



**Committee on Transportation and Infrastructure**  
**U.S. House of Representatives**

**Bill Shuster**  
**Chairman**

**Washington, DC 20515**

**Nick J. Rahall, III**  
**Ranking Member**

Christopher P. Bertram, Staff Director

November 20, 2013

James H. Zoia, Democrat Staff Director

The Honorable Anthony Foxx  
Secretary  
U.S. Department of Transportation  
800 Independence Avenue, SW  
Washington, DC 20591

Dear Mr. Secretary:

We write to you regarding the European Commission's recent proposal to amend the European Union's (EU) Emissions Trading Scheme (ETS) which we believe to be in contravention of the historic global aviation emissions agreement achieved at the International Civil Aviation Organization (ICAO) just last month. As you know, in October the ICAO General Assembly agreed to develop a global market-based mechanism (MBM) between now and 2016 to reduce aviation emissions, which if agreed to, will take effect in 2020. The General Assembly also agreed to a framework for how countries or groups of countries could apply their own MBM in the interim. We believe that the EU's proposed amendment to the ETS violates the spirit and the letter of the ICAO agreement, as it would unilaterally be applied to portions of U.S. flights to and from the EU. Therefore, we urge you to engage in negotiations, as directed in the *European Union Emissions Trading Scheme Prohibition Act of 2012 (ETS Prohibition Act)*, to ensure that U.S. aircraft operators are held harmless from the unilateral approach the EU has proposed and support the global approach agreed at the ICAO General Assembly. Further, if the European Parliament and Council adopt the proposed amendment despite your earnest negotiations, we urge you to exercise the authority granted to you by the *ETS Prohibition Act* to prohibit U.S. civil aircraft operators from participating in the ETS.

As part of the global approach to aviation emissions adopted in October, the ICAO rejected a European proposal that would have allowed countries and groups of countries to unilaterally apply their own market schemes to all aircraft operating in international flight their airspace until the global approach is in place. It bears repeating, the General Assembly rejected the approach that the EU is currently contemplating. Instead, the Assembly agreed that States must engage in consultation and negotiations sufficient to result in an agreement with other States before applying their MBM to foreign air carriers.

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The ETS amendment currently being considered in the EU flouts the agreed upon framework developed by the ICAO. So despite claims that it wanted to address aviation emissions through international agreement at the ICAO, apparently the EU only wants to abide by the parts of the ICAO agreement it likes.

The *ETS Prohibition Act* specifically directs the Secretary of Transportation to prohibit an operator of a civil aircraft of the United States from participating in the ETS unilaterally established by the EU in Directive 2003/87/EC, as amended, when the Secretary determines the prohibition to be, and in a manner that is, in the public interest. In making this determination, the Secretary is to take into account the impacts on U.S. consumers, air carriers and operators; the impacts on economic, energy, and environmental security of the United States; and the impact on U.S. foreign relations, including existing international commitments.

The *ETS Prohibition Act* also directs the Secretary of Transportation, the Administrator of the FAA, and other appropriate U.S. Government officials to conduct international negotiations and take other actions necessary to ensure that U.S. operators are held harmless from the EU ETS. Therefore, in the coming months as the EU considers the proposed ETS amendment, and later should the EU pursue implementation of the ETS before the global approach is agreed to and implemented, we also urge you to consult, negotiate and reach agreement with the EU in order to ensure that U.S. operators are held harmless from the EU ETS.

As you know, the *ETS Prohibition Act* remains the "law of the land" and therefore, we urge you to act in the public interest and fully exercise the authority granted to you under the law. ICAO set forth an agreed upon process for developing a *global* approach to address aviation emissions and it remains the proper forum to achieve this goal."

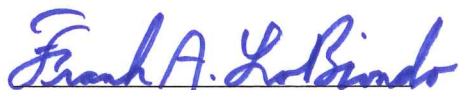
Sincerely,



Bill Shuster  
Chairman  
Committee on  
Transportation and Infrastructure



Nick J. Rahall, II  
Ranking Member  
Committee on  
Transportation and Infrastructure



Frank A. LoBiondo  
Chairman  
Subcommittee on Aviation



Rick Larsen  
Ranking Member  
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