



A bold voice for transportation workers

ENSURING THAT OPEN SKIES DELIVERS ON ITS PROMISE

Proponents of “free trade” have long argued that the lowering of trade barriers between nations sparks economic growth by providing cheaper goods for consumers at home and opening new markets for U.S. products abroad. However, those of us in the labor movement have long understood that the realities of free trade rarely live up to the promise. The decks are too often stacked against U.S. workers, and free trade agreements too often allow multi-national corporations to exploit workers throughout the world—all in search of increased profits. Furthermore, the “protections” built into agreements are so rarely enforced as to render them meaningless.

Now, we say the realities of free trade “rarely” live up to the promise because for nearly thirty years trade in commercial aviation services under the U.S. “Open Skies” regime has often been the exception. Trade in aviation services has primarily been conducted through bilateral air services, or “Open Skies” agreements. With over 100 such deals in effect between the U.S. and countries throughout the world, the Open Skies regime has successfully expanded markets and created jobs as international service has grown. Transportation labor has long argued that liberalized air services must be accompanied by explicit commitments to fair competition and high labor standards as well as clear mechanisms for enforcement. While this trade policy model—appropriately overseen by the subject-matter experts at the Departments of State and Transportation, not the USTR—has given us more confidence that expanded air services can benefit our members, it only works when our government negotiates pacts to meet these goals and enforces them in practice.

Unfortunately, the emergence of “flag of convenience” airlines that seek to lower labor standards and circumvent tax, safety, and employment regulations are threatening to jeopardize the gains established under the Open Skies model. In order to prevent this from happening, U.S. policymakers must take actions that will enforce the terms of our existing agreements, prevent the spread of airlines that operate a flag-of-convenience or related form of labor arbitrage, and ensure that U.S. airlines and their workers are able to compete on a level playing field with international competitors.

Flag-of-convenience airlines are subsidiary carriers established by a parent company in a nation other than its home country in order to take advantage of more lenient labor, tax, and safety laws. These arrangements can and do exist throughout the world.

However, the multilateral nature of the U.S.-EU Open Skies agreement, which was first signed in 2007, enabled the rise of flag-of-convenience air carriers in Europe. While the EU established a trans-European regime in which carriers from any EU member state could operate across borders within the EU and beyond, labor laws and airline licensing authority in Europe remain bound by

national borders. This created a fragmented system that tilted the balance of power in labor-management relations in favor of cross-border managements, and provided greater possibilities for “reflagging,” “social dumping,” and “regulatory shopping” by EU airlines, similar to what has occurred in the maritime industry. Pointedly, EU airlines often use their transnational nature to create subsidiary companies in other EU countries with more permissive laws, and sometimes the carriers play those different labor laws against each other. In response to these concerns, the EU and U.S. amended the agreement in 2010 to include a labor clause— [Article 17 bis](#)—which requires that “opportunities created by the Agreement are not intended to undermine labour standards or labour-related rights and principles contained within the Parties’ respective laws.” In short, the market access opportunities created for the US-EU market are not to be used to undermine the existing labor rights or standards of employees.

While the unique nature of the European market presents specific concerns, flight crew forum shopping occurs worldwide. Other carriers are operating under anti-competitive business models by engaging in labor arbitrage. It is only a matter of time before these carriers or others like them attempt to use their flag-of-convenience schemes to fly from their foreign markets to the U.S. Congress can and must solve this problem, and thanks to Reps. Peter DeFazio (D-OR), Rick Larsen (D-WA), Sharice Davids (D-KS), Rodney Davis (R-IL), and Drew Ferguson (R-GA), a legislative solution is working its way through the House of Representatives. The Fair and Open Skies Act (H.R. 3632) would make several simple, yet effective reforms to how the U.S. Department of Transportation (DOT) grants foreign air carriers the authority to conduct commercial operations to and from the United States that would ensure that flag-of-convenience airlines do not gain a foothold in the U.S. market. First, this bill would require that the DOT perform a public interest test for all foreign airlines seeking the authority to conduct operation to and from the U.S. Second, it would require the DOT to examine whether the airline is a flag-of-convenience carrier or engages in related forms of labor arbitrage. Third, in addition to Congress’ existing requirement for DOT and the State Department to consult with airline labor (at 49 U.S.C. Section 40105), it requires the DOT and the State Department to consider labor standards when formulating formal negotiating objectives. Finally, the bill requires any new European airline to comply with the terms of the U.S.-EU Open Skies Agreement, including [Article 17 bis](#).

We believe it is important the record reflect that the concerted effort by corporate special interests to distort this bill’s modest intentions are as unfortunate as they are misleading. First, the public interest test is a familiar, well-worn tool used by the DOT since the inception of the Open Skies framework. In fact, the DOT has used this test for every single foreign air carrier permit application for over 70 years except for the two instances. In both of these cases it was side-stepped in order to grant a permit to a flag-of-convenience carrier. Second, the legislation would not specifically bar any airline because of its labor practices. Rather, it would simply require the existing public interest test, which examines 16 items to date, to consider whether a carrier is operating a flag of convenience in its overall analysis. Third, the legislation does not apply to existing carriers; it is prospective. Finally, it is important to clarify that the bill will not trigger retaliation from Europe. The bill merely requires European carriers to comply with the terms of the Open Skies Agreement that Europe negotiated with the U.S., which itself provides a formal mediation process for handling disputes if they arise, and it expressly prohibits unilateral retaliation. Similarly, the reforms contained in the Fair and Open Skies Act have no bearing on

and will not unravel any Open Skies or other air services agreements because the United States retains the right to perform its public interest analysis on air carriers, as the DOT does to this day.

These modest reforms would preserve the integrity of the Open Skies regime and ensure that new entrants are not able to shirk the rules, drive down labor standards, and undermine the competitiveness of U.S. airlines. H.R. 3632 has strong bipartisan support and was unanimously passed out of the House Transportation and Infrastructure Committee in September 2019. Similar legislation was included in the House-passed FAA Reauthorization Act of 2018, and had bipartisan Senate support during that bill's conference. We urge the House and Senate to move quickly to pass this bill into law.

TTD unions have worked aggressively to advance policies that protect the jobs, benefits, and working conditions of the men and women who operate, maintain, and service our nation's airlines and ensure the world's safest and most efficient aviation system. Flag-of-convenience air carriers threaten to undermine this balance and the effectiveness of our Open Skies agreements.

By passing the Fair and Open Skies Act, Congress will provide clarity to the DOT to evaluate and help prevent flag-of-convenience airlines from undermining U.S. workers and carriers. Without the strict enforcement mandated by this bill, Open Skies may quickly devolve into another example of globalization that fails workers both here and abroad.

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