

Trade Advisory Committees: Privileged Access For Polluters

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Public Citizen's Congress Watch

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Privileged Access For Polluters: Trade Advisory Committees

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PUBLIC CITIZEN

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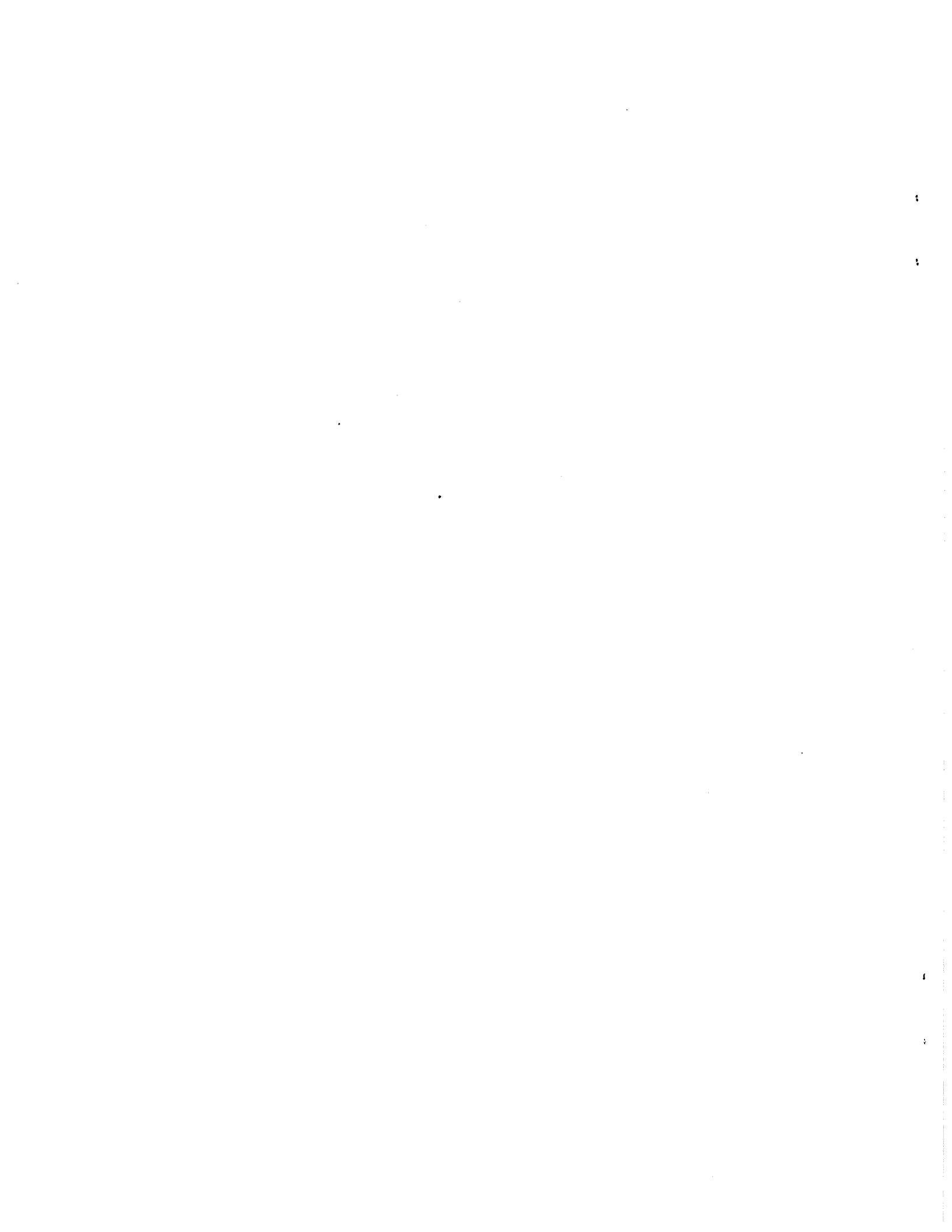
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Trade Advisory Committees: Privileged Access for Polluters EXECUTIVE SUMMARY

Upcoming trade agreements could have a seismic impact on domestic environmental, health and safety standards here and abroad, because trade agreements can effectively undercut domestic law. Distressingly, United States trade negotiators have been lobbying hard for provisions that would threaten much of our domestic environmental, health and safety law in the name of global "harmonization."

Why would U.S. trade representatives work to undercut U.S. environmental, health and safety laws? Closer examination reveals that these unelected, unaccountable U.S. trade representatives are officially counseled by a platoon of corporate lobbyists, who are given preferential access to decisionmakers through a shadowy network of advisory committees. Public Citizen has scrutinized the rosters of these advisory committees. Whom do they represent? Would corporate trade advisors benefit from the deregulatory proposals pushed by our trade negotiators? Is the public excluded from decisions made in its name? Are consumer and environmental concerns given full voice? This report concludes that special access to unelected and otherwise unaccountable trade policymakers has been granted to those with a direct pecuniary interest in weakened health and environmental standards. Citizen advocates have effectively been shut out of the process.

These committees are required under the Federal Advisory Committee Act (FACA) to be "fairly balanced in terms of point of view represented and the functions to be

performed by the committee." The statute establishing the lead trade advisory committee, ACTPN, is even more explicit by requiring that consumers be specifically represented. In reality, however, the trade advisory committees are stacked with corporate representatives. And despite FACA's requirements that advisory committee proceedings be open to the public, the trade advisory committees take advantage of a broadly-worded exception. They are entitled to operate secretly if public disclosure would "seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions. . . ." As a result these panels rarely announce their meetings and never allow the public to attend.

To ensure that trade agreements work to the advantage of all Americans, the advisory system must be revamped to bring in the sunlight of public disclosure, and to give other affected parties a voice in formally guiding our negotiators.

CORPORATE COUNSELORS:

THE TRADE ADVISORY SYSTEM

Public Citizen's Congress Watch scrutinized the environmental and consumer records of companies represented on three trade advisory committees. These committees are the Advisory Committee on Trade Policy and Negotiations (ACTPN), the Industry Policy Advisory Committee (IPAC), and the Chemicals and Allied Products Industry Sectoral Advisory Committee (Chemicals ISAC). Our study reveals a pattern of lawlessness and disregard for consumer health and the environment among many of these companies:

Overall Balance

- Of the three committees' 111 members, 92 represent individual companies, 16 represent industry trade associations, two represent labor unions, and only one represents an environmental advocacy organization. All three committees wield strong influence over trade issues that could endanger the environment or consumer health and safety.

Environmental Offenders

- 27 companies (or their affiliates) represented in advisory committees, nearly a fourth of the combined membership of the committees, have been assessed fines by the EPA of over \$12.1 million since 1980 for various environmental offenses, an average of \$450,196 per offender. This sum represents only part of the total penalties assessed by the EPA, because it does not systematically include administrative penalties.²

Hazardous Waste Dumping Sites

- As of January 1, 1990, 50 companies (or their affiliates) represented in advisory committees, nearly half of all trade advisors in the study, were listed as Potentially Responsible Parties for hazardous waste dumps on EPA's Superfund List. Although more than one company may share responsibility for polluting a Superfund site, each of these 50 offenders is at least partly responsible for an average of more than 11 different Superfund sites.³

Worst Polluters in U.S.

- 24 companies represented on these three advisory committees, nearly a fourth of the combined membership of the committees, rank among America's 50 biggest dischargers of toxic pollutants, or among the top 50 dischargers of airborne or waterborne pollutants.⁴
- The Chemicals Advisory Committee is an especially concentrated assemblage of major polluters. 25 individual companies are represented, and 10 chemical industry trade associations are represented as well. None represent environmental concerns or experts in the toxic effects of commercially-used chemicals. 13 companies (or their affiliates) represented on the Chemicals ISAC, over a third of the committee, rank among America's 50 biggest dischargers of toxic air or water pollutants.⁵
- 5 members of the advisory committees are listed in EPA's 1989 Toxic Release Inventory database as ranking among the 10 biggest dischargers of hazardous wastes in America: **Du Pont**, the biggest polluter in America; **Monsanto**, the second biggest; **3M**, the sixth biggest; **General Motors**, the eighth biggest; and **Eastman Kodak**, the ninth biggest.⁶

Political Campaigns Against Environmental Regulation

- 29 companies (or their affiliates) represented on the three advisory committees, more than a fourth of the combined membership of the committees, collectively contributed at least \$816,172 in a failed attempt to defeat California's Safe Drinking Water and Toxics Enforcement Act, a statewide initiative to require accurate labeling on potentially cancer-causing products, and also to limit toxic discharges into drinking water.⁷
- In 1990, they upped the stakes against another California environmental initiative known as Big Green. 29 contributing companies (or their affiliates) threw in \$2,144,416, and this time won at the ballot box. Had it passed, Big Green would have, among other provisions, set tighter standards for discharge of toxic chemicals.⁸
- Opposition to these initiatives by members of the Advisory Committee on Trade Policy and Negotiations (ACTPN), the most prestigious and influential trade advisory group, was especially intense. ACTPN includes representatives of 38 individual companies, 4 trade associations, and two labor unions. There are no consumer advisors and, as of this date, no environmental representative on the committee. 14 of these companies (or their affiliates), nearly a third of the committee, spent at least \$454,772 in a failed attempt to defeat California's 1986 Safe Drinking Water and Toxics Enforcement Act.⁹ In 1990, 12 companies (or their affiliates) represented on ACTPN, more than a fourth of the committee, spent \$768,358 in a successful attempt to defeat Big Green.¹⁰

CODEX ALIMENTARIUS DELEGATION ADVISORY PANEL

The Codex Alimentarius Commission is an obscure U.N. offshoot chartered in 1962 to issue advisory food standards, primarily for the use of developing countries. Long overrun by business lobbyists, its standards are often weaker than those of the U.S. Yet Codex aspires to someday achieve binding authority in the U.S.

The U.S. delegation to two Codex conferences in Rome this year consisted of an interagency group plus an official flock of corporate advisors: 14 representatives of individual companies, 6 representatives of trade associations, and for the first time since Codex's founding, 2 representatives of U.S. citizen groups.¹¹ A close relationship exists between the government officials and the industry representatives. In August, the head of the U.S. government Codex delegation, Lester Crawford, left to become chief lobbyist

for the National Food Processors Association, an advisor to the U.S. Codex delegation.¹²

- Five companies and two trade associations represented on the delegation, almost a third of the U.S. advisory panel to the Rome conferences, have already illustrated their willingness to use preemption to overturn democratically-determined food safety laws -- in this case, domestically rather than globally. **Kraft, Nestle, Coca Cola, CPC International, PepsiCo, the Corn Refiners Association and the National Food Processors Association** helped to found the Committee for Uniform Regulation of Labelling, or CURL.¹³ CURL filed a lawsuit soon after the 1986 passage of California's Safe Drinking Water and Toxics Enforcement Act. CURL's lawsuit claimed that the new law, approved as a statewide initiative by 63 percent of all California voters, should be abolished, in part because it was preempted by weaker laws at the federal level. The federal court has already dismissed much of CURL's suit, but the pre-emption claim is still pending.¹⁴ If CURL wins, the result will be a devastating blow to the rights of California citizens, and to the protection of their health from cancer-causing substances.

