

Citizen Trade Policy Commission
Friday February 27, 2009
Labor Committee Room, Augusta

Meeting Summary

Members Present: Sen. Troy Jackson, Chair; Rep. Margaret Rotundo, Chair; Sen. Roger Sherman; Rep. Sharon Treat; Rep. Jeffrey Gifford; John Patrick; Sarah Bigney; Jane Aiudi; Wade Merritt; Paul Volckhausen; Malcolm Burson; Carla Dickstein; John Palmer; Joseph Woodbury; Linda Pistner; Leslie Manning

Guests Present: Peter Riggs, Forum on Democracy & Trade; John Delahanty, Pierce Atwood; Matthew Beck, IBEW 1837; Edward Gorham, Maine AFL-CIO

Staff Present: Linda Nickerson, Dept. Labor; Curtis Bentley, Legislative Analyst

The meeting was called to order by Sen. Troy Jackson and welcoming remarks. Introductions were made. Due to meeting conflicts, the agenda was revised.

I. Trade Orientation - Peter Riggs, Director, Forum on Democracy & Trade

Mr. Riggs gave a brief history of the Forum on Democracy and Trade. The Forum is a non-profit agency that works with state and local elected officials and trade over site commissions exploring economic development and state sovereignty implications of international trade agreements and how these agreements impact states.

This week the Maine International Trade Center (MITC) released a report showing that Maine exports increased 9.5% last year. At the same time, in general, Maine's congressional delegation has voted against new free trade agreements which have been highly debated. The opposition at the Maine congressional delegation is based not on opposition to trade, but is based on a server assessment of the current model that's used by the United States to negotiate free trade agreements and conclusion is that the model is flawed. This does not mean that we are going to oppose trade; contrarily it is an opportunity to improve the current model.

Three areas of critical importance:

- (1) ***Labor standards working conditions.*** Until 2007 the free trade model pursued by the United States was totally silent regarding labor standards and working conditions and wasn't part of the negotiating model.
- (2) ***Trade and environmental agreements:*** United States signed up for international trade agreements using international law and signed up as a member of multilateral environmental agreements (international agreements to protect the environment). In general, the trade agreements have binding affects whereas the environmental agreements do not, meaning trade has trumped environment.
- (3) ***Lack of respect for states rights in the current negotiating model:*** The absence of a voice for states in pre code agreements.

With this in mind, the Citizen Trade Policy Commission, the Forum on Democracy and Trade and several other states groups have looked at the current model and asked what and how can it be improved, what would they like to see in a better model and how can it be pursued. Mr. Riggs will be circulating a document called Bill of Rights, a statement of principals on what an improved model for international trade negotiations might look like. The document was formulated by members of the Vermont International Trade Commission.

Mr. Riggs gave a historical context of free trade agreements. The United States of America constituted the world's first free trade zone. States were allowed to set tariffs and issue their own money resulting in weak coordination. Constitution was redrafted removed that power from states to set tariffs and issue their own money and set up a free trade zone known now as the commerce clause.

Through the nineteenth century the United States consolidated its national economy and maintained fairly high barriers to imports and tariffs. East Asia followed the U. S. model maintaining tariffs and industries. In the late 1970's tariffs took a downward turn under the GAT, General Agreement on Tariff and Trade. The GAT was concerned only with one aspect of international trade "the movement of goods across borders." In the late 1970's and early 1980's, the Reagan revolution economic policies of deregulation pursued by Ronald Reagan and Margaret Thatcher saw other barriers to trade called non tariff barriers having to due with product standards and services that previously had not been regulated under the international trade agreements. As a result, in the 1980's leaders pressed for the establishment of a new global trade party and in 1995, the World Trade Organization (WTO) was founded. About the same time, the United States passed a free trade agreement with Canada and Mexico. These trade agreements were passed in the context as an overall economic move towards deregulation.

What we are seeing today is excess of deregulatory activity which makes it extremely hard for national and state governments to regulate in the public interest and pursue economic development policies. The imbalance is seen today with the enormous trade deficit. China and the United States have a gross imbalance in trade, five to one. China exports five times as much goods and services to the United States to what the United States imports to China. The only way that trade and balance can be maintained is through currency manipulation by the Chinese. Chinese manufacturers and exporters do not observe high quality labor standards and environmental costs of the production. This is an unlevel playing field to costs. It may be level in respect to tariffs but is not level to respect to the kinds of costs incurred to manufacturers in the two different countries. In a visit to China, Mr. Riggs saw that trade can lift living standards.

Until these concerns are addressed, it is unlikely that we can get a handle on our serious trade deficits which is an important component of our overall budget deficit.

