

Maine Citizen Trade Policy Commission
Meeting Minutes – January 28th, 2011
Location: Cross Office Building, Room 206

Attending: Rep. Rotundo, Sen. Jackson, Kate Whitelaw, John Palmer, Malcolm Burson, Joseph Woodbury, Sen. Sherman, Rep. Treat, Sarah Bigney, Rep. Gifford

Senator Jackson Gaveled Meeting To Order at 9:13

I) Member Introductions

Because of commission membership turnover between the last meeting and today, members introduced themselves to each other.

II) Update From Rep. Rotundo On the State of the CPTC: Meeting Cancellation Policy, Tribute to Departing Members, Welcome to New Members, Change in Leadership, and Legislative Outreach

Rep. Rotundo spoke about the cancellation of the CPTC meeting originally scheduled for this week and encouraged members to provide the Commission's administrative staffer with mobile or home phone numbers in order to insure orderly weather-related meeting cancellations in the future. Rep. Rotundo then welcomed new members to the CPTC and then spoke about the upcoming leadership change in the CPTC, saying that, at some point soon, Republican leaders in the State Senate and House are likely to appoint new Republican chairs of the commission.

Rep. Rotundo then thanked former members: Senator John Patrick, Paul Volckhausen, Carla Dickstein, and Cynthia Phinney for their service.

Senator Sherman and Jackson discussed further the change in leadership.

Rep. Rotundo briefly discussed legislative outreach to committees and agencies. She announced that Dana Eidsness would be meeting with DHHS and the new Labor, Commerce, Research, and Economic Development Committee.

III) Discussion About Pending Legislation

Malcolm Burson asked that the commission bring up the water extraction/state procurement item on the agenda early. Senator Jackson discussed whether the commission should submit legislation, based on the recommendation that came out of the report of the Ground Water Working Group. Rep. Rotundo reviewed the commission's actions last year on water extraction and state procurement: the commission hasn't yet made the decision to bring forward any such legislation, but, she said, the commission has the authority to do so at any time. Burson asked if draft legislation existed yet. Rep. Rotundo responded in the negative. The subject was temporarily tabled until a later point in the meeting.

IV) Phone Briefing from Jim Catella, Senator Olympia Snowe's Point Person On Trade Policy, On A Pending Free Trade Agreement With South Korea and Also the Debate Over Chinese Currency

At 9:30 the Commission reached Jim Catella by phone in Washington D.C. He said Senator Snowe wanted to introduce a bill that deals with trade enforcement and Chinese currency manipulation issues. The Senator had sent President Obama a letter expressing her concerns. He mentioned several currency-related proposals – one bill would force the Federal Reserve to name countries who manipulate their currencies. Senator Snowe's office prefers a bill that would make it easier for the Department of Commerce to label currency undervaluation as an export subsidy. The Commerce Department has some power to issue penalties or counter-tariffs against such subsidies from foreign governments.

Mr. Catella brought up the South Korea Free Trade Agreement (FTA). He gave a brief overview. He expects the Senate Finance Committee to have a hearing on the FTA in late February or early March. Catella mentioned that the Korea FTA was negotiated under Fast Track Authority. Catella discussed the timeline for considering the agreement and said it's likely the Senate might vote in June. Catella mentioned that U.S. Trade Representative Ron Kirk wants the agreement done by July 1st. **Mr. Catella said Senator Snowe is still looking at how the FTA is developing and is in the process of crafting a position. Mr. Catella said he would soon be coming to Maine and asked if the Commission had suggestions about people in the state he should speak with to get feedback on Korea Free Trade.** Rep. Rotundo thanked Mr. Catella for making such a request. Senator Jackson asked Mr. Catella about auto and beef-related issues contained in the Korea FTA debate. Mr. Catella said beef exports were not included in the FTA and that Senator Max Baucus of Montana was deeply concerned about this. The Obama Administration, Catella said, had wanted to handle the beef issue separately from the FTA. Mr. Catella also said he thinks the Obama administration is worried about linking the Korea FTA with FTAs involving South and Central America.

Senator Sherman asked a follow up on the beef issue, and. Mr. Catella gave an overview of South Korea's policy when it comes to beef imports. He said that in South Korea the political debate over foreign vs. domestic beef is a highly charged one.

Rep. Gifford asked a follow up on how the Korea FTA relates to the paper industry and illegal dumping.

V) Phone Briefing From Nora Todd, U.S. Representative Mike Michaud's Legislative Director On A Pending Free Trade Agreement With South Korea and Also the Debate Over Chinese Currency

At 9:50, the Commission reached Nora Todd in Washington, D.C. Todd reported some new language had begun circulating that morning on the Korea FTA, which shows that the pace of consideration of the bill is beginning to pick up speed.

She thinks the U.S. House could take up the agreement in late February and possibly vote on it in March. Ms. Todd said Rep. Michaud opposes the Korea FTA and will plan to fight it. She said the changes made to the auto provisions in the FTA were “cosmetic at best.”

Joseph Woodbury asked about the United Auto Workers’ support for the Korea FTA and why Michaud would oppose the auto provisions if the UAW has come out in support. Ms. Todd responded essentially that she believes the UAW was “strong-armed” by the Obama Administration into supporting the agreement.

Ms. Todd moved on to Chinese currency issues. She talked about a bill meant to pressure China to loosen its grip on the value of the Yuan that will be introduced with bi-partisan support. But Todd wondered aloud whether the U.S. House Republican leadership might be unsupportive when it comes to bringing the bill to the floor. Ms. Todd also mentioned that Korea’s currency poses some of the same issues that the Chinese currency does. She said that how if Korea treats its currency the same way China does, it could have a large impact on the effects of the Korea FTA on the US and world economies.

Mr. Woodbury said that the currency manipulation issues played out the same way years ago in Japan with few economic consequences for the U.S. He also mentioned that the U.S. might not have a solid argument to make on currency, given the rate at which the Federal Reserve has been creating and spending money lately [on things like U.S. treasury bonds]. Ms. Todd discussed the trade deficit further and how the U.S. needs to develop a coherent manufacturing strategy and a better export strategy the way other countries have done. Mr. Woodbury agreed with her on that final point.

Ms. Todd requested to know what areas/companies/groups might need help with increasing exports and what suggestions they might have for her. Rep. Rotundo suggested she speak with Wade Merritt of the Maine International Trade Center, who was unable to attend today’s meeting because of the sudden snow-related rescheduling. Ms. Todd said she hopes to stay in contact with Merritt and the other commission members as the FTA and currency issues continue to unfold.

Senator Jackson asked Ms. Todd why beef exports were left out of the FTA. Ms. Todd spoke about Korean internal politics and a previous history of the beef provisions being handled outside the FTA. Ms. Todd, like Mr. Catella, brought up Senator Baucus’ opposition to the FTA based on how the beef issue is being handled.

The Commission thanked Ms. Todd for her time and the call ended.

VI) Briefing From Rep. Treat On The Relationship Between the Korea FTA and the Trans Pacific Partnership (TPP) and Prescription Drug Affordability Programs Created By States Like Maine.

Rep. Treat gave some background on the relationship between free trade agreements and prescription drug programs under Medicaid, etc. Rep. Treat mentioned that this was

something that the commission had dealt with before and taken a position on. Rep. Treat worried that the pending FTAs with Asian countries would make it harder for states like Maine to negotiate drug rebates with drug companies and that the cost to Maine taxpayers could rise as much as 50% for the cost of drugs in the Medicaid program.

Mr. Woodbury asked how the FTAs would make it more difficult for the state to negotiate. Rep. Treat talked about how FTAs have language that theoretically could prevent the U.S. and states from legally acting to restrict drug prices in any way. In other words, programs that Maine already has in place through Medicaid or through deals with the state employees, would suddenly become illegal under international trade law established by the FTAs. Theoretically these foreign governments could bring a complaint against the U.S. if a state government violates the rules set out in the FTAs. And even if there's no way to enforce these rules officially, countries could retaliate with tariffs on other products (maybe Maine products) or by further subsidizing their own products (some of which might be competing against Maine businesses). In order to avoid this situation the Federal Government might then look for ways to pressure Maine to abandon its prescription drug affordability programs.

VII) Return To Discussion of Pending Legislation

Senator Jackson noted that Senator Sherman and Rep. Gifford might have to leave soon, so he suggested spending a few moments returning to the state procurement issue. Rep. Gifford said he wanted legislation drafted up, and Senator Sherman wanted the commission to do more research on what the current rules are. He also wanted to take a second look at what bills have been submitted to the legislature already this session.

Sarah Bigney reviewed the relationship between water extraction, procurement issues, and the WTO. After the review Senator Sherman said it might be OK then to draft some legislation.

Rep. Rotundo asked whether the commission was asking for legislation regarding companies doing business with the state, i.e. state procurement, to be drafted. **The commission decided to seek such a draft from Curtis Bentley of OPLA and Linda Pistner of the AG's office.**

The state procurement legislation would be based on the recommendation that came out of the report of the Ground Water Working Group, in its report titled "The Potential Impact of International Trade Agreements on Ground Water Withdrawal Regulations, a Report to the Joint Standing Committee on Natural Resources by the Water Resources Planning Committee and the Citizen Trade Policy Commission, February 2010." That recommendation is quoted here in full below:

"The Legislature may wish to consider requiring that future contracts between governmental units in Maine and private investors include a waiver of any right by investors to seek compensation through international investment arbitration.

“The lack of clarity, certainty, and predictability in international trade and investment law allows international arbitration tribunals broad discretion. While some tribunals have used their discretion wisely and prudently, the precedents of past decisions do not bind future tribunals.

“Requiring such a waiver in governmental contracts would move dispute resolution from international arbitration tribunals to U.S. courts, where precedential actions are an important foundation of the judicial process. Some consideration should be given, however, to whether such action would put Maine at a competitive disadvantage for international investment and whether such a waiver could be used to show discrimination against a certain class of private investors.”

Mr. Palmer discussed the possibility of making the draft legislation stronger, broader, and more enforceable, and Senator Sherman expressed some possible concerns about loopholes companies could use to get around regulations. The commission agreed to wait and see what a first draft of the legislation would look like before digging more deeply into those issues. The subject was then closed, at which point Senator Sherman and Rep. Gifford departed the meeting for another appointment.

VIII) Phone Briefing From Michael Palmedo of American University’s Washington College of Law. Palmedo Works on Information Justice and Intellectual Property Issues

The commission reached Michael Palmedo by phone in Washington DC to discuss the relationship between state pharmaceutical program under things like Medicaid and free trade agreements like the Korea FTA and the Trans Pacific Partnership (TPP). He said state governments have been active trying to protect Medicaid from these agreements, which he said could otherwise prevent states from effectively negotiating drug prices with pharmaceutical companies.