RECOMMENDATIONS

- 1) Provide diverse representation on appropriate committees.

Representatives of citizens' groups should be entitled to meaningful representation on committees of importance to them.

- 2) Establish new committees on the environment and consumer safety.

Advisory committees have been established for special interests as narrow as lumber and non-ferrous metals. The concerns of U.S. consumer health and safety and of the environment, on the contrary, are of general interest to all Americans. New committees should be empaneled to address issues of environmental protection and consumer health and safety.

- 3) Democratize the trade advisory process.

Official trade advisory committees should be required to open their meetings to the public. If some particular matter must be withheld from the public in order to protect the U.S. negotiating strategy, then only those portions of meetings and documents that reveal the matter should be kept secret. The bulk of the advisory committee meetings and oral and written advice provided by the committees can be sanitized and revealed publicly.

NOTES

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2. EPA Enforcement Accomplishments Report, FY 1986-1990; and EPA Civil Enforcement Docket, Office of Enforcement and Compliance Monitoring, U.S. Environmental Protection Agency.
3. Site Enforcement Tracking System. database of U.S. Environmental Protection Agency. January 1, 1990.
4. Manufacturing Pollution: A Survey of the Nation's Toxic Polluters. Report, Citizen's Fund, July 1991. (September 1991 revision) Also, Toxics in the Community: National and Local Perspectives. The 1989 Toxics Release Inventory National Report. Report, Economics and Technology Division, Office of Toxic Substances, U.S. Environmental Protection Agency. September 1991. p. 66. Rankings include subsidiaries of parent companies.
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7. Californians Against Prop. 65. California Fair Political Practices Commission. Contribution list, 1987.
8. Proposition 128, "Against". Capitol Weekly Data. July 15, 1991. p. 14-16.
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10. *supra.* California Weekly Data.
11. Report of the Nineteenth Session of the Joint FAO/WHO Codex Alimentarius Commission, Food and Agriculture Organization of the United Nations and World Health Organization. Rome, 1-10 July 1991. Confirmation of "first-time" nature of citizen group participation from oral communication with Lester Crawford, former Chief of U.S. Delegation to Codex. December 4, 1991.
12. Daniel Puzo, "Crawford Leaves USDA Inspection Service Post," Los Angeles Times. August 22, 1991. p. 31.
13. CURL membership roster. Undated.
14. *Supra.*, "Proposition 65 Litigation," p. 13. Also, oral communication with Edward Weill, Office of the Attorney General, State of California. November 13, 1991.

TRADE ADVISORY COMMITTEES: PRIVILEGED ACCESS FOR POLLUTERS

INTRODUCTION

Trade negotiators from the United States and dozens of other nations are secretly huddling in Geneva, hoping to expand the General Agreement on Tariffs and Trade (GATT) through the Uruguay Round of negotiations. At the same time, trade negotiators from the United States are meeting with their Canadian and Mexican counterparts, in an effort to create a North American Free Trade Agreement (NAFTA). The resulting trade agreements could have a seismic impact on domestic environmental and consumer laws here and abroad, since trade agreements can effectively undercut national laws.

Distressingly, United States negotiators have been lobbying hard for provisions that would threaten much of our domestic environmental, health and safety laws in the name of global "harmonization." In the case of the GATT expansion, a "draft" agreement summarizing points of agreement to date has been released.¹ As it affects these critical protections, the GATT draft amounts to deregulation at home imposed by global trade agreements. Obscure as it is, the GATT expansion constitutes one of the most important threats faced by American consumers today.

Why would U.S. trade negotiators work to undercut U.S. environmental, health and safety laws? Closer examination reveals that these unelected, unaccountable U.S. trade representatives are officially counseled by a platoon of corporate lobbyists,

who are given preferential access to decisionmakers through a shadowy network of advisory committees. These panels meet in secret, are given access to classified documents, and have kept their own activities secret from the public. The trade advisory committees are supposed to represent the interests of the broad public. In fact, however, they are stacked. In effect, special access to unelected and otherwise unaccountable trade policymakers has been granted to those with a direct pecuniary interest in weakened health and environmental standards.

Public Citizen's Congress Watch has scrutinized the rosters of these advisory committees. Whom do they represent? Are consumer and environmental concerns given full voice? Would corporate trade advisors benefit from the deregulatory proposals pushed by our trade negotiators? Is the public excluded from decisions made in its name? Unfortunately, this report concludes that these trade advisors often represent interests currently subject to the very environmental and consumer laws that would be weakened by trade agreements, and that citizen advocates have effectively been shut out of the process. Indeed, many of these panels are dominated by representatives of firms that often violate environmental laws and work to weaken such laws. To ensure that trade agreements work to the advantage of all Americans, the trade advisory system must be revamped to bring in the sunlight of public disclosure, and to give other affected parties a voice in formally guiding our negotiators.

I. DEREGULATION-BY-TRADE AGREEMENT: THE THREAT TO AMERICAN CONSUMERS

The U.S. administration trade policymakers who have granted preferential access to megacorporations are engaged in a drive for deregulation of environmental, health and safety standards through trade agreements. The Uruguay round of GATT -- largely the inspiration of the Reagan/Bush Administration -- could have far-reaching consequences for domestic federal, state and local laws. The December 1990 draft summarizing agreements reached in the GATT round is studded with

proposals, authored or endorsed by our own negotiators, that would undercut many critical domestic consumer and environmental protection laws. The newest GATT draft, due to be released by the end of the year, contains these same proposals.

This potentially devastating consumer and environmental impact is a relatively new phenomenon. In 1974, when the Trade Act first established trade advisory committees, trade policy dealt mainly with traditional issues like tariffs, quotas and duties. The direct impact of trade agreements fell most visibly on businesses and labor unions. Naturally, they lobbied for a role in trade policymaking. As part of a compromise between Congress and the Ford Administration, a series of advisory committees was created.

But trade agreements are no longer just about tariffs and quotas. In recent years it has become almost as common for negotiators to discuss how much residue from lethal pesticides like DDT will be allowed on an imported peach as whether or not a country will be allowed to charge a duty on that peach. The power to intervene in what most Americans think of as domestic law comes from a new emphasis on "non-tariff trade barriers." Almost any law, regulation, standard or tax which applies to imported goods or services can be categorized as a non-tariff barrier to trade.

At one end of the spectrum, Korean laws restrict the sale of "luxury" goods, most of which are made only by foreign importers like the U.S.; such laws may truly amount to an unfair trade barrier.² On the other end of the continuum sits a U.S. law banning imports of tuna caught by methods that slaughter dolphins, challenged in a GATT complaint brought by the Mexican government. The ban on dolphin-deadly tuna was clearly enacted to protect dolphins, not the American fishing industry -- but its legitimate nature did not prevent Mexico from demanding a GATT dispute resolution panel to challenge the U.S. law as an "unnecessary barrier to trade."³ On August 16 the GATT panel, comprised of three foreign trade bureaucrats from Uruguay, Hungary, and Switzerland, decreed the Marine Mammal Protection Act (MMPA) to be a barrier to trade that Congress must eliminate.⁴ The GATT panel decision reached beyond the MMPA to interpret the 1947 GATT Charter as requiring that no nation may have environmental or health laws with extraterritorial implications if those laws also impact

international trade.

The tuna-dolphin GATT decision sounded a clear warning -- unless the public has a role in setting U.S. trade policy, for instance in deciding what domestic laws will and will not be considered unfair trade barriers, trade agreements will pose a potent threat to vast stretches of domestic environmental, health and safety law in the coming decade.

Among the proposals, advocated by our trade negotiators and contained in the December 1990 draft summarizing agreements reached in the GATT round, are proposals that would:

1. Undermine food safety

Food safety laws would be dramatically undercut if the GATT draft is adopted. The section on "Sanitary and Phytosanitary Measures"⁵ would create a presumption that any standards above often flimsy international standards are unfair trade barriers. These standards include chemical and microbial contamination, colors, flavors and other additives, packaging and inspection. The U.S. would be prohibited from barring imports of food and agricultural products under U.S. laws that provide a higher level of consumer protection than those of the GATT standard. The U.S. would only be allowed to enforce its law if it could bear the burden of proving that a purely scientific justification exists for the higher U.S. standard and that it is the alternative least restrictive to trade. **These GATT rules could determine what contaminants end up in your food on your dinner plate.**

For example, the Delaney Clause, which prohibits the use of carcinogenic food additives in processed foods and color additives in all foods, was passed in 1958 by Congress to protect consumers from cancer-causing agents.⁶ Industry groups in the United States have been trying to eliminate the Delaney Clause through legislative and administrative channels for years. As currently drafted, the Uruguay Round Sanitary and Phytosanitary section will provide an unprecedented opportunity for those special interests to leapfrog over the safeguards of the normal democratic process and have the Delaney Clause labelled a trade barrier and eliminated.

In addition, the Uruguay Round Sanitary and Phytosanitary provisions may also **jeopardize food labelling requirements in the United States.** For example, Congress has required mandatory nutritional labelling on foods, which go much further than the voluntary guidelines on labelling which GATT would make the international norm.

The GATT food standards of such enormous import to American consumers would be set by an obscure, Rome-based organization called the Codex Alimentarius Commission ("Codex"). See p. 27 for a description and analysis of Codex.

2. Redefine safety regulations as "technical barriers to trade"

The December 1990 draft agreement from the Uruguay Round negotiations contains a harmonization provision entitled "Technical Barriers to Trade."⁷ This section would bar any nation, or any city or state within the nation, from enacting "technical regulations" that create "unnecessary obstacles to international trade." Technical regulation is defined as any "product or process requirements or standards... for all products, including industrial and agricultural products",⁸ a vast definition that would include everything from recycling laws to auto safety requirements, from toxic substance bans to meat inspection and labeling, and much more.

This GATT section would apply retroactively to all existing standards. Thus, it would open to challenge many U.S. standards which are higher than existing international standards, and U.S. standards for which there are no international norms. The U.S. could only keep out imports that fail to meet U.S. standards if the U.S. can show that the standards, no matter how legitimate, do not create an unnecessary obstacle to international trade.

3. Gut natural resource conservation measures

The proposed Uruguay Round rules would expand trade in natural resources by making many national conservation measures GATT-illegal. The new rules particularly focus on forestry products, minerals, tropical products (rainforest products), and fish products. **The proposed rules would prohibit countries from restricting exports of their own natural resources.**

By making it GATT-illegal to require sustainable natural resource management, the Uruguay Round will promote even greater depletion of natural resources world-wide, which could also have adverse effects on global warming, climatic changes, and the survival of endangered species through the destruction of their critical habitat.

