

CPATH ♦ Center for Policy Analysis on Trade and Health

Bringing a Public Health Voice to Trade and Sustainable Development

Congress Must Act to Add Public Health Representation on Trade Advisory Committees

**Testimony to the Trade Subcommittee
Committee on Ways and Means
U.S. House of Representatives**

**Hearing on the
Trade Advisory Committee System**

July 21, 2009

**Ellen R. Shaffer PhD MPH, and Joseph Brenner MA
Co-Directors, Center for Policy Analysis on Trade and Health (CPATH)**

Industry Represented	2005	2005	2009	2009
	No. of Advisory Committees	No. of Industry Representatives	No. of Advisory Committees	No. of Industry Representatives
Pharmaceuticals	6	20	7	27
Tobacco	2	7	3	6
Alcohol	4	6	5	8
Food	11	4	11	7
Health Services, Products, Insurance	2	5	5	17
TOTAL:	25	42	31	65

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Testimony to the Trade Subcommittee - Hearing on the Trade Advisory Committee System
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Mr. Chairman and Members of the Committee, the forces that shape our modern world have transformed both the way we conduct trade, and our ability to protect and improve the public's health: dramatic changes in financial markets, communications technology and transportation affect the prosperity and well-being of individuals and nations. Thank you for the opportunity to talk with you today about the critical importance of assuring that the U.S. trade advisory committee system keeps pace with these developments, and provides for effective and timely communication between trade policy-makers, and public health advocates and professionals.

I am the Co-Director, with Joseph Brenner, of the Center for Policy Analysis on Trade and Health, CPATH, an independent research organization that aims to bring a public health voice to issues of trade and sustainable development. We became familiar with the trade advisory committee system during our research on the U.S.-Australia Free Trade Agreement in 2004. We found the advisory committee reports illuminating but one-sided, and noted that the members of the relevant committees represented industry exclusively. This quickly came to the attention of many members of Congress, who were surprised to hear their constituents echo our conclusions, that this apparently uncontroversial agreement had implications for access to affordable prescription drugs in the U.S., including the right to re-import medicines.¹ Many members, who nevertheless voted for the agreement, called for including public health voices on trade advisory committees, to assure that Congress and the public are fully informed. Public health remains virtually absent from the committees, while representation by health-related industries has increased.

The law requires that federal advisory committees represent a fair balance of views and interests. We believe that such a balance best serves the interests of the nation and the economy. Both Congress and the new Administration should take action to improve our policy-making process by balancing the perspective of health-related industries with the views of those concerned about the public's health. HR 2293 recommends steps Congress should take now to redress the present imbalance. We fully support the proposal in HR 2293 for a Tier 2 public health advisory committee, in addition to appointing public health representatives to the ACTPN and relevant Tier 3 Committees.

We would like to discuss three main themes today:

- 1. Public health views are essential to assure that the rapidly transforming global economy improves people's lives.**
- 2. A public health presence on all three tiers of trade advisory committees is required for legitimate balance of interests. Health-related industries are robustly represented on the trade advisory committees, including pharmaceuticals, tobacco, health insurance, processed foods, and alcohol beverages.**
- 3. Congress must act to add public health voices to trade advisory committees. Enacting HR 2293 would establish a Public Health Advisory Committee on Trade (PHACT), a Tier 2 committee essential for the trade advisory committee system to achieve balance, transparency and accountability.**

¹ U.S.-Australia Free Trade Agreement, Pharmaceutical Annex 2-C; Chapter 15 Government Procurement, Art.15.11.; CPATH, The U.S.-Australia Free Trade Agreement Can Preempt Drug Reimportation Bills, Challenge VA and Medicaid Drug Price Controls, July 9, 2004
<http://www.cpath.org/sitebuildercontent/sitebuilderfiles/cpathanalysis7-9-048.pdf>

1. Public health views are essential to assure that the rapidly transforming global economy improves people's lives.

As the Committee has noted, the trade landscape has changed dramatically since the 1980s. The pace and number of cross-border transactions have accelerated, though moderated by the current financial slowdown. The chain of production and consumption of goods frequently crosses borders. Services from finance to health care are major economic drivers in developed countries. Transnational corporations have become more concentrated. Millions in poor countries have emerged from poverty, at the same time that economic inequality is increasing among and within nations.

