

**Comments of the International Association of Machinists and Aerospace Workers
Pursuant to the “Request for Comments Concerning the Proposed Transatlantic Trade
and Investment Agreement”
May, 2013**

These comments are submitted on behalf of the International Association of Machinists and Aerospace Workers (IAM), pursuant to the “Request for Comments Concerning the Proposed Transatlantic Trade and Investment Agreement (TTIP)”, issued by the United States Trade Representative on April 1, 2013. The IAM is one of the largest industrial unions in the United States, representing several hundred thousand workers in a variety of industries including, manufacturing, aerospace, transportation, electronics, woodworking, and shipbuilding. Our members build products and service equipment that create the global economy. They have been deeply affected by past trade agreements which have resulted in the loss of hundreds of thousands of jobs. Accordingly, we appreciate the opportunity to submit these comments.

I. The TTIP Presents an Opportunity to Create a New Framework for Trade agreements.

The upcoming U.S.-EU trade negotiations represent an opportunity for a 21st Century trade agreement that puts people first, but only if the agreement is based on a new model, not the NAFTA-style agreements signed with South Korea, Panama, Peru, and Colombia. As further detailed in our submission, we urge USTR to undertake the following activities with respect to the proposed TTIP¹:

- A. Conduct a strategic review of the employment impact of past and future FTA’s, including the TTIP.**
- B. End market distorting European programs that encourage the transfer of U.S. technology and production.**
- C. Include explicit reference to ILO Conventions and accompanying jurisprudence and reduce requirements for filing labor complaints.**
- D. Preserve procurement laws and regulations concerning “Buy American”, “Buy America” and the “Jones Act”.**
- E. Eliminate Investor-to-State Provisions.**
- F. Exclude commercial aviation from the TTIP**

The IAM cautions against any proposals that could lead to further offshoring U.S. jobs by, among other things, making it possible for U.S. companies to move jobs to European countries whose wages and worker protections do not reach the level of the rest of the EU, let

¹ This list does not cover all of our comments and suggestions with respect to critical subject areas including the rules of origin, services, financial services, the environment, food safety and public access to medicine. In addition, we share the comments and suggestions submitted by the AFL-CIO, of which we are affiliated. We also strongly support the proposals reflected in the Brown-Michaud Trade Act.

alone the U.S. We are also strongly opposed to any proposals that could be used to institute and expand austerity programs, like those that have been mandated for certain European countries.

II. Specific Comments and Suggestions

A. Conduct a strategic review of past and future FTA's, including the TTIP

Millions of U.S. workers have lost their jobs since the beginning of the recession. We support efforts to develop a comprehensive, sustainable jobs policy that puts U.S. workers back to work. An overall trade policy that will directly and effectively support this much needed job creation is absolutely essential if we are to rebuild our country's manufacturing sector and regain our economic security. That said, we can only begin this task by adopting a new framework for trade agreements that is based on the lessons we have learned from past FTAs.

A new framework begins with analyzing the impact that agreements, like NAFTA, have had on U.S. manufacturing and U.S. workers. In order for the analysis to be meaningful, it must examine different industries, job classifications, wage rates, and impacts on communities. An industry that should be reviewed immediately is the aerospace and related industries.

Since NAFTA, U.S. aerospace jobs have declined, while aerospace jobs in Mexico have dramatically risen. Mexico's aerospace industry now employs over 30,000 workers and it is producing leading edge technology. Suppliers have noted that they have moved work to Mexico to take advantage of NAFTA and low wages that exist there. Mexico continues to be criticized for not effectively enforcing international labor standards.

B. End Market Distorting European Programs that Encourage the Transfer of U.S. Technology and Production

Many different European countries have instituted policies that mandate the transfer of technology and production by U.S. companies to them in return for market access.² Sometimes referred to as "offsets," these countries mandate that a high percentage of the value of a sale must be transferred to the purchasing country in the form of technology and/or production. While the EU has discouraged offsets, broad national security provisions provide ample loopholes for offsets in the defense industry.

Europe has significant comprehensive offset programs, and over 20 European countries have negotiated offset agreements. As summarized in the New York Times, a

² See Hermstadt, "Offsets And The Lack of Comprehensive U.S. Policy: What Do Other Countries Know That We Don't?" EPI, 4/17/2008

few years ago, offset deals demanded by European countries keep getting bigger: “...offsets are growing. For American and European arms makers, lavish packages have become the key to closing deals.”

Although the U.S. government gathers little information concerning the impact that offsets have on the U.S. economy, we do know that offsets negatively affect U.S. jobs. They also assist in the creation of enterprises in other countries, ultimately resulting in greater competition for U.S. companies and U.S. workers.³ These types of market distorting transfers also impact national security.

The Bilateral 1992 U.S.-EU Agreement on Trade in Large Civil Aircraft, addressed the issue of market distorting transfers of production and technology. The United States, however, withdrew from the pact in announcing its WTO case against the EU over Airbus subsidies. Interpreting Article 4.3 of the GATT Agreement on Trade in Civil Aircraft, the agreement stated,

...the signatories agree that Article 4.3 does not permit government-mandated offsets. Further, they will not require that other factors, such as sub-contracting, be made a condition or consideration of sale. Specifically, a signatory may not require that a vendor must provide offset, specific types or volumes of business opportunities, or other types of industrial compensation. Signatories shall not therefore impose conditions requiring subcontractors or suppliers to be of a particular national origin.⁴

The IAM urges U.S. negotiators to introduce strong language prohibiting offsets. An expanded definition of offsets is needed to include any formal or informal mechanism relied upon by European countries to require the transfer of technology and/or production from the U.S. in return for market access or sales. The provision should explicitly cover the defense and commercial industries and must greatly narrow any exceptions. It should also include strong and effective enforcement mechanisms.

