

Citizen Policy Trade Commission
Summary of Testimony
from Bangor Public Hearing

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 state 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 must 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 choose 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
April 19, 2005
University of Southern Maine
Portland

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 markets 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 so 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

Citizen Policy Trade Commission
Summary of Public Hearing Testimony
November 21, 2005
Southside Middle School
Houlton

Chris Stark of Winterport submitted written testimony. See attached.

Donald Flannery, Executive Director, Maine Potato Board submitted written testimony – see attached

Marilyn Roper of Houlton indicated a lack of publicity affected the number of people in attendance. She thanked the Commission for their help and their existence because many jobs had been lost due to trade agreements. She commented that Canadian companies could hire people from Houlton to build modular homes in Maine instead of bringing in Canadians.

James Cook, a Teamster from Aroostook County commented that under NAFTA they could bring in union nurses and he was not a union member because of this. If have a trade agreement with another country and there is a large difference in wages between the countries, a WTO tribunal may split the difference and then that person who is paid very little in his country can work in the U.S. for half the wage a union worker would get normally.

Rep. Carr asked if nurses coming in had a B.A. and don't have to be licensed and was answered that they don't need a B.A. but need to be licensed.

Dr. Weiss asked if the nurses were licensed by Maine and was answered that he didn't know but would find out.

Dr. Weiss also asked who set the wage standards under Mode 4 and was answered that it was not official - it is part of the GATS negotiations but nothing has happened yet.

Max Soucy of the Caribou UU church commented on the spiritual well-being of the people in Aroostook County. He has a Master's degree and is unable to find a job comparable to a Master's degree. He makes \$8.60 an hour with no insurance. He commented that Aroostook County is losing people, most with higher education. Employers there are not paying health insurance for their workers. The businesses that are able to compete are ones that don't have to compete with larger companies. Companies that move in take advantage of low wages. There is a lot of inertia that must be overcome before things will change.

He indicated it would be good to divert some money going to economic development and give it to businesses that are either locally or employee owned, so the area doesn't have to worry about those jobs going overseas. Some money used for development should go to Co-ops and worker owned companies.

He later added that NAFTA and CAFTA pre-date the problems but have done little to help and has actually accelerated the decline of business here. Not all of the problems are related to fair trade. We need support and encouragement to start businesses here and we can do it.

Tim Hobbs from the Maine Potato Board commented that Canadians are killing the spud local growers. If spud processors in Canada want to get spuds from Maine the other two Canadian Provinces would have to agree they can't supply the spuds before the processor could turn to Maine for the spuds. Twenty-five years ago there were about 100,000 acres planted with potatoes and last year Maine raised about 55,000 acres. The

Canadian acreage has increased significantly. He indicated he would follow up his statements with more details and written testimony he'd send in.

He said that Canadian shippers could ship potatoes into Maine at anytime of year and yet it didn't work the other way around as potatoes flowed more easily into Maine than into Canada. Maine growers export very little of their crop to other places in the world. We are working cooperatively with others regarding potatoe diseases but when it comes to the marketing it is much harder. He suggested taking a look at state policies such as water issues as those may have as much of an impact on the industry as trade issues. Potato growers are not too please with how NAFTA has worked so they did not support CAFTA.

Cindy Manual of Littleton runs a consulting business and commented that Maine and Aroostook County should be very aggressive in attention to trade issues as they must be able to compete on a global scale or they'll fail. They must be able to work with Canada as there were some inequities such as with softwood. She indicated Maine needed to be promoting Maine products and businesses globally, especially with Canada and New Brunswick.

Harrison Roper, a community member questioned comments he'd heard about the US slipping toward 3rd world type status.

Hannah Semler, a College of the Atlantic student related her experience concerning customers and corn production in Mexico. The people tried to stop the flow of genetically modified corn into the area. People need to look for ways to work against the trade agreements as they impact local groups. There also needs to be a way to put checks and balances into the CAFTA agreements like those that exist in NAFTA.

Elsie Flemmings, a College of the Atlantic student commented that she was concerned about the passage of CAFTA and that it would have a devastating effect on farming in Latin America.

Citizen Policy Trade Commission
Summary of Public Hearing Testimony
May 11, 2006
Andover College
Lewiston

I. TESTIMONY BY TOPIC

Democracy Issues

- Concerned about the transparency of the international trade agreement process. Democracy is under attack. We need to do proper assessments of impact of these trade agreements; all negotiations should be halted.
- Concerned about the proposed Net Neutrality Act. If this federal legislation passes, corporations will be able to buy network space and allow deep integration of media. Mainstream media and public perception of the world will be controlled by a few transnational corporations.
- Concerned about secrecy of NAFTA process. Enforcers are unelected. Local laws are disregarded.
- It is the responsibility of government to take charge of trade agreements and take it out of the hands of corporations.
- The poor need to be able to speak up to corporations and big business.
- The most important piece is education. The general population just doesn't know what is going on.

Maine Jobs/Economy

- Maine State Employees Association (MSEA), SEIU Local 1989 concerned about the potential negative impacts that international trade agreements focused on services, such as the General Agreement on Trade in Services (GATS), could have on public sector workers and access to public services in Maine.
- The GATS would accelerate privatization of public services and undermine public service workers, wages and unions.
- MSEA-SEIU believes that trade agreements become fair trade agreements only when they are inclusive and all parties are represented at the table.
- Our survival depends on re-localizing our economy and converting to a low-energy, low-resource, and no-growth economy. Our communities and our next generations will depend on our developing local solutions – whether in agriculture, health care, education or government services.
- We must find ways to reduce our imports and promote cooperative economic development.
- NAFTA alone has cost the State of Maine thousands of decent manufacturing jobs. We have already lost most of the shoe and textile factories, and now the paper industry is investing more overseas than here in the U.S.

- We must take back local democratic control of our economy. We must not surrender power over our local ordinances, laws and regulations to the foreign and alien corporations.

Labor Issues

- Trade agreements have lowered the wages of workers both in America and abroad.
- One out of 4 union leaders murdered in the world are murdered in Columbia; yet the United States has a bilateral trade agreement with Columbia.
- When NAFTA began in 1994, it's supporters claimed that it would increase U.S. exports, create jobs here in America, and raise the standard of living in Mexico, but none of these things happened. Instead, U.S. jobs were lost, exports fell, imports rose, and the standard of living in Mexico fell.
- Workers are being exploited in developing countries.
- We need a minimum manufacturing base; the current cost of fuel highlights this issue.

Public Health/Pharmaceuticals

- Concerned about how trade treaties undermine governments' ability to control tobacco and alcohol – two products that cause substantial harm to public health:
 - Why should tobacco be made cheaper as tobacco taxes are lowered, when it should be made more expensive?
 - Why should tobacco be made easily accessible to citizens through the elimination of market restrictions, when it should be made less accessible – especially to young children?
 - Why should tobacco be made more desirable to youth through global advertising, when we should be reducing tobacco advertising, sponsorships and other promotions to protect young people worldwide?
 - Globally, alcohol causes nearly as much death and disability as tobacco. According to the World Health Organization (WHO), alcohol consumption is the leading risk factor for disease burden in low-mortality developing countries, and the third largest risk factor in developed countries.
- Trade treaties place ever greater restrictions on government actions, making it more difficult for governments around the world to regulate tobacco and alcohol to improve public health.
- The U.S. is requesting that other countries make concessions in the current round of the WTO services negotiations – in the form of collective GATS requests in distribution services. If this demand is accepted, it would make it more difficult for these other countries to regulate tobacco and alcohol in the public interest.
- In 2005, the Framework Convention on Tobacco Control came into force. This is the first legally binding treaty sponsored by WHO and is designed to reduce tobacco-related deaths and disease worldwide by restricting the supply and demand for the product.
- A representative from the National Legislative Association on Prescription Drug Prices (NLAR) spoke about a recent lawsuit filed by a major pharmaceutical company, Eli Lilly, against Australia which has a bilateral trade agreement with the U.S. Under a provision of free trade, the drug company is suing to force Australia to include one of its drugs on the country's preferred prescription list, making it eligible for the government drug benefit program. What can be done in Australia can

be done in Maine or elsewhere. Maine maintains its own preferred drug list for its prescription programs.

- The Australia free trade agreement may limit what states can do and may make it more difficult for Maine to carry out its drug policies.

Environment

- 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).
- The Friends of Merrymeeting Bay (FOMB) are concerned about water quality and quantity as they pertain to the State of Maine and to the Merrymeeting Bay watershed in particular. FOMB is concerned about the potential impact of trade treaties on the democratic control over water.
- FOMB spoke about a NAFTA case where Canadian company Methanex brought suit against California laws banning the gasoline additive MTBE. FOMB feels this case illustrates that global corporations can use international trade treaties to challenge state measures affecting water using a secretive and expensive process that bypasses our domestic laws and court system.
- How can we continue to regulate the extraction, distribution and use of fresh water in our State in the long-term public interest without interference from global water companies using trade treaty rules?
- How can we ensure that democratic control over water in Maine is not subverted?
- Past trade agreements, like NAFTA, show the potential for trade treaties to affect bulk water exports.
- Global trade rules apply to municipal services, such as water treatment, fresh water distribution, and wastewater treatment.
- We haven't done the assessments necessary to understand the impacts of the GATS agreement on land use. Local municipalities need to have control over environmental and historical impacts.

Agriculture

- In the early 1970s, there were approximately 7,000 acres of commercial apple orchards in Maine. Presently, there are just over 2,000 acres. Most of that decrease is a direct result of unfair trade and foreign imports.
- Apples from South America and New Zealand dominate the wholesale market. China has 5 million acres in apple orchards ready to flood the market. Offshore producers don't have the environmental or labor issues to contend with that domestic producers do, such as paying a federally mandated \$9.16 per hour to harvest the apples.

II. REQUESTS MADE OF COMMISSION BY SPEAKERS

Public Health

- Maine should request that the United States Trade Representative (USTR):
 - Not make any GATS offers affecting the supply, distribution, sale, advertising, promotion or investment of tobacco and alcoholic beverages in Maine; and
 - Refrain from making any GATS requests of other countries pertaining to these service sectors.
 - In particular, Maine should request that the federal government instruct the new USTR to withdraw U.S. support for the collective (or “plurilateral”) request it has co-sponsored on Distribution Services as it pertains to alcohol and tobacco.
- A representative from the National Legislative Association on Prescription Drug Prices (NLAR) asked the Commission about the status of a draft resolution calling on the USTR to form guidance on the definition of “federal care program” under Annex 2-C of the U.S.-Australia free trade agreement. In January, NLAR asked the Commission to endorse the Vermont model legislation and to advise the Maine Legislature to come forward with a similar resolution.

Natural Resources

- FOMB urges the Commission to search out examples where trade treaties impact democratic control over water resource and craft state legislation that provides the best possible protection against the intrusion of trade treaty rules.
- FOMB urges the Commission to ensure that water is included as a priority item in all future state efforts to protect state laws from trade treaty interference. Trade treaties extend beyond water as a commodity; these rules pertain to water services and water investments.
- Asked the Commission to look into how we in Maine can protect our fresh water, and services and investments relating to water, from international trade rules.
- Asked the Commission to assess the risks of international trade treaties affecting the democratic control over water in Maine – with special emphasis on global rules on services and investments relating to water.
- Asked the Commission to investigate how the State could minimize its exposure to these risks in its day-to-day practices. Should the State be negotiating much tighter water contract provisions?

Other

- MSEA-SEIU urges the Governor to carve the State of Maine out of previously committed service sectors such as healthcare.
- Peace through Interamerican Community Action (PICA) urged the Commission to recommend to Maine’s congressional delegation that they reject the U.S.-Columbian trade agreement now in negotiations. Union organizers are systematically killed in Columbia.
- Asked the Commission to support federal legislation referred to as “Fair Trade for our Future Resolution.”

**Citizen Policy Trade Commission
Summary of Public Hearing Testimony
Thursday, November 30, 2006
City Council Chambers, Presque Isle**

I. TESTIMONY BY TOPIC

Democracy Issues

- Free trade important to early USA and industrialization and American democracy, yet developing countries (emerging economies) with poor working conditions or ecological degradation may not change to free trade provisions without a democratic process
- State needs to develop policies within the free trade framework
- Access to the US market should require meeting basic standards
- State sovereignty is an important issue and states should be allowed to set their own rules

Maine Jobs/Economy

- Originally thought NAFTA was a good idea, yet as time goes on, seeing wages driven down because of NAFTA
- Friend works for a paper company that's opening 3 mills in Russia
- China now producing paper with raw materials sent from here, processed in China and sent back
- Working at Frasier used to mean a worker had a job they could depend on
- The paper industry is changing with expansion now done in other countries
- Goals of trade should be to open new markets for Americans and to open American markets to goods from other countries
- Northern Maine has seen job loss—need to find
- Need to be concerned about net loss of jobs while considering world standards (especially for emerging economies) for free trade
- 5 companies closed due to NAFTA that were Trade Adjustment Assistance (TAA) certified with 207 workers affected
 - Georgia Pacific- 12 workers
 - Aroostook Starch- 22 workers in Fort Fairfield
 - Louisiana Pacific- 103 workers and a main employer in rural Maine Legislature
 - 1st Technology- 63 workers in Caribou
 - Maine Brad and Manufacturing – 6 workers
- Loss of the 207 jobs devastating to the families and also to the entire area and St. John Valley
- When manufacturing jobs are lost in ME, new business can come in—but they rarely match the wages and benefits lost
- When large employer leaves a community or downsizes it's not just the loss of the employer—but the impact of those left behind, the effect on families, markets and services
- Need to look at how State does business, courting large employers—yet the majority of Maine business are small businesses with 20 employees or less

Labor Issues

- Trade Adjustment Assistance (TAA) Program provides assistance to employees if a company closes resulting from NAFTA agreements

- TAA benefits make US companies great—yet often cause companies to move or expand outside of the US
- TAA grants for tuition assistance (4 year programs) and work force funds target low income and disenfranchised youth, and women to provide an extra boost to workers to help support families
- If affected workers don't chose to go into a 4 yr program to get TAA funding, their options are to find work or to visit a career center that can help guide them to a high growth industry and assist them in getting the skills needed
- People need to be paid fairly—all workers, in Maine and globally
- US has federal trade system—in Canada the provinces compete and fight it out with each other—treating the US about like another province
- Inequity when US workers can't go to Canada and work, yet Canadian workers can get a visa to come to US and work all they want

Public Health/Pharmaceuticals

- Inequities in nursing sector with employment—US employees can't get jobs in Canada, yet US employers often hire Canadian workers because there's no insurance premium—certain sectors like nursing

Environment

- Trade agreements need to include conditions of wages: environmental standards and general health to equalize the playing field

Agriculture

- Having worked in the potato industry, puzzling that Maine can ship potatoes to Boston or New York markets and so can Canada—yet Maine can not send potatoes to Canadian markets
- For small farmers it's a struggle to compete and when there's a good year and the harvest is up, the market floods and NAFTA helps the Canadian farmers and hurts the Maine farmers
- Northern Maine is a farming community having lived in the same area for 50 years ago there used to be 40 farms—now there are 3
- In Maine, used to be 100,000 acres of potato farmland and 50,000 acres in Prince Edward Isle—now it's reversed
- Subsidization is also an issue as Canadian trucks are subsidized 200 miles to the border
- Another farmer that wants to stay in Aroostook county was offered to have a shed (\$3-4 million) built for him in Canada for a broccoli farm and he wouldn't have to pay—despite Canada saying they don't subsidize sheds anymore—still an issue
- Rural Caucus in King's administration got a Maine-Canadian ombudsman—now there's no money—it got reinstated yet Gov. Baldacci didn't realize the money was there—Rep. Carr possibly has research materials for work done by the rural caucus

Other

- 50 states were surveyed and half responded—only 1 state has 'emissary' working with Canada over trade issues

Maine Citizen Trade Policy Commission (CTPC)
Public Hearing
South Portland Community Center
February 21, 2008
Summary

Members Present: Sen. Margaret Rotundo, Senate Chair, Rep. John Patrick, House Chair, Sen. Bruce Bryant, Sen. Kevin Raye, Rep. Jeffery Gifford, Malcolm C. Burson, Peter Connell, Carla Dickstein, Elsie Flemings, John Palmer, Leslie A. Manning, Cynthia Phinney, Linda Pistner, Sarah Bigney, Matt Schlobohm, Paul Volckhausen,

Guest Presenters: Professor Andreas Waldkirch, Colby College, Professor Jim Leiby, University of Maine, Stefano Tijerina, Ph.D. candidate, University of Maine.

Other Guests: Congressional Rep. Michael Michaud, State Senator Ethan Strimling, Rep. Jane Eberle, and Commissioner John Richardson.

Media: Anne Ravana, reporter, Bangor Daily News (Article on hearing published Feb. 22, 2008); Channel 2, Martha Spiess, videographer (the commission will be notified of the airing date and time) Richard Rhames; Jessica Alainio, reporter for an online website, www.politickerme.com. Headline: *Commission reviews trade deal's affects on Maine business*. This site also has video clips of the presenters.

Citizens Present: 42

Who gave testimony: 17

Opening Remarks: Rep. Jane Eberle

Presenters Remarks:

Congressman Mike Michaud: mentioned that he did visit Colombia and that the human rights issues must be considered. Congressman stated: "It's time we step back and see what trade agreements have done to these countries, and change that model."

Professor Andreas Waldkirch (Colby College): He is opposed to the Colombia FTA. Although trade agreements are beneficial in some capacities, they are extremely selective and contribute to the upper redistribution of incomes.the way these agreement s are written it is not for everyone to have free trade; they have provisions that tend to expose those that are at the lower rung of the economic ladder to increases competition, and to protect those at the other end of the ladder.

Professor Leiby (University of Maine at Orono): "What we call free trade agreements tend to be restricted,"..... "[P]eople will lose jobs because of trade agreements." Professor Leiby also commented on the complexities of this and other free trade agreements. He did not have a strong opinion about the Colombia FTA.

Stephano Tijerina (UMO PhD student): Trade deals are primarily political – duo political hemispheric security interest in the region. Consider the proximity to another South American country – Venezuela. Consider also Canada’s interest as well; Canada also wants to sign a bilateral agreement with Colombia. Canada usually follows the U.S. in these agreements.

Public Testimony

General points that many people made:

- The effects of NAFTA have been devastating on Mexico and Maine- loss of jobs, lower wages, etc. This will continue with more NAFTA style agreements like the Colombia FTA.
- Since NAFTA there has been increased immigration. If Colombia passes, there will be more increased immigration from there as more farmers can’t make a living.
- This is a failed trade model. We need a new model for trade agreements, Maine people are opposed to this entire package deal of job off-shoring, agricultural consolidation, small farmers forced off their land, small businesses closed, and investor-state rights that allow corporations to challenge local laws and sue states or countries because their laws are “barriers to trade.”
- The floor price of basic agriculture crops would be eliminated in Colombia should the FTA pass, and that would force farmers off their land, or force them to grow cocaine, or to join paramilitary groups, or to migrate to the U.S.
- Colombia leads the world in murders of trade union leaders and has a terrible and violent human rights record in many different cases.

Martha Spiess - Peace Works, Greater Brunswick:

Ms. Spiess submitted a report *Under the Umbrella of U.S. Hegemony: Canada and Colombia head towards a Trade Deal*. Ms. Spiess was video tapping the hearing and thus was unable to present the findings in this report. Copy available.

Victor Skorapa (Retired physician):

Need for a public health perspective in trade. Spoke about CPATH (Center for Policy on Trade and Health) and presented a report from CPATH for the commission to read entitled “The U.S.-Colombia Trade Promotion Agreement: Public Health Critique and Fixes”. Pharmaceuticals, tobacco, health insurance, alcohol, and all of these industries are represented, but public health is not. When there is a conflict between private corporate priorities and public health, we should choose public health.

Debbie Leighton:

Concerned about domestic regulation in GATS. Presented memo on proposed WTO provisions on the service sector, which would subject licensing boards, any state level public interest regulations to conform to WTO standards.

Ms. Leighton was also very concerned that, under NAFTA-style investor rights provisions, Maine could be sued if the PUC denies Nestle the right to pump water in 12 proposed aquifers in Maine.

Eric McVay:

We should reject these trade agreements due to the effect on our workers. Lay-offs have hurt Northern Maine. Also, the human rights abuses in Colombia are a huge concern.

Kathy Robertson:

Sierra Club member, spoke about the link between free trade agreements and global warming. Laws that Maine is passing to prevent global warming (like CAFÉ standards and RGGI) could be subject to WTO or NAFTA challenge. When companies off-shore, they do so to find locations for factories with lower environmental standards, and the greenhouse gas emissions that result are contributing to global warming.

Peter Kellman:

It's clear where the money goes, to the top 1%. Real wages for hourly paid workers are lower today than they were in 1973, and people are working longer hours. The economy is not great for the majority of people. The economy is not good under this free trade agreement model of economy.

John Connors:

This is a human issue. The people on the other side of the border are people. Union leaders are killed in Colombia, with the help of U.S. companies. "I'm not against trade; I am against what we have now." There are approximately 9 million undocumented workers in the U.S. today who can't make a living in their home countries due to these FTAs. Spoke on issue of corn- that the subsidized corn from the US makes it impossible for Mexican farmers to grow their own corn.

Under these trade agreements, wages are going down. Good trade is when everyone benefits. Today, Maine is importing more food than we make. At the same time, workers abroad are making pennies to produce goods. If they are making pennies, they won't be able to buy our goods. In the grocery store, he sees the sad eyes of the elderly who are watching the prices of food go up and up and can't afford to buy it.

The best way to pay the bills is to have good jobs. Ford knew that if he paid his workers a good wage, they would be able to buy his cars. "We've had good trade policy in the past, we don't now, but we can again".

Tracy Allen:

Policy that the U.S. is passing to prevent more global warming and pollution, like CAFÉ (Corporate Average Fuel Economy) Standards and RGGI (Regional Greenhouse Gas Initiative passed by Maine and states in the Northeast U.S.) are WTO illegal and could be challenged by foreign corporations who don't want to abide by them. The Clean Air Act was weakened because as it was written first, the U.S. would have been sued. We shouldn't be weakening our trade policy based on foreign corporations' right to profit.

John Bernard:

Fair trade product certification, one way to improve trade to be more fair, gives good examples of what priorities we should be seeking, including fair prices for products, community support for education and health care in communities, direct trade, fair working conditions, democratic and transparent organizations and trading, and environmentally sustainability. We should keep these principles in mind as we move forward to build our fair trade future. This is what trade should and can be.

Tom Ledue:

There is a need to re-negotiate trade deals, but how? We must guard against the idea of "profit" at any cost. There should be fair labor certification and green certification for every product. The status quo of trade is unacceptable. We need a profit motive for people to do the right thing, a financial incentive to do the right thing.

Pete Cavanaugh:

There is a need for truth in labeling. Raw food is labeled but processed food is not. Sometimes the labeling is misleading. The current trade model deprives people of the ability to feed themselves. We need a trade system that allows an agriculture system that is self-sustainable.

Grace Braley:

In WTO negotiations, small countries have been ignored. The U.S. trade minister ignored people, until trade ministers from small countries walked out.

Grace was in Mexico in 1994 when NAFTA began and the peso crashed. Both devastated Mexicans, especially small farmers and small businesses. A local meat shop was doing well until NAFTA passed. It closed and then was replaced by a foreign company.

Mexicans said "we miss our homes" after migrating to cities because they couldn't feel their families.

Trade is a wonderful thing but we have to start over.

Daphne Loring:

We have an incredible opportunity to replace fast track. It expired last year and will be replaced next year, hopefully, if we push for it. The commission needs to make sure that Congress, the States, and the public have a voice this time.

We should ensure that:

- Any new agreement must restore balance between Congress and the Executive branch
- Any new agreement must put in core international labor standards and an independent mechanism for enforcement
- Any new agreement must not include foreign investor rights to sue states or countries

Jim Carson:

We need to have a real discussion on what the real effects of these trade agreements are. We must put a hold on negotiating more and go back and take a look. What are the effects? What has the impact been? We need the facts. We need a time out to get evidence and evaluate, to have a thoughtful discussion and then ask what we should do next. We can't have FTAs that only work for a few. There is a lot of displacement of workers here and abroad, resulting in immigration. Let's look at these things.

Ruth Taylor:

Expert in industrial psychology, job satisfaction

The current model encourages exploitation of people for greed and profit. We need long-term job security, not low wages, poor working conditions, and child labor.

Richard Rhames (Dairy farmer from Biddeford):

When NAFTA passed, UMaine professor Melvin Burke gave a speech in Mexico City and said that immigration will increase with NAFTA. Policy-makers said it would decrease. It has clearly greatly increased. Farmers can't make a living anymore with the free trade model in agriculture. It hurts Maine farmers, and Mexican farmers.

Citizens Testimony ended approximately 8:50 p.m.

COMMISSION VOTE/ACTION: The commission met after the public hearing to discuss and vote on whether to send a letter in opposition of the Colombia Free Trade Agreement to Maine's Congressional delegation and Governor Baldacci. The commission voted unanimously to send the letter opposing the Colombia Free Trade Agreement.

ADJOURNMENT: 9:10 p.m.

CITIZEN TRADE POLICY COMMISSION

**Public Hearing
December 4, 2008
Husson College
Libra Lecture Hall
Bangor, ME**

Senator Rotundo welcomed guests and members. Sen. Rotundo described the Commission as a non-partisan commission which was established by the Legislature in May of 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 consists of 17 voting members representing a broad spectrum of interested parties and five nonvoting members from five state governmental departments.

This hearing is to get input from citizens about how international trade agreements are impacting their lives.

While international trade agreements are negotiated at the federal level, public input can and does have an affect on what happens in Washington.

Congressman Michael Michaud was thanked for attending the hearing, along with Carol Woodcock from Senator Snowe's office and Alison Geagan from Senator Collin's office. Introductions of Commission members were made.

Senator Rotundo advised that the public comment period would remain open for written comments or can be submitted to linda.b.nickerson@maine.gov or to her attention at Bureau of Labor Standards, 45 SHS, Augusta, ME 04333-0045. Individuals were asked to step up to the podium and sign the attendance sheet, clearly state their name, city of residence, affiliation for the record, limit their testimony to ten minutes and asked to speak only once to allow others to speak. Attendees were advised that it was inappropriate to enter into debate or prolonged back and forth discussion during this period. It is not the purpose of the hearing to resolve issues or to answer all questions that may arise, but rather it is the intent to capture all public comments, questions and concerns.

Senator Rotundo opened the hearing for comment.

The following persons presented testimony:

1. Emery Deabay, Bucksport affiliated with the United Steel Workers, supporting the Trade Act bill put forth by Congressman Michaud (submitted written testimony).

2. Bonnie Preston, Blue Hill, member of Alliance for Democracy, supporting the Trade Act bill (submitted written testimony).
3. Terry Whorty, President, Local 12 representing the paper mill industry supporting Congressman Michaud's bill (did not submit written testimony).
4. Jon Falk, Director, Peace through Interamerican Community Action, (PICA), Bangor, (submitted written testimony).
5. Steve Husson, Hampden, works for food and medicine, supporting the Fair Trade Act (submitted written testimony).
6. Alexander Aman, University of Maine, Orono student (did not have written testimony) supported Michaud's trade act.
7. Jamilla El-Shafe, southern Maine, Save Our Water, spoke about the water extraction issues, passed out water bottles, spoke in support (no written testimony).
8. Representative Rick Burns, supporting the Trade Act (no written testimony).
9. Kathleen Caldwell, Brooksville, shared concerns with trade agreements, labor and environmental standards in El Salvador, (submitted written testimony).
10. John Greenman, Old Town, met with residents of Carasque, El Salvadore and explained has many have been adversely affected by trade practices. Mr. Greenman supports the Trade Act and thanked Congressman Michaud. Submitted written testimony.
11. Margaret Baillie, Bangor formerly a garment worker. Ms. Baillie urged the commission and Governor Baldacci to join sweatfree consortiums (submitted written testimony).
12. Noah Dudley, Freedom, represents the Beehive Collective in Machias and member of Maine Atlantica Watch. Expressed concerns of how trade affects ecco systems and generations to come (no written testimony).
13. Liam Burnell, midcoast farmworker, Union and Lincolnville. Supports and thanked Congressman Michaud for submitting his bill (no written testimony).
14. Logan Perkins, works as a farm and food policy coordinator for a small statewide non-profit and is a member of the Fair Trade Coalition and the National Family Farm Coalition. Commented on agriculture and trade issues and expressed concerns for Maine's farmers (no written testimony).
15. Jessie Dowling, Searsmont, works on a farm milking goats and making cheese, is a member of the Maine Atlantica Watch (submitted written testimony).
16. Bill Murphy, Glenburn, Maine and Director of the Bureau of Labor Education, University of Maine. Highlighted how NAFTA has affected not only the paper industries in Maine but other industries in Maine. NAFTA impact on Maine's economy and workers has been devastating. Maine has lost over 24,000 manufacturing jobs. Mr. Murphy commented on Congressman Michaud's legislation and supports the Trade Act. Commended Congressman Michaud for his legislation (submitted written testimony).
17. Dennis Chinoy, Bangor, works with Peace through Interamerican Community Action (PICA). Mr. Chinoy discussed trade policies affecting El Salvador and other Latin America areas. The Fair Trade Act will hardly solve problems of economic hardship in our country or Latin America, but makes it possible for people both north and south can live sustainably in countries they love. He urged state and national officials to support Congressman's legislation (submitted written testimony).
18. Robert Kates, Presidential Professor of Sustainable Science, University of Maine. Geographer by training and Climate Scientist by vocation. Chair of the Nobel Peace Prize and in Maine, Chairs the Science and Economic Resource Panel that helped develop the Maine greenhouse action plan. Trade policy issues affect ability to reduce climate change. Michaud bill addresses some but not all issues, however, supports the Trade bill (submitted written testimony).
19. Daphine Loring, Greene, Coordinator, Maine Fair Trade Campaign (submitted summary of Trade Act).

20. Eric Oder-Fink, co-founder of Justice Clothing, retailer of only union made clothing of United States and Canada. Expressed concerns of being a specialty shop selling clothing that is not made in a sweat shop. They are part of a handful of stores in the world that specializes in this. Supports Michaud's Trade Act (submitted written testimony).
21. Alec Maybarduk, MSEA-SEIU, Local 1989. Supports Michaud's Trade Act (submitted written testimony).
22. Mike Lewis, emailed testimony on to the commission on December 16, 2008.
23. Bjorn Claeson, Bangor, Executive Director, SweatFree Communities. Urged support of the Trade Reform, accountability, development and employment of the Trade Act. SweatFree Communities endorsed the Trade Act (submitted written testimony).
24. Michael Owen, student, University of Maine. Discussed free trade agreements and clarification needed (no written testimony).
25. Martha Spiess submitted a written testimony to the commission on January 2, 2009.
26. Congressman Michael Michaud. Thanked Commission for holding the hearing and patience of everyone listening to testimony. Thanked Commission members for the work that they are doing in Maine and a leader whereas other states are following suit as to what Maine is doing. Was asked to talk about the Trade Act but felt that has already been heavily discussed this evening and the devastation that trade policy has had in Maine and across the country. Has been working diligently on the trade model; has met with President elect transition team on trade which made commitment to them that they will not move forward with any major trade policy change unless they sit down with the trade working group to discuss efforts. Also made it clear that whomever they select as US Trade Representative, they will instruct that individual to get input from them. Congressman Michaud discussed his Trade Act, requirements, issues and how it will affect all. Discussed the Value Added Tax and how the Trade Act will correct this disadvantage to U S businesses. Thanked everyone for all the work they are doing.

Representative Patrick recognized Congressman Michaud and thanked him personally for sponsoring the Trade Act.

27. Brent Hall, resident of Bangor, speaking on behalf of Allan Boulier who could not attend due to sickness. Mr. Hall read the testimony submitted by Allan and Debbie Boulier (submitted written testimony).
28. Will Neils, Appleton, Maine. Expressed dismay of government, politics, union paying jobs, trade, lack of social accountability, and Governor Baldacci. Senator Rotundo interrupted Mr. Neils and advised him to keep his personal comments to himself (no written testimony).
29. Juan Carlos Valencia, student University of Maine, originally from Mexico. Discussed how trade affected his country and his family (no written testimony submitted).

Representatives of Snowe's and Collins office were present but left early and declined the opportunity to speak.

Senator Rotundo thanked everyone for attending. Sarah Komuniecki, from WABI TV5 was in attendance, as well as representatives from WERU 89.9 FM. The hearing adjourned at 9:27 p.m.

Respectfully submitted,

Linda B. Nickerson
Secretary
Bureau of Labor Standards

**CITIZEN TRADE POLICY COMMISSION
PUBLIC HEARING**

May 6, 2010
Oxford Hills Comprehensive High School
Meeting Start Time: 1800
Meeting End Time: 1930

In attendance:

Full Commission
Staff: Judy Gopaul

Speakers:

Deborah Kendall. Peer Support Worker, Wausau Paper Mill. She lost her job when the mill closed in 2009 after more than 25 years. Part of her work as a Peer Support worker is to assist other displaced workers in finding jobs. Most of the mill employees are over 50 years old, with limited computer skills. It is difficult to find employment because of their qualifications. Jobs are needed in Maine; manufacturing jobs need to stay in United States. She advocated for better jobs, better benefits. “Everyone needs to support the Fair Trade Policy and stop this insanity before we lose every manufacturing job in Maine and possibly the United States.”

Dean Gilbert. Master Electrician with 29 years’ tenure at the Rumford Paper Mill and Vice-President of the Local 2144 – IBEW (International Brotherhood of Electrical Workers). Over the past two years our mill has idled paper machines, reduced production, and laid off workers. 60% of my crew was laid off, many of whom had more than 15 years’ seniority. Families struggled to get by; they lost their pay checks and in many cases, their dignity. He emphasized that trade laws that favor foreign competition hamper American workers. It is important to keep manufacturing jobs in the United States. He favors tariffs and other sanctions that eliminate unfair advantages for countries that manipulate and undervalue their currency. He also favors a re-evaluation of current trade laws and supports Rep. Michaud’s Trade Act.

Ron Hemingway. VP Maine Labor Council. Thanked the commission for their support of fight against illegal dumping and subsidizing of coated paper from Indonesia and China. Supports the Trade Act and seeks support from the Commission, along with Senators Collins and Snowe, for the act. He is not asking for protectionism, but for fair trade, with reasonable environmental standards, and standards for human rights, health and safety enforcement, and economic justice instead of currency manipulation.

Don Berry. Master Electrician. President, local AFL-CIO. Employed in Maine since 1976. He started with an outside electrical contracting company working in paper mills in Maine; at the time he started there were over two hundred contracted electricians working throughout Maine; now there are none from his company. He attributes the job losses to unfair trade agreements. He supports the Trade Bill from Rep. Michaud and provided copies of recent Trade Assistance Act layoffs in Maine.

