American Policy Development: Mitigating the U.S. Response to the EU ETS Aviation Directive

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EXECUTIVE SUMMARY

At the beginning of 2012 a new European law expanded the European Union's emissions trading system (ETS) to include aviation GHG emissions. The law has prompted diplomatic difficulties because it counts emissions produced by flights to and from non-EEAS countries in its overall carbon cap. The United States government has responded negatively to this development and the Obama Administration has threatened to engage in retaliatory measures if the law proceeds.

This report for the European Parliament Liaison Office analyzes American policy on the recently enacted EU ETS and makes recommendations for improving the European negotiation position vis-à-vis the Obama Administration.

Three main questions are answered:

- (1) What explains the Obama Administration's recent response to the expansion of the European Union emissions trading system?
- (2) What are the underlying motivations and interests on this issue among various stakeholders in American government and industry?
- (3) How can the European Union improve its negotiating position with the Obama Administration?

(1) The Obama Administration's present opposition to the Aviation Directive is the process of two years of policy debate and belies a more diverse array of opinions that continue to be held in the White House. The Administration's official opposition, first voiced publicly in June of 2011, only crystallized after two major political defeats and a persistent lobbying campaigning by an American airline lobby group.

The first turning point was the political defeat of cap-and-trade in the U.S. in 2010. American government opposition to the EU program was viewed as counterproductive for the Administration's domestic policy agenda as long as this legislation was being pushed as a top priority of the Administration. With its defeat, key environmental advocates who were more opposed to taking strong action against the European law were marginalized, while officials from the FAA, DOT, and State Department who were more prone to oppose the EU ETS were empowered.

The second turning point was the Republican sweep of the 2010 mid-term elections. The election of a more anti-environment Congressional delegation made it more difficult for the Obama Administration to stay neutral on the EU ETS and inspired some within the White House to call for a more adversarial and public oppositional position. These two developments were undergirded by the advocacy of the well-connected business association, the Air Transport Association (ATA)—now called Airlines for America (A4A)—whose anti-EU lobbying prompted members of Congress to introduce legislation that would bar American airlines from complying with the EU law.

(2) The industry's opposition to the EU ETS may not be in the best economic interests of the overall airlines industry. In the short-run the industry will not face substantially increased costs from the EU ETS and could make money from the program, if airlines can pass down the full costs of carbon permits, including those that the industry will receive for free. In the long run, the American industry could also benefit if the inclusion of aviation in an emissions trading system holds off the adoption or continuance of more relatively expensive carbon taxes by EU member states.

Therefore the industry's general opposition may not be in the best interests of the American airlines industry. In particular, the association A4A's adamantly anti-regulation position, which is outside of the mainstream of the industry, may be counterproductive given the likely alternatives to the European law.

The Administration's vulnerability to A4A's lobbying is partially related to the design of the U.S. political system. The relatively weak executive branch, the veto points in the overall structure, and the revolving door between government and the private sector provide business interests with more relative power in the United States compared with other countries. Although the dominance of business interests over public policy is not inevitable in the United States, it is much more likely given these institutional features of the American political system.

(3) There are a number of opportunities for the EU to improve its negotiation strategy with the Obama Administration. First, there are many overlapping interests, including avoiding an extreme Congressional response and holding off a trade war, that could be used to build trust for both sides. Second, the different interest priorities of each side—including the fact that the U.S. cares more about sovereignty and the EU more about legitimacy and that the Administration cares about electoral considerations and the EU about advancing its ETS—offer opportunities to create value by "dovetailing differences".[1] Third, the potentials for improved deal design could improve the value and likelihood of a deal being reached. For instance, the EU could improve the value of a potential deal by restructuring its carbon calculation system so that it does not technically include emissions over U.S. airspace. This would reduce the sovereignty concern of the United States without sacrificing the spirit or the substance of the Aviation Directive. Finally, the EU could alter the parties and interests at the negotiating table to improve its overall position. For instance, the EU could further engage the EPA and the White House while reducing its contact with the FAA, DOT, and State. The EU could also circumvent A4A by engaging with the American airlines directly or bringing in other aviation-related companies, like Boeing and GE, who may stand to make money from the faster purchase of new aircraft.

[1] See Lax and Sebenius, pp. 123-125 for more on this concept.

INTRODUCTION

In late 2008, the European Union expanded its emissions trading system (ETS) to the aviation sector, adding in greenhouse gas (GHG) emissions produced by flights to and from EEAS countries.[2] The law was condemned immediately by the airline industry and several airlines and airlines associations filed a lawsuit asserting that the Aviation Directive's extra-territorial provision was illegal under international law.[3] The Bush Administration also raised concerns, writing a series of opposition letters to E.U. leaders and sending a high-ranking U.S. Department of Transportation (DOT) representative to testify against the legislation at a European Parliament committee hearing.[4] But in the wake of the election of Barack Obama, the U.S. government appeared to de-emphasize the issue, causing many officials in Europe to believe the new Obama Administration tacitly supported the European Union's innovative climate change mitigation effort.

During Obama's first two years of office it is certainly true that the Administration was developing a new regulatory framework for GHG emissions generally but it was unclear whether this would include aviation emissions. In 2009 the Obama Administration worked with Congress to introduce cap-and-trade legislation, and one version of this initiative passed the U.S. House with a strong aviation emissions regulation component intact.[5] In 2010 the Environmental Protection Agency (EPA) claimed that it had the authority to regulate GHG emissions from power plants under the U.S. Clean Air Act.[6] During this time, the Obama Administration stayed officially silent on the EU ETS, sidelining some lawyers in the State Department and DOT who wanted to challenge it legally, but satisfying many officials at EPA who thought that opposing the EU ETS would undermine their own regulatory efforts.[7]

But in the summer of 2011, the U.S. government approach to the EU ETS changed. On June 22, 2011, at a meeting in Oslo, Norway held with E.U. officials, the Obama Administration registered its first formal objection to the EU ETS.[8] Five weeks later the U.S. House Transportation Committee organized a contentious hearing that attacked the EU's aviation program as "anti-environment," "illegal," and "arbitrary" and members in

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[2] All EEAS members are participants in the EU ETS. This includes the 27 members of the European Union plus Norway, Iceland, and Liechtenstein.
[3] European Court of Justice, Case C-366/10, July 8, 2010.
[4] "U.S. Official Reiterates Objections to ETS," *Aviation Week,* June 28, 2011. <http://www.aviationweek.com/aw/jsp_includes/articlePrint.jsp?storyID=news/ETS06287.xml&headLine=U.S.%20Official%20Reiterates%20Objection%20To%20ETS>
[5] H.R. 2454: American Clean Energy and Security Act of 2009.
[6] "EPA Announces Plans to Regulate Power Plant, Oil Refinery Emissions," *Washington Post*, Dec. 23, 2010. <http://voices.washingtonpost.com/post-carbon/2010/12/epa_announces_plans_to_regulat.html>
[7] Interviews, EPA representative, Jan. 3, 2012, DOT representative, Jan. 4, 2012, and industry Representative, Jan. 4, 2012.
[8] "Statement of Krishna R. Urs," EU ETS: A Violation of International Law, Aviation Subcommittee, Committee on Infrastructure and Transportation, July 27, 2011, <http://Republicans.transportation.house.gov/Media/file/TestimonyAviation/2011-07-27%20Urs.pdf>

both the U.S. Senate and House introduced unusually aggressive legislation that, if passed into law, would bar U.S. airlines from complying with the European directive.[9]

At this hearing, several high-ranking officials within the Obama Administration publicly condemned the program and threatened to take a series of diplomatic, economic, and legal actions against the E.U. if the law was implemented as planned. Julie Oettinger, Assistant Administrator for International Affairs and the Environment at the Federal Aviation Administration, said that the U.S. government was considering a "variety of legal options," including bringing a case before the World Trade Organization.[10] This possibility was made more concrete in December 2011 when the U.S. DOT issued two orders that were widely perceived to be preliminary steps toward trade sanctions.[11]

A few months later, the American delegation to the U.N. aviation body, the International Civil Aviation Organization (ICAO), drafted a letter of opposition to the EU Aviation Directive that was eventually signed by 26 of the 36 members of the ICAO Governing Council at a meeting in New Delhi, India.[12] Secretary of State Hillary Clinton even weighed in on the subject, saying that the United States "will be compelled to take appropriate action" if the E.U. law went forward as expected.[13] Meanwhile, the new Republican Chair of the U.S. House Transportation and Commerce Committee, John Mica, called the EU program "unjust," and a "violation of international law," while threatening that it "may lead to a trade war."[14]

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[9] For more information on the hearing entitled "EU ETS: A Violation of International Law," and held on July 27, 2011 in the U.S. House Transportation and Infrastructure Committee, including a video of the proceeding, visit the committee's website. <http://transportation.house.gov/hearings/hearingdetail.aspx?NewsID=1355 >. For the text of the Congressional legislation see "The EU Emissions Trading Scheme Prohibition Act," H.R. 2594 and S. 1956, 112th Congress.

[10] "U.S. May Retaliate on EU ETS aviation rule," *Argus Media*, July 27, 2012. < http://www.argusmedia.com/pages/NewsBody.aspx?id=760412&menu=yes>

[11] U.S. Department of Transportation, Orders 2011-12-09 and 2011-12-10, Dec. 16, 2011.

[12] "India, 25 others oppose EU airline carbon charge plan," *Reuters*, Sept. 30, 2011. < http://www.reuters.com/article/2011/09/30/us-eu-aviation-emission-idUSTRE78T1TX20110930>

[13] "EU Court Forces US Airlines to Pay for Emissions. *Spiegel Online*, Dec. 21, 2011, < http://www.spiegel.de/international/business/0,1518,805191,00.html>

[14] "U.S. House Votes to Ban EU ETS Participation," *Air Cargo World*, Oct. 26, 2011, http://www.aircargoworld.com/Air-Cargo-News/2011/10/u-s-house-votes-to-ban-eu-ets-participation/262794.

THE PROJECT

Why did the Obama Administration decide in the summer of 2011 to oppose the EU ETS in such a forceful way? Why did this opposition take two years to crystallize? Why is the U.S. industry so opposed to the EU ETS? And why does the Obama Administration's policy position on this issue appear to be so influenced by this particular industry?

These were some of my unanswered questions after attending a Congressional hearing on the EU ETS in July 2011. At the time I was interning at the European Parliament Liaison Office in Washington, D.C. and I was puzzled by the stridence and bipartisan nature of the opposition to the European law. Many of my European colleagues were perplexed by the American willingness to put the U.S.-E.U. relationship on the line over what appeared to them to be a relatively insignificant issue.

When I was developing a PAE topic that Fall, I realized that this might be an interesting policy area to explore. It would give me the opportunity to expand my policy knowledge about a policy problem I cared about (global climate change) and build upon my theoretical interests (the relationship between business and government), while also helping my former colleagues better understand the American political system. In addition, it would give me a chance to learn more about politics in the European Union, and how the process was similar or different from what I had observed in the United States.

After surveying a number of officials at the E.U. it became clear that there were three underlying questions to which there were incomplete answers. First, what was the story of American policy development on the EU ETS? Although there were multiple theories about the Obama Administration's evolving level of support, no one had fully pinned down the sequence of events. Second, what was driving the high levels of opposition within the U.S. government and industry? The level of opposition in the industry and the sudden turn in the Obama Administration's position was particularly puzzling, but I could find no solid analysis on the subject. Third, given these driving factors, how could the Europeans mitigate the American response to their law? The EU had been unprepared for the stark U.S. opposition that emerged in 2011, and I realized that an analysis of U.S. interests on the EU ETS would be helpful for their ongoing negotiations.

The first and second questions probe into the story of the Obama Administration's policy development on the EU ETS and the third into the Administration's negotiation position and interests. My answers piece together a story about the development of American policy on this issue, suggest analyses for understanding that story, and provide insight for improving European negotiations with the U.S. government. Although most EU officials are familiar with the general thrust of the American response to the EU ETS, many are unfamiliar with all of the details, and few have a solid understanding of the causal forces that underpin it. By providing a comprehensive assessment of the American government and industry's policy positions on the EU ETS, the evolution of these positions over time,

and strategies for arriving at a workable agreement, I hope this report fills some of these gaps.

My client is the European Parliament Liaison Office, which is the European Parliament's diplomatic and policy link with the U.S. Congress. My audience also includes the various departments within the EU that manage the aviation sector component of the European Union's Emissions Trading System (EU ETS), from the Commissioner for Climate Action at the European Commission to the Environment Committee of the European Parliament. My hope is that this report also can be useful for others who have an interest in how policy is developed, how interest groups wield influence, or how international negotiations are organized.

OUTLINE OF PAPER

This paper is divided into four sections. In the first section I tell the story of the development of the Obama Administration's policy on the EU ETS. In the second section I analyze the underpinnings of the Administration's policy, looking in particular at the reasons for industry opposition and the opportunities for business policy capture presented by the institutional design of the American political system. In the third section, I analyze EU and U.S. interests on this issue. In the fourth section I analyze the stakeholders involved and make recommendations for how the EU can move negotiations forward.

METHODOLOGY

This report relies primarily on expert interviews, news articles, industry and financial reports, and the academic literature in political science. I conducted 39 interviews with industry representatives, environmental NGOs, academics, and government officials in the United States, Canada, Australia, and the European Union. The median interview length was 45 minutes, with some lasting more than two hours. Those interviewed include a range of actors who have been involved in the current debate, from representatives of the U.S. Environmental Protection Agency to European NGOs. It also includes a number of experts on the political process in the U.S., E.U., or both. See Table 1 for a full list of the organizations and constituencies interviewed.

For most of these interviews, the general terms agreed to were that the name and identifying characteristics of those interviewed would not be revealed, but that any information provided, including references to specific organizations and individuals, would be on the record. 26 of these interviews were conducted in person and 13 over the phone. Of the interviews conducted in person, 15 were done in Washington, D.C., six in Brussels, Belgium, two in Strasbourg, France, two in Boston, Massachusetts, and one in Berkeley, California. All interviews were either recorded or extensively documented.

The news sources consulted include newspaper articles, government reports, and academic studies. Most of the news articles were accessed through LexisNexis. The

academic literature consulted was mostly within political science, but included economics and negotiations.

