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Curtis Bentley, Legislative Analyst

STATE OF MAINE

## Citizen Trade Policy Commission

August 4, 2010

President Barack Obama  
The White House  
1600 Pennsylvania Avenue NW  
Washington, DC 20500

Dear President Obama,

The Citizen Trade Policy Commission (Commission) is an ongoing study commission that was established pursuant to Public Law 2003, chapter 699, in recognition of the need to establish a state-level mechanism to appropriately assess the impact of international trade agreements on Maine's state and local laws, business environment and working conditions. We are writing to you to express our concerns regarding the U.S.-Korea Free Trade Agreement.

The Commission supports international trade and the agreements used to facilitate trade but we opposes any free trade agreement (FTA) that infringes on Maine's right to govern its domestic affairs, provides foreign investors with special privileges, or negatively impacts Maine citizens' access to affordable health care and pharmaceuticals.

With respect to the U.S.-Korea FTA, we urge you to remedy three problems of special importance to Maine and other states, as your administration works with the Korean government to renegotiate commercial issues related to auto and beef trade.

First, we request that you ensure that U.S. trade agreements do not provide greater rights for foreign investors than are available to U.S. firms under our laws and courts. The prior administration's U.S.-Korea FTA text contains special rights for foreign investors that you rightly identified as requiring reform. This includes the investor-state enforcement mechanism

that empowers foreign investors and corporations to go outside our domestic court system and directly challenge federal and state laws and regulations and even court decisions before foreign tribunals. The investor-state provisions give foreign investors the opportunity to win claims that would be unlikely to succeed under U.S. law, such as broad rights to compensation for “regulatory takings.”

Unlike domestic courts, these tribunals do not have to follow precedence when ruling on similar cases. The ability of a foreign investor to bring a challenge to one of Maine’s laws in a tribunal that is not bound by the rules and conventions of our court system interjects a certain amount of trepidation into our legislative process. Whether real or perceived, the mere uncertainty of whether or not a piece of legislation before the Maine State Legislature, if enacted, may be susceptible to challenge by a foreign investor, casts a negative light over the debate on that bill. It is our understanding that this happens in many states and is an undue infringement on a state’s ability to regulate its domestic affairs.

Second, the prior administration’s U.S.-Korea FTA text includes financial service deregulation that contradicts efforts to restore stability to the global economy. These rules simply forbid commonly used regulatory mechanisms, even when such policies are applied equally to foreign and domestic firms. We feel that this text may run afoul of our state laws and lead to predatory financial practices that are not in the interest of our citizens or the people of South Korea. Therefore, we respectfully ask you to remove the text that deregulates financial services.

Third, with regard to pharmaceuticals, we have in several letters to USTR and Maine’s Congressional Delegation warned that USTR is attempting to restrict through FTAs important practices that U.S. states use to control Medicaid and pharmaceutical costs. The U.S.-Korea FTA includes a radical provision appearing to allow industry to appeal government pharmaceutical reimbursement decisions based on whether they adequately respect the “value” of patented pharmaceutical products. Such provisions, if applied to state pharmaceutical pricing programs, would significantly hamper the operation of important public health programs. Maine has been a leader in expanding access to health care for its residents and identifying and implementing best practices to rein in excessive medical cost and promote public health.

Additionally, legislative members of the Commission have met with USTR staff on Medicaid issues regarding the role of the states implementing and paying for Medicaid that was recognized in a footnote to the U.S.-Korea FTA. However, USTR has made an effort to promote a new international trade framework to restrict domestic regulatory responses to excessive pricing by monopoly pharmaceutical suppliers. This new direction concerns us greatly, because it will increase state health care costs and significantly reduce access to health care. Maine and other states have repeatedly raised concerns about USTR’s recent use of FTAs with Australia and Korea to begin establishing international disciplines on pharmaceutical pricing programs. During your negotiations on the U.S.-Korea FTA, please ensure that the agreement will not jeopardize our efforts to reduce the cost of health care for our citizens.

We look forward to working together with your administration to create trade policy that benefits Maine workers, consumers, farmers and firms, while safeguarding the system of federalism that is a core tenet of our American democracy.

Sincerely,



Handwritten signature of Troy Jackson in cursive, with the initials "CCB" written below it.

Troy Jackson  
Senate Co-Chair



Handwritten signature of Margaret Rotundo in cursive, with the initials "ICR" written below it.

Margaret Rotundo  
House Co-Chair

cc: David Axelrod, Senior Advisor to President Obama  
Ambassador Ronald Kirk, United States Trade Representative  
Senator Olympia J. Snowe  
Senator Susan M. Collins  
Representative Michael H. Michaud  
Representative Chellie Pingree  
Governor John E. Baldacci  
Senator Elizabeth Mitchell, President  
Representative Hannah Pingree, Speaker  
Members of the Citizen Trade Policy Commission