Investor Environmental Health Network

HEALTHY PEOPLE...HEALTHY BUSINESS

NEWS RELEASE

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For Immediate Release

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INVESTORS CALL ON FINANCE COMMITTEE TO REJECT FAST-TRACK; ENSURE TRADE AGREEMENTS' COMPATIBILITY WITH SUSTAINABLE ECONOMY

An organization of investors has called on members of the Senate Finance Committee expressing concern about plans to fast-track European and Trans-Pacific trade agreements. According to the letter from the Investor Environmental Health Network (IEHN) , available evidence suggests that these agreements will be harmful to the US economy by undermining regulations that promote economic prosperity and public health.

According to IEHN Executive Director Richard Liroff, the private dispute resolution provisions in the trade agreements would undermine regulatory programs that protect human health and the environment, and therefore harm economic prosperity and sustainability. "All we have to do is look at the North American Free Trade Agreement (NAFTA) experience to understand why these private dispute resolution provisions are an unacceptable threat to public health protection that should be rejected by Congress. Already under NAFTA we have seen private corporations using the dispute resolution process to undermine regulations on issues such as PCB waste disposal, pesticides, and hydraulic fracturing. Spreading this power to undermine the rulemaking into additional continents is a threat to a sustainable global economy."

President Obama is currently seeking permission from Congress to fast track the Trans-Pacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (TTIP). The Trans-Pacific Partnership (TPP). It is an agreement between the U.S and at least 11 Asian countries along the Pacific Rim, which would encompass 40% of the world economy.[1] The second deal, the Transatlantic Trade and Investment Partnership (TTIP), is similar to the TPP and is being negotiated between the United States and the European Union (EU). Both agreements are based on previous free trade deals like the North American Free Trade

[1] Srinivas, S. (20 January 2015). *Trans Pacific Partnership: Obama Ready to Defy Democrats to push secretive trade deal*. The Guardian. http://www.theguardian.com/business/2015/jan/20/barack-obama-trans-pacific-partnership-republicans

Agreement (NAFTA) and free-trade agreements between the U.S. and Korea, Australia, and Israel.[2]

Fast-tracking these bills would mean the President has the power to negotiate and sign them into law with only an up-or-down vote and no amendments from Congress. Considering the negotiations have been kept secret, with lawmakers not even able to see the text until after negotiations have been concluded, fast-tracking these deals could put the United States in a dangerous position. Reports say 600 corporations[3] are involved in the secret negotiations, with 14 union, consumer and environmental protection groups, which all had to sign non-disclosure agreements in order to participate.

Both the TPP and TTIP are likely to undermine regulations that enforce environmental and chemical safety in food, clothing, medicine and virtually all other consumer goods throughout the entire supply chain. Any new regulation could be required to complete a resource-consuming analysis in addition to a cost-benefit analysis in order to determine the regulation's effect on free trade.[4]

In addition to setting low international standards for health and safety, companies can sue governments for passing new bans or regulations that would be a barrier to trade under the 'Investor-State Dispute Resolution' (ISDR) mechanism.[5] The ISDR involves private international tribunals held outside of national or international jurisdiction, and often the presiding judges are attorneys for other corporations that engage in ISDR

The letter concludes, "The agreements currently under negotiation have the potential to undercut environmental health protections, increase the economic drag on the U.S. economy from consumer and worker exposures to toxic chemicals, discourage business innovation and state-level environmental protections, and favor companies that produce toxic chemicals at the expense of the growing number of businesses that increasingly are seeking to provide safer products to both their business and retail customers. Congress should subject these agreements to careful scrutiny and amendment based on publicly available texts."

The Investor Environmental Health Network is an organization of investors with more than $40 billion in assets under management. Members of IEHN include religious investors such as Mercy Investment Services, Maryknoll Sisters and the Sisters of St. Francis of Philadelphia, and socially responsible investment firms such as Trillium Asset Management, First Affirmative Financial Network, and Miller/Howard Investments.

The letter is appended to this news release.

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[2] Wallach, L. (27 June 2012). *NAFTA on Steroids.* The Nation. http://www.thenation.com/article/168627/nafta-steroids

[3] *TPP Investment Map: New Privileges for 70,000 Companies?* Public Citizen. http://citizen.org/Page.aspx?pid=4083

[4] Center for International Environmental Law, ClientEarth, NRDC. (September, 2014) "Toxic Partnership Revealed." Page 4.

