

MAINE STATE LEGISLATURE

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**STATE OF MAINE
125th LEGISLATURE
FIRST REGULAR SESSION**

**Seventh Annual Report of the
Citizen Trade Policy Commission**

December 2011

Voting Members:

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

**Stephen Cole
Michael Hertz
Michael S. Hiltz
Connie Jones
John Palmer
Linda Pistner
Harry K. Ricker
Jay Wadleigh
Joseph Woodbury**

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Malcolm Burson
Barbara Van Burgel
Wade Merritt
Michael Roland**

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EXECUTIVE SUMMARY

Public Law 2003, Chapter 699, established the Citizen Trade Policy Commission (Commission) during the Second Special Session of the 121st Legislature. The 22-member Commission includes six legislators, an Attorney General designee, five non-voting agency officials representing the Department of Labor, the Maine International Trade Center, the Department of Environmental Protection, the Department of Agriculture, Food and Rural Resources, and the Department of Human Services, and 10 public members representing business, labor, health, government and environmental interests. The Commission provides an ongoing state-level mechanism to assess the impact of international trade policies and agreements on Maine's state and local laws, business environment and working conditions.

Public Law 2003, Chapter 699 as amended by Public Law 2007, Chapter 266, requires the Commission to hold regular meetings, to gather information from the public through public hearings, to conduct a biennial assessment on the impacts of international trade agreements on Maine and to submit a report on its activities annually. This report covers the Commission's activities from July 1, 2010 through June 30, 2011 during which the Commission held 7 meetings.

During this reporting period, the Commission took the following actions.

- The Commission sent a letter to President Obama, Maine's Congressional Delegation and the United States Trade Representative raising the Commission's concerns about state rights and financial and pharmaceutical issues surrounding the South Korean Free Trade Agreement.
- The Commission developed and adopted a policy statement outlining the types of provisions that it would support or reject when considering a free trade agreement.
- The Commission nominated Maine House Representative Sharon Treat to the United States Trade Representative (USTR) to serve on the Intergovernmental Policy Advisory Committee (IGPAC).
- The Commission created a legislative subcommittee to consider possible legislation to submit to the 125th legislature. This committee worked with the Commission on two pieces of legislation. One was a joint resolution titled *Joint Resolution Memorializing the President of the United States, The United States Congress and the United States Trade Representative Regarding States' Rights in Future International Trade Policy*. The resolution was unanimously adopted by the Legislature. The other was a draft bill that was developed from a unanimous recommendation from the report: *The Potential Impact of International Trade Agreements on Ground Water Withdrawal Regulations* completed by the Water Resources Planning Committee and the Citizen Trade Policy Commission. The bill is still under consideration by the Commission. It stipulates that a state

contract for the procurement of services, materials or equipment contain a provision requiring the contractor to resolve differences through the Maine court system in the case of a dispute. The contract must also contain a waiver by the contractor of any right it may assert to seek a remedy in a different forum, including, but not limited to, arbitration pursuant to an international trade agreement. The Commission is seeking ways to ensure that conflicts with the State of Maine be resolved within the Maine judicial system rather than through an international tribunal.

- The Commission sent a letter to the United States Trade Representative opposing the inclusion of investor-state provisions in an investment chapter of the Trans-Pacific Partnership Agreement (TPPA) that is currently in negotiations. The Commission further specified that tobacco be carved out of the TPPA and any future trade agreements.
- The Commission spent significant time discussing the impacts of trade agreements on pharmaceutical pricing and continued to provide comments to the United States Trade Representative (USTR) regarding its concerns.
- The Commission continued to track federal legislation related to international trade agreements and submitted a letter to the Maine Congressional Delegation encouraging support of *The Public Health Trade Advisory Committee Act*.
- Multiple Commission members met with Ambassador Kirk (United States Trade Representative), the Director of the Forum on Democracy and Trade, and members of the Maine International Trade Center. During the meeting, Commission members voiced concern regarding the lack of transparency during trade agreement negotiations and lack of state input into trade agreements. Following the meeting, Representative Margaret Rotundo, then co-chair of the Commission, drafted a letter to Ambassador Kirk questioning the current U.S. model for bilateral investment treaties and investment chapters in free trade agreements, procedural rights and investor-state dispute resolution.

As the Commission considered the topics covered in the above actions, it received presentations from experts in international trade as well as regular reports from Maine's Congressional Delegation, including from Jim Catella, Senator Snowe's legislative staff for trade and foreign policy and Nora Todd, Rep. Michaud's legislative staff for trade and foreign policy.

I. INTRODUCTION

The Citizen Trade Policy Commission was established during the Second Special Session of the 121st Legislature by Public Law 2003, chapter 699. A copy of the law establishing and governing the Commission and amendments to that law are in **Appendix A**. The 22-member Commission includes six legislators, an Attorney General designee, five non-voting agency officials representing the Department of Labor, the Maine International Trade Center, the Department of Environmental Protection, the Department of Agriculture, Food and Rural Resources, and the Department of Human Services, and 10 public members representing business, labor, health, government and environmental interests. The Commission initially convened on October 6, 2004. The Commission's current membership list as well as membership prior to appointments earlier this year can be found in **Appendix B**.

The Commission provides an ongoing state-level mechanism to assess the impact of international trade policies and agreements on Maine's state and local laws, business environment and working conditions. Specifically, the Commission has the following duties:

- 1) To assess and monitor the legal and economic impacts of trade agreements on state and local laws, working conditions and the business environment;
- 2) To provide a mechanism for citizens and legislators to voice their concerns and recommendations;
- 3) To make policy recommendations designed to protect Maine's jobs, business environment and laws from any negative impacts of trade agreements; and
- 4) To establish and maintain a communication link between local, state and federal agencies and the public.

Information about the Commission's activities and all Commission documents can be found online at <http://www.maine.gov/legis/opla/citpol.htm> or obtained through the Office of Policy and Legal Analysis.

II. MEETINGS

During this reporting period, July 1, 2010 through June 31, 2011, the Commission held seven meetings on the following dates:

July 16, 2010
September 17, 2010
October 15, 2010
November 19, 2010
January 28, 2011
February 18, 2011
March 11, 2011

Summaries of the Commission's meetings can be found on its website <http://www.maine.gov/legis/opla/citpol.htm>. A list of acronyms that may be helpful when reviewing the meeting summaries can be found in **Appendix C**.

