



A bold voice for transportation workers

June 12, 2017

Mr. Daniel Watson
Deputy Assistant United States Trade Representative for North America
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20006

**RE: Negotiating Objectives Regarding Modernization of the North American Free Trade Agreement With Canada and Mexico
Office of the United States Trade Representative
Docket No. 2017-0006**

Dear Mr. Watson:

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I write in response to the Office of The United States Trade Representative's (USTR) notice requesting comments on the renegotiation of the North American Free Trade Agreement (NAFTA). By way of background, TTD consists of 32 affiliate unions that represents workers in all modes of transportation.¹ For decades these working people have seen their industries and livelihoods gutted by bad trade deals, and today the threats to their jobs continue. We therefore have great interest in this proceeding.

On May 18, 2017, the Administration informed Congress that it intended to open renegotiations of NAFTA within the next 90 days. In its letter, USTR states that provisions of NAFTA have not kept pace with the U.S. economy and businesses, and that the Administration seeks to support higher paying jobs and economic growth. We agree that NAFTA has failed North American workers, who have not seen the better wages and opportunities the agreement promised. If done properly, a renegotiated NAFTA could help ensure that the agreement brings benefits to working people and growth throughout the U.S. economy. However, it is also critical that the Administration and USTR not open the door for new opportunities for foreign entities to undermine critical domestic programs and protections in the renegotiation process. Our comments detail the ways in which NAFTA has hurt transportation workers, and the critical principles that should guide any renegotiation by this Administration.

¹ Attached is a complete list of TTD's 32 affiliate unions.

Transportation Trades Department, AFL-CIO

815 16th Street NW /4th Floor /Washington DC 20006
Tel:202.628.9262 / Fax:202.628.0391 /www.ttd.org
Edward Wytkind, President /Larry I. Willis, Secretary-Treasurer



Cross-Border Transportation

During the original negotiations of NAFTA, transportation labor and others insisted that land transport provisions in the agreement must not interfere with the enforcement of U.S. safety and labor standards, and require regulatory harmonization between NAFTA Parties to preserve the ability to keep unsafe truck, bus and rail operators out of American transportation networks. However, the language ultimately included in the agreement failed to fully address these issues. Additionally the measures were not properly implemented, thereby weakening the U.S. government's ability to enforce its standards on cross-border transportation.²

Highway Safety

Our initial concern with cross-border transportation was echoed by both the Clinton Administration and Congress. In 1995, President Clinton issued a Presidential Order postponing implementation of NAFTA cross-border trucking provision for safety reasons. Seven years later, the Bush Administration reversed this policy, lifting the moratorium and directing the Federal Motor Carrier Safety Administration (FMCSA) to implement a pilot program that would allow Mexican-domiciled trucks to cross the border. Congress overwhelmingly voted to defund the pilot, citing numerous concerns with the carriers' ability or willingness to comply with U.S. regulatory requirements. Only after the Mexican government retaliated by placing tariffs on \$2.4 billion worth of U.S. products exported to Mexico was a second pilot program enacted. This program expired in 2015, and Mexican carriers are now free to apply for long haul authority. This comes despite the admission by the FMCSA Office of the Inspector General that the pilot program failed to collect enough data to demonstrate a statistically significant conclusion that these carriers had the ability to operate safely in the U.S.³

With regards to both trucking and cross-border passenger bus service, we have ongoing concerns with compliance and enforcement of hours-of-service regulations, drug and alcohol testing, the accuracy of Mexican driver violation records, and the equivalency of the U.S. Commercial Drivers License with the Mexican Licencia Federal. These items represent critical components of our efforts to keep our highways safe for all users, as we strive to ensure that non-compliant operators do not traverse American highways and endanger the public. Despite this, it is clear that current NAFTA provisions continue to be interpreted as allowing for unfettered access to our highways regardless of the risks. As seen in the events concerning the Mexican pilot program, NAFTA Parties have the ability and willingness to impose crippling financial costs in order to maintain this access. A renegotiated NAFTA must empower the U.S. to impose its safety standards on foreign bus and trucking operations without fear of reprisal.

² TTD President Edward Wytkind testified to the House Transportation and Infrastructure Subcommittee on May 7, 1997 discussing transportation labor's ongoing concerns with the implementation of the NAFTA cross-border transportation provisions, specifically that carriers would not comply with critical U.S. safety standards.

³ DOT Office of the Inspector General, FMCSA Adequately Monitored Its NAFTA Cross-Border Trucking Pilot Program but Lacked A Representative Sample To Project Overall Safety Performance. December 2014.

