

Sen. Amy Volk, Chair
Sen. Rodney L. Whittemore
Sen. John L. Patrick
Rep. Robert Saucier, Chair
Rep. Craig Hickman
Rep. Stacey Guerin

Christy Daggett
James Detert
Sharon A. Treat
Dr. Joel Kase



John Palmer
Linda Pistner
Harry Ricker
Jay Wadleigh

Ex-Officio
Mike Karagiannes
Wade Merritt
Pamela Megathlin

Staff:
Lock Kiermaier

STATE OF MAINE

Citizen Trade Policy Commission

May 19, 2015

The Honorable Chellie Pingree
United States House of Representatives
2 Portland Fish Pier, Suite 304
Portland, ME 04101

Re: Invitation to speak before the Maine Citizen Trade Policy Commission

Dear Representative Pingree:

As you know, the Maine Citizen Trade Policy Commission was established in 2003 by the Maine State Legislature to, *“to assess and monitor the legal and economic impacts of trade agreements on state and local laws, working conditions and the business environment; to provide a mechanism for citizens and Legislators to voice their concerns and recommendations; and to make policy recommendations designed to protect Maine's jobs, business environment and laws from any negative impact of trade agreements.”* [10 MRSA §11 (3)].

To accomplish its statutory responsibilities, the CTPC has met regularly in the intervening years to study and review the various Free Trade Agreements that have been negotiated or are in the process of being negotiated. To that end, we have taken an active role in communicating our concerns and viewpoints with you and other members of Maine's congressional delegation, the Governor, the Legislature and the United States Trade Representative.

As a part of our effort to become more knowledgeable about the process by which Free Trade Agreements are negotiated and what the current issues in free trade are, we have frequently invited different individuals to appear before the commission to discuss particular issues and points of view. Currently and in recent years, the CTPC has spent a great deal of attention learning about and understanding the current FTAs which are negotiation including the TransPacific Partnership (TPP), the TransAtlantic Trade and Investment Partnership (TTIP) and the Trade In Services Agreement (TISA). Our review of these FTAs and their possible effects on Maine has necessarily included in-depth studies of the Trade Promotion Authority proposal which is currently before Congress and the Investor-State Dispute Settlement (ISDS) mechanism which is likely to be included in each of the aforementioned FTAs.

To add to our understanding of these various topics, we would like to invite you (or members of your staff) to appear before the commission. Our next meeting is scheduled for Thursday, May

Citizen Trade Policy Commission
c/o Office of Policy & Legal Analysis
State House Station #13, Augusta, ME 04333-0013 Telephone: 207 287-1670
<http://www.maine.gov/legis/opla/citpol.htm>

28, 2015 from 8:30 AM to 10:30 AM at Room 208 of the Cross Office Building in Augusta. We also anticipate scheduling other meetings to take place over the course of the summer and fall.

We look forward to your participation and welcome any comments or questions that you may have regarding a future opportunity to meet with the CTPC. Please feel free to contact either of us or CTPC staff person Lock Kiermaier (phone: 207 446 0651) to arrange such a meeting.

Sincerely,

Handwritten signature of Amy Volk in cursive, with a circled 'TC' to the right.

Senator Amy Volk, Chair

Handwritten signature of Robert Saucier in cursive, with a circled 'TC' to the right.

Representative Robert Saucier, Chair

Sen. Amy Volk, Chair
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STATE OF MAINE

Citizen Trade Policy Commission

May 19, 2015

The Honorable Angus King
United States Senate
4 Gabriel Dr Suite 3
Augusta, ME 04330

Re: Invitation to speak before the Maine Citizen Trade Policy Commission

Dear Senator King:

As you know, the Maine Citizen Trade Policy Commission was established in 2003 by the Maine State Legislature to, *“to assess and monitor the legal and economic impacts of trade agreements on state and local laws, working conditions and the business environment; to provide a mechanism for citizens and Legislators to voice their concerns and recommendations; and to make policy recommendations designed to protect Maine's jobs, business environment and laws from any negative impact of trade agreements.”* [10 MRSA §11 (3)].

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We appreciate the time you spent meeting with the CTPC Chairs on November 15, 2013. To add to our understanding of these various topics, we would like to again invite you (or members of your staff) to appear before the commission. Our next meeting is scheduled for Thursday, May 28, 2015 from 8:30 AM to 10:30 AM at Room 208 of the Cross Office Building in Augusta. We also anticipate scheduling other meetings to take place over the course of the summer and fall.

We look forward to your participation and welcome any comments or questions that you may have regarding a future opportunity to meet with the CTPC. Please feel free to contact either of us or CTPC staff person Lock Kiermaier (phone: 207 446 0651) to arrange such a meeting.

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Senator Amy Volk, Chair

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Representative Robert Saucier, Chair

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Lock Kiermaier

STATE OF MAINE

Citizen Trade Policy Commission

May 19, 2015

The Honorable Bruce Poliquin
United States House of Representatives
6 State Street
Suite 101
Bangor, ME 04401

Re: Invitation to speak before the Maine Citizen Trade Policy Commission

Dear Representative Poliquin:

As you know, the Maine Citizen Trade Policy Commission was established in 2003 by the Maine State Legislature to, *“to assess and monitor the legal and economic impacts of trade agreements on state and local laws, working conditions and the business environment; to provide a mechanism for citizens and Legislators to voice their concerns and recommendations; and to make policy recommendations designed to protect Maine's jobs, business environment and laws from any negative impact of trade agreements.”* [10 MRSA §11 (3)].

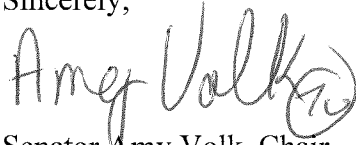
To accomplish its statutory responsibilities, the CTPC has met regularly in the intervening years to study and review the various Free Trade Agreements that have been negotiated or are in the process of being negotiated. To that end, we have taken an active role in communicating our concerns and viewpoints with you and other members of Maine's congressional delegation, the Governor, the Legislature and the United States Trade Representative.

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We look forward to your participation and welcome any comments or questions that you may have regarding a future opportunity to meet with the CTPC. Please feel free to contact either of us or CTPC staff person Lock Kiermaier (phone: 207 446 0651) to arrange such a meeting.

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Senator Amy Volk, Chair



Representative Robert Saucier, Chair

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Lock Kiermaier

STATE OF MAINE

Citizen Trade Policy Commission

May 19, 2015

The Honorable Susan Collins
United States Senate
68 Sewall Street, Room 507
Augusta, ME 04330
Re: Invitation to speak before the Maine Citizen Trade Policy Commission

Dear Senator Collins:

As you know, the Maine Citizen Trade Policy Commission was established in 2003 by the Maine State Legislature to, *“to assess and monitor the legal and economic impacts of trade agreements on state and local laws, working conditions and the business environment; to provide a mechanism for citizens and Legislators to voice their concerns and recommendations; and to make policy recommendations designed to protect Maine’s jobs, business environment and laws from any negative impact of trade agreements.”* [10 MRSA §11 (3)].

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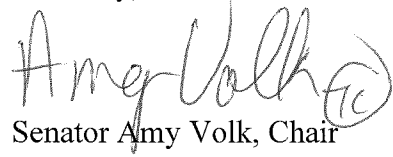
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Sincerely,


Senator Amy Volk, Chair


Representative Robert Saucier, Chair

Sen. Troy Jackson, Chair
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Lock Kiermaier

STATE OF MAINE

Citizen Trade Policy Commission

October 29, 2014

The Honorable João Vale de Almeida
Ambassador, European Union
2175 K Street,
NW, Washington, DC 20037

Re: Questions emanating from:

2014 TRADE POLICY ASSESSMENT

Prepared for the Maine Citizen Trade Policy Commission

Maine Agriculture and Food Systems in the
Transatlantic Trade and Investment Partnership

by Karen Hansen-Kuhn, Institute for Agriculture and Trade Policy and
John Piotti, Maine Farmland Trust

July 2014

<http://maine.gov/legis/opla/2014%20Final%20Assessment.pdf>.

Dear Ambassador Vale de Almeida:

The Maine Citizen Trade Policy Commission (CTPC) is established in Maine State Law “..to assess and monitor the legal and economic impacts of trade agreements on state and local laws, working conditions and the business environment; to provide a mechanism for citizens and Legislators to voice their concerns and recommendations; and to make policy recommendations designed to protect Maine's jobs, business environment and laws from any negative impact of trade agreements.” In seeking to fulfill its statutory mandate, the Commission voted unanimously during its meeting of October 7, 2014 to submit this letter to you respectfully requesting information about a certain agricultural trade topic in the Transatlantic Trade and Investment Partnership (TTIP). This request emanates from the 2014 Assessment that the CTPC commissioned earlier this year; this Assessment can be read in its entirety at the CTPC website which is referenced at the beginning of this letter.

This request for information is based on one of the questions raised by the authors of the 2014 Assessment. This particular question is conveniently summarized in the Executive Summary on page 2 of that document and can be paraphrased as:


Please provide a list of the specific Geographical Indications protections sought by the EU in the current TTIP negotiations.

Our interest in obtaining this information is based on our concerns about ensuring adequate protections for geographical Indications which are unique to the State of Maine such as Maine Lobster. In a letter dated October 17, 2014, we have also made a similar request to USTR Ambassador Michael Froman.

Citizen Trade Policy Commission
c/o Office of Policy & Legal Analysis
State House Station #13, Augusta, ME 04333-0013 Telephone: 207 287-1670
<http://www.maine.gov/legis/opla/citpol.htm>

We welcome any questions that you may have about this request and we look forward to hearing from you.

Sincerely,


Senator Troy Jackson, Chair ^{SH}


Representative Sharon Anglin Treat, Chair ^{SH}

cc:

USTR Ambassador Michael Froman

Cecilia Malmström, EU Commissioner for Trade

Senator Susan Collins

Senator Angus King

Representative Michael Michaud

Representative Chellie Pingree

Senator Eloise Vitelli, Chair, Joint Standing Committee on Agriculture, Conservation and Forestry

Representative James Dill, Chair, Joint Standing Committee on Agriculture, Conservation and Forestry

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Staff:
Lock Kiermaier

STATE OF MAINE

Citizen Trade Policy Commission

October 29, 2014

The Honorable Paul R. LePage
Office of the Governor
#1 State House Station
Augusta, ME 04333-0001

Re: Questions emanating from:
2014 TRADE POLICY ASSESSMENT
Prepared for the Maine Citizen Trade Policy Commission
Maine Agriculture and Food Systems in the
Transatlantic Trade and Investment Partnership
by Karen Hansen-Kuhn, Institute for Agriculture and Trade Policy and
John Piotti, Maine Farmland Trust
July 2014
<http://maine.gov/legis/opla/2014%20Final%20Assessment.pdf>.

Dear Governor LePage:

As you know, the Maine Citizen Trade Policy Commission (CTPC or Commission) is established in Maine State Law "...to assess and monitor the legal and economic impacts of trade agreements on state and local laws, working conditions and the business environment; to provide a mechanism for citizens and Legislators to voice their concerns and recommendations; and to make policy recommendations designed to protect Maine's jobs, business environment and laws from any negative impact of trade agreements."

In seeking to fulfill its statutory mandate, the Commission voted unanimously during its meeting of October 7, 2014 to submit this letter to you requesting certain information about the topic of procurement as it relates to the Transatlantic Trade and Investment Partnership (TTIP) which is currently being negotiated between the United States and member nations of the European Union. This request emanates from the 2014 Assessment that the CTPC commissioned earlier this year; we have previously provided your office with a copy of the Assessment which can also be viewed in its entirety at the CTPC website which is referenced at the beginning of this letter.

Our request for information is based on one of the suggestions raised by the authors of the 2014 Assessment. This suggestion pertaining to procurement is conveniently summarized in the Executive Summary on page 1 of that document. To paraphrase that suggestion:

Can you please provide us with information on any meetings or other communications that your office has had with EU or U.S. officials on potential procurement commitments under the trade agreement (TTIP), both in terms of possible risks to local foods programs and more generally to clarify the process of agreeing to those commitments at the state, county or city level?


Citizen Trade Policy Commission
c/o Office of Policy & Legal Analysis
State House Station #13, Augusta, ME 04333-0013 Telephone: 207 287-1670

As background, Commission members are concerned about the degree to which the TTIP may compromise or threaten the existence and effectiveness of state or locally authorized food procurement programs, which are quite important to the continued vitality of local agriculture within the State of Maine. Some months ago, it came to the attention of Commission members that EU officials, or representatives of EU member countries, may be directly contacting states seeking commitments to be bound by the procurement provisions in TTIP before these provisions have even been decided upon or made public. If this activity is in fact taking place, it would be highly inappropriate; such requests should come from our own federal government after informing the Intergovernmental Policy Advisory Committee (IGPAC), which advises the U.S. Trade Representative on issues affecting state governments.

As you know, Maine law (10 MRSA §13) requires that if the U.S. government provides the State with the opportunity to consent to or reject binding the State to a trade agreement, or a provision within a trade agreement, then an official of the State, including but not limited to the Governor, may only bind the State or give consent to the U.S. government to bind the State after consultation with the CTPC and with the Legislature's approval. In addition, Maine has specific procurement administrative rules for certain goods.

We appreciate your consideration of this request, which is intended to help the Commission carry out its advisory responsibilities on trade policy. We welcome any questions that you may have about this request and we look forward to hearing from you.

Sincerely,


Senator Troy Jackson, Chair


Representative Sharon Anglin Treat, Chair

cc:

Senator Susan Collins

Senator Angus King

Representative Michael Michaud

Representative Chellie Pingree

Senator Eloise Vitelli, Chair, Joint Standing Committee on Agriculture, Conservation and Forestry

Representative James Dill, Chair, Joint Standing Committee on Agriculture, Conservation and Forestry

John Butera, Senior Economic Advisor, Governor's Office

Sen. Troy Jackson, Chair
Sen. John Patrick
Sen. Roger Sherman
Rep. Sharon Treat, Chair
Rep. Jeff McCabe
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Staff:
Lock Kiermaier

STATE OF MAINE

Citizen Trade Policy Commission

October 17, 2014

The Honorable Michael Froman
United States Trade Representative
600 17th Street NW
Washington, DC 20508

Re: Questions emanating from:

2014 TRADE POLICY ASSESSMENT

Prepared for the Maine Citizen Trade Policy Commission

Maine Agriculture and Food Systems in the
Transatlantic Trade and Investment Partnership

by Karen Hansen-Kuhn, Institute for Agriculture and Trade Policy and
John Piotti, Maine Farmland Trust

July 2014

<http://maine.gov/legis/opla/2014%20Final%20Assessment.pdf>.

Dear Ambassador Froman:

The Maine Citizen Trade Policy Commission (CTPC) is established in Maine State Law "...to assess and monitor the legal and economic impacts of trade agreements on state and local laws, working conditions and the business environment; to provide a mechanism for citizens and Legislators to voice their concerns and recommendations; and to make policy recommendations designed to protect Maine's jobs, business environment and laws from any negative impact of trade agreements." In seeking to fulfill its statutory mandate, the Commission voted unanimously during its meeting of October 7, 2014 to submit this letter to you requesting information about certain agricultural trade topics in the Transatlantic Trade and Investment Partnership (TTIP). These questions emanated from the 2014 Assessment that the CTPC commissioned earlier this year; this Assessment can be read in its entirety at the CTPC website which is referenced at the beginning of this letter. In making this request for specific information about the TTIP negotiations, we respectfully note your publicly stated commitment to transparency and public participation in these and other ongoing trade negotiations.

Our requests for information are based on several of the questions raised by the authors of the 2014 Assessment. These questions are conveniently summarized in the Executive Summary on pages 1 and 2 of that document. With regards to the treatment of Food Safety within the ongoing TTIP negotiations, we pose the following questions:

1. Are commitments on food safety issues such as the use of chlorine rinses of poultry, Ractopamine in meat production and diphenylamine (DPA) on fruit being discussed within the TTIP negotiations on Sanitary and Phytosanitary Standards (SPS) or Technical Barriers to Trade (TBT), and, if so, would TTIP SPS or TBT requirements limit states' abilities to raise food safety standards?

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2. If those issues are not being addressed within the chapters on SPS or TBT, would they be covered under a chapter on regulatory coherence? How would regulatory coherence subordinate U.S. and Maine laws to protect public and environmental health in agriculture and food?
3. Is GMO labeling being discussed in TTIP and, if so, how would any commitments made affect Maine's GMO labeling laws?

In a previous letter to you dated February 24, 2014 (see attached copy), we specifically indicated our concern regarding the extent to which EU officials may be seeking commitments from state governments to be bound by procurement provisions in the TTIP and we further requested information from you regarding the extent to which the current TTIP negotiations may bind state and local governments to any procurement provisions included in the TTIP. The response dated July 3, 2014 that we received from Jewel James, Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Engagement did not specifically alleviate our concerns nor did it provide the substantive information that we were seeking about procurement provisions that are currently being negotiated in the TTIP talks. Therefore, we respectfully restate our concerns regarding procurement and request the following information:

4. To what extent are procurement commitments for Farm to School and other local foods programs being specifically protected in current TTIP negotiations?
5. What is the current USTR position on the EU's suggestion that federal grant funds used at the state level be opened up to European vendors?

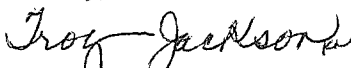
With respect to the topic of Geographical Indications, we request the following:

6. Please provide a list of the specific Geographical Indications protections sought by the EU in the current TTIP negotiations, as well as the specific USTR position on these requested protections.

Finally, we also wish to draw your attention to Maine's unique Dairy Stabilization Program. Through this program, Maine supplements prices established by the Federal Milk Marketing Order system with direct payments to dairy farmers in the state. This current situation is described in appropriate detail in pages 22 through 26 of the 2014 Assessment. The CTPC is extremely concerned that this delicate pricing structure, which has worked well over many years to maintain a stable dairy industry as well as consumer choice in the marketplace, could be subject to challenges under potential provisions that may be included in the TTIP. The uniqueness of this state program is an excellent example of the type of state and local sovereignty which could easily be overlooked by USTR negotiators in the ongoing TTIP negotiations. We strongly urge you to consider adequate protections to ensure that this and other important state programs do not come within the scope of the TTIP and that TTIP provisions may not be used to challenge this program.

We look forward to hearing from you.

Sincerely,



Senator Troy Jackson, Chair



Representative Sharon Anglin Treat, Chair

cc:

Senator Susan Collins

Senator Angus King

Representative Michael Michaud

Representative Chellie Pingree

Senator Eloise Vitelli, Chair, Joint Standing Committee on Agriculture, Conservation and Forestry

Representative James Dill, Chair, Joint Standing Committee on Agriculture, Conservation and Forestry

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

The Honorable Angus King
United States Senate
Washington, DC 20510

JUL 04 2014

Dear Senator King,

Thank you for your letter regarding the Maine Citizen Trade Policy Commission. We have received letters from them stating their views on several trade issues. I am happy to share with you the additional information my office has provided to them.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael", is positioned above the typed name.

Ambassador Michael B.G. Froman

Attachments:

1. Government Procurement
2. Pharmaceutical and Medical Device Reimbursement and IP Provisions
3. Investor State Dispute Settlement

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

July 3, 2014

Citizen Trade Policy Commission
c/o Office of Policy and Legal Analysis
State House Station #13
Augusta, ME 04333-0013

Dear Senator Jackson and Representative Treat:


Thank you for your letter regarding the Transatlantic Trade and Investment Partnership (T-TIP) negotiations. Input from stakeholders is a critical component of our trade policy-making. We recognize and appreciate the important role that states and localities play in our federal system of government and we have directly and pro-actively engaged Governors, Mayors, County Commissioners, and State Legislators, both individually and collectively as we have pursued the President's robust trade agenda. In addition, through our advisory committee system, we regularly consult with and seek advice from the Intergovernmental Policy Advisory Committee (IGPAC).

As your letter indicates, the European Union has expressed interest in expanded access to U.S. state-level government procurements. As you know, states manage their own procurement processes. As such, any discussion of sub-central coverage would be shaped by the direct involvement of our state governments.

You also identified concern about the exclusion of "procurements of any agricultural good made in furtherance of an agriculture support program or a human feeding program." We have received no indication that this is an EU interest in T-TIP, but we appreciate your raising this concern and welcome any additional information on this issue.

Thank you again for your interest in the T-TIP negotiations and active participation in related stakeholder events. We look forward to continuing to coordinate closely with you on this important issue.

Sincerely,



Jewel James
Assistant U.S. Trade Representative for
Intergovernmental Affairs and Public Engagement

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

July 3, 2014

Citizen Trade Policy Commission
c/o Office of Policy and Legal Analysis
State House Station #13
Augusta, ME 04333-0013

Dear Senator Jackson and Representative Treat:

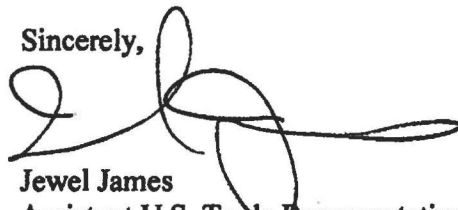
Thank you for your letter regarding the Trans-Pacific Partnership (TPP) negotiations. Input from stakeholders is a critical component of our trade policy-making. Over the past year, we have directly and pro-actively engaged Governors, Mayors, County Commissioners, and State Legislators both individually and collectively. In addition, through our advisory committee system, stakeholder events at negotiating rounds, notice and comment processes, public meetings, and direct submission of comment to USTR, our trade policy is developed with careful consideration of the broadest possible range of stakeholder perspectives.

As you know, ensuring access to affordable healthcare is a priority for this Administration. The TPP transparency provisions are geared towards promoting the kind of transparency and due process features that are already part of the U.S. system, such as publicly disclosing rules and guidelines and providing opportunities for public notice and comment (including from beneficiaries and the public at large), while leaving decisions regarding healthcare expenditures completely within the domain of each country's public health authority. These are straightforward provisions that will not prevent the U.S. Government from pursuing the best healthcare policy for its citizens, including future reforms or decisions on healthcare expenditures.

You also raised the issue of biologics. Among TPP countries, opinions vary on the best term of data protection and standards vary across the region. Some TPP countries currently have no data protection for biologic drugs. Some have five years, others have eight, and the standard under existing U.S. law is twelve years. Biologics offer great potential for new treatments and cures, however they also require enormous amounts of time and money to develop. Our aim on pharmaceutical IP issues is to strike a balance that incentivizes the costly research and development required to create new life-saving drugs, while also ensuring affordability and accessibility for the patients that need them.

Thank you for your interest in the TPP negotiations. We look forward to continuing our constructive dialogue on these important issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Jewel James", with a long horizontal flourish extending to the right.

Jewel James
Assistant U.S. Trade Representative for
Intergovernmental Affairs and Public Engagement

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

July 3, 2014

Citizen Trade Policy Commission
c/o Office of Policy and Legal Analysis
State House Station #13
Augusta, ME 04333-0013

Dear Senator Jackson and Representative Treat,

Thank for your letter regarding the Transatlantic Trade and Investment Partnership (T-TIP) negotiations. Input from stakeholders is a critical component of our trade policy-making. Over the past year, we have directly and pro-actively engaged Governors, Mayors, County Commissioners, and State Legislators, both individually and collectively. Through discussions such as these, as well as through our advisory committee system, stakeholder events at negotiating rounds, notice and comment processes, public meetings, and direct submission of comment to USTR, our trade policy is developed with careful consideration of the broadest possible range of stakeholder perspectives.

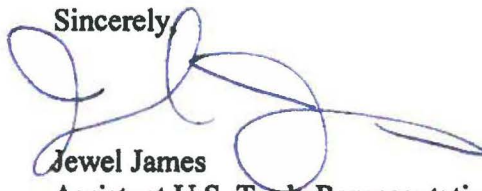
The U.S. approach to investment in trade agreements is based on a public model that was developed through a recently completed multi-year process of extensive stakeholder consultation, public meetings, *Federal Register* notice and public comment, and recommendations from groups representing academic, labor, environmental and other public and business interests. The European Commission has recently followed our lead with its own process. We fully support them.

As a result of our extensive consultations, which have been supplemented by numerous ongoing consultations in the T-TIP context, the United States is pursuing an approach to investment that seeks to facilitate job and growth-creating international investment, while ensuring that the U.S. Government, our state and local governments, and the governments of our trading partners are fully able to regulate in the public interest.

Your letter specifically raises investor-State dispute settlement (ISDS). ISDS is a process for resolving investor disputes that is grounded in established U.S. legal principles enshrined in our Constitution. I have attached a fact sheet that outlines the United States' approach to the investment provisions in our agreements and addresses the specific concerns you have raised. If the CTPC would like an in depth briefing on our investment policy, I am more than happy to facilitate a conversation with our negotiators who work on this issue.

Thank you again for your letter. We appreciate your views, and look forward to continuing our constructive dialogue on these important issues.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jewel James", with a long horizontal flourish extending to the right.

Jewel James
Assistant U.S. Trade Representative for
Intergovernmental Affairs and Public Engagement

The Facts on Investor-State Dispute Settlement: Safeguarding the Public Interest and Protecting Investors

The investment provisions that the U.S. has included in its trade agreements are different – and stronger – than the provisions in many other investment agreements in which the United States is not a participant. It's important to understand how U.S. agreements differ from other agreements that do not meet the same standards. Below are key facts about U.S. investment provisions:

They provide basic legal protections for American companies abroad that are based on the same assurances that the United States provides to both foreigners and Americans in the United States. Investment provisions are intended to prevent discrimination, repudiation of contracts, and expropriation of property without due process of law and appropriate compensation. These are the same kinds of basic protections that are already provided by U.S. law. Unfortunately, not all governments protect basic rights at the same level as the United States. Investment protections are intended to address that fact. They provide no new substantive rights for foreign or domestic investors.

They protect the right of governments to regulate in the public interest. The United States wouldn't negotiate away its right to regulate in the public interest, and we don't ask other countries to do so either. Our investment rules preserve the right to regulate to protect public health and safety, the financial sector, the environment, and any other area governments seek to regulate.

They ensure fair, unbiased, and transparent legal processes with independent, impartial, third party arbitration. The United States is committed to ensuring the highest levels of transparency in all investor-state proceedings. Investment hearings under recent U.S. trade and investment agreements, as well as all key documents, are public. Recent U.S. trade and investment agreements also give NGOs and other non-parties to a dispute the ability to participate by filing *amicus curiae* or "friend of the court" submissions.

They do not impinge on the ability of federal, state, and local governments to maintain (or adopt) any measure that they deem necessary. Nor do they expose state or local governments to new liability. Under our investment provisions, no government can be compelled to change its laws or regulations. In any disputes arising under our trade agreements, the federal government assumes the cost of defending the United States, even if they relate to state and local issues. As a country that plays by the rules and respects the rule of law, the United States has never lost a case and, in a number of instances, has been paid compensation by private parties.

They provide no basis to challenge laws just because they hurt a company's profits. Our investment rules do not in any way guarantee a firm's rights to any profits or to its projected financial outcomes. Rather, they only provide basic rights, such as non-discrimination and compensation in the event of an expropriation. Our investment rules seek to promote standards of fairness, not to protect profits.

They include strong safeguards to deter frivolous challenges to legitimate public interest measures. The United States is pursuing investment provisions with strong safeguards that include strict definitions of what is required for successful claims, as well as mechanisms for expedited review and dismissal of frivolous claims, consolidation of duplicative cases, and transparency. These

are some of the strongest safeguards in any of the nearly 3,200 investment agreements currently in force among 180 countries around the world.

ANGUS S. KING, JR.
MAINE

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(202) 224-5344
Website: <http://www.King.Senate.gov>

United States Senate

WASHINGTON, DC 20510

June 24, 2014

COMMITTEES:
ARMED SERVICES
BUDGET
INTELLIGENCE
RULES AND ADMINISTRATION

The Honorable Michael Froman
United States Trade Representative
600 17th Street NW
Washington D.C 20508

Dear Ambassador Froman

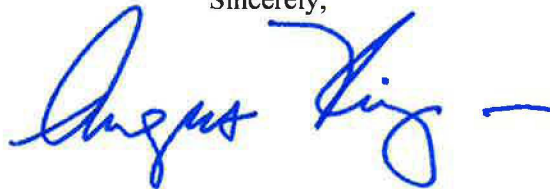
It has come to my attention that the State of Maine Citizen Trade Policy Commission requested a dialogue with you in three letters dated February 24, 2014. Established by Maine law, the Citizen Trade Policy Commission was formed “to assess and monitor legal and economic impacts of trade agreements on state and local laws, working conditions and the business environment; to provide a mechanism for citizens and Legislators to voice their concerns and recommendation; and to make policy recommendations designed to protect Maine jobs, business environment and laws from any negative impact of trade agreements.” These letters attached are in regard to different aspects of the current international trade treaty negotiations. These concerns include:

- Pharmaceutical and medical device reimbursement and intellectual property provisions in the TPP
- Negotiations in the TPP concerning procurement provisions affecting sub-central governments, and
- Support for Public Stocktaking Process on Investment and Investor-to-State-Dispute Settlement Policies.

I am concerned that they have not yet received a response, and am aware that in order to fulfill their mission and charge a response from your office is crucial. The issues addressed in these letters are of great importance to the state of Maine, and deserve a thorough analysis. I would encourage your office to actively engage with the Citizen Trade Policy Commission in order to explore their concerns. I respect how busy your schedule must be, but please find the time to address the letters enclosed.

Please feel free to contact my Senior Policy Advisor, Marge KilKelly if you need more information. You can contact her at marge_kilkelly@king.senate.gov, or 202-228-1467. Please provide copies of your response to the Commission to my office.

Sincerely,



ANGUS S. KING, JR.
United States Senator

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(207) 883-1588

Sen. Troy Jackson, Chair
Sen. John Patrick
Sen. Roger Sherman
Rep. Sharon Treat, Chair
Rep. Jeff McCabe
Rep. Bernard Ayotte

Robert Umphrey
Stephen Cole
Michael Herz
Dr. Joel Kase



John Palmer
Linda Pistner
Harry Ricker
Jay Wadleigh

Ex-Officio
Mike Karagiannes
Wade Merritt
Pamela Taylor

Staff:
Lock Kiermaier

STATE OF MAINE

Citizen Trade Policy Commission

June 13, 2014

Senator Angus S. King, Jr.
359 Dirksen Building
Washington, D.C. 20510

Dear Senator King,

We appreciated the recent opportunity to meet with Marge Kilkelly of your staff in May to discuss several letters sent by the CTPC to the USTR in February 2014 and other important trade issues. During that meeting, we specifically referenced the three enclosed letters that the CTPC sent to USTR Michael Froman on February 24, 2014. These letters addressed significant concerns that the Maine Citizen Trade Policy Commission had regarding differing aspects of current international trade treaty negotiations.

While we realize that the USTR is very busy conducting simultaneous negotiations for the TPP and the TTIP, the CTPC is disappointed that we have not received any response whatsoever from the USTR regarding these three letters which were unanimously approved by the CTPC. We would greatly appreciate any effort that you could make on our behalf to solicit a meaningful set of responses from the USTR to the important issues that the CTPC has raised.

More specifically, these letters addressed pharmaceuticals, procurement and Investor- Settlement Dispute Resolution and can be briefly summarized as follows:

- Pharmaceutical and medical device reimbursement and intellectual property provisions in the TPP : In this letter, the CTPC specified a number of concerns including:
 - opposition to pharmaceutical reimbursement provisions being included in any international trade treaty;
 - the need for transparency, affordability and recognition of the sovereignty of federal, state and local regulation in any healthcare reimbursement provisions included in the TPP; and
 - any Intellectual Property Chapter included in the TPP must reflect a balance between the need for ongoing innovation while at the same time ensuring affordability with respect to biologics

Citizen Trade Policy Commission
c/o Office of Policy & Legal Analysis
State House Station #13, Augusta, ME 04333-0013 Telephone: 207 287-1670
<http://www.maine.gov/legis/opla/citpol.htm>

This letter can be viewed at:

<http://www.maine.gov/legis/opla/CTPCpharmaceuticalslettertoUSTR.pdf>

- Negotiations in the TTIP concerning procurement provisions affecting sub-central governments: In this letter, the CTPC expressed its position that the Procurement Chapter of the TTIP must not restrict the ability of state government to procure and promote local agricultural products.

This letter can be viewed at:

<http://www.maine.gov/legis/opla/CTPCprocurementlettertoUSTR.pdf>

- Support for Public Stocktaking Process on Investment and Investor-to-State Dispute Settlement Policies: In this letter, with regards to the TTIP, the CTPC expressed its longstanding belief that ISDS provisions must reflect a much higher degree of transparency and the opportunity for meaningful public input and participation.

This letter can be viewed at:

<http://www.maine.gov/legis/opla/CTPC%20letter%20ISDS%20to%20USTR.pdf>

We also want to thank you for your support and ongoing interest in the activities of the CTPC.

Sincerely,



Senator Troy Jackson, Chair



Representative Sharon Anglin Treat, Chair

c.c.

Members of the CTPC

Marge Kilkelly, Senior Policy Advisor

Chris Rector, Regional Representative

Sen. Troy Jackson, Chair
Sen. John Patrick
Sen. Roger Sherman
Rep. Sharon Treat, Chair
Rep. Jeff McCabe
Rep. Bernard Ayotte

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Staff:
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STATE OF MAINE

Citizen Trade Policy Commission

Representative Dave Camp, Chair
House Ways and Means Committee
1102 Longworth House Office Building
Washington D.C. 20515

April 16, 2014

RE: Comments on President Obama's Trade Policy Agenda

Dear Chairman Camp and Committee Members,

The Maine Citizen Trade Policy Commission (CTPC) is established in Maine State Law "...to assess and monitor the legal and economic impacts of trade agreements on state and local laws, working conditions and the business environment; to provide a mechanism for citizens and Legislators to voice their concerns and recommendations; and to make policy recommendations designed to protect Maine's jobs, business environment and laws from any negative impact of trade agreements." In seeking to fulfill its statutory mandate, the Commission voted unanimously during its meeting of March 31, 2014 to submit this letter to you indicating our strongly held concerns regarding President Obama's Trade Policy Agenda. In particular, our comments will address the following topics: the President's proposal for Trade Promotion Authority, the Trans-Pacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (TTIP).

Trade Promotion Authority

Over the past several years, the CTPC has devoted considerable attention to the past use of "Fast Track Authority" and has reviewed the current version of Fast Track as represented in the Bipartisan Congressional Trade Priorities Act of 2014 put forward by the Finance and Ways and Means Committees. After a careful review of all the factors that surround this topic, the CTPC has consistently opposed the approach represented by past trade promotion authority and has concluded that the current proposal does not sufficiently address our concerns.

The views of the CTPC and of the Maine Legislature concerning trade promotion authority are expressed clearly in the 2013 Joint Resolution which was sponsored by the CTPC chairs. Specifically, this Resolution states that the current process of trade policy consultation with U.S. states by the Federal Government "*fails to provide a way for states to meaningfully participate in the development of trade policy, despite the fact that trade rules could undermine state sovereignty*" and urges the President, the USTR and Congress to "*seek a meaningful consultation system that increases transparency, promotes information sharing, allows for timely and frequent consultations, provides state-level trade data analysis, provides legal analysis for states on the effect of trade on state laws, increases public*

participation and acknowledges and respects each state's sovereignty”.

The CTPC favors a middle ground approach to congressional consultation and approval which provides for adequate congressional review while at the same time allows the USTR the necessary flexibility to negotiate complicated international trade treaties like the TPP and the TTIP. The pending trade promotion authority proposals do not achieve this standard. This Resolution (HP 1129) was passed unanimously by the Maine Legislature and can be referenced in its entirety at the following address: <http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=HP1129&item=1&snum=126>

Trans-Pacific Partnership (TPP)

The CTPC has also spent a great deal of time learning about the TPP and monitoring the progress of the treaty as negotiations near completion. The CTPC has serious reservations about several provisions of the TPP, to the extent that we can know about the details of this agreement, which is being negotiated in secrecy and the text of which remains confidential. In particular, we have raised concerns about provisions that would greatly reduce or eliminate footwear tariffs; procurement provisions that may bind state and local governments without their consent; provisions that interfere with the State's authority to protect the public health by regulating tobacco; provisions that threaten the continued availability of reasonably priced pharmaceuticals; and the overall threat to the sovereignty of state legislative and judicial authority represented by the use of Investor State Dispute Settlement (ISDS) mechanisms.

Footwear Tariff Reductions. The tariff reductions proposed by Vietnam within the TPP could dramatically affect the domestic production of rubber and plastic footwear to the extent that such production would in all likelihood disappear. Maine continues to have three footwear manufacturing facilities that are critically important to the continuation of our already much-reduced manufacturing base. We need the jobs in these factories-- that's the bottom line. Maine lost 32,196 manufacturing jobs (or 38.6 percent) from 1994-2011, according to Bureau of Labor Statistics figures. This figure is for total manufacturing employment, so it takes into account both jobs created by exports and jobs displaced by imports, among other causes of net job change. There is no question that many of these job losses, indeed a majority, are trade-related. Federal figures show that 21,101 workers were certified as having lost their job due to imports or offshoring under the Trade Adjustment Assistance (TAA) Program. This program has stringent rules and by no means reflects the complete picture of job losses related to free trade agreements.

It is critical that we stop these job losses and maintain tariffs that after all, reflect the differences in working conditions, environmental rules, and wage costs in Vietnam and other TPP countries such as Malaysia. These countries are already expanding their share of U.S. manufacturing without reducing tariffs.

Tobacco Controls. The CTPC is required to conduct a biennial assessment of the impacts of international trade treaties on Maine. With regards to tobacco controls within the TPP, the 2012 CTPC Assessment concluded that:

If TPPA chapters follow the model of existing free trade agreements (FTAs), tobacco companies could use several of them to undermine or challenge tobacco controls. The chapters include:

- 1. Investment – would give greater rights to foreign investors to challenge regulations outside of domestic courts. PMI is using investor rights to seek compensation for “indirect expropriation” of its trademarks by Uruguay and Australia.*
- 2. Intellectual property – would provide (as proposed by the United States) a new right to use elements of trademarks (e.g., non-origin names that refer to a place like Salem and Marlboro).*

3. *Cross-border services* – would expand the number of laws covered by trade rules that limit regulation of tobacco-related services such as advertising, distribution and display of products.
4. *Regulatory coherence* – would create obligations to involve tobacco companies (“stakeholders”) in policy-making, which could undermine an FCTC obligation to limit the influence of tobacco companies.
5. *Tobacco tariffs* – would reduce tariffs to zero (as proposed by the United States) for a range of tobacco products. Several TPPA countries have relatively high tobacco tariffs, which inhibit expansion by international tobacco companies.(page ii)

A complete copy of the 2012 CTPC Assessment can be viewed at the following location:

<http://www.maine.gov/legis/opla/CTPC2012finalassessment.pdf>

As a follow-up to the findings of the 2012 CTPC Assessment, the CTPC sent a letter dated August 1, 2012 to USTR Ron Kirk, which summarized our concerns about the potential treatment of tobacco in the TPP. The following excerpt from that letter, which was reasserted in a letter to Ambassador Michael Froman dated August 22, 2013, continues to represent our viewpoint:

- *We favor a complete “carve out” of tobacco from the trade provisions of the TPPA; in other words, we would prefer that any regulations or laws pertaining to tobacco be completely excluded from the TPPA. The CTPC believes strongly that the efforts of individual nations to control tobacco and combat its adverse health effects should not be interfered or impeded in any way by provisions of the TPPA or any other international trade agreement;*
- *Absent a complete “carve out” of tobacco from the TPPA, we favor an approach which modifies the purported compromise proposal being made by the USTR; more specifically, the CTPC favors an approach which ensures that all federal and state laws and regulations pertaining to tobacco regulation are not subject to jurisdiction under the TPPA and further that any tobacco-related provisions of the TPPA embrace an approach which minimizes potential litigation be it through local, state or federal court and the possible use of “investor-state” dispute settlement systems; and*
- *Finally, the CTPC requests that the USTR develop a clear public statement on the specifics on the specific elements of a tobacco-related provision, as they are proposed by the USTR for consideration as a part of the TPPA.*

A complete copy of the text of this letter can be viewed at:

<http://www.maine.gov/legis/opla/ctpc/tobaccotraderletter.pdf>

Access to Affordable Medicines. The continued availability of affordable pharmaceuticals as a topic within the TPP remains of grave concern. Recently, in a letter to Ambassador Froman dated February 24, 2014, we stated: *“The CTPC has never supported including pharmaceutical reimbursement provisions in any trade agreement... because these provisions reduce access to affordable medicines and insert policy into trade agreements that is best left to domestic regulation.”* This letter may be accessed online here: <http://www.maine.gov/legis/opla/CTPCpharmaceuticalslettertoUSTR.pdf> . The CTPC has yet to receive any response to this letter.

