

- ActionAid USA • Center for Biological Diversity • Earthjustice • Environment America •
- Environmental Defense Fund • Natural Resources Defense Council •
- Oxfam America • Sierra Club • World Wildlife Fund •

December 21, 2011

The Honorable Hillary Rodham Clinton
Secretary of State
Washington, D.C. 20520

The Honorable Raymond H. LaHood
Secretary of Transportation
Washington, D.C. 20590

Dear Madam Secretary and Mr. Secretary,

One of the great legacies of the United States Department of State is the protection of and advocacy for the rule of law, and the greatest global environmental challenge of our time is climate change. We were thus incredibly disappointed to see your December 16, 2011 letter to European Union ministers objecting to the EU's aviation directive. Asking America's allies to back down on strongly-supported domestic legislation to reduce global warming pollution from aviation is simply not consistent with the historical US leadership role on either the environment or the rule of law. If ever there was a time for US leadership in both areas, it is here and now.

The EU Aviation Directive was duly enacted by the European Parliament in 2008, and passed with very broad support, following more than a decade of inaction in the International Civil Aviation Organization (ICAO). The law holds airlines accountable for their emissions associated with flights to, from, and within the EU. When implemented, the Aviation Directive will reduce emissions equivalent to taking 30 million cars off the road each year. The Directive was carefully crafted to fall well within the bounds of international law and to provide an *interim* means of reducing emissions from aviation while talks in ICAO continue.

Airlines from around the world have been complying with the monitoring and reporting provisions of the law since 2010 and, because it was designed to assist in their transition to the new regulations, the airlines stand to receive billions of dollars worth of free emissions allowances. As you know, while simultaneously complying with the EU law, three US airlines, along with their trade association, filed suit in 2009 challenging the legality of the Aviation Directive. A Grand Chamber of the Court of Justice of the European Union, Europe's highest court, issued its ruling in this case today concluding that the Aviation Directive is fully compliant with international law and applicable bilateral aviation agreements.

Unfortunately, the Administration's decision to send the December 16 letter on the eve of the Court's decision risks tarnishing America's reputation as a nation that respects the role of independent judiciaries. We are troubled, as well, that the Administration is now actively thwarting other countries' efforts to effectively and efficiently reduce greenhouse gas emissions and make good on their own international commitments to avoid a dangerous rise in global average temperatures. Indeed, the Administration's current position on the aviation issue risks undermining even the moderate progress

achieved at the recent UN climate negotiations in Durban, South Africa. The US position on aviation—that the EU should await a comprehensive global solution in ICAO before addressing aviation sector emissions—is extremely difficult to reconcile with the US objectives in Durban; namely, that countries should move forward in the near-term, even while building a global approach. While we would ultimately prefer a multilateral approach to regulating emissions reductions, the US should not stand in the way of the EU’s efforts to address these issues in the longstanding absence of such action at the ICAO.

We strongly urge the Administration to respect the Court’s decision, just as the Administration would wish other nations to respect the decision of the US Supreme Court on the legality of a law duly enacted by the US Congress. In addition, we ask that the Administration refrain from escalating the dispute, as there is a constructive path forward for the US, and that is working with the EU—both within ICAO and in parallel to it—to reduce emissions and raise climate finance from the aviation sector. We are particularly eager to work with you on creative approaches that overcome the logjams in ICAO and that capitalize on the innovative power of America’s aviation industry. But we need your leadership to do so. We would welcome the opportunity to meet with both of you to discuss these issues.

Sincerely,

Heather Paul, Executive Director
ActionAid USA

Kierán Suckling, Executive Director
Center for Biological Diversity

Trip Van Noppen, President
Earthjustice

Margie Alt, Executive Director
Environment America

Fred Krupp, President
Environmental Defense Fund

Frances Beinecke, President
Natural Resources Defense Council

Raymond C. Offenheiser, President
Oxfam America

Michael Brune, Executive Director
Sierra Club

Carter Roberts, CEO and President
World Wildlife Fund

cc: Harold Koh, Legal Adviser, US Department of State