Institutions of international trade: The GAT (General Agreement on Tariff and Trade) was an ad hoc arrangement between different nations and states working on trade and was converted into an actual institution in 1995 with the passage of the WTO (World Trade Organization). The GAT is still part of the WTO but deals only with the movement of goods across borders and is one of seventeen different agreements under the WTO. Of importance to the United States are new agreements in services since more than 80% of our economy now is in services. The Government Procurement Agreement (GPA) brings federal and state government purchasing inside the framework of international trade rules. The shift of goods and tax to this broad set of agreements under the WTO has seen us move from what exporters can do (markets that they can access) to a focus on what governments can't do, what they can't regulate by international

agreements. At the time that the NAFTA agreement was complete and the WTO was set up, there was virtually no consideration of state's interest, no recognition by negotiators that many of the regulations and service and labor markets are regulated at the state level. This was sort of stealth preemption, a consolidation of control and power at the central government level within the executive branch.

The United States is represented at the international trade core by the Office of United States Trade Representative (USTR). The USTR is part of the Executive office of the President and because it's a small agency (300 professionals) it's very powerful and technically competent. Over the years, USTR has had a privileged position within the White House and has the backing of big business to pursue new trade agreements.

North Agreement Free Trade Act (NAFTA): If we have the WTO and Canada and Mexico are both members, why do we need NAFTA. The WTO has 152 member countries; representing the consensus of 152 countries in agreements which generally means the Europeans and United States get what they want. One area where neither the Europeans nor the United States got what they wanted was in the area of investments. Current corporations now have the right to sue sovereign governments, not in state or federal courts, but outside of national court systems altogether, and have their disputes heard by an unaccountable unelected three person tribunal that was appointed by the two parties through the dispute. Those who sit on these dispute panels may be trade lawyers, corporate lawyers and do not necessarily have to be Americans and know anything about the US federal system of government. NAFTA has seriously disadvantaged states in terms of defending interests through the US courts.

Part of the Regan revolution also included the Sage Brush Rebellion described as regulatory takings. When there's a dispute about land or resource use and a corporation feels that government regulation has interfered with seeking a profit, the standard of proof for proving that there was an actual taking of potential profitability was set extremely high. The Sage Brush Rebellion tried to undue that and basically was an attempt to say that anytime a government action or regulation interferes with the profit making potential of an enterprise, then that enterprise needs to be compensated and compensated out of tax revenues. Numerous state legislatures looked at these proposals and turned them away and said it was a radical departure of constitutional practice and was rejected.

Being unsuccessful at getting that change incorporated at a state level through national law, it was imbedded into the international trade agreement NAFTA. We have most recently seen this happen in the area of prescription drugs where companies have come forward with law suits against State of Maine, for example, seeking to limit the availability of the State of Maine to set its own reimbursement policies on prescription drugs, drugs purchased by the state where Maine had been negotiating bulk discounts to keep health care costs down. The State of Maine won and the challengers also won. Six months after the Supreme Courts decision upholding Maine's right to set reimbursement policy, we found in a trade agreement signed by the United States, a pharmaceutical chapter which included language on reimbursement policy. Through this and other cases, it shows very clearly when we refer to the democratic deficit in the international trade agreement. It is not designed with our local democracy in mind.

Another example, referencing the toxic toys law and e-waste law. Last year, legislators in MD and VT received in their home mailboxes letters written in Chinese and English and postmarked from Beijing. These letters were sent to legislators who had sponsored toxic toy and e-waste bills. They came from the WTO office in China in Beijing asking them to please withdraw their votes because they believed it constituted a violation of WTO rules. Neither of the laws had

been passed, they were still in draft form, not released. Legislators were rather upset to receive such letters at their home address. They contacted the Forum on Democracy & Trade who investigated and found that the U.S. Department of Commerce and the Office of the U.S. Trade Representative were routinely notifying trading partners of pending state legislation that might have an impact on international trade. Legislators met with representatives of commerce and USTR and advised that it was inappropriate to interfere with state democratic practice. As a result of the meeting, USTR said they would no longer notify state laws to the Peoples Republic and other trading partners when they are still in a draft form.

We can agree that the new stimulus package that was passed is an economic development bill. What is interesting is our trade legislation has not similarly been considered from an economic development perspective. It's as though trade is a different entity disconnected from overall state economic development.

The implementation of the stimulus package relies on the States. For the first time in fifteen years is an approach to the States what could be called a cooperative federalism that takes states roles seriously. The Forum's hope is that in working with CTPC and other state leaders that the process of putting forward interests in trade and economic development so that future trade policy will be based on what's best for the states and best economic advantage.

