



EUROPEAN UNION
DELEGATION TO THE UNITED STATES OF AMERICA

The Head of Delegation

Washington, *6 March 2012*

E-NOTE DELUSW

Subject: Trade Counsellors Meeting on Labour rights with Thea Lea, Deputy Chief of Staff, AFL-CIO on 1st March 2012

Summary:

AFL-CIO is the largest trade union federation in the United States. Thea Lee, who has been following trade issues for the labour movement for many years, discussed both the challenges unions face in the US and their views on trade agreements.

Detail:

The situation of unions in the United States

AFL-CIO is concerned by the political drive to reduce union rights in the United States. The 'Right to Work' legislation adopted by some States (in particular in the South) makes it almost impossible for unions to exist, because they can no longer collect dues among workers who are not union members but benefit from their negotiations. The recent adoption of Right to Work legislation by Indiana was significant because Indiana is the first mid-western industrial State to do so. Almost half of US States are now non-unionized.

However, Thea Lee emphasised that unions have more clout in the electoral system than their decreasing membership (only 7% union membership in the private sector and 12% overall) would suggest. They estimate that 1 out of 4 votes in past elections is from a 'union household', that is, a household with some tie with unions (including existing or past membership from parents as well as children). Unions are also significant financial contributors to election funds, making them the largest progressive constituency in the American political system.

AFL-CIO has been following two strategies to try to counter the decrease among its traditional membership in fields such as manufacturing and construction:

1) creating 'community affiliates': with a 'knock on the door' approach they have managed to put together a group of about three million persons who are supportive of unions' policies and mobilised mainly around elections and events.

2) reaching out and trying to organise constituencies that were not unionised before, for instance taxi drivers in New York, car washers in Los Angeles and household workers.

How unions view globalisation and trade

Thea Lee outlined how American unions had to insert themselves in the trade debate 'by force' at the time of the NAFTA agreement. They have been progressively joined by other constituencies (environmental groups, human rights activists, etc.).

They regret that a discussion on basic labour rights has never been possible in the WTO context. In bilateral agreements, AFL-CIO is in favour of labour and environmental provisions that are as robust as possible: Agreements should be supportive of the overarching ILO convention on fundamental worker rights. Having binding commitments in trade agreements – and enforcing them - is key to the AFL/CIO approach, and she made no secret of her opposition to an approach that is non-binding. AFL-CIO has seen that language that is merely hortatory as in NAFTA has little value, so it is important that sanctions can be taken in case labour provisions are violated.

Thea's colleague Celeste Drake (AFL-CIO trade policy specialist) remarked that unions' interest and concerns in trade negotiations go beyond labour provisions. The investment chapter is a source of concern, as unions oppose investor-to-state dispute settlement because it may impede on sovereign states' right to regulate for other than economic reasons. They are also concerned about provisions on capital movement and control that may have negative impact on countries in times of crisis notably. In the Trans Pacific Partnership (TPP) negotiations, AFL-CIO is opposed to regulatory provisions that in their view would be focused on reducing business costs and giving too much say to US companies on labour regulations in these countries.

With regards to a potential EU-US FTA, AFL-CIO would welcome provisions that would make the US move closer to the EU in certain areas. They mentioned notably the EU regime for chemicals and toxins, which is more protective of workers, as well as the European Works Councils model, which Lee mentioned as a possible template for transatlantic companies.

Questions and debate

One Member State asked AFL-CIO representatives about their views on "**Buy America**". Thea-Lee defended it strongly, indicating she would like to see it strengthened. While she recognised the need to have exceptions for GPA signatories, she felt that it was important that taxpayers' money could be used to foster American jobs and social protection. In their view, it was more effective to keep money at home in order to stimulate the US economy. When asked how the US could reconcile Buy America and their criticism of Buy Chinese policies hurting US manufacturers, Thea Lee expressed her view that the EU also had "huge" exceptions in its procurement regime allowing to restrict access to foreign companies.

When somebody recalled past difficulties to have a closer alignment of EU and US regulatory regimes in chemicals for instance, Thea Lee acknowledged this would be a heavy lift.

She indicated that they had reached out to their European counterpart ETUC to define priorities with regards to a potential EU-US trade initiative.