The Commission used its meetings to:

- Monitor, discuss and react to on-going and emerging trade issues;
- Continue to explore the impact of international trade agreements on Maine's businesses, labor force, healthcare system and the environment;
- Coordinate its efforts with Maine's Congressional Delegation, state officials and other entities involved with international trade; and
- Further develop its relationships and communications with the United States Trade Representative.

In addition, the Commission regularly invited guest speakers to its meetings to provide information on trade issues relevant to the Commission's work. During this reporting period, the Commission invited the following guest speakers to attend its meetings.

- **Janine Bisailon-Cary, Maine International Trade Center.** The Maine International Trade Center provides technical assistance and trade counseling, import and export leads, international credit reports, workshops, coordinated trade missions and trade shows, and many other services to help Maine companies succeed in international markets. Ms. Bisailon provided expertise and detailed explanations of Maine's international trade activity, including its top exports, the countries to which Maine most commonly exports its goods, and potential barriers to increasing Maine's international trade.
- **Jim Catella, Sen. Snowe's Office.** Mr. Catella provided multiple updates to the Commission throughout the year regarding the pending free trade agreements before Congress during this reporting year. Those trade agreements were with South Korea, Panama and Colombia. Additionally, Mr. Catella kept the Commission informed of the softwood lumber disputes between British Columbia and the U.S. Trade Representative on behalf of Maine. Mr. Catella also discussed other issues of concern, such as currency manipulation by trade partners.
- **Pete Connell, Killarney Holdings, LLC.** Mr. Connell presented the impacts of trade agreements on manufacturing in Maine, with a focus on manufactured housing and the North American Free Trade Agreement.
- **Daniel Dowling, International Association of Machinists and Aerospace Workers, Local S-6.** Mr. Dowling represented Bath Iron Works and discussed the loss of jobs overseas, particularly to South Korea and potentially North Korea and expressed concerns over the pending South Korea Free Trade Agreement.

- **Dana Eidsness, Forum on Democracy and Trade.** The Forum on Democracy and Trade is a network of U.S. public officials from State and local governments that work to ensure trade agreements support local decision-making and economic innovation. Ms. Eidsness kept the Commission informed of pending trade agreement disputes before the World Trade Organization and major issues being considered in the negotiations of the Trans-Pacific Partnership Agreement.
- **Sean Flynn, American University's Washington College of Law.** Mr. Flynn discussed with the Commission the potential impacts of future trade agreements on Maine's capacity to negotiate with pharmaceutical companies for reduced pharmaceutical prices.
- **Michael Palmedo, American University's Washington College of Law.** Mr. Palmedo discussed with the Commission the relationship between state pharmaceutical programs such as Medicaid and how they are impacted by free trade agreements such as the South Korean Free Trade Agreement and the Trans-Pacific Partnership Free Trade Agreement.
- **Nora Todd, Rep. Michaud's Office.** Ms. Todd provided multiple updates to the Commission throughout the year regarding the pending free trade agreements before Congress during this reporting year. Those trade agreements were with South Korea, Panama and Colombia. Ms. Todd also discussed other issues of concern, such as currency manipulation by trade partners.

III. COMMISSION ACTIONS

In addition to activities previously discussed, the Commission engaged in the following activities.

- The Commission sent a letter to President Obama, Maine's Congressional Delegation and the United States Trade Representative raising the Commission's concerns about state rights and financial and pharmaceutical issues surrounding the South Korean Free Trade Agreement. See **Appendix D** for a copy of the letter.
- The Commission developed and adopted a policy statement outlining the types of provisions that it would support or reject when considering a free trade agreement. The purpose of the policy statement was not only to reach consensus on its positions as a Commission, but to allow the Chairs of the Commission to act on behalf of the Commission when issues arise that require action before the Commission can meet to discuss them. See **Appendix E** for a copy of the policy statement.
- The Commission nominated Maine House Representative Sharon Treat to the United States Trade Representative (USTR) to serve on the Intergovernmental Policy Advisory Committee (IGPAC). The Committee advises, consults with, and makes recommendations to the U.S. Trade Representative and relevant Cabinet or sub-Cabinet members concerning trade matters. See **Appendix F** for a copy of the nomination letter sent to the USTR. The Commission was successful in its nomination, and Representative

Treat was appointed to serve on the IGPAC. As a member of IGPAC, Representative Treat is able to comment on otherwise confidential components of trade agreement negotiations.

- The Commission created a legislative subcommittee to consider possible legislation to submit to the 125th legislature. This committee worked with the Commission on two pieces of legislation.
 - One was a joint resolution titled *Joint Resolution Memorializing the President of the United States, The United States Congress and the United States Trade Representative Regarding States' Rights in Future International Trade Policy*. The resolution urges and requests that the President of the United States, the United States Congress and the United States Trade Representative seek meaningful consultation with states when developing trade policy. It further seeks protection of state laws under international contracts and development of in-depth analysis of state-level export data and analysis of the effectiveness of trade adjustment assistance. The resolution was passed unanimously by the Legislature. See **Appendix G** for a copy of the resolution (H.P. 1152, 125th Maine State Legislature).
 - The other was a draft bill that was developed from a unanimous recommendation from the report *The Potential Impact of International Trade Agreements on Ground Water Withdrawal Regulations* completed by the Water Resources Planning Committee and the Citizen Trade Policy Commission. The bill stipulates that a state contract for the procurement of services, materials or equipment contain a provision requiring the contractor to resolve differences through the state court system in the case of a dispute. The contract must also contain a waiver by the contractor of any right the contractor may assert to seek a remedy in a different forum, including, but not limited to, arbitration pursuant to an international trade agreement. The Commission is seeking ways to ensure that conflicts with the State of Maine be resolved within the Maine judicial system rather than through an international tribunal. The draft bill was not submitted to the Legislature. See **Appendix H** for a copy of the draft bill.
- The Commission sent a letter to the United States Trade Representative opposing the inclusion of investor-state provisions in an investment chapter of the Trans-Pacific Partnership Agreement (TPPA) that is still in negotiations. The Commission further specified that tobacco be excluded from the TPPA and any future trade agreements. See **Appendix I** for a copy of the letter.
- The Commission also spent significant time discussing the impacts of trade agreements on pharmaceutical pricing and continued to provide comments to the United States Trade Representative (USTR) regarding its concerns. Please see **Appendix J** for a letter that was originally submitted to the USTR in February 2010, and then submitted again electronically as a comment on the USTR website in February 2011.

