MEMORANDUM

To: Members of the Vermont General Assembly

From: Vermont Commission on International Trade and State Sovereignty

Date: February 14, 2013

Subject: International Trade and its Potential Impacts on Vermont

Dear Member:

The purpose of this Memorandum is to provide a basic overview of international free trade agreements (FTAs) and their impact on Vermont, to familiarize you with the Vermont Commission on International Trade and State Sovereignty, and to bring to your attention some of the issues the Commission has been addressing in the past several years that may have a significant impact on Vermont.

What is International Trade?

International trade is the exchange of goods and services across international boundaries or territories. International trade between countries traditionally was conducted according to agreements between two countries, referred to as "bilateral trade agreements." Beginning in 1944 at Bretton Woods, trade began to be considered in a formal global manner and global economic institutions were created to help regulate the conduct of international trade. Some of these organizations include the World Bank, the International Monetary Fund, and the World Trade Organization.

The World Trade Organization is composed of 155 member nations whose trade relations are developed entirely through negotiated agreements. WTO agreements, built upon the foundation of the original General Agreement on Tariffs and Trade (GATT), govern such disparate issues as the sale of goods, services, government procurement policies, agriculture, intellectual property rights, and a binding dispute resolution system. In addition, the United States is party to other multi-lateral agreements including the North American Free Trade Agreement (NAFTA), the Central American Free Trade Agreement (CAFTA), and will be party to a third major agreement currently in negotiations, the Trans-Pacific Partnership Agreement (TPP). Finally, the U.S. has entered into bilateral free trade agreements with 17 other nations, including most recently with Singapore, Chile, Australia, South Korea, and Colombia.

How do the U.S. Government and Individual States Participate?

International trade negotiations are heavily influenced by, and are primarily within the control of, the executive branch of government at both the state and federal levels. The development and coordination of United States international trade policy are conducted by the Office of the United States Trade Representative (USTR), which was created by presidential executive order in 1979. As a creation of the President, the USTR is part of the federal executive branch and is therefore not subject to requests under the Freedom of Information Act. Although the agreements negotiated and signed by USTR are binding on the federal and state governments, historically they have not been construed as "treaties" for purposes of the federal constitution, and thus are subject to approval by majority vote of the U.S. Congress, rather than ratification by two-thirds of that body.

The USTR formally consults with states through the Intergovernmental Policy Advisory Committee, known as IGPAC, and with the individual designated by each state as its State Point of Contact, or SPOC. Unfortunately, however, the USTR has maintained a policy of dealing directly only with the executive branch office within state governments. Furthermore, although members of IGPAC are authorized to review trade agreements during negotiations, they are prohibited by federal law from sharing any information with any outside persons—whether subject area experts, legal counsel, or executive and legislative officers and members. As a result, states—and state legislators in particular—have very limited opportunity to participate in and influence the creation of trade agreements that have very real consequences to state sovereignty.

Why Does International Trade Matter to Vermont?

International trade is very significant to Vermont, not only in terms of its economic impact and economic opportunities, but also for the potential limitations agreements might place on Vermont's ability to continue its progressive record on regulating activity within the state ranging from trade, to agriculture, to consumer protection, to health care.

In terms of economic impacts, Vermont had over $4.2 billion of commodity exports in 2010, including exports to over 150 foreign destinations. Vermont is first in the nation in per capita export of goods, and studies estimate that international trade supports over 70,000 jobs. Vermont's largest foreign market by far is NAFTA-member Canada, which receives nearly half of Vermont's merchandise export total, though exports to Asian markets are increasingly important each year.

Notwithstanding these benefits, international trade also poses potentially significant and adverse impacts on Vermont's regulatory sovereignty. Free trade agreements include rules and standards that are binding on states, including:

- Market access standards, which prohibit quantitative limitations in certain contexts e.g., on the number of goods that may be shipped, or the number of service providers in a given sector such as energy.

- Domestic regulation standards, which require that state laws be "no more burdensome than necessary" to achieve their purpose, a potential risk for consumer protection laws or environmental regulations.
- Minimum treatment standards, which require treatment of all market participants that is consistent with international law, a standard which may not be as high as state law.
- Expropriation standards, requiring compensation of investors for loss of value, which may sometimes include compensation for the loss of anticipated revenues.

Furthermore, under the dispute resolution provisions of many agreements, foreign countries and foreign companies may challenge state laws through dispute resolution panels, rather than through domestic courts. The state is not allowed to participate in this process to defend its laws, but rather, the federal government is the party responsible for pursuing the defense and is the party that is ultimately responsible for the consequences of the decision. In the event of an adverse ruling, the challenged state law may be preempted by the federal government pursuant to provisions of an international trade agreement, and if money damages are awarded, the federal government may seek reimbursement from the state.

Given the breadth of the areas in which Vermont law may be adversely impacted by international agreements—from the use of preferred drug pricing for Medicaid purposes, to the provision of water and sewer service by municipalities that may be in competition with international companies—it is critical that members of the Vermont General Assembly be apprised of the significance of ongoing negotiations and impacts of international trade.

What Action is Vermont Taking to Expand its Participation and Protect its Sovereignty in International Trade Negotiations?

Vermont is one of a handful of states that has devoted significant attention and resources to the issue of international trade in recent years. The Vermont Commission on International Trade and State Sovereignty was established in 2006 to:

- Assess the legal and economic impacts of international trade agreements on state and local laws, state sovereignty, and the state's business environment.
- Provide a mechanism for Vermonters to voice concerns regarding the impact of trade agreements.
- Recommend to the General Assembly, the Governor, Congress, and the USTR how to ensure state benefits from trade while maintaining traditional state sovereignty.

The Commission is composed of one Senator, Representative, and eight additional members who are drawn from the public and private sectors and are directly linked to international trade issues through their respective professional roles. The Commission typically meets on a monthly basis to discuss issues and determine actions to be taken on specific trade issues.

Since its creation, the Commission has taken an active role in representing Vermont's interests in current international trade issues. In February 2009, the Commission adopted a Trade Bill of Rights setting forth the minimum standards that it supports for the adoption and enforcement of international trade agreements. The Commission has drafted letters to USTR, various committees in charge of negotiations on specific policy provisions, the Vermont congressional delegation, and even the President of the United States, to attempt to influence trade policy in real time, as it is being considered. Finally, the Commission has held several special public hearings to discuss specific issues affected by international trade, including transportation, health-care, the environment, and Vermont's business competitiveness.

In the coming months, the Commission plans to create a new, more accessible website, with information on its activities and ongoing trade matters. The Commission also hopes to further engage USTR and the Vermont congressional delegation on negotiations on the TPP, and to work with other states to ensure protection of state sovereignty. Finally, with this letter, and with additional public for a in the coming year, the Commission hopes to raise the profile and awareness of the many benefits and costs of international trade, both within government and with the public.

We want to thank you for your service to Vermont, and we sincerely hope this Memorandum has increased your awareness and piqued your interest in international trade issues. Please look for more information in the coming months on specific trade matters and upcoming public hearings, and more importantly, please feel free to attend a meeting of the Commission.