

Meeting Summary
Maine Citizen Trade Policy Commission
May 5, 2015
Room 208, State House
Augusta, Maine

Members Present: Senator Amy Volk, Representative Robert Saucier, Representative Stacey Guerin, Representative Craig Hickman, Sharon Anglin Treat, Mike Karragiannes, Dr. Joel Kase, Linda Pistner, Jim Detert, Jay Wadleigh

Staff: Lock Kiermaier (Contract)

CTPC Chair Representative Robert Saucier convened the meeting at approximately 8:45 AM. (Note: attendance at the meeting did not meet the statutory minimum number for a quorum and no formal votes were taken)

To begin the meeting, Representative Saucier asked Commission members to introduce themselves. During the introductions, a contact sheet was passed around to obtain members' phone numbers and e-mail addresses.

Review of CTPC statutes (Lock Kiermaier, Staff)

As a means of orienting the several new members of the CTPC, staff person Lock Kiermaier briefly reviewed the CTPC statutes (10 MRSA §11-13). The following aspects of current CTPC law were highlighted:

- The CTPC was first established by the Legislature in 2003 to “*to assess and monitor the legal and economic impacts of trade agreements on state and local laws, working conditions and the business environment; to provide a mechanism for citizens and Legislators to voice their concerns and recommendations; and to make policy recommendations designed to protect Maine's jobs, business environment and laws from any negative impact of trade agreements.*” (10 MRSA §11 (3))
- The CTPC has 17 voting members who represent different facets of Maine’s political, business and non-profit sectors; these members are appointed by either the Governor, the President of the Senate or the Speaker of the House. The CTPC also has 4 nonvoting members representing the Departments of Labor; Environmental Protection; Health and Human Services and Agriculture, Conservation and Forestry;
- The CTPC is required to hold at least 2 meetings per calendar year as well as two public hearings which must take place in separate locations across the state;
- The CTPC has a quorum requirement: 11 voting and nonvoting members to start a meeting and 9 voting members to take a formal vote; and
- Every 2 years, the CTPC is required to conduct an assessment “*of the impacts of international trade agreements on Maine's state laws, municipal laws, working conditions and business environment*” (10 MRSA §11 (9) C). The Legislature appropriates \$10,000 for the CTPC to contract with an individual an/or an organization to

accomplish the assessment on predetermined topic that members of the CTPC have agreed to.

Basic Review of free trade agreement concepts (Lock Kiermaier, Staff):

Continuing with the effort to provide new members of the CTPC with a basic background in international free trade agreements, staff person Lock Kiermaier briefly reviewed the following:

- a. Overview of free trade agreements and required congressional approval
 - i. Free Trade Agreements (FTAs) are generally designed to reduce the barriers to trade between two or more countries. FTAs are agreements that require approval by majority vote of both the Senate and the House of Representatives’
- b. Current FTA’s under negotiation
 - i. Trans Pacific Partnership (TPP): The TPP negotiations began in 2009 and currently involve 13 Pacific Rim countries located in North and South America, Asia and also include Australia and New Zealand. Of considerable importance is the absence of China in these trade negotiations. The TPP is the FTA that is currently nearest to completion and is it anticipated that the agreement will be up for Congressional approval sometime in 2015.
 - ii. TransAtlantic Trade and Investment Partnership (TTIP): The TTIP negotiations began in 2013 between the United States and the member nations of the European Union (EU). The TTIP is generally considered to be a companion agreement to the TPP
 - iii. Trade in Services Agreement (TISA): The TISA negotiations also began in 2013 and are intended to liberalizing world wide trade of services which are very broadly defined but include such major areas of trade such as banking, health care and transportation. TISA is currently being negotiated between 23 different countries which include the US and the member nations of the EU.
- c. Description of “Fast Track Authority”: Formally known as Trade Promotion Authority, the term “Fast Track Authority” is commonly used to describe negotiating authority for FTAs which is granted to the President by Congress. Fast track authority restricts congressional approval of FTAs to an up or down vote without any opportunity for amendments.
- d. Description of Investor-State Dispute Resolution mechanisms (ISDS): The ISDS mechanism is a controversial measure which has been included in all recent FTAs. The ISDS process is designed to resolve international trade conflicts without creating nation-to-nation conflicts. The ISDS mechanism consists of 3 person arbitration panels consisting of lawyers who hear alleged claims of damages from investors who maintain that their ability to make profits allowed under a particular FTA has been impeded by the laws or regulations of a particular signatory state. The ISDS process does not provide for past precedent or the right of appeal and is generally held as having the ability to supersede a nation’s existing judicial system.