Table 1. Organizations and Constituencies Interviewed

American Airlines Industry Representatives	Harvard University Professors
American environmental NGOs	Member of the European Parliament
Attorney who frequently represents the airlines industry	Office of Energy and Climate Change, White House (Former)
Australian Airlines Industry Representative	Office of the European Commissioner for Climate Action
Canadian Airlines Industry Representatives	Transatlantic Dialogue, European Parliament
Other American NGOs	Transport and Environment
Committee on the Environment, European Parliament	UC-Berkeley Professor
Committee on Transportation and Tourism, European Parliament	U.S. Environmental Protection Agency
Delegation of the European Union to the United States	U.S. House Transportation and Infrastructure Committee
DG Clima, European Commission	U.S. Senate Committee on Commerce, Science, and Transportation
European Airlines Industry Representatives	U.S. Senate Foreign Relations Committee
European Parliament Liaison Office	U.S. Senate, Member's Office, Legislative Director
Former Representatives of Airline Industry	U.S. Department of Transportation

PART 1: THE STORY

The American Airlines Association

Although the United States has a large and variable airline industry with many different business models, air fleets, and flight patterns, most U.S.-based carriers have articulated a common policy position in opposition to market-based measures (MBMs) to regulate aviation GHG emissions. This position is largely determined by Airlines for America (A4A), the sole association representing the airline industry in the United States. A4A's policy position on aviation emissions regulation has been relatively adamant and uncompromising compared to other airlines associations around the world. The American association has opposed almost all proposals to establish systems of government mandated GHG emissions regulation, on either the international, regional, or national level, claiming that the airline industry's business structure provides them with sufficient incentives to reduce GHG emissions on their own.

In operation since 1936, A4A is the oldest and now the only association of the principle U.S. carriers, representing 14 air carriers and 28 aviation-related companies. These members collectively account for 90% of U.S. passenger and cargo traffic in the United States, as well as a significant portion of traffic globally.[15] All of the major American airlines are members, including American Airlines, Delta, Jet Blue, Southwest, United, and US Airways, as are the largest cargo shipping companies, UPS Airlines and Federal Express Corporation.[16] Unlike in Europe, where the low-cost carriers Easy Jet and Ryan Air have their own association, the European Low Fare Airlines Association (ELFAA), A4A has managed to retain the membership of lower-cost airline carriers such as Jet Blue and Southwest. The only large American carriers who are not members are Republic Airways and Spirit Airways.

Lobbying Powerhouse

A4A plays an active political role in both the national and international arenas. They have spent at least $28,000,000 on lobbying the U.S. government since 2006, and millions more to lobby foreign officials, other airlines, and international organizations.[17] Their President and CEO, Nicholas Calio, has extensive high-profile experience in both the private and public sector. Formerly he served as an Assistant to the President for Legislative Affairs for both George H.W. Bush and George W. Bush.[18] He is also a former Vice President for Global Governmental Affairs for Citigroup and former member of Citigroup's senior leadership team.[19] In 1998 Fortune Magazine named him one of Washington, DC's ten most powerful lobbyists.[20] A4A's Vice President for

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[15] See Airlines for America Website. <http://www.airlines.org>
[16] Ibid.
[17] See "Air Transport Assn of America," Opensecrets.org, http://www.opensecrets.org/lobby/clientsum.php?id=D000000545&year=2006. Accessed on Jan. 28, 2012.
[18] "Nicholas E. Calio," Airlines for America Website, <http://www.airlines.org/Pages/Nicholas-E.-Calio.aspx>. Last accessed on March 20, 2012.
[19] Ibid.
[20] Ibid.

Environmental Affairs, Nancy Young, is a prominent Washington attorney and an influential figure in aviation policy circles.[21] Several other members of A4A's senior management team, including Sharon Pinkerton, Christine Burgeson, Sean Kennedy, and Chris Brown, have extensive previous experience working in the federal government.[22] Nearly every person I spoke to, whether in industry, government, or the NGO sector, described A4A as wielding an extraordinary amount of power in Washington and having significant influence over both political parties.

A4A also has significant influence within the international airlines association IATA.[23] Established in 1945, IATA represents 240 members from 140 countries that collectively account for 84% of total global air traffic. This high level of organization is unique in industry and has allowed airlines to speak with a remarkable level of unanimity.[24] IATA has facilitated a forum for A4A to organize airlines from around the world.

Several people in government and industry told me that A4A dominates the international association.[25] A4A has used this influence to keep the aviation sector excluded from the overall framework of the Kyoto Treaty in 1997 and to convince governments to pursue an aviation sector solution for aviation emissions through ICAO.[26] According to several sources familiar with the ICAO process, A4A has consistently worked to prevent a binding agreement and in 2004 the association's obstructive effort helped lead to an ICAO decision to formally abandon any effort to produce a binding international agreement.[27] A4A has also used the ICAO and IATA forums to push airlines worldwide to oppose domestic regulatory efforts in the aviation sector.[28] Although it is certainly plausible that airlines and governments around the world might have opposed the EU ETS in the absence of organizing by associations like A4A and IATA, it is hard to imagine them having done so with such stridence and unanimity.

"A Continuing Difficult Experience"

A4A and IATA have actively opposed the Aviation Directive since its inception. Both groups registered their disapproval with the European Commission while it was

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[21] "A4A Executives," Airlines for America Website, http://www.airlines.org/Pages/A4A-Executives.aspx. Last accessed on Jan. 28, 2012.

[22] Ibid.

[23] Based on interviews with European government representatives on Jan. 16, Jan. 20, and Feb. 24, American NGO representatives on Oct. 14, Dec. 20, and Feb. 16, and European NGO representative on Jan. 16.

[24] Analysis derived from interviews with European government representative on Jan. 20, 2012 and European NGO representative on Jan. 16, 2012.

[25] Based on interviews with European government representatives on Jan. 16, Jan. 20, and Feb. 24, American NGO representatives on Oct. 14, Dec. 20, and Feb. 16, and European NGO representative on Jan. 16.

[26] Based on interview with American NGO representative on Dec. 20, 2011, industry representatives on Jan. 8, Jan. 12, and Feb. 9, and European government representatives on Jan. 16 and Jan. 20.

[27] Based on interviews with European government representatives on Jan. 16, Jan. 20, and Feb. 24, American NGO representatives on Oct. 14, Dec. 20, and Feb. 16, and European NGO representative on Jan. 16. See Committee on Aviation Environmental Protection, "Report of the Committee on Aviation Environmental Protection Sixth Meeting", 2004, CAEP/6.

[28] Ibid.

developing the Directive in 2005 and 2006 and made unsuccessful attempts to stop the legislation from moving forward.[29] But the hard-line and aggressive strategies that have been so central to A4A's political success in the United States were almost entirely ineffective in the EU. Despite A4A's significant lobbying effort and expenditure of a fair amount of resources, representatives I spoke to on both sides of the equation agree that the association's European advocacy had almost zero impact on the development of the Aviation Directive.[30] "A4A did not come with alternatives," said one European official when explaining why A4A's European lobbying fell on deaf ears. "[Their problem was] not understanding where we are politically in Europe."[31]

Industry representatives generally agreed that the lobbying effort by A4A did not pay off. The process of lobbying the European Union was described by one lobbyist in the American airlines industry as "a continuing difficult experience" marked by barriers to access and little outreach to the American industry on the part of the Commission.[32] "At the end of the day," summarized the lobbyist, "they don't really care what we have to say."

The European Union's insulation from A4A's pressure tactics was made evident when IATA tried to join the Commission's consultation process, but was kept out by the European Commission because the association was unwilling to support the basic premise that carbon emissions regulations were needed. "[IATA] did not seem to accept the premise of the working group, which was that aviation would be included in the ETS," complained one European official. "The group was about *how* to do it—not *whether* to do it, but *how* to do it."[33]

IATA and A4A also failed in their attempt to instill opposition among the Association of European Airlines (AEA) and the European Low Fare Airlines Association (ELFAA) who did not see how uncompromising opposition to the ETS would benefit their member airlines from either a political or business perspective.[34] So while IATA was kept out of the Commission's consultation process, AEA was allowed in, and subsequently had a significant influence on the final outcome of the legislation.[35]

Turning to the White House

After this European lobbying failure, A4A turned their attention to lobbying their allies within the Bush Administration. This effort was made easier by A4A's close connections to key players inside the Bush White House and the Administration's general hostility

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[29] See for instance, "ATA Assails EC Decision on Emissions Trading, Says Unilateral Approach is Violation of International Law," ATA Press Release, Dec. 20, 2006, http://www.airlines.org/Pages/ATA-Statement-Regarding-EC-Decision-on-Emissions-Trading.aspx.
[30] Based on interviews on Jan. 4, Jan. 16, Jan. 20, and Feb. 24, 2012.
[31] Interview, Jan. 20, 2012.
[32] Interview Jan. 4, 2012.
[33] Interview Jan. 16, 2012.
[34] Based on interviews with industry representatives on Jan. 4 and Jan. 16, 2012.
[35] See "European Climate Change Programme II: Aviation Working Group," European Commission, April 2006. http://ec.europa.eu/clima/policies/transport/aviation/docs/final_report_en.pdf. Last accessed on Sept. 28, 2011.

toward carbon emissions regulation. From almost the moment the Aviation Directive in the European Commission was first debated, the Bush White House registered its disapproval. After sending a series of official letters of disapproval, in June 2007 Andrew Steinberg, the Assistant Secretary for Aviation and International Affairs at DOT at the time, testified against the proposal during a meeting of the Transport & Tourism Committee in the European Parliament.[36] Once the European law was finalized and enacted, A4A filed a lawsuit in a U.K. court alleging that the law was illegal under international law, and then began to aggressively organize opposition to the EU ETS in other countries. [37]

Ambiguity from the New Administration

But A4A's strategy was interrupted in 2009 after Barack Obama was elected U.S. President. Obama made GHG emissions regulation one of his top priorities, and it was unclear to the airlines lobby whether he would give the aviation sector the level of influence they had come to expect from the American government. It was also unclear whether his Administration would oppose binding regulations in the ICAO process or how he would respond to the implementation of the new EU aviation law. A key player in the American industry told me that the association's early meetings with Obama Administration officials were worrying for two reasons.[38] First, it seemed as if the President was committed to regulating the aviation sector's GHG emissions domestically through an ETS. Second, the new Administration was not keen to expend any effort to oppose the European program because they anticipated that opposition to the European ETS would complicate their effort to create a domestic system in the U.S.

The industry's fear was borne out when the House version of the cap-and-trade legislation, Waxman-Markey, passed with jet fuel included in the overall cap. This legislation was more stringent than the EU law because it provided no free allowances or transition period for the aviation sector. Unnerved by this defeat—which by all accounts caught them of guard—A4A stepped up their lobbying efforts in the Senate, speaking to almost every staffer who was working on the bill and a number of key senators.[39] Their effort bore fruit when one of the versions of the Senate legislation largely excluded the aviation sector from the domestic ETS.

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[36] Andrew Steinberg, Assistant Secretary for Transportation and International Affairs at the U.S. Department of Transportation made a presentation to the Transport and Tourism Committee of the European Parliament on June 27, 2011. During this presentation he put forward many of the arguments that continue to be used by the U.S. government today, including that the EU ETS violates international law, undermines bilateral agreements between the U.S. and E.U., challenges U.S. sovereignty, and is counterproductive for the ICAO process. "U.S. Official Reiterates Objections to ETS," *Aviation Week,* June 28, 2011.
<http://www.aviationweek.com/aw/jsp_includes/articlePrint.jsp?storyID=news/ETS06287.xml&headLine=U.S.%20Official%20Reiterates%20Objection%20To%20ETS>

[37] Case C-366/10. *Air Transport Association of America and Others v Secretary of State for Energy and Climate Change*

[38] Interview, Jan. 2012.

[39] Based on interviews with current and former Congressional staffers on Dec. 1 and Dec. 20, 2011 and other interviews on Jan. 4 and 5, 2012.

The eventual failure of the administration's cap-and-trade initiative meant that A4A could turn its lobbying attention away from defeating domestic cap-and-trade and toward drumming up domestic and international opposition to the EU ETS.[40] A4A revisited Administration officials and argued that the failure of cap-and-trade legislation meant that they should now oppose implementation of the EU ETS.[41] To apply pressure in Congress, A4A teamed up with a number of Administration officials who had consistently opposed the EU ETS and who also had had previous employment with the airline industry.[42] Although it was "very, very difficult" to get the Administration to oppose the EU ETS—in the words of one industry representative—eventually they succeeded here as well, and the Administration registered its formal opposition in the summer of 2011.[43] Although some Administration officials such as Carol Browner, Director of the White House's Office of Energy and Climate Change Policy, had been able to hold off the anti-EU ETS sentiment before, the failure of the domestic ETS effort meant they could do so no longer.

"An Example of Policy Development"

Although some European observers say that officials from DOT, FAA, and the State Department expressed disapproval of the EU ETS in conversations throughout the first two years of the Obama Administration, almost all of my interlocutors said that it was not until the summer of 2011 that the Administration's policy on the EU ETS fully crystallized. "It took some time for [A4A] to capture—recapture if you like—the Administration," quipped one European observer. "There was a lull—basically the [Obama] Administration didn't know what it's position was."[44] Another U.S. government insider told me the same story, but with a different twist. "Originally the Administration did not have a position," he said. "This really has been an example of policy development."[45]

Turning Point 1: Failure of Cap-and-Trade

What prompted Administration officials in the summer of 2011 to turn against the EU ETS? The first turning point was the defeat of cap-and-trade. Since this legislation had been one of the primary checks on anti-EU ETS sentiment, its failure changed the dynamic of opinion within the Administration. After its defeat, environmental advocates lost their clout in the White House. Their environmental arguments alone could not hold off opposition from lawyers and civil servants whose skepticism of the EU had been forged in years of contentious negotiations on trade and aviation issues. Their task was made all the more difficult in the deflated political environment of 2010-2011 when the Administration's support for cap-and-trade and other environmental issues was

[40] Ibid.
[41] Interviews with industry representatives, January and February 2012.
[42] The Assistant Administrator for Policy, International Affairs and Environment at the FAA, Julie Oettinger, was previously the Managing Director for International and Regulatory Affairs at United Airlines and Assistant General Counsel at US Airways. The Assistant Secretary for Aviation and International Affairs of the Department of Transportation, Susan Kurland, was previously Vice President and Deputy General Counsel at U.S Airways.
[43] Interview, A4A Representative, Jan. 4, 2012.
[44] Interview, Jan. 16, 2012.
[45] Interview, Jan. 4, 2012.

increasingly blamed not only for the President's declining approval ratings, but also later, for the Republican sweep of the 2010 mid-term elections.

