

Communications Workers of America
Comments on the Transatlantic Trade and Investment Partnership
Federal Register (April 1, 2013); Docket USTR-2013-0019

The Communications Workers of America represents 700,000 workers employed throughout the economy in telecommunications, broadcasting, cable TV, journalism, publishing, manufacturing, airlines, customer service, government service, health care, education and other fields. We appreciate the opportunity to provide these comments on the Transatlantic Trade and Partnership Agreement (TTIP).

CWA believes that the TTIP provides a singular opportunity for the United States Trade Representative (USTR) to negotiate an agreement that enhances the standard of living and rights of workers, democratic governance and a prosperity that can be broadly shared among nations, workers and businesses.

One of the stated goals for the TTIP is the “harmonization” of regulations and standards between the U.S. and the EU.¹ Workers’ rights are an important area in which “harmonization” could benefit millions of workers, especially if we in the U.S. were to move to the accepted standards for workers’ rights adopted by the EU countries. CWA knows from first-hand experience that workers in Germany have more rights and are treated with more respect than workers in the U.S. - even when they work for the same corporation. T-Mobile, a subsidiary of Deutsche Telekom (DT), employs workers in both the U.S. and Germany. The interests of the T-Mobile workers in Germany are represented by unions and workers councils. Germany, as well as every other country in the EU, has ratified the core labor standards of the International Labor Organization (ILO) that guarantee specific rights to workers including those to collectively bargain and organize. Furthermore, the T-Mobile workers in Germany are treated with respect by management. Conversely, the U.S. has not ratified the ILO conventions on organizing and collective bargaining. Only a small handful of T-Mobile workers in the U.S. are represented by unions in the workplace. T-Mobile workers are subjected to surveillance and forced to attend anti-union meetings.² A November 2012 cover story by *Der Spiegel* reported how T-Mobile management in the U.S. publicly humiliated workers who were unable to meet unattainable

¹ High Level Working Group on Jobs and Growth, *Final Report*, February 11, 2013 pp. 3 and 4;

² The National Labor Relations Board issued a complaint in December 2012 that T-Mobile managers were engaging in surveillance (NLRB Case 28-CA-086617). This was not a new pattern at T-Mobile as documented in Human Rights Watch, *Violations of Workers’ Freedom of Association in the United States by European Multinational Corporations*, 2010.

productivity targets.³ Such treatment is not new at T-Mobile. Human Rights Watch documented such management behavior over a period of years and just this month ABC news covered a story about T-Mobile's firing of a pregnant woman.⁴ These actions provide a vivid illustration of the decrepit state of workers' rights in the U.S. The TTIP provides an opportunity to improve the access of all workers to basic collective bargaining rights.

CWA proposes the following specific recommendations to "assist the USTR as it works...to develop U.S. negotiating objectives and proposals for the proposed TTIP agreement."⁵ These recommendations would help ensure that the benefits of a more integrated global economy will be broadly shared, the rights of workers will be recognized, the health, safety and overall environment will be protected, our airline industry continue to function in accord with security and efficiency and that our domestic democratic processes will be strengthened.

- **Enhance labor rights and promote prosperity**

1. Require enforceable labor standards that specifically reference the eight core conventions of the International Labor Organization – all of which have been adopted by every member of the EU but only two of which have been adopted by the U.S.
2. The labor commitments should cover the entire workforce of each participating country - not just those in specific industries, geographic locations, or economic sectors.
3. Labor standards should not limit available redress but should apply to the broadest possible context so that no workers are excluded from its provisions.
4. The enforcement mechanism for the labor standards must be timely, accessible, and reliable.

- **Enhance transnational labor-management cooperation**

5. Establish a form of works' council in larger corporations that operate in both the U.S. and any EU member country to enhance labor-management relations, decision making, consultation and the disclosure of information.

³ Der Spiegel, 'Brutal Psychological Terror': Taking On Employee Intimidation at T-Mobile USA" November 2012, English translation at http://www.cwa-union.org/pages/der_spiegel_highlights_workers_rights_problems_at_t-mobile#.UKpDBofAeSq

⁴ ABC News, "Pregnant T-Mobile Employee Clocked Out for Using the Toilet," May 1, 2013. <http://abcnews.go.com/blogs/business/2013/05/pregnant-t-mobile-employee-clocked-out-to-use-toilet/>; Human Rights Watch, *Violations of Workers' Freedom of Association in the United States by European Multinational Corporations*, 2010.

