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A conversation with NAFTA critic Lori Wallach

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Lori Wallach — one of the foremost critics of today's NAFTA-style trade treaties — will be in Portland Oct. 18 as the keynote speaker at the Oregon Fair Trade Campaign's 10th anniversary fundraising dinner. Wallach, a graduate of Harvard Law School, is a founder of the Citizens Trade Campaign and author of two books on trade policy. She's been a guest on CNN, ABC, Fox, CNBC, C-SPAN, Bloomberg, PBS, and NPR, and has testified before Congress more than 30 times. Labor Press associate editor Don McIntosh interviewed her by phone Sept. 17.

LABOR PRESS: You've been campaigning for decades against NAFTA-style trade policy. What brought you to the cause, and why have you stayed with it?

LORI WALLACH: It was by accident. I was sitting in [Congressional] hearings on food safety when these really unpleasant agribusiness guys from big beef and the chemical manufacturers said things like "Sorry, Congress, you can't do that, not under NAFTA." I started thinking: "What the hell are these guys talking about? I studied trade in law school. It's about tariffs — border taxes. Why are they talking about meat labels and pesticide standards?" I started to realize there was this sneak attack. The big corporations had taken it to a different venue —trade agreements — to get the same agenda they couldn't achieve at home implemented and locked in forever. This was 1991. I connected to people from around the world, and we realized we had to stop this. Why have I stayed at it? Because it affects everything. These so-called trade agreements shut down the future for progress on good jobs and income inequality and a livable environment and safe food and products. It is the one single instrument that actually undermines and rolls back everything a progressive person would care about. All in the disguise of a trade agreement that's not really about trade.

Most people, when they think of trade, they're visualizing manufactured goods, agricultural products, or raw materials. They assume trade agreements are mainly about reducing tariffs. Is that still accurate?

The phrase “trade agreement” has become false branding to cover up what now is a totally different agenda. The agreements have become like Trojan horse mechanisms where we’re all sold about expansion of exports, but really inside the agreement, there’s either nothing that creates that outcome, or it undermines it. And the guts of what’s in there has to do with locking in permanently a set of extraordinary corporate rights and privileges: new rights for Big Pharma to jack up medicine prices, new rights for the financial sector to escape regulation, new rights for agribusiness to be able to use pesticides and additives and hormones and process meat in ways that are unsafe. All that stuff has nothing to do with trade. It’s actually “investor rights” — constraints on domestic regulation that actually remove most of the risk for offshoring jobs, incentivizes manufacturing job loss, and takes away the risk of having to use a foreign court.

A lot of these agreements set up something called “investor-state dispute settlement.” Can you explain what that is?

In investor state dispute settlement, individual foreign corporations are elevated to equal stature with a whole national government — in that they have the right to privately enforce an agreement between sovereign nations. They are empowered to skirt domestic courts and laws and directly sue our governments in front of foreign tribunals of three private-sector attorneys, where they can demand compensation from taxpayers for any government action that they think violates their extraordinary new investor privileges and undermines their expected future profits.

What do you think of the term “free trade” when it’s used to describe agreements that expand government-enforced monopolies on patents, trademarks, and copyrights?

I would imagine that the English philosophers Adam Smith and David Ricardo who created that concept are rolling in their graves to see the term free trade attached to agreements that create protectionism for a class of multinational corporations, that expand monopolies in patents, and that have resulted in some of the worst trade imbalances in the history of man.

When today’s “trade” negotiations focus on investor rights and intellectual property, do those things benefit American workers, or any workers?

Around the world there’s a growing rebellion against the extreme investor rights and investor-state dispute settlement, because they only benefit a very narrow category of multinational corporate interests. Not even small- and medium-sized businesses benefit. In fact they’re hurt, because the big guy who leaves gets privileged treatment. The investor rules in these agreements have absolutely no benefit for workers, communities, or the environment. In South Africa, business, labor and government went through a three-year stakeholder process and came to a consensus that it was not in the public or national interest to continue in those agreements, and they’ve given notice to get out. They join Ecuador and Bolivia, who’ve done the same. India is doing a review: Half the government is saying they should get out now; the other half says they should renegotiate them all. Either way, it’s not going to be the status quo.

