A bold voice for transportation workers

February 26, 2013

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

RE: Request for Comments on an International Services Agreement
Docket No. USTR-2013-0001

Dear Ms. Jamison:

The Transportation Trades Department, AFL-CIO (TTD) appreciates the opportunity to submit its views on the proposed International Services Agreement (ISA) between the United States and a number of other countries. We understand that the United States Government (USG) would see the proposed ISA as building on the trade principles in the General Agreement on Trade in Services (GATS) and in various other free trade agreements to which the U.S. is party. 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 the ISA. 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. Finally, TTD believes that the ISA should not limit or restrict important domestic economic growth policies such as Buy America laws.

As a preliminary matter, TTD believes that international air traffic rights and related services are best established through the existing system of bilateral agreements or exchanged on the basis of comity and reciprocity. The United States air transport services sector has been the beneficiary of a legal and administrative framework that has produced steady and significant increases in such rights for our air carriers and the U.S. now has "open skies" air service agreements with over 100 "open skies" partners. In addition, this framework has produced a "open skies plus" agreement between the U.S. and the European Union (EU) and its Member States and a Multilateral Agreement on the Liberalization of International Air Transport between the U.S. and several Pacific Rim countries. The U.S.-EU Air Transport Agreement (ATA) includes 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 from the ATA.

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By contrast, the GATS does not contain specific provisions for the consideration and redress of the effect of the agreement on labor. It does contain principles which, if applied to traffic rights and related services, could well disadvantage U.S. airlines, as well as have significant adverse effects on U.S. airline employees.

The first of the potentially harmful principles is, "Most-Favored Nation Treatment." If this principle were included in the ISA it would require all contracting GATS members to grant all other members treatment as favorable as that granted any other country. Because the United States would have to extend to all members the concessions made to its most liberal trading partners (i.e., its "open skies" partners) without the other members having to afford reciprocal air service opportunities to the U.S. in return, a country with a highly restrictive approach to granting international aviation rights could gain immediate and full access to the United States on the same terms as the United States most-favored trading partner without U.S. aviation interests receiving anything in turn. The United States would thus lose the advantage of having specialized air transport service negotiators ensure that grants of air service rights to foreign countries are calculated to advance specific U.S. airline and related interests.

The second GATS principle that would be of concern to TTD is "Market Access." That principle would seem to eliminate the ability to place designation or frequency limits on carrier services where appropriate and would appear to nullify the current restrictions on foreign ownership of U.S. airlines. TTD believes that there are a number of complex issues that would be associated with the modification of those restrictions (including the effect on U.S. airline employees) that would require a full and careful examination. Finally, the Market Access provisions of GATS along with the other provisions on the mobility of labor, raises the possibility of foreign workers being employed by both U.S. and foreign airlines in their U.S. domestic operations. This, of course, is an issue of considerable importance to TTD.

Another concern is that we understand that the ISA would grant "National Treatment" for all services on a negative list basis. If this approach were to apply to air transport services, it would allow an airline of a member country to establish or expand an operation in the United States on a basis "no less favorable" than that accorded to U.S. citizens. In short, it would allow foreign carriers to operate in all U.S. air transport markets, including the domestic market. Given that the U.S. domestic and international markets are far and away the largest aviation markets in the world there would be little benefit for and, TTD believes, substantial harm to U.S. air carriers and their employees if this provision were to apply to air transport services.

In addition, TTD believes that the dispute resolution mechanisms of the model open skies agreement and the aviation statutes (see, e.g., 49 U.S.C. §41310) provide for quicker and less costly resolution of disputes than the resolution mechanism applicable to GATS and FTAs.

For these reasons, TTD believes that there is little likelihood that U.S. airlines and their employees would benefit by bringing air traffic rights and related services under the proposed ISA. Accordingly, TTD urges that if the USG does enter into negotiations over an ISA, the USG insist on the exclusion of air traffic rights and services directly related to those rights from coverage under the agreement. Again, these comments are limited to whether or not air traffic rights and service directly related to those rights should be included in ISA negotiations. If these matters are included in the negotiations, we will have a number of additional comments to make about the need to ensure that any ISA not diminish safety, licensing, and workplace standards.

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. It has ensured that the U. S. continues to have a reliable source of domestically built ships and competent American crews to operate them. The Jones Act provides thousands of Americans with secure, well-paying jobs. Any limitation of the Jones Act would harm American mariners, increase the unemployment rate, and seriously damage our economic recovery. 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.

Finally, TTD believes that any trade negotiations undertaken by the U.S. should not limit existing domestic procurement and Buy America laws. These laws are important job-creating policies that help maximize the economic impact of federal investments in our transportation sector. Buy America laws, when full enforced, also help create a reliable domestic supply chain for transportation infrastructure that is better suited to meet the needs of our nation's transportation systems. Any negotiations which restrict the full implementation of and adherence to our Buy America laws would severely hamper the domestic impact of federal investment and result in the lost economic growth opportunities. For further information on Buy America and procurement laws please reference the comments submitted by the AFL-CIO, which TTD supports.

TTD looks forward to working with the U.S. Government as it considers how to proceed with respect to the proposed ISA, and thanks you for consideration of these comments.

Sincerely,

Edward Wytkind
President