

Border Carbon Adjustments:

The special case of international aviation

Kateryna Holzer

WTI PhD Workshop, 24 March 2012

INCLUSION OF AVIATION IN THE EU ETS

From April 2013 **EU and non-EU passenger and cargo airlines landing in or departing from EU airports are obliged to surrender emissions allowances for the flights made in the previous year, with a penalty of Euro 100 for tonne of carbon.**

(Article 3(a)-3(g), Article 16.3 & Annex I of the EU ETS Directive)

INTERNATIONAL REACTION

China: The government bans compliance and threatens to suspend a contract with Airbus.

Russia: Moscow Joint Declaration of 23 countries threatening with retaliations, incl. disputes in ICAO and WTO.

EU aviation firms: A letter of protest to EU leaders.

US: House voted to ban compliance with the EU ETS; US airlines brought a dispute before the ECJ.

ISSUES

WTO

- GATT
- GATS

ICAO

- **Chicago Convention**

NB: Convention has no binding effect on the EU as a non-party

(ECJ Judgment of 21.12.2011 in *Air Transport Association of America and others v. Secretary of State for Energy and Climate Change*, paras. 60-63)

GATT

- Art. I: *Grapes flown to Germany (EU) from South Africa are discriminated against grapes flown to Germany (EU) from Turkey.*
- Art. III:4: a regulation “affecting internal sale...” as it affects the price/sales of products on the EU market.
Grapes flown to Germany (EU) from South Africa are treated less favourably than grapes flown from Spain (EU), or transported by trucks from Italy (EU).
- Art. XI: a quantitative restriction on importation - ?
- Art. XX(b) or (g): justification may fail (Chapeau etc.)
Why is other transport not covered? What about non-EU parts of indirect flights?

GATS

- GATS Annex on Air Transport Services excludes air transport services from the GATS coverage (para. 2), incl. measures affecting pricing (para. 3b and para. 6). Is the EU measure excluded - ?
- Indirect violation of the MFN (GATS Art. II) and NT (GATS Art. XVII) if found discriminatory against foreign providers of tourism services
- Justification under GATS Art. XIV(b): may fail for the same reasons as under GATT Art. XX

PROSPECTS FOR A WTO DISPUTE

- The issue is politically volatile, depends on the negotiations in ICAO
- Retaliations are likely
- WTO dispute is likely too
 - New issues: Climate protection as a legitimate policy objective, border adjustments in services trade - ?