

§ 23. THE COMMISSION ON INTERNATIONAL TRADE

(a) Definitions. For the purposes of this section: "International Trade Agreement" means a trade agreement between the federal government and a foreign country. International Trade Agreement does not include a trade agreement between the state and a foreign country to which the federal government is not a party.

(b) Membership. There is created a Commission on International Trade and State Sovereignty consisting of:

(1) the Chair of the House Committee on Commerce or his or her designee;

(2) the Chair of the Senate Committee on Economic Development, Housing and General Affairs or his or her designee;

(3) a representative of a nonprofit environmental organization, appointed by the Governor from a list provided by the Vermont Natural Resources Council;

(4) a representative of organized labor, appointed by the Governor from a list provided by Vermont AFL-CIO, Vermont NEA, and the Vermont State Employees' Association;

(5) the Secretary of Commerce and Community Development or his or her designee;

(6) the Attorney General or his or her designee;

(7) a representative of an exporting Vermont business, appointed by the Governor;

(8) a representative of a Vermont business actively involved in international trade, appointed by the Governor;

(9) the Secretary of Agriculture, Food and Markets or his or her designee; and

(10) a representative of a Vermont chamber of commerce, appointed by the Governor.

(c) Powers and duties.

(1) The Commission shall conduct an annual assessment of the legal and economic impacts of International Trade Agreements on State and local laws, State sovereignty, and the business environment.

(2) It shall provide a mechanism for citizens and legislators to voice their concerns, which it shall use to make policy recommendations to the General Assembly, to the Governor, to Vermont's congressional delegation, or to the trade representatives of the United States government. Recommendations shall be designed to protect Vermont's job and business environment, and State sovereignty from any negative impacts of trade agreements.

(3) It may recommend legislation or preferred practices and shall work with interested groups in other states to develop means to resolve the conflicting goals and tension inherent in the relationship between international trade and state sovereignty.

(4) As provided for in 9 V.S.A. chapter 111A, the Commission shall consider and develop formal recommendations with respect to how the State

should best respond to challenges and opportunities posed by a particular International Agreement.

(d) Reporting. The Commission shall submit an annual report, which shall be prepared by the Secretary of Commerce and Community Development, to the House Committee on Commerce and Economic Development, the Senate Committee on Economic Development, Housing and General Affairs, the Governor, and Vermont's congressional delegation. The report shall contain information acquired pursuant to activities carried out under subsection (c) of this section. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this subsection.

(e) Staff services. The Commission shall be entitled to staff services of the Agency of Commerce and Community Development, the Legislative Council, and the Joint Fiscal Committee.

(f) Per diem. For attendance at a meeting when the General Assembly is not in session, legislative members of the Commission shall be entitled to the same per diem compensation and reimbursement for actual and necessary expenses as provided members of standing committees under 2 V.S.A. § 406. Except for members employed by the State, members of the Commission shall be entitled to the same per diem compensation as provided under 32 V.S.A. § 1010(a) and mileage reimbursement as provided under 32 V.S.A. § 1267.

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STATE OF VERMONT
GENERAL ASSEMBLY

REP. KATHLEEN C. KEENAN, CO-CHAIR
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Commission on International Trade & State Sovereignty

MINUTES

Friday, November 6, 2015; 9:00 am-3:30 pm

Burlington, VT

Commission Members Present: Sen. Ginny Lyons, Rep. Kathy Keenan, David Anger, Krista Conley, Jon Erickson, Dennis LaBounty, Ted Mudd, Thea Schwartz, Steve Shepard

Other Active Participants: Gail Stevenson, Vermont Council on World Affairs; Chrissy Gilhuly and David Hall, Vermont Office of Legislative Council; Nancy Matthews, Dean of the Rubenstein School of Environment and Resources at the University of Vermont; Reinhard Bütikofer and Bart Staes, Members of the European Parliament; Martin Koehler, Advisor on International Trade of the Greens/EFA Group in the European Parliament; Simon McKeagney, Editor and Campaign Manager for the Greens/EFA group's TTIP campaign in the European Parliament; Jeff Mauk, Executive Director of the National Caucus of Environmental Legislators; New Hampshire State Representative Bob Backus; Iowa State Representative Charles Isenhart; Massachusetts State Representative Denise Provost; Karen Hansen-Kuhn, Director of Trade, Technology and Global Governance, Institute for Agriculture and Trade Policy (IATP); Sharon Anglin Treat, member of the Maine Citizen Trade Policy Commission, and a member of the Intergovernmental Policy Advisory Committee of the U.S. Trade Representative; Reg Godin and Abbey Willard, Vermont Agency of Agriculture, Food and Markets; Jeff Lively and Brian Berini, Vermont Department of Buildings and General Services; and Todd Daloz, Office of the Vermont Attorney General.