The 2012 CTPC Assessment concluded that *“After years of consultation with the drug companies, USTR has proposed a Health Annex for the TPPA that requires reimbursement programs to shift to “market-derived” pricing rules and procedures that give drug companies an opportunity to litigate against the programs that are now working to contain costs. The proposal is drawing fire as a boon to drug companies that are seeking to roll back cost-containment in other countries and foreclose reforms in the United States. (page iii).*

The CTPC continues to endorse the reservations that we stated in an August 1, 2012 letter sent to USTR Ron Kirk about pharmaceutical pricing:

- *CTPC members voted to cite previous communications to the USTR regarding the treatment of pharmaceuticals in international trade treaties. In particular, we have also enclosed a letter dated February 12, 2010 which was addressed to Ms. Jennifer Choe Groves within the USTR. In that letter, the CTPC:*
 - *Voiced its support for evidence-based reimbursement decisions to restrain pharmaceutical prices;*
 - *Endorsed the continued state use of Preferred Drug Lists to also reduce pharmaceutical prices; and*
 - *Opposed any promotion of international restrictions on domestic pharmaceutical pricing programs.*
- *More specifically, the CTPC is unanimous in our support for the inclusion of a footnote in the TPPA and other trade agreements which “carves out” federal reimbursement programs such as Medicaid, 340 B and Medicare Part B;*
- *The CTPC also voted unanimously to support provisions in the TPPA and other international trade agreements which emphasize, allow for and encourage the overall affordability of pharmaceuticals in each affected country; and*
- *Finally, the CTPC requests that the USTR develop a clear public statement on the specific elements of a pharmaceuticals-related provision, as they are proposed by the USTR for consideration as a part of the TPPA.*

The complete text of the August 1, 2012 letter can be viewed at:

<http://www.maine.gov/legis/opla/CTPCpharmaceuticalstradeletter.pdf>

Procurement. The CTPC has taken the position that U.S. states, as sub-central entities, should be explicitly excluded from any procurement provisions in trade agreements. Maine has comprehensive rules governing its own procurement policies, including recycled content standards for various products to promote reuse and recycling, and a Purchasing Code of Conduct requiring certification of “sweat free” labor practices for suppliers of apparel, textiles and footwear, pursuant to 5 MRSA Section 1825-O. A 2009 Maine law provides that the Governor may not unilaterally bind the state to any trade agreement, including procurement provisions, but must consult with the CTPC and the Maine International Trade Center, and receive legislative authorization to enter into the trade agreement. The 2012 Assessment referenced above analyzes potential TPP procurement provisions at p.29-33, and our position on the TPP and procurement remains unchanged from that stated in our August 1, 2012 letter to Ambassador Kirk. That letter can be accessed here: <http://www.maine.gov/legis/opla/CTPCprocurementtradeletter.pdf>

Transatlantic Trade and Investment Partnership (TTIP)

Most of the concerns held by the CTPC previously expressed in these comments also apply to the TTIP. To briefly reiterate, we are opposed to any lessening in the availability of reasonably priced pharmaceuticals, trade-based threats to existing and future state and federal tobacco health laws and regulations, procurement provisions that bind state entities without consent, and the serious threat to national and state sovereignty posed by the inclusion of ISDS mechanisms in the TTIP.

Investor-State Dispute Settlement. The CTPC recently articulated its concerns about the potential inclusion of ISDS in TTIP in a letter to Ambassador Froman dated February 24, 2014, and called for greater transparency and a period of public consultation about the inclusion of ISDS provisions in Free Trade Agreements including the TTIP:

As you know, concerns about overbroad investor protections, and about the ISDS process in particular, are long-standing. ISDS provides foreign investors the right to bypass domestic courts (including constitutionally-created Article III courts) and challenge the U.S. government directly before an international arbitration tribunal; a right that home-grown investors do not share. The ISDS panels are neither democratically selected nor accountable to any public- nor are they required to consider basic principles of U.S. law (such as sovereign immunity or the "rational basis" standard), nor must they weigh the public interest against the alleged violation of an investor's rights. Under this system, the U.S. government can only be a defendant (the investor takes on no corresponding responsibilities), and even when the U.S. government "wins," the U.S. people lose because valuable government resources (an average of \$8 million a case) are expended to defend these often meritless claims.

A complete copy of this letter can be viewed at:

<http://www.maine.gov/legis/opla/CTPC%20letter%20ISDS%20to%20USTR.pdf>

Regulatory Harmonization. In addition, we have a particular concern with proposed regulatory harmonization and effectively, preemption of state regulations including environmental laws, under the investment chapter of TTIP. To the extent the TTIP seeks to harmonize regulations, it is essential that regulations are harmonized upward. Further, governments – including U.S. state governments that in our federalist system share environmental regulatory authority with the federal government – must have the flexibility to develop more ambitious environmental policies in the future. Unfortunately, European Union negotiators and many U.S. industries have explicitly targeted state regulations for preemption in TTIP, and have publicly asserted their intent to use this trade agreement to drive a deregulation agenda.

As discussed above, the potential for “investor-state” provisions in the TTIP raises particular concerns for the ability of states to protect the environment and natural resources. We know from the implementation of the North American Free Trade Agreement (NAFTA), and its investor-state dispute provisions, that corporate challenges under the investment chapter are frequently focused on environmental regulations and policies. Past and current WTO and NAFTA cases against Canadian provinces and U.S. states have included challenges to zoning and regulation of mining, renewable energy policy including local content requirements, regulating toxics in groundwater, and water pollution permitting – all subjects over which state governments have jurisdiction.

Local Agriculture and Food Initiatives. The State of Maine and many local governments have proactively promoted “Buy local” and “Maine Made” programs including Farm to School, Farm to Hospital and other initiatives aimed at sourcing healthy, local and regional foods into institutions as a way of enhancing nutritional and other health outcomes for consumers, supporting local economies, and improving farm profitability. The CTPC is concerned that proposals being advanced in the TTIP negotiations could restrict or even eliminate criteria that favor local or regionally-grown foods as “localization” barriers to trade. The CTPC opposes any provisions in the TTIP that would limit preferences in public procurement programs for healthy, locally grown foods, and communicated its concerns to Ambassador Froman in a recent letter dated February 24, 2014, which may be read in its entirety here: <http://www.maine.gov/legis/opla/CTPCprocurementlettertoUSTR.pdf>

To follow up on these concerns, for its 2104 Trade Assessment, the CTPC is commissioning a report to be jointly conducted by the Institute for Agriculture and Trade Policy and the Maine Farmland Trust on the potential impact of procurement and other provisions on our agriculture policies. The CTPC notes that the EU has been clear in the TTIP negotiations about its intention to preempt state laws that are stricter or different from federal law, and also that the EU seeks to bind states through the procurement chapter. The CTPC opposes that proposal and believes that decisions on whether to bind states on procurement should be left to the individual states.

Finally, additional perspectives on other trade topics that are prominently mentioned in President Obama's 2014 Trade Agenda are included as Exhibit 1 in the attached testimony about the TTIP provided by CTPC Co-Chair Representative Sharon Anglin Treat to the USTR in May of 2013. These trade topics include opinions on investment, services and regulatory coherence, insurance, environmental protections, and access to health care. The perspectives provided in this testimony reflect the current viewpoints of the CTPC.

Thank you for the opportunity to present our viewpoints on President Obama's Trade Agenda. Please feel free to contact us with any questions that you may have.

Sincerely,

Senator Troy Jackson, Chair

Representative Sharon Anglin Treat, Chair

Sen. Troy Jackson, Chair
Sen. John Patrick
Sen. Roger Sherman
Rep. Sharon Treat, Chair
Rep. Jeff McCabe
Rep. Bernard Ayotte

Robert Umphrey
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Michael Herz
Dr. Joel Kase



John Palmer
Linda Pistner
Harry Ricker
Jay Wadleigh

Ex-Officio
Mike Karagiannes
Wade Merritt
Pamela Taylor

Staff:
Lock Kiermaier

STATE OF MAINE

Citizen Trade Policy Commission

Exhibit 1

**Comments on the Trans-Atlantic Trade and Investment Partnership (TTIP):
Concerns of State and Local Governments
Provided by Maine Representative Sharon Anglin Treat
Federal Register Docket Number USTR-2013-0019
<https://federalregister.gov/a/2013-07430>**



STATE OF MAINE
HOUSE OF REPRESENTATIVES
126th LEGISLATURE

May 10, 2013

Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508

**Comments on the Trans-Atlantic Trade and Investment Partnership (TTIP):
Concerns of State and Local Governments
Provided by Maine Representative Sharon Anglin Treat
Federal Register Docket Number USTR-2013-0019
<https://federalregister.gov/a/2013-07430>**

Thank you for the opportunity to provide written comments on the proposed Transatlantic Trade and Investment Partnership (TTIP). I am a legislator serving my 11th term in the Maine Legislature, currently in the Maine House of Representatives, having also served in the Maine Senate. I co-chair the Maine Citizen Trade Policy Commission, and am House Chair of the Legislature's Joint Standing Committee on Insurance & Financial Services Committee. I am also a cleared advisor representing Maine on the Intergovernmental Policy Advisory Committee to the U.S. Trade Representative.

While these written comments are provided in my individual capacity, the positions taken herein reflect policy that has been previously adopted by the Maine Citizen Trade Advisory Council (CTPC) and communicated to the USTR as well as our Congressional delegation. These comments on the TTIP draw extensively from the position papers and letters of the CTPC, as well as Joint Resolutions adopted by the Maine Legislature, which are posted on our website, addressing issues including procurement, tobacco regulation, pharmaceutical reimbursement and pricing, investment policies and dispute resolution, as well as insurance, consumer and environmental regulation, and trade promotion authority.

I intend to present oral testimony at the hearing scheduled for May 29-30, and at that time may be presenting on behalf of the Maine Citizen Trade Policy Commission, following consultation with the full Commission at its regularly scheduled meeting later this month.

Background. The Citizen Trade Policy Commission (CTPC) provides an ongoing state-level mechanism to assess the impact of international trade policies and agreements on Maine's state and local laws, business environment and working conditions. It was established in 2003 by PL

2003, Chapter 699. The 22 member Commission includes six legislators, an Attorney General designee, five non-voting agency officials representing the Department of Labor, the Department of Health and Human Services, the Department of Environmental Protection, The Maine International Trade Center, the Department of Agriculture, Food and Rural Resources, and 10 public members representing business, labor, health, farming, government and environmental interests.

The CTPC's statutory mandate was amended by PL 2007, Chapter 266 to require that the Commission hold regular meetings, gather information from the public through hearings, submit an annual report on its activities, and conduct a biennial assessment on the impacts of international trade agreements on Maine. All of the CTPC's annual assessments, reports, letters, press releases and meeting agendas, as well as related legislation, are posted on its website, and may be accessed here: <http://www.maine.gov/legis/opla/citpolassessments.htm>.

Comments on specific issues or potential chapters of the TTIP:

PROCUREMENT

The Maine CTPC has consistently endorsed the position that coverage of U.S. states as sub-central entities should be *explicitly excluded* from any procurement provisions in trade agreements. The CTPC was established by statute as a direct consequence of legislation addressing state procurement of "sweat free" products and concern about labor standards in our trading partners. Maine has comprehensive rules governing its own procurement policies, including recycled content standards for various products to promote reuse and recycling, and the state has adopted a Purchasing Code of Conduct requiring certification of "sweat free" labor practices for suppliers of apparel, textiles and footwear, pursuant to 5 MRSA Section 1825-O.

In order to assure that these Maine-specific rules are in fact complied with, the State has also enacted a law governing the authority and procedure that must be followed in order to bind the State of Maine to any procurement rules adopted in any trade agreement. Since 2009, the Governor may not unilaterally bind the state to any trade agreement, but must consult with the CTPC and the Maine International Trade Center, and the Legislature must pass a law authorizing the Governor to enter into the trade agreement, see Public Law, Chapter 385 H.P. 876 - L.D. 1257, "An Act To Require Legislative Consultation and Approval Prior to Committing the State to Binding International Trade Agreements" which reads as follows:

"Sec. 1. 10 MRSA §13 is enacted to read:

§ 13. Legislative approval of trade agreements

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Commission" means the Citizen Trade Policy Commission established in Title 5, section 12004- I, subsection 79-A.

B. "Trade agreement" means an agreement reached between the United States Government and any other country, countries or other international political entity or entities that proposes to regulate trade, procurement, services or investment among the parties to the agreement. "Trade agreement" includes, but is not limited to, any agreements under the auspices of the World Trade Organization, all regional free trade agreements, including the North American Free Trade Agreement and the Central America Free Trade Agreement and all bilateral agreements entered into by the United States, as well as requests for binding agreement received from the United States Trade Representative.

2. State official prohibited from binding the State. If the United States Government provides the State with the opportunity to consent to or reject binding the State to a trade agreement, or a provision within a trade agreement, then an official of the State, including but not limited to the Governor, may not bind the State or give consent to the United States Government to bind the State in those circumstances, except as provided in this section.

3. Receipt of request for trade agreement. When a communication from the United States Trade Representative concerning a trade agreement provision is received by the State, the Governor shall submit a copy of the communication and the proposed trade agreement, or relevant provisions of the trade agreement, to the chairs of the commission, the President of the Senate, the Speaker of the House of Representatives, the Maine International Trade Center and the joint standing committees of the Legislature having jurisdiction over state and local government matters and business, research and economic development matters.

4. Review by commission. The commission, in consultation with the Maine International Trade Center, shall review and analyze the trade agreement and issue a report on the potential impact on the State of agreeing to be bound by the trade agreement, including any necessary implementing legislation, to the Legislature and the Governor.

5. Legislative approval of trade agreement required. Unless the Legislature by proper enactment of a law authorizes the Governor or another official of the State to enter into the specific proposed trade agreement, the State may not be bound by that trade agreement."

By letter to USTR dated August 1, 2012, the Maine CTPC has also stated support for permitting "Buy America" provisions in state and federal laws and regulations (see letter posted here: <http://www.maine.gov/legis/opla/CTPCprocurementtradeletter.pdf>). The letter states in pertinent part that the CTPC and State of Maine favor a policy that leaves to the U.S. states the decision whether and to what extent to be subject to the procurement provisions of trade agreements. Maine also commissioned a study of potential procurement impacts on the State from trade agreements broadly and the TPP specifically (see pages 27-34 of the CTPC's 2012 Trade Assessment, posted at: <http://www.maine.gov/legis/opla/CTPC2012finalassessment.pdf>).

Procurement provisions in any trade agreement, including the proposed TTIP, must not bind states without their explicit approval (opt-in) so that state "Buy American," "sweat free" and other procurement rules continue to be enforceable.

INVESTMENT

An investment chapter in the TTIP would provide both substantive investor protections and a process for investor-state dispute settlement. EU countries have entered into about 1,200 investment treaties, and the United States about 60 (counting treaties and investment chapters of FTAs). Most of these are with developing countries; they give a legal advantage to the EU or U.S. investor to challenge laws in a developing country. That one-sided advantage disappears in an investment agreement between the EU and the United States. In virtually all sectors, corporations are invested in subsidiaries on both sides of the Atlantic (valued at \$US 3.7 trillion). Thus, if TTIP includes an investment chapter, corporations would have standing to challenge whichever side of the Atlantic is more progressive (less favorable to investors).

The goal set by the TTIP High-Level Working Group is to harmonize differences between U.S. and EU investor protections in favor of the most investor-friendly side of the Atlantic. This

would have the effect of canceling a decade of incremental reform in U.S. trade and investment agreements, for which the Maine CTPC has been a consistent advocate. These reforms include:

- **Expropriation** – an annex to clarify that except in rare circumstances, regulations that serve a public welfare objective do not constitute an indirect expropriation.
- **Fair and equitable treatment** – a clarification that FET is limited to the standard of treatment that is required by Customary International Law (CIL), which means that governments must only compensate investors when there is a state practice of doing so out of a sense of legal obligation.

Even with these reforms, the investor rights are unnecessarily vague. Yet the EU's investment treaties are worse; they give more power to arbitrators to ignore state practice and compensate investors based on doctrines developed by arbitrators. By favoring the most investor-friendly version, the goals of TTIP flatly ignore the limited progress that the United States has made to clarify the scope of foreign investor rights.

Investment rules and the investor-state dispute resolution system have been justified on the grounds that they protect foreign investors from the discriminatory or capricious actions of the host government, or protect investors from poorly performing or inefficient domestic courts. Independent, capable, and fair judicial systems are well-established in both the U.S. and the EU. There is simply no reasonable justification for including an investment chapter in the TTIP.

Considering that the rule of law and judicial systems are well-developed on both sides of TTIP negotiations, there is no place for an investment chapter in the TTIP.

SERVICES AND REGULATORY COHERENCE

On a number of occasions, the Maine CTPC has commended USTR for paying close attention to WTO negotiations on services and for opposing proposals from other countries that would limit the regulatory authority of state and local governments. This is especially important with respect to essential services that are regulated by states and provided by local governments (e.g., insurance, health care facilities, licensing of professionals, waste management, distribution of energy, etc.). In the Trans-Pacific negotiations, some of the WTO proposals have resurfaced in a new chapter on "regulatory coherence." For example, the chapter promotes use of regulatory impact assessments that apply cost-benefit analysis in ways that are not consistent with state-level regulation of public utilities and other service providers.

The chapters on services and regulatory coherence are highly sensitive in light of our federal system and principles of dual sovereignty. U.S. negotiators risk ruining years of good will if they proceed to negotiate these chapters in the TTIP with the lack of transparency demonstrated in the Trans-Pacific process.

INSURANCE

Particularly with respect to regulation of services relating to insurance, the State of Maine has taken a strong position that trade and investment agreements must not limit state authority. Insurance regulation is primarily, and almost exclusively, a state-level activity. Maine has a strong interest in preserving its role as the primary regulator of the insurance industry providing services in the states, and in maintaining authority to set reserve standards to assure solvency of the industry and consumer protections, to perform market conduct exams, to require disclosure

of insurance policy terms, to seek redress through enforcement actions, and to exclude insurance policies and insurers from the market that do not meet these state standards.

The Maine Citizen Trade Policy Commission opposed the creation of a federal insurance office with powers to declare state insurance laws preempted by trade agreements, both pending and ratified (see letter of April 16, 2010 to Senator Christopher Dodd, posted here: <http://www.maine.gov/legis/opla/citpoltradedocs.htm>). Maine's Insurance Superintendent testified before Congress on these issues, and our Attorney General wrote to oppose the provisions. States throughout the country opposed these federal trade preemption provisions through the testimony of the National Association of Insurance Commissioners. That proposal was defeated, and the Federal Insurance Office that was established in the Dodd-Frank Act is purely advisory. TTIP should not include any provisions that subvert this state-federal regulatory balance.

The USTR should not include in any trade agreement, including the proposed TTIP, any provisions that limit or remove from U.S. state regulation insurance and other financial products and services currently regulated by the states.

TOBACCO CONTROL

Maine has some of the strongest tobacco control laws in the country, including tobacco taxes intended to reduce tobacco use and encourage and assist cessation. Maine was one of the 46 states and 5 territories that sued the tobacco industry and entered into a global settlement with the defendants. That settlement not only provides ongoing funding to the state's tobacco cessation and prevention efforts, it also established the regulatory framework codified in federal law. Since 1997 to 2005, rates for adults who smoke decreased from 30% to 21%, and the rate among high school students plunged nearly 60%. Maine has received national recognition for its impressive outcomes in tobacco prevention in schools, workplaces, communities and retail stores.

The continued success of these efforts is incredibly important to Maine policymakers, the medical and public health community and the parents of our youth. It is vital that tobacco be treated as a special case by our trade rules, and that the proposed TTIP include tobacco exception language that is clear, broad in scope, and effective. It must not preclude new policies in response to changes in our understanding of not only the science of addiction and health impacts, but also of marketing and psychology. It must be able to respond to the ever-evolving strategies and products of the tobacco industry as that global industry adapts to changing regulations and understanding.

For these reasons, and the actions of Philip Morris International (PMI) challenging tobacco regulations adopted in Uruguay and Australia using investor-state arbitration provisions, the Maine Citizen Trade Policy Commission wrote to the U.S. Trade Representative in a letter dated November 19, 2010 calling "for tobacco be carved out of TPP and any future trade agreement."

Unless there is a clear carve-out, a TTIP investment chapter would give PMI standing to challenge tobacco-control measures in the EU, as it would give British American Tobacco (BAT) standing to challenge measures in the United States.

One goal of TTIP is to eliminate tariffs, including tariffs on tobacco products. U.S. tariffs on cigarettes are 41.7 cents/kg + 0.9% (bound and applied rates); EU tariffs are 10% ad valorem (bound and applied rates). (WTO, Tariff Analysis Online)

U.S. trade negotiators have a history of negotiating tariff reductions in order to promote market access on behalf of tobacco companies. For many years, the U.S. Congress has adopted the Durbin and Doggett Amendments to appropriations acts; they prohibit federal agencies from promoting “the sale or export of tobacco or tobacco products” or seeking “the reduction or removal by any foreign country of restrictions on the marketing of tobacco or tobacco products, except for restrictions which are not applied equally to all tobacco or tobacco products of the same type.” President Clinton issued Executive Order 13193 in 2001 to make clear that the prohibition applies to all executive agencies and “the implementation of international trade policy.”

It is hard to avoid the conclusion that the purpose of eliminating tobacco tariffs is to promote tobacco trade or to provide tobacco companies with a windfall. For U.S. negotiators to do so in the TTIP would violate the Doggett Amendment and the Clinton Executive Order. Eliminating tariffs will also reduce the cost of tobacco products generally and undermine the efforts of Maine and other states to reduce tobacco use through steep taxes, a policy with proven effectiveness, particularly in reducing youth smoking.

USTR has vetted (but not yet proposed) an exception in the Trans-Pacific negotiations for regulations that restrict tobacco trade. The exception would apply only to regulations issued by health authorities, not to legislation; it would not apply to regulations adopted by tax, custom, or licensing authorities such as those at the state level. In short, the U.S. proposal is so narrow it would protect only the U.S. Food and Drug Administration, but not the states; and it would require a scientific burden of proof that exceeds the burden in the WTO health exception under GATT and GATS.

The Maine Citizen Trade Policy Commission has taken the position that it is more effective to simply exclude tobacco-control measures from all future trade agreements, including the TTIP. Whereas an exception requires extensive litigation to work as a defense, an exclusion (also called a carve-out) limits litigation to the preliminary question of whether a measure is covered.

ENVIRONMENTAL PROTECTIONS

To the extent the TTIP seeks to harmonize regulations, it is essential that regulations are harmonized upward. Further, governments – including U.S. state governments that in our federalist system share environmental regulatory authority with the federal government – must have the flexibility to develop more ambitious environmental policies in the future.

Of great concern with respect to the TTIP is the fact that the inclusion of so-called “national treatment for trade in gas” would remove the ability of the U.S. Department of Energy to review, condition, or deny exports of US liquid natural gas (LNG) to EU countries. Automatic exports of U.S. LNG to the EU, a significant importer of natural gas, would likely expand hydraulic fracturing (fracking), across the country and lead to higher domestic electricity prices, affecting consumers, U.S. manufacturing, and U.S. jobs.

The potential for “investor-state” provisions in the TTP raises particular concerns for the ability of states to protect the environment and natural resources. We know from the implementation of the North American Free Trade Agreement (NAFTA), and its investor-state dispute provisions, that corporate challenges under the investment chapter are frequently focused on environmental regulations and policies. Past and current WTO and NAFTA cases against Canadian provinces and U.S. states have included challenges to fracking moratoria, zoning and regulation of mining, renewable energy policy including local content requirements, regulating toxics in groundwater, and water pollution permitting – all subjects over which state governments have jurisdiction.

The current trade negotiation process is neither transparent nor inclusive, with negotiations taking place behind closed doors and confidential texts shared with very few state policymakers or advocates for public health and the environment. Currently, state and local officials have limited access to vital information about trade policy decisions, and no meaningful role in forming U.S. positions for trade negotiations - even though they are required to conform their democratically-enacted domestic policies to the constraints and priorities set in trade and investment pacts such as the TTIP.

The CTPC, a state government authority, has experienced over many years great difficulty even in scheduling timely briefings on USTR policies and activities, and there are limited opportunities for the Commission to influence the U.S. trade agenda and specific negotiations.

The TTIP should not override state authority to regulate environmental concerns when those state policies meet the legal standards in the U.S. Constitution.

ACCESS TO HEALTHCARE

State officials, including the Maine CTPC, have repeatedly warned the USTR over the past several years about the harm to U.S. health programs that will follow from the use of trade policy to restrict foreign and domestic medicine pricing programs. These concerns have been raised with respect to the Australia-US FTA, the Korea-US FTA and the Trans-Pacific Partnership Agreement.¹

The Maine Citizen Trade Policy Commission recently commissioned a statutorily required biennial Assessment of the potential impact of trade policy on Maine’s citizens, economy, laws and policies. The Assessment concluded that the impact of proposed provisions in the TPPA on pharmaceutical pricing in Maine, and on access to healthcare, could be significant. The analysis was based on the leaked June 2011 TPPA healthcare transparency text as well as intellectual property provisions under consideration in the TPPA negotiations.

On August 1, 2012, the Maine CTPC wrote to Ambassador Ron Kirk reiterating its concerns about the healthcare technologies text and referring to the Assessment. The letter is posted online here: <http://www.maine.gov/legis/opla/CTPCpharmaceuticalstradeletter.pdf> . The letter

¹ See eg, letter from Vermont Governor Peter Shumlin dated June 1, 2011 to U.S. Trade Representative Kirk and President Obama to oppose the inclusion of a pharmaceutical or healthcare annex in the TPPA. The letter is posted here: <http://freepdfhosting.com/6ee2e21e4c.pdf>. Prior letters and resolutions have been written by officials or commissions in states including California, Vermont, Maine, Washington State, Connecticut, Arizona, West Virginia, Massachusetts, Alaska, Hawaii, and New Hampshire. Some of these letters and resolutions are posted here: <http://www.wcl.american.edu/pijip/go/trade-statedocs>.

reasserts the Commission's support for the positions adopted in previous communications on this issue, in particular its February 12, 2010 letter to USTR. The Commission particularly noted the following:

- Its **support** for evidence-based reimbursement policies to restrain pharmaceutical prices;
- Its **endorsement** of the continued use of preferred drug lists to reduce pharmaceutical prices;
- Its **opposition** to “any promotion of international restrictions on domestic pharmaceutical prices”; and
- Its **support** for “the inclusion of a footnote in the TPPA and other trade agreements which “carves out” federal reimbursement programs such as Medicaid, 340 B and Medicare Part B”.


The Maine Citizen Trade Policy Commission has taken a strong position against inclusion of restrictive healthcare pricing and intellectual property provisions in any future trade agreement, including the TTIP. The Commission adopted the following strong statement on its position opposing the restrictive pricing language such as that proposed in leaked TPPA healthcare technologies text: ***“The CTPC voted unanimously to support provisions in the TPPA and other international trade agreements which emphasize, allow for and encourage the overall affordability of pharmaceuticals in each affected country.”***

SUMMARY

The State of Maine has expressed many concerns about past U.S. trade and investment agreements, as well as the process used to negotiate and approve of these treaties. Through the Maine Citizen Trade Policy Commission, the state has conducted a thorough review of the impacts of these treaties on the state's sovereignty and its authority to protect the public health, safety and welfare.

As the USTR enters into negotiations for a Transatlantic Trade and Investment Partnership, it is imperative that the resultant treaty respects the sovereignty of U.S. states under the federalism provisions of the U.S. Constitution, and that negotiators consult in a meaningful way with state policymakers so that the TTIP does not undermine environmental and public health protections, access to healthcare, procurement standards, and regulation of services such as insurance, which have been reserved to the states. Thank you for your consideration.

Respectfully submitted,



Sharon Anglin Treat
Representative, Maine House District 79
Co-Chair, Maine Citizen Trade Policy Commission
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Sen. Troy Jackson, Chair
Sen. John Patrick
Sen. Roger Sherman
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STATE OF MAINE

Citizen Trade Policy Commission

February 24, 2014

The Honorable Michael Froman
United States Trade Representative
600 17th Street NW
Washington, DC 20508

Re: Comments concerning the pharmaceutical and medical device reimbursement and intellectual property provisions of the Trans-Pacific Partnership

Dear Ambassador Froman:

The Maine Citizen Trade Policy Commission (CTPC) is established in Maine State Law “..to assess and monitor the legal and economic impacts of trade agreements on state and local laws, working conditions and the business environment; to provide a mechanism for citizens and Legislators to voice their concerns and recommendations; and to make policy recommendations designed to protect Maine's jobs, business environment and laws from any negative impact of trade agreements.” In seeking to fulfill its statutory mandate, the Commission voted unanimously during its meeting of February 24, 2014 to submit this letter to you regarding our views on the pharmaceutical and medical device reimbursement and intellectual property provisions of the Trans-Pacific Partnership.

The CTPC understands from several public reports that U.S. negotiators are now considering pharmaceutical reimbursement text in the TPP that would (1) use the pharmaceuticals annex in the Australia-US Free Trade Agreement (AUSFTA) as the drafting template rather than the provisions of the Korea-US agreement (KORUS); (2) specifically designate Medicare Part B as the only U.S. healthcare program subject to the rules of this Annex; (3) limit any appeals of reimbursement decisions to Medicare Part B beneficiaries; and (4) exclude text that may previously have been under consideration (according to leaked documents) that reimbursement decisions have a “transparent basis consisting of competitive market-derived prices in the party’s territory”.

*The CTPC has never supported including pharmaceutical reimbursement provisions in any trade agreement, including AUSFTA, because these provisions reduce access to affordable medicines and insert policy into trade agreements that is best left to domestic regulation.*¹ That said, the AUSFTA pharmaceutical annex raises fewer concerns than either KORUS or leaked TPP reimbursement text, and we are encouraged by USTR’s apparent willingness to reconsider its earlier approach. In particular, we agree strongly with the opt-in approach that would specifically list any covered programs. The opt-in would clarify ambiguous text in

¹ See, eg, the CTPC’s 2012 statutorily required biennial Assessment of the potential impact of trade policy on Maine’s citizens, economy, laws and policies. The Assessment, posted online here: <http://www.maine.gov/legis/opla/CTPC2012finalassessment.pdf>, concluded that the impact of the TPP reimbursement provisions on pharmaceutical pricing in Maine, and on access to healthcare, could be significant.

previous FTAs and insure that Medicaid, 340(B) and other pharmaceutical programs partially administered at the sub-central level by U.S. states are not bound by these rules.

As noted above, however, even the AUSFTA provisions raise concerns. The CTPC strongly urges the inclusion of the following provisions in any healthcare reimbursement and transparency annex in the TPP to address these concerns:

1. The Agreed Principles should specifically include language specifying that healthcare and medicines affordability, safety and efficacy are recognized criteria in government reimbursement decisions governed by the Annex.
2. There should be no appeal of reimbursement decisions but instead a review based on domestic law and limited to beneficiaries.
3. If applicants are afforded an opportunity to provide comments during the reimbursement decision process, beneficiaries and the public should also be allowed to provide comments.
4. Internet posting and other provisions relating to dissemination of information about pharmaceuticals must be bound by a Party's domestic laws and regulations. In other words, the provisions of the TPP must respect domestic policies concerning direct-to-consumer advertising and off-label marketing.
5. The Annex must specifically state that a decision regarding the listing of a pharmaceutical product or setting a reimbursement price through a program covered by the Annex may not be challenged under the country-to-country dispute settlement *nor under the investor-state dispute settlement provisions (ISDS) of the Chapter on Investments*. Both of these changes are critical, and the greater concern lies with the possibility that investors could use the ISDS to challenge these domestic policy decisions.

We also wish to reiterate the longstanding position of the CTPC that the TPP's Intellectual Property Chapter must balance encouraging innovation with assuring affordability. The publically reported USTR position pushing for a lengthy 12-year data exclusivity period for biologics is excessive and will significantly delay the development of generic versions of these pricey and life-saving medicines. The CTPC urges the USTR to modify its position to a more reasonable timeframe that will better protect the affordability of these important medicines.

Thank you for your consideration of these recommendations. The CTPC stands ready to discuss these recommendations with you and to respond to any requests for further information or clarification.

Sincerely,



Senator Troy Jackson, Chair



Representative Sharon Anglin Treat, Chair

cc:

Senator Susan Collins

Senator Angus King

Representative Michael Michaud

Representative Chellie Pingree

Kay Wilkie, IGPAC Chair

Rebecca Rosen, USTR, Director of Intergovernmental Affairs and Public Engagement

Barbara Weisel, USTR, TPP lead negotiator

Stanford McCoy, USTR, AUSTR for Intellectual Property and Innovation

Sen. Troy Jackson, Chair
Sen. John Patrick
Sen. Roger Sherman
Rep. Sharon Treat, Chair
Rep. Jeff McCabe
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STATE OF MAINE

Citizen Trade Policy Commission

February 24, 2014

The Honorable Michael Froman
United States Trade Representative
600 17th Street NW
Washington, DC 20508

Re: Negotiations in the TTIP concerning procurement provisions affecting sub-central governments

Dear Ambassador Froman:

The Maine Citizen Trade Policy Commission (CTPC) is established in Maine State Law “..to assess and monitor the legal and economic impacts of trade agreements on state and local laws, working conditions and the business environment; to provide a mechanism for citizens and Legislators to voice their concerns and recommendations; and to make policy recommendations designed to protect Maine's jobs, business environment and laws from any negative impact of trade agreements.” In seeking to fulfill its statutory mandate, the Commission voted unanimously during its meeting of February 24, 2014 to submit this letter to you indicating our concerns over possible measures in the Transatlantic Trade and Investment Partnership (TTIP) that could undermine our efforts to rebuild local food systems that are healthy, fair and sustainable, and the possibility that European Union officials are directly reaching out to state governments seeking their agreement to be bound by procurement provisions under consideration in the TTIP.

Current Maine law (10 MRSA §13) requires that if the U.S. government provides the State with the opportunity to consent to or reject binding the State to a trade agreement, or a provision within a trade agreement, then an official of the State, including but not limited to the Governor, may only bind the State or give consent to the U.S. government to bind the State after consultation with the CTPC and the Legislature’s approval. In addition, Maine has specific procurement administrative rules (Bureau of General Services, Ch. 130; <http://www.maine.gov/sos/cec/rules/18/chaps18.htm>) for textiles and footwear prohibiting purchasing of goods that do not comply with certain fair labor, equal rights, and health and safety standards.

Citizen Trade Policy Commission
c/o Office of Policy & Legal Analysis
State House Station #13, Augusta, ME 04333-0013 Telephone: 207 287-1670
<http://www.maine.gov/legis/opla/citpol.htm>

In addition, the State of Maine and many local governments have proactively promoted “Buy local” and “Maine Made” programs including Farm to School, Farm to Hospital and other initiatives aimed at sourcing healthy, local and regional foods into institutions as a way of enhancing nutritional and other health outcomes for consumers, supporting local economies, and improving farm profitability. We oppose any provisions in the TTIP that would limit preferences in public procurement programs for healthy, locally grown foods.

We are concerned that proposals being advanced in the TTIP negotiations could restrict or even eliminate criteria that favor local or regionally-grown foods as “localization” barriers to trade. We understand that the EU is pushing for procurement commitments in the trade agreement at all levels of government, including municipal, state and federal contracts. These commitments could open these publicly funded contracts to bids from EU firms, and could restrict the kinds of criteria that local communities deem important in making those decisions. We understand from public reports that the EU is insisting on procurement commitments that “go beyond” those already agreed to in the multilateral Government Procurement Agreement (GPA), which currently includes 37 U.S. states.

While the U.S. excluded “procurement of any agricultural good made in furtherance of an agricultural support program or a human feeding program” from its commitments under the international GPA, the EU has stated clearly that it would like to achieve new commitments in this agreement on goods and services not already covered in the GPA, as well as its goal to, “[e]nsure that rules on off-sets/set asides or domestic preferences such as, but not limited to, Buy America(n) and SME [Small and Medium Enterprise] policies, do not restrict procurement opportunities between the EU and the U.S.”

The fact that the U.S. and EU have refused to publish negotiating texts -- which is accepted practice at the World Trade Organization and other multilateral negotiations -- means that we are compelled to consider what might be at risk under this accord. We do not know which sectors might be included, whether bidding criteria designed to promote social, environmental, economic, health and other public goals could be threatened, or even how decisions would be made -- or by whom -- on whether states or cities are included in procurement commitments in the trade agreement. We urge you to immediately publish negotiating texts on these and other important issues in the trade agreement to foster an informed public debate.

We also wish to bring to your attention the possibility that EU officials are directly contacting state governments seeking commitments to be bound by the procurement provisions in TTIP before these provisions have even been decided upon or made public. Although we do not know of any Maine officials being contacted by EU officials, members of the CTPC have been told that such contacts may be occurring between the EU and officials in other states. If this activity is in fact taking place, it would be highly inappropriate. Any requests to bind state governments should come from our own federal government after informing the Intergovernmental Policy Advisory Committee (IGPAC) that such outreach is planned.

That said, we have been repeatedly assured by USTR negotiators that the US is not seeking to bind sub-central governments in the procurement chapter without their approval, a position that we support. We are asking by means of this letter that you confirm that this understanding is correct. Further, we ask that you insure that any outreach to states and local governments concerning the procurement chapter will be conducted between the federal government and sub-

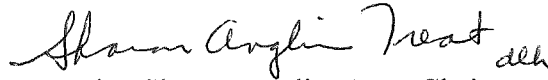
central governments and involve notification of and consultation with IGPAC, and will not involve direct EU to state government contacts.

We would welcome opportunities to discuss these issues with you and hope for an open dialogue based on concrete information and consultation.

