

**Comments of Owen Herrstadt, Director of Trade and Globalization  
International Association of Machinists and Aerospace Workers  
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The International Association of Machinists and Aerospace Workers (IAM) represents 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 impacted by past trade agreements, which have resulted in the loss of hundreds of thousands of jobs. Given our experience with trade agreements, we urge negotiators to make job creation and maintenance the major objective in these discussions.

In order to negotiate an agreement that will create jobs, not cost jobs, and not lead to a lower standard of living for workers, TTIP negotiators must be willing to replace past trade models based on the North American Free Trade Agreement (NAFTA), with models that are built on transparency, democracy, fairness, protecting labor standards, worker, social and environmental safeguards and removing certain market distorting activities. These trade distorting activities include the failure of any country to adopt, implement and effectively enforce fundamental human rights reflected by ILO Conventions and jurisprudence before they enter into a trade agreement. They also include, among other things, eliminating the forced transfer of technology and production in return for market access, often referred to as offsets or offset-like transactions, and eliminating investor to state dispute mechanisms. Negotiators must refrain from seeking any provisions that would encourage austerity measures and other policies that result in job losses. Negotiators must also refrain from seeking language that would weaken regulations concerning workers, the environment, financial services, and other areas of concern.

Some of our suggestions, comments and concerns include the following:

**1. Include Explicit Reference to ILO Conventions and Accompanying Jurisprudence and Reduce Obstacles for Filing Labor Complaints**

The E.U. and many of its Member States have adopted a variety of mechanisms that reflect a deep commitment to strong labor standards reflected by ILO Conventions and jurisprudence. This commitment is demonstrated in various ways, including national laws, the E.U. Constitution, E.U. directives, and ratification of core ILO Conventions. While the U.S. has only adopted two of the core ILO Conventions (some interpretations of national law conflict with international labor standards), it has approved the ILO Constitution by its membership in the ILO (which explicitly references the freedom of association, a core labor standard) and the 1998 Declaration of Fundamental Principles and Rights at Work.

Given the high level of labor standards in both regions, the IAM urges U.S. and E.U. negotiators to insist on the incorporation of ILO Conventions and accompanying jurisprudence in an enforceable labor chapter. Indeed, if these two regions cannot incorporate such a provision, it would send a cynical message to the world about basic commitments to fundamental human rights and the inability to ever negotiate a clear, unambiguous and strong labor chapter in a trade and investment agreement. Sadly, it would also represent a failed opportunity for the U.S. and the E.U. to assert their leadership role in the world when it comes to setting high standards for fundamental human rights.

Failure to include a labor chapter which incorporates ILO Conventions and jurisprudence would also represent a missed opportunity to provide parties with greater predictability and a clearer understanding of what is required under the labor chapter. Current U.S. and E.U. trade models lack certainty in how they are applied. For example, under the U.S.-Peru FTA, labor standards are limited to the ILO's 1998 Declaration on Fundamental Principles and Rights at Work. While we believe that the Declaration incorporates ILO Conventions, we are aware that others do not share this position. The addition of a footnote in the Peru FTA, specifically excluding Conventions, raises further confusion and uncertainty. In order to provide clarity and predictability, based on tri-partite established standards and interpretations, 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.

It is also imperative that these ILO core rights and standards must be effectively adopted into national law before any agreement can be signed, let alone implemented. As stated at the outset, failure to abide by these fundamental human rights leads to market distortions with respect to labor costs. Wages can be artificially suppressed if workers do not enjoy core labor rights to form unions, engage in collective bargaining, and are free from discrimination, forced or prison labor, child labor, and do not have safe and healthy work places.

The IAM notes that some European countries fall significantly short of honoring these core standards. We are reminded of our own experience with NAFTA and the thousands of jobs that have been lost to Mexico where wages are kept artificially low because many workers do not enjoy core labor standards. The TTIP must not replicate this disaster with some European Member States.