[5] Lowrey, A. (30 January 2014) *Obama and G.O.P Facing Opposition to Trade* Pacts. The New York Times. http://www.nytimes.com/2014/01/31/business/reid-pushes-back-on-fast-track-trade-authority.html?_r=0

Supplemental details on ISDR experience:

Experience with ISDR under NAFTA[6] includes:

- When Canada banned the export of PCB waste to the United States consistent with its agreement to the Basel Convention on toxic-waste trade, Ohio-based SD Myers, Inc. sued the Canadian government through an ISDR created by NAFTA. Canada was ordered to pay the company $5 million dollars.[7]

- After Quebec banned hydraulic fracturing, Lone Pine Resources, an oil and natural gas company, used the dispute mechanism in NAFTA to file a lawsuit against the Canadian government for $250 million claiming they lost a valuable right without due process and compensation, without any cognizable purpose.[8]

- Virginia-based Ethyl Corporation sued Canada through NAFTA when the Canadian government banned the import and interprovincial transport of the gasoline additive Methylcyclopentadienyl Maganese Tricarbonyl (MMT), which Canada considered a dangerous toxicant. Ethyl Corporation sought $251 million in damages from the 'expropriation of both its MMT production plant and its good reputation'.[9] The Canadian government settled, paying $13 million in legal fees and damages, and reversing its ban on MMT.[10]

- U.S company Renco is in the midst of an $800 million ISDR action against the Peruvian government under the United States-Peru Trade Promotion Agreement over environmental clean-up obligations at its metal smelter in La Oroya, Peru. Renco claims Peru is refusing to assume liability for claims of environmental harm that have been brought against Renco, and has failed to provide Renco time extensions for Renco's own clean-up obligations.[11]

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[6] *Investor-State Attacks: Empowering Foreign Corporations to Bypass our Courts, Challenge Basic Protections*. http://www.citizen.org/investorcases

[7] "Raw Deal: How the Trans-Pacific Partnership Could Threaten our Climate", Sierra Club

[8] CBC, Nov 23, 2012, http://www.cbc.ca/news/business/ottawa-sued-over-quebec-fracking-ban-1.1140918)

[9] https://www.globalpolicy.org/component/content/article/212/45381.html

[10] Public Citizen Report, "TPP'S Investment Rules Harm Public Health"

[11] http://italaw.com/sites/default/files/case-documents/ita0713.pdf;

Investor Environmental Health Network
HEALTHY PEOPLE...HEALTHY BUSINESS

TO: Members of the Senate Finance Committee

As investors with assets of over $40 billion, we are writing to express our grave concern about the prospect of fast-tracking international trade agreements currently under negotiation. Available evidence strongly suggests that these agreements will be harmful to the US economy by undermining regulations that promote economic prosperity and public health. We urge you to ensure that your decision-making process fully considers the details of these agreements before approval.

The Investor Environmental Health Network is an organization of investors focused on the environmental and financial implications of the use of toxic materials in businesses' products and supply chains.

Allowing the President to use Trade Promotion Authority to fast-track the treaties through Congress without making the text of the agreements available with suitable time for evaluation could be disastrous.

Due to the secretive nature of free trade negotiations, we do not have the details of the proposed trade agreements between the European Union (Transatlantic Trade and Investment Partnership, or "TTIP") or Pacific Rim countries (Trans-Pacific Partnership or "TPP"). However, enough information has become public, and enough experience has been had under NAFTA, which constitutes a template for some provisions of the treaties, to recognize the potential for long-term economic damage created by externalizing costs that ultimately harm public health. Such costs can be quite sizeable. For example, medical researchers have estimated that the annual cost to the U.S. economy from chemical exposures contributing to lead poisoning, prenatal methylmercury exposure, childhood cancer, asthma, intellectual disability, autism, and attention deficit hyperactivity disorder is $76.6 billion.[1]

<u>Harmonizing regulations</u>

A goal of the trade agreements is to harmonize regulations across nations, making it easier for companies to buy and sell products in all member nations. While this notion could have the potential to hold all member nations accountable to the highest level of regulatory safety, experience from past free trade agreements, leaked documents from current negotiations, and public statements by negotiators have shown this will not be the case. Using phrases like 'harmonization' and 'regulatory coherence,' these free trade deals are more likely to treat

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[1] Leonardo Trasande and Yinghua Liu, "Reducing the Staggering Costs of Environmental Disease in Children, Estimated at $76.6 Billion in 2008, *Health Affairs*, 30, no. 5 (2011):863-870.

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important health and safety regulations as 'state barriers to free trade' instead of the foundation for economic health.[2] The TPP and TTIP are far more likely to drive regulations down to the lowest common denominator, rather than bring them up to the highest level.

