

Statement of Andrew B. Steinberg
Assistant Secretary for Aviation and International Affairs
U.S. Department of Transportation

Hearing on Including Aviation in the Emissions Trading Scheme
Committee on Transport and Tourism
European Parliament
Brussels, Belgium – June 27, 2007

Thank you for the opportunity this morning to share some thoughts on how the U.S. sees the proposed EU legislation to include aviation in the EU Emissions Trading Scheme. Let me begin by clarifying from our perspective what we think is--and is not--at issue as the European Union considers the proposal.

This is not about differences on the science related to aviation emissions across the Atlantic. Among the world's experts, including those from the U.S. and Europe, there is fairly wide agreement on what we know, what we do not know, and what research is required to assess aviation emissions and climate impacts. For example, carbon dioxide impacts are well understood; contrails are not. This was the message that came out of the recent ICAO Colloquium on Aviation Emissions.

Neither is this a disagreement about the need to deal with aviation's greenhouse gas emissions. All International Civil Aviation Organization States, including the U.S. and EU Member States, agreed in 2004 that one of international aviation's three environmental goals should be "to limit or reduce the impact of aviation greenhouse gas emissions on climate change."

Nor do we differ on the appropriateness of using market-based measures in dealing with aviation's environmental impacts. The U.S. pioneered work on emissions trading with sulfur dioxide, and the U.S. supports ICAO's development of guidance on emissions trading for international aviation.

Finally, the EU and U.S. both recognize their obligation to modernize air traffic systems to improve environmental performance. Both sides of the Atlantic have separate endeavors underway as well as cooperative endeavors. As Vice President Barrot and FAA Administrator Blakey announced last week at the Paris Airshow, Europe and the US are cooperating to accelerate the use of environmentally friendly flights through the AIRE (Atlantic Interoperability Initiative to Reduce Emissions) project to foster greener flights across the Atlantic. More on that later.

Yet despite our many shared interests and goals, I am here to explain why the European Commission's proposal on emissions trading has elicited such deep misgivings among the vast majority of countries around the world. Both Kyoto signatories and non-Kyoto signatories, developed and developing countries alike have written to the European Presidency with copies to the Parliament, Commission, and Member States, expressing their grave concern that the proposed legislation--if implemented--would violate

international law and just as importantly undercut, rather than support, international efforts to better manage the impact of aviation emissions. While we have yet to receive a reply from the German Presidency, let me briefly amplify our main concerns which I think are shared with many countries.

First, the fundamental problem with the proposed EU legislation is its incompatibility with international obligations. Unilaterally subjecting flights by foreign airlines to the EU scheme would violate EU member states' obligations under the Convention on International Civil Aviation ("Chicago Convention")—specifically Article 15—and may violate numerous bilateral aviation agreements (including the one just signed with the U.S.). There is no sound legal basis for the EU to require a foreign airline to pay non-cost-based charges in the form of an emissions permit for the right to land or take off from member state airports. And other States oppose the legislation citing provisions in the Kyoto Protocol or basic international norms.

The EU seems intent on bypassing the concerns of the world community. The EU scheme cannot be squared with the 2004 ICAO Assembly Resolution--to which all EU member states agreed--that urged States: "to refrain from unilateral environmental measures that would adversely affect the orderly development of international civil aviation." It completely ignores the unanimous views of the both experts and ICAO Council Members from countries outside the EU that mutual consent between governments is the only acceptable approach to emissions trading. It overlooks the fact that there is no agreement internationally concerning the European Community objective to limit the rise in global temperature to 2°C above pre-industrial levels. Certainly ICAO has not endorsed ceding to any community the authority to manage other States' airlines' emissions.

I spent most of my career as a practicing lawyer, and I know we won't solve the legal issues this morning. But as you consider the wisdom of the pending legislation, think about the wasted time and resources for all involved if we spend the next several years in dispute resolution, arbitration, and litigation rather than addressing the very real challenge of managing aviation emissions impacts.

The second concern from our perspective is that the Commission proposal is a "one size fits all solution" imposed on the rest of the world – that frankly ignores the very meaningful and significant differences in aviation industries. Consider the case of the US and EU aviation systems. Both are mature markets carrying over 700 million passengers. Yet they have some striking differences.