Freight Rail

The application of our standards at the border has also been a contentious issue regarding freight rail service. Currently, the Federal Railroad Administration (FRA) requires that Class I air brake inspections be performed at the point of origin, as well a secondary test after every 1000 miles travelled or when the train is interchanged between two railroads, as occurs at the border. On several occasions, freight rail carriers have petitioned the FRA to allow inspections to be conducted in Mexico in order to bypass brake inspections at the border. TTD and our rail affiliates have previously opposed these efforts in federal comments, stating that the petition was a clear effort to outsource jobs at the expense of safety. To date, FRA has correctly denied these requests, as the agency has not been able to certify that these inspections are being performed under regulations equivalent to the FRA's, as required by the Rail Safety Improvement Act of 2008. These concerns are corroborated by a 2016 GAO report that notes that inbound trains from Mexico have been known to arrive with missing or damaged equipment and that railroad employees have noted that it is common for train equipment to show evidence of tampering.⁴

Similarly, railroads have expressed interest in using an international pool of train crew in order to eliminate the need to change crews at the border. In this regard, DOT has clearly and correctly stated that a lack of Mexican safety regulations concerning locomotive engineers and conductors prohibits these crews from operating trains past the border. To date, the U.S. has not been forced to make the type of safety concessions in freight rail transportation that have occurred in the bus and trucking industries. It is critical that NAFTA renegotiations preserve the ability of the FRA to make determinations on the viability and safety of cross-border freight rail transportation.

Procurement

Chapter 10, Government Procurement, has had the ongoing impact of undermining US fiscal policy, and renegotiating the chapter offers the Administration a strong opportunity to deliver on its "Buy American, Build American" promise. As Congress and the Administration look towards much needed investment in America's transportation infrastructure, it is key that they are given the tools to do so while stimulating the American economy. Therefore, in renegotiations, steps should be taken to eliminate any procurement commitments that interfere with U.S. domestic preference policies. It is critical that NAFTA Parties be free to use funds to create jobs within their borders, and require responsible bidding criteria including labor protections. Free trade agreements must also not undercut critical legislation like the Buy American Act, which places domestic preference conditions on certain direct purchases made by the federal government. This includes expenditures associated with the construction of highways, railroads, ports, transit systems, and airports, stimulating the American manufacturing industry and supporting good-paying jobs. Exempting domestic preference programs, including those that affect direct federal procurement, should be a key component of a renegotiated NAFTA.

⁴ Government Accountability Office, Ongoing DOT Efforts Could Help Address Impacts of International Freight Rail. January 2016.

We also urge USTR to ensure that renegotiations do not result in procurement language that takes a step backwards. Article 1001 of NAFTA currently exempts grants, loans, cooperative agreements, and other forms of Federal financial assistance from its coverage. This includes items like Federal-aid highway construction projects as well as FRA and FTA grants, in which funds flow from the federal government but are ultimately spent by state or local governments. These items are then subject to Buy America provisions, which ensure that transportation infrastructure projects are built with American-made products. Because of the Article 1001 exemption Buy America procurement policy is generally not subject to NAFTA rules, and this must remain the case under a renegotiated agreement.

Finally, we endorse the recommendation of the AFL-CIO that the critical Chapter 10 provision on offsets should be maintained. Offsets require forced transfer of technology and production in return for market access, and contribute to industries offshoring to countries where the practice is not prohibited. The USTR must include the provision in NAFTA, and ensure its enforcement in the future.

Protecting Public Services

Currently, Annex II of NAFTA exempts certain laws and regulations from the rules of the services and investment chapters of the agreement. We believe that the Annex does not go far enough in exempting critical public services. These oversights include transportation services, which we urge the USTR to include in renegotiation. Under current NAFTA rules, foreign investors can challenge domestic policies that govern service provision if they believe these policies put them at a disadvantage or threaten their profits. In practice, this could result in a private company – in the process of bidding to operate a public transit system – claiming that requiring service to underserved areas with low ridership was a barrier to private participation. Parties could also challenge certification and licensing requirements meant to ensure public and employee safety as “more burdensome than necessary to ensure quality of a service.”

Failure to strengthen these measures could be damaging to consumers of transportation services, but also to public transportation employees, including public transit workers, employees of State DOTs and school bus drivers. It is essential that Annex II be expanded in order to prevent NAFTA from interfering with how our federal, state and local governments decide to provide transportation services.

Finally, we note that through the investor-state dispute settlement mechanism, existing NAFTA rules can penalize governments that reverse privatization of government services. This is particularly concerning in the transportation sector, where Public Private Partnerships (P3s) are becoming increasingly popular. While there may be opportunities for deployment P3s, it is a necessary tool of the government to be able to reverse course in the event that a project collapses, undermines the public interest or fails to adhere to critical labor protections. Providing a mechanism for foreign investors to demand a payoff when a local, state, or federal government takes back a failed project creates a dangerous roadblock to the delivery and operation of transportation services, and should be guarded against by including transportation in Annex II.