Trade agreements establish countries' mutual rights and obligations with regard to trade. Once focused on setting tariffs on goods, they now address rules that govern critical areas that are a matter of public debate at the national and international levels: intellectual property rules on access to medicines and to information; services ranging from banking to health care and water supply; government procurement for grants and contracts; and agriculture. They can provide a basis for altering domestic U.S. laws and policies, as well as those of our trading partners. Trade rules must balance between protecting corporations' ability to operate within uniform and predictable rules, and the obligations of governments to protect the public's safety and wellbeing.

Trade agreements can foster sustainable economic development, democracy, and peace, consistent with public health principles that prioritize achieving and protecting the health and wellbeing of individuals, communities and populations.^{2,3} They can also conflict with or subordinate policies that prioritize people's health, and equitable access to health-related services.⁴

Enforcement of a number of common trade rules requires balancing commercial and health concerns. For example, trade rules that allow nations to adopt and enforce measures necessary to protect human, animal, or plant life or health, also require that such measures cannot arbitrarily or unjustifiably discriminate between countries or be a disguised restriction on international trade. Domestic regulation rules regarding services similarly require that rules for licensing and qualifications, and technical standards, must be no more burdensome than necessary to ensure the quality of a service. Challenges before trade tribunals claiming that public health measures violate trade rules have been successful in almost all cases. Investor-state provisions that allow corporations to file charges against governments have enabled frivolous and damaging disputes. The Metalclad toxic waste site case against Mexico, and the Methanex/MTBE case against the U.S., are classic examples of charges that exposed populations to unjustifiable harm.

We discuss below issues of particular recent concern for both trade and health: access to affordable medicines, tobacco control, and services. Other public health concerns at issue, which we do not discuss here in detail, include the ability of local, state and national governments to regulate clean and safe air, water, food, consumer products; workplace environments, transportation systems; whether government procurement contracts can specify standards for medical and financial privacy, quality and performance, local economic development, and environmental protection; and the distribution of alcohol beverages.

² Institute of Medicine. The future of public health in the 21st century. National Academies Press, Washington, DC. November, 2002. <http://www.iom.edu/Object.File/Master/4/165/0.pdf>

³ World Health Organization. Constitution of the World Health Organization. http://www.who.int/rarebooks/official_records/constitution.pdf.

⁴ United States Department of State. Metalclad Corporation v. United Mexican States. <http://www.state.gov/s/l/c3752.htm>.

- **Intellectual Property Rules and Pharmaceuticals**

High prices restrict access to prescription drugs in lower income countries and also in developed countries which lack regulatory mechanisms to address drug pricing, such as the United States. Few useful innovative drugs are being developed, despite substantial revenue from drug sales. There is insufficient research into therapies for conditions prevalent in low-income countries.

Trade agreements enforce, extend, and progressively strengthen intellectual property (IP) rules internationally, such as patents, data exclusivity and linkage, that offer monopoly marketing rights to pharmaceutical companies which therefore exert tremendous influence over prices. The World Trade Organization's (WTO) Doha Declaration on Public Health notes that intellectual property protection is important for the development of new medicines. But it also states that IP rules "should not prevent [countries] from taking measures to protect public health." It reaffirms the right of WTO countries to use the flexibilities in TRIPS (Agreement on Trade Related Aspects of Intellectual Property Rights), including their right to issue compulsory licenses to produce brand name or generic equivalents of originator companies' drugs, and parallel importation. Respect for the Doha Declaration, and a fair balance of rights, was also stated as a Congressional objective in the Trade Act of 2002.

These rights were eroded in a number of U.S. bilateral and regional agreements with Jordan, Chile, Singapore, Morocco, Australia and Central America. Civil society organizations in the U.S. and in partner nations raised concerns, which frequently delayed negotiations. In May, 2007, with leadership by the Trade Subcommittee, Congress took action to limit negotiations with lower-income countries on "TRIPS-Plus" IP rules.

