

Congress of the United States
Washington, DC 20515

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Submitted on-line via www.regulations.gov

Ambassador Ron Kirk
United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Secretary Gary Locke
U.S. Department of Commerce
14th & Constitution Ave. NW Room 4001
Washington, DC 20230

RE: Docket Number ITA-2010-0001: Request for Public Comment on the Scope of Viewpoints Represented on the Industry Trade Advisory Committees

Dear Ambassador Kirk and Secretary Locke:

We write to offer our comments on the need for greater public interest representation on the Industry Trade Advisory Committees (ITACs).

It has been almost a year since the Committee on Ways and Means conducted a hearing on the functioning of the trade advisory committee system and on how to increase the transparency and public participation in the development of U.S. trade policy. At this hearing, USTR promised a major review of the trade advisory committee system with a partial focus on increased public interest representation. Unfortunately, despite this Congressional attention on the need for greater public participation and the promise of a thorough review by USTR, no meaningful action appears to have occurred. The very fact that ten months after this hearing, USTR and the Department of Commerce are only now asking for public input just highlights the lack of attention to this important issue.

Most disappointing, the charters for these ITACs expired in February and the rechartering process has already been completed. This rechartering process, of which the composition of the committees is a key element, represented not only a great opportunity to review the need for public interest representation, but arguably a deadline for doing so. At a minimum, asking for comments only after you have already completed the rechartering process calls into question your commitment to addressing in a meaningful fashion the issue of public interest representation on the trade advisory committees.

Representation on the Tier 3 Committees Is Essential

As the statute makes clear, Congress intended that public interest representatives be included throughout the trade advisory committee system. While public interest representatives are largely under-represented at the Tier 1 and 2 levels, we are especially troubled that they are virtually unrepresented at the Tier 3 level. The statute explicitly assigns a significantly different purpose to each. The Tier 3 for example, concentrates on technical, industry specific matters that are not

reviewed by committees on the other tiers. Key policy decisions concerning export controls and other detailed trade matters are considered at this level. By excluding experts representing labor, the environment and public health groups at this level, USTR and Commerce miss the critical opportunity to hear valued insights from important stakeholders.

Our concerns over the lack of public representation at the Tier 3 level are heightened by troubling reports that suggest that trade policy and negotiations are substantially influenced at the Tier 3 level and that during the actual negotiations, the Tier 2 policy committees are either not consulted, or are excluded from offering any meaningful input. We understand that, unlike Tier 2 committees, Tier 3 committees regularly review proposed U.S. negotiating texts and are even consulted by USTR on-site or by telephone during trade negotiations.

As described in further detail below, this lack of effective presentation of environmental, public health or other non-industry concerns on the Tier 3 committees can have severe consequences.

Public Health

Over a year ago, the Public Health Trade Advisory Committee Act was introduced by Representatives Van Hollen and Doggett along with other members of the Ways and Means Committee. The legislation amends the Trade Act of 1974 to require that a Public Health Advisory Committee be added to the influential Tier 2 of the Federal Trade Advisory Committee System. It is widely felt that well-represented corporate interests have sometimes been rewarded with trade provisions at the expense of our nation's health and well-being. This legislation is designed to correct a long-standing imbalance in the Trade Advisory Committee system by giving Public Health a stronger voice in trade agreement formation.

Additionally, this bill paves the way for greater public health representation on the ITACs, since the need for public health voices on the Tier 3 committees is no less strong. Elevating the issue of public health within this system will give public health concerns greater consideration at the onset of trade agreement formation and ultimately make America safer and healthier.

Eight years ago, in 2002, the United States Government Accountability Office, in its report on the role, structure, and system of the trade advisory committee system, found that "new stakeholders in the trade process, such as public health...have limited or no participation in the formal committee system, even though topics such as intellectual property are of interest to them."

Without any counterbalance from the public health community, trade advisory committees provide unwarranted opportunities for the tobacco industry to assert its interests beyond public scrutiny. Not surprisingly, tobacco firms have a strong grip over the Tobacco, Cotton and Peanuts Agricultural Technical Advisory Committee (ATAC). A 2003 Advisory Report from the committee specifically touted the U.S.-Singapore Free Trade Agreement for including tobacco products in the agreement's tariff reduction provisions. Under the Singapore FTA, tariffs on tobacco and tobacco products are to be progressively reduced. By making tobacco products cheaper, this policy increases deadly tobacco consumption.

The Pan American Health Organization has stated: "Transnational tobacco companies...have been among the strongest proponents of tariff reduction and open markets."