"International Regulatory Competition"
The failure of climate change legislation could have changed the Administration's calculus in another way as well. If climate legislation had been enacted, then many American industries would have been put at a competitive disadvantage vis-à-vis similar industries operating in countries without climate regulations. This would have given the U.S. government an incentive to support the expansion of other carbon emissions regulatory efforts around the world. This dynamic is what David Vogel, a professor of business and political science at UC-Berkeley, calls the logic of "international regulatory competition."[46] He finds that since domestic firms are usually competitors with international firms and regulatory arrangements can make a difference in the competitive of business, governments are likely to pursue international arrangements that either increase the competitiveness of their domestic business or leave them unchanged.

When I met Vogel at his office in Berkeley, California in December 2011, he told me that in his estimation international competitiveness was likely the driving force behind the crystallization of the American policy position. When it was expected that aviation emissions were eventually going to be regulated in the United States, then the U.S. government had little reason to oppose—and even some reason to support—a program like the EU ETS that forced airlines from other parts of the world to pay into an ETS. But with the failure of domestic legislation, the United States had little reason to support—and many reasons to oppose—a law like the EU ETS that would place a burden on its domestic airline industry. Thus, the domestic and international arenas of regulation can be mutually reinforcing: where domestic legislation was viewed as likely, the U.S. was neutral or weakly opposed to the EU ETS; when it was viewed as increasingly unlikely, the U.S. was wholly opposed.

Turning Point 2: Republican Congressional Gains
The second crucial event was the Republican sweep of the midterm elections of November 2010. The election brought the Republicans to power in the U.S. House and gave them enough seats in the U.S. Senate to call most major legislative business to a halt. The election also brought to Washington a new crop of legislators holding extreme ideological positions in a variety of policy areas, including some who claimed that global climate change was a scientific hoax. Combined with the tight relationships that most Republicans have with carbon-emitting industries, the Republican victory created a situation that left almost all substantive environmental legislation—and particularly legislation addressing GHG emissions—practically dead on arrival.

Of particular consequence was the election of Rep. John Mica to the Chairmanship of the Aviation Subcommittee of the House Committee on Transportation and Infrastructure.

[46] See David Vogel, *Trading Up: Consumer and Environmental Regulation in a Global Economy*, Harvard University Press: Cambridge, 1995 and Daniel R. Kelemen and David Vogel, "Trading Places: The Role of the United States and the European Union in International Environmental Politics," *Comparative Political Studies*, Volume 43, Issue 4, pp. 427-56, 2009.

Mica has received more than $620,000 from the aviation industry over his career and is a former chairman of the subcommittee. He has shown a particular contempt for the EU law, demonstrating little willingness to restrain his scathing verbal attacks or to consider other aspects of the E.U.-U.S. relationship when registering his disapproval with European diplomats.[47]

Leveraging the White House

The Republican takeover of the House provided another reason for the Administration to oppose the EU ETS. Many officials in the Obama Administration knew that Mica would use his new committee chairmanship to generate opposition to the EU law, and that this would make it more difficult for the White House to stay neutral. Although the Administration's position was already gravitating toward opposition, the Republican election boost pushed the Administration to develop a more hard-line position than they would have had otherwise. Anticipating that the Republicans would not merely oppose, but vituperatively fight, the EU law, some in the Administration pushed for a more adamant position as a way of outflanking Republican opposition. At the same time, Republicans in the House incorrectly assumed—perhaps for some of the same reasons as many Europeans—that the Administration was inclined to support the EU ETS and saw an uncompromising policy stance as a way to undermine the Administration's position in this area.[48] The result was a rhetorical arms race between the Republicans and the Obama Administration to see who could more forcefully oppose the EU law.

The Republican victory also gave A4A and other interest groups a new platform from which to leverage the Administration. Within months of the Republican victory, A4A and U.S. Congressional members attended an ICAO meeting in Montreal and made a series of demands to the European Union delegation. Soon thereafter Congressional officials introduced two bills in the U.S. Congress that would bar American airline compliance with the EU law and organized a contentious hearing in the U.S. House entitled "The EU ETS: A Violation of International Law," that called five witnesses to testify against the EU law.[49] In October, the U.S. House adopted the "EU Emissions Trading Scheme Prohibition Act" by wide margins, but it has since been held up in the Senate.[50]

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[47] Based on interview on Jan. 20, 2012.

[48] Based on interviews with Congressional staffers Dec. 20, 2011 and March 12, 2012.

[49] For information on the legislation see "The EU Emissions Trading Scheme Prohibition Act," H.R. 2594 and S. 1956, 112th Congress. For more information on the hearing entitled "EU ETS: A Violation of International Law," and held on July 27, 2011 in the U.S. House Transportation and Infrastructure Committee, including a video of the proceeding, visit the committee's website. < http://transportation.house.gov/hearings/hearingdetail.aspx?NewsID=1355. The witnesses were Captain Lee Moak, President of the American Pilots Association International, Nancy Young, Vice President for Environmental Affairs, Airlines for America, Julie Oettinger, Assistant Administrator for Policy, International Affairs and Environment at the FAA, Susan Kurland, Assistant Secretary for Aviation and International Affairs and Krishna R. Urs, Deputy Assistant Secretary for Transportation Affairs, U.S. State Department.

[50] "U.S. House Votes to Halt EU Air Tax," Press Release, U.S. House Committee on Transportation and Infrastructure, Oct. 24, 2011, <http://transportation.house.gov/news/PRArticle.aspx?NewsID=1428>

"An Arbitrary Voodoo Tax Scheme"

The hearing was overwhelmingly one-sided. During the two hour-long meeting, not one supportive or even partially receptive statement was expressed about the EU ETS from any of the five expert witnesses or the dozen or so members of Congress who participated in discussion. No representative of the EU was invited to testify, and Republicans and Democrats alike made statements and used examples that were almost identical to those that A4A had used in the past. Although the Air Pilot's Association head Captain Lee Moak made the most memorable statement of the day, calling the EU law "an arbitrary voodoo tax scheme", it was A4A that stole the show.[51] Labeling the EU's plan to expand its emissions trading scheme "anti-environment," "illegal," "unilateral," and a "breach of U.S. sovereignty and international law," A4A Vice President Nancy Young urged airlines and the U.S. government alike to do everything they legally could to stop the application of the E.U. program to Trans-Atlantic flights.[52] Although the hearing was widely—and accurately—viewed as a symbolic display of American opposition to the European law, by bringing in key leaders from the Obama Administration to testify the hearing helped cement bipartisan opposition to the EU ETS and made it more difficult for the Administration to moderate the strong stance that it had staked out two months earlier.

The Present Moment

Since the summer of 2011 the Administration has continued to oppose the Aviation Directive. In September 2011 the American delegation to ICAO organized opposition among other governments at a meeting in New Delhi, India, and in December 2011 the U.S. DOT issued orders that many believe represent preliminary steps toward trade sanctions.[53] According to A4A, in October 2011 President Barack Obama told E.U. officials that he opposed the implementation of the Aviation Directive.[54] On Feb. 21 and 22, 2012 representatives of the Administration met in Moscow, Russia to organize with other countries against the EU ETS and signed a declaration that outlined some of the potential retaliatory measures that might be taken.[55] U.S. Secretary of Transportation Ray LaHood said in March 2012 that the European law was "very, very bad" and mentioned unspecified "enforcement measures" that he was coordinating with U.S. Secretary of State Hillary Clinton.[56]

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[51] Statement of Captain Lee Moak," Expert Testimony, The EU ETS: A Violation of International Law Hearing, Subcommittee on Aviation of the House Committee on Transportation and Infrastructure, July 27, 2011, See http://Republicans.transportation.house.gov/Media/file/TestimonyAviation/2011-07-27%20Moak.pdf. Last accessed on March 20, 2012.

[52] "Testimony by Ms. Nancy Young," Expert Testimony, The EU ETS: A Violation of International Law Hearing, Subcommittee on Aviation of the House Committee on Transportation and Infrastructure, July 27, 2011. See http://transportation.house.gov/hearings/Testimony.aspx?TID=6834. Last accessed on March 20, 2012.

[53] "India, 25 others oppose EU airline carbon charge plan," *Reuters*, Sept. 30, 2011. < http://www.reuters.com/article/2011/09/30/us-eu-aviation-emission-idUSTRE78T1TX20110930> and U.S. Department of Transportation, Orders 2011-12-09 and 2011-12-10, Dec. 16, 2011.

[54] "A4A Commends Senate Opposition to EU ETS," A4A Press Release, Dec. 7, 2011, http://www.prnewswire.com/news-releases/airlines-for-america-a4a-commends-senate-opposition-of-eu-ets-135205218.html>.

[55] For a copy of the Declaration see http://www.greenaironline.com/photos/Moscow_Declaration.pdf.

[56] "U.S. DOT Secretary Slams EU ETS," *Air Transport World*, March 13, 2012, http://atwonline.com/eco-aviation/article/us-dot-secretary-slams-eu-ets-0312.

Meanwhile Congress has continued to advance its non-compliance legislation. Sen. John Thune of South Dakota has introduced companion legislation to the "EU ETS Noncompliance Act" and the Aviation Subcommittee of the Senate Commerce, Science, and Transportation Committee is expected to hold hearings on the bill in the Spring.[57] Although there is some opposition within the Democratic caucus, no senator had expressed any written opposition as of March 14, 2011. Sen. Claire McCaskill of Missouri became the first Democratic co-sponsor at the beginning of March 2011.[58]

Yet even if this legislation is passed, it will probably never be used. "This is optics and this is politics," quipped one lobbyist who used to represent the industry. "That bill is a political 'fuck you' to Europe. It signals to the US carriers, we have your back. Do not participate in this because we don't want our US passengers paying money into the European fisc."[59] Another industry representative described the legislation as intending "to send a warning shot across the EU bow."[60] Several officials I spoke to, including one Republican, said that the purpose of the provision was to communicate the U.S. government's opposition and that no one thought it would ever be used.[61]

[57] Interview Mar. 12, 2012.
[58] "Airline for America Commends Bipartisan Support of Senate EU ETS Bill," *Market Watch,* March 7, 2012, <http://www.marketwatch.com/story/airlines-for-america-commends-bipartisan-support-of-senate-eu-ets-bill-2012-03-07>.
[59] Interview, Feb. 9, 2012.
[60] Interview, March 1, 2012.
[61] Interview, March 12, 2012.

PART II: ANALYZING THE STORY

Although the above account explains the role of the American airlines industry in opposing the EU ETS as well as the turning point in the development of the Administration's position, it leaves several questions unsettled: (1)Why did it take the Administration so long to develop its position? (2)Why is the American airline industry so opposed? (3)Why is the Obama Administration so influenced by the industry's position?

In this section I provide answers to these questions. I first explain why the Obama Administration took so long to develop its position, shedding light on some of the early debates in the White House. I then look at why the industry adopted the position that it did, looking in particular at the role of A4A and ideology in the formation of the American industry position. Finally, I analyze why the Obama Administration was susceptible to capture in the first place, focusing on the relationship between the President and Congress and the channels of influence available to business lobbying groups like A4A.

❖ (1) What was the Administration's policy from 2009-2011?

Given the financial crisis and economic recession, the EU ETS Aviation Directive was certainly not the Administration's top policy priority. It was given scant attention by most senior officials in the White House. But to the extent that a debate did exist, there were two camps. On one side, the career civil servants and political appointees at FAA, DOT, and State were reflexively skeptical of the European Union and worried about how a law like the EU ETS would change the Trans-Atlantic power dynamic, upset bilateral aviation agreements, and affect U.S. sovereignty. On the other side, environmental policy experts saw the initiative as an imperfect but still positive development given the stalled negotiations in ICAO. Obama's domestic policy experts also did not want to oppose the law out of fear that it could compromise their legislative agenda. "Congress is going forward with cap-and-trade legislation," summarized one outside observer, "so why would [the White House] be fighting the Europeans?"[62]

The fact that the Obama Administration did *not* register formal disapproval until 2011 and said little on the subject in 2009 and 2010 was seen as a signal to many—including many European policymakers—that the Administration was developing a different position on the EU ETS from that of the Bush Administration. Looking back, there were some good reasons for this perception. The Administration had put the previous Administration's policy on hold and was concurrently making significant progress on developing the nation's first GHG emissions regulatory framework. Such a combination of events could seem auspicious for those who greatly hoped that U.S. policy was shifting on the EU ETS.

In reality, however, the Obama Administration never considered adopting a new position. The European perception was clouded by wishful thinking—namely, that this new

[62] Interview, Jan. 4, 2012.

President, who promised to bring forth a new era of American diplomacy and who had made global climate change mitigation his second most important domestic priority, would act differently from his predecessors and embrace a law that many in Europe saw as a courageous and progressive first step toward solving the world's most urgent public problem.

Yet even when the Administration was not actively opposing the EU ETS, it refrained primarily for domestic political reasons, not international climate ones. Even when global climate change was a top priority for the Administration, the preponderance of opinion in the White House was still negative on the EU ETS. It is unlikely that this opposition would have gone away even if cap-and-trade legislation had been enacted, Republicans had not swept the 2010 elections, and Barack Obama had maintained 70% approval ratings.

Perhaps what is remarkable is not the fact that the Obama Administration eventually opposed the EU law, but that it took more than two years for it to do so. Aviation policy is a rare area of bipartisan consensus, with leaders from both parties generally following the lead of the American industry, especially when international negotiations are involved. One high-ranking federal government official with more than thirty years of experience working on aviation issues told me that "there's not an enormous difference in policy between Administrations", and that little of what he does changes between Presidents.[63] Although it is striking that the Obama Administration was, if not willing to break the Bush Administration policy on the EU ETS, at least willing to put it on hold, ultimately it is hard to see how the Administration's passively supportive environmental policy advocates could ever have prevailed over the career civil servants and industry-connected political appointees who, from the start, were determined to oppose the European law.

❖ (2) Why is the American Industry So Adamantly Opposed to the EU ETS?