There are 27 pharmaceutical industry representatives on 7 different trade advisory committees. Public health advocates have developed important proposals, ranging from easing the application of TRIPS-Plus rules to reformulating patent rules to incentivize innovation. These views should be included and incorporated in the trade advisory committee system.

- **Tobacco Control and Protection of Public Health**

Globally, tobacco use is expected to kill over 10 million people by 2030. Seventy per cent of the deaths are expected to occur in low and middle income nations. Worldwide, tobacco use is more prevalent among the poor, the uneducated, and those least informed about the effects of tobacco use.⁵

According to the Pan American Health Organization: "Transnational tobacco companies...have been among the strongest proponents of tariff reduction and open markets. Trade openness is linked to tobacco consumption."⁶ Liberalization of trade in tobacco opens countries to competition from lower priced foreign tobacco products, leading to lower prices in the importing country. Liberalization, and lower prices, are therefore associated with greater tobacco use.

A nation that imposes restrictions on tobacco imports, or on the distribution, labeling or advertising of cigarettes, may be challenged to prove that these restrictions are "necessary" for tobacco control, and are less restrictive on trade than alternative health protections—for example,

⁵ E R Shaffer, JE Brenner, and T P Houston. Research Paper: International trade agreements: a threat to tobacco control policy. Tobacco Control 2005;14(Supplement 2).

⁶ D. Woodward, N. Drager, R. Beaglehole, D. Lipson. Globalization, global public goods, and health. In: Trade in Health Services: Global, Regional and Country Perspectives. N. Drager and C. Vieira, Eds. Washington, DC: PAHO, 2002. pp 6-7.

consumer health warnings. The health protective alternatives can be hypothetical, and need not be demonstrably effective or politically feasible.

The Doggett Amendment to the Foreign Service Act, passed by Congress in 1997, banned the use of government monies from the Commerce, Justice, and State Departments to promote the sale or export of tobacco overseas or to seek the removal of any nondiscriminatory foreign-country restrictions on tobacco marketing. However, it is subject to annual renewal, and compliance is up to the USTR and other Agencies. Unfortunately, the Doggett Amendment has not been honored for the last 8 years. The U.S. has negotiated eliminating tariffs on tobacco products as well as leaf in bilateral and regional agreements, including the U.S. Singapore Agreement and CAFTA. It is time for a change. There is a single public health representative on one of the committees concerned with tobacco leaf, compared with **6 tobacco industry representatives on 3 different trade advisory committees**. A new Tier 2 public health advisory committee on trade as described in HR 2293, would offer the opportunity for critical public health analysis and advice on the range of trade provisions at issue.

- **Trade in Services and the Nation's Health**

A range of vital human services such as water supply, health care, and education, as well as financial and commercial services, have been included in trade negotiations, and in some disputes. These issues call for public health leadership. Antigua's trade dispute challenging the U.S. regulations on internet gambling came as a surprise to some U.S. negotiators, who stated they had not intended to include this activity in the commitment on recreation. A similar misunderstanding contributed to invalidating a Mexican surcharge on telecommunications under the WTO's General Agreement on Trade in Services.

In this case, again, it is imperative not only to include public health voices on individual Tier 3 committees, but also to comprise a Tier 2 committee composed of public health representatives. There are inevitably complex issues regarding the relationship of important public health protections, the concerns of domestic and foreign service suppliers, and the appropriate national and international locus for decision-making on a number of issues. A well-informed public health advisory committee would provide a valuable forum for analysis and consultation with other interests.

2. A public health presence on all three tiers of trade advisory committees is required for a legitimate balance of interests. Health-related industries are robustly represented on the trade advisory committees, including pharmaceuticals, tobacco, health insurance, processed foods, and alcohol beverages.

