A bold voice for transportation workers

WRITTEN STATEMENT OF
EDWARD WYTKIND, PRESIDENT
TRANSPORTATION TRADES DEPARTMENT, AFL-CIO

BEFORE THE
SENATE COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION
SUBCOMMITTEE ON AVIATION OPERATIONS, SAFETY AND SECURITY
HEARING ON
"THE U.S. AVIATION INDUSTRY AND JOBS: KEEPING AMERICAN MANUFACTURING COMPETITIVE"

March 13, 2014

Chairwoman Cantwell, Ranking Member Ayotte, and members of the Senate Commerce, Science, and Transportation Committee's Aviation subcommittee, thank you for the opportunity to testify today on the international competitiveness of the U.S. aviation industry.

As the President of the Transportation Trades Department, AFL-CIO (TTD), I am honored to speak on behalf of the employees who operate, maintain, service and build our nation's aviation system. By way of background, TTD consists of 32 affiliated unions that represent workers in every mode of transportation, private and public sector, including those who work in aviation[1]. Today, America is confronted with enormous challenges as the effects of globalization ripple throughout the aviation sector and its workforce. The policy and trade decisions of our government and the business decisions of our air carriers in the next few years will determine the fate of this vital sector of the U.S. economy.

With trade liberalization policies taking hold around the world, our government – with appropriate congressional oversight – has the responsibility to ensure U.S. airlines can compete on a level playing field worldwide and to protect and expand middle class aviation jobs. Specifically, the Administration and Congress must carefully manage aviation trade relationships to ensure we avoid the land mines and pit falls of unscrupulous liberalization, protect against outsourcing of critical safety and security work, oppose regulatory overreaches by foreign states, and provide stable and robust financing for our aviation infrastructure and FAA workforce.

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[1] A complete list of TTD affiliates in attached.

Transportation Trades Department, AFL-CIO

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We are currently faced with a particularly dangerous instance of liberalization run amok that could have far-reaching negative implications for the U.S. aviation industry and its employees. Norwegian Air Shuttle (NAS), which is incorporated in Norway and holds an air operators certificate (AOC) in that country has developed a business model that is designed to exploit European aviation and labor laws and the U.S.-EU Air Transport Agreement (ATA) in order to evade its collective bargaining obligations in Norway and Norway's laws. NAS has created a subsidiary, Norwegian Air International (NAI) which applied for and received an Irish AOC even though it will not serve Ireland. NAI has also registered its 787 aircraft in Ireland and has applied for a foreign air operators certificate with the U.S. Department of Transportation (DOT) as an Irish carrier. Despite being a subsidiary of a Norwegian company and registering as an Irish airline, NAI is using pilots who will be based in Thailand and employed under individual employment contracts that are governed by the laws of Singapore to crew these flights. The pilot crew will not be employed directly by NAI but by a pilot recruitment company that will then contract, or more accurately "rent" them to NAI. A similar arrangement will apply to the flight attendants who will work on the 787s.

The goal here is clear. NAI is using the unique nature of EU aviation laws to effectively shop around for the labor laws and regulations that best suit its bottom line. It's using a "Flag of Convenience" strategy at the expense of high labor standards. NAI is also taking advantage of the liberalized transatlantic aviation market provided by the U.S.-EU ATA, and claiming that this agreement alone provides unlimited access to the U.S. market. NAI has never disputed the assertion by TTD and other U.S. and European labor organizations as well as major air carriers on both sides of the Atlantic that they are simply using this business model to avoid Norwegian labor, tax and other laws. The airline has presented a number of economic reasons for registering in Ireland, but each of these is unsubstantiated and has only been recently presented. Rather than presenting legitimate, fact-based economic benefits, NAI's claims appear to be part of a publicity campaign designed to distract the general public and federal regulators from their true goal and purpose: to undermine labor standards and secure access to the transatlantic aviation market with bottom of the barrel labor costs.[2]

We raise this not just to complain about a foreign airline operator or to insulate U.S. carriers from legitimate competition. If allowed to proceed, the NAI business model will have an immediate impact on U.S. airlines and their employees. With plans to serve Los Angeles, Oakland, Orlando and other American cities if its application secures DOT approval, NAI would undercut U.S. air carriers and their employees that serve those same markets by as much as 50 percent. If NAI's plan is approved, in the long term this type of "Flag of Convenience" model could become the norm, with more and more airlines seeking to compete by scouring the globe for cheap labor and lax regulations.