"An Exorbitant Tax"

Officially the airlines lobby claims that its opposition is motivated by costs. In a December 2011 letter to Congress, A4A writes that the EU ETS would "increase costs in the industry significantly" and siphon "scarce capital… into foreign governments' general funds inhibiting the industry's ability to improve our mutual goal – fuel efficiency."[64] Nicholas Callio, the President of A4A has said at various times that the law would be "very costly in terms of growth and jobs,"[65] would "hamper airlines' ability to invest in new aircraft,"[66] and that the program would amount to an "exorbitant tax."[67] On

[63] Interview, Jan. 4, 2012.
[64] "EU ETS Coalition Letter to Congress" Airlines for America, Dec. 7, 2011. http://www.airlines.org/Pages/EU-ETS-Coalition-Letter-to-Congress.aspx. Accessed on January 29, 2012.
[65] "Pressure mounts on Europe over ETS move," *Airline Business*, June 24, 2011.
[66] "A4A Commends Senate Opposition of ETS," A4A Press Release, Dec. 7, 2011 http://www.airlines.org/Pages/news_12-07-2011_2.aspx.
[67] "EU carbon tax may force jump in air travel costs," *Toronto Star*, Dec. 22, 2011.

many occasions A4A has said that the ETS would likely cost the American airlines industry $3 billion over the next decade.[68]

Yet the cost reality of the EU ETS seems to be far from the airline lobby's account. Bloomberg New Energy Finance finds that the costs of the EU ETS will represent just a quarter of a percent of revenue in 2012 and half a percent in 2020, that almost all of these costs can be passed down to customers, and that the loss to airlines' profits will be negligible.[69] Their study also finds that the effect on demand will be "less than the increase in price" and that customer demand for most long haul and Transatlantic flights will be relatively unaffected.[70] In an interview with Reuters, the report's author Guy Turner concludes: "On the aggregate we think the industry is going to benefit in the long run, at least up to 2020, by the inclusion of the sector in the EU ETS."[71]

Many other financial reports support Bloomberg's conclusion. A Deutsche Bank study concluded that the costs are "relatively minor," far less costly than alternative tax measures, and unlikely to affect profits.[72] A report commissioned by IATA in 2007 predicted that the EU ETS would leave airlines profits unchanged.[73] Finally, a March 2012 report conducted by MIT's Department of Aeronautics and Astronautics, with funding from the FAA, found that the U.S. airlines would see almost no loss in profits and possibly a windfall gain of $2.6 billion if the airlines "grandfather[ed]" in the allowances that they will receive from the EU for free.[74] "With these costs likely to result in passenger fares going up by little more than 2-3 euros per transatlantic flight," remarks Barclays researcher Andrew Sikorski, "it is really hard to see what all the fuss is about."[75]

Most industry officials I spoke to acknowledged that the EU ETS would not significantly affect their profits. "It's really not that expensive," admitted one airline representative. "It's only three to five dollars a passenger."[76] Another industry official even complimented the EU program: "Conceptually the EU ETS does some of the things we think are right," the representative explained. "It sets an aviation specific target with a certain amount of free allowances which are intended to give some credit for being a fuel efficient industry."[77] Others acknowledged that the system provided considerable flexibility and that the airlines industry might be able to make money from the system

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[68] See for instance, "Emissions standards fuel airline ire," *Montreal Gazette*, Oct. 21, 2011.
[69] "EU ETS Research Note," *Bloomberg New Finance*, Oct. 25, 2011. < http://bnef.com/free-publications/white-papers/>
[70] Ibid.
[71] "EU CO2 scheme seen costing airlines 2 bln eur by 2020," *Reuters*, Oct. 26, 2011, http://www.reuters.com/article/2011/10/26/carbon-aviation-idUSL5E7LQ3CM20111026.
[72] "European Airline: Assessing the impact of the Emissions Trading Scheme," Deutsche Bank, Oct. 17, 2011.
[73] "Financial Impact of Extending the EU ETS to Airlines," *IATA*, Jan. 9, 2007. This report has been removed from IATA's website.
[74] Robert 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.
[75] "Airlines face CO2 bill of 300 mln euros in 2012: Barcap," *Reuters*, Feb. 16, 2012. < http://www.reuters.com/article/2012/02/16/carbon-aviation-barcap-idUSL5E8DG4O520120216>
[76] Interview, March 1, 2012.
[77] Interview, Jan. 4, 2012.

through allowance trading. In general, there was a significant gap between the doomsday scenarios put forward by A4A in public statements and the actual estimations of costs by industry representatives in more candid conversations.

If the industry does not anticipate that the EU ETS will reduce their profits, what motivates their staunch opposition?

Alternative Explanation 1: Sovereignty is a Pre-requisite for Political Capture

One explanation for why this concern might be relevant to the American airline industry is that the industry may believe that maintaining U.S. sovereignty is essential for their maintenance of strong influence over the regulatory regime within which they operate. "The legal implications… are bigger than the dollar implications," explained one airline representative when I asked about the reasoning behind the industry's opposition. "This is about the ability of Europe to reach into the United States and regulate its citizens."[78]

Historically, in most nations, there has been a close relationship between governments and national airlines, with governments often promoting carriers as national champions and airlines often having significant influence over regulation. This close relationship means that airlines "believe they can control the political agenda through their ministries of transport"—as one observer who formerly worked for the industry described it.[79] Add to this close relationship in most countries the particular influence that airlines have over the American government and their great success at holding off the regulation of aviation GHG emissions at the national and international level, and you can begin to see why the industry might care about sovereignty. Political power within a nation is worth less if that government has a decreasing degree of sovereignty.

The experience of many European carriers during European integration suggests that the loss of sovereignty has this effect. In her study of the political economy of aviation interests, political scientist Cornelia Woll found that the shift in aviation regulations from the national to the supranational level in Europe reduced the influence national carriers had over their respective regulatory agencies.[80] By opposing the EU ETS now, even when it is not particularly expensive, A4A could be anticipating future harm that would probably come about as regulators who were more insulated from domestic politics took greater responsibility over policy.

This first explanation seems plausible until you consider the alternative to the EU ETS. In taking this position, the American industry appears to assume that stopping the EU ETS will leave it better off, by reducing either current costs or the likelihood of future costs. For this to be true, the alternative to the EU ETS would need to be less costly regulations on emissions.

[78] Interview, Jan. 4, 2012.
[79] Interview, Jan. 16, 2012.
[80] Cornelia Woll. *Firm Interests*, Ithaca, NY: Cornell University Press, 2008.

The preponderance of evidence, however, suggests that the defeat or restriction of the EU ETS would increase costs, not reduce them. This is because the removal of the EU ETS would empower European governments to impose much more costly and extensive taxes of the more traditional variety. As one observer notes:

> "If [A4A] was ever to successfully shoot down the scheme they would expose themselves to simpler measures that legally cannot be called into question—airport departure taxes and so on—which are much more costly and less effective for the environment, but create bigger revenues for governments and which could become politically more attractive if the airlines are shying away from their responsibility."[81]

Faced with legally binding carbon emissions reduction targets under Kyoto and other treaties, European countries would certainly impose other mechanisms to reduce aviation emissions. These mechanisms would probably be more costly than the EU ETS. "You'll see the massive rise of uncoordinated air passenger duties," one European official predicted, when I asked about the likely consequence of ending the EU ETS.[82]

In fact, there are a number of countries in Europe who already impose such duties. Germany recently reduced its aviation departure tax as a response to the introduction of the EU ETS.[83] And the king of all aviation carbon taxes—the British air passenger duty of 120 pounds—is more than 70 times higher at today's carbon trading prices than the projected cost of an ETS covering emissions from the same route. This air passenger tax and other carbon taxes are unlikely to be reduced as long as there is no international alternative.[84] Thus, in the long run, the EU ETS might save the American industry money. As one European observer points out, an ETS can be a "kind of insurance policy against more costly measures."[85]

These arguments suggest that the opposition to the EU ETS on the grounds of profit or even sovereignty does not make much economic sense. Such a position may be reasonable for an industry that is primarily domestic in nature, but could actually materially harm an industry with international operations like the American airlines. Even if the lobby can hold off regulation in the United States, it almost certainly cannot stop it from developing in Europe, where the limitations of the airline industries' influence have been made apparent on more than one occasion. It may even find it difficult to hold off regulation in middle-income countries. For example, China faces increasing pressure to address the climate issue and will likely include aviation in its plans for an ETS.[86]

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[81] Interview, Jan. 16, 2012.
[82] Interview, Jan. 20, 2012.
[83] The recent reduction in Germany's Air Passenger Duty on Jan. 1, 2012 is related to the EU ETS. See < http://www.buzer.de/gesetz/10010/a174272.htm>.
[84] Bloomberg New Energy Finance 2011, page 5.
[85] Interview, Jan. 20, 2012.
[86] "China may include aviation in its emissions trading scheme to avoid ETS," *Climate Connect*, March 19, 2012. < http://www.climate-connect.co.uk/Home/?q=node/2020>.

Alternative Explanation 2: More About Beliefs than Interests

Could the industry's motivation be more about ideology than interests? The most consistent theme throughout A4A's public statements is opposition to all government taxation and regulation regarding climate change.[87] As one non-American airline industry representative put it to me: "[A4A] will not accept any form of burden whatsoever. [A4A CEO] Nick Calio has been appointed with the task of making sure that there will be no further taxes or levies imposed."[88]

A4A's anti-tax stance is consistent and thoroughgoing. When the Obama Administration proposed a $2.50-$5.00 per passenger departure tax to help pay for the cost of security at airports, A4A launched an advertising campaign against the plan that involved airplane vomit bags. The question, "Sick of taxes?" is written on the bag, followed by the message "Stop new airline taxes from driving up costs and reducing service."[89] The fact that the lobbying group would take such antagonistic action, even while courting the Administration's favor in other policy areas like the EU ETS, underscores not only the Obama Administration's willingness to do the bidding of an unthankful interest group but also the intense commitment of A4A to their anti-tax position.

"Most Heavily Taxed Industry After Nuclear"

A current of anti-tax rhetoric ran through almost all of my interviews with current and former representatives of the airline industry. Most of my interlocutors complained about the level of taxation faced by the airline industry—"Airlines are the most heavily taxed industry after nuclear,"—complained one lawyer who frequently represents the industry. An airline representative characterized government regulation as amounting to "death by a thousand cuts."[90] That representative later invoked a metaphor that seemed to question the role of government in providing public goods that most people take for granted. "It's like the government coming around and offering to sweep your streets and maybe you'd rather keep that money and sweep your street yourself," he explained.[91]

This anti-tax ideology is maintained even when it undermines the airline industry's interests. Although MBMs emerged as the pro-business and less costly alternative to more traditional "command and control" type of environmental legislation, A4A has a lukewarm or outright hostile approach to MBMs. In their list of emissions reduction solutions, A4A's market-based measures are dead last as a policy option, behind buying new aircraft, purchasing winglets, developing sustainable alternative aviation fuel, improving air traffic procedures and modernizing the system in ways to make it more efficient—all technical initiatives that are far more costly than MBMs.

Outside of Industry Mainstream

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[87] Scores of anti-tax statements can be found on A4A's website. See < http://www.airlines.org/Pages/News_Releases.aspx>

[88] Interview, Jan. 12, 2012.

[89] "Airline Industry Uses Barf Bags to Heave Obama Fee, Tax Hikes." *NewsMax*, Oct. 19, 2011. < http://www.newsmax.com/US/Obama-airline-hikes-barf/2011/10/19/id/415098> Accessed on January 28, 2012.

[90] Interviews, Oct. 16, 2011 and March 1, 2012.

[91] Interview, March 1, 2012.

Another reason to think that A4A's position is motivated by ideology rather than interests is the fact that their policy stance is outside of the mainstream position of the global airlines industry. The industry representatives I spoke to in Canada, Australia, and Europe all characterized A4A's position as counterproductive for the interests of the industry.[92] One Canadian industry representative said the American approach was akin to "saber rattling" and was likely to lead to a "political crisis."[93] An Australian airline representative told me that the American airlines, in undermining the possibility of reaching a global agreement, were pushing governments around the world to act unilaterally and that this would ultimately result in regulations that were more costly and less predictable for the airline industry.[94]

While the Canadian, European, and Australian industry representatives all affirmed the importance of government emissions regulation and the benefits of an ETS, most American representatives I spoke to de-emphasized the importance of government. "When it comes to slicing up the carbon footprint pie," one representative quipped, "we've got the right slice."[95] This stance contrasted greatly with that of the Australian representative who told me that the airline industry was "a polluter," and as such should "be part of the solution," of reducing global GHG emissions.[96] The European airlines were even more explicit, saying that competitiveness required airlines to be more environmentally responsible: "[I]f it is to be sustainably profitable," said a representative, then the airline industry "needs to have a social element [and] an environmental element…"[97]

Alternative Explanation 3: A4A's Policy Undermines the Industry's Interests
If A4A's current policy position is undermining the interests of the American airline industry—as I believe it is—then why does A4A continue to hold this position and why does the airline industry let them get away with it? A4A is a sophisticated and well-funded organization. It is not plausible that the lobby would unwittingly undermine the industry's interests. Similarly, it would be unreasonable to assume that the American airline industry has been merely blinded by anti-government ideology.

Certainly it is possible that A4A and the rest of the industry do not fully understand the implications of their actions. A4A's anti-tax rhetoric is convincing to many of the airlines, particularly when it emerges from charismatic figures like Nancy Young and especially when it taps into the general ideological current of the American business community in the United States.

Yet perhaps the gap between A4A's position and the American airline industries' interests can be understood simply as a classic principal-agent problem. Acting in its

[92] Interviews on Jan. 4, Jan. 5, Jan. 8, and Jan. 12, 2012.
[93] Interview on Jan. 4, 2012.
[94] Interview on Jan. 8, 2012.
[95] Interview on Jan. 4, 2012.
[96] Interview on Jan. 8, 2012.
[97] Interview, Jan. 12, 2012.

agent capacity for its principals the airlines, A4A may have pursued a policy agenda that is contrary to the airlines' interests but beneficial for its own.

Such a misrepresentation would not need to be intentional. The association is in the position of being able to represent issues only where there is a common position, and consequently, it may put more weight on an issue than an airline otherwise would. This consideration might explain why A4A has spent such a large amount of time on the EU ETS. Unable to do anything about the costs of fuel or new aircraft, A4A has worked on reducing the costs of something it can control—GHG emissions regulation—even though such regulations would amount to well under 1% of total airline costs. Put differently, given the plurality of interests and opinions among members in every other area, A4A may over-emphasize the importance of this issue as a way to stay relevant. One high ranking government official told me that airline interests tend to be most in line with each other on legislative policy matters because in most other areas they compete.[98]

Why would the industry allow A4A to undermine its interests? One reason could be a lack of information. Despite the industry's sophisticated government relations operations, airlines still get most of their information about the EU ETS from A4A. A high percentage of the arguments, examples, and rhetoric used by the airlines representatives in my interviews, in email correspondence I had with industry representatives, and in press statements they released to the public, seemed to have been taken directly from the A4A website.