Serious concerns for the public health of Americans and of our trading partners, in addition to the deadly effects of tobacco, are promulgated in many other areas, such as access to affordable

medicines. For example, there was great concern that provisions of the Australia Free Trade Agreement were only intended to protect pharmaceutical companies—many of which were on the trade advisory board—and denied American citizens access to lower-cost prescription drugs.

Labor

Much of the same is true for other non-industry stakeholders. The statutory language appears, for example, to mandate greater labor representation in Tier 3 committees. Like other stakeholders, many labor representatives are well qualified to share their knowledge on a variety of industrial matters. Individuals from labor that could serve on ITACs have developed sophisticated expertise in most, if not all, of the technical areas covered, including a number that have been the subject of trade complaints over the years. Labor has also offered important insights concerning export controls, support for exports, imports, issues involving the transfer of technology, and others. Given this expertise and the broad labor representation contemplated by the statute, there can be no excuse for the limited representation of labor on the Tier 3 committees.

Environment

In stark contrast to the substantial access and influence enjoyed by Tier 3 committees, a Tier 2 committee nominally devoted to environmental concerns – the Trade and Environment Policy Advisory Committee (TEPAC) – meets infrequently and has little or no access to the U.S. trade negotiating process, either prior to or during negotiations.

As a result of lawsuits filed in 1999, USTR named environmental representatives to three Tier 3 committees. After those representatives stepped down, USTR failed to name replacements. There are currently no environmental representatives on any Tier 3 committee.

This lack of representation of environmental concerns on Tier 3 committees is extremely troubling given the impact of U.S. and international trade policy on the ability of nations to protect the environment. For example, in 2009 TEPAC members learned that ITAC members had submitted formal recommendations to USTR and the Commerce Department urging that the United States bring a formal World Trade Organization challenge to Europe's REACH (Registration, Evaluation and Authorization of Chemicals) policy. The REACH policy establishes ambitious chemical safety laws that may offer valuable health and product safety benefits including free access to health and safety information; harmonized rules across a market of nearly 500 million consumers; safer ingredients and products available to U.S. manufacturers, workers and consumers; and competitive advantages for U.S. exporters that already offer superior products.

Despite these benefits, ITAC-3 advocated aggressively for U.S. opposition to the REACH policy for years, culminating in its recommendation of a WTO challenge. While this recommendation concerned a significant environmental policy, USTR failed to seek TEPAC input in a timely manner and even resisted requests by TEPAC members to receive a copy of the Tier 3 committee recommendation.

Another example is the negotiation of rules concerning the regulation of foreign investment. These provisions have been severely criticized in the past by both TEPAC and the environmental community, which argue that these rules may undermine environmental protections. Unfortunately, it appears that U.S. negotiators have ignored these concerns in certain pending FTAs and with regard to the Model Bilateral Investment Treaty. Strengthening the voice of the

environmental community could allow for a greater refinement of these rules and ease political tensions with respect to these trade provisions.

These are only a few of the examples highlighting the need for environmental representation on the Tier 3 committees.

Greater Public Interest Representation Will Ensure These Voices Are Incorporated More Effectively in the Process


Opponents claim that greater public interest representation will only impede the committees' ability to function properly and provide input into the development of trade policy. But the limited history of public interest participation offers no such evidence. Neither Assistant U.S. Trade Representative Lisa Garcia in her Ways and Means testimony last July nor Ambassador Ron Kirk regarding a subsequent request from Congressman Doggett have been able to identify any incidents in which the work of an advisory committee was impeded by the inclusion of public interest representatives or any credible evidence for these fears, including any incidents in which sensitive information was leaked by a public interest representative, or any conflicts between industry and public interest representatives that were so great that the committee could not do its job effectively.


Previous Administrations have responded to demands for public interest representation by appointing an environmental and a public health representative to ITAC-3, and a tobacco control advocate to an ATAC. Trade policy would benefit from such voices on all Tier 3 committees.


The time has passed for USTR to take action to protect our nation's health and well-being, and our economic and environmental sustainability. It is imperative now for USTR and DOC to include public health, environmental, and labor representatives in the trade advisory process on the ITACs and at all levels of federal advisory committees.


Thank you for this opportunity to comment on the need for greater public interest representation on the Industry Trade Advisory Committees.

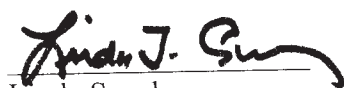
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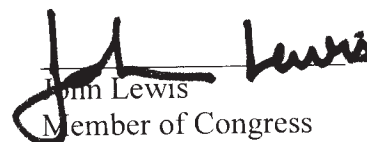

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Chris Van Hollen
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