He suggested the commission send U.S. Trade Rep. Ron Kirk a letter expressing concerns and offered his group’s help with language.

Rep. Treat asked for more information to be e-mailed to the commission, and then asked if there would be differences between the prescription drug language in the Korea FTA and the language in the TPP. Mr. Palmedo suggested that the language in the two agreements would be the same.

Mr. Woodbury asked how states would be coerced by the Feds into buying more expensive brand name drugs instead of less costly generic drugs. Mr. Woodbury then wondered aloud if these trade agreements were an end-around way for the pharmaceutical companies to go back on their price-reducing agreements with state governments. Mr. Palmedo responded that under these agreements, actions of states could constitute grounds for international trade complaints. Rep. Treat agreed with Mr. Woodbury that

pharmaceutical companies were likely trying to influence the language of the trade agreements in order to raise prescription drug prices in the U.S. market.

Rep. Rotundo thanked Mr. Palmedo for his time, and the call was ended.

Rep. Treat and Mr. Woodbury further discussed the state's bargaining position when it comes to negotiating or mandating the price of prescription drugs. Mr. Palmer asked about international drug patent rules and how they might affect prices.

Rep. Treat talked about how a lot of state Medicaid directors around the U.S. are worried because the sudden prospect of increased prescription drug prices has taken them by surprise and could have a real affect on state Medicaid budgets at a time when many states are really struggling to balance their budget each year.

Mr. Palmer, Ms. Treat, and Ms. Whitelaw spoke more about patent protection issues, and Rep. Treat explained further why drug patent language in FTAs impact the work of this commission. Treat said that the agreement could potentially permit other countries to sue Maine for continuing existing policies allowing the state to negotiate prices with drug companies. The commission discussed bringing in Professor Sean Flynn by phone, Mr. Palmedo's boss, for the next meeting to better explain where patent law fits into the puzzle. **It was then agreed to that the commission ask Professor Sean Flynn, to speak to the next meeting of the CTPC.**

IX) CTPC Orientation and Trade Basics

The commission agreed to postpone for a month agenda items presenting a basic overview of the CTPC, a review of the CTPC history and function, and a review of the basics of trade policy, because not enough new members were present at the meeting (due to the sudden snow-related rescheduling the week before).

X) Further Discussion of The Korea FTA and the TPP

Ms. Bigney spoke about how people at Bath Iron Works reported to her that BIW is already losing a couple of contracts to Korea even before the FTA has been taken up by Congress.

Rep. Rotundo mentioned that she had, prior to today's meeting, reminded Jim Catella and Nora Todd about the CTPC concerns about the Korea FTA and the letter the Commission had sent to the Maine Congressional Delegation outlining its concerns. She had also spoken with the trade policy person from Senator Susan Collins' office to remind him of the letter. Ms. Bigney discussed ways to get Senators Snowe and Collins more involved in the Korea FTA issue. She pointed out that Senator Snowe is on the Finance Committee, which will consider the FTA and suggested that the commission come up with some questions for Senator Snowe to ask at the hearing.

Ms. Bigney also suggested the commission hear testimony on possible Chinese paper dumping in a future meeting. **The commission tentatively agreed to look for someone to testify.**

XI) Dates of Future Meetings, Including a Public Meeting In Calais

The commission tentatively agreed to meet in Calais in April, though it would ultimately be up to the yet-to-be-named Republican legislative chairs of the commission to set this meeting up.

It was agreed that commission's next meeting would be Friday February 18th at 9:00 AM in Augusta.

It was agreed that the meeting after that would take place on Friday March 18th, but a subsequent e-mail from Mr. Burson revealed that March 18th is a government shut-down day, which requires the commission to reschedule its March meeting.

XII) Draft Language For a Resolution On Federal-State Consultation On Trade

Ms. Bigney and Mr. Burson discussed the draft language for a resolution on Federal-State Consultation on Trade that the commission has been working on. Ms. Bigney circulated the draft language of the resolution. For the commission's next meeting, Mr. Burson suggested that the language be redrafted into final resolution form then and be brought up for a formal vote at the February Meeting. **The commission agreed to vote on the redrafted language at the next meeting.**

XIII) Adjournment

The meeting was adjourned at 11:30.

Maine Citizen Trade Policy Commission: Meeting Minutes for 2.18.2011

Present: Sen. Jackson, Rep. Rotundo, Linda Pistner, John Palmer, Sarah Bigney, Kathleen Whitelaw, Joseph Woodbury, Stephen Cole, Bob St. Peter, Rep. Maker, Rep. Treat, Michael Roland (non-voting), and Malcolm Burson (non-voting)

At 9:05 Senator Jackson gaveled the meeting to order. New members introduced themselves to one another.

Commission then proceeded to Agenda Item III: The history and purpose of trade policy and the Citizen Trade Policy Commission.

Sarah Bigney summarized the basics of how U.S. trade policy works and who has the power to implement it, past issues that the Commission has addressed, the most important pending trade issues today, conflicts between state and federal governments on trade issues, how trade policy relates to both state and national sovereignty etc. Bigney mentioned a number of examples of how foreign companies and state legislatures often come into conflict under various trade agreements. She mentioned that in 2003 Maine Legislators passed the “Jobs Trade and Democracy Act” creating the CTPC to hold hearings and hear testimony on how trade policies affect individual states.

Rep. Treat then previewed the testimony from Professor Sean Flynn, giving a short professional bio.

At 9:30 the Commission reached Professor Sean Flynn, Associate Director of the Program on Information Justice and Intellectual Property at American University’s Washington College of Law, to speak on the potential impact of future trade agreements on Maine’s capacity to negotiate with pharmaceutical companies for reduced pharmaceutical prices. Flynn discussed the overall concern about the pharmaceutical industry pressuring the US to sign on to trade policies that prevent public drug reimbursement programs, which pressures prices lower and, according to the drug companies, constitute a taking of their intellectual property. Federal U.S. trade policy makers have been somewhat sympathetic to this argument, he said. A free trade agreement with Australia was the first ever FTA to have a specific pharmaceutical chapter. Flynn discussed state drug reimbursement rates and how it relates to the conflict over brand name drugs and generic drugs that are equally effective. Pharmaceutical companies are trying to put in place policies that push preference of brand name drugs over generics that are equally effective and generally affordable for public budget writers. Flynn talked about how these policy changes are contained both within the Korea FTA and possibly the Trans Pacific Partnership as well. Flynn talked about how this debate is tied to Medicaid Reimbursement Programs and whether states can tell doctors which versions of the drugs to prescribe to Medicaid patients. He outlined a short-term concern and two long-term concerns that states have:

Long term concern: States really are and should be opposed to the overall agenda of creating an international framework preventing states from engaging in drug price negotiations.

Short term concern: That there be no pharmaceutical chapter in the Trans Pacific Partnership.

Third Concern: that all future trade agreements should have carve out rules that guarantee states the sovereignty to maintain existing and future drug price negotiation policies under Medicaid etc.

Mr. Woodbury asked about states influencing drug prices through preferred drug lists – whether it’s a mandate or a negotiation with drug companies. Professor Flynn responded that it has negotiation elements and also mandating elements. He said the pharmaceutical companies are free to walk away and not sell under preferred drug lists.

Mr. Woodbury then labeled the efforts to create these pharmaceutical chapters in the FTAs a “corporate rent-seeking effort” meant to move the goal posts in their negotiations with states like Maine.

Mr. Flynn acknowledged that the pharmaceuticals were trying to change the legal field in order to bolster their negotiating position.

Mr. Palmer asked about the effect of countries failing to recognize patents on drugs. Mr. Flynn discussed how states are trying to lower prices by introducing competition into the market and paying the patent holder with royalties instead of granting intellectual property-related monopolies. He also explained that many countries (both rich and poor) exclude drugs from their patent laws in order to distribute medicines quickly, cheaply, and address often very serious public health problems. Other countries are also trying to pool resources to negotiate prices down as well. Pharmaceutical companies are pushing back of course.

Rep. Rotundo asked Prof. Flynn what further actions the Commission might take to encourage the US Trade Representative to protect Maine’s ability to exercise policies that make prescription drugs more affordable.

Prof. Flynn suggested that Maine could send a letter asking the USTR to leave a pharmaceutical chapter out of the Trans Pacific Partnership. He mentioned a Special 301 hearing on March 2nd, and suggested resending to the US TR a letter from Governor Baldacci outlining his concerns about special 301. Professor Flynn said the Commission might reach out to members of IGPAC at the Office of the USTR.

Rep. Treat asked if HHS officials and Medicaid and Medicare officials are even aware of these issues and are working on these issues. She suggested that different parts of the Obama administration might be inadvertently working against each other on the prescription drug issues. Professor Flynn mentioned that the people at the USTR working

on pharmaceuticals don't have a background in Medicaid but instead with the pharmaceutical industry in general.

Rep. Treat asked a follow up on private sector elements attempting to pool together and negotiate the same way government entities have been doing. Flynn said that the private sector (like hospitals) would be unaffected. With the public sector, the drug companies are seeking a right to appeal and a "freedom to prescribe" policy. He said he doesn't know whether public hospitals' purchasing programs would be affected. He said Medicare Part D is managed by private managers and wouldn't likely be subject to what the drug companies are asking for in these free trade agreements. He said drug companies are also pushing for federal laws favoring the drug companies' positions in these international trade agreements, and that would override any state laws to the contrary. He said the drug companies are also pushing for enforceable international standards worldwide.

Rep. Treat asked about enforcement mechanisms. Flynn talked about Federal law and the supremacy clause of the Constitution. The Feds could sue the states to override state laws. He talked about how NAFTA set the precedent in which private companies were allowed to sue as well, and that there are elements of this concept in the current set of pending trade agreements – that could also change enforcement mechanisms. Flynn said he doesn't think we're as close to solid international enforcement mechanisms as we are to a situation in which the Federal government could sue a state for violating the pharmaceutical chapter of a trade agreement.

Rep. Rotundo and Sen. Jackson asked about self-insured people and companies. Professor Flynn talked about how they might be affected by pharmaceutical chapters in the pending trade agreements.

Rep. Treat asked about 340B medical programs. Professor Flynn said it's unclear whether and how the Korea FTA and the TPP would affect 340B programs. He suggested that it be looked into.

Rep. Treat asked about access to public statements on this issue. Professor Flynn agreed to help distribute information to members in the next couple of days.

The call with Professor Flynn ended, and the Commission proceeded to Item VIII: The draft legislation on state procurement.

Rep. Rotundo reviewed how the Commission came to ask for this draft legislation.

Ms. Pistner summarized the legislation and mentioned that Dana Eidsness of the Forum On Democracy and Trade was still reviewing the draft.