William Brennan. Mr. Brennan noted that in Maine, 30,000 manufacturing jobs have been lost in Maine over the past 16 years as corporations have moved jobs overseas where they don't have to worry about regulations that protect the health and safety of their workers or the environment. Urged the commission to push for a reappraisal of NAFTA and the WTO, including an assessment of economic outcomes that factor in health and safety, human rights, and social and environmental indicators. Urges the commission to support the Trade Act. Provided a copy of an article of an accident in Bangladesh that caused twenty-one apparel workers to die in a factory fire after they were locked in.

Mike Castaneda. Was employed for Wausau Paper in Jay for 20 years; lost his job when the mill closed. Created very high stress levels for the now unemployed workers. Noted that one coworker has committed suicide and another died of a heart attack; three additional workers have become disabled as a result of the layoffs. All of those working, despite their efforts with the Trade Adjustment Act of 1974 to become retrained, are underemployed. Mr. Castaneda noted that Maine has lost over 30,000 manufacturing jobs since the passage of NAFTA in 1994. He urges support of the Trade Act sponsored by Rep. Mike Michaud.

Delia Gorham. Speaking as an individual, a Mainer. She applauded Rep. Michaud's support of the American Clean Energy and Security Act and encourages support of the Trade Act to ensure that environmentally sound jobs that look at alternative energy do not go overseas.

Tom Whitney. Discussed his first-hand observations of workers in appalling conditions in countries abroad and the effects of NAFTA on the economies of the US and other countries.

Peter O'Connell. Via e-mail to Rep. Rotunda: Former member of the Commission. Noted that his company and others that were manufacturing companies no longer exist because of the unfair trade practices and advantages given to Canadian manufacturers as a result of NAFTA. Emphasized that trade policy needs a complete overhaul. Viable industry must be brought back to local manufacturers.

Rep. Chellie Pingree submitted handwritten testimonials in support of the Trade Act from **Peter Theriault, Rick Savoy, Robert Arsenault** and **Paul Ouellette, Jr.**, each of whom noted that the illegal dumping of coated paper must stop.

Rep. Mike Michaud was represented at the Commission by _____, who presented a letter from Congressman Michaud about the Trade Act he submitted to Congress.

Citizen Trade Policy Commission
Water Resources Planning Committee
International Trade Agreements and Ground Water Regulations
Public Hearing
State House Room 228
Augusta, Maine
October 15, 2009
Summary

Introduction to the hearing by Robert G. Marvinney, State Geologist.

Linda Pistner, Deputy Chief Attorney General, provided an overview of Maine's legal setting for ground water and an outline of the current regulations that govern the withdrawal of ground water.

Sarah Bigney, Commission member, outlined the major international trade agreements and potential impact to state and federal sovereignty. She provided several examples from cases in other states.

David Webster, Maine Representative from District 106, reviewed Resolve 132 that initiated this analysis of the potential impacts of international trade agreements on the state's ability to regulate ground water withdrawals.

Groups

Shelly Golbiel, Chairperson, Protecting Our Water and Wildlife Resources (POWWR), a grassroots organization founded in 2007: The organization was founded by the townspeople of Shapleigh and Newfield to raise awareness of the water testing by Poland Spring, a division of Nestle Waters North America. She related her town's experience in dealing with potential ground water extraction by Poland Spring. Ms. Golbiel stated that the already-existing local and state-level water laws will not hold in court in their current state. Ms. Golbiel used the Maine shoe industry as an example of the previous statement. The state needs to take lessons from the past and think about future generations. The chair of the POWWR recommended trade and investment agreement reform as well as stricter provisions on policies.

Martin and Barbara Britten, POWWR: The Brittens specifically called for water resources to be carved out of international trade agreements and that Maine's ground water be placed in the public trust. Ms. Britten is concerned that NAFTA and GATT commodify water resources on a global scale. Ms. Britten said, "With the world water crisis and global international agreements, Maine's water is left vulnerable." Ms. Britten also noted that other states, like Vermont, New Hampshire and Massachusetts have recognized the limitation of their water resources and made efforts to protect them. She expressed concern that under NAFTA, Maine is required to give all NAFTA signers the same benefits and deals as the United States. Both of the Brittens seconded the recommendations made by Mrs. Golbiel.

Ben Chin, Maine Peoples' Alliance: The Alliance focuses on laws that benefit the population's well-being. The availability of water for drinking and recreation is of particular concern as it pertains to the well-being of the people of Maine. Mr. Chin stated that the provisions of NAFTA give foreign investors rights and liberties that could potentially "trump" state and national sovereignty. The organization has specific concerns with Chapter 11 of NAFTA. Under this Chapter, for example, the Kids Safe Law could be challenged as too burdensome to a company. With the belief that the power to make legal decisions should be made in Maine and not in international tribunals, Maine People's Alliance also supports the removal of water from international trade agreements.

Bonnie Preston, The Alliance for Democracy: The Alliance for Democracy had specific issues with Article 6 of the GATS of the World Trade Organization, namely Domestic Regulation. Local and state regulations such as “goals to ensure qualifications and standards” could be deemed too burdensome if they hindered a company's profits or services. “National measures shouldn't hinder” these profits or services in anyway. The organization is concerned that basic human needs and drinking water standards could be determined too burdensome. The United States has opposed changes to the agreements under the World Trade Organization and the organization noted that there have been no new disciplines or changes made to article 6.

Stephan Donnell and Daphne Loring, Maine Fair Trade: Maine Fair Trade is comprised of 55 member organizations. Both Donnell and Loring reiterated risks of international trade agreements, namely that they threaten state sovereignty and circumvent local policies that are meant to benefit the public, like those pertaining to the environment and public health. They also recommended that water be carved out of all international trade agreements and specifically the GATS, along with the establishment of investment disclosure, and the protection of sovereignty and local control by enforcing the hearing of conflicts in domestic courts. Ms. Loring also described the experience of Bangor's sister city in El Salvador – Carasque. PacificRim, a Canadian corporation (Canada is not a signatory to CAFTA), used a U.S. subsidiary to sue El Salvador over permits to mine gold. Mr. Donnell and Ms. Loring used this as an example of potential abuses of the international trade agreements to which Maine may be vulnerable.

Betsy Anderson, Steering Committee of Save Our Water from Wells: Ms. Anderson seconded POWWR's concern that if challenged through international trade agreements through an international tribunal, Maine would not succeed. Water is an essential element and Ms. Anderson, along with her organization, does not think it should be treated like oil or pharmaceuticals. Save Our Water also calls for the removal of water from all free trade and investment agreements, specifically the GATS. The economy depends on a clean and safe environment. Ms. Anderson hopes that the legislature will “think globally and act locally, keeping the “Maine” in Maine by refusing to be enslaved by Nestle.”

Herbert Hoffman, Ogunquit, co-chairman of Save Our Water: Mr. Hoffman called for the abolishment of absolute dominion. He believes that the role of water is too precious not to be in a public trust. Mr. Hoffman is concerned that international corporations have been given rights, constitutional and otherwise, similar to those of individual people. His concern is that this “person-status” gives companies the potential to make decisions outside of the local, state and even federal domain. He called for Maine to defend its water.

Emily Posner, from Sheepscot River represented the Defending Water for Life Campaign: This organization also recommends that water be carved out of the GATS and all trade agreements. Ms. Posner expressed her organizations' concerns r specifically with articles 11 and 20 of GATT. Article 20 allows for a country to restrict access to a resource in order to protect human life and conserve the environment. The Defending Water for Life Campaign focuses on the protection of life and health and question the overall root cause of the global shortage of water which seems to have resulted in Maine's water becoming such a desired commodity. The Campaign is also concerned about the effects of bottled water, for example the cancerous effects of plastic manufacturing, aquifer destruction, and effects on other organisms besides humans. Ms. Posner also wanted it to be clear that Maine's water has yet to be determined inexhaustible, with particular concern for the world water shortage and the impacts of climate change.

Economic Supporters

Chip Ahrens, representing Poland Spring, part of the international Nestle company: Mr. Ahrens made it clear that the GATT specifically regulated the trade of *goods* (emphasis from hearing material). Groundwater, or water in its natural state, is not technically regulated under the GATT. Bottled water is, however, regulated by the GATT. Mr. Ahrens also wanted to make that distinction that any disputes over WTO agreements would be heard member nation versus member nation. The WTO also cannot rewrite laws or order any state to change their regulations. International Investment agreements (IIA) under NAFTA, according to Mr. Ahrens, are different from the WTO agreements. The United States, not individual states, can initiate cases. The United States has yet to lose a IIA challenge, although the IIA outcome do not include rewriting any regulations. "Buy American" procurement provisions, "Mad Cow" disease quarantines, and others have all been upheld. IIA only consider monetary damages. Mr. Ahrens also made it clear that nondiscriminatory regulations for public purposes enacted through due process cannot constitute an expropriation.

Chris Jackson, The Maine State Chamber of Commerce: . The Chamber represents at least five-thousand businesses. Mr. Jackson noted that water extraction is already heavily regulated in Maine. The Chamber is also concerned that the state needs more foreign investment. For every single growing local business, there are four or five that are struggling. Unemployment as increased 50% statewide to about 8.5% statewide, and bankruptcies have increased 33%. The Chamber of Commerce noted that Poland Spring employs about 800 people in-state and pays vendors and contractors. The official position of the Chamber is that water replenishes naturally and these types of businesses should be encouraged as long as they are sustainable and reasonable.

Rick Knowlton, Vice President of Aqua Maine: Aqua Maine, a division of Aqua America, an investor- owned company, has served twenty municipalities, some for over fifty years.. Mr. Knowlton expressed concerns with Mr. Waren's draft report and reviewed existing regulations. There is already a bulk water law. Mr. Knowlton referred to a legal article by attorney Scott Slater. He also stated that water is a property under the absolute dominion rule and therefore the GATT and other international trade agreements do not apply. Mr. Knowlton also referred to the Public Utilities Commission and Title 35A which restricts return on a company's investment. Aqua Maine believes, similar to the Chamber of Commerce, that the focus should be on reasonable regulations of water resources before water can be considered goods, products, or services regulated by GATT.

Individuals

Denise Carpenter, Newfield planning board member, a woodlot owner and cattle farmer: Ms. Carpenter reiterated the same information as Shelly Golbiel. . All resources are interrelated. Ms. Carpenter referred to the borders being closed to Mad Cow importation and international companies owning logging in Northern Maine as examples of the effects international policies and agreements have at the state and local levels. She recommends that town-level provisions should be stricter than the state, or "life as we know it will change."

Charles Mullins, Shapleigh: Mr. Mullins does not want domestic regulations to be subject to international policy and believes "there will only be political compromise if the legislature lets it." The goal of the state should be to represent the needs of the people.

Gloria Dyer, Newfield: Ms. Dyer reiterated Hoffman's concern over the constitutional rights given to companies, the threat to state sovereignty, and lack of transparency. Investor's rights give companies power to challenge policies and agencies that interfere with economic profits (including local businesses). In the Newfield-Nestle case, Nestle acted for three years without public notice. Dyer called for laws that would protect Maine's state sovereignty. She also called for water to be removed from the GATT and placed in a public trust for future generations. She recommended that states should be represented in NAFTA and CAFTA negotiations if they are to be affected, directly or indirectly.

Rick Burns: Mr. Burns is an advocate for democracy, private property and fair trade. He noted that there are an increased number of citizens fighting multinationals. Mr. Burns came to the hearing as a supporter for the townspeople of Newfield and Shapleigh. He believes that companies are granted a privilege to use resources and should not undermine municipal ordinances. He also stated his belief that absolute dominion is a product of times past that has eroded and needs to be abolished or rebuilt. "Reasonable Use" has a much better sound than "Absolute Dominion" Mr. Burns also referenced the court case of *Lucas vs. South Carolina Coastal Council* as an example in which regulations were established and businesses had to expect that subsequent regulations would affect the way they do business. He also quoted a former Attorney General, who stated that international tribunals threatened democracy. Consider the rights based ordinance such as that passed by Shapleigh.

Eileen Hennessey: Ms. Hennessey is simply concerned for all natural resources. Everything needs water to survive. Ms. Hennessey is particularly concerned that the 2006 installment of eminent domain allows a company to come onto private land and take ground water for profit. Water should not be a commodity. She further reiterated the recommendation for the removal of water from the GATT and the creation of a public trust for the natural resource. Ms. Hennessey also noted that foreign companies control Maine's wood and electricity.

Jim Freeman, Verona Island: Mr. Freeman raised awareness for the East-West Highway, a 1000ft swath including road, rail, a utility and water pipeline. Maine would be exporting water in pipes. Gravel would go to Europe for roads, and trees would go to Europe for wood pellets to lower carbon dioxide emissions. Both would leave Maine with no value added. This is another example of already-existing economic relationships between Maine and international companies.

Grace Bradley: Ms. Bradley emphasized her concern over the legislature's "potential overconfidence or complacency." Ms. Bradley hopes the legislature will not lose sight of the larger picture, the broader and long-term implications the GATT for Maine. She referred to her own personal experience working with the GATS in Mexico.

Public Hearing Summary
Maine Citizen Trade Policy Commission
June 15, 2012
Room 220, Burton M. Cross State Office Building
Augusta, Maine

Members Present: Representative Joyce Maker, Representative Bernard Ayotte, Representative Rotundo, Senator John Patrick, Linda Pistner, Connie Jones, Joseph Woodbury, Mike Karagiannes (for Heather Parent, DEP), Michael Herz, Steve Cole, Jay Wadleigh

Staff: Lock Kiermaier (Contract)

Upon the required number of members being present to constitute a quorum, the public hearing was convened by CTPC Chair Representative Maker at approximately 9:30 AM.

Current Maine law (10 MRSA §11 (9) C) requires the CTPC to conduct a biennial assessment on the impact of international trade treaties on the State of Maine. The CTPC has fulfilled that obligation by contracting with Professor Robert Stumberg of Georgetown University to conduct the required assessment on the proposed TransPacific Partnership Agreement (TPPA) and to present it in person in a public hearing context. The public hearing held on June 15th featured the presentation made by Professor Stumberg and provided an opportunity for commission members and members of the public to engage Professor Stumberg with questions and discussion about the assessment.

To provide a background to the CTPC's understanding of the assessment and international trade policy in general, Professor Stumberg commenced his presentation with a Powerpoint presentation entitled "*Oversight of Trade Policy*". (A pdf version of Professor Stumberg's various Powerpoint presentations will be posted on the CTPC website: <http://www.maine.gov/legis/opla/citpol.htm>) A brief summation of Professor Stumberg's introduction to international trade treaties is as follows:

Introduction: "Oversight of Trade Policy"

1. Evolution of trade policy: Paradoxically, as international trade treaties have evolved and become more democratic, it has become increasingly more difficult for nations to strike effective trade deals. The current phase of the World Trade Organization (WTO), the Doha Round, is currently stuck in negotiations and is likely to remain that way for the foreseeable future.
2. Current U.S. Trade Agreements: At the present time, the United States has committed to several types of trade agreements:
 - WTO currently consists of 20 different agreements involving 155 nations;
 - Free Trade Agreements (FTAs) currently exist with 19 nations and includes more than 20 separate chapters; and
 - Bilateral Investment Treaties (BITs) exist between the U.S. and 39 different nations.
3. Composition of trade agreements: Trade agreements typically include:
 - A forum for negotiating;
 - A framework for compliance;
 - A mechanism for dispute resolution; and

- A set of trade rules.
4. Affect of trade treaties on states: The trade rules included in different types of trade agreements affect states in different ways:
- WTO agreements affect goods, services, procurement, and subsidies;
 - FTAs affect goods, services and procurement; and
 - BITs only affect investments.
- Due to the provisions of certain international trade agreements, state authority over certain types of services and investment can be successfully challenged by foreign investor claims.
5. Enforcement of trade rules: In effect, trade rules are enforced through economic impact of resulting from trade sanctions, investor compensation and domestic enforcement.

Professor Stumberg then proceeded to make Powerpoint presentations that summarized the three principal elements of the draft “2012 Trade Policy Assessment” that he had authored for the CTPC:

I. TREATMENT OF TOBACCO IN THE TPPA

One of the primary questions regarding the potential elements of the proposed TPPA is how tobacco trade will be dealt with. A leading tobacco company, Philip Morris International (PMI) has been using the provisions of other trade agreements through the use of expensive litigation to successfully challenge existing tobacco controls in a number of countries including Ireland, Norway, Uruguay and Australia. The potential exists for PMI and other tobacco companies to use these same provisions to challenge individual state tobacco regulations. PMI has been advocating that the United States Trade Representative (USTR) negotiate the TPPA to allow tobacco to be treated in the same fashion as other trade sectors.

If the TPPA treats tobacco in the same fashion as other trade sectors, then existing tobacco regulations in the U.S. and other countries could be challenged on the basis of:

- Investment- investor rights could be invoked to dispute domestic regulations outside of domestic courts in international trade tribunals;
- Intellectual property- the expanded use of trademarks;
- Cross-border services- increase the applicability of trade rules to regulations that apply to tobacco-related services which include advertising, distribution and product display;
- Regulatory coherence- would require the participation of tobacco companies in the formulation of domestic policy; and
- Tobacco tariffs- would eliminate tariffs for tobacco products.

USTR is proposing a compromise on tobacco trade to be included in the TPPA. The elements of this proposal include:

- An explicit recognition of the unique status of tobacco products from a health and regulatory perspective;
- An elimination of all tobacco tariffs; and
- Allowing health authorities to develop regulations that use origin-based, science-based restrictions to protect public health.

The USTR proposal for the treatment of tobacco in the TPPA has been criticized on the following grounds:

- The proposal only covers rules and does not apply to legislation;
- The proposal only refers to the adoption of future rules and does not apply to the enforcement of existing rules;
- The proposal does not apply to rules adopted by non-health agencies such as those charged with licensing and taxation responsibilities;
- The proposal does not apply to investment and trade rules that are currently being used to challenge existing tobacco control regulations; and
- The proposal's use of a science-based test is more exacting than the existing health based standard.

Professor Stumberg then suggested that the CTPC had a range of possible options if it chose to take a position on the USTR proposal on tobacco for the TPPA:

- Adopt or endorse the USTR proposal as currently formulated;
- “carve out” tobacco entirely from the TPPA; i.e. provisions of the TPPA would not apply to tobacco trade; or
- Strengthen the USTR proposed exception on tobacco by specifying that all legislation and trade and investment rules are covered.

Finally, Professor Stumberg also pointed out that the USTR proposal on tobacco appears to be in violation of existing federal law and presidential Executive Order which prohibit the promotion of tobacco or the undermining of other countries' restrictions on tobacco trade.

II. PHARMACEUTICAL PROVISIONS IN THE TPPA

Recent actions by Maine and other states have succeeded in reducing the costs of drugs used by participants in the Medicaid program by up to 50%. The cost of prescription drugs in the Medicaid program have been reduced through state use of prior authorization, use of generics and increased copayments.

In response to pressure from major pharmaceutical companies, the USTR has made a proposal that the TPPA be negotiated to require reimbursement programs like Medicaid to use pricing rules which are “market-derived” and to implement procedures which allow pharmaceutical manufactures to litigate against programs like Medicaid that seek to reduce or contain drug costs. More specifically, the USTR proposal on pharmaceuticals is composed of the following elements:

- Pricing rules – Under the USTR proposal, reimbursement programs like Medicaid would be required to use “competitive market-derived” prices for drug costs. Professor Stumberg suggests that this requirement would tend to work against a government's ability to determine lower drug prices by using its power of pooled purchasing;
- Pricing procedures – The USTR proposal requires governments to fully disclose their methods used to determine drug reimbursement costs and requires that drug companies be allowed to participate in the price determination process. The USTR proposal also provides an appeals procedure for drug companies to challenge reimbursement cost decisions. Professor Stumberg suggests that this approach will result in the inability of reimbursement

programs like Medicaid to successfully negotiate the level of cost containment that they have been able to achieve in recent years and further suggests that drug companies will be able to tie up the cost determination process with extensive and expensive litigation;

- Coverage – The USTR proposal covers “reimbursement programs of national authorities” and unlike previous trade agreements, does not specifically exclude Medicaid. Professor Stumberg points out that the failure to specifically exclude federal reimbursement programs like Medicaid will inevitably result in significantly higher drug reimbursement costs which will be incurred by the states.

Professor Stumberg’s various concerns about each of the elements of the USTR drug reimbursement proposal could serve as the basis for possible action by the CTPC. Alternatively, the CTPC could choose to endorse the USTR proposal.

III. GOVERNMENT PROCUREMENT

Professor Stumberg opened his remarks on this topic by stating that no details have been released regarding what the procurement provisions of the TPPA are likely to look like. Thus, his comments on procurement focused on past and current treatment of state procurement processes in other international trade agreements. [Briefly stated, “Procurement” refers to the process by which governments acquire, purchase or contract for services and products necessary to achieve the policy goals and objectives of the particular government.]

From a U.S. perspective, the topic of government procurement has been treated as a more “pro-democratic” sector of international trade policy. As an example of this more inclusive, democratic approach, in the context of relatively recent WTO negotiations, the USTR has invited states to decide whether to be included in the provisions of particular FTAs. In particular, Maine is one of five states to require that the Legislature must decide whether to be included in the procurement provisions of a particular trade agreement.

Professor Stumberg cited the key elements of WTO’s Agreement on Government Procurement (GPA) as somewhat representative of the restraints put on government procurement by international trade treaty rules:

- Nondiscrimination – a prohibition on the implementation of procurement policies which favor the domestic products, services or suppliers from one nation over that of another;
- Performance based standards – a requirement that whenever appropriate, “technical specifications for procurement shall be described in terms of performance rather than design or descriptive characteristics...”;
- Use of “relevant international standards” – a requirement that whenever possible that technical procurement specifications be based on recognized international standards; and
- Procedural requirements - a general requirement that procedural procurement procedures be clearly spelled out with the use of relevant informational materials.

Professor Stumberg also recounted some recent developments in procurement negotiations:

- In addition to the fact that the contents of any TPPA provisions on procurement have not yet been disclosed, the USTR has stated that it will be delaying any effort on their part to receive

approval from individual states as to whether they wish to be subject to the unstated provisions;

- The U.S. and the European Union are currently discussing the possibility of a U.S.-EU trade agreement in which the EU is advocating for the inclusion of state-level procurement and exemptions from any “Buy American” laws;
- The aforementioned WTO GPA has recently been significantly revised and expanded without the USTR seeking congressional approval. This action also appears to preclude the ability of states to decide whether to opt in or out of the new provisions of the GPA;
- China and a number of other less prominent countries are being considered for inclusion in the GPA which may have the effect of increasing the number of countries that can use the provisions of the GPA to take exception to specific procurement policies; and
- A new series of procurement rules are being considered for adoption under the general Agreement on Trades in Services (GATS). It appears likely that the GATS procurement rules under consideration will be broader in scope than the existing GPA rules though it is not yet known whether their perspective content will be similar to GPA procurement rules.

Professor Stumberg then described an important procurement dispute that involves the Canadian province of Ontario vs. the EU and Japan. In 2009, Ontario developed a “feed-in-tariff” (FIT) program that provides “guaranteed, above-market, long-term pricing” for power generated by wind and solar energy facilities. To qualify for participation in the FIT, Ontario requires that a minimum percentage of the power to be produced with equipment that is manufactured in the province. Implementation of the FIT is achieved through public procurement contracts for the purchase of power produced by these facilities. Professor Stumberg noted that as a province, Ontario is not bound by Canada’s participation in the GPA.

Japan and the EU are using the WTO to litigate their contention that the FIT violates international procurement rules in that:

- The “resale” of energy to consumers is not in fact an example of government procurement; and
- The favoring of local products is not an allowable purpose of procurement.

Professor Stumberg cautioned that if the EU/Japan litigation against Ontario’s FIT is successful, it could likely have the ripple effect of calling into question the previous actions of many states to remove themselves from the procurement provisions of the GPA and many FTAs.

Professor Stumberg concluded his remarks with a series of issues regarding procurement that the CTPC may wish to engage in:

- What are the actual procurement provisions of the TPPA and will states have the option of deciding whether to be subject to these rules?
- Will the USTR submit the revised GPA to Congress for ratification and will individual states be able to opt in or out of its provisions?
- What are the procurement implications of a potential EU- US trade agreement?
- When is China (and other nations) likely to join the GPA and what are the procurement implications for states with the inclusion of more countries?

- What is the current status of GATS negotiations and what are the ramifications of having GATS procurement provisions possibly overriding the current commitments made by nations (and states) under GPA?
- What are the possible consequences for state procurement policies if the EU/Japan litigation against Ontario's FIT prevails? Will that possible outcome serve as precedent for rendering state participation to participate (or not) in previous FTA procurement chapters as meaningless?

The public hearing concluded with testimony from Ms. Nicole Brown representing the Maine Fair Trade Campaign. Ms. Brown related the concern of her organization that the current TPPA negotiations are lacking in transparency and in fact represent an unprecedented degree of secrecy and ultimately a lack of meaningful public participation and review. Ms. Brown also cited her belief that in contrast to lack of meaningful public participation in the TPPA negotiations, that some 600 corporate lobbyists have access to USTR documents that are being used in the TPPA negotiations.

Representative Joyce Maker adjourned the public hearing at approximately 2:30 PM.

Public Hearing Summary
Maine Citizen Trade Policy Commission
September 19, 2013
Room 214, Burton M. Cross State Office Building
Augusta, Maine

Members Present: Senator John Patrick, Senator Roger Sherman, Senator Troy Jackson, Representative Sharon Anglin Treat, Representative Jeff McCabe, Steve Cole, Linda Pistner, Bob Umphrey, Pamela Taylor, Jay Wadleigh, John Palmer, Mike Karragiannes, Linda Pistner

Staff: Lock Kiermaier (Contract)

After determining that the statutory requirement that 11 members must be present to officially convene had been satisfied, CTPC Chair Senator Troy Jackson convened the Public Hearing at approximately 5 PM.

To begin the Public Hearing, Senator Jackson asked Commission members to introduce themselves.

Senator Jackson then explained to commission members and members of the public who were present how the Public Hearing had been structured. Several individuals had been scheduled to phone in their testimony at specific times and that testimony from individuals who were present at the hearing would be taken in between and after the scheduled call-ins.

As an introduction to the topics in international trade treaties that the CTPC has been reviewing and in anticipation of the topics that the CTPC expected to receive testimony on, CTPC Chair Representative Sharon Anglin Treat made a brief Powerpoint presentation.

In total, the CTPC heard from a total of 13 individuals. Of that total:

- 4 persons provided testimony via telephone from Washington D.C.;
- 6 persons provided testimony in person; and
- 3 persons submitted written testimony but did not appear in person.

The following list provides a brief synopsis of the testimony offered in the order in which testimony was received. Any written testimony and supporting documentation is available for viewing on the CTPC website.

1. Nora Todd, Legislative Director for U.S. Congressman, Michael Michaud; Maine, 2nd District (by telephone, no written testimony)

(Staff Note: Because Ms. Todd's testimony was in the form of a Question and Answer session over the telephone, the following summary provides more detail than the summaries provided for subsequent testimony by other individuals; all of which was supplemented by written testimony.)

Ms. Todd testified via telephone from Washington D.C..

Representative Sharon Treat started a Question and Answer session with Ms. Todd by asking her about the Trade Promotion Authority that President Obama has requested from Congress in order to ratify the TPP and TTIP, when we might expect that legislation to be approved and what it might look like? Ms. Todd answered by relating that President Obama had just made an announcement stating that he had the public support of Senator Mitch McConnell, Minority Leader of the U.S. Senate for his proposal. From Rep. Michaud's perspective, bi-partisan discussions are ongoing but such a bill has not yet been developed and it is important to note that historically, House Democrats have tended to be opposed to previous FTAs and to previous requests for Fast Track Authority. In the recent past, Rep. Michaud has been opposed to Fast Track Authority feeling that it is much too broad and has recently been working with House leadership to craft Fast Track Authority which is much more open and transparent and affords the opportunity for true deliberation. At this point in time, it is too early to say whether this effort for transparency will be successful. Rep. Michaud also believes that the President should be speaking to all points on the political spectrum to ensure that whatever Fast Track Authority is approved is reflective of all points of view in Congress. The TPP under current negotiation is much more comprehensive and far reaching than any previous FTA and the approved Fast Track Authority needs to reflect that status.

As to timing, Fast Track Authority is being held up by several sticking points including disagreement over inclusion of the Trade Adjustment Assistance Program which helps workers that have been displaced as a result

of previous FTAs and has previously been championed by Rep. Michaud. It appears that the Republicans in Congress would like to move more quickly to approve Fast Track Authority and the TPP as a package. All of these efforts are being held up and delayed by the need to pass various appropriation bills by the end of September. She believes that a likely scenario is for Congress to consider a TPA bill at the earliest in January or February next year and that major trade issues such as the treatment of tobacco and footwear tariffs are yet to be resolved.

In response to a question from Senator Sherman, Ms. Todd mentioned that the Congressional Dairy Caucus had sent a letter, which Rep. Michaud signed, that urged USTR to maximize U.S. dairy exports in the TPP agreement. She said the letter highlighted concerns with New Zealand's dairy monopoly and the potential for export opportunities in Canada.

CTPC member Steve Cole then asked Ms. Todd what previous Republican opposition to the Trade Adjustment Assistance Program had been based on. Ms. Todd responded that the Republican position included the belief that job loss due to trade treaties should not be treated differently than other job losses due to the economy and that the program was ineffective in getting people back to work and had failed to adequately retrain people for new jobs. She believes that Republican opposition to the program is also rooted in their objections to federal payments for unemployment and job retraining purposes.

Next, CTPC member Bob Umphrey then asked if there has been any movement in Congress with respect to textile issues such as transshipment and special treatment. Ms. Todd responded by saying that textile issues are huge in the TPP negotiations with Vietnam pushing strongly for zero tariffs on textiles. The USTR has adopted a stance in favor of a relatively weak "yarn forward" approach which makes use of a "short supply list" rationale to permit the importation of tariff free (or reduced) textiles. Ms. Todd also brought up the importance of footwear tariffs in the negotiations, as textile and footwear issues are seen as Vietnam's top two priorities in the agreement. Rep. Michaud favors a "carve out" for domestically produced footwear products in the TPP and has supported a long phase out of textile tariffs. Ms. Todd remains "nervous" about the USTR commitment to domestic industry in the TPP with a specific concern that during his recent trip to Maine, USTR Froman did not specifically commit to saving US footwear jobs via the TPP.

2. *Chris Buchanan, Organizer for Defending Water for Life in Maine (Written testimony supplied, along with a DVD which is available from CTPC staff)*

Ms. Buchanan presented her written testimony which made the following points:

- Ms. Buchanan is an organizer for Defending Water for Life in Maine and is statewide coordinator of the Stop the East-West Corridor coalition;
- Defending Water for Life in Maine is opposed to ratification of both the TPP and the TTIP as well as the proposed ‘fast track’ legislation ; the organization maintains that both FTAs would result in irreparable damage to Maine’s water as well as local control over that natural resource; and
- The Stop the East-West Corridor coalition is also opposed to the fast track authority and ratification of both FTAs on the grounds that the development of this transportation corridor would gravely harm small business, traditional land use practices, sustainable economic activity on the local level, efforts to preserve local ecosystems and effective environmental protection.

3. *Michael Poland, Papermill Worker at the Sappi Somerset Plant in Skowhegan (Written testimony supplied)*

Mr. Poland presented his written testimony which made the following points:

- Mr. Poland is testifying on behalf of USW Local #4-9, the Maine fair Trade Campaign and Maine Forest Workers;
- Previous FTAs like NAFTA have been devastating to Maine’s paper and forest industry; recent data supplied by the U.S. Department of labor shows that more than 2,000 industry jobs were lost between 1997 and 2003;
- He opposes the proposed “fast track” authority on the grounds that it lacks transparency and inhibits proper congressional review and approval of trade treaties; and

- The TPP includes Vietnam which currently has over 250,000 forest product workers and over 200 wood processing plants making them the second largest furniture manufacturer in the U.S. market; the TPP threatens to transform Maine’s forest product industry into one that simply provides raw forest product for manufacturing in countries like Vietnam with a devastating loss of Maine jobs.

4. *Robert Stumberg, Georgetown University Law Center, Harrison Institute for Public Law (By telephone with PDF version of PowerPoint presentation supplied)*

Professor Stumberg testified via telephone from Washington D.C. and made the following points in his Powerpoint presentation which was entitled “Competing Proposals for Tobacco in the TPPA”:

- In general, the proposed TPPA differs significantly from current FCTC requirements with regards to tobacco:
 - Zero tariffs on tobacco;
 - Least trade restrictive;
 - Allows the use of trademarks;
 - Prohibits limits on services (re advertisements);
 - Requires stakeholder participation.
- The current USTR proposal on tobacco includes zero tobacco tariffs, an overly broad health exception which has no legal significance and a consultation requirement which also has no legal significance; and
- The USTR’s current tobacco proposal does not compare well with Malaysia’s proposal for a total “carve out” for tobacco.

5. *Michael Belliveau, Executive Director, Environmental Health Strategy Center (Written testimony and supporting documentation supplied)*

Mr. Belliveau supplemented his testimony with supporting documentation which made the following points:

- In recent legislation, Maine has significantly surpassed the obsolete and insufficient requirements of the federal Toxic Substances Control Act of 1976;
- The substance of Maine’s effort to provide higher measures of public safety with regards to the use of potentially dangerous chemicals is

severely threatened by the possible passage of the TPP and TTIP which could override the provisions of current Maine law;

- In particular, current Maine state law uses a science-based process to restrict the use of chemicals such as mercury, arsenic, PBDEs (flame retardants) and lead in consumer products- all of which could be potentially overturned or nullified by provisions in the TPP and the TTIP; and
- From Mr. Belliveau's perspective, international chemical manufacturers intent to use TPP and TTIP to achieve downward regulatory harmonization which would effectively override state regulation of toxic chemical use which is largely based on the current regulatory framework (known as REACH) used by member nations of the EU.

6. William Waren, Trade policy Analyst, Friends of the Earth U.S. and Baskut Tuncak, Staff Attorney, Center for International Law (By telephone, supplemented by written testimony and supporting documentation)

William Waren and Baskut Tuncak testified via telephone conference call from Washington D.C.

William Waren spoke first and made reference to his previously published blog piece titled "sinister partners: transatlantic trade agreement & toxic chemicals":

- The current focus of the TTIP is on the removal of non-tariff, regulatory trade barriers; this emphasis poses a serious threat to existing environmental and public health safeguards in the U.S. and in Europe;
- The EU approach to ensuring regulatory safeguards to the use of toxic chemicals, known as REACH, is based on the precautionary approach which places the burden of proof on chemical manufacturers; this approach is likely to be undermined in the TTIP through the use of deregulation. REACH is opposed by the USTR as an example of a technical barrier to trade; and
- The current U.S. approach to chemical regulation, TSCA (Toxic Substances Control Act) is widely regarded as a failure and places the

burden of proof on the EPA which is relatively powerless in this regulatory realm.

