

Sen. Troy Jackson, Chair  
Sen. John Patrick  
Sen. Roger Sherman  
Rep. Sharon Treat, Chair  
Rep. Jeff McCabe  
Rep. Bernard Ayotte

Robert Umphrey  
Stephen Cole  
Michael Herz  
Dr. Joel Kase



John Palmer  
Linda Pistner  
Harry Ricker  
Jay Wadleigh

*Ex-Officio*  
Mike Karagiannes  
Wade Merritt  
Pamela Taylor

*Staff:*  
Lock Kiermaier

STATE OF MAINE

## Citizen Trade Policy Commission

---

February 24, 2014

The Honorable Michael Froman  
United States Trade Representative  
600 17th Street NW  
Washington, DC 20508

Re: Support for Public Stocktaking Process on Investment and  
Investor-to-State Dispute Settlement Policies

Dear Ambassador Froman:

The Maine Citizen Trade Policy Commission (CTPC) is established in Maine State Law "...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." In seeking to fulfill its statutory mandate, the Commission voted unanimously during its meeting of February 24, 2014 to submit this letter to you indicating our strongly held concerns regarding the current process being used to negotiate the Trans-Atlantic Trade and Investment Partnership (TTIP) and the possible inclusion of provisions pertaining to the use of the Investor-State Dispute Settlement (ISDS) process.

In concert with many U.S.-based organizations representing labor, health, consumers, family farms, the environment and small business interests, we write to urge you to join your counterparts from the European Union and embark upon a thorough, open, public consultation process to review the costs and benefits of the investor protection policies in the TTIP. The Commission specifically urges the USTR to release proposed text for public review and analysis and to postpone negotiation of the investment chapter pending an opportunity for this public consultation.

As you know, on January 21, 2014, the European Commission announced that it would "consult the public on the investment provisions of a future EU-US trade deal, known as the Transatlantic Trade and Investment Partnership (TTIP)." In the release, EU Trade Commissioner Karel De Gucht explained, "some existing arrangements have caused problems in practice, allowing companies to exploit loopholes where the legal text has been vague. I know some people in Europe have genuine concerns about this part of the EU-US deal. Now I want them to have their say." We applaud the creation of a public consultation process for Europeans. As a state-authorized commission that represents Maine businesses, non-governmental organizations, and citizens, we would like to have the same opportunity as our counterparts across the Atlantic.

Citizen Trade Policy Commission  
c/o Office of Policy & Legal Analysis  
State House Station #13, Augusta, ME 04333-0013 Telephone: 207 287-1670  
<http://www.maine.gov/legis/opla/citpol.htm>

USTR has pointed to the existence of the U.S. trade advisory committee process and the posting on its website of the Model Bilateral Investment Treaty (Model BIT) as meeting public requests for transparency and consultation. We respectfully disagree. The public availability of generic text cannot replace the opportunity to read and comment on actual proposed language under consideration in TTIP. Further, we have on many occasions detailed the inadequacies of the current advisory committee process, including the limited substantive consultation with U.S. state governments, and the disproportionate access given to corporate advisors in contrast to the limited resources and participation of state officials, small business representatives, and public interest stakeholders. In particular, we refer you to a March 12, 2012 letter we wrote to your predecessor Ron Kirk regarding the process used to negotiate international trade treaties (<http://www.maine.gov/legis/opla/ctpcletmarch62012.pdf>) and to the 2012 Assessment conducted by Professor Robert Stumberg of Georgetown University which documented numerous instances in which the negotiating process has been significantly less than inclusive and open (<http://www.maine.gov/legis/opla/CTPC2012finalassessment.pdf>).

As you know, concerns about overbroad investor protections, and about the ISDS process in particular, are long-standing. ISDS provides foreign investors the right to bypass domestic courts (including constitutionally-created Article III courts) and challenge the U.S. government directly before an international arbitration tribunal; a right that home-grown investors do not share. The ISDS panels are neither democratically selected nor accountable to any public- nor are they required to consider basic principles of U.S. law (such as sovereign immunity or the "rational basis" standard), nor must they weigh the public interest against the alleged violation of an investor's rights. Under this system, the U.S. government can only be a defendant (the investor takes on no corresponding responsibilities), and even when the U.S. government "wins," the U.S. people lose because valuable government resources (an average of \$8 million a case) are expended to defend these often meritless claims.

A public consultation process in which American workers, families, communities, small businesses and civil society organizations have a real voice will be an important step toward creating more balanced investment policies that reflect the diverse needs and interests of real people and their communities, not simply large, global corporations.

We urge you to take this step to ensure that U.S. trade policymaking is at least as inclusive as that of our trading partners.

We look forward to hearing from you.

Sincerely,



Senator Troy Jackson, Chair



Representative Sharon Anglin Treat, Chair

cc:

Senator Susan Collins

Senator Angus King

Representative Michael Michaud

Representative Chellie Pingree

Kay Wilkie, IGPAC Chair

Rebecca Rosen, USTR, Director of Intergovernmental Affairs and Public Engagement

Daniel Bahar, USTR, DAUSTR for Investment