

# ALERT

VOLUME 38, NUMBER 31 • OCTOBER 26, 2012



## Air Board Set to Stage Hidden Tax on Energy

*Analyst: Multibillion-Dollar Auction Unnecessary*



AB 32

The California Air Resources Board has planned the state's first auction of carbon emission credits on November 14 as part of its program

implementing AB 32, California's landmark climate change law.

AB 32 set a goal of reducing greenhouse gas (GHG) emissions statewide to 1990 levels by 2020.

The California Chamber of Commerce and other groups have been emphasizing that the auction is unnecessary to reduce greenhouse gas emissions and amounts to a multibillion-dollar hidden tax on carbon

and therefore energy used by California businesses and consumers.

"Under a legitimate 'cap-and-trade' system, the cap reduces the amount of carbon emitted, while the trading mechanism allows for the most cost-effective technology to be used," said CalChamber President and CEO Allan Zarembek. "The auction is nothing more than a revenue-generating component so its supporters can finance their pet projects."

### Auction Not Necessary

The nonpartisan Legislative Analyst's Office (LAO) agrees that an auction is not necessary to meet AB 32's goals.

*See Air Board: Page 6*

## Private Pension Mandate Must Get Study, Legislative OK

A proposal to mandate pensions for private employers in California cannot take effect until its full ramifications are studied and the resulting plan is introduced in a new bill and approved by the Legislature because of amendments advocated by the California Chamber of Commerce and passed on the last day of the legislative session.

The effect of the amendments to **SB 923 (De León; D-Los Angeles)** was to relegate the private pension mandate in **SB 1234 (De León; D-Los Angeles)** to a study of the issue by the appointed board, as the CalChamber consistently urged while SB 1234 was moving through the legislative process. Accordingly, the CalChamber removed its opposition to SB 1234.

### Media Reports Misleading

Many media reports overlooked the requirements in SB 923, which prohibits the board SB 1234 establishes to develop the pension plan from unilaterally implementing the program to accept enrollees unless new legislation authorizing the program is enacted. SB 923 was tied to enactment of SB 1234. The Governor signed both bills.

Before amendments, SB 1234 would have subjected employers to significant cost, fiduciary responsibilities and liability with no commensurate benefit to employees by mandating that all private non-unionized employers who do not offer a retirement benefit enroll their employees in a government-created defined benefits retirement plan.

The CalChamber pointed out in testimony that SB 1234 set up an appointed board and then turned over authority to that body for studying, creating and implementing the new "retirement savings" program. SB 923 returns final say to the Legislature.

*See Private Pension: Page 4*

## Pregnancy, Disability Discrimination Rules Update

The California Fair Employment and Housing Commission (FEHC) has completed its changes to the proposed amendments of California's pregnancy regulations and disability discrimination regulations.

The FEHC recently filed the changes with the Office of Administrative Law (OAL), which can take up to 30 working days to accept or reject the proposed changes to the regulations.

OAL has until November 27 to respond to the disability discrimination regulations and until November 30 to decide on the pregnancy disability regulations.

The California Chamber of Commerce has proposed that FEHC delay until at least January 1, 2014 any required posting notifications for employers.

Given that the proposed regulations may not be approved until mid-November 2012, the CalChamber said it would be an unfair burden for employers, especially small businesses, to immediately obtain updated posters/notices that comply with the new regulations.

### Proposed Changes

The proposed changes to pregnancy disability leave regulations include: a change to the definition of "four months"; expanded definition of when a woman is "disabled by pregnancy"; changes to notices that provide information for employees about their rights and responsibilities under pregnancy disability leave and the California Family Rights Act.

*See Pregnancy: Page 6*

## Labor Law Corner

# How Alternative Workweeks Apply to Temporary Workers



**Gary Hermann**  
HR Adviser

*Is an employee placed temporarily with an employer by a placement agency subject to the provisions of an alternative workweek in place at the job where the employee is placed? Who is responsible for resolving a labor dispute with a temporary employee—the placement agency or the employer where the worker was placed?*

The Division of Labor Standards Enforcement has consistently taken the position that temporary workers may be hired into an alternative workweek setting with no overtime obligation after eight hours in a day so long as they are employed for the entire **regularly scheduled alternative workweek**.

Temporary workers employed for less than the entire workweek must be paid the applicable overtime after eight hours in any one day.