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[2] Attached are joint comments by AFL-CIO president Richard Trumka and TTD president Edward Wytkind, submitted to DOT docket number OST-2013-0204 on December 12, 2014.

Fortunately, negotiators for the EU-U.S. ATA foresaw this type of nefarious business model as a potential problem and included, for the first time ever, a labor article designed to prevent benefits from the ATA from having adverse effects on aviation jobs. This provision, Article 17 *bis* ("Social Dimension"), states that "the opportunities created by the Agreement are not intended to undermine labour standards or the labour-related rights and principles contained in the Parties' respective laws." It further states that "the principles in paragraph 1 shall guide the Parties as they implement the Agreement."

The inclusion of Article 17 *bis* in the ATA represented important progress in our global effort to ensure that market-opening trade initiatives are not used to harm good jobs and undermine labor standards, and was praised by both U.S. and European negotiators. The article is also consistent with U.S. law that requires DOT to apply, among other factors, a public interest standard as it considers these aviation policy questions. We believe that NAI's business model is a clear violation of Article 17 *bis* and U.S. public interest standards, and gives DOT ample grounds on which to reject the application. We are also pleased that over a quarter of the U.S. Senate, including many of you here today, joined a letter that was led by Senators Schatz, Blunt and Rockefeller to DOT raising many of these concerns, and urging Secretary Foxx to ensure the NAI application is fully compliant with U.S. law and the U.S.-EU ATA. I want to thank these Senators for their support. Our government must make it clear that NAI's operating scheme runs contrary to the faith and intent of the US-EU ATA and will not be rewarded with expanded access to our lucrative aviation market.

In addition to the NAI dispute, another pending trade issue that is vital to our aviation sector is the U.S.-EU negotiations over a Transatlantic Trade and Investment Partnership, better known as TTIP. These negotiations encompass a wide variety of trade issues, yet despite the historical precedent of excluding air services in these types of broad trade negotiations, the EU is attempting to include aviation liberalization in these talks. We are strongly opposed to this approach, as it is an attempt by the EU to force changes to U.S. rules that limit foreign ownership and control of U.S. airlines and reserve domestic point-to-point service, or cabotage, to U.S.-controlled carriers. Because the EU has failed in its attempts to force unwanted reforms to these U.S. laws, it is attempting to do so in complex TTIP talks with hopes that somehow our aviation interests would be "traded away" for other trade objectives. This strategy must be rejected and we have communicated these views to the Administration and the EU.[3]

The good news is that risking our aviation interests in a broader trade negotiation isn't necessary if the objective is opening aviation markets and expanding trade and jobs. Over 100 trade liberalization pacts, referred to as "Open Skies" agreements already exist between the U.S. and various governments, and new and expanded agreements are on the table. In other words, aviation trade is expanding through existing negotiating frameworks overseen by the subject-matter experts at the Departments of Transportation and State. There is no need for our government to throw aviation into a larger, more complex pot of trade issues.

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[3] Attached are TTD's comments on the Transatlantic Trade and Investment Partnership, submitted to USTR docket number USTR-2013-07430 on May 10, 2013.

We know that the expansion of international air transportation opportunities can offer lucrative business opportunities for U.S. airlines and, if done the right way, create good aviation jobs. At the same time, we know that globalization without checks and balances can have devastating effects on entire industries and middle class American jobs.[4] TTD has always rejected efforts that seek aviation liberalization at any cost and without adequate protections for the men and women who work in our aviation industry. Decades of unfair trade policy have ravaged workers in many U.S. industries, and we will not relent in our commitment to ensuring that aviation trade liberalization does not have the same result for U.S. aviation employees.

As noted above, we were pleased to see the inclusion of a labor article in the U.S.-EU ATA as well a process through which the parties can seek to address adverse effects of the agreement on aviation employees. The U.S. also wisely rejected efforts by the EU to force changes to our rules and regulations governing foreign ownership and control of U.S. airlines. It was decided by our government that foreign investment in our airlines was appropriate but not to a degree that ceded actual control to foreign investors.

