

**Testimony of
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“The Trade Advisory Committee System”**

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I. INTRODUCTION

The International Association of Machinists and Aerospace Workers, (IAM) AFL-CIO, represents several hundred thousand active and retired members throughout North America. Our members work in a variety of industries including aerospace, manufacturing, electronics, defense, transportation, shipbuilding, and woodworking to name a few. Much of what our members produce and service depends upon international trade. We firmly believe that U.S. trade policy must work for U.S. workers and have adopted strong positions on trade policy. Like other unions, we have also developed significant trade-related technical expertise in many of the industries in which our members work.

Given our vested interest in trade matters, we recognize the importance of a trade advisory committee system that provides a mechanism for creating a strong and unified national trade policy. The Trade Act of 1974, as amended (the “Trade Act” or the “Act”) sought to achieve this goal, by creating an advisory committee structure to provide opportunities for diverse trade-impacted groups to engage in meaningful and effective consultations with government officials. Unfortunately, the trade advisory committee system has yet to satisfy this goal, particularly when it comes to labor.

Groups like labor have either been underrepresented or not represented at all in the advisory committee system. Moreover, the consultation process itself has been far from effective. While these concerns were expressed to past administrations, things got much worse during the previous administration. Given our experience with the trade advisory committee system, we welcome the opportunity to offer our views on the deficiencies of the system and to submit suggestions for improving it.

II. ADVISORY COMMITTEES’ COMPOSITION IS IMBALANCED

The trade advisory committee system is authorized under the Trade Act which provides that the President, “shall seek information and advice from representative elements of the private sector...”¹ The advisory system provides groups that are impacted by trade with an opportunity to offer comments and recommendations to the administration on a variety of trade related matters, including policy, negotiations, implementation, and enforcement. In creating this system, “[T]he hope was that such

¹ 19 U.S.C. § 2155.

involvement would result in trade agreements that Congress could approve with confidence.”²

In order to achieve this goal, Congress created three tiers of advisory committees to provide “overall policy advice, general policy advice, and technical advice” on trade matters.³ The tiers were to be well-balanced with representation among different groups. Under the Trade Act, the President was to seek information and advice from representative elements of the private sector with respect to negotiating objectives and bargaining positions before entering into a trade agreement, the operation of trade agreements, and other matters of trade policy.⁴

The first tier of the trade advisory committee system is comprised solely of the Advisory Committee for Trade Policy and Negotiations (ACTPN). According to the Trade Act, ACTPN was to broadly represent key sectors of the economy, particularly with respect to those affected by trade.⁵ The Act further states that ACTPN shall consist of a maximum of 45 individuals including representatives of non-Federal governments, labor, industry, agriculture, small business, service industries, retailers, nongovernmental environmental and conservation organizations, and consumer interests.⁶

Despite a clear statutory mandate to “be broadly representative of the key sectors and groups of the economy,” ACTPN’s composition has been overwhelmingly weighted toward industry interests.⁷ Of the 34 members of the committee, at least 24 of the representatives come from corporate or business association interests, such as Goldman Sachs Group, Inc., UBS Investment Bank, Caterpillar, the U.S. Chamber of Commerce, and the National Association of Manufacturers. Only one of the ACTPN’s 34 members represents labor.⁸

ACTPN’s unbalanced composition has been the source of complaints over the past several years. In a letter to then United States Trade Representative, Charlene Barshefsky, labor representatives reminded her that,

[T]he Trade Act of 1974, as amended, calls for the ACTPN to be ‘broadly representative of the key sectors and groups of the economy, particularly with respect to those sectors and groups which are affected by trade.’ The current makeup of ACTPN—27 corporate representatives, three labor union representatives, one environmental representative, and one consumer representative—does not proportionally represent those groups that are affected by trade.⁹

² U.S. General Accountability Office, *Advisory Committee System Should Be Updated to Better Serve U.S. Policy Needs*, September 2002 (GAO-02-876), p. 1.

³ 19 U.S.C. § 2155(a), (b), (c).

⁴ 19 U.S.C. § 2155(a).

⁵ 19 U.S.C. § 2155(b).

⁶ *Id.*

⁷ *Id.*

⁸ The General President of United Association of Plumbers and Pipefitters.

