2005

HOUSE
FEDERAL RELATIONS & TRADE ISSUES

COMMITTEE MINUTES

House Committee On
Federal Relations and Trade Issues

Co-Chaired by

Representative Phillip Frye
Representative Mark Hilton

North Carolina General Assembly Session
2005-2006

Committee Assistants
Mary Hayes
Carol Wilson

HOUSE COMMITTEE ON FEDERAL RELATIONS AND TRADE ISSUES

MEMBER	ASSISTANT	PHONE	OFFICE	SEAT
Co-Chairs				
Phillip Frye	Mary Hayes	3-5661	1019	62
Mark Hilton	Carol Wilson	3-5988	1021	61
Vice- Chairs				
Bill Current	Wendy Miller	3-5809	539	108
J. Farmer-Butterfield	Barbara Hocutt	35898	614	53
Glazier, Rick	Carin Savel	3-5601	2215	81
Alexander, Martha	Ann Faust	3-5807	2208	32
Almond, David	Alice Falcone	3-5908	1315	107
Brown, Larry	Delores Ledford	3-5607	609	105
Coates, Lorene	Melissa Lennon	3-5784	633	19
Cole, Nelson	Suzanne Smith	3-5779	1218	45
England, Bob	Lisa Brown	3-5749	2219	78
Gillespie, Mitch	Cindy Hobbs	3-5862	1008	74
Holloway, Bryan	Chad Hinton	3-5609	1409	98
Hunter, Howard	Barbara Phillips	3-2962	613	68
McMahan, Ed	Jennifer Loftis	3-5602	1426	111
Parmon, Earline	Pat Christmas	3-5829	632	66
Stam, Paul	Jana Estes	3-5780	502	117
Ex-Officio Members				
Cullpepper, Bill	Dot Crocker	5-3028	404	36
Cunningham, Pete	Valerie Rustin	3-5778	541	7
Eddins, Rick	Susan Phillips	3-5828	1002	26
Hackney, Joe	Emily Reynolds	3-5752	2207	69

Staff Attorneys
Karen Cochrane-Brown
Barbara Riley

Committee Assistants
Mary Hayes
Carol Wilson

NORTH CAROLINA GENERAL ASSEMBLY

Federal Relations and Trade Issues
2005 – 2006 SESSION

Rep. Phillip Frye
Chair

Rep. Mark Hilton
Chair

Rep. William Current
Vice chair

Rep. Jean Farmer-Butterfield
Vice chair

Rep. Rick Glazier
Vice chair

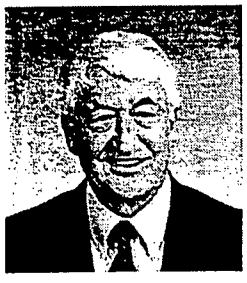
Rep. Martha Alexander

Rep. David Almond

Rep. Larry Brown

Rep. Lorene Coates

Rep. Nelson Cole



Rep. Bob England

Rep. Paul Stam

Rep. Mitch Gillespie

Rep. Bryan Holloway

Rep. Howard Hunter

Rep. Ed McMahan

Rep. Earline Parmon

NORTH CAROLINA GENERAL ASSEMBLY

Federal Relations and Trade Issues
2005 – 2006 SESSION

Rep. Culpepper
Ex-officio

Rep. Cunningham
Ex-officio

Rep. Eddins
Ex-officio

Rep. Hackney
Ex-officio

Corrected Notice
Added Primary Bill Sponsors

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on Federal Relations and Trade Issues will meet as follows:

DAY & DATE: **Tuesday, July 12, 2005**

TIME: **1 pm**

LOCATION: **415**

The following bills will be considered (Bill # & Short Title & Bill Sponsor):

HB 1787 A HOUSE RESOLUTION URGING THE PRESIDENT OF THE UNITED STATES TO CONTINUE IN EFFECT THE CURRENT SAFEGUARDS LIMITING THE INCREASE IN IMPORTS OF CHINESE TEXTILES AND URGING THE CONGRESS TO EXPAND THE TRADE ADJUSTMENT ASSISTANCE PROGRAM AND RAISE THE FUNDING CAP. Primary Sponsors- Glazier, Farmer-Butterfield, Frye, Hilton.

Respectfully,
Representatives Phillip Frye and Mark Hilton
Co-Chairs

I hereby certify this notice was filed by the committee assistant at the following offices at **9:30 am** on **July 7, 2005.**

__x_Principal Clerk
__x_Reading Clerk - House Chamber

Mary Hayes (Committee Assistant)

FEDERAL RELATIONS AND TRADE ISSUES COMMITTEE
JULY 12, 2005
AGENDA

I. Welcome by Representative Mark Hilton, Co-Chair

II. Discussion of House Resolution 1787 – A HOUSE RESOLUTION URGING THE PRESIDENT OF THE UNITED STATES TO CONTINUE IN EFFECT THE CURRENT SAFEGUARDS LIMITING THE INCREASE IN IMPORTS OF CHINESE TEXTILES AND URGING THE CONGRESS TO EXPAND THE TRADE ADJUSTMENT ASSISTANCE PROGRAM AND RAISE THE FUNDING CAP. Primary Sponsors-Glazier, Farmer-Butterfield, Frye, Hilton.

Federal Relations and Trade Issues
Minutes
July 12, 2005

Representatives Frye, Hilton, Alexander, Almond, Brown, Coates, Cole, Current, Farmer-Butterfield, Glazier, McMahan, and Stam were present. Also present were Barbara Riley and Karen Cochrane-Brown, Staff Attorneys.

Representative Hilton called the meeting to order at 1:00 pm. He recognized Staff Attorneys Barbara Riley and Karen Cochrane-Brown to explain HR 1787. The bill recites the negative impacts of Chinese imports on industry. It recommends that the safeguards on Chinese imports continue. It also recommends that the national funding cap be raised to cover 80% of dislocated workers' healthcare from the current 65%. This bill would be forwarded to the United States Congressmen from North Carolina.

Paul Fogleman, Director of the Hoisery Governmental Affairs Council in Hickory spoke to the group. He said that the current safeguards limiting Chinese imports have allowed the N.C. textile industry to come back. He then said that these safeguards were only for one year.

Representative Coates moved for a Favorable Report.

Representative Farmer-Butterfield said that this resolution would provide time to rekindle the economy and diversify industry.

Representative Glazier said that it is important to urge Congress to provide protection for North Carolina's workers.

Representative Brown said he fully supports the resolution and wants to consider drafting a resolution to deal with the furniture industry.

Representative Stam moved to suspend House Rules in order to pass the resolution. The motion and resolution passed.

Representative Hilton asked staff if they had anything to report from the trip to Washington?

Barbara Riley replied that they had learned about different trade relations with the federal government. One example was that Canada is suing the Federal Government for banning MTBE, a medicine that contains Meth.

Representative McMahan asks if the General Assembly has a stance on CAFTA?

Representative Hilton answered that it does not.

Barbara Riley said that the United States senate has passed CAFTA but that Governor Easley is opposed to it.

Representative McMahan said that the president is coming to promote CAFTA and that some industry does support it.

Representative Hilton agreed that some industry in his district also supported CAFTA.

Representative Current said that a man in his district would move his industry to South America if CAFTA passes. He said United States Representative McHenry is against CAFTA.

Representative Farmer-Butterfield requested a packet on pros and cons of CAFTA.

Representative Hilton said that there should be a study committee that addresses how the North Carolina House of Representatives can address CAFTA without crossing the line.

The meeting adjourned at 1:21 pm.

Respectfully submitted,

Mark Hilton

Representative Mark Hilton
Presiding Co-Chair

Carol Wilson
Committee Assistant

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on Federal Relations and Trade Issues will meet as follows:

DAY & DATE: **Monday, June 6, 2005**

TIME: **1 pm**

LOCATION: **415**

The following bills will be considered (Bill # & Short Title & Bill Sponsor):
A HOUSE RESOLUTION ENDORSING THE RECOMMENDATIONS OF THE INTERGOVERNMENTAL POLICY ADVISORY COMMITTEE'S REPORT ON THE US-CENTRAL AMERICA FREE TRADE AGREEMENT. Primary Sponsor – Glazier

Respectfully,
Representatives Phillip Frye and Mark Hilton
Co-Chairs

I hereby certify this notice was filed by the committee assistant at the following offices at **9:30 am** on **June 1, 2005.**

__x_Principal Clerk
__x_Reading Clerk - House Chamber

Mary Hayes (Committee Assistant)

FEDERAL RELATIONS AND TRADE ISSUES COMMITTEE MEETING MINUTES

JUNE 6, 2005

Representatives Frye, Hilton, Alexander, Almond, Brown, Coates, Current, Farmer-Butterfield, Glazier, Hilton, Holloway and Hunter were present.

Representative Frye called the meeting to order at 7:30 pm. He recognized Co-Chair Mark Hilton who made a motion to hear the Proposed Committee Substitute for HB 1614.

Representative Frye then recognized Representative Rick Glazier to explain the Committee Substitute. Representative Glazier explained the title change and the additional Subsection II

Representative Martha Alexander made a motion for a favorable recommendation for the Proposed Committee Substitute and an unfavorable recommendation to the original bill.

The motion passed unanimously.

The meeting adjourned at 7:40 pm.

Representative Phillip Frye, Co-Chair

Mark Hilton, Co-Chair

Mary Hayes
Committee Clerk

FEDERAL RELATIONS AND TRADE ISSUES COMMITTEE
MAY 31, 2005
AGENDA

I. Welcome by Representative Mark Hilton, Co-Chair

II. Discussion of House Resolution 1614 – A HOUSE RESOLUTION URGING THE GENERAL ASSEMBLY TO ENDORSE THE RECOMMENDATIONS OF THE INTERGOVERNMENTAL POLICY ADVISORY COMMITTEE'S REPORT ON US-CENTRAL AMERICA FREE TRADE AGREEMENT.

III. Further Discussion

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on Federal Relations and Trade Issues will meet as follows:

DAY & DATE: **Tuesday May 31, 2005**

TIME: **1 pm**

LOCATION: **415**

The following bills will be considered (Bill # & Short Title & Bill Sponsor):
A HOUSE RESOLUTION ENDORSING THE RECOMMENDATIONS OF THE INTERGOVERNMENTAL POLICY ADVISORY COMMITTEE'S REPORT ON THE US-CENTRAL AMERICA FREE TRADE AGREEMENT. Primary Sponsor – Glazier

Respectfully,
Representatives Phillip Frye and Mark Hilton
Co-Chairs

I hereby certify this notice was filed by the committee assistant at the following offices at **9:30 am** on May 26, **2005.**

__x_Principal Clerk
__x_Reading Clerk - House Chamber

Mary Hayes (Committee Assistant)

FEDERAL RELATIONS AND TRADE ISSUES COMMITTEE MEETING
MINUTES
MAY 31, 2005

Representatives Frye, Hilton, Alexander, Brown, Cole, Current, Farmer-Butterfield, Gillespie, Glazier, McMahan, Parmon, Stam, and Barbara Riley were present.

