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News

Agencies and Departments

USTR, Commerce Sued Over Lack

Of Public Health Reps on Advisory Panels

A coalition of public health and physician groups Dec. 14 sued the Office of the U.S. Trade Representative and the Commerce Department, charging that six U.S. industry trade advisory committees (ITACs) that advise the government on trade policies lack representation from public health representatives (Center for Policy Analysis on Trade and Health v. Office of the U.S. Trade Representative, DC NCalif., No. - , filed 12/14/05).

Under the Federal Advisory Committee Act (FACA), advisory committees must be "fairly balanced in terms of the points of view represented." The ITACs provide the government advice on U.S. trade negotiating objectives before the United States enters into trade agreements.

The suit seeks a declaratory judgment that the government has violated and is continuing to violate FACA's fair balance requirement. The action also seeks to enjoin meetings of the six advisory committees until one or more representatives of the public health community have been appointed to the committees.

USTR receives advice from the ITACs on standards for healthy food, water, health care services, and hazardous waste disposal services as well as access to generic pharmaceuticals and patenting of plants, among other issues.

Earthjustice filed the suit in the U.S. district court in San Francisco on behalf of a coalition of public health organizations including the Center for Policy Analysis on Trade and Health (CPATH), California Public Health Association-North, the Chinese Progressive Association, and Physicians for Social Responsibility.

"Plaintiffs are public health and health care groups particularly concerned with the impacts of international trade on equitable public access to affordable health-related services and products and on the health of individuals, communities and populations ... The ability of Plaintiffs and their members to advocate effectively for these interests is impaired by the exclusion from the committees of any public health representatives," the complaint alleged.

The private sector advisory committee system was established in 1974 by Congress to ensure that U.S. trade negotiation objectives adequately reflected U.S. commercial and economic interests. Congress enhanced the role of the advisory committees in the Trade Act of 2002.

Six ITACs Involved

According to the complaint, at least six of the ITACs address U.S. trade policies directly affecting public health. These are: ITAC-4 (consumer goods); ITAC-5 (distribution services); ITAC-8 (information

and communication technologies, services, and electronic commerce); ITAC-10 (services and financial industry); ITAC-14 (customs matters and trade facilitation) and ITAC-16 (standards and technical trade barriers).

"Every member of these ITACs involved in any way in public health is either an executive of a health-related industry or a representative of a trade association principally concerned with the economic impacts of trade policies on corporate or industrial health care interests," the complaint alleged.

"No members have been appointed to provide advice, information and recommendations regarding the impact of trade policies on public health," the complaint continued.

The plaintiffs sent a letter to USTR and Commerce on May 2, 2005, requesting public health representation on each of the ITACs. While this request was subsequently repeated by e-mail, telephone, and letter, USTR and Commerce have failed to appoint any such representation, the complaint stated.

Earlier ISAC Environmental Lawsuit

Several years ago, environmental groups asked USTR to appoint at least one environmental representative to some industry sector advisory committees or face lawsuits.

In early 2003, a federal district court ruled in favor of environmental plaintiffs (15 ITD, 01/23/03) and ordered USTR to comply with a settlement agreement in which USTR committed to appointing an environmentalist to the Industry Sector Advisory Committee on Chemicals and Allied Products for Trade Policy Matters (ISAC-3). In 2000, a coalition of environmental groups, represented by Earthjustice, brought a case against USTR and the Commerce Department, arguing that every member of ISAC-3 was either an executive of a chemical or allied products representative or a representative of an industry trade association (90 ITD, 05/9/00) USTR had lost a similar lawsuit on environmental representation on two advisory committees on forest products trade (81 ITD, 04/26/00).

"We are calling on the U.S. Trade Representative to obey the law and create more balanced advisory panels," Ellen Shaffer, director of CPATH, said in a press release. "Public health policy is an issue too important to be left to a private club of special interests. If there's room for the pharmaceutical, alcohol, food processing and health insurance industries, there must be room for us."

While U.S. trade policy affects the health of people and the environment worldwide, USTR is getting most of its direct advice from committees dominated by industries seeking to maximize corporate profits, Martin Wagner, director of international programs for Earthjustice, said in the press release. "This suit seeks to bring a public voice to these important decisions," he said.

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