APPENDIX A

Authorizing Legislation
Public Law 2003, Chapter 699
(H.P. 1337 – LD 1815)

An Act to Establish the Maine Jobs, Trade and Democracy Act

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:

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

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	$0	$12,370

Other Special Revenue Funds	**2003-04**	**2004-05**
All Other	$0	$500
Other Special Revenue Funds Total	$0	$500

Appendix B

Citizen Trade Policy Commission Membership List

Citizen Trade Policy Commission

Public Law 2003, Chapter 699
Membership List as of June 3, 2005

Appointment(s) by the Governor

Matt Schlobohm
Maine Fair Trade Campaign
217 South Mountain Rd.
Greene, ME 04236

Representing Nonprofit Organizations Promoting Fair Trade Policies

Paul Volckhausen
1138 Happy Town Road
Orland, ME 04472

Representing Small Farmers

James Wilfong
PO Box 38
Fryeburg, ME 04037

Representing Small Business

Appointment(s) by the Senate President

Sen. Margaret Rotundo- Chair
446 College St.
Lewiston, ME 04240

Senate Member

Sen. Bruce Bryant
P.O. Box 643
Dixfield, ME 04224

Senate Member

Sen. Kevin Raye
63 Sunset Cove Lane
Perry, ME 04667

Senate Member

Peter Connell
74 Kal Shore Road
Norway, ME 04268-9756

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

Carla Dickstein
Coastal Enterprises Inc.
102 Federal St.
Wiscasset, ME 04578

Representing Maine-based Corporations Active in International Trade

Dr. Robert Weiss MD
10 Cromwell Drive
Orono, ME 04473

Representing Health Care Professionals

Appointment(s) by the Speaker of the House

Rep. John Patrick - Chair
206 Strafford Avenue
Rumford, ME 04276

Member of the House of Representatives

Rep. Roderick Carr
24 Pleasant Street
Lincoln, ME 04457

Member of the House of Representatives

Rep. Deborah J. Hutton
31 Carding Machine Road
Bowdoinham, ME 04008

Member of the House of Representatives

Bjorn Claeson
PICA
170 Park St.
Bangor, ME 04401

Representing Nonprofit Human Rights Organizations

Mark Haggerty
6 Grove Street
Orono, ME 04473

Representing Nonprofit Environmental Organizations

Cynthia Phinney
16 Old Winthrop Rd.
Manchester, ME 04351

Representing Organized Labor

Attorney General

Elizabeth Wyman
6 State House Station
Augusta, ME 04333

Designee

Commissioner, Department of Environmental Protection

Jim Dusch
Department of Environmental Protection
#17 State House Station
Augusta, ME 04333-0017
Representing Economic Development Organizations

Designee

Commissioner, Department of Health and Human Services

Barbara Van Burgel
Department of Health and Human Services
Bureau of Family Independence 11 SHS
Augusta, ME 04333

Designee

Commissioner, Department of Labor

Vanessa Santarelli
54 State House Station
Augusta, ME 04333

Designee

Commissioner, Department of Agriculture

Mary Ellen Johnston
Department of Agriculture
28 State House Station
Augusta, ME 04333

Designee

Commissioner, Department of Economic and Community Development

Richard Coyle
Maine International Trade Center
511 Congress Street, Suite 100
Portland, ME 04101

Designee

Staff

Curtis Bentley, Legislative Analyst
Office of Policy and Legal Analysis
13 State House Station
Augusta, ME 04333-0013
207-287-1670
Curtis.Bentley@legislature.maine.gov

Nicole Dube, Legislative Analyst
Office of Policy and Legal Analysis
13 State House Station
Augusta, ME 04333-0013
207-287-1670
Nicole.Dube@legislature.maine.gov

Appendix C

Citizen Trade Policy Commission Meeting Summaries

Citizen Trade Policy Commission
Wednesday, October 6, 2004
Meeting Summary

Members present: Sen. Stephen Stanley (co-chair), Rep. John Patrick (co-chair), Sen. Margaret Rotundo, Rep. Roderick Carr, Rep. Deborah Hutton, Paul Chartrand, Matt Schlobohm, Paul Volckhausen, James Wilfong, Carla Dickstein, Dr. Robert Weiss, Bjorn Claeson, Mark Haggerty, Cynthia Phinney, Elizabeth Wyman, Jim Dusch, Barbara Van Burgel, Adam Fisher, Mary Ellen Johnston, Richard Coyle

Members absent: Sen. Richard Kneeland

Staff present: Curtis Bentley, Legislative Analyst and Nicole Dube, Legislative Analyst

I. Introductions

Sen. Stanley and Rep. Patrick convened the Commission meeting and asked Commission members to introduce themselves and make introductory remarks.

II. Overview of Current Issues

The task force heard presentations from four members regarding the impact of international trade agreements on states.

James Wilfong, Former Assistant Administrator for International Trade, SBA briefed the commission on international trade issues affecting the small business community. Small medium enterprises (SMEs) currently represent approximately 96% of exporters in the United States. Mr. Wilfong noted that despite their large numbers, SMEs lack representation within the Office of the United States Trade Representative (USTR) and suggested the need to create an assistant USTR position as well as a ministry position within the World Trade Organization for small businesses. Given Maine's unique interests as a small rural state, Mr. Wilfong stressed the importance of building alliances with other states and educating the legislature, USTR and Maine's congressional delegation on these interests.

Cynthia Phinney, Organizer, IBEW 1837, briefed the Commission on the impact of international trade agreements on organized labor. There has been an increase in the migration of jobs to foreign countries where wages and living standards are lower, creating job losses and impacting the ability of union workers to negotiate effectively. Ms. Phinney noted that telephone centers are one of the fastest growing sectors in Maine and also one of the most threatened by outsourcing. She also emphasized that organized labor is just one of many factors effected by international trade agreements, noting the impact of Australia's trade agreement on its ability to provide accessible and affordable healthcare.

Matt Schlobohn, Director, Maine Fair Trade Campaign, briefed the commission on federalism and democracy issues raised by international trade agreements. The scope of current trade agreements and entities, such as WTO, NAFTA, and GATS has expanded beyond trade, to include public services, agriculture, quotas, investments, procurement, etc. NAFTA, which was enacted in 1994, has strong enforcement mechanisms with dispute resolution commissions that preempt our court system. State laws can conflict with NAFTA regulations, impacting the ability of states to self-regulate and self-govern. Mr. Scholbohn noted that NAFTA investment rules allow foreign investors to sue national governments, which is often used by large companies as a threat against states. He also provided three case studies to highlight these state/global conflicts that occur.

Bjorn Claeson, Director, PICA/Clean Clothes Campaign, briefed the commission on the impact of international trade agreements on government procurement rules. Mr. Claeson noted that international procurement rules are developed through a closed process that only allows international corporations with access to trade negotiations to participate. In September 2003, the USTR contacted Governor Baldacci and requested access to Maine's procurement markets in trade agreements currently under negotiation. In December 2003, Governor Baldacci agreed without public review or evaluation. However, due to requests by the Maine Fair Trade Campaign and other interested groups, Governor Baldacci withdrew Maine's authorization in May 2004. Mr. Claeson noted the need for future requests to be reviewed on an individual basis.

III. Scoping Out Key Policy Issues and Developing a Work Plan – Commission Discussion

Commission members discussed their perspectives on the purpose, key policy issues and expected outcomes of the study. The task force agreed on the following next steps"

- The commission agreed to hold its second meeting during the first two weeks in November, on a date TBD by staff based on member availability.
- The commission agreed to invite outside experts to its second meeting to provide an orientation/background on international trade agreements and governance and sector issues. The commission also agreed to develop a comprehensive workplan at the second meeting.
- Potential speakers include representatives from the Forum on Trade and Democracy, UMaine, Maine International Trade Center, Small Business Exporters Association.
- Staff will copy and distribute background materials requested by Commission members.

IV. Adjournment

The Commission meeting was adjourned at 11:30 am.

Citizen Trade Policy Commission
Tuesday, November 9, 2004
Meeting Summary

Members present: Sen. Stephen Stanley (co-chair), Rep. John Patrick (co-chair), Sen. Margaret Rotundo, Sen. Richard Kneeland, Rep. Roderick Carr, Rep. Deborah Hutton, , Matt Schlobohm, Paul Volckhausen, James Wilfong, Dr. Robert Weiss, Bjorn Claeson, Mark Haggerty, Cynthia Phinney, Elizabeth Wyman, Mary Ellen Johnston, Vanessa Santarelli

Members absent: Carla Dickstein, Barbara Van Burgel, Richard Coyle, Jim Dusch, Paul Chartrand

Staff present: Curtis Bentley, Legislative Analyst and Nicole Dube, Legislative Analyst

I. Introductions

Rep. Patrick convened the Commission meeting and asked Commission members to introduce themselves and make introductory remarks.

II. Forum on Trade and Democracy Presentation

Director, Peter Riggs and Jennifer Gerbasi from the Forum on Democracy on Trade (FTD) provided the commission an orientation/background on international trade agreements and governance and sector issues. The Forum on Trade and Democracy, a non-profit organization affiliated with the Georgetown School of Law, provides legal and technical assistance and networking support to states working on trade issues. They noted that Maine's Citizen Trade Policy Commission is the first state commission in the country charged with local democracy and oversight. The presentation provided the following information:

International Trading System

FTD staff first provided commission members with an overview of the international trading system, including background information on international agreements (World Trade Organization), regional agreements (NAFTA, CAFTA, FTAA) and bilateral agreements (US-Australia, US-Singapore, US-Chile). New developments in trade agreements, upcoming negotiations, and key rules were also discussed.

Dispute Resolution

WTO and NAFTA dispute resolution is handled by arbitration tribunals, whose authority supercedes federal law. FTD staff noted that these arbitration tribunals have the authority to punish the United States through retaliatory trade sanctions and NAFTA's investment chapter (Chapter 11) can award unlimited monetary damages for any local government action found to be in violation of international trade agreements.

Case Studies

FTD staff provided the commission with case studies focused on six policy areas – prescription drugs (Australia FTA, GATS), agriculture (WTO), energy, water resources (GATT, NAFTA), government procurement (WTO) and gambling (GATS).

State Oversight of International Trade

The commission discussed strategies to improve state oversight of trade policies. FTD staff suggested focusing on a few key areas of concern, working with the Congressional delegation, national associations, posing questions for the USTR, participating in multi-state working groups, and convening hearings on state oversight of international trade. The group also discussed other state approaches, including

California, which has a Senate Select Committee, Washington, which has a Joint Legislative Oversight Committee, and Idaho, which has oversight from an existing standing committee on energy.

III. Scoping Out Key Policy Issues and Developing a Work Plan -- Commission Discussion

Commission members discussed their perspectives on the key policy issues and workplan for the Commission. Recognizing the scope of trade policy issues impacting Maine is beyond the commission's capacity, commission members decided that it would be beneficial to choose policy areas of concern on which to initially focus their work. The commission voted to form the following three subcommittees:

1. Natural Resources/Environment - Rep. Carr, Mark Haggerty, Paul Volckhausen, Bjorn Claeson, Jim Dusch, Jim Wilfong, and Mary Ellen Johnston

2. Healthcare - Rep. Patrick, Sen. Rotundo, Dr. Robert Weiss, Liz Wyman, Matt Schlobohm, and Barbara Van Burgel

3. Labor/Economic Development. Rep. Hutton, Cynthia Phinney, Peter Connell, Vanessa Santarelli, Richard Coyle, Carla Dickstein, and Paul Chartrand

All three subcommittees will focus on four main tasks: Functional Roles in Maine, Tracking/Negotiations, Future Legislation, and Public Education. In addition, the commission agreed on the following next steps"

- The commission agreed to hold its third meeting on Tuesday, December 7th at 9:00 AM. The full commission will convene in the morning and subcommittees will meet in the afternoon.

- Subcommittees will develop individual workplans and will report back to the full commission no later than January 15th.

- The commission agreed to consider introducing legislation this legislative session that would require the Maine's state point of contact (SPOC) to the USTR to report to the Commission and the legislature.

- The commission requested additional information from staff regarding the Governor's Canadian Advisory Committee.

- The commission directed staff to draft introductory letters to the Maine Congressional Delegation, the USTR, and IGPAC.

- The commission agreed to hold a public hearing on Thursday, January 27th from 7-9 PM in Bangor. Rep. Carr agreed to make initial contact with the Husson College Business Center to check availability.

IV. Adjournment

The Commission meeting was adjourned at 3:30 pm.

Citizen Trade Policy Commission

Tuesday, December 16, 2004

State House, Room 127, Augusta

Meeting Summary

Members present: Sen. Margaret Rotundo (co-chair), Rep. John Patrick (co-chair), Sen. Bruce Bryant, Rep. Roderick Carr, Rep. Deborah Hutton, Matt Schlobohm, Paul Volckhausen, James Wilfong, Dr. Robert Weiss, Bjorn Claeson, Cynthia Phinney, Elizabeth Wyman, Mary Ellen Johnston, Vanessa Santarelli, Paul Chartrand, Richard Coyle, Carla Dickstein

Members absent: Barbara Van Burgel, Jim Dusch, Mark Haggerty

Staff present: Curtis Bentley, Legislative Analyst and Nicole Dube, Legislative Analyst

I. Introductions

Sen. Rotundo convened the Commission meeting and asked Commission members to introduce themselves and make introductory remarks.

II. Review of letters to Maine's congressional delegation

Commission members reviewed a draft letter prepared by staff to Maine's congressional delegation introducing the Commission and expressing a desire to work cooperatively with them to address Maine's needs relating to existing and developing international trade agreements. The Commission approved the draft letter with the addition of a clarifying reference to officers of the State, a list of Commission members and requested that a copy of the letter be sent to Robert Zollick at the Offices of the United States Trade Representative.

III. Public Hearing in Bangor The Commission discussed the upcoming public hearing on February 3, 2005, at the Husson Business College from 7-9 PM in Bangor. The Commission determined that the purpose of the public hearing would be to inform the public about the Commission and its goals and to receive input to guide the Commission's work especially on the upcoming negotiations on CAFTA.

IV. Press release and letters to the editor The Commission asked staff to put together a press release providing notice of the Bangor meeting and highlighting the work of the Commission. Commission members suggested that the chairs and other members write letters to the editor to publicize the Bangor public meeting and the work of the Commission.

V. Central American Free Trade Agreement The Commission directed staff to contact the Forum on Democracy to arrange a presentation on the Central American Free Trade Agreement. Commission members agreed to generate a list of concerns about CAFTA and send them to the USTR and Maine's congressional delegation.

VI. Draft Legislation In response to the draft legislation circulated in preparation for this meeting, Richard Coyle, Executive Director of the Maine International Trade Center and Commission member, briefed the Commission on the Center and how the Commission and the Center may work together on international trade agreements.

Mr. Coyle reviewed letters from the Board of the Maine International Trade Center and Commissioner Jack Cashman of the Department of Economic and Community Development, which were addressed to the Citizen Trade Policy Commission. Mr. Coyle indicated that legislation of any kind was premature at this juncture because the work of the Commission is still in its early stages.

Senator Bryant requested that Richard Coyle provide information about requests received by the Center from people who had experienced problems involving trade agreements. Representative Hutton asked Mr. Coyle to provide information on who are the single points of contact for each state with the United States Trade Representative. Commission members agreed to focus any draft legislation on the democracy side of free trade, and not just on the business side or the export/import aspect of free trade, which is the primary focus of the Center. The Commission members agreed to put in a legislative place holder for any draft legislation for the 122nd legislature. The Committee agreed to form another subcommittee to work on draft legislation for the Commission's next meeting. Jim Dusch agreed to be point person for this subcommittee.

VI. Commission's work plan and sub-committees Senator Rotundo indicated that most work of the Commission would be done in subcommittees. Commission members agreed that subcommittees would meet to conduct their business after the regular meetings of the Commission and after public hearings, when possible. The commission then broke out into the three subcommittees to review work plans and provide a framework for the direction of the Commission. The full Commission then reconvened and each subcommittee briefed the Commission on its plans.

VII. Adjournment

The Commission meeting was adjourned at 1:30 pm.

Citizen Trade Policy Commission
Friday, January 21, 2005
State House, Room 127, Augusta

Meeting Summary

Members present: Sen. Margaret Rotundo (co-chair), Sen. Kevin Raye, Sen. Bruce Bryant, Rep. John Patrick (co-chair), Rep. Roderick Carr, Dr. Robert Wiess, Liz Wyman, Vanessa Santarelli, Mary Ellen Johnston, Peter Connell, Paul Volckhausen, Jim Dusch, Mark Haggerty, Bjorn Claeson, Matt Schlobohm, Richard Coyle, Carla Dickstein, James Wilfong

Members absent: Absent: Rep. Deborah Hutton, Cynthia Phinney, Barbara Van Burgel

Staff present: Curtis Bentley, Legislative Analyst and Nicole Dube, Legislative Analyst

I. Introductions

Sen. Rotundo convened the Commission meeting and asked Commission members to introduce themselves and make introductory remarks. Paul Volckhausen informed the Commission that he will be going to El Salvador regarding organic farmers and trade issues and will report back to the Commission at its next meeting. He also requested the Commission send an introductory letter with him to share with interested parties in El Salvador.

II. Presentation on CAFTA

William Waren and Sylvia Tonova from the Forum on Democracy and Trade briefed the Commission on CAFTA and addressed other areas of international trade agreements. William Waren provided handouts outlining the presentation.

III. Commission Work Session

A. Information Requests from Last Meeting

In response to information requests from the Commission at its December 16th meeting, Richard Coyle provided the Commission with the following: written examples of retaliatory tariffs imposed by the European Union, information about requests received by the Center from people who had experienced problems involving trade agreements and information on single points of contact for the United States Trade Representative in each state.

B. Scheduling Future Commission Meetings

The Commission discussed scheduling future Commission meetings and agreed to meet on the last Friday of each month at 9:00 AM. The Commission will conduct its business in the mornings and subcommittees will convene in the afternoon. The Commission agreed to request the USTR to brief the Commission at a future meeting and directed

subcommittees to prepare questions to be sent to the USTR prior to the briefing. The Commission agreed to send the USTR its questions for a written response even if the USTR is unable to attend a Commission meeting. The Commission also agreed to invite members or representatives from Maine's Congressional Delegation to brief the Commission on trade issues and to discuss ways to effectively work together.

C. February 3rd Public Hearing in Bangor

The Commission discussed the structure of the February 3rd public hearing and agreed that it should be conducted according to the same protocol as legislative public hearings. The Commission directed staff to distribute the press release to all municipalities and development districts. The Commission also directed staff to begin to compile a more extensive list of interested parties.

D. Update from the Legislation Subcommittee

The Legislation Subcommittee briefed the Commission on its recent work. Before drafting possible legislation, the subcommittee felt it was necessary to first develop overall goals and strategies to determine if legislation was necessary and/or appropriate at this time. The subcommittee asked the Commission to further consider these proposed goals and strategies before introducing legislation and noted that the authorizing legislation allows the Commission to introduce legislation at any time.