Sincerely,



Senator Troy Jackson, Chair



Representative Sharon Anglin Treat, Chair

cc:

Senator Susan Collins

Senator Angus King

Representative Michael Michaud

Representative Chellie Pingree

Kay Wilkie, IGPAC Chair

Rebecca Rosen, Director of Intergovernmental Affairs and Public Engagement, USTR

Sen. Troy Jackson, Chair
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STATE OF MAINE

Citizen Trade Policy Commission

February 24, 2014

The Honorable Michael Froman
United States Trade Representative
600 17th Street NW
Washington, DC 20508

Re: Support for Public Stocktaking Process on Investment and
Investor-to-State Dispute Settlement Policies

Dear Ambassador Froman:

The Maine Citizen Trade Policy Commission (CTPC) is established in Maine State Law "...to assess and monitor the legal and economic impacts of trade agreements on state and local laws, working conditions and the business environment; to provide a mechanism for citizens and Legislators to voice their concerns and recommendations; and to make policy recommendations designed to protect Maine's jobs, business environment and laws from any negative impact of trade agreements." In seeking to fulfill its statutory mandate, the Commission voted unanimously during its meeting of February 24, 2014 to submit this letter to you indicating our strongly held concerns regarding the current process being used to negotiate the Trans-Atlantic Trade and Investment Partnership (TTIP) and the possible inclusion of provisions pertaining to the use of the Investor-State Dispute Settlement (ISDS) process.

In concert with many U.S.-based organizations representing labor, health, consumers, family farms, the environment and small business interests, we write to urge you to join your counterparts from the European Union and embark upon a thorough, open, public consultation process to review the costs and benefits of the investor protection policies in the TTIP. The Commission specifically urges the USTR to release proposed text for public review and analysis and to postpone negotiation of the investment chapter pending an opportunity for this public consultation.

As you know, on January 21, 2014, the European Commission announced that it would "consult the public on the investment provisions of a future EU-US trade deal, known as the Transatlantic Trade and Investment Partnership (TTIP)." In the release, EU Trade Commissioner Karel De Gucht explained, "some existing arrangements have caused problems in practice, allowing companies to exploit loopholes where the legal text has been vague. I know some people in Europe have genuine concerns about this part of the EU-US deal. Now I want them to have their say." We applaud the creation of a public consultation process for Europeans. As a state-authorized commission that represents Maine businesses, non-governmental organizations, and citizens, we would like to have the same opportunity as our counterparts across the Atlantic.

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USTR has pointed to the existence of the U.S. trade advisory committee process and the posting on its website of the Model Bilateral Investment Treaty (Model BIT) as meeting public requests for transparency and consultation. We respectfully disagree. The public availability of generic text cannot replace the opportunity to read and comment on actual proposed language under consideration in TTIP. Further, we have on many occasions detailed the inadequacies of the current advisory committee process, including the limited substantive consultation with U.S. state governments, and the disproportionate access given to corporate advisors in contrast to the limited resources and participation of state officials, small business representatives, and public interest stakeholders. In particular, we refer you to a March 12, 2012 letter we wrote to your predecessor Ron Kirk regarding the process used to negotiate international trade treaties (<http://www.maine.gov/legis/opla/ctpcletmarch62012.pdf>) and to the 2012 Assessment conducted by Professor Robert Stumberg of Georgetown University which documented numerous instances in which the negotiating process has been significantly less than inclusive and open (<http://www.maine.gov/legis/opla/CTPC2012finalassessment.pdf>).

As you know, concerns about overbroad investor protections, and about the ISDS process in particular, are long-standing. ISDS provides foreign investors the right to bypass domestic courts (including constitutionally-created Article III courts) and challenge the U.S. government directly before an international arbitration tribunal; a right that home-grown investors do not share. The ISDS panels are neither democratically selected nor accountable to any public- nor are they required to consider basic principles of U.S. law (such as sovereign immunity or the "rational basis" standard), nor must they weigh the public interest against the alleged violation of an investor's rights. Under this system, the U.S. government can only be a defendant (the investor takes on no corresponding responsibilities), and even when the U.S. government "wins," the U.S. people lose because valuable government resources (an average of \$8 million a case) are expended to defend these often meritless claims.

A public consultation process in which American workers, families, communities, small businesses and civil society organizations have a real voice will be an important step toward creating more balanced investment policies that reflect the diverse needs and interests of real people and their communities, not simply large, global corporations.

We urge you to take this step to ensure that U.S. trade policymaking is at least as inclusive as that of our trading partners.

We look forward to hearing from you.

Sincerely,



Senator Troy Jackson, Chair



Representative Sharon Anglin Treat, Chair

cc:

Senator Susan Collins

Senator Angus King

Representative Michael Michaud

Representative Chellie Pingree

Kay Wilkie, IGPAC Chair

Rebecca Rosen, USTR, Director of Intergovernmental Affairs and Public Engagement

Daniel Bahar, USTR, DAUSTR for Investment

Sen. Troy Jackson, Chair
Sen. John Patrick
Sen. Roger Sherman
Rep. Sharon Treat, Chair
Rep. Jeff McCabe
Rep. Bernard Ayotte

Robert Umphrey
Stephen Cole
Michael Herz
Dr. Joel Kase



Mike Karagiannes
Wade Merritt
John Palmer
Linda Pistner
Harry Ricker
Jay Wadleigh

Staff:
Lock Kiermaier

STATE OF MAINE

Citizen Trade Policy Commission

May 7, 2013

Secretary Janet Napolitano
Department of Homeland Security
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Secretary Napolitano,

The Maine Citizen Trade Policy Commission (CTPC) "... is established to assess and monitor the legal and economic impacts of trade agreements on state and local laws, working conditions and the business environment; to provide a mechanism for citizens and Legislators to voice their concerns and recommendations; and to make policy recommendations designed to protect Maine's jobs, business environment and laws from any negative impact of trade agreements." In seeking to fulfill its statutory mandate, the Commission voted unanimously during its meeting of April 26, 2013 to submit this letter to you indicating our strong opposition to any proposal from the Department of Homeland Security to impose a border-crossing fee to Canadians crossing the borders to the United States.

During our April 26th meeting, the CTPC heard a presentation from Mr. Daniel Deveau, Maine Canadian Trade Ombudsman for the State of Maine, in which he described a recent controversial proposal from the U.S. Department of Homeland Security to impose a fee on Canadians crossing the border into the U.S. either by foot or vehicle. In the course of the discussion on this issue, members of the CTPC heard and exchanged information which suggested that the imposition of such a fee would be significantly detrimental to free flowing trade between Canada and the U.S. and would result in a deterioration of the close community relationships that currently exist between the residents of northern Maine and the bordering Canadian provinces. A motion was unanimously approved to send a letter you stating the CTPC's formal opposition to such a fee for the reasons enumerated above.

Along with our neighboring Canadian provinces, which include New Brunswick, Ontario and Quebec, the CTPC and the State of Maine in general has worked diligently to promote and encourage trade between our two countries. The encouragement of increased trade necessarily leads to further economic development for both countries as well as preserving the close cultural and community ties and relationships that have historically existed between Maine and its Canadian neighbors for many years. Without reservation, we believe that the imposition of any proposed border-crossing fee as described by Mr. Deveau and detailed in numerous media reports, would significantly impair

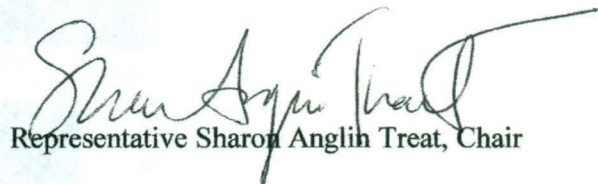
Citizen Trade Policy Commission
c/o Office of Policy & Legal Analysis
State House Station #13, Augusta, ME 04333-0013 Telephone: 207 287-1670
<http://www.maine.gov/legis/opla/citpol.htm>

ongoing efforts towards economic development and the cordial relationship the State of Maine currently has with its Canadian provincial neighbors. We urge you to drop any form of this proposal and to constantly strive for a border-crossing process which maintains mutual security between our two countries while at the same time promoting further economic development and our historically close relationship.

Sincerely,



Senator Troy Jackson, Chair



Representative Sharon Anglin Treat, Chair

c.c. Daniel Deveau, Maine Canadian Trade Ombudsman
Governor Paul LePage
Senator Susan Collins
Senator Angus King
Representative Michael Michaud
Representative Chellie Pingree
Demetrios Marantis, Acting USTR

Sen. Troy Jackson, Chair
Sen. John Patrick
Sen. Roger Sherman
Rep. Sharon Treat, Chair
Rep. Jeff McCabe
Rep. Bernard Ayotte

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Dr. Joel Kase



John Palmer
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Ex-Officio
Mike Karagiannes
Wade Merritt

Staff:
Lock Kiermaier

STATE OF MAINE

Citizen Trade Policy Commission

May 15, 2013

The Honorable Harry Reid
Senate Majority Leader
United States Senate
522 Hart Senate Office Building
Washington, DC 20510

The Honorable John Boehner
Speaker of the House
U.S. House of Representatives
1011 Longworth House Office Building
Washington, DC 20515

The Honorable Mitch McConnell
Senate Minority Leader
United States Senate
317 Russell Senate Office Building
Washington, DC 20510

The Honorable Nancy Pelosi
Minority Leader
U.S. House of Representatives
235 Cannon House Office Building
Washington, DC 20515

Dear Leaders,

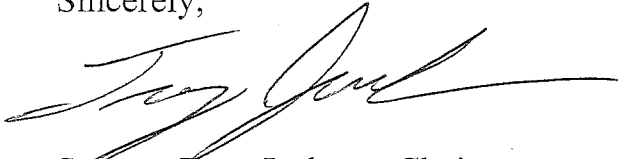
The Maine Citizen Trade Policy Commission (CTPC) "... is established to assess and monitor the legal and economic impacts of trade agreements on state and local laws, working conditions and the business environment; to provide a mechanism for citizens and Legislators to voice their concerns and recommendations; and to make policy recommendations designed to protect Maine's jobs, business environment and laws from any negative impact of trade agreements." In seeking to fulfill its statutory mandate, the Commission voted unanimously during its meeting of April 26, 2013 to submit this letter to you indicating our strong support for third year appropriation for the State Trade and Export Promotion (STEP) program within the US Small Business Administration.

During our most recent meeting on April 26, 2013, the CTPC received a presentation from MITC our state trade office about various activities to promote international trade for the State of Maine. It is our understanding that funds from

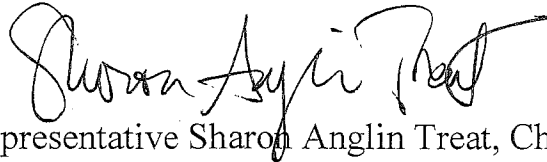
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the STEP program have been used to effectively assist small Maine businesses in the costs incurred to promote the exporting of their products. Most recently, MITC used \$80,000 from the SBA competitive grants program to support 40 Maine companies to export business valued at approximately \$16 million dollars. In view of the apparent success of the MITC in using limited grant funds to effectively assist small businesses in Maine with the vital task of promoting and furthering international trade, the CTPC strongly supports the STEP program and urges its continued funding.

Sincerely,



Senator Troy Jackson, Chair



Representative Sharon Anglin Treat, Chair

cc:

Senator Susan Collins

Senator Angus King

Representative Michael Michaud

Representative Chellie Pingree

Sen. Troy Jackson, Chair
Sen. John Patrick
Sen. Roger Sherman
Rep. Sharon Treat, Chair
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Mike Karagiannes
Wade Merritt
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Harry Ricker
Jay Wadleigh

Staff:
Lock Kiermaier

STATE OF MAINE

Citizen Trade Policy Commission

May 7, 2013

Speaker Mark W. Eves, Chair
President Justin L. Alford, Vice Chair
Legislative Council
126th Maine State Legislature
115 State House Station
Augusta, Maine 04333-0115

Dear Speaker Eves, President Alford and Members of the Legislative Council,

As you know, the Maine Citizen Trade Policy Commission (CTPC) "... is established to assess and monitor the legal and economic impacts of trade agreements on state and local laws, working conditions and the business environment; to provide a mechanism for citizens and Legislators to voice their concerns and recommendations; and to make policy recommendations designed to protect Maine's jobs, business environment and laws from any negative impact of trade agreements." [10 MRSA §11(3)] In seeking to fulfill its statutory mandate, the Commission voted unanimously during its meeting of April 26, 2013 to submit this letter to you indicating our strong concerns regarding a resolution currently tabled in the House.

During our April 26th meeting, CTPC member Representative Jeff McCabe asked the commission to review the wording and contents of a proposed Resolution titled "Joint Resolution Affirming the Friendship between the State of Maine and the Republic of China". Representative McCabe noted that this Resolution includes language which supports Taiwan's inclusion in the United Nations Framework Convention on Climate Change, the United Nations International Civil Aviation Organization and the TransPacific Partnership Agreement (TPPA). Representative McCabe indicated his significant concerns about the appropriateness of these

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various endorsements and pointed out that most of these issues have been reviewed by the CTPC which is the entity created by the Legislature specifically for the review of international trade agreements. To the extent that the TPPA has been reviewed, the CTPC has raised various concerns which are detailed in our 2012 Assessment which can be viewed at the CTPC website:

<http://maine.gov/legis/opla/CTPC2012finalassessment.pdf>

After discussion, the CTPC unanimously endorsed a motion to send you this letter indicating the commission's significant concerns regarding the legislative approval of these endorsements which have not been properly reviewed in any detail by the CTPC or any legislative policy committee.

In closing, we strongly urge you and all members of the Legislature to consider amending the proposed Resolution to omit all endorsements of any participation of the Republic of China in all international trade agreements until such a time that the CTPC and other legislative policy committees can properly review and vet any such endorsement by the Maine State Legislature.

Sincerely,



Senator Troy Jackson, Chair



Representative Sharon Anglin Treat, Chair

RECEIVED JUN 14 2013



**U.S. Customs and
Border Protection**

MAY 30 2013

Ms. Sharon Anglin Treat
Citizen Trade Policy Commission
State House Station #13
Augusta, ME 04333

Dear Ms. Treat:

Thank you for your recent letter to Secretary Napolitano concerning the Land Border User Fee Study in President Obama's fiscal year (FY) 2014 Budget to Congress. After consideration of the concerns you raise about the study, I would like to share more information regarding U.S. Customs and Border Protection's (CBP) reasoning and intentions.

First, it is important to note that CBP's Land Border User Fee Study, is only a study, and; not a proposed fee for FY 2014. As referenced in your letter, many northern border states and local communities have an integral travel and commerce cross-border relationship with Canada. The intention with any fee is to improve that throughput, not to dissuade it.

Consideration will be given to any potential economic benefits resulting from a fee. The additional revenue generated through reasonable land border fees would allow for more CBP officers at our ports and result in decreased wait times.

CBP's intent is to develop a full economic and cost benefit analysis, then conduct an assessment of logistics and steps involved in collection, and finally conduct a pilot that will test all steps involved in land border user fee collection without actual collections. CBP will follow the pilot by analyzing options for land border pedestrian and passenger vehicle fees.

CBP is committed to facilitating and securing lawful travel and trade through U.S. Ports of Entry. Recent years have seen historic travel volumes -- with privately owned vehicle traffic up 4.7 percent since FY 2011 and projected to rise in future years. Truck volume has been increasing since the economic downturn, and is also up by 14 percent since FY 2009. Inbound trade volume overall has recovered with import values growing by 5 percent, reaching \$2.3 trillion in FY 2012, and expected to exceed records in the air, land, and sea environments this year. We recognize the importance to our economy that a secure, streamlined border management process has on growing volumes of trade and travel.

There is currently a disparity in user fee collections between air, land, and sea ports of entry, because of the existing statutory framework and the long established collection mechanisms through air carriers and cruise lines. Currently, CBP incurs costs for inspecting pedestrians, bus passengers, vehicle passengers, and rail passengers, yet for the bulk of these activities, there are no fees in place to recover the costs. Therefore, the costs must be offset by taxpayer-funded

appropriations. In FY 2012, the portion of costs supported by appropriation totaled over \$1.2 billion dollars.

| <i>In thousands</i> | FY 2010 | FY 2011 | FY 2012 |
|--|----------------|----------------|----------------|
| Total Land environment costs | \$1,282,591 | \$1,253,938 | \$1,351,974 |
| Land environment fee collections ¹ | \$67,226 | \$73,817 | \$78,550 |
| Fee recovery level of all costs | 5% | 6% | 6% |
| Land environment costs funded by appropriations (Total costs minus fee collections) | \$1,215,366 | \$1,180,121 | \$1,273,423 |

Collections on the land border would likely be very different than current collection methods, and CBP will examine multiple methods and systems for actual collections and remittances. A few of the focus areas for the study may include (but will not be limited to) commercial bus and rail passengers, existing toll facilities, and penalties for Western Hemisphere Travel Initiative (WHTI) non-compliance.

In the course of the Land Border User Fee Study, CBP will explore the economic impact of increasing wait times at the border and lost opportunity costs versus a potential fee to determine which is potentially more harmful to cross-border travel and commerce. CBP recognizes the difference between daily land border commuters and international air and sea passengers, and will pursue a full understanding of any potential economic disincentive to cross-border trade and travel. CBP recognizes many northern border states and local communities have an integral travel and commerce cross-border relationship with Canada, and the intention with any fee, would be to improve throughput, not dissuade it.

Wait times, and their effect on the local and national economy, has been researched extensively. In February 2013, the National Center for Risk and Economic Analysis of Terrorism Events (CREATE) released a report regarding wait times titled, *The Impact on the U.S. Economy of Changes in Wait Times at Ports of Entry*. CREATE's analysis found that an increase or decrease in staffing at the Ports of Entry has a tremendous impact on wait times and the U.S. economy. The impacts begin with changes in tourism, business travel expenditures, and freight costs affecting not only local communities, but eventually the overall U.S. economy.

In summary, CREATE found that the impacts on the U.S. economy of adding 33 CBP officers are a \$65.8 million increase in Gross Domestic Product (GDP), \$21.2 million in opportunity cost savings, and employment gains of 1,094 annual jobs. The U.S. Travel Association found that every 33 overseas travelers creates one new American job, CREATE's findings equate to 33 American jobs per CBP officer added. In addition to economic benefits, greater law enforcement presence will result in increased security and enforcement effectiveness.

¹ CBP collects a small amount of fees through the CBP Trusted Traveler programs (NEXUS, FAST, SENTRI, Dedicated Commuter Lane (DCL)), I-94 entries, I-68 entries, I-190 entries, rail and truck (COBRA), and agriculture which are then applied to CBP's land environment costs.

As an example of the potential economic and enforcement benefits, CBP reported that for every 1,000 CBP officers hired, the following estimated outcomes could be expected:

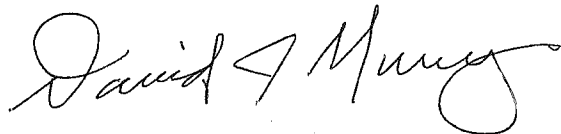
- \$2 billion increase in GDP
- \$642 million in opportunity costs saved
- 33,148 annual jobs added
- 23,000 more enforcement actions
- \$40 million drug seizure value increase
- \$2.75 million currency seizure value increase
- \$7.85 million trade penalty assessment increase
- \$2.5 million Intellectual Property Rights seizures increase
- \$42 million liquidated damage assessment increase

As we address expanded mission requirements, evolving threats, and increasing workload volumes, it is imperative that CBP explore alternative sources of funding in order to support national security and trade and travel facilitation missions that are vital to this nation. The study of a potential land border user fee² is just one of many options CBP is exploring as a way to maintain funding for existing capabilities, and provide better security and services to the trade and travel communities in the future.

The FY 2014 Budget also includes a series of legislative proposals to identify alternative sources of funding to provide for additional CBP officers and infrastructure requirements. These proposals complement the Resource Optimization Strategy and Workload Staffing Model, also released with the FY 2014 Budget, by creating a mechanism for CBP to engage in public-private partnerships to fund enhanced CBP services, support port improvements that would better facilitate flows of international trade and travel, and allow CBP to fund additional CBP officers.

Thank you again for your letter, CBP's study will thoroughly investigate all possible outcomes and will not propose any fee that may have negative consequences on cross-border economic activity. If I may offer further assistance, please contact my office at (202) 344-1620.

Sincerely,



David J. Murphy
Acting Assistant Commissioner
Office of Field Operations

² It should be noted that land border user fee refers to possible fees assessed on pedestrians, bus passengers, vehicle passengers, and rail passengers.

ANGUS KING
MAINE

United States Senate
WASHINGTON, DC 20510-1905

June 21, 2013

Lock Kiermaier
16 Court Street
Augusta, ME 04330-5607

Dear Lock,

I share your concern about charging fees to folks crossing the U.S.-Canada land border. As you mentioned in your message, there is great economic benefit to both Mainers and Canadians in their ability to move easily (and freely) between the two countries. To be clear, the Department of Homeland Security (DHS) which oversees U.S. Customs and Border Patrol, proposed studying the feasibility of collecting a crossing fee at land border crossings, they did not actually propose a fee.

While I believe DHS was well-intentioned in looking for ways to off-set the operational costs of border crossing facilities and officers, and I am aware that crossing fees have long been collected at air and sea ports of entry, I am concerned that DHS did not fully appreciate the effect that such a fee might have the economies of near-border communities. For that reason, I signed letters to both DHS and the Senate Appropriations Subcommittee that oversees DHS's budget which recommended against any effort to study or implement a land border crossing fee. In May, Senator Leahy of Vermont proposed an amendment to the immigration bill that would explicitly prohibit land border crossing fees which I plan on supporting if and when I have the opportunity to vote on it. Thanks for taking the time to write me on this important issue to Maine border communities.

Best Regards,



ANGUS S. KING, JR.
United States Senator

ASK/pb

Sen. Troy Jackson, Chair
Sen. John Patrick
Sen. Roger Sherman
Rep. Sharon Treat, Chair
Rep. Jeff McCabe
Rep. Bernard Ayotte

Robert Umphrey
Stephen Cole
Michael Herz
Dr. Joel Kase



John Palmer
Linda Pistner
Harry Ricker
Jay Wadleigh

Ex-Officio
Mike Karagiannes
Wade Merritt
Pamela Taylor

Staff:
Lock Kiermaier

STATE OF MAINE

Citizen Trade Policy Commission

August 22, 2013

Ambassador Michael Froman
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508

Dear Ambassador Froman:

The Maine Citizen Trade Policy Commission (CTPC) is authorized by Maine State law [10 MRSA §11(3)]“... to assess and monitor the legal and economic impacts of trade agreements on state and local laws, working conditions and the business environment; to provide a mechanism for citizens and Legislators to voice their concerns and recommendations; and to make policy recommendations designed to protect Maine's jobs, business environment and laws from any negative impact of trade agreements.” In carrying out its statutory mission, the CTPC has closely been following various developments relating to the proposed Transpacific Partnership Agreement (TPPA).

As chairs of the CTPC, we write to inform you of our deep concern about the new text concerning tobacco and public health measures under consideration by the USTR for tabling in the TPPA negotiations currently underway. This proposal is a major retreat from the policy that was drafted and widely shared in great detail by USTR in 2012, which would have created a “safe harbor” for some tobacco control regulations, and which the USTR itself stated would “explicitly recognize the unique status of tobacco products from a health and regulatory perspective”.

Based on our most recent understanding, the current USTR proposal on tobacco as it relates to the TPPA is to reaffirm that existing language in the General Agreement on Tariffs and Trade (GATT) which establishes a nation’s right to enact health and safety measures includes tobacco measures. While the Maine CTPC had reservations about the earlier USTR proposal, which failed to recognize and protect the central role of U.S. state governments in enacting and enforcing tobacco control regulations and which contained numerous loopholes, the new proposal is so weak that it fails to be legally significant.

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First, USTR's proposal is not legally significant because it simply states the obvious. As the WTO dispute panel noted in the Indonesia clove cigarettes dispute, "It is self-evident that measures to reduce youth smoking are aimed the protection of human health ...". Second, it is not legally significant because as a general exception, it does not cover the investment chapter – where the greatest litigation threat to tobacco-control measures is posed, as litigation against Uruguay and Australia demonstrates. Also, assuming that TPPA drafters follow the KORUS model, general exceptions do not apply to the chapter on intellectual property and perhaps other new chapters such as those on regulatory coherence and state-owned enterprises.

We want to particularly emphasize our grave concern that the current USTR proposal on tobacco for the TPPA leaves the door wide open for the future use of Investor-State Dispute Resolution (ISDR) mechanisms by large international corporations to challenge and overturn federal, state and local laws and regulations which govern tobacco control measures. It is our strongly held view that the tenants of the proposed TPPA should not be used by the tobacco industry to circumvent existing or evolving public health law – either in the United States or in other TPPA member nations. We note that tobacco control measures are a firmly established tenant of current U.S. law and continue to receive the broad support of elected officials on every level regardless of political affiliation.

Further, we are not impressed with the consultation provision proposed by USTR as we understand it. This provision has no teeth in that even if the consulting parties agree, consultation cannot block a challenge to a tobacco regulation. In any event, this consultation is irrelevant to an investor-state challenge, wherein lies the greatest threat to chill or prevent regulation. In addition, from a U.S. state perspective, this provision is useless in that state health or other sub-federal tobacco regulatory authorities are not included in any consultation.

Under the circumstances, it would be better to not offer this text at all than to give the false impression that the United States is serious about protecting government authority within the TPPA to regulate tobacco to protect health.

In a previous letter dated August 1, 2012, the CTPC wrote to your predecessor Ambassador Ron Kirk, regarding our strongly held convictions about how tobacco should be treated in the TPPA. Among other things, we stated the following:

- The CTPC favors a complete "carve out" of tobacco from the trade provisions of the TPPA; in other words, we would prefer that any regulations or laws pertaining to tobacco be completely excluded from the TPPA. The CTPC believes strongly that the efforts of individual nations to control tobacco and combat its adverse health effects should not be interfered or impeded in any way by provisions of the TPPA or any other international trade agreement;
- Absent a complete "carve out" of tobacco from the TPPA, the CTPC favors an approach which modifies the purported compromise proposal being made by the USTR; more specifically, the CTPC favors an approach which ensures that all federal and state laws and regulations pertaining to tobacco regulation are not subject to jurisdiction under the TPPA and further that any tobacco-related provisions of the TPPA embrace an approach which minimizes potential litigation be it through local, state or federal court and the possible use of "investor-state" dispute settlement systems; and

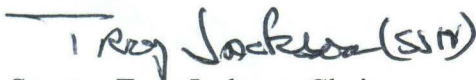
- Finally, the CTPC requests that the USTR develop a clear public statement on the specifics on the specific elements of a tobacco-related provision, as they are proposed by the USTR for consideration as a part of the TPPA.

In speaking for the CTPC, we can safely say that our position has not changed and that we are concerned that the current alternative being proposed by the USTR is woefully inadequate and may in fact be counterproductive towards achieving the goal of protecting the public health and welfare through our federal, state and local laws and regulations which govern tobacco control measures. Given the about-face represented by the USTR's current tobacco proposal, we urge you to consult widely before tabling any text on this topic, and suggest that a public hearing on the treatment of tobacco in the TPPA would be an effective way to convene the relevant parties and gather the information needed to draft an effective proposal that truly protects public health and in particular, the health of our youth.

In closing, at the very least, we favor returning to the earlier USTR "safe harbor" proposal as at least a starting point for further negotiations, although we would prefer a more comprehensive approach which goes further to exempt or "carve out" tobacco control measures from the proposed TPPA.

Please feel free to call on either of us for further information regarding our position on this vitally important public policy issue.

Sincerely,



Senator Troy Jackson, Chair



Representative Sharon Anglin Treat, Chair

c.c. President Barack Obama

Senator Susan Collins

Senator Angus King

Representative Michael Michaud

Representative Chellie Pingree

Maine Attorney General Janet Mills

David Agnew, Deputy Assistant to the President and Director of Intergovernmental Affairs

Sen. Troy Jackson, Chair
Sen. John Patrick
Sen. Roger Sherman
Rep. Sharon Treat, Chair
Rep. Jeff McCabe
Rep. Bernard Ayotte

Robert Umphrey
Stephen Cole
Michael Herz
Dr. Joel Kase



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Ex-Officio
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Pamela Taylor

Staff:
Lock Kiermaier

STATE OF MAINE

Citizen Trade Policy Commission

November 27, 2013

Senator Angus S. King, Jr.
359 Dirksen Building
Washington, D.C. 20510

Dear Senator King,

Thank you for taking the time to meet with us on Friday, November 15, 2013 to discuss various current topics surrounding international trade treaties. In particular, we appreciated the opportunity to meet with you and exchange viewpoints and information on the TransPacific Partnership Agreement (TPP) and the President's "Fast Track" proposal.

We also appreciate your strong advocacy for retaining the footwear tariffs in the TPP that will be necessary to retain approximately 900 textile jobs in the state. Your efforts on this issue will be crucial to ensuring that these footwear jobs will be saved in communities like Norridgewock and Skowhegan.

In addition, we would like to reiterate the importance of the specific issues that we discussed and the recent positions taken by the Citizen Trade Policy Commission (CTPC):

- We strongly support the "carve out" of tobacco health measures from the TPP;
- We are in favor of ensuring that prescription pharmaceuticals are affordable and accessible to member nations of the TPP;
- We believe that the TPP should support and allow for strong federal, state and local regulations and laws that protect the environment and public safety;
- We have serious reservations about the use of Investor-State Dispute Resolution (ISDS) arbitration tribunals in the TPP and the profound threat that these tribunals represent to our national sovereignty; and
- We also object to the current USTR proposal for "Fast Track" authority as a means of expediting congressional approval of the TPP and other similar Free Trade Agreements and maintain that the current process needs to be changed to allow for much greater transparency and participation for Congress to adequately fulfill its constitutional responsibility to review and approve international trade treaties.

In closing, we also wish to emphasize the challenging set of decisions that will be involved for you and other members of Maine's congressional delegation in approving whatever "Fast Track" proposal is finally submitted by President Obama and then, separately, the merits of approving the final negotiated provisions of the TPP.

Please do not hesitate to contact either of us or CTPC Chair Senator Troy Jackson with any questions about these and other topics regarding international trade treaties and their effect upon the State of Maine.

Sincerely,

Sharon Anglin Treat AAT

Representative Sharon Anglin Treat, CTPC Chair,

Roger Sherman KFB

Senator Roger Sherman, CTPC Member and Past Chair

c.c.

CTPC Chair Senator Troy Jackson
CTPC members
Marge Kilkelly, Senior Policy Advisor
Chris Rector, Regional Representative

Citizen Trade Policy Commission
c/o Office of Policy & Legal Analysis
State House Station #13, Augusta, ME 04333-0013 Telephone: 207 287-1670
<http://www.maine.gov/legis/opla/citpol.htm>

Sen. Roger Sherman, Chair
Sen. Thomas Martin Jr.
Sen. John Patrick
Rep. Joyce Maker, Chair
Rep. Bernard Ayotte
Rep. Margaret Rotundo

Heather Parent
Stephen Cole
Michael Herz
Michael Hiltz
Connie Jones



Wade Merritt
John Palmer
Linda Pistner
Harry Ricker
Michael Roland
Jay Wadleigh
Joseph Woodbury

Staff:
Lock Kiermaier

STATE OF MAINE

Citizen Trade Policy Commission

Re: Japan's Expression of Interest in the Trans-Pacific Partnership Trade Negotiations

January 11, 2012

Mr. Paul Kirk, Ambassador
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508

Dear Ambassador Kirk,

We are writing to you in reference to the December 7, 2011 notice in the Federal Register requesting comments on Japan's Expression of Interest in the Trans-Pacific Partnership Trade Negotiations.

The Maine Citizen Trade Policy Commission is authorized by current Maine law [10MRSA§11(3)] "...to make policy recommendations designed to protect Maine's jobs, business environment and laws from any negative impact of trade agreements." In seeking to fulfill its statutory mandate, during its most recent meeting on December 15, 2011, the Commission voted unanimously to submit this letter to you stating our strong opposition to the possible inclusion of Japan, Canada, or Mexico in the proposed Trans-Pacific Partnership negotiations.

Our opposition to the proposed inclusion of these countries in the TPPA is based on a number of concerns and includes:

- The original purpose and design of the TPPA was intended as an international trade agreement among the Pacific Rim countries. Including nations such as Japan with a large international economy in a binding trade agreement represents a significant departure from the original purpose and scope of the TPPA and an ominous threat to state sovereignty and existing trade relationships between Maine and these countries;
- The possibility of adding these neighboring countries and large trade partners also amplifies a concern about the loss of transparency that often occurs in this type of international trade agreement. Since the details of the negotiating process are confidential and yet the items being negotiated are often of paramount importance from a state's perspective, the inclusion of large trading partners tends to further diminish state sovereignty over matters such as business and environmental regulation and the procurement policies of state government without any meaningful opportunity for the state to comment until after the agreement has been finalized thereby rendering any state participation as essentially meaningless and without influence;
- From a state perspective, the possible inclusion of large trading partners like Canada, Japan and Mexico in the TPPA also magnifies concerns about the dispute resolution process that typically emerges from trade agreements of this magnitude. A dispute resolution process that takes states out of the process and instead substitutes the USTR as the defender of particular state regulations and trade deals is a potentially disastrous blow to state sovereignty and the ability to develop, enforce and negotiate its trading relationships with a country such as Mexico. A dispute resolution process that takes the state out of the direct loop in determining a fair outcome and yet imposes possible consequences is inherently unfair and is

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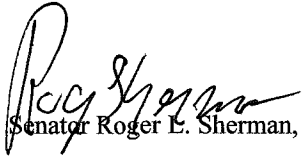
likely to be extremely detrimental to continued efforts by the state to manage its own economy, environment and overall public welfare;

- Further, the tendency of recent trade agreements to reach beyond the trade of tangible goods and intrude upon specific non-trade regulations and practices is an unwarranted intrusion upon a state's inherent ability to determine its own policies which include public health and safety, environmental and natural resource protection and allowable business practices; and
- Finally, the sum effect of all these aforementioned effects is manifested in the willingness of corporations using foreign investor rights provided by these agreements to purposefully use the provisions of a larger trade agreement like that contemplated for the TPPA to circumvent well conceived state regulations and policies to achieve their own narrow goals and objectives.

In closing, we wish to reiterate our strong opposition to the possible inclusion of including Canada, Mexico and Japan in the TPPA as an unwise and unjustified usurpation of state sovereignty in crucial matters of regulation, business practice and policy decisions regarding public health and welfare.

Thank you for the opportunity to make these comments. Please do not hesitate to contact either of us with any questions that you may have regarding the Commission' position on this issue

Sincerely,


Senator Roger E. Sherman, Chair


Representative Joyce Maker, Chair

Cc: Governor Paul R. Lepage
Senator Olympia J. Snowe
Senator Susan M. Collins
Representative Michael H. Michaud
Representative Chellie Pingree

Sen. Roger Sherman, Chair
Sen. Thomas Martin Jr.
Sen. John Patrick
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Staff:
Lock Kiermaier

STATE OF MAINE

Citizen Trade Policy Commission

Re: Japan's Expression of Interest in the Trans-Pacific Partnership Trade Negotiations

January 11, 2012

Mr. Paul Kirk, Ambassador
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508

Dear Ambassador Kirk,

We are writing to you in reference to the December 7, 2011 notice in the Federal Register requesting comments on Japan's Expression of Interest in the Trans-Pacific Partnership Trade Negotiations.

The Maine Citizen Trade Policy Commission is authorized by current Maine law [10MRSA§11(3)] "...to make policy recommendations designed to protect Maine's jobs, business environment and laws from any negative impact of trade agreements." In seeking to fulfill its statutory mandate, during its most recent meeting on December 15, 2011, the Commission voted unanimously to submit this letter to you stating our strong opposition to the possible inclusion of Japan, Canada, or Mexico in the proposed Trans-Pacific Partnership negotiations.

Our opposition to the proposed inclusion of these countries in the TPPA is based on a number of concerns and includes:

- The original purpose and design of the TPPA was intended as an international trade agreement among the Pacific Rim countries. Including nations such as Japan with a large international economy in a binding trade agreement represents a significant departure from the original purpose and scope of the TPPA and an ominous threat to state sovereignty and existing trade relationships between Maine and these countries;
- The possibility of adding these neighboring countries and large trade partners also amplifies a concern about the loss of transparency that often occurs in this type of international trade agreement. Since the details of the negotiating process are confidential and yet the items being negotiated are often of paramount importance from a state's perspective, the inclusion of large trading partners tends to further diminish state sovereignty over matters such as business and environmental regulation and the procurement policies of state government without any meaningful opportunity for the state to comment until after the agreement has been finalized thereby rendering any state participation as essentially meaningless and without influence;
- From a state perspective, the possible inclusion of large trading partners like Canada, Japan and Mexico in the TPPA also magnifies concerns about the dispute resolution process that typically emerges from trade agreements of this magnitude. A dispute resolution process that takes states out of the process and instead substitutes the USTR as the defender of particular state regulations and trade deals is a potentially disastrous blow to state sovereignty and the ability to develop, enforce and negotiate its trading relationships with a country such as Mexico. A dispute resolution process that takes the state out of the direct loop in determining a fair outcome and yet imposes possible consequences is inherently unfair and is

Citizen Trade Policy Commission
c/o Office of Policy & Legal Analysis
State House Station #13, Augusta, ME 04333-0013 Telephone: 207 287-1670
<http://www.maine.gov/legis/opla/citpol.htm>

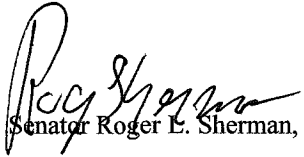
likely to be extremely detrimental to continued efforts by the state to manage its own economy, environment and overall public welfare;

- Further, the tendency of recent trade agreements to reach beyond the trade of tangible goods and intrude upon specific non-trade regulations and practices is an unwarranted intrusion upon a state's inherent ability to determine its own policies which include public health and safety, environmental and natural resource protection and allowable business practices; and
- Finally, the sum effect of all these aforementioned effects is manifested in the willingness of corporations using foreign investor rights provided by these agreements to purposefully use the provisions of a larger trade agreement like that contemplated for the TPPA to circumvent well conceived state regulations and policies to achieve their own narrow goals and objectives.

In closing, we wish to reiterate our strong opposition to the possible inclusion of including Canada, Mexico and Japan in the TPPA as an unwise and unjustified usurpation of state sovereignty in crucial matters of regulation, business practice and policy decisions regarding public health and welfare.

Thank you for the opportunity to make these comments. Please do not hesitate to contact either of us with any questions that you may have regarding the Commission' position on this issue

Sincerely,


Senator Roger E. Sherman, Chair


Representative Joyce Maker, Chair

Cc: Governor Paul R. Lepage
Senator Olympia J. Snowe
Senator Susan M. Collins
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Representative Chellie Pingree

Sen. Roger Sherman, Chair
Sen. Thomas Martin Jr.
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STATE OF MAINE

Citizen Trade Policy Commission

Re: Mexico's Expression of Interest in the Trans-Pacific Partnership Trade Negotiations

January 11, 2012

Mr. Paul Kirk, Ambassador
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508

Dear Ambassador Kirk,

We are writing to you in reference to the December 7, 2011 notice in the Federal Register requesting comments on Mexico's Expression of Interest in the Trans-Pacific Partnership Trade Negotiations.

The Maine Citizen Trade Policy Commission is authorized by current Maine law [10MRSA§11(3)] "...to make policy recommendations designed to protect Maine's jobs, business environment and laws from any negative impact of trade agreements." In seeking to fulfill its statutory mandate, during its most recent meeting on December 15, 2011, the Commission voted unanimously to submit this letter to you stating our strong opposition to the possible inclusion of Mexico, Canada, or Japan in the proposed Trans-Pacific Partnership negotiations.

