A bold voice for transportation workers

May 10, 2013

Ms. Yvonne Jamison
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20508

RE: Request for Comments on the Transatlantic Trade and Investment Partnership
Docket No. USTR-2013-07430

Dear Ms. Jamison,

The Transportation Trades Department, AFL-CIO (TTD) appreciates the opportunity to submit its views on the proposed Transatlantic Trade and Investment Partnership (TTIP) between the United States and the European Union. TTD has previously submitted comments during the United States European Union High Level Dialogue process, and I gave an oral presentation of TTD's views at the US-EU High Level Regulatory Cooperation Forum on April 11, 2013. TTD's comments today will reflect those previously stated positions.

We understand that the EU has asked that the ownership and control rules that pertain to airlines, the right of the carriers of two sides to operate in each other's domestic markets ("cabotage operations"), and maritime transport services be included as topics in the TTIP negotiations. For the purposes of air transport services, TTD's comments here are limited to whether or not air traffic rights and services directly related to those rights should be included in TTIP. TTD strongly believes that they should not. Likewise, TTD believes that maritime transport services and U.S. maritime laws such as the Jones Act should not be included in these negotiations.

Air transport services have historically been excluded from general trade agreements such as GATS and bilateral and multilateral free trade agreements. Rather, such services have been subject to a separate administrative regime, under which the U.S. has negotiated air service specific agreements with foreign countries. These negotiations have been led by the Department of State and the Department of Transportation, two agencies with dedicated experts on air transport services. This regime has led to the steady and dramatic removal of barriers to trade in the air transport services sector and since 1993 the U.S. has entered into "open skies" agreements with 107 countries – agreements that have eliminated virtually all restrictions on the ability of carriers to select routes, to establish frequencies and to set prices.

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The U.S. and the EU have recently entered into such an open skies Agreement ("Agreement"). During the comprehensive discussions that resulted in the Agreement, the EU sought the exchange of cabotage rights and the elimination of restrictions on the ownership and control of airlines by the nationals of the parties. In fact, it is fair to say that consideration of altering the ownership and control rules was one of the central topics in the negotiations. Ultimately, the Agreement left in place the restrictions on cabotage. With respect to ownership and control, the Agreement left in place the statutory restrictions but did establish a Joint Committee (consisting of representatives of the two sides) that meets on a regular basis and is tasked, among other things, with considering possible ways of enhancing the access of U.S. and EU airlines to global capital markets.

In TTD's view the existing administrative framework has been successful in opening markets and liberalizing trade in air transport services while at the same time taking into account the legitimate concerns of airline labor. The regime has also created an open market environment that has permitted the airlines of the two sides to receive antitrust immunity for ever-deeper alliance arrangements. Almost all major U.S. and EU passenger airlines are now members of immunized alliances that permit them to operate as virtually single entities in the international markets that are covered by the immunity grants. Additionally, the Agreement contains provisions that recognize the value of "high labour standards" and establishes a mechanism for considering and addressing adverse effects on airline workers that may result.

While restrictions on cabotage and on ownership and control remain, there are good reasons for this. With respect to cabotage, the operation of foreign airlines in U.S. domestic markets would be at odds with a host of U.S. laws, including visa and labor laws. It would also be inconsistent with the treatment of other business sectors. For example, if a foreign automobile company wishes to set up a manufacturing operation in the U.S., that facility and its workforce are subject to U.S. laws and regulations. Granting cabotage rights to EU airlines, however, would allow these airlines to operate in the U.S. domestic market with a workforce that remains technically based in their home country and subject to that country's laws. This would allow the airlines to bypass U.S. laws and displace U.S. aviation employees. Additionally, given that the U.S. represents about half of the world's aviation market, it is unreasonable to argue that opening the U.S. domestic point-to-point market to foreign carriers would represent an even exchange of benefits with our EU trading partners.