Bjourn Claeson also briefed the Commission on his recent conversation with Kay Wilkie, Chair of the USTR's Intergovernmental Policy Advisory Committee (IGPAC) and provided a list of IGPAC members.

VI. Sub-committee Work Sessions

The Commission broke into its three subcommittees (healthcare, environment/natural resources and labor/economic development) to continue to develop and implement work plans and generate CAFTA questions for a Commission letter to the USTR. The full Commission then reconvened and each subcommittee briefed the Commission on its work.

VII. Next Meeting

The Commission agreed to hold its next meeting on Friday, February 25th at 9:00 AM. Richard Coyle agreed to work with Sen. Raye to determine the availability of the USTR and staff from Maine's congressional delegation to brief the Commission.

V. Adjournment

The Commission adjourned at 4:00 pm.

Citizen Trade Policy Commission

Friday, February 25, 2005

State House, Room 126, Augusta

Meeting Summary

Members present: Sen. Margaret Rotundo (co-chair), Rep. John Patrick (co-chair), Sen. Bruce Bryant, Rep. Roderick Carr, Rep. Deborah Hutton, Matt Schlobohm, Paul Volckhausen, James Wilfong, Dr. Robert Weiss, Bjorn Claeson, Cynthia Phinney, Elizabeth Wyman, Vanessa Santarelli, Wade Merrit (on behalf of Richard Coyle), Carla Dickstein

Members absent: Mary Ellen Johnston, Barbara Van Burgel, Jim Dusch, Richard Coyle

Staff present: Curtis Bentley, Legislative Analyst and Nicole Dube, Legislative Analyst

I. Introductions

Sen. Rotundo convened the Commission meeting and asked Commission members to introduce themselves and make introductory remarks.

II. Briefing from Representative of Maine's Congressional Delegation

- Erik Heilman (Senator Snowe)
- Jane Alonso (Senator Collins)
- Kimberly Thompson (Representative Michaud)
- Todd Stein (Representative Allen)

Congressional delegation staff met with the Commission to brief the Commission on the current status of CAFTA in Congress and to discuss ways to establish a continued dialog that would allow the Commission to provide input on trade issues. Congressional delegation staff made introductory statements on behalf of their delegation members. Staff then briefed the Commission on the process of CAFTA in Congress, indicating that CAFTA is currently signed and is now in the process of being ratified. CAFTA will go through committee hearings in the Senate Finance Committee and the House Ways and Means Committee as early as late March and final passage may be completed sometime this spring. However staff noted that the timing of final passage is dependent upon administration priorities and whether enough votes have been secured.

Congressional delegation staff encouraged input from the Commission regarding CAFTA and other trade issues, noting that while there is no mechanism to amend the CAFTA at this stage, input would help to raise questions during the hearing process. The Commission encouraged the Congressional Delegation to ensure mechanisms are established to inform the public of future trade agreements before they are signed so that the public has the opportunity to provide input.

Action Items:

- Commission members requested Congressional staff to provide 1) Summary of USTR negotiation and consultative processes, 2) List of USTR advisory committees, including membership roster and how appointments are made, 3) Written copies of introductory statements;
- Commission members directed staff to provide the Congressional delegation with a copy of the CTPC authorizing legislation and a summary of the Feb. 3rd public hearing testimony;
- Commission members directed staff to inform the Congressional delegation of future CTPC meetings;
- Commission members requested that the Congressional delegation extend an invitation to USTR to attend the next CTPC meeting on March 25th ; Sen. Raye agreed to follow up with Congressional Delegation staff;
- Commission members agreed to invite Peter Collins, former USTR staff, to the March 25th CTPC meeting; Liz Wyman agreed to check his availability

III. Discussion of Panamanian and Andean Trade Agreements

Alan Stearns, Senior Policy Advisor to Governor Baldacci, briefed the Commission on the recent USTR request for gubernatorial action on state government procurement components of trade agreements being negotiated with Panama and Andean countries. Mr. Stearns informed the Commission that USTR request had been sent to all 50 states and that he expected the Governor to issue a response within approximately 6 months. Mr. Stearns also indicated that he had not yet heard back from USTR regarding his requests for additional information. The Commission discussed ways to provide input to the Governor and agreed to discuss the Panamanian and Andean Trade Agreement request at the next meeting and asked members to analyze the request from their own industry perspectives.

IV. Discussion of Public Hearing in Bangor The Commission discussed the February 3rd public hearing at the Husson Business College in Bangor. Commission members felt the hearing was a success, noting the high turnout and broad representation of experiences and knowledge of those who testified. Commission members also noted the overwhelmingly negative testimony that was received and discussed ways to ensure that the Commission receives balanced public testimony that reflects both positive and negative experiences regarding the impact of trade agreements on Maine's economy, businesses and citizens.

The Commission also discussed the April 15-16 National Conference of State Legislatures (NCSL)/National Association of Attorneys General (NAAG) meeting in Washington DC that will discuss the impact of international trade agreements on states. The Commission felt it would be beneficial for some Commission members to attend in order to develop a dialogue with other states and explore the possibility of collaborative efforts. Commission members Rep. Patrick, Rep. Hutton, Liz Wyman and Jim Wilfong expressed interest in attending and agreed to explore opportunities for Commission members to participate.

Action Items:

- The Commission agreed to hold its second public hearing on April 5th from 7-9 PM in Portland. Commission member, Jim Wilfong agreed to contact the University of Southern Maine and Southern Maine Community College about hosting the public hearing.
- Commission members agreed to email comments and questions regarding CAFTA to staff by March 21st; Staff agreed to compile the comments and questions into a letter to send to the Congressional delegation
- The Commission passed a motion proposed by Dr. Weiss that the Commission chairs contact representatives from California and Washington to determine if representatives from these states would be attending the April 15th NCSL/NAAG meeting and to explore how Commission members can participate in the meeting.
- Commission agreed to distribute press release and letters to a variety of media outlets, including but not limited to Brunswick Times Record, Lewiston Sun Journal, Biddeford, Portland Press Herald, Rumsford Times, and the Kennebec Journal; Rep Hutton requested to write an editorial for Brunswick Times
- The Commission directed staff write a press release providing notice of the Portland meeting and highlighting the work of the Commission; Commission members suggested that the chairs and other members write letters to the editor to publicize the Portland public meeting and the work of the Commission.

VI. Sub-committee Work Session

The Commission broke into its three subcommittees (healthcare, environment/natural resources and labor/economic development) to continue to develop and implement work plans and generate CAFTA questions for a Commission letter to the USTR. The full Commission then reconvened and each subcommittee briefed the Commission on its work.

VII. Adjournment

The Commission meeting was adjourned at 4:00 pm.

Citizen Trade Policy Commission

April, 22, 2005

State House, Room 126, Augusta

Meeting Summary

Members present: Sen. Margaret Rotundo (co-chair), Rep. Deborah Hutton, Matt Schlobohm, Paul Volckhausen, Dr. Robert Weiss, Bjorn Claeson, Mark Haggerty, Cynthia Phinney, Mary Ellen Johnston, Wade Merrit (on behalf of Richard Coyle)

Members absent: Sen. Raye, Sen. Bryant, Rep. Patrick, Rep. Carr, Barbara Van Burgel, James Wilfong, Elizabeth Wyman, Jim Dusch, Richard Coyle, Vanessa Santarelli

Staff present: Curtis Bentley, Legislative Analyst

I. Introductions

Sen. Rotundo convened the Commission meeting and asked Commission members to introduce themselves.

II. Briefing from Lisa Reinhalter

Lisa Reinhalter presented her preliminary findings from her telephone interviews with Commission members regarding the purpose, mission and challenges of the Commission. Ms. Reinhalter informed the Commission that these findings will be presented in her research paper that she will provide to the Commission in May. Her preliminary findings are attached.

III. Discussion of Annual Report and Assessment

Report: The Commission agreed to develop the report and that it should detail what the Commission has done over the past year and include public hearing notes and meeting minutes.

Assessment: The Commission established an "assessment subcommittee" to work with the three other subcommittees to determine the form and subject matter of the assessment. The assessment subcommittee was directed to consider the input provided by the other three subcommittees and to give its recommendations for the assessment to the Commission at the May 27th meeting. The assessment subcommittee includes Cynthia Phinney, Bjorn Claeson and Dr. Wiess. The Commission agreed to use those recommendations to develop a package of information and ideas to be used by an outside organization such as the Forum on Trade and Democracy to do a deeper assessment based on the direction and information provided by the Commission. The Commission directed staff to find out whether or not contracting with an outside source for the assessment would be require that it go through a bidding process.

IV. Scheduling the Next Meeting and Public Hearing.

The Commission will meet on May 27th in Augusta and will set the date for its next public hearing at that meeting. The Commission requested that a discussion of how the Commission can do a better job of reaching out to all sides of the issues surrounding trade agreements including educational efforts, be put on the agenda for the next meeting.

Guests. The Commission was informed by Wade Merrit that Christina Sevilla from the Office of the United States Trade Representative has verbally agreed to attend a meeting of the Commission. Mr. Merrit will check her availability for the May 27th meeting. If she is unavailable the Commission would like to have Peter Collins attend the next meeting. The Commission agreed to invite guests that have expertise in economics and that can provide an economic overview of Maine's economy and how trade agreements and other factors have shaped that economy. It was also agreed to invite someone with expertise in labor matters that can provide information about how Maine's labor force and how it has been affected by trade agreements and other factors over the years. Members cited a number of people who are potential guests and staff was directed to work with Commission members to make necessary arrangements.

VI. NCSL Meeting Report Back and IGPAC Membership.

Rep. Hutton provided the Commission with a brief overview of the National Conference of State Legislatures meeting held in April 2005 in Washington D.C. regarding states and international trade agreements. Among other things, Rep. Hutton reported that there was extreme concern among all states regarding trade agreements and in particular state sovereignty issues. Rep. Hutton also informed that Commission that it might be possible to get a representative from the northeast on IGPAC and that Elizabeth Wyman is a potential candidate, however, the process for placing someone on IGPAC is unclear at this time. The Commission unanimously voted to support Elizabeth Wyman's induction into IGPAC. Rep. Hutton provided the Commission with documents from the meeting and Wade Merrit provided the remarks of Ambassador Peter Allgeier, both are attached.

VII. GAO Study.

The Commission voted unanimously to have Rep. Hutton and Wade Merit draft language to ask Sen. Snowe to request the GAO to study the relationship between the USTR and the states. Once the initial language is drafted they will circulate it to members by email for comment. If there consent about sending the letter it will be sent out directly however, if there is dissent among members, it will held and discussed at the Commission's next meeting. Mr. Merrit stated that the USTR has been asked to convene a meeting of SPOCs to talk about issues regarding communications between the USTR and the states. Wade Merrit stated that SPOCs across the nation are frustrated with the current process.

VIII. Legislation.

The legislative subcommittee presented its recommendations to the Commission and the Commission voted unanimously to:

1. Have staff research any potential legal problems that may need to be addressed before adopting the recommended legislation;
2. Directed the legislative subcommittee to meet with Allen Sterns to ensure the Governor has no concerns regarding the recommended legislation; and
3. If the Governor has no concerns, directed staff to draft language to carryout the recommendations.

The subcommittee's recommendations are attached.

IX. CAFTA Statement.

The Commission voted unanimously to put together a subcommittee to draft a letter to the Governor, USTR and Maine's Congressional Delegation that strongly states the Commission's support of international trade but based on the following concerns and two public hearings the Commission cannot support CAFTA. Those concerns among other are:

1. Maine's sovereignty;
2. Health issues in Maine and abroad;
3. Environmental impacts;
4. Effectiveness of treaties;
5. CAFTA not beneficial to many small businesses;
6. Intellectual property issues;
7. The process used to negotiate CAFTA;
8. Other similar trade agreements' unintended consequences; and
9. CAFTA is not a fair international trade agreement.

The Commission directed the subcommittee (Matt Schlobohm, Mary Ellen Johnston and Bjorn Claeson) to draft a letter that encompasses in more detail the sentiments and concerns listed above and send it to members via email. If there is agreement on its contents it should be sent out ASAP but if there is dissent the letter will be held until it can be discussed at the next meeting.

X. Funding Sources.

The Commission agreed that it can't rely on General Fund money and needs to look for outside funding sources. The Commission discussed possible sources of funding such as The Noyce Foundation, Maine Initiatives and the Hood Foundation. The Commission discussed needs that would require additional funding such as staffing, additional meetings, travel etc. There was discussion about developing a plan with a long-term vision that would identify funding needed to

meet that vision. Sen. Rotundo suggested members individually initiate conversation with potential funding sources and Rep. Hutton suggested that when Sen, Rotundo and Rep. Patrick meet with the Forum on Democracy and Trade in May they discuss possible funding sources. Matt Schlobohm suggested the Commission draft a letter of inquiry for funding sources. The Commission directed staff to check for any potential legal problems with nonprofits making grants to governmental entities.

XI. Adjournment.

The Commission adjourned its meeting at approximately 2:00PM without convening subcommittees.

Citizen Trade Policy Commission

Friday, May 27, 2005

State House, Room 126, Augusta

Meeting Summary

Members present:, Rep. John Patrick (co-chair), Sen. Kevin Raye, Rep. Deborah Hutton, Matt Schlobohm, Paul Volckhausen, Bjorn Claeson, Mark Haggerty, Cynthia Phinney, Richard Coyle, Elizabeth Wyman, Vanessa Santarelli, Carla Dickstein, Peter Connell

Members absent: Sen. Margaret Rotundo (co-chair), Sen. Bruce Bryant, Rep. Roderick Carr, Barbara Van Burgel, Dr. Robert Weiss, Mary Ellen Johnston, James Wilfong, Jim Dusch

Staff present: Nicole Dube, Legislative Analyst

I. Introductions

Rep. Patrick convened the Commission meeting and asked Commission members to introduce themselves.

II. Briefing: Maine's Economy and the Impact of Trade Agreements

Dr. Charles Lawton, Senior Economist, Planning Decisions, Inc. provided the Commission with a general overview of Maine's economy, citing three main trends: the income-earnings paradox, the natural resources glut, and the housing boom. Dr. Lawton also discussed the impact of trade agreements on Maine's economy. (A copy of Dr. Lawton's presentation is attached)

III. Discussion of Commission's Annual Report and Assessment Requirements

Rep. Patrick briefed the Commission on the Forum on Democracy and Trade Leadership Meeting on International Trade and the States, held on April 29th – May 1st in Washington DC. The meeting provided a forum for states to convene to discuss critical trade issues impacting states as well as develop and cultivate collaborative efforts. Rep. Patrick and Sen Rotundo attended the meeting on behalf of the Commission.

The Commission also received a report back from the Assessment Subcommittee indicating that they are in the process of working with the three other subcommittees (Healthcare Subcommittee, Business, Labor and Economic Development Subcommittee and Environment and Natural Resources Subcommittee) to determine the form and subject matter of the assessment. The Commission directed staff to provide a list of other state trade commissions as well as an example of an assessment conducted by another state.

IV. Scheduling the Next Public Hearing

The Commission decided to hold its next public hearing in October at a location in Aroostook County. The Commission directed staff to email potential dates for the public hearing to the Commission. The Commission also discussed how it can do a better job of reaching out to all sides of the issues surrounding trade agreements so that they receive comprehensive information at its future public hearings. Potential strategies identified included utilizing the Aroostook County legislative delegation to inform constituents of the public hearing and increasing advertising to encourage participation from those in the business community and those in support of trade agreements. The Commission also discussed potentially inviting leaders from the metal, forest products and exporter industries to a future meeting.

V. Discussion of the June 24th Meeting

The Commission agreed to gather individual and subcommittee data requests and questions by June 10th to send to Christina Sevilla from the Office of the United States Trade Representative in advance of her briefing to the Commission scheduled for June 24th.

VI. Commission Response to CAFTA

Commission member, Bjorn Claeson provided the Commission with a draft statement in opposition to DR-CAFTA for consideration by the Commission. The Commission members present voted to unanimously adopt an amended version of the statement, pending review of the final language. Bjorn Claeson agreed to email the final revised statement to the Commission no later than Tuesday, May 31st for final approval. The Commission noted that DR-CAFTA is scheduled for a mock mark up in the Senate Finance Committee on June 14th after which it will be considered by the House Ways and Means Committee. Given the short time frame in which DR-CAFTA is being considered in Congress, the Commission agreed to conduct immediate media work around the release of its statement. The Commission directed staff to:

- Draft a press release
- Schedule a press conference at the Statehouse for the week of June 6th
- Send a copy of the statement to newspaper editorial boards along with an offer from the Commission Chairs to meet with them to discuss the statement
- Email the statement to interested parties
- Contact Congressional Delegation staff to determine if they are available to meet with the Commission on June 17th to follow up on DR-CAFTA.

VII. Introduction of Legislation this Session

The Commission received an update from the legislation subcommittee indicating that they were unable to complete legislation in time to be considered this legislative session and will continue

to work on developing legislation for possible consideration during the Second Session of the 122nd Legislature.

VIII. USTR State Request on GATS

The Commission reviewed a draft letter in response to a May 3rd USTR memo to the State Points of Contact (SPOCs) and the Intergovernmental Policy Advisory Committee (IGPAC) asking for comments regarding ongoing negotiations at the World Trade Organization (WTO) on the General Agreement on Trade in Services (GATS). The draft response from the Commission asked that USTR carve out Maine state and local government actions from the new GATS offer scheduled to be tabled by May 31st until the Commission has had an opportunity to adequately review and analyze the language of the proposed commitment. The Commission members present voted unanimously to adopt the letter with minor revisions and send it immediately to USTR.

IX. Sub-committee Work Session

The Commission broke into its three subcommittees (healthcare, environment/natural resources and labor/economic development) to continue to work on the Commission's annual assessment. The full Commission then reconvened and each subcommittee briefed the Commission on its work.

X. Adjournment.

The Commission adjourned its meeting at approximately 3:00PM

Citizen Trade Policy Commission

Friday, June 25, 2005

State House, Room 126, Augusta

Meeting Summary

Members present:, Rep. John Patrick (co-chair), Sen. Bruce Bryant, Rep. Roderick Carr, Rep. Deborah Hutton, Matt Schlobohm, Bjorn Claeson, Jim Dusch, Cynthia Phinney, Richard Coyle, Mary Ellen Johnston, Elizabeth Wyman, Vanessa Santarelli, Carla Dickstein, Peter Connell, Dr. Robert Weiss.

Members absent: Sen. Margaret Rotundo (co-chair), Sen. Kevin Raye, Paul Volckhausen, Barbara Van Burgel, Mark Haggerty, James Wilfong.

Staff present: Nicole Dube, Legislative Analyst

I. Introductions

Rep. Patrick convened the Commission meeting and asked Commission members to introduce themselves.