Mr. St. Peter asked if the legislation covered food and fiber. Mr. Burson and Rep. Treat said that it did.

Rep. Treat asked more about the reach of the legislation.

Mr. Palmer pointed out some technical errors and asked that the term “investors” also be included in the legislation – not just contractors themselves, but the folks who invest in them. Ms. Pistner and the other members agreed.

Mr. Roland asked if the legislation could deprive the federal court of jurisdiction. Ms. Pistner said that it could not legally do that.

Ms. Pistner asked about the timing of the vote. Sen. Jackson said the Commission could go forward today. He said he was nonetheless a bit hesitant, given the transitional state of the Commission’s legislative membership, but that he’d be willing to entertain motions for a vote if the new members present felt comfortable voting now. He reiterated that the vote to change the draft legislation and send it to a more formal redrafting process was not set in stone and could easily be reversed if new members and incoming Republican legislative Commission chairs felt that such legislation would no longer be appropriate.

All voting members of the Commission present indicated they were comfortable taking a vote today.

By proxy, Mr. Herz asked that the following change be made to the draft legislation:

“Although I’m out of state & can’t vote, I do approve the draft legislation with the following change under § 1812. Scope of purchasing authority

1. Definitions.

Under the list of services covered add "electronic equipment repair and maintenance"

Ms. Pistner wasn’t sure if it was legal to make that change. Some discussion ensued.

The Commission discussed making Mr. Palmer’s changes and then voting to move the draft legislation forward to a more formal process.

Rep. Treat moved that the Commission move forward with a formal drafting process through the Revisor’s office.

Mr. Woodbury seconded.

Rep. Rotundo and Rep. Jackson explained the original purpose of the bill, which would require multinational corporations that do business in Maine to settle disputes in Maine courts instead of at an international tribunal in Geneva, Switzerland.

The vote took place, and the result was 11-0 in favor.

Members moved on to the Commission's resolution expressing the sense of the Commission on the issue on federal-state consultation. Ms. Bigney explained that this was her first resolution but that it did put the sense of the Commission on federal-state consultation into proper resolution form.

The other members of the Commission agreed to offer their revisions during the coming week. The Commission to send the resolution the Revisor's office with the understand that it would come back to the Commission at the next meeting for the new membership to take final action on it.

The Commission proceeded to Item I – testimony from employees at Bath Iron Works related to the Korea Free Trade Agreement.

Daniel Dowling is the president of the local S-6 of the IAMAW and represents ironworkers at the Bath Iron Works. He explained that so far this year Bath Iron Works has shed six jobs a week. He said the prospect of losing more to a trade agreement is not welcome. He discussed contracts already being lost to South Korea and how said contracts might actually be sending tax dollars to the North Korean government. He explained that South Korea has an arrangement with the North in which it outsources some jobs to North Korean workers. The leaders of North Korea then siphon off up to 60% of Northern workers' salaries. And the people paying the South Koreans to employ North Koreans are defense department officials and, transitively, American taxpayers. Dowling said he felt that passing the Korea FTA would exacerbate the situation.

Rep. Rotundo asked if Mr. Dowling might be willing to speak with Jim Catella, Senator Snowe's point person on trade issues, since Mr. Catella had been looking for feedback from any Mainer who has a stake in the outcome of the Korea FTA in Congress.

Mr. Woodbury asked Mr. Dowling whether the Pentagon owed it to taxpayers to find the lowest costs possible for defense needs. Mr. Dowling said that it was not just a matter of cost, but also a matter of quality, which, he said, was better when placed in the hands of Maine workers.

Mr. Cole asked if it was common for defense contractors to sub-contract out work internationally. Mr. Dowling said that it wasn't uncommon. Mr. Dowling said he didn't know if BIW subbed out work internationally.

The testimony ended, and the Commission agreed to submit Mr. Dowling's name to Jim Catella in Senator Snowe's office for feedback on the Korea FTA.

The Commission moved on to Item VI: The Korea Free Trade Agreement.

The Commission first took up whom Jim Catella should speak with.

Mr. St. Peter said he wanted to speak to Mr. Catella about how the Korea FTA might affect Maine's farmers, and Senator Jackson said that it would be perfectly acceptable for Mr. St. Peter to do so.

Ms. Treat wanted Mr. Catella to be able to see her notes on the pharmaceutical issues discussed in the earlier portion of these minutes.

Ms. Bigney suggested Senator Snowe ask a question on how the Korea FTA would affect states rights and state sovereignty when this agreement is reviewed by the Senate Finance Committee.

Rep. Treat suggested Senator Snowe ask a question on pharmaceutical issues and also one on how the FTA might affect medical entities called "340Bs."

Mr. Woodbury said Senator Snowe should ask how the pharmaceutical language in the Korea FTA and the TPP would actually promote "free" trade.

Mr. St. Peter mentioned he had spoken to Rep. Michaud, who said that it was possible the Panama and Columbia FTAs would be rolled into the Korea FTA when Congress takes it up, meaning they would all be debated and voted on simultaneously as one big trade bill.

Rep. Treat suggested that the Commission might make public statements or a press release on the pending free trade agreements in order to raise the issue more in the public eye. She complained that these trade agreements are being negotiated in secret where nobody can see what the agreements' contents are and then fast-tracked through law making bodies before anyone can scrutinize them.

Rep. Maker asked if the Commission's position on the Korea FTA was online on the CTPC website. Rep. Rotundo responded in the affirmative.

Sen. Jackson and Rep. Treat discussed enacting Professor Flynn's recommendations involving sending letters. Mr. Cole, Mr. St. Peter, and Rep. Maker all examined past samples of letters the Commission had sent to federal officials expressing concerns about the Korea FTA.

The Commission took up when to meet next and found only one day in March in which all members present would be able to attend without conflict. That day was Friday March 11th at 9 AM. A meeting was set for that time, and the exact location was to be determined later by the administrative staffer in consultation with OPLA and the Commission chairs.

The Commission took up when and where to meet for April's public meeting in Calais. Rep. Maker, who happens to live in and represent Calais, suggested the local community college on a Thursday evening. The Commission tentatively agreed to meet at 6 PM on Thursday April 28th and to explore the possibility of meeting in the local community college. It was also acknowledged by Rep. Rotundo that the

Commission did not have sufficient funds to pay for lodging for those members traveling great distances to attend. Members would be responsible for their own housing or else could simply drive back to their homes once the meeting concluded.

Rep. Rotundo brought up the Commission's outreach efforts. She said that Dana Eidsness, executive director of the Forum on Democracy and Trade, will be making presentations to the following committees in the Maine State Legislature: Health and Humans Services; Labor, Commerce Research, and Economic Development; and Agriculture, Conservation, and Forestry. Rep. Rotundo mentioned that Bill Waren would be leaving the Forum on Democracy and Trade and that members were welcome to sign a farewell card for him after the meeting.

The Commission asked the administrative staff member to send two letters:

The first letter was to be sent to the USTR prior to its March 2nd meeting. It was a copy of the letter Governor Baldacci wrote that was referenced above.

The second letter was to be sent to the Secretary of HHS and other Medicaid officials, etc. The letter was a copy a letter previously sent to the USTR by the Commission outlining its concerns about the impact of trade agreements on pharmaceutical pricing.

The meeting adjourned at 11:42 AM

Maine Citizen Trade Policy Commission
Friday, March 11, 2011
Regular Meeting Minutes

Meeting Locations: Cross State Office Building, Room 206

Members Present:

Senator Sherman, Representative Maker, Representative Rotundo, John Palmer, Sarah Bigney, Malcolm Burson, Michael Herz, Steve Cole, Linda Pistner, Wade Merritt, Joseph Woodbury, Bob St. Peter, Michael Roland, Kate Whitelaw

At 9:05 Senator Sherman gaveled the meeting to order.

The Chairs asked the members reintroduce themselves, and they did so. Rep. Maker, as a new member and new Chair, also asked members to each explain how they came to be members of the Commission and what they or their organizations hoped to achieve through their membership.

Mr. Merritt discussed his role with the Maine International Trade Center and said he hoped he could continue to push for Maine's international business community to play a role in the Commission's deliberations.

Ms. Pistner spoke about her legally mandated role through the Attorney General's office and also her interest in some of the larger magnitude issues that the Commission deals with.

Mr. Herz spoke about his concerns on how trade affects Maine's environmental policies.

Mr. Cole discussed his role representing business development, particularly aquaculture in the international marketplace.

Mr. Woodbury said he was here to promote trade and free trade, not just among multinationals, but among smaller businesses and manufacturers

Mr. Burson reintroduced himself and said his department (the DEP) had no particular agenda.

Ms. Bigney discussed her concerns about NAFTA and the broader policy implications and quandaries it still raises today as other trade agreements come up for debate in Congress.

Mr. Palmer discussed his concern about businesses and technology moving overseas and wanted to learn more about what he might do to help restore Maine's industry. He discussed his concerns over patent law.

Rep. Rotundo said she was increasingly concerned about how international free trade agreements affect Maine's ability to govern itself with regard to a range of issues: from regulating gambling to buying generic drugs in bulk. She wants the Commission to be able to share its concerns with the rest of the state and with the Federal government. She spoke about the Commission's non-partisan role and the variety of viewpoints it showcases.

Mr. St. Peter introduced himself as a small farmer from Aroostook County. He expressed his concerns about the displacement of rural people and the increasing difficulty that rural people had making a living. He has concerns about how international trade in its current form affects this displacement wants to see what he can do to learn more and to help reverse such a trend.

Rep. Maker said she thinks she was selected because she lives on the Canadian border in Calais and thus might have a good feel for the international elements of trade policy. She said she's excited to learn more about the issues facing the Commission.

Sen. Sherman said he was impressed with the background of all the members. He said that the members ought to have more input in the crafting of the agendas for future meetings. He said he wants to tap into the expertise of the members as much as possible. He noted that he lives on the border in Houlton and recalled a trade dispute with Canada over farm machinery and farm products. It piqued his interest in international trade issues, particularly with Canada.

Sen Sherman and Ms. Pistner talked about the value of having someone in Maine to talk with our Canadian counterparts to make sure trade issues flow more smoothly.

Mr. Merritt agreed that it might be a good idea and said it could be done very quickly and easily.

At 9:30 the Commission reached Jim Catella, who gave an overview of the hearing that took place in the Senate Finance Committee, which featured testimony from Ambassador Ron Kirk, the US Trade Representative. They talked about the three major pending trade agreements: Korea, Panama, and Colombia and how the three of them might be linked together legislatively. He thinks all three agreements are ultimately likely to pass both houses of Congress. He said that Korea might still get passed on its own, but then the other two would pass in quick succession.