Representative Hilton called the meeting to order at 1 pm. He recognized Representative Glazier to explain House Resolution 1614. The Resolution endorses the Intergovernmental Policy Advisory Committee (IGPAC) recommendations in its report on the US-Central America Free Trade Agreement (CAFTA) that the Trade Promotion Coordinating Committee (TPCC), the Trade Policy Review Group (TPRG) and the Trade Policy Staff Committee (TPSC) be expanded or reconfigured to include state and local government representation. Representative Glazier stated that Gov. Easley's report makes these same recommendations. This Resolution promotes state and local governments being more involved, not in direct negations, but in the processes of international trade agreements.

Recommendations were:
1) establish and fully funding a regularly scheduled mechanism for US Federal State Trade Policy consultations.
2) increase awareness by state officials of ongoing efforts by US Trade Representative (USTR) and other TPCC agencies to discuss trade issues with national associations of state officials.
3) establish clear priorities for federal support of high technology manufactured goods and services exports.
4) assess the comparative costs and benefits to the federal budget and US economy.

Chairman Hilton recognized Representative Parmon for a motion for approval after discussion and Representative Farmer-Butterfield agreed. Representative Alexander asked Representative Glazier how often the committee meets and he answered quarterly but he would clarify.

Barbara Riley suggested that this Resolution would encourage state and local officials to be involved in the front end of negotiations of trade agreements.

Representative Parmon presented motion for adoption of Resolution. Vote was for unanimous approval of Resolution.

Representative Farmer-Butterfield asked if report from national committee meeting was available and Barbara Riley said complete report was not but she would prepare overview of meeting.

The meeting adjourned at 1:20 pm.

Representative Mark Hilton, Co-Chair

Phillip Frye, Co-Chair

Carol Wilson
Committee Clerk

FEDERAL RELATIONS AND TRADE ISSUES COMMITTEE
MAY 17, 2005
AGENDA

I. Call to order and welcome by Representative Phillip Frye

II. Representative Mark Hilton to explain HB 1366-Urging Congress to Enact Legislation/E-Rate and introduction of Lt. Gov. Beverly Perdue

III. Lt. Governor Beverly Perdue

IV. Primary Bill Sponsors Representatives Joe Tolson, Paul Miller, and Linda Johnson to speak on the bill.

V. Edgar Murphy, Member, State Board of Education

VI. Eddie Davis, President North Carolina Association of Educators

VII. Pat Adams, Chairman of the Greene County Board of Education

VIII. Steve Mazingo, Superintendent, Greene County Schools

IX. Scott Smith, Technology Director, Burke County Schools

X. Terry Williams, Technology Director, Cumberland County Schools

XI. Bo Coughlin, Vice President, Time Warner Cable

XII. Further Discussion

Mary Hayes (Rep. Frye)

From: Mary Hayes (Rep. Frye)
Sent: Thursday, May 12, 2005 11:47 AM
Cc: Rep. Joe Tolson; Rep. Paul Miller; Rep. Linda Johnson
Subject: Federal Relations and Trade Issues Committee Meeting
Importance: High

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on Federal Relations and Trade Issues will meet as follows:

DAY & DATE: **Tuesday, May 17, 2005**

TIME: **1 pm**

LOCATION: **415**

The following bills will be considered (Bill # & Short Title & Bill Sponsor):

HB 1366 – URGING CONGRESS TO ENACT LEGISLATION/E-RATE. Primary Sponsors; Hilton, Tolson, Miller and Johnson

Respectfully,
Representatives Phillip Frye and Mark Hilton
Co-Chairs

I hereby certify this notice was filed by the committee assistant at the following offices at **1:30 pm** on **May 5, 2005.**

___Principal Clerk
___Reading Clerk - House Chamber

Mary Hayes (Committee Assistant)

FEDERAL RELATIONS AND TRADE ISSUES COMMITTEE MEETING MINUTES
May 17, 2005

The House Committee on Federal Relations and Trade Issues met on Tuesday, May 17, 2005 at 1 pm. Members present included: Representatives Frye, Hilton, Current, Farmer-Butterfield, Glazier, Almond, Brown, England, Stam, and Parmon. Also present were Barbara Riley and Karen Cochrane-Brown, Staff Attorneys.

Representative Frye called the meeting to order. He recognized Rep. Mark Hilton, Primary Bill Sponsor to explain HB 1366 – Urging Congress to Enact Legislation/E-Rate.

Representative Hilton said Congress enacted E-Rate as part of the telecommunications act in 1996. In 1996 only 3% of the counties schools and libraries had Internet access. It has grown to 93% today. NC Schools have received $231 million of the 13 billion distributed nationwide. A change in accounting rules in 2004 threatened the programs funding. "Primary sponsors are Representatives Tolson, Miller and Johnson along with myself," said Representative Hilton.

Representative Frye welcomed Lt. Governor Beverly Perdue to discuss the bill.

Lt Gov. Perdue said this is an important piece of information. She explained the future worker and tools would come from this. We must provide our teachers and student with the tools they need if we are to continue to prosper. We also need to get our fair share of the E-Rate money. Our children can no longer compete with just the 3R's. Every school should have access to broadband and high speed Internet. We pay this E-Rate money every time we pay a phone bill and we should get it back from the Federal Government.

Mr. Edgar Murphy, Member of the State Board of Education told the group he was also representing Nortel and the SBE. Access to the Internet is probably the most important key component from the education perspective. Deciding whether students should have access to the Internet is like turning the clock back to see if students should have access to blackboard and books. E-Rate is essential to our schools to provide quality education to survive in the world.

Representative Linda Johnson told the group we must continue our advances. China is nipping at our heels. All their classes are using laptops. We cannot continue to not support this type of legislation.

Mr. Eddie Davis, President of the NC Association of Educators spoke to the group. He told the committee we need to make sure children and their parents are prepared for the latter part of the 21st century.

Ms. Pat Adams is Chairman of Greene County Board of Education and has served on the board for 11 years. She told Committee Members Greene County doesn't have a movie

theatre or a motel but in 2003 Greene County passed out laptops to all the children from grades 6-12 and they have access to take them home. The next year all the teachers got laptops too. Part of the money for this came from E-Rate.

Mr. Steve Mozingo, Superintendent of Greene County Schools, told the group we are very dependent on technology for teaching in Greene County schools. It is the right way to teach our children. E-Rate has made Internet access possible in Greene County. We know we have a future because of these funds.

Mr. Scott Smith, Technology Director for Burke County Schools, said 1.3 million dollars in E-Rate reimbursement pays for Internet access in Burke County School. This is a necessary tool students must have access to. We can't sit by and let technology go to other countries like China. Along with the other speakers, he urges the committee to support this bill.

Mr. Terry Williams, Technology Director for Cumberland County Schools, said in 1997 they ran a $10 million bond and at that time they had dial up service. Along with the bond and $3 million in E-Rate money they were able to change to broadband. The ratio for computers now is 4 students to 1 computer and the teachers all have computers. They get back about 70% of their money back. If they didn't have these funds they would not be able to continue this program.

Mr. Bo Coughlin, Vice President of Time Warner Cable, said "If E-Rate did not exist it would not be possible to distribute $10 million to over 12 school districts over the state. Seventy percent of these funds are paid by E-Rate. This is critical for our schools and our children."

A motion was made and seconded to adopt the bill. The motion passed.

The meeting adjourned at 1:50.

Phillip Frye (Co-Chair)

Mary Hayes
Committee Assistant

Carol Wilson (Rep. Hilton)

From: Myra Best [bestmyra@bellsouth.net]
Sent: Monday, May 16, 2005 6:21 PM
To: Mary Hayes (Rep. Frye)
Cc: Rep. Mark Hilton
Subject: Re: Speakers

Also Paul LeSieur from NCDPI will be on hand to speak to any fiscal questions but is not going to speak.

Hi Mary
Here are the speakers for tomorrow.

- Representative Mark Hilton
- Lt. Governor Bev Perdue
- Edgar Murphy, Member, State Board of Education
- Eddie Davis, President North Carolina Association of Educators
- Pat Adams, Chairman of the Greene County Board of Education
- Steve Mazingo, Superintendent, Greene County Schools
- Scott Smith, Technology Director, Burke County Schools
- Terry Williams, Technology Director, Cumberland County Schools
- Bo Coughlin, Vice President, Time Warner Cable

Please let me know if you need anything else.
Myra

Myra Best, Executive Director
NC Network
Business Education Technology Alliance
Office of the Lt. Governor
PMB 318, 514 Daniels Street
Raleigh, NC 27605
VM 919-832-7215
FAX 919-832-0812
www.ncnetwork.org

E-Rate Background: (Note: you may just want this for your information and not for use in talking points)

The E-rate – or the Schools and Libraries Universal Service Support Mechanism – provides discounts to assist most schools and libraries in the United States to obtain affordable telecommunications and Internet access. Three service categories are funded: Telecommunications Services, Internet Access, and Internal Connections. Discounts range from 20% to 90% of the costs of eligible services, depending on the level of poverty and the urban/rural status of the population served. Eligible schools, school districts and libraries may apply individually or as part of a consortium.

The E-rate supports **connectivity** ($2.25 billion) – the conduit or pipeline for communications using telecommunications services and/or the Internet. The school or library is responsible for providing additional resources such as the end-user equipment (computers, telephones, and the like), software, professional development, and the other elements that are necessary to realize the objectives of that connectivity.

The E-rate is one of four support mechanisms funded through a Universal Service fee charged to companies that provide interstate and/or international telecommunications services. This fee is passed along to customer on their phone bills – *Federal USF* or *Universal Service Fund.* The Universal Service Administrative Company (USAC) administers the Universal Service Fund at the direction of the Federal Communications Commission (FCC); USAC's Schools and Libraries Division (SLD) administers the E-rate.

Talking Points for Representative Mark Hilton
House 1366 E-rate Resolution
Tuesday, May 17, 2005

- Over the past 15 years, the information revolution has transformed nearly every aspect of American life. Millions of Americans use modern technologies to work, gather news and information, access training and education, conduct business, participate in the civic life of their communities, and communicate. However, until Congress enacted the E-Rate as part of the Telecommunications Act of 1996, few schools and libraries had sufficient resources to help students and adults keep up with these rapid changes. The E-Rate is significantly changing this situation. It is helping to bridge the digital divide by bringing new technologies and the power of the Internet to urban, rural and low-income schools and communities nationwide.

- The E-rate program provides discounts of 20 percent to 90 percent to schools and libraries for Internet access and equipment for connections. In 1996, only 3 percent of the country's schools and libraries had Internet access. The portion grew to 93 percent by today. North Carolina schools and libraries have received $231 million of the $13 billion distributed nationwide.

- A change in the in accounting rules in 2004 threatened the program's funding. The problem was that the White House Office of Management and Budget and the Federal Communications Commission changed the program's accounting rules so that it has to follow the Anti Deficiency Act that requires the program to keep more keep more cash on hand.

- That requirement restricts the Universal Service Administration Co., which runs the E-rate program, from investing in anything other than government securities limiting their investments options. The company had to sell investments within three days in September - at a loss of $4.6 million - when the accounting rule temporarily went into effect.

- In addition, the company stopped distributing funds from August to November last year because of uncertainty about the new accounting

rules. The delay led schools and libraries to stall or abandon parts of their technology programs.

- To rescue the program and restore funding to the schools and libraries in the final minutes before adjourning for the year in December, Congress fixed the problem temporarily by exempting it from the new accounting rules of the Anti Deficiency Act. But that remedy lasts only until Dec. 31 this year. Lawmakers are now debating a permanent solution in the form of Senate 241 which is a bipartisan bill sponsored by Senators Olympia Snow and John Rockefeller to permanently exempt schools from the accounting rules.

