



Consumer Federation of America

1620 I Street, N.W., Suite 200 * Washington, DC 20006

**Comments of Consumer Federation of America
Concerning Proposed Public Interest Trade Advisory Committee
Docket Number USTR-2014-0005
March 25, 2014**

Introduction

Consumer Federation of America (CFA) is a nonprofit association of nearly 300 nonprofit consumer organizations across the United States. Its mission is to advance the consumer interest through research, education and advocacy. CFA is also a member of the Transatlantic Consumer Dialogue (TACD), a forum of consumer organizations in the US and the European Union. The TACD develops and agrees on joint consumer policy recommendations to the US and EU governments to promote the consumer interest in their policy making.

In light of the significant impact that the Transatlantic Trade and Investment Partnership (TTIP) could have on the specific areas in which CFA works (food, product safety, insurance, financial services, ecommerce, communications, privacy, and energy) and on the ability to enforce existing consumer protections and enact new ones, CFA is very concerned about the lack of full transparency and public input in the negotiating process. This proposal does not adequately address those concerns.

CFA agrees with the comments regarding the TTIP that the TACD made to the US Trade Representative (USTR) in May 2013:

A second fundamental principle is one of transparency: this negotiation must be conducted in an open manner, with negotiating texts made public at key points. In addition, and not as a substitute to public disclosure, we urge establishment of a Consumer Advisory Committee to insure that not just business, but consumer views are considered as negotiation proceeds.¹

The Proposal Makes No Real Improvement in Transparency

Nothing in the proposal for the Public Interest Trade Advisory Committee (PITAC) indicates that there would be any change in the current classified status of negotiating documents; indeed, one of the criteria for eligibility is that “The applicant must be able to obtain and maintain a

¹ See comments at <http://tacd.org/wp-content/uploads/2013/12/TransatlanticConsumerDialogue-response-to-USTR-on-TTIP-10-05-13.pdf>.

security clearance.”² It is our understanding that if CFA had a representative on the PITAC, that person could see the text but would be unable to share it or discuss it in detail with relevant CFA staff or external experts, or to speak about it publicly with any specificity.

This constraint would make it impossible for consumer representatives participating in the PITAC to consult with others on the text as needed in order to provide well-informed, detailed and useful input. It would also make it very difficult to advocate publicly, a core part of our missions. This is especially ironic considering the frequent leaks of negotiating texts.³ Could consumer representatives who have signed non-disclosure agreements to participate in the PITAC be accused of criminal offenses by publicly commenting on text even when it has been posted on the Internet for all to see? It is a fiction to believe that the texts are truly secret.

The USTR should abandon its insistence on continuing to treat the negotiating drafts as classified documents and provide them to the public at regular intervals. This is not an extreme idea nor would it unduly hamper negotiators. Trade bodies that have made negotiating text public during the drafting process include the World Trade Organization, World Health Organization, World Intellectual Property Organization, Free Trade Area of the Americas and the Codex Alimentarius Commission. Agreements such as the TTIP, which would directly affect public welfare and our regulatory and legislative process, should not be made behind closed doors. The outcome will not be acceptable unless it is the result of a fully transparent process. Allowing members of the proposed Public Interest Trade Advisory Committee to see the text is not a substitute for public disclosure of exactly what is being considered.

Consumers Need Their Own Trade Advisory Committee

The PITAC proposed by the USTR is similar to the Transatlantic Trade and Investment Partnership Stakeholder Advisory Group⁴ that the European Commission (EC) has created for the TTIP, with a broad range of interests represented, including business. CFA notes, however, that unlike the EC, the USTR already has sixteen Industry Trade Advisory Committees, which enable business interests to convey their views, as well as other committees such as Trade Policy and Negotiations, Agricultural Policy, Labor, and Trade and Environmental Policy, which have representatives from relevant industry, labor, and environmental groups.

What is lacking is the consumer voice, and that is why CFA and other consumer organizations have called for the USTR to create a Consumer Advisory Committee. Trade associations and

² See criteria listed in Request for Nominations in Federal Register Notice at <https://www.federalregister.gov/articles/2014/02/25/2014-04062/request-for-comments-from-the-public-and-nominations-for-the-public-interest-trade-advisory>.

³ For example, the EU’s proposals on Regulatory Coherence and on Trade in Services, Investment and E-Commerce for the TTIP have been leaked, as have drafts of US and other countries’ negotiating text on Intellectual Property in the Trans-Pacific Partnership agreement. These texts can easily be found online.

⁴ See press release at http://europa.eu/rapid/press-release_IP-14-79_en.htm.

other nonprofit organizations that do not represent consumers' interests can participate on other USTR committees; their inclusion in the new committee proposed by the USTR is unnecessary and would dilute the consumer voice.

Even if a new advisory committee was created solely for consumer representatives, the confidentiality constraints, and the lack of public disclosure, which is the paramount issue, would make it very difficult for CFA to participate.

Conclusion

CFA welcomes the USTR's attempts to increase openness and public input in the TTIP through meetings, briefings and stakeholder presentations. CFA has taken advantage of those opportunities to ask questions and present its views⁵ and will continue to do so. It is unfortunate, however, that the USTR's proposal to go further by creating the PITAC misses the mark. It would not provide the full transparency and direct channel for the consumer perspective that CFA and others have asked for, and it could hamper our ability to effectively advocate on behalf of consumers' interests.

The USTR can take a real step forward by releasing the draft texts of trade agreements from their artificial shackles. That would enable CFA and others to provide more meaningful input, whether through advisory committees or other means, and bring the trade negotiations out of the shadows into an open process that reflects our democratic values.

Submitted by:



Susan Grant, Director of Consumer Protection
Consumer Federation of America

⁵ See CFA stakeholder presentations on the TTIP at <http://www.consumerfed.org/pdfs/TTIP%20presentation%2012.18.pdf> and <http://www.consumerfed.org/pdfs/TTIP%20presentation%207.10.13.pdf>.