Mr. Catella indicated Congress might also once more pass trade adjustment assistance, which expired in February. Senator Snowe has been pushing to reauthorize it and make sure it reaches the thousands of Mainers it benefits.

Mr. Catella reported that Senator Snowe attended almost the entire trade hearing and was well focused on the issue. She talked about enforcing existing agreements before moving on to brand new agreements. She questioned Ambassador Kirk on China's currency practices and wanted to know how the U.S. could prevent further manipulation.

Mr. Catella said that Senator Snowe expressed concern about a lumber agreement with Canada and some of the pending arbitration cases that surround it.

He also called for the Commission to submit questions to the USTR by this afternoon for the record.

He talked about the fact that there will be a new Commerce Secretary, who will deal with dumping issues. Senator Snowe said will try to use her vote in the Senate to influence the appointment in a way that benefits Maine.

Rep. Rotundo thanked Mr. Catella for the invitation to submit questions.

Ms. Bigney asked Mr. Catella more about currency manipulation involving not China, but Korea. She was concerned that China could send goods to Korea, which could then go to the US through the new Korea FTA. It would be an end run around US-China trade policy.

Mr. Catella acknowledged that was a serious concern. He said Senator Snowe was frustrated with the lack of answers she and talked about seeking certification from other countries on currencies before entering into the future FTAs.

Mr. Merritt asked about the possibility that Ambassador Kirk would move from USTR to Commerce Secretary. Mr. Catella said it's possible but that it might not happen while all these sensitive trade agreements are just now falling into place. He said though, that at Commerce, Kirk would certainly have more sway over currency manipulation issues.

Ms. Bigney asked to what extent the Obama Administration was supporting these pending free trade agreements. Mr. Catella said that while he wouldn't presume to speak for the Administration, there are outstanding issues it still has with these agreements. But he also explained that the Administration has said they want to get the Colombia free trade agreement done. He said the Administration might make it part of a grand bargain with lots of legislation this year, or they might put it off to deal with other, higher priorities first.

Mr. St. Peter recalled an encounter with a Korean delegation he met that was lobbying against the Korea FTA. They had said trade agreements stopped Korea from being able to completely feed its people, which it had been able to do for 5,000 years beforehand. Mr. Catella said Senator Snowe had similar concerns about how the FTA would affect Maine's own self-sufficient production activities. He talked about finding a suitable production balance for both countries. Mr. St. Peter said the trade agreement is bringing down Korean support for the U.S. in general. Mr. Catella said it was particularly true when it comes to beef issues.

There were no further questions for Mr. Catella, and Sen. Sherman said goodbye. The call ended.

The Administrative Staffer passed out Dana Eidness' report on the Korea Free Trade Agreement for Commission members to read at their pleasure.

A revised copy of Sarah Bigney's resolution on federal-state consultation on trade was also passed out, and Ms. Bigney described it and its origins. It's a restatement of past stated Commission positions, only in resolution form. The resolution asks the Legislature to adopt a position identical to that of the Commission. The resolution has not yet been submitted to the Revisor's office for a formal editing treatment.

Richard Nass from the Speaker's office warned the Commission to slow down and said that if the resolution were sent directly to the Legislature right away, it would likely be tabled for months.

Rep. Maker said that this would not be a problem because the resolution would still have to come back to the Commission even after it got reformatted at the Revisor's office. She then moved that the resolution be sent to the Revisor's office.

Mr. Palmer seconded, and the vote took place. The result was 10-0 in favor. The motion was agreed to. The resolution must now be sent to the Revisor's office for reformatting.

Members who hadn't yet had a chance to do so briefly reintroduced themselves: Mr. Roland introduced himself from the Labor department, and Ms. Whitelaw introduced herself from the Maine Fair Trade Campaign.

Rep. Treat gave testimony about her appointment to IGPAC (the Intergovernmental Policy Advisory Committee) and offered to give the Commission's thoughts to IGPAC at its monthly conference call. She said the theme of the first call she attended was mostly about Federal Issues. She said is that her first impression is that IGPAC people don't have on their radar just how much trade rules affect states and their ability to self-govern and adjudicate their own disputes.

She talked about her discussion about a federal register notice involving regulatory cooperation with Canada and Mexico.

On the call there was also an update on the Korea Free Trade Agreement, in which it was said that the President is about to formally submit the Korea FTA to Congress.

There was also an update on the Transpacific Partnership. It was explained that there had been progress on market access, exchanging non-conforming measures on services. They are still working on environment and labor issues. They asked for more state-based comments on the TPP because they said they found it very useful. Rep. Treat intends to submit comments on behalf of Maine.

Rep. Treat said the call also addressed Russia joining the WTO and the diplomatic details involved in that. It also dealt with a truck dispute with Mexico and how that's on the verge of being resolved.

Rep. Treat said that people on the call gave an update on the special 301 report on patent law and hearings they've had on whether other countries are complying with patent law.

She said that the call also talked about trade with South Asia and about how trade in general could affect state legal services here in the U.S.

She also said that there's an interagency task force on electronics stewardship, which, Treat said, could affect Maine's computer and electronics recycling programs

The IGPAC conference call also featured an update on the Federal Insurance Office. States always used to regulate insurance, but now the federal government is getting involved as part of the Dodd-Frank financial regulatory reform bill. There was new insurance language from the newly-created federal agency on international trade, and it had caused some confusion among the call participants.

Rep. Treat said she hoped to use her new IGPAC membership to get more involved in Maine exporting green technologies.

Rep. Maker asked about regulatory compliance in the federal register, involving Mexico and Canada. Rep. Treat mentioned that we have until April 4th to comment on that particular item.

Mr. Herz asked about Mercury under the electronic stewardship item. Ms. Treat said she would look more closely at it. He asked for a contact number for the IGPAC office.

Mr. Cole asked how long it had been since someone from Maine had someone on IGPAC. Rep. Treat said this was the first time ever.

Mr. Burson asked that, given her new position and expertise, should Rep. Treat get a regular spot on the CTPC commission agenda. Rep. Maker said that Rep. Treat would be welcome to come to and speak at CTPC meetings whenever items of interest came up.

Rep. Treat also spoke about her trip to Washington D.C. to attend NCOIL, the National Conference of Insurance Legislators. The conference was considering a resolution involving the pending international trade agreements. The result of the conference was that they all decided to defer any action until the summer (July) so they could learn more about trade policy and how pharmaceutical companies are involved in the language of all the pending free trade agreements.

Rep. Treat's testimony ended.

The Commission took up the state procurement legislation, which Ms. Pistner summarized and explained. She brought up what changes had been made.

Senator Sherman asked about the scope of the legislation. Ms. Pistner said it only affects state contracts and not private ones.

Mr. Palmer asked about changing the language in the definitions sections to broaden what kinds of services would be included. Ms. Pistner said she would look into it and see if it could be done. Senator Sherman that would be OK.

Ms. Pistner moved to look into Mr. Palmer's suggested change with the Revisor's office Mr. Woodbury seconded. The Commission voted 10-0 in favor. Ms. Pistner must now take Mr. Palmer's proposed change to someone at the Revisor's office for examination and evaluation.

Ms. Whitelaw discussed her conference call with the World Trade Organization's Working Party on Domestic Regulation.

Members of the WTO, including the U.S., have signed on something called the GATT, or the General Agreement on Tariffs and Trade. It is a wide-ranging international agreement that, in theory, provides a framework for how countries and private companies should conduct international trade. Typically this involves tariffs, subsidies, and environmental regulations taking place at the national level.

But the reason for the conference call is that the folks at the WTO are now in the process of writing a new chapter of suggested GATT regulations, this time focusing more on the kind of regulations that states, provinces, territories, and even municipalities tend to enact. Hence this Working Party on Domestic Regulation.

The specific kind of regulation discussed in this conference call was the regulation of services, not the kind of tangible products that we generally picture when we think about imports and exports. These are services that could be provided by both foreign and domestic companies. The new chapter of GATT would be designed to limit how states can regulate the services these companies could provide. The idea is to allow foreign companies easy entry into domestic service markets.

There was a lot of talk on the conference call about defining all the different terms that would be used in the law. Participants had discussed who would be affected by the changes, and to what extent would pre-existing regulations be grandfathered into the new body of GATT regulations.

Mr. Burson brought up the example of a possible LNG terminal in Washington County. He said that under the potential new rules, federal regulations would be the controlling authority on the matter and would override the states.

A typical scenario of enforcement: Maine passes a regulation that a foreign company or country finds unfair. It complains to the WTO, which adjudicates the matter. If the U.S. loses the case, the federal government can then use all its leverage to pressure Maine into removing the regulation. So sovereignty is indirectly ceded to either the WTO or the company or country that launched the complaint.

Ms. Whitelaw said that the new rules would lay out the grounds for challenging existing state laws and regulations. It's still uncertain under which jurisdiction the trade dispute would be heard – i.e. in what court and in what country.

Ms. Whitelaw said that this WTO discussion on local regulation cuts to the core of the state sovereignty question. The new GATT chapter would apply to any regulation that affects both foreign and domestic companies operating in a given state or locality.

Mr. Herz expressed concerns about enforcing violations of this new agreement, should it come to pass.

Ms. Whitelaw emphasized that the language being discussed in the WPDR is still very vague and ill-defined.

Mr. Merritt explained that businesses crave clarity and predictability, and that's one of the goals of the WPDR. This agreement would give foreign companies recourse to challenge the federal government, who would then challenge the state government. He noted, however, that the U.S. has never lost against a foreign country in a case of this nature.

Ms. Whitelaw said the new chapter of the GATT could increase the scope of the domestic laws and regulations that could be challenged. **She said letters could be sent to the U.S. negotiators outlining state concerns, especially on specific regulations that the CTPC might be concerned about. She said that this is something the Commission should keep its eye on.**

Senator Sherman asked how this affects the federal and state government. And Mr. Merritt said it deeply affects the federal government and also the states ability to govern itself.

Mr. Herz asked why fisheries were not included in the list. Mr. Burson noted that this agreement was about services, so it's more likely that fish processing would be included in this new chapter rather than the actual fish themselves.

The Commission moved onto discussing the upcoming April public hearing in Calais.

Rep. Maker said she reserved Washington County Community College for Thursday April 28th at 6 PM. She asked about what kind of agenda such a public meeting should have and what its purpose would be. She said some members of the Canadian public might attempt to attend the meeting and wanted the Commission's

thoughts on whether the Commission should also allow Canadian citizens to speak at the hearing. No formal decision was reached on the matter. The administrative staffer said he would check with OPLA on what is required in terms of publicity, agenda, and who is allowed to speak. It turns out that the only legal publicity requirement is posting notice of the public meeting on the Commission's website, the Commission agreed to go way beyond that and write a press release to pass out to local media outlets in the greater Washington County area.