Five years ago this month, during debate in the U.S. Senate on the US-Australia Free Trade Agreement, Congress expressed concerns about the extreme imbalance of the trade advisory committees. Senator John McCain said:

...I am astonished that [the US Trade Representative] would include language [in the US-Australia FTA] which would impair our ability to pass and implement drug importation legislation...When Americans wonder how this continues to happen, maybe they should take a glance at the list of intellectual property "advisors" who worked with the negotiators. These advisors include representatives from--guess who--the pharmaceutical industry as a whole, and

other lobbyists with a direct interest in blocking drug importation. How many public health and consumer advocacy groups were included on this committee? Zero.⁷

Legal Framework For Trade Advisory Process

The trade advisory committee system was established by Congress in Section 135 of the Trade Act of 1974 to institutionalize domestic input into trade negotiations from interested parties outside the federal government.⁸ As the Subcommittee has noted, through the trade advisory committee system, "...U.S. trade negotiators receive information and advice...with respect to U.S. negotiating positions before and during trade negotiations." Trade advisory committees are subject to the requirements of the **Federal Advisory Committee Act (FACA)**⁹ **which requires that each advisory committee covered by the Act be fairly balanced in terms of points of view represented and committee functions performed.**¹⁰ One of the primary purposes of FACA was to end industry domination of advisory bodies.¹¹ 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.

Over the years, Section 135 was amended several times to broaden the purposes for which trade advisory committees provide advice to executive branch officials. For example, the law expanded the scope of topics on which the President was required to seek information and advice, from "negotiating objectives and bargaining positions before entering into a trade agreement," to the "operation of any trade agreements, once entered into," and on other matters regarding the administration of U.S. trade policy.¹² The law was also amended to include additional interests within the advisory committee structure, such as the services sector and state and local governments. Amended legislation also requires the executive branch to inform the advisory committees of "significant departures from their advice."¹³

In regard to FACA's requirement that each advisory committee covered by the Act be fairly balanced in terms of points of view represented and committee functions performed,¹⁴ 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."¹⁵ The FACA fair balance requirement applies to the trade advisory committees established under Section 135 of the Trade Act.¹⁶

Structure Of Trade Advisory Committees

As the Trade Subcommittee noted in the call for this hearing: "The system is arranged in three tiers: the President's Advisory Committee for Trade Policy and Negotiations (ACTPN), five policy advisory committees dealing with environment, labor, agriculture, Africa, and

⁷ Congressional Record: July 15, 2004 (Senate) Page S8178-S8217] From the Congressional Record Online via GPO Access [wais.access.gpo.gov] [DOCID:cr15jy04-147] H.R. 4759, the Australia Free Trade Agreement.

⁸ GAO-02-876 International Trade p.4. P.L. No. 93-618, 88 Stat. 1996, codified at 19 U.S.C. § 2155

⁹ Ibid; 5 U.S.C. App. §§ 1-14.

¹⁰ Ibid. § 5(b)(2).

¹¹ *Northwest Ecosystem Alliance v. USTR*, No. C99-1165R (W.D. Wash. Nov. 8, 1999); GAO-02-876, op.cit., p.62.

¹² GAO-02-876 International Trade p.7; Pub. L. 96-39, 93 Stat. 308.

¹³ Ibid; 19 U.S.C. 2155(i).

¹⁴ Ibid. § 5(b)(2).

¹⁵ Ibid., p.57.

¹⁶ GAO-02-876, p. 58; *Northwest Ecosystem Alliance v. USTR*, No. C99-1165R (W.D. Wash. 1999).

intergovernmental issues, and 22 technical advisory committees in the areas of industry and agriculture. The trade advisory committees have participated in the formulation of policy for all trade negotiations and provided advice to the Executive and Congress on concluded trade agreements prior to implementation.”

There is no formal relationship among the three tiers. The USTR assumes a leadership role, administering the advisory committees, along with the departments of Agriculture, Commerce, and Labor.

Working jointly with other relevant executive departments, USTR has the discretion to create, change, and terminate committees in tier 2 and tier 3. Legislative history of the 1979 amendments to section 135 of the Trade Act¹⁷ indicates congressional interest in broadening representation of the tier-2 and tier-3 committees to include other interests.

An extensive group of advisory committees now provide formal recommendations to the official U.S. trade negotiating agency, the Office of the U.S. Trade Representative (USTR). In 2002, the United States Government Accountability Office (then the General Accounting Office) examined the role, structure, and system of the trade advisory committee system. **The GAO Report found that “new stake holders 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.”**¹⁸

Lack of Public Health Representation on Trade Advisory Committees Is Endemic

In November, 2003, U.S. health leaders called for caution in negotiating international trade agreements. Former U.S. Surgeon General Dr. David Satcher, joining representatives from the American Medical Association, American Nurses Association, the American Public Health Association, and the Center for Policy Analysis on Trade and Health (CPATH), to issue an historic “Call for Public Health Accountability in International Trade Agreements.”