Briefing from Chris Rector, Regional Representative, Senator Angus King: update on current Fast Track Authority proposal

Next, Chris Rector, Regional Representative from US Senator Angus King's office, provided the CTPC with a brief update on the status of President Obama's current Fast Track proposal. Mr. Rector made the following comments:

- The most recent Fast Track Authority proposal which has been negotiated by a bipartisan group of congressional leadership includes provisions which stipulate that:
 - Any FTA agreement will be open for public comment 60 days before the President signs it;
 - Automatic discharge from congressional committees after a certain amount of time;
 - Limited floor debate in both houses of Congress;
 - No congressional amendments will be allowed to any FTA that is before Congress for approval;
 - The entire congressional approval process cannot take longer than 4 months;
 - If the FTA does not meet certain explicit congressional objectives on labor, environmental and human rights standards, a 60 vote majority in the Senate can suspend the fast track process and open the FTA to amendment.
- The Fast Track compromise proposal has been reported out of committee with a majority vote in favor of the compromise; and
- Mr. Rector also relayed Senator King's most recent statement regarding his position on Fast Track: *"Manufacturing is critical to Maine's economy. Our state thrives when we have producers creating jobs and generating growth. But our national trade policies have put Maine manufacturers and other businesses at a disadvantage, and that's why I have been critical on fast-track authority on trade agreements. It's Congress's duty to review the Executive – any executive- when it comes to trade negotiations," said Senator Angus King. "I haven't seen the underlying Trans-Pacific Partnership language yet and I will thoroughly review it when I do, but my priority in these negotiations, as well as any other potential trade agreement, is to make sure that Maine businesses can operate on a level playing field- and I remain concerned that fast-track will make it more difficult to strike a good deal for Maine."*

Briefing from CTPC member Sharon Anglin Treat: Update on status of TTIP

CTPC member Sharon Anglin Treat made a brief presentation regarding her recent attendance at a TTIP negotiating session in Brussels. In a written memorandum to the CTPC, Ms. Treat made the following points:

- Since the CTPC last met in November of 2014, two TTIP rounds of negotiations have been held; one in Brussels in February and most recently during April in NYC;

- The European Parliament is taking a much higher level of interest in current TTIP negotiations than the US Congress;
- Public sentiment in Europe is currently strongly opposed to the inclusion of an ISDS mechanism in the TTIP;
- The topics of food safety and agriculture are priorities within the EU; the EU is concerned that the TTIP will undermine food safety protections, GMO laws and small farming policies;
- The EU is seeking to have the TTIP bind US state procurement policies so as to ensure that foreign corporations will have the indisputable right to bid on state-level procurement contracts; and
- The concept of “Regulatory Cooperation” has been the subject of negotiations in recent TTIP sessions. In brief, the Regulatory Cooperation concept would require trade impact assessments of proposed federal or state regulations or laws before they are adopted. This proposal is proving to be quite controversial in both the US and the EU.