### Placement Scenarios

Temporary employees may be placed in a location in one of two ways:

- If the placement agency places employees with an employer for a normal flat fee or commission, the workers actually are employed by the employer where the workers are placed.

- If the placement agency is paid on an hourly or other basis for the placement, there is a joint employment relationship between the two entities. The placement agency in this case is simply renting its employees out on much the same basis as a company might rent its equipment.

### Labor Disputes

When the employment agency simply places workers for a flat fee or commission, the Labor Commissioner would look to the employer where the worker is placed to resolve any labor dispute.

In the joint employment scenario, however, the obligation for ensuring that any overtime is paid rests with both entities. In this instance, the Labor Commissioner may look to either the placement agency or the employer where the worker was placed to resolve a dispute.

*See Alternative: Page 4*

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Ann Amioka  
Vice President, Communications  
September 27, 2012

# California Newspapers Oppose Prop. 37



Newspapers throughout California have recommended a “no” vote on California Chamber of Commerce-opposed Proposition 37,

the food labeling mandate on the November ballot.

Proposition 37 is a deceptive, deeply flawed food labeling scheme that would add more government bureaucracy and taxpayer costs, create new frivolous lawsuits, and increase food costs by billions—without providing any health or safety benefits. The measure is based on bad science and would place California at a competitive disadvantage to other states.

To date, at least 30 newspapers have editorialized against Proposition 37. Here is a sampling of what the newspapers have been saying:

“Most of the burden for ensuring that foods are properly labeled would fall not on producers but on retailers, which would have to get written statements from their suppliers verifying that there were no bioengineered ingredients — a paperwork mandate that could make it

hard for mom-and-pop groceries to stay in business. Enforcement would largely occur through lawsuits brought by members of the public who suspect grocers of selling unlabeled food, a messy and potentially expensive way to bring about compliance.”

— *Los Angeles Times*

“This food-labeling scheme—written by trial lawyers who hope for a windfall if it becomes law—has many flaws: It creates a new bureaucracy, has huge loopholes and hidden costs and will result in higher grocery bills.”

— *San Francisco Chronicle*

“Voters should be concerned that Prop. 37 would likely spawn waves of lawsuits, with the litigation and enforcement costs passed on to grocers and the consumers.”

— *The Orange County Register*

“It is an overreach, is ambiguous, and would open the way for countless lawsuits against retailers who sell food that might lack the proper labeling.”

— *The Sacramento Bee*

“But Prop. 37 carries onerous aspects that, for us, make it unworkable. First is that rather than rely on state enforcement of the labeling requirement, it allows

state government, local government or private parties to sue companies that violate the labeling requirement. It also relieves the plaintiffs of any burden to show specific damage because of the violation.”

— *Oakland Tribune*

“The problem is that the standards imposed by Proposition 37 would not only make California the first state to have such regulations, they far exceed anything being required by other countries. It also opens the door to potential ‘shakedown’ lawsuits.”

— *Santa Rosa Press Democrat*

“This measure is based on bad science and would place California at a competitive disadvantage to other states,” said CalChamber President and CEO Allan Zaremberg. “If passed, Proposition 37 would impose specific state-only labeling requirements which confuse and unnecessarily worry consumers. Based on the breadth of the definitions in the initiatives, almost every aspect of the food chain would be impacted, requiring needless labeling and sharply increasing the cost of food to consumers at a time when they can least afford it.”

## CalChamber Positions on November Ballot Measures

| Proposition    | Subject  | Position    |
|----------------|--|-------------|
| Proposition 30 | Temporary Taxes to Fund Education. Guaranteed Local Public Safety Funding              | No Position |
| Proposition 31 | State Budget. State and Local Government   | Support     |
| Proposition 32 | Prohibits Political Contributions by Payroll Deduction                                 | No Position |
| Proposition 33 | Changes Law to Allow Auto Insurers to Set Prices Based on Driver’s History of Coverage | No Position |
| Proposition 34 | Death Penalty Repeal   | No Position |
| Proposition 35 | Human Trafficking Penalties  | No Position |
| Proposition 36 | Revises Three Strikes Law  | No Position |
| Proposition 37 | Genetically Engineered Foods: Mandatory Labeling                                       | Oppose      |
| Proposition 38 | Tax for Education and Early Childhood Programs   | Oppose      |
| Proposition 39 | Tax Treatment for Multistate Businesses  | Oppose      |
| Proposition 40 | Referendum on Redistricting of State Senate Districts                                  | Support     |

## Private Pension Mandate Must Get Study, Legislative Approval

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### Required Analysis

SB 1234 requires the board to conduct a market analysis to determine whether sufficient funding will be available from a variety of sources to make the pension program self-sustaining.