For example, if a nation cannot stop the export of raw logs, it may be forced to allow the depletion of its forests. Since deforestation is one of the world's pressing ecological problems, depletion of remaining stands of forests would have adverse and possibly dire environmental consequences. Working together, environmentalists, the timber industry and federal and state

governments had reached an answer to this pressing ecological problem -- raw log export limits. However, such raw log limits now in place in Oregon and Washington and a federal law, the **Forest Resources Conservation and Shortage Relief Act** of 1990⁹, which prohibits the export of unprocessed timber from certain public lands, would be at risk under the Uruguay Round rules. In fact, Japan, the world's number one raw log importer, has threatened in the press to challenge the U.S. laws before GATT using the new Uruguay Round rules and the precedent of the tuna-dolphin decision.

Banning export restrictions, in combination with other Uruguay Round provisions, may jeopardize numerous United States protections that limit trade in natural resources, such as the **Endangered Species Act**,¹⁰ which restricts imports, exports, and interstate commerce in endangered species; and the **Packwood-Magnuson Amendment to the Fishermen's Protection Act**,¹¹ which authorizes restrictions on U.S.-controlled fisheries actions that breach the International Convention for the Regulation on Whaling.

Finally, a flat prohibition on export controls would also be devastating if it prevented a nation from imposing controls on the export of food during times of famine. The GATT currently has exceptions allowing export controls both for times of famine and for certain natural resources. The U.S. has supported eliminating both exceptions.

These proposals are all the more dangerous because Congress has abdicated its normal legislative role. Congress has gone on autopilot on U.S. trade policy by agreeing to a special "fast track" system for congressional approval of trade agreements. Under fast track, Congress' role is limited to a yes or no vote on completed trade agreements, with absolutely no amendments permitted -- only 60 legislative days after first seeing the full agreement. That means that even if an agreement were solid on most counts but contained devastating anti-environmental provisions, Congress would face enormous pressure to ratify the agreement anyway.

II. CORPORATE COUNSELORS: THE TRADE ADVISORY SYSTEM

Trade negotiations are a mystery to most Americans, but not to members of a vast network of official U.S. trade advisory committees. Two comprehensive systems of advisory committees are organized under the direct supervision of the U.S. Trade Representative (USTR) and the Department of Commerce to confer with and counsel

U.S. officials on every aspect of trade negotiation and implementation. These committees fall under the authority of the Federal Advisory Committee Act of 1972, but receive a special exemption from its openness requirements, a drastic error whose consequences are discussed below.

It would be hard to exaggerate the influence of the trade advisory committees. According to a 1989 Department of Commerce document, for example, advisory committee members exercised sweeping influence over the U.S. negotiating stance at the 1979 Tokyo Round GATT talks:

The advisory members spent long hours in Washington consulting directly with negotiators on key issues and reviewing the actual texts of proposed agreements. For the most part, government negotiators followed the advice of the advisory committees . . . whenever advice was not followed, the government informed the committees of the reasons it was not possible to utilize their recommendations.¹²

Advisory committees are so intertwined with governmental trade negotiators that panel members require security clearances. One of the perks of membership is a special reading room filled with classified documents available for perusal by non-governmental advisors. To enable trade advisors' opinions regarding the current GATT talks to reach negotiators more quickly, a database has been established that instantly puts an advisory committee member's words at the negotiators' fingertips.¹³ Government sponsors of the trade advisory system take enormous trouble to keep trade advisors fully informed of every twist and turn in the negotiating process.

Despite their enormous influence, the corporate trade counselors work in near-total obscurity. A proper understanding is made even more difficult by the trade advisory system's dense jungle of acronyms and tangled organizational structures. Grasping which committee does what or answers to whom can be a complicated task. Such closed-door arrangements help explain why relatively few hear about trade advisory committees.

The 1974 Trade Act, as amended, establishes the advisory committee system. The system has two components. First, the President is required to establish an Advisory Committee for Trade Policy and Negotiations (ACTPN), and the President

must keep it informed and consult it on trade policy matters.¹⁴ ACTPN's statutory mandate puts it at the very pinnacle of the trade advisory system. Second, the President may establish other trade advisory committees to provide general policy advice on trade issues, or to provide information and advice with respect to certain functional or sectoral areas. Seven committees and numerous subcommittees dealing with major trade sectors including services, agriculture and defense have been created to fulfill this second mandate (See Appendix 1 for a full listing.)

One of these seven committees, however, stands as an exception to the narrow sectoral focus of its six brethren: the Industry Policy Advisory Committee (IPAC). IPAC's role is to act as a steering committee for the Industry Consultations Program -- in effect, another entire network of 22 trade advisory committees. Seventeen different Industry Sectoral Advisory Committees (ISACs) represent specific industries or industry clusters, and three Industry Functional Advisory Committees (IFACs) handle broader issues of intellectual property, standards and customs regulation. The chair of each committee serves on a Committee of Chairs. (See Appendix 1 for a list of committees sponsored by the Industry Consultations Program.)

III. OUT OF BALANCE, IN THE DARK: TRADE PANELS AND FEDERAL LAW

The American democratic system of government is built on the principles of openness and fair representation. Government advisory committees should exemplify these principles. Yet for the trade advisory system, the practice mocks the principle: secrecy is the norm, as is the exclusion of all but a narrow range of opinions.

In 1972, Congress enacted the Federal Advisory Committee Act (FACA), out of concern that regulated industries were exerting undue influence on governmental policymaking behind the then-closed doors of the advisory committee process. Republican Senator Charles Percy, one of the chief sponsors of the Act, made the following observation:

Viewed in its worst light, the federal advisory committee can be a

convenient nesting place for special interests seeking to change or preserve a federal policy for their own ends. Such committees stacked with giants in their respective fields can overwhelm a federal decision maker, or at least make him wary of upsetting the status quo.¹⁵

In order to curtail this surreptitious industry influence, FACA requires balanced membership on advisory committees, and requires that advisory committee meetings and records generally be open to the public.

A. Balanced Representation

FACA requires that the membership of advisory committees be "fairly balanced in terms of points of view represented and the functions to be performed by the advisory committee."¹⁶ Not only are the trade advisory committees subject to FACA's balance requirements, but the statute establishing the lead trade advisory committee, ACTPN, explicitly requires that consumers be represented on that committee. Despite these requirements, USTR has sought a much narrower balance: "balance among sectors, product lines, between small and large firms, among geographical areas, and among demographic groups."¹⁷

According to USTR, the American business community is entitled to at least five different kinds of "balance," or representation. But is business representation the only kind needed by the American public? American citizens care deeply whether the food they eat is safe -- yet no toxicologists, nutritionists or advocates for food safety are members of the trade advisory committee dealing with food standards. Americans want safe products -- yet no consumer advocates or public health officials are members of any trade advisory committee. Americans are also concerned about the rapid destruction of our natural heritage, and about the poisoning of our air and water -- yet only in August of this year did a token delegation of environmentalists gain admittance to trade advisory committees.

President Bush pledged on May 1, 1991 that environmentalists would gain admittance into the advisory committee system.¹⁸ By that time, nearly five years of the Uruguay Round of GATT negotiations had proceeded without environmental input. But it was not until four months later, in the midst of ongoing NAFTA negotiations, that

five environmentalists were stirred into the system of over 800 corporate advisors.¹⁹ Meanwhile the President has failed, in over seven months, to name the sixth appointment to ACTPN, the most important committee.²⁰ When the dust settles, no one can doubt that the U.S. business community still calls the shots on advice and counsel to U.S. trade officials. Because of this myopic vision, trade advisory committees clearly fail to represent the American public. Public Citizen has sent letters to the government agencies who sponsor the four committees analyzed in this study, demanding that the trade advisory process be opened up to the American public. See Appendix 5 for the text of these letters.

B. Openness

FACA opened the advisory committee process to public scrutiny in the belief that "sunshine" is the best disinfectant. FACA's openness requirements apply to trade advisory committees, but the committees take advantage of a broadly-worded exemption. They are entitled to operate secretly if public disclosure would "seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions. . . ."²¹

The trade advisory committees make use of this vague clause to conduct virtually all their affairs locked away from public view. They rarely announce their meetings publicly and never allow the public to attend the meetings. Documents circulated to the advisory committees may not be publicly disclosed, and the rules and procedures for the committees even threaten the members with criminal penalties if they make such disclosures.²² In June, ACTPN and IPAC issued reports on what they consider desirable goals for the North American Free Trade Agreement. Remarkably, the USTR has ruled that no one without security clearance will be allowed to read them!²³

Moreover, a portrait of the trade policy country club that limited itself to the officially-sponsored trade advisors would be woefully inadequate. Numerous other secretive vehicles have been established for the expression of corporate interests in trade policy. Some business lobbying organizations, such as the MTN Coalition, have

attained an exceptional degree of access to U.S. trade officials. (MTN is an acronym for Multilateral Trade Negotiations. For more information on the MTN Coalition, see Appendix 4.) In addition, official advisors on other trade-related issues, like the establishment of international food standards, often are stacked with corporate representatives. (See section on the Codex Alimentarius Commission, p. 27) These panels claim large stretches of trade policy for their jurisdiction, and the record suggests that their singular goal is corporate profit regardless of the cost to strong environmental and consumer protection.

IV. SELF-INTEREST-AS-NATIONAL-INTEREST: WHO ADVISES THE NEGOTIATORS?

The corporations that fill the advisory committees shape the policy of U.S. trade negotiators on a regular basis. For Americans concerned about the environment or consumer health and safety, this raises some troubling questions: Who are these corporate advisors? Is a clean environment important to them? Do they care about the health of their customers at home and overseas? Can they offer impartial and evenhanded counsel on issues of the environment and consumer health? Unfortunately, the answer to these questions is too often "No".

A. Trade advisory committees

The trade advisory system is composed of 29 different committees, and roughly totals 825 industry representatives.²⁴ Public Citizen analyzed the membership of three of these committees: the Advisory Committee on Trade Policy and Negotiations (ACTPN); the Industry Policy Advisory Committee (IPAC); and the Chemicals and Allied Products Industry Sectoral Advisory Committee (Chemicals ISAC). These committees were chosen for two reasons. First, ACTPN and IPAC are the two most important trade advisory committees, and have as members the leaders of the trade advisory community. Second, all three wield particular influence over trade issues that could endanger the environment or consumer health and safety. Appendix 2

elaborates on the method used to analyze the advisory committees.

Overall Balance

- Of the three committees' 111 members, 92 represent individual companies, 16 represent industry trade associations, two represent labor unions, and only one represents an environmental advocacy organization. All three committees wield strong influence over trade issues that could endanger the environment or consumer health and safety.

Environmental Offenders

- 27 companies (or their affiliates) represented in advisory committees, nearly a fourth of the combined membership of the committees, have been assessed fines by the EPA of over \$12.1 million since 1980 for various environmental offenses, an average of \$450,196 per offender. This sum represents only part of the total penalties assessed by the EPA, because it does not systematically include administrative penalties.²⁵

Hazardous Waste Dumping Sites

- As of January 1, 1990, 50 companies (or their affiliates) represented in advisory committees, nearly half of all trade advisors in the study, were listed as Potentially Responsible Parties for hazardous waste dumps on EPA's Superfund List. Although more than one company may share responsibility for polluting a Superfund site, each of these 50 offenders is at least partly responsible for an average of more than 11 different Superfund sites.²⁶

Worst Polluters in U.S.