Infrastructure

TTD strongly supports the recommendations of the AFL-CIO that renegotiations include a new provision requiring a commitment to infrastructure investment by all NAFTA Parties. Specifically, NAFTA should require each Party to invest a minimum of 3% of GDP annually on public infrastructure construction, repair, and maintenance. Additionally, the NAFTA implementing bill must contain one-time mandatory funding for specific trade-related projects in the U.S. By including such provisions, the U.S. government can begin to chip away at the trillions of dollars needed in long-term investments to our nation's infrastructure, as well as invest in transportation infrastructure required to facilitate the movement of goods and people, and grow the economy.

Aviation

In the renegotiation of NAFTA it is critical that air transport services continue to be excluded. NAFTA Article 1201 currently excludes most air services from its cross-border requirements, and Annex 1, Schedule of the United States, establishes reservations concerning air transportation with regards to foreign ownership and control rules as well as cabotage laws that bar foreign carriers from engaging in U.S. domestic point-to-point air service. These common sense protections serve to defend American aviation from unfair competition and preserve critical labor rights. Both the Article 1201 exclusions and the inclusion of air transportation in the Schedule should not be altered by any NAFTA renegotiation.

We also note that air transport services have historically been excluded from bilateral and multilateral free trade agreements given the unique nature of the aviation industry as well as the existence of separate administrative regimes governing these services. Since 1993, the US has entered into "Open Skies" agreements with 120 countries, including Canada and Mexico. These agreements have paved the way for the liberalization of air transport, opened markets, and provided carriers the ability to select routes, establish frequencies and set prices. These agreements remain the appropriate venue to negotiate international aviation.

Maritime

Similar to aviation, maritime services, laws and policies have also been excluded from free trade agreements because of their unique economic and national security importance. In keeping with this practice, maritime operations should not be included in a renegotiated NAFTA. Today, U.S. maritime cabotage laws collectively known as the Jones Act require that all ships engaged in domestic marine commerce are built in America and crewed by U.S. mariners. This sustains hundreds of thousands of jobs, and generates billions in annual economic output. It is critical to maintain domestic preference in maritime operations, both for the economic benefits and the continued support of our armed forces, trade objectives, foreign aid programs, and national security. For these reasons, the Jones Act, including its constituent parts, must remain excluded in the renegotiation of NAFTA.

The reopening of NAFTA represents a powerful opportunity for the Administration to correct years of bad trade policy that has been harmful to American workers. USTR should take steps to improve the Agreement by reclaiming authority on cross-border transportation and safety issues, securing commitments to infrastructure, protecting public services and defending domestic content

and innovative procurement policies. Furthermore, USTR must ensure that aviation and maritime transport services remains excluded from the scope of NAFTA. Together, these items are key to ensuring a better NAFTA with better outcomes for the economy and American workers.

We thank USTR for the opportunity to comment on this notice, and look forward to continuing to work with the Administration on this issue.

Sincerely,

A handwritten signature in black ink, appearing to read 'Edward Wytkind', with a stylized flourish at the end.

Edward Wytkind
President



Transportation Trades Department, AFL-CIO
A bold voice for transportation workers

TTD MEMBER UNIONS

Air Line Pilots Association (**ALPA**)
Amalgamated Transit Union (**ATU**)
American Federation of Government Employees (**AFGE**)
American Federation of State, County and Municipal Employees (**AFSCME**)
American Federation of Teachers (**AFT**)
Association of Flight Attendants-CWA (**AFA-CWA**)
American Train Dispatchers Association (**ATDA**)
Brotherhood of Railroad Signalmen (**BRS**)
Communications Workers of America (**CWA**)
International Association of Fire Fighters (**IAFF**)
International Association of Machinists and Aerospace Workers (**IAM**)
International Brotherhood of Boilermakers, Iron Ship Builders,
Blacksmiths, Forgers and Helpers (**IBB**)
International Brotherhood of Electrical Workers (**IBEW**)
International Longshoremen's Association (**ILA**)
International Organization of Masters, Mates & Pilots, ILA (**MM&P**)
International Union of Operating Engineers (**IUOE**)
Laborers' International Union of North America (**LIUNA**)
Marine Engineers' Beneficial Association (**MEBA**)
National Air Traffic Controllers Association (**NATCA**)
National Association of Letter Carriers (**NALC**)
National Conference of Firemen and Oilers, SEIU (**NCFO, SEIU**)
National Federation of Public and Private Employees (**NFOPAPE**)
Office and Professional Employees International Union (**OPEIU**)
Professional Aviation Safety Specialists (**PASS**)
Sailors' Union of the Pacific (**SUP**)
Sheet Metal, Air, Rail and Transportation Workers (**SMART**)
SMART-Transportation Division
Transportation Communications Union/ IAM (**TCU**)
Transport Workers Union of America (**TWU**)
UNITE HERE!
United Mine Workers of America (**UMWA**)
United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service
Workers International Union (**USW**)

These 32 labor organizations are members of and represented by the TTD