Baskut Tuncak spoke next and made reference to his written testimony by emphasizing the following points:

- On a federal level, the current U.S. regulatory approach to chemical safety is wholly inadequate;
- The inadequate federal regulatory effort has been superseded by effective regulation on the state level by states like Maine;
- It is likely that the TTIP will be used to undermine the highly effective regulatory approaches used by states and by the EU;
- Mr. Tuncak suggested that the TTIP should avoid:
 - measures which dilute or weaken existing regulations;
 - elevating the interests of private corporations over that of the public through the use investor-state dispute resolution;
 - preempting effective federal, state or local regulation
- The TTIP should be negotiated in an open, transparent and participatory manner; and
- The TTIP should be a *better* trade agreement and not necessarily a *free* trade agreement.

7. Sarah Bigney, Maine AFL-CIO (Written testimony supplied)

In her written testimony, Ms. Bigney made the following points:

- Maine workers are very disturbed by the secrecy and lack of transparency thus far exhibited in the TPP negotiations;
- Previous FTAs like NAFTA have failed and resulted in huge job losses, lower wages, poorer working conditions and the lowering of environmental standards;
- Through the use of investor-state dispute resolution mechanisms, FTAs have been used to undermine local regulations designed to protect communities; and
- The use of fast Track authority is unfair and undemocratic and should be opposed by the CTPC and members of Maine's Congressional delegation.

8. *Cynthia Phinney, President, Maine Fair Trade Campaign (Written testimony supplied)*

In her written testimony, Ms. Phinney made the following points:

- The TPP is being largely negotiated in secret and this situation is one of grave concern;
- The TPP is likely to include provisions for investor-state provisions which allow companies to sue the governments if they feel that regulations create barriers to trade. The tribunals used to administer these provisions are outside any judicial system and are unfair; and
- Ms. Phinney opposes the use of fast track authority because of the secrecy and lack of transparency used to negotiate the TPP.

9. *Anna Ackerman, American Civil Liberties Union of Maine (Written testimony supplied)*

In her written testimony, Ms. Ackerman made the following points:

- The ACLU believes that the TPP raises significant concerns about freedom of expression, due process, innovation and the future of the internet's global infrastructure;
- As currently written, most of TPP does not deal with traditional trade policy and instead concerns itself with a broad range of domestic policies;
- The secrecy of current TPP negotiations is the antithesis of democracy;
- The provisions of the TPP are likely to be a significant threat to free speech and on-line privacy; and
- The ACLU is opposed to the proposed fast track authority which precludes meaningful public discussion and congressional oversight.

The rest of the testimony provided to the CTPC was in written form and did involve a personal presentation:

10. *Becky Smith, Government Relations Director, Maine American Heart Association; Jessa Barnard, Associate General Counsel, Maine Medical Association; and Tina Pettingill, Maine Public Health Association (Written testimony supplied)*

In this written testimony, the following points were made:

- These organizations strongly oppose the current USTR proposal on tobacco measures in the TPP;
- Tobacco use costs \$600 million in annual health costs in Maine and these costs can be reduced through the effective tobacco health measures; and
- The TPP poses a significant threat to existing state tobacco control measures.

11. Grace Braley, resident of Portland (Written testimony supplied with supporting documentation)

In her written testimony, Ms. Braley made the following points:

- Through a competitive structure of acquisition and control of the world's natural resources, labor and production systems and economic and trade policies, FTAs like the TPP works against world peace;
- The treatment of food like any other trade commodity has resulted in the loss of small farms and local control;
- Excessive secrecy has been used to negotiate the TPP and access to the process has been denied to members of the public and their elected representatives;
- The investor-state provisions skirt due process and domestic court systems and promote the rights of corporations over those of the greater public; and
- The TPP should be opposed if the goal is fair trading opportunities and peaceful relationships between nations.

12. Julie Keller Pease, MD, Brunswick (Written testimony supplied with supporting documentation)

In her written testimony, Dr. Pease made the following points:

- The TPP will prevent public health education efforts, such as tobacco health measures, if they are seen as conflicting with corporate profits; the current USTR proposal on tobacco is inadequate;

- The TPP will allow for 20 year patents for pharmaceuticals and medical devices that can be renewed if new indications or methods of delivery are found; this process of “Evergreening” works against generics and seeks to protect profits;;
- The TPP is likely to inhibit the success of MediCare and will support the increased privatization of health care thus resulting in reduced access and increased costs; and
- Congress should be urged to oppose fast track authority and ratification of the TPP.

***NOTE: Copies of all previously cited written testimony and supporting documentation can be viewed at the CTPC website:
<http://www.maine.gov/legis/opla/citpol.htm>***

Issues for Maine in The Trans-Pacific and Trans- Atlantic Trade Agreements

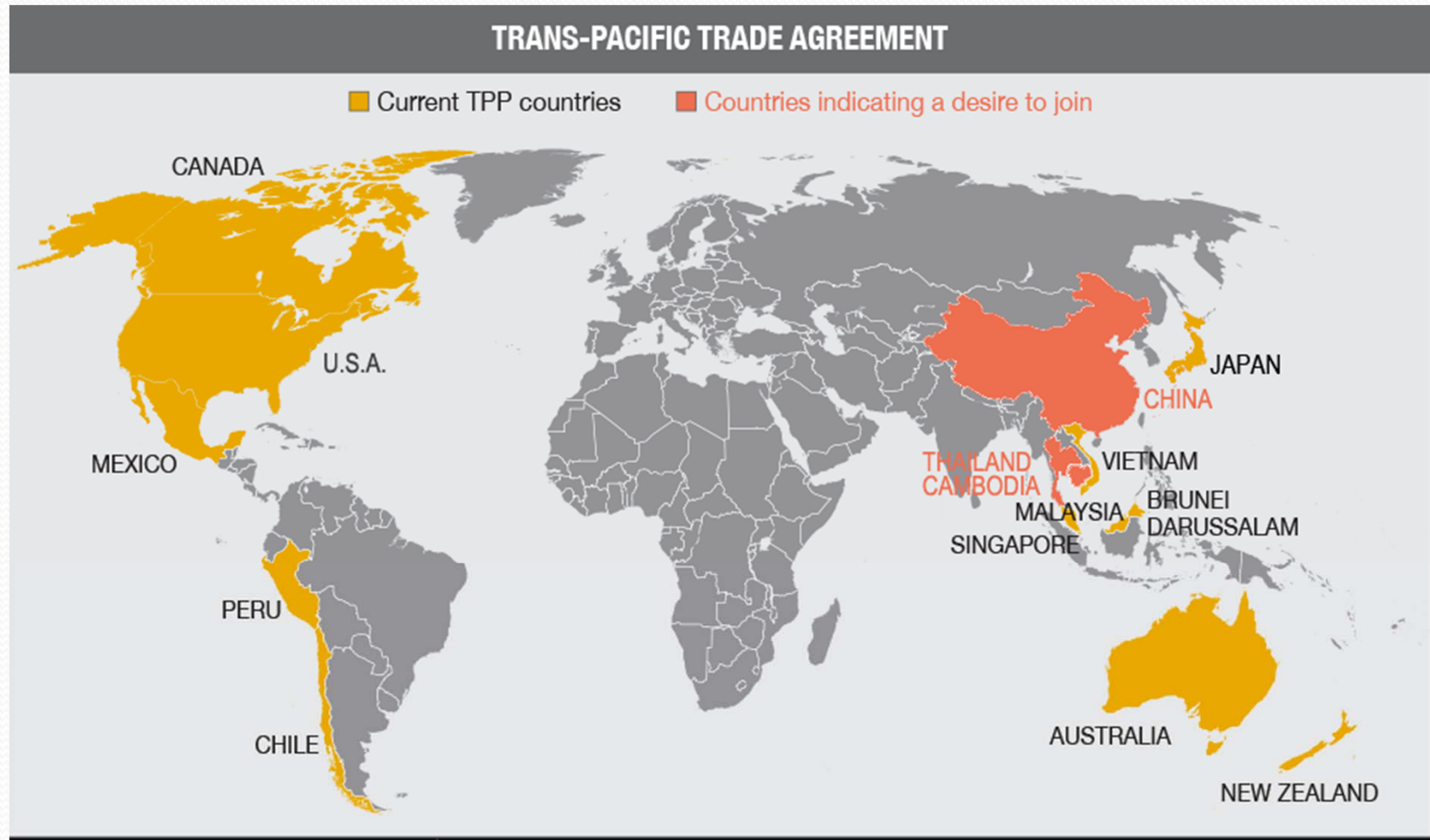
Rep. Sharon Anglin Treat
Maine Citizen Trade Policy Commission
Public Hearing
September 19, 2013



Note:

This presentation is adapted with thanks to Celeste Drake, Trade Policy Specialist for the AFL-CIO, from her presentation “Issues for States in the Trans-Pacific and Trans-Atlantic Trade Agreements,” presented at the NCSL Annual Summit, August 2013

What is the TPP?





What is the TPP?

- The Trans Pacific Partnership Free Trade Agreement (TPP) would be a trade agreement among 12 countries: NAFTA + New Zealand, Australia, Peru, Chile, Vietnam, Malaysia, Singapore, Brunei, and Japan
- Dock-on: Potential for China, Thailand, Korea, Cambodia, and others to join



What is the TPP? (continued)

- President Obama has described it as a “21st Century Trade Agreement”
- Has been under negotiation since 2010 through 19 rounds
- But public information available makes it look like NAFTA with tweaks, not a new model
- It is not clear what will be “new and improved” for states



What is the TPP? (continued)

- The TPP will be structured like other FTAs, with the same or similar provisions regarding procurement (Buy American limitations), services, and investment
- But there does not seem to be anything new regarding currency manipulation, good job creation, protections for state law/regulations, or respect for sovereignty



What is the TPP? (continued)

- *Important:* This information is based on USTR's public statements and reports in the mainstream and specialized trade press
- Because the negotiating text is not made public until the negotiations are concluded, Maine people should make their preferences known now, before it's too late



What is the TPP? (continued)

- No signs of change on issues such as
 - investment
 - government procurement
 - public services
 - financial services (banking, insurance)

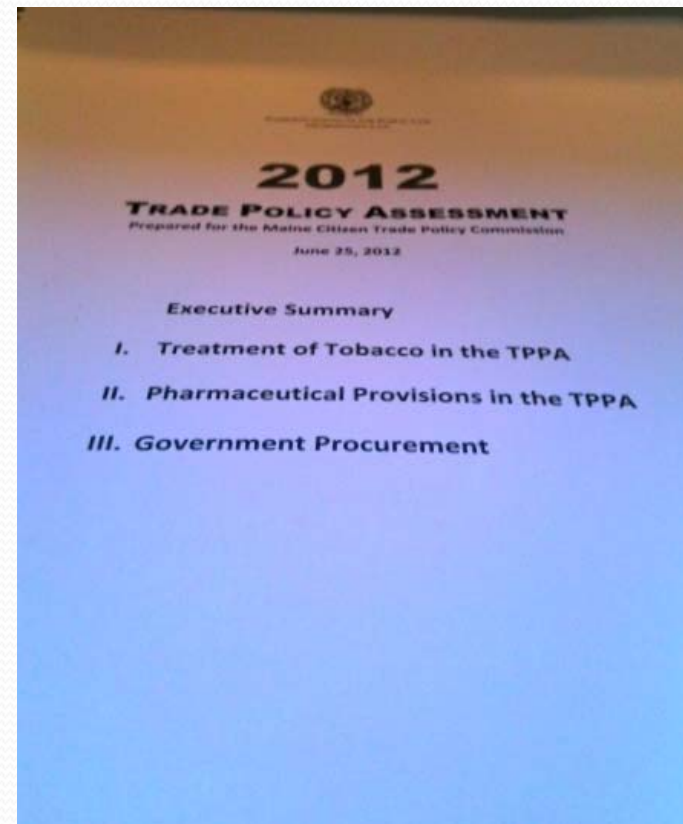
2012 Policy Assessment of TPPA Impacts on Maine

Tobacco – challenges to state smoking prevention measures authorized

Pharmaceuticals – reduced-price Medicaid, access to generics could be limited

Procurement – state govt purchasing guidelines could be overridden

<http://www.maine.gov/legis/opla/CTPC/2012finalassessment.pdf>





TPP Progress of Negotiations

- USTR's Goal: to finish by **October 2013**
- Only “political” issues are left – including *athletic footwear tariffs (New Balance), tobacco text, pharmaceutical pricing and patent provisions, environmental annex, financial services*
- Do you know enough to support the TPP regardless of its details?

What is the TTIP (U.S.–EU FTA)?





TTIP (U.S. – EU FTA)

- Like the TPP, it is promised to be a 21st Century agreement
- Has only had one negotiating round (July 2013); next round October 2013
- Unlike TPP, small risk of off-shoring jobs
- But like TPP, large risks for states in terms of right to regulate/legislate
- ***Leaked paper:*** intent of EU negotiators to preempt state regs that differ from federal regs, procurement



TPP/TTIP Issues for Maine #1

- Will Maine join the procurement chapter, voluntarily limiting our ability to employ “Buy American” and other procurement policies, such as the requirement to comply with “sweat free labor” provisions and recycled content in certain situations?
- Maine law requires legislative as well as gubernatorial approval to make such commitments.



TPP/TTIP Issues for Maine #2

- USTR is seeking to include investor-to-state dispute settlement (ISDS)
- ISDS provides foreign investors (or foreign subsidiaries of US companies) the right to bypass our courts to challenge state & local laws, regulations, permits, judicial and other decisions in unaccountable arbitration panels
- Federal gov't responsible to pay losses, but states bear legal costs



TPP/TTIP Issues for Maine #3

- USTR is seeking to include Services Chapters that go beyond the WTO/GATS
- Services commitments have the potential to interfere with a state's right to regulate/legislate
- A “necessity test” has implications for licensing & certification reqs, e.g. doctors, teachers
- Positive v. Negative lists (opt in or out?)
- Your ability to provide the public services in the manner you choose is implicated



TPP/TTIP Issues for Maine #4

- If USTR seeks to include drug pricing and approval provisions similar to those included in the US-Korea FTA, this could have implications on our state's ability to require rebates from prescription drug providers, to limit costs through the use of approved drug lists, etc.



TPP/TTIP Issues for Maine #5

- Will the TPP reduce athletic footwear tariffs so that hundreds of New Balance jobs in three communities are at risk?
- The stated intent is to reduce tariffs to zero.

Issues for Maine #6: “Fast Track”

- Pending “Fast Track”/Trade Promotion Authority vote in Congress – by end of 2013?
- Fast Track delegates Constitutional authority (Art. 1, Sec. 8) to the Executive Branch to negotiate trade agreements
- It limits debate, prohibits amendments to a trade agreement or its implementing legislation – up or down vote only
- There is no way to send the Administration back to the negotiating table if it fails to meet negotiating objectives

**Public Hearing Summary
Maine Citizen Trade Policy Commission
December 12, 2013
Hutchinson Center, University of Maine System
Route 3
Belfast, Maine**

Members Present: Senator John Patrick, Senator Troy Jackson, Representative Sharon Anglin Treat, Representative Jeff McCabe, Steve Cole, Linda Pistner, Pamela Taylor, Jay Wadleigh, John Palmer, Mike Karragiannes, Michael Herz

Staff: Lock Kiermaier (Contract)

After determining that the statutory requirement that 11 members must be present to officially convene had been satisfied, CTPC Chair Senator Troy Jackson convened the Public Hearing at approximately 4 PM.

To begin the Public Hearing, Senator Jackson asked Commission members to introduce themselves.

Senator Jackson then explained to commission members and members of the public who were present how the Public Hearing had been structured. Several individuals had been scheduled to phone in their testimony at specific times and that testimony from individuals who were present at the hearing would be taken in between and after the scheduled call-ins.

In total, the CTPC heard from a total of 19 individuals. Of that total:

- 3 persons provided testimony via telephone from Washington D.C.;
- 15 persons provided testimony in person; and
- 1 person submitted written testimony but did not appear in person.

The following list provides a brief synopsis of the testimony offered in the order in which testimony was received. Any written testimony and supporting documentation is available for viewing on the CTPC website.

1. Shenna Bellows; U.S. Senatorial candidate and resident of Manchester

Ms. Bellows spoke to her written testimony that made the following points:

- TPP negotiations have been held in near total secrecy and need to be more transparent;
- Leaked text of the TPP shows that the agreement :
 - fails to protect workers' rights and may lead to domestic job losses;
 - fails to ensure adequate environmental standards;
 - may drive small farmers and food producers out of business;
 - may lessen food safety regulations;
 - undermines freedom of speech through more restrictive patent provisions.
- Congress should reject fast track authorization of the TPP

2. *Betsy Garrold; President, Board of Directors of Food for Maine's Future and resident of Knox*

Ms. Garrold spoke to her written testimony that made the following points:

- Ms. Garrold had been involved in drafting the original CTPC legislation, wishes that the CTPC had been given stronger authority but is glad that the CTPC is active holding public hearings;
- TPP is likely to negate food safety regulations;
- Ms. Garrold quoted the narrative of Natalie Noon from United Students for Fair Trade:
 - The TPP will wipe out small food producers;
 - The TPP will significantly reduce food safety standards;
 - The TPP will reduce efforts at reasonable food labeling requirements;
 - The TPP will inhibit state and local governments from the procurement of local foods.

3. *Charlotte Herbold ; Pax Christi Maine and resident of Belfast*

Ms. Herbold spoke to her written testimony that made the following points:

- Previous testimony from Pax Christi Maine pertaining to NAFTA had stated:
 - NAFTA was less about free trade than allowing multinational corporations to exploit workers, community and the environment;
 - NAFTA was an instrument of "naked greed";
 - The public was not consulted about NAFTA and that agreement had nothing to do with the common good.

- The TPP shows that nothing has changed from the NAFTA experience;
- Corporate greed in the TPP rejects any notion of societal concern for the common good.

4. Rocky Alley ; President of the Maine Lobstermen's Union, Local 207 and resident of Jonesport

Mr. Alley made the following comments and supplemented his spoken testimony with a copy of an article titled, "*FDA warning: The TPP is a threat to your health and safety*":

- Concerned that the secret language of the phyto-sanitary chapter of the TPP will threaten measures to ensure seafood safety and presented aforementioned article. Mr. Alley also voiced his objection to any adoption of a lowest common standard for seafood safety;
- Concerned about food labeling provisions of the TPP and does not feel that food labeling regulations constitute a technical barrier to trade; needs to be able to continue to promote Maine lobster as coming from Maine.

5. Matt McKenzie ; Legislative Assistant for U.S. Congresswoman Chellie Pingree, Maine

Mr. McKenzie testified via telephone and made the following remarks:

- In response to a question from Representative Sharon A. Treat about recently leaked TPP text, Mr. McKenzie stated that Congress has not been well informed by the USTR regarding the actual content of procurement text and offered to pass along specific questions from the CTPC to the USTR regarding this topic. In response, one of Representative Treat's questions would be to ask the USTR if the TPP will make it more difficult for Maine to negotiate rebates for Medicare pharmaceutical prescriptions. Mr. McKenzie speculated that this type of question will be met with some resistance from the USTR;
- Senator John Patrick expressed his grave concerns about the lack of transparency in the TPP and the common practice of using the lowest common denominator of regulation in FTAs and asked what is Congresswoman Pingree's position on these topics. Mr. McKenzie responded by citing Congresswoman Pingree's recent signing of a letter from Congress to the USTR objecting to the lack of transparency in the TPP

and the current fast track proposal. Senator Patrick also asked if Congresswoman Pingree would be willing to ask if members of Congress actually know what is in the TPP when they are asked to vote on it. Mr. McKenzie's response was that he felt it is a fair question and one that speaks to the inability of Congress to adequately evaluate the contents of an FTA like the TPP;

- Senator Troy Jackson then asked Mr. McKenzie about his impression of whether Congress was likely to approve the TPP. Mr. McKenzie responded by linking the fast track proposal to the ability of Congress to adequately review the TPP and mentioned that there is considerable bipartisan concern and opposition about both topics and predicted very close votes.

6. *Jon Olson ; Executive Secretary of the Maine Farm Bureau Association*

Mr. Olson spoke to his written testimony that made the following points:

- The Maine Farm Bureau Association supports fair trade as opposed to free trade;
- Using the NAFTA example, in most cases, U.S. farmers are not allowed to export milk and potatoes to Canada whereas Canadian farmers can export any of their agricultural products to the US;
- Mr. Olson is concerned that the TPP will not bind all nations to previous commitments to the elimination of tariffs and non-tariff barriers to trade;
- Mr. Olson also identified the currently unfair situation in which certain agricultural pesticides are banned for use by American farmers but are exported to foreign countries where they are used on crops that are exported to the US.

7. *Bonnie Preston ; Alliance for Democracy and a resident of Blue Hill*

Ms. Preston spoke to her written testimony that made the following points:

- The Alliance for Democracy has opposed previous FTAs and opposes the TPP and its threat to use international tribunals to undermine US laws pertaining to health and the environment;
- The concerns of her organization go beyond the issue of foods safety and maintains that the TPP threatens to wipe out small scale agriculture for all TPP signatories;

- The Alliance for Democracy also has concerns about how the TPP could be used to impose the lowest common denominator of food safety practices on other countries;
- Ms. Preston also submitted written testimony from Mr. Raj Patel, an international authority on trade and economics. Mr. Patel opposes the TPP and the manner in which it has been negotiated in almost total secrecy and maintains that the USTR is representing multinational corporate interests over those of consumers.

8. *John Piotti; President of the Maine Farmland Trust and a resident of Unity*

Mr. Piotti made the following points in his oral testimony:

- Mr. Piotti endorses the previous testimony about the threat that the TPP represents to small farms, food production and food safety but wanted to avoid repeating a point of view that has already been adequately expressed;
- Instead, Mr. Piotti wanted to focus his testimony on the threat that the TPP represents to the Maine dairy industry:
 - The current method of pricing milk is largely determined by a complicated formula administered by the federal government;
 - To a large extent, the milk pricing formula has been insulated from international events and the formula itself is not truly based on supply and demand;
 - The relative stability of the federal milk pricing formula has positive and negative consequences; the negative consequence is that the price paid to dairy farmers is often below their actual cost of production. The positive aspect of the current formula is that international events have not had much effect on the formula and subsequent dairy prices;
 - However, the world has changed significantly in recent times. Currently, Maine exports 15% of its dairy products and it is estimated that a 2% drop in exports would result in a 20% decrease in the prices paid for dairy products. A price decrease of this magnitude would be disastrous for Maine's dairy industry and would result in many dairy farmers going out of business;
 - The significant impact of commodity and agricultural policy changes being contemplated in the TPP would likely be enough to trigger the disaster described earlier;
 - As another aspect of the threat that the TPP represents to Maine's dairy industry, the federal pricing formula is dependent on the higher of the price of cheese or the price of non-fat dried milk powder.

Currently, the high demand for non-fat dried milk is keeping the dairy prices at a level that barely sustains the Maine dairy industry. As a result of the free trade contemplated by the TPP, the dairy market could be flooded by inexpensive non-fat dried milk from New Zealand and thus imperil the prices currently paid to Maine dairy farmers.

9. Nisha Swinton; New England Director for Food & Water Watch and a resident of Portland

Ms. Swinton testified via telephone and made the following remarks:

- Ms. Swinton stated Food & Water Watch is very opposed to the TPP for several reasons:
 - First, the increased levels of imported seafood without adequate inspection will represent a significant harm to the public. Only 2% of imported seafood is properly inspected at the present time and imports are likely to increase because of the TPP;
 - Increased amounts of cheap, uninspected imported seafood also represents a threat to the seafood industry in Maine;
 - The likelihood that food labeling requirements would be lessened as a result of the TPP also represents a threat to that portion of the Maine public that wishes to know the country of origin for agricultural and seafood products and whether foods have been genetically modified or not;
 - Food & Water Watch also opposes the increased ability of international corporations to sue the state under the provisions of the TPP if they feel that their profits are unduly restricted by Maine's environmental and public health laws and regulations.

10. Karen Hansen-Kuhn; International Program Director for the Institute for Agriculture and Trade Policy

Ms. Hansen-Kuhn testified via telephone and made the following remarks:

- Ms. Hansen-Kuhn stated that with regards to food safety there are a number of issues:
 - Under the TPP , food safety rules could be subject to ISDR; this is problematic in that she contends that food safety regulations should be evaluated on the basis of whether they

- legitimately protect human health and not whether they serve to restrict international trade;
 - It appears that procurement provisions in both the TPP and the TTIP may be applied to “sub-national” or state procurement regulations; previously, and up until now, FTAs have allowed states to opt out of the procurement chapters; this could adversely affect local food programs and “buy local” requirements;
- Representative Sharon A. Treat asked Ms. Hansen-Kuhn if she knew of any change in the previous USTR negotiating stance regarding their opposition to changing the ability of states to “opt out” of FTA procurement provisions. Ms. Hansen-Kuhn believes that it would be difficult for the USTR to remove the procurement options on a local level but perhaps more likely to impose restrictions on larger cities

11. Dianne Messer; resident of Liberty

Ms. Messer made the following points in her oral testimony:

- Not nearly enough attention is being paid to food safety issues as they relate to recent events such as the nuclear accident in Fukushima, Japan; she stated that recent actions of the FDA and EPA have significantly increased allowable radiation levels for food products imported from Japan and that these allowable levels of radiation are higher than those currently allowed in Japan;
- The proposed provisions of the TPP are shocking; the TPP will have the effect of eviscerating our health, business and imports and placing these interests as subordinate to the priorities of multinational corporations;
- Ms. Messer believes that the State of Maine should take an extremely strong stand against the TPP and demand full transparency and disclosure about the provisions of the agreement;
- In response to some of Ms. Messer’s comments, Representative Sharon A. Treat pointed out that the Legislature has recently unanimously passed resolutions opposing fast track authority and advocating for significantly more transparency in the negotiating and approval process.

12. Robert Shaw; resident of Belfast

Mr. Shaw made the following points in his oral testimony:

- Mr. Shaw stated his appreciation for the recent actions taken by the Legislature with regards to the TPP but believes the real answer to these issues lies in Washington DC;
- Mr. Shaw also stated his opposition to fast track authority by saying that is neither transparent nor democratic; fast track can be thought of a corporate attempt to pass an FTA which diminishes the quality of life for all citizens; he also characterized the effects of fast track and FTAs as a form of corporate feudalism.

13. Richard Thomas ; resident of Waterville

Mr. Thomas spoke to his written testimony that made the following points:

- Mr. Thomas has grave concerns about the use of ISDR tribunals in the TPP by international corporations to sue governments if they feel that their profits are being unfairly limited through various sovereign laws;
- Mr. Thomas also believes that ISDR will have a damping effect on government's willingness to enact necessary and strict environmental and public safety laws;
- Mr. Thomas posed a final question to the CTPC: Will the TPP FTA include so-called "investor – state" provisions that allow individual corporations to challenge environmental policies as barriers to trade?

14. Kathy Mink ; Waldo County Peace & Justice Group and resident of Waldo

Ms. Mink made the following points in her oral testimony:

- Ms. Mink expressed her gratitude that the CTPC had decided to hold the hearing in Belfast;
- Ms. Mink provided a handout to the CTPC which states the purpose and goals of her organization;
- Ms. Mink stated her belief that the TTP and other FTAs are not really about trade but rather represent a corporate effort to control the lives of all citizens.

15. Heidi Brugger ; Founder of 350 Maine and resident of Freedom

Ms. Brugger made the following points in her oral testimony:

- Ms. Brugger stated her dismay about the TPP and the failure of other FTAs to do anything positive about the job market;
- Ms. Brugger's principal concern is the threat that the TPP and the TTIP represent to Maine's environment; she strongly objects the lowest common denominator approach to protecting the environment and our natural resources, particularly that of our natural water supply.

The public hearing was adjourned at approximately 7 PM.

The CTPC also received written testimony from U.S. Representative Rosa L. DeLauro (CT) which will be posted on the CTPC website.

***NOTE: Copies of all previously cited written testimony and supporting documentation can be viewed at the CTPC website:
<http://www.maine.gov/legis/opla/citpol.htm>***

Good Evening, my name is Betsy Garrold, I homestead in Knox and I serve as President of the Board of Directors of Food for Maine's Future and as a member of the Board of Directors of the Belfast Co-op. I am here tonite to speak on behalf of Food for Maine's Future.

Back in 2003, in the face of NAFTA, CAFTA, Plan Puebla Panamá, etc etc I participated in the meetings that drafted the legislation which eventually lead to the formation of this commission. I wanted the wording of the legislation to be stronger and the commission to have more enforcement teeth but these hearings were a good place to start. It is heartening to see that these public hearings are still happening. So thank you to Senator Jackson and Representative Treat for keeping this public platform alive and well.

When I was asked to come here today and talk about the impact TPP will have on food security, food sovereignty and food safety, I had to think long and hard about exactly what to say. If I say food will be less safe because the TPP will negate food safety regulations then that directly contradicts what Senator Jackson heard me testify again and again this past spring in the legislature. I believe that more regulation does not make safer food. Rather, knowing where your food comes from and who is producing it, so that you can make informed decisions about where to spend your food dollars, is the key to a safer food system. Notice I did not say safe. Nothing is 100%. Whether your organic carrots come from next door or from China there is always the chance they may be contaminated in some way. What I propose is that the farmer next door is not going to deliberately contaminate the produce they sell you in order to make a buck.

Unlike food manufacturers in China who could, and did, contaminate infant formula, pet food, eggs and other food products with melamine in what the World Health Organization calls one of the largest food safety events in recent years.

I am going to read you something written by a young woman affiliated with a group I had the honor of addressing this past summer; Real Food Challenge. This group works with university students to encourage college cafeterias to buy more locally sourced food.

This initiative is one of the newer attempts to help small, local farmers sell more product locally. Farm to institution sales. Just one more income stream that will help family farms keep their heads above water financially.

Natalie Yoon, United Students for Fair Trade, wrote concerning four key points about the TPP and our food system. This is what she had to say (with some interjections and asides from me).

1. Small producers will be wiped out. As the TPP removes tariffs and basic protections from international markets, it will be very difficult for small farmers to stay afloat in the face of international competition. In countries like Japan (and I might add states like Maine) where 80% of the agriculture sector is made up of small farmers, the TPP will wipe out entire communities and replace small farms with large agribusinesses.

2. The TPP will drastically bring down food safety standards at home and abroad. Governments will be forced to "harmonize" their food safety standards to the lowest common denominator. That means soon we could all be eating imported seafood, beef, and chicken that doesn't meet even the basic U.S. standards. The FDA would be powerless to shut down these imports of unsafe food or food ingredients. (Now this may be a good thing, it may encourage more and more folks to buy local, buy food where they know the farmers face, but it also could be an unmitigated disaster,)

3. We won't be allowed to know where our food comes from or what's in it (like melamine). Food labels will also come under fire under the TPP. Transnational corporations like Monsanto are using the TPP to make it illegal to label products as containing GMOs, since it discriminates against them. Corporations have even argued that "locally grown" labels give unfair advantage to small domestic producers over international businesses. (There goes our recently minted GMO labeling bill that we all fought so hard to get enacted and even the Department of Agriculture, Conservation and Forestry's own "Get Real, Get Maine" label and campaign.)

4. Governments won't be allowed to support local food. Under the TPP, government food procurement policies that prioritize supporting their local economies will be illegal. That means that your public university (and I add public schools, public hospitals, etc.) might not be allowed to intentionally source food from local farms, since it violates "free trade" terms by discriminating against foreign farms.

Free trade agreements have for years undermined our national economy and caused the shipping of manufacturing jobs overseas. Those of us who farm had a false sense of security that at least our jobs could not be uprooted and sold to the lowest bidder.

Please help us continue to believe that by doing all you can to make the TPP, if not a bad notion abandoned, at least a document strong enough to protect small local producers whether they are farmers, fishers, or foresters.

Betsy Garrold

The Populist Farmer

<http://thepopulistfarmer.wordpress.com/>

Pax Christi Maine Testimony on the Trans-Pacific Partnership Citizen Trade Policy Commission Hearing, Belfast, December 12, 2013

I am Charlotte Herbold of Belfast, speaking for Pax Christi Maine, the Catholic and ecumenical peace and social justice movement.

More than twenty years ago, Pax Christi Maine's coordinator spoke for the Maine Fair Trade Coalition in objection to the North Atlantic Free Trade Agreement—NAFTA. It is "misnamed", he said.

"It is less about free trade than about granting large multinational corporations an exploitation license to pit worker against worker and community against community, all to see who will work the cheapest under the worst conditions with the fewest environmental regulations.

"As Ross Perot has pointed out, it is chiefly an instrument of naked greed. NAFTA will largely dissolve the safety, labor, environmental, food and drug standards many Americans toiled for years and even gave their lives to establish. Local, state and even national authority to set such standards will be superseded by the agreement."

He goes on to note that the public was not consulted in developing NAFTA. Conflict resolution provisions are weak. Unlike the European Community, which took 24 years to develop, it was not designed to serve the welfare of all and was fast-tracked to limit concerted opposition. Supporting arguments stood firmly on the sand of assumptions which proved false. Serving the common good was nowhere in its calculations. NAFTA agribusiness would erase a million Mexican farms, it was calculated; it erased two million and those two millions largely explain the 12 million desperate undocumented immigrants now subsisting here in limbo.

With the Trans-Pacific Partnership, it would appear that nothing has changed nor anything been learned from NAFTA ruin of manufacturing here, unsafe sweat shops in Bangladesh, enslaved workers in Africa and Asia, increased environmental degradation, falling worker wages, and widening misery.

Under the TPP national and state authority regarding our environment, working conditions, and health will yield to corporate profit. What else? Hundreds of corporations and trade representatives are writing the agreement to secure their license. Congress, responsible for regulating commerce, is excluded. Obscenely rich pharmaceuticals' greed is secured by evergreening patents that will sustain high prices, preventing substitution of generics the poor might afford. Millions will die, forfeit to greed.

We live in perilous times, facing existential threats: our only environment is in danger of becoming uninhabitable. Nuclear disaster is one crumbling Fukushima rod, one rabid ideologue' trigger finger away. Corporate power is no longer checked by church, academe, government, the media, or unions, with slave wages, mass unemployment, misery, chaos, and civil violence just down the road—to be met by world's greatest military power "evah"—turned on its own people. Corporate brainwashing has exploited the New World individualism characteristic of colonial exploitation to generate hatred of government in order to sunder and be rid of the responsibility for the general welfare enshrined in our founding documents—to reject a societal concern for the common good.

Pope Francis has embraced the lame and poor, criticized our narcissistic and throwaway culture, condemned the present rampant greed and lust for power, reminding us that our humanity lies not in wealth, power, or pleasure but in loving our neighbor. The favor he has met indicates that at heart Americans, people everywhere, want a social order that assures the human dignity of all. The TPP agreement being thrust upon us will not contribute anything to that.