- House Resolution 1366: Urges congress to enact legislation to provide that funds received as universal service contributions and the universal service supports programs are not subject to certain accounting rules that prohibit them from dispersing funds to schools who meet the requirements for e-rate discounts and reimbursements. (This is not exempting them from the accounting process only the requirement that the USAC must have on hand the full amount of funds prior to releasing commitment letters.)

- This resolution is sponsored by me and my colleagues: Representations Joe Tolson, Paul Miller and Linda Johnson as well as some of you on this committee and I thank you.

- A spread sheet was sent to each of you and is included in your packet noting the amount of funds received in your districts and this state from 2000 to 2004 as well as the amount requested in commitments as of Feb, 2005 so you can see the importance of this program to North Carolina and more importantly your districts.

- This program is important for the state's economy first because of the benefits to providing affordable or reductions to our schools for connectivity and secondly for the benefit to the telecommunications and cable companies that provide the service.

- Urge them to support the resolution as well as their colleagues.

- People to speak on the behalf of the Resolution:

- Lt. Governor Bev Perdue, chairs the BETA Commission on which I serve and has worked to raise awareness about the technology needs of our schools as well as the benefits of e-rate
- Edgar Murphy, Member, State Board of Education
- Eddie Davis, President North Carolina Association of Educators
- Pat Adams, Chairman of the Greene County Board of Education
- Steve Mazingo, Superintendent, Greene County Schools
- Scott Smith, Technology Director, Burke County Schools (lives in Catawba)
- Bo Coughlin, Vice President, Time Warner Cable
- Terry Williams, Technology Director, Cumberland County Schools

Note: Paul LeSieur from NCDPI will be on hand to speak to any fiscal questions.

HOUSE BILL 1366: E-Rate

BILL ANALYSIS

Committee:	House Federal Relations and Trade Issues	**Date:**	May 11, 2005
Introduced by:	Reps. Hilton, Tolson, Miller, Johnson	**Summary by:**	Barbara Riley
Version:	First Edition		Committee Counsel

SUMMARY:

House Resolution 1366 urges Congress to enact legislation creating a permanent exemption from the Federal Anti-deficiency Act for programs funded through the Universal Service Fund including the E-Rate program.

CURRENT LAW:

Section 254 of the Telecommunications Act of 1996 created a program to promote the availability of telecommunications services nationwide. To assist in making telecommunications services more available, Congress established a Universal Services Fund, composed of contributions made by all telecommunications service providers. The majority of the providers pass this charge along to its customers (for instance, the universal services charge on your cell phone bill). Among the programs funded under the Act by the Federal Communications Commission is the Schools and Libraries Program, also known as the "E-rate" program. This program provides discounts on phone service, internet access, and network wiring to eligible schools and libraries. The discounts are dependent on the income level of the community and range from 20% to 90% of the cost of the service.

Last fall, the FCC determined that the Universal Service Fund was subject to the federal Anti-deficiency Act. That act prohibits agencies of the federal government from making commitments of funds in advance or in excess of available appropriations. Apparently, the required change necessitated the suspension of new funding commitments for the E-Rate program and required the shifting of investments held by the Fund to treasury securities with a concomitant loss of investment income. As a temporary fix, Congress passed a bill on the last day of the Congressional session that exempted the Universal Service Fund from the provisions of the Anti-deficiency Act. A bill has been introduced in Congress this session, S. 241, to make the exemption permanent.

BILL ANALYSIS:

House Resolution 1366 encourages Congress to enact S. 241 making the Anti-deficiency Act exemption for the Universal Services Fund permanent.

EFFECTIVE DATE:

The resolution is effective upon adoption.

H1366e1-SMRF

eRate Summary for Greene County Schools

Funding Year	Ave Disc	TeleCom	Internet Access	Internal Connections	Funding Year Total	Major Projects
Year 1 (1998)	82%		37,682	44,317	81,999	Internet Access LAN equipment (router & server)
Year 2 (1999)	82%		36,952	69,111	106,063	Internet Access LAN equipment (router & server)
Year 3 (2000)	80%	28,085	56,514		84,599	Upgraded Internet Access speed Upgraded WAN connection speed ** Internal Connections Denied for the 80% level
Year 4 (2001)	85%	110,195	7,536	141,904	259,635	Upgraded Internet Access speed Upgraded WAN connection speed Replaced Phone System at SHP LAN equipment (routers and switches) Basic Maintenance
Year 5 (2002)	85%	195,720	30,128	231,710	457,558	SHP TekNet & Video Distribution (equipment & installation) Replaced Phone System at WG, GCMS & GCHS Classroom Connections (phone service to ALL classrooms) Distance Learning (equipment & installation, GCHS) LAN equipment (routers and switches) Basic Maintenance
Year 6 (2003)	85%	285,060	178,925	644,285	1,108,270	WG TekNet & Video Distribution Wireless Infrastructure (equipment & installation, 3 locations) LAN equipment (routers and switches) Basic Maintenance
Year 7 (2004)	85%	198,850	235,910	679,024	1,113,784	Portable Video Conferencing Center at each school & CO Video Conferencing Center at TC LAN equipment (routers and switches) Wireless infrastructure (equipment and installation, 2 locations) PCS Phone Service for all school busses and activity buses Basic Maintenance
Year 8 (2005) Requested	85%	126,944	271,295	213,000	611,239	Implement Total Wireless Network Wireless infrastructure (equipment and installation) PCS Phone Service for all school busses and activity buses LAN equipment (routers and switches) Basic Maintenance

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

HOUSE RESOLUTION 1366

1

Sponsors:	Representatives Hilton, Tolson, Miller, Johnson (Primary Sponsors); Clary, Cleveland, Folwell, Frye, Glazier, Jones, Justice, Lewis, Starnes, and Yongue.
Referred to:	Rules, Calendar, and Operations of the House.

April 21, 2005

A HOUSE RESOLUTION URGING CONGRESS TO ENACT LEGISLATION TO PROVIDE THAT FUNDS RECEIVED AS UNIVERSAL SERVICE CONTRIBUTIONS AND THE UNIVERSAL SERVICE SUPPORTS PROGRAMS ARE NOT SUBJECT TO CERTAIN ACCOUNTING RULES.

Whereas, since its creation in 1996, the E-Rate has had overwhelming success in connecting our nation's schools and classrooms to the Internet; and

Whereas, the program continues to be a vital source of assistance in maintaining connectivity and enhancing learning; and

Whereas, prior to the program's inception, only 3% of the nation's classrooms were connected to the Internet, but today, 93% of classrooms are connected; and

Whereas, the Universal Service Administration Corporation (USAC), the entity that administers the E-Rate, estimates that 82% of public schools and 61% of public libraries receive E-Rate funds; and

Whereas, despite the program's remarkable success, schools and libraries still have considerable technology gaps and a continuing need for E-Rate assistance. Each year, applications for E-Rate funds far exceed the amount available for disbursement; and

Whereas, for the 2004 funding year alone, the Federal Communications Commission received more than 39,000 applications totaling $4.3 billion in requests to help pay for telecommunications services and Internet services, which was $2 billion more than available funding; and

Whereas, the E-Rate program has provided schools with $10.3 billion since its creation and annually provides $2.25 billion, making it the fourth largest source of non-State/nonlocal federal funding to schools; and

Whereas, North Carolina has received over $231 million in E-Rate funds as of October 2004; and

Whereas, in 2004, the Federal Communications Commission began subjecting the E-Rate program to accounting rules that effectively stopped the flow of funds to schools and libraries; and

Whereas, at the end of 2004, Congress passed a one-year exemption from these rules

for the E-Rate program; and

Whereas, a bill (S. 241) has been introduced in the United States Senate to create a permanent exemption for the E-Rate program; Now, therefore,

Be it resolved by the House of Representatives:

SECTION 1. The House of Representatives urges Congress to enact Senate Bill 241 to ensure that students and schools have the technology and connectivity necessary to succeed academically and to prepare tomorrow's workers.

SECTION 2. The Principal Clerk shall transmit a certified copy of this resolution to each member of North Carolina's congressional delegation.

SECTION 3. This resolution is effective upon adoption.

LEAs Receiving E-Rate Funds
Funding Received 2000-04 and Anticipated 2005

LEA	LEA Name	E-Rate FY 2000-2004	Requested FY 2005-06
010	Alamance-Burlington Schools	1,441,537.05	952,003.87
020	Alexander County Schools	44,051.34	32,582.89
030	Alleghany County Schools	166,079.69	54,261.48
040	Anson County Schools	1,840,986.69	1,484,180.91
050	Ashe County Schools	675,799.82	277,958.14
060	Avery County Schools	486,416.59	127,519.80
070	Beaufort County Schools	1,049,323.67	568,126.74
080	Bertie County Schools	5,092,288.27	350,523.98
090	Bladen County Schools	824,468.37	210,885.14
100	Brunswick County Schools	1,501,990.10	273,991.66
110	Buncombe County Schools	1,087,024.64	272,966.32
111	Asheville City Schools	761,966.38	675,886.18
120	Burke County Schools	1,331,534.48	1,512,393.48
130	Cabarrus County Schools	691,761.57	291,591.24
132	Kannapolis City Schools	686,165.53	522,444.78
140	Caldwell County Schools	221,233.44	81,917.11
150	Camden County Schools	73,276.84	14,286.96
160	Carteret County Schools	684,807.85	175,924.38
170	Caswell County Schools	291,030.20	275,951.87
180	Catawba County Schools	943,734.51	637,753.58
181	Hickory City Schools	368,577.25	448,288.25
182	Newton-Conover City Schools	160,769.18	106,434.47
190	Chatham County Schools	404,197.28	177,418.98
200	Cherokee County Schools	846,855.66	247,167.20
210	Edenton-Chowan County Schools	115,601.36	46,440.24
220	Clay County Schools	103,969.08	55,997.28
230	Cleveland County Schools	1,142,529.91	498,874.10
240	Columbus County Schools	5,678,023.47	822,535.72
241	Whiteville City Schools	775,402.06	192,340.50
250	Craven County Schools	1,024,233.68	284,893.43
260	Cumberland County Schools	3,137,458.55	993,623.73
270	Currituck County Schools	101,502.48	65,306.22
280	Dare County Schools	342,541.32	144,681.60
290	Davidson County Schools	487,420.88	238,414.13
291	Lexington City Schools	2,173,915.92	329,736.93
292	Thomasville City Schools	1,107,662.09	1,079,584.41
300	Davie County Schools	71,551.89	207,280.25
310	Duplin County Schools	665,285.28	896,713.30
320	Durham County Schools	1,566,879.43	637,491.47
330	Edgecombe County Schools	483,713.65	533,021.21
340	Winston-Salem/Forsyth County Schools	2,598,821.11	2,664,526.67
350	Franklin County Schools	225,925.64	124,123.67
360	Gaston County Schools	3,252,100.87	1,666,241.44
370	Gates County Schools	289,234.44	-
380	Graham County Schools	222,126.84	48,574.31
390	Granville County Schools	1,019,269.67	863,680.40
400	Greene County Schools	3,178,825.25	553,701.64
410	Guilford County Schools	4,960,352.84	2,295,300.86
420	Halifax County Schools	5,618,974.61	740,562.70
421	Roanoke Rapids City Schools	2,424,546.10	216,358.18
422	Weldon City Schools	2,543,905.45	960,450.63
430	Harnett County Schools	2,735,494.58	699,987.62
440	Haywood County Schools	538,693.11	245,784.00
450	Henderson County Schools	1,038,813.90	624,970.78
460	Hertford County Schools	2,886,562.56	538,171.13
470	Hoke County Schools	1,453,823.70	400,076.80
480	Hyde County Schools	308,939.06	32,583.32
490	Iredell-Statesville Schools	1,133,100.26	826,068.46
491	Mooresville City Schools	-	-
500	Jackson County Schools	416,824.56	105,950.18
510	Johnston County Schools	943,668.20	1,129,305.23
520	Jones County Schools	980,861.43	692,913.27
530	Lee County Schools	1,220,897.62	1,065,438.27
540	Lenoir County Schools	3,633,095.41	282,853.40
550	Lincoln County Schools	641,287.74	4,090,073.59