A. Welcome from Dean Nancy Mathews, Rubenstein School of Environment and Natural Resources, University of Vermont

B. Overview and Introductions of Members and Guests

C. Presentations and Discussions

1. Renewable Energy, Climate Change, and TTIP

Following introductions, Sen. Lyons provided opening comments on the status of the Transatlantic Trade and Investment Partnership Agreement (TTIP), and perspective on Vermont and U.S. perspectives to issues of concern in the agreement related to renewable energy and climate change. MEP Bütikofer provided an overview of the political, social, and economic issues and crises currently influencing the political and trade climate in the E.U. and offered his perspective on renewable energy and climate change concerns in TTIP. The group discussed generally the contrast between the official support for negotiating TTIP in the European Parliament and the European Council contrasted with the popular dissent coursing through European member states; the upcoming climate change summit in Paris contrasted with the likely negative climate change impacts of TTIP as currently drafted; the influence and extensive participation of large corporations in the negotiation process and the substantive construction of TTIP; and the likelihood that a free trade agreement can play a role in positive economic, regulatory, and environmental changes.

2. Procurement

Karen Hansen-Huhn presented on procurement policies and related issues of concern in TTIP. Brian Berini and Jeff Lively provided an overview of the procurement policies, practices, and governing laws for State procurement in Vermont. Abbey Willard presented on Vermont's farm-to-school program, U.S. federal requirements for farm-to-school programs, and Vermont legislation governing the expansion of local food procurement in schools and institutions. MEP Staes presented on the E.U. position on procurement thus far in TTIP negotiations. The group discussed whether and the extent to which subnational units of government would be allowed to opt in or out of procurements policies in TTIP, who would determine applicability of those policies to subnational units of various sizes or statuses, e.g., hospitals and school systems; whether subsidies, grants, or preferences for local or Buy American would survive TTIP; the official position of the E.U. on procurement and the extent to which the E.U. has become more assertive on opening procurement policies; and the extent to which the E.U. was successful in the Comprehensive Economic and Trade Agreement with Canada on procurement and regulatory cooperation and would like to use that as a model for TTIP.

2. Regulatory Cooperation, GMO labeling, and TTIP

Sharon Treat presented on regulatory cooperation and food labeling issues in TTIP. MEP Staes presented on the current legal framework for GMOs in the E.U. Todd Daloz presented on Vermont's GMO labeling law, regulations adopted pursuant to the law, and on the current litigation challenging implementation of the regulations.

The group discussed the extent to which current negotiations on TTIP seek to eliminate non-tariff barriers to trade through "regulatory cooperation" and the "harmonization" of regulatory standards; the status of GMO regulation in Vermont and in the United States in several states and at the federal level; the regulatory posture of GMOs in the E.U. concerning cultivation,

importation, and labeling of foods and feeds; and the increasingly aggressive negotiating pressure from the U.S. concerning biotechnology regulation.

D. Action Items

Following lunch, the Commission and other participants discussed, in light of the group's collective interest to change the course of the current TTIP process and expand the limited opportunity for meaningful participation by many interested parties: (1) whether to support the TTIP and the current negotiation framework; and (2) possible action steps to promote that change.

The group determined that it should not support TTIP in its current form and should seek to reduce corporate power in the process, increase transparency, and promote democracy through broader participation from more stakeholders and greater respect for local control of decisions.

The group explored possible actions it could take collectively or individually, including:

1. Letters to USTR, congressional delegations.
2. Resolutions from U.S. state legislative bodies.
3. Protests or rallies in the United States.
4. More direct engagement in the U.S. presidential campaign.
5. More direct cooperation with the Citizens Trade Campaign
6. More direct engagement with U.S. states' offices of Attorney General
7. White papers built around transparency, equal access for all stakeholders, and democracy.
8. Town meeting initiatives in New England.
9. Press documents or endorsements of this particular meeting and possible replication in other fora.
10. Direct partnerships between U.S. states and states of E.U. member nations.
11. More direct engagement with academics in TTIP areas such as climate change.

E. Motions

No motions were made during the meeting.

Minutes prepared by David P. Hall, Esq., Legislative Counsel

PRESS RELEASE

**General Assembly – 133 State Street – Montpelier, VT 05602
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FOR IMMEDIATE RELEASE

Date: June 18, 2019
Contact: Agatha Kessler
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E-mail: AKessler@leg.state.vt.us

**Vermont Commission on International Trade to Host Meeting
with Members of European Parliament**

Montpelier, Vermont—The Vermont Commission on International Trade and State Sovereignty, in partnership with the Vermont Council on World Affairs, will host a meeting with Members of the European Parliament and members of the National Caucus of Environmental Legislators to address policy issues of common concern in the Transatlantic Trade and Investment Partnership (TTIP), a trade agreement being negotiated between the U.S. and the European Union. The meeting will be held on Friday, November 6, 2015, from 9:00 a.m. to 12:30 p.m. at the University of Vermont's George D. Aiken Center, Room 311. The meeting is open to the public.

Following an introduction and welcome from Nancy Matthews, Dean of the Rubenstein School of Environment and Resources at the University of Vermont, the meeting will consist of a series of presentations and discussion groups lead by European and state panelists on issues of common concern arising in TTIP, including renewable energy and climate change, State procurement and farm-to-school practices, regulatory cooperation on pesticides and chemicals, and GMO labeling. The purpose of the meeting is to facilitate a dialogue between U.S. state and European stakeholders, business groups, executive branch officials, and academics on the potential effects of TTIP on issues of national and subnational sovereignty and public policy, and to explore specific action steps stakeholders can take to support Vermont's interests and to increase cooperation between state, federal, and European stakeholders with similar policy objectives.