- The Commission continued to track federal legislation that was related to international trade agreements and submitted a letter to the Maine Congressional Delegation encouraging support of *The Public Health Trade Advisory Committee Act*. The members of the Maine delegation did not have the opportunity to vote on the bill because it did not make it out of committee. Please see **Appendix K** for a copy of the letter.
- Multiple Commission members met with Ambassador Kirk (United States Trade Representative), the Director of the Forum on Democracy and Trade, and the Maine International Trade Center. During the meeting, Commission members voiced concern regarding the lack of transparency during trade agreement negotiations and the lack of state input into trade agreements. See the meeting summary from Friday, Sept. 17, 2010, for more information including a list of Commission members that attended the meeting. The meeting summary can be found on the Commission's website: <http://www.maine.gov/legis/opla/citpol.htm>. Following that meeting, Representative Margaret Rotundo drafted a letter to Ambassador Kirk questioning the current U.S. model for bilateral investment treaties and the principle of no greater substantive rights established by Congress. In that letter, questions were posed regarding investment chapters in free trade agreements, procedural rights, and investor-state dispute resolution. See **Appendix L** for a copy of the letter.

IV. AGENDA FOR NEXT YEAR

Toward the end of this reporting year, there was a change in the leadership and membership of the Commission. See **Appendix B** for membership lists. Given this change in leadership and membership, the Commission is still determining its direction for the next reporting year. The Commission will continue its dialogue with federal, state and local entities and Maine's citizenry to advocate for improvement in the federal government's consultation with states. The Commission will continue to monitor international trade negotiations and elevate trade-related issues affecting Maine at the state and local levels to Maine's Congressional Delegation and to other appropriate federal entities. The Commission is particularly interested in the current negotiations of the Trans-Pacific Partnership Agreement and looks forward to working with the representative on the Intergovernmental Policy Advisory Committee to the greatest extent possible to ensure positive results for Maine people. The Commission will continue to assess and monitor the legal and economic impacts of trade agreements on state and local laws, working conditions and the business environment; to provide a mechanism for citizens and Legislators to voice their concerns and recommendations; and to make policy recommendations designed to protect Maine's jobs, business environment and laws from any negative impact of trade agreements as required in Maine Revised Statutes Annotated Title 10, section 11.

APPENDIX A

Authorizing Legislation: Public Law 2003, chapter 699 and Public Law 2007, chapter 266

CHAPTER 699

H.P. 1337 - L.D. 1815

**An Act To Establish the Maine Jobs, Trade and
Democracy Act**

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA §12004-I, sub-§79-A is enacted to read:

<u>79-A.</u>	<u>Citizen Trade</u>	<u>Legislative</u>	<u>10 MRSA</u>
<u>Trade</u>	<u>Policy</u>	<u>Per Diem</u>	<u>§11</u>
	<u>Commission</u>	<u>and Expenses</u>	
		<u>for Legislators/</u>	
		<u>Expenses Only</u>	
		<u>for Other</u>	
		<u>Members</u>	

Sec. 2. 10 MRSA c. 1-A is enacted to read:

CHAPTER 1-A

INTERNATIONAL TRADE AND THE ECONOMY

§11. Maine Jobs, Trade and Democracy Act

1. Short title. This section may be known and cited as "the
Maine Jobs, Trade and Democracy Act."

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

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

B. "Trade agreement" means any agreement reached between the United States Government and any other country, countries or other international political entity or entities that proposes to regulate trade among the parties to the agreement. "Trade agreement" includes, but is not limited to, the North American Free Trade Agreement, agreements with the World Trade Organization and the proposed Free Trade Area of the Americas.

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

4. Membership. The commission consists of the following members:

A. The following 17 voting members:

(1) Three Senators representing at least 2 political parties, appointed by the President of the Senate;

(2) Three members of the House of Representatives representing at least 2 political parties, appointed by the Speaker of the House;

(3) The Attorney General or the Attorney General's designee;

(4) Four members of the public, appointed by the Governor as follows:

(a) A small business person;

(b) A small farmer;

(c) A representative of a nonprofit organization that promotes fair trade policies; and

(d) A representative of a Maine-based corporation that is active in international trade;

(5) Three members of the public appointed by the
President of the Senate as follows:

(a) A health care professional;

(b) A representative of a Maine-based manufacturing business with 25 or more employees; and

(c) A representative of an economic development organization; and

(6) Three members of the public appointed by the Speaker of the House as follows:

(a) A person who is active in the organized labor community;

(b) A member of a nonprofit human rights organization; and

(c) A member of a nonprofit environmental organization.

In making appointments of members of the public, the appointing authorities shall make every effort to appoint representatives of generally recognized and organized constituencies of the interest groups mentioned in subparagraphs (4), (5) and (6); and

B. The following 5 commissioners or the commissioners' designees of the following 5 departments who serve as ex officio, nonvoting members:

(1) Department of Labor;

(2) Department of Economic and Community Development;

(3) Department of Environmental Protection;

(4) Department of Agriculture, Food and Rural Resources; and

(5) Department of Human Services.

5. Terms; vacancies; limits. Except for Legislators, commissioners and the Attorney General, who serve terms coincident with their elective or appointed terms, all members are appointed for 3-year terms. A vacancy must be filled by the same appointing authority that made the original appointment. Appointed members may not serve more than 2 terms. Members may

continue to serve until their replacements are designated. A member may designate an alternate to serve on a temporary basis.

6. Chair; officers; rules. The first-named Senate member and the first-named House of Representatives member are cochairs of the commission. The commission shall appoint other officers as necessary and make rules for orderly procedure.

7. Compensation. Legislators who are members of the commission are entitled to receive the legislative per diem and expenses as defined in Title 3, section 2 for their attendance to their duties under this chapter. Other members are entitled to receive reimbursement of necessary expenses if they are not otherwise reimbursed by their employers or others whom they represent.

8. Staff. The Office of Policy and Legal Analysis shall provide the necessary staff support for the operation of the commission. After one year, the commission shall assess the need for and qualifications of a staff person, for example, an executive director. If the commission determines that it requires such a person, it may request additional funds from the Legislature.

