



Client Alert

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Aviation Emission and Copenhagen Summit ----from the perspective of China

The 15th United Nations Climate Change Conference (COP15) is now taking place at Bella Center in Copenhagen from the 7-18 of December, 2009 and 192 nations are participating therein. The main purpose of this conference is to arrange the reduction of greenhouse gas emissions when the first commitment period ends, as provided by the Kyoto Protocol. In recent years, aviation emission has been widely discussed and considered and it is definitely will be mentioned at the conference. How to deal with aviation emission and whether or not the conference will have an arrangement for this issue is worthy discussion.

I. Aviation Emission not Included in Global International Treaties So Far

Climate change has been affecting the existence of human beings, which make almost all nations in the world to have passed legislations or issued policies to tackle. The majority nations' policies have their priorities on the controlling or curbing of the emission of CO₂ while measures have been taken as well to reduce the emissions of other gases. Furthermore, nations intend to implement new mandatory policies on environment protection such as taxing on energy and CO₂, issuing environment permits energy production, setting new standards for use of energy, stimulating the research or developing new energies.

The first global international environmental treaty was the United Nations Framework Convention on Climate Change (UNFCCC). The

UNFCCC was opened for signature on 9th May 1992 after an Intergovernmental Negotiating Committee produced the text of the Framework Convention as a report following its meeting in New York from 30th April to 9th May 1992. It entered into force on 21st March 1994. As by October 2009, UNFCCC had 192 parties. The treaty itself sets no mandatory limits on greenhouse gas emissions (GHS) for individual countries and contains no enforcement mechanisms. In that sense, the treaty is considered legally non-binding. Instead, the treaty provides for updates (called "protocols") that would set mandatory emission limits. The principal update is the Kyoto Protocol (1997), which aimed at combating global warming and has become much better known than the UNFCCC itself.

However, both UNFCCC and the Kyoto Protocol have set up an important principle of so-called "common but differential responsibilities" to require the developed nations to cut their emission of gases.

Under the Kyoto Protocol, international aviation emissions, along with those of shipping, were excluded from reduction targets to be met by developed nations (so-called Annex I Parties) because of the difficulties in allocating emissions to specific nations. Instead, under Article 2.2, the International Civil Aviation Organization (ICAO) and the International Maritime Organization (IMO) were charged with limiting or reducing the growth in, respectively, aviation and shipping emissions.¹

It is said that the main areas for discussion at the Copenhagen summit include:

- (a) Targets to curb greenhouse gas emissions, in particular by developed countries;
- (b) Financial support for mitigation of and adaptation to climate change by developing countries;

¹ <http://www.greenaironline.com/news.php?viewStory=146>.

- (c) A carbon trading scheme aimed at ending the destruction of the world's forests by 2030.²

Nevertheless, some nations have tried to include aviation GHG emissions in an international climate change agreement when the Kyoto Protocol expires in 2012 met with resistance from some developing nations.

II. Brief Analysis of the Viewpoints of the Stakeholders

i. International Civil Aviation Organization (ICAO)

ICAO has made efforts to limit or reduce aviation emission by technology, operation, market-based measure and other actions, specifically voluntary measure, government-based measure (emission-related charges) and market-based measure (emission trading and CDM), which has been appreciated by the majority member states. At the High-Level Meeting on International Aviation and Climate Change (Montréal, 7th to 9th October 2009), there was general support for ICAO to continue to exercise its leadership and on the need for ICAO to provide concrete input to the UNFCCC process and COP15 on how the impact of international aviation on climate change would be addressed. It was also indicated that, given the expected growth of the sector over the coming decades, the aspirational goals of annual 2% fuel efficiency improvement recommended by GIACC would not lead to absolute reductions of CO₂ emissions in the long-term.³ However, ICAO was criticized as having "almost completely failed to assist Countries in reducing emissions from aviation and after more than 10 years of discussions ICAO has not adopted any effective measures: ICAO has even formally

² <http://news.bbc.co.uk/2/hi/science/nature/8400792.stm>

³ http://www.icao.int/HighLevel2009/Docs/HLMEN_V_SD001-Rev_en.pdf.

decided not to establish a specific worldwide ETS for aviation.⁴

ii. International Air Transport Association (IATA)

As a non-governmental organization, IATA has been appealing for global efforts under ICAO to deal with the issue of aviation emission rather than unilateral or regional steps. IATA pointed out that according to the Nobel Prize-winning Intergovernmental Panel on Climate Change (IPCC), aviation contributes only 2% of global manmade CO₂ emissions. Aviation is a small part of the big problem of climate change and the industry is addressing effectively this important issue.⁵ IATA's four-pillar strategy to address climate change with modern technology, effective operations, efficient infrastructure and positive economic measures is another example. "Implementing the four-pillar strategy, IATA has already saved over 68 million-ton of CO₂. This year we expect aviation's carbon emissions to fall by 7% - some 5% from the recession and 2% as a direct result of our work," said Mr. Giovanni Bisignani, the head of IATA.⁶ IATA even tried to map out the goal for airline industry in reducing aviation emission by the following three tough targets:⁷

- (a) Improving fuel efficiency by an average of 1.5% per year through 2020;
- (b) Stabilizing emissions with carbon-neutral growth from 2020; and
- (c) Cutting net emission in half by 2050 compared to 2005.