LEAs Receiving E-Rate Funds
Funding Received 2000-04 and Anticipated 2005

LEA	LEA Name	E-Rate FY 2000-2004	Requested FY 2005-06
560	Macon County Schools	308,635.59	165,341.59
570	Madison County Schools	382,480.48	116,333.29
580	Martin County Schools	2,770,804.39	165,440.90
590	McDowell County Schools	751,407.33	222,587.06
600	Charlotte-Mecklenburg County Schools	8,956,117.57	5,349,303.99
610	Mitchell County Schools	409,255.78	624,602.70
620	Montgomery County Schools	171,451.66	86,685.61
630	Moore County Schools	1,827,648.58	480,018.76
640	Nash-Rocky Mount Schools	4,860,069.13	2,344,353.92
650	New Hanover County Schools	1,439,945.57	556,904.43
660	Northampton County Schools	4,121,006.71	692,174.25
670	Onslow County Schools	1,048,524.00	1,849,697.37
680	Orange County Schools	542,766.17	132,477.33
681	Chapel-Hill/Carrboro City Schools	732,897.02	185,496.96
690	Pamlico County Schools	370,093.56	98,897.74
700	Elizabeth City/Pasquotank County Schools	674,149.49	162,571.98
710	Pender County Schools	2,243,216.34	1,113,969.37
720	Perquimans County Schools	407,288.21	102,479.61
730	Person County Schools	509,980.36	101,392.17
740	Pitt County Schools	7,642,712.78	7,043,692.43
750	Polk County Schools	377,725.94	83,618.19
760	Randolph County Schools	481,279.04	-
761	Asheboro City Schools	562,957.57	161,398.29
770	Richmond County Schools	3,862,559.70	1,247,318.68
780	Robeson County Schools	28,560,863.42	1,641,948.77
790	Rockingham County Schools	1,233,080.49	289,155.72
800	Rowan-Salisbury County Schools	1,468,601.20	538,457.86
810	Rutherford County Schools	282,850.34	121,855.35
820	Sampson County Schools	3,371,917.50	382,679.28
821	Clinton City Schools	258,328.21	428,998.40
830	Scotland County Schools	815,183.32	241,752.02
840	Stanly County Schools	547,242.50	239,385.52
850	Stokes County Schools	784,955.45	331,592.43
860	Surry County Schools	421,787.88	171,766.20
861	Elkin City Schools	81,712.11	11,016.72
862	Mount Airy City Schools	293,855.72	-
870	Swain County Schools	522,822.11	137,469.64
880	Transylvania County Schools	731,017.54	374,001.29
890	Tyrrell County Schools	134,861.96	70,188.95
900	Union County Schools	1,617,954.04	546,545.79
910	Vance County Schools	2,474,213.04	385,144.02
920	Wake County Schools	4,828,359.28	1,486,687.50
930	Warren County Schools	522,572.27	92,647.92
940	Washington County Schools	1,901,905.06	-
950	Watauga County Schools	378,388.78	-
960	Wayne County Schools	3,935,999.10	455,370.03
970	Wilkes County Schools	1,408,933.96	340,416.90
980	Wilson County Schools	882,837.72	354,734.17
990	Yadkin County Schools	107,089.41	92,695.85
995	Yancey County Schools	266,590.92	77,345.71
	Totals	**165,170,632**	**69,565,703.14**

Notes:

1. Benefits from E-Rate are a combination of rate reductions from participating vendors or reimbursements to the LEAs.
2. Funding Requested for FY 2005-06 are based on LEAs requests for proposals sent to the Schools and Libraries Division of the Federal Govt. in March of 2005.

The US-Dominican Republic Free Trade Agreement (FTA)

Report of the
Intergovernmental Policy Advisory Committee

April 22, 2004

April 22, 2004

Intergovernmental Policy Advisory Committee

Advisory Committee Report to the President, the Congress and the United States Trade Representative on the US-Dominican Republic Free Trade Agreement

I. Purpose of the Committee Report

Section 2104 (e) of the Trade Act of 2002 requires that advisory committees provide the President, the Trade Representative, and Congress with reports required under Section 135 (e) of the Trade Act of 1974, as amended, not later than 30 days after the President notifies Congress of his intent to enter into an agreement.

Under Section 135 (e) of the Trade Act of 1974, as amended, the report of the Advisory Committee for Trade Policy and Negotiations and each appropriate policy advisory committee must include an advisory opinion as to whether and to what extent the agreement promotes the economic interests of the United States and achieves the applicable overall and principle negotiating objectives set forth in the Trade Act of 2002.

The report of the appropriate sectoral or functional committee must also include an advisory opinion as to whether the agreement provides for equity and reciprocity within the sectoral or functional area.

Pursuant to these requirements, the Intergovernmental Policy Advisory Committee hereby submits the following report.

II. Executive Summary of Committee Report

America's economic growth and prosperity are best served by embracing strategies for more open and fair global markets, investing in innovative research and technologies that create the industries and jobs of the future, providing assistance to workers impacted by technology and trade trends, and engaging in, rather than isolating ourselves from, the challenges of international competition in this increasingly interconnected world. Thus, in principle, most IGPAC members support adding the Dominican Republic to the Central American FTA (CAFTA), support the Free Trade Agreements' broad goals of trade liberalization and reducing regional barriers to trade and investment, and take this opportunity to also suggest some clarifications to certain provisions. FTA objectives of economic growth, employment creation, sustainable development

and improvements to living standards and market opportunities should be pursued in a manner consistent with constitutional and public policy obligations to state and local constituents. Consequently, this FTA should accord consideration for existing state and local level regulatory, tax, and subsidy policies, and the social, economic, and environmental values those policies promote.

Statutes and regulations that states and local governments have validly adopted, that are constitutional, and that reflect locally appropriate responses to the needs of our residents, should not be overridden by provisions in trade agreements. These concerns were reflected by Congress' inclusion of the "no greater rights" language in Trade Promotion Authority legislation. The principle that the United States may request, but not require, states to alter their regulatory regimes in areas over which they hold constitutional authority should be maintained. Full and effective coordination and consultation should include requesting authority from the appropriate state or local authority before a state or local rule, regulation, or statute is listed in a trade agreement, offer or other binding commitment. IGPAC would prefer a process that relies upon affirmative, informed consent from affected state and local entities, rather than negative opt-out.

IGPAC members appreciate that the USTR involved this and other advisory committees in consultations during FTA negotiations. The compressed timeframe for negotiations did not permit IGPAC members sufficient opportunity to make perspectives known and to influence certain key provisions.

Recent developments in trade disputes impacting federal and state jurisdictions, such as the WTO interim ruling in support of the Antigua-Barbuda GATS challenge to US federal and state internet gambling restrictions, and the NAFTA Chapter 11 arbitration claim filed by Grand River Enterprises Six Nations Ltd. seeking compensation related to the tobacco Master Settlement Agreement, are troubling to IGPAC members. While aware that such challenges do not directly overturn state or federal laws, the demands on state agencies' resources for legal preparation and policy response remain significant.

With respect to this FTA and the CAFTA, some IGPAC members have expressed concerns about, and offered clarifications for, certain provisions regarding market access, investment and investor-state dispute settlement, and procurement. The IGPAC member representing North Carolina indicates that the state is opposed to this FTA on the grounds that it further accelerates the loss of textile jobs without additional protections for North Carolina's workers and communities.

As the US, Dominican Republican and Central American federal governments work toward implementation of the FTAs, IGPAC members would like to offer their support for remaining engaged with our federal and subcentral counterparts in the trade policy dialogue, and for collaborating on trade capacity building efforts and mutually beneficial trade development initiatives.

III. Brief Description of the Mandate of the Intergovernmental Policy Advisory Committee

Established by the United States Trade Representative (USTR), pursuant to Section 135(c)(2) of the Trade Act of 1974 (19C. 2155(c)(2), as amended, the Federal Advisory Committee Act (5 C. App. II) and Section 4(d) of Executive Order No. 11846 dated March 27, 1975, the Intergovernmental Policy Advisory Committee (IGPAC) is charged with providing overall policy advice on trade policy matters that have a significant relationship to the affairs of state and local governments within the jurisdiction of the United States.

IGPAC consists of approximately 35 members appointed from, and reasonably representative of, the various states and other non-federal governmental entities within the jurisdiction of the United States. These entities include, but are not limited to, the executive and legislative branches of state, county, and municipal governments. Members may hold elective or appointive office. The Chair of the Committee shall be appointed by the US Trade Representative, and members shall be appointed by, and serve at the discretion of, the US Trade Representative for a period not to exceed the duration of the IGPAC charter. The US Trade Representative, or the designee, shall convene meetings of the Committee.

IGPAC's objectives and scope of its activities are to:

- Advise, consult with, and make recommendations to the US Trade Representative and relevant Cabinet or sub-Cabinet members concerning trade matters referred to in 19 C. Section 2155(c)(3)(A).
- Draw on the expertise and knowledge of its members and on such data and information as is provided it by the Office of the US Trade Representative.
- Establish such additional subcommittees of its members as may be necessary, subject to the provisions of the Federal Advisory Committee Act and the approval of the US Trade Representative, or the designee.
- Report to the Trade Representative, or the designee. The US Trade Representative or the designee will be responsible for prior approval of the agendas for all Committee meetings.

The United States Trade Representative, or the designee, will have responsibility for determinations, filings, and other administrative requirements of the Federal Advisory Committee Act. The Office of Intergovernmental Affairs and Public Liaison of the Office of the Trade Representative will coordinate and provide the necessary staff and clerical services for IGPAC. IGPAC Members serve without either compensation or reimbursement of expenses.

IV. Negotiating Objectives and Priorities of the IGPAC

Members of the IGPAC would like to express gratitude to USTR colleagues for their tremendously improved efforts to expand participation by state and local government representatives through the Intergovernmental Policy Advisory Committee on Trade (IGPAC) during the US-Dominican Republic Free Trade Agreement (FTA) negotiations.

IGPAC members affirm that America's economic growth and prosperity are best served by:

- embracing strategies for more open and fair global markets;
- investing in innovative research and technologies to foster commercialization into the industries and jobs of the future;
- providing assistance to workers impacted by technology and trade trends, and
- engaging in, rather than isolating ourselves from, the challenges of international competition in this increasingly interconnected world.