- 24 companies represented on these three advisory committees, nearly a fourth of the combined membership of the committee, rank among America's 50 biggest dischargers of toxic pollutants, or among the top 50 dischargers of airborne or waterborne pollutants.²⁷
- 5 members of the advisory committees are listed in EPA's 1989 Toxic Release Inventory database as ranking among the 10 biggest dischargers of hazardous wastes in America: **Du Pont**, the biggest polluter in America; **Monsanto**, the second biggest; **3M**, the sixth biggest; **General Motors**, the eighth biggest; and **Eastman Kodak**, the ninth biggest.²⁸

Political Campaigns Against Environmental Regulation

- 29 companies (or their affiliates) represented on the three advisory committees, more than a fourth of the combined membership of the committees, collectively contributed at least \$816,172 in a failed attempt to defeat California's Safe Drinking Water and Toxics Enforcement Act, a statewide initiative to require

accurate labeling on potentially cancer-causing products, and also to limit toxic discharges into drinking water.²⁹

- In 1990, they upped the stakes against another California environmental initiative known as Big Green. 29 contributing companies (or their affiliates) threw in \$2,144,416, and this time won at the ballot box. Had it passed, Big Green would have, among other provisions, set tighter standards for discharge of toxic chemicals.³⁰

1. Advisory Committee on Trade Policy and Negotiations (ACTPN) is far and away the most influential of all trade advisory committees. ACTPN is established by the trade statutes to play an integral role in the conduct of trade negotiations and the formulation of trade policy. The President is required to inform ACTPN and consult with it regarding trade negotiations during the negotiating process. In addition, the President cannot enter into a trade agreement without first obtaining a report from ACTPN about the trade agreement and the extent to which it promotes the interests of the United States.

In March of this year, ACTPN issued a report calling for extension of fast track approval of trade agreements. The report cited ACTPN's own privileged access to trade negotiations as a reason for extending fast track: "at least from the perspective of the ACTPN, consultations between the private sector and U.S. negotiators have been frequent and substantive over the course of the Uruguay Round."³¹ ACTPN members subsequently took a leadership role in lobbying for congressional approval of fast track extension. Of ACTPN's 44 members, 38 are companies, 4 are trade associations, and 2 are labor unions. Several of these companies have been cited repeatedly for polluting the environment and endangering consumer health. Yet no one representing environmental or consumer interests, or a wide spectrum of others expressed by American citizens, has been allowed to join the committee -- or even to witness a meeting. In May, the Bush Administration at last consented to admit an environmental representative, long after most of the outstanding issues in the Uruguay Round had already been decided. As of this date, however, no such representative has actually been named. Evidence suggests, however, that the lone environmentalist

will find few sympathetic ears on ACTPN:

- 10 companies represented on ACTPN, almost a quarter of the committee, rank among America's 50 biggest dischargers of toxic pollutants, or among the top 50 dischargers of airborne or water pollutants.³²
- As of January 1, 1990, 19 companies (or their affiliates) represented on ACTPN, almost half of the committee, were listed as Potentially Responsible Parties for hazardous waste sites on EPA's Superfund list, with each polluting company responsible, on average, for more than 12 different Superfund sites.³³
- Since 1980, 12 companies (or their affiliates) represented on ACTPN, over a quarter of the committee, have been assessed fines of at least \$5,976,400 by the Environmental Protection Agency for illegally polluting the environment, an average of \$498,033 per offender. This sum represents only part of the total penalties assessed by the EPA, because it does not systematically include administrative penalties, which last year constituted approximately 37 percent of total penalties assessed by the EPA.³⁴
- In 1986, 14 companies (or their affiliates) represented on ACTPN, nearly a third of the committee, spent a total of at least \$454,772 in a failed attempt to defeat California's Safe Drinking Water and Toxics Enforcement Act, a statewide initiative to require warnings on potentially cancer-causing products, and also to limit toxic discharges into drinking water.³⁵ In 1990, 12 companies (or their affiliates) represented on ACTPN, more than a fourth of the committee, spent at least \$768,358 in a successful campaign to kill another California initiative, the Environmental Protection Act, better known as Big Green.³⁶ Had it won enactment, Big Green would have, among other provisions, set tighter standards for discharge of toxic chemicals.

ACTPN COMPANY PROFILE

One of the ways U.S. trade negotiators have sought to "harmonize" regulation is to override domestic food labelling laws. One leading trade advisor, at least, has recently been caught in widely publicized violations of those very laws. Twice in the past year, the Food and Drug Administration (FDA) forced **Procter and Gamble** to stop claiming unwarranted health benefits for its products.

- o Cans of Crisco shortening featured a small heart next to the words "no cholesterol" -- a deceptive reassurance, since the product does contain other unhealthy fats that contribute to heart disease. P & G had to remove its "no cholesterol" claim from the Crisco label.³⁷
- o In March of this year, the FDA requested that Procter and Gamble remove the word "fresh" from its Citrus Hill brand orange juice, noting that P & G's orange juice is no fresher or healthier than any other made from frozen concentrate. Procter and Gamble refused, forcing FDA enforcement agents to seize and confiscate a shipment of Citrus Hill. Only then did the company relent and agree to change the label.³⁸

ACTPN MEMBERS RANK AMONG AMERICA'S 50 BIGGEST POLLUTERS

	TOTAL WASTE ¹	AIR TOXICS ²	WATER TOXICS ³
Allied-Signal	15	31	5
Amoco	20	15	
Bethlehem Steel			46
Boeing		40	
Dow Chemical	28	17	27
General Motors	8	5	
Mobil			40
Pfizer	35		11
3M	6	2	2
Weyerhaeuser			7

Note: Information used to ascertain toxic release rankings for companies represented on ACTPN are derived from Toxics in the Community, a report from the Environmental Protection Agency which ranked the ten biggest dischargers of toxic wastes for the year 1989, using EPA's Toxic Release Inventory (TRI) database.³⁹ The other rankings are derived from Manufacturing Pollution, a September 1991 report by Citizens Fund that analyzes the 1989 TRI database.⁴⁰

¹ TOTAL WASTE: Ranking among the 50 biggest toxic emitters, as compiled in EPA's Toxic Release Inventory database of 1989 emissions, according to calculations in Manufacturing Pollution, a September 1991 report by Citizens Fund.

² AIR TOXICS: Ranking among the 50 biggest airborne toxic emitters, as compiled in EPA's Toxic Release Inventory database of 1989 emissions, according to calculations in Manufacturing Pollution, a September 1991 report by Citizens Fund.

³ WATER TOXICS: Ranking among the 50 biggest waterborne toxic emitters, as compiled in EPA's Toxic Release Inventory database of 1989 emissions, according to calculations in Manufacturing Pollution, a September 1991 report by Citizens Fund.

ACTPN MEMBERS' RESPONSIBILITY FOR SUPERFUND SITES ⁴	
General Motors	34
Mobil Corp.	32
Dow Chemical	27
Procter & Gamble	18
Allied-Signal	16
Amoco	16
Pfizer	15
Coming	13
3M Co.	13
Weyerhaeuser	12
AT&T	9
Scott Paper Co.	9
Hewlett-Packard	6
IBM Corp.	4
Bethlehem Steel	4
Boeing	3
Caterpillar	2
Motorola	2
Brown-Forman	1

⁴ SUPERFUND SITES: Hazardous waste sites EPA has placed on its National Priority List as of January 1, 1990, for which the company or its affiliate is a Potentially Responsible Party.

2. Industry Policy Advisory Committee – The Industry Policy Advisory Committee (IPAC) acts as a steering committee for the Industry Sectoral Advisory Committees (ISACs). Until recently, IPAC's 35 members were all corporate CEOs. In August, 1991, an environmental representative was finally appointed, but the environmental record of IPAC's other 35 members suggests that his post will be a difficult one:

- 4 companies represented on IPAC, one out of every nine members, rank among America's 50 biggest dischargers of toxic pollutants, or among the top 50 dischargers of airborne or water pollutants.⁴¹
- As of January 1, 1990, 20 companies (or their affiliates) represented on IPAC, over half of the committee, were listed as Potentially Responsible Parties for hazardous waste sites on EPA's Superfund list, with each polluting company responsible, on average, for almost 7 different Superfund sites.⁴²
- Since 1980, 8 companies (or their affiliates) represented on IPAC, almost one-fourth of the committee, have been assessed a total of at least \$3,548,000 by the Environmental Protection Agency in civil penalties, an average of \$443,500 per member. This sum represents only part of the total penalties assessed by the EPA, because it does not systematically include administrative penalties, which last year constituted approximately 37 percent of total penalties assessed by the EPA.⁴³
- In 1986, 7 companies (or their affiliates) represented on IPAC, one out of every five members, contributed a total of at least \$168,000 in a failed attempt to defeat California's Safe Drinking Water and Toxics Enforcement Act, a statewide initiative to require warnings on potentially cancer-causing products and to limit toxic discharges in drinking water.⁴⁴ In 1990, 5 companies (or their affiliates) represented on IPAC, almost one out of seven members, chipped in a total of at least \$238,100 in a successful attempt to defeat Big Green.⁴⁵
- In 1988, **Ford Motor Co.** was assessed a fine of \$1.75 million by the EPA for violating the Clean Air Act, the largest civil judicial penalty of any company in this study.⁴⁶

IPAC COMPANY PROFILE

When the government hears only from manufacturers, the result can be skewed against public health. Consider the case of moist snuff, a leading cause of mouth cancer which has been widely decried by U.S. consumer groups. In 1987, Great Britain passed a law banning the sale of moist snuff. The **U.S. Tobacco Company** distributed a draft Section 301 complaint against the British government on the grounds that it had unfairly discriminated against the manufacturer's right to export tobacco products into Great Britain.⁴⁷

The U.S. government interceded on U.S. Tobacco's behalf. The American ambassador wrote a letter to William Waldegrave, the British Cabinet minister with authority over the law, to endorse a U.S. Tobacco Co. "compromise" offer: "We think UST's offer is a constructive effort to address the UK's concerns. It would allow us to put this issue, which has caused considerable consternation and high level political concern in Washington, behind us."⁴⁸ The British government agreed, dropping the ban in return for pledges from the snuff maker, the most important of which was a promise not to market its product to "people under 18."⁴⁹ The final resolution of the "moist snuff affair" satisfied all parties involved, at the expense of the health of British consumers.