Mr. Burson said the Commission should alert the entire County and that someone should make an opening presentation that might be relevant to the citizens there on the importance of trade in Washington County. He suggested local businesses owners, someone from UMM or the Washington Country Community College.

Mr. Burson also said that at past public hearings the Commission has tended to listen to the public rather than talk as it normally does when it meets in Augusta. The Chairs said they found that point to be very helpful in providing guidance for April's meeting.

Mr. Merritt said he liked the idea of business owners having prepared presentations because he said the public in Maine often doesn't hear the good side of trade.

Mr. Cole suggested the Commission reach out to the Passamaquoddy Nation, which the Commission agreed to do.

Mr. Palmer suggested that the Commission's website be included in any press release. It was agreed to.

The Commission moved to the final item: setting the May meeting date. It was agreed that the May meeting would take place on May 20th at 9 AM in Room 206 of the Cross State Office Building.

Senator Sherman adjourned the meeting.

**Maine Citizen Trade Policy Commission Meeting
September 16, 2011
Minutes**

Member attendance: Connie Jones, John Palmer, Jay Wadleigh, Harry Ricker, Rep. Peggy Rotundo, Rep. Joyce Maker, Sen. Roger Sherman, Sen. John Patrick, Jay Wadleigh, Joseph Woodbury, Stephen Cole, Michael Herz, Michael Roland, Wade Merritt, Sen. Thomas Martin

The meeting was opened with introductions by members.

**10:10am Presentation from Sarah Bigney of Maine AFL-CIO
“Trade Agreements 101”**

Ms. Bigney expressed her regrets to those who have heard this Trade Agreements 101 before. Ms. Bigney generally explained trade agreements by stating that they are long and contain hundreds of provisions that go beyond simple trade and the exchange of goods and services. Those additional provisions have a significant impact on state sovereignty. She noted that Maine was at the forefront of being informed about and addressing the issue of trade and the states by creating the Citizen Trade Policy Commission. Since then, other states have followed suit and established similar bodies.

Ms. Bigney talked briefly about the passage of NAFTA and how that became a model for future trade agreements including CAFTA which she described as controversial and narrowly passed in the wee hours of a Congressional Session.

She went on to discuss and describe the World Trade Organization (WTO) and its purpose which were included in here handouts. She talked about the establishment of the General Agreement on Tariffs and Trade (GATT) and how it was borne out of the WTO.

Ms. Bigney briefly described how the WTO negotiates trade agreements that then need to be ratified by each member nation. She briefly discussed certain agreements and how each have impacts on state sovereignty, including those related to agriculture, services, and intellectual property rights. Particular attention was given to an agreement on Technical Barriers to Trade (TBT) – the purpose of which to eliminate obstacles to trade including domestic laws at any level. The provisions of TBT pose the biggest problems to governments within the U.S., at any level with regard to sovereignty and policy making.

Ms. Bigney drew attention to the myriad acronyms outlined in a handout she provided to the Commission.

Ms. Bigney described the fast-track process used by Congress to implement the trade agreements and stated that it has diminished the role of democracy in these important negotiations. Furthermore, states play little if any role in the development of implementing legislation passed using this fast-track process. There has been a push to let this fast track process expire...it is currently not on the docket to be renewed. There could be another mechanism introduced that would allow for more Federal and State consultation.

Ms. Bigney described the Intergovernmental Political Advisory Committee IGPAC – advisory committee to the United States Trade Representative (USTR). (Rep. Treat a former CTPC member serves on this committee) IGPAC provides some voice for states although there is consensus that the level of input is minimal.

Ms. Bigney discussed investor state rights under NAFTA and CAFTA which allow a nation to sue another member nation if federal, state or local laws limit the future profits of that nation. According to Ms. Bigney, foreign nation countries have been awarded millions under this provision.

Under WTO suits are nation to nation but under other bilateral agreements a foreign company can sue another member nation or government. This is a source of discontent for State Legislatures.

There is a dispute mechanism when a ruling on a trade agreement violation by a member nation or governmental unit therein is unacceptable to a party, but this process is criticized because the tribunals operate behind closed doors to determine whether the law in question needs to be changed or not.

The crux of the issue with the way these trade agreements are implemented is the impact on domestic regulation. In fact, currently, there is a proposal under GATS that would restrict states ability to license regulate or govern the service sector (proposal would use baseline of the lowest level of regulation and governance). However, states have been pushing back and it appears this proposal may not be incorporated into the Doha round. (Doha round is the latest round of negotiations at the WTO. It began in 2001 and suffered collapse in 2008 – agricultural tariffs being a major sticking point.)

Rep. Rotundo asked Ms. Bigney to provided some specific examples or issues to help illustrate her information.

Ms. Bigney spoke of the TBT agreement and how it has been a significant issue for State Legislatures. She cited a letter from China to a Vermont Legislator and Maryland Assemblyman warning that China will sue if the laws being considered by their respective states were to be passed.

She spoke of a Canadian company that challenged a California law regarding MTBE restrictions. The Canadian company argued, citing chapter 11 of NAFTA, that their profits would be limited by this restriction. That suit failed.

Metalclad also sued under Chapter 11 of NAFTA for lost profits provisions because a state in Mexico banned a substance that was polluting water supply. Commission member Woodbury interjected – saying it was not under 11 that Metalclad succeeded but there was a different ruling under another provision. Ultimately, Mexico did reimburse Metalclad.

Another example cited was the Antigua gambling case. The state of Utah has a law prohibiting gambling. Most internet gambling is based in Antigua. Antigua is arguing that gambling is a service covered under GATS. The United States as a member nation argues that gambling was never meant to be in the agreement as a service. The U.S lost in a ruling on the case but has not paid because they are currently challenging. This ruling is significant because of the storage of liquid natural gas may also be deemed a service and regulation of LNG sites could be challenged.

Ms. Bigney cited two other successful challenges to US regulations under trade agreements. Upon a challenge from Mexico, the WTO ruled against the dolphin safe message on tuna sold in the US. The US Youth Smoking Act was also successfully challenged by Indonesia.

**10:38 am Phone –in presentation:
Pending Free Trade Agreements Jim Catella – Sen. Snowe’s office**

Signed in 2006 and 2007

Colombia

Panama

South Korea

These agreements have not been officially signed by the President. Congress is currently working on the implementing legislation.

According to Mr. Catella, Sen. Snowe is concerned about the Korean agreement and that it will increase the trade deficit, although believes there are some good agricultural benefits to the agreement. She is concerned the risks are greater than the benefits in particular with regard to challenges faced by the states for policies and regulations deemed inconsistent with or in violation of the agreements.

Sen. Snow is also concerned about the Colombia agreement because of concern about violation of the human rights of Colombian workers. Santos in Colombia has stated that they are making improvements of human rights conditions and enforcement. Sen. Snowe is hesitant to support the agreement until it can be assessed how well these human-rights improvement efforts have worked.

Panama agreement – similar concerns with human rights but not to the degree of Colombia –Sen. Snowe is likely to support this agreement.

Mr. Catella noted that Sen. Snowe is concerned with currency manipulation by the Chinese government. She wants the US to pass legislation that allows investigation of China monetary practices – and another to require the President to certify that any country we enter into an agreement with has not been found to have manipulated currency in the past.

She also wants to reauthorize trade adjustment systems – to address loss of employment from outsourcing and loss of exports.

Mr. Catella mentioned pending legislation that would extend, through 2013, benefits to US service workers who lose jobs to outsourcing to countries with whom we have trade agreements. They may consider this as early as Monday or Tuesday of next week (9/19 or 9/20). Sen. Snowe would like this passed prior to signing off on trade agreements.

Likely the goal is to wrap up the pending trade agreements prior to Thanksgiving – so the legislation may be put through.

Additionally, Mr. Catella told the commission that Sen. Snowe is pressing the President to not have across the board duty cuts apply to shoe imports because of the negative impact on Maine shoe industry.

Mr. Catella noted that there is significant interest in the softwood lumber agreements (SLA) and briefed the commission on a July meeting held with USTR Ron Kirk. He cited that Canada has violated these agreements. The agreements are not the issue but the delay or lack of enforcement is having a detrimental impact on US/Maine. Snowe pressed that enforcement of violations needs to happen more quickly. Agreements are due for extension to 2015. Snowe still cautious and wants to ensure that we are using the enforcement tools in the SLA.

Senator Sherman inquired about the Korean agreement as it relates to beef. Catella noted that Korea has a high tariff on imported beef. However, this is not the biggest bone of contention. There are agricultural gains like blueberries - but the negative impact on manufacturing outweighs those benefits regarding the Korean agreement.

Sen. Patrick inquired if Sen. Snowe had a concern about Panama becoming a tax haven. Mr. Catella stated that this had been an area of concern. A major concern had been lack of transparency in their tax policy and bank secrecy provision similar to the Cayman Islands. That concern has been somewhat mitigated because they have agreed to be more transparent so an assessment can be made by the US if indeed Panama is a tax haven. He went on to note that we actually enjoy a trade surplus with Panama because our exports go into their markets at reduced rates.

Sen. Patrick added that generally with regard to these pending agreements it is vital that in addition to human rights concerns we need to ensure protection of the environment and the rights of workers.– in addition to human rights...we want to see protection of environmental and workers' rights assurances

11:00am Phone-in presentation

Nora Todd – Rep. Michaud's office

Ms. Todd informed the commission that she is a Legislative Director in Rep. Michaud's office. She handles the House trade working group (4 members of Congress that advocate for fair trade). This group is very busy discussing the 3 pending free trade agreements with Colombia, Panama and S. Korea.

She noted that President Obama wanted to improve them before reaching floors of Congress

The three pending agreements should hit the floors of Congress in October. Rep. Michaud is opposed to all 3 because of their NAFTA style template.

A Trade Adjustment Assistance bill which provides benefits to workers negatively impacted by job losses to countries with whom we have trade agreements may be up for consideration next week. The 2009 changes to the program expired this year – an extension is pending. The 2009 changes allowed workers in service industry to qualify and also dealt with health benefits. Rep. Michaud is pushing for a 5 year extension of a more streamlined and improved TAA program. The Senate bill is a 2 year extension excluding public sector workers (problem for Michaud). The White House wants that TAA to happen before the FTA happens. We should know more next week.

When TAA passes – we expect the FTAs to go through. These FTAs were all negotiated under fast track...there will be no amendments because of this process. By early Nov. we could expect to see action on a TAA bill as well as the pending FTAs.

Sen. Sherman inquired about the typical length of extension. Ms. Todd explained that TAA has not been controversial in the past. Short extensions were bipartisan so there was no threat of expiration unlike with this current TAA. If there is no extension the TAA may revert back to the 2002 system – and will stay that way for a long time.

