

EU court rejects challenge to airline emissions charges

December 21 2011, by Roddy Thomson



The European Court of Justice threw out a case brought by north American airlines against a new EU system charging airlines for carbon emissions.

Europe's top court on Wednesday threw out a US-led challenge to new charges for carbon emissions across EU airspace, opening up fears of a possible trade war which could also draw in China.

North American [airlines](#) had challenged a European Union decision to include as of January 1 all carriers in a [carbon trading](#) system targeting heavy polluting industries as part of the EU's efforts against climate change.

US carriers had argued that the decision was discriminatory and amounted to a backdoor tax.

But the European Court of Justice ruled that the EU's approach was "valid," and that it "infringes neither the principles of customary international law at issue nor the Open Skies Agreement" covering trans-Atlantic flights.

Despite a clear threat of reprisals issued by US Secretary of State [Hillary Clinton](#), the Luxembourg-based judges said that non-EU airlines could "choose" whether to make [commercial flights](#) to and from EU airports.

As a result, the EU system "infringes neither the principle of territoriality nor the sovereignty of third states, since the scheme is applicable to the operators only when their aircraft are physically in the territory of one of the member states of the EU."

Furious US, Canadian and other carriers say their inclusion in the Emissions Trading System (ETS) violates international aviation pacts, but the European Commission said after the ruling that the ETS would enter force as scheduled.

"After crystal clear ruling today, EU now expects US airlines to respect EU law, as EU respects US law," EU [climate change](#) commissioner Connie Hedegaard wrote on Twitter.

A high-ranking source in the aviation sector told AFP that "the court's judgment risks unleashing a trade war between Europe and the United States."



An American Airlines jet takes off at Los Angeles International Airport, 2008. The European Court of Justice threw out a case brought by north American airlines against a new EU system charging airlines for carbon emissions.

Chinese and Indian airlines also said earlier this year they could launch similar cases.

In a letter to EU officials dated December 16, Clinton listed 43 nations from Argentina to Russia to Venezuela also opposed to the EU move.

"Halt or, at a minimum, delay or suspend application of this directive," she wrote. "Re-engage with the rest of the world."

"The United States stands ready to engage in such an effort. Absent such willingness on the part of the EU, we will be compelled to take appropriate action."

Already in October, the US House of Representatives passed a bill directing the US government to forbid US carriers to take part "in any [emissions trading](#) scheme unilaterally established by the European Union."

Underscoring the potential for a significant trade row, China reportedly

got its retaliation in early in June by blocking an order by Hong Kong Airlines for billions of euros worth of Airbus aircraft.

Airbus and rival US planemaker Boeing have already been locked horns in a seven-year-long battle over government subsidies at the World Trade Organization.

Under the EU scheme, airlines would have to pay for 15 percent of the polluting rights accorded to them in 2012, the figure then rising to 18 percent between 2013 and 2020.

UN agency the International Civil Aviation Organization last month urged the EU to exclude foreign carriers from the new rules.

In a statement Tuesday ahead of the ruling, European airlines already expressed fears of a damaging trade war should the EU executive stick to its guns.

"The real issue is political, not legal," said Ulrich Schulte-Strathaus of the Association of European Airlines (AEA).

"Even if the ECJ decides that the EU ETS conforms with EU law, this will not resolve non-European countries' vehement hostility," she said.

The case was brought by the Air Transport Association of America and the US airlines [American Airlines](#), Continental and United Airlines, joined by the International Air Transport Association (IATA) and the National Airlines Council of Canada.

The complaint was first filed in a British court, which then asked the EU court to state whether the directive was valid.

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