Hence, as a general principle, IGPAC members support this agreement's trade liberalization objectives, with the recognition that those objectives must be carried out in a manner consistent with constitutional and public policy obligations owed by the federal government to state and local entities. Consequently, the FTA should accord consideration for existing state and local level regulatory, tax, and subsidy policies, and the social, economic, and environmental values those policies promote. Statutes and regulations that states and local governments have validly adopted, that are constitutional, and that reflect locally appropriate responses to the needs of our residents, should not be overridden by provisions in trade agreements. These concerns were reflected by Congress' inclusion of the "no greater rights" language in Trade Promotion Authority legislation. The principle that the United States may request, but not require, states to alter their regulatory regimes in areas over which they hold constitutional authority should be maintained.

Full and effective coordination and consultation should include requesting authority from the appropriate state or local authority during the policy formulation and negotiation process, before a state or local rule, regulation, or statute is listed in a trade agreement, offer or other binding commitment. In general, IGPAC would prefer a process that relies upon affirmative consent from fully informed, involved and affected state and local entities, rather than for them to be required to opt out of proposed coverage.

Background -- Context

State and local government entities are at the front lines of the international marketplace: both by assisting businesses to engage in global competition through trade development assistance; and by working to mitigate the impact of technological change and trade dislocations on communities, businesses and workers through varied adjustment, training and assistance programs. States have typically been innovators in international economic development work to foster increased export activity by small and mid-sized firms. Though businesses may turn first to private sector contacts

for trade assistance, research shows that the transaction costs for providing trade development assistance to small and medium-sized businesses generally outweigh the benefits for most private sector service providers. Hence, federal, state and local government trade assistance plays a key role in filling this need by providing information, technical assistance, referrals, alliance-building and facilitative guidance to smaller firms lacking the internal resources to develop export expertise on their own. Still, the specific export and job creation/retention benefits from informational, capacity-building trade development assistance services remain difficult to measure. Moreover, many state and local trade development efforts are constrained by limited resources and competition from other budgetary priorities.

State and local governments have generally supported multilateral, regional and bilateral efforts to expand market access, both for local businesses reaching out to global markets, and for international investors engaged in the local economy and creating employment. By strengthening rules-based international trade and investment systems, and making the investment process more transparent both in the US and abroad, the ability of all parties to expand trade is enhanced. As trade liberalization efforts progressed in recent decades, however, their coverage and scope have increasingly extended beyond the federal-level, increasing the impact on state and local-level laws, practices and regulations.

Following the approval of Trade Promotion Authority in August 2002, the USTR is to be commended for expanding the IGPAC, and for engaging in active consultations with states and others on a wide array of trade agreements under negotiation. Still, in recent years, concerns such as the following have emerged:

- Given the comparative newness of states' involvement in the content of international trade agreement negotiations, and in their implementation and dispute resolution, states often lack a clearly defined institutional structure with experienced staff dedicated to handling requests from trading partners, federal agencies and other interested parties, and for articulating the state's position on trade issues. Despite the absence of a clear structure for federal-state trade policy consultations, the dialogue has gradually intensified and the role of state policy-makers has increased, as has the involvement of other interested parties.

- Though the State Point of Contact system was meant to create a clear conduit for two-way communications, the structure has not met expectations for a variety of reasons. Most would agree that a broader and deeper range of contacts with diverse state entities, and particularly with those bearing regulatory and legislative authority, needs to be created and maintained by the USTR. Further, requests from the USTR for information and comments related to agreements being negotiated need to allow sufficient time for an informed and meaningful state/local response in order to influence the initial development and articulation of US positions.

- The analytical challenge faced by state and local governments is significant as well: international trade and investment data at the state level are insufficient; and reporting on the

results of trade agreements at the state/local level is scant. There is no information by state on services or merchandise imports; no detailed data on services exports and decreasing information on merchandise exports at the zip code level (given the discontinuation by the US Dept. of Commerce of the Exporter Location data series); and limited, delayed and highly aggregated international investment information. The challenges of assembling national, not to mention subcentral, information on procurement contracts and merchandise and services trade render reporting on specific trade agreement results quite problematic for the US and other countries. These data gaps make it difficult to conduct an informed analysis of the specific costs or benefits of trade liberalization for a given industry or location.

- Legal experts in all branches of government at the state and local level are examining the evolving impact of deepening trade liberalization on federalism, as interpretations of trade agreements during trade disputes brought by investors, trading partners and others impact the historically established state-federal division of power and responsibility (e.g. Chapter 11 of NAFTA). Recent developments in trade disputes impacting federal and state jurisdictions, such as the WTO interim ruling in support of the Antigua-Barbuda GATS challenge to US federal and state internet gambling restrictions, and the NAFTA Chapter 11 arbitration claim filed by Grand River Enterprises Six Nations Ltd. seeking compensation related to the tobacco Master Settlement Agreement, are troubling to IGPAC members. While aware that such challenges do not directly overturn state or federal laws, the demands on state agencies' resources for legal preparation and policy response remain significant.

Today as throughout history, the benefits of trade liberalization and its short, medium and long-term costs and benefits are being debated by academics, government leaders and the general public. Our increasing and intensifying globalization is occurring ever more rapidly, with factors of production more mobile and international interconnections more profound than ever before. Resulting advances in technology and productivity are having a major impact on employment trends in a variety of sectors and professions. Given the disparate trade flow impacts, those communities, businesses and workers gaining from greater international market access tend to be less visible, while those challenged by global competition tend to suffer disproportionately, evoking understandable public concern and calls for greater government intervention. Some industrial and agricultural sectors facing import competition may effectively organize for protection or special treatment, while other sectors may suffer more comparatively given their lack of connections and clout to gain preferential treatment. Additional factors often placing US smaller businesses at a competitive disadvantage are the substantial budgets and sophisticated export assistance infrastructure of our major trading partners -- at regional, federal and sub-central levels. Though American awareness of the importance of effective trade development efforts has grown, greater attention to these matters will be crucial in upcoming years.

Recommendations:

Given this climate, it has never been more essential for international trade agreements, and the federal, state and local trade policy discussions surrounding these agreements, to be effective at

opening markets and expanding the benefits of trade for US firms and workers. Bolstering the global competitiveness of the country's growth engine, small and mid-sized firms and their workforces, is at stake. Collaborative state/federal efforts for deepening international trade policy dialogue and fostering creative trade development strategies can help address this need.

IGPAC recommends that the Trade Promotion Coordinating Committee (TPCC), the Trade Policy Review Group (TPRG) and the Trade Policy Staff Committee (TPSC) be expanded or reconfigured to include state and local government representation (e.g. interested IGPAC members, designated State Points of Contact for the USTR, other relevant agency officials) and private sector representation. Issues for the attention and action on the part of a newly expanded trade promotion and trade policy consultative process might include:

- Establishing and fully funding a formal, regularly scheduled mechanism for US federal-state trade policy consultations in light of the increasing state role in trade policy formulation, negotiation and dispute resolution. Consultations would address trade and investment agreement negotiations that may impact state laws and practices, and would continue into implementation and dispute settlement phases. To be most effective and inclusive, this consultative mechanism would:
  - need a structure with sufficient budgetary support and resources to develop essential institutional capacity;
  - build upon the annual National Forum on Trade Policy (started by North Carolina in December 2003 and being supported by Centers for International Business Education and Research around the nation); and
  - be informed by best practices of trading partners, such as the Canadian federal-provincial model for trade consultations (C-Trade).

  The creation of a consultative federal-state trade policy infrastructure could serve to bridge trade policy gaps between federal agency understanding of varied state processes and states' understanding of the scope of federal requests -- and between federal agency needs and expectations, and states' capacity to respond in a timely and effective fashion.

- Increasing awareness by state officials of the recent and on-going efforts on the part of USTR and other TPCC federal agencies to proactively discuss trade issues with national associations of state officials exercising regulatory functions (e.g. National Association of Attorneys General, National Association of Insurance Commissioners, National Association of State Procurement Officials, etc.). Particularly with respect to GATS, national associations of state regulators such as the National Association of Regulatory Utility Commissioners should play an important role in USTR consultations with states, given the vast scope of these negotiations, the number of agencies and sub-sectors involved, and complexity and range of services regulations. It would be helpful for the federal-state trade policy consultation process to foster links between the national associations' experts in trade law and state trade contacts, and among federal negotiators and federal/state/local agency contacts with expertise in the given issue area.

- Establishing a clear priority for federal support of high technology manufactured goods and services exports. This would build on a foundation of increased federal funding for research and development in emerging sectors such as biotechnology, nanotechnology, photonics, advanced materials, and other innovative technologies. US support for the infrastructure of advanced R&D and for the commercialization of new technologies has never been more crucial to our nation's economic survival in this century's globally competitive context. Such support, along with an educational system preparing the technology workers of the future, would spur the US economy to generate high paying, high value-added employment. Some US trading partners, Singapore, for example, have multi-year plans to strategically target industrial development, devoting significant resources to accelerate their comparative advantages. In confronting the challenges of this century, the US has as much to learn from our global trading partners as they do from us.

- Assessing the comparative costs and benefits to the federal budget and US economy, particularly in terms of employment creation/retention and trade value, of the allocation of resources and trade protections to agricultural commodities, technology research and development, industrial goods, manufactured products, and services sectors.

- Collecting and disseminating better national, state, regional and zip-code level data on merchandise and services exports and imports, and on international investment flows, deploying mapping technologies and other tools to better inform analysis and planning. Such data would make it possible to benchmark state/federal trade performance against other major trading partners and regions with successful trade development agencies (e.g. Canada, European Union, Japan) by conducting regular evaluations of measured performance, program outcomes, and customer satisfaction at the sub-central level. Having TPCC conduct empirical analysis and report on the trade development capacity and resources of selected trading partners would be an essential aspect of this benchmarking process.

- Encouraging TPCC federal agencies to: deepen the state/federal trade development partnership; prioritize support by overseas posts for state-led trade initiatives in global markets; increase cooperation in domestic trade development program delivery; and integrate further Eximbank trade finance and delegated authority activities with those of states and the private sector, improving small firms' awareness of and access to trade financing. Successful collaboration by federal agencies with state, local, public and private sector economic development partners should be acknowledged and rewarded.

- Substantially transforming, expanding and fully funding the Trade Adjustment Assistance program, perhaps renamed as the "Technology" or "Workforce Adjustment Assistance" program (TAA or WAA). A transformed workforce adjustment and retraining program could more effectively prepare our nation's future workforce for confronting and mastering this century's employment challenges. In the past just as in the present, the complex interactions of economic and industrial factors are more often the cause of employment dislocations than trade-related import competition alone. Many manufacturing and services

industries are transitioning through wrenching adaptations to technological change, automation advances and productivity gains, in an intensely competitive global context. The significant job losses occurring in some sectors result from broad trends transcending time and borders. A reconstituted Technology or Workforce Adjustment Assistance effort, beyond aggressively implementing existing TAA provisions (e.g. wage insurance, job-search and relocation aid, health insurance), needs to create initiatives for continuous training, skill enhancement and other assistance (e.g. fully portable health and pension benefits, asset-value insurance, tax incentives for companies' increased on-the-job training), offering a comprehensive safety net to cushion the adaptation of impacted workers and their communities. Such efforts, in addition to appropriately redistributing a small portion of the national gains from technology and trade to dislocated workers and communities, might foster more domestic understanding of, and support for, investments in education, research, technology, and an agenda of trade liberalization in the future. Moreover, in light of the rapidly changing characteristics of employment being relocated or displaced, the reconstructed program should serve the needs of our nation's wide and diverse workforce, assisting manufacturing workers at varied skill levels as well as workers in services industries. Specifically, the US government should allocate full funding for Technology and Workforce Adjustment Assistance for both blue and white collar workers, including information technology and other professionals whose jobs are being lost due to outsourcing or technological change.

