

Maine Citizen Trade Policy Commission
Friday, March 11, 2011
Regular Meeting Minutes

Meeting Locations: Cross State Office Building, Room 206

Members Present:

Senator Sherman, Representative Maker, Representative Rotundo, John Palmer, Sarah Bigney, Malcolm Burson, Michael Herz, Steve Cole, Linda Pistner, Wade Merritt, Joseph Woodbury, Bob St. Peter, Michael Roland, Kate Whitelaw

At 9:05 Senator Sherman gaveled the meeting to order.

The Chairs asked the members reintroduce themselves, and they did so. Rep. Maker, as a new member and new Chair, also asked members to each explain how they came to be members of the Commission and what they or their organizations hoped to achieve through their membership.

Mr. Merritt discussed his role with the Maine International Trade Center and said he hoped he could continue to push for Maine's international business community to play a role in the Commission's deliberations.

Ms. Pistner spoke about her legally mandated role through the Attorney General's office and also her interest in some of the larger magnitude issues that the Commission deals with.

Mr. Herz spoke about his concerns on how trade affects Maine's environmental policies.

Mr. Cole discussed his role representing business development, particularly aquaculture in the international marketplace.

Mr. Woodbury said he was here to promote trade and free trade, not just among multinationals, but among smaller businesses and manufacturers

Mr. Burson reintroduced himself and said his department (the DEP) had no particular agenda.

Ms. Bigney discussed her concerns about NAFTA and the broader policy implications and quandaries it still raises today as other trade agreements come up for debate in Congress.

Mr. Palmer discussed his concern about businesses and technology moving overseas and wanted to learn more about what he might do to help restore Maine's industry. He discussed his concerns over patent law.

Rep. Rotundo said she was increasingly concerned about how international free trade agreements affect Maine's ability to govern itself with regard to a range of issues: from regulating gambling to buying generic drugs in bulk. She wants the Commission to be able to share its concerns with the rest of the state and with the Federal government. She spoke about the Commission's non-partisan role and the variety of viewpoints it showcases.

Mr. St. Peter introduced himself as a small farmer from Aroostook County. He expressed his concerns about the displacement of rural people and the increasing difficulty that rural people had making a living. He has concerns about how international trade in its current form affects this displacement wants to see what he can do to learn more and to help reverse such a trend.

Rep. Maker said she thinks she was selected because she lives on the Canadian border in Calais and thus might have a good feel for the international elements of trade policy. She said she's excited to learn more about the issues facing the Commission.

Sen. Sherman said he was impressed with the background of all the members. He said that the members ought to have more input in the crafting of the agendas for future meetings. He said he wants to tap into the expertise of the members as much as possible. He noted that he lives on the border in Houlton and recalled a trade dispute with Canada over farm machinery and farm products. It piqued his interest in international trade issues, particularly with Canada.

Sen Sherman and Ms. Pistner talked about the value of having someone in Maine to talk with our Canadian counterparts to make sure trade issues flow more smoothly.

Mr. Merritt agreed that it might be a good idea and said it could be done very quickly and easily.

At 9:30 the Commission reached Jim Catella, who gave an overview of the hearing that took place in the Senate Finance Committee, which featured testimony from Ambassador Ron Kirk, the US Trade Representative. They talked about the three major pending trade agreements: Korea, Panama, and Colombia and how the three of them might be linked together legislatively. He thinks all three agreements are ultimately likely to pass both houses of Congress. He said that Korea might still get passed on its own, but then the other two would pass in quick succession.

Mr. Catella indicated Congress might also once more pass trade adjustment assistance, which expired in February. Senator Snowe has been pushing to reauthorize it and make sure it reaches the thousands of Mainers it benefits.

Mr. Catella reported that Senator Snowe attended almost the entire trade hearing and was well focused on the issue. She talked about enforcing existing agreements before moving on to brand new agreements. She questioned Ambassador Kirk on China's currency practices and wanted to know how the U.S. could prevent further manipulation.

Mr. Catella said that Senator Snowe expressed concern about a lumber agreement with Canada and some of the pending arbitration cases that surround it.

He also called for the Commission to submit questions to the USTR by this afternoon for the record.

He talked about the fact that there will be a new Commerce Secretary, who will deal with dumping issues. Senator Snowe said will try to use her vote in the Senate to influence the appointment in a way that benefits Maine.

Rep. Rotundo thanked Mr. Catella for the invitation to submit questions.

Ms. Bigney asked Mr. Catella more about currency manipulation involving not China, but Korea. She was concerned that China could send goods to Korea, which could then go to the US through the new Korea FTA. It would be an end run around US-China trade policy.

Mr. Catella acknowledged that was a serious concern. He said Senator Snowe was frustrated with the lack of answers she and talked about seeking certification from other countries on currencies before entering into the future FTAs.

Mr. Merritt asked about the possibility that Ambassador Kirk would move from USTR to Commerce Secretary. Mr. Catella said it's possible but that it might not happen while all these sensitive trade agreements are just now falling into place. He said though, that at Commerce, Kirk would certainly have more sway over currency manipulation issues.