9. Powers and duties. The commission:

A. Shall meet at least twice annually;

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

C. Shall conduct an annual assessment of the impacts of international trade agreements on Maine's state laws, municipal laws, working conditions and business environment;

D. Shall maintain active communications with and submit an annual report to the Governor, the Legislature, the Attorney General, municipalities, Maine's congressional delegation, the Maine International Trade Center, the Maine Municipal Association, the United States Trade Representative's Office, the National Conference of State Legislatures and the National Association of Attorneys General or the successor organization of any of these groups. The commission shall make the report easily accessible to the public by way of a publicly accessible site on the Internet maintained by the State. The report must contain

information acquired pursuant to activities under paragraphs B and C;

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

F. May recommend or submit legislation to the Legislature;

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

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

10. Outside funding. The commission may seek and accept outside funding to fulfill commission duties. Prompt notice of solicitation and acceptance of funds must be sent to the Legislative Council. All funds accepted must be forwarded to the Executive Director of the Legislative Council, along with an accounting that includes the amount received, the date that amount was received, from whom that amount was received, the purpose of the donation and any limitation on use of the funds. The executive director administers any funds received.

11. Evaluation. By December 31, 2009, the commission shall conduct an evaluation of its activities and recommend to the Legislature whether to continue, alter or cease the commission's activities.

Sec. 3. Staggered terms. Notwithstanding the Maine Revised Statutes, Title 10, section 11, subsection 5, the appointing authorities for the original appointments of public members of the Citizen Trade Policy Commission shall designate their first appointment for a one-year term, their 2nd appointment for a 2-year term and any other appointments for a 3-year term. An initial term of one or 2 years may not be considered a full term for purposes of limiting the number of terms for which a member may serve.

Sec. 4. Appropriations and allocations. The following appropriations and allocations are made.

LEGISLATURE

Legislature

Initiative: Provides funds for the per diem and expenses for members of the Citizen Trade Policy Commission as well as public

hearing and general operation expenses. A base allocation in the amount of \$500 is included below in the event outside sources of funding are received for this purpose.

General Fund	2003-04	2004-05
Personal Services	\$0	\$1,320
All Other	0	11,050
General Fund Total	<hr/> \$0	<hr/> \$12,370
Other Special Revenue Funds	2003-04	2004-05
All Other	\$0	\$500
Other Special Revenue Funds Total	<hr/> \$0	<hr/> \$500

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Amend the Membership and Reporting Requirements for the Citizen Trade Policy Commission

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 10 MRSA §11, sub-§4, ¶B, as enacted by PL 2003, c. 699, §2, is amended to read:

B. The following 54 commissioners or the commissioners' designees of the following 54 departments and the president or the president's designee of the Maine International Trade Center who serve as ex officio, nonvoting members:

- (1) Department of Labor;
- (2) (rp) ~~Department of Economic and Community Development;~~
- (3) Department of Environmental Protection;
- (4) Department of Agriculture, Food and Rural Resources; and
- (5) Department of Human Services.

Subparagraph (5): Human Services should be Health and Human Services

Sec. 2. 10 MRSA §11, sub-§9, ¶C, as enacted by PL 2003, c. 699, §2, is amended to read:

C. Shall every 2 years conduct an annual 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;

Sec. 3. 10 MRSA §11, sub-§9, ¶D, as enacted by PL 2003, c. 699, §2, is amended to read:

D. Shall maintain active communications with and submit an annual report to the Governor, the Legislature, the Attorney General, municipalities, Maine's congressional delegation, the Maine International Trade Center, the Maine Municipal Association, the United States Trade Representative's Office, the National Conference of State Legislatures and the National Association of Attorneys General or the successor organization of any of these groups. The commission shall make the report easily accessible to the public by way of a publicly accessible site on the Internet maintained by the State. The report must contain information acquired pursuant to activities under ~~paragraphs~~paragraph B and may contain information acquired pursuant to activities under paragraph C;

Sec. 4. 10 MRSA §12 is enacted to read:

§ 12. Quorum

For purposes of holding a meeting, a quorum is 11 members. A quorum must be present to start a meeting but not to continue or adjourn a meeting. For purposes of voting, a quorum is 9 voting members.

Effective September 20, 2007

APPENDIX B

Citizen Trade Policy Commission Membership Lists

CITIZEN TRADE POLICY COMMISSION

Membership after appointments made between January 2011 and June 2011

Appointment(s) by the Governor

Vacant

**Representing Nonprofit Organizations Promoting
Fair Trade Policies**

John Palmer
P.O. Box 519
Oxford, ME 04270
207-539-4800

Representing Small Business

Bob St. Peter
3 Flower Farm Lane
Sedgewick, ME 04676

Representing Small Farmers

Harry Ricker
35 Macintosh Drive
Turner Me 04282
754-3455

**Representing a Maine-based corporation that is
active in international trade**

Appointments by the President of the Senate

Sen. Roger L. Sherman
P.O. Box 682
Houlton, ME 04730
207-532-7073

Senate Member

Sen. Thomas Martin Jr.
1308 Clinton Ave.
Benton, ME 04901

Senate Member

Sen. John L. Patrick
206 Strafford Avenue
Rumford, ME 04276

Senate Member - Chair

Stephen Cole
80 Bristol Road
Damariscotta, ME 04543

**Representing Economic Development
Organizations**

Michael S. Hiltz
45 Pleasant Avenue
Portland, ME 04103

Representing Health Care Professionals

Joseph Woodbury
508 Gore Road
Otisfield, ME 04270

**Representing Maine-based Manufacturing Business
with More than 25 Employees**

Appointments by the Speaker of the House

Rep. Joyce Maker - Chair

89 Lafayette Street
Calais, ME 04619

House Member

Rep. Bernard Ayotte

1469 Van Buren Road
Caswell, ME 04750
207-325-4905

House Member

Rep. Margaret Rotundo

446 College Street
Lewiston, ME 04240
207-784-3259

House Member

Connie Jones

Mid Coast Chapter, American Red Cross
16 Community Way
Topsham, ME 04086

**Representing Nonprofit Human Rights
Organizations**

Michael Herz

P.O. Box 1462
Damariscotta, ME 04543

**Representing Nonprofit Environmental
Organizations**

Jay Wadleigh

International Association of Machinists
40 Wadleigh Way
Belgrade, ME 04917

Representing Organized Labor

Attorney General

Linda Pistner

6 State House Station
Augusta, ME 04333-0006
207-626-8821

Attorney General or designee

Commissioner, Department of Agriculture

Walter E. Whitcomb

Maine Department of Agriculture, Food and Rural
Resources
28 State House Station
Augusta, ME 04333-0028
207-287-3871

