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TESTIMONY OF OWEN HERRNSTADT
ON BEHALF OF THE
INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO
REGARDING NAFTA RE-NEGOTIATIONS

The International Association of Machinists and Aerospace Workers (IAM) represents hundreds of thousands of workers in North America. IAM members work in a variety of industries, including manufacturing, aerospace, electronics, shipbuilding, defense, steel, woodworking and transportation, just to name a few. Our members produce, service, assemble and transport products, parts and assemblies that create the global economy.

The IAM welcomes the opportunity to offer suggestions on replacing NAFTA and the current trade template with one that will benefit workers here at home and in other countries.

We need an agreement that will create more jobs and higher wages here at home. Negotiators must be willing to replace NAFTA with an agreement built on transparency, democracy, fairness, strong labor standards, and social safeguards. Merely tweaking current language is unacceptable.

Among other things, we urge negotiators to greatly strengthen provisions regarding labor, rules of origin, procurement and many other critical matters. We also urge negotiators to delete language regarding investor state dispute mechanisms and add language on currency rules. Since suggestions on each of these matters, is included in the AFL-CIO submission, they will not be repeated here.[1]

In view of the AFL-CIO's comments, which the IAM shares, we will use this opportunity to provide additional comments with respect to the labor provision in a re-negotiated NAFTA as well as the disastrous impact NAFTA has had on U.S. manufacturing workers, including aerospace.

[1] The IAM is an active affiliate of the AFL-CIO and has contributed to its submission regarding this matter.

The lack of a strong, effective labor provision in all U.S. trade agreements, especially NAFTA, the Peru template and the proposed language in the TPP, is one of many reasons why U.S. workers have been placed in an unfair position in the global economy. Past templates for labor provisions in various U.S. trade agreements, and the proposed TPP must be rejected. These provisions reference standards that have not been interpreted consistently by various parties. They also contain significant hurdles for complaints to proceed under these provisions. In other words, it is not enough that major violations of labor rights, which are human rights, are violated. Under NAFTA and the current TPP trade template, these violations must also meet additional, convoluted and burdensome standards on the party filing the complaint.

Indeed, there is no clearer proof about the ineffectiveness of the current language than the final report of the Guatemala panel that was just released. As reported,

> *While the U.S. was able to prove that at eight worksites and with respect to 74 workers Guatemala had not effectively enforced its labor laws by failing to secure compliance with court orders, the report notes that the U.S. could not prove these cases constituted a course of inaction that was in a manner affecting trade.*[2]

While it reached the wrong conclusion, the panel's report should not be surprising. For years, the IAM has called for the elimination of the burdensome and overly vague requirement that labor violations must be in a manner affecting trade.

Effective and strong labor provisions in trade agreements are critical. If properly drafted, implemented and enforced, they can stop signatories, like Mexico, from distorting the market because they unfairly suppress labor costs. These artificially low labor costs are obtained by denying Mexico's workers the right to form their own unions, engage in collective bargaining, and being free from discrimination, forced labor and child labor. Mexico receives the benefits of NAFTA, but because its rules with respect to labor are seriously flawed, Mexico gains an advantage on both the U.S. and Canada through artificially low labor costs.

Mexico's manufacturing industry has dramatically expanded since NAFTA, at the direct cost of U.S. workers. Since NAFTA, its aerospace industry is now one of the largest industries in Mexico, employing between 30,000 and 40,000 workers. Aerospace manufacturers promote the existence of low wages in Mexico to draw business across the border. "Mexico's proximity to the U.S. and its lower labor cost structure have drawn approximately 300 foreign manufacturers to areas in five Mexican states." [3] As one review of the aerospace industry noted, "[T]he

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[2] "USTR faults panel for 'incorrectly' concluding Guatemala labor violations did not affect trade"; https://insidetrade.com/daily-news/ustr-faults-panel-incorrectly-concluding-guatemala-labor-violations-did-not-affect-trade?s=em

[3] https://offshoregroup.com/industries/aerospace-manufacturing-in-mexico/

downside of this is that the country may be used increasingly for its cheap labor by profit-hungry companies from more established markets."[4] Mexico's aerospace industry is now one of the major exporters to the U.S. While U.S. workers have lost thousands of jobs to Mexico in this fashion, this number is multiplied when considering the lost job opportunities that would have been created if European aerospace companies and their suppliers would have located production in the U.S., as opposed to Mexico.

NAFTA and low labor costs are increasingly attracting U.S. aerospace production. The United States International Trade Commission reported:

> U.S. and foreign aerospace component suppliers have been increasingly locating production facilities in Mexico. Lower manufacturing costs (largely due to a lower wage structure), proximity to original equipment manufacturers (OEMs) in the United States, duty-free access to other important aerospace markets, … all contribute to Mexico's greater appeal compared with other global manufacturing locations. Mexico's base of aerospace suppliers expanded rapidly from 109 firms to 249 during 2006–11. Employment also grew from 10,000 to 31,000 workers during this period, and by 2012, companies located in Mexico were supplying parts and structures to U.S. and foreign transport aircraft OEMs (table 1) and OEMs of general aviation aircraft (Bombardier Learjet, Cessna, and Hawker Beechcraft).[5]

NAFTA's failure at raising labor standards in Mexico has been well documented. Our own U.S. State Department's Country Reports on Human Rights once again lists Mexico as one of the most notorious countries for failing to respect these rights. As the report states[6]:

> *Workers exercised their rights to freedom of association and collective bargaining with difficulty.*
>
> *Protection (unrepresentative, corporatist) unions and "protection contracts," collective bargaining agreements signed by employers and these unions to prevent meaningful negotiations and ensure labor peace, continued to be a problem in all sectors.*
>
> *According to several NGOs and unions, many workers faced procedural obstacles and various forms of intimidation (including physical violence) from protection union leaders, or employers supporting a protection union, in the lead-up to, during, and after*

[4] http://www.americasquarterly.org/content/aerospace-emerging-mexican-industry
[5] "The Rise of Foreign Aerospace Suppliers in Mexico", https://www.usitc.gov/publications/332/coffin_mexico_aerospace4-25.pdf
[6] https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper

bargaining-rights elections from other workers, union leaders, violent individuals hired by a company, or employers favoring a particular union.

Other intimidating and manipulative practices continued to be common, including dismissal of workers for labor activism.

Nor are fundamental human rights prohibiting forced labor honored. Again, according the U.S. government:

The law prohibits all forms of forced or compulsory labor, but the government did not effectively enforce the law. Forced labor persisted in the agricultural and industrial sectors, as well as in the informal sector.

Fundamental human rights with respect to child labor in Mexico is also of extreme concern:

Enforcement was inadequate in many small companies and in the agriculture and construction sectors and nearly absent in the informal sector, in which most child laborers worked.

According to the 2013 INEGI survey, the most recent data available on child labor, the number of employed children between ages five and 17 remained at 2.5 million, or approximately 8.6 percent of the 29.3 million children in the country. Of these children, 746,000 were between ages five and 13, and 1.8 million were between ages 14 and 17. Of employed children 30 percent worked in the agricultural sector in the harvest of melons, onions, cucumbers, eggplants, chili peppers, green beans, sugarcane, tobacco, coffee, and tomatoes. Other sectors with significant child labor included services (25 percent), retail sales (26 percent), manufacturing (13 percent), and construction (4 percent). On August 25, the government announced the percentage of children engaged in labor decreased from 11.5 percent of total children in 2007 to 7.5 percent in 2015.

Mexico does not honor fundamental human rights with respect to prohibitions regarding discrimination in the workplace. As found by the U.S. government:

The government did not effectively enforce its laws and regulations. Penalties for violations of the law were not generally considered sufficient to deter violations. Discrimination in employment or occupation occurred against women, indigenous groups, persons with disabilities, LGBTI individuals, and migrant workers.

Renegotiation of NAFTA offers the signatory countries the opportunity to create a new template that is clear, unambiguous and based on labor standards reflected in ILO Conventions

and ILO jurisprudence.[7] This can be accomplished if the labor chapter in the agreement explicitly states that parties honor and effectively enforce the rights and standards expressed in ILO Conventions and interpretations issued under the ILO's supervisory mechanisms, like the Committee on the Freedom of Association. Footnotes that raise uncertainty over the definition of labor rights and standards, like the one in the Peru FTA limiting the terms of the chapter to the ILO's unenforceable 1998 Declaration on Fundamental Principles and Rights at Work, must be abandoned.

In order to be certain that parties satisfy these requirements, they must demonstrate that they are in compliance prior to the agreement going into effect. This is especially critical in view of the long, frustrating dispute resolution path contained in the Peru template. Of course this presumes that a renegotiated NAFTA will have an effective dispute resolution provision that covers labor violations. Failure to adopt such a provision would be a fatal flaw to the effectiveness of any labor chapter.

Vague limitations on the nature of violations that are covered by a renegotiated NAFTA must also be avoided. Specifically, the Peru FTA requirements that labor violations must be "in a manner affecting trade or investment" and constitute a "sustained or reoccurring action or inaction" should be rejecting by negotiators, especially in view of the recent Guatemala report. As mentioned, 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. Furthermore, 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.

Fundamental human rights, like the labor standards defined by the ILO Conventions, apply to all workers throughout the world with equal intensity. For this reason, side agreements or alternative arrangements like those used in conjunction with NAFTA, the U.S.-Colombia Labor Action Plan, or proposed for Vietnam, Brunei and Malaysia are no substitute for the kind of strong labor chapter described above. As previously mentioned, these side arrangements have not been effective. After more than 20 years the NAALC has not stopped Mexico from continually violating workers' rights, nor has the Labor Action Plan with Colombia stopped the murder and death threats for trade unionists and human rights activists. Adopting the proposed TPP labor provisions would not make a difference in Mexico

[7] Portions of the following testimony were taken directly from Owen Herrnstadt, "TTIP: Time for a New Approach to Labor Rights and Standards", http://digitalcommons.ilr.cornell.edu/globalschol/5/

It is also imperative that these ILO core rights and standards be adopted into national law and effectively enforced before any agreement can be signed, let alone implemented. Promises to effectively enforce labor laws after a trade agreement has been implemented have been repeatedly been found to be disingenuous, especially in view of the U.S. State Department's documentation regarding continuing violations in Mexico.

Replacing the current trade agreement template on labor provisions is only one of several dramatic changes that must take place in NAFTA before it can be acceptable. Mere tweaks and word changes will not suffice. Investor to state dispute mechanisms must be eliminated, rules of origin must be strengthened and enforced, as well as other provisions. Further suggestions on these and other provisions are attached to the IAM's written comments.

We appreciate the opportunity to provide this testimony (as well as our written comments) and would be glad to answer any questions you may have.