Though IATA is not entitled to provide draft resolution to the Copenhagen Summit, its proposals and suggestions have been used and

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http://ec.europa.eu/environment/climat/pdf/poznan/speech_liese.pdf

⁵ <http://www.iata.org/pressroom/speeches/2009-01-16-01.htm>

⁶ <http://www.climatecoanalysis.org/post/aviation%E2%80%99s-copenhagen-commitment/>

⁷ <http://www.iata.org/pressroom/speeches/2009-10-19-01.htm>

absorbed partly by ICAO and governments. Mr. Giovanni Bisignani pointed out that inclusion of aviation emission into EU's emission trading scheme (ETS) is unilateral, extra-territory and illegal.⁸

iii. European Union (EU)

After years' scientific research, survey and discussions on the influence of aviation emission to the climate change, European Union has introduced legislation to include aviation in the EU emissions trading scheme (EU ETS), in order to mitigate the climate impacts of aviation, Directive 2008/101/EC (amending Directive 2003/87/EC) to include aviation into the EU ETS was published in the Official Journal on 13 January 2009. The intention is for the EU ETS to serve as a model for other countries considering similar national or regional schemes, and to link these to the EU scheme over time. Therefore, the EU ETS can form the basis for wider, global action.⁹ Global airlines blast EU ETS decision and Giovanni Bisignani said that crisis is not the time for rubber stamps. But that is exactly what the Council of Justice and Home Affairs Ministers used today - without a word of debate. It's Brussels acting in a bubble - even in the middle of a global economic crisis.¹⁰ IATA claims that acquiring carbon credits in order to enter this scheme would cost the industry \$3.5bn in 2012 alone - equivalent to two-thirds of the global industry's profits of 2007.¹¹

Trading officially begins in 2012, while member states have a year to transpose the Directive into national law. According to EU regulations, all flights landing or taking off from EU airports will have to buy CO₂ allowances under the EU's

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<http://www.greenaironline.com/news.php?viewStory=600>.

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http://ec.europa.eu/environment/climat/emission/implementation_en.htm

¹⁰ <http://www.euractiv.com/en/transport/global-airlines-blast-eu-ets-decision/article-176679>.

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<http://www.guardian.co.uk/business/2008/jul/21/the-airlineindustry.travelleisure>

cap-and-trade system under the new directive and the 33 airlines from China are among the list of about 2000 airlines, which will have to pay for the CO2 it emits and increase their operation costs. Furthermore, each carrier operating flights to or from the EU will now have to submit a plan describing how it intends to monitor and report on emissions. From 2012, these airlines will be allotted certain emission quotas, and they can sell their quota surplus or buy the shortage, according to the EU's regulation. The quotas are set to decrease year on year.

The universal criticism on EU's inclusion of aviation emission into its ETS, EU has been firm on its implementation. It seems hard to have EU change its attitude on the subject at Copenhagen Summit.

iv. China-China's Stand on Aviation Emission

China has been paying much attention to environment protection and has been trying to make the balance between its economy development and environment protection. On 26th November 2009, China promised to slow its carbon emissions, saying it would nearly halve the ratio of pollution to GDP over the next decade — a major move by one of the world's largest emitters, whose cooperation is crucial to any deal as a global at Copenhagen Summit. As a developing nation, China has long been persisting that countries in the world should strengthen cooperation between developed and developing countries, seek a way of sustainable development that is consistent with the framework of existing international law and each state's condition, and avoid any restraint to the sustainable development of air transportation.¹² At Copenhagen Summit, China will probably insist that emission trading can be only applied to UNFCCC Annex I countries, otherwise, such "cap and trading" mechanism is unfair to developing countries' air transport industries which are still undergoing the growing period. Therefore, the Parties not included in Annex I should not be imposed such coercive duty on

¹² See http://www.icao.int/icao/en/assembly/a36/wp/wp23_5_en.pdf.

emission trading. Furthermore, China has been appealing the developed nations to provide financial, technological and training support to developing nations to improve developing nations' capacity to address aviation emission.