One Member State challenged Thea Lee's assumption that the US **trade deficit** was detrimental to the economy; imports contribute to jobs and competitiveness. Similarly, he challenged AFL-CIO on **investment**, noting that one should not discourage outward investment as two-way investment was important for the economy. Thea Lee made a distinction between different kinds of investment. AFL-CIO was not opposed to 'market-seeking' investment' but to 'cheap labour seeking' investment. This is why they support the administration's proposal to disallow "tax breaks for companies that off-shore production and jobs".

Annex: AFL-CIO submission to USTR Federal Register notice on the High Level Working Group on Jobs and Growth

AFL-CIO Response to

Request for Comments on "US-EU High Level Working Group on Jobs and Growth" Federal Register, (January 11, 2012) Docket Number USTR-2012-0001

The AFL-CIO appreciates this opportunity to comment on the possibility of strengthening jobs and economic growth through increased cooperation with the European Union. These comments include our general concerns as well as specific recommendations.

The AFL-CIO believes that increasing trade ties with the EU could be beneficial for both American and European workers. Both regions have advanced economies, high national incomes, and well developed legal and regulatory regimes designed to protect health and the environment and defend workers' rights. We note in this regard, that in many respects, European nations' efforts to provide a social safety net and protect families and the environment far exceed our own.

Discussions should remain disciplined and focused on efforts to create and maintain good jobs

Actual US job growth that can be measured with precision (not extrapolated from US Department of Commerce data) should be a priority of the Working Group. In the past few years, millions of US jobs in manufacturing and other sectors have been lost. If this dialogue is to have any positive impact on US workers, discussions must remain focused on specific efforts to spur the direct creation and maintenance of good jobs here at home. Participants should be discouraged from focusing on policies that could result in making it easier for US corporations to shift production and technology.

Efforts must also be made to distinguish between activities that benefit the US economy by supporting US jobs and activities that *only benefit shareholder value* for certain corporations. We are painfully aware that many corporations which are headquartered in the US manufacture products in Europe either directly or through subsidiaries or supplier networks. While shareholder value of those companies may benefit from the transfer of additional work to Europe, US workers do not benefit. Among other things, the opportunity to create US jobs in the future is also lost as entire industries vanish from our shores.

It will not be helpful if the working group decides to concentrate its discussions solely on laying the groundwork for full-blown trade agreement negotiations. (We have submitted our position on the essential elements of a new trade template to USTR on numerous occasions and would be happy to engage in further discussions along these lines should USTR desire.) It will also be counterproductive if the working group

undertakes actions that will lead to the elimination or weakening of US and EU member states' employment and labor laws and regulations that are essential for decent living standards. In this vein, it would be very disappointing if the working group's efforts were used to support many of the austerity measures that are currently being contemplated in Europe and that are fervently opposed by workers and communities in the EU, as well as throughout the world.

**The Working Group should consider the elimination
of market distorting mechanisms such as offsets and offset-like transactions**

Offsets involve the transfer of technology and/or production from a US company to a company in another country in return for a sale. They cost US workers thousands of jobs. While offsets are virtually unregulated in the US, over 20 European countries have well established policies that are feeding the development of their own industries and bringing US productive capacity and technology to their shores. [See Owen Herrnsstadt, "Offsets and the Lack of a Comprehensive U.S. Policy: What Do Other Countries Know That We Don't?", *Economic Policy Institute*, (2008).]

Efforts to eliminate offsets were contemplated by the short-lived Presidential Commission on Offsets. That Commission, created by President Clinton, perished during the Bush Administration before it could issue a final report. Although prohibitions against offsets were reflected in the now-defunct US-EU 1992 Agreement on Large Commercial Aircraft, that language was narrow, weak and, rarely (if ever) enforced.

A high-level dialogue with the EU on jobs presents a tremendous opportunity to adopt new language that is robust and that will effectively eliminate EU's use of offsets and offset-like activities. This effort could also assist US and European companies which are constantly being pitted against one another by China. If both the US and the EU were to agree bilaterally not to engage in offsets with each other – or when competing with one another for sales to China – jobs that would have been lost due to offsets could be avoided.

A Possible Trans-Atlantic FTA?