Commissioner or designee

**Commissioner, Department of
Environmental Protection**

Malcolm Burson
DEP
17 State House Station
Augusta, ME 04333-0017
207-287-8662

Commissioner or designee

**Commissioner, Department of Health &
Human Services**

Barbara Van Burgel
DHHS
Bureau of Family Independence
11 State House Station
Augusta, ME 04333-0011
207-287-3106

Commissioner or designee

Commissioner, Department of Labor

Michael Roland
ME Department of Labor
45 State House Station
Augusta, ME 04333-0045
207-623-7932

Commissioner or designee

**Director, Maine International Trade
Center**

Wade Merritt
511 Congress Street
Portland, ME 04101
207-541-7400

Representing Maine International Trade Center

Staff:

Danielle Fox, Legislative Analyst
Jean Guzzetti, Legislative Analyst
Office of Policy and Legal Analysis
207-287-1670

CITIZEN TRADE POLICY COMMISSION (on-going)
Public Law 2003, Chapter 699

Membership Prior to 2011 Appointments

Appointment(s) by the Governor

John L. Patrick
206 Strafford Avenue
Rumford, ME 04276
207-364-7666

**Representing Nonprofit Organizations Promoting
Fair Trade Policies**

John Palmer
P.O. Box 519
Oxford, ME 04270
207-539-4800

Representing Small Business'

Paul Volckhausen
1138 Happy Town Road
Orland, ME 04472
207-667-9212

Representing Small Farmers

Appointment(s) by the President

Sen. Stanley J. Gerzofsky
3 Federal Street
Brunswick, ME 04011
207-373-1328

Senate Member

Sen. Troy D. Jackson
167 Allagash Road
Allagash, ME 04774
207-436-0763

Senate Member

Sen. Roger L. Sherman
P.O. Box 682
Houlton, ME 04730
207-532-7073

Senate Member

Carla Dickstein
P.O. Box 268
Wiscasset, ME 04578
207-882-7552

**Representing Economic Development
Organizations**

Michael S. Hiltz
45 Pleasant Avenue
Portland, ME 04103

Representing Health Care Professionals

Joseph Woodbury
508 Gore Road
Otisfield, ME 04270

**Representing Maine-based Manufacturing
Business' with More than 25 Employees**

Appointment(s) by the Speaker

Rep. Margaret Rotundo – Chair
446 College Street
Lewiston, ME 04240
207-784-3259

House Member

Rep. Jeffery A. Gifford
346 Frost Street
Lincoln, ME 04457
207-794-3040

House Member

Rep. Sharon Anglin Treat
22 Page Street
Hallowell, ME 04347
207-623-7161

House Member

Sarah Adams Bigney
306 Congress Street, Apt. C
Portland, ME 04101
207-356-7322

**Representing Nonprofit Human Rights
Organizations**

Michael Herz
P.O. Box 1462
Damariscotta, ME 04543

**Representing Nonprofit Environmental
Organizations**

Cynthia Phinney
16 Old Winthrop Road
Manchester, ME 04351

Representing Organized Labor

Attorney General

Linda Pistner
6 State House Station
Augusta, ME 04333-0006
207-626-8821

Attorney General or designee

Commissioner, Department of Agriculture

Jane Aiudi

Commissioner or designee

Commissioner, Department of Environmental Protection

Malcolm Burson
DEP
17 State House Station
Augusta, ME 04333-0017
207-287-8662

Commissioner or designee

**Commissioner, Department of Health &
Human Services**

Barbara Van BURGEL
DHS
Bureau of Family Independence
11 State House Station
Augusta, ME 04333-0011
207-287-3106

Commissioner or designee

Commissioner, Department of Labor

Michael Roland
ME Department of Labor
45 State House Station
Augusta, ME 04333-0045
207-623-7932

Commissioner or designee

**Director, Maine International Trade
Center**

Wade Merritt
511 Congress Street
Portland, ME 04101
207-541-7400

Representing Maine International Trade Center

Staff:

Curtis Bentley
Office of Policy and Legal Analysis
207-287-1670

APPENDIX C

Common International Trade Acronyms

Common International Trade Acronyms

BIT – Bilateral Investment Treaty
CTPC – Citizen Trade Policy Commission
FTA – Free Trade Agreement
GATS – General Agreement on Trade in Services
GATT – General Agreement on Tariff and Trade
IGPAC – Intergovernmental Policy Advisory Committee
IIA – International Investment Agreement
LNG – Liquefied Natural Gas
MITC – Maine International Trade Center
MST – Minimum Standard of Treatment
NAFTA – North American Free Trade Agreement
NCSL – National Conference of State Legislatures
SCM – Subsidies and Countervailing Measures (Agreement)
TAA – Trade Adjustment Assistance (Program)
TBT – Technical Barriers on to Trade
TTP(A)- Trans-Pacific Partnership Agreement
USTR – United States Trade Representative
VAT – Value Added Tax
WHO – World Health Organization
WPDR – Working Party on Domestic Regulation
WTO – World Trade Organization

APPENDIX D

Letter to President Obama regarding the South Korean Free Trade Agreement

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

Malcolm Burson
Michael Roland
Wade Merritt
Linda Pistner
Barbara VanBurgel



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

Curtis Bentley, Legislative Analyst

STATE OF MAINE

Citizen Trade Policy Commission

August 4, 2010

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

Dear President Obama,

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

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

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

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

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

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

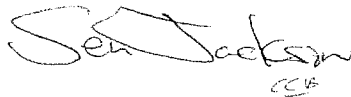
Second, the prior administration's U.S.-Korea FTA text includes financial service deregulation that contradicts efforts to restore stability to the global economy. These rules simply forbid commonly used regulatory mechanisms, even when such policies are applied equally to foreign and domestic firms.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

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

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

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

Sincerely,

Handwritten signature of Troy Jackson in cursive, with the initials "CC" written below it.

Troy Jackson
Senate Co-Chair

Handwritten signature of Margaret Rotundo in cursive, with the initials "MR" written below it.