NAFTA turned 20 this year. How do you think the United States, Canada and Mexico are different because of it?

After 20 years of NAFTA, unfortunately, we can see empirically that none of the promises of benefits occurred, and in fact in many instances, exactly the opposite outcome occurred of what was promised. So the United States for instance went from close to a trade balance to an enormous, chronic, almost $200 billion trade deficit with our NAFTA partners. If you do the math, that's millions of U.S. jobs lost, mainly through offshoring of manufacturing and some agriculture. But simultaneously we have seen in all three countries a spate of these investor-state attacks: $350 million has been paid out to corporations over toxics bans, water use rules, timber rules, for public interest policies. In certain very sensitive sectors, like corn, the NAFTA rules allow the dumping of subsidized U.S. production such that even while we lost millions of manufacturing jobs to Mexico, Mexico's wages are down. Inequality has increased in Mexico, just like here, in no small part because NAFTA has wiped out some 1.5 million campesino families' livelihoods. This led both to a huge wave of desperate migration to the U.S., but also to a glut of manufacturing workers in the border. In Mexico, not only are industrial wages down, but tens of thousands of small- and medium-sized mom-and-pop retailers — and the manufacturers that used to supply them food, clothing, shoes … — were just wiped out when the U.S. mega-companies like Walmart came in. Canada has been the biggest loser as far as investor-state rollbacks of policies, because in the face of these attacks, Canada's government more likely than not rolls back the law. So toxics that were taken off the market were put back on the market because that was the settlement of an investor-state case. Canada was going to adopt plain packaging rules for cigarettes, to help keep people who hadn't started smoking from starting. RJ Reynolds threatened an investor-state case, and Canada walked away from it.

NAFTA-style trade agreements are often blamed for offshoring, but U.S. companies were already moving production to Mexico before NAFTA, and to China before the United States granted it "permanent normal trade relations" and allowed it to join the World Trade Organization. Is there a way in which these agreements make it easier for American companies to outsource?

First of all, you can look at the data, and there's a huge jump in offshoring after these agreements go into place. If you're up to your ankles in offshoring, when these agreements go into effect, within a year, you're in over your head. That's also true of China joining the WTO (World Trade Organization). The reason that happens is two things. One is guaranteed long-term duty-free access. In the case of China, before, every year it had to go through a review process, and when they were doing horrible things about human rights or labor rights, there was always a question about whether they would get low-tariff "most-favored-nation" status for the next year. So companies would think twice about relocating. Once there was a certainty that China would be in the WTO and would have duty-free access no matter what they did on human rights and labor rights, then a lot of companies felt it was safe to go in. In addition, the investor rules in the free trade agreements guarantee certain things that remove the risks and costs of relocating. The free-market Cato Institute has come out against investor-state dispute settlement, and part of the reason why is it's a market distortion. In their libertarian perspective, it skews what they call the risk premium, how much risk they have to take, distorts it in favor of offshoring. About offshoring or not offshoring, they're ideological: They don't care what the result is; they just want the market to be free. And they see this as a distortion because the investor rules provide preferential treatment. There's things you can do to regulate a U.S. company that you can't do to regulate a foreign company under these trade agreements. Singapore was just putting up capital controls to avoid a financial bubble that would lead to another financial crisis — because they had a flood of money coming to invest in their real estate sector. But because they have a free trade agreement with the U.S., they can't. They are left to have a bubble-led crisis because they lost the ability to regulate. These rights include the right to compensation for changes in regulatory structure. Germany announced they're phasing out nuclear power by 2029, because of Fukushima. So they've given notice in the whole industry to figure out a transition plan. And all the domestic companies are trying to figure out what to do. But two plants are owned by a Swedish company Vatenfall, which launched an investor-state case saying, "We don't care if it applies to German firms. We're foreign investors. We have special privileges. You can change the policies, but you have to compensate us for billions of dollars, because we expected to make profits on those plants in the future."

