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Sierra Club • US Climate Action Network • World Wildlife Fund US**

August 3, 2012

The President
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear Mr. President,

On behalf of our millions of members and supporters, we strongly urge you to reject the airline industry's pressure to file an Article 84 action in the International Civil Aviation Organization (ICAO) challenging the European Union's Aviation Directive, which holds airlines accountable for carbon pollution from flights landing at or taking off from European airports. Filing a formal proceeding to block the Directive would be highly inconsistent with your Administration's efforts to reduce carbon pollution from other sources, and would undermine your Administration's stated goal of achieving an agreed framework in ICAO to limit global warming pollution from international aviation.

In calling for the United States to initiate an Article 84 proceeding, industry argues that doing so would somehow enhance ICAO's ability to achieve meaningful results. This assertion is simply not credible. To the contrary, in January the ICAO Secretary-General cautioned that an Article 84 dispute would profoundly disrupt ICAO's ability to make progress in the accelerated proceeding it has already launched on this issue. Moreover, no Article 84 action has ever been resolved through official ICAO channels; if the goal of filing an Article 84 action is to prompt negotiations, it is unnecessary given that such negotiations are already underway.

Also lacking credibility is the airlines' assertion that the EU program violates international law. The legal arguments against the EU Aviation Directive were thoroughly rebutted by the European Court of Justice (Europe's equivalent of the U.S. Supreme Court) in disposing of litigation brought by U.S.-based airlines. Because the EU Aviation Directive has been determined not to violate national sovereignty nor constitute a charge, there is no basis for an Article 84 action.

Finally, it is essential to keep in mind that ICAO negotiations over carbon pollution from international aviation have already dragged on for more than a dozen years. Indeed, it is evident that the recent uptick in the level of engagement at ICAO in recent months has been prompted by the fact the EU Aviation Directive took effect as of January 2012. An Article 84 proceeding would simply undercut the one lever that has brought the parties for the first time to engage seriously at ICAO.

As such, calls for such a proceeding must be viewed for what they truly are: not an effort to improve ICAO's odds of achieving a global solution, but rather a means of reducing the likelihood that ICAO takes meaningful action on carbon pollution from international aviation – while simultaneously obviating the

world's only program that is now actually doing so. In short, an Article 84 proceeding is at base a transparent effort to allow airlines to evade responsibility for their carbon pollution in perpetuity.

Rather than initiating an Article 84 proceeding that would undercut ICAO's prospects for making progress, your Administration should lead the effort in ICAO to craft a meaningful global approach on aviation carbon pollution, working together with airlines and civil society. We are aware that the United States this week hosted a meeting of several nations to discuss further steps at ICAO. Though we are concerned about the European Union's conspicuous exclusion from that meeting, we hope that the meeting will help lead ICAO to reach a meaningful global agreement on this important and fast-growing source of carbon pollution.

Respectfully,

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