⁹ Letter to The Honorable Charlene Barshefsky, from John Sweeney, Jay Mazur, and Lenore Miller, 2/24/2000.

Matters became demonstrably worse during the Bush Administration. In December 2002, thirty-two appointments to the ACTPN were announced – none represented labor or environmental activists.¹⁰ AFL-CIO President John Sweeney and other trade union presidents protested to President Bush:

Corporate executives cannot adequately represent the concerns of working families, consumers, or the environment, and should not be expected to. As Congress recognized when it made these requirements mandatory, trade policies have an impact on workers, wages, labor market conditions and regulations, consumer standards, and the environment. Thus, it is not only appropriate, but essential, that people with relevant expertise and representing a diverse range of affected constituencies be involved at every stage of policy formation.¹¹

A sole labor representative was named to ACTPN in 2003, but then resigned in 2004, citing the “failure to make ACTPN broadly representative of labor, environmental, and consumer interests.”¹² He was succeeded on the committee by the treasurer of a local lodge of the engineers union who also resigned. In September 2007, the General President of the United Association of Plumbers and Pipefitters became the new and sole ACTPN labor representative.¹³

The second tier of the advisory committee system consists of five committees: the Labor Advisory Committee, Trade Advisory Committee on Africa, Agricultural Policy Advisory Committee, Trade and Environment Policy Advisory Committee, and the Intergovernmental Policy Advisory Committee. Labor’s representation on the second tier is confined to the Labor Advisory Committee (LAC). Although the LAC’s charter allows for up to 30 members, the previous Administration named only 13 members to the committee.¹⁴ Despite repeated requests, key trade union leaders representing workers in some of the most active trade sectors were not included on the LAC.¹⁵

In contrast to the LAC, the other second tier advisory committees were composed of significantly more members. For example, the Agricultural Policy Advisory

¹⁰ Inside U.S. Trade, December 19, 2002, *White House Rewards Donors With Slots on Key Advisory Committee*.

¹¹ Letter to President Bush from AFL-CIO President John Sweeney and other labor leaders, December, 2002.

¹² U.S. Government Accountability Office, *An Analysis of Free Trade Agreements and Congressional and Private Sector Consultations under Trade Promotion Authority*, November 2007 (GAO-08-59), p. 62, fn. 84.

¹³ *Id.*

¹⁴ Charter of the Labor Advisory Committee for Trade Negotiations and Trade Policy, May 16, 2008.

¹⁵ We understand that the current administration is considering limiting membership of all advisory committees, including the LAC and its staff oriented liaison committee, to representatives who are not registered lobbyists. If implemented, the membership rule would further restrict the functionality of the LAC. Unlike their corporate counterparts, that can afford to maintain separate staff to handle technical matters and government affairs, union staff must often assume both responsibilities. Consequently, some unions would be effectively barred from participating in LAC activities, or potentially any other committee, if the proposed rule were applied.

Committee consisted of over 35 members (many representing industry). All of the other second tier committees (with the exception of the LAC), consisted of 23 or more members (including industry representatives).¹⁶

The third tier of the trade advisory committee system consists of 6 agricultural technical advisory committees (ATACS), and 16 individual Industry Trade Advisory Committees (ITACs). These committees are, “insofar as is practicable, be representative of all industry, labor, agricultural, or service interests (including small business interests) in the sector or functional areas concerned.”¹⁷ Labor is not represented on any of them, despite the fact that the 16 ITACs represent several industrial sectors where unions represent workers, including aerospace, automotive equipment, chemicals, energy, steel, textiles, and others.¹⁸ In contrast over 375 industry executives are represented on the various ITACs.¹⁹ Many of the additional 170 members of the ATACS also represent industry.²⁰

In all, under the previous administration, well-over 400 industry and trade association representatives were included in the three-tier advisory committee system. Only 14 labor representatives were included and, of these, 13 of them serve on the second tier, the LAC. Given the composition of these committees, it is no wonder that the U. S. Government Accountability Office reported in November 2007 that:

[J]ust under half of the committee members which whom we spoke expressed frustration with the composition of their committees. Members who were dissatisfied with representation told us either that they felt that certain relevant viewpoints were not adequately represented or that the composition favored representation of one industry or group at the expense of another.²¹

USTR explains that, “trade advisors...provide advice on key objectives and bargaining positions...As a result of these efforts, the United States is able to display a united front when it negotiates trade agreements with other nations. The United States’ negotiating position is strengthened because its objectives are developed with bipartisan, private-sector input throughout the negotiations.”²² The failure to include labor representatives from the entire third tier of the committee system impedes the advisory committee system from achieving its goal to provide the Administration with information and advice from diverse groups.²³

¹⁶ See, <http://www.ustr.gov/about-us/intergovernmental-affairs/advisory-committees>, extracted on July 7, 2009.