Senator Jackson thanked Mr. Riggs for his very informed presentation.

Senator Sherman and Senator Gifford were excused to attend a hearing of the Agriculture Committee.

II. Review of Commission's History

Rep. Margaret Rotundo gave a background of the Citizen Trade Policy Commission. The CTPC was established by the 121st Legislature to monitor the impact of international trade policies and agreements on Maine's state and local laws, business environment and working conditions. The CTPC consists of members representing the House of Representatives, the State Senate, the Maine International Trade Center, various state agencies, and members affiliated with citizen constituencies including small businesses, manufacturers, labor, environmental organizations, and small farmers. Over the past four years the commission has developed the strongest state level democratic dialogue in this country. The CTPC is charged to hold at least two public hearings annually to solicit public testimony and recommendations from Maine citizens and qualified experts. They also are required by law to submit an annual report on its activities and conduct an annual assessment of the impacts of international trade agreements on Maine's state and local laws and business environment.

III. Review of the Commission's Accomplishments

Sarah Bigney reviewed the Commission's past history and developed an action timeline from 2004 – 2008 (*Attachment 1*). Annual reports and other information are available on the Commission's webpage at www.maine.gov/legis/opla/citpol.htm . One of the biggest impacts is that the commission developed a model which other states are replicating. In regards to the GATS letter that was written last year on the domestic regulations; she's heard that it is being circulated in Geneva and other areas around the country. It appears other countries are expressing concerns on the same matters. The GATS domestic regulations negotiations have not gone through and are still being monitored.

Rep. Rotundo advised that the CTPC's assessments are available publicly every two years along with their annual report. The regional work has helped bring sovereignty to Washington.

John Patrick gave an update on the NCSL meeting he attended. He was amazed with the lack of knowledge of trade agreements that people had. Discussed CTPC's accomplishments, networked with other groups and was advised that CTPC may be used as a blueprint to develop their own committees.

IV. Action on the USTR letter – Sarah Bigney

Sarah Bigney clarified the two pieces in today's packet which may be confusing. The regional work has generated a trade bill of rights (VT) and would like people to consider it at some point in the future. In addition to that, there is a draft letter regarding nomination of Ronald Kirk as the US Trade Representative. Mr. Kirk's hearing is scheduled for next Tuesday. She believes a letter of congratulations, as well as advising him who the CTPC is, express our concerns to him, along with changes and the role of the USTR, should be included in the context of the letter. Sarah submitted a draft letter for review and suggestion (*Attachment 6*). Sarah also advised that several people had submitted questions via Sen. Olympia Snowe who is serving on the appointment committee hearing.

Rep. Treat agreed that now is a good time and a good opportunity to create a new relationship with the USTR and get on their radar. We may also want to include attachments to the letter such as annual reports and the action sheet that Sarah presented today.

Leslie Manning suggested it would be helpful to advise the new representative what the previous relationship was with the USTR, so that we could invite him to fully participate in conversations. Rather than just expressing our concerns, believes we should address our strengths stating that we are the oldest established commission in the country, help us informing our federal delegation, as well as our own executive branch about the implications of trade agreements for Maine citizens and that we have a series of ongoing relationships with trade representative offices. We should extend an invitation to come and meet with us as we have invited previous trade representatives.

We also should remember the history of trade weakness in this country. The executive branch in any administration regardless of party is always going to seek the authority to directly negotiate with other nations states on issues of commerce. We need to be clear with this appointee that we fully expect him to honor his appointers promise to consult fully with the states before he implements any trade agreements. If we refer back to one of our earlier handouts, Obama made a promise that said that he would fully consult with the states. Remember Obama said he was going to review language in NAFTA and the Canadian government met with him and issued a press release that said of course he's only saying that to candor to his political constituency. Leslie referenced Ottawa and statements made that now isn't the right time to revisit NAFTA; perhaps the Canadians were on to something. If that's the case, then we need to find out. We have the opportunity to find out where the new nominee stands and let's exploit it.

Sen. Jackson stated that a decision needs to be made whether we send a letter and what will be included.

Rep. Treat stated that she liked what Leslie said and would like to have it transcribed into a letter format.

Motion made by Rep. Treat to send a letter to the new trade representative along the lines as outlined by Leslie. Seconded by Paul Volckhausen who agreed that now is the time to start out strong. John Palmer also agreed with Leslie and what she said was very accurate and also wants to see the letter come from the Commission and not the Chairs.

John Patrick also supported the motion. Wade Merritt asked for clarification of what the letter is exactly going to say. Are we using Sarah's letter or rewriting one with Leslie's comments.