The primary goal of any Trans-Atlantic FTA (or some related effort) must be to maximize employment opportunity for workers, not simply to maximize profits for multinational corporations looking to reduce the labor, environmental, or other protections that help families thrive. Ideological goals, such as imposing the austerity measures now in force in Greece and Spain, or imposing neo-liberal tax, trade, and deregulatory policies, must not be pursued; these would only exacerbate the global slump in consumer demand and harm workers in the US and EU.

Unlike trade with many other regions, increased trade with the EU offers the opportunity to trade with nations that have robust labor, environmental, health, and safety regulatory regimes—regimes that should be respected as we work to ensure regulatory compatibility. We encourage you to strengthen and enhance commitments in recent US trade agreements in which parties commits to adopt, enforce, and maintain ILO core labor rights. In addition, given the EU’s robust labor market policies, we urge you to go further in promoting and securing rights and protections for workers by adopting an approach appropriate to the EU’s highly developed labor regulations— one that promotes European-style works councils for trans-national corporations; labor neutrality agreements; and strengthening existing social protections for workers.¹ Anything less would be a step back for workers both here and in Europe.

In 2010, the US had a \$79 billion deficit in trade in goods with the EU. If well-negotiated with a goal of increasing employment and well-being for working families, using the Trans-Atlantic FTA to increase market access to Europe, with its highly industrialized nations and large middle class, could positively affect that trade imbalance and create jobs in the US by increasing net exports.

Unfortunately, experience has shown that, despite rosy predictions by the US International Trade Commission (ITC) and various free trade advocates about export and job growth, promised gains from NAFTA-style trade agreements generally fail to pan out. The recent debate over trade agreements with South Korea, Colombia, and Panama echoed past debates over NAFTA, CAFTA, and permanent normal trade relations with China, among others. In each case, the estimates of job creation by the ITC and other experts were wildly inaccurate— often with the wrong sign (i.e. predicting job gain or improvements in the trade balance, when the opposite occurred). We therefore encourage you to abandon the NAFTA model and adopt an entirely new approach, modeled more closely on the Michaud-Brown TRADE Act.

A key component of such a new model would be the abolition of the Investor-State Dispute Settlement (ISDS) mechanism. Given the advanced judicial systems of both the US and EU, ISDS is an unwarranted risk to domestic policy-making at the local, state, and federal levels.

In public and private comments, the AFL-CIO has made clear that the approach to all

¹ Here, we emphasize that by “European-style Works Councils” we mean Works Councils formed pursuant to the Works Council Directives of the EU, in which around 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 Works Council Directives apply to companies with 1,000 or more employees, including at least 150 in two or more Member States. This structure should be protected and enhanced to include companies with operations in the US and at least one EU Member State who otherwise meet the requirements. In this document, “European-style Works Councils” does not refer to any kind of employer-sponsored effort to avoid or weaken unionization of workers.

trade negotiations must be fact-based. As such, we strongly encourage you to study the impact of the proposed trade agreement or enhanced trade relationship (segregated by industry, region, gender, and other relevant classifications) on the people of both the US and EU before any such agreement is finalized, and to adjust your negotiating goals and objectives to prevent concentration of harm to any one group. The EU already engages in a related analysis and its model may provide a basis for developing one of our own.

The procedure of negotiations should be transparent and offer opportunities of meaningful engagement of social partners and other representative organizations of the civil society. The governments of both sides of Atlantic should keep parliaments/Congress, social partners, and media informed of the tabled texts and the course of negotiations.

In light of the global financial crisis and recession, the inclusion of financial services in the liberalization agenda of a possible Trans-Atlantic Agreement would only enlarge the financial sector and create more structural uncertainties in the Atlantic and global economy. As both EU and US are strong financial powers, the Agreement should exclude financial services in order to avoid mergers and acquisitions which would create new global conglomerates that would be "too big to fail." The American and European space to regulate should not be eliminated by this Agreement.

As always, the AFL-CIO will be unable to support any trade agreement unless it is well balanced, foments the creation of good jobs, protects the rights and interests of working people, and promotes a healthy environment. We also note that to work, trade agreements must also be fairly and consistently enforced. Further, trade agreements, without complementary policies such as infrastructure development, export promotion strategies, and active labor market policies, will not produce the outcomes desired.