¹⁷ 19 USC § 2155(c) (2).

¹⁸ <http://www.ustr.gov/about-us/advisory-committees/industry-trade-advisory-committees-itac>, extracted June, 18, 2009.

¹⁹ Id.

²⁰ More than 100 industry representatives serve on the ATACS.

²¹ GAO-08-59, p. 62.

²² Industry Trade Advisory Committees: <http://www.ustr.gov/about-us/advisory-committees/industry-trade-advisory-committees-itac>, extracted July, 7, 2009.

²³ Exclusion of some private sector groups from advisory committees has resulted in legal challenges.

Concerns that labor representatives should not serve on the ITACs because they do not have technical expertise on sectoral trade issues are without merit.²⁴ Unions have long been recognized for their specific expertise in various industries. Among other things, they have been involved in numerous trade complaints and other trade matters requiring technical expertise. Their expertise has even been relied on by some of the sectoral advisory committees themselves. For example, under the previous administration, the IAM's International President, R. Thomas Buffenbarger was named to the Presidential Commission on the Future of the Aerospace Industry. The Industry Sector Advisory Committee (ISAC) responsible for aerospace noted its close work with the Commission.²⁵

Arguments that labor representatives on ITACS are not necessary because of labor's representation on the LAC also are without merit. The purpose of the LAC, a second tier committee, is to provide *general policy* advice. As a practical matter, labor representatives on that committee represent workers from across industry sectors. As a consequence, it is simply not always practical to engage in detailed discussions regarding technical industry matters.

III. CONSULTATION HAS NOT BEEN EFFECTIVE

The Act directs the President to seek information and advice from the committees with respect to:

- (A) negotiating objectives and bargaining positions before entering into a trade agreement;
- (B) the operation of any trade agreement once entered into, including preparation for dispute settlement panel proceedings to which the United States is a party; and
- (C) other matters arising in connection with the development, implementation, and administration of the trade policy of the United States.²⁶

Information and advice is also sought regarding the following.

- (A) The principal multilateral and bilateral trade negotiating objectives and the progress being made toward their achievement.
- (B) The implementation, operation, and effectiveness of recently concluded multilateral and bilateral trade agreements and resolution of trade disputes.

²⁴ See, GAO-02-876, p.43.

²⁵ Industry Sector Advisory Committees preceded ITACs. See, <http://www.ita.foc.tob/td/itp/FactSheets?Isac.01html>, extracted June 19, 2009.

²⁶ 19 USC § 2155.

- (C) The actions taken under the trade laws of the United States and the effectiveness of such actions in achieving trade policy objectives.
- (D) Important developments in other areas of trade for which there must be developed a proper policy response.²⁷

The consultation process cannot work if the committees do not meet regularly or in a timely fashion. Notably, the LAC did not meet during the more than two year period beginning in September 2003 and ending in November of 2005. During that period, numerous trade agreements were considered and negotiated and numerous trade matters were discussed and implemented. When meetings eventually resumed, many members of the LAC had not passed the vetting process, which in many cases took over a year to complete.²⁸ As a result of these delays, the administration lost a valuable opportunity to gain much needed insight from labor.