The IAM urges negotiators to ensure upward harmonization of labor and employment laws, regulations, policies, and directives so that both regions compete on a level playing field—a level playing field that incorporates ILO Conventions. The IAM notes that E.U. directives recognize the critical importance of labor unions in successful industries and in building prosperous national economies. National laws in Member States like Germany are “designed to give organized labor a significant voice in industrial decisions and to give individual employees significant job

security.”<sup>1</sup> Germany and other member States, like the E.U., accept unions as an essential element of a tripartite relationship with business and government.

The IAM also believes that certain vague, unpredictable 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. For example, 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 a complaining party. Further, 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.

## **2. End Market Distorting Programs that Encourage the Transfer of Technology and Production for Market Access**

Among many other things, the 1992 U.S.-E.U. Agreement on Trade in Large Civil Aircraft addressed the issue of market distorting demands of transfers of production and technology in return for sales. Interpreting Article 4.3 of the GATT Agreement on Trade in Civil Aircraft, the agreement stated,

Article 4.3 does not permit Government-mandated offsets. Further, they will not require that other factors, such as subcontracting, 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.<sup>2</sup>

In 2004, the U.S. exercised its right to terminate the agreement at roughly the same time it filed its WTO subsidy claim against the E.U. The E.U. subsequently filed a subsidy claim against the U.S.

The IAM urges negotiators to adopt language that reinforces and strengthens the 1992 Agreement’s interpretation of Article 4.3 and eliminate the use of offsets between E.U. Members States and the U.S. The provision would also stop third party countries, like China, from pitting the U.S. and the E.U. against one another to see which country or region is willing to transfer more of their technology and production to third party countries in return for sales.

Offsets and offset-like activities distort the market.<sup>3</sup> Although little information is kept on the impact of offsets in the U.S. defense industry (even less is kept for civil markets), what is known is alarming. According to U.S. government reports on the

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<sup>1</sup> Keller, International Labor and Employment Laws, BNA, Vol. I, 1997, p.42

<sup>2</sup> See Presidential Commission on Offsets, 2001, 17-18.

<sup>3</sup> For more information on offsets see, Owen Herrnstadt, “Offsets and the Lack of a Comprehensive U.S. Policy: What do other countries know that we don’t”, Economic Policy Institute, 4/2008.

U.S. defense industry, in 2011, U.S firms reported entering into offset agreements valued at several billions of dollars.<sup>4</sup> During 2011, reported offset agreements ranged from a low of 25 percent of the defense export sales contract value to a high of 100 percent”.<sup>5</sup> During 1993-2011, “associated offset agreements were valued at \$83.73 billion.”<sup>6</sup> During 2009-2011, the top four industry sectors, representing 47.4 percent of offsets transactions based on value were related to aerospace, including, aircraft manufacturing, aircraft parts, aeronautical systems, aircraft engine and engine parts manufacturing.<sup>7</sup>

U.S. policy already discourages the use of offsets in the defense industry. The U.S. Government considers offsets to be “economically inefficient and trade distorting,” and prohibits “any agency of the U.S. Government from encouraging, entering directly into, or committing U.S. firms to any offset arrangement in connection with the sale of defense articles or services to foreign governments.”<sup>8</sup>

E.U. policy on offsets is not as definitive compared with U.S. policy. In 2011, the European Defense Agency issued , a code of conduct on offsets agreed by certain E.U. Member States. The code states that the participating Member States “share the ultimate aim to create the market conditions, and develop a European DTIB (European Defence Technological and Industrial Base) in which offsets may no longer be needed. Nonetheless, the present structure of the European DTIB and our early open market efforts require, in the short term, evolving offsets...”<sup>9</sup>

Some European countries, have well-established offset programs aimed at developing their own leading edge industries.<sup>10</sup> For example, in Norway: “The supplier must undertake to carry out industrial co-operation equal to a minimum of 100% of the value of the basis of calculation. For all acquisitions, a substantial part of the Commitment must be covered by binding contracts with the Norwegian industry prior to the Armed Forces entering into an agreement with the supplier.”