FDA warning:" The TPP is a threat to your health and safety

June 20, 2013

Ronnie Cummins, U.S. Food and Drug Administration Commissioner

The role of the U.S. Food and Drug Administration is to protect and promote public health by strengthening programs and policies governing both the safety of the U.S. food supply and accessibility to safe and effective medical products, including pharmaceutical drugs. The Trans-Pacific Partnership (TPP) threatens to undermine the FDA's ability to carry out that mission, in a number of important ways, as described here.

Undermine FDA food safety regulations. Draft text of the TPP chapters on Sanitary and Phytosanitary Standards (SPS) and Technical Barriers to Trade are not available. However, it is assumed that the rules being considered under the TPP are consistent with the rules laid out in other free trade agreements (FTAs) that incorporate the World Trade Organization's (WTO) rules. This would mean lowering food safety standards in participating countries, including the U.S., to the lowest common denominator in order to increase export opportunities for agribusiness. To facilitate and speed up increased trade volumes, the TPP will likely require the U.S. to allow imports of meat, poultry and seafood products that don't meet U.S. Food safety standards.



Maine Farm Bureau Association

"The Voice Of Organized Agriculture"

December 12, 2013

Chairman Jackson, Chairwoman Treat and Members of the Citizen Trade Policy Commission:

My name is Jon Olson. I am the Executive Secretary of the Maine Farm Bureau, the state's largest farm organization. I wish to make the following comments in general on free trade agreements and then specifically discuss the TransPacific Partnership Agreement (TPP).

We support fair trade rather than free trade. The current North American Free Trade Agreement (NAFTA) is not a fair trade for Maine farmers. In the negotiations for NAFTA, Canada was able to exempt agricultural imports because they were already exempt in the US-Canadian Free Trade Agreement. This meant and continues to mean that American farmers cannot export milk and potatoes to Canada, unless there is a shortage, while Canadian farmers can export any or all of their agricultural products to us.

Even now Canada is trying to be exempted from the USDA rule on Country of Origin Labeling (COOL). The law was enacted as a food safety protection measure allowing consumers to know where their food comes from. Many other countries, as you know, have less stringent plant chemical protection and animal growth hormone regulations. This summer several Canadian meat industry groups have filed a lawsuit to block the implementation of the COOL rule. This has come about because Tyson, the largest U.S. meat processor, announced it would not accept Canadian cattle for slaughter due to the high costs of the COOL regulations. The Canadians also intent to shift the regulation from mandatory to voluntary and to change the labeling as "Product of North America." COOL is a food safety issue that Canada wants to undermine.

In 2011, the leaders of TPP nations agreed they would "serve to define this historic agreement and set a new standard for trade agreements in the future." Those objectives include comprehensiveness and the elimination of tariffs and other non-tariff barriers to trade. Canada and Japan, even at this late date, have yet to convey their acceptance of these key market access objectives. This troubles us especially with our experience with Canada under NAFTA. If TPP is to go forward, we insist that Canada and Japan fully adopt these objectives and make concessions.

One of the major concerns we have with TPP is the issue pesticides in producing food. You may be familiar with the concept of "The Circle of Poison." U.S. chemical companies continue to manufacture and ship to foreign countries pesticides banned in the United States. These same chemicals are used to grow fruit, meat and produce that are imported from such countries as Thailand, Indonesia, Japan and other TPP countries. Not only are U.S. farmers economically penalized for obeying the law while producers of other nations face no restrictions, consumers are not sure how this foreign food was grown. If a pesticide is too unsafe to be used on American-grown food, then it is too unsafe to be used on foreign-grown food. This needs to be part of TPP. It will give consumers confidence in the U.S. food supply.

Thank you for your attention to the above. I'll be pleased to answer any questions you may have.

4 Gabriel Drive Suite 1 Augusta, Maine 04330 207-622-4111

Testimony

My name is Bonnie Preston, and I am on the National Council of Alliance for Democracy, an organization that works to replace corporate rule with a government of the people, by the people and for the people. We have campaigned against the so-called "free" trade agreements since our founding in 1996. All of these trade agreements have been intent on expanding the wealth and power of multi-national corporations, even going so far as to allow foreign corporations to use international trade courts to challenge our domestic laws on health and the environment. It is clear to us from the TPP provisions which have been leaked that the TPP would be harmful to Maine's people and our local farmers.

The Alliance for Democracy supports the movement in Maine to protect local farmers by passing Local Food and Community Self-Governance Ordinances. We have grave concerns about the TPP regarding food, going beyond food safety. Previous trade agreements have consolidated the power of the largest agribusinesses, helping to destroy small-scale agriculture in both developing countries and the US. They have refocused farms on food grown for export, increasing food insecurity here and abroad.

Agribusiness with its gigantic equipment, longer and longer supply chains, and miles of monoculture are contributing to global climate change and weakening local economies and traditional community cultures. The TPP will accelerate this path to the destruction of communities and the environment.

Most Americans see the food safety issue in trade as the problem of unsafe food coming into the US, but before the advent of trade liberalization promoted by these trade agreements, plants located in foreign countries were required to have inspections by USDA inspectors. Now the corporate food model is infecting our domestic regulations creating a food system that is less safe. The USDA, for example, now allows chicken processors to speed up their lines, and to use company-paid inspectors, as they do in China. Corporate challenges to our regulations threaten to further weaken domestic regulations. Whether foreign or domestic, food safety is undermined by trade rules. The TPP would extend these rules to 40% of the global economy.

In the TPP negotiations, the US position is to force other countries to accept unsafe agricultural practices allowed in the US. For example:

- Most countries ban the use of ractopamine, an asthma drug, to accelerate growth in meat production, which is allowed in the US.
- Many countries have banned GMOS. The US wants these bans lifted and to outlaw the efforts to label GMOs.
- Nano-particles, used in US food and food packaging, can pass through cell walls, including the placenta and the blood/brain barrier. Research in China has

indicated they may cause mutagenic changes at the molecular level. Do you really care that they make the creme fillings in doughnuts whiter and brighter?

- Most countries refuse to import meat from the US because of the over-use of antibiotics in industrial meat production. The medical profession has been asking the FDA to ban this for about 20 years now, to no avail.
- Feeding grain to cattle instead of grass, as is done in CAFOs, changes the composition of the fat in the meat (and milk) from healthy omega 3s to unhealthy omega 6s.
- Poultry is washed with bleach to try to kill bacteria; studies have still found that most packaged meats in the supermarket have dangerous bacteria on them.

Many countries want to use procurement policies to allow regulation of their food supply for reasons of public health and safety, and to support local economies. The US believes this distorts markets and should not be allowed. However, monopoly power also distorts markets, and the US has no problem with that. Just four companies control almost 85% of the meat industry in the US, for example.

Agroecology has become recognized as having the greatest potential to feed the growing world population. Small, diversified farms using closed systems and natural inputs are much more productive than huge monocultures using petrochemicals and fertilizers. They also can adapt to specific environments in ways that industrial agriculture cannot, and they are more resilient in the face of climate change. Maine is situated to lead the country in agroecology, as was pointed out in the recent Maine Food Summit meeting.

Instead, the TPP is designed to strengthen agribusiness, as all of our trade agreements are designed to do. This is an extraordinarily short-sighted policy and would make Maine's food strategy based on agroecology TPP-illegal. The new trade provision in the TPP requiring countries to create a bureaucracy to ensure compliance with the TPP rules increases this threat significantly.

Cheap imported foods are no substitute for healthful and delicious locally grown food. Local foods strengthen local economies, food security, and local food traditions. The growing food sovereignty movement here in Maine and around the world is a direct challenge to the power of Monsanto, Cargill, Tyson and all of the other huge multinational corporations that want to control us all.

Henry Kissinger famously said "If you control oil, you control countries; if you control food, you control the people." And Francis Moore Lappé equally famously said "...hunger is not caused by lack of food but by lack of democracy." These quotes embody two different visions of our future. Will we be controlled by the money-hungry corporations, or will we control our own food supply and thus our own destiny?

We urge the Maine Citizens Trade Policy Commission to take a position in opposition to the TPP and in favor of Maine's farmers, local economy, and healthy families. Our future is in your hands.

Bonnie Preston
Blue Hill

Alliance for Democracy
Maine Fair Trade Campaign
Local Food RULES

Testimony

The stakes at the Trans Pacific Partnership negotiations couldn't be higher. You'll hear talk about how it will cover 25% of global trade and 40% of global GDP [1]. But those numbers mask higher stakes. The TPP is actually about democracy - about who can write the rules under which people exchange goods, can plant crops, can heal and care for one another. Of course, when it comes to food and farming, we don't know precisely what the TPP has in store - it is being negotiated in secret. Yet, given what we've already seen from the leaked intellectual property chapter of the agreement, I'm quite happy to assert this: it represents a power-grab by large corporations for the land, intellectual property, surplus, protections and environment in which small sustainable farming and eating happens. This shouldn't come as a surprise. At the table, representing the citizens of Maine, is the United States Trade Representative. The USTR has always been far more beholden to the interests of multinationals than to the interests of citizens. Evidence? The leaked intellectual property regulation shows how the USTR negotiated in the interests of cellphone companies, against consumers, even though the White House has endorsed the consumer side of the debate. [2]) If an agreement that covers so much human exchange has been negotiated in secret, it has no business being part of a democratic process. We should call it what it is - corporate authoritarianism.

[1]<https://www.dfat.gov.au/fta/tpp/>

[2]http://www.slate.com/blogs/future_tense/2013/11/18/tpp_wikileaks_white_house_claims_to_support_cellphone_unlocking_but_treaty.html

Raj Patel

Raj Patel has degrees from Oxford, the London School of Economics, and Cornell. He has worked for the World Bank and the WTO, and has protested against them around the world. His first book was *Stuffed and Starved: The Hidden Battle for the World Food System*. He writes both scholarly papers and popular books and essays.

The Trans-Pacific Partnership Agreement (TPPA): When Foreign Investors Sue the State

I am most concerned about the strengthening of the right of corporations to sue governments in an international tribunal, if changes in government policies or regulations reduce the corporations' future profits. [Under the clauses on fair and equitable treatment and indirect appropriations}

an investor-state
If the ^{an investor-state} suit succeeds, the tribunal can award the investor financial compensation for the claimed losses. If the payment is not made, the award can ^{be} enforced through the seizure of assets of the government, or through tariffs raised on the country's exports. Decisions are made by of 3 arbitrators. Decisions are sometimes quite contradictory from one case to another, and yet no appeal is possible.

The application of this that worries me the most concerns the fossil fuel industry, which has already used the existing investor-state dispute system to sue countries that have interfered with their profit making. After studying climate science a good deal, I believe that over the next 10-20 years, climate change will become harmful enough that world governments will pass laws and regulations to mitigate climate change, and this will mean cutting deeply into the profits that the fossil fuel industry is currently making. If this industry is empowered by the TPPA to successfully sue government for their losses, this could slow down mankind's efforts to stop climate change, and our grandchildren would pay a terrible price for this. *in terms of a degraded planet on which to live.*

And this is just one example of how further empowering corporations to sue governments can lead to harm to the public. ~~Another~~ recent examples involve the American company Renco which sued Peru for \$800 million because its contract was not extended after the company's operations caused massive environmental and health damage. Another was a \$2 billion claim against Indonesia by a UK-based oil company after its contract was cancelled because it was not in compliance with Indonesian law.

~~Further~~, the threat of law suits would make it difficult for government to make new policies, as it is hard to anticipate which policy changes would provoke law suits from some corporation. Another danger is that TPP will be used to force states to lower standards e.g., environmental and workers protection, or be sued for damages.

]The bottom line is that governments are designed ideally to try to balance the public welfare with the ability of business to operate successfully, whereas corporations are designed strictly to make profits. Corporations are not designed to consider the public good, and consequently, I feel that corporations should not be empowered to control governments through law suits.

- The question I would like to leave you with is this, : Will the Trans-Pacific Partnership FTA include so-called "investor-state" provisions that allow individual corporations to challenge environmental policies as barriers to trade?

Richard Thomas *rthomas@mainegeneral.org*

STANDING FOR PEACE AND JUSTICE SINCE 2001

WE ARE THE PEACE AND JUSTICE
GROUP OF WALDO COUNTY
(MAINE)

We meet the first Tuesday of each month, 6:30 PM, at the Unitarian-Universalist Church, 37 Miller St., Belfast, Maine, to plan upcoming events.

We sponsor monthly free educational films and forums on issues essential to our democracy, each third Wednesday (except summer months), 6 PM, Belfast Library.

We sponsor peace vigils every Sunday from noon to 1 PM at the corner of Main & High Streets, Belfast; your signs are welcome.

For more information about our group:
Call (207) 338-4920 or email
rosc@psouth.net.

JOIN US—CREATE PEACE

Our vigil is a public educational project elevating those issues which need citizen attention. Our perspective is a socially progressive point of view and incorporates the following positions:

Ω War is not the answer to disagreements.

Ω The age of empire is *not* really over *until* all people, their lands, resources, and social and political practices are

being respected as a matter of human right.

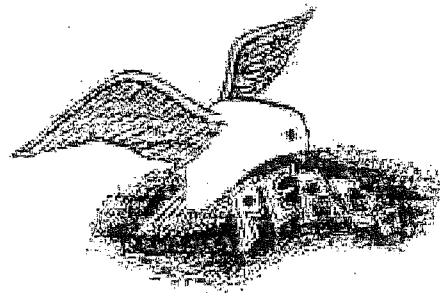
ΩWhen our government is guilty of violating human rights, environmental regulations, and/or international and domestic law, we believe it is the duty of each citizen to demand that the government discontinue such policies and practices because the government acts in our name.

ΩWe want to see *only* public funding of elections nationwide.

ΩWe believe in freedom of speech and assembly and encourage public discussion in a nonviolent and respectful manner.

- DEMAND TRUTH FROM GOVERNMENT
- PROMOTE EQUALITY, PEACE, AND JUSTICE
- WORK FOR A CLEAN ENVIRONMENT
- ACT LOCALLY TO CREATE A SUSTAINABLE WORLD

Together, we CAN make a difference!!



Written Testimony of the Honorable Rosa L. DeLauro
Maine Citizen Trade Policy Commission
Public Hearing: TPP Seafood and Food Safety Issues
Thursday, December 12, 2013

I want to thank Senator Troy Jackson and Chair Representative Sharon Anglin Treat for the opportunity to provide testimony for the record for this public hearing of the Maine Citizen Trade Policy Commission on seafood and food safety issues associated with the proposed Trans-Pacific Partnership free trade agreement.

I commend you for recognizing the important impact this deal will have on the state of Maine, which has a lobster industry that already faces severe challenges as a direct result of past trade agreements. It is worth noting that, according to federal data from 2011, roughly three out of every four lobsters imported into the United States came from a TPP nation. That year, the United States imported 104.1 million pounds of lobster from TPP nations, compared to less than half of that, 48.7 million pounds, 16 years prior.

I have serious concerns about the proposed Trans-Pacific Partnership, or TPP, trade agreement – an unprecedented agreement currently being negotiated by officials from the United States and eleven other countries. This potential TPP agreement will be one that reaches well beyond traditional tariff measures, setting rules on non-trade matters that affect our daily lives, including food safety.

According to the Food and Drug Administration (FDA), the increasing globalization of America's food supply is posing difficult challenges to both our regulatory system and public health. When Congress voted for United States membership in the World Trade Organization (WTO) in 1994, half of the seafood consumed by Americans was imported. Today that figure is roughly 84 percent. Although most seafood is already duty-free under the WTO's Most Favored Nation tariff bindings, free trade agreements (FTAs) have led to further increases in U.S. seafood imports, even as the FDA inspects less than 1% of all seafood imports.

It is within that context that the United States is negotiating with TPP countries that have major seafood export industries and with whom significant food safety issues have already arisen. Accordingly, a TPP FTA has the potential to undermine the broadly supported public health goal that the food Americans consume must be safe.

For example, seafood imports from Vietnam are plagued by unusually high levels of antibiotic residues, microbial contamination, and other serious food safety concerns, all of which have been confirmed by FDA laboratory testing. In Fiscal Year 2012, imported seafood products from Vietnam, the fifth largest exporter of shrimp to the United States, were refused entry 206 times because of concerns such as filth, decomposition, drug residues, unapproved food additives and *Salmonella*.

As another example, U.S. Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) officials have determined that some exporters in Malaysia have acted as conduits to transship Chinese shrimp to the United States, in order to circumvent both FDA

Import Alerts and antidumping duties. CBP has tested shipments of suspected Chinese shrimp illegally transshipped through Malaysia and found contamination.

Unfortunately, the Malaysian government is not allowing CBP and ICE officials to freely investigate the facilities of suspected exporting firms. According to a May 2012 Government Accountability Office (GAO) report on antidumping and countervailing duties, GAO investigators were given approval by the Malaysian government to visit honey and shrimp producers in that country, but that approval was then rescinded without explanation. This makes it very difficult to identify the sources of illegal shrimp and to track possible contaminations.

These troubling problems could soon become even worse for the United States should a TPP FTA that does not properly address food safety concerns go into effect. We know this as food-safety related provisions of past FTAs have imposed constraints on signatory countries' domestic food safety standards and import protocols when they overlap with problematic principles from WTO agreements.

First, past FTAs incorporate the WTO's sanitary and phytosanitary (SPS) and technical barriers to trade rules. These rules set ceilings on signatory countries' domestic food safety standards. As a result, WTO panels have ruled against U.S. meat country-of-origin labeling requirements and voluntary dolphin-safe tuna labels in challenges brought by other WTO countries.

In addition, the FDA has also engaged in extensive harmonization of food safety standards between countries, as required by the WTO SPS rules and our past FTAs. Yet, harmonization does not always involve raising standards to U.S. levels.

Finally, past FTA models include the establishment of SPS committees to speed up implementation of mechanisms to facilitate increased trade volumes, including "equivalence" determinations. The equivalence rule, like harmonization, requires the United States to permit imports of meat, poultry and now possibly seafood products that do not necessarily meet U.S. food safety standards, but are deemed to meet "equivalent" standards of other countries.

The recent TPP negotiations represented an opportunity to remedy the food safety-related shortcomings of previous free-trade agreements – to learn from the record of WTO implementation in the past, and to modify the food safety-related rules of U.S. trade pacts to best protect the public health. These negotiations should be setting floors, rather than ceilings, for food safety standards, and help to see that other countries are meeting U.S. food safety standards when exporting their products to the United States. They should ensure that all food sold to American consumers meets U.S. safety standards without equivalence rules, which effectively outsource domestic food inspection to other countries, as the basis for our nation accepting food imports.

I have long urged the U.S. Trade Representative (USTR) to take these issues into account and make food safety a top priority in the negotiations. I also joined with my colleagues Senator Mary Landrieu and Representative Walter Jones in sending a bipartisan letter to USTR encouraging our negotiators to pursue bilateral food safety agreements with Vietnam and Malaysia.

Vietnam has bilateral SPS agreements with a number of countries, including Canada, and a similar U.S.-Vietnam agreement that puts in place a strict inspection and certification regime would be in the best interest of American consumers. Similarly, we could enact a cooperative agreement with Malaysia that ensures CBP and ICE officials access to exporter facilities, in order to end Malaysia's circumvention of U.S. law.

Unfortunately, USTR has not pursued bilateral agreements with these countries. Nor have they pursued talks that would clearly raise food safety standards in problematic nations like Vietnam and Malaysia to U.S. standards.

USTR has suggested that by including improved science-based risk assessments in partner countries in any TPP FTA with the aim of increase U.S. exports to those markets, the risk associated with imported seafood will decrease. Yet, in the case of Vietnam, we have in fact seen a number of legally enforceable regulations – including a Ministry of Fisheries Decision that required all consignments of shrimp and other seafood products to be tested before shipment to the United States –either not extended or completely revoked.

Moreover, USTR is also pursuing a consultative dispute resolution process for resolving food safety disputes with TPP partner nations. The process would involve technical consultations with regulatory agencies in charge, along with trade agencies, to talk about and resolve concerns another country may have about a particular food-related issue. Through this consultation process, countries would sit down and try to come up with a resolution that they mutually agree to within a given time frame.

This process will, I believe, jeopardize our already overburdened food safety system by draining resources that would otherwise be used to protect American consumers as FDA plays its role in resolving these disputes. I am even more concerned about a suggested “binding dispute resolution” process that would obligate countries to resolve disputes through this process, which could clearly undermine public health.

Any TPP FTA might also give partner nations a further opportunity to undermine U.S. law, including the landmark Food Safety Modernization Act that I and my colleagues recently passed to help revamp our antiquate food safety system. Under the TPP, a foreign food corporation operating within the United States may be able to directly challenge our policies if they felt they were undermining their expected future profits. This is not acceptable.

Finally, and especially at this time of federal budget cuts, I am deeply concerned that the FDA will not be provided the funding it needs to inspect more of the influx in seafood expected from TPP countries. We already know about the contamination that is often associated with seafood from these nations. Allowing more food while resources for inspection are limited could well result in further challenges ensure public health.

For all of these and a host of other reasons, I believe any Trans-Pacific Partnership free trade agreement should be carefully reviewed by Congress, which has constitutional authority over trade agreements that must be asserted particularly when today's trade deals are setting binding

policies on the Congress. Accordingly, I am working with my colleagues in both parties to prevent a deal from being fast-tracked without far greater input from Congress.

I thank the Commission for the opportunity to express my views and for its work in this critical area.

Public Hearing Summary
Maine Citizen Trade Policy Commission
June 26, 2014
Room 202
Cross Office Building
Augusta, Maine

Members Present: Senator John Patrick, Senator Troy Jackson, Senator Roger Sherman, Representative Sharon Anglin Treat, Representative Jeff McCabe, Pamela Taylor, Jay Wadleigh, Mike Karragiannes, Michael Herz, Wade Merritt, Dr. Joel Kase

Staff: Lock Kiermaier (Contract)

After determining that the statutory requirement that 11 members must be present to officially convene had been satisfied, CTPC Chair Senator Troy Jackson convened the Public Hearing at approximately 1 PM.

To begin the Public Hearing, Senator Jackson asked Commission members to introduce themselves.

Current Maine law (10 MRSA §11 (9) C) requires the CTPC to conduct a biennial assessment on the impact of international trade treaties on the State of Maine. The CTPC has fulfilled that obligation for 2014 by contracting with Ms. Karen Hansen-Kuhn, Director of International Strategies for the Institute for Agriculture and Trade Policy, and Mr. John Piotti, President of Maine Farmland Trust, to jointly conduct the 2014 Assessment.

CTPC commissioned Ms. Hansen-Kuhn and Mr. Piotti to assess the potential impacts of the proposed Transatlantic Trade and Investment Partnership (TTIP) from the following perspectives:

1. Farm-to-School and other procurement provisions favoring local food and agriculture; and
2. Agricultural policies including direct and indirect subsidies relevant to Maine such as dairy price supports and tax policies favoring farming easements.

The public hearing held on June 26th featured a presentation made in-person by Ms. Hansen-Kuhn and by speaker phone from Mr. Piotti and provided an opportunity for commission members and members of the public to engage both individuals with questions and discussion about the draft assessment.

Ms. Hansen-Kuhn began her presentation by describing the Institute for Agriculture and Trade Policy (IATP) as a nonprofit organization with offices in Minneapolis, Minnesota and Washington D.C. that works at the intersection of policy and practice to ensure fair and sustainable food, farm and trade systems. IATP got its start approximately 25 years ago during a farm crisis that affected farmers in both the US and Europe; the founders of IATP realized that trade rules were affecting farmers across the world in ways that had never previously been anticipated. In previous years, the IATP has focused on the WTO, NAFTA and other bilateral trade agreements but also on working with farmers in Minnesota and other locations towards the goal of sustainable agriculture. The advent of the TTIP represented an opportunity for the IATP to refocus its efforts on a bilateral trade agreement that is likely to include sections that will significantly affect the efforts to promote and develop sustainable agriculture on both sides of the Atlantic.

Ms. Hansen-Kuhn also remarked that the CTPC assessment offered the opportunity to shift from a macro focus back to the potential impact that a large FTA like the TTIP is likely to have on the agriculture policies and programs of an individual state such as Maine. Further, Ms. Hansen-Kuhn also highlighted the opportunity to work with Mr. Piotti and the Maine Farmland Trust to benefit from his detailed knowledge about agricultural practice and policy in Maine.

In remarking about the timing of the CTPC assessment and the current state of TTIP negotiations, Ms. Hansen-Kuhn pointed out that were the assessment be conducted after the finalization of the TTIP, the assessment would likely reach somewhat different results and conclusions. The delay in the anticipated timetable for negotiations and the relatively closed manner in which the negotiations are being held, somewhat impede the ability to accurately assess what the TTIP is likely to achieve. However, several important themes of the TTIP are becoming evident:

- A relative lack of transparency characterizes these negotiations forcing interested parties to rely on government summaries and leaked text for a picture of what is being negotiated in the TTIP;
- Investor State Dispute Settlements (ISDS) is also a huge topic in the TTIP negotiations. ISDS provisions allow international corporations to sue

sovereign governments for alleged profit loss due to government regulations and laws which are contrary to the provisions of an FTA like the TTIP. ISDS provisions are particularly controversial in Europe where the country of Germany has been sued under ISDS provisions for enacting laws which restrict the use of nuclear power;

- The concept of “regulatory coherence” is central to TTIP negotiations; i.e. the effort to bring US and EU regulations to a common point is a primary focus for many of the negotiators. Having a common level of regulation is intended to reduce or eliminate barriers to trade and investment. In many cases, the regulatory effort in the EU has a higher standard than what exists in the US and this is a real concern from both perspectives. Any effort to harmonize regulations downward could have a negative “boomerang” effect on the efforts of individual states to enact higher regulatory standards for agriculture and food safety; and
- Another significant issue is the current EU focus on negotiating a trade treaty which will apply to sub-national or state programs that deal with government procurement, such as school food programs and “buy local” requirements. This effort also extends to any state regulations or laws that are concerned with the use of toxic chemicals and various labeling requirements.

Ms. Hansen-Kuhn then proceeded to highlight the key findings of the report from the IATP perspective, to be followed by the state perspective and conclusions afforded by Mr. Piotti :

- In particular, the TTIP is not really focused on tariffs. The current levels of weighted tariffs between the US and the EU are relatively low at about 3 %. In reality, fluctuations in exchange rates are likely to have more effects on market access than current tariff levels. With respect to Maine, EU goods that are exported to this state tend to be alcoholic products such as vodka, wine and beer which have very few trade restrictions whereas Maine exports to the EU are led by lobsters which have some tariffs and other processed agricultural goods which tend to have higher tariff levels. Instead of tariffs, the real focus of TTIP talks is that of regulatory coherence. Ms. Hansen-Kuhn related recent discussions with EU agriculture officials that revealed their firm opposition to any lowering of EU standards pertaining to the use of GMOs, hormone use in beef production or chlorinated chicken. This stance is in contrast to recent statements by US Secretary of Agriculture Tom Vilsack who says these issues are definitely subject to negotiation in the TTIP. The EU stance on these issues is largely based on the use of the

“precautionary principal” which holds that products may not enter the market until they are proven safe from a scientific perspective. In contrast, the US approach to food safety issues (but not on medicine) is significantly different and permits the use of certain procedures until that can be proven to be unsafe through scientific conclusion. The discussion on this issue extends to a debate on various EU labeling requirements for GMO products which are opposed by many prominent US agricultural corporations.

- Public procurement is another issue that the assessment focuses on. As stated earlier, EU officials are quite interested in negotiating the TTIP to be binding on procurement policies and programs that exist on the state level. At particular risk are the currently popular farm-to-school programs used in Maine and other states.
- Another prominent issue of concern for a state like Maine is proposals that are likely to be considered in the TTIP regarding “Geographical Indications” for food products that are identified with a particular region such as cheese, wine and meat. These geographical indicators are closely tied to places of origin and particular production techniques. Many countries seek to restrict the use of commonly used product names to those original food products produced in a particular region using a unique production technique or process. Ms. Hansen-Kuhn believes that there is a lot of room for discussion on this issue between the US and the EU and that prior trade agreements have produced precedents which can be effectively implemented in the TTIP.

After her initial presentation, at the request of CTPC Chair, Senator Troy Jackson, Ms. Hansen-Kuhn responded to several questions from CTPC members:

- When asked by CTPC member Dr. Joel Kase about the possible differences in tariff levels, Ms. Hansen-Kuhn responded that in general they are fairly consistent and on average they seem to hover around the 3% mark. She also mentioned that agricultural tariff amounts did not differ greatly from other types of tariffs and that tariffs for processed agricultural products tended to be higher than those for less processed agricultural goods;
- CTPC member Wade Merritt offered that at the request of Senator Collins office, the Maine International Trade Center (MITC) had conducted a study about a year ago analyzing the projected dollar impact of TTIP on the state of Maine. That study showed that the highest tariff rate was 8.5% on lobsters and that the rest of the tariffs were lower; the study concluded that the TTIP was not really to be primarily about lowering or changing tariff rates thus confirming an earlier statement made by Ms. Hansen-Kuhn;

- CTPC member Senator Roger Sherman mentioned several issues relative to his district in Aroostook County:
 - With regards to broccoli production, a local family had tried to get into broccoli growing in Mexico but were thwarted by Mexican authorities and wondered if it might have to do with quality control issues; and
 - With regards to Maine's relatively large seed potato crop, Maine used to export large amounts of seed potatoes to South America and wondered if there was any discussion of seed potato exports in the TTIP discussions.

Ms. Hansen-Kuhn stated that she did not see any specific mention of seed potatoes in the literature that she reviewed but did mention that Maine apparently imports large amounts of various vegetable seeds and annually exports about \$600,000 worth of other vegetable seeds and guessed that the possible use of chemicals might constitute a limit on vegetable seed exports;

- CTPC Chair Representative Sharon Anglin Treat mentioned several aspects of the draft assessment:
 - Referring to an earlier comment from Ms. Hansen-Kuhn regarding previous bilateral trade agreements on agricultural organic standards, Representative Treat suggested that these previous agreements might serve as a model for how difficult issues in the TTIP could be resolved;
 - Representative Treat also asked about how a country could back out of a previously agreed to bilateral trade agreement which featured onerous provisions such as ISDS;
 - With regards to labeling and country of origin agricultural issues, Representative Treat asked if the assessment could discuss more about this issue as well as a discussion of ISDS relative to agricultural issues.

Ms. Hansen-Kuhn responded by mentioning a recent case in Australia where Philip Morris made use of the ISDS process to sue Australia regarding certain tobacco regulations and she could easily imagine similar cases being brought up in the US and elsewhere regarding agriculture related regulations. Ms. Hansen-Kuhn emphasized that any such cases using the ISDS process will not be focused on the validity of the health and public safety reasoning behind any such

agricultural rules but instead will be focused on whether such regulations serve to undermine a corporation's right to profits under the terms of a trade agreement like the TTIP. Ms. Hansen-Kuhn also mentioned that with regards to the organic equivalency trade agreements, those negotiations were highly transparent and offer the opportunity to be revised as the science evolves. Ms. Hansen-Kuhn then stated that the possibility that some of the objectives mentioned by Representative Treat could perhaps be more easily achieved outside of the TTIP through separate bilateral agreements.

- Senator Roger Sherman also asked about a particular sentence included in the introduction of the draft assessment which states that "...a fair amount of information can be deduced from existing information, as well as the results of recent trade deals, particularly the EU-Canada Comprehensive Economic and Free Trade Agreement (CETA)." (page 1, second paragraph). Senator Sherman wanted to know if that agreement had been finalized.

Ms. Hansen-Kuhn replied that CETA is in the final stages of negotiations and mentioned that leaked text from that agreement has been useful as indicators of what the EU's trade agenda is.

- CTPC member Jay Wadleigh asked a question about Maine's blueberry industry and any labeling/ country of origin requirements that might exist in terms of existing bilateral trade agreements.

Ms. Hansen-Kuhn responded by stating that she had no specific knowledge of blueberries as a trade topic but that she had a recent conversation with an official from the American Origin Products Association who stated that ensuring these types of protections for American agricultural products such as Vidalia Onions had been difficult to achieve. Ms. Hansen-Kuhn also suggested that there are probably valuable lessons to be learned from how the EU has recently handled these types of geographical indications for agricultural products but that it might be unwise to try to lock into these kinds of approaches so early in the TTIP negotiations.

- CTPC member Senator John Patrick then took an opportunity to thank Ms. Hansen-Kuhn for her work on the assessment, particularly with the focus on regulatory coherence, and stated his long standing opposition to the lowest common denominator approach to regulatory coherence in trade agreements like TTIP.

Next, CTPC Chair Senator Troy Jackson invited Mr. Piotti from the Maine Farmland Trust (MFT) to make comments over the speaker phone regarding his perspective and contributions to the draft assessment.

Mr. Piotti began with a brief review of his background by mentioning that he has been professional focused on Maine agricultural issues for the past 20 years and has been President of MFT since 2008 and thus has been supporting Maine farmers in a variety of significant ways. Mr. Piotti also mentioned his service in the Maine Legislature having served for 4 terms in the House and serving as Chair of the Joint Standing Committee on Agriculture.

Mr. Piotti proceeded to state that being able to work on the assessment with Mr. Piotti provided him with a new opportunity to learn a great deal about international trade agreements. His principal roles in the assessment were twofold:

1. To be a sounding board regarding the particulars of Maine agriculture; and
2. To provide factual information about Maine's complicated system of dairy subsidies and how those policies might be affected by the TTIP.

Mr. Piotti then highlighted a few aspects of Maine's dairy subsidy programs that might be affected by the TTIP:

- International trade agreements do have the potential to have an impact on the price that Maine dairy farmers are paid for their products; the amount paid to the farmer for milk, the "producer's price" is not set by the market directly but rather by a federal milk marketing order system. The federal pricing system is determined by a complicated set of formulas and that these formulas could be significantly affected by the TTIP. As an example, Mr. Piotti mentioned the price of Class One milk (what we drink) is set by a federal formula which is largely determined by the current price for either dried milk or butter- whichever is higher. In the past 4 years, the price of dried milk has been higher than that of butter and thus driving the final price paid to Maine dairy farmers. The current price structure is good news for Maine dairy farmers in that they are being paid more for Class One milk that they produce. The bad news is that if the price for dried milk were to go down significantly, then Maine farmers would be receiving a lot less for Class One milk. With regards to the TPP, the US dairy industry has opposed that treaty because of the fear that subsequent prices for dried milk could be decreased significantly thereby resulting in seriously depressed prices paid

to dairy farmers throughout the nation. As of yet, the US dairy industry has not taken a similar stand regarding the TTIP but clearly the potential exists for the same trade results resulting in the lowering of the price paid for dried milk on international trade markets;

- Next, Mr. Piotti highlighted the circumstances of the Maine Dairy Stabilization Fund (MDSF) as established by the Maine State Legislature in 2004. The MDSF pays out subsidies to Maine dairy farmers based on a tier or scale system and has been critically important in keeping Maine's dairy industry solvent. The MDSF is unique among all the states and thus, could be at significant risk from whatever the final results of the TTIP are particularly in terms of the possible results of regulatory harmonization;
- In addition, the way that Maine deals with artificial growth hormones for cattle is an important factor. Although not required by law, Maine's two major milk producers do not currently accept milk from cows that have been fed artificial growth hormones therefore creating a significant market advantage for Maine milk. Mr. Piotti emphasized that this current practice in the Maine milk industry could be threatened by any effort towards regulatory harmonization that is agreed to in the TTIP.