Over the years, Public Citizen Global Trade Watch has kept a running tally of fair trade supporters in Congress. How's the "Fair Trade caucus" doing?

There is pretty much bipartisan consensus in the House of Representatives against ever doing the old-style "fast track" trade mechanism [an agreement to hold a speedy up-or-down vote on trade agreements, with limited debate and no opportunity to amend.] That has been a huge chill on negotiations of agreements like TPP [Trans Pacific Partnership]. Some of the fast track opponents are structuralists: They don't think that fast track delegation is constitutional. In the Constitution, Congress has exclusive authority over trade. And some are free traders but have gotten savvy that the trade agreements aren't about that any more. There are people who are for zero tariffs but have no interest in undermining food safety, internet freedom, etc. It all boils down to a majority in the House right now against fast track. However, Oregon U.S. Senator Ron Wyden, now the chair of Finance Committee, is the guy who's going to decide what happens next. And he could be the man who retires the undemocratic fast track mechanism. Fast track has been key to getting us into failed trade agreements like NAFTA and WTO, by giving away Congress' and the public's oversight role. Wyden can be the guy who tweaks and tries to continue it. Or he can be the guy who retires it. If you read the book I wrote on the history of trade authority in the United States since the founding of our country, it lays out how almost every 40 years, Congress has created a new system of trade authority. We're very overdue to replace fast track. Fast track was established by Richard Nixon in 1973 in an era when trade agreements were mainly about tariffs, about border taxes. It's a dangerous mismatch when you have Congress' core business — legislating — being delegated on a huge array of non-trade issues. It's all going to come down to Wyden, who in the past has supported fast track, has supported all these NAFTA style agreements.He even voted for NAFTA.

He voted for all of them. He's one of the rare Democrats who voted for the U.S.-Colombia Free Trade Agreement. He voted for CAFTA — the Central American Free Trade Agreement. At the same time, he's a smart guy. He's had an open process and he's heard from a lot of Democratic senators and some Republicans that they want something different: no more fast track. He's heard from Internet freedom groups, environmental groups, all the unions, family farm groups, Methodists, consumer groups, MoveOn, AARP, groups that have never been involved in trade fights. Because it's not about trade any more. It's about medicine costs for seniors and so many other things. So all of these groups and many members of Congress have spoken to Chair Wyden and said, "Sir, you are the man who is either going to replace fast track and give us a totally different way of getting better agreements, or you're going to be the guy who's responsible for trying to revive Nixon's undemocratic fast track." And it's either going to happen in the lame duck Congress that starts Nov. 12, or it's going to be coming out of the chute in January 2015.

Do you think there's a plan to approve fast track in the lame duck session after the November 2014 election?

I think the White House is dying to have the old-fashioned legislative luge run. Because the way they've dicked around Congress, they are not going to be able to get TPP the way it's constructed — with a big "F.U." to Congress on things Congress has explicitly said had to be in there. It's got stuff in there that major blocs of Congress has said, "If that's in there, then I'm against it." If that's in the TPP, they know it's only going to get done if they have fast track.

We see from experience what it looks like when trade agreements are written by corporations. What would a Lori Wallach "fair trade" policy look like?

Corporate special privileges, constraints on government regulation, and expansion of monopoly patents and copyrights, would all be excised from trade agreements. Trade agreements would actually focus on trade. And countries that want market access rules and cuts on tariffs would have to meet internationally-agreed standards with respect to labor, health and the environment. You would build international commerce on the basis of prioritizing the international policies that exist through the ILO (International Labor Organization), multilateral environmental agreements, World Health Organization treaties, and the rights of human beings. We need that floor set as the basis for getting commercial privileges.