- Emulating our nation's effective responses to natural disasters, in order to mobilize resources for economic disasters, TPCC and related entities should collaborate on the creation of an *Economic* Federal Emergency Management Agency. Such an agency would concentrate varied resources and programs to assist communities coping with sudden and severe workforce contractions following plant shut-downs.

In addition to the recommendations above for expanding state/local and private sector connections to the TPCC, TRPG and TPSC, IGPAC members suggest that the USTR:

- Intensify the focus of its consultative process on reaching out to State Points of Contact, advisory committees and other interested parties for their input as trade policy is being formulated and as trade agreement negotiations are being initiated – rather than after their conclusion. Given the economic distress and employment dislocations created in certain industries and communities due to trade liberalization, the USTR outreach process needs to include active participation by federal and state-level labor agencies and labor unions.

- Utilize the existing corporate, government, and academic relationships of the US states abroad as a bridge to foster cooperation and understanding in preparation for future trade policy, trade capacity building, program development and trade agreement initiatives and meetings, such as WTO Ministerials. Some illustrations of these collaborative ties in action: During CAFTA negotiations in the fall of 2002, at the invitation of the USTR, New York State economic development officials provided Central American delegation members with

an overview of trade development and investment attraction strategies from the state perspective. Another example: UNC Chapel Hill recently honored Chilean President Lagos with an honorary doctorate in recognition of his time spent teaching Latin American studies in North Carolina and of his leadership role in Chile. And a third example would be the on-going technical assistance and training provided by the National Center for State Courts to enhance the efficiency, transparency and effectiveness of the court systems in Honduras and El Salvador. These types of state-global working relationships may provide linkages of benefit to leaders in the Dominican Republic and other CAFTA nations working toward a more productive world trade system. Many states have formal and informal international connections that could advance our shared objectives for trade development and capacity building.

V. Advisory Committee Opinion on the US-Dominican Republic FTA

General Observations:

The US-Dominican Republic Free Trade Agreement is supported in principle by most IGPAC members, as the agreement adds the Dominican Republic to the CAFTA and advances comprehensive trade development in a manner generally beneficial to our national, regional and local economies. Certain provisions related to investment and procurement warrant clarification, as detailed below. The IGPAC member representing North Carolina indicates that the state is opposed to this FTA on the grounds that it further accelerates the loss of textile jobs without additional protections for North Carolina's workers and communities.

This agreement with the Dominican Republic builds on the CAFTA obligations and commitments recently negotiated with the nations of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua. The CAFTA and FTA with the Dominican Republic deepen long-standing trade arrangements and regional economic integration, launched in 1984 through the Caribbean Basin Initiative. This FTA should substantially improve the business environment, and advance civil society development objectives, while increasing trade capacity and investment opportunities between the US and this region of the Americas. The elimination of over 80 percent of tariffs on US consumer and industrial product exports to the Dominican Republic at inception is most welcome, as are other market opening provisions for a wide range of technology, services and agriculture products. US economic interests, entrepreneurs and employees would benefit from improved market access for goods, services, agricultural products, and from better access to government procurement opportunities. Provisions to promote workers rights, labor standards and environmental protections, and to advance regional development through trade capacity-building, technical assistance and the integration of civil society, are appreciated and essential. IGPAC members commend the USTR for having resolved negotiations to integrate the Dominican Republic into the CAFTA. As the Dominican Republic is the largest economy, most significant destination for US exports and largest beneficiary of the CBI in the Caribbean, the broadened CAFTA creates a more comprehensive regional pact. IGPAC members note that the US, Puerto Rico, the Dominican Republic, and the entire Central American and Caribbean area are poised to benefit, both from greater access between markets, and from greater regional integration amongst smaller and larger nations in the Americas.

While supportive of innovative regional and bilateral trade liberalization agreements, IGPAC members remain hopeful that USTR leadership in re-energizing the WTO Doha Round will successfully advance multilateral efforts. Given limited trade policy time and resources at the state and local level, we are especially mindful of the considerable staff time involved in the analysis of trade agreements – whatever their scope and economic impact. Obviously, comprehensive multilateral agreements encompassing all WTO member countries would offer comparatively significant trade development benefits for the investment of federal and subcentral staff time and resources involved. With demonstrable trade gains on a large scale from multilateral trade accords, the case for constituent support can be persuasively made at the

subcentral level. It may prove more difficult for state and local officials to communicate the relative importance and potential benefits of free trade agreements with smaller, individual countries or regions.

Members of IGPAC support expanding trade and market access, while simultaneously maintaining a commitment to ensuring that trade laws, enforcement efforts and the dispute settlement process respect the authority of states and local governments to regulate and interpret land-use, labor, health, safety, welfare, and environmental measures. Some of the core principles that could facilitate international trade and investment agreements, and dispute resolution processes, without sacrificing constitutional standards, include:

- Inclusion of the phrase "no greater procedural or substantive rights" in trade agreements, notably with respect to international investment provisions. Such language would ensure that international businesses do not receive preferential treatment when compared to domestic businesses, and would reference the US Constitution as the benchmark with respect to competing language in international agreements. As evidenced by disputes arising from the NAFTA Chapter 11 *Methanex* and *Loewen* cases, generalized expropriation language has allowed some foreign investors to file frivolous takings claims that challenge laws traditionally in the purview of state and local governments. Where agreements are reached with countries in Dominican Republic, inclusion of a wholly separate litigation process, applicable only to foreign commerce and investment, would seem understandable, as the legal and regulatory systems in some nations may lack the certainty and clarity desired by the international business community. Still, the construction of any investor-state provisions should be approached with extreme caution and after extensive consultation with state and local governments, in order to avoid unintended consequences akin to NAFTA Chapter 11.

- Legal standards that are "rationally related to a legitimate governmental interest," and that are consistent with the US Constitution and applicable case law, by ensuring state and local governments are not held to a higher standard in defending legitimate governmental interests with respect to international trade than domestic commerce. International agreements that include standards such as "least trade restrictive" or "least burdensome" for defining the permissible scope of governmental regulation are inconsistent with constitutional standards for evaluating legislation, and may affect a state or municipality's ability to implement effective economic development programs and zoning laws.

- Transparency in claim and dispute resolution processes. Where it may still be appropriate to include investor dispute resolution procedures, greater attention must be paid to making these more accessible to both the public and any affected governmental entity. The United States and relevant international tribunals need to provide prompt notification to state and local governments when their regulation or law is being challenged, seek their input and assistance at all stages of the process, and allow impacted state and local governments to participate fully in the hearing and deliberation process. Affected state and local governments should be empowered to file *amicus* briefs in matters before the tribunal and be able to work with the

federal government in defense of their laws and regulations. Attention should also be given to making the proceedings open to the public. Recent developments in trade disputes impacting federal and state jurisdictions, such as the WTO interim ruling in support of the Antigua-Barbuda GATS challenge to US federal and state internet gambling restrictions, and the NAFTA Chapter 11 arbitration claim filed by Grand River Enterprises Six Nations Ltd. seeking compensation related to the tobacco Master Settlement Agreement, are troubling to IGPAC members. While aware that such challenges do not directly overturn state or federal laws, the demands on state agencies' resources for legal preparation and policy response remain significant. Finally, further consideration should be given to the structural problems inherent in regulating important aspects of international trade through a process that uses *ad hoc* judges and eschews reliance on precedent. In view of the need of businesses for stability and predictability and, in light of the substantial impact that decisions may have, there is an imperative need to ensure that the decisions and decision-makers are viewed as having substantial institutional credibility.

- Improvement by USTR of the consultation process by implementing the recommendations for consultations outlined above, and by adopting the standard set out in Federalism Executive Order 13132, Section 6, (which requires federal agencies to consult with state and local officials and representatives of their respective national organizations *before* issuing proposed rules or submitting legislative proposals to the Congress) would help the USTR gauge the concerns of state and local governments in a timely fashion.

- No presumption of federal authority over state and local law, when dealing with matters of unclear constitutional authority. This would bolster due consideration for the principles of federalism, and the negotiating position of the US would be clarified if federal functions were clearly separated from those of state and local governments.

- Monitoring and enforcement by USTR and relevant federal agencies, to ensure Dominican Republic's compliance with commitments made under the FTA with respect to market access, labor standards, environmental protections and other provisions. Updated information on on-going US monitoring and enforcement efforts should be made readily and publicly available.

Market Access

To the extent that state and local laws, regulations and other measures are involved, IGPAC requests that, in concert with the consultation provisions between CAFTA parties, regular channels of communication and consultation between federal and subcentral governments be established as needed (note report recommendations in section IV) with respect to provisions of this Agreement, notably on sanitary and phyto-sanitary measures (Chapter 6), technical barriers to trade (Chapter 7), government procurement per detailed notes below (Chapter 9 and Annexes), investment and investor-state dispute settlement per notes below (Chapter 10 and Annexes), cross border trade in services (Chapter 11), financial services (Chapter 12 and Annexes),

telecommunications (Chapter 13), e-commerce (Chapter 14), intellectual property (Chapter 15), labor (Chapter 16), environment (Chapter 17), transparency (Chapter 18), and dispute settlement (Chapter 20).

Government Procurement

IGPAC members generally support the goal of improving transparency and increasing fair market access in government procedures and regulatory decisions that are related to procurement, while preserving the independent authority of state and local governments to adopt legislation, standards and procedures consistent with their experience and interests. IGPAC members understand that sub-central, i.e. state, government procurement is covered by this Agreement as specified in Annex 9.1, Section C and other Annex notes to Chapter 9, and that local government procurement is neither covered in the FTA nor in the World Trade Organization (WTO) Government Procurement Agreement (GPA). Regarding the coverage of state procurement in CAFTA, certain provisions in Chapter 9 related to the procurement process call for clarification, as detailed below.

IGPAC members appreciate that the USTR agreed with our recommendation to invite the National Association of State Procurement Officials (NASPO: a member organization consisting of the state purchasing directors for the centralized procurement organizations in each state) to join IGPAC, and that NASPO has designated a member. Given the technical complexity and procedural sensitivity of the procurement process, state-level procurement expertise offers guidance on specific terms and conditions, implementation feasibility and background on potential conflicts with existing law. Many NASPO members are familiar with the World Trade Organization (WTO) Government Procurement Agreement (GPA), whose subcentral procurement provisions are similar to those in the CAFTA. To the extent that the USTR seeks to obtain the voluntary participation and informed consent of additional state government entities in international procurement agreements, the involvement of state procurement officials is critical. Moreover, with respect to the implementation phase of this or any other trade agreement covering procurement at the subcentral level, IGPAC members would recommend that the USTR and other federal agencies make a concerted effort to communicate to impacted state entities in all branches of government the content of relevant provisions in order to advance understanding, effective administration and compliance.