Sen. Jackson advised that they would combine ideas and comments into one letter. Sarah advised that she and Leslie will get together and rewrite the letter. Rep. Treat suggested keeping the letter to two pages. Sen. Jackson suggested having the letter drafted, reviewed, and sent out as soon as possible.

Linda Pistner advised that when sending a letter out, the process is to come up with draft, post it on the website to be available to the public for comments to be compliant with access laws.

Rep. Treat stated she liked that process, but if for some reason negative responses were received, it would be delayed and expressed concerns of timeliness.

Sen. Jackson expressed concerns of timeliness as well but also wants to be in compliance with the Freedom of Information (FOI).

Further discussion followed on FOI.

Rep. Rotundo asked if they needed to do anything more with the motion that is on the floor to be in compliance with FOI.

Amended Motion:

John Patrick amended the motion to include comments from Linda Pistner in regards to Freedom of Information and post it to the CTPC website. Rep. Treat accepted the amended motion. Seconded by Paul Volckhausen. Vote, unanimous.

V. Report on Prescription Drug Conference – Rep. Treat

Rep. Treat advised that she attended a prescription drug conference and circulated some handouts. Pharmaceuticals have a long trade history, some of which Peter outlined already. Rep. Treat outlines past experiences around prescription drugs and preferred drug lists. Preferred drug lists is a way that states set up negotiating process with the pharmaceutical industry. By preferring a drug and not requiring advanced approval by a prescriber or doctor usually ends with a bigger discount. The State of Maine is one of the most aggressive states in the United States in terms of being very effective it setting up these lists and negotiating with the drug companies. The amount of money spent on prescription drugs in the Medicaid program has not gone up the same way that overall health cost of increase. (*Attachment 7*)

She pointed out that if we have a trade agreement with another country, that trade agreement applies to that other country just as it applies to us. As an example, if the U.S. was negotiating an agreement with Korea which said you shall not have a list of drugs for which you set pricing for those drugs, that same agreement applies to U.S. unless there was some specific language stating otherwise. This has been a big issue that the Commission has weighed in on, as well as her job outside the legislature.

The head of Pfizer got together with a professor from Stanford University and both testified at a hearing. A product of this is the letter attached. (*Attachment 8*) This letter raised a lot of alarm. Of concern is it will be harder to import cheaper generic drugs for low income families and also may increase the cost.

Rep. Treat referenced specific areas of concerns in the context of this letter. As a result of this letter, Sen. Baucus met with stakeholders, Pfizer, the professor from Stanford, and other drug companies, as well as a couple of non-profit organizations. A professor from American University on Information Justice and Intellectual Property held their own meeting ahead of the other meeting prior to this and invited all of the non-profits in the states which Rep. Treat attended. Rep. Treat found this meeting very informative and useful.

States need to be informed and involved and concerned with health care initiatives. Further discussion followed in regards to Senator Snowe's ongoing legislation and the fact that staff was not aware of Baucus's letter, and meeting.

Sen. Jackson thanked Rep. Treat for her informative update.

Leslie asked if there was any discussion about drug purity and strengthening of the FDA which has always been an issue in deregulation and less regulation. The issue for healthcare advocates is access to drugs and reimportation of pure and quality drugs.

Rep. Treat advised that drugs are being manufactured in other countries. FDA issue is a huge issue and being taken up in Congress. Sen. Snowe's legislation goes on forever on how to ensure that medications being brought into the U.S. meet specifications. There are numerous proposals in Congress right now.

John Patrick expressed his concerns and was one of the reasons why he got involved with the Commission.

Rep. Treat advised that she will continue to monitor the above.

VI. Representative Treat's Bill

Rep. Treat circulated a copy of a bill she submitted (*Attachment 2*). A couple of states have passed laws that require the legislature to be involved before a governor makes a commitment to be bound by a trade agreement. With this in mind, Rep. Treat submitted a bill that would have a process to involve the Maine legislature before entering into a binding agreement. Rep. Treat reviewed her draft with members. The draft has not been printed. Concerns were expressed about the timelines of bills. Discussion followed. Leslie Manning stated that it was important for people that would be voting on it, to be familiar with the current process and referred it to Wade Merritt to explain what the current process is and/or consultation on the trade agreement.

Rep. Rotundo questioned as to what is the current consultative procurement process being used in Maine in conjunction with the Governor's office and how would we know if something was received.