Briefing from Attorney General Janet Mills: update on her recent meeting with USTR

The CTPC next heard from Attorney General Janet Mills who reported on her recent meeting with USTR Michael Froman. The Attorney General’s comments included the following:

- AG Mills and Idaho Attorney General Lawrence Wasden met with USTR Michael Froman in Washington Dc on Friday, May 1, 2015;
- As background, AG Mills recounted that in February of 2014, 48 state AGs had signed on to a letter to Ambassador Froman focused on their concerns about their ability to regulate tobacco as it pertains to provisions in the TPP;
- As of February of 2015, the USTR had not provided a formal response to that letter and as a result, AG Mills had suggested to her fellow AGs that the letter be re-sent and it was re-sent in March of 2015;
- With still no response from the USTR, AG Mills began to draft another letter to the USTR regarding the Attorneys General concern that the TPP and other FTAs needed to be more transparent, needs to include a “carve out” for tobacco and address the state’s ability to regulate predatory lenders. While this letter has yet to be sent, it has been endorsed by 23 other state AGs and became known to the USTR;
- As a result of this yet-to-be-sent draft letter, USTR Michael Froman invited AG Mills (Democrat) and Idaho AG Lawrence Wasden (Republican) to come to Washington to discuss these bipartisan concerns;
- The meeting between USTR Froman and AG Wasden and AG Mills touched on many FTA topics including ISDS and tobacco and financial regulation;
- AG Mills reported that USTR Forman was cordial and “predictably noncommittal” regarding the concerns voiced by both Attorneys General;
- AG Mills also had the impression that the USTR was not going to press for a tobacco “carve out” in the TPP nor were they overly concerned about certain existing generalities in the model Bilateral Investment Treaty (BIT) and held that footnotes within the model BIT protect *consumer* financial regulation- an assertion which is disputed by AG Mills;

- During the meeting, USTR Froman focused on three actions that the USTR is focusing on:
 1. Refining the definition and use of “expropriation” in FTAs;
 2. Making sure that “sham corporations” don’t leave one country and simply resume business in another country so as to bring ISDS complaints against the US or any other signatory nation;
 3. Ensuring that the FDA has the ability to regulate tobacco; AG Mills commented that her concern was retaining the authority of states to regulate tobacco.
- USTR Froman also discussed the use ISDS and emphasized that the US government has never lost an ISDS case in arbitration, to which AG Mills indicated her concern about the results of whatever the next case may be.
- USTR Froman stated that the federal government would take full responsibility in defending federal and state government in any ISDS proceeding to which AG Mills indicated her concern regarding a precise understanding of exactly what role the states have in an ISDS proceeding that involves a challenge to state laws and regulations. She also indicated her concern about a situation in which a state has one set of laws or regulations that are different than those of the federal government and more precisely, state laws that the federal government might disagree with. The USTR assured her and AG Wasden that the federal government would defend the state in that situation to which AG Mills stated that she would like to see that guarantee in writing;
- The USTR and Attorneys General Mills and Wasden also discussed the practice of investors engaging in “forum shopping” in which investors chose ISDS as the forum to initiate their challenge to various governments and cited the recent Bilcon case in Nova Scotia as a prime example of this practice. They further discussed the possibility of using an international court in place of ISDS to resolve these disputes; and
- Those present at the meeting agreed that a conference call involving the USTR and other state Attorneys General could be arranged to further discuss the draft letter in question.

Possible invitations to members of Maine’s Congressional Delegation:

Upon discussion, it was agreed that the CTPC Chairs would write to members of Maine’s Congressional delegation to appear before the CTPC in the near future to discuss FTAs, fast track authority, ISDS and other international trade agreement topics. Accordingly, the CTPC Chairs will soon be sending letters of invitation to:

- Senator Susan Collins,
- Senator Angus King,
- Representative Chellie Pingree,
- Representative Bruce Poloquin

Articles of interest (Lock Kiermaier, Staff)

Due to a lack of time, it was suggested that CTPC members could review the printed copies of the articles of interest for the month of April on their own. Staff person Lock Kiermaier also pointed out that these articles are also available on the CTPC website:

<http://legislature.maine.gov/legis/opla/ctpcmtgpacket5515.pdf>

Discussion of next meeting date

Those members present tentatively decided to schedule the next CTPC meeting for:

*Thursday, May 28, 2015
8:30 AM to 10:30 AM
Room 208, Cross Office Building
Augusta, ME*

It was also decided to poll CTPC members about scheduling future CTPC meeting dates for the summer.

Adjournment

The CTPC Chairs adjourned the meeting at approximately 10:30 AM.