

## **US airlines fight EU plan to extend pollution charge**

By Pilita Clark in London

**US airlines have gone to court to fight the European Union's plan to force them to pay for their pollution**, claiming it is an "astonishing" move that breaches international law and will cause legal "chaos".

The Air Transport Association of America, together with American Airlines and the United Continental group, told the European Court of Justice in Luxembourg that Brussels should not be allowed to extend its emissions trading scheme to foreign airlines from January 2012.

The scheme, which started in 2005, is the world's largest emissions trading programme.

Until now it has only covered large polluters such as power stations located in the EU.

Aviation accounts for 2-3 per cent of global carbon dioxide emissions but the industry's rapid growth means its emissions are likely to rise sharply in coming years.

In what amounts to the most ambitious step yet by Brussels to make companies outside its borders comply with its emissions rules, any airline flying in or out of the EU will be covered by the scheme from next year.

Carriers will be allocated permits allowing them to emit a certain level of carbon dioxide. If they exceed that, they will have to buy more permits from traders or European governments. Airlines that do not buy enough permits will be penalised. If the airlines do not buy enough, they face penalties of €100 per tonne of carbon dioxide equivalent emitted.

The EU, which insists it will not amend its rules, says the scheme will only amount to a few extra euros per ticket.

However, foreign airlines say the eventual cost will be much higher and some analysts say the scheme could cost the industry €1.1bn (\$1.5bn) in the first year. The US government

**has formally opposed the move and Chinese airlines have sharply criticised it, prompting fears of retaliation among European groups such as Airbus, the aircraft maker.**

**Lawyers for the ATA told the court on Tuesday that a US airline flying from San Francisco to London would be subject to EU emissions rules from the moment it started to taxi in San Francisco, even though only 9 per cent of its emissions would occur in EU airspace.**

**They said 29 per cent of emissions would take place in US airspace; 37 per cent in Canadian airspace, and a further 25 per cent over the high seas.**

**“Yet the ETS will impose a levy on this carrier, and may also impose an excess emissions penalty based on emissions for the entire flight from start to finish,” they said.**

**“It is astonishing that a US airline must acquire an EU licence to cover its emissions at a US airport, or in US airspace, but that is precisely what the ETS requires.”**

**The lawyers said the regulation by the EU of third country airlines in third country airspace was “contrary to a fundamental principle of customary international law”, namely that “a state has complete and exclusive sovereignty over its airspace”.**

**This principle was reflected in various international conventions, including the so-called magna carta of aviation law, the 1944 Chicago Convention, an international aviation treaty governing global rules on air travel.**

**A global agreement was needed, they insisted, rather than “unilateral and piecemeal regulation, which can only lead to chaos at the international level”.**

**An advisory opinion on the ATA case , which was originally filed with the High Court in London before it was referred to the European Court of Justice, is expected before the end of the year.**

**Several environmental groups have intervened in the ATA case.**

**“Airlines should be racing to comply with this law and deliver cleaner low-carbon travel to the flying public, instead of racing to the courthouse to try to block a reasonable and well-designed law,” said Pamela Campos, an attorney at Environmental Defense Fund.**