⁵ USTR, "Request for Comments Concerning Proposed Transatlantic Trade and Investment Agreement," April 1, 2013.

- **Enhance airline industry efficiency, cooperation and security**
 6. Continue to utilize the existing “open skies” agreements negotiated between countries with the input of the airline industry, workers, airports and governmental agencies.

- **Enhance democracy and national sovereignty**
 7. Ensure transparency in the negotiations and the public release of draft texts.
 8. Ensure domestic sovereignty by refusing to allow corporations to challenge domestic laws, rules and regulations before international tribunals.

- **Enhance the environment and worker health and safety**
 9. Improve the environment and address climate change.
 10. Improve worker health and safety through prevention and enforcement.

The following sections include comments and recommendations that would help ensure that the TTIP improves the lives of the vast majority of people in the U.S. and the EU. The comments are divided into the following sections: labor rights and prosperity; labor-management cooperation; airline efficiency and security; national sovereignty and democratic governance; and the environment and worker health and safety.

THE OPPORTUNITY TO ENHANCE LABOR RIGHTS AND PROMOTE PROSPERITY

The CWA supports the statement by the High Level Working Group on Jobs and Growth that “The EU and the United States are both committed to high levels of protection for the environment and workers.”⁶ The recognition of core labor standards across regions is of critical importance to overall economic development both here and abroad. Higher levels of union representation are correlated with higher levels of productivity, standards of living, health and safety, and lower levels of inequality.⁷

Enhanced labor rights are important not just to the workers involved but also to the health of national and international economies. The U.S. and the EU are currently mired in an economic crisis that is characterized by high unemployment, stagnant wages, relatively low levels of aggregate demand and a severe contraction in government expenditures. In periods of high unemployment and low investment in jobs, it has been proven both by theory and practice that it is critical to increase the overall level of demand in order to stimulate investment and, thus, jobs. This was one of the great insights of economists like John Maynard Keynes who actively promoted such policies. Keynes also identified the extension and enhancement of collective

⁶ High Level Working Group on Jobs and Growth, *Final Report*, February 11, 2013 p. 5

⁷ Richard B. Freeman and James L. Medoff, *What Do Unions Do*, 1984; Patrice Laroche and Christos Doucougliagos, *What do Unions do to Productivity: A Meta-Approach*, 2007http://www.academia.edu/175958/What_Do_Unions_Do_to_Productivity_A_Meta-Analysis

bargaining rights as a key component in the fight to restore prosperity, increase jobs and incomes and address the causes of the overall economic crisis. “I regard the growth of collective bargaining as essential [to addressing the depression].⁸

The TTIP actually provides the USTR with an opportunity to improve the prospects for economic prosperity in both the United States and the European Union by enhancing labor rights, wages, benefits and working conditions.

Differences between the U.S. and EU in relation to Labor Rights

The EU countries generally have stronger standards protecting the access of workers to collective bargaining rights than the U.S.

- **Adoption of ILO labor standards.** Every one of the 27 EU nations - including all the former communist countries - has adopted each of the eight core ILO labor conventions.⁹ In contrast, the U.S. has adopted only two of the ILO conventions. The differences between the U.S. and the EU in relation to the ILO labor conventions will be discussed in more detail below.
- **Collective Bargaining Coverage.** Collective bargaining agreements cover two-thirds of employees (66%) across the EU but only 12.5% of workers in the U.S. Every country in the EU has more workers covered by collective bargaining than the U.S. The proportion of workers covered by collective bargaining in the EU varies from well over 90% to just one country that is below 30%. Fifteen of the EU countries have rates of coverage over 50% and another 11 have rates from 30%-44%. Lithuania with just 15% of its workforce covered is the only EU country with less than 30%. Every one of the former communist countries in the EU has a higher percentage of the workforce covered by collective bargaining than the US with most ranging from 30-41%. The two outliers are Lithuania at 15% and Slovenia at 96%.¹⁰
- **Workplace Representation.** In the EU and Norway, workers are presented by unions and/or works councils. Unions provide the main form of workplace representation in 13 of the 27 EU states plus Norway. Unions also are dominant in the 13 countries where