Another reason could be the power of A4A's "principled" ideology itself. The invocation of these principles—and the effectiveness in which they make their arguments—has allowed A4A to be viewed as the industry's champion, even when they may be actively undermining the industry's interests. Every American industry representative I spoke to praised the work of A4A, and their passionate, dedicated, and principled stance of opposition against the EU ETS. In sum, A4A may be tapping into the undercurrent of anti-government ideology present in American discourse not only to influence the Obama Administration's policy but also to stay relevant to the American airline industry.

These non-monetary explanations should be taken with a grain of salt. As a whole the American industry operates as a rational profit-seeking business. However, a non-monetary concern for sovereignty, the influence of anti-tax ideology, and principal-agent problems may partially explain why the airline industry has taken such an extreme position on the EU ETS.

[98] Interview, Jan. 4, 2012.

❖ (3) Why Is the American System So Vulnerable to Capture?

The motivations for industry opposition only reveal part of the puzzle. Why was the Obama Administration so vulnerable to being influenced by A4A in the first place? The industry's uncompromising behavior would matter much less if they did not have significant influence over government policy.

A Presidential System

One of the most important differences between the political systems in the United States on the one hand and most European governments on the other is that the United States has a presidential system and most European governments parliamentary ones. Pure presidential systems are characterized by what Alfred Stepan and Cindy Skach call "mutual independence" because both the executive and legislature are elected separately and have fixed electoral mandates.[99] These governments are marked more often by divided government and high numbers of veto points, giving government in general less power relative to other national systems.

In contrast, pure parliamentary systems are characterized by "mutual dependence" because the executive is a member of the legislature and rules at the will of the legislature.[100] In parliamentary systems the government in power usually has a majority in the legislative branch, there are fewer veto points, and party leaders and bureaucrats tend to have longer government careers.

For the political scientist Douglas Verney, the most salient difference between parliamentary systems and presidential systems is that there is a focus of power in the former and no focus of power in the latter.[101] "Those who admire efficient government may be inclined toward the cabinet government form of parliamentarism," he writes in a comparison of the two systems. "Those who prefer more limited government may turn toward presidentialism."[102] The combined effect of these differences—chime Stepan and Skach— is to give governments in presidential systems fewer "degrees of freedom" over business than in parliamentary ones.[103]

More Vulnerable to Capture

The design of the U.S. political system explains part of the reason why the Obama Administration's policy position became influenced by industry almost as soon as the Democrats lost their monopoly on power in Congress and the cap-and-trade legislation was defeated.[104] Jacob Hacker and Paul Pierson, who have studied the role of business in the American political system, have demonstrated in their 2010 book *Winner Take All Politics* that government power vis-à-vis business is not as robust in the United States

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[99] Stepan, Alfred and Skach, Cindy. 1994. "Presidentialism and Parliamentarism Compared," *The Failure of Presidential Democracy* (ch 1), Linz and Valenzuela, eds. Baltimore: Johns Hopkins University Press.)
[100] Ibid.
[101] Verney, Douglas V., "Parliamentarism and Presidentialism," in *Parliamentary Versus Presidential Government*, Lijphart, Arend, ed., Oxford University Press: Oxford, 1992, pp. 31-47.
[102] Ibid, 46.
[103] Stepan and Skach, Ibid.
[104] Not coincidentally, this reason also helps explain why the cap-and-trade legislation was defeated.

compared to most other systems and is generally more vulnerable to being undermined by business capture.[105] The two political scientists have detailed some of the specific ways that the institutional structure of the United States government makes it easier for business to obstruct government policy. "With its multiple branches and hurdles," they write, "the institutional structure of American government allows organized and intense interests—even quite narrow ones—to create gridlock and stalemate."[106]

This is not to say that the American presidential system renders the U.S. government powerless against industry. History provides many examples in the United States when government has been able to assert regulatory authority over business. In their work on the international leadership of the U.S. on environmental issues during the 1970's and 80's, Daniel Keleman and David Vogel remind us that the United States led the world in environmental regulation up until 1990, pushing forward new domestic and international environmental laws in a variety of areas, from endangered species protection to chlorofluorocarbons emissions regulation. [107] Nevertheless, the design of the American system makes this task more difficult.

In the United States, the lack of government policy control was evident during the first two years of the Obama Administration, when the Democratic Party held 60% of both chambers of Congress, and the Obama Administration did not have a clear position on the EU ETS. But it became more evident after the Republicans swept the 2010 elections and the Administration's policy position became more in line with the industry's demands.

High Number of Veto Points

The inability to counter airline demands was driven by four institutional features of the American presidential system. First, the high number of veto points that exist in presidential systems gave airlines more opportunities to stop legislation. Second, the relative autonomy held by members of Congress due to presidential systems' feature of "mutual independence", allowed airlines to shift their focus to Congress when the Administration proved less receptive. Third, the airlines' exploitation of veto points and leveraging of congressional opinion was aided by two other distinctive feature of the U.S. political system: the massive numbers of lobbyists and the ample opportunities to insert money into the political process—both of which were utilized heavily by the airlines. Finally, the organization of the U.S. bureaucracy—which is also structured by the presidential system—meant that many of the key decision makers in the Obama Administration were political appointees who had previously worked in the airline industry. This presented the airlines with additional points to apply pressure that they would not have had in a parliamentary system.

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[105] Hacker, Jacob and Pierson, Paul. *Winner Take All Politics*, New York: Simon & Schuster, 2011.
[106] Ibid, 83.
[107] Kelemen, R. Daniel and Vogel, David, "Trading Places: The Role of the United States and the European Union in International Environmental Politics," *Comparative Political Studies*, Volume 43, Issue 4, pp. 427-56, 2009.

Structuring Business Demands

Yet American government has the ability to defend itself against business interests even in a context marked by well-organized interests holding high levels of structural and instrumental power. Government can influence business political behavior, including the way that an industry conceives of its interests, preferences, and strategies. As Woll succinctly puts it in a study of airline lobbying in the U.S. and E.U., "business demands result as much from government action as policy decisions respond to business demands."[108]

The most important effect government institutions have on business is in structuring the strategic environment within which business operates. For example, Hacker and Pierson showed in 2002 how the expanding role of the federal government during the Great Depression "alter[ed]… the scope and character of business power," in a way that made it more difficult for business to oppose the reorganization of the economy which resulted from the New Deal.[109]

Jody Freeman, who served as Counselor for Energy and Climate Change in the White House from 2009-2010, told me that the most important determinant for whether an industry was willing to constructively engage reform efforts was whether that industry viewed government regulation as inevitable.[110] Even when an industry is well-connected, well-organized and opposed to a regulation, the industry will at times claim to support the goal of a regulation if they perceive that the best way to shape the regulation's development is to support it.

The American auto industry's evolving position on Corporate Average Fuel Economy Standards (CAFE standards) is a recent example of how government can alter the strategic environment in a way that makes business more likely to support regulation. When the auto industry had the power to stop the U.S. government from increasing fuel efficiency standards during the 1980's and 1990's, they staunchly opposed all improvements, but in 2009, when the industry perceived that both the federal government and the state of California would pursue stricter standards with or without their input, automakers changed their policy position and became more open to improvements. This new openness culminated in July 2011 in a landmark agreement between the federal government, state of California and thirteen automakers to more than double CAFE standards by 2025.[111]

Could the same thing happen in the realm of aviation emissions? Perhaps—especially if regulations from other parts of the globe make it increasingly difficult for the U.S. to avoid developing a comparable framework. In the mean time, aviation emissions

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[108] Woll, 19.

[109] Hacker, Jacob and Pierson, Paul, "Business Power and Social Policy: Employers and the Formation of the American Welfare State," *Politics and Society,* 2002 30: 315.

[110] Interview, Nov. 9, 2011.

[111] "President Obama Announces Historic 54.5 mpg Fuel Efficiency Standard," Office of the Press Secretary, White House, July 29, 2011. < http://www.whitehouse.gov/the-press-office/2011/07/29/president-obama-announces-historic-545-mpg-fuel-efficiency-standard> Accessed on January 29, 2012.

regulations do not appear to be a priority in the U.S. government. Although the aviation sector was included as part of the overall cap in the House version of cap-and-trade, airlines was largely excluded from one of the final draft versions of the Senate legislation. Although countries like Canada have pursued voluntary aviation emissions regulation with the industry, the United States has so far avoided enacting any standard. Unlike in the auto industry, where fear of more stringent requirements coming out of the state of California was part of the reason the industry agreed to raise CAFÉ standards, the state of California has no authority to regulate aviation emissions.

PART III: ANALYSIS OF NEGOTIATIONS

With the airlines leading a global blitzkrieg against the EU ETS, the Obama Administration continuing to escalate its hard-line stance, and few signs suggesting that either the airlines or the administration will moderate their positions, is there any hope that the U.S. and EU can come to a compromise agreement? If not, what are the best alternatives to a negotiated agreement (BATNA)?

An Agreement is Possible

At first glance, a deal does not seem possible. Most people on the American side say that the Obama Administration is not interested in pursuing a compromise deal on the EU ETS. The Europeans too—although less harsh in tone—do not seem willing to alter the implementation date or scope of the current law.

Yet underneath the tough stance of the Obama Administration and the matter-of-fact position of the Europeans lies, I believe, a genuine desire to stop the EU ETS from devolving into a trade war that would harm both sides and come to a negotiated agreement that meets both sides' most important interests. The Obama Administration certainly does not want the EU ETS to become a political liability or an economic burden. As of the time of this writing on March 20, 2012, the U.S. government had not yet taken any retaliatory actions against the European Union. Similarly, although hard-hitting in their rhetoric, the American airlines have complied with every aspect of the EU law to date. Several carriers have already added customer surcharges to Trans-Atlantic flights, presumably so they can be ready to make their payments to the EU ETS in April of 2013.[112] A number of overlapping interests and compatible solutions exist beneath the charged political rhetoric coming out of both governments.

In this section I analyze the current negotiations in order to identify new ideas and strategies for moving forward out of the current diplomatic row. In Part A, I analyze the current positions, interests, and priorities of each side in a variety of key areas; in Part B, I identify overlapping interests; and in Part C, I evaluate the different priorities on each side.

Negotiations Analytical Framework

In their book *3-D Negotiation: Powerful Tools to Change the Game in Your Most Important Deals,* David Lax and James Sebenius offer important insights for rethinking negotiations.[113] They emphasize that negotiations should be conceptualized in three dimensions. The first dimension—tactics—is the most familiar and involves the people

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[112] "Delta Adds Surcharge to Flights to and from Europe," *USA Today,* Jan. 5, 2012. < http://travel.usatoday.com/flights/post/2012/01/delta-adds-3-surcharge-to-flights-to-and-from-europe/596086/1>.

[113] David A. Lax and James K. Sebenius, *3-D Negotiation: Powerful Tools to Change the Game in Your Most Important Deals,* Harvard Business School Press, Boston, 2006.

and process "at the table."[114] The second dimension—deal design—focuses on the value, substance, and outcomes of negotiations and seeks to increase the total value of a deal.[115] The third dimension—setup—is the basic architecture of the negotiations and includes everything that takes place "away from the table" from the parties and interests involved to the no-deal options.[116] I use this framework, and other insights and suggestions from Lax and Sebenius, throughout this section.

Table 2: Individual dimensions that make up an overall 3-D approach[117]

Dimension	Nickname	Where	Focus	Sample Moves
First	Tactics	"At the table"	People, process	Improve communication, build trust, counter hardball ploys, bridge cross-cultural divides
Second	Deal design	"On the drawing board"	Value, substance, outcomes	Invent and structure agreements that create greater value, meet objectives better, are more sustainable
Third	Setup	"Away from the table"	Architecture	Ensure most favorable scope (right parties, interests, no-deal options), sequence, and basic process choices

A. Overview of Positions, Interests, and Priorities

To begin it is important to understand the positions, interests, and priorities on the most relevant issues to the current negotiations. For each issue, I briefly summarize each side's position, interests, and priorities and then evaluate whether an area of overlap or potential area of accommodation exists. I use the symbol √ to indicate an affirmative potential and ∅ to indicate a negative one.

Following Lax and Sebenius I define issues as "the things that are on the table and up for direct discussion," positions as the E.U.'s and Obama Administration's respective "stands on those issues", and interests as the things that each side cares about "that [are] at stake in the process.[118] Although the two sides have differing positions on the EU ETS and many divergent interests, there is also some overlap between interests. As Lax and Sebenius point out, "compatible interests often underlie incompatible positions."[119]

❖ *Regulation of Aviation GHG Emissions*

The European Union believes that the high and growing percentage of carbon emissions coming from the aviation sector makes it critical for aviation emissions to be included in the larger effort to reduce carbon emissions. The fact that the EU has already set up an

[114] Ibid, 19.
[115] Ibid.
[116] Ibid.
[117] Table 1 is a copy of Table 1-1 of Lax and Sebenius, 19.
[118] Lax and Sebenius, 76.
[119] Ibid.

ETS for its power plants and other most substantial GHG emitters has allowed it to focus more on regulating aviation emissions.

The Obama Administration has said little about aviation emissions specifically. Aviation fuel was included in the Waxman-Markey version of cap-and-trade, but it is unclear whether it would have been included in the most likely version of Senate legislation. Within EPA, GHG emissions are viewed as a "significant but not huge" portion of total emissions.[120] Given that emission from sectors like stationary power plants are still not adequately regulated, GHG emissions from the aviation sector have not been the focus of current EPA regulatory efforts. It is unclear whether the Administration is actually interested in advancing aviation GHG emissions regulation either domestically or internationally.

∅ **There is some overlap in each side's position but little in each side's interests. Aviation emissions regulation is a priority for the EU and it is not a priority for the U.S.**

❖ *Mitigate GHG Emissions Generally*

The E.U. is a consistent leader of climate change mitigation efforts on both the international, regional, and national levels. It has established the world's largest ETS and made the climate change issue a top priority in its foreign and regional policy agenda.

Although the Obama Administration also supports climate change mitigation, it is no longer a top priority, both because of the underlying political risks associated with support for environmental regulation and because of the difficulty of getting any meaningful environmental legislation through Congress.