**IPAC MEMBERS' RANK
AMONG AMERICA'S 50 BIGGEST POLLUTERS**

	TOTAL WASTE ⁵	AIR TOXICS ⁶	WATER TOXICS ⁷
Cargill*			26
Ford Motor Co.	23	7	
Inland Steel	14		28
Phillips Petroleum			41

Note: Information used to ascertain toxic release rankings for companies represented on IPAC are derived from Manufacturing Pollution, a September 1991 report by Citizens Fund that analyzes EPA's Toxic Release Inventory database for the year 1989.⁶⁰ An asterisk after the company name notes that the company listed on the chart is the parent of the subsidiary officially represented in the advisory committee.

⁵ TOTAL TOXIC EMISSIONS: Ranking among the 50 biggest toxic emitters, as compiled in EPA's Toxic Release Inventory database of 1989 emissions, according to calculations in Manufacturing Pollution, a September 1991 report by Citizens Fund.

⁶ AIR TOXICS: Ranking among the 50 biggest airborne toxic emitters, as compiled in EPA's Toxic Release Inventory database of 1989 emissions, according to calculations in Manufacturing Pollution, a September 1991 report by Citizens Fund.

⁷ WATER TOXICS: Ranking among the 50 biggest waterborne toxic emitters, as compiled in EPA's Toxic Release Inventory database of 1989 emissions, according to calculations in Manufacturing Pollution, a September 1991 report by Citizens Fund.

IPAC MEMBERS' RESPONSIBILITY FOR SUPERFUND SITES ⁸	
Ford	24
KKR*	20
TRW	14
Coming*	13
Whirlpool	10
Dow Coming	10
Halliburton	9
Dresser	8
Owens-Corning	7
Phillips Petroleum	4
Cincinnati Milacron	4
Reliance Electric	3
Cargill*	2
Motorola	2
Quaker Oats	2
Deere	1
Inland Steel	1
Stone Container	1
Warner-Lambert	1
Wolverine	1

Note: an asterisk after the company name notes that the company listed on the chart is the parent of the affiliate officially represented in the advisory committee.

* SUPERFUND SITES: Hazardous waste sites EPA has placed on its National Priority List as of January 1, 1990, for which the company or its affiliate is a Potentially Responsible Party.

3. Chemicals and Allied Products ISAC (ISAC 3), the advisory committee that advises trade policy regarding chemical products, speaks for the U.S. chemical industry, with 35 industry members on its roster. ISAC 3 is one of the 17 sectoral committees under IPAC. Its jurisdiction includes several of the trade issues most crucial to consumer health and to the environment: food safety, pesticide restrictions, hazardous waste trade and cleanup. The Chemicals ISAC lists 25 corporate executives and 10 trade association representatives on its roster. No consumer group, environmental organization, independent public health authority or toxicology expert is included, despite the valuable role such individuals and groups could play in setting domestic policy and shaping international chemicals trade policy, which currently threatens such domestic policy.

- According to the EPA's 1989 Toxic Release Inventory, four of America's ten biggest polluters (or their affiliates) maintain representatives on the Chemicals ISAC: **Du Pont**, the biggest polluter in America; **Monsanto**, the second biggest; **3M**, the sixth biggest; and **Eastman Kodak**, the ninth biggest.⁵¹
- 13 companies represented on the Chemicals ISAC, over one-third of the committee, rank among the 50 biggest dischargers of toxic pollutants, or among the top 50 dischargers of airborne or water pollutants.⁵²
- As of January 1, 1990, 17 companies (or their affiliates) represented on the Chemicals ISAC, almost half of the committee, were listed as Potentially Responsible Parties for hazardous waste sites on EPA's Superfund list, with each polluting company responsible, on average, for more than 16 different Superfund sites.⁵³
- Since 1980, 10 companies (or their affiliates) represented on the Chemicals ISAC, almost a third of the committee, have been assessed fines totalling at least \$4,321,312 by the EPA for illegally polluting the environment, an average of at least \$432,131 per offender. This sum represents only part of the total penalties assessed by the EPA, because it does not systematically include administrative penalties, which last year constituted approximately 37 percent of total penalties assessed by the EPA.⁵⁴

- In 1986, 13 companies (or their affiliates) represented on the Chemicals ISAC, over a third of the committee, spent a total of at least \$469,457 in a failed attempt to defeat California's Safe Drinking Water and Toxics Enforcement Act (Proposition 65).⁵⁵ In 1990, 15 Chemicals ISAC members (or their affiliates), almost half the committee, spent at least \$1,483,516 in a successful campaign to defeat "Big Green" (Proposition 128). Had it won enactment, Big Green would have, among other provisions, set tighter standards for discharge of toxic chemicals.⁵⁶

ISAC 3 COMPANY PROFILE

On July 31, a joint team of Justice Department and EPA attorneys cracked down on companies around the U.S. that were illegally discharging lead into the environment. According to the EPA, lead pollution presents a serious health threat to the American public: "it is a highly toxic metal . . . Effects include nervous and reproductive system disorders, delays in neurological and physical development, cognitive and behavioral changes and hypertension."⁵⁷ Four Chemicals ISAC members were caught in the lead polluters' dragnet: **Amoco, PPG Industries, Ethyl Corp., and Corning Inc., a co-owner of Dow Corning.**

EPA has charged Amoco and Corning with illegal storage of lead-containing hazardous wastes under the Resource Conservation and Recovery Act.⁵⁸ PPG, a co-defendant with ALCO Corp., agreed to assume liability for a hazardous waste site in Pennsylvania contaminated with lead, chromium, cadmium and other lethal substances.⁵⁹ Ethyl agreed to pay a civil penalty of \$750,000 for its violation of the Clean Water Act: spewing lead-containing wastewater into the Mississippi River.⁶⁰

ISAC 3 COMPANY PROFILE

Superfund is a law that forces corporations responsible for dumping hazardous wastes to assume financial responsibility for cleaning up the polluted sites that result from such practices. Shortly after Superfund (technically known as the Comprehensive Environmental Response, Compensation, and Liability Act, or CERCLA) won reauthorization in 1986, an industry-funded lobbying group organized a campaign to weaken it: The Coalition on Superfund Research Program. Realizing that the general public would disapprove of corporations opposing such an important environmental protection statute, the Coalition made no public announcement of its existence or its membership.⁶¹

But internal letters and memoranda leaked to the Natural Resources Defense Council exposed the Coalition's machinations and forced an early public emergence.⁶² Under pressure from the news media, the Coalition revealed the names of several leading participants, including **Monsanto, Dow, DuPont and Union Carbide.**⁶³ All four companies are responsible for numerous toxic waste sites, as the chart on p. 26 illustrates. All four companies, despite their role as toxic waste polluters and opponents of legislation to clean up toxic waste, enjoy privileged access to U.S. trade officials with authority over issues of hazardous waste import and export.

ISAC 3 COMPANY PROFILE

Eastman Kodak, through its wholly-owned subsidiary D-Con, has tried to use federal preemption to overturn state food safety standards. In 1989, D-Con sued the state of California, claiming that federal law preempted the Safe Drinking Water and Toxics Enforcement Act, also known as Proposition 65. The court rejected Eastman Kodak's demands for pre-emption.⁶⁴ But membership in the Chemicals ISAC gives Eastman another chance at an even larger preemptive strike.

CHEMICALS ISAC MEMBERS' RANK AMONG AMERICA'S 50 BIGGEST POLLUTERS

	TOTAL WASTE ⁹	AIR TOXICS ¹⁰	WATER TOXICS ¹¹
Air Products	36	49	
Amoco*	20	15	
CF Industries		38	34
Dow Chemical Co.	28	17	27
Du Pont	1	4	18
Eastman Kodak*	9	3	13
Eli Lilly	30	37	16
Grace & Co., W.R.			12
Monsanto Co.*	2	35	9
PPG Industries	39		45
Quantum Chemical		50	
3M Co.	6	2	2
Union Carbide	26	16	

Note: Information used to ascertain toxic release rankings for companies represented on the Chemicals ISAC are derived from Toxics in the Community, a report from the Environmental Protection Agency which ranked the ten biggest dischargers of toxic wastes for the year 1989, using EPA's Toxic Release Inventory (TRI) database.⁶⁵ The other rankings are derived from Manufacturing Pollution, a September 1991 report by Citizens Fund that analyzes the 1989 TRI database.⁶⁶ An asterisk after the company name notes that the company listed on the chart is the parent of the affiliate officially represented in the advisory committee.

⁹ TOTAL TOXIC EMISSIONS: Ranking among the 50 biggest toxic emitters, as compiled in EPA's Toxic Release Inventory database of 1989 emissions, according to calculations in Manufacturing Pollution, a September 1991 report by Citizens Fund.

¹⁰ AIR TOXICS: Ranking among the 50 biggest airborne toxic emitters, as compiled in EPA's Toxic Release Inventory database of 1989 emissions, according to calculations in Manufacturing Pollution, a September 1991 report by Citizens Fund.

¹¹ WATER TOXICS: Ranking among the 50 biggest waterborne toxic emitters, as compiled in EPA's Toxic Release Inventory database of 1989 emissions, according to calculations in Manufacturing Pollution, a September 1991 report by Citizens Fund.

CHEMICALS ISAC MEMBERS' RESPONSIBILITY FOR SUPERFUND SITES ¹²	
Du Pont	46
Monsanto*	34
Union Carbide	32
Dow Chemical	27
Rohm & Haas	24
W.R. Grace	23
PPG Industries	19
Amoco*	16
Air Products	15
3M Co.	13
Dow Corning	10
Ethyl Corp.	9
Eastman Kodak*	6
Conagra	3
Eli Lilly	3
CF Industries	2
Hormel	2

Note: an asterisk after the company name notes that the company listed on the chart is the parent of the affiliate officially represented in the advisory committee.

¹² SUPERFUND SITES: Hazardous waste sites EPA has placed on its National Priority List as of January 1, 1990, for which the company or its affiliate is a Potentially Responsible Party.

B. Codex Alimentarius Delegation Advisory Panel

A second channel for public participation in environmental and consumer protection policies is found in advisory committees to other agencies that have trade-related activities. Here too, however, the relevant panels are heavily dominated by the very industries that would seek to use trade agreements to weaken standards. The **U.S. Advisory Panel to the Codex Alimentarius** offers striking evidence of the ways in which consumer health and environmental issues become trade issues as well. The Panel also illustrates the federal government's remarkable deference to industry opponents of consumer health and a clean environment.

The Codex Alimentarius Commission is a Rome-based U.N. organization established jointly in 1962 by the World Health Organization and the United Nations Food and Agriculture Organization to assist developing nations by setting international guidelines for food additives, chemicals and contaminants. Since its inception, Codex's standards have been merely advisory. However, both the U.S. delegation to GATT and to Codex have advocated proposals in the Uruguay Round negotiations to transform Codex standards into the binding rules of international trade. Recently, the U.S. Trade Representative disclosed that Codex would also play a similar role for trilateral U.S.-Mexico-Canada trade.

Unfortunately, Codex is structured so as to be particularly susceptible to the importuning of multinational business. Government officials participate in Codex meetings at which standards are adopted, but these officials are actively assisted by executives from food and chemical companies. Each national delegation brings a contingent of private-sector advisors whose chief concern is increasing corporate profits, not setting strong consumer safety standards.