⁸ John Maynard Keynes , “Letter of February 1 1938 to Franklin Roosevelt”

⁹ International Labor Organization,

http://www.ilo.org/dyn/normlex/en/f?p=1000:10011:0::NO::P10011_DISPLAY_BY,P10011_CONVENTION_TYP E_CODE:1,F

¹⁰ European Trade Union Institute, “Collective Bargaining Across Europe,” <http://www.worker-participation.eu/National-Industrial-Relations/Across-Europe/Collective-Bargaining2>

there is a mix of unions and works councils. In the U.S., there is no provision for works councils.¹¹

- **Board-Level Representation.** Twelve of the EU countries provide for the representation of employees on the boards of companies over a certain size. Six countries require board representation to state-owned or recently privatized companies. The U.S. has no provision at all for board level representation by workers.¹²

The greater rights of EU workers – especially in the more advanced economies – translate into better benefits including vacation, health care, child care, educational opportunities, training, and working conditions.¹³ The goal of the TTIP negotiations should be to enhance labor rights in both the U.S. and the EU in order to generate prosperity, create a better quality of life, and strengthen our democracies.

ILO Labor Standards

The International Labor Organization (ILO) is a specialized agency of the United Nations with 185 member nations. The main aims of the ILO are to promote rights at work, encourage decent employment opportunities, enhance social protection and strengthen dialogue on work-related issues. The ILO has constructed a system of “international labor standards aimed at promoting opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and dignity.”¹⁴ These conventions gain the status of treaties when ratified by governments. When a convention comes into force as a treaty, it creates a legal obligation for the ratifying nations to apply its provisions.

In 1998, the 86th International Labor Conference adopted the *Declaration on Fundamental Principles and Rights at Work*. This declaration contains four fundamental policies that are institutionalized through eight conventions.¹⁵

¹¹ European Trade Union Institute, “Worker Representation Across Europe,” <http://www.worker-participation.eu/National-Industrial-Relations/Across-Europe/Workplace-Representation2>

¹² European Trade Union Institute, “Board Level Representation Across Europe,” <http://www.worker-participation.eu/National-Industrial-Relations/Across-Europe/Board-level-Representation2>

¹³ Thomas Geoghegan, *Were You Born on the Wrong Continent? How the European Model Can Help You Get a Life*, New Press, 2011.

¹⁴ International Labor Organization, <http://www.ilo.org/global/standards/introduction-to-international-labour-standards/lang--en/index.htm>

¹⁵The information contained in the following descriptions is from the International Labor Organization, http://www.ilo.org/dyn/normlex/en/f?p=1000:10011:0::NO::P10011_DISPLAY_BY,P10011_CONVENTION_TYP,E_CODE:1,F

- **The right of workers to associate freely and bargain collectively.**
 - Convention #87: The Freedom of Association and Protection of the Right to Organize Convention was adopted in 1948 and has been ratified by 152 countries. This convention establishes the right of workers and employers to freely and voluntarily establish and join organizations of their own choice and the right of the organization to carry out its activities in freedom without government interference. These rights should be implemented with no interference in an employee's decision to associate; no anti-union discrimination; no interference with the activities of the workers' representatives and allow the free discussion of issues at work.
 - Convention #98: The Right to Organize and Collectively Bargain Convention was adopted in 1949 and has been ratified by 163 countries. This convention provides that workers should be protected against acts of anti-union discrimination, interference or attempted domination by employers.

- **The end of forced and compulsory labor**
 - Convention #29: The Forced Labor Convention was adopted in 1930 and has been ratified by 177 countries. This convention seeks to suppress the use of forced or compulsory labor in all its forms. Forced labor is defined as "forced or compulsory labor shall mean all work or service which is extracted from any person under the menace of any penalty and for which said person has not offered himself voluntarily." There are exemptions for military service and cases of emergency. Governments are obliged to prohibit such forced labor.
 - Convention #105: The Abolition of Forced Labor Convention was adopted in 1957 and has been ratified by 174 countries. This convention extends the previous convention by itemizing specific forms of forced labor including the use of political coercion or punishment; mobilizing labor for economic development or as a means of labor discipline, punishment for participating in strikes or as a means of racial, social, national or religious discrimination.