During the 2004 Congressional deliberations on the US-Australia Free Trade Agreement (FTA), members of the House and Senate expressed concerns about the extreme imbalance on trade advisory committees and lack of representation from public health. Congress raised objections to provisions in the agreement related to pharmaceuticals and intellectual property that they had been unaware of that could have an impact on Congressional efforts to authorize re-importation of drugs. They also expressed concern about the potential impact on current U.S. health care programs, including on Veterans Affairs, Medicare and Medicaid, and urged that such provisions should not serve as precedent for future trade agreements.

On the effect of the imbalance on the trade advisory committees on the American people, Rep Rahm Emanuel expressed his disappointment that:

...an otherwise strong Free Trade Agreement has been tainted by provisions designed to protect a captive market for the prescription drug industry in this country...Eli Lilly, Schering-Plough, PhRMA were all on the advisory board to the USTR when it came to negotiating this trade deal, and we are setting a precedent, forcing Americans again to continue to pay the highest pharmaceutical prices than anywhere in the world when we could have provided

¹⁷ GAO-02-876, p. 60; P.L. No. 96-39, 93 Stat. 308-10.

¹⁸ Ibid, p. 40.

Americans the chance of a free trade agreement where we reopen markets, bring in competition, lower the prices around the world.¹⁹

Restructuring of the trade advisory committees in August, 2004, did not address this problem. There continued to be strong representation in the advisory committee structure from the industries with a direct financial stake in trade, including pharmaceuticals and tobacco..

An analysis by the CPATH in 2005 found that the number of representatives from the health-related pharmaceutical, tobacco, alcohol, processed food, and health services and products industries totaled 42 representatives on 25 committees. The pharmaceutical industry had 20 representatives, and the tobacco industry had 7. The Chair of the Advisory Committee on Consumer Goods (ITAC 4) was from the corporate tobacco giant Altria. The Chair of the Services and Finance Industry advisory committee (ITAC 10) was and today still is the president of the U.S. Coalition of Service Industries, the largest lobbying group in the U.S. of services companies, including health services.²⁰

The extent of the representation from the public health community in 2005 persisted: Zero.

Requests for Public Health Representation on U.S. Trade Advisory Committees

In May, 2005, public health organizations, including the Center for Policy Analysis on Trade and Health, American College of Preventive Medicine, the American Nurses Association, the American Public Health Association, the California Conference of Local Health Officers, The National Association of Community Health Centers, Physicians for Human Rights, and Physicians for Social Responsibility, sent a letter to USTR Rob Portman requesting the Administration to ensure that the concerns of the health of individuals, communities, and populations be taken into account in developing U.S. trade policy, and strongly encouraged appointment of public health representation on 7 relevant existing Tier 3 advisory committees, and the creation of a new Tier 2 public health advisory committee, to provide information, reports, and advice to and consult with the President, Congress, and the US Trade Representative.²¹ Public health organizations cited issues considered by US trade advisory committees and provided analysis of the public health and health care interests and work affected. Issues considered by advisory committees which were cited in a report to the USTR as being of relevance and importance to public health included: agriculture; government procurement; health-related services; insurance; investment; intellectual property rights and pharmaceuticals; movement of personnel; regulations regarding hazardous substances including alcohol and tobacco; and transparency.²²

A concurrent letter was sent to the Ambassador Portman from seven tobacco control organizations urging advisory committee appointment of organizations working to ensure the ability of governments to regulate or control trade in, access to, and marketing of tobacco and tobacco, citing the imbalance in the advice provided by advisory committees to the USTR.

In December, 2005, CPATH and others filed a lawsuit seeking representation on trade advisory committees. In decisions in 2006 and 2008, both District and appellate courts found that although CPATH and public health have standing to claim injury due to lack of representation on trade

¹⁹ Congressional Record, July 14, 2004 House of Representatives debate on the U.S.-Australia Free Trade Agreement, H.R. 4759. <http://frwebgate.access.gpo.gov/cgi-bin/getpage.cgi>, H5708.