Our opposition to the proposed inclusion of these countries in the TPPA is based on a number of concerns and includes:

- The original purpose and design of the TPPA was intended as an international trade agreement among the Pacific Rim countries. Including nations such as Mexico with a large international economy and a contiguous border with other states in a binding trade agreement represents a significant departure from the original purpose and scope of the TPPA and an ominous threat to state sovereignty and existing trade relationships between Maine and these counties;
- The possibility of adding these neighboring countries and large trade partners also amplifies a concern about the loss of transparency that often occurs in this type of international trade agreement. Since the details of the negotiating process are confidential and yet the items being negotiated are often of paramount importance from a state's perspective, the inclusion of large trading partners tends to further diminish state sovereignty over matters such as business and environmental regulation and the procurement policies of state government without any meaningful opportunity for the state to comment until after the agreement has been finalized thereby rendering any state participation as essentially meaningless and without influence;
- From a state perspective, the possible inclusion of large trading partners like Canada, Japan and Mexico in the TPPA also magnifies concerns about the dispute resolution process that typically emerges from trade agreements of this magnitude. A dispute resolution process that takes states out of the process and instead substitutes the USTR as the defender of particular state regulations and trade deals is a potentially disastrous blow to state sovereignty and the ability to develop, enforce and negotiate its trading relationships with a country such as Mexico. A dispute resolution process that takes the state out of the

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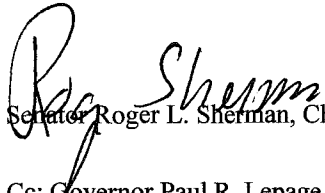
direct loop in determining a fair outcome and yet imposes possible consequences is inherently unfair and is likely to be extremely detrimental to continued efforts by the state to manage its own economy, environment and overall public welfare;

- Further, the tendency of recent trade agreements to reach beyond the trade of tangible goods and intrude upon specific non-trade regulations and practices is an unwarranted intrusion upon a state's inherent ability to determine its own policies which include public health and safety, environmental and natural resource protection and allowable business practices; and
- Finally, the sum effect of all these aforementioned effects is manifested in the willingness of corporations using foreign investor rights provided by these agreements to purposefully use the provisions of a larger trade agreement like that contemplated for the TPPA to circumvent well conceived state regulations and policies to achieve their own narrow goals and objectives.

In closing, we wish to reiterate our strong opposition to the possible inclusion of including Canada, Mexico and Japan in the TPPA as an unwise and unjustified usurpation of state sovereignty in crucial matters of regulation, business practice and policy decisions regarding public health and welfare.

Thank you for the opportunity to make these comments. Please do not hesitate to contact either of us with any questions that you may have regarding the Commission's position on this issue

Sincerely,


Senator Roger L. Sherman, Chair


Representative Joyce Maker, Chair

Cc: Governor Paul R. Lepage
Senator Olympia J. Snowe
Senator Susan M. Collins
Representative Michael H. Michaud
Representative Chellie Pingree

Sen. Roger Sherman, Chair
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STATE OF MAINE

Citizen Trade Policy Commission

March 6, 2012

The Honorable Ron Kirk
Trade Ambassador
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508

Dear Mr. Ambassador:

The Maine Citizen Trade Policy Commission "... is established to assess and monitor the legal and economic impacts of trade agreements on state and local laws, working conditions and the business environment; to provide a mechanism for citizens and Legislators to voice their concerns and recommendations; and to make policy recommendations designed to protect Maine's jobs, business environment and laws from any negative impact of trade agreements." In seeking to fulfill its statutory mandate, the Commission voted unanimously during its meeting of February 10, 2012 to submit this letter to you urging your support for significant changes in the process used to negotiate and accept foreign trade policy agreements such as, but not limited to, the Trans-Pacific Partnership Agreement (TPPA).


Maine has traditionally supported international trade when fair rules of trade are in place. As do other states, Maine intends to be an active participant in the global economy. From the Commission's perspective, the current process used to inform, negotiate and accept the provisions of a foreign trade treaty like the TPPA is in need of significant improvement.

Specifically, the Commission remains concerned that recent international trade agreements may have a negative impact on the State's constitutionally guaranteed authority to protect not only the public health, safety and welfare, but also

regulatory authority. The Commission believes this situation has occurred in large part because the process used to formulate United States trade policy lacks transparency, fails to properly recognize the principles of state sovereignty and is bereft of any meaningful opportunity for Congressional review and acceptance. The current process minimizes the opportunity for meaningful input and review, and the Commission suggests there should be an opportunity for process change with significant improvements in transparency and participation.

Please contact us with any questions that you may have regarding the Commission's position on these issues.

Sincerely,


Senator Roger L. Sherman, Chair


Representative Joyce Maker, Chair

Cc: Governor Paul R. Lepage
Senator Olympia J. Snowe
Senator Susan M. Collins
Representative Michael H. Michaud
Representative Chellie Pingree
State Representative Sharon Treat

Sen. Roger Sherman, Chair
Sen. Thomas Martin Jr.
Sen. John Patrick
Rep. Joyce Maker, Chair
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STATE OF MAINE

Citizen Trade Policy Commission

March 13, 2012

Representative Dave Camp, Chairman
House Ways and Means Committee
Ways and Means Committee Office
1102 Longworth House Office Building
Washington D.C. 20515

Dear Chairman Camp:

The Maine Citizen Trade Policy Commission "... is established to assess and monitor the legal and economic impacts of trade agreements on state and local laws, working conditions and the business environment; to provide a mechanism for citizens and Legislators to voice their concerns and recommendations; and to make policy recommendations designed to protect Maine's jobs, business environment and laws from any negative impact of trade agreements." In seeking to fulfill its statutory mandate, the Commission voted unanimously during its meeting of March 9, 2012 to submit this letter to you and other members of the Ways and Means Committee offering our comments on President Obama's Trade Policy Agenda. In particular, we are advocating for significant changes in the process used to negotiate and accept foreign trade policy agreements such as, but not limited to, the Trans-Pacific Partnership Agreement (TPPA).

Maine has traditionally supported international trade when fair rules of trade are in place. As do other states, Maine intends to be an active participant in the global economy. From the Commission's perspective, the current process used to inform, negotiate and accept the provisions of a foreign trade treaty like the TPPA is in need of significant improvement.

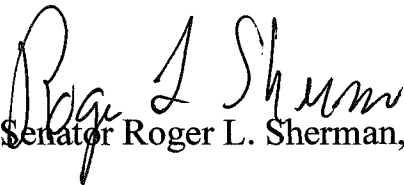
Specifically, the Commission remains concerned that recent international trade agreements may have a negative impact on the State's constitutionally guaranteed

authority to protect not only the public health, safety and welfare, but also regulatory authority. The Commission believes this situation has occurred in large part because the process used to formulate United States trade policy lacks transparency, fails to properly recognize the principles of state sovereignty and is bereft of any meaningful opportunity for Congressional review and acceptance. The current process minimizes the opportunity for meaningful input and review, and the Commission suggests there should be an opportunity for process change with significant improvements in transparency and participation.

In addition, the Commission strongly supports the recently stated position of the Australian government in opposition to inclusion of investor-state dispute settlement (ISDS) clauses in the TPPA. As you know, ISDS clauses give businesses from one country the power to take international legal action against the government of another country over breaches in an international trade treaty. The practical effect of ISDS clauses is the possible abrogation of federal, state and municipal law due to certain interpretations of foreign trade treaties like the TPPA. The Commission believes that, regardless of the particular national perspective in question, that the use of ISDS clauses undermines federal, state and municipal sovereignty and should not be included in international trade treaties like the TPPA.

Please contact us with any questions that you may have regarding the Commission's position on these issues.

Sincerely,


Senator Roger L. Sherman, Chair


Representative Joyce Maker, Chair

Cc: Governor Paul R. Lepage
Senator Olympia J. Snowe
Senator Susan M. Collins
Representative Michael H. Michaud
Representative Chellie Pingree
State Representative Sharon Treat

Sen. Roger Sherman, Chair
Sen. Thomas Martin Jr.
Sen. John Patrick
Rep. Joyce Maker, Chair
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STATE OF MAINE

Citizen Trade Policy Commission

March 23, 2012

The Honorable Ron Kirk
Trade Ambassador
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508

Dear Mr. Ambassador:

The Maine Citizen Trade Policy Commission "... is established to assess and monitor the legal and economic impacts of trade agreements on state and local laws, working conditions and the business environment; to provide a mechanism for citizens and Legislators to voice their concerns and recommendations; and to make policy recommendations designed to protect Maine's jobs, business environment and laws from any negative impact of trade agreements."

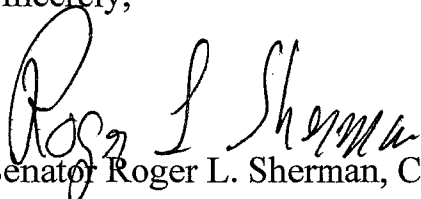
We recently sent you a letter on March 6, 2012 stating our concerns about the manner in which international trade treaties are currently negotiated and the overall need for greater transparency and meaningful congressional consultation and review. Since that time, the Commission met on March 9, 2102 and unanimously voted to send you this additional letter of concern.


The Commission strongly supports the recently stated position of the Australian government in opposition to inclusion of investor-state dispute settlement (ISDS) clauses in the TPPA. As you know, ISDS clauses give businesses from one country the power to take international legal action against the government of another country over breaches in an international trade treaty. The practical effect of ISDS clauses is the possible abrogation of federal, state and municipal law due to certain interpretations of foreign trade treaties like the TPPA. The Commission believes that, regardless of the particular national perspective in question, that the

use of ISDS clauses undermines federal, state and municipal sovereignty and should not be included in international trade treaties like the TPPA.

Please contact us with any questions that you may have regarding the Commission's position on these issues.

Sincerely,


Senator Roger L. Sherman, Chair


Representative Joyce Maker, Chair

Cc: Governor Paul R. Lepage
Senator Olympia J. Snowe
Senator Susan M. Collins
Representative Michael H. Michaud
Representative Chellie Pingree
State Representative Sharon Treat

Sen. Roger Sherman, Chair
Sen. Thomas Martin Jr.
Sen. John Patrick
Rep. Joyce Maker, Chair
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STATE OF MAINE

Citizen Trade Policy Commission

August 1, 2012

The Honorable Ronald Kirk
Trade Ambassador
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Mr. Probir Mehta
Deputy Assistant for Intellectual Property & Innovation
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Re: 2012 Trade Policy Assessment; commissioned by the Maine Citizen Trade Policy Commission

Dear Ambassador Kirk and Mr. Mehta:

As you may know, the Citizen Trade Policy Commission (CTPC) is required by current Maine Law (10 MRSA Chapter 1-A) to provide an ongoing state-level mechanism to assess the impact of international trade policies and agreements on Maine's state and local laws, business environment and working conditions. An important part of the CTPC mandate is to conduct a biennial assessment on the impacts of international trade agreements on Maine.

We have enclosed a copy of our recently completed 2012 Trade Policy Assessment. In a process that is more fully described in an addendum included within the printed document, the Citizen Trade Policy Commission contracted with Professor Robert Stumberg of Georgetown University to conduct this assessment.

We believe that the 2012 Trade Policy Assessment is an invaluable tool for a more complete understanding of both the proposed TransPacific Partnership Agreement (TPPA) which is currently being negotiated and other international trade treaties and their current and potential effects on Maine. As a specific result of the 2012 Trade Policy Assessment, the CTPC has voted unanimously to make a number of recommendations regarding the potential treatment of *pharmaceuticals* within the TPPA and other international trade agreements:

- CTPC members voted to cite previous communications to the USTR regarding the treatment of pharmaceuticals in international trade treaties. In particular, we have also enclosed a letter dated February 12, 2010 which was addressed to Ms. Jennifer Choe Groves within the USTR. In that letter, the CTPC:
 - Voiced its support for evidence-based reimbursement decisions to restrain pharmaceutical prices;
 - Endorsed the continued state use of Preferred Drug Lists to also reduce pharmaceutical prices; and
 - Opposed any promotion of international restrictions on domestic pharmaceutical pricing programs.
- More specifically, the CTPC is unanimous in our support for the inclusion of a footnote in the TPPA and other trade agreements which “carves out” federal reimbursement programs such as Medicaid, 340 B and Medicare Part B;
- The CTPC also voted unanimously to support provisions in the TPPA and other international trade agreements which emphasize, allow for and encourage the overall affordability of pharmaceuticals in each affected country; and
- Finally, the CTPC requests that the USTR develop a clear public statement on the specific elements of a pharmaceuticals-related provision, as they are proposed by the USTR for consideration as a part of the TPPA.

In making these and other recommendations, members of the CTPC expressed a clear desire to further discuss these subjects in detail with either of you in the context of a public meeting held by the CTPC. We invite you to appear at such a public meeting at a date that is mutually satisfactory and as an alternative to you traveling to Maine, we suggest that a conference call could be arranged on a date to be determined in the near future.

On behalf of the CTPC, we thank you for your attention to the issues we have raised regarding any pharmaceutical-related provisions to be included in the TPPA and other international trade agreements and we look forward to discussing these issues with you in more detail.

Sincerely,



Senator Roger Sherman, Chair



Representative Joyce Maker, Chair

c: Governor Paul LePage
 Senator Olympia Snowe
 Senator Susan Collins
 Representative Michael Michaud
 Representative Chellie Pingree
 Maine State Representative Sharon Treat, member of Intergovernmental Policy Advisory Committee

Sen. Roger Sherman, Chair
Sen. Thomas Martin Jr.
Sen. John Patrick
Rep. Joyce Maker, Chair
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Staff:
Lock Kiermaier

STATE OF MAINE

Citizen Trade Policy Commission

August 1, 2012

The Honorable Ronald Kirk
Trade Ambassador
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Ms. Barbara Weisel
Assistant U. S. Trade Representative for Southeast Asia and the Pacific
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Re: 2012 Trade Policy Assessment; commissioned by the Maine Citizen Trade Policy Commission

Dear Ambassador Kirk and Ms. Weisel:

As you may know, the Citizen Trade Policy Commission (CTPC) is required by current Maine Law (10 MRSA Chapter 1-A) to provide an ongoing state-level mechanism to assess the impact of international trade policies and agreements on Maine's state and local laws, business environment and working conditions. An important part of the CTPC mandate is to conduct a biennial assessment on the impacts of international trade agreements on Maine.

We have enclosed a copy of our recently completed 2012 Trade Policy Assessment. In a process that is more fully described in an addendum included within the printed document, the Citizen Trade Policy Commission contracted with Professor Robert Stumberg of Georgetown University to conduct this assessment.


We believe that the 2012 Trade Policy Assessment is an invaluable tool for a more complete understanding of both the proposed TransPacific Partnership Agreement (TPPA) which is currently being negotiated and other international trade treaties and their current and potential effects on Maine. As a specific result of the 2012 Trade Policy Assessment, the CTPC has voted unanimously to make a number of recommendations regarding the potential treatment of *tobacco* within the TPPA:


- We favor a complete “carve out” of tobacco from the trade provisions of the TPPA; in other words, we would prefer that any regulations or laws pertaining to tobacco be completely excluded from the TPPA. The CTPC believes strongly that the efforts of individual nations to control tobacco and combat its adverse health effects should not be interfered or impeded in any way by provisions of the TPPA or any other international trade agreement;
- Absent a complete “carve out” of tobacco from the TPPA, we favor an approach which modifies the purported compromise proposal being made by the USTR; more specifically, the CTPC favors an approach which ensures that all federal and state laws and regulations pertaining to tobacco regulation are not subject to jurisdiction under the TPPA and further that any tobacco-related provisions of the TPPA embrace an approach which minimizes potential litigation be it through local, state or federal court and the possible use of “investor-state” dispute settlement systems; and
- Finally, the CTPC requests that the USTR develop a clear public statement on the specifics on the specific elements of a tobacco-related provision, as they are proposed by the USTR for consideration as a part of the TPPA.

In making these and other recommendations, members of the CTPC expressed a clear desire to further discuss these subjects in detail with either of you in the context of a public meeting held by the CTPC. We invite you to appear at such a public meeting at a date that is mutually satisfactory and as an alternative to you traveling to Maine, we suggest that a conference call could be arranged on a date to be determined in the near future.

On behalf of the CTPC, we thank you for your attention to the issues we have raised regarding the treatment of tobacco-related provisions in the TPPA and we look forward to discussing these issues with you in more detail.

Sincerely,


Senator Roger Sherman, Chair


Representative Joyce Maker, Chair

c: Governor Paul LePage
 Senator Olympia Snowe
 Senator Susan Collins
 Representative Michael Michaud
 Representative Chellie Pingree
 Maine State Representative Sharon Treat, member of Intergovernmental Policy Advisory Committee

Sen. Roger Sherman, Chair
Sen. Thomas Martin Jr.
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STATE OF MAINE

Citizen Trade Policy Commission

August 1, 2012

The Honorable Ronald Kirk
Trade Ambassador
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Ms. Jean Grier
Senior Procurement Negotiator
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Re: 2012 Trade Policy Assessment; commissioned by the Maine Citizen Trade Policy Commission

Dear Ambassador Kirk and Ms. Grier:

As you may know, the Citizen Trade Policy Commission (CTPC) is required by current Maine Law (10 MRSA Chapter 1-A) to provide an ongoing state-level mechanism to assess the impact of international trade policies and agreements on Maine's state and local laws, business environment and working conditions. An important part of the CTPC mandate is to conduct a biennial assessment on the impacts of international trade agreements on Maine.

We have enclosed a copy of our recently completed 2012 Trade Policy Assessment. In a process that is more fully described in an addendum included within the printed document, the Citizen Trade Policy Commission contracted with Professor Robert Stumberg of Georgetown University to conduct this assessment.

We believe that the 2012 Trade Policy Assessment is an invaluable tool for a more complete understanding of both the proposed TransPacific Partnership Agreement (TPPA) which is currently being negotiated and other international trade treaties and their current and potential effects on Maine. As a specific result of the 2012 Trade Policy Assessment, the CTPC has voted unanimously to make a number of recommendations regarding the potential treatment of *procurement* within the TPPA and other international trade agreements:

- We favor an approach represented by procurement provisions in other previously negotiated trade agreements such as the World Trade Organization's Agreement on Government Procurement which allow state governors to decide whether to be subject to the procurement chapters of different Free Trade Agreements that have been negotiated between the U.S. and individual nations. The CTPC strongly believes that it is essential to a state's sovereignty to be able to decide whether to be subject to certain procurement provisions;
- The CTPC also is unanimous in our support for the inclusion of provisions in the TPPA and other trade agreements which allow for laws and regulations which permit "Buy America" procurement requirements and
- Finally, the CTPC requests that the USTR develop a clear public statement on the specific elements of a procurement-related provision, as they are proposed by the USTR for consideration as a part of the TPPA.

In making these and other recommendations, members of the CTPC expressed a clear desire to further discuss these subjects in detail with either of you in the context of a public meeting held by the CTPC. We invite you to appear at such a public meeting at a date that is mutually satisfactory and as an alternative to you traveling to Maine, we suggest that a conference call could be arranged on a date to be determined in the near future.

On behalf of the CTPC, we thank you for your attention to the issues we have raised regarding any procurement-related provisions to be included in the TPPA and other international trade agreements and we look forward to discussing these issues with you in more detail.

Sincerely,

Roger Sherman^{AM}

Senator Roger Sherman, Chair

Joyce Maker^{AM}

Representative Joyce Maker, Chair

c: Governor Paul LePage
 Senator Olympia Snowe
 Senator Susan Collins
 Representative Michael Michaud
 Representative Chellie Pingree
 Maine State Representative Sharon Treat, member of Intergovernmental Policy Advisory Committee

Sen. Roger Sherman, Chair
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STATE OF MAINE

Citizen Trade Policy Commission

August 1, 2012

The Honorable Ronald Kirk
Trade Ambassador
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Re: "Country-of-Origin" Labeling Issue

Dear Ambassador Kirk:

As you may know, the Citizen Trade Policy Commission (CTPC) is required by current Maine Law (10 MRSA Chapter 1-A) to provide an ongoing state-level mechanism to assess the impact of international trade policies and agreements on Maine's state and local laws, business environment and working conditions.

During the most recent meeting of the CTPC on July 11, 2012, the commission considered the issue of "Country of Origin" labeling as it pertains to certain provisions of trade agreements administered by the World Trade Organization (WTO). It is our understanding that in recent months, the WTO has handed down three decisions which have invalidated certain U.S. laws and regulations pertaining to country-of-origin labeling; specifically the federal Country of Origin Labeling Act (COOL) has been accused by the WTO as having violated international trade rules.

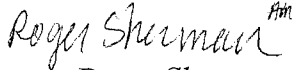
During our review of this issue, the CTPC was informed that the USTR is assessing exactly what steps should be taken with regards to the adverse WTO rulings but no specific information was provided regarding exactly what options are available and under contemplation. Accordingly, because the provisions of COOL and other similar federal and state legislation are so crucial to issues surrounding state sovereignty, the CTPC requests that you respond to the following questions:

1. Exactly what parties, organizations or individuals are you consulting with regarding the recent WTO decisions which invalidate the federal COOL legislation?; and
2. What courses of action are the USTR considering in response to the recent adverse decisions from the WTO?

In making these and other recommendations, members of the CTPC expressed a clear desire to further discuss these subjects in detail with either of you in the context of a public meeting held by the CTPC. We invite you or senior members of your staff to appear at such a public meeting at a date that is mutually satisfactory and as an alternative to you traveling to Maine, we suggest that a conference call could be arranged on a date to be determined in the near future.

On behalf of the CTPC, we thank you for your attention to our significant concerns about the adverse WTO decisions with regards to Country-of-Origin labeling requirements that we have raised and we look forward to discussing these issues with you in more detail.

Sincerely,



Senator Roger Sherman, Chair



Representative Joyce Maker, Chair

c: Governor Paul LePage
Senator Olympia Snowe
Senator Susan Collins
Representative Michael Michaud
Representative Chellie Pingree
Maine State Representative Sharon Treat, member of Intergovernmental Policy Advisory Committee

Sen. Roger Sherman, Chair
Sen. Thomas Martin Jr.
Sen. John Patrick
Rep. Joyce Maker, Chair
Rep. Bernard Ayotte
Rep. Margaret Rotundo

Heather Parent
Stephen Cole
Michael Herz
Michael Hiltz
Connie Jones



Wade Merritt
John Palmer
Linda Pistner
Harry Ricker
Michael Roland
Jay Wadleigh
Joseph Woodbury

Staff:
Lock Kiermaier

STATE OF MAINE

Citizen Trade Policy Commission

August 1, 2012

The Honorable Olympia Snowe
United States Senate
154 Russell Senate Office Building
Washington, D.C. 20510-1903

Re: 2012 Trade Policy Assessment; commissioned by the Maine Citizen Trade Policy Commission

Dear Senator Snowe:

We have enclosed a copy of our recently completed 2012 Trade Policy Assessment. In a process that is more fully described in an addendum included within the printed document, the Citizen Trade Policy Commission contracted with Professor Robert Stumberg of Georgetown University to conduct this assessment.

As you know, the Citizen Trade Policy Commission (CTPC) is required by current Maine Law (10 MRSA Chapter 1-A) to provide an ongoing state-level mechanism to assess the impact of international trade policies and agreements on Maine's state and local laws, business environment and working conditions. An important part of the CTPC mandate is to conduct a biennial assessment on the impacts of international trade agreements on Maine.

We believe that the 2012 Trade Policy Assessment is an invaluable tool for a more complete understanding of both the proposed TransPacific Partnership Agreement (TPPA) which is currently being negotiated and other international trade treaties and their current and potential effects on Maine. In the text of the 2012 Assessment, Professor Stumberg offers a comprehensive critique of certain proposals pertaining to *pharmaceuticals* and *tobacco* made by the USTR regarding the TPPA and also provides a similarly relevant analysis of how the subject of *procurement* has been dealt with in recent international trade treaties. Further, Professor Stumberg has suggested a number of constructive suggestions as to how these 3 important trade topics might be handled differently.

The CTPC has followed up on these suggestions by unanimously endorsing a number of separate letters to be sent to the USTR regarding these topics. Copies of these letters to the USTR will be sent to you and the other members of the Maine Congressional delegation. It is our sincere hope that our suggestions will be the start of a meaningful exchange with the USTR on these

Citizen Trade Policy Commission
c/o Office of Policy & Legal Analysis
State House Station #13, Augusta, ME 04333-0013 Telephone: 207 287-1670
<http://www.maine.gov/legis/opla/citpol.htm>

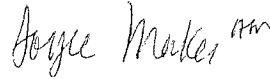
important international trade topics and that you and the other members of Maine's congressional delegation will become significantly involved in the public dialog that we intend to initiate with the USTR.

We invite you and members of your staff to attend and participate in meetings of the CTPC that will be scheduled in the very near future to discuss the ramifications and suggestions emanating from the enclosed 2012 Trade Policy Assessment. We look forward to your participation and welcome any comments or questions that you may have regarding the 2012 Assessment.

Sincerely,



Senator Roger Sherman, Chair



Representative Joyce Maker, Chair

c: Governor Paul LePage

Sen. Roger Sherman, Chair
Sen. Thomas Martin Jr.
Sen. John Patrick
Rep. Joyce Maker, Chair
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Joseph Woodbury

Staff:
Lock Kiermaier

STATE OF MAINE

Citizen Trade Policy Commission

August 1, 2012

The Honorable Susan Collins
United States Senate
413 Dirksen Senate Office Building
Washington, DC 20510

Re: 2012 Trade Policy Assessment; commissioned by the Maine Citizen Trade Policy Commission

Dear Senator Collins:

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Sincerely,

Handwritten signature of Roger Sherman in cursive, with a small "RHS" monogram above the name.

Senator Roger Sherman, Chair

Handwritten signature of Joyce Maker in cursive, with a small "JM" monogram above the name.

Representative Joyce Maker, Chair

c: Governor Paul LePage

Sen. Roger Sherman, Chair
Sen. Thomas Martin Jr.
Sen. John Patrick
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Staff:
Lock Kiermaier

STATE OF MAINE

Citizen Trade Policy Commission

August 1, 2012

The Honorable Michael Michaud
House of Representatives
1724 Longworth HOB
Washington, DC 20515

Re: 2012 Trade Policy Assessment; commissioned by the Maine Citizen Trade Policy Commission

Dear Representative Michaud:

We have enclosed a copy of our recently completed 2012 Trade Policy Assessment. In a process that is more fully described in an addendum included within the printed document, the Citizen Trade Policy Commission contracted with Professor Robert Stumberg of Georgetown University to conduct this assessment.

As you know, the Citizen Trade Policy Commission (CTPC) is required by current Maine Law (10 MRSA Chapter 1-A) to provide an ongoing state-level mechanism to assess the impact of international trade policies and agreements on Maine's state and local laws, business environment and working conditions. An important part of the CTPC mandate is to conduct a biennial assessment on the impacts of international trade agreements on Maine.

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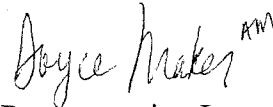
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Sincerely,



Senator Roger Sherman, Chair



Representative Joyce Maker, Chair

c: Governor Paul LePage

Sen. Roger Sherman, Chair
Sen. Thomas Martin Jr.
Sen. John Patrick
Rep. Joyce Maker, Chair
Rep. Bernard Ayotte
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Heather Parent
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Michael Hiltz
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Wade Merritt
John Palmer
Linda Pistner
Harry Ricker
Michael Roland
Jay Wadleigh
Joseph Woodbury

Staff:
Lock Kiermaier

STATE OF MAINE

Citizen Trade Policy Commission

August 1, 2012

The Honorable Chellie Pingree
House of Representatives
1318 Longworth HOB
Washington, D.C. 20515

Re: 2012 Trade Policy Assessment; commissioned by the Maine Citizen Trade Policy Commission

Dear Representative Pingree:

We have enclosed a copy of our recently completed 2012 Trade Policy Assessment. In a process that is more fully described in an addendum included within the printed document, the Citizen Trade Policy Commission contracted with Professor Robert Stumberg of Georgetown University to conduct this assessment.

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Sincerely,



Senator Roger Sherman, Chair



Representative Joyce Maker, Chair

c: Governor Paul LePage

Sen. Roger Sherman, Chair
Sen. Thomas Martin Jr.
Sen. John Patrick
Rep. Joyce Maker, Chair
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Pamela Taylor
Stephen Cole
Michael Herz
Mike Karagiannes
Connie Jones



Wade Merritt
John Palmer
Linda Pistner
Harry Ricker
Jay Wadleigh
Joseph Woodbury

Staff:
Danielle Fox and Alyson Mayo
Legislative Analysts-Office of Policy and Legal
Analysis

STATE OF MAINE

Citizen Trade Policy Commission

October 4, 2012

Ms. Jean Grier
Senior Procurement Negotiator
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Dear Ms. Grier,

Please accept our sincere appreciation for your participation at the meeting held by the Maine Citizen Trade Policy Commission (CTPC) on September 19, 2012. Your comments were timely, informative, helpful and clear. We feel very fortunate that you were able to take the time to speak with us over the phone in spite of what we assume is an incredibly demanding schedule.

As you know, the CTPC dedicates itself to staying informed about international trade policy and how it impacts our state. We conduct biennial assessments of specific areas of interest with regard to trade policy; our most recent dealt with the Trans Pacific Partnership Agreement (TPPA) and was completed this summer. A copy of that assessment can be found on our website at: <http://www.maine.gov/legis/opla/citpolassessments.htm>

In addition to expressing our gratitude for your participation at our last meeting, we wanted to point out statements that we found particularly helpful and informative.


- In response to our question as to the potential negotiations for state-level procurement provisions in the TPPA, you stated that the USTR is committed to the same process of consulting with the states that has been used in other trade agreements. You assured us that USTR will seek state input if TPPA includes sub-federal level procurement provisions. We've established our strong support for state input. Not only are we one of the 37 states which have stated we want to be consulted with regard to procurement, we have also enacted legislation that requires the Governor to receive approval from the Maine Legislature to either opt in or opt out of the procurement provisions in international trade agreements. That requirement can be found at 10 MRSA §13. Subsection 5 of this law reads:


5. Legislative approval of trade agreement required. Unless the Legislature by proper enactment of a law authorizes the Governor or another official of the State to enter into the specific proposed trade agreement, the State may not be bound by that trade agreement.

- You also spoke to our concerns regarding potential changes to the WTO Agreement on Government Procurement (GPA), stating that any changes to that umbrella agreement will only apply to procurement on the federal level. We have been aware of the pressure being applied by the European Union with regard to changes to the GPA in order for them to have greater access to state-level procurement opportunities. We are relieved to know that the USTR will support maintaining the provisions of the GPA that enable states to opt in or opt out of procurement provisions in trade agreements and that the USTR won't bind states in any way unless they opt-in.
- We understand that the trigger for seeking input from the states is procurement activity that equals or exceeds \$500,000 in value. It was reassuring to hear that there are no plans to reduce that threshold.
- You were helpful in pointing out that the Davis Bacon Act, which requires a prevailing wage be paid for federal projects, and the Berry Amendment, which requires the Department of Defense to give procurement preference to domestically made goods for the military, will not be impacted by procurement provisions negotiated in the TPPA.

The Commission is so fortunate to have access to and input from people directly involved with the important responsibility of negotiating international trade agreements. Please accept our sincere gratitude for your thoughtful and helpful participation at our September meeting.

Sincerely,


Senator Roger L. Sherman, Co-chair (DDF)
Maine Citizen Trade Policy Commission


Representative Joyce A. Maker, Co-chair (DDF)
Maine Citizen Trade Policy Commission

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

OCT 26 2012

Senator Roger Sherman, Chair
Representative Joyce Maker, Chair
State of Maine
Citizen Trade Policy Commission
c/o Office of Policy & Legal Analysis
State House Station #13
Augusta, ME 04333-0013

Dear Senator Sherman and Representative Maker:

Thank you for the recent letters you sent on behalf of the Citizen Trade Policy Commission (CTPC) and for sending a copy of your 2012 Trade Policy Assessment. I appreciate receiving your input on the possible impacts of international trade agreements generally and the Trans-Pacific Partnership (TPP) specifically, including the potential coverage of procurement by state governments and the potential treatment of tobacco and pharmaceuticals. In addition, you asked several questions regarding the status of the dispute in the World Trade Organization (WTO) regarding the Country of Origin Labeling Act (COOL).

With regard to your concerns with the potential coverage of state procurement under the TPP, let me assure you that the United States will only cover the state procurement of Maine or any other state where that state has expressly authorized such coverage. This is our long-established practice, which dates back to the inclusion of state procurement under the WTO Agreement on Government Procurement. With respect to your interest in further discussions of these issues, I understand our government procurement negotiator, Jean Grier, has been in contact with you.

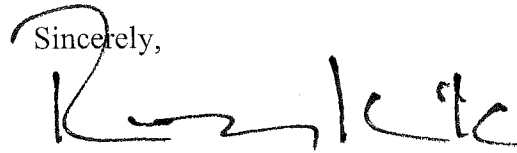
In one of your letters you also outlined a number of CTPC recommendations regarding the treatment of tobacco in the TPP negotiations. We have heard from many stakeholders in recent months, with a number of perspectives on this issue and the draft tobacco proposal we developed. We are considering this wide-ranging input before determining how to move forward in the TPP negotiations. It is important to ensure we strike the right balance on an issue that is important to so many Americans. As we move forward in our review of the input we have received, we look forward to further discussion with interested stakeholders, including members of the CTPC.

Regarding your concern on the reimbursement of pharmaceutical products and medical devices, USTR is seeking TPP transparency provisions to ensure transparency and procedural fairness for pharmaceutical products and medical devices. This is a significant area of concern for U.S. exporters, including those in the innovative and generic pharmaceutical industries and the medical device industry. Our emphasis on transparency and fairness preserves flexibility for all TPP governments to design evidence-based pricing and reimbursement programs at the national level, while ensuring respect for the rights of stakeholders of all viewpoints through basic norms of transparency and procedural fairness. We will continue to negotiate these provisions carefully with the concerns of state government authorities in mind. As USTR has indicated previously, it remains our view that corresponding provisions of existing agreements are not applicable to Medicaid or health care programs at non-central levels of government.

NOV 05 2012

Finally, you asked about the status of the WTO dispute settlement proceedings regarding COOL. The United States has stated that it intends to comply with the recommendations and rulings of the WTO in the COOL dispute. We are continuing to consult internally within the U.S. Government on this matter, and no decision has yet been made as to how we will implement the WTO's recommendations and rulings.

Thank you again for sharing your views on the TPP negotiations and other trade issues of interest to the CTPC. We appreciate this input and your active engagement with us, and we will continue to consult closely with stakeholders, including members of the CTPC, as we formulate and implement U.S. trade policy.

Sincerely,


Ambassador Ron Kirk

Sen. Roger Sherman, Chair
Sen. Thomas Martin Jr.
Sen. John Patrick
Rep. Joyce Maker, Chair
Rep. Bernard Ayotte
Rep. Margaret Rotundo

Heather Parent
Stephen Cole
Michael Herz
Michael Hiltz
Connie Jones



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Harry Ricker
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Joseph Woodbury

Staff:
Lock Kiermaier

STATE OF MAINE

Citizen Trade Policy Commission

December 15, 2011

Secretary Tim Geithner
U.S. Department of the Treasury
Federal Insurance Office
MT 1001
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: Input on the Report to Congress on How to Modernize and Improve the System of Insurance Regulation in the United States

Dear Secretary Geithner,


We are writing on behalf of the Maine Citizen Trade Policy Commission in response to the Department of Treasury's request for comment on How to Modernize and Improve the System of Insurance Regulation in the United States.

When the Restoring of Financial Stability Act of 2010, later amended in conference committee to the Dodd-Frank Wall Street Reform and Consumer Protection Act, was first proposed, it included provisions that preempted state insurance laws if such laws are perceived to be inconsistent with international trade agreements. At that time, the Commission expressed strong opposition to those provisions in a letter to Senator Dodd (see enclosure).

The Commission maintains its opposition and would like to take this opportunity to encourage the Treasury to recommend against any similar provisions for future insurance regulation. The Commission's letter to Senator Dodd is attached and outlines our rationale for opposition.

Thank you for your consideration.

Sincerely,


Senator Roger Sherman, co-chair


Representative Joyce Maker, co-chair

cc:
Senator Susan M. Collins
Senator Olympia J. Snowe
Representative Michael Michaud
Representative Chellie Pingree
Governor Paul LePage

Citizen Trade Policy Commission
c/o Office of Policy & Legal Analysis
State House Station #13, Augusta, ME 04333-0013 Telephone: 207 287-1670
<http://www.maine.gov/legis/opla/citpol.htm>

Sen. Troy Jackson, Chair
Sen. Stan Gerzofsky
Sen. Roger Sherman
Rep. Margaret Rotundo, Chair
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Sarah Adams Bigney
Carla Dickstein
Michael Herz
Michael Hiltz
John Palmer
John L. Patrick
Cynthia Phinney
Paul Volckhausen
Joseph Woodbury

Curtis Bentley, Legislative Analyst

STATE OF MAINE

Citizen Trade Policy Commission

April 16, 2010

The Honorable Christopher J. Dodd, Chairman
Committee on Banking, Housing, & Urban Affairs
United States Senate
448 Russell Senate Office Building
Washington, DC 20510

Re: Restoring American Financial Stability Act of 2010

Dear Senator Dodd:

We are writing on behalf of the Maine Citizen Trade Policy Commission which by unanimous vote today expressed its strong opposition to the Office of National Insurance (ONI), created by Title V, Subtitle A of the Restoring American Financial Stability Act of 2010 (Chairman's Mark, Senate Standing Committee on Banking, Housing, & Urban Affairs). Subtitle A would establish a new federal bureaucracy (ONI) and give one person the power to invalidate state insurance laws that are perceived as "inconsistent with" international agreements.

We are concerned that this legislation bypasses the trade negotiation and implementation process and vests in one person in the Treasury Department the power to preempt validly enacted state laws – without waiting for a specific allegation of a trade violation, and based on a vague and expansive definition of potentially affected trade agreements. All of this would be done without any of the protections provided by the U.S. Constitution when international treaties are negotiated and Congress preempts state law. Disturbingly, even a treaty that has been submitted for ratification and defeated could be considered an "agreement" with preemptive force.

The Maine Citizen Trade Policy Commission (CTPC) is a bipartisan commission established in 2003 to assess and monitor the legal and economic impacts of trade agreements on state and local laws, working conditions and the business environment, and to make policy recommendations to the Legislature and the Governor concerning the impact of trade agreements

and trade-related policies. In our view, the preemption provisions of Subtitle A reach well beyond the scope of current trade policy and constitute an unprecedented intrusion into matters reserved to the states.

We are cognizant that international agreements can have an impact on state policies, and indeed the CTPC has an advisory role within Maine to insure that policy makers are aware of the parameters of trade policy. Subtitle A goes well beyond any trade policy we are aware of and vests within one agency employee the power to sweep aside state insurance laws regulating purely domestic markets, such as licensing laws or laws requiring the use of U.S. statutory accounting principles. Any "international insurance agreement" with a foreign government or regulatory entity (even a non-governmental entity) could be used by this federal employee as the rationale for an action to preempt state-based standards, overturning the actions of state legislatures without resort to the courts or to international trade dispute resolution tribunals.

We urge you to strike the preemption provisions and the authority given to Treasury to negotiate and enter into new international insurance agreements in Title V, Subtitle A.

Thank you for your consideration.

Sincerely,

Senator Troy Jackson, co-chair

Representative Peggy Rotundo, co-chair

cc:

Senator Susan M. Collins

Senator Olympia J. Snowe

Senator Harry Reid

The Honorable Michael Michaud

The Honorable Chellie M. Pingree

Mila Kofman, Superintendent of Insurance

Janet Mills, Attorney General

Sen. Troy Jackson, Chair
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STATE OF MAINE

Citizen Trade Policy Commission

April 16, 2010

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United States Senate
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We urge you to strike the preemption provisions and the authority given to Treasury to negotiate and enter into new international insurance agreements in Title V, Subtitle A.