- **The end of child labor**
 - Convention #138: The Minimum Age Convention was adopted in 1973 and has been ratified by 165 countries. This convention establishes a minimum age for employment under normal circumstances of 15 years with some exceptions that allow 13 years for light work. Where the economy and educational facilities are insufficiently developed the minimum age is 14 years with 12 years for light work. The minimum age for hazardous work is 18 years.
 - Convention #182: The Worst Forms of Child Labor Convention was adopted in 1999 and has been ratified by 177 countries. Governments are obligated to eliminate the worst forms of child labor including all forms of slavery or practices

similar to slavery, child prostitution, drug trafficking, or any work that is likely to harm the health, safety or morals of children.

- **The end of unfair discrimination among workers**
 - Convention #100: The Equal Remuneration Convention was adopted in 1951 and has been ratified by 171 countries. This convention provides for the principle of equal remuneration for men and women workers for work of equal value.
 - Convention #111: The Employment and Occupation Discrimination Convention was adopted in 1958 and has been ratified by 172 countries. This convention defines discrimination as “any distinction, exclusion or preference made on the basis of race, color, sex, religion, political opinion, national extraction or social origin while has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.”

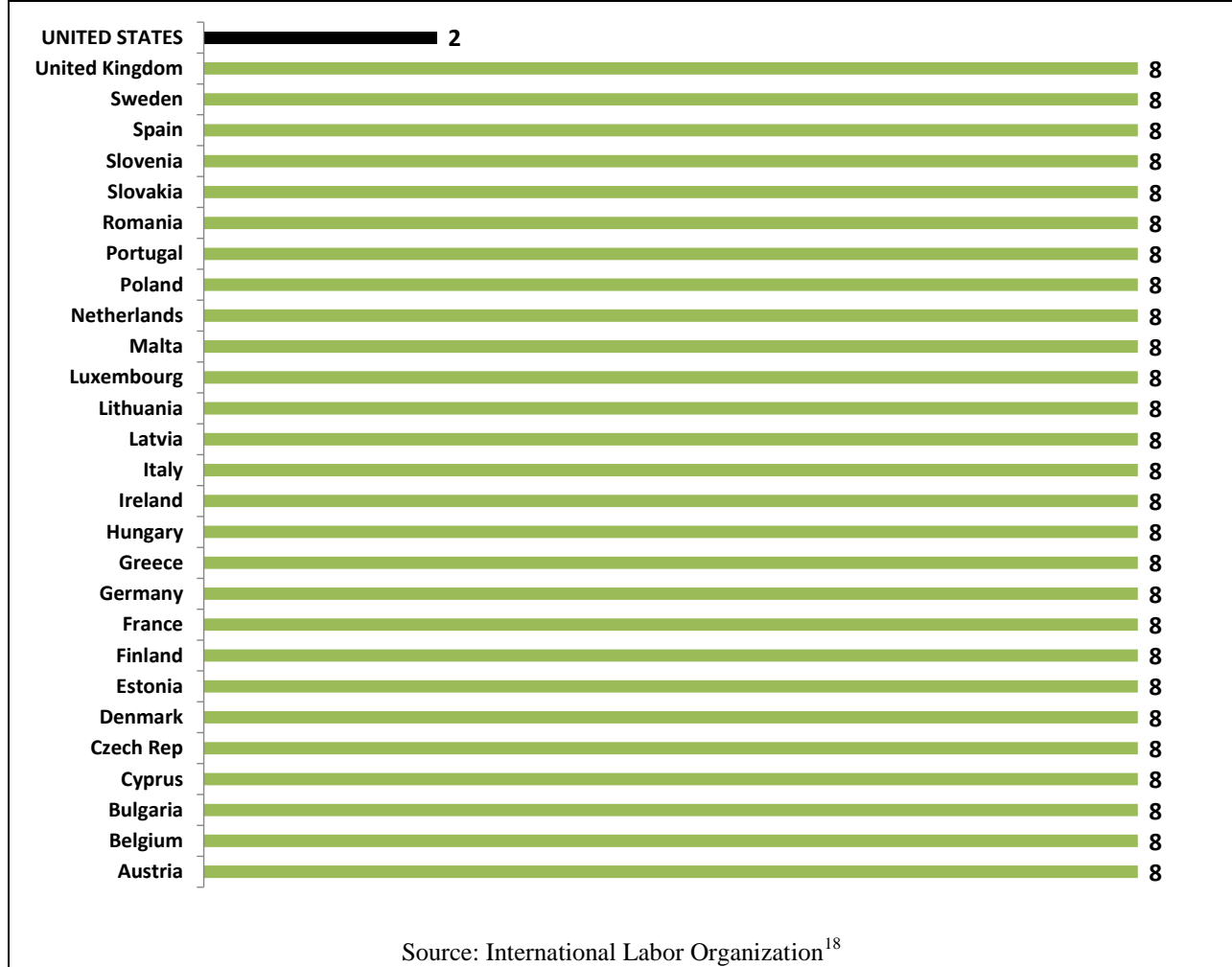
Every one of the EU countries – including all the former communist countries - has adopted each of the eight core ILO labor conventions. The United States has only ratified the ILO conventions on forced labor (Convention #29) and the worst forms of child labor (Convention #182).¹⁶