Panelists will include: **Reinhard Bütikofer** (Germany), a Member of the European Parliament (Greens/EFA) and the Co-Chair of the European Green Party (EGP); **Bart Staes**, MEP (Groen, Belgium), a member of the Greens/EFA group in the European Parliament since 1999; **Martin Koehler**, the Advisor on International Trade of the Greens/EFA Group in the European Parliament and the Advisor of the Group on Transatlantic Relations; **Simon McKeagney**, the

Editor and Campaign Manager for the Greens/EFA group's TTIP campaign in the European Parliament; **New Hampshire State Representative Bob Backus**, an Assistant Majority Leader, and member of the Science, Technology and Energy Committee; **Iowa State Representative Charles Isenhardt**, the ranking member on the Environmental Protection committee; **Massachusetts State Representative Denise Provost**, a member of the House Committee on Global Warming and Climate Change and the Joint Committees on Higher Education; Revenue; and State Administration and Regulatory Oversight; **Karen Hansen-Kuhn**, Director of Trade, Technology and Global Governance, Institute for Agriculture and Trade Policy (IATP); and **Sharon Anglin Treat**, a lawyer and public policy consultant, member of the Maine Citizen Trade Policy Commission, and a member of the Intergovernmental Policy Advisory Committee of the U.S. Trade Representative.

The presentations are designed to increase awareness of the potential impacts of international trade agreements. According to Gail Stevenson, Executive Director of the Vermont Council on World Affairs: "One of the mandates of the Vermont Council on World Affairs is to provide information about global issues to the business and policy communities. The current TTIP trade negotiations and relations with our European neighbors touch upon issues that will have an impact on Vermont businesses. We are delighted to be able to work with the Vermont Commission on International Trade and State Sovereignty to highlight them." Add Senator Ginny Lyons and Rep. Kathleen Keenan, Co-Chairs of Vermont's Commission of International Trade and State Sovereignty, "understanding challenges posed by TTIP on agricultural, energy, local procurement, and other policies is important to Vermont's economy. Meeting with representatives of the European Parliament gives state regulators, businesses, and legislators an opportunity to respond to those challenges."

The meeting was organized in cooperation with Sharon Treat, a former Maine state legislator. Treat is a consultant on trade policy for the National Caucus of Environmental Legislators, and will be presenting at the meeting on two papers she authored, on TTIP and U.S. states' food labeling policies, and TTIP and U.S. states' chemical and pesticides policies. The members of the European Parliament attending the Vermont meeting hosted Ms. Treat this summer for a six-country series of forums in the EU on TTIP, and this visit is an opportunity to connect with U.S. legislators and continue a dialogue on TTIP on this side of the Atlantic. The EU delegation's visit to Vermont follows meetings in Washington, D.C. earlier in the week with members of Congress and representatives of labor, environmental, and food policy organizations.

According to Treat, "This meeting presents a unique opportunity to share research and perspectives between key members and staff of the European Parliament and U.S. state government policymakers from Vermont and several other states, who are interested and engaged in trade policy and how it will impact consumer, food, and environmental protections on both sides of the Atlantic."

PUBLIC MEETING NOTICE PRESS RELEASE
AUTHORIZATION

Text of press release reviewed by: _____
(Attorney or Legislative Member) (Date)

Text authorized for release to press by: _____
(Attorney or Legislative Member) (Date)

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Commission on International Trade & State Sovereignty

MINUTES

Tuesday, September 8, 2015

1:00-3:45 pm; Burlington, VT

Commission Members Present: Sen. Ginny Lyons, Rep. Kathy Keenan, David Anger, Krista Conley, Jon Erickson, Dennis LaBounty, Ted Mudd, Thea Schwartz, Steve Shepard

Other Active Participants: Gail Stevenson and Patricia Preston, Vermont Council on World Affairs; Megan Sullivan, Office of Congressman Peter Welch; Chrissy Gilhuly and David Hall, Vermont Office of Legislative Council; Annie Noonan and Andrea Huffy, Vermont Department of Labor (by telephone)

A. Introductions of Members and Participants

B. Discussion:

1. Following introductions, David Hall reviewed with the Commission its authorizing legislation and charge, 3 V.S.A. § 23..

2. Next, Gail Stevenson and Patricia Preston presented an overview of the mission and activities of the Vermont Council on World Affairs, an independent 501(c)(3) organization affiliated with the Lake Champlain Chamber of Commerce. The Commission discussed potential future meetings of the Commission with dignitaries from Africa and Europe on October 26 and November 20.

3. Next, Megan Sullivan presented an update on international trade issues under discussion at the federal level and ongoing for Vermont's business community, including:

(a) the expiration of the legislative authority for the federal Export-Import Bank, and the prospect of attaching reauthorization to a continuing resolution;

(b) ongoing efforts by President Obama to normalize trade relations with Cuba, and the prospects for Vermont dairy farmers and pharmaceutical and telecommunications firms to benefit from new trade opportunities;

(c) the recent Congressional approval of fast track authority coupled with reauthorization of trade adjustment assistance;

(d) the status of the Trans-Pacific Partnership Agreement, which was not resolved in summer 2015, as scheduled, due in part to significant disputes over pharmaceutical intellectual property and tobacco provisions; resolution of the agreement is expected to be further delayed by upcoming Canadian and U.S. elections;

(e) the status of the Trans-Atlantic Free Trade Agreement, which is also significantly delayed due to ongoing issues in the European economy, including the Greed debt crisis and refugee crisis;

(f) approval of the nuclear deal with Iran and prospects for Vermont businesses in the aviation industry if trade restrictions are eased;

(g) issues concerning Vermont's points of entry with Canada, including ongoing discussions on upgrades at Derby Line and Highgate.