Regarding procurement provisions in Chapter 9 of the CAFTA, IGPAC members support the basic intent of expanding market access through increasingly fair and open bidding processes. IGPAC members would also note that coverage of state procurement in this FTA only pertains to those subcentral entities that have affirmatively offered to include their procurement in the CAFTA and other FTAs. Some state governments that are not covered by the WTO GPA may be unable or unwilling to comply with certain specific requirements, given potential conflict with state rules, regulations, laws and the exigencies of a particular procurement. In reflecting issues that may arise for states, especially those states not presently covered by the WTO GPA, IGPAC

members endorse the following recommendations provided by NASPO's expert review of FTA Chapter 9:

- Article 9.5 (Time Limits for the Tendering Process – requiring public notice of not less than 40 days, or not less than 10 days under some conditions): This CAFTA provision should be clarified with respect to alternative time limits. Some states' bids are published for shorter time frames, for example from 2 to 4 weeks (less than the 40 calendar days specified in the CAFTA text, and not meeting conditions listed as necessary to reach the reduced 10 day time frame, i.e. the absence of qualification requirements or publication of an annual notice of intended procurements). In some urgent cases, states may need bids back in 2 to 5 days -- a time frame that may be inconsistent with the 10 day minimum in the text. Also note that e-procurement tools have allowed many states to accelerate the tendering process, while improving efficiency and international market access to the procurement opportunity.

- Article 9.6 (Tender Documentation – requiring that all criteria for contract awards be published in the tender): The provisions in article 9.6.1 should be clarified as to the definition of tendering documentation. There is agreement that all information used to evaluate bids should be documented prior to the receipt of bids to ensure a fair evaluation process. However, various state laws do not always require that all of the detail, especially in very complex RFP procurements, needs to be included in the tendering document. Some state laws provide for a general description of the evaluation process in the tendering document and an evaluation packet, which may be a separate document from the tendering document. Some state laws may have similar requirements, for example: "A best value determination must be based on the evaluation criteria detailed in the solicitation document. If criteria other than price are used, the solicitation document must state the relative importance of price and other factors." Although similar in concept, the proposed CAFTA language appears to hold states to a higher standard by requiring "all cost factors" and "weights" in the tendering document. NASPO and IGPAC recommend clarification of this article to more clearly define the scope of tender documentation, focusing on the intent of fair and open competition without constraining the specific mechanics used to accomplish that intent.

- Article 9.10 (Awarding of Contracts – requiring tender submissions in writing): It is recommended that section 9.10.1 be clarified, since this requirement appears contrary to e-procurement activity on the part of some states and would also appear to contradict CAFTA's definition of "in writing" in article 9.17.

- Article 9.12 (Non-Disclosure of Information – regarding the non-disclosure of certain confidential information): This article needs clarification, in light of the fact that many states have Freedom of Information Legislation (FOIL) requirements that may be consistent with the intent but not the letter of the CAFTA text. For example, some states provide that the only business-related data that can be protected from disclosure as non-public must meet the legal standard of "trade secret" -- a stricter test than the definition here. In addition, the last

phrase, "...that provided the information to the Party." should be clarified to include "...that provided the information to the Party or to the entity or to the reviewing authority."

IGPAC members comprehend that the text negotiated by federal parties for this FTA, the WTO GPA and other international agreements covering subcentral procurement may not include detailed language on the terms and conditions duly specified by each state entity. Still, state governments reserve the right to condition their agreement to accept the proposed procurement language based not only on the terms of the final agreement and implementing legislation, but also upon the inclusion of terms and conditions such as the following in their acceptance letters:

- Agreements to be included may be withdrawn upon a subsequent decision by the appropriate legislative and executive offices;
- State procurement written and on-line publications will be recognized as meeting relevant requirements;
- Federal officials will provide necessary resources and assistance to impacted agencies for procurement trade agreement implementation and compliance;
- Amendment of inconsistent state or local laws to conform with the obligations being undertaken depends upon approvals by the relevant legislative, administrative and executive bodies;
- In the event that a contract award is disputed by a foreign bidder, the procurement process will not be impeded or delayed, thereby preserving public interest and safety;
- In the event of a dispute settlement adverse to the US due to the actions of a state or local entity, such entity will not be held liable to compensate the US for any costs or sanctions imposed under the dispute settlement;
- Any substantial changes to the types of commitments covering state and local procurement contained in this agreement, future agreements, and the WTO Government Procurement Agreement will not be deemed as being within the scope of agreements currently provided to the USTR without providing such entities an opportunity for full review and a new decision on inclusion;
- Existing state and local exceptions to coverage will be maintained, including but not limited to:
    - all existing or future preferences and practices benefiting small, minority and women-owned businesses;
    - procurement contract awards made to state or local companies due to tie-bids;
    - procurement of transit cars, buses and related equipment, steel, coal, autos, and printing services, and
    - requirements designed to encourage economic development for the purpose of alleviating economic distress and to promote environmental quality.

Currently, public awareness of the implications of "outsourcing" or "offshoring" has been heightened as some US employment shifts overseas and across borders – while popular awareness of the benefits of international investment and foreign affiliate employment to the US economy seems less evident. A wide array of proposals under review by state and local elected

officials could potentially limit international procurement market access. Given this context, IGPAC members suggest that the USTR, the US Department of Commerce Export Assistance Centers, and other relevant federal agencies, provide technical assistance to actively encourage US firms to access newly opened procurement markets under this agreement.

Services

State and local governments generally support objectives to liberalize trade in services industries as a means of increasing market access for US firms and for reaching trade development objectives. IGPAC members equally assert that the independent exercise of state and local legislative and regulatory power is critical to protecting citizens' interests and safeguarding the federal system. IGPAC would suggest that involving the National Association of Regulatory Utility Commissioners (NARUC) as a member of IGPAC and as part of the trade policy consultation process could significantly enhance substantive comment on services provisions from the state and local regulatory perspective, as NARUC members include governmental agencies engaged in the regulation of telecommunications, energy, and water utilities and carriers in the US, Puerto Rico and the Virgin Islands.

The USTR has diligently endeavored to identify various state statutes and local measures that may not conform to certain provisions in this agreement, excluding them from coverage by listing them in annexes of non-conforming measures. It should not be presumed, however, that these annexes are comprehensive, nor that future legislative and regulatory decisions must be consistent with commitments made in this agreement.

In this regard, the general "blanket" exemption for "existing" and subsequent state and local measures that do not increase the degree of non-conformity could leave open a myriad of potential disputes about future changes. At a minimum, this matter highlights the critical need for the USTR to educate and consult with state and local entities so that they remain aware of the constraints that may be imposed upon future legislative actions. If future measures are not covered by current exceptions for existing laws, it would be necessary to fit them within other exceptions, many of which are far narrower and risk being subject to problematic standards, such as being "no more burdensome than necessary." The unintended consequence might be to freeze state and local legislation in ways that prevent it from adapting adequately to changing facts and circumstances. The difficulties that developed under energy deregulation in the Western states, and the discussions about whether to reconsider any aspects of current law in the area are indicative of such potential problems. This is particularly true where the interpretation of many of these terms and concepts continues to evolve and is subject to dispute within the WTO framework. IGPAC members urge the USTR to act expeditiously to work with the global community on forging a common view on these issues, so that state and local governments can make more informed assessments of their positions on future agreements.

Investment

Where agreements are reached with nations in Central America and the Caribbean, with less fully developed legal systems, inclusion of a wholly separate litigation process, applicable only to foreign commerce and investment, may be viewed as necessary at the moment for creating conditions in countries like the Dominican Republic that are conducive to attracting and retaining international investment. IGPAC members' objections to investor-state provisions stem from concerns that investors from nations with well-developed legal systems have abused such FTA provisions to challenge the authority of state and local governments. In particular, the *Methanex* and *Loewen* cases stemming from NAFTA Chapter 11 have reinforced concerns that the provision will be abused by investors who simply hope to circumvent established legislative and judicial procedures. Given the still evolving context of investor-state disputes as cited earlier, IGPAC members maintain significant concerns about Chapter 10-Section B provisions on investor-state dispute settlement claim submission and arbitration. IGPAC members do welcome those Chapter 10-Section B provisions in the CAFTA that bring about greater transparency, inclusion of non-disputing party and *amicus curiae* submissions, and consideration of whether claims or objections may be frivolous. IGPAC also notes that on-going US-sponsored efforts to strengthen the administration of justice in Central American and Caribbean nations may ameliorate legitimate concerns in the future about these legal systems.

While appreciating the importance of flexibility in provisions related to national treatment (Article 10.3.3), such provisions could be clarified to more clearly preclude misunderstandings and unintended consequences related to investment and subcentral jurisdiction. Conceivably, a foreign investor could use this provision to argue for the treatment provided by one US state for its investment in another US state. Though clearly not intended to be used in this manner, such language may leave open that potential interpretation and misuse. IGPAC members would welcome the opportunity to discuss clarifications and suggested language for various investor-state provisions in the CAFTA and future trade agreements.

Comment on Advisory Committee Process:

IGPAC members sincerely appreciate the dedication of USTR Intergovernmental staff in providing extensive information and assistance as we prepared this report. However, IGPAC members found the 30 day period allotted for review of each of the four FTA documents (from February through April this year: the US-Australia FTA; the CAFTA; the Morocco FTA, and the Dominican Republic FTA) and for the creation of our reports to be insufficient, given the complexity of the agreements, the time needed for consultation amongst many members entirely new to the Committee, the delay in making documents publicly available which hampered our discussions with other interested parties, and the coordination of members' schedules -- especially complex since some members are elected officials with legislatures in session. In view of the compressed schedule and the need to consult with a large number of constituent members, the representatives of the National Association of Attorneys General (NAAG) do not take a formal position on this Agreement at this time. The National Association of State

Procurement Officials (NASPO) appreciates becoming a participating member of IGPAC and the thoughtful inclusion of its input regarding procurement-related issues in this report on the US-Dominican Republic Free Trade Agreement. Because NASPO represents purchasing directors from all of the states, some of which will have differing positions on the Agreement, NASPO does not take a formal position on the FTA at this time.

IGPAC members emphasize that the creation of an institutional infrastructure, to foster on-going federal-state-local trade policy consultations before, during and after final trade agreement language is made available, would provide for a far more comprehensive, inclusive and valuable IGPAC review process. In light of the commitment of the USTR and Congress to receiving input from IGPAC and other advisory committees, lengthening the time frame and deepening the resources devoted to the entire trade policy review and consultation process, as detailed in earlier recommendations (section IV of this report), would be most welcome, essential and commendable.