II. Commission Work Session

Staffing

The Commission discussed its staffing needs and voted unanimously to direct the Chairs, in consultation with staff, to develop a written policy establishing procedures and guidelines for the utilization of Commission staff during the legislative session.

Annual Report and Assessment Requirements

The Commission received a report back from the Assessment Subcommittee indicating that they are still in the process of working with the three other subcommittees (Healthcare Subcommittee, Business, Labor and Economic Development Subcommittee and Environment and Natural Resources Subcommittee) to develop the form and subject matter of the annual assessment. The subcommittees agreed to send draft assessments to staff before the next Commission meeting and the Commission directed staff to provide a draft report and assessment for the Commission to review at its next meeting. The Commission also agreed to ask the Forum on Democracy and Trade to review the draft subcommittee assessments in order to provide technical assistance.

USTR State Request on GATS

The Commission discussed its May 27th letter to USTR in response to a May 3rd USTR memo to the State Points of Contact (SPOCs) and the Intergovernmental Policy Advisory Committee (IGPAC) asking for comments regarding ongoing negotiations at the World Trade Organization

(WTO) on the General Agreement on Trade in Services (GATS). The response from the Commission asked that USTR carve out Maine state and local government actions from the new GATS offer until the Commission has had an opportunity to adequately review and analyze the language of the proposed commitment. The Commission did not receive a response from USTR. The Commission members present voted unanimously to send a letter to the Congressional delegation asking for assistance obtaining a response from USTR in order to strengthen and clarify the system for communicating with USTR in future. Commission member Liz Wyman agreed to draft the letter and staff agreed to follow up with the Congressional delegation.

Scheduling the Next Commission Meeting

The Commission agreed to hold its next meeting on July 22nd in order to review and vote on its annual report and assessment and directed staff to confirm that a quorum will be present. The Commission decided not to meet in August due to its inability to secure a quorum. The Commission also agreed to extend another invitation to USTR to attend its September meeting. Commission member Richard Coyle agreed to check USTR's availability in September.

III. Sub-committee Work Session

The Commission broke into its three subcommittees (healthcare, environment/natural resources and labor/economic development) to continue to work on the Commission's annual assessment. The full Commission then reconvened and each subcommittee briefed the Commission on its work.

IV. Adjournment.

The Commission adjourned its meeting at approximately 3:00PM

Appendix D

Citizen Trade Policy Commission Public Hearing Summaries

Citizen Policy Trade Commission
Summary of Public Hearing Testimony
Husson Business College, Bangor
February 3, 2005

I. TESTIMONY BY TOPIC

Democracy Issues

- Civil governments are taking second place to a system of corporate power and trade tribunals under CAFTA
- CAFTA will erode basic democracy and local sovereignty and control, as well as the systems of protection of our health, environment and economic security
- Trade agreements are based on the premise that most government regulations are "nontariff" barriers to trade; this creates a fundamental challenge to local and sate democratic authority; Maine will not benefit from these treaties, only multinational corporations
- Trade agreements are considered Trade Promotion Authority(Fast Track) legislation that allows the President and US Trade Representatives to negotiate a trade deal and force it on Congress, unaltered, for a yes or no vote with no ability for Congress to amend it; this process limits the democratic process; public participation is limited in these circumstances
- Negotiations for trade agreements are being done without the input of citizens from here and abroad who are the ones being impacted by those agreements

Maine Jobs/Economy

- At 163 locations across Maine over 11,630 workers have been laid off
- Verizon Communications has been forced by the Free Trade Agreements to accept lower pay and pensions for operators hired after 1999 in order to keep the jobs in Maine
- Potential impact of trade agreements on the "Poland Spring Water Use Agreement" with the State of Maine
- Procurement rules in CAFTA undermine a state's ability to exercise purchasing preferences to promote local economic development or the conservation of natural resources
- International trade agreements such as CAFTA, NAFTA and GATT would make it possible for global corporations to override local controls on development, zoning and planning
- Impact of job losses on care of children; families can no longer afford quality child-care for their children because of job losses due to trade agreements
- Erosion of Maine manufactured products and jobs due to cheap imports of items from other countries, including furniture (impact on forest industry in Maine)
- Free trade agreements are negatively effecting Maine's pulp and paper industry; IP already has operations in more than 40 countries and sells its products in more than 120 nations
- Trade agreements have created nothing but stagnant incomes and rising inequality; NAFTA has been a disaster for Maine, costing the people of Maine nearly 24,000 high

paying manufacturing jobs in the last 10 years; American corporation are often forced to compete with foreign corporations who are not held to the same labor or environmental standards

Labor Issues

- Commercial rights have more power than labor rights under CAFTA
- Entry of Canadian workers into the US as business visitors to set modular homes violates NAFTA and US immigration law. Canadian workers are going beyond status granted to them and are engaging in building or construction work that otherwise would be available to US labor force
- Maine representatives should demand the creation and enforcement of fair laws that will govern all workers under NAFTA before duplicating their mistakes with CAFTA (i.e. inequitable pay and child labor)

Healthcare/Pharmaceuticals

- US-Australia Free Trade Agreement (section 2, transparency) potential impact on U.S. Medicare/Medicaid programs
- US-Australian Free Trade Agreement impact on prescription drug prices for US and Australian consumers; agreement could block the importation of less expensive drugs into the US; higher prices for drugs under the Medicaid program and VA health services
- Inclusion of test data secrecy/market exclusivity provisions in the FTA will slow the introduction of generic drugs, decrease competition, raise prices and hinder access to lifesaving medicines in the Dominican Republic-CAFTA countries (erodes countries' protections under the Douha Declaration).
- Healthcare is considered a service and can be regulated by trade agreements
- Under CAFTA, "Non-tariff barriers to trade" can be interpreted to mean that private companies can demand access to provide, for profit services; that are currently administered by the government; this provision of CAFTA could impact the Maine RX law and Dirigo Health insurance program

Libraries

- Public libraries may be subject to the same market access rules as private sector businesses under trade agreements (libraries should not be considered key players in our economic system and should not be subject to market access, national treatment and most-favored nation rules)

CAFTA/NAFTA

- Petition submitted to US Congress by 800 delegates representing five hundred social organizations at the Meso-American Forum on Free Trade Agreements held in San Salvador, El Salvador in July of 2004 in opposition to CAFTA because they believe it will benefit only the most wealthy and powerful in their countries at the expense of the majorities of their population
- Some of CAFTA's provisions are alarming: violation of people's democratic right to enact laws protecting their own health and safety; privatization of government services, including water supplies and fair-labor standards are not enforced

- CAFTA has been revised and no longer includes sanctions for violations of labor standards; CAFTA does not encourage countries to treat their workers better
- NAFTA Chapter 11 gives corporations the rights to sue for damages if they believe they have been hurt by the action of government; this provision challenges democracy
- CAFTA is worse than NAFTA because the definition of "investment" over which a corporation can sue is broader under CAFTA than NAFTA; tribunals can accept appeals directly from a corporation even if a country has not approved the appeal; tribunal proceedings are secret and the public can not see what decisions are made
- CAFTA/NAFTA/FTAA are organizations directly linked to the WTO; WTO is an organization designed by representatives of multinational corporations who have no allegiance to any nation and have no regards for the welfare of common local people; when laws of individual member nations came into conflict with laws of the WTO, they have to submit to the WTO, even against the will of the local people
- Petition submitted by Midcoast Maine citizens demanding that NAFTA be eliminated and that the US and member countries return to bilateral trade as it had before NAFTA was created
- CAFTA will not help the majority of people in Central America, only four groups will benefit; importers of basic grains, private owners of companies that sell electricity, telecommunications and transportation services, developers of assembly plants and banks that charge Salvadoran émigrés 25 cents on every dollar they send back home
- CAFTA prohibits numerical limits on harmful service activities, zoning restrictions based on size or density, restrictions on harmful services such as waste incineration, energy extraction or tourism

Environment

- CAFTA's Chapter 17 provision dealing with protecting the environment are toothless and mostly unenforceable provisions
- CAFTA's new investment provisions give foreign corporations more rights than does NAFTA to challenge laws that protect our health and environment; multinational corporations could sue taxpayers for cash damages if they feel that environment or public health laws interfere with their profits
- Impact of trade policies on the independence of state action to experiment with ways of improving the well being of our people and environment

Agriculture

- CAFTA could devastate small farmers in both the U.S. and Central America; elimination of an effective price floor would force down market prices, allowing corporate agribusinesses to sell their products at well below cost
- CAFTA would open the door to imports into the US of crops that would threaten small farmers and devastate rural Maine communities
- Free trade agreements have adversely affected Maine potato farmers; can not compete with Canadian farmers because the playing field is not level under the trade agreements; Canadian potatoes come into Maine duty free and are priced below Maine potatoes

General Comments

- We need international trade and investments, but they should be governed by fair and equitable trade policy
- Trade treaties threaten to making privatizing the US Social Security system much more difficult and costly to reverse

II. REQUESTS MADE OF COMMISSION BY SPEAKERS

Government procurement

- What is at stake for Maine if we commit to government procurement deals in new trade agreements?

CAFTA/NAFTA

- Will we the people have the power to elect and discharge the members of the trade tribunals where trade disputes will be heard?
- Which body of law will govern these tribunals?
- Do the investment rules contained in CAFTA Chapter 10 and NAFTA Chapter 11 get in the way of Maine renegotiating the terms of the Nestle water agreement?
- What will be the impact of the WTO recent ruling that US laws restricting internet gambling violate the GATTS service treaty have upon Maine's revenues generated from gambling (racinos)?
- Commission should investigate the possibility of ensuring that all measures that affect Maine's public library system are placed beyond the reach of CAFTA, proposed FTA and negotiations to expand GATTS.
- What will be the impact of CAFTA on the majority of people in Central America and who will win and who lose in Maine?
- What are the potential ramifications of trade treaties on the President Bush's social security privatization proposal?

Healthcare

- Investigate and raise questions about whether Maine people really benefit by having healthcare services covered, under any specific trade agreement. If a trade agreement does not benefit Mainers, can state healthcare policies be taken out of trade agreements? If not, what other avenues of recourse exist?

Other

- What are the impacts that the Andean Free Trade Agreement will have on Maine, as well as Ecuador, Columbia and Peru? Who will benefit from this trade agreement?

III. RECOMMENDATIONS FOR IMPROVING TRADE AGREEMENTS

Democracy /Federalism Issues

- Support Representative Michaud's bill to repeal Trade Promotion Authority
- Oppose current investor-state dispute provisions (Ch 10 of CAFTA):
    - Governments should not be able to be sued without their consent

    - The public should be allowed to examine all records of all tribunals
    - Tribunal judges should be appointed by governments
    - Tribunals should not have authority to override the decisions of supreme courts of countries
    - Corporations should not be able to challenge non-discriminatory environmental and consumer protection laws
    - Foreign corporations should not be granted greater rights than domestic corporations
- Have an exchange of letters:
    - That clarifies ability of governments to set environmental, health etc. regulations and that these decisions cannot be challenged in a tribunal
    - That clearly and narrowly defines "tantamount to expropriation" to not include non-discriminatory environmental, health-related, or security motivated decisions by competent authorities
- USTR should keep state legislators informed about trade agreements, can use NCSL as a resource
- Negotiations of international trade agreements should be public information
- Citizens should be given the opportunity to provide input on trade agreements during negotiation

Procurement

- Government procurement policies such as living wage laws, anti-sweatshop policies, "buy-local" preferences, and human rights procurement legislation much be protected
- Maine should not bind itself to government procurement rules of CAFTA

Labor / Economic Development

- Preserve Maine's ability to set zoning restrictions based on size and/ or density
- Labor rights in CAFTA should be more robust, set high international standards, not just local laws
- ILO's Core Conventions of labor rights should be linked to trade in the way that intellectual property rights have been through TRIPS
- Labor provisions should be enforceable
- Fines of labor violations should not be capped at $15 million
- There should be oversight of countries' payment of fines so that the money goes to improving labor standards
- Fines that countries pay for labor violations should be paid to an international fund to relieve poverty in developing nations, not to government where violation took place
- Support right to unionize overseas

Agriculture

- Maintain FDA regulations
- Price floors should not be eliminated when it forces prices below the cost to produce and hurts small farmers
- US agricultural subsidies to corporate agribusinesses should be eliminated
- Ensure Canadian compliance with NAFTA regulations re: potato importation

- Oppose US importation of sugar

Environment/ Natural Resources

- There should be an exchange of letters that clarifies that Parties of NAFTA and CAFTA have the right to make environmental regulations that are necessary to protect human life and health and that this decision shall be taken by competent authorities in that country and that tribunals cannot override these regulations
- Preserve Maine's ability to set environmental regulations:
  - emissions caps and trade with lower emissions producers
  - prohibition of waste incineration
  - phasing-out of arsenic treated lumber
  - numerical limits on harmful service activities, energy extraction, and tourism
  - government purchase of recycled materials, clean cars, and electricity from alternative energy sources (biodiesel)
- Make environmental regulations of CAFTA enforceable
- Strengthen environmental provisions of CAFTA beyond simply "strengthening *capacity* to protect the environment"
- Provide funding to help Central American countries enforce environmental regulation
- Oppose privatization of drinking water (which the EU is pressuring the US to do); i.e. don't list drinking water as a service covered under GATS
- Don't prohibit people from collecting rain water for personal use
- Address the issue of invasive species of animals, insects and plants

Healthcare/ Pharmaceuticals

- Intellectual property rights should not restrict ability of governments to make generic drugs available in case of public health crises
- Oppose "test data" secrecy/ pharmaceutical market exclusivity provisions in CAFTA which effectively prohibit generic competition to brand name drugs for five years
- Oppose extension of patent rights of pharmaceutical drugs to 25 years
- Make sure that trade agreements don't interfere with:
  - drug re-importation policies
  - Dirigo Health Plan
  - Maine RX
  - Medicare

Essential services

- Governments should be allowed to chose which services to bid for, instead of the current policy in which they carve out certain services
- Libraries should be protected from market access rules of trade agreements even if they do charge small fees to cover basic costs

Modular Homes

- Enforce NAFTA regulations at US-Canadian border to prohibit the entry of Canadian drivers as business visitors to set modular homes

General Suggestions

- Vote against CAFTA
- Get rid of NAFTA
- Withdraw from WTO / support it's abolishment
- Support only bilateral trade agreements

Citizen Policy Trade Commission
Summary of Public Hearing Testimony
University of Southern Maine, Portland
April 19, 2005

I. TESTIMONY BY TOPIC

Democracy Issues

- Trade deals which undermine democratic institutions via secret dispute resolution tribunals or other mechanisms should be rejected
- Current model for passage of trade agreements is deeply undemocratic; "fast-track" authority places total power in the hands of a few trade bureaucrats
- NAFTA gives corporations the right to challenge our laws in secret tribunals and to demand compensation from the government; NAFTA's investment chapter is flawed and multinational corporations have exploited these flaws to challenge legitimate government regulations designed to protect the environment, shield consumers from fraud and safeguard public health
- AFL-CIO strenuously objects to the inclusion of investment measures modeled on NAFTA Chapter 11 in a trade agreement with Central America; an agreement with Central America should contain broad carve-outs allowing governments to regulate corporate behavior to protect the public interest; a trade agreement should rely on government-to-government rather than investor-to-state dispute resolution

Maine Jobs/Economy

- America should not export its jobs, skills and knowledge at the expense of the American worker; Maine is an example of NAFTA's effects: Bass Shoe, Dexter Shoe, Eastland Shoe, Wilner Wood, Hathaway shirts are all victims of trade agreements
- Loss of manufacturing jobs in Maine that pay a living wage with benefits is a predictor of the future for all and not a temporary shift in our region's economy
- Break up large retailers; the small independent retailer must be revitalized; limit large retailers to one store per Congressional district

Labor Issues

- National and multi-national corporations have zero consideration for human rights, the rights of workers to organize or for the environment; trade agreements should not go forward unless they are reprioritized
- Commercial rights have more power than labor rights under CAFTA
- CAFTA and NAFTA brought more poverty to the poorest workers in the world; factory owners in foreign lands are pushed into paying ever-lower wages to workers by the CEO's of huge American businesses that want "Deals" on cheaper products
- Markets are not ends in themselves, but tools to be employed for the benefit of the people; no one opposes trade, but markers without morals – without some socially-determined element of fairness-are prescriptions for disaster
- Trade agreements have lowered the wages of workers both in America and abroad

- Workers in Central America have too often been excluded from the benefits of increased trade in the region, as they continue to have their basic human rights respected in the workplace; not one Central American country included in CAFTA comes close to meeting a minimum threshold of respect for the ILO's core labor standards
- NAFTA and CAFTA make no provisions for the welfare of workers; we must protect the laws we have in effect for the protection of workers, and make sure that no outside organization is empowered to remove these carefully considered provisions in our legal system
- We must find a way to use our labor force in the U.S. and maintain a manufacturing base here; we must challenge corporations to find ways to remain competitive here, prior to exploiting labor forces in other countries that have no laws to protect them
- Corporations should be watch dogged and held accountable to treat all labor forces with respect and dignity and compensate them a fair wage and benefit
- Globalization and free trade as they are currently structured will not increase manufacturing jobs or jobs in general
- Under NAFTA, women in both North and South America have lost jobs, benefits and safe working conditions
- Every agreement at the international and federal levels has a human cost, corporations should not have the power to supersede the laws we make in Maine nor should they control our state's economic well-being
- United States should not be allowed to run a trade deficit

Healthcare/Pharmaceuticals

- Free trade agreements conflict with public health policies, especially those having to do with health care reform; domestic laws that restrict markets for health services, no less than for other commodities, are seen as barriers to trade
- NAFTA and CAFTA contain provisions that allow multinational corporations to sue a government for takings of their profits; this provision can have impacts on environmental laws, working conditions, public welfare and health care; Maine's RX program and Dirigo Health program could be at risk

Libraries

- Impact of international treaties, such as the TRIPS, on public libraries; need to be extremely wary that treaties governing the commercial exchange of intellectual property do not impinge on our democratic access to information and do not thwart the ability of public libraries to provide the citizens in Maine and elsewhere unfettered, free access to information that is sp critical to safeguard and revitalize democracy itself
- Public libraries may be subject to the same market access rules as private sector businesses under trade agreements (libraries should not be considered key players in our economic system and should not be subject to market access, national treatment and most-favored nation rules)

CAFTA/NAFTA

- CAFTA/NAFTA are trade agreements that are not carried out in the best interests of all; the only people who benefit are corporate CEOS

- CAFTA is not about free trade; agreements like CAFTA turn people into sharecroppers for the global corporate elite
- Trade deals lacking adequate provisions for labor, the environment and public health should be rejected
- CAFTA will be used as a smokescreen to reward other countries at the expense of the American workforce
- CAFTA is not beneficial to anyone except the already super rich
- Free trade agreements of the last decade have been sold as a panacea, but in reality they have been an agent of destruction for societies in all corners of the World
- Free trade policies promote the conditions of war
- Current model of free trade agreements limits public investment in social programs including education, health care and environmental protection, while placing no limits on military budgets
- The introduction of free trade policies in many countries has resulted in widespread popular unrest which has been targeted by police and military crackdowns
- We need trade agreements that start with human values- dignity of persons, primacy of the common good, safeguarding the environment, agreements win which our government upholds those values, not another agreement that serves only the greedy
- NAFTA has been nothing but a disaster for Maine, costing the people of Maine nearly 24,000 high paying manufacturing jobs in the past 10 years

Environment

- Free trade rules make it easy for the U.S. companies to export hazardous pesticides
- Trade agreement rules may apply to water, including municipal water treatment and wastewater treatment and water investments such as the State of Maine's agreement with Poland Springs
- A state has no authority to alter the rights of foreign investors under international law, either by law, regulation or contract (in reference to the State of Maine's agreement with Poland Spring Water)

Gambling

- As a result of actions taken by the federal government during GATS negotiations, Maine and other state legislatures must now contend with the prospect that tough market access rules in international trade agreements will be applied to their gambling laws and practices, without their consent

Agriculture

- CAFTA could devastate small farmers in both the U.S. and Central America; elimination of an effective price floor would force down market prices, allowing corporate agribusinesses to sell their products at well below cost

II. REQUESTS MADE OF COMMISSION BY SPEAKERS

Gambling

- All members of the Commission and the Legislature should examine the GATS Article XVI Market Access rules and seek legal guidance to begin to understand their significance in relation to our state laws on gambling
- Determine what steps the U.S. Administration can take to ensure that the prerogative of the State of Maine to regulate gambling remains unfettered by the GATS and any other international treaty; what concrete steps can the federal government now take to undo or mitigate the damage it has caused?