4. Next, Annie Noonan and Andrea Huffey provided an overview of the type and scope of benefits and services available to dislocated workers through the Department of Labor and the trade adjustment assistance program and also provided an update on the closing of the Comfort Colors facility in Northfield.

C. Action Items

The Commission requested the following further information and actions:

1. Background information on the Export-Import Bank, its mission, and activities, in order to determine whether the Commission will submit a letter to Congress in support of reauthorizing the Bank.

2. Research on the tax benefits to Keurig Green Mountain from moving its commodity purchasing headquarters from Vermont to Switzerland.

3. Research on whether there has been any support for harmonizing the federal Toxic Substances Control Act with more stringent European toxics standards in the context of the Trans-Atlantic Free Trade Agreement.

4. Research whether Comfort Colors was the recipient of State assistance.

5. Conduct a doodle poll on dates for meetings in October, November, and December, and Commission members submit ideas for agenda items.

D. Motions

No motions were made during the meeting.

Minutes prepared by David P. Hall, Esq., Legislative Counsel

DRAFT

RESOLUTION OF THE VERMONT COMMISSION ON INTERNATIONAL TRADE AND STATE SOVEREIGNTY ON INTERNATIONAL INSURANCE REGULATORY DISCUSSIONS

WHEREAS, for 150 years the U.S. state-based insurance regulatory system has overseen the solvency of insurers and consumer protection thereby helping to create the largest insurance market in the world;

WHEREAS, even during times of financial crisis, the U.S. state-based insurance regulatory system has assured that companies meet their obligations to insurance customers, including the establishment of mechanisms to protect consumers in case of insurance insolvencies;

WHEREAS, the state-based insurance regulatory system is second to none in the world in terms of consumer protection and has assured that regulated companies are capitalized at record levels;

WHEREAS, the state-based insurance regulatory system is transparent and open to all stakeholders, is accountable to the public and is governed by the rule of law;

WHEREAS, insurers subject to U.S. state-based insurance regulation have engaged in individual and collective actions to dramatically improve highway, workplace and building safety, resulting in millions of lives saved, millions of injuries prevented and billions of dollars of losses avoided;

WHEREAS, the Congress has repeatedly, as recently as in the Dodd-Frank Act, affirmed the U.S. state-based insurance regulatory system as the U.S. system for regulating insurers;

WHEREAS, the state-based insurance regulatory system is constantly evolving to address new market conditions and challenges and to improve its effectiveness and efficiency; and

WHEREAS, despite this record of performance, attempted intrusions into the U.S. state-based insurance regulatory system are multiplying from many sources, including the International Association of Insurance Supervisors and especially the Financial Stability Board which has issued directives far beyond its charter with the apparent participation and approval of U.S. federal agencies;

NOW THEREFORE BE IT RESOLVED THAT THE VERMONT COMMISSION ON INTERNATIONAL TRADE AND STATE SOVEREIGNTY:

1. Reaffirms its unqualified support for the U.S. state-based insurance regulatory system and calls on all state and federal organizations and agencies to do the same;
2. Formally requests that the NAIC, FIO, and other relevant federal agencies have regular consultations with the National Conference of Insurance Legislators with regard to international insurance regulatory matters;
3. Formally requests that the U.S. Congress direct all relevant federal agencies to oppose all proposals by the Financial Stability Board that make recommendations applicable to any entities not officially designated by the U.S. as systemically important financial institutions; and
4. Formally requests that the Administration, U.S. Congress, and NAIC assure that all representatives of the U.S. in international insurance regulatory discussions advocate only positions that are consistent with the insurance regulatory policies determined by the states, which continue to have the authority to regulate the business of insurance.

By Senator Lyons, Representative Pearson

Senate resolution relating to the public policy implications of the proposed Trans-Pacific Partnership Agreement and the Transatlantic Trade and Investment Partnership.

Whereas, the proposed Trans-Pacific Partnership Agreement (TPPA) is a multinational trade agreement in the Asia-Pacific region which, if implemented, could create the largest trading bloc in the world, and

Whereas, the Transatlantic Trade and Investment Partnership (TTIP) is a free trade agreement being negotiated with the European Union that could override Vermont's constitutionally guaranteed authority to pass laws and implement policies on a wide range of domestic issues, and

Whereas, the negotiations for the two trade agreements lack transparency and concern terms going beyond tariff agreements, and

Whereas, the trade agreements could impact state sovereignty and restrict the ability of Vermont to regulate certain corporate activities impacting the environment, health care, tobacco products, pharmaceuticals, energy, and agriculture, and

Whereas, states do not have an equal advisory capacity in the trade negotiations as that given to businesses, and

Whereas, the negotiating texts have not been published and there has not been public debate on U.S. trade policy, and *now therefore be it*

Resolved by the Senate:

That the Senate of the State of Vermont requests the USTR: (1) to increase transparency in TTIP and TPPA free trade negotiations, (2) to publish information going beyond tariff negotiations, (3) to give states an equal advisory role in the negotiations as that given to businesses, and (4) to consider state sovereignty and the impact of the trade agreements on state and local laws, *and be it further*

Resolved: That the Secretary of the Senate be directed to send a copy of this resolution to the USTR and the Vermont Congressional Delegation.

