

109TH CONGRESS
1ST SESSION

S. CON. RES. 12

Providing that any agreement relating to trade and investment that is negotiated by the executive branch with another country must comply with certain minimum standards.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 15, 2005

Mr. FEINGOLD submitted the following concurrent resolution; which was referred to the Committee on Finance

CONCURRENT RESOLUTION

Providing that any agreement relating to trade and investment that is negotiated by the executive branch with another country must comply with certain minimum standards.

Whereas there is general consensus among the American public and the global community that, with respect to international trade and investment rules—

(1) global environmental, labor, health, food security, and other public interest standards must be strengthened to prevent a global “race to the bottom”;

(2) domestic environmental, labor, health, food security, and other public interest standards and

policies must not be undermined, including those based on the use of the precautionary principle (the internationally recognized legal principle that holds that, when there is scientific uncertainty regarding the potential adverse effects of an action, a product or technology, a government should act in a way that minimizes the risk of harm to human health and the environment);

(3) provision and regulation of public services such as education, health care, transportation, energy, water, and other utilities are basic functions of democratic government and must not be undermined;

(4) raising standards in developing countries requires additional assistance and respect for diversity of policies and priorities;

(5) countries must be allowed to design and implement policies to sustain family farms and achieve food security;

(6) healthy national economies are essential to a healthy global economy, and the right of governments to pursue policies to maintain and create jobs must be upheld;

(7) the right of State and local and comparable regional governments of all countries to create and

enforce diverse policies must be safeguarded from imposed downward harmonization; and

(8) rules for the global economy must be developed and implemented democratically and with transparency and accountability; and

Whereas many international trade and investment agreements in existence and currently being negotiated do not serve these interests, and have caused substantial harm to the health and well-being of communities in the United States and within countries that are trading partners of the United States: Now, therefore, be it

1 *Resolved by the Senate (the House of Representatives*
 2 *concurring)*, That any agreement relating to trade and in-
 3 vestment that is negotiated by the executive branch with
 4 another country should comply with the following:

5 (1) REGARDING INVESTOR AND INVESTMENT
 6 POLICY.—No such agreement that includes any pro-
 7 vision relating to foreign investment may permit a
 8 foreign investor to challenge or seek compensation
 9 because of a measure of a government at the na-
 10 tional, State, or local level that protects the public
 11 interest, including, but not limited to, public health,
 12 safety, and welfare, the environment, and worker
 13 protections, unless a foreign investor demonstrates
 14 that the measure was enacted or applied primarily
 15 for the purpose of discriminating against a foreign
 16 investor or foreign investment.

1 (2) REGARDING SERVICES.—Any such agree-
2 ment, to the extent applicable, shall comply with the
3 following:

4 (A)(i) The agreement may not discipline a
5 government measure relating to—

6 (I) a public service, including public
7 services for which the government is not
8 the sole provider;

9 (II) a service that requires extensive
10 regulation;

11 (III) an essential human service; and

12 (IV) a service that has an essentially
13 social component.

14 (ii) A service described in clause (i) in-
15 cludes, but is not limited to, a public benefit
16 program, health care, health insurance, public
17 health, child care, education and training, the
18 distribution of a controlled substance or product
19 (including alcohol, tobacco, and firearms), re-
20 search and development on a natural or social
21 science, a utility (including an energy utility,
22 water, waste disposal, and sanitation), national
23 security, maritime, air, surface, and other
24 transportation services, a postal service, energy

1 extraction and any related service, and a correc-
2 tional service.

3 (B) The agreement shall permit a country
4 that has made a commitment in an area de-
5 scribed in subparagraph (A) to revise that com-
6 mitment for the purposes of public interest reg-
7 ulation without any financial or other trade-re-
8 lated penalty.

9 (C) The agreement shall ensure that any
10 rule governing a subsidy or government pro-
11 curement fully protects the ability of a govern-
12 ment to support and purchase a service in a
13 way that promotes economic development, social
14 justice and equity, public health, environmental
15 quality, human rights, and the rights of work-
16 ers.

