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# S. CON. RES. 69

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

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 16, 2003

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

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## CONCURRENT RESOLUTION

Providing that any agreement relating to trade and investment that is negotiated by the executive branch with other countries 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 which holds that, when there is

scientific uncertainty regarding the potential adverse effects of an action or a product or technology, governments 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 other countries should comply with the following:

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

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

20                   (A)(i) The agreement may not discipline  
 21 government measures relating to—

22                           (I) public services, including public  
 23 services for which the government is not  
 24 the sole provider;

1 (II) services that require extensive  
2 regulation;

3 (III) essential human services; and

4 (IV) services that have an essentially  
5 social component.

6 (ii) The services described in subclauses (I)  
7 through (IV) of clause (i) include, but are not  
8 limited to, public benefit programs, health care,  
9 health insurance, public health, child care, edu-  
10 cation and training, the distribution of con-  
11 trolled substances and products, including alco-  
12 hol and tobacco and firearms, research and de-  
13 velopment on natural and social sciences, utili-  
14 ties including energy utilities, water, waste dis-  
15 posal and sanitation, national security, mari-  
16 time, air, surface, and other transportation  
17 services, postal services, energy extraction and  
18 related services, and correctional services.

19 (B) The agreement shall permit countries  
20 that have made commitments in areas covered  
21 in subparagraph (A) to revise those commit-  
22 ments for the purposes of public interest regu-  
23 lation without financial or other trade-related  
24 penalties.

1 (C) The agreement shall ensure that rules  
2 on subsidies and government procurement fully  
3 protect the ability of governments to support  
4 and purchase services in ways that promote eco-  
5 nomic development, social justice and equity,  
6 public health, environmental quality, and  
7 human and workers' rights.

8 (D) The agreement shall make no new  
9 commitments on the temporary entry of work-  
10 ers because such policies should be determined  
11 by the Congress, after consideration by the con-  
12 gressional committees with jurisdiction over im-  
13 migration to avoid an array of inconsistent poli-  
14 cies and policies which fail to—

15 (i) include labor market tests that en-  
16 sure that the employment of such tem-  
17 porary workers will not adversely affect  
18 other similarly employed workers;

19 (ii) involve labor unions in the labor  
20 certification process implemented under  
21 the immigration program for temporary  
22 workers under section 101(a)(15)(H)(i) of  
23 the Immigration and Nationality Act, in-  
24 cluding the filing by an employer of an ap-

1                    plication under section 212(n)(1) of that  
2                    Act; and

3                    (iii) guarantee the same workplace  
4                    protections for temporary workers that are  
5                    available to all workers.

6                    (E) The agreement shall guarantee that all  
7                    governments that are parties to the agreement  
8                    can regulate foreign investors in services and  
9                    other service providers in order to protect pub-  
10                    lic health and safety, consumers, the environ-  
11                    ment, and workers' rights, without requiring  
12                    the governments to establish their regulations  
13                    to be the least burdensome option for foreign  
14                    service providers.

15                    (3) REGARDING POLICIES TO SUPPORT AMER-  
16                    ICAN WORKERS AND SMALL, MINORITY, AND WOMEN-  
17                    OWNED BUSINESSES.—Any such agreement shall  
18                    preserve the right of Federal, State, and local gov-  
19                    ernments to maintain or establish policies to support  
20                    American workers and small, minority, or women-  
21                    owned businesses, including, but not limited to, poli-  
22                    cies with respect to government procurement, loans,  
23                    and subsidies.

1 (4) REGARDING ENVIRONMENTAL, LABOR, AND  
2 OTHER PUBLIC INTEREST STANDARDS.—Any such  
3 agreement—

4 (A) may not supersede the rights and obli-  
5 gations of parties under multilateral environ-  
6 mental, labor, and human rights agreements;  
7 and

8 (B) shall, to the extent applicable, include  
9 commitments, subject to binding enforcement  
10 on the same terms as commercial provisions—

11 (i) to adhere to specified workers'  
12 rights and environmental standards;

13 (ii) not to diminish or fail to enforce  
14 existing domestic labor and environmental  
15 provisions; and

16 (iii) to abide by the core labor stand-  
17 ards of the International Labor Organiza-  
18 tion (ILO).

19 (5) REGARDING UNITED STATES TRADE  
20 LAWS.—No such agreement may—

21 (A) contain a provision which modifies or  
22 amends, or requires a modification of or an  
23 amendment to, any law of the United States  
24 that provides to United States businesses or

workers safeguards from unfair foreign trade practices, including any law providing for—

(i) the imposition of countervailing or antidumping duties;

(ii) protection from unfair methods of competition or unfair acts in the importation of articles;

(iii) relief from injury caused by import competition;

(iv) relief from unfair trade practices;

or

(v) the imposition of import restrictions to protect the national security; or

(B) weaken the existing terms of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, or the Agreement on Subsidies and Countervailing Measures, of the World Trade Organization, including through the domestic implementation of rulings of dispute settlement bodies.

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

(A) restrict the ability of the United States to ensure that food products entering the



1 United States are rigorously inspected to estab-  
 2 lish that they meet all food safety standards in  
 3 the United States, including inspection stand-  
 4 ards;

5 (B) force acceptance of different food safe-  
 6 ty standards as “equivalent”, or require inter-  
 7 national harmonization of food safety stand-  
 8 ards, which undermine the level of human  
 9 health protection provided under domestic law;  
 10 or

11 (C) restrict the ability of governments to  
 12 enact policies to guarantee the right of con-  
 13 sumers to know where and how their food is  
 14 produced.

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

18 (A) contain provisions that prevent coun-  
 19 tries from—

20 (i) establishing domestic and global  
 21 reserves,

22 (ii) managing supply,

23 (iii) enforcing antidumping disciplines,

24 (iv) ensuring fair market prices, or

1 (v) vigorously enforcing antitrust  
2 laws,  
3 in order to guarantee competitive markets for  
4 family farmers; or

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

11 (8) REGARDING TRANSPARENCY.—(A) The  
12 process of negotiating any such agreement must be  
13 open and transparent, including through—

14 (i) prompt and regular disclosure of full  
15 negotiating texts; and

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

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

22 (i) proposes specific Federal, State, and  
23 local laws and regulations in the United States  
24 to be changed, eliminated, or scheduled under  
25 such an agreement, including, but not limited

1 to, subsidies, tax rules, procurement rules, pro-  
2 fessional standards, and rules on temporary  
3 entry of persons;

4 (ii) proposes for coverage under such an  
5 agreement—

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

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

19 (iii) proposes a discipline or process of gen-  
20 eral application which may interfere with the  
21 ability of the United States or State, local, or  
22 tribal governments to adopt, implement, or en-  
23 force laws and regulations identified in clause  
24 (i) or provide or regulate services identified in  
25 clause (ii).

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

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

17          (9) REGARDING GOVERNMENTAL AUTHORITY.—  
 18          No such agreement may contain provisions that bind  
 19          national, State, local, or comparable regional govern-  
 20          ments to limiting regulatory, taxation, spending, or  
 21          procurement authority without an opportunity for  
 22          public review and comment described in paragraph  
 23          (8), and without the explicit, informed consent of the  
 24          national, State, local, or comparable regional legisla-

1       tive body concerned, through such means as is de-  
2       cided by such legislative body.

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

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

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

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