According to the National Caucus of Environmental Legislators, industry stakeholders have made clear their intent to use the TTIP as a way to challenge state environmental regulations, specifically pesticide and chemical provisions in California, Maine, Minnesota, Oregon and Washington State.[3] American negotiators in the TTIP are reportedly targeting the EU's Regulation on Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), as a barrier to trade.[4] REACH is one of the toughest toxic substances regulations in the world that has made the EU a leader in controlling endocrine-disrupting chemicals and nanomaterials.[5] Removing these 'barriers to trade' will only remove regulations keeping workers, businesses and consumers safe -- e.g., sanitary regulations that prevent the transmission of disease and infection and the avoidance of their associated costs in healthcare expenses and lost work time.

<u>Lawsuits Against the States through So-Called "Investor-State Dispute Resolution"</u>

Like NAFTA, the new trade agreements are also expected to provide 'Investor-State Dispute Resolution' (ISDR) mechanisms. This allows foreign companies to sue governments for creating 'barriers to trade' in private tribunals that lack any system of judicial review.[6] ISDR tribunals further discourage member nations from creating new regulations to protect the health of their economy—even if the regulations created are part of a larger international agreement to protect people and the environment. Instead, nations are punished for regulatory innovation and put through a costly process with no guarantee of a fair trial. The following cases prove just how costly ISDR cases can be to member nations:

When Canada banned the export of PCB waste to the United States consistent with its agreement to the Basel Convention on toxic-waste trade, Ohio-based SD Myers, Inc. sued the Canadian government through an ISDR created by NAFTA. Canada was ordered to pay the company $5 million dollars.[7]

After Quebec banned hydraulic fracturing, Lone Pine Resources, an oil and natural gas company, used the dispute mechanism in NAFTA to file a lawsuit against the Canadian government for $250 million claiming they lost a valuable right without due process and compensation, without any cognizable purpose.[8]

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2 http://www.independent.co.uk/voices/comment/what-is-ttip-and-six-reasons-why-the-answer-should-scare-you-9779688.html

3 Sharon Anglin Treat, National Caucus of Environmental Legislators Stakeholder Presentation, Round 8 TTIP negotiations, Brussels, Belgium February 4, 2015

4 http://www.foe.org/news/archives/2013-06-sinister-partners-transatlantic-trade-agreement--tox

5 page 4, Center for International Environmental Law, ClientEarth, NRDC. (September, 2014) "Toxic Partnership Revealed."

6 6 National Association of Attorney Generals, "Trade Talks and Attorneys General: Moving Forward, Backwards, or Sideways and Why Should We Care?" NAAGazette 8(9). Accessed at: http://www.naag.org/publications/naagazette/volume-8-number-9/trade-talks-and-attorneys-general-moving-forward-backwards-or-just-sideways-and-why-should-we-care.php

7 "Raw Deal: How the Trans-Pacific Partnership Could Threaten our Climate", Sierra Club

8 CBC, Nov 23, 2012, http://www.cbc.ca/news/business/ottawa-sued-over-quebec-fracking-ban-1.1140918)

Virginia-based Ethyl Corporation sued Canada through NAFTA when the Canadian government banned the import and interprovincial transport of the gasoline additive Methylcyclopentadienyl Maganese Tricarbonyl (MMT), which Canada considered a dangerous toxicant. Ethyl Corporation sought $251 million in damages from the 'expropriation of both its MMT production plant and its good reputation'.[9] The Canadian government settled, paying $13 million in legal fees and damages and reversing its ban on MMT.[10]

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Promoting Innovation, Healthy Business, and Healthy People

In sum, the agreements currently under negotiation have the potential to undercut environmental health protections, increase the economic drag on the U.S. economy from consumer and worker exposures to toxic chemicals, discourage business innovation and state-level environmental protections, and favor companies that produce toxic chemicals at the expense of the growing number of businesses that increasingly are seeking to provide safer products to both their business and retail customers. Congress should subject these agreements to careful scrutiny and amendment based on publicly available texts.

We welcome your views on this critically important issue. Please respond to Richard Liroff, Executive Director of the Investor Environmental Health Network, rliroff@iehn.org.

Sincerely,

Richard Liroff, PhD
Executive Director

Sanford Lewis
Counsel

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9 https://www.globalpolicy.org/component/content/article/212/45381.html
10 Public Citizen Report, "TPP'S Investment Rules Harm Public Health"
11 http://italaw.com/sites/default/files/case-documents/ita0713.pdf;