OPPOSE "FLAG OF CONVENIENCE" AMENDMENT

The "Flag of Convenience" Amendment (the "Amendment") would threaten the Open Skies Agreements the US has entered into with 120 countries since 1992 by introducing barriers to entry into the US market never contemplated in, nor allowed by, the original agreements.

It is estimated that Open Skies Agreements generate $4 billion in annual economic gains to consumers and that full liberalization of the global commercial aviation market would support 9 million jobs in aviation and related industries. These gains would all be threatened by the passage of this Amendment, a primary reason why the Trump Administration strongly opposes this language.

The Amendment would introduce **three new barriers** to entry that would violate the basis for the majority of the US Open Skies Agreements that have enabled US airlines to launch new international services to destinations around the globe:

- In the US-EU Open Skies Agreement, "interested parties" could require the DOT Secretary to make a formal finding that an EU airline entering the US market was not undermining labor standards
    - No basis for such a provision in the Open Skies Agreement
    - Passage of this language would be a per se violation of the Agreement and would invite retaliation against US airlines by the EU
- For all airlines seeking a foreign air carrier permit, the DOT Secretary would have to make a formal finding that allowing entry into the US is "in the public interest"
    - No such provision in the original Open Skies agreements
    - Open Skies are based on decision by both sides that the agreement is in the public interest – no need for a second finding confirming the same
- "Flag of Convenience" carriers would be barred from entering the US
    - "Flag of Convenience" is not a recognized term in commercial aviation. It is a misapplication of a shipping term by supporters of this Amendment.
    - Language is so broad as to capture any carrier that has operations outside its home country
    - Open Skies Agreements are negotiated to protect interests on both sides, including labor concerns, but this does not allow one side to dictate labor rules to the other

Labor's arguments in favor of the Amendment are not persuasive:

- **So-called Flag of Convenience carriers threaten US jobs by using cheaper foreign labor:** All carriers today are able to access labor from less expensive markets, as long as they satisfy licensing and immigration laws. The fact is that no airline has done this in the US, including Norwegian, and that US airline employment is growing, not declining, suggests this is a solution in search of a problem.
- **So-called Flag of Convenience carriers are less safe than US carriers:** Under US law, DOT/FAA must certify that a carrier is safe before it is allowed to operate to the US.
- **DOT has failed to protect the US aviation industry by not enforcing the labor provision in the US-EU Agreement:** Both the US (Executive and Judicial Branch) and EU agree that nothing in the original agreement contemplated labor standards as a barrier to entry.
- **We need this language to protect commercial aviation from the fate of commercial shipping:** This is a false analogy. A key component of all Open Skies Agreements is protections for the US commercial aviation industry from unfair or unsafe competition. Shipping is governed by principles of "freedom of the seas" and does not enjoy the equivalent of Open Skies Agreements.
- **Mandating a public interest finding only confirms standard DOT procedures:** As recently confirmed by the D.C. Circuit, DOT does not require a public interest finding unless a foreign carrier applies for an expedited review of their application to enter the US. The public interest finding contained in the Amendment would extend this to all applications, something never contemplated by the agreement
- **The EU threat to retaliate is not credible as the US-EU Agreement prohibits retaliation:** If the USG prohibited airlines from exercising rights under the US-EU Agreement based on the Amendment, the EU would be fully empowered to respond with countermeasures, in addition to taking the US to formal arbitration. The EU has clearly stated it intends to take all necessary measures if this Amendment becomes law.

The "Flag of Convenience" Amendment would violate US treaty obligations at the expense of US airlines and the global commercial aviation industry generally