FTAs have been signed – implementing legislation is what is considered by Congress – it's a stamp of approval of the agreement negotiated by the White House.

Sen. Patrick expressed concern about transparency of Panamanian banking system and potential for tax haven status. Ms. Todd noted that there have been efforts by the White House to increase that transparency but it is not yet clear if it is enough.

Mr. Ricker referring to a comment made about including public center employees in the assistance program asked – what is the impact on public sector jobs so that they must be included in the TAA?

Ms. Todd responded that the general issue is off-shoring of jobs – Michaud is also concerned that TAA are being narrowed at the same time that more FTAs are being adopted.

11:20 Rep. Rotundo CTPC overview

Opened comments by citing how responsive the delegation has been – and commission comments have clearly made it into the debates on these agreements.

Rep. Rotundo presented a summary of the representation on the commission and noted that all of the votes of the commission have been unanimous. There was a misconception that the CTPC was an anti-trade commission but to the contrary, the commission has pushed the federal government to push exports of Maine goods.

A major issue for the commission is that these agreements are negotiated without input from the states (with the exception of IGPAC). The agreements go far beyond the issues of trade and tariffs which is why it is so vital for State input.

Jurisdiction is an issue – the foreign tribunal is directed to rule on disputes in a way that maximizes free trade. These disputes are not handled in a Maine court even if we are the respondent to a claim.

The list of concerns for Maine with these agreements is great. The areas of concern include, prescription drugs, LNG terminals, tobacco advertising and gambling. These topics are those that Maine has a vital role in developing policies for...that policy-making can be infringed upon by these trade agreements and the standing provided in those agreements that allow foreign nations or corporations who feel harmed to come after us.

Rep. Rotundo noted that Sen. Patrick (while in the House) helped pass the bill which formed this commission (co-sponsor). He added that it took a year for the CTPC to educate itself on trade and the impacts on state sovereignty. The Maine CTPC is recognized as a model across the country. He noted that he has learned the value of trade in a world economy and gained a more global view.

He has also learned how important it is to ensure competitiveness where the competition has little regard for human rights or the environment.

DISCUSSION OF DATES AND TIMES OF HEARINGS:

NEXT MEETING NOVEMBER 3RD – CALAIS
1PM COMMISSION MEETING
6PM EVENING PUBLIC HEARING

12:00 BREAK

12:43 pm Phone-in presentation

Bob Stumberg – Harrison Institute of Public Law and Georgetown University

Summary briefing on 2009 CTPC Assessment (Mr. Stumberg consulted on the assessment with Forum on Trade and Democracy who was contracted to conduct it)

Mr. Stumberg provided what he called a roadmap of trade agreements and discussed how lawyers think of them. He put the agreements into 3 families:

- WTO – 20 agreements, 153 nations – trade disputes between nations but not between private investor and nation state;
- FTA – 17 nations (they overlap with WTO agreements) cover disputes between nations but they include investor arbitration;

- BITs – Bilateral investment treaties (39 US treaties). These are similar to a particular chapter in a WTO agreement. These treaties serve a single function and there is no arbitration between nation states but rather a forum for investor arbitration.

Mr. Stumberg spoke to the commission regarding a potential new trade agreement being proposed for consideration – the Trans Pacific Partnership. This is a large trade agreement being proposed that would be bigger than the EU if successful.

Mr. Stumberg provided a list of trade agreements that have impacts on state sovereignty (see chart in slides).

He provided a short description of the Trans Pacific Partnership Agreement (TPPA) meeting in Chicago last week regarding impacts of these agreements impacting governing at the state level. There is a big network for states to communicate their interests and needs to the trade world.

Mr. Stumberg spoke of Rep. Sharon Treat's presentation in Chicago and her membership on IGPAC and her direct contacts with trade negotiators.

Sharon Treat joined the conversation to mention that members of IGPAC don't get the time to consider the agreements under the intended timeline – there is often only 4 days to familiarize with the topic and make comment and since the information can't be shared it's challenging to consult with others in order to make comment.

She also has concerns about what happens to those comments and whether or not they go into the void. She did have the luck to be in Washington to follow-up on her last submission –but that won't always be a process.

She uses the CTPC assessment that Mr. Stumberg consulted on to make those comments – and since it's a public document she can refer to it when she makes her comments. Documents that she is available to view as a member of IGPAC are prohibited from being discussed publicly.

Mr. Stumberg stressed that it is important to have each state represented on IGPAC – you need to have a voice and be persistent to have an impact.

Mr. Stumberg referred to his presentation and Slide 6 regarding how trade rules are used. He stated that a loss in a trade dispute can result in serious consequences.. Trade sanctions are almost always 100% punitive tariffs. In a loss to Indonesia with regard to cigarette sales, they are not likely to impose sanction on cigarettes but rather intellectual property or something else that inflicts pain. Thus, the subject punishment does not necessarily correlate with the trade offense.

Mr. Stumberg provided the commission with examples of trade rules that effect state governments.

Pharmaceutical trade rules require that reimbursement policies must be based on competitive market derived prices – contrary to state policies to control escalating prescription costs. This

rule group can impact Maine's programs to reduce the cost of prescription drugs and could potentially impact the Affordable Care Act. The Australia and Korea FTAs did carve out an exception of Medicaid. However, Medicare Part B was not excepted – where prices are set by statute and Section 340B of Fed. Public Health Act was not excepted. These are big budget issues for states.

GATS: list of many services from alcohol, gambling, financial service and waste management. GATS rules provided there can be no quantitative limits that impact “market access” and that there can be no discrimination against nations. GATS also lists 70 proposed disciplines for domestic regulations. The bulk of laws that could be impacted by GATS disciplines are not discriminatory and do not set quantitative limits. Interpretation of these disciplines may be problematic (see slides 12 and 13 for illustration using LNG and tobacco examples).

Rules regarding foreign investor rights:

- Expropriation
- Fair and Equitable Treatment
- Most Favorable treatment

Mr. Stumberg cited an example regarding the treatment of tobacco in FTAs. He stated that trade agreements protect tobacco with the benefits enjoyed by all sectors. This would have implications where other industries could use trade agreements to avoid regulation as well.

In slides 17 and 18 of his presentation, Mr. Stumberg stated that US trade negotiators have exceeded their authority, using tobacco as an example.

Commission member Michael Herz inquired about the process for complaints of trade agreement violations and the tribunals for arbitration – not just the outcomes of these trade agreements. Mr. Stumberg explained that the tribunals are usually composed of 3 people nominated as follows:

- 1 by plaintiff
- 1 by defending country
- 1 by secretariat of tribunal/ “neutral arbitrator”

He also noted that a member of this tribunal could be an arbitrator on Tuesday but a litigant on one side or another on Wednesday. It's a serious problem. There is a strong argument to be made for investment courts with impartial to deal with these trade disputes.

Mr. Stumberg then noted that at dispute tribunals at WTO there are more seasoned diplomats – but still come with their own biases depending on where they come, for example whether they come from a more centralized or a federalist style of government.

1:30 pm

Non-agenda item – Rep. Sharon Treat – discussion of IGPAC role and the Trans Pacific forum in Chicago

Commission invited former commission member, Rep. Sharon Treat to talk about her position with IGPAC and how the CTPC plays a role in that position. Rep. Treat discussed challenges of attending these forums like the Trans Pacific forum in Chicago and her concern about how much impact one can have in this forum. She noted that speaking/attending as an elected official is a position that gives her comments and those from the CTPC more weight.

In advance of the Chicago forum, she spent 2 hours with USTR who went over the comments on the pending trade agreement because of strict confidentiality rules. She is now a member of IGPAC and is an official who can look at the text of agreements.

The fact that this commission is actively and proactively looking at the things that are particularly important to this state is very valuable for Rep. Treat to be prepared to offer comment and represent the CTPC's positions on trade agreements – she has been able to use the CTPC assessments to participate as a member of IGPAC. CTPC materials have provided her with information that she can share in contrast to the information received through IGPAC which is confidential.

There are many areas where we don't have the appropriate expertise – that is a problem beyond CTPC but also at USTR – and it is beneficial to be aware of those areas where we do not have expertise.

Rep. Treat, in a discussion about the lack of transparency of these negotiations, responded to an inquiry by commission member John Palmer who asked if it is true that foreign governments wouldn't negotiate unless there was this protection of privacy. Rep. Treat responded that it is not necessarily true that the foreign nations insist on the privacy but more so the US. Commission member Palmer when on to ask that shouldn't transparency be one of the goals of this commission? Rep. Treat cited a Resolution sponsored by Rep. Maker to make these negotiations transparent. The Resolution also proposed to remove us from under the jurisdiction of the arbitration panels but rather have those disputes handled in a US forum to be resolved here if the US is a respondent to the complaint.

2:00 pm Commission Discussion

The commission was asked to consider potential topics for the next meeting which will be held November 3rd in Calais.

CTPC co-chair, Rep. Maker asked members to review the assessment of 2009 and consider the things presented today to come up with topics.

John Palmer – requested an updated email distribution list that incorporates the new members of the commission.

Commission Meeting Adjourned 2:08

Meeting Summary
Maine Citizen Trade Policy Commission
November 3, 2011
Washington County Community College
Calais, Maine

Present: Senator Sherman, Representative Maker, Senator Martin, Senator Patrick, Representative Rotundo, Deputy Attorney General Linda Pistner, Wade Merritt, Connie Jones, Stephen Cole, Joseph Woodbury, Michael Roland, John Palmer, Harry Ricker, Jay Wadleigh

Senator Sherman and Representative Maker made some opening remarks to start the meeting and asked Commission members to introduce themselves.

State Consultation with the United States Trade Representative (USTR)

The first item on the agenda was a joint presentation regarding state consultation with the United States Trade Representative and how Maine can have more direct consultation on trade issues.

Presenters: Rep. Rotundo, Rep. Sharon Treat, Wade Merritt

Rep. Rotundo:

Representative Rotundo provided a historical perspective on the CTPC and its past efforts to be heard by and successfully communicate with the USTR regarding the development, negotiation and ratification of international trade agreements.

An early effort was made by the commission to ensure communication to designate a single point of contact for the USTR. The Maine International Trade volunteered and was welcomed by the CTPC to be the contact point. Despite the promising concept of a single point of contact in Maine, in practice, that system has not worked very well for a variety of reasons

Representative Rotundo cited another conduit for communication with the USTR available to Maine, a group called IGPAC (Intergovernmental Policy Advisory Commission). This group, within the office of the USTR, advises the USTR concerning trade matters. According to Rep. Rotundo, IGPAC has limited authority or power in the development and negotiation of trade agreements. However, Rep. Sharon Treat serves as a member of IGPAC and is an excellent resource to the CTPC and serves the invaluable purpose of relaying the positions and concerns of the commission.