CAFTA/NAFTA

- Make a formal recommendation to Maine's Congressional Delegation to vote NO on CAFTA

Healthcare

- Assess in greater detail the risks of international trade treaties affecting democratic control over water in Maine
- Investigate how the State could minimize its exposure to these risks in its day-to-day practices (i.e. caps on water extractions, shorter water license terms)
- Look into the methods for excluding local and State measures relating to water from the terms of international trade treaties

Libraries

- Commission should review the book by Ruth Rikowski, "Globalization, Information and Libraries: The Implications of the World Trade Organization's GATS and TRIPS Agreements" and seek out other information related to the impact of international treaties on Maine libraries and information services
- Guarantee Maine citizens that our public library and information services are protected from CAFTA, GATS, NAFTA and TRIPs

Other

- Maine Citizens Trade Policy Commission should consider adopting benchmark criteria for what constitutes a good trade agreement
- Ascertain if the federal government has rendered existing Maine state measures in service sectors other than gambling vulnerable to the GATS challenge
- Ask USTR to notify the WTO that the U.S. will not give its consent to new GATS restrictions on domestic regulation and wants an end to the GATS negotiations devoted to creating new restrictions on domestic regulation

III. RECOMMENDATIONS FOR IMPROVING TRADE AGREEMENTS

Democracy /Federalism Issues

- Negotiations of international trade agreements should be public information
- Citizens should be given the opportunity to provide input on trade agreements during negotiation

- Trade agreements should not grant transnational firms privileges that exceed national laws, including the power to challenge national laws that protect the public interest in secret tribunals
- Affected citizens must have the right to participate in all dispute resolution procedures between their government and foreign investors
- The process leading to a trade agreement must be widely publicized and must incorporate the real and effective participation of social actors during the negotiations, approval and subsequent evaluation and follow-up

Procurement

- Maine should not bind itself to government procurement rules of CAFTA
- Trade agreements should not ban the use of government procurement policies to pursue legitimate social goals; trade agreements should not restrict the right of governments to legitimately regulate private services to protect the people's interests

Labor / Economic Development

- Trade agreements should incorporate a gender analysis; look to see whether women are impacted differently than men, if women and children are affected positively by the agreement and assure that women re workers are active in helping shape trade agreements as well as workplace policies and practices
- An economic integration agreement must require the participating countries to commit themselves to the effective application of their Constitutional norms and their own labor laws and to comply with the basic standards established in the Declaration of Fundamental Principles and Rights at Work and the ILO Conventions ratified by member countries
- Trade agreements must include compensatory measures for displacements of production and labor resulting from the restructuring of production linked to market opening
- Trade agreements must include measures designed to relieve debts of Central American countries, establish an international arbitration mechanism for debt reduction and allow governments to establish controls on capital flows designed to avoid or alleviate situations of financial crisis

Agriculture

- Trade treaties should protect the rights of small farmers and landless rural workers; subsidies of farm products should be limited and designed for the protection of small and medium producers and not for the benefit of large agricultural exporters

Healthcare/ Pharmaceuticals

- Make sure that trade agreements don't interfere with:
    - drug re-importation policies
    - Dirigo Health Plan
    - Maine RX

General Suggestions

- Vote against CAFTA
- Repeal NAFTA

- Oppose US importation of sugar

Environment/ Natural Resources

- There should be an exchange of letters that clarifies that Parties of NAFTA and CAFTA have the right to make environmental regulations that are necessary to protect human life and health and that this decision shall be taken by competent authorities in that country and that tribunals cannot override these regulations
- Preserve Maine's ability to set environmental regulations:
  - emissions caps and trade with lower emissions producers
  - prohibition of waste incineration
  - phasing-out of arsenic treated lumber
  - numerical limits on harmful service activities, energy extraction, and tourism
  - government purchase of recycled materials, clean cars, and electricity from alternative energy sources (biodiesel)
- Make environmental regulations of CAFTA enforceable
- Strengthen environmental provisions of CAFTA beyond simply "strengthening *capacity* to protect the environment"
- Provide funding to help Central American countries enforce environmental regulation
- Oppose privatization of drinking water (which the EU is pressuring the US to do); i.e. don't list drinking water as a service covered under GATS
- Don't prohibit people from collecting rain water for personal use
- Address the issue of invasive species of animals, insects and plants

Healthcare/ Pharmaceuticals

- Intellectual property rights should not restrict ability of governments to make generic drugs available in case of public health crises
- Oppose "test data" secrecy/ pharmaceutical market exclusivity provisions in CAFTA which effectively prohibit generic competition to brand name drugs for five years
- Oppose extension of patent rights of pharmaceutical drugs to 25 years
- Make sure that trade agreements don't interfere with:
  - drug re-importation policies
  - Dirigo Health Plan
  - Maine RX
  - Medicare

Essential services

- Governments should be allowed to chose which services to bid for, instead of the current policy in which they carve out certain services
- Libraries should be protected from market access rules of trade agreements even if they do charge small fees to cover basic costs

Modular Homes

- Enforce NAFTA regulations at US-Canadian border to prohibit the entry of Canadian drivers as business visitors to set modular homes

General Suggestions

- Vote against CAFTA
- Get rid of NAFTA
- Withdraw from WTO / support it's abolishment
- Support only bilateral trade agreements

Citizen Policy Trade Commission
Summary of Public Hearing Testimony
University of Southern Maine, Portland
April 19, 2005

I. TESTIMONY BY TOPIC

Democracy Issues

- Trade deals which undermine democratic institutions via secret dispute resolution tribunals or other mechanisms should be rejected
- Current model for passage of trade agreements is deeply undemocratic; "fast-track" authority places total power in the hands of a few trade bureaucrats
- NAFTA gives corporations the right to challenge our laws in secret tribunals and to demand compensation from the government; NAFTA's investment chapter is flawed and multinational corporations have exploited these flaws to challenge legitimate government regulations designed to protect the environment, shield consumers from fraud and safeguard public health
- AFL-CIO strenuously objects to the inclusion of investment measures modeled on NAFTA Chapter 11 in a trade agreement with Central America; an agreement with Central America should contain broad carve-outs allowing governments to regulate corporate behavior to protect the public interest; a trade agreement should rely on government-to-government rather than investor-to-state dispute resolution

Maine Jobs/Economy

- America should not export its jobs, skills and knowledge at the expense of the American worker; Maine is an example of NAFTA's effects: Bass Shoe, Dexter Shoe, Eastland Shoe, Wilner Wood, Hathaway shirts are all victims of trade agreements
- Loss of manufacturing jobs in Maine that pay a living wage with benefits is a predictor of the future for all and not a temporary shift in our region's economy
- Break up large retailers; the small independent retailer must be revitalized; limit large retailers to one store per Congressional district

Labor Issues

- National and multi-national corporations have zero consideration for human rights, the rights of workers to organize or for the environment; trade agreements should not go forward unless they are reprioritized
- Commercial rights have more power than labor rights under CAFTA
- CAFTA and NAFTA brought more poverty to the poorest workers in the world; factory owners in foreign lands are pushed into paying ever-lower wages to workers by the CEO's of huge American businesses that want "Deals" on cheaper products
- Markets are not ends in themselves, but tools to be employed for the benefit of the people; no one opposes trade, but markers without morals – without some socially-determined element of fairness-are prescriptions for disaster
- Trade agreements have lowered the wages of workers both in America and abroad

- Workers in Central America have too often been excluded from the benefits of increased trade in the region, as they continue to have their basic human rights respected in the workplace; not one Central American country included in CAFTA comes close to meeting a minimum threshold of respect for the ILO's core labor standards
- NAFTA and CAFTA make no provisions for the welfare of workers; we must protect the laws we have in effect for the protection of workers, and make sure that no outside organization is empowered to remove these carefully considered provisions in our legal system
- We must find a way to use our labor force in the U.S. and maintain a manufacturing base here; we must challenge corporations to find ways to remain competitive here, prior to exploiting labor forces in other countries that have no laws to protect them
- Corporations should be watch dogged and held accountable to treat all labor forces with respect and dignity and compensate them a fair wage and benefit
- Globalization and free trade as they are currently structured will not increase manufacturing jobs or jobs in general
- Under NAFTA, women in both North and South America have lost jobs, benefits and safe working conditions
- Every agreement at the international and federal levels has a human cost, corporations should not have the power to supersede the laws we make in Maine nor should they control our state's economic well-being
- United States should not be allowed to run a trade deficit

Healthcare/Pharmaceuticals

- Free trade agreements conflict with public health policies, especially those having to do with health care reform; domestic laws that restrict markets for health services, no less than for other commodities, are seen as barriers to trade
- NAFTA and CAFTA contain provisions that allow multinational corporations to sue a government for takings of their profits; this provision can have impacts on environmental laws, working conditions, public welfare and health care; Maine's RX program and Dirigo Health program could be at risk

Libraries

- Impact of international treaties, such as the TRIPS, on public libraries; need to be extremely wary that treaties governing the commercial exchange of intellectual property do not impinge on our democratic access to information and do not thwart the ability of public libraries to provide the citizens in Maine and elsewhere unfettered, free access to information that is sp critical to safeguard and revitalize democracy itself
- Public libraries may be subject to the same market access rules as private sector businesses under trade agreements (libraries should not be considered key players in our economic system and should not be subject to market access, national treatment and most-favored nation rules)

CAFTA/NAFTA

- CAFTA/NAFTA are trade agreements that are not carried out in the best interests of all; the only people who benefit are corporate CEOS

- CAFTA is not about free trade; agreements like CAFTA turn people into sharecroppers for the global corporate elite
- Trade deals lacking adequate provisions for labor, the environment and public health should be rejected
- CAFTA will be used as a smokescreen to reward other countries at the expense of the American workforce
- CAFTA is not beneficial to anyone except the already super rich
- Free trade agreements of the last decade have been sold as a panacea, but in reality they have been an agent of destruction for societies in all corners of the World
- Free trade policies promote the conditions of war
- Current model of free trade agreements limits public investment in social programs including education, health care and environmental protection, while placing no limits on military budgets
- The introduction of free trade policies in many countries has resulted in widespread popular unrest which has been targeted by police and military crackdowns
- We need trade agreements that start with human values- dignity of persons, primacy of the common good, safeguarding the environment, agreements win which our government upholds those values, not another agreement that serves only the greedy
- NAFTA has been nothing but a disaster for Maine, costing the people of Maine nearly 24,000 high paying manufacturing jobs in the past 10 years

Environment

- Free trade rules make it easy for the U.S. companies to export hazardous pesticides
- Trade agreement rules may apply to water, including municipal water treatment and wastewater treatment and water investments such as the State of Maine's agreement with Poland Springs
- A state has no authority to alter the rights of foreign investors under international law, either by law, regulation or contract (in reference to the State of Maine's agreement with Poland Spring Water)

Gambling

- As a result of actions taken by the federal government during GATS negotiations, Maine and other state legislatures must now contend with the prospect that tough market access rules in international trade agreements will be applied to their gambling laws and practices, without their consent

Agriculture

- CAFTA could devastate small farmers in both the U.S. and Central America; elimination of an effective price floor would force down market prices, allowing corporate agribusinesses to sell their products at well below cost

II. REQUESTS MADE OF COMMISSION BY SPEAKERS

Gambling

- All members of the Commission and the Legislature should examine the GATS Article XVI Market Access rules and seek legal guidance to begin to understand their significance in relation to our state laws on gambling
- Determine what steps the U.S. Administration can take to ensure that the prerogative of the State of Maine to regulate gambling remains unfettered by the GATS and any other international treaty; what concrete steps can the federal government now take to undo or mitigate the damage it has caused?

CAFTA/NAFTA

- Make a formal recommendation to Maine's Congressional Delegation to vote NO on CAFTA

Healthcare

- Assess in greater detail the risks of international trade treaties affecting democratic control over water in Maine
- Investigate how the State could minimize its exposure to these risks in its day-to-day practices (i.e. caps on water extractions, shorter water license terms)
- Look into the methods for excluding local and State measures relating to water from the terms of international trade treaties

Libraries

- Commission should review the book by Ruth Rikowski, "Globalization, Information and Libraries: The Implications of the World Trade Organization's GATS and TRIPS Agreements" and seek out other information related to the impact of international treaties on Maine libraries and information services
- Guarantee Maine citizens that our public library and information services are protected from CAFTA, GATS, NAFTA and TRIPs

Other

- Maine Citizens Trade Policy Commission should consider adopting benchmark criteria for what constitutes a good trade agreement
- Ascertain if the federal government has rendered existing Maine state measures in service sectors other than gambling vulnerable to the GATS challenge
- Ask USTR to notify the WTO that the U.S. will not give its consent to new GATS restrictions on domestic regulation and wants an end to the GATS negotiations devoted to creating new restrictions on domestic regulation

III. RECOMMENDATIONS FOR IMPROVING TRADE AGREEMENTS

Democracy /Federalism Issues

- Negotiations of international trade agreements should be public information
- Citizens should be given the opportunity to provide input on trade agreements during negotiation

- Trade agreements should not grant transnational firms privileges that exceed national laws, including the power to challenge national laws that protect the public interest in secret tribunals
- Affected citizens must have the right to participate in all dispute resolution procedures between their government and foreign investors
- The process leading to a trade agreement must be widely publicized and must incorporate the real and effective participation of social actors during the negotiations, approval and subsequent evaluation and follow-up

Procurement

- Maine should not bind itself to government procurement rules of CAFTA
- Trade agreements should not ban the use of government procurement policies to pursue legitimate social goals; trade agreements should not restrict the right of governments to legitimately regulate private services to protect the people's interests

Labor / Economic Development

- Trade agreements should incorporate a gender analysis; look to see whether women are impacted differently than men, if women and children are affected positively by the agreement and assure that women re workers are active in helping shape trade agreements as well as workplace policies and practices
- An economic integration agreement must require the participating countries to commit themselves to the effective application of their Constitutional norms and their own labor laws and to comply with the basic standards established in the Declaration of Fundamental Principles and Rights at Work and the ILO Conventions ratified by member countries
- Trade agreements must include compensatory measures for displacements of production and labor resulting from the restructuring of production linked to market opening
- Trade agreements must include measures designed to relieve debts of Central American countries, establish an international arbitration mechanism for debt reduction and allow governments to establish controls on capital flows designed to avoid or alleviate situations of financial crisis

Agriculture

- Trade treaties should protect the rights of small farmers and landless rural workers; subsidies of farm products should be limited and designed for the protection of small and medium producers and not for the benefit of large agricultural exporters

Healthcare/ Pharmaceuticals

- Make sure that trade agreements don't interfere with:
    - drug re-importation policies
    - Dirigo Health Plan
    - Maine RX

General Suggestions

- Vote against CAFTA
- Repeal NAFTA

APPENDIX E

Citizen Trade Policy Commission
June 2, 2005
Dominican Republic-Central American Free Trade Agreement Statement

Maine Citizen Trade Policy Commission

Senator Margaret Rotundo, Co-Chair

Representative John Patrick, Co-Chair

June 2, 2005

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

The Honorable Susan M. Collins
United States Senate
154 Russell Senate Office Building
Washington, D.C. 20510-1903

The Honorable Thomas H. Allen
United States House of Representatives
1717 Longworth House Office Building
Washington, D.C 20515

The Honorable Michael H. Michaud
United States House of Representatives
437 Cannon House Office Building
Washington, D.C 20515

Dear Senator Snowe, Senator Collins, Congressman Allen and Congressman Michaud:

The following statement was adopted unanimously by members of the Citizen Trade Policy Commission present on May 27, 2005. The Commission was established by the Maine Legislature in 2004 to assess and monitor the legal and economic impacts of trade agreements on state and local laws, working conditions and the business environment; to provide a mechanism for citizens and Legislators to voice their concerns and recommendations; and to make policy recommendations designed to protect Maine's jobs, business environment and laws from any negative impact of trade agreements. The Commission includes Legislators from at least two political parties and citizens representing a wide variety of Maine constituencies impacted by trade. (See attached Commission membership list)

Statement on Dominican Republic-Central America-United States Free Trade Agreement (DR-CAFTA)

The Maine Citizen Trade Policy Commission supports international trade. Countries improve overall economic welfare by producing those goods at which they are relatively efficient, while trading for the rest. Trade can improve productivity, lower the price of consumer goods, and

increase consumer selection, potentially benefiting both workers and consumers. Larger global markets for Maine products can help maximize the benefits of trade for Maine workers and consumers.

However, in recent years trade agreements such as the North American Free Trade Agreement have created both winners and losers. That has been apparent in Maine, with scores of closed factories, thousands of jobs lost to the surge of imports, and many communities struggling to survive. Globalization may be inevitable, but the details of any trade agreement are not. Because the rules of globalization reach far beyond border measures such as tariffs and quotas, potentially impacting every realm of public policy, the details of a trade agreement should be publicly accessible and critically examined before we decide whether or not to support it. Public scrutiny will strengthen, not undermine, globalization.

The Maine Citizen Trade Policy Commission believes that trade agreements should:

- Promote and strengthen basic human rights, labor rights, and environmental protections, and raise standards in developing countries in order to prevent a "race to the bottom" which hurts Maine businesses, workers, and communities.
- Safeguard local and state lawmaking authority and level the playing field for small businesses in Maine and elsewhere.
- Guard against the unintended consequence of impeding access to basic human services such as education, healthcare, energy, and water.
- Be negotiated in a public and transparent manner.