17 (D) The agreement shall not make a new
18 commitment on the temporary entry of workers
19 because such policies should be determined by
20 the Congress, after consideration by the con-
21 gressional committees with jurisdiction over im-
22 migration to avoid an array of inconsistent poli-
23 cies and any policy that fails to—

24 (i) include labor market tests that en-
25 sure that the employment of temporary

1 workers will not adversely affect other
2 similarly employed workers;

3 (ii) involve labor unions in the labor
4 certification process implemented under
5 the immigration program for temporary
6 workers under section 101(a)(15)(H)(i) of
7 the Immigration and Nationality Act, in-
8 cluding the filing by an employer of an ap-
9 plication under section 212(n)(1) of that
10 Act; and

11 (iii) guarantee the same workplace
12 protections for temporary workers that are
13 available to all workers.

14 (E) The agreement shall guarantee that all
15 governments that are parties to the agreement
16 can regulate foreign investors in services and
17 other service providers in order to protect pub-
18 lic health and safety, consumers, the environ-
19 ment, and workers' rights, without requiring
20 the governments to establish their regulations
21 to be the least burdensome option for foreign
22 service providers.

23 (3) REGARDING POLICIES TO SUPPORT AMER-
24 ICAN WORKERS AND SMALL, MINORITY, AND WOMEN-
25 OWNED BUSINESSES.—Any such agreement shall

1 preserve the right of Federal, State, and local gov-
2 ernments to maintain or establish policies to support
3 American workers and small, minority, or women-
4 owned businesses, including, but not limited to, poli-
5 cies with respect to government procurement, loans,
6 and subsidies.

7 (4) REGARDING ENVIRONMENTAL, LABOR, AND
8 OTHER PUBLIC INTEREST STANDARDS.—Any such
9 agreement—

10 (A) may not supersede the rights and obli-
11 gations of parties under multilateral environ-
12 mental, labor, and human rights agreements;
13 and

14 (B) shall, to the extent applicable, include
15 commitments, subject to binding enforcement
16 on the same terms as commercial provisions—

17 (i) to adhere to specified workers'
18 rights and environmental standards;

19 (ii) not to diminish or fail to enforce
20 existing domestic labor and environmental
21 provisions; and

22 (iii) to abide by the core labor stand-
23 ards of the International Labor Organiza-
24 tion (ILO).

1 (5) REGARDING UNITED STATES TRADE
2 LAWS.—No such agreement may—

3 (A) contain a provision which modifies or
4 amends, or requires a modification of or an
5 amendment to, any law of the United States
6 that provides to United States businesses or
7 workers safeguards from unfair foreign trade
8 practices, including any law providing for—

9 (i) the imposition of countervailing or
10 antidumping duties;

11 (ii) protection from unfair methods of
12 competition or unfair acts in the importa-
13 tion of articles;

14 (iii) relief from injury caused by im-
15 port competition;

16 (iv) relief from unfair trade practices;

17 or

18 (v) the imposition of import restric-
19 tions to protect the national security; or

20 (B) weaken the existing terms of the
21 Agreement on Implementation of Article VI of
22 the General Agreement on Tariffs and Trade
23 1994, or the Agreement on Subsidies and Coun-
24 tervailing Measures, of the World Trade Orga-
25 nization, including through the domestic imple-

1 mentation of rulings of dispute settlement bod-
2 ies.

3 (6) REGARDING FOOD SAFETY.—No such
4 agreement may—

5 (A) restrict the ability of the United States
6 to ensure that food products entering the
7 United States are rigorously inspected to estab-
8 lish that they meet all food safety standards in
9 the United States, including inspection stand-
10 ards;

11 (B) force acceptance of different food safe-
12 ty standards as “equivalent”, or require inter-
13 national harmonization of food safety stand-
14 ards, which undermine the level of human
15 health protection provided under domestic law;
16 or

17 (C) restrict the ability of governments to
18 enact policies to guarantee the right of con-
19 sumers to know where and how their food is
20 produced.