In addition, the consultation process cannot be effective if the exchange of information between the administration and the advisory committee members is inadequate. Labor representatives previously expressed their dissatisfaction with the quality of the meetings that took place during previous administrations. AFL-CIO President John Sweeney stated:

[T]he ACTPN has tended to offer reflexive support to current trade policy, while minimizing and marginalizing dissent. ACTPN should be a forum that fosters vigorous and substantive debate, not simply a body that provides a rubber stamp to a pre-determined policy. ACTPN reports must reflect the full spectrum of debate, rather than just the majority view.²⁹

Again, instead of improvement under the Bush years, the consultative process became much worse. Upon his resignation from ACTPN in 2004, the sole labor representative protested the Bush Administration's continued disregard of advice and dissenting views.³⁰

Members of the LAC were particularly frustrated with the consultation process under the previous administration. While the USTR participated in meetings, the Secretary of Labor never attended them. During the meetings, little or no information that wasn't already available to the public was exchanged. Moreover, there were sincere concerns that the advice offered by committee members was not given any meaningful consideration.

Members of other committees also expressed their dissatisfaction with the consultation process. As the GAO noted, "[M]ost of the second tier policy committee...were not satisfied with the quality of information presented during consultations and felt that it was no better than information available to the general

²⁷ 19 USC § 2155.

²⁸ GAO-08-59, p. 64, fn. 90.

²⁹ AFL-CIO President John Sweeney letter to USTR Barshefsky, August 1, 2000.

³⁰ GAO-08-59, p. 62, fn. 84.

public.”³¹ Committee members were also troubled by government officials’ responsiveness to the information and advice that was offered during committee meetings. This frustration is also noted by the GAO which summarized:

Most of the second tier and a few of the third tier committee chairs, however, expressed dissatisfaction with the feedback from USTR. They expressed their perception that USTR is either biased against their committee or that by being asked to comment on completed deals, their opinions are not truly valued or taken into consideration. Two chairs said USTR wants them to “rubber-stamp” decisions or to be “cheerleaders” for the administration. Other chairs said their committees rarely or never get feedback.³²

The advisory committees are given 30 days after the President notifies Congress of the intent to sign a trade agreement to submit reports detailing their committee’s advisory opinion on whether the agreement promotes the economic interest of the United States and achieves the applicable overall and principle negotiation efforts. The 30-day deadline puts undue pressure on committee members to file thorough reports, especially when the text of an agreement is not available immediately.³³

IV. RECOMMENDATIONS FOR STRENGTHENING THE TRADE ADVISORY COMMITTEE SYSTEM

The trade advisory committee system, as implemented under previous administrations, and particularly under the Bush Administration, has failed to provide much needed balance and meaningful consultation. In order to improve the system, we recommend the following with respect to the three tier system:

1. Provide greater balance by increasing the number of labor, environmental, consumer, and other non-governmental organizations on the ACTPN.
2. Ensure that ACTPN corporate representatives represent a diversity of viewpoints with respect to trade policy.
3. Increase the number of labor representatives on the LAC.
4. Include labor (and other non-corporate) representatives on appropriate ITAC and ATAC committees.

³¹ *Id.*, p. 56.

³² GAO Report, p. 57.

³³ For example, the LAC was notified of the President’s intent to sign the KORUS FTA on April 2 and was only given until April 27 to submit the report. The various chapters of the agreement, many in partial form, were released piecemeal over the first two weeks of April. The entire text of the agreement was not released until April 16th. The agricultural and manufacturing tariff schedules were not released until over half of the time allotted to write the report had expired.

5. Expedite the vetting process for new committee members. (Delays of one year or more are simply unacceptable.)
6. Provide increased information that is not generally available to the public and that is commensurate with committee members' level of security clearance.
7. Increase the period for filing reports on trade agreements to 60 days.
8. Improve the entire consultation process by engaging committees at the earliest possible point of trade activities. In many cases, the LAC has been merely informed of the government's decisions with regard to critical issues long after they are made. Committees must have a role in the decision making process, through meaningful and timely consultation *before* decisions are made.
9. Ensure transparency of the entire advisory committee system by among other things, requiring USTR, DOL, and Commerce to report on an annual basis to Congress the number of meetings held as well as the agenda items discussed at each meeting. In addition, include in the report summaries of information that were exchanged, as well as advice that was offered during the meetings.

The federal trade advisory committee system is instrumental in providing a mechanism for developing and implementing a national trade policy that benefits all stakeholders. Unfortunately, in the past, the essential elements of balanced composition of the committees and an effective consultation process for the most part have not been met.

We are hopeful that the Congress and the current administration will move swiftly to correct these deficiencies.