The Six Core ILO Conventions NOT Ratified by the U.S.	
Convention	Countries Ratified including all 27 EU Nations
#87 Freedom of Association and Right to Organize	152
#98 Right to Organize & Collectively Bargain	163
#138 Establishing a Minimum Age to End Child Labor	165
#105: Abolition of Forced Labor in Specific Forms	174
#100: Equal Remuneration for men and women workers for work of equal value.	171
#111: Employment and Occupation Discrimination	172
Source: International Labor Organization ¹⁷	

¹⁶ International Labor Organization, http://www.ilo.org/dyn/normlex/en/f?p=1000:10011:0::NO::P10011_DISPLAY_BY,P10011_CONVENTION_TYP,E_CODE:1,F

¹⁷ Ibid.

Number of the Eight Core Labor Standards Ratified by the U.S. and the EU Countries



Recommendations to enhance labor rights and promote prosperity in the U.S. and EU

CWA urges the USTR to adopt the following recommendations in order to enhance the rights of workers in both the U.S. and the EU. These provisions are not only germane to the U.S. but also to a number of EU countries. The EU includes states such as Romania, Bulgaria, Cyprus and Slovakia whose worker protections lag behind most of their EU counterparts. Furthermore, Poland has been engaging in so-called “labor market flexibilities” for a generation and Hungary’s current government has been intent on destroying many worker protections.¹⁹ The

¹⁸ International Labor Organization, http://www.ilo.org/dyn/normlex/en/f?p=1000:10011:0::NO::P10011_DISPLAY_BY,P10011_CONVENTION_TYPE_CODE:1,F

¹⁹ AFL-CIO, U.S.-EU Free Trade Agreement, <http://www.aflcio.org/Issues/Trade/U.S.-EU-Free-Trade-Agreement>

TTIP should be utilized to ensure that workers in all the EU countries and the U.S. benefit from enhanced labor rights and shared prosperity.

- 1. The TTIP should include the adoption and enforcement of fundamental labor rights as laid out in the core ILO conventions.** The TTIP should explicitly require each party to adopt, enforce and maintain in its statutes and regulations – and practices – fundamental core labor rights as laid out in the core labor rights and conventions included in the ILO Declaration on Fundamental Principles and Rights at Work. Consequently, the USTR should omit the language of footnote 2 in the Peru Free Trade Agreement which allowed parties and dispute resolution panels the discretion to interpret and apply the terms of the ILO Declaration differently than the Declaration has been interpreted and applied by the ILO itself. In addition, the TTIP also should include enforceable standards for acceptable conditions of work and the treatment and recruitment of migrant workers.
- 2. Labor standards should apply to the entire workforce of each participating country.** The labor commitments should cover the entire workforce of each participating country - not just those in specific industries, geographic locations, or economic sectors. Labor repression in any sector—including the public sector—affects the labor market as a whole, repressing wages throughout the country, and artificially providing a competitive advantage in labor costs. Artificially limiting the application of labor rights to violations which occur in a manner affecting trade or investment provides a license for governments to deny rights to their own employees.
- 3. Labor standards should not limit available redress.** The labor provisions should also apply in the broadest context possible: limiting available redress solely to violations which are “sustained or recurring” and “in a manner affecting trade or investment,” as is the case in the Peru agreement, should be modified because they exclude too many workers from coverage and make it exceedingly difficult to effectively pressure recalcitrant governments to do the right thing and protect their own workers.
- 4. Enforcement should be timely, accessible and reliable.** The enforcement mechanism for the labor standards must be timely, accessible, and reliable. The labor dispute process must be at least as strong and swift as that available to business interests, and penalties should likewise be trade-related and high enough to encourage parties to resolve violations at the initial stages. Token fines unrelated to the economic sectors where the violations occur do little to encourage private sector compliance or deter future violations.