Mr. Merritt advised that in the early days of the consultative process, every state had a designated state point of contact (SPOC) who was the state directors of international trade. They

would receive faxes notifying them of activities which might have been one or two a month. Since then the system has changed. Mr. Merritt stated that within the past five years he does not recall anything coming in through the SPOC system. The SPOC system has been replaced in the Governors office. Governors have the power to appoint a contact person and in some states it's the State Treasurer, the Attorney General's office, Economic Development and Trade offices. Over time that changed and it is now directly the Governor's office.

Mr. Merritt advised that staff in the Governor's office is very active and they talk with them often. Lance Boucher is the Governor's point person within the governor's staff. Technically, if something was received in the Governor's office right now, Lance Boucher would notify him immediately. Sen. Jackson asked if there was any way they would know before the Governor signed something. Mr. Merritt advised that they would know, especially Peter Riggs before such happened.

Rep. Treat suggested including language in the bill to provide notice of requests to both the Commission and the International Trade Center.

Mr. Volckhausen advised that the Commission years ago started this process and eventually the bill never went anywhere or was even submitted. The bill stated that the process was wrong and to use SPOC and that they wanted to be involved. Rather than submitting a bill, they should talk to the governor's office, form a subcommittee, look at issues, have people from the legislature, the governor's office, Peter Riggs and others to come up with what the best process is to make this work. This did not come about.

Instead of having the Reviser or someone from the legislative office write this bill, the CTPC should be doing this.

Rep. Treat recalled this and advised how the legislative process works and deadlines for submitting bills. Rep. Treat made the decision to submit a bill to make sure they had the opportunity to consider legislation over the next two years. The CTPC does not have the authority to submit a bill because they do not have legislative authority.

Rep. Treat requested member's involvement, suggestions, ideas, between now and the hearings in terms of language they prefer.

Rep. Patrick thanked Rep. Treat for submitting the bill. Discussion followed.

Sarah Bigney suggested developing a subcommittee to work on Rep. Treat's bill and bring proposals back to the CTPC's next meeting. Rep. Treat welcomed working with the group. She does not have the bill from the Reviser's office; editing would need to be done rather quickly.

Motion:

Motion made by Wade Merritt to form a subcommittee to work on Rep. Treat's bill consisting of Paul Volckhausen, Sarah Bigney, Rep. Treat, Peter Riggs, Linda Pistner and himself. Sen. Jackson was not sure if Peter Riggs could work on the subcommittee but believed he would work with them. Seconded by Rep. Treat. Vote, unanimous.

Linda Pistner advised of the public notice process for meetings. Policy is that they do not discuss the substance of discussion outside the subcommittee meeting.

VII. Strategy on Water Bills

Rep. Rotundo advised that there may be approximately fourteen water extraction bills before the legislature. Some are already in work session and are actively being discussed. She wanted to know if the Commission wanted to weigh in on bills and issues. She circulated an incomplete list of groundwater bills (*Attachment 3*). She asked members to look at the list and hold a discussion before they go to the committees.

Rep. Rotundo recognized and welcomed John Delahanty who is the lobbyist for Poland Spring Water.

Update - Peter Riggs:

Mr. Riggs advised that if there was a risk to the water bills then potentially they might be challenged more likely as a result of NAFTA. The two most significant NAFTA cases were concerns with regulation groundwater – Methanex and Metalclad.

Case 1 –Metalclad

A U. S. company challenged the right of a Mexican municipality to prevent them from opening a hazardous toxic waste facility. The issue was that the federal government of Mexico had told and made assurances to Metalclad that they could open and operate this facility. They had to get a permit but were told it would be taken care of; however, the municipality refused Metalclad permits. Metalclad took their case to NAFTA, Chapter 11 Tribunal seeking 14 million dollars in damages because they had an assurance that they would be able to open this facility. The Tribunal agreed that Metalclad's rights had been violated and ordered the Mexican federal government to pay 14 million dollars in damages. The Mexican federal government then turned around and withheld 14 million dollars funding to the municipality.

Case 2 – Methanex

California banned the use of the gasoline additive MBTE. MBTE is a harmful chemical that will find groundwater. Methanex Corporation out of Canada sued under Chapter 11 of NAFTA. Methanex was leaking from underground storage tanks contaminating groundwater wells. Methanex sued for 970 million dollars based on the lack of access to the California market and loss of future profits. Five years of hearings transpired and the final decision of the tribunal was that Methanex did not have a right to sue and was rejected. California phased out the use of MBTE.

Case 3 – Glamis

This case also involves the question of mineral extraction in California. This case is currently being heard by the international tribunal and a decision has not been made.

Peter advised that he had not had a chance to review all the bills that are in the Reviser's office. The opportunity to review legal options is very important.