C. Include Explicit Reference to ILO Conventions and Accompanying Jurisprudence and Reduce Requirements for Filing Labor Complaints

Given that many European countries already have strong labor rights through national laws, the EU Constitution, and EU directives, the IAM urges U.S. negotiators to insist on the incorporation of ILO Conventions and accompanying jurisprudence in an enforceable labor chapter.

A major purpose of an FTA is to give parties predictability and a clear understanding of its provisions. As we have stated in conjunction with other FTA proposals, the IAM believes that strong, unambiguous, and enforceable labor standards must be part of any FTA. The labor chapter's labor standards must go beyond the ILO Declaration on

³ See, “Offsets in Defense Trade,” Seventeenth Study, U.S. Department of Commerce, BIS, 2/2013

⁴ See Presidential Commission on Offsets, 2001, 17-18.

Fundamental Principles and Rights at Work, in direct contrast to the limitations provided in the Peru FTA. Limiting these standards to the Declaration can be subject to varying interpretations over what constitutes a violation.

While we believe that the Declaration incorporates ILO Conventions, the addition of a footnote in Peru excluding Conventions is disturbing and causes confusion. Consequently, explicit language must be included that clearly states that labor standards and rights in the TTIP are reflected by ILO Conventions and their accompanying jurisprudence. The ILO Conventions and interpretations supplied by tri-partite ILO committees, such as the Committee on Freedom of Association, provide well-reasoned and internationally accepted meaning to labor standards. It is also imperative that these rights and standards must be effectively adopted into national law, especially by those European countries that have yet to recognize and enforce fundamental human rights, prior to a trade agreement being signed.

The IAM also urges negotiators to table proposals that would ensure upward harmonization of labor and employment laws, regulations, policies, and directives. The IAM notes that EU directives encompass the institutionalization of social dialogue through works councils and other forums. National laws in other countries like Germany are “designed to give organized labor a significant voice in industrial decisions and to give individual employees significant job security.”⁵ Germany and other European countries accept unions as an essential element of a tripartite relationship with business and government.

The IAM also believes that certain vague and unworkable conditions that must be met before a violation of labor standards can be found in past trade agreements should be rejected in the TTIP. Specifically, the Peru FTA contains objectionable requirements that labor violations must be “in a manner affecting trade or investment” and constitute a sustained or reoccurring action or inaction. The mere fact that labor standards are included in a trade agreement should indicate a direct relationship to trade without placing a further burden of proof on an agreed party. Particularly outrageous violations of labor rights should by themselves be eligible for a complaint, regardless of whether the violation was part of a sustained or reoccurring violation.

D. Preserve Procurement Laws Like “Buy American”

The IAM continues to argue that trade agreements should not constrain federal, state, and local procurement laws that promote critical public policy goals relating to economic development, job creation, and fundamental human rights, including workers’ rights. These procurement policies and their public policy goals were instrumental in enabling the American Recovery and Reinvestment Act, the largest U.S. domestic economic stimulus program since the Great Depression, to be implemented and to serve as a significant factors in assisting in our recovery. Other, procurement laws, such as those reflected by Buy American, continues to serve as critical components of restoring our nation’s manufacturing economy.

⁵ Keller, International Labor and Employment Laws, BNA, Vol. I, 1997, p.42

We are deeply alarmed over reports that Europe may be intending to use these negotiations to enable it to more expansively take advantage of public procurement, especially with respect to defense. As the largest defense industry union in North America, the IAM strongly opposes this objective. If Buy American laws and regulations are weakened in any way by the TTIP, hundreds of thousands of U.S. jobs will be threatened and the public policies they promote will be thwarted. Moreover, domestic suppliers, which include small business, will be hurt as U.S. contractors replace them with overseas suppliers. For similar reasons the IAM urges negotiators to refuse any attempt by European negotiators to interfere with the Jones Act.

E. Eliminate Investor-to-State Provisions

The IAM and others, have argued over the years, foreign investors in the United States should not be accorded greater substantive rights with respect to investment protections than U.S. investors in the United States. Past trade agreements contain a deeply flawed investor-to-state dispute resolution mechanism that could lead to the abuse of the private right of action. Among other things, they could make it possible for individual foreign investors to attack workers' rights and environmental standards. The IAM urges negotiators to exclude investor-to-state provisions from an agreement.

F. Do Not Include Commercial Aviation in TTIP

As the largest air transport union in North America, the IAM strongly opposes the inclusion of commercial aviation traffic rights. These topics are being handled by other U.S. Departments and agencies who have the expertise that is needed in such technical negotiations. They must not be included in TTIP negotiations.

As stated at the outset, the TTIP offers an opportunity to negotiate a 21st century trade agreement that leaves no one behind. In addition to our submission, we urge USTR to consider the comments of the AFL-CIO. We also urge USTR to adopt the framework for future trade negotiations that are detailed in the Brown-Michaud Trade Act, which we strongly support.