Mr. Piotti then welcomed comments and questions regarding these highlighted points of the draft assessment:

- CTPC Chair Representative Sharon Anglin Treat suggested that the unique circumstances of Maine's dairy industry may not be adequately represented by national dairy organizations, thereby underlining the need for Maine's congressional delegation to effectively communicate these circumstances to the USTR. In particular, Representative Treat singled out her concerns about the MDSF which she feels is quite possibly threatened by the TTIP. She suggested that the draft assessment be revised, perhaps through use of an appendix, to accurately and clearly describe the circumstances and importance of the MDSF to Maine's dairy industry. Mr. Piotti agreed that such a revision would be important and could easily be done;
- Senator Roger Sherman then asked about any effect to the dairy industry from the soon to be finalized CETA agreement between Canada and the EU. Mr. Piotti responded by stating that he was not very knowledgeable about how the Canadian government supports their dairy industry but suggested that direct price supports probably result in the lower costs of milk production. Mr. Piotti also stated the paramount need to ensure that the unique regulatory circumstances surrounding Maine's dairy industry be highlighted as much as possible and that every effort should be made to

avoid the effects of regulatory harmonization in the TTIP which could threaten the current status of Maine's dairy industry;

- Next, Dr. Joel Kase asked about a section in the assessment in which the current dairy system in Maine was compared to that of Vermont and it was pointed out that Vermont's dairy industry produces about 6 times as much dairy products as the state consumes on an annual basis whereas in Maine production and consumption are relatively equal. In his response, Mr. Piotti confirmed that dairy production and consumption in Maine is about equal but part of the equation is a significant amount of exports and imports of dairy products that contribute to the overall equation. Given these facts, Dr. Kase then asked if there was some barrier to the expansion of the dairy industry in Maine. Mr. Piotti answered by saying that there is not currently an in-state barrier to the expansion of Maine's dairy industry; Maine has a good climate for dairy production but is somewhat constrained by the current federal pricing structure.

CTPC Chair Senator Troy Jackson then asked Ms. Hansen-Kuhn about any existing tariffs on the export of wood fiber or raw paper products and how any such tariffs might be affected by the TTIP. Ms. Hansen-Kuhn replied that she had not come across any mention of specific tariff on wood fibers but will research the topic and will include an extensive list of tariffs relevant to Maine's most prominent exported agricultural products. CTPC member Wade Merritt supplemented Ms. Hansen-Kuhn's comments with information from the MITC staff which indicates that seed potatoes have a tariff of 4.5%, broccoli has a tariff of 13.6% and he later reported that there is no existing tariff for wood fiber.

Dr. Joel Kase then suggested that it might be appropriate for the assessment to include an appendix which identified the 10 most important import/export products in the state.

CTPC member Mike Karagiannes then asked a follow-up question about organic equivalency trade agreement and how it might relate to the ISDS process; i.e. how would differences in FDA and EU standards be resolved? Ms. Hansen-Kuhn replied by saying that she would have to look into that issue but that she was aware that there are agreed upon organic standards but that it is an evolving process that appears to be functioning well. Representative Sharon Anglin Treat further followed up by saying that it would be useful for the assessment to document and then suggest other ways to achieve trade goals without many of the previously identified negative effects and that this part of the assessment could be offered to the USTR for their consideration.

CTPC Chair Senator Troy Jackson then invited any members of the public to offer testimony. In response to this invitation, Mr. Ron Hemingway, a resident of Dixfield, representing United Steel Workers, Local 900 started his testimony by stating that he had not been clear whether this public hearing had had a particular purpose or theme and his original intention was to provide testimony on trade in general. Senator Jackson encouraged Mr. Hemingway to proceed with his intended testimony. Mr. Hemingway made the following points:

- It is unfortunate that current trade deals are mostly negotiated by the USTR behind closed doors without adequate public knowledge of what the treaties contain. The actual provisions of agreements like the TTIP are often not fully understood for several years after being finalized. Most recently, countries such as China have taken advantage of the overall trade situation to dump enormous amounts of cheap paper products into the US market, thereby resulting in the eventual loss of American paper making jobs. Mr. Hemingway suggested that the US government, not private industry, should have to bear the legal costs of fighting alleged trade violations which often pertain to a very narrow trade topic;
- The USW represents many manufacturing industries besides paper making and these trade issues are common to many of these industries and have to be fought on many fronts;
- Mr. Hemingway hopes that the TTIP will not result in lower common standards because the current EU standards are higher and better than ours in the US; he believes that US corporations want to use the TTIP to lower overall standards;
- The US needs fair trade, not free trade with sensible rules for all countries to abide by;
- Trade agreements should mandate fair and humane standards of labor with fair and comparable wage practices;
- Trade agreements should provide adequate protection for intellectual property, patents and copyrights;
- Trade agreements should deal directly with the issue of currency manipulation; countries like China deliberately undervalue their currency to create an unfair trade advantage;
- Predatory pricing and illegal subsidies should be prohibited in international trade;

- Manufacturing is a primary industry necessary for true economic health and any move towards a dependence on a service economy is not economically sustainable;
- Infrastructure upgrading should be predicated on buying American and make use of the American labor force;
- The US should promote patriotism by protecting our economy and our military by making use of products and military equipment produced in America;
- The gradual loss of the manufacturing base in the US is consequently eroding our middle class tax base thus reducing our national capacity to pay for education, social programs and effective government services;
- Fast Track legislation should be opposed; it denies an effective chance to openly and fully debate trade policy in a timely fashion; and
- The WTO should not be allowed to dictate American domestic policy and should not be provided with the opportunity to overturn our domestic laws and regulations.

In response to Mr. Hemingway's testimony, Senator Sherman had several questions:

1. With respect to current US tax policy that allows companies to shield their profits through the use of foreign tax havens, what would be the chance of allowing these profits to reenter the US economy without being taxed? Mr. Hemingway suggested that perhaps a one-time use of tax amnesty followed up a series of laws that effectively prohibit a repeat of this process might be useful.
2. Did Mr. Hemingway have any comment or reaction to the apparent large-scale subsidies provided by the Canadian government of large manufacturing facilities and the current state of paper making facilities in Maine? Mr. Hemingway confirmed the recent expansion of a tissue making facility in Baileyville and mentioned that tissue manufacturing is a growing segment of the paper manufacturing business in Maine; and
3. With respect to Washington County, would the export of torrefied wood pellet manufacturing products be a plus for Maine manufacturing and exports? Mr. Hemingway replied by saying that he was familiar with the product but not know enough to comment on its export potential.

In closing, in response from a request from CTPC members for her impression of what were being asked for revisions in the draft assessment, Ms. Hansen-Kuhn listed the following:

- Through the use of an appendix, provide additional tariff information for particular products that are being exported and imported into Maine;
- Provide information on ISDS and how it particularly may relate to agriculture policies and programs in Maine;
- Provide an additional appendix summarizing the history of dairy pricing regulations and practice in Maine; and
- Provide more information on the Organic Equivalency Agreement and how disputes are handled under that agreement and how terms of the agreement can be modified as time progresses.

Dr. Joel Kase followed up by asking Ms. Hansen-Kuhn to speak more about the unintended consequences of trade treaties on public health. Ms. Hansen-Kuhn responded by mentioning how the food environment in Mexico had changed as a result of NAFTA. In particular, as a result of NAFTA, the rules of investment significantly changed resulting in a large increase in investment in fast-food chains and supermarkets thereby resulting in a shift in the default food environment for consumers. The final result has been a dramatic increase in the obesity rates for the Mexican public.

Mike Karagiannes suggested that the draft assessment could benefit from including a specific example on how manipulation and fluctuation of currency rates has a much more significant effect on international trade than the imposition of trade tariffs.

CTPC member Michael Herz mentioned that there are three places in the draft assessment that constitute specific recommendations that address important points that the CTPC could follow up with specific actions. CTPC Chair Representative Sharon Anglin Treat responded by saying that at its next meeting, the CTPC could decide exactly what actions to take as a result of the assessment. After discussion among members, it was generally agreed to that the next meeting could be probably be scheduled for some time in early or mid-September or possibly the last week in August, particularly August 25th or August 27th.

Representative Treat also mentioned the existence of another trade agreement currently under negotiation, known as the Trade and Services Agreement (TISA), which the CTPC has not reviewed. TISA could potentially develop rules for the

service sector which would impact virtually every aspect of international trade. Representative Treat mentioned the possibility of inviting a prominent Canadian expert, Mr. Scott Sinclair, to address the next CTPC meeting on this topic.

Michael Herz suggested that it would be useful for the CTPC to know more about ISDS and how it works as well as what exactly the rack record is. Representative Treat commented that Mr. Sinclair could also speak directly to this topic.

The public hearing was adjourned at approximately 3 PM.

Public Hearing Summary
Maine Citizen Trade Policy Commission
Joint Standing Committee on Agriculture, Conservation and Forestry
November 20, 2014
Room 101, Roberts Learning Center
University of Maine at Farmington
Augusta, Maine

CTPC Members Present: Senator John Patrick, Senator Troy Jackson, Representative Sharon Anglin Treat, Representative Jeff McCabe, Representative Bernard Ayotte, Steve Cole, Pamela Megathlin, Attorney General Janet Mills, John Palmer, Dr. Joel Kase, Jay Wadleigh, Mike Karagiannes, Mike Herz

ACF Members Present: Representative James Dill, Representative Robert Saucier, Representative Craig Hickman, Representative Donald Marean, Representative Russell Black

Staff: Lock Kiermaier (CTPC Contract), Karen Nadeau-Drillen (ACF Legislative Analyst), Micheal O'Brien (ACF Legislative Analyst)

CTPC Chair Senator Troy Jackson convened the public hearing at approximately 6:45 PM.

To begin the hearing, Senator Jackson asked CTPC members and members of the Joint Standing Committee of Agriculture, Conservation and Forestry to introduce themselves.

Senator Jackson next asked CTPC Chair Representative Sharon Anglin Treat to make some introductory remarks about the purpose of the public hearing. Representative Treat's remarks included the following:

- Most recently, the CTPC has been focusing on reviewing the possible impacts of two international trade treaties on Maine that are currently being negotiated: the TransPacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (TTIP);
- The CTPC is required by state law to do an assessment of trade impacts on the state once every two years;
- For the 2014 Assessment, the CTPC focused on the topic of agriculture as it is being discussed in the TTIP which is currently being negotiated between the US and member nations of the European Union (EU);
- To conduct the 2014 Assessment, the CTPC contracted with the Institute for Agriculture and Trade Policy and the Maine Farmland Trust;
- The 2014 Assessment raised several significant trade-related issues pertaining to agriculture for the State of Maine:
 - Whether or not the US should agree to limitations on *geographical indications* which are regional names associated with particular foods such as Parmesan cheese or Maine seafood;
 - Possible restrictions on *public procurement programs for food* like those that extend preference to Maine-grown foods;

- The extent to which the TTIP will address *food safety issues*; the primary issue being the extent to which the US and the EU will be bound by common regulations established by either party; and
 - The possible threat posed to the *subsidies provided by the Maine Dairy Stabilization Fund* which is essential to the current level of stability and price supports provided for Maine’s remaining dairy farms; under the TTIP, these subsidies could be considered to be discriminatory and thus be disallowed.
- These modern trade treaties go way beyond the traditional trade topic of allowable tariffs and now extend to issues dealing with domestic regulation on the federal, state and municipal levels; and
 - In addition, a current topic of concern for the CTPC in relation to both the TPP and the TTIP is the issue popularly known as “Fast Track”; Fast Track is the current proposal in front of Congress from the Obama administration which would allow approval of these treaties on a simple up or down vote with limited debate and no amendments being allowed.

At the conclusion of Representative Treat’s comments, Senator Jackson then opened the public hearing to testimony from those members of the public present. From that point on, the public hearing evolved into a public discussion about these trade topics in which no formal oral or written testimony was received. The CTPC and the ACF Committee did engage in a public discussion with several citizens and discussed a number of different trade related-topics:

- The first conversation took place with Mr. Will Bonsall who is an organic farmer interested in crop diversity and resident of Industry. Mr. Bonsall inquired about the context of the meeting and remarked that all the CTPC and AFC members represented either state government or NGOs but that the trade negotiations were taking place on the federal level and stated that it seemed that none of the members had any actual decision making authority regarding these trade agreements. The response from Senator Jackson and others emphasized that this was indeed true but that the CTPC has been actively working for a number of years to influence the final shape and content of these trade agreements through the use of formal letters to the USTR, contacts with Maine’s Congressional delegation and working with similar commissions and like-minded legislators in other states;
- Representative Treat also discussed her membership as a “Cleared Advisor” on the Intergovernmental Advisory Committee to the USTR and how she has continually sought to influence the trade negotiating process and policies from that vantage point. She also mentioned the CTPC’s responsibility to hold two public hearings in different parts of the state every year so as to provide an opportunity to hear from Maine citizens about these trade policies and developments as well as to inform them about the same subjects. She also addressed the progress that the CTPC and others had been able to make in influencing (or delaying) the adoption of the President’s Fast Track proposal;
- Attorney General (and CTPC member) Janet Mills spoke to the ongoing efforts that she and Attorneys General from other states have been making with regards to the contents of these trade treaties, particularly that of the ISDS arbitration provisions and how the inclusion of that process (largely controlled by international corporate interests)

represents a real threat to the sovereignty of a state's ability to adopt and administer laws and regulations which broadly protect the public health and welfare. In particular, Attorney General Mills mentioned the very real threat that these trade agreements may represent to the efforts to enforce the state's public health and safety laws and regulations regarding the use and sale of tobacco. She also mentioned a recent letter to the USTR signed by Chief Justices from most states indicating their grave concerns and reservations regarding the threat that these treaties represent to the sanctity of due process and judicial oversight;

- Next to speak was Cynthia Stancioff from Chesterville who voiced her ongoing concerns and reservations about these international trade treaties and how she doubted that any benefits from these treaties would outweigh the benefits. She stated her belief that these treaties have the potential to tamper with careful and deliberate policy decisions made on the state and local levels and objects to the potential of international corporate interests to override these public policy decisions made by the people of the state of Maine and other states. Representative Treat discussed the recent progress that the CTPC and other entities have made in disseminating public information about these treaties and their potential provisions which are largely negotiated in secret and how the public could actively influence the Congressional decision whether or not to approve the President's Fast Track proposal;
- Senator Patrick commented on the Fast Track proposal and his grave concern as to how that proposal limits congressional debate and prohibits any amendments to these treaties which might pertain to the various agricultural topics highlighted in the 2014 CTPC Assessment;
- Next to speak was Cynthia Phinney from Livermore Falls. Ms. Phinney is current President of the Maine Fair Trade Campaign and is a former member of the CTPC. Ms. Phinney expressed her gratitude for the CTPC's recent focus on agriculture with the important role that small farms plays in Maine's current economy. She stated her belief about the necessity of being able to make policy on a state and local level which supports local farms and agriculture and not having these decisions to be overridden by international trade agreement and how important it is to maintain the present state subsidies for the dairy industry as a means of ensuring the survival of small dairy farms across the state;
- CTPC member Dr. Joel Kase asked about any recent trade consequences of the President's recent trip to China. While acknowledging that all of these trade negotiations are done behind closed doors in near total secrecy, Representative Treat mentioned her many connections across the world with regards to these trade negotiations and a communication that she recently had from a contact in Chile who mentioned that nothing of trade substance had really happened in those meetings. She further mentioned the many trade issues like tobacco that have not yet been resolved in either the TPP or the TTIP and how that lack of progress is actually indicative of the amount of public concern about these proposals;
- Mr. Bonsall asked about potential ways that citizens could be informed about these many trade issues. Representative Treat responded by mentioning how all of the CTPC actions, reports, information and correspondence are posted on the CTPC website. CTPC staff person Lock Kiermaier then informed the meeting how interested parties could get on the CTPC mailing list by contacting him through an existing link on the CTPC website and

how that website can most easily be found by googling “Citizen Trade Policy Commission”;

- Mr. Bonsall next asked about the manner in which the Fast Track proposal is being pushed. Attorney General Mills suggested that the Fast Track concept may be modeled on the federal BRAC procedure for military base closure where recommendations for base closures are made for an up or down congressional vote with no options for further changes, amendments or substitutions;
- CTPC member John Palmer expressed a concern about the lack of knowledge as to what governmental entity will be responsible for the payment of damages resulting from an unfavorable ISDS arbitration decision. Mr. Palmer also stated his dismay over the near total degree of secrecy and lack of transparency by which these trade agreements are currently negotiated under. He also mentioned the alarming access that powerful trade associations have to the trade negotiations to the disadvantage of small businesses without a lot of resources and the success that the CTPC has had in publicizing its various positions and concerns;
- Representative Treat related a recent incident in which the only way she was able to read text of a portion of one of these agreements, even with her status as a USTR Cleared Advisor, was to arrange to read it under the supervision of an FBI agent in their Augusta office and how she was restricted in being able to communicate the contents of what she had read. She contrasted this to the very public manner in which the State Legislature conducts its business;
- Attorney General Mills then discussed a recent letter sent by the states’ Attorneys General to the USTR. This letter did not generate a response from the USTR. However, the National Association of Manufacturers did respond to that letter prompting questions about who has access to the USTR process;
- Representative Treat reviewed the many efforts that the CTPC has made to communicate its concerns with members of Maine’s Congressional delegation and suggested that the election of a new congressperson in the Second Congressional District presented an opportunity for the CTPC and public to communicate concerns about these treaties to that newly elected representative;
- In response to a question about the European reaction to the issues raised about the perspective of small farms in the US, Representative Treat mentioned her recent conversations with members of the European Parliament which indicated very similar interests and concerns regarding policies like “Buy Local”;
- ACF member Representative Saucier asked about the degree to which these trade agreements are forever binding? Representative Treat stated that it is very difficult for a country to withdraw from a trade treaty and that to do so requires that consent of all signatory nations. She also mentioned the fact that the TTIP may seek to establish regulatory councils which would be responsible for reviewing, and in effect, approving/rejecting proposed laws and regulations which might have a bearing on a particular trade treaties raising questions about our sovereignty and ability to follow our Constitution;
- In response to a question about whether the TTP and/or the TTIP will supersede the provisions of NAFTA, Representative Treat stated that it was a great question to which no one currently knows the answer to. In addition, she mentioned that a possible option that would raise significant concerns if it is under consideration by trade negotiators

would be if an international corporation could select a provision of whatever ratified treaty it wanted to further its own perspective or goals;

- In response to a question from John Palmer, Senator Patrick affirmed that there was a recent incident in which the Chinese government threatened a legislator with legal action over a piece of sponsored legislation that the Chinese felt violated the terms of a WTO trade agreement. Representative Treat related this incident to the ability of the aforementioned regulatory councils in the TTIP to reject proposed legislation. In a further response, Senator Patrick questioned whose interests (public or those of international corporations) are best being served by these international trade agreements and stated that he was in favor of trade agreements that fairly protect trade, the environment, public safety and labor agreements;
- Representative Treat reiterated her belief that it is important to continually participate and to state one's beliefs during the process by which trade treaties are negotiated and finally approved. She mentioned that certain trade deals have been turned down and others that have been changed by amendment when approved by Congress;
- Senator Patrick mentioned that prior to the creation of the CTPC in 2003, the only information that was made available to states was through a Single Point of Contact in each Governor's office and he questioned how accessible and transparent that information actually was. He then maintained that the success of the CTPC has led to the establishment of similar commissions in other states and that the CTPC is considered to be a leader in the effort to make the trade negotiating process more transparent and accessible;
- Mr. Bonsall suggested that the real value of a group like the CTPC is to help ensure the accountability of the trade negotiating process and the degree to which the process is transparent and accessible;
- Attorney General Mills mentioned the importance of letting the more than 8,000 farms in Maine know about the 4 predominant previously mentioned issues raised in the 2014 CTPC Assessment; and
- ACF member Representative Black asked how these trade agreements might affect subsidies in the federal Farm Bill. Representative Treat answered by suggesting that agricultural subsidies contained in the Farm Bill as well as agricultural subsidies provided in any of the other countries involved in these agreements are always subject to negotiation, since the goal of these agreements generally is to remove tariffs and subsidies. She stated that because agricultural subsidies are of great importance to every country, trade-offs can be expected, but there is the possibility that U.S. programs could be adversely affected or eliminated.

The public hearing was adjourned by Senator Jackson at approximately 8:20 PM.

**Citizen Policy Trade Commission
Summary of Public Hearing Testimony
Thursday, November 30, 2006
City Council Chambers, Presque Isle**

I. TESTIMONY BY TOPIC

Democracy Issues

- Free trade important to early USA and industrialization and American democracy, yet developing countries (emerging economies) with poor working conditions or ecological degradation may not change to free trade provisions without a democratic process
- State needs to develop policies within the free trade framework
- Access to the US market should require meeting basic standards
- State sovereignty is an important issue and states should be allowed to set their own rules

Maine Jobs/Economy

- Originally thought NAFTA was a good idea, yet as time goes on, seeing wages driven down because of NAFTA
- Friend works for a paper company that's opening 3 mills in Russia
- China now producing paper with raw materials sent from here, processed in China and sent back
- Working at Frasier used to mean a worker had a job they could depend on
- The paper industry is changing with expansion now done in other countries
- Goals of trade should be to open new markets for Americans and to open American markets to goods from other countries
- Northern Maine has seen job loss—need to find
- Need to be concerned about net loss of jobs while considering world standards (especially for emerging economies) for free trade
- 5 companies closed due to NAFTA that were Trade Adjustment Assistance (TAA) certified with 207 workers affected
 - Georgia Pacific- 12 workers
 - Aroostook Starch- 22 workers in Fort Fairfield
 - Louisiana Pacific- 103 workers and a main employer in rural Maine Legislature
 - 1st Technology- 63 workers in Caribou
 - Maine Brad and Manufacturing – 6 workers
- Loss of the 207 jobs devastating to the families and also to the entire area and St. John Valley
- When manufacturing jobs are lost in ME, new business can come in—but they rarely match the wages and benefits lost
- When large employer leaves a community or downsizes it's not just the loss of the employer—but the impact of those left behind, the effect on families, markets and services
- Need to look at how State does business, courting large employers—yet the majority of Maine business are small businesses with 20 employees or less

Labor Issues

- Trade Adjustment Assistance (TAA) Program provides assistance to employees if a company closes resulting from NAFTA agreements

- TAA benefits make US companies great—yet often cause companies to move or expand outside of the US
- TAA grants for tuition assistance (4 year programs) and work force funds target low income and disenfranchised youth, and women to provide an extra boost to workers to help support families
- If affected workers don't chose to go into a 4 yr program to get TAA funding, their options are to find work or to visit a career center that can help guide them to a high growth industry and assist them in getting the skills needed
- People need to be paid fairly—all workers, in Maine and globally
- US has federal trade system—in Canada the provinces compete and fight it out with each other—treating the US about like another province
- Inequity when US workers can't go to Canada and work, yet Canadian workers can get a visa to come to US and work all they want

Public Health/Pharmaceuticals

- Inequities in nursing sector with employment—US employees can't get jobs in Canada, yet US employers often hire Canadian workers because there's no insurance premium—certain sectors like nursing

Environment

- Trade agreements need to include conditions of wages: environmental standards and general health to equalize the playing field

Agriculture

- Having worked in the potato industry, puzzling that Maine can ship potatoes to Boston or New York markets and so can Canada—yet Maine can not send potatoes to Canadian markets
- For small farmers it's a struggle to compete and when there's a good year and the harvest is up, the market floods and NAFTA helps the Canadian farmers and hurts the Maine farmers
- Northern Maine is a farming community having lived in the same area for 50 years ago there used to be 40 farms—now there are 3
- In Maine, used to be 100,000 acres of potato farmland and 50,000 acres in Prince Edward Isle—now it's reversed
- Subsidization is also an issue as Canadian trucks are subsidized 200 miles to the border
- Another farmer that wants to stay in Aroostook county was offered to have a shed (\$3-4 million) built for him in Canada for a broccoli farm and he wouldn't have to pay—despite Canada saying they don't subsidize sheds anymore—still an issue
- Rural Caucus in King's administration got a Maine-Canadian ombudsman—now there's no money—it got reinstated yet Gov. Baldacci didn't realize the money was there—Rep. Carr possibly has research materials for work done by the rural caucus

Other

- 50 states were surveyed and half responded—only 1 state has 'emissary' working with Canada over trade issues

Meeting Summary
Maine Citizen Trade Policy Commission
September 24, 2015
Room 208, State House
Augusta, Maine

Members Present: Senator Amy Volk, Senator John Patrick, Representative Craig Hickman, Randy Levesque, Sharon A. Treat, Christy Daggett, John Palmer, Pam Megathlin, Linda Pistner, Jim Detert

Staff: Lock Kiermaier (Contract)

CTPC Chair Senator Amy Volk convened the meeting at approximately 1 PM.

To begin the meeting, Senator Volk asked Commission members to introduce themselves.

After the introductions had been made, CTPC staff Lock Kiermaier stated that because the statutorily required minimum quorum of 11 members had not been met, that a formal meeting could not take place and that no formal vote could take place. However, Mr. Kiermaier also pointed out that the CTPC statutes are silent regarding a required quorum of members that need to be present for public hearing to take place and there seemed to be no reason why the scheduled public hearing could not commence.

Public Hearing

To begin the public hearing, Senator Volk invited any members of the public who were present and wanted to testify to please come forward.

Dr. Martha Spiess, a veterinarian living in Portland, offered written testimony that she read aloud. Dr. Spiess made the following points in her testimony:

- With regards to the tendency for trade treaties to undermine government's ability to regulate tobacco as a public health measure, the testimony questioned why tobacco and alcohol continue to be treated as "ordinary commodities" in recent FTAs thereby resulting in increased use and availability;
- The CTPC is urged to explore a proposal which would exempt alcohol and tobacco from future FTAs; and
- The CTPC is also urged to explore any commitments that the USTR has made regarding Distribution Services as it pertains alcohol and tobacco.

Dr. Spiess's written testimony also included a copy of a paper titled "Trading Away health: The Influence of Trade Policy on Youth Tobacco Control" by Sohil Sud, Joseph Brenner and Ellen Shaffer.

Alcohol, tobacco, and public health. Why should trade treaties limit Maine's public health policy?

Submission to Maine Citizen Trade Policy Commission, Augusta, September 24, 2014

By Dr. Martha Spiess

Thank you Senator Volk, Representative Saucier and the members of the Maine Citizen Trade Policy Commission for holding this hearing and welcoming public testimony.

As a veterinarian, I am interested in public health policy and have learned from this Commission how trade treaties can undermine governments' ability to control tobacco. Traditional economic theory implies that trade treaties are supposed to lead to increased production and consumption of commodities, or goods. Treaties are "designed to make goods *cheaper* as taxes are lowered, more *accessible* as market restrictions are eliminated, and more *desirable* to consumers as they are advertised and otherwise promoted."

Globally, if alcohol causes nearly as much death and disability as tobacco, why should these two products be treated as "ordinary commodities?" Why shouldn't countries be able to regulate tobacco and alcohol in the public interest? I am interested in the questions that were raised within this Commission during the last meeting and would ask the Commission to explore the proposal that tobacco and alcohol be exempted from all future bilateral, regional and global trade treaties and explore what commitments the USTR has made on Distribution Services as it pertains to alcohol and tobacco.

I look forward to learning of your further deliberations and of the Commission's efforts to pursue alternative treaty models that have the potential to improve, rather than threaten, public health in relation to tobacco and alcohol consumption.

Attached is a recent review of how evidence-based tobacco policies are being challenged, how trade agreements are subverting the work of legislators.

A handwritten signature in cursive script that reads "Martha Spiess". The signature is written in black ink and is positioned below the main body of text.

Trading Away Health: The Influence of Trade Policy on Youth Tobacco Control

Sohil R. Sud, MD, MA¹, Joseph E. Brenner, MA², and Ellen R. Shaffer, PhD, MPH²

Tobacco companies and tobacco-producing nations are exploiting international trade rules to block implementation of policies designed to curb youth smoking. These challenges represent a growing threat to tobacco control efforts, of which pediatricians should be made aware. Ongoing lawsuits and trade disputes, as well as contemporary trade agreements, challenge health principles by treating tobacco—a lethal and addictive product—the same as any other good. This article equips health care providers with the requisite vocabulary, history, and analysis to understand the impact of global trade practices on youth tobacco control.

Described herein are examples of trade-based challenges to the following: (1) banning flavored cigarettes; (2) restricting point-of-sale product advertising; (3) placing graphic warning labels on cigarette packaging; and (4) taxing tobacco effectively.

Evidence-Based Policies to Curb Youth Smoking at Risk

As highlighted in recent US Surgeon General reports, “tobacco use is a pediatric epidemic.”¹ Youth of all ages are at risk from this scourge, including newborns and toddlers for whom sudden infant death syndrome and asthma (both new onset and exacerbations of existing disease) are just 2 of the many health effects from exposure to secondhand smoke.² Adolescents—long known to be targets of tobacco marketing schemes³—are particularly at-risk, for teen smokers may well be consigned to lifelong addiction: nearly 90% of adult daily smokers smoked their first cigarette by age 18 years.¹

Countries around the world are enacting regulations to curb youth smoking and combat notions that tobacco is cool, available, tasty, safe, and affordable. These include bans on flavored cigarettes, increases in tobacco taxation, restrictions on tobacco advertisements, and placement of graphic warning labels on cigarette packages. A robust basis of evidence underlies each of these policies. Bans on flavored cigarettes are supported by research indicating that adolescents are far more likely to smoke candy- and fruit-flavored cigarettes than adults.^{4,5} Some studies have even documented a misperception among youths that flavored cigarettes are safer than traditional cigarettes.⁶ Tax hikes on tobacco products are supported by data demonstrating that when the price

of cigarettes increases, youths buy fewer cigarettes (even more so than adults).^{7,8} Marketing bans are backed by evidence suggesting that exposure to tobacco advertisements increases the likelihood that adolescents will start smoking.⁹ Graphic warning labels increase awareness of the harms of tobacco use and increase the likelihood of attempting to quit smoking.¹⁰

Such health regulations also are supported by international legal norms. In 2005, 168 nations joined together to sign the world’s first health treaty, known as the Framework Convention on Tobacco Control (FCTC).¹¹ Housed at the World Health Organization, the FCTC sets forth universal minimum standards for key aspects of tobacco control, including advertising, labeling, and taxation.

Many of these standards are being challenged by existing global trade policies. Previous research by Shaffer et al¹² identified that international trade practices conflict with tobacco control regulations and public health norms. This article provides practicing clinicians with important updates, as well as an overview of the extent to which trade policies impede efforts to curb youth smoking.

Challenges to Banning Flavored Cigarettes

In 2009, the Family Smoking Prevention and Tobacco Control Act was signed into law and banned the sale of flavored cigarettes in the US, including candy, fruit, and spice flavors, though with a notable exception for menthol. This policy was enacted to reduce teen smoking, given a strong inverse correlation between age and use of flavored cigarettes.² Since its implementation, 30-day prevalence rates of cigarette use among US adolescents continue to decrease to record lows.¹³ In 2010, Indonesia—the world’s largest producer of clove cigarettes—alleged that the law was inconsistent with US trade obligations under various World Trade Organization’s (WTO) agreements.

Trade agreements bind signatory nations to rules intended to reduce barriers to cross border trade. Such barriers may be financial (eg, tariffs that make foreign goods more expensive) or regulatory (eg, laws that require products to meet particular standards). Trade agreements also allow for national regulations to be challenged if they discriminate between “like”

FCTC	Framework Convention on Tobacco Control
ISDS	Investor-state dispute settlement
PM	Philip Morris
WTO	World Trade Organization

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products by country of origin. On the basis of these principles, Indonesia claimed that the US violated WTO agreements by discriminating between “like” products (eg, clove and menthol flavorings) by banning imported clove cigarettes and permitting the sale of domestic menthol cigarettes.¹⁴

In April 2012, a WTO Appellate Body panel ruled in favor of Indonesia, agreeing that the US violated trade provisions by discriminating between the 2 flavors. The Body determined that menthol and clove flavors are “alike” because they share a competitive economic relationship. Health considerations played little influence on the ruling. The argument that removing clove cigarettes from the US market is a public health boon was rendered effectively irrelevant.

The ruling demonstrated the preeminence of trade and economic issues in international law and ostensibly paved the way for reintroducing clove cigarettes into US markets. This has not occurred, and in exchange for preserving the ban, the US recently agreed to make trade concessions with 2 other unrelated goods (ignition wiring sets and mineral ores) and to assist Indonesia with intellectual property right protections. The US also agreed “that it will not arbitrarily or unjustifiably discriminate against cigars or cigarillos (HS 2402.10) from Indonesia.”¹⁵ The legal implications of this recent statement are uncertain, although the inclusion of any language that might obstruct efforts to ban flavored tobacco products (eg, clove cigars) is concerning.