The CTPC has continually advocated for ways to increase participation in matters of international trade. Rep. Rotundo stated that the CTPC has been a model for other states that have formed similar commissions which share the common belief that states should have a say if they are to be impacted by trade agreements and that states should be allowed to opt out of these agreements as well. The following are some of the goals shared by states who have similar entities to the CTPC:

- Greater transparency in trade negotiations
- Greater information sharing
- Allowance of time necessary for deliberation and consideration
- Data sharing

- Greater provision of legal analysis regarding the impact of trade agreements on state's laws
- Acknowledgement and respect of state sovereignty

In response to the question, "How has the CTPC sought to address these goals?" Rep. Rotundo explained about successfully reaching out to the USTR (former) and inviting her to a meeting to develop a system of communication. The fact that the meeting that to be held was required by Maine law to be a public meeting, proved to be a sticking point for the USTR. Ultimately, that hurdle was overcome and the meeting was held.

Additionally, the commission has regularly sent letters to the President of the United States and the USTR. The CTPC has joined with other states in order to amplify our voices in the trade arena.

The CTPC also worked to pass legislation that requires legislative approval of trade agreements and prohibits a state official from binding the state in matters of trade. This bill (LD 1257 An Act to Require Legislative Consultation and Approval Prior to Committing the State to Binding International Trade Agreements – 2009 P.L. c. 385) was passed during the First Regular Session of the 124th Legislature.

Rep. Rotundo also cited legislation that did not go forward that requires trade disputes be handled within the state if the alleged violation was made by the state. This did not go forward because the membership of the CTPC was changing and new members did not have the opportunity to weigh in on this legislation in time.

The 125th Legislature also passed a Resolution urging the Federal Government to improve the process of trade policy development to include consultation between the Federal Government and the States that increase transparency, promotes information sharing and acknowledges state sovereignty. (House Paper # 1152).

Rep. Sharon Treat (by phone):

As a member of IGPAC, Rep. Treat stated that she does have the ability to convey the positions and concerns of the CTPC to the USTR to and the greater community involved with international trade. She stated what would make it easier for her to communicate on behalf of Maine as a member of IGPAC would be to know the CTPC's position on certain agreements in advance. Timing is an issue because there is such a small window of time to respond when information on the pending agreements is made available. Much information that she is given is secret and she is prohibited from sharing it – but if the commission has anticipated what may be covered in a pending agreement and provides a written position on it, she can relay that to the USTR. She noted the challenges of accomplishing this because you can't always anticipate what is on the table.

The CTPC has been helped by the "leaking" of text of certain parts of the TPPA (Trans Pacific Partnership Agreement) and the U.S. positions on these parts of the developing treaty. Rep. Treat is given an opportunity to comment, but it's unclear what happens with her comments after they are given.

With regard to the TPPA, Rep. Treat stated that the developers are looking back on the Korea agreement and using that as a template. This may be helpful to the CTPC in forming policy statements. Rep. Treat then cited issues currently being discussed as part of the TPPA that may be of concern to Maine and the U.S., such as sanitation requirements in food shipment and preparation and the prohibition of technical barriers on trade.

Rep. Treat informed the commission that many countries (possibly 20) are looking to join in on the TPPA, including Canada. So, it's important to be involved and aware of the development of this trade agreement. The dispute mechanism for alleged violation of the trade agreement is particularly important. A serious concern is the standing of foreign corporations as nation states when they feel harmed by a country that is party to the agreement.

Under TPPA it is likely that the least regulating standard is what will govern parties to the agreement. The United States (and possibly individual states) could be vulnerable to trade violations if our regulations are higher or stricter. A practical example of this means that Korea could be the standard in food sanitary practices and regulations and Japan the standard on pharmaceuticals.

Wade Merritt

Mr. Merritt discussed his role as the Vice President of the Maine International Trade Center. Although they may communicate with the USTR, the United States Department of Commerce (DOC) is the primary agency with whom they work. One recent accomplishment is a long-awaited memorandum of understanding with the DOC acknowledging that states have a role in export promotion. The Maine International Trade Center was founded in 1996 and has offices in Portland and Bangor. Some of the primary functions of the center are:

1. International Trade consulting – working with manufacturers in the state establishing or expanding their international trade;
2. Educational programs(Portland, Lewiston and Bangor) where they bring in established trading companies to talk to smaller companies or those new to trade share their expertise;
3. Overseas activities and trade missions – This November the center is going to Brazil and Chile with 12 companies on the annual trade mission. This year Governor Lepage is not travelling with them this year- but typically they are joined by whoever is serving as Governor;
4. The Center has launched foreign investment initiatives to encourage foreign investments in Maine. Composites and renewable energies are at the forefront currently; and
5. Attracting international students to Maine.

MITC wants to be a resource to companies interested in trade, the CTPC and other interested parties. They are limited in what they can do with data analysis regarding trade because there is little data that is made available to them. They have good information about what is being exported out of the state but less about imports and services. They recognize the importance of good data for analysis and have been pushing federal agencies for better access to that information. Imports can be easily documented, but where they go once they enter the country is more difficult to know, particularly when documenting consumer goods.

Mr. Merritt indicated that MITC tries to be a resource to companies with trade rules as they currently exist. But, because they are a non-profit they are prohibited from lobbying and do not make efforts to influence the development of trade rules.

Mr. Merritt noted that MITC has had a longstanding relationship with CTPC. Mr. Merritt himself has regularly served on the commission and been involved with it since its inception.

At one point it was decided by the CTPC and the Governor's office (Baldacci) that MITC would be the single point of contact for the USTR to communicate with the state. This worked well for a time but that mechanism for communicating has ceased. They expect that information is going through the Governor's office, and they have a good contact there. So, it could be the case that there is no communication from the USTR coming through.

Mr. Merritt closed by saying that the CTPC has garnered the attention of the trade community in Washington D.C. They are aware that we stay up to speed on trade issues. This awareness keeps them on their toes.

Recent developments regarding the Transpacific Partnership Agreement –Pharmaceuticals and general issues regarding regulatory provisions

Representative Sharon Treat (by phone):

Rep. Treat discussed via conference call, the issue of pharmaceutical regulations in developing Transpacific Partnership trade agreement (TPPA). She made a point to note that there are many other provisions that are of concern with the TPPA, such as intellectual property. But with regard to medicines- there could be problems with getting generic drugs to the market and controlling the escalation of prices in the market. One of the best tools for accomplishing that, which has been a goal of Maine and the United States, is better access to generic drugs.

The intellectual property provisions that have been leaked are similar to what is currently law. However, there are current investigations going on regarding abuses of the current process for the introduction of generic drugs into the market place like "pay to delay." If we sign on to these provisions, the U.S. may be unable to change the intellectual property laws that govern medicines and the release of generic alternatives to name-brand prescription drugs without threat of trade violations.

Other provisions in the TPPA proposed text that has been leaked could have a direct impact on the pricing of medicines and how much programs like Maine Care may have to pay for them. The USTR has added a footnote to its comments on these portions of the developing agreement (Annex on Transparency and Procedural Fairness for Healthcare Technologies). The footnote states that the provisions should not apply to Maine Care because it is a regionally implemented program and the TPPA is proposed to only deal with centrally administered programs. However, Rep. Treat noted, we all know that Maine Care is administered on both the state and federal level. Additionally, even though the footnote was made, there is no assurance that this carve-out will actually be incorporated into the agreement. New Zealand, a party to the TPPA, will be a primary player in this topic of negotiation because of their low-cost drug program. If they sign on they want assurance that the U.S. will enter into a reciprocal relationship. According to comments by Rep. Treat, this is not something that the U.S. should agree to - but instead of this fact keeping them from signing on to the agreement- the U.S. may rely on this footnote as justification to sign

on to the agreement. Relying on the footnote may not provide the U.S. with the protection it needs to administer drug programs that allow for the negotiations of drug prices.

Regulatory provisions of the TPPA and the potential implications for domestic regulation.

Professor Bob Stumberg (by phone:)

Professor Stumberg noted two chapters that are expected to be included in the TPPA which address issues that do not exist in other US trade agreements, state-owned enterprises and regulatory coherence. The chapter on state-owned enterprises has not been leaked yet but could potentially impact public utilities. Commission members note that this should be considered as an agenda item at a future meeting.

The chapter being proposed in the TPPA that deals with regulatory coherence has been leaked. In this draft it is only intended to apply to national or federal governments. But its structure could be used as a model if the regulatory coherence provisions are ever applied to state governments.

According to Professor Stumberg, the proposed chapter requires governments to create a body that assesses regulatory coherence. Guidelines established in the trade agreement would instruct how to conduct regulatory impact assessments (RIAs). Similar assessments are currently executed through the Office of Management and Budget at the federal level in the U.S. These assessments are basically cost-benefit analyses which make a broad swath and are conducted for any significant measure that affects trade. They can be controversial because the analysis may support trade challenges brought against the U.S. by other countries (or investors).

Regulation of tobacco is an issue to watch as the TPPA develops. This product, though highly regulated and controversial, has been treated like any other with regard to trade agreements. Corporations have been filing claims, just as a nation-state would using the investor protection provisions in trade agreements. These corporations are supporting the regulatory coherence provisions to challenge tobacco controls in member countries. There appears to be a deliberate effort to use these trade agreements to undo and undercut tobacco controls and regulations with the ultimate focus trained on the United States. Public health organizations in the U.S. are aware of this trend and are pursuing efforts to carve tobacco out of the trade protections provided to products under these trade agreements.

Professor Stumberg ended his comments by stating that CTPC is known for the tough questions that it poses in its communications to the USTR. Those communications are received and heard world-wide. The comments from the CTPC are a departure from what is typically presented to the USTR.

A local perspective – supporting border towns Calais and St. Stephen.

Diane Barnes and John Ferguson:

The commission invited the town manager of Calais (Barnes) and the Chief Executive Officer of St. John, New Brunswick (Ferguson) to talk about the relationship between the two communities and the unique perspective they have as border towns. They discussed the economic effects felt in one community from developments in the other despite the national border between them.

Jointly, they focus on ensuring that their communities are supported to ensure that their citizens maintain their liberties without losing sight of the security measures that are necessary when

sharing a border. That said, they noted that they are not on the U.S. – Mexico border and they shouldn't be viewed that way. Security measures should be viewed differently.

The towns have worked out ways to have a successful mutual aid agreement for fire protection. They have a cross-enrollment program with the community colleges in St. Stephen and Calais. The towns have been proactive in addressing concerns that the border may pose. Both stated that if there are good benefits to the people of these communities when they cross the border, it is possible to find ways to take advantage of them and respect the border.

