

September 26, 2013

Senator Ron Wyden
Chairman, Comm. on Energy & Na. Resources
304 Dirksen Senate Building
Washington D.C. 20510

Senator Lisa Murkowski
Ranking Member, Comm. on Energy & Na. Resources
304 Dirksen Senate Building
Washington D.C. 20510

Dear Chairman Wyden and Ranking-Senator Murkowski;

As the Senate Committee on Energy and Natural Resources considers S.812, legislation to codify the U.S.-Mexico Transboundary Hydrocarbon Agreement ("U.S.-Mexico THA"), we, the undersigned member organizations of the Publish What You Pay Coalition (PWYP), want to express our appreciation to you for only including the provisions essential to codify the U.S.-Mexico THA. As you are aware, the House of Representatives included unnecessary anti-transparency language that would provide exemptions from compliance with disclosures mandated by the Cardin-Lugar Extractives Transparency Amendment (Section 1504 of the Dodd-Frank Act). To be clear, none of the signatory groups to this letter opposes the approval of the U.S.-Mexico THA.

Cardin-Lugar requires companies to report on a country-by-country basis all payments made to the U.S. and foreign governments for oil, gas and mining. It is supported by investors comprising over \$5.6 trillion in assets under management, as well as faith, anti-corruption, human rights, development and transparency groups in the U.S. and around the world. It is also part of U.S. energy security strategy and multilateral foreign policy. Cardin-Lugar disclosures will increase transparency in extractive development, fostering stable investment and operating environments for U.S. companies, and providing investors with high-quality, consistent, regular information for assessing companies' risk exposure in oil, gas and mineral-rich countries. Transparency will also increase government accountability in these countries, which is critical to the U.S. foreign policy objective of reducing extreme poverty by combating corruption, fraud and waste in resource-rich developing countries, and ending the "resource-curse."

We urge you to note that in a 'Statement of Administration Policy' relating to HR.1613, clearly says "*...the Administration strongly objects to exempting actions taken by public companies in accordance with transboundary hydrocarbon agreements from requirements under section 1504 of the Dodd-Frank Act and the Securities and Exchange Commission's Natural Resource Extraction Disclosure Rule. As a practical matter, this provision would waive the requirement for the disclosure of any payments made by resource extraction companies to the United States or foreign governments in accordance with a transboundary hydrocarbon agreement. The provision directly and negatively impacts U.S. efforts to increase transparency and accountability, particularly in the oil, gas, and minerals sectors.*"¹

While oil and gas drilling in the Outer Continental Shelf (OCS) is dependent on international agreements for sharing revenues from the hydrocarbon deposits that straddle our maritime borders, we believe that implementing the agreement between Presidents Obama and Calderon does not require exemptions from Cardin-Lugar disclosures. The U.S. Department of State, which negotiated and finalized the agreement 18 months after the passage of Cardin-Lugar, has given no indication that such a conflict exists between the full U.S. disclosure regime and the terms of the agreement. In fact, Ambassador Carlos Pascual, Special Envoy and Coordinator for International Energy Affairs for Energy Affairs, made no mention of it when he testified

¹ See: http://www.whitehouse.gov/sites/default/files/omb/legislative/sap/113/saphr1613r_20130625.pdf

before the House Natural Resources Committee² and the House Foreign Affairs Subcommittee on the Western Hemisphere.³

Further, in his written statement to the subcommittee, he stated *“There are also some issues that are universal for all energy-producing countries, such as the need to develop new resources responsibly and transparently. The ‘resource curse’ thesis was first used in describing the situation in several Latin American countries, and countries in the region continue to face governance challenges today in managing these resources.”* The implementation of the above stated U.S. policy of global transparency would be hindered by any anti-transparency provision similar to the one in H.R.1613 which reads as follows:

“(d) EXEMPTION FROM RESOURCES EXTRACTION REPORTING REQUIREMENT.—Actions taken by a public company in accordance with any transboundary hydro carbon agreement shall not constitute the commercial development of oil, natural gas, or minerals for purposes of section 13(q) of the Securities Exchange Act of 1934 (157U.S.C. 78m(q)).

Exemptions from Cardin-Lugar disclosures are unnecessary to implement the U.S.-Mexico THA because the agreement explicitly accommodates U.S. disclosure requirements in its Confidentiality Clause. It states that *“To the extent consistent with their national laws, the Parties shall maintain confidential, and obligate their Licensees to maintain confidential, all Confidential Data and other information obtained from the other Party or its Licensees in accordance with this Agreement.”* Furthermore, no laws exist in Mexico to prohibit disclosures of company payments to the government or by Mexican companies to other governments.

We also urge you to consider the harmful global impact of an exemptions provision. Cardin-Lugar laid the foundations for a new global standard for extractives transparency. On June 11, 2013, the 27-member European Union voted to adopt measures that match the U.S. law. Critically, the EU Transparency Directive also does not allow for exemptions. Providing exemptions in the U.S.-Mexico THA would signal a retreat from transparency, and send a very poor message to our strongest allies.

Domestically, the proposed exemptions in H.R. 1613 would create a regulatory conflict between the Department of Interior, which oversees oil leases, and the SEC, which oversees companies listed on U.S. stock exchanges. The two agencies should not be put in a position to countermand each other’s regulations as to the scope of Cardin-Lugar and the propriety of exemptions.

In conclusion, transparency promotes accountability and stability and improves the global business climate for economic growth and investment, which is good for American business and our national security. For these reasons, we urge Congress to keep America’s commitments and stand up for transparency by excluding the anti-transparency language, and any variations of it, from S.812 or any legislation considered or negotiated with the House to codify the U.S.-Mexico THA.

Thank you for your attention to this important matter.

Sincerely,



Jana Morgan
National Coordinator, Publish What You Pay United States

² See <http://naturalresources.house.gov/news/documentsingle.aspx?DocumentID=331599>

³ See <http://foreignaffairs.house.gov/hearing/subcommittee-hearing-energy-opportunities-latin-america-and-caribbean>



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CC: Members of the Senate Committee on Energy & Natural Resources
Members of the Senate Committee on Banking, Housing & Urban Affairs
Members of the Senate Foreign Relations Committee