Thank you for your consideration.

Sincerely,

Senator Troy Jackson, co-chair

Representative Peggy Rotundo, co-chair

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Senator Olympia J. Snowe

Senator Harry Reid

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STATE OF MAINE

Citizen Trade Policy Commission

December 15, 2011

Secretary Tim Geithner
U.S. Department of the Treasury
Federal Insurance Office
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1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: Input on the Report to Congress on How to Modernize and Improve the System of Insurance Regulation in the United States

Dear Secretary Geithner,

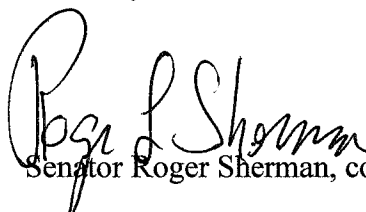
We are writing on behalf of the Maine Citizen Trade Policy Commission in response to the Department of Treasury's request for comment on How to Modernize and Improve the System of Insurance Regulation in the United States.


When the Restoring of Financial Stability Act of 2010, later amended in conference committee to the Dodd-Frank Wall Street Reform and Consumer Protection Act, was first proposed, it included provisions that preempted state insurance laws if such laws are perceived to be inconsistent with international trade agreements. At that time, the Commission expressed strong opposition to those provisions in a letter to Senator Dodd.

The Commission maintains its opposition and would like to take this opportunity to encourage the Treasury to recommend against any similar provisions for future insurance regulation. The Commission's letter to Senator Dodd is attached and outlines our rationale for opposition.

Thank you for your consideration.

Sincerely,


Senator Roger Sherman, co-chair


Representative Joyce Maker, co-chair

Citizen Trade Policy Commission
c/o Office of Policy & Legal Analysis
State House Station #13, Augusta, ME 04333-0013 Telephone: 207 287-1670
<http://www.maine.gov/legis/opla/citpol.htm>

Cc:

Senator Susan M. Collins

Senator Olympia J. Snowe

Representative Michael Michaud

Representative Chellie Pingree

Governor Paul LePage

Sen. Troy Jackson, Chair
Sen. Stan Gerzofsky
Sen. Roger Sherman
Rep. Margaret Rotundo, Chair
Rep. Jeffery A. Gifford
Rep. Sharon Anglin Treat

Jane Aiudi
Malcolm Burson
Leslie Manning
Wade Merritt
Linda Pistner
Barbara VanBurgel



Sarah Adams Bigney
Carla Dickstein
Michael Herz
Michael Hiltz
John Palmer
John L. Patrick
Cynthia Phinney
Paul Volckhausen
Joseph Woodbury

Curtis Bentley, Legislative Analyst

STATE OF MAINE

Citizen Trade Policy Commission

February 17, 2010

Jennifer Choe Groves
Senior Director for Intellectual
Property and Innovation and Chair of the Special 301 Committee
Office of the United States Trade Representative

Re: Submission of Written Testimony and Notice of Intent to Testify at a Public Hearing
Concerning the 2010 Special 301, Docket #USTR-2010-0003

Dear Ms. Groves:

On behalf of the Maine Citizen Trade Policy Commission (CTPC or Commission), we write to oppose the recent and disturbing expansion of the Special 301 report into the realm of disciplining countries for implementing effective and non-discriminatory pharmaceutical pricing policies. This letter, and our request to testify orally at the hearing that will be held in on Wednesday, March 3, 2010, is pursuant to the unanimous vote of the Commission at our January 8, 2010 meeting.

The Maine Citizen Trade Policy Commission was established by the Legislature in 2003 to assess and monitor the legal and economic impacts of trade agreements on state and local laws, working conditions and the business environment; to provide a mechanism for citizens and Legislators to voice their concerns and recommendations; and to make policy recommendations designed to protect Maine's jobs, business environment and laws from any negative impact of trade agreements. We have members representing the Maine House of Representatives, and Senate, the Maine International Trade Center, various state agencies, and members affiliated with citizen constituencies including small businesses, manufacturers, labor, environmental organizations, and small farmers.

Pursuant to our statutory mission, we have included a focus on health policy and trade issues, including pharmaceutical policy and in particular, the impact of that policy on Medicaid implementation and costs in the state. Our membership is determined by statute and includes a health professional. We have previously written to the U.S. Trade Representative concerning carving out Medicaid from free trade agreement provisions relating to pharmaceuticals. Legislative members of the commission have also met with USTR staff on these issues, and we were gratified that the Korea FTA included a footnote recognizing the role of the states implementing and paying for Medicaid and explicitly carving out these state programs.

Despite this past advocacy and the at least tacit recognition by the USTR that when trade agreements address pharmaceutical policy, there can be unintended and deleterious consequences for state health policy and access, it appears that the USTR has nevertheless embarked on an even broader effort to promote a new international trade framework to restrict domestic regulatory responses to excessive pricing by monopoly pharmaceutical suppliers.

This new direction concerns us greatly, because it will increase state health care costs and significantly reduce access to health care. The timing of this initiative is particularly questionable given the multi-million dollar deficits in state Medicaid budgets caused by the ongoing worldwide recession. The consequence of its implementation will be to reduce access to affordable health care at the very time the Administration is pushing for universal health coverage in partnership with the States.

Maine relies on evidence-based reimbursement decisions to restrain pharmaceutical prices. Like other states, Maine uses a wide variety of regulatory tools and policies to control excessive pricing by medicine suppliers. These are often the same tools used by foreign governments that USTR lists as “unreasonable” under Special 301 and has sought to restrict or eliminate in recent trade agreements. One of the most important of these state mechanisms is the Preferred Drug Lists (PDLs) in the Medicaid program.

More than forty states use PDLs for Medicaid and other programs. These are programs that, like those in other countries, use the bulk purchasing and reimbursement power of governments to pressure drug companies to accept steep reductions in their reimbursement prices as a condition for gaining preferred access to a large market. The industry calls these “price controls,” governments call them “negotiation.” Regardless, these are the same tools that USTR for several years has been highlighting as in need for a new international standard setting exercise to restrict domestic policy options.

Use of PDLs by Maine and other U.S. states has resulted in tremendous savings; eliminating or restricting this tool will have serious negative repercussions. The prices paid by the state of Maine for prescription drugs in its Medicaid program average around 50% of the “Average Wholesale Price” (AWP) as a result of both the federal Medicaid rebate, rebates through the state’s supplemental rebate program, and a tiered PDL. The state also has improved its bargaining power while maintaining this basic approach by expanding the size of its

purchasing pool. At a time when brand-name drug prices and spending has increased in the double digits over a decade, Maine has been able to keep its drug spend relatively flat.

Maine's approach to drug pricing is consistent with the approach taken in the majority of states. Indeed, the President's budget for 2008 specifically noted that Medicaid "allows states to use [such] private sector management techniques to leverage greater discounts through negotiations with drug manufacturers."¹ Maine's current Supplemental Budget as proposed by Governor John E. Baldacci would already cut back on pharmaceutical access programs such as Drugs for the Elderly,² a program initiated in the early 1970's – the first such program in the Nation – in an effort to balance the budget in light of reduced revenues due to the economy.

Although it is commonly posited by industry that foreign countries "free ride" on U.S. pharmaceutical prices, U.S. governments that use policy tools that are similar to foreign governments pay similar prices. The prices paid by state Medicaid programs or the Veterans Administration hospitals, for example, are frequently *lower* than Canadian and European prices.³ Similar tools are used by almost every bulk purchaser of drugs – including private insurance companies, branches of the U.S. federal government and most other industrialized countries.

The Maine Citizen Trade Policy Commission opposes USTR's promotion of international restrictions on domestic pharmaceutical pricing programs. As noted above, we are concerned about a recent and disturbing trend of the United States Trade Representative using trade agreements and pressure, including through Special 301, to push for the international regulation of *domestic* pharmaceutical reimbursement programs.

Maine and other states have repeatedly raised concerns about USTR's recent use of Free Trade Agreements with Australia and Korea to begin establishing international disciplines on pharmaceutical pricing programs. In several submissions to USTR and Congress we have warned that U.S. states already use the same tools that USTR was attempting to restrict abroad. The Korea agreement included a radical provision appearing to allow industry appeals of government pharmaceutical reimbursement decisions on whether they adequately respected the "value" of patented pharmaceutical products. Such provisions, if applied to state pharmaceutical pricing programs, would significantly hamper the operation of important public health programs.

The 2009 Special 301 Report contains additional evidence of USTR's shift of its negotiating priorities into the arena of restricting evidence based pricing programs. The Report singles out Japan, Canada, France, Germany, New Zealand, Taiwan and Poland for administering "unreasonable . . . reference pricing or other potentially unfair reimbursement policies." The Report further states that:

¹ Budget of the United States Government, FY 2008. Available at www.whitehouse.gov.

² See information posted at: <http://www.maine.gov/dhhs/mainerx/del.htm>

³ See the 2004 Annual Report of the West Virginia Pharmaceutical Cost Management Council, available at <http://www.wvc.state.wv.us/got/pharmacycouncil/>.

The United States also is seeking to establish or continue dialogues with Organization for Economic Cooperation and Development (OECD) members and other developed economies to address concerns and encourage a common understanding on questions related to innovation in the pharmaceutical sector.

It appears to the Commission that USTR is targeting the same policies that it has in the past – i.e. innovative reimbursement policies that effectively restrain medicine pricing in a manner similar to state preferred drug lists and other public policies. ***We oppose this use of Special 301. The U.S. should not be negotiating for the limitation of programs abroad that are the best practices in the field right now here at home***

Finally, we are concerned that the actions of USTR threaten best practices needed for health reform. Maine has been a leader in expanding access to health care for its residents and identifying and implementing best practices to rein in excessive medical cost and promote public health.⁴ Pharmaceutical policy in the U.S. is a major component of health policy – and costs – and is no less in need of reform. We spend more on pharmaceuticals than any other country in the world. Maine and other U.S. states are effectively using policies to reduce costs and promote public health by influencing prescribing decisions with evidence. As the federal government continues working on health reform, we strongly urge that it learn from these examples, and not allow its USTR to negotiate them out of existence.

Thank you for your consideration.

Yours sincerely,

Senator Troy Jackson, Chair

Representative Margaret Rotundo, Chair

cc: Ron Kirk, USTR
John Baldacci, Governor
Member of Maine's Congressional Delegation

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⁴ Initiatives include Dirigo Health, the Maine Quality Forum, increased transparency of medical pricing and quality (including a first-in-nation web-based disclosure) and the Advisory Council on Health Systems Development which just issued a draft report on payment reform. See http://www.maine.gov/governor/baldacci/policy/health_care.html

ORAL STATEMENT PRESENTED MARCH 3, 2010 BY MAINE REP. SHARON TREAT ON BEHALF OF THE MAINE CITIZEN TRADE POLICY COMMISSION BEFORE THE USTR ON THE SPECIAL 301 REPORT

Good afternoon. I am Sharon Treat, a Maine State Representative and a member of the Maine Citizen Trade Policy Commission (CTPC or Commission). I am here today representing the co-chairs of the Commission, Senator Troy Jackson and Representative Peggy Rotundo, and the entire CTPC which voted has unanimously to testify at this hearing and to oppose the recent and disturbing expansion of the Special 301 report into the realm of disciplining countries for implementing effective and non-discriminatory pharmaceutical pricing policies.

The Maine Citizen Trade Policy Commission was established by the Maine Legislature in 2003 to assess and monitor the legal and economic impacts of trade agreements on state and local laws, working conditions and the business environment; to provide a mechanism for citizens and Legislators to voice their concerns and recommendations; and to make policy recommendations designed to protect Maine's jobs, business environment and laws from any negative impact of trade agreements. We are bipartisan and have membership representing the Maine House of Representatives and Senate, the Maine International Trade Center, various state agencies, and citizen constituencies including small businesses, manufacturers, labor, environmental organizations, and small farmers.

Our membership is determined by statute and includes a health professional. We have since our inception included a focus on health policy and trade, including pharmaceutical policy and in particular, the impact of that policy on Medicaid implementation and costs in the State. We have previously written to the U.S. Trade Representative concerning carving out Medicaid from free trade agreement provisions relating to pharmaceuticals.

Legislative members of the Commission have also met with USTR staff on these issues, and we were gratified that the Korea FTA included a footnote recognizing the role of the states implementing and paying for Medicaid and explicitly carving out these state programs.

Despite this past advocacy and the at least tacit recognition by the USTR that when trade agreements address pharmaceutical policy, there can be unintended and deleterious consequences for state health policy and access, it appears that the USTR has nevertheless embarked on an even broader effort to promote a new international trade framework to restrict *domestic* regulatory responses to excessive pricing by monopoly pharmaceutical suppliers.

This new direction concerns us greatly, because it will increase state health care costs and reduce access to affordable health care at the very time the Administration is pushing for universal health coverage in partnership with the States.

- **Maine relies on evidence-based reimbursement decisions to restrain pharmaceutical prices.** Like other U.S. states, Maine uses a wide variety of regulatory tools and policies to control excessive pricing by medicine suppliers. These are often the same tools used by foreign governments that USTR lists as “unreasonable” under Special 301 and has sought to restrict or eliminate in recent trade agreements. One

of the most important of these state mechanisms is the Preferred Drug Lists (PDLs) in the Medicaid program.

- **Use of PDLs by Maine and other U.S. states has resulted in tremendous savings; eliminating or restricting this tool will have serious negative repercussions.** The prices paid by the State of Maine for prescription drugs in its Medicaid program average around 50% of the “Average Wholesale Price” (AWP) as a result of the federal Medicaid rebate, additional discounts through the state’s supplemental rebate program, and a tiered PDL. The state also has improved its bargaining power while maintaining this basic approach by expanding the size of its purchasing pool. *At a time when brand-name drug prices and spending has increased in the double digits over a decade, Maine has been able to keep its drug spend relatively flat.*
- **Maine’s approach to drug pricing is consistent with the approach taken in the majority of states, at least 40 of which rely on PDLs to bring drug prices down.** Indeed, the President’s budget for 2008 specifically noted that Medicaid “allows states to use [such] private sector management techniques to leverage greater discounts through negotiations with drug manufacturers.”
- **Maine is already facing budget cuts resulting from revenue shortfalls caused by the ongoing worldwide recession – cuts that will take spending back to 2004 levels and hit health care funding especially hard.** The current Supplemental Budget as proposed by Governor John E. Baldacci would cut back on pharmaceutical access programs such as Drugs for the Elderly, a program initiated in the early 1970’s – the first such program in the Nation – in an effort to balance the budget in light of reduced revenues. Any measure that increases the prices we pay now for prescription drugs would further devastate our budget and cause untold harm by cutting access to medicines.
- **The Maine Citizen Trade Policy Commission opposes USTR’s promotion of international restrictions on domestic pharmaceutical pricing programs.** As noted above, we are concerned that the USTR is using trade agreements and pressure, including through Special 301, to push for the international regulation of *domestic* pharmaceutical reimbursement programs. In several submissions to USTR and Congress we have warned that U.S. states already use the same tools that USTR was attempting to restrict abroad. The Korea agreement included a radical provision appearing to allow industry appeals of government pharmaceutical reimbursement decisions on whether they adequately respected the “value” of patented pharmaceutical products. Such provisions, if applied to state pharmaceutical pricing programs, would significantly hamper the operation of important public health programs.

The 2009 Special 301 Report contains additional evidence of USTR’s shift of its negotiating priorities into the arena of restricting evidence-based pricing. The Report singles out Japan, Canada, France, Germany, New Zealand, Taiwan and Poland for administering “unreasonable . . . reference pricing or other potentially unfair reimbursement policies.” The Report further states that:

The United States also is seeking to establish or continue dialogues with Organization for Economic Cooperation and Development (OECD) members and other developed economies to address concerns and encourage a common understanding on questions related to innovation in the pharmaceutical sector.

It appears to the Commission that USTR is targeting the same policies that it has in the past – i.e. innovative reimbursement policies that effectively restrain medicine pricing in a manner similar to state preferred drug lists and other public policies. ***We oppose this use of Special 301. The U.S. should not be negotiating to limit programs abroad that are the best practices in the health care field here at home.***

- **Finally, we are concerned that the actions of USTR threaten best practices needed for health reform.** Maine has been a leader in expanding access to health care for its residents and identifying and implementing best practices to rein in excessive medical cost and promote public health. In addition to our early adoption of PDLs to expand access to medicines and implementation of pharmaceutical discount programs including Drugs for the Elderly and MaineRx Plus, Maine has pioneered initiatives including the public-private Dirigo Choice insurance product, the Maine Quality Forum, increased transparency of medical pricing and quality (including a first-in-nation web-based disclosure) and the Advisory Council on Health Systems Development which just issued a draft report on payment reform.

Pharmaceutical policy in the U.S. is a major component of health policy – and costs – and is no less in need of reform. We spend more on pharmaceuticals than any other country in the world. Maine and other U.S. states are effectively using policies to reduce costs and promote public health by influencing prescribing decisions with evidence. As the Federal government continues working on health reform, we strongly urge that it learn from these examples, and not allow its USTR to negotiate them out of existence.

USTR-2010-003

UNITED STATES TRADE REPRESENTATIVE

IN THE MATTER OF
2010 SPECIAL 301 REVIEW:
IDENTIFICATION OF COUNTRIES UNDER SECTION 182 OF THE TRADE ACT OF 1974

**SUBMISSION OF U.S. STATE HEALTH ORGANIZATIONS:
NATIONAL LEGISLATIVE ASSOCIATION ON PRESCRIPTION DRUG PRICES
WORKING GROUP ON TRADE, THE VERMONT COMMISSION ON
INTERNATIONAL TRADE AND STATE SOVEREIGNTY, AND THE FORUM ON
DEMOCRACY AND TRADE**

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February 18, 2010

SUMMARY 1

STATEMENT OF INTEREST 2

ARGUMENT 3

A. States Rely on Evidence-Based Reimbursement Decisions to Restrain Pharmaceutical Prices.....3

B. USTR Has Been Using Trade agreements and Special 301 to Promote International Restrictions on Domestic Pharmaceutical Pricing Programs.....5

C. The 2009 Special 301 Report Continues USTR’s Promotion of International Restraints on Pharmaceutical Reimbursement Programs7

D. USTR’s Advocacy of International Restrictions on Domestic Pharmaceutical Pricing Policies will Limit U.S. Programs8

1. USTRs Agenda Will Limit Effective Programs in the U.S..... 8

2. USTR’s Agenda Will Damage State “Re-importation” Policies..... 9

3. USTR is Threatening Best Practices Needed for Health Reform 9

E. USTR Lacks Statutory Authority to Promote Restrictions on Non-Discriminatory Pharmaceutical Pricing Policies10

SUMMARY

We write to oppose the recent and disturbing use of the Special 301 Report to discipline effective and non-discriminatory pharmaceutical pricing policies. This shift, disturbing on its face, is all the more concerning because it is evidently part of a broader effort by USTR to promote a new international trade framework to restrict domestic regulatory responses to excessive pricing by monopoly pharmaceutical suppliers. This agenda is not authorized by any statute or administrative directive. And the agenda is incredibly unwise at a time when the U.S. is struggling to find ways to restrain its own health costs. To the extent there are best practices in the U.S., they are at the state governmental level and they follow the same basic policies and principles of foreign countries that USTR seeks to discipline. Reciprocal enforcement of USTR standards to state programs would obliterate the effectiveness of Medicaid pricing programs and threaten the administration’s policy goal of reducing the cost of healthcare in this country.

States have repeatedly contacted federal officials opposing this radical agenda, as will be further described below. In this Special 301 submission, State representatives appeal to the

Obama administration to change course and halt the use of trade pressure or negotiations to internationally regulate domestic drug pricing programs that do not violate any World Trade Organization rule.

STATEMENT OF INTEREST

The National Legislative Association on Prescription Drug Prices' Working Group on Trade helps states establish institutional mechanisms both to provide ongoing oversight over trade policy, and to educate their citizenry and policy makers about the connection between international trade policy and affordable prescription drugs. It is comprised of state legislators, trade and Medicaid experts, and representatives of state attorneys general. The Working Group is co-chaired by Arizona State Senator Meg Burton-Cahill and Connecticut State Representative Kevin Ryan.

The Vermont Commission on International Trade and State Sovereignty was established by the Vermont General Assembly in 2006 to assess the legal and economic impacts of international trade agreements on state and local laws, state sovereignty, and the business environment. As part of this charge, the Vermont Commission closely examined the transparency offered and public participation process utilized by the U.S. Trade Representative (USTR) in the negotiation of trade agreements.

The Forum on Democracy and Trade's mission is to support public officials engaged in global trade debates. Forum participants work to ensure that U.S. trade policies are consistent with, and deferential to, the principles of federalism as enshrined in the constitution.

ARGUMENT

A. States Rely on Evidence-Based Reimbursement Decisions to Restrain Pharmaceutical Prices

Patents on medicines can create a particularly strong form of monopoly that, if left impervious to regulations affecting pricing power, can lead to extraordinarily high prices that harm social welfare. This is because medicines can be basic life necessities that few will do without and because many purchasers are insulated from price exposure by forms of insurance.

State governments use a wide variety of regulatory tools and policies to restrain excessive pricing by medicine suppliers. These are often the same tools used by foreign governments that USTR describes as “unreasonable” in the Special 301 Report, and has sought to restrict or eliminate in recent trade agreements.

Although it is commonly posited by industry that foreign countries “free ride” on U.S. pharmaceutical prices, U.S. federal government agencies and state governments use policy tools that are similar to foreign governments – and pay similar prices.¹ One of the most important tools of states are Preferred Drug Lists (PDLs) in the Medicaid program. More than forty states use PDLs for Medicaid and other local health programs. Similar tools are used by almost every bulk purchaser of drugs – including private insurance companies, branches of the U.S. federal government and most other industrialized countries. These programs use bulk purchasing and reimbursement to pressure drug companies reduce prices as a condition for access to a large market. PDLs are substantially similar to the programs in other countries that USTR and industry criticize as unreasonable price controls.

Use of PDLs by U.S. states has resulted in tremendous savings:

¹ See *The 2004 Annual Report of the West Virginia Pharmaceutical Cost Management Council*, available at <http://www.wvc.state.wv.us/got/pharmacycouncil/>.

- Iowa has saved \$100 million dollars between 2005 and 2009. The state's Department of Human services reports that last year the state's Preferred Drug List delivered savings equal to 34.7% of its total drug budget.²
- Oregon reports saving 40% per prescription due to greater generic uptake resulting from its use of a Preferred Drug List in 2009.³
- From 2006 to 2007, discounts negotiated by private companies for Medicare Part D were "substantially smaller" than those negotiated by state Medicaid programs, resulting in costs 30% higher for Medicare.⁴
- Total Medicaid spending on pharmaceuticals decreased by 1.8% in 2007 (the most recent year for which data is available), while at the same time drug spending as a whole increased at a rate of 4.9%.⁵
- The President's budget for 2008 specifically noted that Medicaid allows states "to use [such] private sector management techniques to leverage greater discounts through negotiations with drug manufacturers."⁶
- According to the January 2003 annual report of the Office of Vermont Health Access, spending on acid reducers, anti-inflammatory drugs, and opiate analgesics dropped from \$15.8 million to \$12 million within 8 months of introducing the Medicaid PDL. Vermont saved over ten percent of its prescription drug budget for state employees (\$2.8 million on total expenditures of \$21.1 million) by restructuring the benefit to include a PDL.⁷

The big difference between prices in the U.S. and prices in other countries is that we currently have a large number of people who are not covered by any pooled purchasing plan and

² Iowa Department of Human Services, <http://www.resultsiowa.org/humansvs.html> (last visited Feb. 12, 2010).

³ Oregon Prescription Drug Program Newsletter, Jan. 2010.

⁴ Report of the U.S. House Committee on Oversight and Reform, Majority Staff, *Medicare Part D: Drug Pricing and Manufacturer Windfalls*, July 2008, available at http://www.cmhda.org/breaking_news/documents/0807_Breaking%20News_Medicare%20Part%20D%20report%20House%20of%20reps%207-08.pdf.

⁵ Micah Hartman, Anne Martin, Patricia McDonnell, Aaron Catlin, and the National Health Expenditure Accounts Team *National Health Spending In 2007: Slower Drug Spending Contributes To Lowest Rate Of Overall Growth Since 1998*, J. Health Affairs, 28(1), 246-61 (2009).

⁶ Budget of the United States Government, FY 2008. available at <http://www.hhs.gov/asrt/ob/docbudget/2008budgetinbrief.pdf>

⁷ Letter from Ginny Lyons and Kathleen Keenan, Vermont State Representatives, to US Congressional Representatives. Apr. 18, 2007.

therefore are subject to un-negotiated retail prices at the pharmacy. These individuals pay the highest prices for medicines, prices that have been estimated at between 58 and 118 percent more for patented brand-name drugs than buyers in Canada and western European countries.⁸

The rational policy response to the pricing problem in the U.S. would be to study what successful governments in the U.S. and abroad are doing to restrain excessive pricing and apply those models here. Instead, USTR has been joining an industry campaign to obliterate successful programs.

B. USTR Has Been Using Trade agreements and Special 301 to Promote International Restrictions on Domestic Pharmaceutical Pricing Programs

Ambassador Kirk recently expressed his “support” for broadening the discussion of a proposal by Pfizer to promote a new international trade agreement that would “discipline” pharmaceutical reimbursement programs in the U.S. and abroad.⁹ This statement is extremely concerning to state officials, as have previous efforts of the past USTR to use trade agreements to regulate domestic pharmaceutical pricing programs.

Two past Free Trade Agreements – with Australia and Korea – include chapters that impose restrictions on pharmaceutical reimbursement programs. These were negotiated under a lapsed Congressional mandate to “achieve the elimination of government measures such as price

⁸ Victoria Colliver, *U.S. Drug Prices 81% Higher than in 7 Western Nations/Study of Name Brands Shows Steep Rise in Differential Since 2000*, San Francisco Chron. (Oct. 29, 2004).

⁹ See Testimony of Jeff Kindler, Pfizer CEO, before the Senate Finance Committee (Jul. 15, 2008), available at http://media.pfizer.com/files/news/kindler_testimony_sfc_071508.pdf (last visited on Feb. 17, 2010). See also, A Discussion with Prof. John Barton, sponsored by PIJIP (Feb. 19, 2009) available at wcl.american.edu/pijip/go/barton (stating that the Pfizer proposal includes as “a trade goal the achievement of a sector-specific trade agreement” that would ensure that high prices in wealthy countries subsidize lower prices for some populations in poor countries. In the rich countries like the U.S., the agreement would impose internationally binding restrictions on regulatory authority that would “ensure that pricing and reimbursement policies recognize and reward innovation, and to set disciplines on government practices that undermine incentives for innovation.” The proposal would also demand that wealthy country aid programs limit use of generic drugs and pay high prices even for distribution in developing countries with no patent protections on the drugs).

controls and reference pricing.”¹⁰ Implementation of this negotiating principle to restrain pharmaceutical price regulations was always highly controversial. The same guidance legislation required that trade agreements respect the Doha Declaration on TRIPS and Public Health.¹¹ The Doha Declaration on TRIPS and Public Health requires USTR to protect the rights of all countries to use TRIPS flexibilities to promote access to medicines to all, including the flexibility to adopt regulations of excessive pricing and other abuses of the patent monopoly power.¹²

The bilateral FTA negotiated between the US and Australia included procedures for industry to participate in and legally challenge pharmaceutical reimbursement programs. In the 2006 negotiation of the US - Korea FTA, negotiations broke down at one point with Korea’s refusal to negotiate away a national “positive list” drug reimbursement formulary very similar to state Medicaid preferred drug lists. Chapter 5 of the FTA ultimately included severe restrictions on drug reimbursement programs, including an opportunity for industry to appeal drug reimbursement decisions that do not “appropriately recognize the value of patented pharmaceutical products.”¹³

State officials repeatedly warned USTR and Congress that the norms being pressed by the U.S. in these pharmaceutical chapters would cripple state Medicaid programs.¹⁴ As the

¹⁰ 19 U.S.C. § 3802(b)(8)(D). Expired, 2007

¹¹ 19 U.S.C. § 3802(b)(4)(C). Expired, 2007

¹² *Cf.* TRIPS Article 8 (stating that members may “adopt measures necessary to protect public health” and specifically counsels that appropriate measures “may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.”); 2009 Report of the Special Rapporteur on the Right to Health, delivered to the General Assembly, U.N. Doc. A/HRC/11/12 (Mar. 31, 2009) (noting that freedom to adopt regulatory price controls are an important TRIPS flexibility), *available at* http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.12_en.pdf (last visited on Feb. 17, 2010).

¹³ Korea-US FTA, Art. 5.2(b)(i).

¹⁴ *See* Vermont State Senate Resolution J.R.S. 50 (urging USTR to “pursue an exchange of Interpretive notes” with Australia to formally ensure state Medicaid programs would not be covered by Annex 2(c)); from Liz Figueroa and Sheila Kuehl, California state Senators, to USTR in 2005; from National Legislative Association on Prescription

administration recognized, U.S. Medicaid programs “are taking the same approach” as the governments of Australia and Korea – “containing costs by scrutinizing prescription drugs, particularly brand name drugs.”¹⁵

C. The 2009 Special 301 Report Continues USTR’s Promotion of International Restraints on Pharmaceutical Reimbursement Programs

The 2009 Special 301 Report contains additional evidence of USTR’s radical shift of its negotiating priorities into the arena of restricting evidence based pricing programs. The 2009 Special 301 Report singles out Japan, Canada, France, Germany, New Zealand, Taiwan and Poland for administering “unreasonable . . . reference pricing or other potentially unfair reimbursement policies.”

It is unclear what USTR is complaining about in these examples because, as in other areas of the report, there is insufficient explanation, citation or description of any objective standard accompanying the listing decisions. There are no allegations in the Report that any of these policies violate most favored nation or any other WTO norm or bilateral agreement. Nor is there an adequate explanation for how the programs fall under the statutory criteria for Special 301 review, a point explained more fully below.

Drugs May 2005 (warning about the dangers of the free trade agreement and asked for a binding interpretation that it did not cover U.S. state programs); from Washington Governor Gregoire March 2006 (expressing concerns over the FTA); from four Washington state legislators to the Washington State Congressional Delegation March 2006; Letter from Meg Burton Cahill, Arizona State Senator, and Kevin Ryan, Connecticut State Representative, to Members of the House Ways and Means Committee Subcommittee on Trade, Mar. 18, 2007 (stating that legislators are “extremely troubled by, and strongly oppose, USTR’s efforts to alter public reimbursement formularies in the Korea FTA”); National Legislative Association on Prescription Drug Prices, Testimony before the Subcommittee on Trade of the House Committee on Ways and Means, Mar. 20, 2007 (warning that the language applied to Medicaid programs would “give pharmaceutical companies rights to block and delay implementation of the most important and proven medicine cost-control tools available.”); Letter from Ginny Lyons, Vermont State Senator, and Kathleen Keenan, Vermont State Representative, to Senators Patrick Leahy and Bernard Sanders, and Representative Peter Welsh, (Apr. 18, 2007) (asserting that “Vermont uses a similar ‘positive list’ approach [as Korea]”).

¹⁵ Thomas Jung, State Department Cable, Sept. 9, 2003, quoted in http://www.huffingtonpost.com/james-love/korea-fta-negotiations-on_b_24929.html

Viewed against the background of past experience, states assume that USTR is targeting the same policies that it has in the past – i.e. innovative reimbursement policies that effectively restrain medicine pricing in similar ways as state preferred drug lists and other public policies. We oppose this use of Special 301. The U.S. should not be negotiating for the limitation of programs abroad that are the best practices in the field here at home.

D. USTR’s Advocacy of International Restrictions on Domestic Pharmaceutical Pricing Policies will Limit U.S. Programs

1. USTRs Agenda Will Limit Effective Programs in the U.S.

In the past, USTR has explained that the requirements imposed through its agreements do not apply to U.S. programs because of a host of technical interpretations and definitions.¹⁶ These definitional carve outs have done little to assuage state concerns.¹⁷ Trade agreements are reciprocal by definition. It is foolhardy to think that USTR can negotiate deep restrictions in the regulatory authority of other countries and not have the same programs in the U.S. affected.¹⁸ Indeed, Ambassador Kirk has publicly expressed support for a broad debate on how trade policy

¹⁶ *E.g.*, The Korea FTA only restricts pharmaceutical programs at the “central level of government,” and a footnote to Article 5.8 states that “Medicaid is a regional level of government health care program in the United States, not a central level of government program.” To avoid the successful VA program, the agreement was made applicable only to “reimbursement” programs, not procurement.

¹⁷ National Legislative Association on Prescription Drug Prices Working Group on Trade, Comments to USTR on the Korea-US Free Trade Agreement, Sept. 15, 2009 (expressing concern about the inappropriate “use of trade policy to create a new set of international norms” on pharmaceutical pricing) available at <http://www.reducedrugprices.org/read.asp?news=4264> (last visited on Feb. 17, 2010).

¹⁸ *See id.*, (stating “While USTR may view its efforts to push back against evidence based pharmaceutical pricing as only affecting foreign countries, we view it as the use of trade policy to create a new set of international norms. The branded pharmaceutical industry will eventually seek to apply these norms in the United States to the detriment of access to affordable medicines in the US – whether through specific FTAs, or as part of a broader pharmaceutical policy.”); Testimony of Kevin Outterson, Boston University Professor, before the U.S. Senate, Health, Education, Labor & Pensions Committee: Hearing on *Drug Importation: Would the Price Be Right?* (Feb. 17, 2005) (“[c]onsider the negotiations between USTR and the EU: we demand that they modify an important social policy, universal access to care, and raise their drug prices to match our own. If they respond at all, it will be to call us hypocrites, and to demand that we sacrifice our veterans, public health clinic patients, and Medicaid recipients in the bargain.”).

could be used to set international standards to “discipline” pharmaceutical reimbursement programs.¹⁹

2. USTR’s Agenda Will Damage State “Re-importation” Policies

USTR efforts to discipline effective pricing programs in Canada and other advanced pharmaceutical markets threaten state re-importation programs that facilitate parallel trade of patented medicines. Vermont, Illinois, Rhode Island, Minnesota, Kansas, Missouri, Minnesota, California, Wisconsin, and the District of Columbia allow their citizens to purchase pharmaceuticals from Canada or other countries where direct to consumer prices are much lower than in the U.S. These programs, which have saved millions of scarce health dollars, will be ineffective if the U.S. forces other successful countries to abandon effective policies and raise prices for needed drugs.

3. USTR is Threatening Best Practices Needed for Health Reform

This administration is committed to national health reform which relies on finding and utilizing the best practices for restraining health costs through evidence based policies that promote public health. Pharmaceutical policy in the U.S. is in sore need for such reform. We spend more on pharmaceuticals than any other country in the world, in part because we oversubscribe costly new medicines when they are not better, and are often much worse, than cheaper alternatives. In U.S. states and in other countries policies are being used effectively to

¹⁹ See Testimony of Jeff Kindler, Pfizer CEO, before the Senate Finance Committee (Jul. 15, 2008), *available at* http://media.pfizer.com/files/news/kindler_testimony_sfc_071508.pdf (last visited on Feb. 17, 2010). *See also*, A Discussion with Prof. John Barton, sponsored by PIJIP (Feb. 19, 2009) *available at* wcl.american.edu/pijip/go/barton (last visited on Feb. 17, 2010) (stating that the Pfizer proposal includes as “a trade goal the achievement of a sector-specific trade agreement” that would ensure that high prices in wealthy countries subsidize lower prices for some populations in poor countries. In the rich countries like the U.S., the agreement would impose internationally binding restrictions on regulatory authority that would “ensure that pricing and reimbursement policies recognize and reward innovation, and to set disciplines on government practices that undermine incentives for innovation.” The proposal would also demand that wealthy country aid programs limit use of generic drugs and pay high prices even for distribution in developing countries with no patent protections on the drugs).

reduce costs and promote public health by influencing prescribing decisions with evidence.²⁰ The idea is simple – the best drugs should be preferred, costs should be in line with effectiveness, not market power. As the federal government continues working on health reform, it needs to learn from these examples, not allow its USTR to negotiate them out of existence.²¹

E. USTR Lacks Statutory Authority to Promote Restrictions on Non-Discriminatory Pharmaceutical Pricing Policies

The USTR lacks any statutory authority to pursue the limitation of foreign or US pharmaceutical market regulation that restrains patented medicine pricing.

The Special 301 authorizing statute requires the identification of countries that lack adequate intellectual property protection or that “deny fair and equitable market access to United States persons that rely upon intellectual property protection.”²² A traditional market access issue might be a discriminatory regulation that unduly burdens foreign suppliers, e.g. a preference for local IP-protected goods by national suppliers. However, the 2009 Special 301 report takes an incredibly broad interpretation of “market access barriers,” extending it to “price controls and regulatory and other barriers [that] can discourage the development of new drugs.”²³

Policies that affect the “development of new drugs” are not market access issues. Neither TRIPS nor any other international trade agreement places any restrictions on the non-discriminatory operation of pharmaceutical price regulation, competition policy or other regulatory program that may affect the price of drugs. This interpretation is too broad as a matter

²⁰ Testimony of Meredith Jacob to the Illinois House Committee on Human Services, (Mar. 4, 2009); National Physicians Alliance. The Sale of Physician Prescribing Data Raises Health Care Costs — The National Physicians Alliance Calls for a Ban. Issue Brief. www.npalliance.org; Michael Fischer & Jerry Avorn, *Economic Implications of Evidence-Based Prescribing for Hypertension: Could Better Care Cost Less*, 291 JAMA 1850, 1854 (2004).

²¹ Letter from Sean Flynn and Maine State Rep. Sharon Treat, on behalf of National Legislative Association on Prescription Drug Prices, to Sen. Baucus, Chairman of the U.S. Senate Finance Committee (Jan. 11, 2007), available at wcl.american.edu/pijip/documents/NLARxLtrtoSenFinanceCommittee.pdf (last visited on Feb. 17, 2010).

²² 19 U.S.C. § 2242(a)(1)(B).

²³ 2009 Special 301 Report.

of law and of policy. USTR should not be, and lacks the statutory authority to, negotiate or impose new international standards for medicine pricing policies.

There is no statutory requirement to use trade negotiating authority to restrict foreign pricing programs. But the U.S. is still bound by its commitment to the Doha Declaration. When interpreting any ambiguity in the statutory term “market access” in the Special 301 authorizing statute, USTR should use the Doha Declaration and its human rights obligations as a guide,²⁴ and avoid the use of trade pressure that will predictably threaten access to medicines for all. We appeal to the Obama administration to change course and halt the use of Special 301 or other trade initiatives to internationally regulate domestic drug pricing programs that do not violate any World Trade Organization rule.

²⁴ See 2009 Report of the Special Rapporteur on the Right to Health, *supra* note 11, at 17 (defining the “need to have strong pro-competitive measures to limit abuse of the patent system” as a human rights duty imposed by the internationally recognized right to health).

Sen. Troy Jackson, Chair
Sen. Stan Gerzofsky
Sen. Roger Sherman
Rep. Margaret Rotundo, Chair
Rep. Jeffery A. Gifford
Rep. Sharon Anglin Treat

Jane Aiudi
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Paul Volckhausen
Joseph Woodbury

Curtis Bentley, Legislative Analyst

STATE OF MAINE

Citizen Trade Policy Commission

April 16, 2010

The Honorable Christopher J. Dodd, Chairman
Committee on Banking, Housing, & Urban Affairs
United States Senate
448 Russell Senate Office Building
Washington, DC 20510

Re: Restoring American Financial Stability Act of 2010

Dear Senator Dodd:

We are writing on behalf of the Maine Citizen Trade Policy Commission which by unanimous vote today expressed its strong opposition to the Office of National Insurance (ONI), created by Title V, Subtitle A of the Restoring American Financial Stability Act of 2010 (Chairman's Mark, Senate Standing Committee on Banking, Housing, & Urban Affairs). Subtitle A would establish a new federal bureaucracy (ONI) and give one person the power to invalidate state insurance laws that are perceived as "inconsistent with" international agreements.