Margaret Rotundo
House Co-Chair

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

APPENDIX E

Citizen Trade Policy Commission Policy Statement

CTPC International Trade Agreement Policy

WORKING DOCUMENT

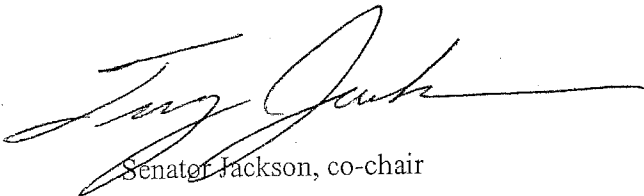
July 16, 2010

The Citizen Trade Policy Commission believes that Maine must be able to compete successfully in the global economy in order to realize its full economic potential. The commission supports efforts to foster and increase the export of Maine's products and services around the world. International trade agreements are indispensable tools that enable the expansion of global trade and can level the economic playing field between nations and sub-national governments. The commission favors international trade agreements that:

1. Recognize and maintain the state's sovereign right to govern its domestic affairs;
2. Enhance the ability of Maine businesses to export and import goods and services;
3. Create new employment opportunities in the state without compromising labor standards in Maine or abroad;
4. Does not provide foreign-investors special privileges or a private enforcement system;
5. Does not encourage development or trade that is not environmental sustainable or that may compromise or violate a national or sub-national environmental law or regulation;
6. Fosters access to affordable healthcare and affordable pharmaceuticals for everyone; and

Additionally, the commission supports increased transparency in trade agreement negotiations and enhanced federal-state consultation regarding those negotiations.

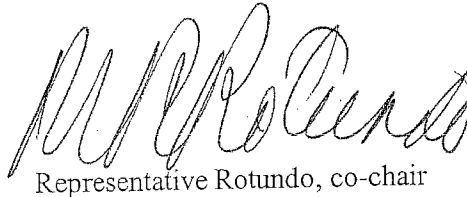
The Citizen Trade Policy Commission has voted to confirm this set of policies on July 16, 2010 and grants the chairs of the commission the authority to apply and communicate these policies to others and in the interest of Maine's citizenry and environment.



Senator Jackson, co-chair

Date

7/16/10



Representative Rotundo, co-chair

Date

July 16, 2010

APPENDIX F

**Citizen Trade Policy Commission Letter
Nominating Representative Sharon Treat to the
Intergovernmental Policy Advisory Committee**

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

Malcolm Burson
Michael Roland
Wade Merritt
Linda Pistner
Barbara VanBurgel



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

Curtis Bentley, Legislative Analyst

STATE OF MAINE

Citizen Trade Policy Commission

November 30, 2010

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

Dear Ambassador Kirk:

As you recall, during our August 5, 2010, meeting in Bangor, Maine with the Maine International Trade Center, you requested that the Maine Citizen Trade Policy Commission (Commission) submit names to USTR for possible membership on the Intergovernmental Policy Advisory Committee. We are pleased to nominate Representative Sharon Treat for your consideration. Please find attached Rep. Treat's resume and biography for your perusal.

Representative Treat is in her 6th nonconsecutive term in the Maine House of Representatives and served four terms in the Maine Senate where she was Senate majority Leader from 2002-2004. Rep. Treat is the Executive Director of the National Legislative Association on Prescription Drug Prices, a nonpartisan, nonprofit organization of state legislators jointly working to reduce prescription drug prices and expand access to medicines and was an Adjunct Lecturer at Colby College, University of Maine Law School, Bowdoin College and the University of New England.

The Maine Citizen Trade Policy Commission was the first state-level organization of its kind and has served as a model for other states. Representative Treat has served on the Commission since 2006, actively working to increase Maine's ability to effectively comment on pending international trade agreements and in particular, to enhance the consultation process between federal and state governments on trade related matters. Given Maine's pioneering role in fostering effective federal/state consultation on international trade agreements, we believe it would be fitting to have a representative from Maine on IGPAC and that person should be Representative Treat. We are thrilled to have this opportunity and please do not hesitate to contact us if there is anything we can do to further her appointment to IGPAC.

Yours sincerely,

 ^{cc}

Senator Troy Jackson, Chair

 ^{cc}

Representative Margaret Rotundo, Chair

cc: Myesha Ward, Deputy Assistant, United States Trade Representative
Senator Olympia J. Snowe
Senator Susan M. Collins
Representative Michael H. Michaud
Representative Chellie Pingree
Governor John LePage
Senator Raye, President
Representative Nutting, Speaker

APPENDIX G

**Joint Resolution Memorializing the President of the United States,
Congress and the United States Trade Representative
Regarding States' Rights in Future International Trade Policy**

STATE OF MAINE

**IN THE YEAR OF OUR LORD
TWO THOUSAND AND ELEVEN**

**JOINT RESOLUTION MEMORIALIZING THE
PRESIDENT OF THE UNITED STATES, THE
UNITED STATES CONGRESS AND THE UNITED
STATES TRADE REPRESENTATIVE REGARDING
STATES' RIGHTS IN FUTURE INTERNATIONAL
TRADE POLICY**

WE, your Memorialists, the Members of the One Hundred and Twenty-fifth Legislature of the State of Maine now assembled in the First Regular Session, most respectfully present and petition the President of the United States, the United States Congress and the United States Trade Representative as follows:

WHEREAS, Maine strongly supports international trade when fair rules of trade are in place and seeks to be an active participant in the global economy; and

WHEREAS, Maine seeks to maximize the benefits and minimize any negative effects of international trade; and

WHEREAS, existing trade agreements have effects that extend significantly beyond the bounds of traditional trade matters, such as tariffs and quotas, and that can undermine Maine's constitutionally guaranteed authority to protect the public health, safety and welfare and its regulatory authority; and

WHEREAS, a succession of federal trade negotiators from both political parties over the years has failed to operate in a transparent manner and has failed to meaningfully consult with states on the far-reaching effect of trade agreements on state and local laws, even when obligating the states to the terms of these agreements; and

WHEREAS, the current process of consultation with states by the Federal Government on trade policy fails to provide a way for states to meaningfully participate in the development of trade policy, despite the fact that trade rules could undermine state sovereignty; and

WHEREAS, under current trade rules, states have not had channels for meaningful communication with the United States Trade Representative, as both the Intergovernmental Policy Advisory Committee on Trade and the state point of contact system have proven insufficient to allow input from states and states do not always seem to be considered as a partner in government; and

WHEREAS, the President of the United States, the United States Trade Representative and the Maine Congressional Delegation will have a role in shaping future trade policy legislation; now, therefore, be it

RESOLVED: That We, your Memorialists, respectfully urge and request that future trade policy include reforms to improve the process of consultation between the Federal Government and the states; and be it further

RESOLVED: That We, your Memorialists, respectfully urge and request that the President of the United States, the United States Congress and the United States Trade Representative seek a meaningful consultation system that increases transparency, promotes information sharing, allows for timely and frequent consultations, provides state-level trade data analysis, provides legal analysis for states on the effect of trade on state laws, increases public participation and acknowledges and respects each state's sovereignty; and be it further

