

December 22, 2010

Joseph G. Block

T 202.344.4878  
F 202.344.8300  
jgblock@venable.com

**VIA E-MAIL AND U.S. MAIL**

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

Administrator Lisa Jackson  
United States Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Ave., NW  
Washington, DC 20460

Re: Trade and Environment Policy Advisory Committee (TEPAC) Comments Regarding  
The Membership of ITACs

Dear Ambassador Kirk and Administrator Jackson:

On behalf of the Trade and Environment Policy Advisory Committee ("TEPAC"), I am pleased to submit the following comments regarding the appropriate scope of representation on the Industry Trade Advisory Committees (ITACs). These comments are made pursuant to TEPAC's mandate to provide the USTR and EPA with policy advice on issues involving trade and the environment.

On April 27, 2010, the Office of the USTR and the U.S. Department of Commerce requested public comments on the appropriate scope of representation on the ITACs. More than 75 comments were received. While some commenters thought that the current makeup of the ITACs was adequate and successful, others encouraged, in one way or another, additional environmental, labor, and public health input on the ITACs.

On October 12, 2010, the chairpersons of 16 ITACs wrote USTR and the Commerce Department opposing the inclusion of non-industry representatives on their committees. They stated their belief that this addition would make it harder to reach consensus, would shift the focus of the work from technical issues to overall policy debates, and has a questionable legal basis.

With regard to the question of ITAC membership, several TEPAC members believe that adding representatives of non-industry environmental, labor and public health concerns to the ITACs

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would be one step toward broadening the advice they render to address the concerns of those with differing viewpoints. These members believe that if market access issues were the only issues considered by the ITACs, non-industry representation on these advisory committees might not be a useful way in which to broaden trade policy and trade negotiation input. However, ITACs, as do the Tier One and Tier Two advisory committees, address a number of issues in which non-industry groups interested in trade have expertise and policy views. One such example is the impact of the European Union's chemical registration regulation, REACH, on US industry. While the regulation directly impacts industry, its subject matter is squarely within TEPAC's expertise.

Consensus recommendations may be helpful when there is broad agreement on a subject of advice. But consensus arrived at by exclusion of major points of view may be counter-productive by masking disagreement within the broader community interested in trade policy and negotiations. If the views of an industry are uniform, these members believe, ITAC advice could be presented as such with the additional notation of the differing views of non-industry groups. Several TEPAC members point out that ITACs, on occasion, may reach consensus views because the full range of views within the industry may not be represented within the ITAC. For example, one TEPAC member notes that on the Energy and Energy Services ITAC, there is no representation of either public power producers or cooperative power producers, both models of user-owner energy production. It is possible that broadening ITAC membership in this direction would provide less consensus but a more representative spectrum of industry views.

On the other hand, several TEPAC members question whether TEPAC as a body should advise the government about how other advisory committees organize themselves. These members note that ITACs were established under the Trade Act of 1974 to ensure that U.S. negotiators consulted with the private sector during trade negotiations. Those Tier Three sectoral and functional committees were established to provide technical advice to trade negotiators from an industry viewpoint. As the legislative history indicates, they were to “be representative of the producing sectors of our economy” to “strengthen the hand of U.S. negotiators by improving their knowledge and familiarity with the problems domestic producers face in obtaining access to foreign markets.” S. Rep. 1298, 93d Cong., 2d Sess. 102 (1974). ITACs provide a level of specific industry expertise, which is essential in helping to shape U.S. trade negotiating positions reflective of national economic interests. Therefore, these members agree with the ITAC Chairs that adding non-industry, public interest groups to one or all ITACs would make it more difficult to develop consensus positions and tend to shift the focus of the committee work from technical issues to broader policy debates.

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Notwithstanding this view, some of these members do believe that establishing a separate forum or committee to take account of NGO positions on policy issues, especially those relating to public health would be acceptable. Some of these members also favor the option of inter-committee consultations rather than establishing new groups or adding NGOs to the ITACs. They believe that committees should be authorized to consult each other, as appropriate.

Having operated for more than 15 years with both industry and non-industry representatives, TEPAC believes it is best able to provide advice based on a full consideration of a variety of viewpoints, not only those of industry or non-industry representatives. The membership of TEPAC is diverse, representing industry, public interest organizations, academia, think tanks, and private law practitioners with an environmental law background. Our membership reflects the broad array of stakeholders in environmental issues. The views discussed at TEPAC meetings and included in TEPAC advice to the USTR and the Environmental Protection Agency Administrator reflect this diversity. TEPAC does not believe that consensus recommendations are the only form of useful advice. This allows USTR and the Administrator to assess fully the spectrum of opinions held by institutions and individuals knowledgeable on trade and environment matters, and to be informed of the nuances of those differing opinions.

Somewhat apart from the question of ITAC membership, TEPAC strongly believes that the advice it and other committees provide USTR, EPA and the Secretaries of the other related departments would be improved by increasing the interactions between the various advisory committees. TEPAC notes that there is almost a total lack of communication between and among the ITACs and TEPAC - and the absence of any mechanism for informing the various advisory committees in all three tiers of the system of each others' views and specific advice to the Trade Representative. TEPAC believes that this situation can and should be remedied.

One step toward improved inter-committee communication would be for USTR to establish a procedure under which each advisory committee could be made aware of the advice formally rendered by the other advisory committees. A system that notes the topic(s) of advice letters and comments rendered and allows other committees or their individual members to obtain and respond to points of advice would be beneficial. One way to achieve this might be to utilize the new secure interactive website for advisory committee members to post these documents. Similarly, USTR could establish occasional, but regularly scheduled, joint meetings of multiple advisory committees to discuss particular issues involved in current policy formulation or trade negotiations.

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Please let us know if you would like to discuss these comments or if additional information would be useful. While we have addressed our comments to USTR and EPA, we encourage you to share them with the Department of Commerce as well.

Sincerely,



Joseph G. Block,  
Chairperson of TEPAC

cc: Members, Trade and Environment Policy Advisory Committee

Mark Linscott, Assistant U.S. Trade Representative for Environment and Natural Resources

Myesha Ward, Assistant U.S. Trade Representative, Office Intergovernmental Affairs and Public Engagement