Challenges against Australia’s Plain Packaging Law

In late 2011, Australia passed legislation to create uniform cigarette packaging on which brand names would be listed in small font at the bottom of cartons, and pictorial warnings and a quit-line phone number would comprise the remainder. One of the explicit objectives of the measure was to “reduce the attractiveness and appeal of tobacco products to consumers, particularly young people,”¹⁶ a claim supported by evidence from multiple studies showing youths find plain cigarette packs less appealing.^{17,18}

Since implementing these laws, Australia has seen a 78% increase in the number of quit-line calls and decreases in adult daily smoking rates from 15.1% to 12.8% from 2010 to 2013, respectively.¹⁹ The age at which youths (14-24 year olds) first smoke a full cigarette has also increased by 0.5 years from 2010 to 2013.¹⁹

Notwithstanding these successes, Philip Morris (PM) Asia (based in Hong Kong) is suing Australia, arguing that the bill violates conditions of a 1993 investment agreement between Hong Kong and Australia.²⁰ In trade terms, trademarks, including brand names and logos, are categorized as a company’s intellectual property. PM Asia claims that Australia’s law deprives the company of its intellectual property and infringes upon protections granted from the aforementioned trade agreement. The company argues that Australia should compensate PM for lost revenues and stop enforcing the law. Australia contends that trademark laws protect a corporation’s

branding from appropriation by competitors but do not confer an unlimited immunity from regulations. The case is being heard by a tribunal at the United Nations that carries a charge to review the claims for trade (not health) violations.²¹

In a separate contention against the plain-packaging law, several tobacco-producing nations (including Honduras, Ukraine, Cuba, and the Dominican Republic) claim that Australia’s policy is overly restrictive and contradicts trademark protections afforded by various WTO agreements.^{22,23} These nations have filed suit at the WTO, where a tribunal was established in May 2014 to begin arbitrating these allegations.²⁴

Disputes against Uruguay’s Warning Labels

In 2006, the Uruguayan government—led by then-President and oncologist Tabare Vasquez, MD—passed a series of regulations to: (1) increase warning labels from 50% to 80% of the package; (2) place health images on packages; and (3) prohibit the use of “brand families” in which the same brand name is used across multiple product lines (eg, Marlboro Red, Marlboro Green, etc).²⁵ In the years after enactment of these anti-smoking laws, 30-day prevalence rates of tobacco use among adolescents decreased by 8% annually, and per-person cigarette consumption decreased by 4.3% annually.²⁶

In 2010, however, the Swiss operational hub of PM filed suit at the World Bank, claiming that government’s regulations violate a 1991 bilateral investment treaty between Uruguay and Switzerland. Using similar arguments to those posited by PM Asia against Australia, the Swiss-based PM contends that Uruguayan policies intrude upon PM’s intellectual property and exceed that which is reasonable to protect the public’s health.²⁷ Per the terms of the 1991 trade agreement, the dispute is being arbitrated by a tribunal of international trade experts housed at the World Bank, who ruled in July 2013 that it had jurisdiction to hear the case; each side is currently submitting testimony to support their claims.^{28,29}

Challenges to Point-of-Sale Product Advertising

In January 2010, with the intent of reducing youth exposure to tobacco advertising, Norway banned point-of-sale displays of tobacco products in retail outlets.³⁰ Months later, PM Norway sued the Government, arguing that this policy violated the 1994 Agreement of the European Economic Area by restricting the company’s purported right to “free movement.”³¹ Unlike the cases in Uruguay and Australia, this case was tried domestically (at the Oslo District Court) with consultation from the international Court of the European Free Trade Association.³² In September 2012, the Court delivered its verdict and sided with the Government, noting that the display ban does not restrict product movement as defined as by the European Economic Area. Furthermore, the Judge noted that a ban is “suitable and necessary in order to ensure the protection of public health.”³⁰

Challenges to Tobacco Taxation

All of the aforementioned legal proceedings relate to trade agreements signed prior to 1994. To determine how tobacco is treated in more recent agreements, we analyzed US trade agreements with the following nations: Chile (2004), Singapore (2004), Peru (2009), South Korea (2011), Colombia (2011), and Panama (2011). In all 6 agreements, US tobacco exports are made tariff-free (ie, without an import tax) or placed on a tariff reduction schedule.³³⁻³⁸ Essentially, as a result of these agreements, all 6 trading partners lose one means of tobacco taxation, an effective evidence-based measure known to reduce youth smoking.

Detrimental Consequences of Trade-Based Challenges

As mentioned previously, increasing evidence suggests that policies designed to ban flavored tobacco products, institute large graphic warning labels on cigarette packages, restrict point-of-sale product advertising, or increase tobacco prices are effective in reducing youth smoking. These efforts are strongly supported by the World Health Organization's FCTC.³⁹ Furthermore, as a result of such progress (particularly in Australia), England, Ireland, New Zealand, and France are all in various exploration and planning stages to implement plain packaging laws.⁴⁰

Despite this success, tobacco companies and tobacco-producing nations continue to use trade-based claims to delay, undo, or otherwise obstruct implementation of health policies. Defending these challenges—irrespective of verdict—is time consuming and immensely expensive, detracting efforts and funds available for public health generally. Arbitration between PM and Australia commenced 3 years ago, and yet the 2 parties are still at least 1 year away from settling jurisdictional matters. The legal battle with Uruguay formally began in March 2010 and is only slightly further along.

The legal process by which tobacco companies like PM bring claims against a government is also troubling. This is known as “investor-state dispute settlement (ISDS),” and has been written into many bilateral investment treaties, including the Australia-Hong Kong and Uruguay-Switzerland treaties described previously, as well as all 6 US trade agreements reviewed.³³⁻³⁸ ISDS allows corporations (investors) to bring claims against the governments of trading partners without needing to engage their host government. Hong Kong and Switzerland are not parties in the respective lawsuits that PM has filed against Australia and Uruguay, even though the investment treaties in contention involve those governments. ISDS provides corporations with a startling degree of legal power in trade arenas and, depending on the coffers of the corporations involved, it can threaten the financial well-being of impacted nations. Uruguay, unable to afford the costly legal fees of this four-year-and-counting ordeal, is being aided by wealthy philanthropists.⁴¹

Trade-based challenges to tobacco control policies also act as a deterrent to other nations seeking to enact similar legislation.

Canada's attempts to ban misleading terms such as “light” and “mild” were forestalled after PM argued that such a policy would violate the North American Free Trade Agreement.^{42,43} New Zealand has delayed introducing plain packaging laws pending the outcome of Australia's legal battles.⁴⁴

Reasserting the Primacy of Health Concerns in the Trade Agenda

Tobacco control measures and other public health laws and regulations frequently are at odds with commercial priorities and interests. In addition, public health policy and politics often are complicated and messy, involving compromises to achieve incremental progress. Requiring that tobacco control policies must additionally conform to trade rules designed to regulate fair treatment among businesses gives commercial interests an unfair “thumb on the scale.”

The outcome of current negotiations and outstanding trade disputes stand to have a tremendous impact on youth tobacco use. The extent to which sovereign nations can safeguard the health of their own people, using measures supported by international health conventions, hangs in the balance.

The US is currently negotiating 2 major multilateral trade deals—the Trans Pacific Partnership, a 12-nation pact with Pacific Rim nations, and another with European nations. Tobacco is proving to be a contentious topic in both negotiations. Although the US Trade Representative has acknowledged that tobacco is indeed different from other “goods” in these trade deals,¹⁵ the Office has failed to promote substantive measures that afford tobacco control efforts effective legal protection.

Malaysia has called for an outright exclusion of tobacco from the protections and provisions of the Trans Pacific Partnership.¹⁶ This would have a positive impact on public health worldwide. It would exclude the legal mechanisms (eg, ISDS) by which corporations can bring claims against the governments of trading partners, as well as precluding government-to-government disputes. Health care providers are taking greater notice of the troubling relationship between tobacco and trade, and pediatricians have been instrumental in calling for health-focused trade reforms, particularly Malaysia's proposed tobacco exclusion.^{17,48}

We must continue to call on policymakers to mandate that investment agreements “do no harm” to existing tobacco control measures and assert the primacy of health concerns by insisting that governments defer to the FCTC in the event of discrepancy between a trade agreement and the FCTC. We have come so far in enacting sound policies to combat notions that tobacco is cool, available, tasty, safe, and affordable. Trade-based loopholes must not continue to stymie, or worse undo, such progress. ■

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**Public Hearing Summary
Maine Citizen Trade Policy Commission
December 10, 2015
Eastern Maine Community College
Room 105, Rangely Hall
268 Sylvan Road
Bangor, ME 04401**

Members Present: Senator Amy Volk, Senator John Patrick, Representative Robert Saucier, Representative Stacey Guerin, Sharon A. Treat, John Palmer, Pam Megathlin, Dr. Joel Kase, Linda Pistner

Staff: Lock Kiermaier (Contract)

Subject of the Public Hearing: *to gather public comment on the proposed TransPacific Partnership free trade agreement*

CTPC Chair Senator Amy Volk convened the public hearing at approximately 5 PM.

To begin the public hearing, Senator Volk invited any members of the public who were present and wanted to testify to please come forward. A total of 15 persons testified in person. The following summary briefly recounts the gist of each person's testimony in the order in which they testified. Most of the spoken testimony was supplemented by written statements which were distributed to commission members. In addition to the personal testimony, the CTPC also received written testimony from several other individuals. All written testimony received by the CTPC is available for viewing at the CTPC website:

<http://legislature.maine.gov/legis/opla/citpol.htm>

1. Coralie Giles; resident of Brewer and representing the Maine State Nurses' Association- Ms. Giles testified in opposition to the TPP. In her written testimony, Ms. Giles included the following points:
 - a. The TPP will permit drug companies to challenge and overturn laws and regulations which allow government to negotiate lower drug prices for bulk purchases;
 - b. Maine nurses are opposed to monopoly pricing protections that exist in the TPP for large pharmaceutical firms; and
 - c. The TPP will undermine environmental and food safety standards.
2. Alex Jackimovicz; resident of Boothbay, electrical contractor and representing the Maine Small Business Coalition- Mr. Jackimovicz testified in opposition to the TPP. In his written testimony, Mr. Jackimovicz included the following points:
 - a. By transferring power to unaccountable, extra-governmental entities, the TPP threatens national, state and local sovereignty over the environment, food safety and public health;

- b. The TPP replaces democracy with private, corporate power over many aspects of American life including intellectual property rights, labor and environmental protections, consumer safety, government procurement and national resource management;
 - c. Economic globalization and free trade have had significant negative effects on American jobs, wages and benefits; and
 - d. The TPP is inadequate to protect human rights abuses in many TPP countries;
 - e. Through the use of ISDS, the TPP potentially overturns state and federal regulations that are considered “trade irritants” thereby eliminating many public health regulations such as food labeling laws.
3. Bonnie Preston; resident of Blue Hill and member of the National Council of the Alliance for Democracy- Ms. Preston testified in opposition to the TPP. In her written testimony, Ms. Preston included the following points:
- a. The TPP and other FTAs provide multi-national corporations with power that they could not get through the democratic process;
 - b. The use of ISDS in the TPP allows corporations to have equal footing with our democratic government and, for first time, will allow financial regulations to be challenged;
 - c. The TPP is not the only FTA that challenges the democratic process. The TTIP and TISA FTAs also present grave challenges to our nation; and
 - d. Ms. Preston also provided a copy of model legislation to create “TPP-Free Zones”.
4. Betsy Garrold; resident of Knox and representing Food for Maine’s Future- Ms. Garrold testified in opposition to the TPP. In her written testimony, Ms. Garrold included the following points:
- a. By gutting our sovereign courts’ ability to defend our safety, labor and environmental regulations, the TPP will be very bad for Maine’s farms; and
 - b. Based on previous experience with NAFTA and WTO, many small-scale farms in Maine will go out of business as a result of the TPP.
5. Christine Greenleaf; resident of West Gardiner and Unemployment Counselor- Ms. Greenleaf testified in opposition to the TPP. In her written testimony, Ms. Greenleaf included the following points:
- a. Ms. Greenleaf is currently engaged in her 4th career; her previous three jobs with a shoe manufacturing shop in Gardiner, Health-Tex in Gardiner and Carleton Woolen Mills in Gardiner all went out of the manufacturing business because of the influx of foreign imports created by recent FTAs;
 - b. In recent years, 3 mill closures have resulted in the loss of 1,695 jobs; and
 - c. The TPP and other FTAs have largely been responsible for the destruction of our national economy and need to be replaced with FTAs that level the playing field for American workers.
6. Sherri Mitchell; resident of the Penobscot Nation, indigenous rights attorney and representing the Land Peace Foundation- Ms. Mitchell testified in opposition to the TPP. In her written testimony, Ms. Mitchell included the following points:
- a. The TPP does not in any way reflect input from Indigenous People that live in the countries that will be members of the TPP;

- b. The TPP completely disregards the concept of Free, Prior and Informed Consent which is a basic tenant of the UN Declaration on the Rights of Indigenous Peoples;
 - c. The TPP will allow trans-national corporations to extract oil, gas and minerals without the consent guaranteed by the UN Declaration;
 - d. The TPP will allow companies to evade compensation for environmental damage done to land belonging to Indigenous Peoples;
 - e. The TPP awards exclusive rights over seeds and traditional plant-medicines to corporations;
 - f. The use of ISDS in the TPP allows corporations to sue nations for any profits lost to laws and regulations; this will severely impact the efforts made by Indigenous Peoples to protect the environment; and
 - g. The culmination of these injustices under the TPP amounts to a new form of colonization for Indigenous Peoples.
7. Dennis Chinoy, resident of Bangor and member of Power in Community Alliances in Bangor- Mr. Chinoy testified in opposition to the TPP. In his written testimony, Mr. Chinoy included the following points:
- a. Like other FTAs, the TPP has winners and losers; Maine loses through a loss of industrial jobs and challenges through the ISDS process to our laws which protect public health and safety, public services, labor rights and the environment; and
 - b. Mr. Chinoy provided a list of concerns posed by ISDS as compiled by the Citizens Trade Campaign.
8. James Moore, resident of Bangor and attorney- Mr. Moore testified in opposition to the TPP. In his oral testimony, Mr. Moore included the following points:
- a. Mr. Moore has 3 primary concerns about the TPP;
 - i. Loss of manufacturing jobs;
 - ii. Will provide rights through ISDS to foreign corporations that are not enjoyed by companies in the US; and
 - iii. Countries that will benefit from the TPP will not be able to live up to the enforcement requirements for the labor standards, environmental protection, copyright and other laws.
 - b. The TPP is an overall assault on our democratic form of government
9. Gray Cox, resident of Bar Harbor and Professor at College of the Atlantic- Mr. Cox testified in opposition to the TPP. In his written testimony, Mr. Cox included the following points:
- a. The TPP will threaten our existing sovereignty and transfer power to a system dominated by corporate interests;
 - b. Advocates for the TPP typically claim three things- each of which are fundamentally mistaken:
 - i. The theory of “comparative advantage” advances our national economy by seeking the benefits of trade. In the case of the TPP, comparative advantage benefits corporations but not average citizens;
 - ii. The TPP is necessary to thwart economic dominance of the Pacific Rim countries by China. The more appropriate question is rather “which economic system will dominate and govern us?”

- iii. The TPP is necessary to pursue economic development as an outgrowth of a free market capitalist society; without the TPP we are promoting a governmental system of a socialist society which depends on regulations and governmental interventions. This reasoning is inherently false in that it fails to recognize that every economy is essentially a hybrid of the two systems.
 - c. The ISDS system in the TPP is fundamentally opposed to the sovereignty that citizens in Maine have used to accomplish a sense of how life in Maine should be.
10. Stefano Tijjerina; resident of Old Town, Professor at UMO and Director of the Peace and Justice Center- Mr. Tijjerina testified in opposition to the TPP. In his oral testimony, Mr. Tijjerina included the following points:
- a. As a historian, Mr. Tijjerina believes that the TPP must be viewed in a historical context which is the globalization and the expansion of markets beyond the nation-state;
 - b. We are moving from a world market of 12% of trade occurring due to NAFTA towards a more global 40% of the economic market represented by the TPP;
 - c. Since the end of the 20th century we have been moving away from the sovereignty of the nation-state towards a new kind of sovereignty of globalization where the decision makers are drawn from the private sector or trans-national corporation with no national identity or loyalty;
 - d. The regional context of the TPP is that of the Pacific Ocean which is far removed from Maine and bears no real benefit for the state of Maine;
 - e. As reflected in the TPP, primary shareholder interests (those of large corporations) have little relevance to Maine;
 - f. The Pacific orientation of the TPP suggests that we as Mainers have very little leverage in this latest globalization effort and even less of the economic protections that we have become accustomed to; and
 - g. Rather than a race to the top, the TPP represents a race to a very deep bottom.
11. Jessie Dowly; resident of Whitefield and small farmer- Ms. Dowly testified in opposition to the TPP. In her oral testimony, Ms. Dowly included the following points:
- a. Very concerned about how the TPP will affect small businesses and small farms;
 - b. She believes that the TPP is a bad deal for Maine and for small farmers; and
 - c. She hopes that the CTPC will do everything in its power to prevent the TPP from passing
12. Troy Jackson; resident of Allagash and former legislator and former Chair of CTPC- Mr. Jackson testified in opposition to the TPP. In his oral testimony, Mr. Jackson included the following points:
- a. The TPP is an awful deal for the citizens of Maine;
 - b. He sees no benefit from the TPP for anyone that he knows;
 - c. He does not believe in FTAs and believes that TPP will lead Maine and the nation as a whole into third world status; and
 - d. Questions why anyone would give up their right to have an agreement like this discussed in a an open and transparent manner and not to do so is very shortsighted and represents bad government.
13. Karl Norton; resident of Bangor- Mr. Norton testified in opposition to the TPP. In his oral testimony, Mr. Norton included the following points:

- a. He agrees with the points that had been made earlier by previous speakers;
 - b. He has been studying parts of the TPP text for a number of hours;
 - c. He believes that the TPP is excessively lengthy, too complicated, too comprehensive, and too difficult to understand- a document like the TPP does not lend itself to good democratic government;
 - d. A document like the TPP should be broken into smaller pieces and each piece should be carefully examined and debated in full; and
 - e. Given the only option of an up or down vote, the TPP should be voted down.
14. Stephanie Mattsen; resident of Bangor- Ms. Mattsen testified in opposition to the TPP. In her oral testimony, Ms. Mattsen included the following points:
- a. She agrees with the points that had been made earlier by previous speakers;
 - b. She appreciates the opportunity to speak in this type of open format where people are allowed to express their beliefs;
 - c. If the TPP passes, she believes that that this type of meeting will no longer be possible with the loss of local control;
 - d. The TPP is not working in the local interests of the people of Maine and that the real power will rest in the ISDS process;
 - e. She believes that the CTPC is very negative for everyone in Maine.
15. Martha Spiess; resident of Freeport and veterinarian- Ms. Spiess testified in opposition to the TPP. In her written testimony, Ms. Spiess included the following points:
- a. Ms. Spiess believes that the TPP serves to undermine our government's health policy and does not believe that the TPP "carve-outs" for tobacco in the ISDS process are adequate; and
 - b. Ms. Spiess provided copies of a statement from the Center for Policy Analysis on Trade and Health which specifies to what extent the TPP falls short of protecting existing health policy and provides a suggested set of public health guidelines for FTAs.

Written Testimony provided to the CTPC but no oral testimony

16. Chellie Pingree; resident of Maine and U.S Representative- In her written testimony, Representative Pingree testified in opposition to the TPP and included the following points:
- a. Representative Pingree fears that the TPP's effort to remove "non-tariff barriers to trade" will inhibit our efforts to enact protections in areas such as worker protection, public safety and the environment;
 - b. Representative Pingree believes that the TPP will result in the loss of even more jobs being lost overseas; and
 - c. Representative Pingree objects to the lack of transparency in the TPP approval process and objects to the fact that the agreement cannot be amended or changes.
17. Glen Brand; resident of Maine and Maine Chapter Director of the Sierra Club- In his written testimony, Mr. Brand testified in opposition to the TPP and included the following points:

- a. Mr. Brand objects to the use of ISDS in the TPP and believes that it gives foreign investors unprecedented means to challenge climate and environmental laws and regulations;
- b. The inclusion of any so-called “safeguards” in the TPP are inadequate;
- c. The TPP will force the US Department of Energy to approve all exports of Liquefied Natural Gas, which is a product of fracking and contributes significantly to global warming and climate change; and
- d. The TPP will result in the continued loss of manufacturing jobs to other TPP countries with less effective environmental regulations thereby adding to climate change.

Adjournment

The public hearing was adjourned at approximately 7 PM.

Testimony of Cokie Giles, RN
President of the Maine State Nurses Association
Before the Maine Citizen Trade Policy Commission
Dec. 10, 2015

Good evening. Thank you for the opportunity to speak today on behalf of Maine nurses.

My name is Cokie Giles.

I am a Registered Nurse, the President of the Maine State Nurses Association, and a Vice-President of National Nurses United, the largest organization of registered nurses in the United States.

Nurses are patient advocates—and by extension advocates of our patients' families and our communities—and we are here to sound the alert on the Trans-Pacific Partnership.

Despite the promises and reassurances offered by the Obama administration, the final text of the Trans-Pacific Partnership, or TPP, is even worse than prior reports had predicted.

As an example, RNs know from the frontlines of fighting HIV/AIDs around the world that when brand-name drugs were the only option, AIDS was a death sentence in the world's poorest countries.

It was only when the introduction of generic drugs was allowed that dramatic price drops occurred -- from \$15,000 per person per year to just \$150 -- making treatment possible for millions.

The TPP would allow drug companies the legal authority to challenge and overturn national laws and regulations that permit governments to negotiate lower drug prices through bulk purchases, which cuts costs for everyone.

That would hurt the people in the countries signatory to the agreement that already do drug bulk purchasing and it would hurt the ability of the US government to finally do it here at home.

These gifts to the billionaire drug companies are a cruel and disgraceful threat to the lives of millions of people.

The pretext of giving the pharmaceutical corporations expanded monopoly control to 'repay' them for research and development costs is particularly hollow considering that a substantial percentage of those costs are paid for with public funds with drugs developed at public universities.

Nurses are appalled at the provisions regarding the so-called Investor State Dispute Settlement ISDS process that allow global corporations to sue to overturn laws and regulations, including public safety and environmental protections.

As has already occurred with prior trade deals, the ISDS process allows corporations to challenge domestic laws through extrajudicial tribunals, staffed by corporate attorneys that can demand taxpayers reimburse corporations for lost "expected" profits. In prior trade pacts, this provision has forced some countries to drop health, safety, or environmental rules rather than face bankruptcy from billion dollar ISDS rulings.

Maine nurses urge Congress to reject this fatally flawed agreement and strongly encourage the Maine legislature to speak out in the public interest against the TPP.

While there are many good reasons to ~~this~~ reject the TPP, Maine's registered nurses are particularly appalled about this agreement's threat to public health and safety. Monopoly pricing protections for giant pharmaceutical firms in the TPP could be a death sentence for countless patients in need of affordable medications around the world.

Pharmaceutical corporations would be given years more of monopoly pricing practices on their patents for high-priced, brand name drugs to block distribution of competitive, cheaper, lifesaving generic medications.

That is especially critical for people suffering from cancer, HIV/AIDS, hepatitis, and other illnesses in developing countries as well as in the United States. Patent exclusivity rules, that affect when cheaper, generic versions of high priced name brand drugs, can go on the market, can produce long delays in access to affordable medicines, under the TPP.

This agreement is an all out assault on not only health and safety but also on the democratic rights of the American people to pass public protections. It's another reminder that the pharmaceutical industry and other corporate lobbyists, who wrote many of these provisions, continue to dominate and corrupt our political system.

We can understand why these huge multinational corporations want such deals—and why they in fact are helping write them—bigger and bigger profits for them. But Congress should reject this outright because it is clearly not in the public interest.

In addition to the health concerns that I have already outlined, the TPP would undermine environmental and food safety standards. Maine nurses also share the concerns of workers across the country that the TPP will lead to more job loss, driving down wages, and weakened labor protections in the United States.

Nurses and working people will not be silent in working to stop and overturn this dangerous agreement.

Maine's members of Congress must now step up and join this fight to defeat the TPP, and we urge this commission and the legislature to strongly recommend they do so.

Thank you.

Good evening, and thank you to the members of the Maine Citizens' Trade Policy Commission, for holding this public hearing on the important matter of the proposed Trans-Pacific Partnership trade agreement.

My name is Alex Jackimovicz. I'm an electrical contractor and business owner from Boothbay. And, I'm a member of the Maine Fair Trade Campaign. I'm speaking today as a steering committee member of the Maine Small Business Coalition, representing over 4,000 small businesses in Maine, and as a concerned citizen and taxpayer. I'd like to thank you for the opportunity to offer our perspective on this issue as small business owners.

The TPP is an enormous and expansive trade deal, arguably the largest in United States history, and it deserves a full hearing, to examine its likely impacts, globally, nationally, and in regard to Maine. We all have the right and the responsibility to ensure that it is well understood, by all those who will be impacted by its

implementation. Due to limitations on time, I will only be able to address a few of our most alarming concerns this evening.

The Trans-Pacific Partnership, while being argued at the highest levels of government, as an engine to further develop the strength of the American economy, by easing trade barriers and encouraging U.S. exports, actually poses substantial threats to American jobs and wages. It also threatens national, state, and local economic and regulatory sovereignty over the environment, food safety, and public health. More than just a give away of national, and regional sovereignty rights, modern proposed trade deals like the Trans-Pacific Partnership represent significant take-overs and appropriations of economic decision-making, formerly the domain of national, state, and local governments. In essence, it transfers power to unaccountable, extra-governmental, corporate entities.

The TPP is designed to deliberately remove many layers of democracy, public input and scrutiny in decision-making. This is a

net loss for democracy at every level. The TPP replaces democracy with private, corporate power over many economic decisions with “significant implications for nearly every aspect of American life—including intellectual property rights, labor and environmental protections, consumer safety and product labeling, government procurement, and national resource management...”¹

This binding pact, which encompasses as much as 40% of the world’s economic activity, falls far short of establishing the high standards that the United States should require of a modern trade deal. Rather than having closed-door discussions, that narrowly focus on which industries may receive small advantages and disadvantages, policymakers should be asking deeper questions about whether the rules of the TPP as a whole will create American jobs, enhance environmental sustainability, improve public health, raise worker’s wages, and advance human rights and democracy.

After carefully considering all the terms outlined in the TPP, the members of the Maine Small Business Coalition, along with the Maine Fair Trade Campaign and thousands of other business and worker's groups across the country, believe that the answer to every one of those deeper questions is no.

Our opposition to the TPP is broad and varied. Unfortunately, I can only offer a short summary of the issues that we find most disturbing:

First, let's put things into context. As a result of globalization, there has been a consolidation of industries that has created great disruption of regional and local economies. Regional and local leaders used to provide localized economic development plans that met the needs of the local communities. Now, the needs of the local communities are overlooked in favor of large-scale corporate benefit. This leaves those in small American communities to pay the price at the local level. Jobs are

outsourced, and manufacturing of goods purchased locally has been moved. In addition, locally made goods and services can't compete with the prices of goods, where production is subsidized and where economies 'of scale' are making huge amounts of cheaply produced products for export. Economic globalization and free trade has had dire impacts on workers and local communities. In addition to literally re-locating jobs to locations where profit comes at the expense of worker wages, human rights, and the environment, free trade agreements in the industrialized nations have strengthened the ability of employers to accept lower wages and benefits. To quote a recent Citizen's Trade Campaign letter:

The TPP is the latest opportunity to “offshore more good-paying American jobs, lower [the] wages in the jobs that are left and increase income inequality by forcing U.S. employers into closer competition with companies exploiting labor in countries like Vietnam, with workers legally paid less

than 65 cents an hour, and Malaysia, where an estimated one third of workers in the country's export-oriented electronics industry are the victims of human trafficking.”

“And the TPP's labor standards are grossly inadequate to the task of protecting human rights abroad and jobs here at home. The countries involved in the TPP have labor and human rights records so egregious that the “May 10th” model — which was never sufficient to tackle the systemic labor abuses in Colombia — is simply incapable of ensuring that workers in Mexico, Vietnam, Malaysia and all TPP countries will be able to exercise the rights they are promised on paper. Even if the labor standards were much stronger, the TPP is also so poorly negotiated that it allows products assembled, mainly from parts manufactured in “third party” countries, with no TPP obligations whatsoever to enter the United States duty free.”

One of the more disturbing TPP requirements affecting small, local businesses includes procurement waivers that eliminate “Buy American” and “Buy Local” preferences that are currently found in many types of government purchasing contracts. Buy American policies require most federal government purchases of goods to go to American firms, which allows tax dollars to be recycled back into our economy. Under TPP requirements, Buy American would be effectively gutted as TPP rules require that foreign corporations receive “national treatment” in government procurement bids. This will allow foreign corporations to take over the local procurement markets and effectively export American jobs directly tied to federal procurement laws, by ‘off-shoring’ our tax dollars.

While previous trade agreements were aimed to open up new markets, a primary intention of the TPP is to reduce or eliminate state and federal regulations that are viewed as “trade irritants,” which is likely to eliminate many small markets nationally and

globally. To deal with “barriers to trade,” an expansive body of investor rights takes up most of the text of the TPP. The TPP sets up a system of independent, extra-governmental, secret tribunals, known as an Investor-State Dispute Settlement (ISDS) system. This system allows corporations the right to sue for losses from ‘expected future profits,’ such as when business profits could be hurt by environmental or regulatory standards which rise above an accepted standard for all signatory nations--except as they pertain to ‘investor rights’. These private three-person corporate tribunals will be given greater rights and more power to arbitrate disagreements than even the Supreme Court of the United States!²

What this means for states like Maine and Vermont is that state labelling laws (including GMO-labelling, and identifying products as being produced locally) may be vulnerable to litigation, and thus struck down. Numerous health warnings and nutrition information labels are at risk of being viewed as “barriers to trade”

and eliminated. There is also a threat of litigation for evolving environmental, health and safety standards that meet the needs of local people, or from local procurement laws (after a three year window eclipses), if they are viewed as impeding corporate profitability. This will have a definite chilling effect on regulatory standards, while also diminishing the regulatory sovereignty of local, state and national governments, since nations, states and towns can be sued by foreign corporations for any losses to 'expected future profits' that may result from any such regulation. This takes away our control at the local level to determine the quality of life that we wish to promote in our communities and on behalf of our citizens.

I'd like to end by pointing out that the aims of the TPP are contrary to the interests of small, local businesses in Maine. The TPP will not strengthen our local economies. It will not result in workers seeing higher wages, or allow environmental and safety standards to be strengthened. It will not allow greater access to

locally produced goods and services. In fact, the opposite is true. We can and should collectively look at the big picture and realize that in adopting the provisions of the TPP, we are forcing our Maine businesses to compete with thousands of foreign corporations that do not have our labor laws, health and safety regulations, or environmental standards. We will be facing a 'race to the bottom' to compete with those countries that maintain archaic standards that violate the rights of the people and the environment on nearly every level. This isn't good for our communities, or our state or national governments. And, it certainly isn't good for our livelihoods. The TPP favors a handful of large multi-national corporate entities, and it destroys the checks and balances that allow smaller businesses to succeed. In order to protect American sovereignty, the integrity of the American workforce, and ensure an equitable opportunity for all businesses to succeed, we need to strongly reject the Trans-Pacific Partnership. Thank you.

Alex Jackimovicz, Boothbay

Notes:

1. Korten, David. "Do Corporations Really Need More Rights?

Why Fast Track for the TPP Is a Bad Idea." YES! Magazine. 9

Mar. 2015.

Web. 5 Apr. 2015.

2. "Comprised of three private attorneys, the extrajudicial tribunals are authorized to order unlimited sums of taxpayer compensation for health, environmental, financial and other public interest policies seen as frustrating the corporations' expectations. The amount is based on the "expected future profits" the tribunal surmises that the corporation would have earned in the absence of the public policy it is attacking. There is no outside appeal."

Investor-State Attacks: Empowering Foreign Corporations to

Bypass our Courts, Challenge Basic Protections'-- Public Citizen

Web. 5 Apr. 2015. <http://www.citizen.org/investorcases> There are currently about 500 cases of corporations versus national or local governments, and the ad hoc 'arbitration tribunals' overwhelmingly favor the corporate over local interests. The TPP would greatly expand the ability of corporations to sue, likely resulting in an explosion of litigation and have a chilling of regulatory standards as even the threat of suing a poorer government or state within a government would have a powerful effect on future legislation. A report entitled, "Profiting from Injustice: How law firms, arbitrators and financiers are fueling an investment arbitration boom" shows that the *"arbitration industry is far from a passive beneficiary of international investment law. They are rather highly active players, many with strong personal and commercial ties to multinational companies and prominent roles in academia who vigorously defend the international investment regime. They not only seek every opportunity to sue governments, but also have campaigned forcefully and successfully against reforms to the international investment*

regime....Rather than acting as fair and neutral intermediaries, it has become clear that the arbitration industry has a vested interest in perpetuating an investment regime that prioritises the rights of investors at the expense of democratically elected national governments and sovereign states.” Executive Summary of “Profiting from Injustice: How law firms, arbitrators and financiers are fueling an investment arbitration boom” published by Corporate Europe Observatory and the Transnational Institute.

Maine Citizen Trade Policy Commission
Dec. 10, 2015
Testimony

Good evening, and thank you for having this hearing tonight. My name is Bonnie Preston, and I live in Blue Hill. Tonight I want to urge you to recommend to our Congressional delegation to vote No on the TPP--the Trans Pacific Partnership.

I am on the National Council of the Alliance for Democracy. We work to keep alive the dream that Abraham Lincoln expressed as government of the people, by the people, and for the people. Currently we have government of the corporations, by the corporations and for the corporations. As David Talbot says in his new book, *The Devil's Chessboard*, "Democracy [...is] an impediment to the smooth functioning of the corporate state."

One of the main reasons that we have this corporate state is that the "free" trade regime, under the WTO, IMF, World Bank and various "free" trade agreements, have given multi-national corporations power they could not get from transparent, democratic processes. I will show this with a few pieces of the provisions of the Investor-State Dispute Settlement chapter of the TPP.

Under the WTO, multi-national corporations must get their national government to challenge laws that threaten their "expected future profits." Under NAFTA and the TPP, these corporations can challenge a government directly, putting a foreign corporation on an equal footing with our nation. The dispute does not go to a court of law, but to a 3-person tribunal made up of judges who are corporate lawyers. They are tasked with deciding whether the trade agreement has been violated, not with deciding on the merits of the case. The lawyers making up the tribunals rotate between their roles as judge and their roles, in other cases, as advocates for the corporations. There is no requirement that they be impartial or independent; they can even be connected financially to the corporation that has brought a case forward. This is the system that just days ago imposed over \$1 billion of trade sanctions on the US because of our country of origin labeling requirement for meat. Americans want to know where their food comes from; we now will not be able to because Canada and Mexico do not want us to know. When our Congress is allowing corporations--nearly 600 participated in writing the TPP-- to write the laws in ways that will serve corporate interests rather than the interests of the people, we have given away our claims to be a sovereign, democratic nation in which we are all equal under the law.

For the first time in any U. S. trade agreement, financial regulations may be challenged using the same ISDS processes as other types of corporations. What progress that has been made since 2008 in reining in the banks and other financial institutions will be thrown out the window, rather inevitably leading, sooner or later, to another crisis of massive proportions.

Claims against the United States are already impacting us on such issues of particular importance to Maine as forestry rules, water services, and mining regulations, and there are pending claims against the US that total over \$25 billion. If the TPP passes, our exposure to claims will be doubled because of the expanded number of foreign corporations and their subsidiaries that are in the U.S.

There are many more problems just in that one chapter of the TPP. The Transatlantic Trade and Investment Partnership and the new Trade in Services Agreement are already being negotiated, both in the interests of the multi-national corporations. It doesn't look like We the People stand a chance to decide how our country will be run. Fortunately, opposition to a new world order of total control by big business is building. The Alliance for Democracy has a campaign to get municipalities and counties in the U.S. to declare themselves, by ordinance or by resolution, a TPP-Free Zone. So far, 19 entities have done this or are in the process of doing it. They range in size from Fort Bragg CA to New York City, and in geographic scope from Bellingham WA to Hialeah Gardens FL. Cities in Europe are starting to plan TTIP-Free Zones.

Defeating the TPP is the number one priority if we are to be able to even pretend that the U.S. is a democracy. All of our Congressional delegates voted No on Fast Track; we need you to recommend to them that they stay strong and vote No on the agreement. They will be under tremendous pressure to do otherwise, but with your support and the support of the Maine people, which they have on this issue, we can expect them to help defeat the biggest corporate take-over yet.

