



June 07, 2023

The Honorable Maria Cantwell
Chair, Committee on Commerce, Science, and
Transportation
United States Senate
Washington, D.C. 20510

The Honorable Ted Cruz
Ranking Member, Committee on Commerce,
Science, and Transportation
United States Senate
Washington, D.C. 20510

The Honorable Tammy Duckworth
Chair, Subcommittee on Aviation Safety,
Operations, and Innovation
Committee on Commerce, Science, and
Transportation
United States Senate
Washington, D.C. 20510

The Honorable Jerry Moran
Ranking Member, Subcommittee on Aviation
Safety, Operations, and Innovation
Committee on Commerce, Science, and
Transportation
United States Senate
Washington, D.C. 20510

Dear Chair Cantwell, Ranking Member Cruz, Chair Duckworth, and Ranking Member Moran,

We, the undersigned organizations, write in opposition to S. 1752. The bill would place the U.S. in violation of all of its binding international air service agreements — including the more than 130 existing Open Skies agreements that have been crucial to the development of the commerce of the United States. This deeply misguided legislation would undermine U.S. foreign policy leadership, **directly invite economic retaliation from all U.S. bilateral aviation partners**, and dismantle decades of U.S. leadership and excellence in global aviation.

U.S. Open Skies policy is unquestionably one of the most successful economic and diplomatic initiatives in American history. It has promoted competition in the aviation sector, increased air service access at U.S. airports, reduced costs for consumers, raised the standards for aviation safety and security globally, facilitated exports for U.S. businesses, and enhanced U.S. diplomacy. For example, during the COVID-19 pandemic, these accords provided vital flexibility for cargo airlines to move critical medicines, supplies, and consumer goods. With these facts in mind, we ask that you heed the following warnings about the dangers that S. 1752 would pose to U.S. foreign policy and the economy.

S. 1752 Would Place the U.S. in Violation of Several Open Skies Agreements

Erroneously dubbed as the “Fair and Open Skies Act,”¹ this legislation would place the U.S. in direct violation of dozens of longstanding international agreements that facilitate trade in air services. By

¹ See: <https://www.congress.gov/bill/118th-congress/senate-bill/1752?s=1&r=1>

adding burdensome and duplicative requirements² to the existing public interest test³ for permits of foreign air carriers, S. 1752 would eliminate the U.S. government's ability to guarantee aviation market access to foreign carriers — including those in countries that have an established Open Skies agreement with the U.S. This bill would also lead to retaliation on the U.S. commercial and cargo aviation industries by our international partners — with far-reaching implications to the U.S. workforce. This includes the thousands of manufacturing jobs that support U.S. aviation and aerospace, as well as consumers and businesses who all rely on the global supply chain and just-in-time deliveries.

In establishing the Open Skies framework in 1992, a transparent and broad industry stakeholder discussion and debate occurred around the definition of labor standards. U.S. government records reflect broad stakeholder engagement including then-U.S. labor officials who were consulted extensively on the merits of a public interest test for foreign air carrier permits, and the public was provided an opportunity to weigh in on the framework through the U.S. Department of Transportation's (DOT) public docket process. Within this framework — as an additional safeguard — DOT affords all stakeholders the opportunity to consult during air service agreement negotiations and during licensing processes for foreign carriers serving the United States. Furthermore, Congress has vested DOT with broad statutory and regulatory tools to address problems that arise within air service agreements so as not to violate a binding bilateral agreement. For example, in the event that any party believes conditions have changed that would trigger a potential violation, they can pursue their claim transparently through existing laws such as the International Air Transportation Fair Competitive Practices Act (IATF CPA)⁴.

S. 1752 Supporters Consistently Downplay the Threat of Foreign Retaliation

While proponents of this bill have tried to downplay the threat of retaliation in the past, recent responses from the European Union (EU) clearly demonstrate their intention to uphold terms of the U.S.-EU Air Transport Agreement (ATA). Notably, the EU previously filed for arbitration⁵ against the U.S. for breaching this pact during Norwegian Air International's application process, saying that DOT's slow-walk to a decision "constitutes a breach of the EU-U.S. Air Transport Agreement." Additionally, in the authoritative Memorandum of Consultations⁶ signed in 2010 at the conclusion of the U.S.-EU negotiations, the delegations stated explicitly that "in the event that a Party would take measures contrary to the Agreement ... the other Party may avail itself of any appropriate and proportional measures in accordance with international law, including the Agreement."

S. 1752 Would Slash Jobs & Economic Growth in U.S. Aviation

The consequences of S. 1752 are clear. Retaliation from EU and other countries that the U.S. enjoys an Open Skies agreement with could take the form of new public interest and country-specific standards against U.S. carriers — or enforce existing standards from which U.S. carriers are already exempt. In turn, this would reduce market access for U.S. carriers and cost travelers an estimated⁷ \$4 billion annually through increased fares and limited options. S. 1752 would also place millions of U.S. jobs that are

² See: 49 U.S. Code § 40101(a)(5), (10), (15)

³ See: 49 U.S. Code § 41302

⁴ See: Pub. L. 93-623

⁵ See: <https://www.reuters.com/article/norweg-air-shut-eu-usa/eu-files-for-arbitration-in-u-s-dispute-over-norwegian-air-idUSL8N1DW569>

⁶ See: https://www.gsa.gov/cdnstatic/Switzerland_Transport_Agreement.pdf

⁷ See: <https://www.brookings.edu/wp-content/uploads/2016/06/Open-Skies-Published.pdf>

supported directly and indirectly by the aviation, aerospace, travel, and tourism industries at risk, and could cost billions of dollars in future economic contributions from these industries⁸. These retaliatory actions would undermine the growth of the U.S. aviation industry, break down global supply chains, stymie job creation, weaken U.S. competitiveness, and erode diplomatic relationships with partner nations.

Conclusion

Open Skies agreements reflect the success of a bipartisan foreign policy vision that has been advanced by both Democratic and Republican administrations for three decades. We ask for your continued leadership in upholding the Open Skies framework by rejecting this harmful legislation and urge you to maintain Congress' long-standing position in support of Open Skies. In doing so, Congress is validating the integrity of the U.S. in our existing agreements, and the credibility to pursue future agreements that will continue to advance U.S. jobs and innovation, and to provide economic competition directly benefiting U.S. consumers.

Thank you for your attention to this important matter.

Sincerely,

Airbus
Airports Council International-North America
Atlas Air
Boeing
Cargo Airline Association
DHL
FedEx
International Air Transport Association
JetBlue
National Association of Manufacturers
UPS

cc: The Honorable Amy Klobuchar, United States Senate
The Honorable Roger Marshall, United States Senate

⁸ See: <https://wtcc.org/research/economic-impact>