The author and supporters of the bill originally contended the entire cost of the California Secure Choice Retirement Savings Program would be supported by the plan's contributions and investment income.

Other analysts, however, said the supporters significantly underestimated the costs and the potential shortfalls that will result if investment returns fall short of projections.

Any program the board creates cannot

be put into place if either:

- it fails to qualify for the favorable federal income tax treatment ordinarily granted to Individual Retirement Accounts (IRAs); or
- it is determined to be an employee benefit plan subject to the federal Employee Retirement Income Security Act (ERISA), enacted in 1974 to protect participants in non-government-sponsored (private) retirement plans.

The IRA and ERISA provisions were added to SB 1234 after the CalChamber and others voiced concern about the original bill's shortcomings in these areas.

### Pension Mandate Risks

The CalChamber argued that a pension

mandate would force low-wage workers to choose between a requirement to set aside money for retirement and current pressing obligations, including paying the rent and high-interest credit debt, with no assistance regarding the best and highest use of their funds.

If ultimately implemented in subsequent legislation, the private employer pension requirement would apply to employers with as few as five workers. The new risk could be particularly harmful to small businesses that can't afford the added liability, including the duty to properly educate employees about the retirement options available so the employees can make an informed decision.

**Staff Contact: Marc Burgat**



### CalChamber Post-Election Public Affairs Council Meeting

November 14–15, 2012 | Montage Resort | Laguna Beach, California



## CalChamber-Sponsored Seminars/Trade Shows

More information at  
[www.calchamber.com/events](http://www.calchamber.com/events).

### Labor Law

Conducting Workplace Investigations Webinar. CalChamber. November 15. (800) 331-8877.

### Business Resources

California Retail and Trade Business Conference. Chairman Jerome E. Horton, California State Board of Equalization. November 1, Los Angeles. (888) 847-9652.

Small Business Expo-Los Angeles. The Show Producers. November 8, Los Angeles. (212) 520-4966.

### International Trade

Branding Monterey Bay Region to Global Market. Monterey Bay International Trade Association. October 30, Santa Cruz. (831) 335-4780.

APPEX 2012. The Malaysian Trade Commission. October 30–November 1, Las Vegas. (213) 892-9034.

CA Cleantech Company Trade Mission to China. El Camino College Center for

International Trade Development (CITD). October 30–November 11, China. (310) 973-3161.

A Taste of California Matchmaking Exhibition. California CITD. November 5–7, Oakland. (559) 324-6401.

Nagoya Export Trade Mission 2012. Aichi Prefectural Government, City of Nagoya, and Nagoya Chamber of Commerce and Industry. November 7–10, Nagoya, Japan. (310) 732-3838.

China International Green Innovative Products and Technologies Show 2012. China Chamber of Commerce and China Foreign Trade Centre. November 9–11, Guangzhou, China. (415) 852-5972.

Commerce Dept. Trade Mission to South Africa and Zambia. U.S. Commercial Service. November 26–30, South Africa and Zambia. (202) 482-2054.

INTRADE 2012. MATRADE Los Angeles. November 27–29, Kuala Lumpur, Malaysia. (213) 892-9034.

## Alternative Workweeks

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If the employer is using workers who are employees of another entity, the workers still will be allowed to be employed in the alternative workweek, without overtime liability, as long as they were employed for the full regularly scheduled alternative workweek.

If the worker is employed for the entire alternative workweek, however, the referring employer could not employ that worker any further during the workweek without incurring overtime liability.

*The Labor Law Helpline is a service to California Chamber of Commerce preferred and executive members. For expert explanations of labor laws and Cal/OSHA regulations, not legal counsel for specific situations, call (800) 348-2262 or submit your question at [www.hrccalifornia.com](http://www.hrccalifornia.com).*

## Annual Meeting

In compliance with Article VII of the bylaws, notice is hereby given that the annual meeting of the members of the California Chamber of Commerce, a mutual benefit corporation operating under the laws of the State of California, will be held on Friday, December 7, 2012, at 9 a.m. in Salon III at the Ritz-Carlton, 600 Stockton Street, San Francisco, California, for the transaction of whatever business may be necessary.

