



October 28, 2019

The Honorable Robert Lighthizer
U.S. Trade Representative
Executive Office of the President
600 17th Street, NW
Washington, DC 20508

Dear Ambassador Lighthizer:

As policymakers and stakeholders continue to negotiate the terms of the United States–Mexico–Canada Agreement (USMCA), we, the International Association of Sheet Metal, Air, Rail and Transportation Workers - Transportation Division (SMART-TD), and the Transportation Trades Department, AFL-CIO (TTD), write to bring your attention to a thus unresolved issue concerning freight rail service between the United States and Mexico and the disparate treatment of rail workers under current law.¹

Since 1931, Mexico has required railway companies operating within its borders employ only Mexican workers. This restriction was further enshrined in NAFTA by way of a Non-Conforming Measure in the Annex 1 Schedule of Mexico. The U.S. does not have such a restriction in federal law, nor does NAFTA contain a reciprocal carve out for U.S. rail workers.

This issue came to the fore last year, as a rail carrier began to operate freight trains into the United States using crews domiciled in Mexico. While SMART-TD and TTD have substantial concerns regarding the safety and qualification of these employees,² their ability to work within the U.S. is also a question of basic fairness and equity, given the existence of Mexico's prohibition. Allowing workers from Mexico to operate in the United States while U.S. workers are prohibited from operating in Mexico is a direct and existential threat to the jobs of thousands of conductors and locomotive engineers represented by SMART-TD.

¹ TTD represents 33 unions in the transportation sector. TTD affiliate SMART-TD represents approximately 50,000 freight rail crewmembers.

² Stopping The Unsafe Outsourcing Of U.S. Rail Jobs, TTD Policy Statement No. F18-03

When the Administration moved to reopen NAFTA, TTD filed comment urging you to pursue a reciprocal measure regarding rail service within the United States.³ We filed similar remarks to the International Trade Commission's investigation on sectoral impacts of the USMCA.⁴ This language would provide the railroad crewmembers represented by SMART-TD the same protections enjoyed by their Mexican counterparts and would defend the high labor standards, working conditions, and system safety that exist in this country due to a strong unionized workforce.

We are disappointed that this measure was not included in November's agreement due to objections from the Mexican government. Unfortunately, without its inclusion, the agreement fails domestic rail workers and their sector, and further fails to uphold principles of parity between the U.S. and Mexico on the issue of rail service. If the opportunity to renegotiate this provision arises, we strongly urge you to take aggressive action to ensure its addition.

In the event that it is not possible to amend the existing USMCA to include a reciprocal carve out for U.S. rail employees, we call on you to pursue other avenues to put an end to unfair and unsafe freight rail competition from Mexico. SMART-TD and TTD strongly agree with the Administration that NAFTA has failed working people and that the impacts of a trade agreement that was not written for their benefit are still being felt. Ensuring that the USMCA does not repeat these mistakes is paramount, and we call on you to not abandon freight rail workers. SMART-TD and TTD look forward to working with you and Congress on a fair and just solution.

Sincerely,



Jeremy Ferguson
President
SMART-TD



Larry I. Willis
President
Transportation Trades Department, AFL-CIO

³ Negotiating Objectives Regarding Modernization of the North American Free Trade Agreement With Canada and Mexico, Docket No. 2017-0006

⁴ United States-Mexico-Canada Agreement: Likely Impact on the U.S. Economy and on Specific Industry Sectors Investigation Docket No. TPA-105-003