DR-CAFTA does not meet our standards for an acceptable trade agreement for several reasons. We are particularly concerned with DR-CAFTA's impacts on our state sovereignty and labor standards across the region. During two public hearings on DR-CAFTA held in Bangor and Portland over the past several months, we heard citizen testimony that ranged widely in scope, but was overwhelmingly opposed to DR-CAFTA. People worried about economic issues such as outsourcing, labor standards, and impacts on small businesses, but also voiced concerns about the possibility of maintaining and creating policies pertaining to public services, environmental protection, prescription drugs, municipal zoning, and social security. Many people also spoke about DR-CAFTA's impact on Central America's small farmers, many of whom would be forced to abandon their land for factory work in sweatshop conditions in their own countries or emigrate to the United States. Others were concerned that there is no avenue for meaningful public input in trade negotiations. Many people urged the Commission to take a stand against DR-CAFTA and recommend that Maine's Congressional delegation votes against it. For a summary of the public hearings, please see: http://www.state.me.us/legis/opla/citpol.htm

Based on our own analysis of DR-CAFTA and the concerns of the citizens and constituencies we represent, we urge you to actively work against the passage of DR-CAFTA. At a time when several Maine communities may be facing dramatic job loss and disruption as a result of proposed military base closures, we would only compound our problems with a trade agreement that will diminish opportunities for those who need them the most. While Maine can make its voice heard on the question of military base closures and possibly influence the final decision, DR-CAFTA has been created through a process that completely excludes citizens and elected

representatives from meaningful participation, and contributes to the lack of trust and confidence that citizens have about trade agreements.

Higher quality trade agreements that meet the Commission standards require state and citizen discussion of trade policy and an avenue for our concerns to be heard in trade negotiations. Maine joins many other states in requesting regular and meaningful consultation with the United States Trade Representative office to correct the democracy deficit in trade negotiations. We are deeply appreciative of the role Maine's Congressional delegation has played in fighting for fair trade agreements that promote the interests of Maine workers, businesses, and communities. We look forward to working with you to develop a new trade negotiation process that is democratic and transparent, and accountable to the diverse voices and interests in Maine.

Sincerely,

Senator Margaret Rotundo
Co-Chair

Representative John Patrick
Co-Chair

Cc: Rob Portman, Ambassador, United States Trade Representative
Governor John E. Baldacci
Members, Citizen Trade Policy Commission
Alan Stearns, Senior Policy Advisor, Office of the Governor

Appendix

The following sections on "Democracy and Sovereignty Issues, " "Labor and Small Business Issues," "Impact on Central America and Consequences for Maine," and "Process of Trade Negotiations" contain our analysis and concerns about DR-CAFTA. The Appendix should not be read as an exhaustive analysis or a comprehensive view of the DR-CAFTA issues relevant for Maine.

Democracy and Sovereignty Issues

International trade agreements such as CAFTA, NAFTA, and GATS would make it possible for global corporations to override local controls on development, zoning and planning. Such agreements may also be used to override local and state environmental regulations, as well as national labor and safety standards.

-- Valerie Carter, Ph.D., CTPC Public Hearing, Bangor, February 3, 2005

DR-CAFTA's Chapter 11 (Cross-Border Trade in Services) could weaken Maine's regulatory authority. Like the General Agreement on Trade in Services (GATS), it requires signatories to ensure "conformity of all laws, regulations, and administrative procedures" to the agreements (Agreement Establishing the WTO, Article XVI: 4). Thus, when a country commits a specific service sector to DR-CAFTA rules it must conform its domestic policy – including laws, regulations, administrative decisions, and even unwritten practices maintained by all levels of government: central, regional, and local – to the requirements of the trade agreement. The rules also apply to non-governmental authorities in exercise of power delegated by governments, including professional associations, boards of hospitals, schools, universities, and standard-setting bodies (CAFTA, Article 11.1.2). Furthermore, while only those services explicitly committed are covered by DR-CAFTA's rules, DR-CAFTA's scope is tied to the scope of GATS, and GATS mandates continuous rounds of renegotiation to increase liberalization of trade in services and pressure countries to remove exceptions to GATS rules and commit ever more service areas to the Agreement. As GATS expands, so will regional trade agreements, such as DR-CAFTA.

The expansion of GATS rules may also impact future interpretations of DR-CAFTA provisions. A World Trade Organization working group on domestic regulations is currently working on new "disciplines" on domestic regulations that may include a "necessity test" and a list of "legitimate objectives" that would be used to assess the level of trade-restrictiveness of a government measure. If and when finalized, the GATS disciplines would be directly imported into DR-CAFTA according to DR-CAFTA Article 11.8 (3). Professional licensing, qualification requirements, and technical standards governing hospitals, nursing homes, physicians, nurses, or HMOs that ensure the quality of healthcare delivery may have to face necessity tests. Currently, the United States has committed to necessity tests for accounting, engineering, and architecture that may become a precedent for other sectors, including healthcare. The domestic regulation rule can ultimately be used to challenge the federalist system of separate state laws that promotes diversity and encourages states to act as "laboratories of democracy." A challenger could claim

that a state law is more burdensome than necessary if there are less stringent laws in other states with similar conditions.

Investment Rules

[NAFTA's Chapter 11 provisions] *have raised serious problems with the ability of state and local governments to take constitutional actions to protect public welfare and the environment. These provisions compensate disappointed investors from other countries under a vague standard that is potentially much more expansive than that available for domestic investors who claim a regulatory taking in our courts. In effect, these provisions may require government to pay foreign investors for the right to enforce its environmental regulations.*

-- Maine Attorney General Steven Rowe, August 25, 2002

As a state that values clean air, clean water and clean energy, Maine often leads the country in enacting progressive environmental laws. For example, during the last session, the Maine legislature passed "An Act to Protect Human Health by Reducing Exposure to Arsenic." This law speeds the phase-out of arsenic treated lumber. Arsenic is known to cause cancer, and children are exposed to it when they play on jungle gyms and decks built with arsenic-treated lumber. The Maine Bureau of Health found health risks from arsenic in pressure-treated lumber were just as high as the risks from exposure to arsenic in drinking water. Under NAFTA, it's possible that a Canadian corporation that produces arsenic-treated lumber could sue the U.S. over the Maine ban because of lost market share.

-- Maureen Drouin, Northeast Regional Representative, Sierra Club, CTPC Public Hearing, Bangor, February 3, 2005

Modeled on NAFTA's Chapter 11 investor-state dispute resolution mechanism, DR-CAFTA's Chapter 10 investment rules give a foreign investor the right to seek monetary compensation for a federal, state, or local regulatory action the company alleges to be either a direct or indirect expropriation of their profits. Because these investment rules include more expansive property rights than the United States Constitution grants domestic businesses, DR-CAFTA's Chapter 10 appears to violate the "no greater rights" for foreign investors mandate included in the 2002 Trade Promotion Act.

DR-CAFTA Chapter 10 in effect redefines public regulation as a government "taking" of private property that requires compensation to the owner, just as when a government takes private land for a highway or park and has to pay its fair market value. Because DR-CAFTA Chapter 10 includes broad standings language, allowing a domestic corporation with substantial business interests in another party to use the investor-state dispute resolution mechanism to challenge a domestic law, a Central American subsidiary of a U.S. company could potentially use DR-CAFTA to challenge Maine laws it considers to be "tantamount to expropriation."

For example, a casino based in a DR-CAFTA member country, or with substantial business interest in a DR-CAFTA member country, could challenge state restrictions on gambling. In the recent GATS gambling case against the United States brought by Antigua and Barbuda, the World Trade Organization Appellate Body ruled that the United States had made a GATS commitment to open up all forms of gambling to international competition, but did allow for the

United States to use the GATS Article XX "public morals exceptions" to defend certain restrictions on gambling. However, DR-CAFTA's Chapter 10 does not provide for a public morals exception. The State of Maine maintains strict limits on "games of chance" and gambling via electronic video machines that appear to violate DR-CAFTA Market Access rules that prohibit quantitative limits on, and exclusive suppliers of, committed services.[1] These limits and Maine's future ability to regulate gambling appear to be at risk in the event of a challenge under Chapter 10 of DR-CAFTA[2]

Access to Public Services

Do trade treaties like CAFTA and the North American Free Trade Agreement (NAFTA) and the General Agreement on Trade in Services (the GATS) make Social Security privatization a one-way street? Could they 'lock-in' even partial privatization *forever? It is important to note that these questions are not partisan ones. Whether or not one supports the proposed privatization of Social Security makes little difference in this discussion. What this Commission deals with and what makes the Commission so important is asking the question, "How might these trade agreements affect us in our day to day lives?" That is something I think we can all get behind.*

-- Alexander Aman, CTPC Public Hearing, Bangor, February 3, 2005

Expansion of DR-CAFTA rules to cover traditional public services such as water, sewer, environmental protection and education could require extension of public subsidies to foreign private competitors. DR-CAFTA's national treatment rule requires governments to allow foreign service providers to compete on equal terms with local public providers for taxpayer funds. For example, a foreign corporation bidding to provide water delivery services in a Maine municipality must be given the same favorable treatment as the public agency that traditionally has provided the service, including public funding and access to infrastructure. The low bidder wins. The result could be privatization of water delivery services. Privatization would be a one-way street. Once a public service has been opened to free trade, the price for closing the market to foreign access is to pay the investors what they would have made had it remained open.

---

[1] See Title 17, Chapter 14 Games of Chance, available at: http://janus.state.me.us/legis/statutes/17/title17ch14sec0.html and http://www.gambling-law-us.com/State-Laws/Maine/

[2] Thank you to Martha Spiess for providing testimony to the Commission on the WTO United States— Gambling decision's implications for regulation of gambling in Maine. See "Upping the Ante: What does the final WTO U.S.-Gambling decision mean for the democratic regulation of gambling in Maine?" submitted to CTPC Public Hearing, Portland, April 19, 2005. The Commission also heard testimony on the possibility of Maine's sustainable water withdrawal practices being challenged by a foreign investor. The testimony included an international trade lawyer's analysis of the agreement between the State of Maine and Great Spring Waters of America Inc., operating as Poland Springs. The lawyer noted that this Agreement "is subject to these international [trade] agreements," and that "if a conflict arises between the provisions of the Agreement and those of international trade law, the latter would prevail," possibly threatening democratic control over water in Maine. However, Poland Spring would only be able to use DR-CAFTA's investor-state dispute resolution mechanism if it, or its parent company Nestle, had resident status in a Dr-CAFTA country. See testimony by Marga Huntington, "Protecting Maine Water from International Trade Treaties," and Steven Shrybman, "Re: Spring Water Use Agreement and License," submitted to CTPC Public Hearing, Portland, April 19, 2005.

Proponents of current services rules argue that public services are excluded from GATS and DR-CAFTA's Chapter 11 since the rules do not apply to "services supplied in exercise of governmental authority," which it defines as services supplied "neither on a commercial basis, nor in competition with one or more service providers" (CAFTA, Article 11.1.6). On the other hand, when a government does act on a commercial basis (e.g., charges a fee for the service provided) or in competition with other service suppliers, its activities are to be treated like those of any other private supplier. Maine provides few services exclusively on a non-commercial basis.

Whether or not to privatize is a debate we should have publicly, and a decision we should make democratically. Unless public services are clearly and unambiguously excluded from DR-CAFTA, the Agreement could deprive us of the right to make these decisions, in effect forcing the transformation of public services into tradable commodities.

Government Purchasing Rules

In Governor Baldacci's State of the State address, he talked about how The State of Maine now purchases 40% of its electricity from Maine's own renewable power resources; that they heat state office buildings with biodiesel, and that they are improving the fuel economy of the State fleet by purchasing more hybrids and smaller vehicles. According to the Governor, these energy savings steps have saved the State $776,000 in transportation fuel costs and reduced state government greenhouse gas emissions by 8% just in the past two years. Under CAFTA, these preferences could be considered inappropriate trade barriers and challenged.

-- Maureen Drouin, Northeast Regional Representative, Sierra Club, CTPC Public Hearing, Bangor, February 3, 2005

Government procurement rules in DR-CAFTA Chapter 9 limit the use of non-economic criteria for government purchasing, depriving the public control over the use of public funds, and diminishing the value of government procurement as a public policy tool. The rules may conflict with Maine policies, initiatives, and preferences such as:

- Recycled paper and fuel efficient cars, because technical specifications must be limited to "performance requirements;"
- Products made in non-sweatshop conditions, because supplier qualifications must be limited to their "legal, technical and financial abilities" to fulfill a procurement and may not include criteria related to the methods of production;
- In-state suppliers, because our trading partners' suppliers must be accorded treatment "no less favorable" than the "most favorable treatment" we give to domestic suppliers; and
- Banning state contractors from shipping jobs overseas, because contractor conditions to "encourage local development" are forbidden.

While the State of Maine has opted, at this time, not to allow USTR to offer Maine's government procurement market to DR-CAFTA parties and would not need to adhere to its government procurement rules, it is also of concern that federal government procurement policies would have to conform to DR-CAFTA's Chapter 9 rules. Unless changed through DR-CAFTA implementing legislation or exempted in the Agreement, such policies as Buy America laws and

the prohibition of federal acquisition of products produced by forced or indentured child labor (by Executive Order 13126) could be subject to challenge.

Labor and Small Business Issues

"[The] differences between the rights of business and the rights of labor are enormous [in CAFTA]. When injuries happen to commercial or business interests, countries are severely punished through trade sanctions that are equal to the original injury. These can be enormous. For example, Europe is currently in the position of levying $4 billion in trade sanctions against theU.S. Fines for labor rights violations are miniscule in comparison, as they are capped at $15 million. Worse yet, the violator gets to pay itself! Though this fine is supposed to be used to help the country correct the violation of labor rights, there is nothing in the agreement to prevent a country from paying itself a fine, then shifting money from one budget to another and so effectively side-stepping the intent of the fine."

-- Jack McKay, President, Greater Bangor Area Central Labor Council, CTPC Public Hearing, Bangor, February 3, 2005

I am willing to compete with any worker in the world for labor... But I do not want to compete with children who are forced to beg for their existence when they lose vital body parts. I do not want to compete with companies that are allowed to pollute the air and water to gain a price advantage. Give us trade agreements with level playing fields... and Maine will compete and survive. We will have a shoe industry, garment manufacture, a growing paper industry, family farms and a place for my business too. Then Maine will truly be "the way life should be."

-- Allyn Beecher, Owner, Monroe Millworks, CTPC Public Hearing, Bangor, February 3, 2005

Export processing zones, where *maquila* factories operate and mostly women 15-25 years old provide cheap labor under poor conditions, are already prevalent throughout Central America. These zones would expand dramatically under DR-CAFTA. Widely acknowledged human rights abuses in these zones include non-enforcement of health, safety, and labor regulations, hostility toward union organizing, excessive working hours, and dangerous working environments. Human rights monitors such as the U.S. State Department, the International Labor Organization, and Human Rights Watch have recognized that labor law enforcement in many Central American countries is inadequate.

While DR-CAFTA should require national labor laws to meet International Labor Organization core standards, such as the right to organize unions ("freedom of association") and bargain collectively, its Article 16.1 calls on parties to "strive to ensure" such standards, only requiring that parties enforce their existing labor laws. However even this requirement is compromised by:

- Article 16.2.1(b), which gives each party "the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other labor matters determined to have higher priorities." Thus parties can decide to not enforce key portions of

their existing labor law by allocating resources elsewhere. Article 16.6.7 ensures that any such decision not become the subject of an arbitral (dispute resolution) panel.

- Article 16.2.2, which does not prohibit a country from weakening its existing labor law protections in order to attract investment. The article only says that countries "shall strive to ensure" that they do not do so. Article 16.6.7 ensures that any such weakening of labor law not become the subject of an arbitral panel.

- Article 20.17, which does not allow DR-CAFTA arbitral panels to suspend parties' tariff benefits when they violate DR-CAFTA's labor provisions. If a party violated DR-CAFTA's commercial provisions, such as the intellectual property rights rules or market access rules, it could face trade sanctions under article 20.16. But even if a country systematically refused to enforce its own labor laws, it would only face fines, capped at $15 million annually as long as the violation continues. Because tariff benefits can only be suspended if a party fails to pay a fine, not because it fails to address a violation, there is no way to compel remediation. A country can choose to pay a fine indefinitely and enjoy DR-CAFTA benefits while systematically failing to enforce its own labor laws. Furthermore, the fines would be given back to the violating country "for appropriate labor ... initiatives, including efforts to improve or enhance labor ... law enforcement." However, DR-CAFTA does not prohibit a violating party from simultaneously redirecting existing funds away from labor law enforcement. Thus the net result of labor law violations could be zero.

It is important to note that DR-CAFTA is a step backward from existing trade related labor protections in the region. Currently, the General System of Preferences and the Caribbean Basin Initiative directly condition market access on respect for International Labor Organization core standards. The credible threat of reduced trade benefits is responsible for most significant labor reforms in Central America over the last two decades. CAFTA would destroy the only proven effective means to raising the bar for workers in the Americas.

Central America is already a very small export market. The largest market, the Dominican Republic, is equivalent to Bakersfield, California; the smallest, Nicaragua is equivalent to Lawrence, Kansas. Portland's market size is larger than Honduras, fifth on the list, and Bangor's is larger than Nicaragua's.[3] The region as a whole is Maine's 13th largest trading partner; the region without the Dominican Republic is Maine's 29th largest trading partner.[4] The weak labor standards in DR-CAFTA will do nothing to increase the significance of this export market for Maine businesses. Export production workers in Central America – that is, those workers whose wages and living standards could be directly impacted by trade agreements – usually earn no more than legal minimum wages which are barely sufficient to meet the basic food requirements of a family, let alone other basic needs. Tying trade benefits to payment of non-poverty wages, or even median wages for the country of manufacture, would be one way to increase the market size of this region, potentially benefiting Maine export businesses. However, DR-CAFTA's labor provisions will only accelerate the race to the bottom, depriving Maine businesses of the potential benefits of a trade agreement with stronger labor standards.

---

[3] See: http://www.usmayors.org/metroeconomies/0703/metroecon_appendix_0703.pdf and http://www.americaneconomicalert.org/view_art.asp?Prod_ID=1921

[4] Source: Maine International Trade Center

Impact on Central America and Consequences for Maine

"When we lived in the village [of Carasque, El Salvador] it soon became apparent that ... the majority of Salvadorans are not entrepreneurs looking for a low tariff environment for exporting their products. They are subsistence farmers who grow corn, rice, and beans to feed their families, and try to sell their extra at market to buy other staple items, shoes and medicines. For these people free trade agreements like CAFTA mean freedom for them to compete with subsidized agribusinesses from the U.S., which have driven the price they can get for their corn lower than their cost to produce it, even if one discounts their labor as entirely free."