∅ **There is some overlap in positions, but less overlap in interests. The Administration may be willing to commit to a comprehensive emissions reduction, but it is unclear whether such a commitment could be credible given the opinion in Congress.**

❖ *Advance ICAO Agreement*

The European Union supports the ICAO process and has been one of the strongest advocates for developing binding targets for reductions. But the EU is frustrated by the limited outcomes of 15 years of ICAO negotiations and does not think that binding agreements are likely given the unresolved Common But Differentiated Responsibilities (CBDR) issues in the larger United Nations Framework Convention on Climate Change (UNFCC) negotiations and a hostile American Congress that is unlikely to allow the U.S. to make a credible commitment to advance aviation emissions regulation.

The Obama Administration has become more supportive of pursuing an ICAO agreement because they know that this will allow them to maintain more control over the direction of and framework for aviation emissions regulation. But most domestic observers do not

[120] Interview, Jan. 3, 2012.

expect that the United States will agree to any binding targets for aviation as long as Republicans control the U.S. House and the global climate change issue remains polarizing in American political discourse. "Adding a tax on U.S. aviation in a recession for priorities that other countries have adopted that the US hasn't—," explained one former industry lobbyist, "the politics just don't work."[121] Even if sincere, the U.S. government's current attempts to push the ICAO process forward are unlikely to deliver a real agreement.

∅ Although both sides' positions are ostensibly compatible, there is little overlap in interests. The U.S. would like to advance the ICAO process to marginalize the EU ETS, but is not interested in achieving a binding agreement. The EU supports ICAO in theory, but does not expect it to produce a meaningfully outcome in practice.

❖ *Extra-territorial Provision*

The European Union is not interested in having an ETS that applies only to EU borders because (1) intra-European flights represent a relatively small, though growing, portion of total European travel, (2) an EU-only law would exclude substantial portions of total air travel involving EU airports and provide little leverage for advancing an international agreement, and (3) European airlines would be placed at a competitive disadvantage vis-à-vis other airlines.

The Obama Administration does not want the EU to count emissions from flights over its borders and views this as a violation of U.S. sovereignty and customary international law. They point to the Australian ETS, which applies only to intra-Australian flights, as a preferable model.

√ The extra-territorial issue is the crux of the current dispute and there are few areas of overlap in the European and American positions or interests. However, there may be an opportunity for a creative deal design that meets the EU interest of accounting for emissions of flights outside of its borders while also meeting the American's sovereignty-based opposition to travel through its airspace being included in the scheme.

❖ *Equivalency Provision*

The Europeans do not understand why the United States appears uninterested in pursuing an arrangement that would recognize equivalency, especially if it could reduce the cost of the EU ETS for airlines by half. They see the ambiguity in their law as a strength that allows for the maximum amount of flexibility in the implementation of the provision. They are eager to recognize other countries' systems as equivalent and are pursuing agreements with several countries because of the way that it would help legitimize the EU law.

The Obama Administration views the equivalent measure provision as half-hearted and arrogant. "It puts us in the situation where you're basically negotiating with yourself,"

[121] Interview, Feb. 9.

remarked one Administration official.[122] The White House is also concerned that the EU will pursue an agreement with a third country that will legitimize the law while limiting the Americans' ability to win concessions or maintain control over the development of the overall emissions regulation framework itself.

√ There is little overlap in each side's positions, but some potential overlap in each side's interests. An equivalency measure could be designed in a way that meets both sides' interests.

- *Sovereignty and Legitimacy*

  The European Union cares more about legitimacy than sovereignty. On the EU ETS issue in particular, the European officials have been sensitive to any challenge to the authority or fairness of the European political process because they have viewed it as an attack on the legitimacy of the EU itself.

  The Obama Administration cares more about sovereignty than legitimacy. The sovereignty issue has been a central concern for the Administration since 2009. They are especially worried about what precedent the EU ETS will set and how this will change the dynamic of power between Europe and the United States. They also worry about the effect of the precedent on international law or the effect of other countries' laws on the United States—both of which could affect U.S. sovereignty.

  √ There is little overlap in current positions, but some potential overlap in interests if a creative solution can be found that simultaneously upholds U.S. sovereignty and E.U. legitimacy.

- *Maintain Good EU-US Relations*

  The European Union cares a lot about the EU-U.S. relationship and still views itself as being aligned with the United States on most issues. The United States does not value the EU-US relationship as much because they have close bilateral ties with the largest EU member states. How given the increasing percentage of member-states' laws that are decided on the EU-level (more than 60% by some estimates), the U.S. increasingly recognizes that it must maintain good relations with the EU as well. However, many American government officials who have previous experience negotiating with the EU over trade and environmental issues, are deeply skeptical of the EU and prone toward antagonism.

  √ There is some overlap in positions and substantial overlap in interests, though there are differences in priorities. Both sides do not want to see the EU-U.S. relationship jeopardized long term, but the EU cares more about the relationship.

- *Electoral Considerations*

  In Europe, climate change mitigation measures are popular with the public, and many members of the European Parliament are strongly supportive of the Aviation Directive.

[122] Interview, Jan. 4, 2012.

However, most policy-makers working on this issue are relatively immune from electoral considerations. Certainly the unelected European Commission does not place electoral considerations at the top of its priorities.

In contrast, the Obama Administration's top priority is to get re-elected in November. The Administration is unlikely to do anything in the short-term that will jeopardize Obama's chances in what is likely to be an extremely close, contentious, expensive, and hard-fought election. Consequently, any working deal cannot be perceived as undermining Obama's re-election prospects. Many political analysts anticipate that the Obama Administration will mostly avoid discussing global climate change during the upcoming campaign.

√ Although there are no overlapping positions and interests here, the EU may be able to help accommodate the Obama Administration's electoral considerations at a relatively low cost.

❖ *Balance of Power*

The Administration is concerned that accepting the EU ETS will set a precedent that will empower the Europeans to take similar actions in other regulatory spheres. They are also worried that this may exacerbate the loss of American geo-political power.

Although some in the EU would like to use the Aviation Directive as an opportunity to leave their imprimatur on international law, this does not seem to be a high priority for the EU. In general, the EU is more concerned about legitimacy and advancing climate change mitigation than about increasing its geo-political power.

√ Although there are competing positions and interests here, the balance of power interest is more intense for the United States than the E.U. The Europeans may be able to help accommodate the Americans' balance of power concerns at a relatively low cost.

❖ *Protect the Interests of Domestic Airlines*

The Europeans are committed to maintaining an ETS that does not put their airlines at a competitive disadvantage. This aspect of the law was central to AEA's decision to support the Aviation Directive and the EU is committed to ensuring that the law does not distort competition.

The Obama Administration is also committed to protecting the interests of their domestic airlines. Currently the Administration's understanding of American airlines' interests is mediated by A4A, which is deeply opposed to compromise. For a variety of political and institutional reasons, it is difficult for the Obama Administration to oppose A4A's position.

√ There is some potential for overlapping interests, but current interests are opposed. The Europeans do not want to do anything that jeopardizes the competitiveness of their own airlines and the Obama Administration is currently

entangled with A4A's hard-line stance. If the airlines' position and interests on the EU ETS can be separated, and A4A's influence over the Obama Administration can be reduced, then the underlying overlapping interests that exist in this area can be realized.

❖ *Avoid a Trade War*

It is in the long-term interest of both the Europeans and Americans to avoid a trade war and it is a priority of both sides to avoid one. There seems to be little potential benefit for the Europeans to allow a trade war. However, the Europeans are not willing to sacrifice their law—and consequently their legitimacy—just to avoid a trade war. If launched, a trade war would be limited and would likely only have a marginal impact on economic output.

There may be some short-term interest for the Obama Administration to instigate retaliatory action if it is seen as demonstrating strong leadership and defending America's interests. But there equally might be a disincentive to not take harsh action, if such an action would be seen as alienating Obama's donor and activist base, or if it is viewed as reckless or harmful for the economy. The trade war threat continues to be actively discussed in the United States, particularly in Congress, and most people I spoke to claimed that it was a real possibility, although many of these opinions seemed uninformed.

√ Both sides' positions are oppositional, but interests are overlapping. It is not in the long-term interest of either the Europeans or Americans to have a trade war, though it may be in the Americans' short-term interest.

❖ *Avoid Extreme Congressional Response*

The Europeans are not interested in seeing the U.S. government bar American airlines from complying with European law. However, the proposed Congressional legislation would put American airlines "between a rock and a hard place"—as one airline representative put it—not the Europeans.[123] Europeans do not find this threat credible and consequently do not view avoiding it as a high priority.

The Administration is concerned with controlling an extreme Congressional response. The White House does not want to empower Congress to take autonomous action in this policy area. Part of the reason the Administration has escalated its response to the EU is to regain control of Congress. Similarly, the legislation has been stalled and re-written in the Senate to buy the Administration time and tame the Congressional response.

√ Positions are different, but interests are somewhat overlapping. Both the Europeans and Americans want to avoid an extreme Congressional response. However, the Obama Administration has more to lose from such a development than the Europeans.

[123] Interview, March 1, 2012.

- *Desire for Compromise*

  The EU appears very willing to compromise. Although the Europeans consistently say that they will not reverse their law, they ask far more questions about why the Administration won't compromise or what a potential compromise might look like than their American counterparts. They also openly discuss what a negotiated agreement might look like.

  The Americans do not ostensibly appear willing to compromise at all and speak in terms that suggest the only way forward is for the Europeans to reverse their law. However, the Americans are clearly more interested in coming to a resolution than their hard-line language would suggest. For instance, Americans seem concerned that the Europeans are pursuing agreements with other countries, suggesting that this factor may be a potential leverage point for the EU.

  √ No overlap in positions, but some overlap in interests. Both sides have an interest in compromise, but a number of barriers now prevent this from happening.

B. Summary of Overlapping Interests

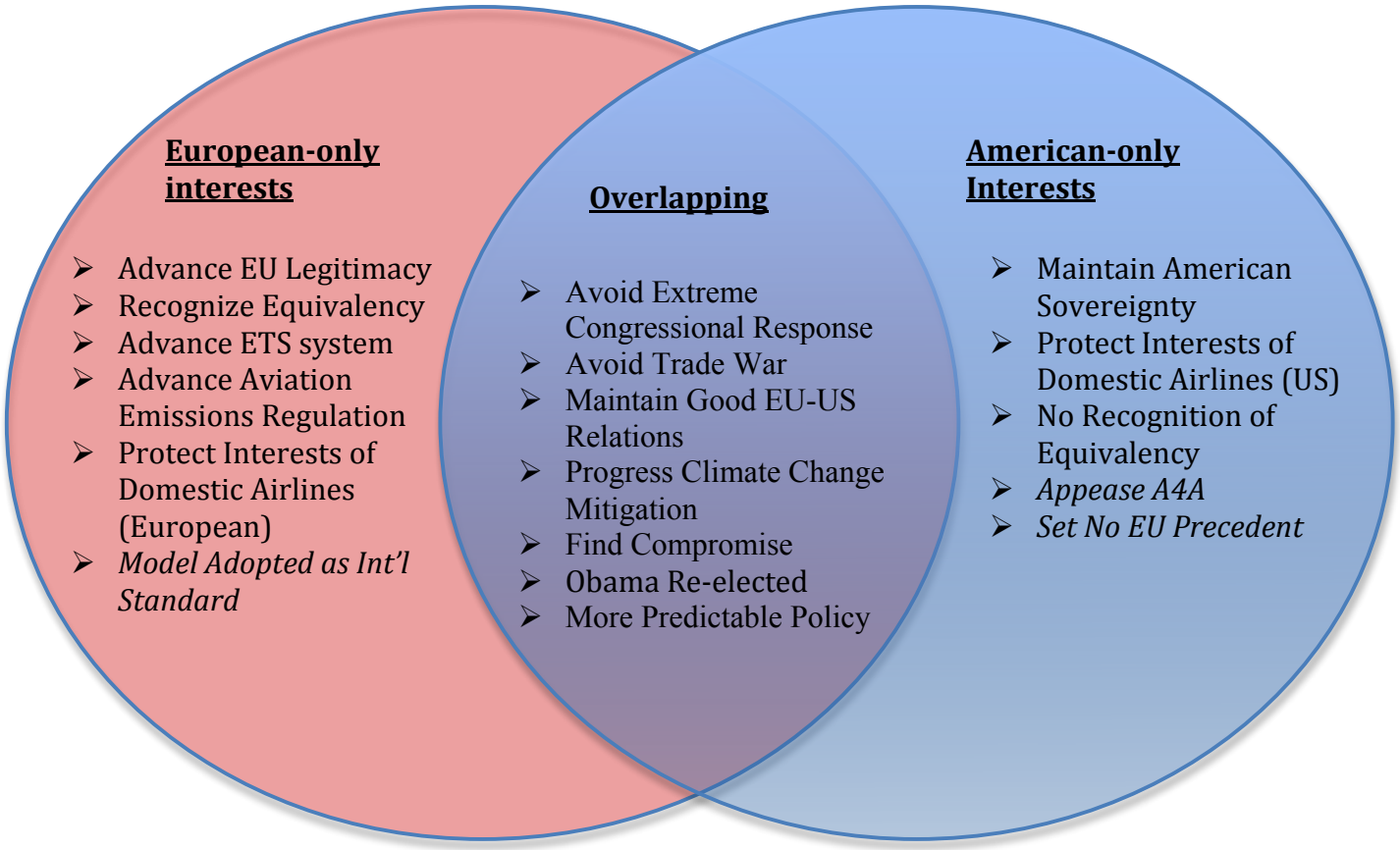
Figure 1 presents the relatively high number of overlapping interests between the EU and Obama Administration. Both sides want to avoid an extreme Congressional response that will hurt the airlines, jeopardize the EU-US relationship, and give Republicans a win. Both sides want to avoid a trade war and maintain good trans-Atlantic relations. Both sides are interested in Obama being re-elected. And both sides want to advance climate change mitigation efforts generally, even if the two sides have different definitions about how to do this specifically.

We can also recognize some differing interests. Some of these interests are not opposed by the other side. These include the EU's interest of advancing its ETS, and the Obama Administration's interest in getting re-elected.

There are other interests that are currently opposed by the other side, but under the right circumstances could become acceptable. These interests include the EU's concern with advancing its legitimacy and promoting the interests of the European airlines. They include the Obama Administration's interests in preserving U.S. sovereignty, and protecting the interests of American airlines.