We are concerned that this legislation bypasses the trade negotiation and implementation process and vests in one person in the Treasury Department the power to preempt validly enacted state laws – without waiting for a specific allegation of a trade violation, and based on a vague and expansive definition of potentially affected trade agreements. All of this would be done without any of the protections provided by the U.S. Constitution when international treaties are negotiated and Congress preempts state law. Disturbingly, even a treaty that has been submitted for ratification and defeated could be considered an "agreement" with preemptive force.

The Maine Citizen Trade Policy Commission (CTPC) is a bipartisan commission established in 2003 to assess and monitor the legal and economic impacts of trade agreements on state and local laws, working conditions and the business environment, and to make policy recommendations to the Legislature and the Governor concerning the impact of trade agreements

and trade-related policies. In our view, the preemption provisions of Subtitle A reach well beyond the scope of current trade policy and constitute an unprecedented intrusion into matters reserved to the states.

We are cognizant that international agreements can have an impact on state policies, and indeed the CTPC has an advisory role within Maine to insure that policy makers are aware of the parameters of trade policy. Subtitle A goes well beyond any trade policy we are aware of and vests within one agency employee the power to sweep aside state insurance laws regulating purely domestic markets, such as licensing laws or laws requiring the use of U.S. statutory accounting principles. Any “international insurance agreement” with a foreign government or regulatory entity (even a non-governmental entity) could be used by this federal employee as the rationale for an action to preempt state-based standards, overturning the actions of state legislatures without resort to the courts or to international trade dispute resolution tribunals.

We urge you to strike the preemption provisions and the authority given to Treasury to negotiate and enter into new international insurance agreements in Title V, Subtitle A.

Thank you for your consideration.

Sincerely,

Senator Troy Jackson, co-chair

Representative Peggy Rotundo, co-chair

cc:

Senator Susan M. Collins

Senator Olympia J. Snowe

Senator Harry Reid

The Honorable Michael Michaud

The Honorable Chellie M. Pingree

Mila Kofman, Superintendent of Insurance

Janet Mills, Attorney General

Sen. Troy Jackson, Chair
Sen. Stan Gerzofsky
Sen. Roger Sherman
Rep. Margaret Rotundo, Chair
Rep. Jeffery A. Gifford
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Paul Volckhausen
Joseph Woodbury

Curtis Bentley, Legislative Analyst

STATE OF MAINE

Citizen Trade Policy Commission

June 23, 2010

The Honorable Max Baucus
Chairman
Committee on Finance
U.S. Senate
Washington, D.C. 20515

The Honorable Charles E. Grassley
Ranking Member
Committee on Finance
U.S. Senate
Washington, D.C. 20515

Dear Chairman Baucus and Ranking Member Grassley:

The Maine Citizen Trade Policy Commission is a bipartisan commission established in 2003 to assess and monitor the legal and economic impacts of trade agreements on state and local laws, working conditions and the business environment, and to make policy recommendations to the Legislature and the Governor concerning the impact of trade agreements and trade-related policies.

The Maine Citizen Trade Policy Commission voted unanimously to express its strong support of Congressional efforts to preserve jobs in Maine that are threatened as a result of some foreign companies manipulating our tariff system to gain an unfair economic advantage over our domestic manufacturers. If left uncorrected, this situation will encourage other foreign manufactures to manipulate their products for the purposes of avoiding tariffs to which they should be subject.

Genfoot, Inc. and New Balance are among the few remaining domestic shoe manufacturers. New Balance employs roughly 1,000 individuals at their three manufacturing facilities in Maine in skilled, middle class jobs that have brought a direct economic benefit to the State of Maine during this time of high unemployment. The viability of this company has depended on duty rates Congress adopted years ago on the recommendation of the U.S. Trade

Representative. These duty rates help level the playing field and are essential to the preservation of jobs at this facility. However, some international manufacturers have found a way around these tariffs by implanting a small amount of textile material onto the sole of their footwear causing that footwear to be reclassified as a textile product subject to a lower duty rate.

We cannot afford to lose these valuable jobs in our state to unfair tariff practices especially during this time of high unemployment. We strongly urge Congress to close the loophole that allows importers to evade duties that help domestic manufacturers compete in the U.S. and global markets.

We urge you to take action to save Maine jobs and prevent importers from avoiding tariff rates that protect domestic footwear.

Sincerely,

Senator Troy Jackson, co-chair

Representative Peggy Rotundo, co-chair

cc:

Senator Susan M. Collins

Senator Olympia J. Snowe

The Honorable Michael Michaud

The Honorable Chellie M. Pingree

Sen. Troy Jackson, Chair
Sen. Stan Gerzofsky
Sen. Roger Sherman
Rep. Margaret Rotundo, Chair
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Joseph Woodbury

Curtis Bentley, Legislative Analyst

STATE OF MAINE

Citizen Trade Policy Commission

To: The Honorable Olympia Snowe
United States Senate
154 Russell Senate Office Building
Washington, DC 20515-0001

The Honorable Susan Collins
United States Senate
413 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Michael Michaud
U. S. House of Representatives
1724 Longworth House Office Building
Washington, DC 20515-1902

The Honorable Chellie Pingree
U. S. House of Representatives
1037 Longworth House Office Building
Washington, D.C. 20515

From: Senator Troy Jackson, co-chair
Representative Peggy Rotundo, co-chair
Maine Citizen Trade Policy Commission

Date: July 9, 2010

Re: HR 2293/S. 1644, The Public Health Trade Advisory Committee Act

We are writing to ask you to support H.R. 2293/S.1644, the Public Health Trade Advisory Committee Act that was introduced by Reps. Chris Van Hollen (D-MD) and Lloyd Doggett (D-TX), and Sen. Debbie Stabenow (D-MI). The legislation amends the Trade Act of 1974 to add a Public Health Advisory Committee on Trade to the Second Tier of the Federal Trade Advisory Committee System. The provisions of this legislation are consistent with policy positions the Maine Citizen Trade Policy Commission has voted to support over the years.

In general, the Trade Advisory Committee System helps the President develop U.S. trade policy. The system has three tiers with the Advisory Committee for Trade Policy and Negotiations on the top tier and the Industry Trade Advisory Committees on the lowest tier. The proposed new

Public Health Advisory Committee on Trade will enable public health representatives to work with other advisory committees to express their unique perspectives. Even though global trade agreements significantly affect public health matters from the price of medication to the regulations that protect the safety of our food and water supplies, there is an absence of public health representation on U.S. trade advisory committees. This bill will also pave the way for greater public health representation on the Advisory Committee for Trade Policy and Negotiations and the Industry Trade Advisory Committees.

We feel this bill will improve the Trade Advisory Committee system in several ways:

1. It would give public health concerns consideration at the onset of trade agreement formation;
2. It would require greater openness and transparency in the way all of the trade advisory committees operate. The changes would involve more timely communications among committees, Congress and the Administration, and hold the Administration accountable for responding to committees' concerns; and
3. It would be the first Trade Advisory Committee to be exclusively composed of nongovernmental organizations to provide a more thorough and effective representation of public interests.

Thank you for attention to this matter and we hope you will support this piece of legislation.

Sen. Troy Jackson, Chair
Sen. Stan Gerzofsky
Sen. Roger Sherman
Rep. Margaret Rotundo, Chair
Rep. Jeffery A. Gifford
Rep. Sharon Anglin Treat

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Curtis Bentley, Legislative Analyst

STATE OF MAINE

Citizen Trade Policy Commission

August 4, 2010

President Barack Obama
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear President Obama,

The Citizen Trade Policy Commission (Commission) is an ongoing study commission that was established pursuant to Public Law 2003, chapter 699, in recognition of the need to establish a state-level mechanism to appropriately assess the impact of international trade agreements on Maine's state and local laws, business environment and working conditions. We are writing to you to express our concerns regarding the U.S.-Korea Free Trade Agreement.

The Commission supports international trade and the agreements used to facilitate trade but we opposes any free trade agreement (FTA) that infringes on Maine's right to govern its domestic affairs, provides foreign investors with special privileges, or negatively impacts Maine citizens' access to affordable health care and pharmaceuticals.

With respect to the U.S.-Korea FTA, we urge you to remedy three problems of special importance to Maine and other states, as your administration works with the Korean government to renegotiate commercial issues related to auto and beef trade.

First, we request that you ensure that U.S. trade agreements do not provide greater rights for foreign investors than are available to U.S. firms under our laws and courts. The prior administration's U.S.-Korea FTA text contains special rights for foreign investors that you rightly identified as requiring reform. This includes the investor-state enforcement mechanism

that empowers foreign investors and corporations to go outside our domestic court system and directly challenge federal and state laws and regulations and even court decisions before foreign tribunals. The investor-state provisions give foreign investors the opportunity to win claims that would be unlikely to succeed under U.S. law, such as broad rights to compensation for “regulatory takings.”

Unlike domestic courts, these tribunals do not have to follow precedence when ruling on similar cases. The ability of a foreign investor to bring a challenge to one of Maine’s laws in a tribunal that is not bound by the rules and conventions of our court system interjects a certain amount of trepidation into our legislative process. Whether real or perceived, the mere uncertainty of whether or not a piece of legislation before the Maine State Legislature, if enacted, may be susceptible to challenge by a foreign investor, casts a negative light over the debate on that bill. It is our understanding that this happens in many states and is an undue infringement on a state’s ability to regulate its domestic affairs.

Second, the prior administration’s U.S.-Korea FTA text includes financial service deregulation that contradicts efforts to restore stability to the global economy. These rules simply forbid commonly used regulatory mechanisms, even when such policies are applied equally to foreign and domestic firms. We feel that this text may run afoul of our state laws and lead to predatory financial practices that are not in the interest of our citizens or the people of South Korea. Therefore, we respectfully ask you to remove the text that deregulates financial services.

Third, with regard to pharmaceuticals, we have in several letters to USTR and Maine’s Congressional Delegation warned that USTR is attempting to restrict through FTAs important practices that U.S. states use to control Medicaid and pharmaceutical costs. The U.S.-Korea FTA includes a radical provision appearing to allow industry to appeal government pharmaceutical reimbursement decisions based on whether they adequately respect the “value” of patented pharmaceutical products. Such provisions, if applied to state pharmaceutical pricing programs, would significantly hamper the operation of important public health programs. Maine has been a leader in expanding access to health care for its residents and identifying and implementing best practices to rein in excessive medical cost and promote public health.

Additionally, legislative members of the Commission have met with USTR staff on Medicaid issues regarding the role of the states implementing and paying for Medicaid that was recognized in a footnote to the U.S.-Korea FTA. However, USTR has made an effort to promote a new international trade framework to restrict domestic regulatory responses to excessive pricing by monopoly pharmaceutical suppliers. This new direction concerns us greatly, because it will increase state health care costs and significantly reduce access to health care. Maine and other states have repeatedly raised concerns about USTR’s recent use of FTAs with Australia and Korea to begin establishing international disciplines on pharmaceutical pricing programs. During your negotiations on the U.S.-Korea FTA, please ensure that the agreement will not jeopardize our efforts to reduce the cost of health care for our citizens.

We look forward to working together with your administration to create trade policy that benefits Maine workers, consumers, farmers and firms, while safeguarding the system of federalism that is a core tenet of our American democracy.

Sincerely,

Handwritten signature of Troy Jackson in black ink, with the initials "CCB" written below it.

Troy Jackson
Senate Co-Chair

Handwritten signature of Margaret Rotundo in black ink, with the initials "CCR" written below it.

Margaret Rotundo
House Co-Chair

cc: David Axelrod, Senior Advisor to President Obama
Ambassador Ronald Kirk, United States Trade Representative
Senator Olympia J. Snowe
Senator Susan M. Collins
Representative Michael H. Michaud
Representative Chellie Pingree
Governor John E. Baldacci
Senator Elizabeth Mitchell, President
Representative Hannah Pingree, Speaker
Members of the Citizen Trade Policy Commission

Sen. Troy Jackson, Chair
Sen. Stan Gerzofsky
Sen. Roger Sherman
Rep. Margaret Rotundo, Chair
Rep. Jeffery A. Gifford
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Joseph Woodbury

Curtis Bentley, Legislative Analyst

STATE OF MAINE

Citizen Trade Policy Commission

November 19, 2010

The Hon. Ron Kirk
United States Trade Representative
600 17th Street NW
Washington, DC 20508

Dear Ambassador Kirk:

Your office has promoted the Trans-Pacific Partnership as the Obama Administration's proposal for a 21st Century Trade Agreement. The success of this agreement is of utmost importance to the U.S. trade strategy and is an opportunity to learn from what hasn't worked in the past to build a better model for future trade agreements. With an unprecedented nine countries included as members in the pending TPP, even more considering inclusion, and a web of existing agreements and treaties that will coexist with the TPP—getting the language right and fully considering the complex implications of what we're agreeing to is more important than ever.

As you know, the TPP negotiations include nine Pacific Rim countries: Australia, Brunei, Chile, Malaysia, New Zealand, Peru, Singapore, United States, and Vietnam. We understand they may be joined by Canada and Japan. With one exception, all TPP countries are members of the world's first global health agreement, the Framework Convention on Tobacco Control (FCTC). The exception is the United States, which is home to the world's largest tobacco company, Philip Morris International (PMI).

In January 2010, you sought public comments on the TPP. In its comments, PMI urged U.S. negotiators to continue their practice of treating tobacco trade like any other sector. In particular, PMI asked USTR to expand investor arbitration, incorporate WTO rules to protect tobacco trademarks and brands, and expand cross-border services, including distribution of tobacco. Public health advocates urged your office to reject PMI's request and carve out tobacco from the TPP altogether. The advocates included the Campaign for Tobacco Free Kids¹ (TFK) and the

¹ Matthew Meyers, President of TFK, Comments to USTR: Proposed United States – Trans-Pacific Partnership Trade Agreement [Docket USTR-2009-0041] (January 25, 2010), available at <http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480a831a4> (viewed August 9, 2010). [hereafter, TFK, Comments on TPP].

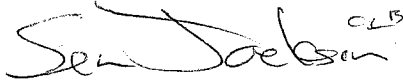
Center for Policy Analysis on Trade and Health (CPATH).² Just a few weeks later, PMI invoked investor-state arbitration and WTO trademark rules to challenge Uruguay's limits on tobacco brands and packaging. PMI sought arbitration under the Switzerland-Uruguay bilateral investment treaty (BIT). Like most BITs, this one provides the remedy of monetary compensation for an investor's losses.

In effect, PMI wants the TPP to include the same legal tools that it is using against Uruguay. PMI candidly admits that it is targeting tobacco regulations in at least two TPP countries, Australia and Singapore. If successful, PMI will be able to influence a much larger set of countries that want to exceed the "floor" of regulations required by the Framework Convention on Tobacco Control (FCTC). If the TPP covers tobacco trade and investment, PMI could also have a platform to challenge future tobacco regulations in the United States through a subsidiary in another TPP country. Congress recently delegated authority to the Food and Drug Administration to regulate tobacco products; this delegation is similar to the authority that PMI is targeting in Singapore.

In light of last week's FDA decision to require new larger and more graphic warning labels on cigarettes sold in the United States—the threat grows that PMI will target domestic regulations through investor-state arbitration brought by one of its foreign subsidiaries.

We oppose the inclusion of investor-state provisions in an investment chapter in the TPP and request for tobacco to be specifically carved out of the TPP and any future trade agreement.

Yours sincerely,

Handwritten signature of Senator Troy Jackson in black ink, with the initials "CLB" written in the upper right corner of the signature.

Senator Troy Jackson, Chair

Handwritten signature of Representative Margaret Rotundo in black ink, with the initials "CCR" written in the upper right corner of the signature.

Representative Margaret Rotundo, Chair

cc: Senator Olympia J. Snowe
Senator Susan M. Collins
Representative Michael H. Michaud
Representative Chellie Pingree
Governor John E. Baldacci
Senator Elizabeth Mitchell, President
Representative Hannah Pingree, Speaker

² Joseph Brenner and Ellen Shaffer, co-directors of CPATH, Comments to USTR: Proposed United States-Trans-Pacific Partnership Trade Agreement [Docket: USTR-2009-0041] (January 25, 2010), available at <http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480a83af2> (viewed August 9, 2010). [hereafter, CPATH, Comments on TPP]

Sen. Troy Jackson, Chair
Sen. Stan Gerzofsky
Sen. Roger Sherman
Rep. Margaret Rotundo, Chair
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Rep. Sharon Anglin Treat

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Joseph Woodbury

Curtis Bentley, Legislative Analyst
Linda Nickerson, Administrative Staff

STATE OF MAINE

Citizen Trade Policy Commission

March 11, 2009

Ambassador Ronald Kirk
United States Trade Representative
Office of the United States Trade Representative
600 17th Street, N.W.
Washington, DC 20508

Dear Ambassador Kirk:

Congratulations on your appointment as the new United States Trade Representative. We, the members of the Maine Citizen Trade Policy Commission, look forward to working with you. We have enjoyed a robust exchange of views with your predecessors, and look forward to working closely with you. We invite you to meet with our Commission at any time convenient to the demands of your new assignment, as we move forward in establishing a relationship based on the interests of our people, our economy and our standing in the world. We believe in the power of trade as a tool for promoting economic growth and enhancing relationships between the United States and its trading partners.

The Citizen Trade Policy Commission was established by the Maine Legislature in 2004 to monitor the impact of international trade policy on our state. We have members representing the House of Representatives, the State Senate, the Maine International Trade Center, various state agencies, and members affiliated with citizen constituencies including small businesses, manufacturers, labor, environmental organizations, and small farmers.

States and local governments are important partners with private business in the design and implementation of our nation's economic development strategies. States and cities have traditionally acted as the 'laboratories of democracy' where different economic policies can be pioneered. Because trade is a critical part of any successful economic development strategy, and because different states, cities and towns have needs related to trade and trade policy that are as different from one another as are the mix of products and services that we export, we seek to add our voices and expertise to this policy arena.

Since the conclusion of NAFTA and the WTO Uruguay Round, states have been allowed to play only a limited role in the policy-making process. USTR has expected our support in all matters pertaining to trade but too often has been unwilling to engage in dialogue with state actors on critical issues of trade and investment.

With your assistance, we intend to build a more collaborative relationship between the federal government and the states on trade. By working together, we can preserve our federal system and reach out for new trade relationships around the world.

In meetings convened with the support of national associations such as the National Governors Association, the National Association of Attorneys General, and the National Conference of State Legislatures, officials from the different branches of state and local governments have been meeting in order to articulate a set of approaches that could assist in the development of a better federal-state consultative process on trade. As a result of these discussions, in which Maine has played an essential part, we request your consideration of the following:

The establishment of a **Federal-State International Trade Policy Commission**, and/or the creation of a **Center on Trade & Federalism**, supported by both the federal government and the states, with adequate personnel and resources to ensure that the major provisions of trade agreements and disputes that impact on states can be analyzed, and their findings communicated to and discussed with key state actors on trade.

Changes in the structure and role of USTR trade advisory committees. All state and local government input has been limited to a single committee, the InterGovernmental Policy Advisory Committee (IGPAC); the membership of that committee was determined exclusively by USTR and not by the states themselves. IGPAC was designated few resources and a time line for input that resulted in no meaningful consultation for states. More than half of all states lack any representation on IGPAC.

We look forward to discussing with you opportunities for building a collaborative approach to trade that will strengthen the system of federalism that was part of the genius of our nation's founders. With congratulations and very best wishes for success in your new role.

Yours sincerely,

Senator Troy Jackson, Chair

Representative Margaret Rotundo, Chair

/ln

Sen. Troy Jackson, Chair
Sen. Dan Gerzofsky
Sen. Roger Sherman
Rep. Margret Rotundo, Chair
Rep. Jeffery A. Gifford
Rep. Sharon Anglin Treat

Curtis Bentley, Legislative Analyst



Michael S. Hiltz
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Sarah Adams Bigney
Cynthia Phinney
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Malcolm Burson
Barbara VanBurgel
Leslie Manning

STATE OF MAINE

Citizen Trade Policy Commission

To: Senator Olympia J. Snowe
From: Citizen Trade Policy Commission
Date: February 26, 2009
RE: Confirmation hearing of Ron Kirk requests

Dear. Senator Snowe:

The Maine Citizen Trade Policy Commission respectfully requests that you consider posing the following questions to President Barack Obama's nominee for United States Trade Representative, Ron Kirk, during his confirmation hearing on March 3, 2009.

1. How does Mr. Kirk envision the consultation process between the USTR and the states playing out? What changes, if any, will he make to the current consultation process?
2. Do you intend to create a Deputy of Domestic Relations position and what will be the role of that position?
3. Is Mr. Kirk familiar with the International Government Policy Advisory Committee's 2004 Memorandum entitled Recommendations for Improving Federal-State Trade Policy Coordination? If so, does he intend to create a Federal-state International Trade/Investment Policy Commission to provide institutional structure for continuous bipartisan consultation about US federal-state trade policy as recommended in that report?

Thank you for considering our request.

COPY

Sen. Troy Jackson, Chair
Sen. Stan Gerzofsky
Sen. Roger Sherman
Rep. Margaret Rotundo, Chair
Rep. John L. Patrick
Rep. Jeffery A. Gifford
Rep. Sharon Anglin Treat

Curtis Bentley, Legislative Analyst
Linda Nickerson, Administrative Staff



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Michael Herz
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STATE OF MAINE

Citizen Trade Policy Commission

April 17, 2009

Lisa Garcia
Assistant U.S. Trade Representative
Office of the United States Trade Representative
600 17th Street, N.W.
Washington, DC 20508

Dear Ms. Garcia:

Congratulations on your appointment as the Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Liaison. We know you bring with you the confidence of the President and the respect of professional staff throughout USTR.

The Maine Citizen Trade Policy Commission has noticed and appreciates the outreach to a broader group of state officials and civil society voices, by the transition team and by new USTR staff. Maine was the first state to pass statute creating a citizen commission on international trade, which brings together legislators, attorney general staff, representatives of the governor's office, and citizens representing small business, farmers, exporters, and labor leaders to examine the opportunities and impact of international trade and investment agreements on our states. New England has come together as a region to discuss new agreements, communications with federal counterparts, and the role of IGPAC and national associations such as NCSL. Also, as part of that work, we've had some opportunity to work with USTR staff, and also to develop ideas for improvements in consultation and in the data available for making trade policy.

We appreciate this comment from USTR's 2009 Trade Policy Agenda:

"In addition to promoting social accountability, U.S. trade policy development needs to become more transparent. Many stakeholders are frustrated with the lack of consultation involved in the development and implementation of trade policy, but we can and should expand public participation in advising U.S. trade negotiators. The methods for doing so will have to evolve but improved websites for the trade

policy agencies and more public consultation venues outside the established advisory groups are important steps toward this goal."

We were also pleased to see Ambassador Kirk's response to Maine Senator Olympia Snowe's question for his Finance Committee confirmation hearing:

Question: "As USTR, how would you improve your office's interaction with state and local governments and trade policy groups to better address their concerns with U.S. trade policy?"

Answer: "USTR needs to do a much more proactive job of reaching out to Governors, State Attorneys General, local officials and others to solicit their input early and often."

Remarks made by Ambassador Kirk as part of the confirmation process, USTR's Annual Trade Review, and conversations with other USTR staff, also suggest that USTR may soon undertake a review of the policy advisory committee structure. Our Commission is very interested in participating in that review.

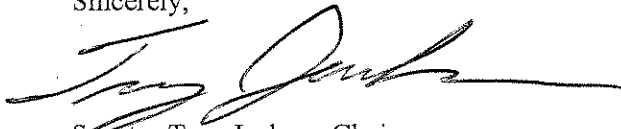
We also understand that USTR is undertaking a transparency review, and we hope that there will be an opportunity for states and IGPAC to make proposals regarding federal-state consultation, with respect to both the "transparency review" and also with respect to the formal advisory committee structure to ensure that the discussion format and process takes into consideration the unique needs of state legislators and government officials.

We would appreciate the opportunity to share our ideas on the needs of states in the broader trade debate. Trade policy has a significant impact on our state and the current systems lack sufficient transparency and state consultation.

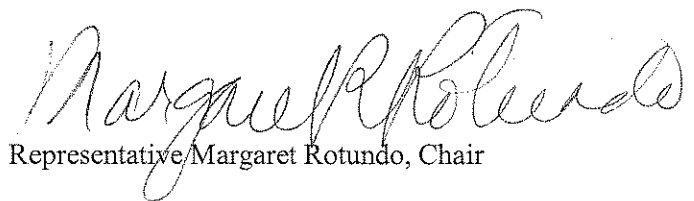
Attached please find information about the Maine Citizen Trade Policy Commission including the contact information for our members, as well as a summary of actions the Commission has taken since its inception in 2004.

We look forward to working with you in your role as Assistant USTR for Intergovernmental Affairs.

Sincerely,



Senator Troy Jackson Chair



Representative Margaret Rotundo, Chair

SB/ln
Attachments

cc: Kay Alison Wilkie, Director for International Policy

A Brief Description of Maine's Citizen Trade Policy Commission

1. Established. The Citizen Trade Policy Commission was established by the Maine State Legislature in 2004 to assess and monitor the legal and economic impacts of trade agreements on state and local laws, working conditions and the business environment; to provide a mechanism for citizens and Legislators to voice their concerns and recommendations; and to make policy recommendations designed to protect Maine's jobs, business environment and laws from any negative impact of trade agreements.

2. Membership. The commission consists of 22 members including six legislators, an Attorney General designee, a member from the Department of Labor, the Department of Environmental Protection, the Department of Agriculture, Food and Rural Services, the Department of Human Services, the Maine International Trade Center and 10 members representing a broad range of interests in the private and nonprofit sectors.

3. Powers and duties. The commission:

1. Must hear public testimony and recommendations from the people of the State and qualified experts when appropriate at no fewer than 2 locations throughout the State each year on the actual and potential social, environmental, economic and legal impacts of international trade agreements and negotiations on the State;

2. Must every 2 years conduct an assessment of the impacts of international trade agreements on Maine's state laws, municipal laws, working conditions and business environment;

3. Must maintain active communications with and submit an annual report to the Governor, the Legislature, the Attorney General, municipalities, Maine's congressional delegation, the Maine International Trade Center, the Maine Municipal Association, the United States Trade Representative's Office, the National Conference of State Legislatures and the National Association of Attorneys General or the successor organization of any of these groups;

4. Must maintain active communications with any entity the commission determines appropriate regarding ongoing developments in international trade agreements and policy;

5. May recommend or submit legislation to the Legislature;

6. May recommend that the State support, or withhold its support from, future trade negotiations or agreements; and

7. May examine any aspects of international trade, international economic integration and trade agreements that the members of the commission consider appropriate.

4. Additional information. For more information about Maine's Citizen Trade Policy Commission please visit its website at <http://www.maine.gov/legis/opla/citpol.htm>.

Actions of the Citizen Trade Policy Commission of the Maine Legislature

2004:

- Commission established by the Jobs, Trade and Democracy Act (LD 1815)
- Commission first meets, October 2004

2005:

- Issued a statement urging Maine's Congressional Delegation to work against the passage of DR-CAFTA
- Recommended in writing that United States Trade Representative carve out government actions at the state and local level from the new GATS offer until the Commission had an opportunity to adequately review and analyze the language of the proposed commitment.
- Issued a number of press releases regarding its activities and held press conferences regarding its position on CAFTA.

2006:

- Met with and worked directly with the Office of the United States Trade Representative's (USTR) to establish a direct and open dialogue to maximize the ability of the Commission to convey the concerns of Maine's citizens to USTR in a timely and effective manner.
- In conjunction with the Forum on Democracy and Trade developed and conducted the Commission's 2006 assessment.
- Provided USTR with policy recommendations during the most recent round of the World Trade Organization's (WTO) Working Party on Domestic Regulation (WPDR) negotiations on rules implementing a provision of the General Agreement on Trade and Services (GATS) dealing with the domestic regulation of services.
- Established a legislative outreach subcommittee to better inform Maine's Legislature about trade related issues.
- Opposed the adoption of the proposed rules by the Department of Homeland Security pursuant to the Intelligence Reform and Terrorism Prevention Act that would require U.S. citizens and nonimmigrant aliens to present a passport or alternative form of documentation approved by the department in order to enter the United States from Canada.

- Supported the National Legislative Association on Prescription Drugs Prices' nomination of Sharon Treat to two USTR advisory committees.

- Began exploring possible funding sources to support an executive director position within the Commission.

2007:

- Developed a resolution that passed unanimously in both chambers of the State Legislature to request the U.S. Congress to replace the existing Trade Promotion Authority (Fast-Track) with a more inclusive and democratic system for negotiating trade agreements. Fast-Track expired without renewal on June 30, 2007, and has not yet been replaced.

2008:

- Notified Maine's Congressional Delegation and Governor Baldacci that it opposed the proposed U.S. -Colombian Free Trade Agreement based on public testimony received at the commission's February 21, 2008 public hearing and after determining that the agreement would be unfavorable to the people of Maine, the United States and Colombia.

- As a result of the People's Republic of China's challenge to Maryland's proposed legislation to regulate lead in consumer products, the commission posed the following questions USTR: 1) what agency/entity within the U.S. federal government is responsible for notifying WTO member nations of state legislation; 2) how often such notification occurs and 3) what mechanism or process is used to monitor state legislation. USTR responded that state legislatures remain fully empowered to take action to protect the public and that the WTO notification system normally requires USTR to provide notification on federal agency regulations but not federal or state legislative proposals.

- Advised USTR of its concerns about recent GATS negotiations and in particular, the draft language proposed by the chair of the WTO's Working Party on Domestic Regulations that appeared to shift the constitutionally-protected "rational basis test" for state regulation to a much more restrictive standard of "not more burdensome than necessary to ensure the quality of the service." The commission also expressed concern about draft language that could restrict a state's ability to adopt standards that may be different from those advanced at the federal level.

Citizen Trade Policy Commission
Membership

Rep. Margaret Rotundo – Chair
446 College St.
Lewiston, ME 04240
Tel. 784-3259
mrotundo@bates.edu

Term: Reappointed 01/15/09

Sen. Troy Jackson, Chair
P. O. Box 221
Ft. Kent, ME 04743
Tel. 398-4081
jacksonfor1@hotmail.com

Term: Appointed 01/15/09

Jane Aiudi
Dept. of Agriculture
28 State House Station
Augusta, ME 04333-0028
Tel. 287-9072
jane.aiudi@maine.gov

Ex-Officio – DA

Sarah Bigney
306 Congress St., Apt. C.
Portland, ME 04101
Tel. 777-6387 or 356-7322
sarah@mainefairtrade.org

Representing Nonprofit Human Rights Organizations
Term: 12/04/07 – 12/03/2010

Malcolm C. Burson
Dept. Environmental Protection
17 State House Station
Augusta, ME 04333-0017
Tel. 287-7755
malcolm.c.burson@maine.gov

Ex-Officio – DEP

Carla Dickstein
Coastal Enterprises, Inc.
102 Federal St.
Wiscasset, ME 04578
Tel. 882-7552
cbd@ceimaine.org

Representing Economic Development Organizations
Term: 11/26/07 – 11/25/2010

Sen. Stan Gerzofsky
3 Federal St.
Brunswick, ME 04091
Tel. 373-1328
Stan1340@aol.com

Term: Appointed 12/08 -

Rep. Jeffery A. Gifford
346 Frost St.
Lincoln, ME 04457
Tel. 794-3040
giff@line-net.net
repjeff.gifford@legislature.maine

Term: Reappointed 12/08

Michael Herz
P. O. Box 1462
Damariscotta, ME 04543
Tel. 563-5435
mherz@lincoln.midcoast.com

Representing Nonprofit Environmental Organizations
Term: Appointed: 02/2009

Michael S. Hiltz, RN, BSN
45 Pleasant Ave.
Portland, ME 04103
Tel. 615-7351
michaelshiltz@hotmail.com

Representing Healthcare Professionals
Term: Appointed 02/17/09 3 year term

Leslie A. Manning
Dept. of Labor
Bureau of Labor Standards
45 State House Station
Augusta, ME 04333-0045
Tel. 623-7932
leslie.a.manning@maine.gov

Ex-Officio-DOL

Wade Merritt
Maine International Trade Center
511 Congress St., Ste 100
Portland, ME 04101
Tel. 541-7400
merritt@mitc.com

Represents DECD

Perry Newman
130 Fort Rd.
South Portland, ME 04106
Tel. 791-1460 or 767-3767
perry.newman@yahoo.com

RESIGNED 2/11/09

Representing Maine based Corporations Active in International Trade
Term: 10/09/07 – 10/08/2010

John Palmer
P. O. Box 519
Oxford, ME 04270
Tel. 539-4800 or 743-3337
jpalm@exploremaine.com

Representing Small Business
Term: 10/31/07 – 10/30/2010

John Patrick
206 Strafford Avenue
Rumford, ME 04276
Tel. 364-7666
Johnpat2000@hotmail.com

Representing Organizations Promoting Fair Trade Policies
Term: Appointed 02/25/09 3 year term

Cynthia Phinney
16 Old Winthrop Rd.
Manchester, ME 04351
Tel. 623-1036

Representing Organized Labor
Term: 12/04/07 – 12/03/2010

Linda Pistner
Attorney General's Office
6 State House Station
Augusta, ME 04333-0006
Tel. 626-8820
linda.pistner@maine.gov

Representing AG's Office

Sen. Roger Sherman
P. O. Box 682
Houlton, ME 04730
Tel. 532-7073
Rsherm_2000@yahoo.com

Term: Appointed 12/08 -

Rep. Sharon Treat
22 Page Street
Hallowell, ME 04349
Tel. 623-7161 Cell 242-8558
Office 622-5597
Repsharon.treat@legislature.maine.gov
satreat@earthlink.net

Term: Reappointed 01/15/09

Barbara VanBurgel
Dept. Health & Human Services
Bureau Family Independence
11 State House Station
Augusta, ME 04333-0011
Tel. 287-3106
barbara.vanburgel@maine.gov

Ex-Officio - DHHS

Paul Volckhausen
1138 Happy Town Rd.
Orland, ME 04472
Tel. 667-9212
pkvolckhausen@escrap.com

Representing Small Farmers
Term: 12/17/07 – 12/16/2010

Joseph Woodbury
508 Gore Rd.
Otisfield, ME 04270-6836
Tel. 539-4462
jwoodbury@nwpmaine.com

Representing ME-based Manufacturing Business
with more than 25 employees
Term: Appointed 02/17/09 3 year term

Governing Statute: Title 10 MRSA, Chap. 1-A, §11

- Membership:*
- 3 senators representing at least 2 political parties, appointed by the President of the Senate;
 - 3 members of the House Representative representing at least 2 political parties, appointed by the Speaker of the House;
 - 4 members of the public, appointed by the Governor as follows:
 - Small business person;
 - Small farmer;
 - Representative on nonprofit organization that promotes fair trade policies;
 - Representative of a Maine-based corporation active in international trade.
 - 3 members of the public appointed by the President of the Senate as follows:
 - Healthcare professional;
 - Representative of Maine-based manufacturing business with 25 or more employees;
 - Representative of economic development organization.
 - 3 members of the public appointed by the Speaker of the House as follows:
 - Person active in organized labor community;
 - Member of a nonprofit human rights organization;
 - Member of a nonprofit environmental organization.
 - Ex-Officio non-voting Membership:
 - Department of Labor;
 - Department of Environmental Protection;
 - Department of Agriculture, Food and Rural Resources, and
 - Department of Human Services.

Term: Except for Legislators, Commissioners and the Attorney General, members are appointed for 3-year terms. Appointed members may not serve more than 2 terms. Members continue to service until their replacements are designated.

Duties: Shall hold twice public hearings twice annually;
Shall conduct an assessment every 2 years on the impacts of international trade;
Shall submit an annual report.

Quorum: For purposes of holding a meeting, a quorum is 11 members. For purposes of voting, a quorum is 9 voting members.

Sen. Troy Jackson, Chair
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Sen. Roger Sherman
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Curtis Bentley, Legislative Analyst
Linda Nickerson, Administrative Staff

STATE OF MAINE

Citizen Trade Policy Commission

April 17, 2009

Sen. Seth Goodall, Chair
Rep. Robert Duchesne, Chair
Joint Standing Committee on Natural Resources
124th Maine Legislature
2 State House Station
Augusta, ME 04333-0002

Dear Senator Goodall, Representative Duchesne, and Members of the Joint Standing Committee on Natural Resources:

The Maine Citizen Trade Policy Commission was established by the Legislature in 2003 to assess and monitor the legal and economic impacts of trade agreements on state and local laws, working conditions and the business environment; to provide a mechanism for citizens and legislators to voice their concerns and recommendations; and to make policy recommendations designed to protect Maine's jobs, business environment and laws from any negative impact of trade agreements.

The CTPC would like to highlight implications international trade agreements may have in the dialogue your committee is having regarding groundwater extraction. This is an issue that citizens around the state are dealing with today, and several of these local groups have contacted us seeking assistance with understanding the role trade agreements play in regards to groundwater extraction. We have been looking at the issue for several months and would like to provide you with some important information.

Water is a natural resource that is becoming more of a trade commodity as global demand for it increases. As a globally traded commodity, water then falls under certain international trade and investment agreements.

In some cases, municipalities that sign contracts with multinational corporations, as many of our local towns and cities have done or are debating, may face issues should they need to regulate that water in the future. Free trade agreements like the North American Free Trade Agreement (NAFTA) and the World Trade Organization (WTO) contain investor-state provisions that allow foreign companies the right to challenge laws that they feel restrict their ability to profit.

One example that illustrates this situation is the case of Metalclad vs. Mexico. The town, Guadalucazar in the State of San Luis Potosi, denied Metalclad a permit to build a landfill on top of a drinking water aquifer. The Forum on Democracy and Trade, a national network of state and local officials interested in advancing trade while safeguarding local authority, stated: "In the Metalclad case, Mexico was faulted for allowing environmental regulations adopted at the sub national level to interfere with the use of Metalclad's property, which has the effect of depriving the owner of 'reasonably-to-be-expected economic benefit of the property.' A NAFTA tribunal ruled this as tantamount to expropriation under article 1110 9 (1) of NAFTA."

The threat of challenge under international trade and investment agreements is not a reason for municipalities and the Legislature to hesitate in passing policies to protect its natural resources as it sees fit. We see this as information citizens, legislators, and municipalities should have before they decide to sign a contract with a multi-national corporation, in order to prevent future challenges or limits to their sovereign right to govern their resources such as water.

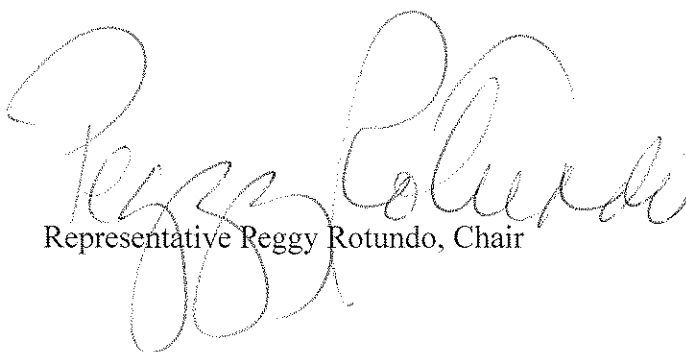
We would be happy to provide more information for your committee as you move forward with your important service to the people of Maine. Please feel free to contact us, as chairs of the Citizen Trade Policy Commission, for more information.