– Katherine Kates, Bangor-El Salvador Sister City Project, PICA, CTPC Public Hearing, Bangor, February 3, 2005

As all trade agreements, DR-CAFTA will create both winners and losers. In Central America, the beneficiaries of DR-CAFTA are likely to be large importers of foodstuffs and manufactured goods, bankers and other financial groups that mediate the investments of foreign corporations, owners and developers of free-trade zone assembly plants, those who profit from the sale of public government services to private businesses, and those who profit from selling these services to their countrymen. These groups belong to the wealthiest sectors of Central American society.

The large majority of the population, small subsistence farmers, will face a flood of imported U.S. agricultural products that may destroy their livelihoods.[5] Under DR-CAFTA over half of current U.S. farm exports to Central America would become duty free immediately, including cotton, wheat, soybeans, certain fruits and vegetables, and processed food products. Other agricultural products have a gradual tariff phase-out schedule, with up to 20 years for products such as rice and dairy. Tariffs on yellow corn, a key subsistence crop and source of income for many Central American farming communities, would be completely phased out in 15 years, down from the current high of 45 percent tariffs.[6] The consequences for small farmers will be hunger, disruption of families and communities, and exploitation in sweatshops or a dangerous trek north. In the terms of the U.S. Congressional Research Service: "...countries dependent on small subsistence farms require time to accommodate the structural adjustment taking place as their economies transition toward larger farms, manufacturing, and services."[7]

This "structural adjustment" in Central America will have consequences for the United States and Maine. Increasing the cheap labor supply for manufacturing in Central America will contribute to downward pressure on wages and work-related benefits in the region and increase competitive pressures on Maine businesses that now provide wages adequate for Maine workers and families.

---

[5] See "DR-CAFTA & Agriculture: Will the *campesinos* survive?," Oxfam America, March, 2004, http://www.oxfamamerica.org/pdfs/cafta_ag_brief0404.pdf.

[6] The source for all figures in this section is the United States Department of Agriculture, Foreign Agricultural Service, United States-Central America-Dominican Republic Free Trade Agreement Commodity Fact Sheets, March 2005.

[7] Hornbeck, J.F., "The U.S.-Central America Free Trade Agreement (CAFTA): Challenges for Sub-Regional Integration," Congressional Research Service Report for Congress, June 1, 2004.

Furthermore, when small independent farms are squeezed out of markets and small farmers are pushed off their land by giant agribusinesses, and when export-oriented economies stimulated by free trade agreements fail to create enough new good jobs to replace all those that are eliminated, the pressure to migrate legally or illegally increases. Unauthorized immigration from Mexico to the United States increased sharply after NAFTA's implementation, more than doubling between 1990 and 2000, as more than 1.5 million Mexican peasant farmers were forced to abandon their land.[8] Similarly, DR-CAFTA is likely to increase immigration to the United States from Central America.[9] Immigrant workers in the United States, especially those with illegal status, face numerous challenges including low-paying jobs, discrimination, exploitation, inadequate access to social services, and limited legal rights, challenges that are exacerbated for those immigrants that do not have legal status. This issue was brought to light in Maine in September 2002, when 14 loggers from Honduras and Guatemala perished as their van, traveling at an unsafe speed, slipped off a one-lane bridge into the Allagash River. The immigrants were coffee growers and rural workers in their home countries; in Maine they were planting and harvesting pine trees destined for paper mills. Desperate to pay off large loans to recruiters who brought them to the United States and to send remittances back home to their families, the loggers were speeding to extend the working day. Their employer had been cited numerous times by the Department of Labor's Wage and Hour Division for unpaid overtime work, and has now lost its license to operate for failing to ensure the safety of workers.

Process of Trade Negotiations

As a citizen who helped to make this Commission possible I ask you to insert Maine's human voice in those [trade] negotiations wherever possible. Specifically, please investigate and raise questions about whether Maine people really benefit by having health care, including state healthcare services, covered under any specific trade agreement. Will Maine citizens benefit? Will doctors, nurses, and healthcare providers in general benefit? Will businesses and working people benefit? Will children benefit?

-- Dr. Sara Stalman, CTPC Public Hearing, Bangor, February 3, 2005

Given the far-reaching consequences of DR-CAFTA for state regulatory authority and state policies, the non-transparent and undemocratic trade negotiation process is particularly troublesome. The only formal mechanism for public input into trade negotiations is the United States Trade Representative's Trade Advisory Committee (TAC) system. The system consists of 27 advisory committees that overwhelmingly represent commercial interests: 22 of the 27 committees are industry and agribusiness oriented, with membership consisting primarily of the largest business interests in each sector. Only one committee, the Inter-Governmental Policy Advisory Committee (IGPAC) represents state interests and is well represented by state policy

[8] "Another Americas is Possible: The Impact of NAFTA on the U.S. Latino Community and Lessons for Future Trade Agreements," August 2004, Labor Council for Latin American Advancement and Public Citizen's Global Trade Watch.

[9] Already, an estimated 500 Salvadorans leave the country every day, bound for the United States. According to a recent Salvadoran newspaper poll, one fifth of the population claims to have plans to leave for the United States this year. See: Estrada, Erick and Iraheta, Boris. "Alta emigración de los salvadoreños." *La Prensa Gráphica,* March 6, 2005. http://www.laprensagrafica.com/dpt15/Noticias/06032005/141033.asp

makers. While USTR consults regularly with industry advisory committees that frequently draft key sections of the trade agreements, IGPAC has very limited influence.[10]

Furthermore, the TAC system disallows public debate and participation. TAC members must keep all information regarding pending agreements and TAC discussions confidential until after the agreement is signed. Ironically, the security clearance that public officials must submit to in order to become members of IGPAC means that they are forbidden to disclose the draft texts of negotiated agreements, preventing those with the most complete and up-to-date information from using that information to inform the public dialogue. USTR itself is not subject to the Freedom of Information Act or the Administrative Procedures Act. Consequently, no records exist of TAC discussions, how often committees meet, who testifies before USTR, what they say, and how it impacts the drafting of the text.[11] And Congress, operating under the constraints of "fast track" or the President's Trade Promotion Authority, is limited to 20 hours of debate on trade agreements and a straight up or down vote. Congress cannot modify an agreement, but must reject it entirely to have it modified.

We are concerned that the policy making process for DR-CAFTA has suffered from these problems, that the agreement has been crafted without the benefit of full public discussion and participation, and that the voices and interests of Maine workers, businesses, and citizens are not adequately reflected in it. Maine's Congressional delegation has frequently been in the forefront of debates on trade, globalization, and the reach of federal trade negotiating authority. We deeply appreciate the time and attention that the delegation has devoted to these questions so integral to our economy and democracy. At this point, the low level of disclosure and public discussion regarding the United States trade negotiating agenda, and USTR's weak accountability necessitate a review of USTR's negotiating mandate and federal-state consultation mechanisms. We urge you to continue to exercise leadership in Congress to help defeat DR-CAFTA and work with us to ensure that the process for future trade agreement negotiations is democratic and transparent, and reflects the diverse interests and concerns of Maine workers, businesses, and citizens.

[10] Gerbasi, Jennifer and Warner, Mildred, "Is There a Democratic Deficit in the Free Trade Agreements?" *Public Management*, March 2004.
[11] Ibid.

APPENDIX F

Citizen Trade Policy Commission
May 27, 2005 letter to the United States Trade Representative regarding May 3, 2005 General Agreement on Trade in Services request

Citizen Trade Policy Commission
July 5, 2005 letter to the Maine Congressional Delegation regarding the May 3, 2005 General Agreement on Trade in Services request

Maine Citizen Trade Policy Commission

Senator Margaret Rotundo, Co-Chair *Representative John Patrick, Co-Chair*

MEMORANDUM

May 27, 2005

Mr. Christopher A. Padilla
Assistant U.S Trade Representative
For Intergovernmental Affairs and Public Liaison
1724 F. Street, N.W.
Washington, DC 20006

Dear Mr. Padilla:

We are writing regarding your May 3, 2005 memo to the State Points of Contact (SPOCs) and the Intergovernmental Policy Advisory Committee (IGPAC) asking for comments regarding ongoing negotiations at the World Trade Organization (WTO) on the General Agreement on Trade in Services (GATS). A copy of this memo was recently shared with us by our SPOC.

This memo raises several concerns for us, both in terms of the process used to consult with the State of Maine and the substance of the WTO GATS negotiations.

While our SPOC made your request available via the Maine International Trade Center website, we are concerned that the timeframe to consult with the necessary parties is unreasonably short. As representatives of our state have communicated to your office in the past, our current practice is to make decisions regarding whether or not to bind state laws to the rules of international trade agreements with the input of representatives from multiple branches of government, as well as the public. We are also concerned that we need more information to adequately evaluate your request.

We ask that the USTR provide Governor Baldacci and members of the Maine Citizen Trade Policy Commission with the proposed schedule of commitments as it would appear in the agreement - including which modes of delivery are proposed to be bound in which service sector, and to what specific levels of commitment. As we cannot make an informed decision with the information and timeline given, we also request that the USTR carve out all Maine state and local government actions from the new GATS offer slated to be tabled by May 31, 2005 until such time as we have the opportunity to review and analyze the language of the proposed commitments.

100 State House Station Augusta, Maine 04333-0100 Telephone 207-287-1670

Thank you in anticipation for your timely response. We look forward to working with you to resolve our concerns in a timeframe relevant to the current negotiations.

Sincerely,

Margaret Rotundo

Senator Margaret Rotundo
Co-Chair

John L. Patrick

Representative John Patrick
Co-Chair

cc: Governor John E. Baldacci
Alan Stearns, Senior Policy Advisor to Governor Baldacci
Members, Citizen Trade Policy Commission

100 State House Station Augusta, Maine 04333-0100 Telephone 207-287-1670

Maine Citizen Trade Policy Commission

Senator Margaret Rotundo, Co-Chair *Representative John Patrick, Co-Chair*

MEMORANDUM

July 5, 2005

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

The Honorable Susan M. Collins
United States Senate
154 Russell Senate Office Building
Washington, D.C. 20510-1903

The Honorable Thomas H. Allen
United States House of Representatives
1717 Longworth House Office Building
Washington, D.C. 20515

The Honorable Michael H. Michaud
United States House of Representatives
437 Cannon House Office Building
Washington, D.C. 20515

Dear Senator Snowe, Senator Collins, Congressman Allen and Congressman Michaud:

The Maine Citizen Trade Policy Commission writes to seek your assistance in obtaining information from the United States Trade Representative ("USTR") regarding the federal government's intentions to commit Maine state laws to comply with the World Trade Organization's General Agreement on Trade in Services (GATS).

As you know, while the United States Constitution places the regulation of trade with foreign countries within the prerogative of the federal government, primary responsibility for protecting public health, welfare and safety is left to the states. It has become increasingly clear to us that the GATS has the potential to undercut traditional areas of state authority. Thus, we view it as crucial that the federal government seek Maine's prior informed consent before agreeing to proposals in negotiations to expand the GATS that would bind state and local governments to conform their laws and practices to the terms of the pact.

Unfortunately, the USTR's efforts to date to seek the input and consent of states have been less than ideal. On May 3, 2005, the USTR issued a memo to the State Points of Contact (SPOCs) providing summaries of additional service sectors that were under consideration for inclusion in the updated United States GATS submission, and giving states the opportunity to

comment on whether the proposed submission accurately reflected existing state laws or regulations in the identified service sectors. The USTR gave the states until May 26, 2005, to respond to the memo.

On May 27, 2005, the Commission responded by faxed letter asking USTR to carve out all Maine State and local government actions from the new GATS offer until such time as there had been full opportunity to review and analyze the language of the proposed commitments. A copy of the Commission's letter is attached. We have not received a response to this letter. The U.S. offer was submitted to the WTO on May 31, 2005, and it appears that Maine was not carved out of the GATS offer.

The Commission's staff member was told, informally, by a staff person at USTR that Maine's request to be carved out of the current GATS offer was not honored because it arrived at USTR one day beyond the May 26, 2005, deadline, and because it did not come from the Governor's office. If this report is correct, it is troubling for two reasons. First, timely response to the USTR's request was made difficult by the shortness of time as well as the dearth of information provided to the states. In our responding letter, we pointed out that the tight deadline made it difficult to respond, and that we needed more information to analyze the request. Moreover, May 26 was an arbitrary deadline. The real deadline, in terms of the process of offers, was May 31. The U.S. had not yet made its GATS offer when it received Maine's request and could have carved out Maine measures from the offer had they been willing to do so.

Second, the USTR's alleged refusal to honor the commitment because it did not come from the Governor's office relies on a formality that is not based in law or policy. In practice, the USTR communicates with the State of Maine through the Single Point of Contact system. Maine's Single Point of Contact, Richard Coyle, as director of the Maine International Trade Center, is a member of our Commission. At a minimum, upon receiving the Commission's letter, the USTR should have contacted the Commission, Mr. Coyle, or the Governor's office, to discuss Maine's response to the offer. The USTR's failure to respond or inform the State of Maine regarding the status of its services commitments leaves us in an untenable position of uncertainty.

All of this points out problems that are inherent in the current system of consultation with the states on international trade issues. The USTR has demonstrated a failure to communicate openly and in a timely fashion with an appropriate range of contacts in the states. There are no formal guidelines or protocols for engaging in discussions with the USTR. The USTR's failure to institute a policy for consistent, uniform, and substantive communication with the states has resulted in confusion and lack of understanding on both sides. In an effort to resolve issues relating to this most recent failure of communication, and in a continuing effort to strengthen and clarify the system for communicating with USTR in future, we would appreciate your assistance in receiving answers to the following questions:

- On what basis did USTR refuse to honor the Commission's request that Maine be carved out of the May 31, 2005 GATS offer?

- What will be the USTR's protocol for communicating with States for the remainder of the GATS negotiations, including both market access negotiations and negotiation of new GATS rules such as disciplines on domestic regulation?

- How will USTR address the common complaint that states are not given enough time or information to evaluate requests for comment? Will USTR honor Maine, and other states' requests that they be given more time and information necessary to evaluate the requests for services commitments as they arise?

- The May 31, 2005 offer states, "The United States reserves the right to withdraw, modify, or reduce this offer, in whole or in part, at any time prior to the conclusion of the negotiations." As the U.S. negotiating position is still malleable, what will the USTR do to work with Maine to withdraw service sectors that have already been offered or committed in previous rounds of negotiations if we have major concerns about potential future impacts that such commitments may have on the enforcement of state laws and regulations?

Thank you for your attention and anticipated assistance in obtaining answers to our questions from the USTR. We admire and rely on your leadership in reviewing trade agreements and pressing for fair treatment for the people of Maine. We appreciate your willingness to listen to our concerns regarding the negotiation of the GATS.

Sincerely,

Senator Margaret Rotundo
Co-Chair

Sincerely,

Representative John Patrick
Co-Chair

APPENDIX G

Citizen Trade Policy Commission
Subcommittee Annual Assessments

Maine Citizen Trade Policy Commission
Healthcare Subcommittee Annual Assessment
October 28, 2005

Introduction

The Healthcare Subcommittee focused its research on the areas of pharmaceuticals, provision of health insurance, and the licensing of health-care officials and facilities. The following is a brief synopsis of each of these three areas, and how international trade agreements impact, or may impact, the regulation of healthcare in the State of Maine.

Pharmaceuticals

A significant area of concern for the CTPC Healthcare Subcommittee is pharmaceuticals, and the potential threat that international trade agreements could pose to the State of Maine's efforts to provide affordable prescription drugs to its citizens. There are several provisions contained in trade agreements that could affect Maine's prescription drug legislation and policies.

GATS

Through membership to the World Trade Organization (WTO) the United States is subject to the rules of the General Agreement on Trade in Services (GATS). The GATS includes both general commitments to which all WTO members must adhere; as well as sector-specific commitments. Sector-specific commitments are voluntary commitments by governments to follow GATS rules in particular sectors, and in particular, the rule that services be regulated in the manner "least burdensome" to international trade. The United States has made a sector-specific commitment on "distribution services." This commitment requires states to regulate the pharmaceutical industry through the rule that requires states to regulate the distributors (pharmacies and manufacturers) in the least burdensome fashion. All regulations have to be based on objective criteria and be the least burdensome regulatory option available to reach the government's goal.

TRIPS

Through its WTO membership the United States is also subject to the Trade Related Aspects of Intellectual Property (TRIPS), which establishes a framework under the WTO for protecting trademarks, copyrights and patents. Under TRIPS, all WTO members make patents available for pharmaceutical inventions for 20 years from the time the patent is filed. TRIPS recognizes that pharmaceutical manufacturers may have the right to limit the resale and importation of products originally sold to foreign markets. TRIPS does not require countries to include this patent right in their laws. If a country grants it patent holder control of the product after the initial sale, then trading partners must honor that extension of ownership control.

Doha Declaration

The TRIPS agreement was modified in 2001 by the Doha Declaration, which stated that the TRIPS agreement should not prevent countries from taking measures to protect public health, including measures

necessary to lower the cost of prescription medication. The Doha Declaration affirms the rights of countries to authorize production of generic drugs (compulsory licensing) and the importation of patented drugs at lowest price (parallel importation). When Congress passed the Trade Promotion Authority Act ("fast track") in 2002, Congress specifically directed that USTR must follow the Doha Declaration on TRIPS and public health. Congress also directed the USTR to maintain U.S. patent protections. The USTR cites this latter direction from Congress as a rationale for the expanded patent protections it pushes for in negotiating various free trade agreements.

Annex 2C of AUSFTA

When it negotiated the Australian United States Free Trade Agreement ("AUSFTA"), the United States committed to Annex 2C, which represented an unprecedented focus on the rights of pharmaceutical manufacturers to protect their patents. Among other things, Annex 2C puts in place a procedural process that allows a drug manufacturer to have several opportunities during the drug-listing system, such as a preferred drug list ("PDL"), to question decision makers and challenge their decisions to exclude a drug from a list.

Specific potential impacts on Maine and Maine's laws (Maine Rx)

Maine has been a leader in developing innovative programs to help provide affordable prescription drugs for its citizens. In particular, the Maine Rx Plus program uses the State's buying power under federal Medicaid law to cut drug prices by 25 percent for the working poor, retirees and the uninsured. Maine Rx Plus requires drug companies to offer discounts to uninsured Maine citizens in return for being listed as a preferred drug provider in the state Medicaid program.

With respect to GATS, the United States has made market access commitments in distributions services under GATS that preclude the United States, or a state, from adopting measures that limit the number of exclusive service suppliers. If a preferred drug list is deemed an exclusive service supplier arrangement, there is a possibility that limiting the number of participating drug companies could be considered a market access violation.

