

The 2003 Energy Tax Directive Agreement sets a minimum of 32 cents/litre fuel tax on all road, off road, and diesel rail locomotives while exempting aviation fuel. Member states are now considering a proposal to phase out the exemptions over a 10 year period but it's still not clear what will happen – a weak deal or no deal. This CATA confers intra EU traffic rights on all ASEAN airlines without stipulating that should the EU introduce intra EU fuel taxation, ASEAN carriers would also be subject to this tax on any intra EU 5th freedom flights. The Commission was supposed to remove the right for non EU carriers to block such a move almost 20 years ago. This I believe has not yet happened.

Article 11 Customs Duties and Other Taxes;

Virtually all bilateral ASAs signed by EU member states in the post WWII years as well as all EU ASAs contain similar language exempting parties on a reciprocal basis from taxing fuel on uplift in the other party. This CATA incorporates slightly different language in Article 11.2 by adding the word's 'to the fullest extent possible under the Parties' respective domestic laws and regulations'. I am not a lawyer, but I believe the meaning and intent of these additional words cannot be an accident. The Tweede Kamer should seek a clarification before taking a decision because this new language may set an unclear and potentially counterproductive precedent.

Especially as the Dutch Parliament previously proposed an environmental tax on EU flights carrying cargo. This was dropped because the EU/US Open Skies agreement gives unlimited EU traffic rights to two US cargo carriers and the US Government the power of veto in the ASA's Joint Committee on such taxation.

As some previous speakers have already noted, Article 18 on the Environment is bland and general. This is the case in most such Articles on the environment in the thousands of ASAs signed over the years. In some respects, this CATA article is better than similar provisions in the EU's ASAs with Qatar and the USA which contain some specific and restrictive provisions on environmental measures which are unacceptable.

On the other hand, this CATA Article 18 it is unacceptably restrictive – by specifically only referring to potential cooperative efforts to address greenhouse gas 'GHG' emissions – at both domestic and international level - related to climate change. And so ignoring two pollutants which indirectly help generate the largest part of aviation's contribution to global heating. NOx emissions from jet engines around airports (LTO) produce ultra fine PM dangerous to human health and a cause of premature death. At altitude NOx produces complex atmospheric impacts resulting in significant positive global warming.

But NOx itself is not a GHG. Nor is non volatile particular matter – nvPM or soot – which is a major pollutant arising from the incomplete combustion of fossil kerosene in aircraft engines. Soot emitted at altitude can lead to contrail formation under certain atmospheric conditions and times of day. Climate warming impacts of non CO2 emissions – soot/contrails and Nox- may well account for over 70% of the aviation sector's climate impacts. And far exceed over shorter time frames the climate impacts of CO2 which is a strong GHG and whose climate impacts over the longer term are of major concern.

The EU Green Deal included impacts of these non CO2 equivalent emissions in the monitoring and reporting provisions of the aviation ETS MRV. The aviation ETS covers all inbound and outbound

flights to and from all EU airports - so also emissions from flights to and from ASEAN countries to the EU. EU Regulation 2024/2493 requires airlines to monitor and report all aviation non-CO2 equivalent emissions. With extra EU flights exempted potentially only until the ETS is revised in 2027. The 2027 Commission review may well also recommend all EU flights be subject to the surrendering of ETS allowances for non CO2e emissions. Yet Article 18 is silent on what is arguably the elephant in the room as to aviation's impacts on the climate.

Para 4 of Article 18 does mention agreement on the exchange of information related to SAF, noise 'and other measures aimed at addressing GHG emissions'. As residents around Schiphol will attest, aircraft air pollution has long been a major concern and subject to years of government study/enquiry. And while aircraft noise has been the focus of the decision to reduce allocated slot capacity at Schiphol, the potential need to factor in soot and sulphur SOx emissions has not been mentioned at all in this paragraph 4. Yet EU law is clear that airport capacity calculations must take into account environmental factors – so not just noise, or CO2. But air pollution etc.

Para 5 of Article 18 states that Parties have agreed that any measures to prevent or otherwise address the environmental impacts of air transport should be fully consistent with the rights and obligations of each Party under international law. As other position papers have noted, this raises the question as to the extent to which national governments such as The Netherlands can apply stricter environmental standards than those agreed internationally - say at ICAO. EU law has already precluded EASA from going beyond ICAO aircraft standards. And requires The Netherlands to comply with the balanced approach as to aircraft noise at Schiphol.

