

Maine Citizen Trade Policy Commission: Meeting Minutes for 2.18.2011

Present: Sen. Jackson, Rep. Rotundo, Linda Pistner, John Palmer, Sarah Bigney, Kathleen Whitelaw, Joseph Woodbury, Stephen Cole, Bob St. Peter, Rep. Maker, Rep. Treat, Michael Roland (non-voting), and Malcolm Burson (non-voting)

At 9:05 Senator Jackson gaveled the meeting to order. New members introduced themselves to one another.

Commission then proceeded to Agenda Item III: The history and purpose of trade policy and the Citizen Trade Policy Commission.

Sarah Bigney summarized the basics of how U.S. trade policy works and who has the power to implement it, past issues that the Commission has addressed, the most important pending trade issues today, conflicts between state and federal governments on trade issues, how trade policy relates to both state and national sovereignty etc. Bigney mentioned a number of examples of how foreign companies and state legislatures often come into conflict under various trade agreements. She mentioned that in 2003 Maine Legislators passed the “Jobs Trade and Democracy Act” creating the CTPC to hold hearings and hear testimony on how trade policies affect individual states.

Rep. Treat then previewed the testimony from Professor Sean Flynn, giving a short professional bio.

At 9:30 the Commission reached Professor Sean Flynn, Associate Director of the Program on Information Justice and Intellectual Property at American University’s Washington College of Law, to speak on the potential impact of future trade agreements on Maine’s capacity to negotiate with pharmaceutical companies for reduced pharmaceutical prices. Flynn discussed the overall concern about the pharmaceutical industry pressuring the US to sign on to trade policies that prevent public drug reimbursement programs, which pressures prices lower and, according to the drug companies, constitute a taking of their intellectual property. Federal U.S. trade policy makers have been somewhat sympathetic to this argument, he said. A free trade agreement with Australia was the first ever FTA to have a specific pharmaceutical chapter. Flynn discussed state drug reimbursement rates and how it relates to the conflict over brand name drugs and generic drugs that are equally effective. Pharmaceutical companies are trying to put in place policies that push preference of brand name drugs over generics that are equally effective and generally affordable for public budget writers. Flynn talked about how these policy changes are contained both within the Korea FTA and possibly the Trans Pacific Partnership as well. Flynn talked about how this debate is tied to Medicaid Reimbursement Programs and whether states can tell doctors which versions of the drugs to prescribe to Medicaid patients. He outlined a short-term concern and two long-term concerns that states have:

Long term concern: States really are and should be opposed to the overall agenda of creating an international framework preventing states from engaging in drug price negotiations.

Short term concern: That there be no pharmaceutical chapter in the Trans Pacific Partnership.

Third Concern: that all future trade agreements should have carve out rules that guarantee states the sovereignty to maintain existing and future drug price negotiation policies under Medicaid etc.

Mr. Woodbury asked about states influencing drug prices through preferred drug lists – whether it’s a mandate or a negotiation with drug companies. Professor Flynn responded that it has negotiation elements and also mandating elements. He said the pharmaceutical companies are free to walk away and not sell under preferred drug lists.

Mr. Woodbury then labeled the efforts to create these pharmaceutical chapters in the FTAs a “corporate rent-seeking effort” meant to move the goal posts in their negotiations with states like Maine.

Mr. Flynn acknowledged that the pharmaceuticals were trying to change the legal field in order to bolster their negotiating position.

Mr. Palmer asked about the effect of countries failing to recognize patents on drugs. Mr. Flynn discussed how states are trying to lower prices by introducing competition into the market and paying the patent holder with royalties instead of granting intellectual property-related monopolies. He also explained that many countries (both rich and poor) exclude drugs from their patent laws in order to distribute medicines quickly, cheaply, and address often very serious public health problems. Other countries are also trying to pool resources to negotiate prices down as well. Pharmaceutical companies are pushing back of course.

Rep. Rotundo asked Prof. Flynn what further actions the Commission might take to encourage the US Trade Representative to protect Maine’s ability to exercise policies that make prescription drugs more affordable.

Prof. Flynn suggested that Maine could send a letter asking the USTR to leave a pharmaceutical chapter out of the Trans Pacific Partnership. He mentioned a Special 301 hearing on March 2nd, and suggested resending to the US TR a letter from Governor Baldacci outlining his concerns about special 301. Professor Flynn said the Commission might reach out to members of IGPAC at the Office of the USTR.

Rep. Treat asked if HHS officials and Medicaid and Medicare officials are even aware of these issues and are working on these issues. She suggested that different parts of the Obama administration might be inadvertently working against each other on the prescription drug issues. Professor Flynn mentioned that the people at the USTR working

on pharmaceuticals don't have a background in Medicaid but instead with the pharmaceutical industry in general.