INTERNATIONAL TRADE BENEFITS TO VERMONT

- \$4.2 billion in exports, including agricultural products (2010)
- Additional exports of services
- 70,000 local jobs

BUT SPECIFIC PROVISIONS IN FREE TRADE AGREEMENTS CAN HARM VERMONT

- Agriculture (labeling requirements, dairy market)
- Environment (regulation of toxins, land use planning)
- Medicaid drug prices and choices
- State purchasing ("green" and "buy-local" requirements)
- Tobacco control

The Vermont Commission on International Trade & State Sovereignty was created in 2006 to:

- Assess the legal and economic impacts of trade agreements on state laws and regulations
- Provide Vermonters a forum to voice concerns regarding the impact of trade agreements
- Recommend to the Legislature, Governor, Congress and the U.S. Trade Representative how to ensure state benefits from trade without undermining state laws

on International Trade and State Sovereignty



**small
print in
free
trade
agreements**

can overturn

Vermont state

laws



*The Vermont Commission on
International Trade & State Sovereignty*

Free Trade Agreements (FTAs) regulate how goods and services are bought and sold across international borders.

Agriculture

If the U.S. signs the proposed Trans-Pacific Partnership trade agreement, dairy products from other countries could become a big issue for Vermont. U.S. dairy farmers and members of Congress believe that at least one foreign dairy company could end up dominating the international market and undercut milk earnings in Vermont.

Environmental protection

Foreign companies can use trade agreements to challenge state environmental laws. Under those agreements, companies can sue to recover investment losses due to a state's environmental protection laws. In one NAFTA case, a U.S. company challenged Canada's ban on the gasoline additive MMT, suspected of causing adverse health effects; Canada suspended the ban and paid \$13 million.

Health Care/Prescription Drugs

State limits on health care costs can be undercut by trade agreements that require countries to "promote access" to new drugs. Until it was "clarified," this type of provision in the U.S.-Australia agreement could have barred Vermont from requiring that drugs on its Medicaid "preferred drug list" be cost-effective, causing major increases in price.

The U.S. has signed over 60 two-country (bilateral) and multi-lateral FTAs, including World Trade Organization agreements and the North American Free Trade Agreement (NAFTA).

- **State purchasing**

The State of Vermont buys things for public purposes—paper, cars, energy. Until now, the U.S. Trade Representative has consulted with state governors on whether they agree to be bound by an international treaty on government procurement; but consultation is only discretionary. Should this approach change, Vermont's "buy-local" and energy efficiency requirements could be challenged as barriers to trade.

- **Tobacco regulation**

The proposed Trans-Pacific Partnership could allow countries and companies to challenge state and federal regulation of tobacco products. The U.S. ban on clove cigarettes has already been successfully challenged in an international trade case, and tobacco control measures are the subject of suits in Uruguay and Australia.

- **Trade processes shut out states**

States do not participate in international trade negotiations. And challenges to state laws are heard in secret by tribunals of trade lawyers; the affected state has no place at the table.

For more information, go to the Vermont Commission on International Trade & State Sovereignty's website:
www.leg.state.vt/workgroups/Trade/

What is International Trade?

- ❖ International Trade is the exchange of goods and services across international boundaries or territories.
- ❖ Free Trade Agreements (FTAs) between countries regulate how goods and services are exchanged between countries.
- ❖ FTAs may be bi-lateral—between two countries—or multi-lateral—between many countries.
- ❖ The US is a party to over 40 bilateral trade agreements and over 20 multi-lateral FTAs, including the World Trade Organization (WTO) and the North American Free Trade Agreement (NAFTA).
- ❖ FTAs create international standards for trade in goods, services, for technical regulation, and for trade dispute resolution.

Small Print In Free Trade Agreements

Can supersede

Vermont State

Laws

Where Do I Find Information About International Trade?

The Vermont Commission on International Trade and State Sovereignty:

- ❖ **Website:**
www.leg.state.vt.us/workgroups/Trade/
- ❖ **Phone:** (802) 828-2231

Office of the United States Trade Representative

- ❖ www.ustr.gov
- ❖

Forum on Democracy and Trade

- ❖ www.forumdemocracy.net
-
-

What are Some Advantages of International Trade?

- ❖ Vermont had over \$4.2 billion of commodities exports in 2010 and is ranked first in the nation in per capita export of goods.
- ❖ Vermonters also export services and engage in other trade not easily quantifiable in data.
- ❖ Studies estimate that international trade supports over 70,000 jobs in Vermont.
- ❖ Approximately 50% of all Vermont commodities exports are to Canada. The remainder of exports increasingly flow to countries throughout North and Central America, Asia, and Europe.
- ❖ Dairy and agricultural exports play an increasingly significant role for Vermont farm producers and extend our brand identity to new markets throughout the world.

What Areas of Vermont Law might be Directly Impacted by FTAs?

