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Environmental Defense Fund • Environment Northeast • Environment America
Greenpeace USA • League of Conservation Voters • Natural Resources Defense Council
Oxfam America • Sierra Club • US Climate Action Network • World Wildlife Fund US

May 8, 2012

Dear Senator,

As many of our groups wrote earlier this year, we strongly urge you to oppose Senator Thune's European Union Emissions Trading Scheme Prohibition Act of 2011 (S.1956), which would set a disturbing precedent undermining rule of law and exacerbate the likelihood of an aviation trade war by seeking to undercut a European anti-pollution law governing flights to, from, and within Europe. We strongly oppose inclusion of such provisions in any bill under consideration in the Senate or House.

Left uncontrolled, aviation's carbon pollution is predicted to almost double by 2025 and quadruple by 2050, according to the International Civil Aviation Organization.ⁱ In the absence of a global agreement on reducing carbon pollution from the aviation sector, action by the EU is a sensible first step. It will spur airlines to deploy new operational procedures and new aircraft technologies that are already being produced, while reducing the carbon pollution from this growing source.

S. 1956 would set a disturbing precedent undermining international rule of law. It authorizes the Secretary for Transportation to prohibit an operator of a civil aircraft of the United States from complying with this European aviation law. If Congress were to establish a legislative basis for the Executive Branch to forbid U.S. companies doing business in another country from complying with that country's duly enacted laws, other nations' legislatures may use the same tactic regarding U.S. statutes they find objectionable. Ramifications could include impacts on transportation security and safety, computer security, intellectual property rights and financial disclosure.

The EU Aviation Directive is non-discriminatory. It applies even-handedly to all flights landing in or departing from EU airports regardless of origin or destination, and to the operators of those flights regardless of the airline's home country. It is flexible in design, giving airlines multiple compliance options to meet pollution reduction goals. Moreover, flights arriving from countries with programs equivalent to the EU's are exempted altogether.

A recent peer-reviewed study by researchers at the Massachusetts Institute of Technology, funded in part by the Federal Aviation Administration, concludes that U.S. airlines could make money by participating in the EU system. While the report finds that the EU Aviation Directive "will have a relatively small impact on the overall operations of U.S. airlines," with only "small changes in operating revenues, operating costs and profit margins relative to BaU [business as usual],"ⁱⁱ the researchers' bottom line is that the program could yield "a net transfer [of financial resources] from the EU to the U.S." In fact, the existing analysis has found: "In the near term, the EU aviation policy will increase airline profits..."ⁱⁱⁱ

S. 1956 would not only undercut the rule of law and stall action to address dangerous pollution from aviation; it would also exacerbate the likelihood of an aviation trade war with one of our largest trading partners at a time when the still-fragile U.S. economic recovery can ill afford it.

In addition, since increased efficiency is one of the principal ways of achieving pollution reductions, the EU law sends an important signal to airlines that investments in more fuel-efficient aircraft will be rewarded now and into the future – including aircraft such as the Boeing 787.^{iv} Undercutting such incentives is bad for American aircraft makers.

The European Aviation Directive is consistent with international law and does not violate U.S. sovereignty. The E.U. law applies only to aircraft that choose to land or take-off at European airports. Because an aircraft generates pollution from the complete trip, not just from that portion occurring in European airspace, the E.U. law reasonably requires that those flights choosing to use European airports reduce all their carbon pollution associated with the flight.

The UN's International Civil Aviation Organization (ICAO) has attempted through more than a dozen years of international negotiations to address carbon pollution and has yet to develop – much less adopt – standards and policy to control these emissions. Indeed, the Director of the Office of International Aviation at the U.S. Department of Transportation (DOT) recently cautioned: “Don't overestimate our ability to get things done there – it is more limited than ever before.”^v

S. 1956 and any amendment based on this bill should be rejected.

Sincerely,

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ⁱ International Civil Aviation Organization (ICAO), ICAO Environment Report 2010, available at: <http://www.icao.int/environmental-protection/Pages/EnvReport10.aspx>

ⁱⁱ Malina et al., The impact of the European Union Emissions Trading Scheme on US aviation. *Journal of Air Transport Management*, Volume 19, March 2012, Pages 36–41.

<http://www.sciencedirect.com/science/article/pii/S0969699711001268>

ⁱⁱⁱ See: http://www.americanprogress.org/issues/2012/02/pdf/eu_emissions.pdf

^{iv} Which Boeing touts as having “unmatched fuel efficiency” and using “20 percent less fuel for comparable missions than today's similarly sized airplane.” See: <http://www.boeing.com/commercial/787family/background.html>

^v See: <http://www.greenaironline.com/news.php?viewStory=1381>