Similarly, there is a question as to whether Annex 2C of the AUSFTA could interfere with Maine's ability to decide what prescription drugs will be considered for its PDL. Annex 2C applies transparency requirements to "federal healthcare authorities [that] operate or maintain procedures for listing new pharmaceuticals or indications for reimbursement purposes, or for setting the amount of reimbursement for pharmaceuticals, under its federal healthcare programs." While Annex 2C should be read as only applying to "federal decisions," not state decisions, such as what companies are on a state's preferred drug list, there is no assurance that this interpretation would withstand challenge.

As one citizen testified at public hearing in Bangor on February 3, 2005, regarding AUSFTA and Annex 2C: "The agreement could block reimportation of less expensive drugs into the United States from other countries, including Canada. It could require changes in U.S. law which could delay or alter decisions providing affordable drugs for Medicaid, Medicare and Veterans Administration Health Care. The many vague provisions of the agreement will be interpreted and enforced by international dispute panels which are not subject to U.S. law." (Statement of Jane Sanford of Belfast)

The reimportation issue raised by Ms. Sanford is another area of great concern to the Healthcare Subcommittee. Ironically, while the purpose behind the negotiation of regional and bilateral trade agreements has been to expand trade by eliminating barriers to trade, provisions in recently negotiated trade agreements have the effect of restricting trade in pharmaceuticals. For example, AUSFTA as well as agreements with Singapore and Morocco prohibit Americans from buying drugs from those countries

because these agreements contain language allowing U.S. patent-holders to bar importation of their products, so-called "parallel importation."

In subsequent trade agreements, such as CAFTA, compulsory licensing and parallel importation are restricted, despite the Doha Declaration's specific allowance for compulsory licensing. The provisions in these agreements would bar such importation even if the United States Congress passes a law that would legalize imports of pharmaceuticals. Indeed, Congress has pending legislation that would allow importation of lower-priced patented prescription drugs from Canada and other countries. One of these bills, Dorgan-Snowe, is co-sponsored by Maine Senator Olympia Snowe. If the Dorgan-Snowe or another importation bill becomes law, there is a question as to whether it could go into effect in light of trade agreements that prohibit reimportation.

There is also the issue of trade agreements allowing extension of patent rights far beyond what is allowed by United States law or the TRIPS agreement. CAFTA and other pending bilateral agreements contain language that grants a five-year period of data exclusivity to a drug manufacturer. Generic drug manufacturers rely on this data to produce less expensive generic drugs. If they are denied access to this data for long periods, citizens in the countries subject to these trade agreements will be denied access to less expensive generic drugs.

As was expressed in a statement submitted by Senator Olympia Snowe at a Senate Finance Committee Hearing on CAFTA on April 13, 2005: "[T]rade should increase opportunities, not reduce them. A trade agreement which could jeopardize access to prescription drugs in countries suffering poverty, and perhaps even here in the U.S., will not promote development. Provisions in this agreement limit access to data used in the drug approval process – data which is essential to licensing generic drugs. At a time when we are reaching agreement to achieve greater transparency in the drug approval process, I am greatly concerned that the Trade Representative would seek the opposite."

Finally, it has become apparent in looking at these issues that the USTR consults too closely with the pharmaceutical industry, and has adopted industry positions in its negotiating posture at the expense of public health concerns. The Healthcare Subcommittee joins the concern voiced by other states and healthcare advocacy groups that the USTR must consult with the states and public health advocates in looking at the pharmaceutical industry sector. When it passed fast track, Congress specifically required the United States to negotiate trade agreements in keeping with the Doha Declaration's intent of allowing countries to protect the healthcare needs of their respective citizens, including obtaining affordable prescription drugs. The USTR has not lived up to that obligation.

Actions or initiatives taken or planned

- The Healthcare Subcommittee has prepared a letter to the USTR outlining specific concerns regarding the potential impact that Annex 2C of Australia Free Trade Agreement as well as GATS market access rules could have on Maine Rx Plus, and specifically requesting an interpretation of Annex 2C. The interpretation requested should be a formal agreement between the United States and Australia through the commission that implements the AUSFTA.

- Two members of the Healthcare Subcommittee attended National Legislative Association on Prescription Drugs (NLARx) meeting on May 6, 2005, in Boston and agreed to work with other states to study the impact of trade on state legislation dealing with pharmaceuticals issue.

- Rep. John Patrick, Co-Chair of CTPC, and member of the Healthcare Subcommittee along with legislators from six other states (Arizona, California, Connecticut, Hawaii, Maine, West Virginia, Washington) signed a letter prepared by the Legislative Working Group on Prescription Drugs

and Trade directed to the Assistant U.S. Trade Representative for Asia-Pacific and Pharmaceutical Policy, objecting to trade policies that may restrict access to affordable prescription drugs

Health Insurance

Maine has been very active in pursuing innovative health insurance policies that seek to address healthcare problems within the state. This policy work has been accompanied by a lively, ongoing public debate about the best ways to address the health insurance challenges facing Maine. The Maine Citizen Trade Policy Commission has become increasingly concerned that international trade agreements could pose significant threats to Maine's ability to provide affordable and accessible health insurance to its citizens. Additionally, the commission is concerned that trade rules could limit Maine's ability to pursue a full range of future policy options and foreclose our state level policy space, thus effectively preempting the state debate over what health insurance policy best serves Maine.

The agreement that most directly impacts health insurance policy in Maine is the General Agreement on Trade in Services (GATS). Administered by the World Trade Organization (WTO), the GATS is designed to extend trade rules into the service economy including the healthcare sector. The United States has committed health insurance to be partially bound by the GATS rules. The WTO requires member countries to ensure "conformity of all laws, regulations, and administrative procedures" to the agreements including the GATS.

Additionally, regional trade agreements such as the North American Free Trade Agreement (NAFTA) and the Dominican Republic – Central American Free Trade Agreement (CAFTA) could impact Maine health insurance policy. These regional agreements contain services chapters similar to GATS rules as well as powerful investment chapters which could directly impact state health insurance policy.

Potential impacts of trade policies on Maine and Maine health insurance laws

Dirigo Health

Passed by the legislature in 2003, Dirigo Health is a healthcare reform plan that seeks to increase access, contain costs and increase the quality of healthcare through a variety of measures including the creation of a new health plan, Dirigo Choice. Trade rules cold potentially undermine Dirigo Health or similar healthcare reform measures.

The United States has committed the health insurance sector under the GATS which means that the GATS national treatment (Article XVII) and market access (Article XVI) rules apply. The national treatment rule requires that the US must treat foreign service suppliers, including suppliers of health insurance, "no less favorable" than domestic suppliers regarding all "measures" affecting the supply of the services. This could mean that government funding for Dirigo Health would be in violation of GATS national treatment rules since Dirigo will receive Medicaid dollars as well as first-year state funding. Such funding could be argued to be discriminatory against foreign health insurance providers. The US has made no exemptions in its GATS Schedule of Commitments to protect or maintain government subsidies to public health insurance plans. If the law were challenged and a WTO tribunal were to rule that the Dirigo Health plan is inconsistent with the GATS the US could face trade sanctions or have to repeal or modify the law.

Some would argue that GATS Article I(3)b exempts public services, such as Dirigo Health, from the GATS rules based on a "governmental authority" exclusion. Article I(3)b states that the GATS applies to

all services "except those supplied in the exercise of governmental authority." The very next GATS clause (Article I(3)c) reads, " "a service supplied in the exercise of governmental authority" means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers." The exclusion only applies to those governmental services which are not commercial and which do not compete with other service suppliers. The critical terms – "on a commercial basis" and "in competition with" – are left entirely undefined and up to the interpretation of a WTO trade tribunal.

When asked specifically whether the Dirigo Health plan violated the United States national treatment commitment in healthcare and health insurance and whether the services rules in GATS or CAFTA could negatively impact Dirigo, the Office of the United States Trade Representative (USTR) did not give a very reassuring answer:

> We understand that the plan [Dirigo Health Plan] operates under the auspices of the Maine government and receives some state funding for the first year as well as public funds through Medicaid. We understand that the plan has several objectives including working with insurance companies and hospitals to find voluntary means of reducing the cost of insurance and healthcare and ensuring that poor citizens are able to obtain insurance. ***Dirigo appears to have a unique governmental role and is not intended to compete directly with private sector suppliers of insurance and related services or healthcare services.*** In order to provide a more definite response, we would need additional information on the plan, including its operation, how it will be funded, and how it will evolve in the future. [1]

USTR goes on to say that it seems unlikely that GATS would have any bearing on the Dirigo Health Plan, but it appears that this assessment is based on an incorrect understanding of the plan. USTR bases its claim, in part, on the false notion that Dirigo is not intended to compete with private insurers. But Dirigo Choice is competing – and is intended to compete - with private insurance suppliers to offer citizens and small business a better deal, in part by using state funding. The most recent assessment of current enrollment in the Dirigo Choice insurance plan makes it clear that Dirigo is competing with private sector insurers. According to a survey from the University of Southern Maine's Muskie School of Public Service, more than two-thirds of the first people to enroll in Dirigo Choice switched from other more expensive health insurance plans.[2] So clearly Dirigo is competing with private sector suppliers.

The logic behind USTR's claim (highlighted above) implicity suggests that if Dirigo were to compete with private sector suppliers of insurance – as it does – it would be violating national treatment rules and could potentially result in a WTO law suit.

Additionally, the GATS domestic regulation rules (Article VI) could potentially impact Dirigo Health and other similar measures in the future. Under these GATS rules the WTO is charged with developing "disciplines" (i.e. rules) to ensure that domestic laws regarding licensing and qualification requirements and technical standards are "not more burdensome than necessary" and "do not constitute unnecessary barriers to trade." Under these rules a foreign country could challenge Maine laws in a WTO tribunal as being overly burdensome. Disciplines on domestic regulations have been created for the accounting sector and the WTO is also working to create general disciplines that would apply to service sectors. There currently are not disciplines for the health insurance sector although they may be developed in the

---

[1] Letter from Office of USTR to Senator Susan Collins, April 13, 2005. (See Appendix for a copy of the letter)
[2] Bowe, T. (2005, August). "DirigoChoice member survey: A snapshot of the program's early adopters." Portland, ME: University of Southern Maine, Edmund S. Muskie School of Public Service, Institute for Health Policy. The survey was based on interviews with 1,564 people who signed up for Dirigo Choice in the first quarter of 2005. Dirigo Choice currently provides insurance for 8,100 Mainers.

future. Such rules, if they are created, could seriously impact measures adopted by Dirigo Health's board with respect to the level of preventative care and the type of preventative care that must be included in health insurance plans offered under the Dirigo umbrella in the future.

Future Healthcare reform in Maine

As noted, Maine has been at the forefront of nationwide healthcare reform. In the future the state may democratically decide to pursue a range of health insurance policy options, including the creation of a universal single payer health insurance system. Such an action could be undermined and even halted because of the rules in trade agreements.

The creation of a single payer system would clearly violate the GATS. Under GATS *Monopolies and Exclusive Service Suppliers* rules (Article VIII:4) a WTO member may have to negotiate trade related compensation with trading partners if a state or federal government decides to grant monopoly rights to supply a service to a single government or non-profit supplier in a sector covered by its specific commitments. A single payer system would create a government or non profit monopoly in the provision of health insurance. Since the US has committed the health insurance sector, the U.S. could be obligated to offer trade related compensation to trading partners if Maine – or any other state or the federal government – enacted single-payer universal health insurance legislation.

If the U.S. does not withdraw its "specific commitments" in the health insurance sector, the prospect of having to offer trade related compensation to an array of trading partners for the right to create a universal health care system could have a serious chilling effect on efforts to pass such legislation in Maine.

There are examples that should cause us to take this concern seriously. In New Brunswick, Canada, in 2003, after years of increasing automobile insurance rates, the Legislative Assembly of New Brunswick created a Select Committee on Public Automobile Insurance. The committee was charged with exploring, "the most suitable form of a public insurance system for New Brunswick should the province conclude that a public system is required."

After months of expert and public consultation and discussion, the all-party committee unanimously recommended a public automobile insurance system for New Brunswick. During the debate regarding the legislation the insurance industry threatened trade treaty litigation, based on Canada's GATS commitments and NAFTA's investment rules, if New Brunswick went ahead with the legislation. The prospect of trade litigation and expensive trade compensation costs had a chilling effect on the legislation and it ultimately did not move forward, despite broad based support.[3]

Future Actions the CTPC Healthcare Subcommittee is Considering:

1. Ask USTR to withdraw health insurance commitments in the GATS

[3] For a summary of the proceedings surrounding this issue see "International Treaty Implications Color Canadian Province's Debate over Public Auto Insurance," International Institute for Sustainable Development, May 11, 2004, available online at http://www.iisd.org/pdf/2004/investment_investsd_may11_2004.pdf. To read a more detailed legal analysis of the trade threats posed see Shrybman, Steven and Sinclair, Scott, "Public Auto Insurance and trade treaties," Canadian Centre for Policy Alternatives, June 2004, available online at http://www.policyalternatives.ca/documents/National_Office_Pubs/brief5-1.pdf or see McCarthy Tetrault, Memorandum Re: Atlantic Canada Insurance Harmonization Task Force, September 9, 2003, available on-line at: www.cap-cpma.ca/images/worddocuments/Memo%20re%20International%20Trade.doc

2. Work on increased state level oversight on ongoing GATS negotiations on Domestic Regulation rules

3. Ask USTR to agree to a prohibition on any "disciplines" on domestic regulation in the healthcare sector.

Licensing

Licensing requirements are vital to healthcare policy in Maine and the United States because licensing requirements are a primary means of regulating HMOs, health insurers, hospitals and other health facilities. The issue of licensing as a matter of trade policy is defined and established in the GATS agreement. It includes all licensing for professions and trades. The statement of policy establishes the principal that all signatories to the trade agreements shall establish standards and language which is consistent with other signatories so as to permit persons licensed in the country of a signatory nation may practice in the country of any other signatory nation. The only standard is that a nation declare that its licensing standards is consistent with that of the other signatories.

As an illustration, India has recently declared that its professional licensees are certified to practice in the nations that are signatories to the GATS treaty. No details are given as to the selection of candidates for their exams or the standards for passing the exams etc. This despite the well established data which shows the wide discrepancy in the number of Indian trained physicians passing the examination currently required for foreign trained physicians to take US licensing exams. In addition licensing has always been a state prerogative. This includes the acceptance of an applicant from another state in the United States. An applicant from another State must apply to the Board of Medical Examiners in the new State that she/he wishes to practice in. Rules accepted by the trade organizations are made by trade negotiators and without participation of the States and would, if enforced as written, result in in a legislative battle with the states and Federal Government, and the Trade Organization

Another serious problem which has arisen with the trade rules is the out sourcing of services such as reading and interpreting x-rays. Insurance Companies have contracted to send x-rays in batches to India for reading and interpretation There is no real check on the training and competence of the Radiologists in India as to training or experience.
End

Facilities

The terms of the current and proposed trade agreements include Health Facilities. This includes hospitals, nursing homes, outpatient facilities, laboratories and facilities for noninvasive procedures such as MRIs or PET Scanners. It also includes facilities for minimally invasive procedures such as angiography and plastic surgery as well as day Surgery units,

Many of the facilities included are partially or fully financed by foreign investors. There are no provisions for restrictions by states for states to impose certificate of need restrictions on foreign investors. This is not addressed in the Facility section of the GATS agreement. Foreign investors could protest that such a restriction would prevent profits which would otherwise accrue.

The same questions could arise regarding staffing and or standards of care if they differ from those of the country of the financier. Facilities may change the organization of the practice of Medicine even though medical practice is excluded from trade treaties at present.

Questions to the United States Trade Representative (USTR) from the Maine Citizen Trade Policy Commission (CTPC) Healthcare subcommittee

In our work, the CTPC Healthcare subcommittee has identified a number of important health related questions that we need answers to. We are posing these questions to USTR in the hope that they can provide us with timely answers. These questions will also serve as a helpful blueprint for the subcommittee's ongoing work on trade and healthcare issues over the coming year.

1. Maine citizens previously raised concerns about the impact of GATS rules on Maine's administration of Dirigo Health. USTR's response to question #4 in its 13 April 05 letter to the Honorable Senator Susan Collins suggests that USTR does not fully understand the nature of this state insurance plan: "In order to provide a more definitive response, we would need additional information on the plan, including its operation, how it will be funded, and how it will evolve in the future."[4] We appreciate USTR's note regarding the potential use of the subsidies exclusion, but we are also concerned about requirements on transparency, necessity tests, and market access provisions.

- Will USTR provide an opportunity for Maine officials to present information about Dirigo Health so as to clarify its role in the insurance market and its relation to current GATS commitments and pending GATS negotiations?

- Given that USTR has already noted the need for additional information on this plan, as well as on Maine Rx and other health-related services, will USTR honor Maine's previous request for a carve-out of Maine's service sectors until such time as all three branches of state government have had sufficient time to analyze US sectoral, domestic regulation, and rules-group offers in the WTO GATS negotiations?

- If a review of Dirigo Health's role in Maine's overall insurance markets reveals areas of conflict with proposed GATS rules, would USTR work with the state of Maine to include a carveout for Dirigo Health in the scheduling of any new commitments? Are there other ways in which a limit on commitments can be registered and acknowledged by other WTO parties? How would Maine go about carving out other sectors if the state wished to do so?

2. In its April 13 letter, USTR responded to the questions regarding Maine Rx by noting that the program "does not seem to be [impose] any limitation on the number of service suppliers mandated by the State of Maine" and therefore is not subject to a challenge under the GATS market access commitment. However, the Commission is also concerned about how commitments on GATS Article VI.4 now under discussion in the Working Party on Domestic Regulation (WPDR) could impact Maine Rx.

- Would U.S. acceptance of "least burdensome" or "least trade restrictive" rules as proposed by US trading partners in the WPDR require Maine to provide opportunities for challenging, or requiring administrative review of, listing decisions made by Maine Rx?

- Would new disciplines on transparency as part of the implementation of Article VI.4 impose new disclosure and public notice requirements on the State of Maine?

- With reference to Maine Rx and its cost-containment provisions, Maine asserts that affordability itself relates to the "quality of the service" as defined by the GATS.

[4] Letter from Office of USTR to Senator Susan Collins, April 13, 2005. (See Appendix for a copy of the letter)

3. In line with its commitment to transparency at the WTO, will USTR also make public its submission to the GATS Working Party on Domestic Regulation on transparency? At the very least will it share that proposal with Maine's Congressional Delegation at the earliest opportunity so that its implications can be understood?

4. Maine Revised Statutes Annotated 22 section 2159-C bans discrimination in health insurance based on genetic information or testing. The Commission is concerned about the impact on this law and others of any GATS commitments whereby regulatory actions must be "no more burdensome than necessary to ensure the quality of the service." What is USTR's response to such concern?

5. 22 MRSA chapter 103-A contains certificate of need requirements for health facilities and health services. DHHS rule 10-144, chapter 112, chapter X contains nursing staffing requirements for licensure of specialty and general hospitals. The rules require staffing to meet the needs of the patients but are not strict stated numerical ratios that apply to each shift in all hospitals.

