

1 November 2016

The Honorable James Himes
United States Representative
4th District of Connecticut

Dear Mr. Himes,

I write to you not only as a concerned citizen of the United States but also as a Mission Worker of the Presbyterian Church (USA) serving in Peru. On behalf of the people I accompany on a daily basis and the Church that has sent me, I urge you to commit to vote no on a possible lame-duck vote on the the Trans Pacific Partnership (TPP).

The Presbyterian Church (USA) Office of Public Witness has a clear position opposing the TPP, because it would roll back access to life-saving medicines, undermine environmental protections, jeopardize the safety of the food we feed our families, lower wages and offshore jobs, and elevate investor rights over human rights and democracy. I know from my first-hand experience as a Presbyterian missionary that, until the Investment Chapter of the TPP is dramatically reformed and the Investor State Dispute Settlement (ISDS) mechanism found in this agreement is either replaced or eliminated, the TPP will work to undermine democracy and the most basic human rights of the people it claims to serve.

In early 2009, I arrived to the city of La Oroya, Peru, which is often referred to as one of the ten most contaminated cities in the world. Nearly 99% of the children have been shown to have blood-lead levels far exceeding the World Health Organization's recommended threshold. Upon walking into the town that first time, I immediately felt my eyes itch and my throat burn. The cause of this contamination is the emissions of a metallurgical smelter owned by New York based holding company Renco Group, Inc. and operated at that time by its subsidiary Doe Run Peru.

The Renco Group, Inc., by way of another of its subsidiaries (Doe Run - Herculanum) purchased the smelter from the State of Peru in 1997. The contract of sale between Renco and the State did something that had never been done before in Peru; it divided the environmental management program associated with the smelter into two parts: one to be managed by the State and one to be managed by Renco's subsidiary. Renco's subsidiary would be responsible for installing new technologies and best practices to limit the emissions, and then the State would remediate the soils and waters impacted by decades of pollution.

Renco Group was given ten years to fulfill its obligations, but in 2006 it requested and received an extension from the State. By 2009 it still had not fulfilled its obligations, and following a significant drop in metals prices related to the 2008 collapse of the global economy, it claimed that its subsidiary Doe Run Peru was going bankrupt. However, in wanting to offset its losses from the economic crisis, it placed blame on the State of Peru, claiming that the environmental obligations of the management program as established in the contract were more costly than anticipated, thus violating its investor rights as stipulated in the U.S.-Peru Free Trade Agreement (rights also expressed in the TPP). Furthermore it argued that the State was also not fulfilling its contractual obligations, thus claiming that it was being held to a different standard which would also be a violation of its investor rights (again, also expressed in the TPP). This contract - that was negotiated behind closed doors by the administration of then President Alberto Fujimori who presently is in prison for corruption and crimes against humanity - is the focal point of an ISDS arbitration filed in 2011 against the State of Peru by Renco Group within the framework of the U.S. - Peru Free Trade Agreement. Earlier this year, in a surprise verdict, the arbiters ruled to

dismiss the case against the State on grounds of jurisdiction; however, the decision also laid the groundwork for Renco Group to re-file the case, which it immediately stated it would do.

My intention here is not to argue the merits of this case one way or the other, rather my hope is to express to you how the mere existence of this case, regardless of the outcome, has hi-jacked justice for the children of La Oroya.

Upon closing operations in 2009, Doe Run Peru filed bankruptcy. To this day the smelter finds itself in a lengthy liquidation process, over which hangs the outcome of Renco's arbitration. Until a decision is final in the pending arbitration, the State resists taking any decisive regulatory action that would impact the environmental management program for a potential buyer, therefore making more difficult the sale of the smelter. In the meantime, remediation of soils will not take place either until new technologies are installed and emissions standards are implemented or the smelter is closed once and for all.

As for the children? They wait. While the arbitration dragged on for five years, they waited while nothing happened. And when Renco files the suit again as it promised it would do, they will wait again, perhaps for five more years. Where will they wait? In a contaminated environment. Even though the smelter has not fully operated in over seven years, the children continue to be contaminated. When they go to school and play on the playground, they ingest the contaminated dust that floats in the air. When they play soccer on the open fields after school, they take in the contaminated soil that dirties their hands and feet. But, even if they took every precaution necessary, they would still find lead in their blood and bones because it is there from the time they are born – passed to them through the blood of their mothers who also ingest it day in and day out.

I am not claiming that with the simple elimination of ISDS (or the dismissal of this particular case of Renco against Peru) that justice will be won in La Oroya. There are many, many obstacles at hand. But, the fact of the matter is that as long as foreign investors like Renco Group have explicit rights articulated in trade agreements that are enforceable by ISDS while the rights of children and their mothers to breathe clean air are not expressed and not enforceable within the same agreement, there will never be justice in La Oroya or anywhere that unscrupulous investors operate. The cowardice of the State has proven that it will always bow down to the threat of the investor, even at the expense of its own people. That is what is happening right now; in the interest of appeasing potential foreign investors the State is ignoring the health of its children.


La Oroya is but one of hundreds of places impacted by such ISDS arbitrations. In the end, while the verdict of such cases may indeed have importance, it is ultimately irrelevant to the people on the ground – the people I accompany day in and day out. What I see everyday up close and personal is that by simply allowing investors to file such arbitrations within the present system, justice is being hi-jacked in the interest of potential economic gain by a narrow set of interests.

Don't get me wrong. I am not anti-trade, and I fully support sustainable and responsible economic growth. I understand the potential for economic growth and jobs creation that trade agreements may bring. I also understand the vantage point by which trade negotiators construct such agreements. In personal meetings with trade negotiators of no less than ten of the TPP nations, as well as a lengthy conversation with a former trade negotiator of the United States who is a member of a congregation I once pastored in New York, it is abundantly clear that the primary operative in constructing trade agreements is to protect investors from the supposed threat of State corruption in the interest of profit. What I find ironic, if not backwards, in this argument, is that in practice what ISDS seems to do best is not protect well-behaved investors, rather shield the unconscionable (if not corrupt) practices of investors like Renco Group.

In short, the current system of ISDS is broken. But, there are alternatives. Sadly, none of these alternatives have been considered, let alone implemented in the negotiations of the TPP. Without such necessary change, the TPP, if ratified, will be considered nothing short of an attack on democracy and a failure to God's children. For this reason, I plead with you to oppose the TPP.

Mr. Himes, please know that I do not question your good intentions nor your moral fortitude as you look at this matter; I do however wonder if the vantage point from which you are viewing it is not obscuring your vision. I understand that you are a Presbyterian, and as Presbyterians, we have clarity in such matters. It is our faith-based understanding that the moral test of the globalizing economy is whether it serves the human enterprise and creation, not just national advantage and corporate profit. I pray that you, too, may adhere to the Biblical charge to review all things from the vantage point of the sick, the poor and the suffering. In this way, together we will find the way to lasting peace and justice. I believe that such a review of the TPP will lead you to the conclusion to oppose the deal in a lame-duck session of Congress. Lastly, I urge you to set a time and date for a Skype conversation with members of the affected community in La Oroya as soon as possible so that you may hear with your own ears the gravity of the situation.

Respectfully

A handwritten signature in dark ink, appearing to read 'Jed Hawkes Koball', written in a cursive style.

Rev. Jed Hawkes Koball
Mission Worker, Presbyterian Church (USA)
Lima, Peru