

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

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

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

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

No longer. Today’s “trade” deals like the WTO, NAFTA and NAFTA-style FTAs contain numerous non-trade rules, including limits on our domestic procurement policies. If a country – or state – does not conform its laws to these rules, other nations in the agreement can challenge the domestic laws in foreign tribunals, where rulings can be enforced by indefinite trade sanctions if the laws are not changed. The only good news is that these challenges take at least five years to be decided, giving us time to change the pacts themselves. Doing so is necessary to undo the following WTO and FTA restrictions on public interest policymaking:

- **Anti-offshoring policies.** Laws requiring that outsourced government work be done by U.S. workers or firms, and other local development policies designed to keep our tax dollars recycling in our domestic economy, directly violate the WTO, NAFTA and FTA procurement rules. These agreements require domestic and foreign companies seeking many types of government contracts to be treated like U.S. firms. That means that many federal and state procurement policies that give preference to locally-produced goods and services (“Buy American” or ‘Buy Local’ policies) are forbidden.
- **“Green” procurement policies.** Requirements for recycled content in paper and other goods, or policies requiring energy to be from renewable sources, are exposed to challenge under U.S. “trade” agreement procurement rules. Preferences for certain environmental or consumer safety labels and eco-friendly packaging are also subject to challenge. Presidential candidates and federal and state policymakers continue to discuss plans for creating green jobs via government investment in enhanced energy efficiency and infrastructure. But these very proposals are subject to the restrictions of WTO and FTA government procurement rules that restrict, and thus undermine, many such environmental policies.

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

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

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

**For more information, contact Public Citizen’s Global Trade Watch:
www.tradewatch.org or 202-546-4996**