In regards to groundwater extraction, both the international trade rules and investment rules need to be applied. The standards that are used in NAFTA and other free trade agreement are that an investor has to establish that he is domiciled and has a substantial business presence in that country.

It is possible for a U.S. corporation to set up a subsidiary in a third country, make an investment back in to the U S through the shell company and use the privileges under the international investment agreements to bring a claim.

Until we know more about the corporate structures of those seeking permits, the identity of the investors and capital structures of those investments, it is premature to say that the trade rules do not apply.

Senator Sherman spoke regarding water issues, discussed rules and regulations from the agricultural side and the utilities and energy side. On the agricultural side, he studied water issues, glaciers, etc. and water withdrawal taking into account fish, bugs, wells, and so forth. On the utilities and energy side, he's looking at the sale of water, working with geologists, stream flow, cubic feet and 'x' number of gallons, shut off valves, etc. Out of this, he asked if the Mexican case was a process issue where the company relied on two different levels of government. Could this happen in Maine? Should we take a look at it; there's plenty of data and is more of a process issue and suggested a central place that deals with such.

Peter Riggs handed out a "Statement to the Presidential Transition Team on Trade Policy" stating that regulations passed using due process that are non-discriminatory cannot be the basis for a successful NAFTA claim (*Attachment 4*). Discussion followed.

Senator Jackson asked if a company from Canada or Mexico came to Aroostook county and made an agreement allowing extraction of water and afterwards found that it would hurt the town and area, how would that be handled? Peter responded if the investor moved ahead with a project based on a verbal or signed agreement with an elected official, you'd have a problem. Can't answer if definitively.

Senator Jackson asked if there are any trade issues to watch. Mr. Riggs advised that the Forum on Democracy and Trade will take a position on issues having to do with state and federal consultation and trade. He is outside his mandate to comment on bills, however, proposals to establish a commission state wide review seems to be prudent. Discussion followed.

VIII. Review of Current Trade Issues and Issue to Watch – Peter Riggs

Confirmation hearings for nominee for the U.S. Trade Representative take place next week. The nominee's name is Ron Kirk, former mayor of Dallas. He does not have previous background as a trade negotiator but has built strong electoral coalitions involving the business community. Senator Olympia Snowe is on the committee and is in a position to ask direct questions of nominee, Ron Kirk, at the confirmation hearing next week. If the CTPC has particular questions or interests they want to see addressed, he suggested they get them to Sen. Snowe immediately.

Rep. Michael Michaud is in the process of finalizing resubmission of a bill called the Trade Act. He expects the Trade Act to be reintroduced within the next two weeks to a month. Rep. Michaud sent President Obama a letter which addresses the principles (*Attachment 5*).

The Geneva negotiations with WTO on services will reconvene next week and one of the areas that will be looked at is domestic regulation. So far the US has taken a friendly approach. The Brazilian proposal, Hong Kong proposal, and the Australian proposal attempts to strip business licensing authority from local governments.

CTPC weighed in on this issue two years ago with a letter to USTR and it may be worthwhile to consider doing so again.

There are three holdover trade free trade agreements that have been negotiated but have not yet been signed. They are with Korea, Panama, and Columbia. The Korea agreement is somewhat flawed because of its weak provisions for auto producers. The Columbia agreement is unlikely to move forward since Columbia remains to be a dangerous place, etc. The Panama agreement has been under the radar for awhile. It's known to be a tax haven, an offshore profits/laundering money, banking secrecy, and taking into consideration the financial markets, etc., it seems odd that this will move forward. The CTPC may want to look at the agreement and take a position on it.

Most importantly, the Obama administration will pursue federal/state policy on trade. USTR has said that there will be a new assistant USTR appointed to government relations.

Sen. Jackson thanked Peter Riggs for his very informative presentations.

Rep. Treat stated regarding a letter to Ron Kirk, to make sure we allude to the fact that we want to be involved and questions to Senator Snowe, consultations, what their role is going to be, and the need for a different process.

Rep. Rotundo agrees with Rep. Treat's suggestions for Sen. Snowe and that the subcommittee should come up with questions. John Patrick also agreed with Rep. Rotundo and Treat.

Sarah Bigney wanted to know how formal this should be. Two options – one could be to draft specific wording to the questions and send it in and the other could be to suggest on behalf of the commission, questions on consultation and be straight forward.

Rep. Treat stated to be as specific as possible; general question is not enough.

Leslie Manning suggested looking at the rule of intergovernmental relations and asking; 1) What are your thoughts on consultation with the states in these areas and draw an outline; 2) How to seek a model and what role will they play; and 3) Are you familiar with IGPAC's recommendations for 2004 and what is your position.