The Department of Agriculture and the Food and Drug Administration have evolved a two-step method for soliciting outside advice regarding the Codex process. First, the agencies solicit advice from industry advisors by providing them a copy of the agenda for upcoming Codex meetings, as well as the draft U.S. position and background documents, and then following up with a meeting. Second, the agencies

invite a group of industry advisors to accompany the U.S. delegation to the Codex conferences. During the conference, they advise the delegation on whatever issues may arise.⁶⁷ This process, dating back at least to 1985, contains no institutionalized role for consumer advocates or experts on consumer health.

At the most recent biannual conference in July, the U.S. delegation was accompanied almost entirely by representatives of food and agricultural companies or producer associations. Among the attendees were advisors from Kraft, Nestle, the National Food Processors Association and Ralston Purina. For the first time ever, 2 representatives of consumer groups also journeyed to Rome. Prior to this conference, U.S. consumers had never been represented at Codex's biannual Rome conference.⁶⁸

Many Codex standards are distressingly weak, especially those governing dangerous pesticides and food additives. Under Codex, for example, imported peaches could be slathered in more than 50 times the trace amount of DDT allowed on such fruits under U.S. law. (although use of DDT has been banned in the U.S. for over 20 years, because DDT remains in water and soil for years after use, a trace residue standard exists to respond to the background DDT level)⁶⁹ President Bush would have new reason to avoid broccoli, since Codex would permit farmers to spray more than 5 times the amount of heptachlor (one of the most dangerous pesticides) on this vegetable than currently allowed in the U.S. Other Codex standards allow residues of pesticides banned in the U.S., and allow pesticide residues on foods that are many times higher than those permitted by existing EPA and FDA regulations. A study by the U.S. General Accounting Office, comparing the amount of pesticides allowable on fruits and vegetables under U.S. standards with that allowable under Codex standards, concluded: "[A]mong the pesticides studied that EPA has rated as probable carcinogens, the United States has lower MRLs [Maximum Residue Levels] in 55 percent of the cases; the Codex, in only 27 percent."⁷⁰

Despite Codex's notoriously anemic standards, the U.S. government is campaigning to give Codex actual authority over domestic food safety laws. In 1987, Reagan Administration officials proposed that the Uruguay round establish total

harmonization of world food safety standards. Under the proposal, all GATT countries would have been required to adopt as their domestic standards those standards announced by the Codex Alimentarius -- which often are, as already noted, considerably weaker than existing U.S. standards. The Administration eventually withdrew the proposal.⁷¹ But the current Uruguay Round draft still maintains an important role for Codex, by setting a presumption that any national standard above Codex is a barrier to trade.

A close relationship exists between food regulators at Codex and lobbyists from the food and agricultural industries. The official who led the delegation until recently, former Under Secretary of Agriculture Lester Crawford, has referred to relations between his office and the corporate advisory board as "collegial".⁷² In August, Crawford's relationship became even more "collegial," when he left Codex to become chief lobbyist for the National Food Processors Association.⁷³

The close relationship between regulators and regulated industries results in weak food safety standards, and a U.S. delegation that seeks to drag U.S. food safety standards down, rather than lobbying to raise global rules to safer levels. For a list of Codex advisors to the biannual July conference, as well as a key conference in March, see Appendix 2.⁷⁴

- Five companies and two trade associations represented on the delegation, amounting to virtually a third of the advisory panel, have already sought to use preemption to overturn democratically-determined food safety laws -- in this case, domestically rather than globally. **Kraft, Nestle, Coca Cola, CPC International, PepsiCo, the Corn Refiners Association and the National Food Processors Association** helped to found the Committee for Uniform Regulation of Labelling, or CURL.⁷⁵ CURL filed a lawsuit soon after the 1986 passage of California's Proposition 65, the Safe Drinking Water and Toxics Enforcement Act. (see pg. 39) CURL's lawsuit claimed that the new law, approved as a statewide initiative by 63 percent of all California voters, should be abolished, in part because it was pre-empted by weaker laws at the federal level. The court has already dismissed much of CURL's suit, but the pre-emption claim is still pending.⁷⁶ If CURL wins, the result will be a devastating blow to the rights of California citizens, and to the protection of their health from cancer-causing substances. Now its members have yet another chance. If Codex Alimentarius standards become mandatory in the U.S., then Codex could pre-empt the Safe Drinking Water Act's product labelling standards and

other consumer safety laws automatically.

- Attacking consumer health and environmental standards is a top priority for some Codex companies and associations -- in fact, it's a million-dollar priority. Seven companies and one trade association represented on the U.S. Codex delegation, more than a third of the advisory panel, were leaders in the 1990 campaign against Proposition 128, the California Environmental Protection Act. (see pg. 39) Commonly known as Big Green, this statewide environmental initiative lost at the ballot box last year. **E.I. DuPont** and its subsidiary **Conoco** dropped \$471,571 on the campaign to defeat Big Green, followed closely by **Monsanto**, which chipped in \$437,266. **Phillip Morris** and its subsidiary **Kraft** contributed \$129,650, **Ralston Purina** gave \$25,140, **Nestle** and **Coca Cola** gave \$25,000 apiece, **Pepsico** gave \$15,000, and the **Grocery Manufacturers Association** added \$5000 -- a grand total of \$1,133,627.⁷⁷

V. CONCLUSION AND RECOMMENDATIONS

America's largest corporations already wield undue influence over the political process -- able to spend millions to defeat environmental initiatives, clog the courts with litigation, proffer PAC contributions, or lobby Congress. These activities are, largely, public. But the far-reaching nature of modern trade agreements -- coupled with a stacked advisory committee process that gives undue access to those with a pecuniary interest in weakened standards -- add a subtle and dangerous new wrinkle.

These corporate advisors can encourage the negotiator for an ongoing round of trade negotiations to write provisions into the final version of that agreement that eliminate domestic laws or expose them to later challenges. Since fast track approval of trade agreements forces Congress to approve all provisions of an agreement at once, with only 60 legislative days allowed for consideration of the document and no amendments allowed, dangerous provisions could easily slide past Congressional approval and into federal law.

This study has shown that the danger of corporate counselors abusing the trade policy process for their own ends is not theoretical, but rather frighteningly immediate. Many companies belonging to trade advisory committees are horrendous polluters; some are indifferent to the health and safety of their customers; and quite a

few have aggressively fought laws and regulations to protect consumers and the environment. Given these records, many corporate members of trade advisory committees would likely support gutting environmental and consumer health laws. As this report shows, opportunities for mischief in the trade process are many.

Reforms are urgently needed to open up the advisory system, bringing in voices that represent the vast majority of Americans left out until now. Those reforms must be systematic; merely tinkering with the current system will solve little. At present, the trade advisory committee system chiefly serves the interests of the corporate counselors who dominate it. Yet the system can be opened to outside influences. Such a step would enable trade officials to get a full range of advice on the needs and interests of ordinary Americans:

1) Provide diverse representation on appropriate committees.

Representatives of citizens' groups should be entitled to meaningful representation on committees of importance to them. For consumer and environmental advocates, these would include the leadership committees, ACPTN and IPAC, as well as committees dealing with chemicals, consumer products, investment, lumber, energy and intellectual property, among others.

2) Establish new committees on the environment and consumer safety.

Advisory committees have been established for special interests as narrow as lumber and non-ferrous metals. The concerns of U.S. consumer safety and of the environment, on the contrary, are of general interest to all Americans. Furthermore, as the recent addition of environmentalists to the advisory system shows, stirring a half-dozen citizen representatives into a broth of hundreds of corporate executives does not suffice to provide them real representation. New committees should be empaneled at the Policy Advisory Committee level to address issues of environmental protection and consumer safety. To comply with FACA, these panels should include representatives of business, as well as consumer, environmental, public health and

safety activists and academics. This will also ensure that these committees do not become an environmentalist "ghetto".

3) Open the advisory committees to public scrutiny.

Official trade advisory committees should open their meetings to the public. If some particular matter must be withheld from the public in order to protect the U.S. negotiating strategy, then only those portions of meetings and documents that reveal the matter should be kept secret. The bulk of the advisory committee meetings and oral and written advice provided by the committees can be sanitized and revealed publicly.

Trade Advisory Committees: Privileged Access for Polluters

APPENDICES

Appendix 1: The Advisory Committee System

The network of official U.S. trade advisory committees includes 29 separate committees, numerous subcommittees and over 800 representatives from the American business community. Two comprehensive systems of advisory committees are organized under the direct supervision of the U.S. Trade Representative (USTR) and the Department of Commerce, with secondary assistance from the Departments of Labor, Treasury and Agriculture.

At the very pinnacle of the trade advisory system is the Advisory Committee on Trade Policy and Negotiations (ACTPN). ACTPN's existence is mandated in the Trade Act of 1974 (as amended), and by law ACTPN must be informed and consulted about trade negotiations during the negotiating process.⁷⁸ ACTPN's mandated status empowers it with a central role in the conduct of trade negotiations and the formulation of trade policy. A step below ACTPN are seven committees dealing with specific sectors of the economy: the Industry Policy Advisory Committee (IPAC), the Agricultural Policy Advisory Committee (APAC), the Labor Advisory Committee (LAC), the Investment Policy Advisory Committee (INPAC), the Services Policy Advisory Committee (SPAC), the Inter-Governmental Policy Advisory Committee (IGPAC), and the Defense Policy Advisory Committee (DPAC).⁷⁹

1) Industry Policy Advisory Committee (IPAC)⁸⁰

One of these seven committees has a slightly broader mandate. Called IPAC, the committee serves as a steering committee for the Industry Consultations Program for Trade Policy Matters, a joint project of the Department of Commerce and the U.S. Trade Representative's office which is essentially a second system of trade advisory committees. The Program consists of 22 committees. Seventeen different Industry Sectoral Advisory Committees (ISACs) represent specific industries or industry clusters, and three Industry Functional Advisory Committees (IFACs) handle broader issues of intellectual property, standards and customs regulation. The chair of each committee serves on a Committee of Chairs.