# CalChamber Member Companies Among Best Places to Work in Los Angeles

The *Los Angeles Business Journal* has recognized 18 California Chamber of Commerce members for their success and commitment to nurturing their employees.

In total, 100 businesses were selected to be part of the “Best Places to Work” list, which the *Los Angeles Business Journal* put together in partnership with Best Companies Group. The two organizations identified the companies based on their methods of “elevating morale and team spirit to new heights.”

While differing in their methods, the companies have one thing in common, according to the *Journal*: a commitment to the concept that employees’ well-being has a direct impact on a company’s well-being.

The awards list, published in August, was divided by the scale of the company: large (250 or more employees), medium (50 to 249 employees), and small (15 to 49 employees).



## Small Companies

- **No. 8 Palmer, Lombardi & Donohue LLP.** Palmer, Lombardi & Donohue LLP provides legal services to businesses and financial firms. Employees are provided with flexibility in work schedules to accommodate commuting and family needs.

## Medium Companies

- **No. 17 CPEhr.** A human resources outsourcing firm, CPEhr offers employees a flexible schedule and on-site company-sponsored yoga events.

- **No. 26 The Phelps Group.** The Phelps Group is an integrated marketing communications company. It focuses on key elements of job satisfaction, such as no layers of supervision, rules, departments or physical offices. The company also maintains an open communication culture with its employees, so that everyone can pitch in creatively, operationally and as colleagues.

- **No. 35 SingerLewak.** SingerLewak, an accounting services and consulting firm, hosts tax season (“busy season”) games, such as bingo and “riddle me this” Thursday, and throws an annual “end of busy season” staff party. The firm also brings ice cream into the office the last Friday of every month.

## Large Companies

- **No. 6 PCL Construction Services, Inc.** PCL is a family of construction companies that is 100% employee-owned.

- **No. 8 Kaiser Permanente.** Kaiser Permanente provides health services throughout California, and focuses on providing health care to both patients and employees. The company provides on-site fitness centers, group fitness classes, and lunchtime and after-work walking groups for its employees.

- **No. 9 Bentley Prince Street.** Bentley Prince Street is the largest commercial carpet manufacturer in California. The company is committed to sustainable commerce and innovations to integrate style and function with environmental practices through its Mission Zero goal of eliminating any negative impact on the environment by the year 2020.

- **No. 11 KForce.** Kforce is a professional staffing and solutions firm. The company holds team building events and staff parties, and provides employees with flexible schedules and take-home laptops.

- **No. 12 Rothstein Kass.** Rothstein Kass is a professional services firm, employing 850 team members (the company’s name for employees).

- **No. 13 Bryan Cave LLP.** Bryan Cave LLP provides transactional and litigation representation. The firm continuously and in multiple ways empowers every one of its employees to have ample access to information and resources so the employees can excel professionally. John R. Shiner, lead partner at Bryan Cave, is a member of the CalChamber Board of Directors.

- **No. 16 Getty Images.** Getty Images creates and distributes still imagery, footage, music and other premium content. The most common responses from staff about why they love to work at Getty are the people and the products. Getty’s employees enjoy the camaraderie and challenges of working in an innovative and entrepreneurial environment.

- **No. 19 Bingham McCutchen LLP.** Bingham offers a broad range of market-leading practices focused on global financial services firms and Fortune 100 companies. Part of the culture of benefiting employees at Bingham includes a community service element. An example is the “Backpack Project” where Bingham employees round up school supplies for disadvantaged children. The firm also hosts food and clothing drives, serves meals to the homeless, and raises funds

*See CalChamber: Page 6*

## Air Board Set to Stage Hidden Tax on Energy

From Page 1

In response to a legislator's inquiry, Legislative Analyst Mac Taylor noted that "it is the declining cap on emissions that will reduce the state's overall level of GHGs—not the manner in which the allowances are introduced into the market. Thus, an allowance auction is not necessary to meet the AB 32 goal of reducing GHG emissions statewide to 1990 levels by 2020."