Foreign ownership and control rules, and prohibitions against foreign carriers engaging in cabotage have ensured a viable U.S. airline industry and have protected U.S. aviation workers against unfair competition, preserved workers' rights and ensured our nation's status as the world's leader in air transportation. Foreign states have long lobbied to loosen these restrictions in order to gain a foothold in the lucrative U.S. aviation market, the world's largest, and syphon away good middle class jobs. In rejecting these proposals, despite the heavy-handed tactics of the EU, the final U.S.-EU accord proved again that liberalization agreements can be reached that include important protections for a vital U.S. industry and good jobs. With companies such as NAI already seeking to exploit an Open Skies agreement with a clear labor protection article, it would be particularly dangerous to further muddy the regulatory waters by throwing air traffic rights issues into a broad free trade agreement.

The expanding web of aviation liberalization agreements throughout the world is making the global aviation system increasingly interconnected and integrated. With this comes a host of regulatory issues and concerns that will need to be addressed. One such issue is the impact of aircraft carbon emissions on the environment and global climate change. TTD is committed to working with U.S. carriers and the U.S. government to seeking a global solution to reducing aviation emissions, but we believe that any solution must be truly global in order to provide meaningful results and ensure competitive balance. Piecemeal unilateral attempts to curb carbon emissions would place an unreasonable financial burden on U.S. carriers and their employees and only further delay the process of reaching an international, consensus-based agreement. This includes the EU's Emissions Trading Scheme (ETS), a plan that if implemented would apply to all flights entering and leaving EU airspace.

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[4] Bivens, J. (2008, May 6). Trade, Jobs and Wages. *Economic Policy Institute*. Issue Brief #244.

I would like to thank Senators Thune and McCaskill for leading the effort last year to pass legislation that allowed the Secretary of Transportation to combat the harmful effects[5] of the EU ETS and ensured that U.S. airlines were not subject to the EU cap-and-trade tax penalties. Because of this legislation and other international pressure, the EU postponed implementation of ETS for a year to give the International Civil Aviation Organization (ICAO) an opportunity to draft a global plan. We were pleased, then, when late last year ICAO's general assembly approved a plan that will provide for the development, over the next three years, of a global framework for addressing aviation's impact on climate change, with the goal of implementing the plan worldwide by 2020. The ICAO action was an important step toward implementing a global solution to this problem, and we look forward to working with ICAO to develop a framework that will substantially reduce global emissions, improve the efficiency and cost-effectiveness of our aviation system, and promote sound environmental stewardship while maintaining competitive balance and fairness in the international aviation marketplace.

We are also pleased that EU officials have tentatively backed off a plan to continue pushing the misguided ETS scheme. In the aftermath of the ICAO general assembly meeting, the European Commission (EC) proposed revising the EU law so that the ETS would cover all flights over EU airspace, including those flown by international carriers. Last week EU officials announced that they would not pursue this course of action, but a final vote is pending in April. We hope that the EU will completely suspend its plans to unilaterally implement its ETS scheme and work with the U.S. and others toward a truly global solution through ICAO.

We also must ensure that the more than 700 foreign-based aircraft repair stations certified by the FAA to work on U.S. aircraft are held to the same safety and security rules that we require for work done in this country. Too often this has not been the case. For example, aircraft mechanics working in the United States either employed at air carriers or at domestic contract repair stations are required to undergo various drug and alcohol screenings to ensure their ability to perform safety-sensitive repairs. Yet employees working at repair stations based overseas are exempt from these tests despite the fact that they work on the same U.S. aircraft and at repair stations certified by the FAA. To address this and other safety loopholes, Senator McCaskill championed a number of reforms to aircraft repair station regulations in the context of the FAA Modernization and Reform Act of 2012. I want to thank and recognize the Senator for her leadership on this issue. Specifically, the final law included a provision (Section 308(d)(2)) directing the FAA, within one year of enactment, to issue a proposed rule requiring all repair station employees responsible for safety-sensitive maintenance on U.S. aircraft to be subject to an alcohol and controlled substance testing program.[6] While we are pleased that Congress moved to address this safety issue, the FAA is now over a year late in fulfilling this mandate and

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[5] Attached is TTD's policy statement "Supporting a Global Solution to Aviation Emissions," which was adopted by the TTD Executive Committee on October 29, 2013.

[6] Separately, Section 308(d)(1) directs the Secretary of Transportation and the Secretary of State to request that member countries of ICAO establish international standards for alcohol and controlled substance testing of persons that perform safety-sensitive maintenance functions on U.S. commercial aircraft.

the provision will have no impact until it is formally implemented by the FAA. This delay is unacceptable and particularly grievous since additional time will be needed to implement the final regulations after the proposed rule is finally released.