- ❖ Agriculture and Dairy
- ❖ Environmental protection
- ❖ Groundwater
- ❖ Prescription drugs
- ❖ Consumer protection
- ❖ Gambling
- ❖ State purchasing
- ❖ Dispute resolution
- ❖ Professional licensing
- ❖ Utilities
- ❖ Technical specifications

What are Some Disadvantages of International Trade?

- ❖ FTAs include standards governing market access, technical regulation, trade discrimination, and many other areas, that are binding on states and may limit or supersede state laws.
- ❖ States are not allowed to participate directly in FTA negotiations, and rarely have the opportunity to comment or review FTA texts until they are finalized.
- ❖ States are not authorized to directly participate in a dispute resolution process when state laws are challenged by a foreign nation or company.
- ❖ Many FTA provisions may significantly impact areas that define Vermont's social identity, from environmental and land use regulations, to buy local and Made in Vermont labeling standards, to tobacco regulation.

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STEVEN SHEPARD

STATE OF VERMONT
GENERAL ASSEMBLY

Commission on International Trade & State Sovereignty

Dear Member,

On behalf of the Vermont Commission on International Trade and State Sovereignty, please find the enclosed Memorandum concerning international trade and its potential effects on Vermont.

International trade has many positive impacts on Vermont's economy, supporting over 70,000 jobs and over \$4.2 billion in commodity exports as of 2010. However, for all of the benefits that accrue to Vermont and the United States from participation in international trade, the provisions of bilateral and multilateral trade agreements governing such trade have the potential to restrict or preempt Vermont statutes, rules, and regulations in many important areas, including:

- **Agriculture** (*labeling requirements; food safety; subsidies*)
- **Environmental law and land use regulation** (*siting, permitting, takings*)
- **Consumer protection** (*professional licensing; quality standards*)
- **Health care and prescription drugs** (*Medicaid preferred drug lists*)
- **Utilities** (*certificates of public good; permitting standards*)
- **Tobacco regulation** (*labeling; consumer safety requirements*)
- **Government procurement** (*preferences for green or local products*)

We hope you will take a moment to review the enclosed Memorandum, and we further invite you to access international trade materials available on the homepage of the Vermont General Assembly. Finally, please be on the lookout for additional briefings and materials being planned for the upcoming legislative session.

Thank you for all of your work on behalf of Vermont.

Sincerely,

GINNY LYONS *KATHLEEN C. KEENAN*

Ginny Lyons
Co-Chair
Senator, Chittenden County

Kathleen Keenan
Co-Chair
Representative, St. Albans

MEMORANDUM

To: Members of the Vermont General Assembly

From: Vermont Commission on International Trade and State Sovereignty

Date: September X, 2012

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.

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JOLINDA LACLAIR
LAWRENCE MILLER

STATE OF VERMONT
GENERAL ASSEMBLY

COMMISSION ON INTERNATIONAL TRADE AND STATE SOVEREIGNTY

August 31, 2011

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

Dear President Obama:

We are contacting you on behalf of the Vermont Commission on International Trade and State Sovereignty (Vermont Commission) regarding the U.S Trade Representative's (USTR's) negotiation of the Trans Pacific Partnership Agreement (TPPA) and how proposed provisions in that agreement could undermine state law and restrict the traditional authority of states to regulate the public health and welfare. The Vermont Commission was established to assess the legal and economic impacts of free trade agreements (FTAs) on the economy and laws of Vermont. International trade undoubtedly is vital to the U.S. and Vermont economies, and the Vermont Commission recognizes and encourages efforts to open international markets to Vermont goods and services.

However, the Vermont Commission recently learned that Philip Morris International (Philip Morris) invoked investor-state dispute mechanisms in two free trade agreements to challenge tobacco packaging regulations in Uruguay and Australia. As a result of Philip Morris's claim, Australia has requested that the investor-state dispute mechanism be removed from the TPPA. Australia is concerned that Philip Morris and other tobacco companies could use an investor-state dispute mechanism to challenge tobacco packaging, display, and advertising laws and regulations. In addition, the Commission recently received and reviewed the Forum on Democracy and Trade's Statement of Principles regarding potential concerns with tobacco and investment in the TPPA.

The Commission concurs with the Forum on Democracy's principles and shares Australia's concerns regarding the inclusion of an investor state-dispute mechanism in the TPPA. As we have written you and the USTR in the past, the Vermont Commission has serious concerns that investor-state dispute mechanisms in free trade agreements could ultimately infringe on traditional, constitutional authority of states to regulate the public health and welfare. For example, Vermont currently regulates the sale of tobacco products, the display of tobacco products, the type of vending mechanisms for tobacco sales, tobacco sales licenses, and Internet sales of tobacco.¹ Most other U.S. states have similar regulations or restrictions on the sale and

¹ See 7 V.S.A. §§ 1003, 1004, 1006, and 1010.

display of tobacco products.² If an investor-state dispute mechanism is included in the TPPA, an international subsidiary of Philip Morris or another tobacco company based in a TPPA country other than the United States could challenge a U.S. state law regulating tobacco sales, advertising, or display.