Rep. Treat stated these would be questions for the confirmation hearing and we need to get words to Senator Snowe immediately.

Motion:

Motion made by Rep. Treat that we submit the three questions that Leslie suggested to Senator Snowe. Seconded by Sen. Sherman. Vote, unanimous.

Rep. Rotundo advised that several chairs have asked us to weigh in on the water bills. She is not sure if we are prepared to make specific recommendations and is wondering if we should make general recommendations. What would be the legal implications?

Sarah Bigney brought to the commission's attention a water bill and read sections.

Rep. Treat stated not knowing what all the bills are and not knowing whether some are procedural issues, caution should be taken whether the commission should take a position on one individual bill as there could be another that makes more sense.

Rep. Gifford stated that the water bills have resulted in rural caucuses and people do have opinions.

Sen. Sherman suggested to talk with Rep. Webster to see what he already knows and wondered how much information might already be out there. They are hearing issues through rural caucuses and suggested to get more information before acting on it.

Presentation by John Delahanty – Pierce Atwood and Poland Spring

Mr. Delahanty has worked for 30 years within Maine's environmental statutes, rules and regulations.

Mr. Delahanty commented on the Mexico case. He is not familiar with Mexico's environmental regulations. It is his understanding that the permit was issued and that the facility was constructed; however, the operational permit was not issued, therefore, investors sought a tribunal. Tribunal found that based on facts that the investors relied on the government's representation regarding the status of the permits and that the government was fully aware that the landfill was under construction. He believes that this type of a process would be extremely difficult to occur in Maine. He cannot imagine a company coming into Maine and beginning to undertake a large scale water extraction simply based upon representations of a local official. Maine has extremely robust environmental laws. If laws and regulations are applied and adopted with due process, application is fair and applies to all in a nondiscriminatory manner which protects the State.

He believes that there is a lot of misunderstanding and a lack of understanding about how Maine's water extraction laws are presently enforced, overseen, and regulated. Two years ago legislation was submitted and passed that changed Maine's water extraction laws. As a result, a commission was created that monitors water resources along with several other state agencies.

Mr. Delahanty thanked members for the opportunity to attend and talk at today's meeting.

Senator Jackson asked Mr. Delahanty if he thought it would be better to have one body review water bills instead of three or four groups.

Mr. Delahanty responded that it would make it easier to have one group look at the bills, what the present law is, and regulations. In terms of the Commission, it is getting people more educated and have an understanding on how water is regulated in terms of extraction. A couple of years ago there was a task force that focused on water regulations. There's been a lot of media and press in regards to Poland Spring, as well as a lot of opposition which he believes is a lack of understanding of how it is regulated. He certainly hopes that there would be a way to lessen the concern of people that the activities of companies to extract water, regardless of the type, to lessen the concern that it is not appropriate fair oversight.

Rep. Gifford thanked Mr. Delahanty. Most people on the list of legislative bills have not been to caucuses. He has learned a lot and wells are very well monitored.

Rep. Sherman suggested they wait to see what is already out there for bills.

John Palmer asked Mr. Delahanty if he knew how much water is exported out of the country. Mr. Delahanty was not sure and knew that it was shipped to Boston, New York and possibly Canada but would check on it for him. Mr. Palmer advised that when he was in Saudi Arabia, Poland Spring bottled water was distributed. Again, Mr. Delahanty advised he was not sure but that contractors purchase it and can possibly export it.

Sarah Bigney posed a question for the Commission purposes as to what the regulations are and would they be subject to international challenge when we sign contracts with a multinational corporation. This potentially could be of major concern.

Linda Pistner stated that part of their roles is how to make the bills effective to reduce the possibility of challenge. Discussion followed.

Leslie Manning stated that the Methanax standard as discussed today is the defensive standard. When we review a standard and are comfortable with that standard when it is an accountable transparent standard and equitable to everybody. Our role is to advise and to say do what you feel is necessary to regulate the health, welfare and safety but be aware that if you're going to be held to a higher standard in international laws, make sure that you are not singling out any one entity and make sure that you are held to a standard that is fair and equitable.

Rep. Rotundo advised that the bills represent community concerns all over the state and believes that they should step back and take a bigger view of all issues and figure out what is best. Expressed concerns of looking at the bigger picture of international trade.

Mr. Palmer asked if State bills preempt local bills. Senator Jackson responded that he thought they possibly would. Linda Pistner advised that the State has the authority and explained the process.

Rep. Gifford advised that that it would have to be approved by several state agencies. Sen. Jackson asked if a letter should be drafted by the CTPC expressing concerns.

Rep. Rotundo stated when legislative leadership asks us to weigh in on a bill, what would we say; we do not have an opinion?