We are also extremely disappointed in the final security rule on foreign and domestic repair stations issued by the Transportation Security Administration (TSA) in January. When TSA issued an NPRM in 2010, we raised significant concerns that the proposal did not go far enough to address the security questions that have been raised. We agree with TSA's assessment, noted in the agency's NPRM, that as TSA "tightens security in other areas of aviation, repair stations increasingly may become attractive targets for terrorist organizations attempting to evade aviation security protections currently in place." That is why we were dismayed that the final rule further rolls back the already weak security requirements TSA proposed in 2010, fails to address security loopholes we identified in the proposed rule, and runs counter to the congressional requirement that TSA ensure the security of maintenance work performed at contract repair stations.

The final rule eliminates the proposal that repair stations certified by the FAA that work on U.S. aircraft adopt and implement a security program to help control access to a facility. Instead, limited and weak security measures will apply only to stations that are on or adjacent to an airport. The security challenges raised by the heavy use of contract maintenance are not limited to stations at airports and Congress clearly did not identify this distinction when it mandated security enhancements.

The final rule also did nothing to address concern with adequate background checks of contract station employees. In fact, it went in the opposite direction by only applying these reviews to individuals at a repair station designated as a TSA point of contact and those who have the means to prevent the unauthorized operation of large aircraft.

Finally, TSA does not intend to fully inspect FAA certified repair stations, weakening the agency's ability to ensure their security. This rule also fails to give TSA the clear authority to conduct unannounced inspections of foreign repair stations. While the rule extols the virtues of unannounced inspections at domestic stations, it notes that for foreign stations "it will always coordinate any inspection with the host government prior to starting an inspection." The final rule fails to fulfill the intent of Congress, and we look forward to working with this Committee to improve the safety and security of foreign repair stations.

Beyond TTIP, Open Skies negotiations and ICAO global aviation emission issues, the U.S. government must embrace policies that promote the competitiveness of U.S. airlines and protect and expand U.S. airline jobs. It also must not advance policies that provide a competitive advantage to foreign airlines, particularly state owned or subsidized airlines. Unfortunately the Department of Homeland Security (DHS) has been doing the latter. Earlier this year DHS opened a Customs and Border Protection (CBP) pre-clearance facility at the Abu Dhabi International Airport in the United Arab Emirates (UAE), despite an outpouring of objections from the U.S. aviation community, including labor, U.S. airlines and airports. CBP pre-

clearance facilities are popular with passengers and can help relieve congestion at customs check points in U.S. airports. However, no U.S. carrier currently flies between the U.S. and Abu Dhabi. This facility is staffed by U.S. customs agents at significant cost to the U.S. taxpayer, yet it only benefits Etihad – the state-owned air carrier of the UAE. This is also a significant departure from the prevailing construct of preclearance operations, which is to facilitate U.S. travel and to benefit U.S. travelers. Preclearance should not be a vehicle to put U.S. air carriers and U.S. airline jobs at risk by advantaging a foreign competitor exclusively. And given that Etihad only operates three routes between Abu Dhabi and the U.S., we believe CBP resources and personnel would be better used here at home to relieve overburdened customs lines in U.S. airports. While the Abu Dhabi facility is now up and running, we are concerned that this will lead to other pre-clearance facilities in airports that have a minimal U.S. presence such as Dubai and Doha. We will work closely with Congress in the coming months to ensure that our customs resources are used in a way that help alleviate congestion at our airports while also promoting the competitiveness of U.S. airlines.

In order to remain competitive in the global marketplace and continue in our commitment to serving the flying public, the U.S. must invest in the FAA's workforce and aging infrastructure, stabilize the FAA's operating budget, ensure enhanced oversight of the industry and airspace, and continue modernizing the National Airspace System (NAS) through the Next Generation Air Transportation System (NextGen) initiative. We have all witnessed the impact that government shutdowns have had on these programs and each time this occurs, these initiatives, designed to make air travel safer and more efficient and to expand capacity, are grounded or idled.

The government shutdown is just the latest disruption for the FAA. Passage of the 2012 FAA Reauthorization Act was delayed over three years with 23 extensions before finally being signed into law. In fact, when an agreement could not be reached on the 21st extension, the FAA was partially shut down for two weeks during the summer of 2011, costing the government nearly $30 million a day. More recently, in April 2013, sequestration forced the FAA to furlough every employee, including air traffic controllers and safety inspectors, and look at closing towers in order to achieve the mandated spending cuts. Sufficient and predictable long-term funding is desperately needed to ensure that our aviation system is as safe and efficient as possible.

