

# *WTO, NAFTA and 'Free Trade Agreements' Even Meddle in How We Can Spend Our Tax Dollars*

## *Green Procurement, Human Rights and Anti-Sweatshop Rules Threatened; Buy Local and Anti-offshoring Policies Banned*

Many Americans know that the United States lost 4 million manufacturing jobs since corporate trade deals like the North American Free Trade Agreement (NAFTA) and World Trade Organization (WTO) went into effect. And, now even high-tech and service jobs are being offshored in the same race to the bottom. The incentives these agreements give firms to move production to low-wage nations and send products or services back tax-free are pushing down wages for most American workers. And many people know that an array of environmental laws have been successfully challenged and weakened under these pacts and that unsafe imported food and products have flooded into the country thanks to the pacts' limits on environmental, health and safety policies.

**But what many Americans do not realize is that today's "trade" pacts even constrain how we – and our democratically-elected federal and state governments - can choose to spend our tax dollars.** Trade agreement 'procurement rules' label certain environmental and human rights conditions as 'illegal barriers' and flat-out ban other procurement policies commonly used at the federal and state levels. As a result, the pacts could undermine plans for future 'green jobs' based on government investment in alternative energy and infrastructure improvements. Plus, the pacts pose threats to jobs that *cannot* be moved out of the United States. For decades, before NAFTA and WTO, trade deals only covered border taxes (tariffs) and quotas on goods. Government procurement and the service sector, like construction, were not covered, much less how we spend our tax dollars.

No longer! Today's "trade" deals like WTO, NAFTA and the NAFTA style Free Trade Agreements (FTAs) contain numerous non-trade rules, including limits on our domestic procurement policies. If a country – or state – does not conform its laws to these rules, other nations in the agreement can challenge our laws in foreign tribunals and stick us with indefinite trade sanctions if we do not change our laws. The only good news is that these challenges take at least five years to be decided, by which point we will have hopefully changed the pacts!

- **Anti-offshoring policies.** Laws requiring that outsourced government work be done by U.S. workers or firms, and other local development policies designed to keep our tax dollars recycling in our domestic economy (paying U.S. workers' wages), directly violate the WTO, NAFTA and FTA procurement rules. These agreements require domestic and foreign companies seeking many types of government contracts to be treated like U.S. firms. That means that many federal and state procurement policies that give preference to locally-produced goods and services (so-called "Buy American" or 'Buy Local' policies) are forbidden.
- **"Green" procurement policies.** Requirements for recycled content in paper and other goods or energy from renewable sources are exposed to challenge under the trade agreement procurement rules. Preferences for certain environmental or consumer safety labels and eco-friendly packaging are also subject to challenge. Presidential candidates and federal and state policymakers are all talking about plans for creating green jobs with new government investment in improving our energy efficiency and infrastructure, but these very proposals are subject to the anti-environment constraints in the trade pacts' government procurement rules.

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## **Green Procurement, Human Rights and Anti-Sweatshop Rules Threatened; Buy Local and Anti-offshoring Policies Banned**

- **Policies targeting companies' human rights, environmental, labor conduct.** The trade deals limit Congress and state governments from disqualifying companies from government contracts because of labor, safety or environmental records or practices. If a foreign firm was "disbarred" from bidding on state contracts for repeated environmental violations, that policy can also be challenged.
- **Policies targeting countries' human rights, labor rights, other conduct.** WTO, NAFTA and the FTAs' procurement rules forbid U.S. federal and state governments from treating foreign firms – including European or other third-country firms – differently because of the human rights or labor rights records of the countries in which they operate or are based. This removes tools used in the past to demand corporate responsibility for human rights abuses, such as the successful Apartheid-era bans on doing business with companies operating in South Africa.
- **Prevailing and living wage laws and project-labor agreements.** The agreements also set limits on what terms our governments can require for a company to be qualified to bid on a contract. The permitted conditions are limited to requiring that a prospective bidder must be financially and technically able to fulfill a contract. Additional conditions, such as requiring companies to agree to pay prevailing or living wages, could be challenged by a company that is excluded from a government contract because of such requirements. If signing a Project Labor Agreement that requires fair treatment of workers and their unions in order to avoid labor disputes in public works projects is a condition for getting a government contract, that also could be challenged by a foreign company seeking the contract.

### **WTO, NAFTA and the FTAs expose U.S. procurement policies to challenge in foreign tribunals**

- Other signatory nations are empowered to challenge our state and federal laws in tribunals set up in the agreement.
- In NAFTA and the FTAs, foreign corporations can avoid U.S. courts and law and directly attack federal construction contracts too.
- Foreign trade officials, not U.S. courts or judges, decide if our laws "violate" the rules.
- The tribunals are authorized to order us to change our laws or face sanctions or pay millions in compensation. So far, one procurement law was so challenged – Massachusetts' ban on contracts with firms operating in Burma. That WTO challenge by Japan and Europe was withdrawn when a U.S. court ruled that U.S. federal law on Burma pre-empted the state policy, so no ruling was ever issued by the WTO.
- Since then, WTO threats have been used to chill to death progressive procurement policies before they are passed, including a Maryland law aimed at the pressuring the Nigerian dictatorship.

**For more information, contact Public Citizen's Global Trade Watch division:  
[www.tradewatch.org](http://www.tradewatch.org) or 202-546-4996**