THE OPPORTUNITY TO ENHANCE TRANSNATIONAL LABOR-MANAGEMENT COOPERATION

Any U.S. or EU corporation of a certain size that operates in these EU countries must – by law - behave in accordance with all of the ILO core principles. In many EU countries companies also must provide for worker representation on their boards of directors. The EU itself has a directive on Works Councils – as distinct from the laws of individual members of the EU. Through this directive, approximately 10 million workers across the EU have the right to information and consultation on company decisions at the European level through their Works Councils. The EU Works Council directive applies to companies with 1,000 or more employees, including at least 150 in two or more member states. It does not interfere with or reduce the bargaining rights of unionized workers.²⁰

The corporations that operate in the EU are not required to provide workers with the same level of collective bargaining rights or information when operating in the U.S. For example, T-Mobile, a subsidiary of Deutsche Telekom, treats its German workers according to the ILO core principles but has sought to deny these same rights to its U.S. workers. Yet, the corporations that operate both in Europe and the U.S. could easily provide all their workers with the same or a similar level of rights and protections.

The USTR should do all it can to promote transnational cooperation between labor unions and between labor and management. U.S. and EU unions have a long history of partnership and are excited about the opportunity to expand markets in a way that expands workers' rights. For example, CWA's partnership with ver.di, Germany's largest telecommunications union, has been an effective way to advance worker rights. CWA and ver.di formed T-Mobile United (TU) to speak with one voice for all workers of T-Mobile.

In this model, the Deutsche Telekom executive board member from ver.di is responsible for relations with Deutsche Telekom, while the CWA President is responsible for organizing and working with telecom workers and TU members here in the U.S. Through TU, CWA and ver.di are able to share best practices and resources with members, while continuing an open dialogue regarding management differences with the parent company Deutsche Telekom.

In Germany, Deutsche Telekom managers seek to improve the performance of their employees. They understand that one of the keys to success in the 21st century is investing in continuous skills training for workers so they develop the mental agility to compete in a global economy.

²⁰ AFL-CIO, Response to Request for Comments on the "Trans-Atlantic Trade and Investment Partnership" Federal Register (April 1, 2013), Docket Number USTR-2013-0019

Their first step is to train-and-educate, not fire-and-relocate. For example, if an employee's Call Resolution Time (CRT) in a call center is too high, then the employee receives training to deal more efficiently with customers. The employees also may be directed toward supplemental courses that not only improves their skills but also increases their intrinsic economic value. The goal is to make sure that workers learn the skills they need to succeed. In contrast, corporations in the U.S. have been cutting their worker training budgets and forcing high turnover which have resulted in poor service quality for the customer.

Recommendation to enhance transnational labor relations and cooperation

The TTIP negotiations present an opportunity to address and raise labor standards in the U.S. and the EU. Many globally integrated corporations work in concert with unions in European countries to find bilateral solutions to benefit both their stock price and work force.

- 5. The TTIP should establish a form of works' council between workers and transnational corporations to enhance relations, information and consultation** as outlined in existing EU directives on European Workers Councils. The labor chapter of trade agreements has utilized a standards enforcement model (to varying degrees of success) but do very little to actually enhance cross-border labor relations. Such mechanisms could increase efficiency by giving employers and workers the ability to address labor relations matters across supply chains within and between economic regions. It makes sense to allow workers employed by a common employer in two or more TTIP countries to form a council to address labor relations matters, meet with management, receive information and give their views on current strategies and decisions affecting the enterprise and its workforce including economic and financial issues, research, the environment, investment, health and safety and equal opportunity. These works councils would be established to broaden cooperation and thus would be prohibited from being used in any way to avoid or weaken the unionization of workers. We strongly encourage the USTR to support the inclusion of such global partnerships in the TTIP so that labor and management can unite in a common purpose to drive our economies and societies forward.