There are also ultimately conflicting interests. These interests, indicated in italics, include the Obama's interest in setting no new precedent for EU action and accommodating A4A's political demands and the EU's interest in having its model adapted as the de facto standard for aviation emissions regulation.

Figure 1: Venn Diagram of Interests



C. Analysis of Priorities

It is not enough to simply know what interests each side has; we must also know how much each side values each interest. For instance, although both the Obama Administration and EU want to advance climate change mitigation, this interest is more intense for the Europeans.

Prioritizing each side's interests can provide important insights for designing a deal that is most likely to move a compromise forward. As Lax and Sebenius remind us "[d]ifferences of interest and priority can open the door to unbundling different elements and giving each party what it values the most at the least cost to the other."[124] In other words, where there is a "values gap"—or a difference in priority between two parties—there is also an opportunity for an agreement.[125]

Table 3: Interest Priorities for the EU and Obama Administration on EU ETS

EU	**Obama Administration**
Advance EU Legitimacy	Electoral Considerations
Progress Climate Change Mitigation	Preserve US Sovereignty
Avoid Trade War	No Recognition of Equivalency with third countries
Desire for Compromise	Avoid Extreme Congressional Response
Recognize Equivalency	Avoid Trade War
Advance ETS system	Maintain Good EU-US Relations
Progress Aviation Emissions Regulation	Set no Precedent for EU Action
Model Adopted as Int'l Standard	Protect Interests of Domestic (American) Airlines
Maintain Good EU-US Relations	Desire for Compromise
Protect Interests of Domestic (European) Airlines	Appease A4A
Avoid Extreme Congressional Response	No Recognition of Equivalency with U.S.
Electoral Considerations	Progress Climate Change Mitigation
	Progress Aviation Emissions Regulation

Table 3 re-arranges the interests listed in Figure 1 in the order of their priority for each side. Interests colored in green indicate that the interest is shared by both sides, in blue that the interests are currently opposed by could become more acceptable, and in red that the interests are ultimately conflicting.

- *Electoral considerations*. This is highly important for Obama but not so important for the Europeans. Can the EU find a way to accommodate Obama's electoral considerations without sacrificing any of its substantial interests?

[124] Lax and Sebenius, 11.
[125] Ibid.

- *Sovereignty and Legitimacy*. The Europeans care more about legitimacy, the Obama Administration more about sovereignty. Can the Europeans reduce the perception that the EU ETS undermines American sovereignty? Or can they structure the law differently so that it avoids some of the American concerns about sovereignty?

- *Climate Change Mitigation*. The Europeans highly value the enactment of binding laws to address the climate change, the Obama Administration less so. These asymmetrical preferences mean that the EU may need to give something up to get the Obama Administration to push climate change mitigation forward. What kinds of concessions is the EU prepared to make?

- *Extreme Congressional Response*. The Obama Administration places higher value on stopping a Congressional response than the EU does. This opens up an opportunity for the EU to play one branch against the other in a way that strengthens their position. How can the EU better leverage this opportunity?

- *Equivalency recognition*. In general, Europeans want to recognize equivalency and Americans do not want the Europeans to recognize it. However, the Americans are only weakly opposed to having their own law recognized and intensely opposed to having a third parties law recognized. Can equivalency be structured differently so that greater value is structured on both sides? Can it be framed differently so that Americans better understand and appreciate its value?

- *Willingness to come to an agreement*. Europeans are keener to come to an agreement than the Obama Administration. This difference weakens the European position. Can the Europeans reduce the perception that they are eager for an agreement?

PART IV: RECOMMENDATIONS FOR IMPROVING EU NEGOTIATIONS

In this section I use the findings from Part III to explore possible deal design changes that could improve the desirability of compromise for both the EU and Obama Administration, analyze the EU's various best alternatives to a negotiated agreement (BATNA), and do an analysis of parties and interests, assessing which actors should be emphasized and de-emphasized and which new ones should be brought in.

Recommendations for Improved Deal-Design

What deal is the EU currently ready to make? How could this deal be improved? And what are the best alternatives to making a deal? Exploring all three of these questions can help us flesh out ideas for an improved deal while also evaluating whether a deal is advisable for the EU.

Recognition of Equivalency and Exemption on Incoming European flights
The Europeans seem prepared to offer equivalency recognition to the U.S. even in the absence of concrete action on aviation emissions. The deal would create value for both sides in a number of ways. For the Europeans it would advance the EU ETS, promote aviation emissions regulation and advance EU legitimacy, while also lessening the chance of an extreme Congressional response and a trade war. For the Obama Administration it would reduce the costs to the industry and create a wedge that can be used to enact emissions regulation down the line.

In many ways, this is an incredibly generous deal. It would reduce the payments of the American airlines by half and the United States could probably receive this reduction without having to implement aviation emissions regulations in the short-term.

Framing is Half the Battle
Why has the Obama Administration shown so little interest in pursuing such an agreement? Part of the reason is that the Administration does not want to weaken its negotiation position. If they appeared eager for a deal at this (still early) stage, they would be able to extract fewer concessions from the Europeans later on. But this only explains part of the story.

A second component is how the offer has been communicated. Many Americans do not seem to appreciate the real value of the deal because it has been framed as a generous gift rather than a mutually advantageous compromise. This "arrogant" framing—as one American described it—has prompted an almost reflexively negative reaction, obscuring the real value that the deal offers the Americans. The offer needs to be framed as an opportunity to create value or to build a better common regulatory framework, not as a presumptuous act of European generosity.

The third component is that the deal does not create enough value for the Americans. Specifically, it does little to appease their concerns about sovereignty and precedent. For

the U.S. to move forward constructively, they need assurances that (1) American sovereignty will not be impacted and (2) accepting the EU ETS will not empower the EU to take similar action in other areas.

Need for Improved Deal-Design
An improved offer will need to meaningfully advance global climate change mitigation while also minimizing damage to the perception of EU legitimacy, US sovereignty, and Barack Obama's re-election efforts. Put differently, it must answer two obverse questions: First, how can the Europeans accept an agreement that does not violate U.S. sovereignty or undermine Obama's re-election chances? Second, how can Obama accept an agreement without undermining European legitimacy or undermining progress on aviation GHG emissions regulation?

Recommendations for Improving Deal Design
An improved deal might include the following provisions:

- *Assure Deal Credibility:* Add a mechanism to assure both parties that a trade war and Congressional response will not occur after an agreement is reached.

- *Take U.S. Sovereignty Seriously:* Create a way to assure the Obama Administration that the EU ETS will be a limited action that does not change the Transatlantic power dynamic or set new precedents for EU action.

- *Rework Carbon Calculation.* Calculate carbon emissions in a way that is not based on the time spent flying over U.S. territory. One way to do this would be to base the carbon allowances not on the number of miles flown or number of passengers, but on the amount of fuel purchased.

- *Create Safety Valve*. Although the cost of carbon is currently trading at a low rate, there is no assurance that it could become much higher in future years. This uncertainty concerns the American industry and causes them to place disproportionate emphasis on the cost of the EU ETS. Adding a carbon price safety valve that placed a ceiling on the price of carbon would mitigate the intensity of opposition that is currently coming from the American industry.

- *Show More Consideration for Electoral Factors.* Wait until after November to pursue an agreement. In the mean time, lay low and pursue deals with other countries.

- *Rework Money Allocation.* Put some of the money paid by the airlines into an account to be shared by all parties for common climate mitigation efforts.

- *Involve Other Countries*. Design a multi-lateral agreement that involves friendly countries like Australia, New Zealand, and Canada.

Recommendations for Improving No-Deal Options

It may not be necessary to design an entirely new deal. The Obama Administration may just need some time to warm up to or need additional clarification about the current offer. Many Americans, for instance, do not seem to understand the equivalency provision or the Europeans' willingness to recognize an equivalent measure in the United States based on regulatory plans that are, at best, in a preliminary stage of development.

However, if the EU does not overhaul its deal, it will need to find a more effective strategy to address the other countries and airlines around the world who have escalated their responses to the EU ETS. The EU is unlikely to be able to sustain a negative response from the U.S., China, Russia, and India at the same time. If the EU cannot reach a deal, it will need to improve its no-deal options.

First, improve the real and perceived no deal options for the EU.

- Develop a contingency plan that improves the EU's position in a trade war.
- Pursue equivalency negotiations with other countries so that the U.S. is isolated.
- Reach out to airlines to create pressure for the U.S. to change its policy.

Second, worsen the real and perceived no deal options for the United States.

- Pursue deals with third-party countries.
- Make it clear that the EU is willing to use the full extent of the law to enforce its provision.
- Communicate a willingness to sustain a trade war, further legal assaults, and even the Congressional non-compliance law as a way to strengthen its negotiating position.

Recommendations for Improving Setup of Parties and Interests

Just as important as the deal-design are the parties involved in negotiations. A number of parties who are not at the table right now would be beneficial to empower. A number of parties who are currently at the table should be disempowered.

Figure 2: American Parties and Interests in the EU ETS Debate.

	Position (Current Deal)	**Interest** (Current Deal)	**Interest** (Potential Deal)
FAA			
DOT			
State			
EPA*			
Obama White House			
Romney White House*			
Democratic House*			
Republican House			
Democratic Senate			
Republican Senate*			
A4A			
American Airlines*			
GE*			
Honeywell*			
Boeing*			
Canada and Australia*			
American NGOs*			
American Opinion Makers*			
European Airlines*			

Key: The above chart estimates each party's respective interest in pursuing a deal under different arrangements. (green= interest, yellow=mixed interest, red=little interest).

Explanation of Chart

Figure 2 lists the parties and interests that are currently engaged in negotiations as well as the parties and interests that could potentially be engaged in negotiations (marked with an asterisk).

"Position (Current Deal)" refers to each party's current stance with respect to pursuing an agreement along the lines of the E.U. offer "currently on the table" (recognition of equivalency) as described in Part D. "Interest (Current Deal)" refers to whether such an agreement would align with what each party cares about, regardless of each party's position. "Interest (Potential Deal)" refers to whether an improved deal design as described in Part D would align with the interests of each party.

Green indicates that the deal is aligned with the party's position or interest and the party is generally willing to come to an agreement, yellow that the deal partially meets the party's position or interest and the party may be open to an agreement, red that the deal

does not meet the party's position or interests and that the party generally does not desire to come to an agreement.

Party Analysis and Recommendations

- *FAA, DOT, and State:* In the U.S. these parties have the least interest in pursuing a deal under the current terms and, if allowed to continue to dominate the White House position, will lessen the likelihood of a deal being reached. FAA and DOT are heavily influenced by A4A and they seem willing to follow through with a trade war or other retaliatory measure. To the extent possible, the EU should expand the scope of negotiating parties beyond this group. But if a deal can designed in a way that reduces sovereignty and balance of power concerns, then these parties may be more willing to pursue a deal.

  √ Expand the scope of negotiating parties beyond this group
  √ Design a deal that increases willingness of parties to negotiate.

- *EPA:* The American environmental regulatory agency is the most underutilized actor within the current negotiations. Many EU officials working on this issue appear to have a surprisingly low amount of contact with EPA. The EPA continues to be marginalized both within the Administration and U.S. government as a whole. Although EPA is not necessarily fully supportive of the EU ETS, they are supportive of the environmental goals and recognize that the EU ETS may be the best way to achieve meaningful aviation emissions reductions given the current intransigence in Congress and impasse in ICAO.

  √ Further engage EPA in negotiations

- *White House:* Although the Obama Administration is currently allowing the DOT, FAA, and State Department to run the show on the EU ETS, and they do not want to do anything that jeopardizes their election chances, the White House could become a partial ally if Barack Obama is re-elected in November. The White House is more prone toward a deal than other parts of the Administration, more insulated from groups like A4A then other parts of the U.S. government, and less burdened by anti-EU baggage than civil servants at State and DOT who have spent substantial portions of their career engaged in antagonistic negotiations with the E.U.

  If Mitt Romney is elected, then the White House will probably be less sympathetic to the effort to reduce global climate change, though a Romney White House might also be less burdened by needing to outmatch Congressional hostility toward Europe.

  √ Elevate the negotiations and engage high-ranking European officials with the White House directly as a way to get around FAA and DOT
  ∅ Future strategy with the White House will depend upon the outcome of the 2012 Presidential election

- *Congress:* There are several reasons why members of Congress are less likely to be supportive. First, members of Congress are generally more captured by A4A and other

moneyed interests given some of the institutional features of the United States discussed in Part II. Second, members of Congress do not have the same responsibility for diplomacy as the president and thus have less of an imperative to preserve a good relationship between the EU and U.S. Yet given the autonomy of Congress from the President and the major role they play in every area of policy, the EU cannot avoid involving members of Congress.

The EU may have underemphasized its outreach to Congress during the first two years of the Obama Administration and consequently set themselves up to be unnecessarily surprised when Congress introduced its anti-EU ETS legislation. Although far from a majority, a substantial caucus of Democrats in both the Senate and the House might be receptive to the European position. In the future, if Republicans take control of the Senate—or if they retain control of the House (both of which are somewhat likely)—than it is probably preferable to downplay engagement with members themselves. If Democrats gain a majority in the House or retain their majority in the Senate, then Congress may become a (slightly) more constructive player, especially if an improved deal could adequately meet some of Congress' current concerns.

√ Keeping Congress out of negotiations may undermine negotiations
∅ But engaging them extensively could be counterproductive
√ Develop a carefully constructed relationship with Congress that focuses on education but does not show your hand.

- *A4A:* As shown in Part II, A4A is a powerful association that is outside of the mainstream of the global industry and may be undermining the real interests of the American industry. They have shown no signs of being willing to compromise. Including them at talks threatens to break down any potential agreement. Although it can be beneficial to include opposed business interests in some cases, as a way to moderate their position or keep them from undermining negotiations behind the scenes, in the case of A4A, I would recommend excluding them from negotiations and engaging directly with their member airlines.

  ∅ Identify ways to weaken A4A's reputation with the Administration.
  ∅ Liaise with A4A's member airlines directly.

- *American airlines:* Although the airline industry's policy position on this issue is largely determined by A4A and many airline lobbyists are enthusiastic about A4A's leadership, this may change as it becomes more clear how little the EU ETS will cost airlines and how expensive opposition might eventually become. Engaging the airlines directly would allow the EU to move past some of the ideological reasons for opposition and to get to the heart of the dollars and cents of the EU ETS, which as noted in Part II is not onerous and even possibly beneficial to the airlines. This may also be an opportunity to identify and exploit cleavages within the industry—be they average jet age or routing structures—that may make some airlines more willing to support a compromise deal on the EU ETS than others.