Sincerely,



Senator Troy Jackson, Chair

SB/ln



Representative Peggy Rotundo, Chair

Sen. Troy Jackson, Chair
Sen. Stan Gerzofsky
Sen. Roger Sherman
Rep. Margaret Rotundo, Chair
Rep. Jeffery A. Gifford
Rep. Sharon Anglin Treat

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Curtis Bentley, Legislative Analyst
Linda Nickerson, Administrative Staff

STATE OF MAINE

Citizen Trade Policy Commission

The Honorable Olympia J. Snowe
United States Senate
154 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Susan M. Collins
United States Senate
413 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Michael H. Michaud
United States House of Representatives
1724 Longworth House Office Building
Washington, D.C. 20510

The Honorable Chellie Pingree
United States House of Representatives
1037 Longworth House Office Building
Washington, D.C. 20510

June 3, 2009

Dear Senator Snowe, Senator Collins, Representative Michaud, and Representative Pingree,

The Maine Citizen Trade Policy Commission (commission) voted on May 22, 2009, to oppose the Panama Free Trade Agreement (Panama FTA). In general, the commission supports global trade but it has come to our attention that the proposed Panama FTA would have significant negative impacts on Maine as outlined below.

1. Panama is a known tax-haven for corporations including national financial institutions that compete directly with Maine's local banks. Panama's laws create a system of banking secrecy and make it comparatively easy for U.S. companies to create subsidiaries there in order to evade U.S. taxes. According to the U.S. State Department, Panama has more than 350,000 registered corporations, the second most in the world after Hong Kong and it does not have a tax transparency treaty with the U.S. As a result, corporations or their subsidiaries registered in Panama can operate in secrecy and avoid other forms of financial regulations. The

Senate Homeland Security Committee estimated that tax evasion in offshore havens costs U.S. taxpayers \$100 billion a year.

The Panama tax haven creates an uneven playing field for companies in the U.S. that pay taxes and abide by the rules. Maine's local banks are comparatively small and are unlikely to have subsidiaries registered in Panama putting them at a competitive disadvantage with national banking institutions that can avail themselves of Panama's banking laws. We are very concerned that passing a free trade agreement with Panama will make this problem even worse, further weakening our local businesses' and financial institutions' ability to compete locally and nationally.

2. The Panama FTA provides foreign-investors special privileges and a private enforcement system that promotes offshoring and subjects our environmental, zoning, health and other public interest policies to challenge by foreign investors in foreign tribunals. The Panama FTA's investment chapters replicate the language in the Central America Free Trade Agreement that allow private investors and corporations to directly enforce FTA foreign-investor rights and privileges by suing governments in foreign tribunals. These FTA investor-rights terms create additional incentives for U.S. firms to locate their U.S. production offshore where they can operate under the foreign-investor status of FTA, rather than dealing with our country's democratically passed federal, state and local laws and our domestic court system. Passing the proposed Panama FTA will further compromise our state's sovereignty and the authority of Maine's Legislature to enact laws in the public interest.

We respectfully encourage you to oppose the proposed Panama Free Trade Agreement.

Sincerely,

Troy Jackson
Senate Co-Chair

Margaret Rotundo
House Co-Chair

cc: Members, Citizen Trade Policy Commission
Governor John E. Baldacci
Senator Elizabeth Mitchell, President
Representative Hannah Pingree, Speaker

Sen. Troy Jackson, Chair
Sen. Stan Gerzofsky
Sen. Roger Sherman
Rep. Margaret Rotundo, Chair
Rep. Jeffery A. Gifford
Rep. Sharon Anglin Treat

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Curtis Bentley, Legislative Analyst
Linda Nickerson, Administrative Staff

STATE OF MAINE

Citizen Trade Policy Commission

June 3, 2009

President Barack Obama
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear President Obama,

The Citizen Trade Policy Commission (commission) is an ongoing study commission that was established pursuant to Public Law 2003, chapter 699, in recognition of the need to establish a state-level mechanism to appropriately assess the impact of international trade agreements on Maine's state and local laws, business environment and working conditions. We are writing to you to express our concerns with the proposed U.S.-European Union settlement in the World Trade Organization's (WTO's) Internet gambling case brought by Antigua against the United States.

There have been a number of attempts to site a Liquefied Natural Gas (LNG) facility in Maine and each effort has generated a great deal of government concern, public protest and press (as it does in every coastal state where such a facility is proposed) because of potential health, environmental and safety concerns. While the commission has not taken a position on the siting of a LNG facility in Maine, we are troubled by the USTR's proposal to have this sector committed to the WTO. We strongly support Maine's ability to regulate the siting and operation of LNG facilities in Maine without those regulations being subject to WTO challenges in foreign tribunals where WTO rules, not U.S. law, apply and the basic due process rights provided in our courts do not exist. We encourage USTR not to submit this service sector under the General Agreement to Trade and Services (GATS).

We also request that at a minimum, the text of the proposed U.S. commitments be clarified to ensure that the USTR goal of excluding LNG facilities is actually accomplished in the commitment text. The most effective way to do so would be to remove the sub-category of “Bulk storage of liquids or gases” from the U.S. settlement offers in the Antigua gambling case and to ensure that the sub-category is not included in any offers at WTO.

Thank you for your consideration of this matter and we look forward to a new relationship with you and the Office of USTR under your leadership.

Sincerely,

Troy Jackson
Senate Co-Chair

Margaret Rotundo
House Co-Chair

cc: Members of the Citizen Trade Policy Commission
Ambassador Ronald Kirk, United States Trade Representative
Senator Olympia J. Snowe
Senator Susan M. Collins
Representative Michael H. Michaud
Representative Chellie Pingree
Governor John E. Baldacci
Senator Elizabeth Mitchell, President
Representative Hannah Pingree, Speaker

Maine Citizens' Trade Policy Commission
Vermont Commission on International Trade and State Sovereignty

December 24, 2008

Kay Alison Wilkie
Director for International Policy
NYS Department of Economic Development
30 South Pearl Street
Albany, NY 12245

Dear Kay:

As Chairs, respectively, of trade oversight commissions of two northern New England states, we would like to express our deep appreciation for the work you have done as Chair of the InterGovernmental Policy Advisory Committee. The two conference calls you convened in October--for discussions with the GAO, and with USTR negotiators--were extremely helpful in advancing states' positions on trade policy.

We know that you share many of our concerns about the communications by the Peoples' Republic of China to the Vermont and Maryland legislatures related to pending legislation that would regulate toxic toys and e-waste disposal, and we thank you for creating the opportunity to discuss these issues with USTR staff.

The PRC's actions, putting Maryland and Vermont "on notice" as a matter of international trade law, are perceived as intrusions on the state legislative process, albeit ones that are sanctioned by the TBT agreement. While the notification issues are important, our primary concern remains the extent to which trade agreements restrict state legislative authority. China's notices reference two of the most powerful restrictions on state legislative authority incorporated into the TBT agreement: (1) the requirement that technical standards not be more trade restrictive than necessary, and (2) the presumption that state technical standards ought to conform to international and national standards. The PRC's actions are also a matter of concern, as you know, because the TBT notification process and restrictions on legislative authority are models for some of our trading partners in ongoing WTO negotiations related to domestic regulation of services.

At a joint meeting conducted on September 19 in Manchester, New Hampshire and conference calls on October 14 and November 12, the trade policy oversight commissions of Maine, New Hampshire, and Vermont resolved to work cooperatively to communicate our concerns about the PRC's action and the federalism implications of the TBT agreement to the U.S. Trade Representative, the U.S. Secretary of Commerce, and our congressional delegations.

The state trade policy commissions also resolved to work on this problem in consultation with IGPAC.

We believe that we are close to finalizing something close to a consensus position among the broad-base of state and local officials in New England regarding the more difficult substantive TBT and domestic regulation issues, most importantly the necessity test. That consensus position needs to be effectively communicated to the in-coming Administration and its transition team. We are writing at this time to ask for your continued help as Chair of IGPAC. We believe that a dialogue with administration officials concerning some of the issues related to the TBT notification process could be productive. Third, we have learned that the Department of Commerce is completing a report outlining options on TBT notification and are very interested in learning about the report when it's finished. Finally, we look forward to discussing this matter as part of the Trade Policy Leadership Seminar scheduled for early December in Atlanta, to coincide with NCSL's Fall Forum.

We look forward to consulting with you further and we ask for your guidance in finding the most effective means of resolving our concerns.

Sincerely,

Senator Margaret Rotundo, Co-Chair
Maine Citizen Trade Policy Commission

Representative John Patrick, Co-Chair

Representative Kathleen Keenan, Co-Chair
Vermont Commission on International Trade and State Sovereignty

Senator Virginia Lyons, Co-Chair

Cc: Members, Maine Citizen Trade Policy Commission
Members, New Hampshire Trade Policy Commission
Members, Vermont Commission for International Trade and State Sovereignty

Maine Citizens' Trade Policy Commission
Vermont Commission on International Trade and State Sovereignty

December 24, 2008

The Honorable Susan Schwab
Office of the United States Trade Representative
600 17th Street N.W.
Washington D.C. 20508

Dear Ambassador Schwab:

We would like to thank you and Senior Director Jeff Weiss for convening an open conference call with states to discuss the notification process under the Technical Barriers to Trade agreement. We appreciate the opportunity to engage in a dialogue with your office on trade issues and the impacts on state governments and legislative authority.

The Peoples' Republic of China in recent months has complained that bills related to toxic toys and e-waste disposal introduced respectively in the Maryland and Vermont legislatures must be "cancelled" or "revised." China makes these requests based on their reading of the World Trade Organization Agreement on Technical Barriers to Trade (TBT), to which the United States is a party.

The PRC's actions, putting Maryland and Vermont "on notice" as a matter of international trade law, are intrusions on the state legislative process, albeit ones that are sanctioned by the TBT agreement. We also understand that interagency consultations are underway regarding how the United States meets its TBT obligations. We are also concerned about substantive issues of how this agreement and others may intrude on areas of regulation traditionally reserved to the states.

At a joint meeting conducted on September 19 in Manchester, New Hampshire and conference calls on October 14 and November 12, the trade policy oversight commissions of Maine, New Hampshire, and Vermont resolved to work cooperatively to communicate our concerns about the PRC's action and the federalism implications of the TBT agreement to the U.S. Trade Representative, the U.S. Secretary of Commerce, and IGPAC.

We are therefore writing at this time to ask for your help in establishing formal federal/state consultations on the TBT process in the coming year.

We look forward to speaking to you at the earliest opportunity.

Sincerely,

Senator Margaret Rotundo, Co-Chair
Maine Citizen Trade Policy Commission

Representative John Patrick, Co-Chair

Representative Kathleen Keenan, Co-Chair
Vermont Commission on International Trade and State Sovereignty

Senator Virginia Lyons, Co-Chair

Cc: Members, Maine Citizen Trade Policy Commission
Members, New Hampshire Trade Policy Commission
Members, Vermont Commission for International Trade and State Sovereignty
Kay Wilkie, IGPAC
Hon. Susan Collins, Maine Senator
Hon. Olympia Snowe, Maine Senator
Hon. Michael Michaud, Maine Congressman
Hon. Chellie Pingree, Maine Congresswoman Elect
Hon. Patrick Leahy, Vermont Senator
Hon. Bernard Sanders, Vermont Senator
Hon. Peter Welch, Vermont Congressman

Sen. Margaret Rotundo, Chair
Sen. Bruce Bryant
Sen. Kevin L. Raye
Rep. John L. Patrick, Chair
Rep. Jeffery A. Gifford
Rep. Sharon Anglin Treat

Curtis Bentley, Legislative Analyst
Judy Gopaul, Policy Assistant



Perry Newman
John Palmer
Matt Schlobohm
Paul Volckhausen
Peter N. Connell
Carla Dickstein
Sarah Adams Bigney
Elsie Flemings
Cynthia Phinney
Jane Aiudi
Malcolm Burson
Barbara VanBurgel
Leslie Manning

STATE OF MAINE

Citizen Trade Policy Commission

March 24, 2008

The Honorable Olympia J. Snowe
United States Senate
154 Russell Senate Office Building
Washington, D.C. 20510

VIA FACSIMILE & U.S.MAIL
Facsimile: 202-224-1946

The Honorable Michael H. Michaud
United States House of Representatives
1724 Longworth House Office Building
Washington, D.C. 20515

VIA FACSIMILE & U.S.MAIL
Facsimile: 202-225-2943

The Honorable Susan M. Collins
United State Senate
413 Dirksen Senate Office Building
Washington, D.C. 20510

VIA FACSIMILE & U.S. MAIL
Facsimile: 202-224-2693

The Honorable Thomas H. Allen
United States House of Representative
1127 Longworth House Office Building
Washington, D.C. 20515

VIA FACSIMILE & U.S.MAIL
Facsimile: 202-225-5590

RE: Colombia Free Trade Agreement

Dear Senator Snowe, Senator Collins, Representative Michaud, and Representative Allen,

The Maine Citizen Trade Policy Commission (commission) voted unanimously, on February 21, 2008, to oppose the U.S.-Colombia Free Trade Agreement (Colombia FTA). In general, the commission supports global trade but in light of testimony we received from Maine citizens at the February 21 public hearing and after careful consideration of the Colombia FTA provisions, it is evident to the commission that the Colombia FTA is unfavorable for the people of Maine, the U.S., and Colombia.

In 2005, in anticipation of the pending Central American Free Trade Agreement (CAFTA), the commission established the following criteria for trade agreements. The commission believes that trade agreements should:

- Promote and strengthen basic human rights, labor rights, and environmental protections; and raise standards in developing countries in order to prevent a “race to the bottom” which hurts Maine businesses, workers, and communities;
- Safeguard local and state lawmaking authority and level the playing field for small businesses in Maine and elsewhere;
- Guard against the unintended consequence of impeding access to basic human services such as education, healthcare, energy, and water; and
- Be negotiated in a public and transparent manner.

Although the Colombia FTA was designed to strengthen Colombia’s civil society and to open its markets to economic opportunities with the U.S., we believe that it does not meet the above standards for a free trade agreement, and will result in an overall negative impact on our economies, our environment, and on working conditions.

Unfortunately, many of the flawed provisions in the North American Free Trade Agreement (NAFTA), which does not meet the commission’s standards for a trade agreement, are also contained in the Colombia Agreement.

The Colombia FTA would continue to expand investor rights of foreign corporations by allowing them to challenge democratically established laws. This can force countries and states to weaken their environmental, labor and public health laws, among others, to avoid the potential of costly litigation thereby giving foreign corporations undue influence in shaping domestic public policy. The commission has established opposition to these investor-state rights and continues to oppose this infringement on state sovereignty.

At our recent public hearing, we repeatedly heard testimony expressing concerns over Colombia’s human rights record. It was stated that more union leaders are murdered in Colombia than the rest of the world combined. These human rights violations are alarming and are grounds to reject the Colombia FTA.

Another specific concern raised at the public hearing regarding the Colombia FTA is the removal of the floor bans on basic agricultural crops that are currently in place to protect small farmers from bankruptcy. Leaders in the Andean region have warned that these agricultural rules would displace thousands of small farmers – as we saw in Mexico after the passage of NAFTA. The loss of farming jobs in Colombia will likely push many families into the migration flow. Colombia is the top producer of cocaine representing 2/3 of the world supply. If this FTA were ratified, it would displace thousands of Colombian peasant farmers, which could lead to increased coca production and violence.

On behalf of the citizens of Maine, the Maine Citizen Trade Policy Commission urges you to oppose the Colombia Free Trade Agreement. The commission has stated many times in the past that we support international trade because we recognize the multitude of benefits that can be derived from global trade. We cannot support the adoption of the Colombia FTA, because it absolutely fails to promote fair trade and sustainable economic growth in the U.S. and abroad, and adoption of its provisions would send the message to the world that cheap labor, no matter what the social costs, should be rewarded.

Sincerely,

Senator Margaret Rotundo, Co-Chair

Representative John Patrick, Co-Chair

CC: Governor John E. Baldacci

Sen. Margaret Rotundo, Chair
Sen. Bruce Bryant
Sen. Kevin L. Raye
Rep. John L. Patrick, Chair
Rep. Jeffery A. Gifford
Rep. Sharon Anglin Treat

Curtis Bentley, Legislative Analyst
Judy Gopaul, Policy Assistant



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Elsie Flemings
Cynthia Phinney
Jane Aiudi
Malcolm Burson
Barbara VanBurgel
Leslie Manning

STATE OF MAINE

Citizen Trade Policy Commission

April 22, 2008

Ambassador Susan C. Schwab
United States Trade Representative
Office of the United States Trade Representative
600 17th Street N.W.
Washington, DC 20508

VIA FACSIMILE:(202) 395-3692
& U.S. MAIL

Re: Requesting information on USTR and WTO Procedures

Dear Ambassador Schwab:

The Maine Citizens Trade Policy Commission (commission), established by the Maine Legislature and charged with monitoring and analyzing the impact of trade agreements on the State of Maine, requests information about the process by which the U.S. federal government informs the World Trade Organization (WTO) of impending state legislation.

This issue came to our attention after the People's Republic of China (PRC) challenged legislation proposed by Maryland (House Bill 8) to regulate lead in toys and other products likely to be handled by children. We were alarmed by the fact that the PRC appeared to be applying pressure on the Maryland General Assembly to not pass this law. The commission members feel this is an absolutely unwarranted intrusion into the decision-making processes of states.

China's complaint raises several questions regarding the procedure by which the U.S. notifies the WTO about pending state legislation. In particular, the commission requests information regarding: 1) what agency/entity within the U.S. federal government is responsible for notifying WTO member nations of state legislation; 2) how often or how routinely such notification occurs; and 3) what mechanism or process is used to monitor state legislation.

Finally, we seek information as to why the WTO was notified of impending state legislation. We fully understand that the federal government has a requirement to notify the WTO of new legislation passed at federal or state levels. But given that thousands of proposed bills are advanced through state legislatures in any given year, of which only a fraction are eventually passed into law, it seems unusual that China would have been notified about a bill prior to its consideration in the General Assembly. This raises questions about possible 'selective notification', as well as unwarranted intrusion by foreign interests into state lawmaking practices.

In addition, Maryland House Bill 8 has brought to our attention the fact that, unlike other WTO agreements, the Technical Barriers to Trade (TBT) does not have a 'general exception' regarding "the protection of human life and health." The commission is very concerned that the right of a sovereign state government to enact legislation to protect the life and health of its citizens is being challenged under this WTO agreement.

This is of significant concern because it is the role of the state government to protect the health and safety of our citizens. Maine citizens are alarmed that products, especially children's toys, contain harmful toxins like lead that put consumers and workers at risk, and indeed Maine is considering legislation not dissimilar to that proposed in the state of Maryland. We are aware of several other states in a similar position, and are very concerned about how those efforts may be impacted by statements or complaints issued by foreign governments, such as the PRC's complaint regarding Maryland's House Bill 8.

The commission will hold their next general meeting on May 16th, 2008, at 10:00 a.m. and would like to extend an invitation to you to participate in this discussion, via phone link, at this meeting.

The commission would appreciate a written response to our inquiry from your office by May 9th, 2008. Thank you for your help with this matter and we look forward to your response.

Sincerely,

Senator Margaret R. Rotundo, Co-Chair

Representative John L. Patrick, Co-Chair

CC: Senator Susan Collins
Senator Olympia Snowe
Representative Michael Michaud
Representative Tom Allen

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

MAY 29 AM 7:44

MAY 19 2008

The Honorable Margaret R. Rotundo
Co-Chair
The Honorable John L. Patrick
Co-Chair
State of Maine, Citizen Trade Policy Commission
100 State House Station
August, ME 04333

Dear Senator Rotundo and Representative Patrick:

Thank you for your letter of April 22, 2008, regarding the process of notifying the World Trade Organization of proposed U.S. regulations and the communication received by the State of Maryland from the government of China on proposed legislation to protect children from lead-containing products. Ambassador Schwab has asked me to respond to your letter. We strongly support the goal of ensuring the safety of imported goods. To this end, Ambassador Schwab has assigned a team of professionals within USTR to work with other agencies, the importing community, and our trading partners on the roadmap laid out by President Bush in the "Action Plan for Import Safety."

Let me assure you that no one in the Administration has encouraged China or any other country to intrude in the decision-making processes of state legislatures. We have been careful to ensure that our international trade agreements safeguard the right of governments to enact laws and regulations to protect human health and safety. The authority of the Maine legislature and other state legislatures to take action to protect our nation's children is beyond question.

We have also been successful in convincing other governments to follow the same kinds of fair and transparent decision-making that Maine, our other states, and the federal government apply in developing product regulations. As a result of our efforts, our key trade agreements provide a mechanism for U.S. businesses and organizations to learn of, and provide comments on, proposed regulations around the world that may affect U.S. commercial interests. The World Trade Organization includes a procedure that requires foreign governments to notify us of their proposed product regulations. This procedure makes it possible for the many small businesses in Maine that sell their products in foreign markets to receive notice of, and submit comments on, proposed foreign regulations.

These kinds of transparency procedures are reciprocal, of course, and we notify other governments of proposed U.S. product regulations as well. While foreign governments and companies may seek to comment on our proposed regulations – as they are free to do anyway in this country – our states and the federal government remain fully empowered to take action needed to protect the public.

Senator Margaret Rotundo
Representative John L. Patrick
Page Two

The WTO notification system normally calls for us to notify proposed agency regulations rather than federal or state legislative proposals. U.S. notifications occur quite routinely; last year, we notified more than 100 proposed measures to the WTO. The National Institute of Standards and Technology (NIST), which provides U.S. notifications, monitors the U.S. Federal Register on a daily basis for proposed federal agency measures, and an electronic database for proposed state measures. We learned several months ago that our notifications had inadvertently included certain state legislative proposals. We have since asked NIST to ensure that it is not inadvertently notifying state legislative proposals in the future.

Thank you again for your letter. Please contact our office if you have any other questions.

Regards,



Tiffany M. Moore
Assistant U.S. Trade Representative
For Intergovernmental Affairs and Public Liaison

cc: Senator Susan Collins
Senator Olympia Snowe

Maine Citizen Trade Policy Commission



Senator Margaret Rotundo, Co-Chair

Representative John Patrick, Co-Chair

June 6, 2008

Christopher Melly, Director, Services Trade Negotiations
Daniel Watson, Director, Services Trade Negotiations
Office of the United States Trade Representative
600 17th Street, N.W.
Washington, DC 20508

Dear Mr. Melly and Mr. Watson:

We are writing to you on behalf of the Maine Citizens Trade Policy Commission. The Commission is a public body created by an act of the Maine Legislature to examine both the economic opportunities for the State of Maine provided by the expanding number of trade agreements to which the U.S. is party, and also the possible impacts of new trade disciplines on U.S. federalism, particularly as they pertain to Maine's ability to regulate in the public interest. With this in mind, the Commission has taken a particular interest in the on-going negotiations pertaining to the General Agreement on Trade in Services (GATS). We are writing to you today to update our June 16, 2006 letter regarding GATS negotiation to address recent developments by the Working Party on Domestic Regulations (WPDR) regarding proposed disciplines for U.S. commitments under GATS.

1. Negotiations on “domestic regulation” in the WTO's Working Party on Domestic Regulation. The WPDR has been asked to develop binding rules for implementation of GATS Article VI.4, to ensure that regulations are “not more burdensome than necessary to ensure the quality of the service.” We have previously expressed our concerns that the creation of a test of “burdensomeness” or “necessity” could shift the standard for regulation away from the constitutionally-protected “rational basis test” to one which is far more restrictive of state authority. We have also have communicated our concern that limiting regulations to those necessary to “ensure the quality of the service” would preclude a whole range of non-discriminatory policies that seek to protect broader public interest in relation to the provision of that service. We are pleased to see that the text of the WPDR Chair's fourth draft does not contain the “necessity test” language. We greatly appreciate you efforts to remove that language from the latest draft of proposed disciplines. However, as cited above, GATS Article VI.4 still contains the “necessity test” language and we are concerned that unless the text of the proposed disciplines contains language that essentially “turns off” the existing “necessity test” language in

GATS it may still be the overall purpose of the disciplines.

We are extremely concerned about the deletion of deference to sub-federal policy objectives as legitimate exercises of the “right to regulate.” The Chair’s second draft included both national and subnational objectives within the right to regulate, but the third and fourth drafts reverted to only national objectives. This deletion could restrict the ability of states to adopt standards that may be different than those advanced at the federal level. The restriction of this ability is entirely unacceptable and strikes at the heart of U.S. federalism. On this and subsequent points, we support the recommendations and analysis submitted to you by the Intergovernmental Policy Advisory Committee (IGPAC).

With these concerns in mind, we urge USTR to:

- Continue to reject any proposal brought before the WPDR for consideration that would include a “necessity test,” and include text that would ensure that existing language in GATS Article VI.4 would not be interpreted to be the overall purpose of the proposed disciplines. This will confirm the prerogative of legislative bodies to make the final determination of what measures are “necessary” or “relevant”.
- Preserve fully the rights of states to regulate all aspects of a service, by seeking the broadest possible definition of what regulatory measures relate to the “quality of the service,” including the external impact of a service on people, commerce or the environment.
- Reject references to “national policy objectives,” or insert the following language: **“National policy objectives include objectives identified at national or sub-national levels.”**
- Continue to safeguard state oversight of professional licensing procedures and use of education/qualification requirements. We sincerely appreciate USTR’s efforts in removing some of the problematic language from the WPDR Chair’s third draft regarding professional licensing protocol.

2. Impacts of new GATS sectoral commitments on the ability of Maine to regulate the siting and construction of a Liquid Natural Gas (LNG) facility. As you know, there are several entities seeking a license from the Federal Energy Regulatory Commission (FERC) to develop on- or off-shore LNG facilities in the State of Maine. At least one of those entities includes foreign ownership. In the 2005 Energy Policy Act, Congress gave FERC authority to license LNG facility siting, while explicitly preserving state authority to review applications to site coastal facilities. The FERC describes this on its website as having preserved a “virtual veto” power for states. At the same time, however, foreign LNG suppliers have already complained (explicitly in the case of California) that the dual federal-state LNG regulatory oversight system is overly burdensome.

With this in mind, we wish to therefore remind USTR that:

- Maine has requested a carve-out from any new GATS sectoral disciplines, including those pertaining to bulk storage of fuels and pipeline transportation of fuels—both of

which would be part of any coastal LNG facility.

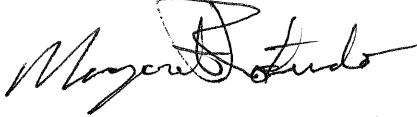
- States worked actively with their Congressional delegations to preserve state regulatory authority on LNG siting decisions in the 2005 Energy Policy Act, and would therefore take a dim view of any “end-around” of state authority through commitments on GATS—including new rules on domestic regulation that impose tests regarding whether particular regulations are “relevant to the supply of the services,” a discipline that remains in the Chair’s fourth draft. As you know, LNG terminals raise concerns that go well beyond the quality of natural gas services. States are concerned about coastal zone management issues that include security, environmental, commercial, scenic, historic, and recreational impact of facility siting and operations.
- We understand that while the commitment on storage facilities is still pending, USTR has officially offered this sector as part of a proposed Internet gambling case settlement with the nation of Antigua. We note that this settlement is not just about trade with Antigua; the new commitments will extend to all WTO nations. While Antigua wants gambling access, the settlement focuses on other sectors of interest to the European Commission, Japan and Canada. We understand that consultations have also included Australia, which has significant LNG interests in the U.S. market. We have serious reservations about this offer because it appears to be tantamount to an “end-around” of state authority to regulate the siting of storage facilities.

3. USTR’s continued failure to address concerns raised in previous letters from the Maine Citizens Trade Policy Commission. The lack of meaningful consultation regarding proposed new GATS commitments led us to conclude that it would be most prudent for Maine to seek a carve-out from new GATS commitments until such time as the Commission—which includes representatives from both houses of the Maine Legislature and a number of executive branch agencies, plus the Maine State Point of Contact with USTR—has had an opportunity to study the potential impacts of such new commitments on Maine’s regulatory authority. For example, in addition to storage, the proposed settlement of the Internet gambling case involves research and development, a sector in which states have extensive tax incentives and regulations that affect service suppliers. Given the lack of consultation with states on USTR’s decision to include bulk storage of fuels and research and development in the Internet gambling settlement, we believe our request for a carve-out from new GATS commitments is more urgent than ever and we re-assert that request here.

The members of the Maine Citizens Trade Policy Commission request that USTR negotiating staff brief members of the Commission regarding current negotiations in the WPDR particularly USTR’s position on the WPDR Chair’s fourth draft of proposed disciplines, USTR’s settlement offer of disciplines that encompass bulk fuel storage facilities in the Antigua gambling case, and any other issues pertaining to GATS “domestic regulation” rules or new sectoral commitments.

We appreciate the opportunity to raise these concerns with you and look forward to your earliest possible reply. If you would prefer to reply by telephone, we are happy to arrange a conference call. With very best wishes.

Sincerely,



Senator Margaret Rotundo
Co-Chair



Representative John Patrick
Co-Chair

cc: Tiffany M. Moore, Assistant USTR, Intergovernmental Affairs and Public Liaison
Patrick Kilbride, Director of Intergovernmental Affairs and Public Liaison
Maine's Congressional Delegation
Coastal States Organization
Kay Wilkie, Chair, Intergovernmental Policy Advisory Committee
William Pound, Director, National Conference of State Legislatures

**JOINT RESOLUTION MEMORIALIZING THE MAINE DELEGATION, THE
CONGRESS OF THE UNITED STATES AND THE PRESIDENT TO SAFEGUARD
THE STATE'S ROLE IN INTERNATIONAL TRADE AGREEMENTS**

WHEREAS, the State of Maine strongly supports international trade when fair rules of trade are in place, and seeks to be an active participant in the global economy; and

WHEREAS, the State of Maine seeks to maximize the benefits and minimize any negative impacts of international trade; and

WHEREAS, existing trade agreements have impacts which extend significantly beyond the bounds of traditional trade matters such as tariffs and quotas, and can undermine Maine's constitutionally guaranteed authority to protect the public health, safety and welfare, and regulatory authority; and

WHEREAS, a succession of federal trade negotiators from both political parties over the years have failed to operate in a transparent manner and have failed to meaningfully consult with states on the far-reaching impact of trade agreements on State and local laws, even when binding the State of Maine to the terms of these agreements; and

WHEREAS, existing trade agreements have not done enough to ensure a level playing field for Maine workers and businesses, or to include meaningful human rights, labor, and environmental standards, which hurts Maine businesses, workers, and communities; and

WHEREAS, the negative impact of existing trade agreements on the State's constitutionally guaranteed authority to protect the public health, safety and welfare, and regulatory authority has occurred in part because U.S. trade policy has been formulated and implemented under the Trade Promotion Authority (Fast Track) process; and

WHEREAS, Trade Promotion Authority (Fast Track) eliminates vital checks and balances established in the U.S. Constitution by broadly delegating to the Executive Branch authority reserved for Congress to set the terms of international trade; and

WHEREAS, Trade Promotion Authority (Fast Track) circumvents normal congressional review and amendment committee procedures, limits debate to 20 hours total, forbids any floor amendments to the implementing legislation that is presented to Congress, and generally creates a non-transparent trade policymaking process; and

WHEREAS, Trade Promotion Authority (Fast Track) is not necessary for negotiating trade agreements, as demonstrated by the existence of scores of trade agreements, including major pacts such as the agreements administered by the WTO, implemented without use of Fast Track; and

WHEREAS, the current grant of Trade Promotion Authority (Fast Track) expires in July 2007; now, therefore be it

RESOLVED: That the State of Maine respectfully requests that the United States Congress create a replacement for the Trade Promotion Authority (Fast Track) system so that U.S. trade agreements are developed and implemented using a more democratic and inclusive mechanism that entails meaningful consultation with states: and be it further

RESOLVED: That the State of Maine respectfully requests that the United States Congress fully fund and support export promotion programs and Trade Adjustment Assistance programs: and be it further

RESOLVED: That copies of this Joint Resolution be immediately transmitted to Senator Olympia Snowe, Senator Susan Collins, Representative Michael Michaud, and Representative Tom Allen and be copied to the Honorable George W. Bush, President of the United States; Ambassador Susan Schwab, United States Trade Representative; the President of the United States Senate; and the Speaker of the House of Representatives.



Senator Margaret Rotundo, Co-Chair

Representative John Patrick, Co-Chair

STATE OF MAINE

June 22, 2006

Ingrid V. Mithem, Director
Industry Trade Advisory Center
U.S. Department of Commerce
14th and Constitution Avenue, NW.
Room 4043
Washington, DC 20230

Dear Ms. Mithem:

The Secretary of Commerce and the United States Trade Representative have sought nominations for the appointment of a public health or health care community representative to the Industry Trade Advisory Committee on Chemicals, Pharmaceuticals, Health/Science Products and Services (“ITAC 3”) and the Industry Trade Advisory Committee on Intellectual Property Rights (“ITAC 15”). Previously the National Legislative Association on Prescription Drugs Prices (“NLARx”) nominated Sharon Treat to be a representative for ITAC 15. We join NLARx in strongly supporting the nomination of Sharon Treat for either ITAC 3 or ITAC 15.

The Citizen Trade Policy Commission was established by the Maine Legislature to assess and monitor the legal, policy and economic impacts of international trade agreements at the state and local levels. As part of our work, healthcare is an important focus area and Ms. Treat has proved to be an invaluable resource in our efforts to analyze the impact of trade agreement on Maine’s unique healthcare system. Ms. Treat, an attorney and former college administrator and state legislator, is nationally recognized as a leader on public health and pharmaceutical policy issues, and also has expertise specific to trade policy and pharmaceutical access and affordability.

CTPC believes that Ms. Treat can provide the USTR with important input from the public health and health care community that will greatly assist the USTR in developing sound U.S. trade policy. As a result of organizing national conferences on pharmaceutical policy for state policymakers, Ms. Treat is familiar with the status of healthcare and healthcare policies in many states. Additionally, she will bring outstanding academic and legal expertise to benefit the committee. We urge the Department of Commerce and the USTR to appoint Ms. Sharon Treat to serve on ITAC 3 and/or ITAC 15.

Thank you for considering our recommendations

Sincerely,

Margaret Rotundo
Senate Co-Chair

John Patrick
House Co-Chair

cc: Maine's Congressional Delegation
 Governor John E. Baldacci
 Steven Rowe, Attorney General
 Members, Citizen Trade Policy Commission
 Alan Stearns, Senior Policy Advisor, Office of the Governor

Maine Citizen Trade Policy Commission



Senator Margaret Rotundo, Co-Chair

Representative John Patrick, Co-Chair

June 16, 2006

Christopher Melly, Director, Services Trade Negotiations
Daniel Watson, Director, Services Trade Negotiations
Office of the United States Trade Representative
600 17th Street, N.W.
Washington, DC 20508

Dear Mr. Melly and Mr. Watson:

We are writing to you on behalf of the Maine Citizens Trade Policy Commission. The Commission is a public body created by an act of the Maine Legislature to examine both the economic opportunities for the State of Maine provided by the expanding number of trade agreements to which the U.S. is party, and also the possible impacts of new trade disciplines on U.S. federalism, particularly as they pertain to Maine's ability to regulate in the public interest. With this in mind, the Commission has taken a particular interest in current negotiations pertaining to the General Agreement on Trade in Services. We are writing today out of concern about three matters pertaining to current GATS negotiations:

1. Negotiations on “domestic regulation” in the WTO's Working Party on Domestic Regulation. The WPDR has been asked to develop binding rules for implementation of GATS Article VI.4, to ensure that regulations are “not more burdensome than necessary to ensure the quality of the service.” We have previously expressed our concerns that the creation of a test of “burdensomeness” or “necessity” could shift the standard for regulation away from the constitutionally-protected “rational basis test” to one which is far more restrictive of state authority. We also have communicated our concern that limiting regulations to those necessary to “ensure the quality of the service” would preclude a whole range of non-discriminatory policies that seek to protect broader public interest in relation to the provision of that service. Recent proposals circulated in the Working Party on Domestic Regulation have also expressed hostility to sub-federal regulatory authority by noting that regulations must relate to “national policy objectives,” thereby restricting the ability of states to adopt standards that may be different than those advanced at the federal level. This ability, of course, is at the heart of U.S. federalism.

With these concerns in mind, we urge USTR to:

- Reject any proposal brought before the WPDR for consideration that would include a “necessity test,” and/ or include language that would confirm the prerogative of

legislative bodies to make the final determination of what constitutes “necessity” or “relates to” standard.

- In our view, any adoption of a “necessity” or “relates to” standard makes it essential that the U.S. Schedule of Commitments be modified so as to note a horizontal limit on commitments so that, for purposes of Domestic Regulation rules, legislative bodies retain final authority regarding what constitutes “necessity” or a “relates to” standard.
- Preserve fully the rights of states to regulate all aspects of a service, by seeking the broadest possible definition of what regulatory measures relate to the “quality of the service.”
- Reject references to “national policy objectives,” or modify this language to include “national *and sub-national* policy objectives.”
- Safeguard state oversight of professional licensing procedures and use of education/qualification requirements. We look forward to working with USTR and the appropriate authorities in Maine who develop and implement licensing procedures and examinations to develop the appropriate safeguards.

2. Impacts of new GATS sectoral commitments on the ability of Maine to regulate the siting and construction of a Liquid Natural Gas (LNG) facility. As you are no doubt aware, currently there are several entities seeking a license from the Federal Energy Regulatory Commission (FERC) to develop on- or off-shore LNG facilities in the State of Maine. At least one of those entities includes foreign ownership. In the 2005 Energy Policy Act, Congress gave FERC authority to license LNG facility siting, while explicitly preserving state authority to review applications to site coastal facilities. The FERC describes this on its website as having preserved a “virtual veto” power for states. At the same time, however, foreign LNG suppliers have already complained (explicitly in the case of California) that the dual federal-state LNG regulatory oversight system is overly burdensome.

We wish to therefore remind USTR that:

- Maine has requested a carve-out from any new GATS sectoral disciplines, including those pertaining to bulk storage of fuels and pipeline transportation of fuels—both of which would be part of any coastal LNG facility.
- States worked actively with their Congressional delegations to preserve state regulatory authority on LNG siting decisions in the 2005 Energy Policy Act, and would therefore take a dim view of any “end-around” of state authority through commitments on GATS—including new rules on domestic regulation that imposed tests regarding whether particular regulations were “related to the quality of the service.”

3. USTR’s continued failure to address concerns raised in previous letters from the Maine Citizens Trade Policy Commission. The lack of meaningful consultation regarding proposed new GATS commitments led us to conclude that it would be most prudent for Maine to seek a carve-out from new GATS commitments until such time as the Commission—which includes representatives from all three branches of government, plus the Maine State Point of Contact with USTR—has had an opportunity to study the potential impacts of such new commitments on Maine’s regulatory authority.

Given impending deadlines for completion of modalities in the WTO Doha Round negotiations, and given the June 19th meeting of the Working Party on Domestic Regulation—for which the Chair has indicated that he hopes to forward a “consolidated text” to the General Council on Services regarding Domestic Regulation disciplines-- **the members of the Maine Citizens**

Trade Policy Commission request that USTR negotiating staff brief members of the Commission regarding current negotiations in the WPDR, the content of any texts emerging from the Working Party, and any other issues pertaining to GATS “domestic regulation” rules or new sectoral commitments, as soon as is practicable following the June 19th meeting.