IPAC -- Industry Policy Advisory Committee:

- ISAC 1 -- Aerospace Equipment
- ISAC 2 -- Capital Goods
- ISAC 3 -- Chemicals and Allied Products
- ISAC 4 -- Consumer Goods
- ISAC 5 -- Electronics and Instrumentation
- ISAC 6 -- Energy
- ISAC 7 -- Ferrous Ores and Metals
- ISAC 8 -- Footwear, Leather, and Leather Products
- ISAC 9 -- Building Products and Other Materials
- ISAC 10 -- Lumber and Wood Products
- ISAC 11 -- Nonferrous Ores and Metals
- ISAC 12 -- Paper and Paper Products
- ISAC 13 -- Services
- ISAC 14 -- Small and Minority Business
- ISAC 15 -- Textiles and Apparel
- ISAC 16 -- Transportation, Construction and Agricultural Equipment
- ISAC 17 -- Wholesaling and Retailing
- IFAC 1 -- Intellectual Property
- IFAC 2 -- Customs
- IFAC 3 -- Technical Standards
- Committee of Chairs

Besides IPAC, six other committees have been established to provide advice and counsel on specific economic sectors:

2) Agricultural Policy Advisory Committee (APAC)⁸¹

Agricultural Technical Advisory Committees (ATACs)

- ATAC 1 -- Cotton
- ATAC 2 -- Tobacco
- ATAC 3 -- Processed Foods
- ATAC 4 -- Sweeteners
- ATAC 5 -- Poultry and Eggs
- ATAC 6 -- Oilseeds and Products
- ATAC 7 -- Livestock and Livestock Products
- ATAC 8 -- Grain and Feed
- ATAC 9 -- Fruits and Vegetables
- ATAC 10 -- Dairy Products

- 3) Labor Advisory Committee (LAC)
- 4) Investment Policy Advisory Committee (INPAC)
- 5) Services Policy Advisory Committee (SPAC)
- 6) Inter-Governmental Policy Advisory Committee (IGPAC)
- 7) Defense Policy Advisory Committee (DPAC)

Appendix 2: Companies represented on the Advisory Panel to the U.S. Codex Alimentarius Delegation⁸²

Individuals representing the following companies, trade associations and citizen groups accompanied the official U.S. government delegation to at least one of two meetings of the Codex Alimentarius Commission at its headquarters in Rome, Italy: the biannual July conference (July 1-10), or an important March conference (March 18-27). Companies or associations marked with an asterisk were represented in March, but not July.

Companies

- Coca Cola Company
- CPC International, Inc.
- *E.I. DuPont Co.
- *Holland & Knight
- *International Flavors & Fragrances Inc.
- Kraft General Foods (a subsidiary of Philip Morris USA)
- *McNeil Specialty Products (a subsidiary of Johnson & Johnson)
- *Monsanto Agricultural Co. (a subsidiary of Monsanto Co.)

Mt. Gretna Inn
Nestle USA, Inc.
Pepsi Company, Inc.
Ralston Purina Company
Smithkline Beecham

Trade Associations

American Association of Cereal Chemists
American Frozen Food Institute
Corn Refiners Association
*Council for Responsible Nutrition
*Food Marketing Institute
Grocery Manufacturers of America
National Food Processors Association

Citizen Organizations

Community Nutrition Institute
Public Voice for Food and Health Policy

Appendix 3: Databases utilized in this report

Using advisory committee membership rosters available from USTR and the Department of Commerce in conjunction with the databases listed below, Public Citizen analyzed 92 companies represented on three important trade advisory committees. The purpose was to ascertain the degree of their compliance with the letter and spirit of laws protecting the environment and consumer health, as well as the degree of their hostility to such laws.

Attempts were made to incorporate all affiliates of the analyzed set, using the 1991 Directory of Corporate Affiliations.⁶³ Any alterations in status due to mergers, acquisitions, buy-outs, or other organizational activity will only be included prior to September 1990, the Directory's cutoff date. Furthermore, affiliates are generally not included for privately-held companies, because they are not required to divulge such information.

In the case of toxic emissions, the Dun & Bradstreet system was used to match

parents with affiliates. The Environmental Protection Agency's 1989 Toxic Release Inventory database utilizes Dun & Bradstreet's parent/affiliate matching system. See section C. for more information on the Toxic Release Inventory.

A. Environmental Offenders

The U.S. Environmental Protection Agency enforces laws and regulations against environmental pollution on a national level. This report analyzes the extent to which companies (or their affiliates) represented on advisory committees violate these environmental laws and regulations.

1. Enforcement data are derived primarily from the Environmental Protection Agency's Civil Enforcement Docket Database for the period 1980-1990.⁸⁴ As large as they appear, docket statistics seriously understate annual environmental penalties by omitting administrative actions of EPA's regional offices, which are not included in this study. Last year, administrative penalties constituted approximately 37 percent of total penalties paid to the EPA.⁸⁵

2. This study does make use of an annual enforcement yearbook, EPA's Civil Enforcement Accomplishments Report.⁸⁶ The Report describes some regional administrative cases of the past year, and the Public Citizen study makes use of this source. However, cases cited in the Report are only what EPA considers most legally significant, usually because they set a precedent or mark an especially sought-after victory. Such an approach provides only spotty coverage; and the Report itself extends back only to 1986. Nor does EPA document environmental enforcement levied at the state level, where much enforcement takes place.

B. Superfund

Under Superfund, EPA places hazardous waste sites on a National Priority List that have reached a high point of toxicity, as determined by its Hazard Ranking System. EPA forces the companies it believes responsible to pay their fair share of the cleanup. Such companies are known as Potentially Responsible Parties (PRPs).

In December 1980, EPA began compiling an interim list of hazardous waste sites, which it formally designated as Superfund sites on December 30, 1982.⁸⁷

The EPA Site Enforcement Tracking System (SETS) database lists hazardous waste sites on the National Priority List.⁸⁸ This study examines such sites from the Superfund designation date until January 1, 1990.

C. Toxic Release Inventory

Since 1987, certain manufacturing facilities have been required to report their emissions of certain chemicals to the EPA. EPA compiles the emission data throughout the year, and releases it annually to the public in a computerized database. This database is known as the Toxic Release Inventory.

The Public Citizen study uses EPA's 1991 Toxics in the Community, a report which calculates the ten biggest toxic chemical emitters for the year 1989. All references to this set of toxic emitters are based on EPA's Toxics report.⁸⁹

The rating system used in this study for toxic air and water pollutants, and for total pollutants below the 10th rank, is derived from Manufacturing Pollution: A Survey of the Nation's Toxic Polluters, an annual analysis of the EPA's Toxic Release Inventory data issued by Citizens Fund, an education and research affiliate of the advocacy group Citizen Action.⁹⁰ The Citizens Fund report ranks the 50 U.S. facilities that emit the largest amount of toxic chemicals, but also goes a step further: the report aggregates the emissions of all the facilities owned by a given company into one total, again ranking the top 50.

Both EPA and Citizens Fund matched parent companies to affiliates using the "Dun & Bradstreet" system, by which parent companies sharing a common number with their affiliates are aggregated to obtain total emission figures. Only on the TRI database does the Public Citizen study utilize this aggregated ranking system.

Public Citizen also made use of RTK-Net, an on-line computer system operated by the OMB Watch, a public interest organization that advocates for greater government accountability. RTK-Net is linked to EPA's TRI database, and this online system made it possible to doublecheck emission rankings for companies listed

amongst the top 50 biggest toxic chemical emitters in 1989.

Certain limitations that would cause under-reporting of pollution are inherent in both the Manufacturing Pollution study and the original TRI data. First, reporting is required of manufacturing facilities only. Second, the TRI program covers only certain toxic chemicals. Third, according to EPA, under-reporting is widespread. Finally, the data is subject to estimation errors by manufacturers and data input errors by the manufacturers and EPA.⁹¹

D. Corporate Campaign against Environmental Regulation: the California Story

The 1986 Safe Drinking Water and Toxics Enforcement Act

The Safe Drinking Water and Toxics Enforcement Act was passed in 1986 in California as a statewide initiative (Proposition 65) to prohibit knowingly exposing people to chemicals that cause cancer or reproductive problems without "clear and reasonable warning." The Act also limits discharges of toxic chemicals into drinking water.⁹²

Contributors to political campaigns in the state of California are required to file quarterly disclosure forms with the California Fair Political Practices Commission. This study uses the Commission's consolidated report on contributions to the Californians Against Proposition 65 Committee. The report lists contributions above \$250.⁹³

The 1990 Environmental Protection Act

A 1990 statewide initiative in California, the Environmental Protection Act (Proposition 128) was better known as Big Green. Had it won enactment, Big Green would have reduced and regulated pesticide usage in agriculture, phased out ozone-depleting chemicals, banned the clearcutting of virgin redwood stands, banned most offshore oil drilling and set tighter standards for discharges of toxic chemicals.

No consolidated report on the Big Green campaign has yet been issued by the

California Fair Political Practices Commission. However, Capitol Weekly Data, a Sacramento publication, collected data on the opposition to Big Green by three committees: No on 128, Californians for Food Safety (sponsored by the Western Agricultural Chemical Association), and Californians for Air & Water Quality (sponsored by the aerospace, chemical and petroleum industries). Capitol Weekly Data's compilation lists contributions above \$250.⁹⁴

Appendix 4: The MTN Coalition--How to Become a "Stealth"

Advisor

The MTN Coalition represents a striking illustration of how an unofficial lobbying group can become a "stealth" advisor -- heeded by trade officials even without official standing as an advisory committee. MTN stands for "Multilateral Trade Negotiations," the jargon term used to signify a GATT negotiating round. The MTN Coalition is a business group that lobbies Congress, the news media and the general public on behalf of the draft Uruguay Round GATT agreement.

MTN came into existence in 1989 at the urging of Carla Hills, the then-recently-appointed U.S. Trade Representative. After her appointment, Hills reportedly suggested to James Robinson, chairman of American Express, that the U.S. business community should help mobilize support for the Uruguay GATT round.⁹⁵ Early the next year, AmEx Executive Harry Freeman resigned and founded the MTN Coalition. A platoon of giant corporations and trade associations jumped on board, most of them represented on the "official" trade advisory committees: General Motors, American Farm Bureau Federation, AT&T, IBM, and Procter & Gamble, for example, all maintain representatives on ACTPN.⁹⁶ The 18 companies and 13 trade associations represented in MTN are not philanthropists for free trade. Membership magnifies their clout with trade officials by adding the role of friendly lobbyist to that of trusted advisor.

When MTN members walk out of a trade official's office, evidence suggests that they leave dirty footprints behind. The environmental and consumer-safety record of the 18 corporations represented on MTN provides a warning sign of the kind of advice

and counsel they are likely to provide:

- As of January 1, 1990, 11 companies (or their affiliates) represented on MTN, more than a third of the Coalition, were listed as Potentially Responsible Parties for an average of more than 15 different Superfund sites per polluting company.⁹⁷
- 6 companies (or their affiliates) represented on MTN, almost a fifth of the Coalition, rank among America's 50 biggest dischargers of toxic air and water pollutants.⁹⁸
- Since 1980, 7 companies (or their affiliates) represented on MTN, almost a fourth of the Coalition, have been assessed fines of at least \$3,397,900 to the Environmental Protection Agency for illegally polluting the environment, an average of \$485,414 per offender. Yet this sum represents only part of the total penalties assessed by the EPA, since it does not systematically include administrative penalties.⁹⁹
- In 1986, 9 companies (or their affiliates) represented on MTN, almost a third of the Coalition, spent a total of at least \$380,557 in a failed attempt to defeat California's Safe Drinking Water and Toxics Enforcement Act, a statewide initiative to require warnings on potentially cancer-causing products.¹⁰⁰ In 1990, 5 companies (or their affiliates) represented on MTN, almost a sixth of the Coalition, spent at least \$339,558 in a successful attempt to defeat another California initiative, the Environmental Protection Act, better known as Big Green. Had it won enactment, Big Green would have, among other provisions, set tighter standards for discharge of toxic chemicals.¹⁰¹

Appendix 5: Demand Letters Sent to Agencies Sponsoring Advisory Committees

PUBLIC CITIZEN LITIGATION GROUP

SUITE 700

2000 P STREET N.W.

WASHINGTON, D.C. 20036

(202) 833-3000

December 16, 1991

Ambassador Carla Hills
U.S. Trade Representative
600 17th Street, N.W.
Washington, D.C. 20506

Secretary Robert A. Mosbacher
Department of Commerce
14th Street
between Constitution Ave. & E Street, N.W.
Washington, D.C. 20230

Re: Trade Advisory Committees

Dear Ambassador Hill and Secretary Mosbacher:

Public Citizen hereby requests that you bring the trade advisory committees jointly administered by the Office of the U.S. Trade Representative and the Department of Commerce into compliance with the balanced representation and openness requirements of the Federal Advisory Committee Act ("FACA"), 5 U.S.C. App. 2.