Rep. Treat asked a follow up on private sector elements attempting to pool together and negotiate the same way government entities have been doing. Flynn said that the private sector (like hospitals) would be unaffected. With the public sector, the drug companies are seeking a right to appeal and a "freedom to prescribe" policy. He said he doesn't know whether public hospitals' purchasing programs would be affected. He said Medicare Part D is managed by private managers and wouldn't likely be subject to what the drug companies are asking for in these free trade agreements. He said drug companies are also pushing for federal laws favoring the drug companies' positions in these international trade agreements, and that would override any state laws to the contrary. He said the drug companies are also pushing for enforceable international standards worldwide.

Rep. Treat asked about enforcement mechanisms. Flynn talked about Federal law and the supremacy clause of the Constitution. The Feds could sue the states to override state laws. He talked about how NAFTA set the precedent in which private companies were allowed to sue as well, and that there are elements of this concept in the current set of pending trade agreements – that could also change enforcement mechanisms. Flynn said he doesn't think we're as close to solid international enforcement mechanisms as we are to a situation in which the Federal government could sue a state for violating the pharmaceutical chapter of a trade agreement.

Rep. Rotundo and Sen. Jackson asked about self-insured people and companies. Professor Flynn talked about how they might be affected by pharmaceutical chapters in the pending trade agreements.

Rep. Treat asked about 340B medical programs. Professor Flynn said it's unclear whether and how the Korea FTA and the TPP would affect 340B programs. He suggested that it be looked into.

Rep. Treat asked about access to public statements on this issue. Professor Flynn agreed to help distribute information to members in the next couple of days.

The call with Professor Flynn ended, and the Commission proceeded to Item VIII: The draft legislation on state procurement.

Rep. Rotundo reviewed how the Commission came to ask for this draft legislation.

Ms. Pistner summarized the legislation and mentioned that Dana Eidsness of the Forum On Democracy and Trade was still reviewing the draft.

Mr. St. Peter asked if the legislation covered food and fiber. Mr. Burson and Rep. Treat said that it did.

Rep. Treat asked more about the reach of the legislation.

Mr. Palmer pointed out some technical errors and asked that the term “investors” also be included in the legislation – not just contractors themselves, but the folks who invest in them. Ms. Pistner and the other members agreed.

Mr. Roland asked if the legislation could deprive the federal court of jurisdiction. Ms. Pistner said that it could not legally do that.

Ms. Pistner asked about the timing of the vote. Sen. Jackson said the Commission could go forward today. He said he was nonetheless a bit hesitant, given the transitional state of the Commission’s legislative membership, but that he’d be willing to entertain motions for a vote if the new members present felt comfortable voting now. He reiterated that the vote to change the draft legislation and send it to a more formal redrafting process was not set in stone and could easily be reversed if new members and incoming Republican legislative Commission chairs felt that such legislation would no longer be appropriate.

All voting members of the Commission present indicated they were comfortable taking a vote today.

By proxy, Mr. Herz asked that the following change be made to the draft legislation:

“Although I’m out of state & can’t vote, I do approve the draft legislation with the following change under § 1812. Scope of purchasing authority

1. Definitions.

Under the list of services covered add "electronic equipment repair and maintenance"

Ms. Pistner wasn’t sure if it was legal to make that change. Some discussion ensued.

The Commission discussed making Mr. Palmer’s changes and then voting to move the draft legislation forward to a more formal process.

Rep. Treat moved that the Commission move forward with a formal drafting process through the Revisor’s office.

Mr. Woodbury seconded.

Rep. Rotundo and Rep. Jackson explained the original purpose of the bill, which would require multinational corporations that do business in Maine to settle disputes in Maine courts instead of at an international tribunal in Geneva, Switzerland.

The vote took place, and the result was 11-0 in favor.

Members moved on to the Commission's resolution expressing the sense of the Commission on the issue on federal-state consultation. Ms. Bigney explained that this was her first resolution but that it did put the sense of the Commission on federal-state consultation into proper resolution form.

The other members of the Commission agreed to offer their revisions during the coming week. The Commission to send the resolution the Revisor's office with the understand that it would come back to the Commission at the next meeting for the new membership to take final action on it.

The Commission proceeded to Item I – testimony from employees at Bath Iron Works related to the Korea Free Trade Agreement.

