

Maine Citizens' Trade Policy Commission
Vermont Commission on International Trade and State Sovereignty

December 24, 2008

Kay Alison Wilkie
Director for International Policy
NYS Department of Economic Development
30 South Pearl Street
Albany, NY 12245

Dear Kay:

As Chairs, respectively, of trade oversight commissions of two northern New England states, we would like to express our deep appreciation for the work you have done as Chair of the InterGovernmental Policy Advisory Committee. The two conference calls you convened in October--for discussions with the GAO, and with USTR negotiators--were extremely helpful in advancing states' positions on trade policy.

We know that you share many of our concerns about the communications by the Peoples' Republic of China to the Vermont and Maryland legislatures related to pending legislation that would regulate toxic toys and e-waste disposal, and we thank you for creating the opportunity to discuss these issues with USTR staff.

The PRC's actions, putting Maryland and Vermont "on notice" as a matter of international trade law, are perceived as intrusions on the state legislative process, albeit ones that are sanctioned by the TBT agreement. While the notification issues are important, our primary concern remains the extent to which trade agreements restrict state legislative authority. China's notices reference two of the most powerful restrictions on state legislative authority incorporated into the TBT agreement: (1) the requirement that technical standards not be more trade restrictive than necessary, and (2) the presumption that state technical standards ought to conform to international and national standards. The PRC's actions are also a matter of concern, as you know, because the TBT notification process and restrictions on legislative authority are models for some of our trading partners in ongoing WTO negotiations related to domestic regulation of services.

At a joint meeting conducted on September 19 in Manchester, New Hampshire and conference calls on October 14 and November 12, the trade policy oversight commissions of Maine, New Hampshire, and Vermont resolved to work cooperatively to communicate our concerns about the PRC's action and the federalism implications of the TBT agreement to the U.S. Trade Representative, the U.S. Secretary of Commerce, and our congressional delegations.

The state trade policy commissions also resolved to work on this problem in consultation with IGPAC.

We believe that we are close to finalizing something close to a consensus position among the broad-base of state and local officials in New England regarding the more difficult substantive TBT and domestic regulation issues, most importantly the necessity test. That consensus position needs to be effectively communicated to the in-coming Administration and its transition team. We are writing at this time to ask for your continued help as Chair of IGPAC. We believe that a dialogue with administration officials concerning some of the issues related to the TBT notification process could be productive. Third, we have learned that the Department of Commerce is completing a report outlining options on TBT notification and are very interested in learning about the report when it's finished. Finally, we look forward to discussing this matter as part of the Trade Policy Leadership Seminar scheduled for early December in Atlanta, to coincide with NCSL's Fall Forum.

We look forward to consulting with you further and we ask for your guidance in finding the most effective means of resolving our concerns.

Sincerely,

Senator Margaret Rotundo, Co-Chair
Maine Citizen Trade Policy Commission

Representative John Patrick, Co-Chair

Representative Kathleen Keenan, Co-Chair
Vermont Commission on International Trade and State Sovereignty

Senator Virginia Lyons, Co-Chair

Cc: Members, Maine Citizen Trade Policy Commission
Members, New Hampshire Trade Policy Commission
Members, Vermont Commission for International Trade and State Sovereignty