²⁰ ITAC 10 Membership, <http://www.ita.doc.gov/itac/committees/services.asp>, accessed 7-15-09.

²¹ Letter to USTR Robert Portman, May 2, 2005, <http://www.cpath.org/sitebuildercontent/sitebuilderfiles/healthrequestustrdoc5-2-05.pdf>.

²² <http://www.cpath.org/sitebuildercontent/sitebuilderfiles/ustrcommitteeswarrantinghealthrep5-05.pdf>.

advisory committees, the Trade Act's standards are insufficient for courts to determine a proper balance of membership.²³ In contrast, the court cited comparable statutes that designated at least broad groups of constituents to be included.²⁴ **The courts suggested that Congress and/or the Administration act to clarify further their intentions to address the obvious imbalance.**

In June of 2006, 6 key Senators and 9 Congressional Representatives, including Senator Kennedy, and Representatives Stark, McDermott, and Emanuel, urged the USTR to appoint a public health representative to the top Advisory Committee for Trade Policy and Negotiations, and to create a new Tier 2 advisory committee, specifically addressing public health, to provide advice, technical information, and guidance on policies affecting health care, global health, environmental health, and other important issues.²⁵

The absence of and continued need for public health representatives were chronicled in the September 2007 GAO Report entitled, "Intellectual Property – U.S. Trade Policy Guidance on WTO Declaration on Access to Medicines May Need Clarification."²⁶ The report found that input related to public health into U.S. trade negotiations had remained limited since Congress enacted the Trade Promotion Authority (TPA) in 2002. Two individuals associated with public health were appointed to two advisory committees that address pharmaceuticals, otherwise composed of 20 and 33 private sector representatives from the pharmaceutical and other industries. Eric Lindblom, representing the Campaign for Tobacco Free Kids was appointed to an agricultural trade advisory committee on tobacco, cotton and peanuts. The report found little evidence that "USTR discussed the concerns submitted about the public health impact of FTAs with U.S. health agencies or other members of the public health community,"(p.55) and that there was little evidence that HHS or other U.S. agencies have determined whether FTAs affect public health, either positively or negatively.(p.52) As a possible explanation for the lack of consideration of public health concerns, the report notes that input USTR receives through informal channels (outside the trade advisory system) "may lack the weight of formal private sector input on public health issues in trade agreements."(p.57) The report proposes that if Congress is concerned over USTR's approach to date, it may wish to specify more clearly its intentions related to balancing public health concerns and the negotiation of IP protections in trade agreements.(p.6)

U.S. Trade Advisory Committees in 2009 - Increased Domination by Corporate Health Interests

In May, 2009, CPATH's updated analysis of the composition of U.S. trade advisory committees found that over the past five years, health-related industries have significantly increased their representation on advisory committees. The only decline is in tobacco industry representation.

The number of representatives from health-related industries increased to 65, from 42 in 2005, and the breadth of representation from health-related industry representatives increased from a presence on 25 committees to presence on 31 committees. The pharmaceutical industry increased their representatives to 27. The change is illustrated in the table below.

²³ CPATH V OFFICE OF US TRADE (9th Cir. 2008), *Federal Circuits*, 9th Cir. (August 22, 2008), Docket number: 06-16682, Permanent Link: <http://vlex.com/vid/cpath-v-office-of-us-trade-41960551>

²⁴ U.S. District Court, No. C05-05177 MJJ, Order Granting Motion To Dismiss, Case 3:05-cv-05177-MJJ Document 28 Filed 06/29/2006

²⁵ Letter to USTR Susan Schwab, June 14, 2006, from U.S. Congress, http://www.cpath.org/sitebuildercontent/sitebuilderfiles/letter_ustrschwab_14june06.pdf.

²⁶ GAO-07-1198, Intellectual Property, <http://www.gao.gov/new.items/d071198.pdf>, p. 5.