- Will USTR discuss with the State of Maine any proposals made in the WPDR regarding "necessity tests," and its impact on various health services in Maine?

- Is it USTR's interpretation that a general health facility staffing requirement—one that does not take the form of a specific quota—complies with current and proposed GATS rules?

- Is it USTR's position that Domestic Regulation disciplines should be limited only to issues of regulatory transparency?

6. Would new GATS disciplines on licensing procedures—either for facilities or for professionals—require Maine's state agencies to more thoroughly explain reasons for rejecting licensing applications than in the past?

7. In minutes taken from the February 2005 meeting of the Working Party on Domestic Regulation, it appears that the United States proposal would require that members establish horizontally-applicable, clear, and publicly available licensing procedures. Would the requirement for horizontally applicable licensing procedures require harmonization of differing procedures at the state level? Would Maine municipalities be required to operate under a single state standard?

8. If new GATS disciplines on Domestic Regulation are agreed to at the December WTO ministerial in Hong Kong (or as a result of that negotiation), does USTR plan to submit those disciplines to Congress for review as a new undertaking?

9. Will USTR provide an update to the to Maine's Congressional delegation and the Maine Citizens' Trade Policy Commission regarding any negotiations on services procurement under the WTO?

10. Will USTR provide for state representation on any international standard setting body concerned with developing GATS disciplines on:

- Privacy of medical records, including genetic history?
- Facility licensing?
- Licensing standards for professionals, particularly under GATS Mode 4?

APPENDIX

Letter from the Office of the United States Trade Representative to Senator Susan Collins
April 13, 2005

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

APR 13 2005

The Honorable Susan M. Collins
United States Senate
Washington, DC 20510-1904

Dear Senator Collins:

Thank you for your letter concerning various questions from the Maine Fair Trade Campaign regarding the free trade agreement with Central America and the Dominican Republic (CAFTA-DR). Please find below responses to these questions:

1. *Who in Maine will benefit from the CAFTA-DR?*

Trade barriers artificially raise costs while at the same time reduce the range and quality of goods and services available to consumers. When consumers pay more than necessary, they have less money available to invest or to spend on other goods and services, which depresses economic growth and employment. The elimination of trade barriers through agreements like the CAFTA-DR will benefit the citizens of Maine by fostering economic growth, employment, and consumer welfare.

The CAFTA-DR will also expand market access opportunities for producers of goods and services in Maine. Most goods imported from the CAFTA-DR countries already receive duty-free treatment in the United States. By contrast, exports from U.S. producers still face significant tariffs in the region. U.S. manufacturers, therefore, have everything to gain from this agreement.

For Maine, in particular, CAFTA-DR represents a dynamic, diversified growth market for exporters of high-tech goods. Maine's total exports to the six CAFTA-DR countries are up 166 percent since 2000, ranking it among the top ten U.S. states for fastest export growth to the region. In 2004, Maine's top three export groups to CAFTA-DR recorded nearly $50 million in exports: $31.4 million in leather and related products; $8.4 million in electrical equipment, appliances and parts; and $8.2 million in computers and electronics. Computers and electronics sales from Maine to the CAFTA-DR region increased more than sevenfold from 2000 to 2004. Other multimillion-dollar 2004 export groups from Maine to the region include apparel manufacturers ($7.7 million) and processed foods ($2.9 million).

2. *Do CAFTA investment provisions violate the Bipartisan Trade Promotion Authority Act of 2002, which provides that foreign investors should have no greater substantive rights with respect to investment protections than U.S. investors in the United States?*

The Honorable Susan Collins
Page Two

No. After Congress passed the Bipartisan Trade Promotion Authority Act of 2002 (TPA Act), the Administration consulted extensively with Congress and with the business and non-governmental organization (NGO) communities to develop new investment provisions. The provisions ultimately were incorporated into the free trade agreements (FTAs) with Chile, Singapore, Morocco, and Australia that Congress has approved. They were also incorporated into the CAFTA-DR investment chapter.

As with our other recent FTAs, under the CAFTA-DR investment chapter, foreign investors do not receive greater substantive rights than do U.S. investors in the United States. For example, the investment chapter includes an expropriation annex that draws heavily from principles developed under U.S. takings law. Among other things, it incorporates tests established in U.S. Supreme Court decisions to determine whether a regulatory taking has occurred. The investment chapter also clarifies that the obligation to accord foreign investors "fair and equitable treatment" refers to a standard that is grounded in the due process standards embraced by the United States and other major legal systems of the world (as contrasted to a subjective standard).

3. *Why are CAFTA's labor and environmental provisions not enforced as stringently as the commercial provisions in the agreement?*

It is inaccurate to say that the CAFTA-DR provides for less stringent enforcement of its labor and environment provisions than its commercial provisions. The TPA Act calls for "equivalent" – not "identical" – dispute settlement procedures and remedies to apply in FTA disputes involving commercial, labor, or environment obligations. Moreover, the TPA Act provides that remedies should be "appropriate" to the subject matter of the dispute.

The CAFTA-DR's dispute settlement provisions are consistent with this guidance. In general, the CAFTA-DR's dispute settlement procedures are the same for commercial disputes on the one hand, and labor or environment disputes on the other. For all disputes, the first goal is to eliminate a Party's failure to comply with its obligations under the Agreement. In commercial disputes, if the disputing Parties cannot agree on a way to do this or if they cannot otherwise agree on some form of compensation, the complaining Party can impose trade sanctions of equivalent effect, unless the defending Party opts to pay a monetary assessment. A monetary assessment will be set at 50 percent of the level of benefits determined to be of equivalent effect, unless the disputing Parties agree on a different amount.

In labor and environment disputes, if a Party refuses to comply with an adverse dispute settlement panel determination and the disputing Parties cannot agree on a way to resolve the problem, the monetary assessment step comes first. While equivalent to the commercial dispute process, this innovation is more likely to bring a Party into compliance with its labor

and environment obligations. This is because the monetary assessments in environment and labor disputes can only be used to fix the enforcement failure or for other labor or environment initiatives in the country that is not meeting its obligations. Given the nature of the Agreement's labor and environment obligations, which require Parties to effectively enforce their own labor and environmental laws, it makes sense to provide for monetary assessments as a first step in these disputes. At the same time, consistent with the procedures for commercial disputes, if the defending Party fails to pay the monetary assessment, the complaining Party may take other appropriate steps, including imposing trade sanctions against the defending Party.

In sum, the dispute settlement procedures provide for the potential use of trade sanctions and monetary assessments to enforce the Agreement's obligations, but do so in a way that is appropriate to the subject matter of commercial, labor, and environmental disputes.

4. *Could any of the services rules in CAFTA-DR or GATS negatively impact Maine healthcare policies such as Maine's Dirigo Health Plan or Maine Rx?*

Based on the description of Maine's Dirigo Health Plan, we understand that the plan operates under the auspices of the Maine government and receives some state funding for the first year as well as public funds through Medicaid. We understand that the plan has several objectives, including working with insurance companies and hospitals to find voluntary means of reducing the cost of insurance and healthcare and ensuring that poor citizens are able to obtain insurance. Dirigo appears to have a unique governmental role and is not intended to compete directly with private sector suppliers of insurance and related services or healthcare services. In order to provide a more definitive response, we would need additional information on the plan, including its operation, how it will be funded, and how it will evolve in the future.

In addition, trade agreements, including the CAFTA, contain various provisions specifically designed to ensure that governments retain full discretion to develop and maintain appropriate policies to support the health and wellbeing of their citizens. For example, subsidies generally are excluded from the scope of our trade agreements. Since the main concern noted in your letter is public funding of the Dirigo Plan, it is possible that the subsidies exclusion would apply to this program.

Similarly, in our FTAs, the United States reserves the right to adopt or maintain measures with respect to the provision of social services performed for a public purpose. This includes social welfare and public health services. Both the GATS and our FTAs exclude measures necessary to protect human life or health from the coverage of services disciplines. In addition, financial activities conducted by a public entity on behalf of the government or that use the financial resources of the government are excluded from these agreements.

In light of the various provisions designed to retain government discretion in matters affecting health and welfare, it seems unlikely that either the CAFTA-DR or the GATS would have any bearing on the Dirigo Health Plan, as you have described it.

- Is the Maine Rx program vulnerable to a trade-based challenge given the U.S. market access commitments under GATS?

Under the GATS market access commitment, the United States agreed not to limit the number of suppliers of distribution services, for example, by designating a monopoly or exclusive service supplier. (An exclusive supplier arrangement is one in which the government limits the number of suppliers of a particular service.) As described, the Maine Rx program is open to all pharmaceutical companies that are willing to offer a discount to uninsured citizens. There does not seem to be any limitation on the number of service suppliers mandated by the State of Maine.

- Does the government procurement exception apply to the Maine Rx program?

From the description of the program, it appears as though the State of Maine does not actually procure drugs, but instead provides an incentive for pharmaceutical companies to reduce their prices for uninsured citizens. If no procurement activity takes place, then the government procurement exception would not be relevant. However, as noted above, the Maine Rx program also does not appear to be inconsistent with our market access commitments, so there does not seem to be a need to invoke an exception.

5. *Do CAFTA's intellectual property rights provisions violate Section 2101(b)(4)(C) of the Trade Act of 2002 to uphold the 2001 WTO Declaration on the TRIPS Agreement and Public Health?*

No. The intellectual property provisions contained in the CAFTA-DR are fully consistent with the WTO Declaration on the TRIPS Agreement and Public Health ("Doha Declaration") as well as the negotiating objectives set forth in the Trade Act of 2002. The intellectual property right provisions in the CAFTA-DR do not limit or undermine the flexibilities referenced in the Doha Declaration. In addition to making reference to the Doha Declaration, the Trade Act of 2002 also states that the Administration shall seek to "ensure that the provisions of any multilateral or bilateral trade agreement governing intellectual property rights that is entered into by the United States reflect a standard of protection similar to that found in United States law." In accordance with this mandate, the intellectual property rights

5 'd 608 ON
APR 13 2005 2:35PM

provisions of the CAFTA-DR are consistent with U.S. law in this area. We have, in the CAFTA-DR as in our other FTAs, sought to meet both this objective and the objective of respecting the Doha Declaration.

Sincerely,

Matt Niemeyer
Assistant U.S. Trade Representative for
Congressional Affairs

NO 609 P. 6

APR. 13. 2005 2:35PM

Maine Citizen Trade Policy Commission
Labor and Economic Development Subcommittee Annual Assessment
October 28, 2005

Research approach

The Labor and Economic Development Committee focused on developing a research approach that will illuminate the interplay between international agreements and Maine's labor and business environment. While data on Maine's exports are available through the Maine International Trade Center, it appears that detailed import data are not readily available and may be significantly more difficult to obtain at a level of detail necessary for conducting a meaningful analysis. The subcommittee will continue to investigate potential sources for this data at the state and national level for its analysis on Maine's exports and imports. Canada maintains import statistics at the provincial and national level and similar statistics may be available from federal sources.

In conducting research on the impact of trade agreements on Maine jobs, it appears that data on job loss due to foreign trade are more readily available than job creation because job losses are captured, at least in part, in statistics from TAA when plants are certified and gain benefits for displaced workers. The Department of Commerce compiles statistics on job creation related to the export industry and indicates that exports support approximately 25,000 jobs in Maine.

Public hearings

At both of the Bangor and Portland public hearings, citizens voiced concerns with a number of issues related to jobs and/or economic development. A summary of those concerns are presented below.

- Testimony from workers from several industries that either they themselves or people they know have been laid off when companies have moved jobs offshore or competition from offshore has caused Maine-located companies to downsize as a cost-saving measure. Data on TAA certified layoffs was presented. We heard testimony that in the recent period 11,630 workers have been laid off at 163 locations, and also that over the past ten years nearly 24,000 high-paying manufacturing jobs have been lost. Additionally, specific testimony was given about how international trade agreements have hurt Maine's pulp and paper industry and the workers involved in that industry.

- People voiced concerns about procurement rules in DR-CAFTA that may undermine the state's ability to exercise purchasing preference to promote local economic development, or to avoid purchasing items manufactured in sweat shop conditions.

- The owner of a wood products business gave testimony about the conditions of the industry in Central America including the extremely low minimal wages laborers are paid and how the poor work environment and low wages negatively impacts similar businesses in Maine.

- A Maine t-shirt business owner testified that the cost difference in the production of t-shirts in other countries drives many of his customers to imported t-shirts instead of buying locally. The business owner indicated that was not possible to cut his operational

cost to the point of being able to compete with countries that maintain low labor and business standards.

- Participants at the hearing pointed out that even if Maine companies do not move jobs offshore, the ease with which those companies can now make that threat produces enough leverage to lower wages and benefits of jobs which remain in Maine. One worker testified that this threat had been made directly in his union's negotiations for a collective bargaining agreement with his employer.

- Small business owners testified that the current model of free trade does more to benefit very large corporations than to advance the interests of small businesses.

- Issues were raised by the representatives of the modular housing industry about what they see as a lack of enforcement of the rules in NAFTA, the result of which is Canadian labor entering the state along with the imported homes and taking the setup work away from Maine workers.

- The proprietor of a daycare center spoke of her loss of business when parents of children she has cared for lose their jobs as mills downsize or close.

- Concerns were raised about whether some of the services provisions in GATS might affect our Social Security system if, as part of the reform efforts currently underway, parts of that system are privatized.

- An economics professor testified that free trade is a good thing but that CAFTA in particular contains inadequate labor and environmental protections.

- One person testified that free trade increases productivity and lowers the cost of goods.

Future work

Over the next few years we hope to be able to obtain enough detailed information about Maine's exports and imports to conduct an in depth analysis on how trade agreements impact Maine's labor and business environment over the short-term and the long-term.

The Labor and Economic Development Subcommittee plans to pursue answers to some of the following questions that arose during our initial research:

1. How do our labor laws interact with the international trade agreements? Could this have an impact on, for example, the fact that our state minimum wage is higher than the federal standard?

2. Are the studies available about what has happened to consumer prices and quality on various commodities as international trade has grown? What is happening to wages at the same time?

3. What is the role of the public sector at the state level in helping to influence market decisions?

4. How do we get USTR to consider our input about policy options that we want to keep open?

It is the intent of this subcommittee to work cooperatively with a number of entities to find answers to the aforementioned questions. Some of those entities may include the Economic Policy Institute, the University of Maine Research, Maine's Congressional Delegation, the Forum on Trade and Democracy and the Maine International Trade Center

Maine Citizen Trade Policy Commission
Natural Resources/Environment Subcommittee Annual Assessment
October 28, 2005

The Natural Resources/Environment Subcommittee has identified the following areas for continued investigation and assessment based on expert briefings and testimony at public hearings.

Water Withdrawal Regulation

Context

Water is covered under the General Agreement on Tariff and Trade and in NAFTA and CAFTA as a resource, and under the General Agreement on Trade in Services (GATS), as a service. This raises complex questions of exactly what rules will apply and under which circumstances.

Maine is a water rich state. Water is becoming more valuable as a resource and is already a multi-billion dollar industry. European companies, like Nestle, profit from water by bottling it, while others, like Suez, RWE and Veolia provide services by taking over municipal water and sewer systems.

Maine's *Water Withdrawal Reporting Program*, 38 M.R.S.A. §§ 470-A to 470-G, requires the Department of Environmental Protection to establish by rule water use standards that maintain in-stream flows and lake levels protective of aquatic life and other uses. The standards are set based on highly sophisticated analysis of many factors, including water conditions and seasonal variations. The standards result, as a practical matter, in restrictions on the quantity of water that may be taken depending on the conditions existing at a particular point in time. These rules were adopted January 1, 2005.

Currently, the United States does not include drinking water services as a sector open for negotiation, although it does include water services for industrial and commercial use. The European Union is pushing to list drinking water services under GATS.

Questions

- Can Maine's water withdrawal regulations be challenged as a violation of the GATS market access rules which prohibits quantitative limits on the value of services transactions in a committed service area?
- Can the GATS discipline on domestic regulations – requiring them to be the least trade restrictive possible and no more burdensome than necessary to achieve their purpose – dissuade Maine from setting standards or local ordinances that violate GATS rules?
- How can Maine and other states with abundant natural resources be consulted before the trade rules are written in such a way as to be potentially harmful to them?
- How do states and municipalities find out whether or not the United States is considering including drinking water services in its GATS commitments?

Maine Climate Action Plan

Context

Maine's Climate Action Plan contains 14 policy strategies to reduce the consumption of energy and reduce the emissions of global warming gasses.

Questions

- Maine is considering adopting California style auto emissions controls. A component of the program is to require automakers to sell zero-emission vehicles. Additionally, there are plans to increase energy standards of appliances. Will these requirements violate trade agreements?

- Maine has adopted a renewable energy standard for electricity supplied to the state; will this be viewed as a restriction to trade?

- Maine will increase it regional collaboration (both with New England states and Canadian Providences). Will this collaboration violate trade agreements?

Zoning and Smart Growth Issues

Context

Market access rules: If governments make an unqualified commitment for a particular service to GATS market access rules, they cede the right to maintain or create policies that limit the number of service suppliers, the total value of service transactions, the total number of service operations, or the type of legal entity through which this type of service is provided. Central, regional and local governments and authorities are all obligated to comply with these constraints. The USTR has included retail and wholesale distribution, construction, and hotel and restaurant services in the list of initial U.S. GATS commitments.

New disciplines on domestic regulations: WTO negotiators are also pursuing new "disciplines on domestic regulation" that explicitly target municipal zoning. ... If adopted, local officials would have to limit regulations to what is "no more burdensome than necessary," or "no more trade restrictive than necessary," or "proportionate" regarding their impacts on foreign service providers or services trade.

Rights of foreign investors: NAFTA and CAFTA contain investment chapters that give foreign investors the right to sue signatory governments in closed trade tribunals for compensation for regulatory costs. Municipal government actions to protect the environment have already been challenged by corporations as regulatory takings under NAFTA Chapter 11. Example: challenge by Metalclad of Mexican municipality permit requirements for toxic waste facility operation ... Mexican government had to pay $16 million in damages.

Questions

Should Maine municipalities be concerned about possible challenges to:

- Zoning aimed at protecting heritage or scenic areas – if such policies and decisions limit the number of hotel, housing or retail service suppliers?

- Restrictions on the size of "big box" stores and retail outlets, as well as restrictions on the hours of operation – because they limit the total value of service transactions?

- Anti-sprawl and smart growth strategies and urban growth boundaries that limit the number of service suppliers?

- Development permits aimed at preserving green space allocations and mitigating neighborhood impacts would be restricted to only those with the "least burdensome" requirements?

- Development restrictions that severely limited potential investment, such as a ban on new construction in heritage or environmentally sensitive areas because it could be judged "disproportionately" restrictive relative to their benefit by a WTO dispute panel?