Thank you.



TPP-FREE ZONE: MODEL LEGISLATION

Whereas the TransPacific Partnership (TPP) is being negotiated between the US and 12 or more Pacific Rim countries by the US Trade Representative in secret without any consultation with our local government either directly or through the National League of Cities or the US Conference of Mayors or the National Association of Counties; and

Whereas, the text is being drafted with transnational corporations which will benefit greatly from its rules;

Whereas, the TPP text has not been made available to the public or even to our local officials;

Whereas the TPP would have direct, potentially undesirable consequences for our municipality, its people, its local businesses, and its ecological systems on which all life depends;

Whereas the Investment Chapter of the TPP, which was leaked in 2012, would allow foreign corporations to sue the US and its states over any law or regulation violating TPP rules which could take away their "right" to future profits and therefore potentially rob our municipality of needed protections for our people, local businesses and environment;

Whereas TPP financial rules would prevent regulation of risky financial products such as "interest rate swaps" thereby threatening the financial stability of our government and more broadly the stability of our overall economy;

Whereas US, state and local food safety rules could be challenged by foreign corporations as "illegal trade barriers" if higher than standards in other TPP countries thus threatening the health of our residents;

Whereas the TPP would provide large pharmaceutical firms with new rights and powers to increase medicine prices and limit access to cheaper generic drugs which would impact our residents;

Whereas the US would agree to waive "Buy American" or "Buy Local" requirements aimed at enhancing our local economy and creating local jobs;

Whereas, we would have no right or ability to represent our interests before the foreign tribunals which would have the authority to hear cases brought by corporations under the TPP; and

Whereas such rulings might require taxpayer compensation which could impact the financial health of our municipality and its residents;

Therefore the City/Town Council of _____ hereby declares as a matter of law that _____ is a TPP-Free Zone where we will not recognize the secretly negotiated rules laid down without our consent nor any decisions by any secret tribunals which would in any way diminish our ability to act in the best interest of our residents and our local businesses and to protect our ecological systems on which all life is based.

Further, we will convey our ordinance to our Congressional delegation, to President Obama and to US Trade Representative Michael Froman, with our demand that all text be made public and that all further negotiations cease.

And finally, if despite the harm to our community and our nation, Congress approves the TPP, we will take all necessary measures to ensure that this ordinance is enforced.

Good evening, my name is Betsy Garrold, I am the President of the board of directors for a small non-profit, Food for Maine's Future, which advocates for small farmers, farm laborers and their patrons against corporate food monopolies. I come here today to tell you that the Trans-Pacific Partnership trade deal will be very bad for Maine's small farms.

Back in the spring I wrote an op-ed for the Bangor Daily News in response to ^a ~~another~~ piece that had been written by someone from the USDA. This person's article represented very well the sentiments of the big agribusiness concerns and it needed some push back.

This government official stated in her op-ed that rural economies needed "trade promotion authority" in order to "compete on a level playing field" when it comes to international trade and the export of U.S.-grown food and manufactured goods. As the North American Free Trade Agreement, the Central American Free Trade Agreement and the World Trade Organization have proven, this is pretty far from the facts on the ground — unless your idea of a level playing field is one that is dirty, polluted and economically ravaged.

What does the TPP mean for small farmers? We know about the devastation of the manufacturing base in the American Midwest after the above mentioned trade deals took effect. Companies scurried to move their plants to places with lower standards of living, loose or non-existent environmental protections and no history of organized labor protecting poorly paid workers. If this is what we want for our small family farms, then by all means let's sign the Trans Pacific Partnership and the Transatlantic Trade and Investment Partnership, both of which, like NAFTA and CAFTA, gut our own sovereign courts' ability to defend our soil, water, air and workers from abusive lawsuits brought by multinational corporations. These lawsuits are not decided in a U.S. court of law but by an international tribunal composed of three judges looking only at the trade rules for their decision. We saw a prime example of this just this week with the WTO's decision in the meat country of origin labeling case.

In a May 2013 article on food imports to the U.S., Public Citizen's trade watchdog stated, "Smaller-scale U.S. family farms have been hardest hit by the import influx caused by deals like NAFTA and the WTO. About 170,000 small U.S. family farms have gone under since NAFTA and the WTO took effect, a 21 percent decrease in the total number. After the WTO required elimination of various U.S. price support and supply management policies, small farmers were also hard-pressed to survive the increasing year-to-year volatility in prices paid for commodities, making investment and planning more difficult than before the WTO."

The National Family Farm Coalition is watching these trade deals closely and has reported on the Obama administration's aggressive push for Fast Track trade authority. I serve on the executive board of this organization and we will be convening from all over the country in DC this coming February to lobby congress and, we hope, stop passage of this disastrous trade deal.

Small farmers across the country are organizing to tell Congress that what may be good for big agribusiness firms is definitely not good for struggling, small family farms. Here in Maine we are fortunate to have a young, vibrant group of farmers who are working to grow food, rebuild the local food infrastructure and feed the people of Maine. Their livelihood does not depend on exports, but they are subject to the same vagaries that affect small-scale farmers everywhere. If the market becomes flooded with cheap imported food of questionable quality, they may well find it impossible to compete and will leave the land, just as countless others have been forced to do from Iowa to Chiapas.

Again from Public Citizen, "U.S. corn exports to Mexico in the three years after NAFTA soared 377 percent above the level in the three years before the deal. In 2013, the United States exported 26 times as much corn to Mexico as before NAFTA. But when the flood of U.S. corn in Mexico caused corn prices to plummet 66 percent for Mexican farmers, 2.5 million farmers and agricultural workers in Mexico lost their livelihoods, many of whom resorted to migration. In NAFTA's first seven years, the annual number of people emigrating from Mexico to the United States more than doubled."

Talk about unintended consequences. Do we really want to turn our young farmers into economic refugees?

This would happen to Maine growers as cheap and questionably "organic" food floods the market from China. We must protect our family farms and help them grow their businesses to keep the rural economy growing and supporting all the people who live and work in towns and villages across the state and the nation.

Betsy Garrold is the president of the board of directors for Food for Maine's Future. She monitors the Maine Citizen Trade Policy Commission for that organization. She also serves on the executive committee for the National Family Farm Coalition and lobbies in Augusta for the Farm-to-Consumer Legal Defense Fund. She can be reached at hgarrold@yahoo.com or 568-3302.

→ and elsewhere.

Testimony for Trade Policy Commission Hearing December 10, 2015

My name is Christine Greenleaf and I would like to share my personal experiences with you on how trade policies have affected my life. I have held four jobs in my lifetime, but the first three I lost due to foreign imports - a shoe shop that closed in Gardiner in 1979 that employed 105, Health-Tex that closed in Gardiner and Brunswick in 1986 that employed little over 400 people mostly women, and Carleton Woolen Mills in Gardiner which closed in 1998 employing 121. In all three facilities I did different types of work, made good money for that period, but all in the manufacturing sector which has been hit hard by foreign imports. I would still be at any one of them making an honest living had they not closed, because I loved the feeling of producing a product that was sold all over the country. I took great pride in that, we all did, and each one of us enjoyed sharing our life with our "work family" in all three facilities. One of the hardest emotions on all of us who have lost a job, is the grief of losing that contact with "work family".

In my fourth job I am employed as a member of a team who delivers information on Unemployment Insurance, Career Center Services, Community Resources, and Health Insurance Options, then if the company becomes TRADE certified, also presenting all aspects of that program, to our states laid off workers due to downsizings and closures. A huge number of these dislocations are eligible for the TAA-TRA program because the layoff was due to foreign imports. I have some numbers and experiences I thought this group would be interested in. I have been doing this for 17 years now, working with thousands of laid off workers who have lost their jobs and plan to share numbers from the last 2 years but would first like to share a couple of facts that I can never forget.

Sherman Lumber Company: Trade Certified closure due to imports

I remember the closure of Sherman Lumber company in 2002 with 136 employees affected from Sherman, Stacyville, Patten and the surrounding small little towns. A few of these folks were not able to read and write and most everyone had little or no computer experience or even access to a computer. The reason this one sticks out, and always will, is that I was told by the union president that a very significant number of the people laid off used their severance pay and cashed in their 401K's to pay off their houses so they wouldn't lose them. Money to enjoy retirement was no longer an option for them. I remember feeling so sad that they had been saving for retirement all their work life and suddenly it was more important not to lose their home.

Hathaway Shirt: Trade Certified closure due to imports

Hathaway Shirt company closed at the end of 2002 leaving 235 employees (90% women) out of work. A fact about this closure that I will never forget: 4 women died of heart attacks within 6 months of this closure. Yes these things matter to the overall health of the employees affected. All of this matters to these workers and it matters to me.

I have many more but for the sake of time I will move on to here and now so everyone has enough time to convey their message.

Every year we all as a team say "maybe this year there won't be as many layoffs" and then we are hit with the next big closing. I don't even want to add up the number we have seen in the last 17 years, I would be able to, but I don't want to - it's heartbreaking to me, so I only total the count for the year.

The last 2 years began November of 2013 - Lincoln Paper & Tissue became Lincoln Pulp & Tissue when they took their paper making machines off line and laid off 186 workers.

This was very closely followed by the layoff of 256 in February 2014 and the eventual final closure of Great Northern Paper in East Millinocket.

October 2014 brought the announcement of the closure of Verso Paper in Bucksport with 578 workers scrambling to figure out, can I retire now or do I need to find another job, after 40 years in the mill. 75% of this workforce were 50 and older, 518 male, 58 female.

End of September 2015 started the announcements of three more major dislocations.

Verso/ Androscoggin in Jay announced the layoff of 300 workers at the end of this year, Expera Speciality Solutions in Old Town announced it was closing laying off 195 workers (they are being paid until December 28th) and Lincoln Pulp & Tissue has closed displacing another 180 workers.

That is 1695 workers, 1395 of which are within a 80 mile radius of three of the northern mills. All of these sites have now been approved for the TRADE program, meaning we lost these jobs due to foreign imports. The trickledown affect has already begun with layoffs happening in the trucking industry, the woods cutting industry, the Mom and Pop stores, restaurants, municipal services, ect.

These workers have lost good paying jobs and a way of life. Most are lucky to replace the wages at 58 – 64%. Some have been able to replace their wage but probably had to move, or are driving more than 100 miles one way to work.

This is why, to me, it's unthinkable that our elected leaders in Congress continue to stack the deck for multinational corporations at the expense of Maine workers as they pass these unfair free trade agreements. We need trade, but it needs to be fair. This NAFTA trade model encourages companies to outsource jobs so they don't have to follow labor or environmental laws.

We need a new trade model that levels the playing field for American workers. The proposed Trans Pacific Partnership, or TPP, is a big expansion of this same failed model that has destroyed our economy. If the TPP passes, this problem will continue to get worse and will crush any hope for future job growth. I hope our elected official's, and you as members of this Commission, will do everything you can do turn this around and give Maine workers a chance again.

In closing I would just like to say I love what I do for work, but I hate that it is necessary. Someday, I'd like to move on to a 5th job in my life, not because I don't love my work, but because I hope someday there won't be any need for me and the team and there could finally be an end to these layoffs that hurt Maine families.

Thank you.

Maine Citizens' Trade Policy Commission Public Hearings on the TPP

Testimony of Sherri Mitchell, Penobscot Nation, Indigenous Rights Attorney

Hello my name is Sherri Mitchell, I'm a member of the Penobscot Nation, an Indigenous Rights Attorney, and the Executive Director of an Organization called the Land Peace Foundation.

I'm here tonight to talk with you about an issue that often gets overlooked when discussing the TPP, Indigenous Rights.

In the same vein as deals like the North American Free Trade Agreement and the World Trade Organization, the TPP is being drafted with no input from the Indigenous Peoples who live in countries that will be affected by the deal. The TPP could have broad implications for Indigenous Peoples living in the United States, Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam. The TPP entirely disregards the concept of Free, Prior and Informed Consent, a tenet of the UN Declaration on the Rights of Indigenous Peoples which states that policies affecting Indigenous Peoples should not move forward without the full understanding and approval of those it might affect.

The TPP threatens to dramatically affect Indigenous Peoples by ramping up trade policies that have allowed for trans-national corporations to engage in oil, gas, and mineral extraction without the Free, Prior and Informed Consent of their communities. TPP policies would encourage the natural gas industry, which has already severely impacted Native and First Nations communities in North America, by facilitating "increased exports of liquefied natural gas by requiring the US Department of Energy to automatically approve all natural gas exports to TPP countries. Increased exports would mean an increase in hydraulic fracturing, or fracking, the dirty and violent process that dislodges gas deposits from shale rock formations." (Sierra Club). Natural gas companies have already begun encroaching on otherwise off-limits Native lands. In fact, we've seen a precursor to this in the recent Defense Bill that illegally gave Apache lands to a foreign mining company. Going back to the issue of fracking on tribal lands, Native women are particularly victimized, as fracking operations have been correlated with increased sex trafficking, rape, missing women, and influxes of drugs and alcohol into communities. This results from the man camps that crop up around fracking operations. In addition, there is also environmental contamination of local water and air quality that impacts the health and well being of community members.

The TPP would also allow companies to evade financial responsibility for environmental contamination, even when it occurs on Indigenous Peoples' lands. Under the proposed agreement, investors could demand taxpayer compensation for imposed fines, effectively burdening the public

with the cost of environmental cleanup. This is true for both Indigenous lands and non-Indigenous land holds as well. According to Professor Jane Kelsey of New Zealand, the TPP draft chapter on environmental regulations fails to define its key terms, leaving vagueness that will allow for inconsistent interpretation and implementation of regulations. Nowhere in the chapter does it detail a mechanism for setting penalties for environmental offenders, which is problematic for all people, and the planet, not just for Indigenous peoples. It also excludes resource management practices and ignores standards set by the UN Declaration on the Rights of Indigenous Peoples.

The TPP's draft article on Trade and Biodiversity recognizes the rights of states over natural resources and genetic material. This would allow for multinational corporations like Monsanto and industries like Big Pharma to benefit enormously by allowing them exclusive rights over seeds and traditional plant-based medicines found in biodiverse areas managed by Indigenous communities. The draft flagrantly ignores Article 31 of the Declaration, which states that "Indigenous Peoples have the right to maintain, control, protect and develop... the manifestations of their sciences, technologies and cultures including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora."

The patenting of plants that have been used traditionally by Indigenous Peoples without their consent or beneficial sharing has been called bio-piracy, and would conceivably snowball upon the approval of the TPP. Indigenous activist Te Kaituhi, a Māori of Aotearoa New Zealand, asks us to "imagine a world where Indigenous knowledge, language, and customs are outright owned by multinational corporations and copy-right enforcement is heavily backed by government police forces." Kaituhi argues that "the TPP won't only affect Indigenous freehold land, nor will it just push our people further into poverty. The TPP will give multinationals the right to exploit the ecosystem and further aid them in the acquiring of enforced trademarking and copyrighting of Indigenous intellectual property and cultural or traditional knowledge;" in other words, a new form of colonization.

Another troubling aspect of the TPP is found in the draft chapter on investment deals with investor-state dispute settlement, which gives corporations the right to sue a government for unlimited cash compensation in private and non-transparent tribunals over nearly any law or policy that a corporation alleges will reduce its profits. Today, the majority of investment arbitrations under similar agreements involve natural resources, especially mining, and have resulted in billions of dollars of damages against governments for measures designed to protect the environment from harm caused by foreign corporations. But, there's no cause to believe that this won't expand to other areas under the TPP. In fact, the terms of the TPP are so sweeping, as to include nearly all areas of our lives,

that there is great cause to believe that these law suits will broaden and expand, crippling local communities under their weight and pressure.

Under the proposed TPP, the investor-state clause can be used to pressure governments into allowing the continued operation of severely polluting industries out of fear of being sued for lost profits. Governments around the world are already reluctant to regulate industries like mining and oil, which can bring large revenues. With the potential for States to be held financially responsible for reigning in harmful business practices, corporate profits will gain an even stronger precedence over disenfranchised Indigenous Peoples living with destructive industries in their backyards.

If history is any indicator, there is nothing that would prevent these same corporate entities from suing states or nations for laws that protect Indigenous peoples and Indigenous lands. The TPP would take us back hundred of years, to a time where feudal overlords ran roughshod over the people, without any consideration for human rights or environmental responsibility. The profit driven foundation of the TPP, and the Investor State Dispute systems attached to it, are archaic as they unravel all the rights and protections that we have worked so hard to establish as an evolving society. As Indigenous peoples, we have been dealing with the harmful impacts of industrial negligence for decades. These same practices are now leaking out into the commons, where communities around the country, and the world, are facing illegal land takings and the destruction of local habitat and ecosystems for the benefit of private industry. If you allow the TPP to move forward, these same practices will soon be in your backyard.

Thank you.

Source materials: Sierra Club, UN Declaration on the Rights of Indigenous Peoples, Cultural Survival.

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Testimony to Maine Trade Policy Commission 12/10/2015

Thanks so much for coming to Bangor to hear citizens concerns; I know it's quite a drive for many of you.

I volunteer with PICA which is Power in Community Alliances in Bangor, which for many years has focused on issues of social and economic justice at home and across borders. Ever since NAFTA and later CAFTA, it's been clear that such agreements are not Win-Win propositions for all concerned, as was initially advertised. Rather, these agreements create winners and losers. So it behooves us to understand just who gains and who suffers. You know this because the Maine Trade Policy Commission was in fact created in order to evaluate how Maine's businesses, consumers and ordinary citizens may be positively or negatively affected by trade pacts.

Free trade agreements are less about tariffs than about provisions labeled "non-tariff barriers to trade." These are all about who can sell what to whom, and who can or can't stop them. The "what" mostly isn't about shirts, bananas or toaster ovens, but items we never imagined could or should be for sale. The "barriers" in question are current laws that assume that goods and services essential to all of us shouldn't be privately owned, unsafe, or priced out of range of those who need them.

I'm here to talk about the Trans Pacific Partnership. NAFTA and CAFTA's ~~whose~~ primary adverse effect on Maine was widespread industrial job loss, jobs which likely won't return. But the TPP threatens all Mainers in ways beyond lost jobs, threats that under previous trade pacts were technically possible, but mostly hypothetical.

If the TPP passes, many protections we take for granted will be at risk because the TPP will permit foreign investors to sue governments for the right to provide products we may regard as dangerous, despite whatever public health or environmental laws are on our books. Or to privately own and operate, and charge what they please, for services we believe should be public. The enabling mechanism is through what's termed investor-state dispute settlement provisions.

A quick cross-border detour: If you ask Bangor's Salvadoran sister city residents what free trade means, they will answer simply: "The big fish eat the little fish." And they know that their countries south of the border are the little fish. So in the past it's been the Bolivian town of Cochabamba whose water rights the Bechtel Corporation bought, and then charged townspeople fees for collecting rainwater from their own roofs. It's been peasant farmers sued by Monsanto for saving and planting last year's seeds. It's been the Salvadoran government spending millions of dollars to defend itself in an international trade court against claims for damages in the hundreds of millions by both U.S. and Canadian mining corporations: El Salvador's infraction: Denying mining permits to these companies on environmental grounds, even as previously mined communities feature rivers that have turned orange and ground waters toxic.

Now back to the US of A: If the TPP passes, we will get a non-hypothetical taste of what our little fish trading partners have had to contend with for years. That's because in the past it's been U.S. corporations that have largely been doing the suing in the unelected, unaccountable, corporation-friendly international tribunals that arbit these disputes. In contrast, the TPP will empower close to 19,000 corporations located in non-little fish countries – Australia, Canada, Japan, Malaysia among others -- to sue the U.S. and by extension our local and state governments, as well, in these same business-friendly courts.

I just mentioned that a mining company in Canada, which is not a member of the Central America Free Trade Agreement nevertheless sued El Salvador CAFTA. How? The Pacific Rim Corporation headquartered in British Columbia simply set up a warehouse in Reno, Nevada expressly for the purpose of having a U.S. subsidiary through which to sue a Central American country. In like manner, non -TPP countries including, for a pertinent example, China, can do the same as long as they have a subsidiary in other TPP countries like for a pertinent example, Vietnam.

So if the TPP passes, get ready for a an aggressive surge of international trade tribunal assaults on many of the goods and services you never even thought to worry about, brought by foreign corporations headquartered all around the globe.

Those goods include adequately inspected food, unadulterated medicine, non-toxic children's toys, safe bridges, non-carcinogenic consumer products, non-contaminated drinking water, and whatever else you may have assumed consumers shouldn't have to stay up at night worrying about.

Those services include public education, fire departments, water supplies, sanitation services, roads, libraries, parks, tax collection and whatever else you may have imagined should belong to a community and not to private companies.

The Citizens Trade Campaign notes that 50 cases were brought by corporations against governments in the first 30 years of the existence of ICSID (the International Commission on Settlement of International Disputes). But in the last four years, ICSID has heard ~~that~~ 50 cases each year with pending claims totaling 25 billion dollars. These are not trivial sums. The TPP's passage will insure that this spate of cases will become an avalanche.

The cases will be decided by tribunalists who are a rotating panel of private sector attorneys, not bound by any conflict-of-interest rules, who often prosecute such cases when they are not hearing them, and whose verdicts permit no appeal. Often even the threat of loss in these trade tribunals are sufficient to have governments capitulate to corporate demands.

The devil in the details of this problem is even more alarming than I've outlined, but is too lengthy for oral testimony presentation. So I've included a four page summary just of concerns associated with the investor-state threat, not the entire TPP, provided by the Citizens Trade Campaign.

To close I'd just remind us all what Jim Hightower said about trade agreements negotiated in private between corporate lobbyists and government trade reps, excluding advocates for labor rights, affordable medicines, public health and safety, or environmental hazards. He said, "If you're not at the table, you're probably on the menu."

Thanks very much for listening.

INVESTMENT CHAPTER: Expanded List of Policies Exposed to Attack by 9,200 Foreign Firms Newly Empowered to Use ISDS Against the U.S.

- **Contrary to administration claims that the TPP's Investment Chapter would limit the uses and abuses of the controversial ISDS regime, much of the text replicates, often word-for-word, the most provocative terms found in past U.S. ISDS-enforced pacts.** Worse, the TPP would expand the controversial ISDS regime that elevates individual foreign investors to equal status with the 12 sovereign governments signing the deal. Many fixes and reforms included in a 2012 leaked draft version of the Investment Chapter have been eliminated. The final TPP text does include some new verbiage seemingly designed to counter the growing political blowback against ISDS. While the tone is different in some provisions, in practice the TPP's binding legal language does not constrain ISDS tribunals from making ever-expanding interpretations of the rights countries owe foreign investors and thus the compensation they can be ordered to pay foreign firms.
- **Contrary to Fast Track negotiating objectives, the TPP would grant foreign firm greater rights that domestic firms enjoy under U.S. law and in U.S. courts.** One class of interests – foreign firms – could *privately enforce* this public treaty by **skirting domestic laws and courts** to challenge U.S. federal, state and local decisions and policies on grounds not available in U.S. law, and do so before extrajudicial tribunals authorized to order payment of unlimited sums of taxpayer dollars. Under the TPP, compensation orders could include the “expected future profits” a tribunal surmises that an investor would have earned in the absence of the public policy it is attacking.
- **TPP would expand U.S. ISDS liability by widening the scope of domestic policies and government actions that could be challenged. For the first time in any U.S. free trade agreement:**
 - **The provision used in most successful investor compensation demands would be extended to challenges of financial regulatory policies.** The TPP would extend the “minimum standard of treatment” obligation to the TPP Financial Services Chapter's terms, allowing financial firms to challenge policies as violating investors' “expectations” of how they should be treated. The “safeguard” that the USTR claims would protect such policies repeats an ambiguously written WTO provision that has not been accorded significant deference in the past.
 - **Pharmaceutical firms could use the TPP to demand cash compensation for claimed violations of WTO rules on creation, limitation or revocation of intellectual property rights.** Currently, WTO rules are not privately enforceable by investors.
- **With Japanese, Australian and other firms newly empowered to launch ISDS attacks against the United States, the TPP would *double* U.S. ISDS exposure. More than 1,000 additional corporations in TPP nations, which own more than 9,200 subsidiaries here, could newly launch ISDS cases against the United States.** Currently, under ALL existing U.S. investor-state-enforced pacts, about 9,500 U.S. subsidiaries for foreign firms have such powers. Almost all of the 50 past U.S. ISDS-enforced pacts are with developing nations with few investors here. That is why the United States has managed largely to dodge ISDS attacks to date. But, the TPP would subject U.S. policies and taxpayers to an unprecedented increase in ISDS liability at a time when the types of policies being attacked and the number of ISDS case are surging. Just 50 known cases were

launched in the regime's first three decades combined while about 50 claims were launched in *each* of the last four years.

- **The TPP also would newly empower more than 5,000 U.S. corporations to launch ISDS cases against other signatory governments on behalf of their more than 19,000 subsidiaries in those countries.** (These are firms not already directly covered by an ISDS-enforced pact between the United States and other TPP governments.)
- **U.S. negotiators succeeded in pressuring other TPP nations to empower foreign investors to bring certain sensitive contract disputes with TPP signatory governments to ISDS tribunals, instead of resolving such matters in domestic courts.** This includes disputes with the federal government about natural resource concessions, government procurement projects for construction of infrastructure projects and contracts relating to the operation of utilities. **TPP ISDS tribunals would not meet standards of transparency, consistency or due process common to TPP countries' domestic legal systems or provide fair, independent or balanced venues for resolving disputes** (Section B). ***Contrary to claims that the process was "reformed":***
 - **TPP tribunals would still be staffed by three private sector attorneys allowed to rotate between acting as "judges" and as advocates for investors** launching cases. Such dual roles would be deemed unethical in most legal systems.
 - **The TPP text has no requirement for tribunalists to be independent or impartial.** Rather, the text relies on weak impartiality rules set by the arbitration venues themselves.
 - **The text does not include new conflict of interest rules for tribunalists.** TPP negotiators punted a so-called "Code of Conduct" for ISDS tribunalists to a side agreement to be created and put in place before the pact goes into effect (Article 9.21.6). Whether such rules will be effective with respect to tribunalists' direct conflicts of interest is an open question. It seems improbable that Congress and the public will get to evaluate the rules and how enforceable they will be before votes to approve the pact. However, even if the Code of Conduct were to stop the outrageous practice of lawyers with direct financial interests in the companies and issues involved being allowed to serve as "judges," the TPP text does not address the bias inherent in the ISDS system and underlying the business model of lawyers engaged in this field: ISDS tribunalists have a structural incentive to concoct fanciful interpretations of foreign investors' rights and order compensation to increase the number of investors interested in launching new cases and enhance the likelihood of being selected for future tribunals.
 - **The provisions on expedited dismissal of "frivolous" cases replicate the language included in U.S. pacts since the Bush II administration with respect to timelines for such claims and tribunals' authority to order claimants to pay costs for dismissed cases.** The only new term makes explicit a factor (that a claim is "manifestly without legal merit") that is inherent in the standard for expedited dismissal that has been included in past U.S. pacts and in the TPP: that "a claim submitted is not a claim for which an award in favour of the claimant may be made..."
 - **There is no system of outside appeal on the merits of a decision. Nor is an appellate body established within TPP.** The text retains tribunalists' full discretion to determine how much a government must pay an investor. This can include claims for the "expected future profits" the tribunal surmises would have earned in the absence of the policy under attack. ISDS tribunals have ordered billions in compensation under existing U.S. pacts alone for toxic bans, land-use policies, financial stability measures, forestry rules, water services, economic development policies, mining restrictions and more. Pending claims under U.S. pacts total more than \$25 billion.

- **There is no “exhaustion” requirement – that foreign firms seek redress in domestic legal and administrative venues before resorting to ISDS.** Instead, foreign investors can forum shop.
- **Even when governments win, under TPP rules they can be ordered to pay for the tribunal’s costs and legal fees, which average \$8 million per case.**
- **TPP does not include the promised “reforms” of the substantive foreign investor rights underlying egregious past rulings.**
 - **The TPP retains the “Minimum Standard of Treatment” and “Indirect Expropriation” language from past U.S. pacts that grants foreign investors “rights” to not have expectations frustrated by a change in government policy.** Under the TPP, it does not matter if the changed policy came in response to a new financial crisis or health discovery or environmental catastrophe, *or if it applies to domestic and foreign firms alike.*
 - **There are no new safeguards that limit ISDS tribunals’ discretion to issue ever-expanding interpretations of governments’ obligations to investors and order compensation on that basis.** The text reveals virtually identical “limiting” annexes and terms that were included in U.S. pacts since the 2005 Central America Free Trade Agreement (CAFTA) that have failed to rein in ISDS tribunals. CAFTA tribunals have simply ignored the “safeguard” annexes that are replicated in the TPP and as with past pacts, in the TPP such tribunal conduct is not subject to appeal.
 - **The TPP includes an overreaching definition of “investment” that would extend the coverage of the TPP’s expansive substantive investor rights far beyond “real property,” permitting ISDS attacks over government actions and policies related to financial instruments, intellectual property, regulatory permits and more.** Proposals to narrow the definition of “investment,” and thus the scope of policies subject to challenge, that were included in an earlier version of the text that leaked have been eliminated.
 - **The lack of robust “denial of benefits” provisions would allow firms from non-TPP countries and firms with no real investments to exploit the extraordinary privileges the TPP would establish for foreign investors.** This includes firms from non-TPP countries that have incorporated in a TPP signatory country. Thus, for instance, one of the many Chinese state-owned corporations in Vietnam and Malaysia (that also have U.S. investments), could “sue” the U.S. government under this text. Language limiting investors to those that have “substantial business activities” is not defined, and tribunals have been willing to consider very minimal investments in host states as conferring nationality for the sake of gaining treaty protections.
- **Proposals included in leaked earlier drafts to extend even the TPP’s weak general exceptions for environmental and health policies to the Investment Chapter were rejected.** Instead of real safeguards to stop attacks on nations’ environmental, health and other regulatory policies, the TPP text replicates the same self-cancelling provision included in past U.S. pacts, although with more policy types listed. The provision, which limits the rule of construction to only environmental and other policies that *already are consistent* with the agreement, makes the measure meaningless. A safeguard is only needed to protect policies that would otherwise violate the agreement’s rules. The relevant provision (Article 9.15) reads “Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining or enforcing any measure **otherwise consistent** [emphasis added] with this Chapter that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental, health or other regulatory objectives.”

- **The only meaningful new ISDS safeguard included in the final TPP text is a carve-out for tobacco-related public health measures that allows countries to elect to remove such policies from being subject to ISDS challenges, either in advance or once a policy is attacked.** Leading health groups, pro-free-trade former New York City mayor Michael Bloomberg and TPP nations like Malaysia pushed for years for more expansive terms. These proposals would have prevented all TPP challenges to tobacco-related health policies, including by other governments and would have excluded tariff cuts on unprocessed tobacco and tobacco products that would result in the lowering of the price of cigarettes. The final tobacco provision makes clear that government-to-government challenges to tobacco control measures are allowed as is tariff elimination on tobacco and tobacco products. But even with these unfortunate limitations, the final provision is considerably better than past ISDS tobacco control exception proposals. It provides an example of how a meaningful trade pact safeguard against ISDS attacks could be structured. That said, because the TPP's Investment Chapter includes a Most Favored Nations provision, a tobacco company could demand the better investor rights provided in other ISDS-enforced investment agreements the regulating country has enacted. (Indeed, the TPP tobacco language was motivated in part by various subsidiaries of Phillip Morris using the ISDS clauses of various countries' ISDS-enforced agreements to attack Australian and Uruguayan tobacco control policies.) However, even with those not insignificant caveats, this real carve-out from ISDS liability for various forms of health-related tobacco control policies makes apparent how ineffective and meaningless the chapter's language advertised by the White House as protecting other health policies and the environment actually is (Article 9.15). The tobacco provision also begs the question why only tobacco control policies are excluded from ISDS attacks, given no other provision of the Investment Chapter nor the TPP's General Exceptions Chapter provides any meaningful safeguard or effective exception to stop ISDS attacks on other public health measures, from toxins bans to patent policies to pollution cleanup requirements. (For more on the TPP's tobacco-related provisions, see the text analysis from Action on Smoking and Health.)

Remarks for the Maine Citizen Trade Policy Commission hearing on the Trans-Pacific Partnership

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My name is Gray Cox. I grew up in Bar Harbor and teach at College of the Atlantic. I want to start by thanking you for providing this opportunity for us to gather and to speak. This is a dark time of year and in many ways a dark season in which to be living. But it is a delight to come in to this large, spacious, open room that is so full of light and have the opportunity to listen and share our concerns and views. It is the sort of thing we do here in Maine, in town meetings, public hearings, church groups, libraries and all kinds of other settings – come together to care for our communities.

I want to specially make mention of my gratitude for this opportunity tonight because this gathering represents precisely the kind of thing that defines us as Mainers and that threatened by the TPP and its mechanisms for undermining and supplanting our democratic practices in towns and states and even at the federal level.

The issues at stake here cross party lines. They invite us to stop thinking like Republicans and Democrats because of this. We need to think like Americans and Mainers. We have to think in terms of the whole BECAUSE this is a treaty that will change our whole relationship with the Pacific Rim AND, more importantly, with the systems of governance we have developed over the last 400 years in this land. I would like to begin my comments by reaffirming a comment made by Representative Sharon Anglin Treat in her December 1 “SUMMARY OF KEY ISSUES IN THE TRANS-PACIFIC PARTNERSHIP (TPP) AGREEMENT” (<http://www.maine.gov/legis/opla/CTPCSummaryTPPAnalysisST120115.pdf>). The comment concerns the ways in which the proposed agreement will effectively give up the sovereignty of our federal, state and local governments and pass it on to a system of committees dominated by corporate interests.

As Rep. Treat notes:

“Negotiated in complete secrecy over a period of six years, the 12-country TPP is now in final form and cannot be changed. Congress can only vote to accept or reject it. Nonetheless, this agreement is a “living agreement” that additional countries can join in the future, and will put into place roughly 20 committees to manage trade in agriculture, government procurement, the Internet, food safety, financial regulation, and other topics covered in the deal. Some committees have narrow authority, but others are open-ended in scope. Like the negotiation process that created TPP, many of these ongoing committees, even those dealing with public health and food safety, will be subject to confidentiality provisions that will hamper scientific peer review of their activities and limit public and consumer oversight of their activities. And, unlike a state or federal law that can be repealed when new information comes to light or conditions change, trade agreements require the agreement of all parties

to commence negotiations to make changes, which as a practical matter will not occur.”

People who are advocating for this treaty and the transformations it will bring in our governance systems will tell you that it is about three things, three things that frame its importance and value. They will say it is, first, about whether we want to have a rational economic policy that follows modern economic theory in advancing our national economy as a whole by seeking benefits of trade in what is called “comparative advantage”. Second, they will tell you that it is about whether Pacific Rim economies in particular – and the world economy in general – are going to be dominated by the Chinese or by us. Third, they will tell you that it is about whether we want to pursue development as a free market, capitalist society or promote the government regulations and interventions of a socialist society.