This lack of stable funding has already caused damage, some of which will be difficult if not impossible to reverse. For example, stop-and-start funding means that the FAA can't plan for the future, making long term improvement and modernization projects even more difficult. In addition, restarting modernization projects is very expensive and some projects may need to begin again from square one. The April 2013 furloughs caused delays to modernization projects like En Route Automation Modernization (ERAM) that are costing $6 million per month of delay (currently estimated to be about $42 million).

Due to budget cuts, preventative maintenance has been halted, and engineers and systems specialists must contend with a fix-on-fail policy, meaning they must wait until equipment actually breaks before replacing it. This creates an obvious safety concern and may also result in excessive and avoidable air traffic delays. Sequestration-mandated furloughs in April 2013

caused severe delays: during the week of April 21-27 2013, delays nearly tripled at our nation's airports, from 5,103 delays to 13,694. These funding cuts are problematic, and will continue until Congress finds a responsible way to end sequestration. Until then, our NAS is in jeopardy of falling behind on efficiency, safety, and capacity.

The FAA also continues to face serious problems regarding staffing, especially considering that one-third of its workforce, including air traffic controllers, aviation safety inspectors and systems specialists, will be eligible to retire starting this year. Furthermore, even if the FAA replaced these retiring workers immediately, the training for employees throughout the agency is extensive and it can take two to five years to fully train new hires. In addition, FAA operations within the current budget environment are presenting major challenges for the FAA workforce and the aviation system, which is resulting in limited funding for travel, challenges performing inspections and other surveillance activity, reduced or delayed maintenance of critical systems and equipment, and difficultly in meeting growing industry demands with its manufacturing and certification process. Without clear funding in place to ensure the current workforce remains on the job and a new generation of employees is in place with access to thorough on-the-job training, there is no way the FAA can guarantee there will be enough aviation safety inspectors, air traffic controllers, systems specialists and other employees in place to secure the safety and efficiency of the system.

The U.S. must also foster programs that will help develop a workforce with the skills and expertise necessary for the manufacture and maintenance of modern, technologically advanced aircraft. U.S. aviation cannot compete globally without maintaining its world leadership in producing the highest quality aircraft. To that end the International Association of Machinists and Aerospace Workers (IAM), a TTD affiliate, has partnered with the Boeing Company to create the Quality Through Training Program. The IAM and Boeing jointly design and administer a host of programs designed to continually upgrade the skills and abilities of the incumbent workforce. These programs comprise career planning, education assistance, and a variety of onsite training programs including apprenticeships.

We also want to refer the committee to the Modular Manufacturing Development Project, developed by IAM in collaboration with Goodwin College, the Connecticut Center for Advanced Technology (CCAT) and other manufacturing organizations. This project is a shining example of a program designed to increase our manufacturing capabilities to meet the demands of U.S. aviation and around the world. This project has identified gaps in our manufacturing capabilities and brings together industry stakeholders, including labor, to recognize and address the needs of our manufacturing workforce. I commend IAM, led by President R. Thomas Buffenbarger, for its leadership and vision in collaborating on this project, and hope that it will serve as model for workforce development and technological advancement in aviation manufacturing.

The U.S. aviation industry and its workers face significant challenges and opportunities as globalization and liberalization become more prevalent. Already, U.S. aviation crews have seen their jobs threatened by corporate schemes such as alliances between U.S. and foreign air carriers, and the "flag of convenience" scheme being advanced by NAI. Similarly, foreign

outsourcing of aircraft maintenance and passenger service functions is sending good U.S. aviation jobs overseas, while our own FAA remains paralyzed by sequestration and budgetary uncertainly. The U.S. aviation system remains the best and safest in the world, however, and through smart government policies and investment that promote U.S. competitiveness, middle class job creation, and technological modernization we can thrive in the international marketplace.

Thank you for the opportunity to testify today, and I look forward to working with the committee to promote the competitiveness of the U.S. aviation industry and to protect and expand our middle class aviation industry workforce.