RESOLVED: That We, your Memorialists, respectfully urge and request that the Federal Government reform the system of consultation with states on trade policy to more clearly communicate and allow for states' input into trade negotiations by allowing a state to give informed consent or to opt out if bound by nontariff provisions in a trade agreement and by providing that states are not bound to these provisions without consent from the states' legislatures; to form a new nonpartisan federal-state international trade policy commission to keep states informed about ongoing negotiations and information; and to provide that the United States Trade Representative communicate with states in better ways than the insufficient current state point of contact system; and be it further

RESOLVED: That We, your Memorialists, respectfully urge and request that state laws that are subject to trade agreement provisions regarding investment, procurement or services be covered by a positive list approach, allowing states to set and adjust their commitments and providing that if a state law is not specified by a state as subject to those provisions, it cannot be challenged by a foreign company or country as an unfair barrier to trade; and be it further

RESOLVED: That We, your Memorialists, respectfully urge and request that the United States Congress fund a center on trade and federalism to conduct legal and economic policy analysis on the effect of trade and to monitor the effectiveness of trade adjustment assistance and establish funding for the Department of Commerce to produce state-level service sector export data on an annual basis, as well as reinstate funding for the Bureau of Economic Analysis's state-level foreign direct investment research, both of which are critical to state trade offices and policy makers in setting priorities for market selection and economic impact studies; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the Honorable Barack H. Obama, President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, to the United States Trade Representative Ambassador Ron Kirk and to each Member of the Maine Congressional Delegation.

APPENDIX H

Citizen Trade Policy Commission

Draft Legislation

**An Act to Ensure Foreign Corporations Have No Greater Rights
than Domestic Corporations Regarding State Procurement**

Sponsor: Citizen Trade Policy Commission

LA: Curtis Bentley

File Name:G:\Studies 2011\CTPC\Multinational bill draft.doc

LR (item)#:

Date: February 1, 2011

Title: An Act to Ensure Foreign Corporations Have No Greater Rights than Domestic Corporations Regarding State Procurement

Be it enacted by the People of Maine as follows:

Sec. 1. 5 MRSA § 1812, is amended to read:

§ 1812. Scope of purchasing authority

1. Definitions. The terms "services," "supplies," "materials" and "equipment" as used in this chapter mean any and all services, articles or things that are used by or furnished to the State or any department or agency thereof, and any and all printing, binding, publication of laws, journals and reports.

For the purposes of this section and section 1812-B, "recycled materials" means materials that are composed in whole or in part of elements that are reused or reclaimed.

The word "services," when used in this chapter, means any and all window cleaning services, elevator repair and maintenance services, laundry service, linen supply service, dry cleaning service, janitor service, floor maintenance service, rubbish and garbage disposal service, tree surgeon service, all types of office machine repair and maintenance service, exterminator service, refrigerator repair and maintenance service and oil burner repair and maintenance service when any such service is performed by an independent contractor.

2. Procurement. Except as provided in chapters 141 to 155, any and all services, supplies, materials and equipment needed by one or more departments or agencies of the State Government must be directly purchased or contracted for by the Director of the Bureau of General Services, as may be determined from time to time by rules adopted pursuant to chapters 141 to 155, which rules the Department of Administrative and Financial Services is authorized and empowered to make. It is the intent and purpose of this chapter that the Director of the Bureau of General Services purchase collectively all services, supplies, materials and equipment for the State or any department or agency thereof in a manner that will best secure the greatest possible economy consistent with the grade or quality of the services, supplies, materials and equipment best adapted for the purposes for which they are needed. Whenever supplies and materials are available for purchase that are composed in whole or in part of recycled materials and are shown by the seller, supplier or manufacturer to be equal in quality and are competitively priced, except for paper and paper products, the Director of the Bureau of General Services shall purchase such recycled supplies and materials. The Director of the Bureau of General Services shall also review procurement procedures and bid specifications for the purchase of products and

materials to ensure, to the maximum extent feasible, the purchase of products or materials that are made with recycled materials or may be recycled or reused once discarded. ~~For the purposes of this section and section 1812-B, "recycled materials" means materials that are composed in whole or in part of elements that are reused or reclaimed.~~

3. University of Maine System. The Trustees of the University of Maine System may authorize the Department of Administrative and Financial Services to act for them in any purchases.

~~The word "services," when used in this chapter, means any and all window cleaning services, elevator repair and maintenance services, laundry service, linen supply service, dry cleaning service, janitor service, floor maintenance service, rubbish and garbage disposal service, tree surgeon service, all types of office machine repair and maintenance service, exterminator service, refrigerator repair and maintenance service and oil burner repair and maintenance service when any such service is performed by an independent contractor.~~

4. Independent contractors. The Director of the Bureau of General Services may, with the approval of the Commissioner of Administrative and Financial Services add to or eliminate from the various types of service set forth in this paragraph such services performed by independent contractors as may be considered by the director to be in the best interests of the State.

5. 5. Dispute; jurisdiction. A contract for the procurement of services, materials or equipment must contain a provision that requires the contractor to bring any dispute arising from the contract in the courts in this state, and must also contain a waiver by the contractor of any right it may assert to seek a remedy in a different forum, including but not limited to arbitration pursuant to an international trade agreement.

SUMMARY

This bill provides that a contract for the procurement of services, materials or equipment must contain a provision requiring contractor to bring any dispute arising from the contract in the courts in this state, and must also contain a waiver by the contractor of any right it may assert to seek a remedy in a different forum, including but not limited to arbitration pursuant to an international trade agreement.

APPENDIX I

**Citizen Trade Policy Commission Letter
To the United States Trade Representative
Regarding the Trans-Pacific Partnership Agreement**

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

Malcolm Burson
Michael Roland
Wade Merritt
Linda Pistner
Barbara VanBurgel



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

Curtis Bentley, Legislative Analyst

STATE OF MAINE

Citizen Trade Policy Commission

November 19, 2010

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

Dear Ambassador Kirk:

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

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

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

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


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

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

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

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

Yours sincerely,

Handwritten signature of Senator Troy Jackson in black ink.

Senator Troy Jackson, Chair

Handwritten signature of Representative Margaret Rotundo in black ink.

Representative Margaret Rotundo, Chair

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

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

APPENDIX J

Citizen Trade Policy Commission Comments to United States Trade Representative Regarding Pharmaceutical Pricing

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

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



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

Curtis Bentley, Legislative Analyst

STATE OF MAINE

Citizen Trade Policy Commission

February 17, 2010

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

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

Dear Ms. Groves:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Thank you for your consideration.