Each of these three ways of framing the issue is fundamentally mistaken.

Regarding the first, the theory of comparative advantage, like the Newtonian physics that was believed at the time David Ricardo developed it, holds true in some limited circumstances but not in others – and it most especially does not hold true in our circumstances today.

The basic theory of comparative advantage suggests each country is better off if we each specialize – producing whatever our natural resources, capital and labor best fit us for. But, first, it is crucial to note that the comparative advantages are often to corporations not to average citizens. When the comparative advantage is that they have lower taxes or other costs because they lack health care, education, and workplace safety or because they have less regulation and can freely pollute or because they can bribe officials to grease the wheels of deals and avoid regulative enforcement . . . in these cases, these are only plutocratic, extractive comparative advantages, not democratic, sustainable ones.

The point about sustainability bears emphasis. Monoculture and other forms of specialization for the sake of comparative advantage are only beneficial when and if our overriding national aim is extractive and accumulative. If the aim is sustainability then each country is better off diversifying, and connecting locally, and regenerating and developing good relationships within its borders.

The theory of comparative advantage and the relentless pursuit of economic growth that is coupled with it is designed for an earlier age – a prior age when there was no need to worry about the carbon footprint of transport and the threats of climate change and the destruction of habitat around the world. Amongst the students at the college where I teach, there is enormous concern about climate change and its many implications. These young people are deeply concerned about our common future and the ways in which the issues of climate, now, in Naomi Klein’s memorable phrase, “Change Everything”. They are working here in Maine as well as in Bolivia, India and a host of other sites to develop local farming and alternatives to petrochemical based agriculture, alternatives to fossil fuels, alternative transportation systems, sustainable fisheries, resilient wildlife management, and school programs that provide action based service learning on these issues. And a large group of them has been taking part annually in the climate negotiations which have been dragging on since before they were born and which now, still, in Paris, are leaving us hanging, unsure of whether the negotiators will be able

to reach any meaningful agreement. The nations of the world have already agreed that science tells us that meaningful treaty will have to find a way to lead us leave 80% of the carbon fuels we have already discovered unused. We will have to change our economies in a fundamental direction in order to leave those petrochemicals in the ground. Finding a way to do that is a central challenge of our time. And the TPP is designed to encourage long distance economic trade and development that would move us in precisely the opposite direction. For that reason alone it should be opposed.

But sustainability is about much more than just climate. It is about securing the diversity and integrity of our country's economic system in ways that make it resilient in the face of change. On this score the doctrine of comparative advantage provides a myopic understanding of reality – it holds true only when we look at short run situations in which the basic social and ecological conditions for sustainability are already provided and can be presupposed. In today's turbulent world, are we better off specializing in making only whatever particular items we can make the most money with given the current international market conditions? Are we better off pursuing "comparative advantage" by giving up the ability to be self reliant in the production of food, fuel, and our other necessities – without which we can not survive let alone thrive? Just reframing the issue in these terms lets us hear the voices of Ralph Waldo Emerson, Thomas Jefferson, Sojourner Truth and a crowd of other proud and self reliant forbearers calling out: Self Reliance! We can only hope to survive as ourselves and thrive as ourselves when we do for ourselves! We should not allow any treaty to strip us of our abilities to provide for ourselves come what may. And we should not allow it to leave us naked and powerless to govern ourselves with local, state, and federal policies that promote just such economic security and freedom from dependence on far away suppliers and unstable international markets.

The question is not whether we will sacrifice comparative advantage for special interests of workers or environmentalists. The question is whether we will sacrifice economic security and sustainability for special interests of corporations.

What of the second point -- when advocates for the treaty argue that it will help prevent China from dominating the economies of the Pacific Rim and the world? We should reply that the issue is not which country will dominate some region of the world. The question is, which economic system will govern and dominate us. Will it be one of our own making? One we can remake as needed? To adapt to not only to new technologies but new cultural trends, changes in our population, and advances in our moral insight like those that came with Civil Rights in the 60's, the Women's movement in the 70's and the Americans with Disabilities in the 80's?

As Mainer's we should not be worried about whether China is selling more objects of plastic, metal and food stuffs in Vietnam than we are. We should be worried about whether we can produce and consume here, in Maine, the kinds of things we think that we and our children should have. Can we make Maine be the way life should be or not? That is the question. What power do we have over our own lives and communities – regardless of who is the top dog, currently, in whatever international trade competition you might care to bet on and speculate about.

And what of the third point in which the advocates for the treaty tell us that it is a question of whether we want to pursue development as a free market, capitalist society or promote the government regulations and interventions of a socialist society? This

simplicistic contrast between Capitalism vs. Socialism is a false dichotomy. Every economy on this planet is a mixed economy with voluntary exchanges in markets of many different kinds AND with government playing a crucial role in framing the contexts of those markets – the rules of property, the public infrastructure that makes trade and economic growth possible and makes sure it promotes the public well being.

Every society is a mixed economy – a political economy. The question is, will it be controlled by a few or by the many. Our political economy in the United States is increasingly controlled by the few. It is the particular kind of oligarchy classified as a plutocracy – where the few who are most wealthy exercise the most way in how our political economy works. The TPP with outrageously centralized, undemocratic principles and processes for implementing them would push us even further in that very wrong direction.

I would here highlight a later section of the remarks of Rep. Treat referred to before. In the section on on the so called Investor State Dispute Settlement (ISDS) procedures which provide a “A PRIVATE LEGAL SYSTEM JUST FOR CORPORATIONS” she notes:

“The Investor-State Dispute Settlement (ISDS) procedures in TPP are of particular concern. ISDS allows foreign investors the right to sue governments for lost profits caused by regulations in offshore private investment tribunals, bypassing the courts or allowing a "second bite" if the investors do not like the results of domestic court decisions. Policies can be challenged under ISDS even if they apply to both foreign and domestic firms – in other words, even if they do not discriminate against trading partners. ISDS clauses in other trade agreements including NAFTA have been used repeatedly to attack environmental and public health measures. Even unsuccessful challenges take years to resolve, cost millions to defend, and have a chilling effect on the development of new legislation. The cost just for defending a challenged policy in an ISDS forum is \$8 million on average; Phillip Morris’s ISDS challenge to Australia’s tobacco regulations has already racked up litigation costs of over \$50 million for the Australian government, and the case is still in preliminary stages. • TPP would double the number of corporations that could use ISDS. More than 1,000 additional corporations in TPP nations, which own more than 9,200 subsidiaries in the U.S., could newly launch ISDS cases against the U.S. government. • The “reforms” to ISDS touted by the Obama Administration are largely cosmetic. ISDS tribunals would not meet standards of transparency, consistency or due process common to TPP countries’ domestic legal systems or provide fair, independent or balanced venues for resolving disputes. There is still no appeals mechanism; the arbitration panels would still be staffed by private sector lawyers paid by the hour and allowed to rotate between TPP ISSUES judging and advocating for investors; and problematic “minimum standard of treatment” and “indirect expropriation” language from past trade agreements is largely replicated. • The TPP investment chapter actually expands ISDS liability by widening the scope of domestic policies and

government actions that could be challenged: Financial regulations for the first time could be subject to “minimum standard of treatment” claims under the investment chapter. Pharmaceutical firms could demand cash compensation under the investment chapter for claimed violations of World Trade Organization rules on creation, limitation or revocation of intellectual property rights.”

The people of Maine, like those of the rest of America, fought and died in war after war to secure freedom for themselves and others – the freedom to govern themselves, and not be governed by the interests of foreign sovereigns and corporations. The first nations of the Wabnaki who were here first – and our still here now – have cherished the lands and waters of this region and the ways of life they developed here as independent, sovereign communities – and the others who have joined them in living here join them as well in cherishing those same values and seeking to secure them for all who live in this Dawnland of the Americas. The peoples of Maine have worked day in and day out, hard, from one season to another, year after year, down through generations – straining their backs and freezing their butts and pushing themselves hard to make a life for themselves and their children – the way they think life should be – not the way some international rule or corporate lawyer or committee of three in an ISDS thinks it should be. The people of Maine have done their duty paying taxes and going to town meetings and serving on Warrant Committees and wrestling with referenda driving down to Augusta and arguing with friends and working out shared solutions with political opponents in order to fashion a system of governance for our communities and our political economy that suits us and expresses how we think life should be. And if my mother was still alive to have her say about this I am sure that she would say that she would be damned before she would let some TPP come along at tell us how our life should be.

In closing, I want to thank you again for making this hearing possible and for carrying on this tradition of open, public dialogue and democratic discussion and policy making that is so treasured by us in Maine. This is a tradition that is so treasured that we will come to gatherings at the end of long work days, sometimes driving great distances or through harsh weather to get to them, spend hours hearing each other out (even when it is sometimes painful to do so), and spends even more hours talking about it all afterwards and preparing for the next meetings. All of us, regardless of political party, treasure this tradition and the way of life that it has made possible. It makes us who we are. It defines us as people. I want to thank you all for representing it so well and for allowing us to carry it on in this gathering this evening in this open spacious place so full of light. Thank you!

Alcohol, Tobacco, public health...and trade treaties.

Submission to Maine Citizen Trade Policy Commission, Bangor, Maine Dec. 12, 2015

Dr. Martha Spiess

Thank you Senator Volk and Representative Saucier and the members of the Maine Citizen Trade Policy Commission for holding this hearing.

A few months ago, after this Commission discussed the possibility of carving out tobacco and alcohol from trade agreements (two products that cause substantial harm to public health) I gave testimony during a public hearing from my perspective as a veterinarian as to how trade treaties can undermine governments' health policy.

"These treaties are designed to make goods *cheaper* as taxes are lowered,
more *accessible* as market restrictions are eliminated,
And *more desirable* to consumers as they are advertised and otherwise promoted."G-O/Jer.

To follow up, please find Comments attached which were submitted Dec. 9, 2015 by the Center for Policy Analysis on Trade and Health (CPATH). ***They point out how the much proclaimed "carve out" of tobacco by the TPP falls far short of protecting health policy,*** and also outline a helpful set of Public Health objectives for U.S. Global Trade Agreements.

I look forward to learning of your further deliberations and of the Commission's efforts
-to restrict the application of harmful trade treaty rules in Maine, and
-to pursue alternative treaty models that have the potential to improve, rather than threaten, public health in relation to tobacco and alcohol consumption.

CPATH ♦ Center for Policy Analysis on Trade and Health

Bringing a Public Health Voice to Trade and Sustainable Development
Public Health Comments

Investment Hearing

Trading Views: Real Debate on Key Issues in the TPP

U.S. House of Representatives Committee on Ways and Means

Dec. 2, 2015

Comments submitted Dec. 9, 2015

Joseph E. Brenner MA and Ellen R. Shaffer PhD MPH, Co-Directors
Center for Policy Analysis on Trade and Health (CPATH)

Overview

On behalf of the Center for Policy Analysis on Trade and Health (CPATH), we appreciate the opportunity to comment on public health concerns regarding the investment provisions of the Trans-Pacific Partnership Agreement (TPP). The investment chapter includes rules for enforcing the terms of the agreement, including through the Investor-State Dispute Resolution System (ISDS), which has been used to contest a wide range of public health policies. The TPP's proposed "exception" from ISDS disputes in the case of tobacco control measures is limited at best.

Public health measures authorize local, state and national governments to identify, monitor and promote the conditions that achieve and maintain healthy individuals, communities and populations. These range from protection from tobacco and other hazards, to sustainable economic systems that increase income equality, democratic political inclusion and social justice.^{1 2}

Trade agreements establish countries' mutual rights and obligations with regard to trade. Matters of concern to public health include: tariffs; intellectual property rules on access to affordable medicines and to information, copyrights, and advertising; services ranging from banking to health care, water supply, and distribution of alcohol products; government procurement for grants and contracts; agriculture; and internet access and information privacy. These agreements can provide a basis for altering the implementation of domestic U.S. laws and policies, as well as those of our trading partners. Trade rules that advance corporations' ability to operate within uniform and predictable rules can foster sustainable economic development, democracy, and peace. They can also conflict with or subordinate policies that prioritize people's health.

The TPP and other trade deals should safeguard and improve the economic well-being of Americans and our trading partners, promote the health of our communities, and advance economically and socially just, democratically controlled, and environmentally sustainable outcomes.

¹Institute of Medicine. The future of public health in the 21st century. National Academies Press, Washington, DC. November, 2002. <http://www.iom.edu/Object.File/Master/4/165/0.pdf>

²World Health Organization. Constitution of the World Health Organization.

Rather, the TPP prioritizes commercial gain at the expense of people's health, including protection from deadly tobacco products, and undermines democratic sovereignty to make decisions to safeguard and improve our health. It expands the rights of transnational corporations to protect their profits over the rights of democratically elected governments and the public. These include the right to challenge the implementation of domestic laws and regulations in international trade tribunals.

Previous trade agreements have prohibited parallel importation (reimportation of pharmaceuticals to increase their affordability)³, and weakened the ability of local, state and national governments' procurement contracts to specify standards for medical and financial privacy, quality and performance, local economic development, and environmental protection.

Congress can't amend the TPP, but can only vote yes or no on the whole package, due to "Fast Track" rules. The text on tobacco control and other key public health concerns therefore requires particularly careful analysis. These concerns are also relevant to other complex, multi-national trade agreements being negotiated by the U.S. Trade Representative (USTR), including the Transatlantic Trade and Investment Partnership (TTIP) with the European Union, and the Trade in Services Agreement (TISA).

Investor-State Dispute Resolution

Trade agreements negotiated by the United States with other nations provide foreign governments and corporations with internationally enforceable rights. These rights increasingly supersede the rights and ability of domestic governments at the local, state and federal levels to regulate in the interests of the public and of public health.

State-to-state disputes arising from World Trade Organization (WTO) agreements are enforced by financial fines and trade sanctions in the case of violations. For this reason, they have proven to be the most effectively enforced international agreements. The WTO is set as the unequivocal arbiter of trade rules for its 162 member countries. Countries that believe their companies are being barred from trade by another country for reasons that violate WTO rules can file a dispute with the WTO. Disputes among nations are resolved by panels appointed by the WTO. The panels are not accountable to national governments or courts. The panels can authorize countries to impose trade sanctions, financial penalties and the boycott of products against other countries, as compensation for violations or for failure to comply with trade panel decisions.

Nations have successfully brought challenges before trade tribunals claiming that public health measures violate trade rules. Health and quality standards and labeling requirements have sometimes been construed by the WTO as barriers to trade. From a public health perspective, standards for labeling genetically modified foods or protecting dolphins from becoming snared in commercial fishing nets are important protections for human and animal health, and the environment. But businesses have asserted that these standards constitute barriers to trade.

Chapter 11 of NAFTA provides an "investors' rights" provision that allows individual foreign corporations (referred to as investors) to directly sue any of the three participating national

³ Australia-U.S. Free Trade Agreement, Article 17.9.4.

http://www.ustr.gov/sites/default/files/uploads/agreements/fta/australia/asset_upload_file469_5141.pdf.

governments. Companies can sue for the loss of current or future profits, even if the loss is caused by a government agency's prohibiting the use of a toxic substance. Prior to NAFTA, regional trade agreements only permitted country-to-country enforcement by governments. This was a major elevation of the rights of corporations, and an important blow to national sovereignty. Subsequent regional and bilateral agreements negotiated by the US include this investor's rights provision. Objections by the Intergovernmental Policy Advisory Committee to the USTR, composed of state and local public officials, contributed to keeping this provision out of the U.S.-Australia Free Trade Agreement.

The tobacco industry has used both WTO country-to-country dispute procedures, and investor-state mechanisms, to protest and delay tobacco control measures including graphic warning labels and plain packaging.

The following investor-state trade dispute cases illustrate the negative implications for health. As is typical of such cases, the health argument did not substantially prevail. The Methanex case, an exception, nevertheless extended exposure to a known health hazard:

- **Closure of a Toxic Waste Disposal Site**

In a landmark environmental case filed under NAFTA Chapter 11, a NAFTA tribunal awarded the U.S.-based Metalclad Company \$16.7 million in its suit against Mexico. The state of San Luis Potosi had refused permission for Metalclad to re-open a waste disposal facility, in the face of a geological audit showing the facility would contaminate the local water supply and resulting opposition by the local community. Metalclad claimed that this local decision constituted an expropriation of its future potential profits and successfully sued Mexico.

- **Eliminating Toxic Gasoline Additive**

The Methanex Corporation of Canada sued the United States for approximately \$1 billion, because the state of California banned the use of methyl tertiary butyl ether (MTBE), a gasoline additive. Though introduced to reduce air pollution, MTBE was found to be carcinogenic when it leaked into the water supply. Methanex produces methanol, a component of MTBE. Methanex ultimately lost its case, because the trade panel cast doubt on whether the state intended to discriminate against Methanex as a foreign corporation. However, due in part to the possible sanctions resulting from this case, MTBE remained in use within California for years as the case proceeded. The U.S. Dept. of Justice spent countless hours defending the case. Other states were meanwhile chilled from taking protective measure on MTBE.

Tobacco Control and Protection of Public Health

Tobacco use continues to be the leading preventable cause of death in the United States and worldwide, and is the only legal substance that, when used as intended, kills people, causing 6.3 million deaths a year.⁴ Cigarette smoking is responsible for about one in five deaths annually⁵ and a major contributor to the global pandemic of tobacco-related non-communicable diseases.

⁴ Centers for Disease Control and Prevention. Smoking-Attributable Mortality, Years of Potential Life Lost, and Productivity Losses—United States, 2000–2004. *Morbidity and Mortality Weekly Report* 2008.

⁵ U.S. Department of Health and Human Services. *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease*. Atlanta: U.S. Department of Health and Human Services, Centers for

Countries continue to tackle this public health crisis with sound policies supported by a robust body of scientific evidence designed to curb smoking and combat deceptive industry practices. Such regulations include bans on flavored cigarettes, increases in tobacco taxation, restrictions on tobacco advertisements, and placement of graphic warning labels on cigarette packages. Each has been contested in recent trade agreements and by trade-related challenges. Tobacco companies have accelerated their use of trade rules to attempt to delay and reverse tobacco control measures in the U.S., Australia, Uruguay, and Norway.⁶

U.S. bilateral agreements with Singapore and Peru also eliminated tariffs on tobacco and tobacco products.

The Doggett Amendment to the Foreign Service Act, passed by Congress in 1997, banned the use of government monies from the Commerce, Justice, and State Departments to promote the sale or export of tobacco overseas or to seek the removal of any nondiscriminatory foreign-country restrictions on tobacco marketing. However, it is subject to annual renewal, and compliance is up to the USTR and other Agencies. Unfortunately, the Doggett Amendment has not been honored since 2001. The U.S. has negotiated eliminating tariffs on tobacco products as well as leaf in bilateral and regional agreements, including the U.S. Singapore Agreement, CAFTA, and now the TPP. It is time for a change.

According to the Pan American Health Organization: “Transnational tobacco companies...have been among the strongest proponents of tariff reduction and open markets. Trade openness is linked to tobacco consumption.”⁷

Tobacco Industry Challenges

The industry has exercised trade rights in order to challenge and undermine the authority of the U.S. Food and Drug Administration (FDA) Center for Tobacco Products to oversee and regulate tobacco products, and to ensure compliance with the Family Smoking Prevention and Tobacco Control Act of 2009.

Curtailing these loopholes is a priority for securing and expanding measures at the local and state levels to reduce environmental exposure to the toxic effects of tobacco smoke and residue, and to regulate nicotine and tobacco products.

In the U.S.: The Family Smoking Prevention and Tobacco Control Act of 2009 banned the sale of certain flavored cigarettes. This provision was enacted to reduce teen smoking, given evidence that youth smokers are more than three times more likely to smoke flavored cigarettes as adults. One year later, Indonesia—the world’s largest producer of clove cigarettes—alleged that the law was inconsistent with U.S. trade obligations under the WTO’s 1994 General Agreement on Trade and

Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2010.

⁶ Sud S, Brenner JB, Shaffer ER. Commentary: Trading Away Health: The Influence of Trade Policy on Youth Tobacco Control. *Journal of Pediatrics*. Online: Feb. 10, 2015. DOI: <http://dx.doi.org/10.1016/j.jpeds.2015.01.016>

⁷ D. Woodward, N. Drager, R. Beaglehole, D. Lipson. *Trade in Health Services: Global, Regional and Country Perspectives*.

Tariffs (GATT). GATT mandates that member nations cannot discriminate between “like products”, and since the U.S. law did not prohibit the sale of menthol cigarettes, Indonesia declared that the law was unfair and biased.

In April 2012, a WTO dispute settlement panel ruled in favor of Indonesia, agreeing that menthol cigarettes are “like” clove cigarettes, and that the United States violated provisions of the General Agreement on Tariffs and Trade (GATT) by discriminating between the two products. The U.S. had to decide among several options to comply with the ruling: (a) revise the Family Smoking Prevention and Tobacco Control Act to also ban the sale of menthol cigarettes; (b) revise the law to permit the sale of clove cigarettes; (c) pay a fine to Indonesia equaling the amount of trade lost, estimated at \$16 million per year; or (d) yield trade concessions to Indonesia for other goods or services.

In 2006, tobacco control legislation in Uruguay mandated: increasing warning labels from 50% to 80% of cigarette packages; placement of one of six selected health images on every package; and prohibiting the use of “brand families.” in which the same brand name is used across multiple product lines (e.g., Marlboro Red, Marlboro Green, etc.). In the years after enactment of these anti-smoking laws, 30-day prevalence rates of tobacco use among adolescents decreased by 8% annually, and per person cigarette consumption decreased by 4.3% annually.

In 2010, however, the Swiss operational hub of Phillip Morris filed suit at the World Bank, claiming that the government’s regulations violate a 1991 bilateral investment treaty between Uruguay and Switzerland, which granted internationally enforceable rights to corporations to file trade charges directly against a nation. The Swiss-based PM contends that Uruguayan policies intrude upon PM’s intellectual property rights and exceed that which is reasonable to protect the public’s health. Per the terms of the 1991 trade agreement, the dispute is being arbitrated by a tribunal of international trade experts housed at the World Bank, who ruled in July 2013 that it had jurisdiction to hear the case.

Through existing bilateral and regional trade agreements, to which the United States is a partner, PMI could challenge a host of tobacco control efforts in California, such as: reducing exposure to second-hand smoke, clean indoor air rules; restrictions on retail distribution networks for tobacco products; and advertising, promotion, sponsorship, and marketing restrictions.

In addition, the industry is actively contesting at every level of jurisdiction the right to enact and implement graphic warning labels and other marketing restrictions. A court ruling on July 11, 2012, overturned a New York City law requiring graphic warning labels. The Philip Morris attorney commented that the power to regulate is reserved to the federal government. But four of the five largest U.S. tobacco companies are suing the federal government saying the warnings violate their free speech rights. Tobacco industry use of trade rules to challenge federal authority to ensure compliance with the Tobacco Control Act of 2009 could have a significantly adverse effect on states.

In 2013, Australia’s highest court upheld Australia’s cigarette plain-packaging laws that will require tobacco companies to remove branding and sell tobacco products in generic green packets. The High Court rejected a legal challenge by tobacco companies which argued that the value of their trademarks would be destroyed if they could no longer display their distinctive colors, brand designs and logos on packs of cigarettes. The issue of plain-packaging, however, is being challenged at the international level through intellectual property and other trade rules in existing trade agreements.

Tobacco control efforts at the state and local levels in the U.S. are vulnerable to tobacco industry challenges under existing trade rules.

Trans-Pacific Partnership Agreement The Trans-Pacific Partnership Agreement (TPP) provided a critical opportunity to curtail these actions by the tobacco industry and to reduce tobacco-related deaths. Local, state, and national decision-makers joined in public statements by public health and medical associations delineating the threats of TPP provisions to tobacco control measures, and calling to carve out tobacco and tobacco control measures from the entire web of provisions that have ensnared tobacco control measures through the jurisdiction of trade agreements.

This carve-out demand was tabled formally to the TPP by the Malaysian trade delegation. The USTR responded by circulating two complex but widely discredited alternative proposals. Neither the full carve-out, nor either US proposal, appears in the final TPP.

The "Exception" for Tobacco Control Is Flawed

The Exceptions chapter of the TPP, in 29.5, states that any single TPP country could individually elect to opt out of having its tobacco control laws and regulations subjected to ISDS trade challenges by corporations.

Despite claims to the contrary, this does not conclusively protect nations' tobacco control measures from trade challenges by tobacco companies. Nor would it necessarily prevent the types of cases Uruguay and Australia are facing. There are serious loopholes, though they are different from the loopholes evident in earlier proposed schemes.

Why is this the case? Like the product it sells, the tobacco industry has learned to inflict damage on the public's health by using the corporate dispute mechanisms in trade agreements exactly as intended.

Setting up the protection as an election for individual countries leaves the door open to back-door pressure by the tobacco industry and chambers of commerce to allow ISDS cases to proceed.

Rather than acting as a group of 12 nations to exclude tobacco companies from using ISDS, each country would have to muster the political will to take on the tobacco industry's clout and message machine, and make it a priority for officials to decide to "opt out" of the trade dispute system in the case of tobacco control rules. In practice this is an open invitation to Big Tobacco to sharpen its arrows to ensure that no country executes the election to safeguard public health and protect tobacco control measures.

In addition, many tobacco control measures are promulgated by local and state officials and legislatures. These bodies would have no role or authority in the face of an ISDS challenge. No recourse would be available to state and local officials or the public in the event of an unpopular decision at the federal/national level not to exercise the "election to deny" a tobacco-related trade challenge.

Further, if a country elects to deny the use of the TPP's trade dispute mechanism in the face of a threatened challenge to a particular tobacco control measure, the election itself could be construed as

tantamount to an admission that the country's measure does in fact violate a trade rule in some way. This could then strengthen the basis for a tobacco company charge through another agreement that includes a corporate investor-state dispute system, or a state-to-state charge through a WTO agreement.

This is a realistic picture of some of the flaws in the TPP's hastily drafted exception provision.

On the positive side, the description of tobacco control measures covered appears to be close to comprehensive, and offers a good basis for discussion for a future proposal linked to an actionable implementation mechanism.

Other Tobacco-Related Provisions

Regarding other tobacco-related provisions in the TPP, we note these comments by Action on Smoking and Health:

"Tariffs: Tobacco is treated like any other product in terms of tariff reduction. For the most part, this means that tobacco tariffs are reduced to zero, which produces a windfall of tobacco profits—unless there is a later compensating increase in domestic excise taxes. This explicit promotion of tobacco exports appears to violate the Doggett Amendment, a congressional limit on authority of U.S. agencies to promote tobacco sales.

"Other chapters: Tobacco is still treated like other products in the rest of the TPP, which signals that governments are still not recognizing that tobacco is unique in international trade (we want less, not more, and these same governments have agreed to this in the FCTC and other international instruments, such as the SDGs and the NCD summit). The failure to approve the full exemption will have consequences for tobacco control. For example, the chapter on regulatory coherence requires Parties to set up mechanisms for "interested persons" to provide input into regulatory oversight. This creates a direct conflict of law with FCTC Article 5.3, which requires Parties (11 of whom are also TPP Parties) to limit government interaction with the tobacco industry."

Conclusions: Promote Democratic, Transparent, and Accountable Trade Agreements

In order to advance the promises of the 21st century for sustainable technological and economic development policies that protect and promote health, CPATH recommends the following Public Health Objectives for Global Trade Agreements:

Public Health Objectives for U.S. Global Trade Agreements

1. **Assure democratic participation by public health and transparency in trade policy:**
 - a. Open all proceedings and documents of trade negotiations and trade advisory committees to the public; and
 - b. Appoint to all three tiers of trade advisory committees representatives of organizations that work to assure equitable access to affordable health-related services and products, and promote the health of individuals, communities and populations, who can provide formal advice to USTR from the public health and health care community to USTR; and
 - c. USTR to consult with all relevant committees of the House and Senate in the development, negotiation, implementation, and administration of trade and negotiating objectives.
2. **Develop mutually beneficial trade relationships with trade partners that create sustainable economic development** in an increasingly interdependent world.

3. **Recognize the legitimate exercise of national, regional and local government sovereignty to protect population health**, and ensure that countries do not weaken or reduce, as an encouragement for trade, sound policies that contribute to health and well-being and democracy, including laws on public health, the environment, labor, food safety, human rights and internet freedom.
4. **Exclude tariff and nontariff provisions that address vital human services** such as health care, water supply and sanitation, food safety and supply, and education, including licensing and cross-border movement of personnel in these fields.
5. **Exclude tobacco and tobacco products**, which are lethal, and for which the public health goal is to reduce consumption, from tariff and nontariff provisions of the TPP, including advertising, labeling, product regulation and distribution.
6. **Exclude alcohol products**, which present serious hazards to public health. Policies designed to reduce the harm caused by alcohol products should not be subject to compromise in exchange for other trade benefits.
7. **Eliminate intellectual property provisions related to pharmaceuticals from the TPP, and from TTIP negotiations**, as these are more appropriately addressed in multilateral fora, **and promote trade provisions which enable countries to exercise all flexibilities provided by the Doha Declaration on Public Health**, including issuing compulsory licenses for patented pharmaceuticals, parallel importation, and other measures that address high prices and promote access to affordable medicines.

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COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEES:
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RELATED AGENCIES
INTERIOR, ENVIRONMENT, AND RELATED
AGENCIES

CHELLIE PINGREE
CONGRESS OF THE UNITED STATES
1ST DISTRICT, MAINE

December 9, 2015

Senator Amy Volk, Co-chair
Representative Robert Saucier, Co-chair
Maine Citizen Trade Policy Commission
State House Station #13
Augusta, ME 04333-0001

Dear Senator Volk and Representative Saucier,

Thank you for the opportunity to offer my feedback on the Trans-Pacific Partnership (TPP). I appreciate that you are collecting public input on a trade agreement that would have many consequences for Maine and its economy.

I have grave concerns with the TPP, which, if passed, would become the largest free-trade agreement in history. I fear that its efforts to remove "non-tariff barriers to trade" will hamper our ability to enact protections in a number of different areas—including worker protection, public safety, and the environment—by allowing foreign companies to sue if those regulations hurt their profits. Our country needs to be able to respond to the emerging needs and issues of our citizens without this threat of foreign litigation.

I am also skeptical of the TPP's benefits to the American economy. When the North American Free Trade Agreement was passed 20 years ago, there were many similar arguments that it would grow American jobs. The opposite has been true in Maine, with thousands of jobs being sent overseas over the past two decades. Having reviewed the language of the TPP, I believe that it would have an even more devastating impact.

Finally, I have been troubled by the lack of transparency in the process that has led to this agreement. Negotiations were held in secret without input from the public. In Congress, I voted against giving the President fast-track authority to negotiate this agreement and am extremely disappointed that we will not be able to propose amendments when it comes to a vote.

While I believe international trade is an important area of opportunity for Maine businesses, I do not think the TPP is the right path forward. Thank you again for the opportunity to comment. Please keep me posted of your findings.

Sincerely,

A handwritten signature in black ink that reads "Chellie R" followed by a long horizontal line.

Chellie Pingree
Member of Congress

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December 10, 2015

Dear Maine Citizens Trade Policy Commission,

I am writing to express the Sierra Club's concerns about the environmental implications of the Trans-Pacific Partnership (PPP). Our new report, "Dirty Deal: How the Trans-Pacific Partnership Threatens our Climate" (available at www.sierraclub.org/sites/www.sierraclub.org/files/uploads-wysiwig/dirty-deal.pdf) details these concerns.

Among other conclusions, our report finds that the TPP:

- Would empower fossil fuel corporations to attack climate policies in private tribunals;
- Would lock in dirty fossil fuel production by expediting natural gas exports;
- Would increase climate-disrupting emissions by, for example, shifting U.S. manufacturing overseas and encouraging wider production of crops like oil palm that drive deforestation; and
- Would impose new limits on government efforts to combat climate disruption.

First, the TPP investment chapter would give foreign investors, including some of the world's largest fossil fuel corporations, expansive new rights to challenge climate protections in unaccountable trade tribunals. Fossil fuel corporations, such as ExxonMobil and Chevron, have used such rights under past trade and investment agreements to challenge policies. Targeted policies have included a natural gas fracking moratorium in Canada, a court order to pay for oil pollution in Ecuador, and environmental standards for a coal-fired power plant in Germany.

The TPP would expand these privileges to more than 9,000 companies in the United States, roughly doubling the number of companies that could use this "investor-state dispute settlement" system to challenge U.S. policies. That includes, for example, the U.S. subsidiaries of BHP Billiton, one of the world's largest mining companies, whose U.S. investments range from coal mines in New Mexico to offshore oil drilling in the Gulf of Mexico to fracking operations in Texas.

While the Office of the U.S. Trade Representative claims to have included "safeguards" in the TPP, our report demonstrates that these so-called safeguards are far too weak to protect climate and environmental policies challenged by corporations in private tribunals.

Second, the TPP would require the U.S. Department of Energy to automatically approve all exports of liquefied natural gas (LNG), a fossil fuel with high life-cycle greenhouse gas emissions, to all TPP countries including Japan, the world's largest LNG importer.

By expediting U.S. LNG exports, the TPP would facilitate increased fracking, leading to greater air and water pollution, and increased health risks; increase the world's dependence on a climate-disrupting fossil fuel; and encourage construction of new fossil fuel infrastructure that would lock in greenhouse gas emissions for years to come.

Third, the TPP would force U.S. manufacturers to compete directly with companies in low-wage countries like Vietnam and Malaysia, encouraging U.S. manufacturing to set up operations abroad. This “offshoring” of U.S. manufacturing would not only cost us jobs in the U.S., but also increase climate-disrupting emissions. This is because production in Vietnam is more than four times as carbon-intensive, and production in Malaysia is twice as carbon-intensive, as U.S. production. This shift in manufacturing from the United States to countries on the other side of the Pacific Ocean would also increase shipping-related greenhouse gas emissions.

The TPP would further expand climate-disrupting emissions by eliminating tariffs on cash crops like oil palm, encouraging wider production in countries such as Malaysia, where oil palm expansion has played a leading role in destroying tropical forests that capture carbon. Increased oil palm production also would fuel an industry that is already rife with human rights and labor abuses.

Fourth, the TPP would impose new limits on climate policies, including renewable energy programs that encourage local job creation, energy and carbon labeling programs, and government contracts that require energy to come from renewable sources.

Government officials charged with promoting the TPP typically ignore these threats to our climate, claiming instead that the pact’s environment chapter would “preserve the environment.” However, the chapter includes no provision that would protect climate and environmental policies from the myriad threats posed by other parts of the TPP. And while the TPP environment chapter mentions a range of conservation issues, the actual environmental obligations are generally weak and in some respects actually take a step back from environmental rules included in all trade pacts since 2007.

The Sierra Club believes that a new model of trade that protects communities and the environment is urgently needed — one that overturns the polluter-friendly model of the TPP.

Sincerely,

Glen Brand
Chapter Director