Attachment 1

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

BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
WASHINGTON, DC

Application of NORWEGIAN AIR INTERNATIONAL LIMITED for an exemption under 49 U.S.C. § 40109 and a foreign air carrier permit pursuant to 49 U.S.C. § 41301 (US-EU Open Skies)	)	Docket No. OST-2013-0204

ANSWER OF THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS, AND THE TRANSPORTATION TRADES DEPARTMENT, AFL-CIO TO DOT NOTICE OF MOTION

On behalf of the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), and the Transportation Trades Department, AFL-CIO, we write in response to the written summary of the January 8, 2014 U.S.-EU Joint Committee meeting as it pertained to the current and planned long haul operations of Norwegian Air Shuttle ASA (NAS) and its affiliated companies, Norwegian Long Haul AS (NLH) and Norwegian Air International Limited (NAI).

The AFL-CIO and TTD support the comments filed by the Air Line Pilots Association (ALPA), and we refer you to the analysis and response to each point made by the European delegation detailed in ALPA's filing. As those comments discuss, the DOT Summary states that during a closed-door session of the Joint Committee Meeting, the European delegation gave the Joint Committee what the Summary characterized as "some detailed factual information." We do not believe that this characterization accurately reflects the nature of the information provided by the European delegation, as the information is in most cases not detailed or not factual, or both. Much of the justification being provided for NAS/NLH/NAI business model, including their decision to seek an Air Operators Certificate in Ireland rather than Norway, has only

been recently presented. Furthermore, as detailed in the ALPA filing, the economic claims for basing long haul operations out of Ireland seem to be insubstantial. Rather, we believe that these claims are merely part of a publicity campaign designed to distract the general public and federal regulators from their true goal and purpose: to avoid Norway's labor and other social laws, evade their existing collective bargaining agreements, and to undercut existing U.S. and European airlines and their workers.

Perhaps the most troubling thing about the written summary is what is what the EU delegation did not mention. The EU-U.S. Air Transport Agreement (ATA) includes, for the first time ever, a labor article designed prevent an agreement from having adverse effects on aviation workers. This provision, Article 17 bis ("Social Dimension"), states that "the opportunities created by the Agreement are not intended to undermine labour standards or the labour-related rights and principles contained in the Parties' respective laws." It further states that "the principles in paragraph 1 shall guide the Parties as they implement the Agreement."

The inclusion of Article 17 bis in the ATA represented important progress in our global effort to ensure that market-opening trade initiatives are not used to harm good jobs and undermine labor standards, and was praised by both U.S. and European negotiators. On March 25, 2010 Siim Kallas, the European Commission Vice President Responsible for Transport released a statement proclaiming that "For the first time in aviation history, the agreement includes a dedicated article on the social dimension of EU-US aviation relations. This will not only ensure that the existing legal rights of airline employees are preserved, but that the implementation of the agreement contributes to high labour standards."[1]

Despite such a strong statement supporting high labors standards and worker protections, the European delegation appears to be walking away from commitments they agreed to in Article 17 bis. At no point in the written summary of the European delegation's presentation was Article 17 bis mentioned or referenced. Nor does it appear that the European delegation has factored this article into its determination that the U.S. DOT should grant NAI a foreign air carrier permit.

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[1] European Commission, Office of the Vice President for Transport. Breakthrough in EU–US second-stage Open Skies negotiations: Vice-President Kallas welcomes draft agreement. Retrieved from: http://europa.eu/rapid/press-release_IP-10-371_en.htm?locale=en

As TTD detailed in its previous filing, NAI's intentions leave little in doubt. Its business model was developed explicitly to evade its collective bargaining obligations in its home country and Norwegian labor laws, and it is doing so using opportunities provided by the ATA. By basing its crews in Thailand and employing them on individual contracts governed by the laws of Singapore, NAI is clearly undermining labor standards on both sides of the Atlantic.

The negotiators of the ATA recognized that the fact that each European signatory to the ATA has its own national labor law might entice airlines to "shop around for a better deal." Article 17 bis was included to precisely to prevent this practice. Yet now, when NAI is attempting to do precisely that, the European delegation appears to be abandoning the principles that guided their negotiations, and walking away from their commitments under the agreement.

Should NAI's business plans be allowed to move forward, we believe that it will set a devastating precedent that will have far reaching implications for the global aviation industry, U.S. and European airlines and airline employees. NAI's application is a critical test case for how the U.S.-EU air services agreement will be implemented, and whether the Article 17 bis labor protections will be enforced as intended.