TTIP language prohibiting the use of offsets is not only critical to eliminate this market distorting activity between E.U. Member States and the U.S., it is also critical to prevent both regions from being forced to compete with one another on which one can transfer the most technology and production to third party countries such as

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<sup>4</sup> “Offsets in Defense Trade”, Seventeenth Study, U.S. Department of Commerce, Bureau of Industry and Security, 2/2013

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.; Defense Production Act Amendments of 1992 (Pub. L. 102-558, Title I, Part C, Sec. 123).

<sup>8</sup> U.S.-China Economic and Security Review Commission, 2005.

<sup>9</sup> A Code of Conduct on Offsets agreed By the EU Member States Participating in the European Defence Agency, European Defence Agency (version approved on May 3, 2011)

<sup>10</sup> The following example was found at <http://www.eda.europa.eu/offsets/viewpolicy.aspx?CountryID=NO>. Other examples can be found at this website as well.

China. Few countries are as assertive as China in building an aerospace industry through the transfer of technology and production from Western aerospace companies.<sup>11</sup>

According to the U.S. China Economic and Security Review Commission, “...Chinese firms have used their leverage to extract offsets — agreements to transfer some of the aircraft production along with related expertise and technology — as part of the deals...China nurtures its domestic aviation and aerospace industry by exploiting the international competition already in the industry.”<sup>12</sup>

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 to require the transfer of technology and/or production in return for market access or sales. The provision should explicitly cover the defense and commercial industries. It should also include strong and effective enforcement mechanisms.

### **3. 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.<sup>13</sup> 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 factor in assisting in our recovery. Other, procurement laws, such as those reflected by Buy American and Buy America statutes, continue to serve as critical components contributing to U.S. economic and national security.

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<sup>11</sup> See testimony of Owen Herrstadt, U.S.-China Economic Security Review Commission, 5/2010.

<sup>12</sup> U.S.-China Economic and Security Review Commission, 2005.

<sup>13</sup> Buy America requirements fundamentally differ from European Member State’s offset programs. Offsets are part of a nation’s industrial policy to create and expand strategically targeted sectors, such as aerospace and defense, by mandating that entities in the selling country transfer technology and production to one of its own domestic entities. In contrast, the U.S. does not have an industrial policy and the purpose of Buy American and Buy America (which is not focused on creating domestic defense industries) are not aimed at the creation of industries in the U.S. at the expense of other countries. Unlike offset policies, Buy American and Buy America statutes contain broad waivers when a product is not produced in the U.S. at all or in a sufficient quantity, is more expensive than a product produced outside the U.S., or when it would not be in the “public interest”. Under these waivers, the U.S. continues to procure billions of dollars of goods from outside the U.S. and it should not be weakened through the TTIP. Additionally, with respect to offsets, both the U.S. and the E.U. seemingly agree that offsets should be eliminated, at least at some point. The same cannot be said with respect to Buy American laws..

We are deeply alarmed that the TTIP negotiations could threaten these essential U.S. procurement laws. If Buy American and Buy America laws and regulations are weakened in any way by the TTIP, hundreds of thousands of U.S. jobs will be threatened and the U.S. manufacturing base, which has already been decimated, will grow even weaker. Moreover, domestic suppliers, which include small business, will be hurt as they are replaced by overseas suppliers. For similar reasons the IAM urges negotiators to not make any effort to weaken the Jones Act.

**4. 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 lead to the abuse of the private right of action. A private right of action for individual foreign investors to attack workers' rights and environmental standards should not be included in the TTIP.

**5. 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 matters are covered by other international concerns which have the expertise that is needed in such technical negotiations. They must not be included in TTIP negotiations.

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In addition to our comments today, we share the comments of the AFL-CIO.