The Task Force has a stated goal of making operation improvements in approximately three year metrics, which is meant to make the case for equipage more compelling.

The equipage questions will be particularly important to ASA members with inventories of avionics, because NextGen is expected to have an impact on the avionics that commercial aircraft are required to (and desire to) install. This could render certain avionics obsolete, while promoting the sales of others.

The implementation of NextGen will shape the entire future of the aviation industry. For those interested in following the NextGen Task Force's progress as they embark on their challenging task, plenary meetings will be held approximately every 3-4 weeks until June and will be announced in advance in the Federal Register. These plenary meetings are open to the public. Additionally, overviews of past plenary meetings and other information about the Task Force's goals are available on the RTCA website at [www.rtca.org](http://www.rtca.org), under the sidebar link for "NextGen Task Force". 


## FAA Reauthorization Seeks to Revise Antitrust Immunity

On March 6th, the House Transportation and Infrastructure Committee approved FAA reauthorization legislation, with a new “airline antitrust immunity” clause added.

The additional clause in the bill requires the Government Accountability Office to study the criteria and policy behind conferring antitrust immunity on airline alliances, and to report back as to whether changes should be made to the criteria. This clause would also end all airline antitrust approvals after a period of three years, thus forcing the airlines to reapply and be reassessed by the government under any new policies created.

Theoretically, this clause could result in airlines losing their antitrust immunity and then having to apply under new, tougher policy, only to be denied. This could be extremely detrimental to the business models of many airlines. Forcing airlines to re-think their business models amidst shaky economic times seems like a sure-fire way to see airlines’ profits plummet; perhaps some will go out of business.

The added clause in the FAA reauthorization bill is already meeting with criticism and opposition from the Air Transport Association and the International Air Transport Association. Since airlines are regulated in such a way that they cannot merge as businesses in other industries do, alliances are part of the way that airlines can remain competitive.

The next step for the FAA reauthorization bill is to move to the House floor for debate and voting. 


## Airports to Test Experimental Bird Radar Systems

In the wake of the January 15th incident when a U.S. Airways jet was forced to land on the Hudson River after hitting a flock of birds, the Port Authority of New York and New Jersey is requesting that the FAA install experimental bird radar systems in the three major airports it runs. In 2007, pilots and controllers reported 87 incidents of birds striking planes at LaGuardia alone.

The bird detection radar systems combine computer software that monitors birds for a distance of up to six miles from the airport with radar antennas, and could give warning of the need to delay or reroute an aircraft because of bird activity. The radar systems have already been in use at other airports, such as Seattle-Tacoma International, which deployed its third system last week. Chicago’s O’Hare Airport and Dallas-Fort Worth Airport are also slated to have the systems installed in the coming months.

At a cost of \$500,000 to \$2 million or more per radar system, the systems are a cheap option compared to the price of repairing the damage an aircraft engine can sustain if struck by a bird, or the price of the damage to an aircraft that loses engine power during flight.

FAA officials have expanded testing of the bird radar, but are warning that the technology is in its infancy and will still require years of refinement. For example, the current radar systems are incapable of relaying information about potentially threatening bird activity to pilots in time for the pilots to take action.

In the wake of the recent U.S. Airways accident, though, this is an area where enterprising avionics engineers may find themselves devoting some attention. It is possible that this could ultimately lead to another piece of data transmitted to aircraft from ground-based radar in a NextGen environment. 

**REGULATORY UPDATE**

# Some Airlines Seek Inclusion of Aviation Emissions in Global Climate Agreement

Air France/KLM, Cathay Pacific, Virgin Atlantic, and British Airways recently united in a call for aviation emissions to be included in the next international climate pact. The next pact is meant to be broader than, and also to replace, the Kyoto Protocol, whose first phase ends in 2012. Nations are meeting in Copenhagen at the end of 2009 to negotiate the new climate agreement.

The world's airlines account for approximately two percent of man-made carbon dioxide pollution and have faced criticism in the past from environmental groups for not doing enough to help fight global warming. These four major airlines' call for the inclusion of aviation emissions in the pact is seen by some as the aviation industry taking a proactive step to involve itself in the pact to hopefully help get a result that will satisfy the environmentalists and the industry.

It is important to the aviation industry that any curbs on emissions in the new global pact still allow the industry to maintain competitiveness. The general plan for the new pact implicating the industry is for developing nations to sign emissions curbs that would include shipping and aviation.

The United Nations' International Civil Aviation Organization (ICAO) has been working for years on developing an international plan to limit aviation emissions. The four airlines issuing the call for aviation emissions plan to discuss these existing proposals and seek input from other airlines and from the ICAO while trying to settle on the best approach for inclusion in the pact. Additionally, the four airlines, along with airport operator BAA, are meeting in Hong Kong to discuss and formulate a balanced approach to aviation emissions.

The potential benefits of including aviation emission in the next global climate pact include avoiding a potentially confusing and conflicting patchwork of national and regional policies, and would ensure equal treatment for all airlines worldwide. This would put the airlines on a level playing field for the sake of competition.



**CONTACT US!**

ASA Staff is always interested in your feedback. Please contact us with any comments or suggestions.

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