√ Further engage airlines themselves.
√ Probe for differences of opinion and interests in airlines industry.

❖ *European Airlines:* Airlines talk to their counterparts. Bringing in European airline representatives, such as AEA, might be useful both for convincing the industry to make a deal. American and European carriers regularly coordinate many aspects of their business, especially for airlines operating under the same code share.

√ Bring AEA in as a mediator to hedge against A4A and to assure the European industry that their interests will not be sacrificed by a deal with the Americans.

❖ *American NGOs:* Environmental groups like the Environmental Defense Fund are already involved with the EU's negotiations. Other NGOs should be brought in as well. Organizations like the Center for American Progress (CAP) have a significant influence on the Democratic Party's leadership which organizations like the Brookings Institution can impact elite American opinion. Working with these organizations to sponsor a serious conference on the EU ETS in Washington, D.C. could go a long way toward reshaping the debate on the EU ETS within U.S. discourse. These organizations would probably also have good suggestions for how to improve the EU's negotiating position U.S. government lobbying strategy.

√ Further engage American NGOs like CAP or Brookings
√ Sponsor a high-profile conference in Washington, DC that highlights the importance of the Aviation Directive and the failure of ICAO

❖ *U.S. Opinion Leaders:* Equally important is engaging other elite opinion leaders both in the press and in universities. Recent support expressed in opinion-editorials from the New York Times[126] and joint letters from economists[127] have been useful for advancing the European position in the United States and pushing the Obama Administration to consider changing its position. This constituency might be key for convincing the Administration to de-escalate its response even if they cannot succeed in changing its official position.

√ Identify key U.S. opinion leaders who have influence in the Administration
√ Solicit editorial opinions in the *Wall Street Journal*, *Financial Times*, *Washington Post*, and *New York Times*

❖ *Other Aviation Interests:* It may also be useful to engage other aviation-related companies. These would include companies like Boeing which makes airframes, Honeywell which make avionics equipment, Rolls Royce which makes jet engines, and

[126] "Airlines, Emissions, and Europe's Sensible Plan," Editorial, *New York Times*, Feb. 26, 2012, <http://www.nytimes.com/2012/02/27/opinion/airlines-emissions-and-europes-sensible-plan.html?_r=1>.
[127] "Leading U.S. Economists back EU carbon plan," *Brisbane Times,* March 14, 2012, <http://www.brisbanetimes.com.au/business/world-business/leading-us-economists-back-eu-carbon-plan-20120314-1uza4.html>.

GE which provide airlines with leasing and financing services. All of these companies stand to make more money if airlines speed up their purchase of new aircraft in response to inclusion in the EU ETS. A barrier to engaging these other aviation interests is that many of them are hesitant to upset the airlines that provide them with so much business. Although this factor limits how public these companies would be in their advocacy, engaging them quietly may help moderate the airlines' position and grease the wheels for a potential agreement. Certainly these companies may have agendas of their own, as Airbus and other companies' recent public statements demonstrate.[128] If the current impasse is seen as jeopardizing the position of any of any of these businesses, and an agreement centered around equivalency is viewed as the best way to forward or the most likely outcome, then representatives of these industries may become more willing to stick their necks out on the issue.

√ Do soft outreach to other aviation interests, including airframe, avionics, and engine manufacturers and airline leasing companies
√ Share selected information about likely cost of the program, expected purchasing speedups, and likely alternatives to an ETS
∅There is a risk that this approach will backfire and inspire opposition from these companies

- *Canada and Australia:* One concern of the United States is that the EU will reach a deal with other nations like Canada or Australia that improves the relative position of these countries' domestic airlines while putting the American industry at a competitive disadvantage. This insecurity should be used to the EU's advantage. If the EU can reach a deal with Australia, this may induce the U.S. to pursue either a bilateral EU-US deal or a multilateral arrangement with other countries. Solidifying these deals before the U.S. or A4A has a chance to undermine them should be a top priority for the EU right now.

√ Develop equivalency deals with Canada and Australia strategically, so that they maximize the likelihood of inducing the United States and others to pursue deals as well
∅Tread cautiously with Canada because of their industry's close contact with A4A and their government's hostility to climate change mitigation efforts

- *China, India, and Russia:* It is important to address the concerns of China, India, and Russia separately from the concerns of the United States. These countries are being used by the United States as a leverage point to force the EU to back down. These countries should be negotiated separately from but concurrently with the United States.

∅ Avoid multi-party negotiations in negotiations
√ Engage bilaterally to probe potentials for a deal and to sideline current U.S. efforts.

[128] "Airbus, airlines, attack EU leaders over carbon tax," *The Australian*, March 12, 2012, < http://www.theaustralian.com.au/business/aviation/airbus-airlines-attack-eu-over-carbon-tax/story-e6frg95x-1226296911642>.

WORKS CITED

Air Cargo World, "U.S. House Votes to Ban EU ETS Participation," Oct. 26, 2011, http://www.aircargoworld.com/Air-Cargo-News/2011/10/u-s-house-votes-to-ban-eu-ets-participation/262794. [Last Accessed on March 18, 2012].

Air Transport Association, "ATA Assails EC Decision on Emissions Trading, Says Unilateral Approach is Violation of International Law," ATA Press Release, Dec. 20, 2006, http://www.airlines.org/Pages/ATA-Statement-Regarding-EC-Decision-on-Emissions-Trading.aspx. [Last Accessed on March 18, 2012]

Airline Business, "Pressure mounts on Europe over ETS move," June 24, 2011.

Airlines for America, Press Statement, "A4A Commends Senate Opposition of ETS," Dec. 7, 2011 http://www.airlines.org/Pages/news_12-07-2011_2.aspx.Airlines for America, Press Statement, "EU ETS Coalition Letter to Congress" Dec. 7, 2011. http://www.airlines.org/Pages/EU-ETS-Coalition-Letter-to-Congress.aspx. [Accessed on Jan. 28, 2012]

Argus Media. "U.S. May Retaliate on EU ETS aviation rule," July 27, 2012. < http://www.argusmedia.com/pages/NewsBody.aspx?id=760412&menu=yes>. [Last Accessed on March 18, 2012].

Aviation Week, "U.S. Official Reiterates Objections to ETS," June 28, 2011. http://www.aviationweek.com/aw/jsp_includes/articlePrint.jsp?storyID=news/ETS06287.xml&headLine=U.S.%20Official%20Reiterates%20Objection%20To%20ETS. [Last Accessed on March 18, 2012]

Bloomberg New Finance, "EU ETS Research Note," Oct. 25, 2011. < http://bnef.com/free-publications/white-papers/>. [Last Accessed on March 16, 2012].

Brisbane Times, "Leading U.S. Economists back EU carbon plan," March 14, 2012, <http://www.brisbanetimes.com.au/business/world-business/leading-us-economists-back-eu-carbon-plan-20120314-1uza4.html>. [Last Accessed on March 20, 2012]

Climate Connect, "China may include aviation in its emissions trading scheme to avoid ETS," March 19, 2012. < http://www.climate-connect.co.uk/Home/?q=node/2020>.
Committee on Aviation Environmental Protection, "Report of the Committee on Aviation Environmental Protection Sixth Meeting", 2004, CAEP/6. [Last Accessed on March 20, 2012]

Deutsche Bank, "European Airline: Assessing the impact of the Emissions Trading Scheme," Oct. 17, 2011.

European Commission, "European Climate Change Programme II: Aviation Working Group," European Commission, April 2006. http://ec.europa.eu/clima/policies/transport/aviation/docs/final_report_en.pdf. [Last accessed on Sept. 28, 2011]

European Court of Justice, Case C-366/10. *Air Transport Association of America and Others v Secretary of State for Energy and Climate Change*

Hacker, Jacob and Pierson, Paul, "Business Power and Social Policy: Employers and the Formation of the American Welfare State," *Politics and Society*, 2002 30: 315.

Hacker, Jacob and Pierson, Paul, *Winner Take All Politics*, New York: Simon & Schuster, 2011.

IATA,"Financial Impact of Extending the EU ETS to Airlines," Jan. 9, 2007.
Kelemen, R. Daniel and Vogel, David, "Trading Places: The Role of the United States and the European Union in International Environmental Politics," *Comparative Political Studies*, Volume 43, Issue 4, pp. 427-56, 2009.

Kelemen, R. Daniel and Vogel, David, "Trading Places: The Role of the United States and the European Union in International Environmental Politics," *Comparative Political Studies*, Volume 43, Issue 4, pp. 427-56, 2009.

Lax, David A. and Sebenius, James K., *3-D Negotiation: Powerful Tools to Change the Game in Your Most Important Deals*, Boston: Harvard Business School Press, 2006.

Malina, Robert 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.

Market Watch, "Airline for America Commends Bipartisan Support of Senate EU ETS Bill," March 7, 2012, <http://www.marketwatch.com/story/airlines-for-america-commends-bipartisan-support-of-senate-eu-ets-bill-2012-03-07>.

Montreal Gazette, "Emissions standards fuel airline ire," Oct. 21, 2011. < http://www.montrealgazette.com/life/Emissions+standards+fuel+airline/5584418/story.html> [Last accessed on March 20, 2012]

New York Times, Editorial "Airlines, Emissions, and Europe's Sensible Plan," Feb. 26, 2012, < http://www.nytimes.com/2012/02/27/opinion/airlines-emissions-and-europes-sensible-plan.html?_r=1>.[Last accessed on March 20, 2012]

NewsMax, "Airline Industry Uses Barf Bags to Heave Obama Fee, Tax Hikes," Oct. 19, 2011. < http://www.newsmax.com/US/Obama-airline-hikes-barf/2011/10/19/id/415098> [Last accessed on Jan. 28, 2012]

Opensecrets.org, "Air Transport Assn of America,", http://www.opensecrets.org/lobby/clientsum.php?id=D000000545&year=2006. [Last accessed on Jan. 28, 2012]

Reuters, "Airlines face CO2 bill of 300 mln euros in 2012: Barcap," Feb. 16, 2012. < http://www.reuters.com/article/2012/02/16/carbon-aviation-barcap-idUSL5E8DG4O520120216>. [Last accessed on March 17, 2012]

Reuters, "EU CO2 scheme seen costing airlines 2 bln eur by 2020," Oct. 26, 2011, http://www.reuters.com/article/2011/10/26/carbon-aviation-idUSL5E7LQ3CM20111026. [Last accessed on March 18, 2012].

Reuters, "India, 25 others oppose EU airline carbon charge plan," Sept. 30, 2011. < http://www.reuters.com/article/2011/09/30/us-eu-aviation-emission-idUSTRE78T1TX20110930>. [Last Accessed on Jan. 28, 2012].

Spiegel Online, "EU Court Forces US Airlines to Pay for Emissions, Dec. 21, 2011, < http://www.spiegel.de/international/business/0,1518,805191,00.html>. [Last accessed on Jan. 28, 2012].

Stepan, Alfred and Skach, Cindy. "Presidentialism and Parliamentarism Compared," *The Failure of Presidential Democracy*, Linz and Valenzuela, eds. Baltimore: Johns Hopkins University Press, 1994.

Subcommittee on Aviation, House Committee on Infrastructure and Transportation "Statement of Krishna R. Urs," EU ETS: A Violation of International Law, July 27, 2011. See <http://transportation.house.gov/hearings/Testimony.aspx?TID=6833>. [Last accessed on March 20, 2012]

Subcommittee on Aviation of the House Committee on Transportation and Infrastructure "Testimony by Ms. Nancy Young," Expert Testimony, The EU ETS: A Violation of International Law Hearing, July 27, 2011. See http://transportation.house.gov/hearings/Testimony.aspx?TID=6834. [Last accessed on March 20, 2012]

Subcommittee on Aviation of the House Committee on Transportation and Infrastructure, Statement of Captain Lee Moak," Expert Testimony, The EU ETS: A Violation of International Law Hearing, , July 27, 2011, See http://Republicans.transportation.house.gov/Media/file/TestimonyAviation/2011-07-27%20Moak.pdf. [Last accessed on March 20, 2012]

The Australian, "Airbus, airlines, attack EU leaders over carbon tax," March 12, 2012, < http://www.theaustralian.com.au/business/aviation/airbus-airlines-attack-eu-over-carbon-tax/story-e6frg95x-1226296911642>. [Last accessed on March 16, 2012]

Toronto Star, "EU carbon tax may force jump in air travel costs," Dec. 22, 2011.

U.S. Department of Transportation, Orders 2011-12-09 and 2011-12-10, Dec. 16, 2011.

U.S. House Committee on Transportation and Infrastructure, Pres Release, "U.S. HOUSE

VOTES TO HALT EU AIR TAX," Oct. 24, 2011, http://transportation.house.gov/news/PRArticle.aspx?NewsID=1428 [Last accessed on March 18, 2012]

USA Today, "Delta Adds Surcharge to Flights to and from Europe," Jan. 5, 2012. < http://travel.usatoday.com/flights/post/2012/01/delta-adds-3-surcharge-to-flights-to-and-from-europe/596086/1>. [Last accessed on March 18, 2012]

U.S. Congress. H.R. 2454: American Clean Energy and Security Act of 2009, 111th Congress.

U.S. Congress, "The EU Emissions Trading Scheme Prohibition Act," H.R. 2594 and S. 1956, 112th Congress.

Verney, Douglas V., "Parliamentarism and Presidentialism," in *Parliamentary Versus Presidential Government*, Lijphart, Arend, ed., Oxford University Press: Oxford, 1992, pp. 31-47.

Vogel, David, Trading Up: *Consumer and Environmental Regulation in a Global Economy*, Harvard University Press: Cambridge, 1995.

Washington Post, "EPA Announces Plans to Regulate Power Plant, Oil Refinery Emissions," Dec. 23, 2010. <http://voices.washingtonpost.com/post-carbon/2010/12/epa_announces_plans_to_regulat.html> [Last accessed on Jan. 28, 2012]

White House, Office of the Press Secretary, "President Obama Announces Historic 54.5 mpg Fuel Efficiency Standard," July 29, 2011. < http://www.whitehouse.gov/the-press-office/2011/07/29/president-obama-announces-historic-545-mpg-fuel-efficiency-standard> [Last accessed on Jan. 28, 2012]

Woll, Cornelia. *Firm Interests*, Ithaca, NY: Cornell University Press, 2008.