The Tenth Amendment of the U.S. Constitution reserves to the states authority that is not expressly delegated to the federal government. This authority includes the authority of the states to regulate for public health and welfare, and free trade agreements should not grant international companies or investors the authority to restrict or infringe on this authority. Consequently, the Vermont Commission requests that the investor-state dispute mechanism be removed from the TPPA in order to prevent international companies from challenging state laws. In addition, the TPPA and all future free trade agreements should exempt or carve out tobacco from the terms of the agreement, thereby preserving the traditional, constitutional authority of states to regulate tobacco as a component of the public health and welfare.

Thank you for the opportunity to raise our concerns. Please let us know if we can provide more information or if you would like to discuss this issue with us by contacting our staff, Michael O'Grady at 828 2282, or Rosalind Daniels at 828-2250.

Sincerely,



Ginny Lyons
Co-Chair
Senator, Chittenden County



Kathleen Keenan
Co-Chair
Representative, St. Albans

Cc: Members, Commission
Senator Patrick Leahy
Senator Bernie Sanders
Representative Peter Welch
Governor Peter Shumlin
Ambassador Ron Kirk, USTR
Myesha Ward, USTR
Intergovernmental Policy Advisory Committee
Forum on Democracy and Trade

² See, e.g., American Lung Ass'n, State Legislated Actions on Tobacco Issues, at <http://www.lungusa2.org/slati/about.php>.

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KEVIN DORN

STATE OF VERMONT
GENERAL ASSEMBLY

COMMISSION ON INTERNATIONAL TRADE AND STATE SOVEREIGNTY

August 27, 2010

President Obama
The White House
1600 Pennsylvania Ave., N.W.
Washington DC 20500

Dear President Obama:

We are contacting you on behalf of the Vermont Commission on International Trade and State Sovereignty (Vermont Commission) regarding renegotiation of the free trade agreement between the United States and South Korea (Korea FTA). It has come to our attention that in renegotiating the Korea FTA, the United States Trade Representative will rely largely upon language negotiated and signed by President Bush three years ago. We believe that reliance on the previously negotiated language is a mistake due to several provisions in the language that could substantially undermine state sovereignty and traditional state regulatory authority. It is important to emphasize that the Commission is not opposed to trade agreements and supports trade with other countries as vital to Vermont's, as well as the nation's, economy.

The Vermont General Assembly established the Vermont Trade Commission to review the impact of free trade agreements on Vermont and the sovereignty of the state. International trade is a key component of the economy of Vermont, and the Vermont Commission supports free trade agreements that provide fair and equitable trade among countries. However, the Korea FTA negotiated three years ago includes an investor-state enforcement mechanism. Investor-state enforcement authority is not equitable, because it provides foreign investors with greater substantive and procedural rights than those afforded U.S. citizens.

Investor-state enforcement mechanisms, such as Chapter 11 of the North American Free Trade Agreement, and the expropriation and "minimum standard of treatment" (MST) claims they authorize provide foreign countries and corporations the ability to undermine laws enacted under the states' traditional 10th Amendment authority. For example, foreign corporations can challenge the validity of state laws addressing public health, professional licensing, safety, and the environment, all of which are matters clearly within state legislative authority. Such challenges should be prohibited unless a state enacts a law in a discriminatory manner without due process—as was argued, successfully, in the *Methanex* case, but which has yet to be codified as a standard for all U.S. bilateral and free trade agreements.

Investment chapters or agreements also allow foreign investors procedural rights that are unavailable to U.S. citizens. For example, before a U.S. corporation may bring a takings claim against a

state, the corporation must exhaust all administrative routes of appeal and receive a final administrative action. In contrast, a foreign corporation need not receive a final administrative action in order to initiate an expropriation or MST claim in an international tribunal. Similarly, investment chapters or agreements allow foreign corporations to seek relitigation of a decision of a U.S. court, a recourse unavailable to any U.S. citizen. The greater substantive and procedural rights afforded foreign corporations under investor-state enforcement mechanisms prejudice U.S. corporations and citizens and place the U.S.-based corporations at a disadvantage in the marketplace.

In addition, the previously negotiated text of the Korea FTA includes language authorizing financial service deregulation. This language would forbid countries and states from employing common regulatory mechanisms. For example, the financial services chapter of the Korea FTA would prohibit a state from using an economic needs test to determine limits on the number of financial institutions in the state. In Vermont, financial institutions are required to obtain a certificate of general good prior to operation. As part of the application for the certificate, the state regulatory agency reviews several factors, including the adequacy of the financial resources of the proposed institution and the needs of the market area to be served. Under the financial services chapter of the Korea FTA and the expropriation claim authority embedded within the chapter, these basic and historic mechanisms for the regulation of financial institutions could be subject to challenge by a Korean corporation or investor.

The Tenth Amendment of the U.S. Constitution reserves to the states the authority to regulate when not otherwise prohibited. This valued authority is the basis of all state government regulation, and all efforts should be made to prevent the curtailment of that authority by free trade agreements. Therefore, we ask that you remove from the Korea FTA the investor-state enforcement mechanism and the prohibitions on state regulation of the financial service sectors.

If you do go forward with an investment chapter, we strongly urge that the nature of the property protected and the extent of the protection should be consistent with U.S. takings law. Similarly, the investment chapter should not grant foreign investors greater substantive or procedural rights than those afforded U.S. citizens. If the financial service limitations on state regulation are not removed, the language should at least be amended to clarify that states retain the traditional authority to regulate the approval and operation of financial institutions, including the use of economic needs tests.