v. The United States

Although preparations by U.S. carriers are already underway for 2012, the first year aircraft operators will be included in the EU ETS, the United States think the European Union's inclusion of aviation in EU ETS, which includes U.S. carriers flying in and out of Europe, is a complex and controversial matter. The inclusion of aviation in the current EU ETS implicates a number of international treaties and agreements and has raised concerns among stakeholders both within and outside the United States. Many stakeholders within the United States have posed that the inclusion of aviation in the EU ETS violates provisions of these international agreements (Unlawful under Article 15 of the Chicago Convention of 1944) and is contrary to international resolutions.¹³ During this special period of financial crisis, the United States is sensitive to this issue as U.S. airlines are responsible for 5.2 percent of U.S. GDP, but contribute only 2 percent of the nation's greenhouse gas (GHG) inventory,¹⁴ while they are struggling out of the downturn situation hard.

It is said that the aviation sector in the world could exceed its emission cap by 77 million tonnes of CO2 when it enters the EU ETS in 2012, equating to a bill of more than \$1.1bn at the current spot price of \$14.40 a ton, the costs of which could be higher still if, as expected, the spot price of carbon climbs as the economy recovers and demand for EU emission allowances (EUAs) from other industries increases.

The United States airlines are predicted to face the largest shortfall in carbon allowances, with Delta Air Lines and United Airlines expected to

¹³ <http://www.gao.gov/new.items/d09554.pdf>.

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<http://copenhagen.nationaljournal.com/2009/12/aviation-environmental-protect.php>.

have to buy EUAs worth 3.5 million-ton and 3.3 million-ton respectively.¹⁵

The United States government believes that ICAO must continue to exercise global leadership to achieve aviation growth in an environmentally responsible fashion. ICAO offers the best forum to find the harmonized approached we need for a global industry like aviation. ICAO allows the proper balance of collaboration and State sovereignty.¹⁶

III. Prediction of Measures of Aviation Emission to be Taken at Copenhagen Summit

As we mentioned before, the aviation emission only accounted for 2-3% of GHS and aviation emission is not among the main issues to be solved at the Copenhagen Summit, anyhow, it has drawn widely attention throughout the world. There are at least three results from Copenhagen Summit:

- (a) To have principal provisions in the final document the Copenhagen Summit, authorizing ICAO to establish a one-time pay and universal management system for aviation emission (including ETS), which shall be established on the principles of reality, justice and effectiveness, reflecting the need for the developing nations to develop their civil aviation industry, encouraging the development of clean alternative aviation fuels, optimizing the traffic routes etc;
- (b) To partly absorb EU ETS concerning the aviation emission, providing for the global regime for aviation emission and establish a global regime for aviation emission, which should be applied equally to the developed and developing countries as well, however, the application of the regime to aviation emission should be put into effect at a later stage;

- (c) No result. The EU inclusion of aviation emission of the all flights to, from and in the EU shall come into effect in 2012, while other countries or regions shall take counter measures against EU ETS on aviation emission, which is the worst situation and shall probably result in trade wars among states.

IV. Proposals for China's Air Transport Industries

The aviation emission has become one of the hot-topics at Copenhagen Summit, the following proposals recommended for the air transport industry of China:

- (a) To have a thorough understanding of the nation's general strategy and plan for the development and environment protection in China, proposing for due legislation and policy-making for the healthy development of China's civil aviation;
- (b) To have close contact with other nations and international organizations concerned, which have different and opposing views towards EU's regime for including international aviation emission into its ETS by 2012, to pass a solution or other measures against EU's regime at Copenhagen Summit, and to have provisions for ICAO to be in charge of having a solution for aviation emission for the all airlines throughout the world;
- (c) To have an eye on the new development of alternative aviation fuels and to have cooperations with the manufactures home and broad in doing research of the fuels as basis for the future application;
- (d) To have a better understanding of the EU inclusion of aviation emission into the ETS and to have the due preparation therefor if there is no result for the civil aviation at the Copenhagen Summit.

¹⁵ <http://www.businessgreen.com/business-green/news/2246818/emission-trading-impose-1bn>.

¹⁶ See STATEMENT OF DANIEL K. EL WELL, ASSISTANT ADMINISTRATOR, 2nd April 2008.

From what we have read from the media and the internet for the past days, we can find that three participants are playing important role at the

Copenhagen Summit, namely, the United States, EU and the so-called the economically advanced developing nations (China, India, Brazil and Russian). "Without a bid from the US or China, only half of emissions are covered," Sweden's environment minister Andreas Carlgren said after he led talks with other EU nations. This wording can not be agreed with as China is a developing nation, which emits much less GHG

into the atmosphere on average per person, however, it indicates that China's increasing influence and status in the international community. According to this author's experience, it is possible to reach an agreement finally if the conference has urgent, diversified issues to deal with, which largely depend on the wisdom of the participants thereof. Good luck Copenhagen Summit!

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