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The Extension of the EU Emissions Trading Scheme to Aviation Activities

Dr. Martin Bartlik LL.M. (McGill), Abu Dhabi, 15 April 2009

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Content

- Introduction to the EU Emission Trading Scheme
- How will it work?
- Which additional burdens will it bring to the air transport industry?
- What to do now?
- Conclusion

Introduction to the EU Emission Trading Scheme?

- internalization of external effects of CO_2
- contributes to the EU Member States' effort to achieve compliance with their commitments undertaken under the Kyoto Protocol (= reduction of CO_2 emissions by 5% relating to the 1990 level)
- <u>but</u>: international aviation is not subject to Kyoto Protocol
- extension of ETS to aviation sector to support CO_2 emissions reduction efforts made in other industry sectors
- creation of a scarcity through allocation of CO_2 emission allowances (cap & trade); 1 allowance = right to emit 1 t of CO_2
- ETS allows to reduce CO_2 emissions in the economically most efficient manner

How will it work?

Application for allowances
time limit: 21 months prior to beginning of resp. trading period (31 March 2011)

MS transmit applications to Commission
time limit: 18 months prior to beginning of respective trading period

Commission's decision:
a) total no. of allowances (97% / 95% of average historical emissions 2004-06)
b) no. of certificates free of charge
c) reference value for allocation of free allowances
time limit: 15 months before beginning of respective trading period

MS publish:
no. of allowances allocated to each air operator it administers
time limit: 3 months after Commission's decision

Issuance of allowances
time limit: until 28 Feb of each year

Submission of report
time limit: 31 March of following year

Surrender of allowances
time limit: 30 Apr of following year

legend: air operator · Commission · Member State

Which additional burdens will it bring?

- administrative burden on air operators will increase significantly due to monitoring and reporting requirements
- allowances to be distributed among air operators may not be sufficient
- additional costs resulting from necessity to fleet modernization and/or purchase of additional allowances
- IATA/ICAO forecast: fuel efficiency will be offset by growing travel demand
- impact of global financial crisis uncertain (IATA: 6% drop in CO_2 emissions in 2009 due to financial crisis)

What to do now?

- legal proceedings against ETS
  - possible infringement of Art. 1 Chicago Convention
  - legal proceedings at EU Member State level or ICAO dispute resolution mechanism
- cost reduction through fleet modernization
- purchase of additional allowances

What to do now?

EUA price €/t CO_2 2005 to 2009

Source: European Energy Exchange

What to do now?

Clean Development Mechanism (CDM)

- Kyoto Protocol project based mechanism
  - investments in advanced, environmentally sound technologies of industrial countries vs transfer of such technologies to developing/emerging countries (win-win situation)
  - emission cuts generate credits (CERs) that can be exchanged for EU Allowances (1 CER = 1 EUA)
  - very cost-effective means to obtain additional allowances
- EU Member States plan to purchase 550 million t of CO_2 credits during 2nd trading period (2008 – 2012) (budget: € 2,9 bill.; 500-1,000 projects required) => investments in airport infrastructure (e.g. at London-Stansted a biomass boiler for heating of new terminal was installed to render the airport extension “CO_2 neutral”)

What to do now?

Clean Development Mechanism (CDM)

countries with CO_2 reduction obligation under KP (investor)

countries without CO_2 reduction obligation under KP (host)

project: CO_2 emission reduction

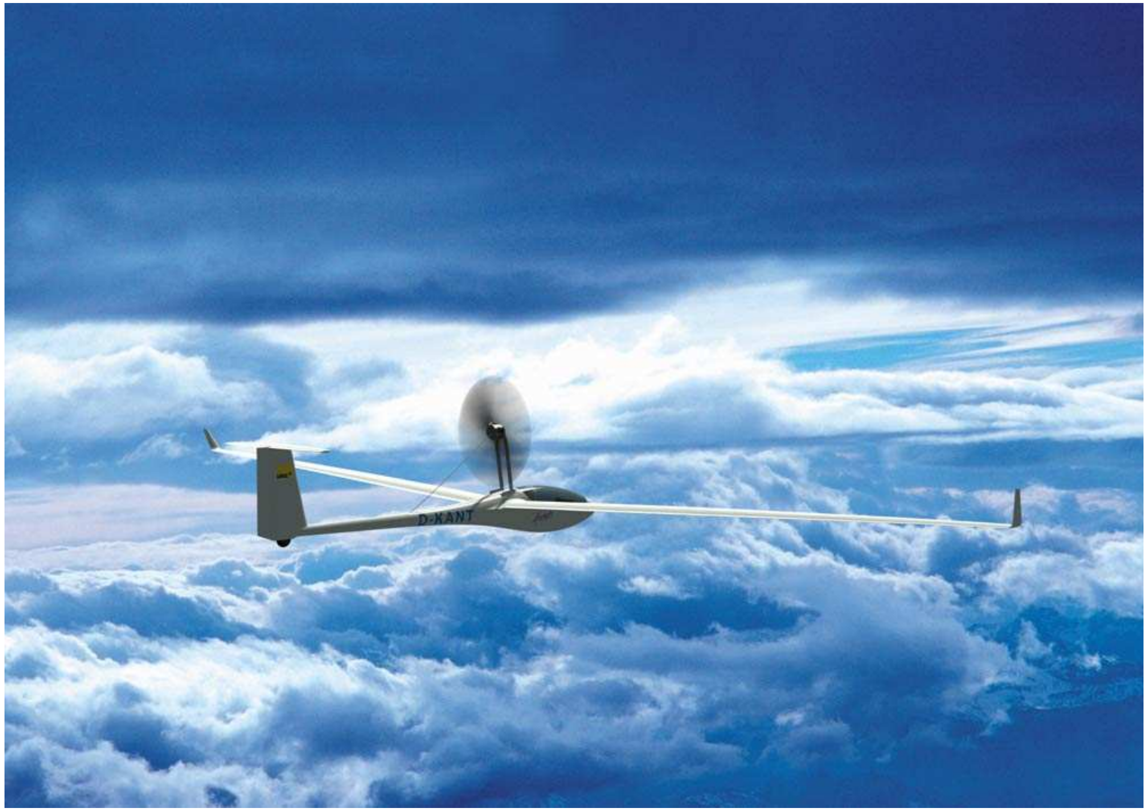
Certified Emission Reductions (CERs)

aviation sector: up to 15% of required allowances

Conclusion

- financial impact of ETS in the short future uncertain due to financial crisis
- ETS will cause additional financial and administrative burdens in the long run
- ETS may be incompatible with Art. 1 of Chicago Convention

Thank you for your attention!



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Publications

The „Open-Skies" Decision of the European Court of Justice: The Advent of a New Era? (Annals of Air and Space Law 2003)

The Impact of EU Law on the Regulation of International Air Transportation (Ashgate 2007)

The Extension of the EU ETS to Aviation Activities (Annals of Air and Space Law 2009)

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