These advisory committees play a significant role in negotiation of trade agreements and the development of trade policies on countless matters that affect consumers, public health and safety, and the environment. Nonetheless, these interests have historically been unrepresented on the trade advisory committees. Moreover, while there have been a handful of appointments of environmental representatives to a few select advisory committees, the vast majority of the committees are composed entirely of industry representatives and contain no representation of environmental or consumer interests, despite the fact that many such committees deal directly with matters that affect those interests. Attached is a Public Citizen report entitled "Trade Advisory Committees: Privileged Access for Polluters," which reveals that the membership of three of the trade advisory committees is dominated by representatives of companies that often violated environmental laws and worked to weaken such laws.

FACA specifically mandates that the membership of advisory committees be "fairly balanced in terms of points of view represented and the functions to be performed by the advisory committee." 5 U.S.C. App. 2, § 5(b)(2). It also mandates that their "advice and recommendations will not be inappropriately influenced by . . . any special interest." *Id.* § 5(b)(3). Congress included this balanced membership requirement in order to

thwart "the danger of allowing special interest groups to exercise undue influence upon the Government through the dominance of advisory committees which deal with matters in which they have a vested interest." H. Rep. No. 1017, 92d Cong., 2d Sess. at 6 (1972). Yet the trade advisory committees present an opportunity to industry to exert this very type of undue and prohibited influence on government trade officials.

FACA also requires advisory committees to hold public meetings and make their documents publicly available except for those portions of meetings and documents that fall within a specific exemption from the openness requirement. 5 U.S.C. App. 2, § 10. In contrast, the trade advisory committees operate almost entirely in secret, which compounds the danger from industry domination. This excessive secrecy is wholly unnecessary, given the extensive public disclosures that are routinely made about matters under consideration in trade negotiations. If some particular information must be temporarily withheld from the public in order to protect the U.S. negotiating strategy, then only those portions of meetings and documents that reveal that matter should be kept secret. The bulk of the advisory committee meetings and oral and written advice provided by the committees can be revealed publicly, as FACA requires.

In order to bring the trade advisory committees into compliance with FACA, Public Citizen asks that environmental and consumer representatives be appointed to all committees dealing with environmental, health, safety, and consumer issues, and that advisory committee meetings and records be opened to the public, unless one of the limited FACA exceptions applies. We would appreciate a response to this letter within 30 days.

Sincerely,



Patti A. Goldman

Enc.

PUBLIC CITIZEN LITIGATION GROUP

SUITE 700

2000 P STREET N W

WASHINGTON, D. C. 20036

(202) 833-3000

December 16, 1991

Secretary Edward Madigan
U.S. Department of Agriculture
Administration Building
Washington, D.C. 20250

Commissioner David Kessler, M.D.
Food & Drug Administration
5600 Fishers Lane
Rockville, MD 20857

Re: Codex Advisory Committee

Dear Secretary Madigan & Commissioner Kessler:

Public Citizen hereby requests that the Department of Agriculture and the Food and Drug Administration bring the advisory committees that assist them in developing the United States' positions taken before the Codex Alimentarius Commission and its committees into compliance with the Federal Advisory Committee Act ("FACA"), 5 U.S.C. App. 2.

As a body of the World Health Organization and the United Nations Food and Agriculture Organization, the Codex Alimentarius Commission ("Codex") establishes international food standards and guidelines. While most Codex standards are voluntary guidelines, there is a strong movement toward making Codex standards the international norm.

Indeed, lead proposals in the current round of multilateral trade negotiations under the General Agreement on Tariffs and Trade ("GATT") would make Codex food safety standards presumptively correct, thereby requiring countries seeking to impose more stringent requirements to provide scientific justifications for such departures from the Codex rules. Similarly, several federal agencies are proposing that Codex pesticide standards be used for imported foods for which the Environmental Protection Agency ("EPA") does not have a tolerance. General Accounting Office, Food Safety & Quality: Five Countries' Efforts to Meet U.S. Requirements on Imported Produce at 79 (Mar. 1990).

Even before adoption of this proposal, the EPA has adopted a proposed Codex standard as an interim pesticide tolerance, even though the agency did not have adequate information to make a determination under its own procedures as to the pesticide's

safety. 55 Fed. Reg. 39,171 (Sept. 25, 1990); 56 Fed. Reg. 19,518 (April 26, 1991). Other federal agencies have likewise pointed to Codex standards as justification for their actions, see, e.g., 55 Fed. Reg. 41,856 (Oct. 16, 1990) (incorporating Codex standard for quick frozen blocks of fish fillets); 55 Fed. Reg. 23,565 (June 11, 1990) (incorporating Codex standard for quick frozen fish sticks), or have otherwise taken Codex standards into account in establishing their own regulatory requirements. See, e.g., 56 Fed. Reg. 8084 (Feb. 26, 1991) (nutritional labelling). Because of the increasingly prominent role that Codex standards are playing in the field of U.S. food safety, it is critical that these standards be formulated in accordance with federal law.

As a general rule, Codex standards are developed by governmental officials without the type of public participation that is required when comparable domestic standards are developed. In other words, there is no public notice of the proposed standards and no opportunity for public comment. Similarly, the Codex meetings are not open to the general public.

Instead, the principal avenue for outside participation in the development of Codex standards is the advisory process that the Department of Agriculture and the Food and Drug Administration have established and utilized for their participation in Codex meetings. In the past, the agencies have solicited outside advice in two stages. First, they have solicited advice from industry advisors on the United States position at Codex meetings. They have done this by providing industry representatives the agenda for upcoming Codex meetings and the draft United States position and background documents on the matters on the agenda. They have thereafter convened a meeting (or meetings) of the industry representatives for the purpose of obtaining their advice on the U.S. positions. Second, the agencies have invited a group of industry advisors to accompany the United States delegation to the Codex meeting. During the meeting, these advisors have advised the delegation on matters that have arisen during the meeting.

While the agencies have followed this method of operating since at least 1985, they have done so without complying with FACA. As a result, neither agency has chartered the advisory committees and identified their mission; provided public notice of the committees' meetings; opened the committees' meetings to the general public; made the United States position and background documents and the advisors' responses available to the public; allowed the public to make submissions to the advisory committee; and ensured that the committees have a balanced representation. As a result, for most of the past six years, the Codex advisory committees have been composed exclusively of industry representatives. Attached is a Public Citizen report entitled "Trade Advisory Committees: Privileged Access for Polluters," which describes the domination of the Codex advisory committees by industry. Indeed, the Codex advisory committees are the epitome of

the industry-dominated committees that exert their influence on government decisionmakers behind closed doors that FACA was designed to prevent. See H.R. Rep. No. 1017, 92d Cong., 2d Sess. 6 (1972). While two representatives of food safety organizations participated in the advisory process in connection with a 1991 Codex meeting, there has been no formal commitment by the agencies to make such participation a permanent component of these advisory committees. Nor have the agencies taken any other action to bring these committees into compliance with FACA. Thus, while the agencies have afforded each industry sector, such as chewing gum manufacturers, frozen food producers, and the chocolate industry, an opportunity to become involved in matters of interest to them, they have not afforded this same opportunity to public health and consumer organizations. It is critical that the agencies comply with FACA by identifying the committees' mission and constituting appropriately balanced committees to address those interests.

If we do not receive a satisfactory response to this letter within 30 days, we will consider taking further action to bring the Codex advisory committees into compliance with FACA.

Sincerely,



Patti A. Goldman

INDUSTRY POLICY ADVISORY COMMITTEE
FOR TRADE POLICY MATTERS (IPAC)

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*
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Mr. Joseph D. Williams
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IPAC

Appendix 6: Membership of Trade Advisory Committees Studied

Office of the Private Sector Liason
Office of the U.S. Trade Representative
Private Sector Advisory Committees
MEMBERSHIP REPORT BY COMMITTEE
ACTPN

Advisory Committee for Trade Policy & Negotiations

Mr. John Akers
Chairman
IBM Corporation

Mr. Robert Allen
Chairman & CEO
AT&T

Mr. Edwin L. Artzt
Chairman & CEO
Procter & Gamble

Mr. Roger Baccigaluppi
President & CEO
Blue Diamond Growers

Mr. Curtis E. Barnette
Senior Vice President
Bethlehem Steel Corporation

Ms. Remedios Diaz-Oliver
President & CEO
American Int'l Container, Inc.

Mr. Donald G. Fisher
Chairman & CEO
The GAP, Inc.

Mr. Donald V. Fites
Chairman & CEO
Caterpillar, Inc.

Hon. Barbara H. Franklin
President
Franklin Associates

Mr. Robert W. Galvin
Chairman, Exec. Committee
Motorola, Inc.

Mr. Dean Kleckner
President
American Farm Bureau Federation

Mr Lawrence A. Bossidy
CEO
Allied Signal Inc.

Mr. W.L. Lyons Brown, Jr.
Chairman & CEO
Brown-Forman Corporation

Mr. Don Butler
Nat'l Cattlemen's Assn.

Mr. A.W. Clausen
Chairman, Exec. Committee
BankAmerica Corporation

Mr. Trammel Crow
Chairman
Trammel Crow Company

Mr. Stanley C. Gault
Chairman, Exec. Committee
Rubbermaid Incorporated

Mr. Maurice R. Greenberg
Chairman
American Int'l. Group,

Mr. James Houghton
Chairman & CEO
Corning Inc.

Mr. Allen F. Jacobson
Chairman & CEO
3M

Hon. David K. Karnes
President & CEO
The Fairmont Group, Inc.

Mr. N.J. Nicholas, Jr.
President & Co-CEO
Time Warner Inc.

Mr. David S. Lee
President & CEO
Qume Corporation

Mr. Phillip B. Lippincott
Chairman, CEO
Scott Paper Company

Mr. Richard M. Morrow
Retired Chairman of the Board
Amoco Corporation

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