Ms. Bigney asked to what extent the Obama Administration was supporting these pending free trade agreements. Mr. Catella said that while he wouldn't presume to speak for the Administration, there are outstanding issues it still has with these agreements. But he also explained that the Administration has said they want to get the Colombia free trade agreement done. He said the Administration might make it part of a grand bargain with lots of legislation this year, or they might put it off to deal with other, higher priorities first.

Mr. St. Peter recalled an encounter with a Korean delegation he met that was lobbying against the Korea FTA. They had said trade agreements stopped Korea from being able to completely feed its people, which it had been able to do for 5,000 years beforehand. Mr. Catella said Senator Snowe had similar concerns about how the FTA would affect Maine's own self-sufficient production activities. He talked about finding a suitable production balance for both countries. Mr. St. Peter said the trade agreement is bringing down Korean support for the U.S. in general. Mr. Catella said it was particularly true when it comes to beef issues.

There were no further questions for Mr. Catella, and Sen. Sherman said goodbye. The call ended.

The Administrative Staffer passed out Dana Eidness' report on the Korea Free Trade Agreement for Commission members to read at their pleasure.

A revised copy of Sarah Bigney's resolution on federal-state consultation on trade was also passed out, and Ms. Bigney described it and its origins. It's a restatement of past stated Commission positions, only in resolution form. The resolution asks the Legislature to adopt a position identical to that of the Commission. The resolution has not yet been submitted to the Revisor's office for a formal editing treatment.

Richard Nass from the Speaker's office warned the Commission to slow down and said that if the resolution were sent directly to the Legislature right away, it would likely be tabled for months.

Rep. Maker said that this would not be a problem because the resolution would still have to come back to the Commission even after it got reformatted at the Revisor's office. She then moved that the resolution be sent to the Revisor's office.

Mr. Palmer seconded, and the vote took place. The result was 10-0 in favor. The motion was agreed to. The resolution must now be sent to the Revisor's office for reformatting.

Members who hadn't yet had a chance to do so briefly reintroduced themselves: Mr. Roland introduced himself from the Labor department, and Ms. Whitelaw introduced herself from the Maine Fair Trade Campaign.

Rep. Treat gave testimony about her appointment to IGPAC (the Intergovernmental Policy Advisory Committee) and offered to give the Commission's thoughts to IGPAC at its monthly conference call. She said the theme of the first call she attended was mostly about Federal Issues. She said is that her first impression is that IGPAC people don't have on their radar just how much trade rules affect states and their ability to self-govern and adjudicate their own disputes.

She talked about her discussion about a federal register notice involving regulatory cooperation with Canada and Mexico.

On the call there was also an update on the Korea Free Trade Agreement, in which it was said that the President is about to formally submit the Korea FTA to Congress.

There was also an update on the Transpacific Partnership. It was explained that there had been progress on market access, exchanging non-conforming measures on services. They are still working on environment and labor issues. They asked for more state-based comments on the TPP because they said they found it very useful. Rep. Treat intends to submit comments on behalf of Maine.

Rep. Treat said the call also addressed Russia joining the WTO and the diplomatic details involved in that. It also dealt with a truck dispute with Mexico and how that's on the verge of being resolved.

Rep. Treat said that people on the call gave an update on the special 301 report on patent law and hearings they've had on whether other countries are complying with patent law.

She said that the call also talked about trade with South Asia and about how trade in general could affect state legal services here in the U.S.

She also said that there's an interagency task force on electronics stewardship, which, Treat said, could affect Maine's computer and electronics recycling programs

The IGPAC conference call also featured an update on the Federal Insurance Office. States always used to regulate insurance, but now the federal government is getting involved as part of the Dodd-Frank financial regulatory reform bill. There was new insurance language from the newly-created federal agency on international trade, and it had caused some confusion among the call participants.

Rep. Treat said she hoped to use her new IGPAC membership to get more involved in Maine exporting green technologies.

Rep. Maker asked about regulatory compliance in the federal register, involving Mexico and Canada. Rep. Treat mentioned that we have until April 4th to comment on that particular item.

Mr. Herz asked about Mercury under the electronic stewardship item. Ms. Treat said she would look more closely at it. He asked for a contact number for the IGPAC office.

Mr. Cole asked how long it had been since someone from Maine had someone on IGPAC. Rep. Treat said this was the first time ever.

Mr. Burson asked that, given her new position and expertise, should Rep. Treat get a regular spot on the CTPC commission agenda. Rep. Maker said that Rep. Treat would be welcome to come to and speak at CTPC meetings whenever items of interest came up.

Rep. Treat also spoke about her trip to Washington D.C. to attend NCOIL, the National Conference of Insurance Legislators. The conference was considering a resolution involving the pending international trade agreements. The result of the conference was that they all decided to defer any action until the summer (July) so they could learn more about trade policy and how pharmaceutical companies are involved in the language of all the pending free trade agreements.

Rep. Treat's testimony ended.

The Commission took up the state procurement legislation, which Ms. Pistner summarized and explained. She brought up what changes had been made.

Senator Sherman asked about the scope of the legislation. Ms. Pistner said it only affects state contracts and not private ones.