The request to eliminate the ownership and control restrictions raises its own set of difficult issues. If an EU airline were able to own a U.S. airline, it would be able to place the air crew of the U.S. carrier in competition with the air crew of the EU airline for the international routes flown by the previously U.S-owned carriers. If the foreign owner sought to eliminate U.S. jobs and move this work to a foreign crew, it is unlikely that U.S. labor laws would provide an adequate remedy or protection for these workers. This is a very real threat, and the consequences of a similar arrangement are currently being felt by aviation workers in Europe where several airlines have taken advantage of the lack of a comprehensive labor law in the European common aviation area to undermine the ability of European flight crews to bargain over the flying done by their companies. We would be happy to provide specific examples of these actions if you wish to consider the issue in more depth.

Changes to our ownership and control laws would have a negative impact on U.S. aircraft maintenance workers as well. If foreign carriers are allowed to take over U.S. airlines, the practice of outsourcing aircraft maintenance to foreign countries will only accelerate. This is already a major problem that has cost thousands of skilled U.S. jobs and lowered safety standards. And while there is currently a congressionally mandated moratorium on certifying new foreign repair stations, we are still awaiting long overdue security rules governing contract repair stations and drug and alcohol testing at foreign repair stations. Any actions that would further promote the outsourcing of aircraft maintenance work, particularly without adequate rules governing the oversight of these foreign repair stations, should be rejected by this administration. The U.S. government should be pursuing market-opening aviation trade opportunities that create and sustain U.S. jobs both in the air and on the ground, not those that leave the future of U.S. aviation to foreign carriers (and their respective governments) that may have different economic agendas.

In addition to the problems that relaxing foreign ownership and control rules would cause for our domestic aviation workforce, this proposal would strain our government's ability to mandate and enforce critical security standards. With a foreign interest so integrally involved in controlling the operations of a U.S. air carrier, it would be impossible to assert U.S. security interests. Moreover, the ability of our government to manage the Civil Reserve Air Fleet (CRAF) program, which assures U.S. air carrier capacity for our military's air transport needs during wars and conflicts, would be undermined. Under relaxed foreign ownership and control rules we question how a foreign executive that controls the commercial aspects of a U.S. carrier but does not support our military strategy would be compelled to provide CRAF air transport services during a war or conflict.

Finally, we would note that the Bush Administration in 2005 proposed a rule change to allow foreign entities to exercise actual control over U.S. airlines. This proposal was subject to fierce opposition in Congress and eventually had to be withdrawn by the Administration. It is clear that there remains little support in Congress for changing our current ownership and control standards at the demand of an international trading partner when there is no identifiable benefit to U.S. interests.

The same principles noted above apply to any consideration of U.S. maritime transport laws and policies. The Jones Act has been a successful part of our nation's national security and economic policy since 1922, and serves a critical economic role for our nation, sustaining over 500,000 good-paying American jobs and generating $100 billion in total annual economic output. This law has ensured that the U.S. continues to have a reliable source of domestically built ships and competent American crews to operate them. Overall, the U.S.-flag maritime industry has played a vital role in supporting our armed forces, our trade objectives, food and other aid to other countries, and our national security. We should be promoting the growth of the U.S. merchant marine, not pursuing changes in our maritime policies through trade negotiations that weaken this vital segment of our transportation system.

Any limitation of the Jones Act would harm American mariners, increase the unemployment rate, accelerate the decline of U.S.-flag operators and seriously damage our economic recovery and national security. This would also permit foreign entities that do not employ U.S. workers and do not pay taxes to our treasury to operate with impunity on our inland waterways and along our coasts. Any efforts to include maritime transport services in these negotiations or to otherwise weaken or infringe upon the Jones Act should be rejected by U.S. negotiators.

TTD looks forward to working with the U.S. Government as it considers how to proceed with respect to the proposed TTIP. Thank you for your consideration of our views.

Sincerely,

Edward Wytkind
President

cc: Susan Kurland, Assistant Secretary for Aviation and International Affairs, DOT
Paul Gretch, Director, Office of International Aviation, DOT
Kris Urs, Deputy Assistant Secretary for Transportation Affairs, DOS