

To: U.S. Trade Representative Ron Kirk  
Secretary Gary Locke, Department of Commerce [TheSec@doc.gov](mailto:TheSec@doc.gov)

Public Health Call for Representation on Trade Advisory Committees,  
December 2, 2010

We note the written statement of members of the Committee of Chairs of the Industry Trade Advisory Committees dated October 12, 2010, addressed to the U.S. Department of Commerce (DOC) and the U.S. Trade Representative (USTR). We regret that the meeting at which this statement was presented was not posted on the website of the Federal Advisory Committee Act. Nevertheless, we wish to reaffirm our priorities regarding the legally mandated representation of the public in setting trade policy for the U.S., including through representation on trade advisory committees.

In summary, we urge the Administration to immediately create a Tier 2 committee for public health, and to expand access to policy-making for a range of public interest organizations. At the same time, we call for appointing additional members to Tier 3 committees in order to represent a fair balance of interests, as legally mandated.

The importance of these appointments has been upheld by judicial orders and documented and affirmed since 2000 via several GAO publications, formal correspondence and meetings with the USTR, testimony to the Trade Subcommittee of the Committee on Ways and Means of the U.S. House of Representatives in July, 2009, and comments for the record in May, 2010.

We value the recognition by the DOC and USTR that trade policy has increasingly become a matter of broad public concern since the passage of the original Trade Act in 1974. Trade advisory committees are subject to the requirements of the Federal Advisory Committee Act (FACA) which requires that each advisory committee covered by the Act be fairly balanced in terms of points of view represented and committee functions performed. One of the primary purposes of FACA was to end industry domination of advisory bodies. The legislative history of FACA “shows that the fair balance requirement was intended to ensure that persons or groups directly affected by the work of a particular advisory committee would have some representation on the committee.”<sup>1</sup>

The FACA fair balance requirement applies to the trade advisory committees established under Section 135 of the Trade Act. Over the years, Section 135 was amended to include additional interests within the advisory committee structure, such as the services sector and state and local governments. Today, the structure of the US Trade Advisory Committees is extremely imbalanced, with domination by industries whose activities have an impact on public health, and notable and problematic absence of representation from the public health community.

---

<sup>1</sup> GAO-02-876 International Trade p. 57.

Since 1974, factors have created the imperative to widen official consultation on trade negotiations and policy by the Administration with a wide array of parties: the creation of the World Trade Organization and the inclusion of services, intellectual property and agriculture within the sphere of trade negotiations; the pursuit of investor-state trade challenges; the acceleration of global financial and commercial transactions; and dramatic swings in the stability of national economies, attended by widespread civil unrest.

These developments have had particular salience for public health, and we are gratified to note that in response to consistent approaches over the last six years, the Administration has wisely included public health representatives on ITACs 3 and 15, and on the Agricultural Trade Advisory Committee on Cotton, Tobacco, Peanuts and Planting Seeds. We regard these initial appointments as important precedents. We note further that since these appointments the work of those committees has proceeded without disruption, while providing a new but still limited level of transparency and accountability to the public health community.

We continue to seek broader and more consistent opportunities to present a public health viewpoint on trade, and to interact with experts in the arena from the Administration, Congress and other committee members. HR 2293/S 1644 proposes precisely the kind of Tier 2 Public Health Advisory Committee on Trade that the ITAC Committee Chairs describe. The creation of such a committee, and the opportunity for formal communication at periodic plenaries, would certainly mark an important milestone in setting a 21st century trade agenda.

Given the confluence of interests and agreement on that issue, we urge the Administration to take the following steps:

1. Codify the creation of a Tier 2 Public Health Advisory Committee on Trade. In developing the charter and making appointments to such a committee, we urge recognition of public health concerns regarding: the relationship of trade to sustainable economic development; public health regulations and the authority of the government to regulate in the interest of public health, including by adopting sanitary and phytosanitary rules, technical standards, regulations with respect to the production, distribution, sale, or advertising of tobacco, alcohol, and harmful substances, and standards to ensure clean and safe food, air, and water; vital human services and systems, including health care and public health services and systems, water supply and sanitation services and systems, and licensing and cross-border movement of persons employed in the provision of such services or the development of such systems; occupational safety and health; and matters relating to access to affordable pharmaceuticals.

2. Appoint public health representatives on additional Tier 3 committees, including: Chemicals and Pharmaceuticals (ITAC 3), Consumer Goods (4), Distribution Services (5), Information and Communications Technologies, Services, and Electronic Commerce (8), Services and Finance Industries (10), Customs Matters and Trade Facilitation (14), Intellectual Property Rights (15), and Standards and Technical Trade Barriers (16).

We look forward to an opportunity to review these proposals with your offices in the near future.

Sincerely,

Center for Policy Analysis on Trade and Health (CPATH)  
American Public Health Association  
California Conference of Local Health Officers  
California Public Health Association - North  
Health Alliance International  
Institute for Agriculture and Trade Policy  
Maquiladora Health & Safety Support Network  
National Women's Health Network  
National Nurses Union  
Oxfam America  
Physicians for Social Responsibility, SF-Bay Area Chapter