Mr. Palmer asked about changing the language in the definitions sections to broaden what kinds of services would be included. Ms. Pistner said she would look into it and see if it could be done. Senator Sherman that would be OK.

Ms. Pistner moved to look into Mr. Palmer's suggested change with the Revisor's office Mr. Woodbury seconded. The Commission voted 10-0 in favor. Ms. Pistner must now take Mr. Palmer's proposed change to someone at the Revisor's office for examination and evaluation.

Ms. Whitelaw discussed her conference call with the World Trade Organization's Working Party on Domestic Regulation.

Members of the WTO, including the U.S., have signed on something called the GATT, or the General Agreement on Tariffs and Trade. It is a wide-ranging international agreement that, in theory, provides a framework for how countries and private companies should conduct international trade. Typically this involves tariffs, subsidies, and environmental regulations taking place at the national level.

But the reason for the conference call is that the folks at the WTO are now in the process of writing a new chapter of suggested GATT regulations, this time focusing more on the kind of regulations that states, provinces, territories, and even municipalities tend to enact. Hence this Working Party on Domestic Regulation.

The specific kind of regulation discussed in this conference call was the regulation of services, not the kind of tangible products that we generally picture when we think about imports and exports. These are services that could be provided by both foreign and domestic companies. The new chapter of GATT would be designed to limit how states can regulate the services these companies could provide. The idea is to allow foreign companies easy entry into domestic service markets.

There was a lot of talk on the conference call about defining all the different terms that would be used in the law. Participants had discussed who would be affected by the changes, and to what extent would pre-existing regulations be grandfathered into the new body of GATT regulations.

Mr. Burson brought up the example of a possible LNG terminal in Washington County. He said that under the potential new rules, federal regulations would be the controlling authority on the matter and would override the states.

A typical scenario of enforcement: Maine passes a regulation that a foreign company or country finds unfair. It complains to the WTO, which adjudicates the matter. If the U.S. loses the case, the federal government can then use all its leverage to pressure Maine into removing the regulation. So sovereignty is indirectly ceded to either the WTO or the company or country that launched the complaint.

Ms. Whitelaw said that the new rules would lay out the grounds for challenging existing state laws and regulations. It's still uncertain under which jurisdiction the trade dispute would be heard – i.e. in what court and in what country.

Ms. Whitelaw said that this WTO discussion on local regulation cuts to the core of the state sovereignty question. The new GATT chapter would apply to any regulation that affects both foreign and domestic companies operating in a given state or locality.

Mr. Herz expressed concerns about enforcing violations of this new agreement, should it come to pass.

Ms. Whitelaw emphasized that the language being discussed in the WPDR is still very vague and ill-defined.

Mr. Merritt explained that businesses crave clarity and predictability, and that's one of the goals of the WPDR. This agreement would give foreign companies recourse to challenge the federal government, who would then challenge the state government. He noted, however, that the U.S. has never lost against a foreign country in a case of this nature.

Ms. Whitelaw said the new chapter of the GATT could increase the scope of the domestic laws and regulations that could be challenged. **She said letters could be sent to the U.S. negotiators outlining state concerns, especially on specific regulations that the CTPC might be concerned about. She said that this is something the Commission should keep its eye on.**

Senator Sherman asked how this affects the federal and state government. And Mr. Merritt said it deeply affects the federal government and also the states ability to govern itself.

Mr. Herz asked why fisheries were not included in the list. Mr. Burson noted that this agreement was about services, so it's more likely that fish processing would be included in this new chapter rather than the actual fish themselves.

The Commission moved onto discussing the upcoming April public hearing in Calais.

Rep. Maker said she reserved Washington County Community College for Thursday April 28th at 6 PM. She asked about what kind of agenda such a public meeting should have and what its purpose would be. She said some members of the Canadian public might attempt to attend the meeting and wanted the Commission's

thoughts on whether the Commission should also allow Canadian citizens to speak at the hearing. No formal decision was reached on the matter. The administrative staffer said he would check with OPLA on what is required in terms of publicity, agenda, and who is allowed to speak. It turns out that the only legal publicity requirement is posting notice of the public meeting on the Commission's website, the Commission agreed to go way beyond that and write a press release to pass out to local media outlets in the greater Washington County area.

Mr. Burson said the Commission should alert the entire County and that someone should make an opening presentation that might be relevant to the citizens there on the importance of trade in Washington County. He suggested local businesses owners, someone from UMM or the Washington Country Community College.

Mr. Burson also said that at past public hearings the Commission has tended to listen to the public rather than talk as it normally does when it meets in Augusta. The Chairs said they found that point to be very helpful in providing guidance for April's meeting.

Mr. Merritt said he liked the idea of business owners having prepared presentations because he said the public in Maine often doesn't hear the good side of trade.

Mr. Cole suggested the Commission reach out to the Passamaquoddy Nation, which the Commission agreed to do.

Mr. Palmer suggested that the Commission's website be included in any press release. It was agreed to.

The Commission moved to the final item: setting the May meeting date. It was agreed that the May meeting would take place on May 20th at 9 AM in Room 206 of the Cross State Office Building.

Senator Sherman adjourned the meeting.