If it seems a little far-fetched that two of the world’s most important powers and closest historical allies might launch a trade war over a $3 airfare dispute, then you haven’t been following what could be one of the most inane fights in memory between the US and the EU.

Under newly enacted legislation, the US secretary of transportation can prohibit US-based airlines from complying with an EU law limiting emissions from flights to and from the EU. The law in question – a part of the EU Emissions Trading System (ETS) – establishes the world’s only programme of enforceable limits on such pollution from the fast-growing aviation sector. Already, aviation accounts for so much carbon pollution that it would rank seventh in the world if it were a country, and its emissions are projected to quadruple in coming years.

In opposing the EU’s approach, the US and other nations have insisted that the UN’s International Civil Aviation Organization (ICAO) is the only appropriate forum for addressing emissions from international aviation – while consistently stating their commitment to reach a deal in ICAO. Now they have the chance to make good on that position.

State of play
The US and its allies in this matter – Russia, China and India, among others – have proclaimed indignantly that the EU’s law impinges on their sovereignty, inasmuch as the EU ETS calculates airlines’ obligations based on emissions from the entirety of the flight, including the portion outside the EU’s airspace. This contention conveniently ignores the fact that the US routinely imposes conditions on ships and planes arriving at and departing from its ports and airports – indeed, the US even bans gambling on international journeys to and from the country.

Several airlines have also objected loudly, predicting economic catastrophe. But the impact on fares is projected to be decidedly modest: as low as $3 per transatlantic flight, according to a US Federal Aviation Administration-supported study.

Nonetheless, the US Congress enacted anti-EU ETS legislation late last year that now risks triggering a trade war: were the secretary of transportation to implement the prohibition authorised by the bill, US airlines would be required to violate EU law. Only twice before has Congress prohibited US companies from complying with other nations’ laws: it forbade US companies from complying with South Africa’s apartheid, and it barred US firms from furthering boycotts, including the Arab League boycott of Israel.

No winners would emerge from an EU-US trade war. There is, however, a real – though time-limited – opportu-
Finding the right approach

Given the unattractiveness of these alternatives, and given that failure in ICAO would greatly increase the risk of a trade war, one could imagine that nations in ICAO – and the airline industry – will redouble efforts to find an effective path forward. Agreement by ICAO on the contours of a global market-based measure to address aviation’s greenhouse gas emissions could deliver benefits to the aviation sector, giving a much-needed boost to the larger climate talks, which aim to conclude a new protocol or other legal instrument by 2015.

Conversely, if ICAO is unable to deliver, that failure could portend badly for the overall UNFCCC-led international climate talks. This potential confluence of circumstances – positive or negative – gives France, which has offered to host the crucial 2015 UNFCCC meeting, a special incentive to try to ensure that ICAO reaches a robust deal.

Building on the very useful work done to date by the international Air Transport Association, the aviation industry now has a crucial role to play in mobilising support for such an approach – allowing the industry to live up to the commitments it has expressed in the past, and jumpstarting the ICAO process while doing so.

In the meantime, while the high level group continues its talks, the European Parliament and Council are debating the European Commission’s ‘stop the clock’ proposal. This proposal, however, only applies to flights into and out of the EU in 2012: intra-European flights still must comply for 2012. All carriers must still collect their 2013 emissions data, report it to the appropriate European authorities in early 2014 and be prepared to comply for 2013, because the clock will automatically re-start on 1 January 2014 if ICAO fails to reach a solution this year.

What about passengers? When the aviation provisions of the EU ETS took effect at the beginning of 2012, press reports indicated that many airlines began charging passengers increased fares to cover what the airlines hypothesised might be additional costs of purchasing pollution permits to comply with the EU ETS. If the EU stops the clock, then passengers who travelled on flights to and from Europe in 2012 may well demand that money back, just as they – and government regulators – are demanding greater transparency from the airlines about baggage fees, fuel surcharges and the like.

But the outlook is improving. US President Barack Obama has directed his cabinet to identify executive actions the US can take now and in the future to cut emissions. Passengers and the president: that’s a potentially powerful combination. Even as it has objected to the application of the EU ETS to international aviation, the Obama administration has consistently affirmed that aviation’s impact on climate change is a serious problem and that ICAO is the place to address it.

Now the US has the opportunity to show that its commitment to reduce emissions from aviation is not empty talk. Will new Secretary of State John Kerry, a champion of strong climate action, and the new secretary of transportation live up to the high bar set by the president in his second inaugural address in January? The choice will be theirs whether to “respond to the threat of climate change” – or not, “knowing that the failure to do so would betray our children and future generations”.

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