Lastly, the previously negotiated text of the Korea FTA includes provisions that committed each country to "appropriately recognize the value of patented pharmaceutical products and medical devices in the amount of reimbursement it provides." See Korea-US Free Trade Agreement, Art. 5.2(b)(i). In response to state concerns, a special protection for Medicaid was included as a footnote to the Pharmaceuticals chapter of the Korea-US FTA to clarify that the policy was not appropriately applied to a federally funded health care program administered by the states.

Both U.S. federal government agencies and state governments negotiate drug prices in similar ways as foreign governments, and they pay similar prices. Some of the most important tools used by over 40 state Medicaid programs are open formularies known as Preferred Drug Lists (PDLs). States with PDLs use bulk purchasing and reimbursement to persuade drug companies to reduce prices as a condition for access to a large market. PDLs are substantially similar to the programs in other countries that USTR and industry criticize as unreasonable price controls in the Special 301 report.

Prices charged in federal health care programs, such as Medicare Part D, can have an impact on the cost to states. For example, Vermont has a state prescription drug program to assist Medicare beneficiaries with Part D cost-sharing, such as the "donut hole." In addition, under the new federal health

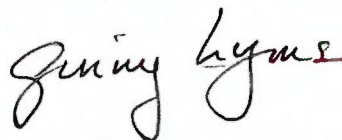
care reform legislation, there are cost-reduction requirements that apply to pharmaceutical companies participating in Part D.

Vermont has been a leader in health care reform, and the success of federal reform directly impacts on the state's reform efforts. Because many Vermonters currently have health insurance protections in excess of the federal reform requirements, it is possible the state will continue to "wrap around" federal reform efforts, including pharmaceutical coverage, by providing supplemental state subsidies. If pharmaceutical costs are not aggressively contained at the federal level, this could have a negative impact on state budgets and the state's ability to ensure its citizens have adequate and affordable health care coverage.

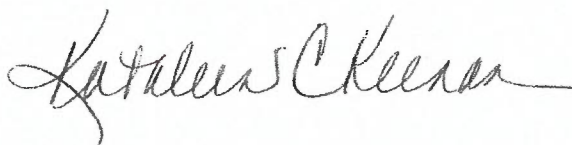
For these reasons, we urge you to ensure that the Korea FTA does not impinge on state or federal pharmaceutical reimbursement policy, which will increase state health care costs and reduce access to health care, by continuing to prioritize higher reimbursements over cost containment in health care. At a minimum, please retain the footnote clarifying that the provisions do not apply to Medicaid or state health care programs.

Thank you for the opportunity to raise our concerns. We would like to work with you and Ambassador Kirk in the formation of a U.S. trade policy that fosters free and fair trade and that benefits Vermont and respects the traditional regulatory authority guaranteed to the states by the U.S. Constitution. If you would like to discuss the issue further with us, please contact our staff—Robin Lunge or Michael O'Grady—at 802-828-2231.

Sincerely,



Ginny Lyons
Co-Chair
Senator, Chittenden County



Kathleen Keenan
Co-Chair
Representative, St. Albans

Cc: David Axelrod
Ambassador Ron Kirk, USTR
Senator Patrick Leahy
Senator Bernie Sanders
Representative Peter Welch
Myesha Ward, USTR
Intergovernmental Policy Advisory Committee
Forum on Democracy and Trade

**Vermont Commission on International Trade and State Sovereignty
Proposed Action Plan**

1. Education and Communication

- The Trade Commission should increase educational activities regarding international trade and free trade agreements.
 - Goal & audience need to be defined. Possible audiences are legislators and executive branch staff. Audience is dependent on the topic.
- Potential educational activities, include:
 - Developing an educational kiosk for display in the State House and elsewhere regarding international trade, free trade agreements, and their impact on Vermont.
 - Recruiting speakers that are trade experts to anchor a public hearing or other meeting.
 - What are the topics and/or speakers?
- The Trade Commission should improve communication to the public regarding commission activities and the effects of international trade and free trade agreements.
 - Who is the “public”? Specific groups & businesses; policy makers; trade associations; others?
- Potential methods for improving communication, include:
 - Increased use of press releases. Press releases should include substantive analysis.
 - Who will take this task on? Do we need a media plan?
 - Leverage media by inviting newspaper, radio, and T.V.
 - Invite to...hearings? Meetings?

2. Focus of Commission

- Commission should focus on 2 to 3 issues in the coming year.
- Potential issues for Commission focus, include:

8/19/10; revised 10/24/10

- The Trans-Pacific Partnership going forward, including its impact on dairy, tobacco, child labor, and Rx and its potential as a new model for future FTAs.
- How NAFTA has impacted and will continue to impact Vermont and the Vermont economy, including examples and a public hearing.
 - What is the measure? Review Maine's report? DOL information?
- Continued focus on particular topics as they arise?
 - investor-state? GATS? Domestic Regulation? Rx?

3. Coordination of International Trade Issues on a State Level

- Vermont does not coordinate government promotion and response to international trade and free trade agreements under one government office or committee.
- Recommend that the state establish an office or committee for the coordination among state government of potential trade benefits/impacts on Vermont.