But what about air pollution regulations and their potential impacts on slot allocation at Schiphol? Already in 2015 The Netherlands called upon ECAC to act on desulphurising fossil kerosene to protect local residents from aircraft SOx emissions which generate ultra fine PM, a well recognised source of premature deaths. Nothing happened. The Ministry of Infrastructure and Water Management is well aware that desulphurising aviation kerosene is feasible and cheap and can be implemented quickly by refineries and bring immediate results. But this requires EU legislation to force refineries supplying fuel to EU airports to act. Still nothing happens.

Rotterdam is by far the largest and busiest shipping port in Europe. The Netherlands is a party to the IMO's MARPOL Annex VI which has cut SOx PM emissions from shipping by limiting the sulphur content in marine fuel. It's now down to an average of 600ppm Sulphur in IMO Emission Control Areas such as the North Sea and English Channel. 600ppm is believed to be the average sulphur content of aviation kerosene uplifted by aircraft at EU airports – although its only now starting to be measured. No-one lives in the North Sea. But many thousands live around Schiphol, Rotterdam and Eindhoven airports.

Is it acceptable that this CATA should potentially restrict the Netherlands from taking further action to protect its own citizens from ultra fine jet engine pollution? The Netherlands agreed with EU legislation over 20 years ago to desulphurise road fuel in order to limit air pollution in cities. A previous Schiphol Airport administration even relocated the carpark next to the Sheraton and opposite the main terminal in order to further protect arriving and departing passengers from vehicle traffic air pollution. Nothing has been done to protect passengers and Schiphol residents from premature death due to jet engine emissions.

Aside from sulphur induced PM pollution, soot/black carbon emitted from jet engines is both a source of ultrafine PM around airports and at altitude a major precursor of soot induced contrail warming. The Netherlands is a key proponent of the Green Deal Refuel EU SAF blending mandate to cut aviation CO2. In 2022 CE Delft produced a report commissioned and written for the Dutch Ministry of Infrastructure and Water Management and sent to the Dutch Parliament which lauded the CO2 reduction benefits of SAF – eventually. But efforts to promote aviation SAF production in the previous decade proved derisory and still remain miniscule compared to projected volumes needed to have any impact on CO2. Shell in Rotterdam and other major fuel suppliers like BP having completely pulled out of the aviation SAF business.

But another report by CE Delft for the EU's Horizon research program and commissioned in 2018 by Airbus, found that cutting both the sulphur and aromatics in jet kerosene could cut contrail warming and soot air pollution dramatically. And almost immediately if mandated on refiners. And at a minimal cost of a few cents per litre. Bio-SAF let alone aviation e-SAF has a fuel price premium of 2 and 11 times the cost of fossil kerosene – about 60 cents/litre today. However this report was suppressed and then withheld by then European Commission VP Timmermans from distribution to the European Parliament when deciding on aviation Green Deal issues. Its findings continue to be ignored. At the very time as the EU policy on promoting SAF production and fuel blending is all but collapsing due to continued minimal production levels.

Instead of taxing aviation fuel via a revised ETD to reduce demand and emissions, the EU's new Clean Industrial Deal plans to allocate many more billions in ETS revenues per annum to SAF production. So even more subsidies to EU aviation. When you're in a hole, isn't it best to stop digging?

I wonder if these issues will be discussed by the CATA Parties in relation to the Environment under Article 18. Or indeed under Article 8 on Fair Competition which deals with subsidies and the shared objective of all Parties' air carriers to enjoy fair and equal opportunities to compete. All fuel suppliers in the EU are obliged to comply with the Refuel EU e-SAF and the bio-SAF blending mandate which starts this year. All carriers departing EU airports – so including ASEAN carriers – are required by Refuel EU to conform with these uptake requirements. EU carriers which operate almost all of the intra EU flights covered since 2012 by the ETS, will also benefit from 20 million free ETS SAF allowances until 2030. In addition, the EC website highlights a potential stronger price signal via a revised ETD by providing preferential treatment to SAF compared to fossil kerosene for intra EU flights. I wonder whether the potential for EU carriers to use such incentives to cross-subsidise their SAF obligations on longhaul flights to the potential competitive detriment of ASEAN carriers departing EU airports might be raised by ASEAN Parties within the planned CATA Joint Committee?

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