We believe that the case presented by the European delegation as detailed in the written summary is fundamentally flawed and ignores a crucial article in the ATA. It also ignored many serious questions that TTD and other organizations have posed in regards to the NAI business model. DOT should make clear that it will not ignore the ATA labor article, and seek further information from the European delegation and NAI about how they will address the serious labor concerns that we have presented.

We appreciate your consideration of our views.

Richard Trumka
President, AFL-CIO

Edward Wytkind
President, TTD

A bold voice for transportation workers

Attachment 3

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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Edward Wytkind, President /Larry I. Willis, Secretary-Treasurer

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

TTD

A bold voice for transportation workers

Attachment 4

SUPPORTING A GLOBAL SOLUTION TO AVIATION EMISSIONS

Earlier this month the International Civil Aviation Organization's (ICAO) general assembly approved a plan that will provide for the development, over the next three years, of a global framework for addressing aviation's impact on climate change, with the goal of implementing the plan worldwide by 2020. TTD applauds the adoption of this plan, and looks forward to working with ICAO to develop a framework that will substantially reduce global emissions, improve the efficiency and cost-effectiveness of our aviation system, and promote sound environmental stewardship while maintaining competitive balance and fairness in the international aviation marketplace.

The U.S. aviation system plays a critical role in our national economy. It employs millions of workers both directly and indirectly, generates nearly $900 billion in economic activity annually, and is responsible for nine percent of our GDP. The aviation industry also faces significant financial head winds as profit margins remain thin and job losses continue at some carriers. Rising fuel costs have contributed greatly to these hardships. Despite technology driven reductions in jet engine fuel consumption and airline fuel conservation practices, jet fuel expenses have become the airlines' largest operating cost. As a result, U.S. airlines have acted proactively to both decrease their environmental footprint and combat volatile fuel expenses. The industry has improved fuel efficiency and lowered emissions, including a 1.5 percent annual average fuel-efficiency gain through 2020, carbon-neutral growth from 2020, and a 50 percent net reduction in emissions by 2050. The U.S. was also actively engaged in negotiating the ICAO global emissions plan.

The ICAO agreement comes on the heels of a contentious period revolving around aviation emissions. In November of last year President Obama signed legislation that allowed the Secretary of Transportation to combat the harmful effects of the European Union's Emissions Trading Scheme (EU ETS) and ensured that U.S. airlines are not subject to the EU cap-and-trade tax penalties. TTD endorsed this legislation, the purpose of which was not to turn a blind eye to the effects of aviation emissions on global climate change, but to reaffirm our commitment to finding a global solution to reducing aviation emissions through ICAO.

The U.S. and EU share the common goal of reducing carbon emissions in the aviation industry. However, while the U.S. was committed to working through the ICAO process, the EU moved forward by unilaterally subjecting all international flights arriving and departing from the EU to emissions standards mandated by the EU ETS. This would have placed an unreasonable financial burden on U.S. carriers and their employees, and would have only further delayed the process of reaching an international, consensus-based agreement. Fortunately, in the face of deep criticism from the international community including the legislation signed by President Obama, the EU delayed implementation of the EU ETS for one year to allow the ICAO process to deliver a global plan.

A global solution is not only the most effective way to reduce aviation emissions in the environment that we all share, but also the most economically sound solution. Rather than a patchwork system of environmental standards set by various governments, a global system will address this problem without putting U.S. carriers and their workers at a competitive disadvantage. The emission payments under the EU ETS, for instance, were expected to cost the U.S. aviation industry over $3 billion dollars in the next several years – a prohibitive expense that could have cost thousands of jobs.

Despite the international commitment to creating a global framework for reducing carbon emissions, EU officials have unfortunately expressed disappointment with the ICAO agreement and are pushing to implement the misguided ETS scheme regardless. In the aftermath of the ICAO general assembly meeting, the European Commission (EC) proposed revising the EU law so that the ETS would cover all flights over EU airspace, including those flown by international carriers. While we continue to support the responsible reduction of carbon emissions, the latest EU proposal only complicates the goal of reducing emissions on a truly global scale.

TTD and its affiliated unions oppose the heavy handed, unilateral approach being taken by the EU and believe that these actions only harm the international community's ability to find a meaningful and permanent solution. We remain committed to working with U.S. carriers, the U.S. government, and ICAO to build an international framework for combating global carbon emissions in the aviation system, but will oppose unilateral action by other governments that undermine U.S. airlines and their workers.

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