We appreciate the opportunity to raise these concerns with you and look forward to your earliest possible reply. With very best wishes.

Sincerely,

Senator Margaret Rotundo
Co-Chair

Representative John Patrick
Co-Chair

cc: Tiffany M. Moore, Assistant USTR, Intergovernmental Affairs and Public Liaison
Christina Sevilla, Director, Intergovernmental Affairs

Maine Citizen Trade Policy Commission



Senator Margaret Rotundo, Co-Chair

Representative John Patrick, Co-Chair

June 2, 2005

The Honorable Olympia J. Snowe
United States Senate
154 Russell Senate Office Building
Washington, D.C. 20510-1903

The Honorable Susan M. Collins
United States Senate
154 Russell Senate Office Building
Washington, D.C. 20510-1903

The Honorable Thomas H. Allen
United States House of Representatives
1717 Longworth House Office Building
Washington, D.C. 20515

The Honorable Michael H. Michaud
United States House of Representatives
437 Cannon House Office Building
Washington, D.C. 20515

Dear Senator Snowe, Senator Collins, Congressman Allen and Congressman Michaud:

The Citizen Trade Policy Commission adopted the following statement unanimously on May 27, 2005. The Commission was established by the Maine Legislature in 2004 to assess and monitor the legal and economic impacts of trade agreements on state and local laws, working conditions and the business environment; to provide a mechanism for citizens and Legislators to voice their concerns and recommendations; and to make policy recommendations designed to protect Maine's jobs, business environment and laws from any negative impact of trade agreements. The Commission includes Legislators from at least two political parties and citizens representing a wide variety of Maine constituencies impacted by trade. (See attached Commission membership list)

Statement on Dominican Republic-Central America-United States Free Trade Agreement (DR-CAFTA)

The Maine Citizen Trade Policy Commission supports international trade. Countries improve overall economic welfare by producing those goods at which they are relatively efficient, while trading for the rest. Trade can improve productivity, lower the price of consumer goods, and

increase consumer selection, potentially benefiting both workers and consumers. Larger global markets for Maine products can help maximize the benefits of trade for Maine workers and consumers.

However, in recent years trade agreements such as the North American Free Trade Agreement have created both winners and losers. That has been apparent in Maine, with scores of closed factories, thousands of jobs lost to the surge of imports, and many communities struggling to survive. Globalization may be inevitable, but the details of any trade agreement are not. Because the rules of globalization reach far beyond border measures such as tariffs and quotas, potentially impacting every realm of public policy, the details of a trade agreement should be publicly accessible and critically examined before we decide whether or not to support it. Public scrutiny will strengthen, not undermine, globalization.

The Maine Citizen Trade Policy Commission believes that trade agreements should:

- Promote and strengthen basic human rights, labor rights, and environmental protections, and raise standards in developing countries in order to prevent a “race to the bottom” which hurts Maine businesses, workers, and communities.
- Safeguard local and state lawmaking authority and level the playing field for small businesses in Maine and elsewhere.
- Guard against the unintended consequence of impeding access to basic human services such as education, healthcare, energy, and water.
- Be negotiated in a public and transparent manner.

DR-CAFTA does not meet our standards for an acceptable trade agreement for several reasons. We are particularly concerned with DR-CAFTA’s impacts on our state sovereignty and labor standards across the region. During two public hearings on DR-CAFTA held in Bangor and Portland over the past several months, we heard citizen testimony that ranged widely in scope, but was overwhelmingly opposed to DR-CAFTA. People worried about economic issues such as outsourcing, labor standards, and impacts on small businesses, but also voiced concerns about the possibility of maintaining and creating policies pertaining to public services, environmental protection, prescription drugs, municipal zoning, and social security. Many people also spoke about DR-CAFTA’s impact on Central America’s small farmers, many of whom would be forced to abandon their land for factory work in sweatshop conditions in their own countries or emigrate to the United States. Others were concerned that there is no avenue for meaningful public input in trade negotiations. Many people urged the Commission to take a stand against DR-CAFTA and recommend that Maine’s Congressional delegation votes against it. For a summary of the public hearings, please see: <http://www.state.me.us/legis/opla/citpol.htm>

Based on our own analysis of DR-CAFTA and the concerns of the citizens and constituencies we represent, we urge you to actively work against the passage of DR-CAFTA. At a time when several Maine communities may be facing dramatic job loss and disruption as a result of proposed military base closures, we would only compound our problems with a trade agreement that will diminish opportunities for those who need them the most. While Maine can make its voice heard on the question of military base closures and possibly influence the final decision, DR-CAFTA has been created through a process that completely excludes citizens and elected

representatives from meaningful participation, and contributes to the lack of trust and confidence that citizens have about trade agreements.

Higher quality trade agreements that meet the Commission standards require state and citizen discussion of trade policy and an avenue for our concerns to be heard in trade negotiations. Maine joins many other states in requesting regular and meaningful consultation with the United States Trade Representative office to correct the democracy deficit in trade negotiations. We are deeply appreciative of the role Maine's Congressional delegation has played in fighting for fair trade agreements that promote the interests of Maine workers, businesses, and communities. We look forward to working with you to develop a new trade negotiation process that is democratic and transparent, and accountable to the diverse voices and interests in Maine.

Sincerely,

Senator Margaret Rotundo
Co-Chair

Representative John Patrick
Co-Chair

Cc: Rob Portman, Ambassador, United States Trade Representative
Governor John E. Baldacci
Members, Citizen Trade Policy Commission
Alan Stearns, Senior Policy Advisor, Office of the Governor

Appendix

The following sections on “Democracy and Sovereignty Issues,” “Labor and Small Business Issues,” “Impact on Central America and Consequences for Maine,” and “Process of Trade Negotiations” contain our analysis and concerns about DR-CAFTA. The Appendix should not be read as an exhaustive analysis or a comprehensive view of the DR-CAFTA issues relevant for Maine.

Democracy and Sovereignty Issues

International trade agreements such as CAFTA, NAFTA, and GATS would make it possible for global corporations to override local controls on development, zoning and planning. Such agreements may also be used to override local and state environmental regulations, as well as national labor and safety standards.

-- Valerie Carter, Ph.D., CTPC Public Hearing, Bangor, February 3, 2005

DR-CAFTA’s Chapter 11 (Cross-Border Trade in Services) could weaken Maine’s regulatory authority. Like the General Agreement on Trade in Services (GATS), it requires signatories to ensure “conformity of all laws, regulations, and administrative procedures” to the agreements (Agreement Establishing the WTO, Article XVI: 4). Thus, when a country commits a specific service sector to DR-CAFTA rules it must conform its domestic policy – including laws, regulations, administrative decisions, and even unwritten practices maintained by all levels of government: central, regional, and local – to the requirements of the trade agreement. The rules also apply to non-governmental authorities in exercise of power delegated by governments, including professional associations, boards of hospitals, schools, universities, and standard-setting bodies (CAFTA, Article 11.1.2). Furthermore, while only those services explicitly committed are covered by DR-CAFTA’s rules, DR-CAFTA’s scope is tied to the scope of GATS, and GATS mandates continuous rounds of renegotiation to increase liberalization of trade in services and pressure countries to remove exceptions to GATS rules and commit ever more service areas to the Agreement. As GATS expands, so will regional trade agreements, such as DR-CAFTA.

The expansion of GATS rules may also impact future interpretations of DR-CAFTA provisions. A World Trade Organization working group on domestic regulations is currently working on new “disciplines” on domestic regulations that may include a “necessity test” and a list of “legitimate objectives” that would be used to assess the level of trade-restrictiveness of a government measure. If and when finalized, the GATS disciplines would be directly imported into DR-CAFTA according to DR-CAFTA Article 11.8 (3). Professional licensing, qualification requirements, and technical standards governing hospitals, nursing homes, physicians, nurses, or HMOs that ensure the quality of healthcare delivery may have to face necessity tests. Currently, the United States has committed to necessity tests for accounting, engineering, and architecture that may become a precedent for other sectors, including healthcare. The domestic regulation rule can ultimately be used to challenge the federalist system of separate state laws that promotes diversity and encourages states to act as “laboratories of democracy.” A challenger could claim

that a state law is more burdensome than necessary if there are less stringent laws in other states with similar conditions.

Investment Rules

[NAFTA's Chapter 11 provisions] have raised serious problems with the ability of state and local governments to take constitutional actions to protect public welfare and the environment. These provisions compensate disappointed investors from other countries under a vague standard that is potentially much more expansive than that available for domestic investors who claim a regulatory taking in our courts. In effect, these provisions may require government to pay foreign investors for the right to enforce its environmental regulations.

-- Maine Attorney General Steven Rowe, August 25, 2002

As a state that values clean air, clean water and clean energy, Maine often leads the country in enacting progressive environmental laws. For example, during the last session, the Maine legislature passed "An Act to Protect Human Health by Reducing Exposure to Arsenic." This law speeds the phase-out of arsenic treated lumber. Arsenic is known to cause cancer, and children are exposed to it when they play on jungle gyms and decks built with arsenic-treated lumber. The Maine Bureau of Health found health risks from arsenic in pressure-treated lumber were just as high as the risks from exposure to arsenic in drinking water. Under NAFTA, it's possible that a Canadian corporation that produces arsenic-treated lumber could sue the U.S. over the Maine ban because of lost market share.

-- Maureen Drouin, Northeast Regional Representative, Sierra Club, CTPC Public Hearing, Bangor, February 3, 2005

Modeled on NAFTA's Chapter 11 investor-state dispute resolution mechanism, DR-CAFTA's Chapter 10 investment rules give a foreign investor the right to seek monetary compensation for a federal, state, or local regulatory action the company alleges to be either a direct or indirect expropriation of their profits. Because these investment rules include more expansive property rights than the United States Constitution grants domestic businesses, DR-CAFTA's Chapter 10 appears to violate the "no greater rights" for foreign investors mandate included in the 2002 Trade Promotion Act.

DR-CAFTA Chapter 10 in effect redefines public regulation as a government "taking" of private property that requires compensation to the owner, just as when a government takes private land for a highway or park and has to pay its fair market value. Because DR-CAFTA Chapter 10 includes broad standings language, allowing a domestic corporation with substantial business interests in another party to use the investor-state dispute resolution mechanism to challenge a domestic law, a Central American subsidiary of a U.S. company could potentially use DR-CAFTA to challenge Maine laws it considers to be "tantamount to expropriation."

For example, a casino based in a DR-CAFTA member country, or with substantial business interest in a DR-CAFTA member country, could challenge state restrictions on gambling. In the recent GATS gambling case against the United States brought by Antigua and Barbuda, the World Trade Organization Appellate Body ruled that the United States had made a GATS commitment to open up all forms of gambling to international competition, but did allow for the

United States to use the GATS Article XX “public morals exceptions” to defend certain restrictions on gambling. However, DR-CAFTA’s Chapter 10 does not provide for a public morals exception. The State of Maine maintains strict limits on “games of chance” and gambling via electronic video machines that appear to violate DR-CAFTA Market Access rules that prohibit quantitative limits on, and exclusive suppliers of, committed services.¹ These limits and Maine’s future ability to regulate gambling appear to be at risk in the event of a challenge under Chapter 10 of DR-CAFTA²

Access to Public Services

Do trade treaties like CAFTA and the North American Free Trade Agreement (NAFTA) and the General Agreement on Trade in Services (the GATS) make Social Security privatization a one-way street? Could they 'lock-in' even partial privatization forever? It is important to note that these questions are not partisan ones. Whether or not one supports the proposed privatization of Social Security makes little difference in this discussion. What this Commission deals with and what makes the Commission so important is asking the question, "How might these trade agreements affect us in our day to day lives?" That is something I think we can all get behind.

-- Alexander Aman, CTPC Public Hearing, Bangor, February 3, 2005

Expansion of DR-CAFTA rules to cover traditional public services such as water, sewer, environmental protection and education could require extension of public subsidies to foreign private competitors. DR-CAFTA’s national treatment rule requires governments to allow foreign service providers to compete on equal terms with local public providers for taxpayer funds. For example, a foreign corporation bidding to provide water delivery services in a Maine municipality must be given the same favorable treatment as the public agency that traditionally has provided the service, including public funding and access to infrastructure. The low bidder wins. The result could be privatization of water delivery services. Privatization would be a one-way street. Once a public service has been opened to free trade, the price for closing the market to foreign access is to pay the investors what they would have made had it remained open.

¹ See Title 17, Chapter 14 Games of Chance, available at: <http://janus.state.me.us/legis/statutes/17/title17ch14sec0.html> and <http://www.gambling-law-us.com/State-Laws/Maine/>

² Thank you to Martha Spiess for providing testimony to the Commission on the WTO United States— Gambling decision’s implications for regulation of gambling in Maine. See “Upping the Ante: What does the final WTO U.S.- Gambling decision mean for the democratic regulation of gambling in Maine?” submitted to CTPC Public Hearing, Portland, April 19, 2005. The Commission also heard testimony on the possibility of Maine’s sustainable water withdrawal practices being challenged by a foreign investor. The testimony included an international trade lawyer’s analysis of the agreement between the State of Maine and Great Spring Waters of America Inc., operating as Poland Springs. The lawyer noted that this Agreement “is subject to these international [trade] agreements,” and that “if a conflict arises between the provisions of the Agreement and those of international trade law, the latter would prevail,” possibly threatening democratic control over water in Maine. However, Poland Spring would only be able to use DR-CAFTA’s investor-state dispute resolution mechanism if it, or its parent company Nestle, had resident status in a Dr-CAFTA country. See testimony by Marga Huntington, “Protecting Maine Water from International Trade Treaties,” and Steven Shrybman, “Re: Spring Water Use Agreement and License,” submitted to CTPC Public Hearing, Portland, April 19, 2005.

Proponents of current services rules argue that public services are excluded from GATS and DR-CAFTA's Chapter 11 since the rules do not apply to "services supplied in exercise of governmental authority," which it defines as services supplied "neither on a commercial basis, nor in competition with one or more service providers" (CAFTA, Article 11.1.6). On the other hand, when a government does act on a commercial basis (e.g., charges a fee for the service provided) or in competition with other service suppliers, its activities are to be treated like those of any other private supplier. Maine provides few services exclusively on a non-commercial basis.

Whether or not to privatize is a debate we should have publicly, and a decision we should make democratically. Unless public services are clearly and unambiguously excluded from DR-CAFTA, the Agreement could deprive us of the right to make these decisions, in effect forcing the transformation of public services into tradable commodities.

Government Purchasing Rules

In Governor Baldacci's State of the State address, he talked about how The State of Maine now purchases 40% of its electricity from Maine's own renewable power resources; that they heat state office buildings with biodiesel, and that they are improving the fuel economy of the State fleet by purchasing more hybrids and smaller vehicles. According to the Governor, these energy savings steps have saved the State \$776,000 in transportation fuel costs and reduced state government greenhouse gas emissions by 8% just in the past two years. Under CAFTA, these preferences could be considered inappropriate trade barriers and challenged.

-- Maureen Drouin, Northeast Regional Representative, Sierra Club, CTPC Public Hearing, Bangor, February 3, 2005

Government procurement rules in DR-CAFTA Chapter 9 limit the use of non-economic criteria for government purchasing, depriving the public control over the use of public funds, and diminishing the value of government procurement as a public policy tool. The rules may conflict with Maine policies, initiatives, and preferences such as:

- Recycled paper and fuel efficient cars, because technical specifications must be limited to "performance requirements;"
- Products made in non-sweatshop conditions, because supplier qualifications must be limited to their "legal, technical and financial abilities" to fulfill a procurement and may not include criteria related to the methods of production;
- In-state suppliers, because our trading partners' suppliers must be accorded treatment "no less favorable" than the "most favorable treatment" we give to domestic suppliers; and
- Banning state contractors from shipping jobs overseas, because contractor conditions to "encourage local development" are forbidden.

While the State of Maine has opted, at this time, not to allow USTR to offer Maine's government procurement market to DR-CAFTA parties and would not need to adhere to its government procurement rules, it is also of concern that federal government procurement policies would have to conform to DR-CAFTA's Chapter 9 rules. Unless changed through DR-CAFTA implementing legislation or exempted in the Agreement, such policies as Buy America laws and

the prohibition of federal acquisition of products produced by forced or indentured child labor (by Executive Order 13126) could be subject to challenge.

Labor and Small Business Issues

“[The] differences between the rights of business and the rights of labor are enormous [in CAFTA]. When injuries happen to commercial or business interests, countries are severely punished through trade sanctions that are equal to the original injury. These can be enormous. For example, Europe is currently in the position of levying \$4 billion in trade sanctions against the U.S. Fines for labor rights violations are miniscule in comparison, as they are capped at \$15 million. Worse yet, the violator gets to pay itself! Though this fine is supposed to be used to help the country correct the violation of labor rights, there is nothing in the agreement to prevent a country from paying itself a fine, then shifting money from one budget to another and so effectively side-stepping the intent of the fine.”

-- Jack McKay, President, Greater Bangor Area Central Labor Council, CTPC Public Hearing, Bangor, February 3, 2005

I am willing to compete with any worker in the world for labor... But I do not want to compete with children who are forced to beg for their existence when they lose vital body parts. I do not want to compete with companies that are allowed to pollute the air and water to gain a price advantage. Give us trade agreements with level playing fields... and Maine will compete and survive. We will have a shoe industry, garment manufacture, a growing paper industry, family farms and a place for my business too. Then Maine will truly be "the way life should be.”

-- Allyn Beecher, Owner, Monroe Millworks, CTPC Public Hearing, Bangor, February 3, 2005

Export processing zones, where *maquila* factories operate and mostly women 15-25 years old provide cheap labor under poor conditions, are already prevalent throughout Central America. These zones would expand dramatically under DR-CAFTA. Widely acknowledged human rights abuses in these zones include non-enforcement of health, safety, and labor regulations, hostility toward union organizing, excessive working hours, and dangerous working environments. Human rights monitors such as the U.S. State Department, the International Labor Organization, and Human Rights Watch have recognized that labor law enforcement in many Central American countries is inadequate.

While DR-CAFTA should require national labor laws to meet International Labor Organization core standards, such as the right to organize unions (“freedom of association”) and bargain collectively, its Article 16.1 calls on parties to “strive to ensure” such standards, only requiring that parties enforce their existing labor laws. However even this requirement is compromised by:

- Article 16.2.1(b), which gives each party “the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other labor matters determined to have higher priorities.” Thus parties can decide to not enforce key portions of

their existing labor law by allocating resources elsewhere. Article 16.6.7 ensures that any such decision not become the subject of an arbitral (dispute resolution) panel.

- Article 16.2.2, which does not prohibit a country from weakening its existing labor law protections in order to attract investment. The article only says that countries “shall strive to ensure” that they do not do so. Article 16.6.7 ensures that any such weakening of labor law not become the subject of an arbitral panel.
- Article 20.17, which does not allow DR-CAFTA arbitral panels to suspend parties’ tariff benefits when they violate DR-CAFTA’s labor provisions. If a party violated DR-CAFTA’s commercial provisions, such as the intellectual property rights rules or market access rules, it could face trade sanctions under article 20.16. But even if a country systematically refused to enforce its own labor laws, it would only face fines, capped at \$15 million annually as long as the violation continues. Because tariff benefits can only be suspended if a party fails to pay a fine, not because it fails to address a violation, there is no way to compel remediation. A country can choose to pay a fine indefinitely and enjoy DR-CAFTA benefits while systematically failing to enforce its own labor laws. Furthermore, the fines would be given back to the violating country “for appropriate labor ... initiatives, including efforts to improve or enhance labor ... law enforcement.” However, DR-CAFTA does not prohibit a violating party from simultaneously redirecting existing funds away from labor law enforcement. Thus the net result of labor law violations could be zero.

It is important to note that DR-CAFTA is a step backward from existing trade related labor protections in the region. Currently, the General System of Preferences and the Caribbean Basin Initiative directly condition market access on respect for International Labor Organization core standards. The credible threat of reduced trade benefits is responsible for most significant labor reforms in Central America over the last two decades. CAFTA would destroy the only proven effective means to raising the bar for workers in the Americas.

Central America is already a very small export market. The largest market, the Dominican Republic, is equivalent to Bakersfield, California; the smallest, Nicaragua is equivalent to Lawrence, Kansas. Portland’s market size is larger than Honduras, fifth on the list, and Bangor’s is larger than Nicaragua’s.³ The region as a whole is Maine’s 13th largest trading partner; the region without the Dominican Republic is Maine’s 29th largest trading partner.⁴ The weak labor standards in DR-CAFTA will do nothing to increase the significance of this export market for Maine businesses. Export production workers in Central America – that is, those workers whose wages and living standards could be directly impacted by trade agreements – usually earn no more than legal minimum wages which are barely sufficient to meet the basic food requirements of a family, let alone other basic needs. Tying trade benefits to payment of non-poverty wages, or even median wages for the country of manufacture, would be one way to increase the market size of this region, potentially benefiting Maine export businesses. However, DR-CAFTA’s labor provisions will only accelerate the race to the bottom, depriving Maine businesses of the potential benefits of a trade agreement with stronger labor standards.

³ See: http://www.usmayors.org/metroeconomies/0703/metroecon_appendix_0703.pdf and http://www.americaneconomicalert.org/view_art.asp?Prod_ID=1921

⁴ Source: Maine International Trade Center

Impact on Central America and Consequences for Maine

“When we lived in the village [of Carasque, El Salvador] it soon became apparent that ... the majority of Salvadorans are not entrepreneurs looking for a low tariff environment for exporting their products. They are subsistence farmers who grow corn, rice, and beans to feed their families, and try to sell their extra at market to buy other staple items, shoes and medicines. For these people free trade agreements like CAFTA mean freedom for them to compete with subsidized agribusinesses from the U.S., which have driven the price they can get for their corn lower than their cost to produce it, even if one discounts their labor as entirely free.”

-- Katherine Kates, Bangor-El Salvador Sister City Project, PICA, CTPC Public Hearing, Bangor, February 3, 2005

As all trade agreements, DR-CAFTA will create both winners and losers. In Central America, the beneficiaries of DR-CAFTA are likely to be large importers of foodstuffs and manufactured goods, bankers and other financial groups that mediate the investments of foreign corporations, owners and developers of free-trade zone assembly plants, those who profit from the sale of public government services to private businesses, and those who profit from selling these services to their countrymen. These groups belong to the wealthiest sectors of Central American society.

The large majority of the population, small subsistence farmers, will face a flood of imported U.S. agricultural products that may destroy their livelihoods.⁵ Under DR-CAFTA over half of current U.S. farm exports to Central America would become duty free immediately, including cotton, wheat, soybeans, certain fruits and vegetables, and processed food products. Other agricultural products have a gradual tariff phase-out schedule, with up to 20 years for products such as rice and dairy. Tariffs on yellow corn, a key subsistence crop and source of income for many Central American farming communities, would be completely phased out in 15 years, down from the current high of 45 percent tariffs.⁶ The consequences for small farmers will be hunger, disruption of families and communities, and exploitation in sweatshops or a dangerous trek north. In the terms of the U.S. Congressional Research Service: “...countries dependent on small subsistence farms require time to accommodate the structural adjustment taking place as their economies transition toward larger farms, manufacturing, and services.”⁷

This “structural adjustment” in Central America will have consequences for the United States and Maine. Increasing the cheap labor supply for manufacturing in Central America will contribute to downward pressure on wages and work-related benefits in the region and increase competitive pressures on Maine businesses that now provide wages adequate for Maine workers and families.

⁵ See “DR-CAFTA & Agriculture: Will the *campesinos* survive?,” Oxfam America, March, 2004, http://www.oxfamamerica.org/pdfs/cafta_ag_brief0404.pdf.

⁶ The source for all figures in this section is the United States Department of Agriculture, Foreign Agricultural Service, United States-Central America-Dominican Republic Free Trade Agreement Commodity Fact Sheets, March 2005.

⁷ Hornbeck, J.F., “The U.S.-Central America Free Trade Agreement (CAFTA): Challenges for Sub-Regional Integration,” Congressional Research Service Report for Congress, June 1, 2004.

Furthermore, when small independent farms are squeezed out of markets and small farmers are pushed off their land by giant agribusinesses, and when export-oriented economies stimulated by free trade agreements fail to create enough new good jobs to replace all those that are eliminated, the pressure to migrate legally or illegally increases. Unauthorized immigration from Mexico to the United States increased sharply after NAFTA's implementation, more than doubling between 1990 and 2000, as more than 1.5 million Mexican peasant farmers were forced to abandon their land.⁸ Similarly, DR-CAFTA is likely to increase immigration to the United States from Central America.⁹ Immigrant workers in the United States, especially those with illegal status, face numerous challenges including low-paying jobs, discrimination, exploitation, inadequate access to social services, and limited legal rights, challenges that are exacerbated for those immigrants that do not have legal status. This issue was brought to light in Maine in September 2002, when 14 loggers from Honduras and Guatemala perished as their van, traveling at an unsafe speed, slipped off a one-lane bridge into the Allagash River. The immigrants were coffee growers and rural workers in their home countries; in Maine they were planting and harvesting pine trees destined for paper mills. Desperate to pay off large loans to recruiters who brought them to the United States and to send remittances back home to their families, the loggers were speeding to extend the working day. Their employer had been cited numerous times by the Department of Labor's Wage and Hour Division for unpaid overtime work, and has now lost its license to operate for failing to ensure the safety of workers.

Process of Trade Negotiations

As a citizen who helped to make this Commission possible I ask you to insert Maine's human voice in those [trade] negotiations wherever possible. Specifically, please investigate and raise questions about whether Maine people really benefit by having health care, including state healthcare services, covered under any specific trade agreement. Will Maine citizens benefit? Will doctors, nurses, and healthcare providers in general benefit? Will businesses and working people benefit? Will children benefit?

-- Dr. Sara Stalman, CTPC Public Hearing, Bangor, February 3, 2005

Given the far-reaching consequences of DR-CAFTA for state regulatory authority and state policies, the non-transparent and undemocratic trade negotiation process is particularly troublesome. The only formal mechanism for public input into trade negotiations is the United States Trade Representative's Trade Advisory Committee (TAC) system. The system consists of 27 advisory committees that overwhelmingly represent commercial interests: 22 of the 27 committees are industry and agribusiness oriented, with membership consisting primarily of the largest business interests in each sector. Only one committee, the Inter-Governmental Policy Advisory Committee (IGPAC) represents state interests and is well represented by state policy

⁸“Another Americas is Possible: The Impact of NAFTA on the U.S. Latino Community and Lessons for Future Trade Agreements,” August 2004, Labor Council for Latin American Advancement and Public Citizen's Global Trade Watch.

⁹ Already, an estimated 500 Salvadorans leave the country every day, bound for the United States. According to a recent Salvadoran newspaper poll, one fifth of the population claims to have plans to leave for the United States this year. See: Estrada, Erick and Iraheta, Boris. “Alta emigración de los salvadoreños.” *La Prensa Gráfica*, March 6, 2005. <http://www.laprensagrafica.com/dpt15/Noticias/06032005/141033.asp>

makers. While USTR consults regularly with industry advisory committees that frequently draft key sections of the trade agreements, IGPAC has very limited influence.¹⁰

Furthermore, the TAC system disallows public debate and participation. TAC members must keep all information regarding pending agreements and TAC discussions confidential until after the agreement is signed. Ironically, the security clearance that public officials must submit to in order to become members of IGPAC means that they are forbidden to disclose the draft texts of negotiated agreements, preventing those with the most complete and up-to-date information from using that information to inform the public dialogue. USTR itself is not subject to the Freedom of Information Act or the Administrative Procedures Act. Consequently, no records exist of TAC discussions, how often committees meet, who testifies before USTR, what they say, and how it impacts the drafting of the text.¹¹ And Congress, operating under the constraints of “fast track” or the President’s Trade Promotion Authority, is limited to 20 hours of debate on trade agreements and a straight up or down vote. Congress cannot modify an agreement, but must reject it entirely to have it modified.

We are concerned that the policy making process for DR-CAFTA has suffered from these problems, that the agreement has been crafted without the benefit of full public discussion and participation, and that the voices and interests of Maine workers, businesses, and citizens are not adequately reflected in it. Maine's Congressional delegation has frequently been in the forefront of debates on trade, globalization, and the reach of federal trade negotiating authority. We deeply appreciate the time and attention that the delegation has devoted to these questions so integral to our economy and democracy. At this point, the low level of disclosure and public discussion regarding the United States trade negotiating agenda, and USTR's weak accountability necessitate a review of USTR's negotiating mandate and federal-state consultation mechanisms. We urge you to continue to exercise leadership in Congress to help defeat DR-CAFTA and work with us to ensure that the process for future trade agreement negotiations is democratic and transparent, and reflects the diverse interests and concerns of Maine workers, businesses, and citizens.

¹⁰ Gerbasi, Jennifer and Warner, Mildred, “Is There a Democratic Deficit in the Free Trade Agreements?” *Public Management*, March 2004.

¹¹ *Ibid.*

Maine Citizen Trade Policy Commission



Senator Margaret Rotundo, Co-Chair

Representative John Patrick, Co-Chair

MEMORANDUM

July 5, 2005

The Honorable Olympia J. Snowe
United States Senate
154 Russell Senate Office Building
Washington, D.C. 20510-1903

The Honorable Susan M. Collins
United States Senate
154 Russell Senate Office Building
Washington, D.C. 20510-1903

The Honorable Thomas H. Allen
United States House of Representatives
1717 Longworth House Office Building
Washington, D.C. 20515

The Honorable Michael H. Michaud
United States House of Representatives
437 Cannon House Office Building
Washington, D.C. 20515

Dear Senator Snowe, Senator Collins, Congressman Allen and Congressman Michaud:

The Maine Citizen Trade Policy Commission writes to seek your assistance in obtaining information from the United States Trade Representative (“USTR”) regarding the federal government’s intentions to commit Maine state laws to comply with the World Trade Organization’s General Agreement on Trade in Services (GATS).

As you know, while the United States Constitution places the regulation of trade with foreign countries within the prerogative of the federal government, primary responsibility for protecting public health, welfare and safety is left to the states. It has become increasingly clear to us that the GATS has the potential to undercut traditional areas of state authority. Thus, we view it as crucial that the federal government seek Maine’s prior informed consent before agreeing to proposals in negotiations to expand the GATS that would bind state and local governments to conform their laws and practices to the terms of the pact.

Unfortunately, the USTR’s efforts to date to seek the input and consent of states have been less than ideal. On May 3, 2005, the USTR issued a memo to the State Points of Contact (SPOCs) providing summaries of additional service sectors that were under consideration for inclusion in the updated United States GATS submission, and giving states the opportunity to

comment on whether the proposed submission accurately reflected existing state laws or regulations in the identified service sectors. The USTR gave the states until May 26, 2005, to respond to the memo.

On May 27, 2005, the Commission responded by faxed letter asking USTR to carve out all Maine State and local government actions from the new GATS offer until such time as there had been full opportunity to review and analyze the language of the proposed commitments. A copy of the Commission's letter is attached. We have not received a response to this letter. The U.S. offer was submitted to the WTO on May 31, 2005, and it appears that Maine was not carved out of the GATS offer.

The Commission's staff member was told, informally, by a staff person at USTR that Maine's request to be carved out of the current GATS offer was not honored because it arrived at USTR one day beyond the May 26, 2005, deadline, and because it did not come from the Governor's office. If this report is correct, it is troubling for two reasons. First, timely response to the USTR's request was made difficult by the shortness of time as well as the dearth of information provided to the states. In our responding letter, we pointed out that the tight deadline made it difficult to respond, and that we needed more information to analyze the request. Moreover, May 26 was an arbitrary deadline. The real deadline, in terms of the process of offers, was May 31. The U.S. had not yet made its GATS offer when it received Maine's request and could have carved out Maine measures from the offer had they been willing to do so.

Second, the USTR's alleged refusal to honor the commitment because it did not come from the Governor's office relies on a formality that is not based in law or policy. In practice, the USTR communicates with the State of Maine through the Single Point of Contact system. Maine's Single Point of Contact, Richard Coyle, as director of the Maine International Trade Center, is a member of our Commission. At a minimum, upon receiving the Commission's letter, the USTR should have contacted the Commission, Mr. Coyle, or the Governor's office, to discuss Maine's response to the offer. The USTR's failure to respond or inform the State of Maine regarding the status of its services commitments leaves us in an untenable position of uncertainty.

All of this points out problems that are inherent in the current system of consultation with the states on international trade issues. The USTR has demonstrated a failure to communicate openly and in a timely fashion with an appropriate range of contacts in the states. There are no formal guidelines or protocols for engaging in discussions with the USTR. The USTR's failure to institute a policy for consistent, uniform, and substantive communication with the states has resulted in confusion and lack of understanding on both sides. In an effort to resolve issues relating to this most recent failure of communication, and in a continuing effort to strengthen and clarify the system for communicating with USTR in future, we would appreciate your assistance in receiving answers to the following questions:

- On what basis did USTR refuse to honor the Commission's request that Maine be carved out of the May 31, 2005 GATS offer?

- What will be the USTR’s protocol for communicating with States for the remainder of the GATS negotiations, including both market access negotiations and negotiation of new GATS rules such as disciplines on domestic regulation?
- How will USTR address the common complaint that states are not given enough time or information to evaluate requests for comment? Will USTR honor Maine, and other states’, requests that they be given more time and information necessary to evaluate the requests for services commitments as they arise?
- The May 31, 2005 offer states, “The United States reserves the right to withdraw, modify, or reduce this offer, in whole or in part, at any time prior to the conclusion of the negotiations.” As the U.S. negotiating position is still malleable, what will the USTR do to work with Maine to withdraw service sectors that have already been offered or committed in previous rounds of negotiations if we have major concerns about potential future impacts that such commitments may have on the enforcement of state laws and regulations?

Thank you for your attention and anticipated assistance in obtaining answers to our questions from the USTR. We admire and rely on your leadership in reviewing trade agreements and pressing for fair treatment for the people of Maine. We appreciate your willingness to listen to our concerns regarding the negotiation of the GATS.

Sincerely,

Senator Margaret Rotundo
Co-Chair

Sincerely,

Representative John Patrick
Co-Chair

Maine Citizen Trade Policy Commission



Senator Margaret Rotundo, Co-Chair

Representative John Patrick, Co-Chair

MEMORANDUM

July 27, 2006

The Honorable Olympia J. Snowe
United States Senate
154 Russell Senate Office Building
Washington, D.C. 20510-1903

The Honorable Susan M. Collins
United States Senate
154 Russell Senate Office Building
Washington, D.C. 20510-1903

The Honorable Thomas H. Allen
United States House of Representatives
1717 Longworth House Office Building
Washington, D.C. 20515

The Honorable Michael H. Michaud
United States House of Representatives
437 Cannon House Office Building
Washington, D.C. 20515

Dear Senator Snowe, Senator Collins, Congressman Allen and Congressman Michaud:

The Maine Citizen Trade Policy Commission writes to express our concerns about recent developments regarding the negotiations taking place in the GATS Working Party on Domestic Regulations (WPDR). The WPDR's mandate is to develop binding international rules for implementing Article VI.4 of the GATS, which calls for services regulation to be "no more burdensome than necessary...to ensure the quality of the service." As we understand it, the WPDR negotiations are unaffected by the overall collapse of the Doha Development Round negotiations, because the WPDR mandate was part of the previous (Uruguay) round of trade talks. Because the Uruguay Round has already been ratified by Congress, U.S. trade negotiators have asserted the right to complete and adopt binding international rules on domestic regulation and apply them to all levels of government.

As you are aware, on July 10, 2006, the WPDR Chairman's "consolidated text" for proposed rules was released in Geneva. The Chairman created a "streamlined" text that tried to note major points of agreement, as well as different Options (#1, #2, #3, etc.) based on different proposals submitted by parties to the negotiations where interpretations/preferences differed. On

July 13, 2006, the multi-state Working Group on Services met by conference call to discuss the implications of this text. While there are no formal mentions of "necessity tests" there are still some problems with "relates to" tests, and other language that the Chairman adopted from different proposals.

We are deeply concerned on two levels about the phrase in the Chairman's consolidated text, "not more trade restrictive than required to fulfill national policy objectives." First, it appears to be a "back-door" attempt to impose operational necessity tests on regulation. We understand that the United States has continued to oppose necessity tests and consequently, USTR should argue strenuously against the language of "not more trade restrictive than required..."

Second, the Citizen Trade Policy Commission requests, in the strongest possible terms, that you oppose and urge USTR to oppose language in the Chairman's text that calls for services to meet "national policy objectives." At a minimum, it needs to be clarified in the body of the text that national policy objectives are also defined with reference to sub-federal (state and local) policy objectives. Moreover, we recommend that the language of "*domestic* policy objectives" be used instead of "national policy objectives." Since these discussions are taking place in the "Working Party on Domestic Regulation," we see no reason why the phrase "domestic regulation" should not suffice. In addition, we urge a specific note in the text to clarify that "domestic regulation" in this context refers to actions taken at all levels of government.

The ability of states to play their "laboratory of democracy" role should remain unhindered. A "national policy objective" test is intrinsically hostile to such innovation, and its prominent use in "Objectives" and "General Provisions" in the Chairman's text—and its absence in the list of "Definitions"—is deeply troubling. Maine is one of several states to have expressed concerns about the possible restrictions on sub-federal government regulatory authority and administrative discretion resulting from proposed language in the WPDR text. We ask you to communicate our concerns to USTR negotiators and work to ensure that the language of the WPDR rules does not constrain state action.

Thank you for your willingness to listen to our concerns and consider our recommendations.

Sincerely,

Senator Margaret Rotundo
Co-Chair

Sincerely,

Representative John Patrick
Co-Chair

Maine Citizen Trade Policy Commission



Senator Margaret Rotundo, Co-Chair

Representative John Patrick, Co-Chair

MEMORANDUM

May 27, 2005

Mr. Christopher A. Padilla
Assistant U.S Trade Representative
For Intergovernmental Affairs and Public Liaison
1724 F. Street, N.W.
Washington, DC 20006

Dear Mr. Padilla:

We are writing regarding your May 3, 2005 memo to the State Points of Contact (SPOCs) and the Intergovernmental Policy Advisory Committee (IGPAC) asking for comments regarding ongoing negotiations at the World Trade Organization (WTO) on the General Agreement on Trade in Services (GATS). A copy of this memo was recently shared with us by our SPOC.

This memo raises several concerns for us, both in terms of the process used to consult with the State of Maine and the substance of the WTO GATS negotiations.

While our SPOC made your request available via the Maine International Trade Center website, we are concerned that the timeframe to consult with the necessary parties is unreasonably short. As representatives of our state have communicated to your office in the past, our current practice is to make decisions regarding whether or not to bind state laws to the rules of international trade agreements with the input of representatives from multiple branches of government, as well as the public. We are also concerned that we need more information to adequately evaluate your request.

We ask that the USTR provide Governor Baldacci and members of the Maine Citizen Trade Policy Commission with the proposed schedule of commitments as it would appear in the agreement - including which modes of delivery are proposed to be bound in which service sector, and to what specific levels of commitment. As we cannot make an informed decision with the information and timeline given, we also request that the USTR carve out all Maine state and local government actions from the new GATS offer slated to be tabled by May 31, 2005 until such time as we have the opportunity to review and analyze the language of the proposed commitments.

Thank you in anticipation for your timely response. We look forward to working with you to resolve our concerns in a timeframe relevant to the current negotiations.

Sincerely,

Senator Margaret Rotundo
Co-Chair

Representative John Patrick
Co-Chair

cc: Governor John E. Baldacci
Alan Stearns, Senior Policy Advisor to Governor Baldacci
Members, Citizen Trade Policy Commission