

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.