Taylor went on to comment, "freely allocating 100% of available allowances can reduce the cost of compliance, as well as the overall economic impacts of achieving the goal of AB 32."

### Free Allocation Reduces Cost

A key advantage of a totally free allocation, Taylor said, is that it "would offset significantly more of the marginal cost increase resulting from compliance with the program . . . and reduce the potential for leakage while preserving the environmental integrity of the program."

Economic leakage, as noted in the LAO letter, includes consumers seeking lower-cost goods not produced in California, and firms deciding to relocate outside of the state, reduce their presence in California or close business due to the

competitive disadvantage resulting from the cost to comply with the cap-and-trade program.

California job losses are the ultimate consequence of all forms of "leakage."

### Minimal Potential

Critics of the free allowances have argued that they will lead to windfall profits for businesses. The Legislative Analyst outlined two scenarios and concluded the potential for windfall profits was low in both cases:

- An energy-efficient company is given free allowances beyond what it needs to comply with the cap-and-trade regulation. The magnitude of this potential problem is low, the LAO wrote, because California's emissions cap is stringent and most companies already have energy-efficient production processes due to the state's decades-old energy efficiency standards and clean air rules.

- A company receives free allowances and still passes compliance costs along to customers. Because a large majority of the California electricity market is regulated by the Public Utilities Commission, the potential for this problem "would likely be minimal," the LAO said.

## Pregnancy, Disability Discrimination Rules Go to Review

From Page 1

The proposed changes to the disability regulations include: expanding the definitions of "mental" and "physical" disability; clarifying what evidence might be used to show a function is "essential" to a job; a description of the interactive process and obligations of the employer, and the applicant.

### Compliance Assistance



Readers can sign up at the CalChamber Store to receive email notification of OAL's decision, plus advance notice of CalChamber's follow-up webinar. Limited seating is available.

Also available for purchase is the Poster Protect service, ensuring customers will receive a new poster at no additional charge if there are any mandatory changes in state or federal employment law posting requirements during the calendar year.

## CalChamber Member Companies Among Best Places to Work in L.A.

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through bake sales and silent auctions.

- **No. 21 Quest Diagnostics Nichols Institute of Valencia.** Quest Diagnostics Nichols Institute is one of the largest single sources of specialized medical testing in the United States. The company has open employee communications, with management accessible to all employees, providing frequent updates on company initiatives. Employee celebrations such as on-site gourmet lunch trucks, ice cream socials, pizza parties, talent shows and music events also are commonplace.

- **No. 29 Hunton & Williams LLP.** Hunton & Williams provides legal services to a broad array of entities. All lawyers and professional staff are eligible for performance-based bonuses as part of the firm's annual review process. In addition, the firm gives "extra-effort" bonuses to professional staff members who go above and beyond at any time.

- **No. 33 Western Asset Management Company.** Western Asset provides investment services for a wide variety of global clients. The company offers its employees on-site personal development and/or stress management workshops, seminars and classes, and it maintains a robust intranet system for employees with a dedicated administrator to keep information fresh and up to date.

- **No. 37 Katten Muchin Rosenman LLP.** Katten Muchin Rosenman LLP is a full-service law firm with more than 600 attorneys. The aim of the attorneys who formed the firm in 1974 was to advise businesses and individuals while creating a rewarding culture and work environment for employees.

- **No. 38 HealthCare Partners Medical Group, Inc.** HealthCare Partners Medical Group provides primary, specialty and urgent medical care throughout Los Angeles County. A decentralized manage-

ment style empowers employees and physicians throughout the organization to make decisions about how to operate their medical offices, so health care can remain a local business. Staff and physicians also share annual clinical quality and customer service goals.

- **No. 42 Insperty.** Insperty provides an array of human resources and business solutions to help improve business performance. Programs to incentivize and maintain the morale of employees include paid time off (PTO) to volunteer in the community, a generous number of PTO days and a comprehensive employee benefits plan.

Next Alert:  
November 9

# Workshop Explains How Businesses Can Overcome Foreign Trade Barriers

How businesses can overcome foreign trade barriers was the focus of a recent workshop in Washington, D.C. hosted by the U.S. Chamber of Commerce together with the National District Export Council.

U.S. Trade Ambassador Ron Kirk was a featured speaker at the “Workshop on Defeating Foreign Trade Barriers” on October 17.