Yours sincerely,

Senator Troy Jackson, Chair

Representative Margaret Rotundo, Chair

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

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

APPENDIX K

**Citizen Trade Policy Commission Letter
To Maine's Congressional Delegation Encouraging Support of
*The Public Health Trade Advisory Committee Act***

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

Malcolm Burson
Michael Roland
Wade Merritt
Linda Pistner
Barbara VanBurgel



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

Curtis Bentley, Legislative Analyst

STATE OF MAINE

Citizen Trade Policy Commission

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

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

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

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

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

Date: July 9, 2010

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

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

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

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

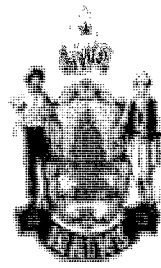
We feel this bill will improve the Trade Advisory Committee system in several ways:

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

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

APPENDIX L

**Letter from Representative Rotundo to Ambassador Kirk
Regarding Bilateral Investment Treaties**



HOUSE OF REPRESENTATIVES

2 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0002
(207) 287-1400
TTY: (207) 287-4469

September 28, 2010

Margaret R. Rotundo

District 74
446 College Street
Lewiston, ME 04240
Residence: (207) 784-3259
E-Mail: mrotundo@bates.edu

Dear Ambassador Kirk:

Thank you for the reply on August 19, 2010 from your staff to my note about international investment agreements.

In response to the message from your office, we have four specific questions about your assertion that the current U.S. model for bilateral investment treaties (BITs) and investment chapters in free trade agreements (FTAs) meets the principle of no greater substantive rights established by Congress. We also have a few more general questions about greater procedural rights and the whole concept of investor-state dispute resolution.

In general, these questions concern citizens and public officials in Maine because international investor-state claims often involve matters of public policy, including state and local regulations related to social welfare, economic development, and environmental protection. In particular, these questions relate to our concern about international investment tribunals enjoying jurisdiction over disputes that raise questions about state and federal constitutional law.

Indirect Expropriation

1. Is it true that the U.S. Model BIT permits state and local tax measures to be challenged as violations of the expropriation article? We understand that international investment tribunals have found on several occasions that tax measures can constitute forms of indirect expropriation. Why is this not a conflict with the no greater rights standard, given that the U.S. Supreme Court has rejected "takings" challenges to tax

measures, even when the tax is high enough to threaten the financial sustainability of a business?

2. Is the restriction of expropriation claims under the U.S. model to situations involving “property” as opposed to the more broadly defined “investment” adequate to ensure compliance with the “no greater rights” principle, given that “regulatory takings” under the Fifth Amendment of the U.S. Constitution have generally been found to apply only to regulations affecting real property?

Minimum Standard of Treatment

3. What prevents a claimant in a future international investment suit against the United States from asserting a right under the minimum standard of treatment article to compensation for “arbitrary” governmental measures? Although such a claim was rejected by the panel in *Glamis Gold*, how is the decision in any way binding on a future tribunal, unless the rule in *Glamis* is codified in future agreements and incorporated into existing agreements by official interpretation of the parties? Could a failure to codify the *Glamis* rule leave the door open for a future tribunal to engage in the type of aggressive review of state economic legislation that has not been available in the United States since the 1930s? What possible objections are there to such a codification, if it merely ensures that foreign investors will not enjoy greater substantive rights than those that are provided under the U.S. Constitution? Do you believe, as the message from you staff implied, that state legislatures should be required to adhere to the federal Administrative Procedure Act standard of “arbitrary and capricious” decision-making? If so, would you also argue that Congress should similarly be bound by the APA rule?

Definition of Investment

4. To comply with the no greater rights requirement, should the definition of the characteristics of investment in the U.S. model exclude the expectation of profit and the assumption of risk and include only the kinds of property that are protected by the U.S. Constitution?

Investor-State Dispute Resolution

Ultimately, we have to ask the broader question. Why is the whole system of investor-state dispute resolution not a violation of the no greater rights principle, particularly if it is understood to include procedural rights? Clearly, the bi-partisan National Conference of State Legislatures (NCSL) believes this to be so. At its July 2010 Annual Meeting in Louisville, NCSL members voted overwhelmingly to adopt a lobbying policy resolution providing that: “NCSL will not support Bilateral Investment Treaties (BITs) or Free Trade Agreements (FTAs) with investment chapters that provide greater substantive or procedural rights to foreign companies than U.S. companies enjoy under the U.S. Constitution. Specifically, NCSL will not support any BIT or FTA that provides for investor-state dispute resolution.”

If foreign investors truly enjoy no greater rights under BITS and FTAs compared to U.S. constitutional law, why allow them to litigate claims for money damages against the United States outside of the U.S. judicial system? The option of by-passing U.S. courts, in itself,

constitutes a greater right. How is the alleged distinction between procedural and substantive rights truly meaningful in this context? Why not at the very least require foreign investors to exhaust their domestic remedies under U.S. law before bringing an international investment claim?

These are questions of urgent concern to the people of Maine. They are questions about striking the right balance between commercial interests and local democracy. They are the same questions raised a century ago by Louis Brandeis when as the "people's lawyer" and later as a Supreme Court Justice, he defended the states as "laboratories of democracy" and successfully fought to protect state legislatures from the *Lochner*-era Court, which sought to substitute its political judgment about what is fair to business for the decisions of the peoples' elected legislative representatives. Why not put to rest fears of a *Lochner* era in international investment arbitration? Such fears are not totally unfounded, as is indicated by the attached statement of a group of distinguished international trade scholars.

We very much appreciate your willingness to listen to our point of view, even if it differs from the conventional wisdom in high policy circles in Washington, D.C. We look forward to your response, and in particular your reply to our four specific questions.

A continuing dialogue is necessary to resolve any misunderstandings. We all believe, surely, that the competing values of free enterprise and local democracy can be successfully balanced in international investment law, just as they have been successfully balanced, over time, under the U.S. Constitution.

Sincerely,

A handwritten signature in black ink that reads "Peggy Rotundo". The signature is written in a cursive, flowing style with a large, prominent "P" and "R".

Margaret R. Rotundo, Maine House of Representatives, District 74-Lewiston

Co-chair, Maine Citizen's Trade Policy Commission

Cc: Maine's Congressional Delegation
Governor Baldacci
James Ward, NCSL