-- The US air transport system is primarily domestic, while Europe's is much more international. Consider that since 1990 US carriers' greenhouse gas emissions on international flights have grown at just 1/3rd the rate of EU airlines.

-- The US has a single air traffic service provider, the FAA, while the EU employs a multiplicity of organizations that European assessments say result in an overall air traffic operation that is half as efficient as the US.

-- The US has had a fuel tax in place for decades on our airlines in their domestic operations. It raises hundreds of million dollars annually, all of it plowed back into the aviation system including for environmental mitigation. The EU Member States have no such tax- with the lone exception of the Netherlands.

-- Proponents of the EU legislation claim that aviation emissions are growing rapidly. But that growth is hard to see in the U.S. Our airlines burned five percent less fuel in 2006 than in 2000. That means producing 10 million less tons of CO₂ in 2006 than in 2000 while still moving 12% more passengers and 22% more freight.

The point of the comparison is not to judge one system better than the other. Rather, it is simply a reminder of the diversity that has to be accounted for in developing any legislation. Trying to force the power plug you use here in Brussels to power your computer into a socket in China, or Japan, or Canada, or India will not get you very far.

Third, the design of the system proposed in the EU legislation raises serious doubt as to its fairness and likely effectiveness. The scheme would have a more significant impact on Asia-Pacific airlines (because of their non-stop long haul flights), on new entrants, and on air carriers from developing countries. The scheme places no responsibility at all on air navigation service providers for their role in generating emissions from inefficient routing, insufficient capacity, and delays. I was struck this morning at the oddness of forcing carriers to buy permits from other EU industries. The scheme's equivalent measure provision offers little comfort to countries outside the EU. "Equivalent" is left undefined by the Commission. Moreover, its practical impact is the unacceptable situation of appointing the EU as judge for what is satisfactory action on emissions measures by other sovereign states.

The scheme also offers no assurance that EU member states won't separately levy taxes and charges to address the same environmental impact. Even if an international airline participated in the trading scheme, it could still face additional taxes and charges levied at the Member State level for the same flight. This is not a hypothetical issue. The United Kingdom has already justified doubling its air passenger duty on the basis of mitigation of CO₂ emissions.

Finally, even a casual observer has seen considerable doubts raised about the functioning of the EU emission trading scheme into which aviation would be included. Trading systems this big require time to iron out the kinks. However, is it wise to include new sectors in the scheme before those problems have been resolved? Your colleagues on the Environment Committee have not only expressed significant concerns about the ETS, but several members have echoed this exact concern: why would the Commission add a new sector as complex as aviation to the ETS before it was first fixed? Is it any wonder why countries outside the EU have deep reservations about such a scheme?

Let me be clear. The US strongly supports efforts to address aviation emission impacts. We are choosing to tackle aviation's greenhouse gas emissions through a positive, technology- and operationally-based action program. We are facilitating research on critical scientific issues, fostering more environmentally efficient engine and aircraft designs, and exploring the development of alternative fuels, in addition to accelerating the modernization of our air traffic management system.

The U.S. also supports ICAO's adoption of emissions trading guidance for international aviation. It should be part of the "toolbox" of solutions for countries around the world. However, the guidance should endorse its use only on the basis of mutual consent between States.

The real issue before us is how we work together in the international community to meet this difficult, but common challenge. As President Barroso told US policy makers a couple of years ago, working multilaterally is the only way forward if the goal is to quote "find solutions that work rather than to engage in political wishful thinking", end quote.

I mentioned the AIRE program earlier. I believe this initiative provides the model for a better way forward. With AIRE, both sides of the Atlantic -recognizing our respective responsibilities for our own aviation industry - identified areas to work together to accelerate our common interest in environmental improvements. We started without preconditions. We built on the record of technology innovation in aviation. We recognized differences in efforts and emphasis. It required no regulatory or legal action to accomplish. It will produce real, measurable emissions improvements in the near-term rather than enriching the legal profession.

My hope is that the European Union—its institutions and its Member States—will recall the advice of President Barroso and the example of AIRE. Even with all its "imperfections," working through collaboration and consent with international partners will enhance our ability to produce globally acceptable solutions to deal with this critically important challenge of managing aviation's emissions impacts.