THE OPPORTUNITY TO ENHANCE AIRLINE COOPERATION, EFFICIENCY AND SECURITY

Since 1926, the United States has required that U.S. aviation systems be domestically owned and controlled. These limitations were enacted to protect a fledgling U.S. airline industry;

regulate international air service through bilateral agreements; control access of foreign aircraft to U.S. airspace; and ensure military access to civilian airlines to supplement airlift capacity.²¹

When needed, bilateral aviation agreements have been negotiated by the Department of State and the Department of Transportation. In preparation for negotiating these international aviation agreements, the Departments of State and Transportation consult with airlines, airports and labor to ensure that the concerns of all industry stakeholders are represented. Already more than 100 “open skies” agreements have been negotiated by the Department of State and none of these agreements, despite pressure from foreign governments, have required the U.S. to alter, change or creatively interpret our air rights or foreign control and ownership rules.

These open skies agreements have reduced the number of trade barriers to international air transport services in a fair and equitable manner. The EU’s previous attempts through the established process to negotiate an air services agreement have been unsuccessful for reasons of U.S. national security and economic interests. The USTR should not allow the EU to use the TTIP as an instrument to evade the effective mechanisms, in existence for nearly a century, for negotiating aviation rights agreements. Allowing foreign investors direct control in the U.S. airline industry could:

- influence future air rights negotiations;
- lead to modifications of international route structures;
- influence new aircraft purchasing decisions; and
- impact domestic routes structure by allowing for a foreign investor to decide, on purely economic interests, which rural communities receive air service.

Recommendation to enhance airline industry efficiency, cooperation and security

- 6. The USTR should continue to utilize the current system of regulating international air traffic rights and related services through bi-lateral agreements** negotiated between countries with the input of the airline industry, workers, airports and governmental agencies. There is no reason to change an effective and efficient process that, over the last 20 years, has produced 107 successful “Open Skies” air transport agreements. Thus, the USTR should exclude international air traffic rights and related services from the TTIP.

²¹ U.S. General Accounting Office, “Airline Competition: Impact of Changing Foreign Investment and Control Limits on U.S. Airlines”, GAO/RCED-93-7 (Washington, D.C.: Dec. 9, 1992.)

THE OPPORTUNITY TO ENHANCE DEMOCRATIC GOVERNANCE AND PROCESSES

The TTIP represents an important opportunity for the USTR to enhance democratic governance and processes. The USTR should not allow the TTIP to be used to circumvent or undermine our democratically determined decisions, policies, laws, rules, regulations and processes that have been developed in the U.S. over our entire existence.

Recommendations to enhance democratic governance, processes and national sovereignty

- 7. Ensure Transparency.** The USTR should promote a negotiation framework that is transparent with the public release of draft texts throughout the entire process. Greater transparency is essential because the TTIP negotiations not only deal with trade and investment but the very integration of two gigantic economies. Moreover, the U.S. will be obliged to bring existing and future domestic laws, rules and regulations into compliance with the international norms established by the TTIP. The TTIP therefore would establish policies that are binding on future U.S. Congresses and state legislatures on numerous non-trade policies currently under the jurisdiction of domestic legislative bodies. The enforceability and permanence of such binding rules, with later changes to an adopted pact requiring agreement by all signatory countries, necessitates maximal transparency and extreme care on the front end. The closed and secretive process used for the TPP should not be replicated. The TTIP negotiators should allow public access to the negotiating texts of the pact's various chapters. Such transparency is standard practice for many trade negotiations. The World Trade Organization posts negotiating texts on its website for review, and negotiating texts were also made available on the recently completed Anti-Counterfeiting Trade Agreement (ACTA).
- 8. TTIP should include a state-state dispute resolution mechanism.** The USTR should not allow the TTIP to include investor-state provisions. The investor-state provisions allow a single foreign-owned business to bypass domestic courts to challenge a democratically elected government's choice of labor, clean water, food safety, or any other legislative, regulatory, or judicial decision in an international arbitration forum. No such rights are provided to other economic or political actors—effectively creating a two tiered legal system that provides expanded privileges to foreign but not domestic firms. Multinational enterprises that move their production and jobs offshore are able to use these rights to impede legitimate public interest measures—thus harming workers abroad while shrinking our domestic job base. Over \$365 million in compensation has already been paid to corporations in a series of these “investor-state” cases under NAFTA-style agreements. There are 19 pending claims seeking over \$14 billion in compensation. Many of these claims relate to environmental, energy, public health,