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* Does not include the industry-dominated APAC and 6 Agricultural Technical Advisory Committees

- 4 representatives from the pharmaceutical industry or representing pharmaceutical interests sat on the Advisory Committee for Trade Policy and Negotiations (ACTPN), the top advisory committee providing general advice to the President;
- 11 out of 35 members of the Industry Trade Advisory Committee on Chemicals, Pharmaceuticals, Health Science Products and Services (ITAC 3) were from the pharmaceutical industry or representing pharmaceutical interests;
- The tobacco industry had 6 representatives on advisory committees including the advisory committee on Consumer Goods (ITAC 4);
- The alcohol industry had 8 representatives spread across 5 advisory committees.
- Representatives from the health services, health products, and health insurance industries totaled 17, serving on 5 committees, including 2 on the ACTPN.

3. Congress must act to add public health voices to trade advisory committees. Enacting HR 2293 would establish a Public Health Advisory Committee on Trade (PHACT) and would help reform the trade advisory committee system to achieve balance, transparency and accountability.

It is imperative that Congress establish in law the need for public health representation at all three levels of trade advisory committees.

We strongly support HR 2293, which:

Requires public health organizations to be included on the Advisory Committee for Trade Policy and Negotiations.

Establishes a new Tier 2 Public Health Advisory Committee on Trade (PHACT). The advantage to the USTR and to the members of a Tier 2 committee is that they can receive confidential information, and analyze it with other “cleared” advisors with a similar viewpoint. In this way, committee members gain insight into new policies and help shape them, while the USTR would receive a range of views that reflect the public health community.

We also call for additional public health representatives on 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), Intellectual Property Rights (15), and Standards and Technical Trade Barriers (16).

Specifies that members of the Tier 2 PHACT are to be appointed from among individuals who are nominated by and represent organizations in the United States with an interest in improving and protecting the public health. These public health advisors will be required to have expertise in one or more of 5 areas: 1. trade and sustainable development; 2. public health regulations and the authority of the Government to regulate in areas including tobacco control, alcohol control, and standards to ensure safe food, air and water; 3. vital human services and systems, including health care and public health services and systems and water supply and sanitation services and systems, and licensing and cross-border movement of persons employed in these health-related services; 4. occupational safety and health; or 5. access to affordable prescription drugs. Members cannot represent for-profit entities, or receive significant financial support from a for-profit entity represented on any other trade advisory committee.

Importantly, the selection of public health advisers on the basis of their expertise who are from organizations in the United States which focus on improving and protecting public health, will ensure that the best technical advice available will be provided from advisers who possess a broad range of expertise in the field of public health.

Improves Transparency and Accountability:

Requires Consultations with Advisory Committee During Trade Negotiations

Critical to the committees' effectiveness in improving U.S. trade policy decision-making will be the provision of timely advice throughout the trade negotiating process on the potential impact of proposed trade policy and trade agreement rules on protecting and promoting public health in the U.S. and with our trading partners.

The USTR and Secretaries of Agriculture, Commerce, Health and Human Services, Labor and Defense, will consult and receive information from Public Health advisors concerning U.S. trade negotiating objectives, and on terms of trade agreements being negotiated by the United States and the impact of those terms on the U.S. Public health advice will be sought and provided before the commencement of negotiations, throughout the negotiating process, and before a final agreement is reached.

PHACT Reports – The PHACT will issue written advisory opinions before final agreement is reached on the terms of a trade agreement to the President, Congress, and the USTR. Written reports will include the extent to which a trade agreement promotes: the economic interests of the U.S.; and public health and the environment in the United States, and in any other country affected by the agreement.

Requires Committees to report minority views – Committees now vary in their practices. Such reports are particularly critical on committees where public health representatives are a minority. In the longer term, it may be necessary to revisit more thoroughly how Tier 3 committees are composed so that the number of members reflects various interests.

Publicly Available – Committee reports will be published on the USTR website, unless the President determines a particular report should not, according to specified criteria.

In addition, Tier 2 committees should be adequately staffed.

In conclusion, we thank the Chair and the Trade Subcommittee for your careful attention to this critical issue. We offer our cooperation as Congress and the Administration proceed to improve the effectiveness of the trade advisory committee system.