The U.S. Chamber and the National District Export Council hosted the day-long event to showcase services available to exporters.

## Keynote

In his keynote remarks, Ambassador Kirk explained how the efforts of the Office of the U.S. Trade Representative to remove trade barriers can assist businesses by eliminating tariffs, improving intellectual property rights protection, and easing customs administration to get products to market more quickly.

In addition, Michael C. Camuñez, assistant secretary of commerce for market access and compliance in the U.S. Commerce Department, indicated that good free trade agreements can have been negotiated, trade finance can be in place, together with a robust trade promotion plan, but companies can still encounter foreign trade barriers that limit market access.

The Market Access and Compliance (MAC) division of the International Trade Administration in the U.S. Department of Commerce defends, expands and promotes market access for U.S. goods, services and investment abroad to help American businesses thrive and create jobs in the United States. MAC’s mandate is to overcome trade barriers that have a negative impact on U.S. businesses so they can compete more effectively abroad. For further information, see [www.trade.gov/MAC](http://www.trade.gov/MAC).

Deputy Assistant Secretary Seward Jones then spoke about the Trade Compliance Center in the U.S. Department of Commerce. The center is the U.S. government’s focal point for monitoring foreign compliance with trade agreements to see that U.S. firms and workers get the maximum benefits from these agreements. The center is a one-stop shop for getting U.S. government assistance in resolving



U.S. Trade Ambassador Ron Kirk

trade barriers or unfair situations encountered in foreign markets.

For further information, visit [www.export.gov/TCC](http://www.export.gov/TCC).

In addition, *STOPfakes.gov* was launched to serve as a one-stop shop for U.S. government tools and resources on intellectual property rights. The federal agencies behind *STOPfakes.gov* have developed a number of resources to educate and assist businesses, particularly small and medium-sized enterprises, as well as consumers, government officials and the general public

## District Export Council

The day before the workshop, the National District Export Council held its annual meeting at the Ronald Reagan Trade Center in Washington, D.C. Roy Paulson, president of Paulson Manufacturing Corporation (a California Chamber of Commerce member) in Temecula, is vice chair of the council. Susanne Stirling, CalChamber vice president of international affairs, is a member of the Northern California District Export Council and participated in both events.

The District Export Councils (DECs) contribute leadership and international trade expertise to complement the U.S. Commercial Service’s export promotion efforts. The DEC members are appointed by the Secretary of Commerce.

For more information, see [www.calchamber.com/DEC](http://www.calchamber.com/DEC).

## Pending Trade Issues

DEC members discussed several pending trade issues, including the possible U.S. congressional “lame duck” vote approving permanent normal trade relations (PNTR) for Russia. The U.S. House Ways and Means Committee and the U.S. Senate Finance Committee have passed Russia PNTR. It is vital to extend PNTR with Russia this year.

The White House and Congress are encouraged to work together to ensure passage of this legislation as quickly as possible after the November elections. There is strong bipartisan support for this measure, which will support U.S. exports, U.S. jobs and the U.S. economy.

The DEC membership also discussed the future need for presidential trade promotion authority (TPA), which would allow for future trade negotiations. TPA (formerly called fast track trade negotiating authority) is the process by which Congress gives authority to the President and/or U.S. Trade Representative to enter into trade negotiations in order to lower U.S. export barriers.

TPA expired in June 2007 and must be extended by Congress once again. The United States’ major trading partners are participating in sectoral and regional agreements, and TPA is a prerequisite to meaningful U.S. participation.

Without TPA, the United States will be compelled to sit on the sidelines in the future while other countries negotiate numerous preferential trade agreements that put U.S. companies at a competitive disadvantage.

Increased market access achieved through trade agreements has played a major role in the nation’s success as the world’s leading exporter. TPA is vital for the President of the United States to negotiate new multilateral, bilateral and sectoral agreements that will continue to tear down barriers to trade and investment, expand markets for U.S. farmers and businesses, and create higher-skilled, higher-paying jobs for U.S. workers.

## CalChamber Position

The CalChamber concurs with these trade priorities. See [www.calchamber.com/RussiaPNTR](http://www.calchamber.com/RussiaPNTR) and [www.calchamber.com/TPA](http://www.calchamber.com/TPA).

Staff Contact: Susanne Stirling



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