land use and transportation rather than to traditional trade issues.²² The USTR should negotiate agreements that enhance rather than undermine our democratically determined laws and processes.

THE OPPORTUNITY TO ENHANCE OUR ENVIRONMENT AND WORKER HEALTH AND SAFETY

Everyone should rightfully expect that the air we breathe, the water we drink, the food we eat, and the places where we work and live should all be safe and promote a healthy life. The USTR should use the TTIP as an opportunity to protect and improve our environment and worker safety and health.

Recommendations to enhance our environment and worker health and safety

9. Improve the environment and address climate change. TTIP should contain an environment chapter that includes obligations for countries to enforce and strengthen their domestic environmental laws and policies and their commitments under multilateral environmental agreements (MEAs).
 - a. Building on the progress in recent FTAs, the environment chapter should be legally binding and enforceable and should address biodiversity and conservation, including commitments to strengthen and enforce measures to eliminate trade in illegally taken wildlife and illegally harvested wood and wood products, building on the model of the U.S. Lacey Act.
 - b. The TTIP must also allow governments the flexibility to put in place new and/or strengthen existing climate policies, such as feed-in tariffs, a carbon tax, renewable energy and energy efficiency standards without constraints and without fear of trade litigation. Therefore, any chapter that may address issues related to climate change, including chapters on technical standards or technical barriers to trade, services, subsidies, or investment must explicitly provide governments the flexibility to put in place climate mitigation and adaptation strategies. For example, environmental and public health protection measures must be exempt from investor-state dispute resolution challenges.
 - c. The TTIP parties should also agree to prohibit the TTIP from being used to either abrogate or partially revoke national, sub-national, and local laws and regulations that establish environmental standards or aim to protect the environment and public health.

²² Public Citizen, “Table of Foreign Investor-State Cases and Claims under NAFTA and Other U.S. Trade Deals,” January 2013.

10. Improve worker health and safety through prevention and enforcement. Worker health and safety is not only an economic concern for workers but for entire communities. It also can be a matter of life and death for workers and other community members as demonstrated by the recent explosion of the chemical fertilizer plant in Texas. There are important differences between the health and safety laws in the EU and the U.S. In general, the EU standards mandate prevention, i.e., dealing with potential problems before they occur. In the U.S. the Occupational Safety and Health Act requires that a violation must occur before an employer is mandated to provide safe and healthful working conditions. The EU also requires employers to adhere to occupational and environmental standards and conduct scientific research to develop and use the least toxic products. Whereas, the Globally Harmonized System in the U.S. only covers appropriate and expanded Safety Data Sheets, labeling, signage, and training. There is no overlap with environmental issues, contamination or any requirement to conduct scientific research for less toxic alternatives. The TTIP should become a vehicle to ensure that the more pro-active EU approach is utilized for occupational safety and health. This would lead to the improvement of Occupational Safety and Health Act's permissible levels/exposure standards as well as encouraging the coordination between the Occupational Safety and Health Administration, the National Institute for Occupational Safety and Health and the Environmental Protection Agency in relation to an increased emphasis on the identification, development and use of less hazardous alternative products.

CONCLUSION

The USTR should use the TTIP as an opportunity to promote a broadly shared prosperity for workers, businesses and nations by enhancing labor rights and enforcement; transnational labor-management cooperation; airline industry efficiency, cooperation and security; democratic governance and national sovereignty; the environment and the ability to address climate change; and worker health and safety.

Submitted May 9, 2013

Kenneth R. Peres
Chief Economist
Communications Workers of America
501 3rd Street NW
Washington, DC 20001

kperes@cwa-union.org

202.434.1185