On the flightpath to success

The international row over the EU's move to include aviation in its emissions trading programme has briefly been put on pause. But will this diplomatic breather and a more outspoken US president lead to success in global talks to cut emissions? Annie Petsonk charts the route ahead

If it seems a little far-fetched that two of the world's most important powers and closest historical allies might launch a trade war over a $3 airfare dispute, then you haven't been following what could be one of the most inane fights in memory between the US and the EU.

Under newly enacted legislation, the US secretary of transportation can prohibit US-based airlines from complying with an EU law limiting emissions from flights to and from the EU. The law in question – a part of the EU Emissions Trading System (ETS) – establishes the world's only programme of enforceable limits on such pollution from the fast-growing aviation sector. Already, aviation accounts for so much carbon pollution that it would rank seventh in the world if it were a country, and its emissions are projected to quadruple in coming years.

In opposing the EU's approach, the US and other nations have insisted that the UN's International Civil Aviation Organization (ICAO) is the only appropriate forum for addressing emissions from international aviation – while consistently stating their commitment to reach a deal in ICAO. Now they have the chance to make good on that position.

State of play

The US and its allies in this matter – Russia, China and India, among others – have proclaimed indignantly that the EU's law impinges on their sovereignty, inasmuch as the EU ETS calculates airlines' obligations based on emissions from the entirety of the flight, including the portion outside the EU's airspace. This contention conveniently ignores the fact that the US routinely imposes conditions on ships and planes arriving at and departing from its ports and airports – indeed, the US even bans gambling on international journeys to and from the country.

Several airlines have also objected loudly, predicting economic catastrophe. But the impact on fares is projected to be decidedly modest: as low as $3 per transatlantic flight, according to a US Federal Aviation Administration-supported study.

Nonetheless, the US Congress enacted anti-EU ETS legislation late last year that now risks triggering a trade war: were the secretary of transportation to implement the prohibition authorised by the bill, US airlines would be required to violate EU law. Only twice before has Congress prohibited US companies from complying with other nations' laws: it forbade US companies from complying with South Africa's apartheid, and it barred US firms from furthering boycotts, including the Arab League boycott of Israel.

No winners would emerge from an EU-US trade war. There is, however, a real – though time-limited – opportunity to avoid one. Last November, ICAO formed a high level group to provide guidance on an international approach to cutting the sector's emissions – prompting the EU to respond by announcing that it would "stop the clock" for one year on key elements of its law. At ICAO's next triennial assembly in September, governments will try to agree on the outlines of such an approach.

Sceptics might point out that ICAO has failed for years to agree on any global action. Indeed, it was partly that history of unsuccessful negotiations that led the EU to expand its ETS to cover aviation in the first place (the amendments were adopted in 2008 and took effect in 2012).

But the formation of the high level group, and the EU's response, offer new momentum for a solution. The high level group is considering a basket of ideas, including a global market-based mechanism that would complement improvements in fuel efficiency and operations and give industry key tools to meet, cost-effectively, its own stated goals of carbon-neutral growth from 2020 and a 50% cut in 2005 level emissions by 2050.

Elements of an ICAO solution

At its assembly, ICAO could agree on the key elements for a global market-based measure, including – crucially – a timeline for fleshing out the details of these key elements by its next assembly in 2016. These would include:

- a cap on carbon emissions from international civil aviation, at least as ambitious as the airlines' own stated 50% reduction target;
- allocation of emissions reduction responsibility on a route-by-route basis in a way that gives fast-growing routes greater 'headroom' – an approach that would simultaneously accommodate the understandable concerns of countries with rapidly increasing aviation sectors, while meeting the Chicago Convention test of non-discrimination by country or carrier; and
- use of standard carbon market tools to allow carriers to meet the cap with maximum flexibility and minimum cost – including emissions trading and high-quality offsets generated by verified reductions in other sectors.

The alternatives to such a global approach that have been put on the table all have significant drawbacks. Under one long-abandoned, though recently resuscitated, proposal, each country would adopt a national programme limited to its own sovereign airspace. But the parties to the UN Framework Convention on Climate Change (UNFCCC) – including the US – explicitly rejected that approach more than 15 years ago for two distinct and well-founded reasons: first, because it would lead to a patchwork of different regulatory systems, and second, because it would result in gaping holes in coverage over the world's oceans – thus missing a substantial portion of international aviation's total emissions.

Related to this is the idea of a carbon fee for 'overflights' – a fee that all airlines would pay to each country through whose sovereign airspace they pass, even though they do not land in that country. Such an approach could find favour with states such as Russia, which historically has sought to charge for overflights through Siberian territory.

While the US might not be concerned about charging for Siberian overflights, since few of its carriers use that airspace, it might be more concerned about the broad application of that principle – eg, if Denmark began charging for Greenland overflights, which are frequently part of transatlantic flight paths for US-based carriers. Moreover, as with the already-rejected individual-country approach, overflight fees would fail to account for any emissions over the high seas.

Finding the right approach

Given the unattractiveness of these alternatives, and given that failure in ICAO would greatly increase the risk of a trade war, one could imagine that nations in ICAO – and the airline industry – will redouble efforts to find an effective path forward. Agreement by ICAO on the contours of a global market-based measure to address aviation's greenhouse gas emissions could deliver benefits beyond the aviation sector, giving a much-needed boost to the larger climate talks, which aim to conclude a new protocol or other legal instrument by 2015.

Conversely, if ICAO is unable to deliver, that failure could portend badly for the overall UNFCCC-led international climate talks. This potential confluence of circumstances – positive or negative – gives France, which has offered to host the crucial 2015 UNFCCC meeting, a special incentive to try to ensure that ICAO reaches a robust deal.

Building on the very useful work done to date by the International Air Transport Association, the aviation industry now has a crucial role to play in mobilising support for such an approach – allowing the industry to live up to the commitments it has expressed in the past, and jumpstarting the ICAO process while doing so.

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In the meantime, while the high level group continues its talks, the European Parliament and Council are debating the European Commission's 'stop the clock' proposal. This proposal, however, only applies to flights into and out of the EU in 2012: intra-European flights still must comply for 2012. All carriers must still collect their 2013 emissions data, report it to the appropriate European authorities in early 2014 and be prepared to comply for 2013, because the clock will automatically re-start on 1 January 2014 if ICAO fails to reach a solution this year.

What about passengers? When the aviation provisions of the EU ETS took effect at the beginning of 2012, press reports indicated that many airlines began charging passengers increased fares to cover what the airlines hypothesised might be additional costs of purchasing pollution permits to comply with the EU ETS. If the EU stops the clock, then passengers who travelled on flights to and from Europe in 2012 may well demand that money back, just as they – and government regulators – are demanding greater transparency from the airlines about baggage fees, fuel surcharges and the like.

But the outlook is improving. US President Barack Obama has directed his cabinet to identify executive actions the US can take now and in the future to cut emissions. Passengers and the president: that's a potentially powerful combination. Even as it has objected to the application of the EU ETS to international aviation, the Obama administration has consistently affirmed that aviation's impact on climate change is a serious problem and that ICAO is the place to address it.

Now the US has the opportunity to show that its commitment to reduce emissions from aviation is not empty talk. Will new Secretary of State John Kerry, a champion of strong climate action, and the new secretary of transportation live up to the high bar set by the president in his second inaugural address in January? The choice will be theirs whether to "respond to the threat of climate change" – or not, "knowing that the failure to do so would betray our children and future generations". **CF**

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