Rep. Treat agreed with Linda Pistner's advice in terms of making sure that the committees understand that just because we may not be in agreement doesn't mean not to go forward but to go forward in a way where the standards are adhered to. One of the problems could be at a local level, such as a town grants permission, they go to DEP or wherever, and they decline the permit, that's where the problem is. If the committees do not do anything, there could be trade implications.

Paul Volckhausen stated that this was an issue and that they are stepping out of their role. The legislature has to have an open process and our role is to make clear to people that if something is not done right, that there could be international trade implications. These bills are no different than any other bill that is submitted, reviewed, passed, etc. and that we should not be advising and only be monitoring.

Sen. Jackson stated that in the past seven years, this is the first time he's heard what he did today and expressed concerns.

Discussion followed around awareness and level of understanding of trade implications.

Sen. Sherman suggested developing a matrix checklist around trade that they could use.

Rep. Treat referenced the Right to Know law process and in the past has had to send sections of bills back to the Judiciary committee because some language was in violation of the Right to Know law.

Sen. Sherman suggested a checklist that would identify areas of concerns and/or violation. Further discussion followed.

Leslie Manning expressed that this has been an ongoing concern; issue of water as a resource versus a commodity. Issues of water extraction are not specific to Maine or New England. As a regional group we should say as a community and reps are looking for guidance on these issues. State sovereignty always comes up, water and resource extraction, and issues of procurement in one form or another. Part of the reason why the Commission has been so successful is because we have not been afraid to take on the big issues. We've been able to move forward and make progress and build the credibility that we have so that when we weigh in on an issue, we hear both sides and issues and then make a recommendation. People pay attention to that recommendation and take it seriously. If that process works for us, why wouldn't it for the state. Have public hearings, public discussion, public input into the process as to how we regulate water in this state that may serve as a model for other states. Our responsibility is to report honestly and directly to our federal delegation, legislature and communities what we see the implications of any piece of legislation or implications are of any kind of trade agreement. We have a track record using this approach.

Leslie stated that the Commission is required to hold two public hearings. Within the next 30 to 60 days schedule a public hearing, announce what the subject matter will be, invite all the parties to it, and invite other commissions to join us to weigh in on these issues.

Motion:

Rep. Rotundo made a motion to follow the above procedure Leslie laid out. Seconded by Rep. Treat.

Malcolm Burson stated he was very uncomfortable with this and that it is not their job, i.e., water extraction, and that it is putting an intolerable burden on them and asked the CTPC to think this over very carefully before reopening this. Paul Volckhausen agreed with Malcom; international trade may be, but water extraction is not our business. Our business is international trade and its effect on us.

Rep. Rotundo withdrew her motion on the floor. As a commission, we need to find the things that we can agree to today so we can move on.

Motion:

Rep. Treat made a motion that they draft a letter to all the policy committees that are hearing bills on water and state that we believe that there are trade implications that could come to the floor in some water proposals that are out there and that none the less this is not a reason not to go forward as long as committees that are focused on this do the three things that Leslie recommended. 1) hold transparencies; 2) fairness, and 3) accountability.

Seconded by Sen. Sherman. Vote: Ten in favor, one opposed.

IX. Consideration of Invitation to Secretary of Labor

Sen. Jackson advised that Congressman Michaud will be in Aroostook County over the weekend and he wanted to ask Cong. Michaud to extend an invitation to the Secretary of Labor to come sometime in the future to discuss trade issues and labor standards.

Motion:

Motion made by Rep. Treat to invite the Secretary of Labor to address the Commission and discuss issues and also provide a brief history of the Commission. Seconded by Rep. Rotundo. Vote, unanimous.

VIII Next Meeting

Discussion followed on holding the regular meeting the last Friday of the month as being difficult for members to attend. Malcom Burson stated that holding the meeting on the same day of the month allows people to plan and schedule accordingly.

Sen. Jackson, Sen. Sherman, Rep. Gifford all have Agriculture meetings on Fridays so cannot attend. Rep. Rotundo suggested holding frequent meetings more often during the legislative session, possibly from 4:00 to 6:00 p.m. Rep. Treat advised that as the session moves forward, it becomes more difficult to attend. After lengthy discussion it was decided to stay with the current schedule.

The next meeting is scheduled for Friday, March 27th, 9:00 a.m.

Sen. Jackson reminded members that they can contact him at home or email if they have issues they would like to discuss or place on the schedule.

VIII Adjournment

The meeting adjourned at 1:20 p.m.

Respectfully submitted,

Linda B. Nickerson
Secretary

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encs.