21 (7) REGARDING AGRICULTURE AND FOOD SE-
22 CURITY.—No such agreement may, with respect to
23 food and other agricultural commodities—

24 (A) contain provisions that prevent coun-
25 tries from—

- 1 (i) establishing domestic and global
2 reserves,
3 (ii) managing supply,
4 (iii) enforcing antidumping disciplines,
5 (iv) ensuring fair market prices, or
6 (v) vigorously enforcing antitrust
7 laws, in order to guarantee competitive
8 markets for family farmers; or

9 (B) prevent countries from developing the
10 necessary sanitary and phytosanitary standards
11 to prevent the introduction of pathogens or
12 other potentially invasive species which may ad-
13 versely affect agriculture, human health, or the
14 environment.

15 (8) REGARDING TRANSPARENCY.—(A) The
16 process of negotiating any such agreement must be
17 open and transparent, including through—

18 (i) prompt and regular disclosure of full
19 negotiating texts; and

20 (ii) prompt and regular disclosure of nego-
21 tiating positions of the United States.

22 (B) In negotiating any such agreement, any re-
23 quest or offer relating to investment, procurement,
24 or trade in services must be made public within 10
25 days after its submission if such request or offer—

1 (i) proposes specific Federal, State, and
2 local laws and regulations in the United States
3 to be changed, eliminated, or scheduled under
4 such an agreement, including, but not limited
5 to, subsidies, tax rules, procurement rules, pro-
6 fessional standards, and rules on temporary
7 entry of persons;

8 (ii) proposes for coverage under such an
9 agreement—

10 (I) specific essential public services,
11 including, but not limited to, public bene-
12 fits programs, health care, education, na-
13 tional security, sanitation, water, energy,
14 and other utilities; or

15 (II) private service sectors that re-
16 quire extensive regulation or have an in-
17 herently social component, including, but
18 not limited to, maritime, air transport,
19 trucking, and other transportation services,
20 postal services, utilities such as water, en-
21 ergy, and sanitation, corrections, education
22 and childcare, and health care; or

23 (iii) proposes a discipline or process of gen-
24 eral application which may interfere with the
25 ability of the United States or State, local, or

1 tribal governments to adopt, implement, or en-
2 force laws and regulations identified in clause
3 (i) or provide or regulate services identified in
4 clause (ii).

5 (C) The broad array of constituencies rep-
6 resenting the majority of the people of the United
7 States, including labor unions, environmental organi-
8 zations, consumer groups, family farm groups, pub-
9 lic health advocates, faith-based organizations, and
10 civil rights groups, must have at least the same rep-
11 resentation on trade advisory committees and access
12 to trade negotiators and negotiating fora as those
13 constituencies representing commercial interests.

14 (D) Any dispute resolution mechanism estab-
15 lished in any such agreement must be open and
16 transparent, including through disclosure to the pub-
17 lic of documents and access to hearings, and must
18 permit participation by nonparties through the filing
19 of amicus briefs, as well as provide for standing for
20 State and local governments as intervenors.

21 (9) REGARDING GOVERNMENTAL AUTHORITY.—
22 No such agreement may contain provisions that bind
23 national, State, local, or comparable regional govern-
24 ments to limiting regulatory, taxation, spending, or
25 procurement authority without an opportunity for

1 public review and comment described in paragraph
2 (8), and without the explicit, informed consent of the
3 national, State, local, or comparable regional legisla-
4 tive body concerned, through such means as is de-
5 cided by such legislative body.

6 (10) REGARDING ACCESS TO MEDICINES AND
7 SEEDS.—(A) No such agreement may contain provi-
8 sions that prevent countries from taking measures to
9 protect public health by ensuring access to medi-
10 cines.

11 (B) No such agreement may constrain the
12 rights of farmers to save, use, exchange, or sell
13 farm-saved seeds and other publicly available seed
14 varieties.

15 (11) REGARDING DEVELOPING COUNTRIES.—
16 Any such agreement must grant special and dif-
17 ferential treatment for developing countries with re-
18 gard to the timeframe for implementation of the
19 agreement as well as other concerns.

○