Daniel Dowling is the president of the local S-6 of the IAMAW and represents ironworkers at the Bath Iron Works. He explained that so far this year Bath Iron Works has shed six jobs a week. He said the prospect of losing more to a trade agreement is not welcome. He discussed contracts already being lost to South Korea and how said contracts might actually be sending tax dollars to the North Korean government. He explained that South Korea has an arrangement with the North in which it outsources some jobs to North Korean workers. The leaders of North Korea then siphon off up to 60% of Northern workers' salaries. And the people paying the South Koreans to employ North Koreans are defense department officials and, transitively, American taxpayers. Dowling said he felt that passing the Korea FTA would exacerbate the situation.

Rep. Rotundo asked if Mr. Dowling might be willing to speak with Jim Catella, Senator Snowe's point person on trade issues, since Mr. Catella had been looking for feedback from any Mainer who has a stake in the outcome of the Korea FTA in Congress.

Mr. Woodbury asked Mr. Dowling whether the Pentagon owed it to taxpayers to find the lowest costs possible for defense needs. Mr. Dowling said that it was not just a matter of cost, but also a matter of quality, which, he said, was better when placed in the hands of Maine workers.

Mr. Cole asked if it was common for defense contractors to sub-contract out work internationally. Mr. Dowling said that it wasn't uncommon. Mr. Dowling said he didn't know if BIW subbed out work internationally.

The testimony ended, and the Commission agreed to submit Mr. Dowling's name to Jim Catella in Senator Snowe's office for feedback on the Korea FTA.

The Commission moved on to Item VI: The Korea Free Trade Agreement.

The Commission first took up whom Jim Catella should speak with.

Mr. St. Peter said he wanted to speak to Mr. Catella about how the Korea FTA might affect Maine's farmers, and Senator Jackson said that it would be perfectly acceptable for Mr. St. Peter to do so.

Ms. Treat wanted Mr. Catella to be able to see her notes on the pharmaceutical issues discussed in the earlier portion of these minutes.

Ms. Bigney suggested Senator Snowe ask a question on how the Korea FTA would affect states rights and state sovereignty when this agreement is reviewed by the Senate Finance Committee.

Rep. Treat suggested Senator Snowe ask a question on pharmaceutical issues and also one on how the FTA might affect medical entities called "340Bs."

Mr. Woodbury said Senator Snowe should ask how the pharmaceutical language in the Korea FTA and the TPP would actually promote "free" trade.

Mr. St. Peter mentioned he had spoken to Rep. Michaud, who said that it was possible the Panama and Columbia FTAs would be rolled into the Korea FTA when Congress takes it up, meaning they would all be debated and voted on simultaneously as one big trade bill.

Rep. Treat suggested that the Commission might make public statements or a press release on the pending free trade agreements in order to raise the issue more in the public eye. She complained that these trade agreements are being negotiated in secret where nobody can see what the agreements' contents are and then fast-tracked through law making bodies before anyone can scrutinize them.

Rep. Maker asked if the Commission's position on the Korea FTA was online on the CTPC website. Rep. Rotundo responded in the affirmative.

Sen. Jackson and Rep. Treat discussed enacting Professor Flynn's recommendations involving sending letters. Mr. Cole, Mr. St. Peter, and Rep. Maker all examined past samples of letters the Commission had sent to federal officials expressing concerns about the Korea FTA.

The Commission took up when to meet next and found only one day in March in which all members present would be able to attend without conflict. That day was Friday March 11th at 9 AM. A meeting was set for that time, and the exact location was to be determined later by the administrative staffer in consultation with OPLA and the Commission chairs.

The Commission took up when and where to meet for April's public meeting in Calais. Rep. Maker, who happens to live in and represent Calais, suggested the local community college on a Thursday evening. The Commission tentatively agreed to meet at 6 PM on Thursday April 28th and to explore the possibility of meeting in the local community college. It was also acknowledged by Rep. Rotundo that the

Commission did not have sufficient funds to pay for lodging for those members traveling great distances to attend. Members would be responsible for their own housing or else could simply drive back to their homes once the meeting concluded.

Rep. Rotundo brought up the Commission's outreach efforts. She said that Dana Eidsness, executive director of the Forum on Democracy and Trade, will be making presentations to the following committees in the Maine State Legislature: Health and Humans Services; Labor, Commerce Research, and Economic Development; and Agriculture, Conservation, and Forestry. Rep. Rotundo mentioned that Bill Waren would be leaving the Forum on Democracy and Trade and that members were welcome to sign a farewell card for him after the meeting.

The Commission asked the administrative staff member to send two letters:

The first letter was to be sent to the USTR prior to its March 2nd meeting. It was a copy of the letter Governor Baldacci wrote that was referenced above.

The second letter was to be sent to the Secretary of HHS and other Medicaid officials, etc. The letter was a copy a letter previously sent to the USTR by the Commission outlining its concerns about the impact of trade agreements on pharmaceutical pricing.

The meeting adjourned at 11:42 AM