Trade Adjustment Assistance Program

Judy Pelletier, Maine Department of Labor– TAA program administrator:

Judy Pelletier spoke to the commission about the administration of the Federal Trade Adjustment Assistance program. The program's purpose is to mitigate the negative impacts to workers who have lost their jobs to overseas workers because of the passage of trade agreements.

Ms. Pelletier spoke to the commission about the administration of the TAA program, including outreach, training, job searches and the distribution of funds from the program for things like wage adjustment, job-search costs and relocation cost reimbursement. Ms. Pelletier provided a useful hand-out that provided information about the program including who is eligible and how it is administered. The hand out may be viewed on the commission's website.

Assessment of the impacts of international trade agreements on Maine **Commission discussion**

Every two years the CTPC is required by statute to conduct an assessment of the impacts of international trade agreements. Maine Revised Statutes Annotated Title 10, §11, sub-§9, ¶C, states that the commission:

C. Shall 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. The assessment must be submitted and made available to the public as provided for in the annual report in paragraph D;[.]

The Commission discussed briefly two potential ideas for an assessment topic that were listed on the meeting agenda. The first would have had the commission look at the dollar value, volume and number of exports leaving Maine during 2009-10 compared with a time when the U.S. dollar was similarly valued. Another idea was to follow-up on some of the items listed at the end of the last assessment completed by the commission.

The commission, referring comments on the developing Transpacific Partnership Agreement at the September and November meetings, also briefly discussed the potential of using this important trade development as the focus of its next assessment. Commission members cited the idea that it would be useful to have an assessment that is more proactive in providing a statement on a trade agreement that is still in the works. An assessment on this topic could be a useful educational tool to Maine policy makers at the state and federal level and even inform those outside the state.

As the meeting came to end, the commission decided that it needed more information to decide on a topic for the bi-annual assessment and would continue the discussion at its next meeting.

Meeting Summary
Maine Citizen Trade Policy Commission
December 15, 2011
Room 220, Burton M. Cross State Office Building
Augusta, Maine

Members Present: Senator Sherman, Representative Maker, Senator Martin, Senator Patrick, Representative Rotundo, Representative Bernard Ayotte, Deputy Attorney General Linda Pistner, Connie Jones, Michael Hertz, Stephen Cole, Michael Roland, Jay Wadleigh

Staff: Danielle Fox (OPLA), Jean Guzzetti (OPLA), Lock Kiermaier (Contract)

Upon the required number of members being present to constitute a quorum, the meeting was convened by the Chairs at approximately 1:30 PM.

In the first item of the proposed agenda, Senator Sherman and Representative Maker convened the meeting and asked Commission members to introduce themselves.

Representative Bernard Ayotte introduced himself and noted that this was his first CTPC meeting. The Commission Chairs also noted that the newly appointed member from DEP, Ms. Heather Parent, was unable to attend this meeting.

The Commission Chairs then introduced Lock Kiermaier who will be staffing the CTPC on a contractual basis through the end of June 2012. OPLA legislative Analysts Danielle Fox and Jean Guzzetti are unable to provide necessary staffing coverage due to the demands of the Second Regular Session of the Legislature.

Consideration of Annual Report

The second item on the agenda was the consideration of the draft Seventh Annual Report of the Citizen Trade Policy Commission dated December 2011. The commission is required by current law (10 MRSA §11(9)D) to submit an annual report to specified parties including the Governor and the Legislature. The report is to contain relevant information about the commission's activities from July 1, 2010 through June 30, 2011. Accordingly, the draft of this year's report includes:

- a description of the many actions taken by the commission;
- a list of the seven dates on which the Commission met;
- a list of guest speakers who appeared before the commission;
- a description of a proposed agenda for the upcoming year; and
- a comprehensive list of appendices of supporting information

Upon consideration of the draft report, a motion was made by Senator Patrick and approved unanimously by those commission members present to accept the draft report as final and distribute it according to the requirements of current law.

Transpacific Partnership Agreement (TPPA)

The third item on the agenda was further review and discussion of the Transpacific Partnership Agreement (TPPA). Staff person Danielle Fox briefly summarized the TPPA by describing it as a major international trade agreement that is currently being negotiated. Most notably, the prospective agreement was originally intended to include smaller trading Pacific Rim partners of the U.S. but recent proposals have been made to include Canada, Mexico and Japan.

To provide a background understanding of international trade agreements and why they have an important bearing on state sovereignty, Commission member Linda Pistner, Chief Deputy Attorney General, was invited to summarize a memo dated 12/13/11 that she had prepared for the commission's consideration. Ms. Pistner's comments included the following points:

- Trade treaties are enforced on a nation-to-nation basis; thus, provisions of state law that are challenged under the provisions of a trade treaty are defended by the office of the U.S. Secretary of State. Further, the implications of this process suggest the possibility of a significant loss of state sovereignty through limitations on its ability to regulate various aspects of intra-state commerce and other activities. Also of significant concern is the very real possibility of state liability in the form of arbitration costs or compensation if a state regulation is found to be in violation of a trade treaty;
- The current process by which trade treaties like TPPA are negotiated occurs on the federal level by the U.U. Trade Representative (USTR) and the details of ongoing negotiations are confidential which has the practical effect of limiting the ability of states to proactively provide input to provisions which may have a serious negative impact to state sovereignty.

In comments following Ms. Pistner's presentation, Senator Sherman advocated that the commission's upcoming assessment needed to focus on the topics raised by Ms. Pistner. Representative Sharon Treat, former Commission member and current member of the Intergovernmental Policy Advisory Committee (IGPAC), concurred with Senator Sherman's suggestion and emphasized that the upcoming CTPC assessment needs to reflect a clear understanding of TPPA process and its potential impact on Maine.

Next, Commission members proceeded to discuss at length a potential approach and methodology for the commission's upcoming bi-annual assessment as required under current law (10 MRSA §11(9)C). This discussion included the following points, suggestions and possible actions:

- The state procurement process is crucially important matter of state sovereignty and needs to be specifically addressed in the assessment process. In addition, the commission need to consider writing a letter in the very near future on this topic to Ambassador Kirk, USTR, highlighting the provisions of current Maine law (10 MRSA §13) which states that Maine may not be bound by a specific trade agreement unless the State has enacted a specific law to enter into that agreement;
- Other potential issues to be covered by the upcoming assessment include pharmaceuticals and fishing subsidies;
- Commission member Steve Cole suggested that he knows qualified people at the University of Minnesota that possibly could be used in the assessment process;
- There was considerable sentiment among Commission members towards adopting an approach for the assessment which uses a public hearing model in which particular experts on specific subject areas would be invited to make presentations to the commission. This public hearing process would be supplemented by a subsequent analysis by a individual qualified in

trade policy analysis. Further comments by Commission members suggested that the audience for this kind of assessment model would include members of the Maine Public, the legislature and Governor, the Maine Congressional delegation and the USTR; and

- Commission member Steve Cole also suggested that the Margaret Chase Smith Policy Center at the University of Maine could be approached to discuss the possibility of having them focus an issue of *Maine Policy Review* on the same trade policy topics that the Commission would be reviewing in the proposed assessment process.

The consensus of those commission members present was that the upcoming assessment should follow a hybrid public hearing/analysis model and that this format would be fleshed out in subsequent meetings of the commission.

Fast Track Authority

The Commission then heard from Troy Haines, of the Maine Fair Trade Campaign, who spoke informally regarding President Obama's intent to ask Congress for "fast track authority" to negotiate the TPPA. Mr. Haines explained that fast track authority effectively suspends the requirement that Congress negotiate trade policy agreements and thus eliminates the opportunity for Congress and the states to influence specific provisions of trade policy agreements. Finally, Mr. Haines maintained that the granting of fast track authority effectively negates state sovereignty.

Upon discussion of Mr. Haines' comments, Commission members expressed an interest in taking up the topic of fast track authority at the next meeting with the possibility of sending a letter on this topic to members of the Maine Congressional delegation and the USTR.

USTR Request for Comment on Canada, Japan and Mexico Joining TPPA

Next, commission staff alerted the commission about a recent notice from the USTR in the Federal Register which invites public comment (with a 1/13/12 deadline) on the possibility of allowing Canada, Japan and Mexico to join as participants of the TPPA. Upon further discussion of this topic, Commission member Senator John Patrick expressed his strong concern that the TPPA must reflect the ability for signees to enforce high public health standards.

Senator Patrick then made a motion, which was seconded, for the Commission to submit a letter to the USTR stating the Commission's concern that the inclusion of large trading partners into the TPPA was largely incompatible with a trade agreement that was originally conceived from the perspective of trade between the US and smaller Pacific rim countries. The letter should also point out the potentially chilling effect that such a trade agreement would have on state sovereignty for states like Maine that have a contiguous border with Canada. Senator Patrick's motion was unanimously adopted by the Commission.

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

Commission staff also informed members of the commission by another recent notice in the Federal Register from the Secretary of Treasury Tim Geithner inviting public comment (with a 12/16/11 deadline) on a Report to Congress on How to Modernize the and Improve the System of Regulation in the United States. Commission members were reminded of a previous action by the Commission

in April of 2010 when the Commission sent a letter to Senator Christopher Dodd regarding a proposed provision in the Restoring American Financial Stability Act of 2010 which would have allowed the federal government to invalidate state insurance laws that were interpreted as being “inconsistent with” international agreements. The Commission’s letter of April 16, 2010 stated the commission’s strong opposition to this proposed abrogation of state sovereignty. Commission staff reminded the Commission that the final federal legislation in question did not include the onerous aforementioned proposal.

After further discussion, Senator Patrick made a motion, which was seconded, to resend the April 2010 letter to Secretary Geithner with a cover letter which reiterated the Commission’s continuing opposition to any change in federal regulation or law pertaining to the ability of trade agreements to supersede existing state sovereignty regarding insurance regulation. Senator Patrick’s motion was approved unanimously by the Commission.

Financial Report

Next, Commission staff presented a financial report on the CPTC which showed the following:

- For FY 12, the CTPC has General Fund appropriations of \$2,600 in Personal Services and \$28,510 in All Other for a total appropriation of \$31,150; and
- Year-to-date GF expenditures through 12/13/11 amounted to \$550 in Personal Services and \$2,823.85 in All Other for total expenditures of \$2,823.85.

Commission members reviewed the report without additional public comment.

Scheduling Next Meeting Date and Suggested Agenda Topics

As a final topic, Commission members agreed to a next meeting date in mid to late January with the specific date to be confirmed by Commission staff person Lock Kiermaier after further communication with Commission Chairs and members. Anticipated topics include further discussion of the design of the upcoming assessment and a consideration of the advisability of fast track authority with regard to the TPPA.

The meeting was adjourned at approximately 4:30 PM.