VI. Membership of Intergovernmental Policy Advisory Committee (IGPAC) Roster as of April 2004

Name	Affiliation
Rep. Sheryl Allen	Utah House of Representatives
Kent Allin	National Association of State Procurement Officials
Jill Arthur	City of Santa Ana, California
Representative Daniel E. Bosley	Commonwealth of Massachusetts
Peter Bragdon	Office of the Governor/ Oregon
James A. Brooks	National League of Cities
Teresa Brown	Arkansas Attorney General's Office
Brian R. Caldwell	Office of Consumer Counsel/ Northern Mariana Islands
Liz Cleveland	Mississippi Development Authority
Carol Colombo	State of Arizona
Karen Cordry	National Association of Attorneys General
Peter S. Cunningham	North Carolina Department of Commerce
Rep. Johnny Ford	Alabama House of Representatives
Robert Hamilton	Office of the Governor/ State of Washington
Kathy M. Hill	Iowa Department of Economic Development
Judge Rebecca Jackson	Jefferson County Judge/Executive/ Louisville, Kentucky
Governor Dirk Kempthorne	State of Idaho
Brian Krolicki	Treasurer, State of Nevada
Peter Owens Lehman, Esq.	South Carolina State Ports Authority
Rep. Peter Lewiss	Rhode Island House of Representatives
Tony Lorusso	Minnesota Trade Office
Cassandra Matthews	National Association of Counties
Robert R. Matthias	City of Virginia Beach, Virginia
James Mazzarella	State of New York, Office of Federal Affairs
Ron McMurray	State of Idaho
Jeremy Meadows	National Conference of State Legislatures
Mayor Meyera E. Oberndorf	City of Virginia Beach, Virginia
Senator Jose Ortiz-Daliot	Commonwealth of Puerto Rico
Veronique Pluvoise-Fenton	National League of Cities
Representative Clay Pope	State of Oklahoma
Mayor Miguel A. Pulido	City of Santa Ana, California
Lynne Ross	National Association of Attorneys General
MardiLyn Saathoff	Office of the Governor/ Oregon
Milton Segarra	Commonwealth of Puerto Rico
Ms. Hannah Shostack	Office of Legislative Services, New Jersey Legislature
Mr. Richard Van Duizend	National Center for State Courts
Governor Tom Vilsack	State of Iowa
Mary Beth Warner	Kentucky Cabinet for Economic Development
Christopher Whatley	Council of State Governments
Kay Alison Wilkie	New York State Department of Economic Development

FEDERAL RELATIONS AND TRADE ISSUES COMMITTEE
APRIL 19, 2005
AGENDA

I. Welcome by Representative Phillip Frye, Co-Chair

II. Update on Washington, DC trip by Rep. Frye

III. Discussion of HB 800 - An Act Requiring Vendors Bidding on State Contracts to Disclose Whether Services Will Be Performed Outside the United States.

IV. Further Discussion

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on Federal Relations and Trade Issues will meet as follows:

DAY & DATE: **Tuesday, April 19, 2005**

TIME: **1 pm**

LOCATION: **415**

The following bills will be considered (Bill # & Short Title & Bill Sponsor):

HB 800 State Contracts/Report Outsourcing - Primary Sponsors Glazier, Farmer-Butterfield, Frye and Hilton

Respectfully,
Representatives Phillip Frye and Mark Hilton
Co-Chairs

I hereby certify this notice was filed by the committee assistant at the following offices at **4:50pm** on **April 12, 2005.**

___Principal Clerk
___Reading Clerk - House Chamber

Mary Hayes (Committee Assistant)

MINUTES
FEDERAL RELATIONS AND TRADE ISSUES
Tuesday, April 19, 2005

The House Committee on Federal Relations and Trade Issues met on Tuesday, April 19, 2005, at 1 pm. Members present included; Representatives Frye and Hilton, Co-Chairs, Representatives Current, Glazier, Alexander, Brown, Holloway, and McMahan. Also present were Barbara Riley and Karen Cochrane-Brown, Staff Attorneys.

Representative Frye called the meeting to order. He gave a brief update on the NCSL meeting in Washington, DC. He told the Committee the meeting was very informative and he will have more information to share with the group in the future. He also had a good meeting with Senator Dole and she will be sending more information for the Committee.

A motion was made to adopt the committee substitute. Representative Rick Glazier was recognized to explain HB 800 – State Contracts/Report Outsourcing. This bill would require Vendors bidding on State Contracts to disclose whether services will be performed outside the United States.

Representative McMahan asked if there were any idea of how many contracts this would effect?

Representative Glazier stated he had no idea of the numbers.

Representative Hilton asked if there were any records to track which companies are bidding on State Contracts and will be performing these services outside of the US.

Representative Glazier said he thought State Contracts would track this since they were the ones that accepted the bids but he was not sure if they had a tracking system.

Representative Alexander asked if this should not be included in the bill?

Ms. Karen Cochrane-Brown said this could be included in the bill.

The report was favorable for the Committee Substitute and unfavorable for the original bill.

Representative Frye gave members two handouts (See attachments 1 & 2).

Meeting was adjourned at 1:15 pm.

Phillip Frye (Co-Chair)

Mary Hayes
Committee Assistant

Paul Fogleman

Attachment #1

[redacted] "jim schollaert" <jim.schollaert@verizon.net>
"qhog" <hogahl@erols.com>
Sent: Tuesday, April 12, 2005 8:51 AM
Subject: Maryland Legislature Overrides Gov. on Free Trade; Vote Halts Foreign Bids on Procurement

The Washington Post

April 12, 2005 Tuesday
Final Edition

MD Legislature Overrides Ehrlich on Free Trade; Vote Halts Foreign Bids On Md. Procurement

BYLINE: Paul Blustein, Washington Post Staff Writer

BODY:

The Maryland legislature gave new impetus yesterday to a growing movement among politicians at the state level to reject provisions of **free-trade** agreements that apply to state governments.

The General Assembly yesterday joined the Senate in voting to override a veto by Gov. Robert L. Ehrlich (R) of a bill concerning Maryland's willingness to open state contracts to foreign competition. The legislature's override vote effectively rescinds a commitment Ehrlich made to allow foreign firms to compete for state business under the terms of international accords such as the Central American **Free Trade** Agreement.

[redacted] **of trade pacts hailed the vote as one of the strongest signs yet that the nation's statehouses are rebelling against portions of trade agreements that lawmakers view as threatening their sovereign rights.** Fueling the rebellion are fears that the trade pacts undermine states' ability to set policy in a wide range of areas, including land use and the environment. In California, for example, a bill mandating the use of recycled U.S. tires for asphalt in road construction was reluctantly vetoed by Gov. Arnold Schwarzenegger (R) on the grounds that it would discriminate against Mexican and Canadian rubber exporters in violation of NAFTA, the North American **Free Trade** Agreement.

The Maryland legislature's override is "the latest evidence of state officials' growing demands for accountability in international trade negotiations," said a statement by Public Citizen's Global Trade Watch, a Ralph Nader-affiliated group. **It makes Maryland the first state to withdraw from a World Trade Organization** pact on government procurement, the group said.

The Bush administration denounced the vote. "This is a big step backwards for Maryland, because it could result in Maryland suppliers of goods and services losing access for opportunities to bid on overseas government contracts," said Neena Moorjani, a spokesman for the U.S. trade representative's office.

At issue is an effort at the federal level by the Bush administration and its predecessors to open up the worldwide market for government contracts and procurement to businesses regardless of their nationality. Washington has long contended that foreign governments discriminate against U.S. multinational firms and fail to follow transparent procedures in the awarding of contracts.

By striking agreements that open government procurement to foreign firms, the argument goes, U.S. companies will benefit by winning a greater share of contracts abroad. But opponents contend that the accords restrict states' ability to favor local firms and set pay standards.

Under a WTO agreement, 27 member countries of the Geneva-based trade body have agreed to open their government procurement markets to one another's firms. In the 1990s, 37 U.S. states agreed to cover some of their procurement under that accord -- with the expectation that their companies could win contracts from local governments overseas.

[redacted] n administration sought to expand the concept in 2003, when then-U.S. Trade Representative Robert B. Zoellick asked all of the nation's governors to open some of their states' procurement to countries such as Australia, Morocco and the five nations of Central America he was negotiating **free-trade** pacts with.

But that move has been only partially successful. According to Moorjani, 29 governors agreed to cover their procurement under the

U.S.-Australia accord; 23 agreed to do so under the Morocco deal; and 22 signed on to the Central American agreement. Congress has yet to approve CAFTA, which has been expanded to include the Dominican Republic.

Virginia has declined to cover its procurement under the new pacts, and the District was not asked, Moorjani said, because it does n[redacted]e statehood status.

Under then-Gov. William Donald Schaefer (D), Maryland allowed some state procurement to be covered by the WTO agreement in 1993, and Ehrlich agreed to Zoellick's request to bind the state's procurement to the rules of the other trade deals as well. But lawmakers have now rescinded those commitments and required that future commitments be approved by the legislature.

LOAD-DATE: April 12, 2005

Attachment #1

Quota Query: General First Unit of Quantity by Quantity Description and General First Unit of Quantity For ALL Countries

U.S. General Imports

Annual Data

[redacted]

Quantity Description	Country	2000	2001	2002	2003	2004	Percent Change	Percent Change
		In Actual Units of Quantity					2003 - 2004	2000-2004
dozen pairs	China	503,647	976,411	5,873,978	21,999,835	56,057,380	154.80%	11030.29%
.	Korea	10,489,478	13,608,237	20,729,438	23,363,112	23,440,957	0.30%	123.47%
.	Pakistan	2,789,594	5,170,387	10,519,954	15,351,881	22,801,777	48.50%	717.39%
.	Dominican Rep	6,585,704	5,082,558	5,784,066	11,613,694	20,363,821	75.30%	209.21%
.	Mexico	21,699,587	24,515,096	26,121,921	21,148,168	19,998,974	-5.40%	-7.84%
.	Costa Rica	7,724,245	11,537,803	11,825,526	11,732,013	12,479,894	6.40%	61.57%
.	Honduras	2,373,922	3,066,566	6,980,733	7,641,235	11,779,609	54.20%	396.21%
.	Taiwan	10,010,214	11,505,917	13,234,390	10,893,798	8,306,101	-23.80%	-17.02%
.	Turkey	1,867,440	2,873,968	4,302,934	5,526,917	5,610,388	1.50%	200.43%
.	Canada	7,844,376	6,087,396	7,877,154	6,795,544	4,473,348	-34.20%	-42.97%
.	Colombia	1,152,525	1,039,021	1,773,101	2,936,268	3,939,117	34.20%	241.78%
.	Ghana	0	0	104,709	1,603,461	2,362,086	47.30%	NA
.	Guatemala	74,948	214,814	482,837	1,029,430	2,263,825	119.90%	2920.53%
.	Philippines	815,747	1,116,312	1,334,753	1,150,474	1,313,038	14.10%	60.96%
.	India	334,970	430,379	949,674	1,156,417	1,124,401	-2.80%	235.67%
Subtotal - dozen pairs		74,266,397	87,224,865	117,895,168	143,942,247	196,314,716	36.40%	164.34%
All Other:		3,619,301	2,942,251	3,538,363	3,339,311	4,161,170	24.60%	14.97%
Grand Total		77,885,698	90,167,116	121,433,531	147,281,558	200,475,886	36.12%	157.40%

Sources: Data on this site have been compiled from tariff and trade data from the U.S. Department of Commerce, the U.S. Treasury, and the U.S. International Trade Commission.

Rep. Phillip D. Frye Attachment #2

From: Dan St Louis [sockman@legsource.com]

Sent: Tuesday, April 19, 2005 9:31 AM

To: Rep. Phillip D. Frye

Subject: FW: State Lawmakers Challenge Gubernatorial Authority On Free Trade Deals

Representative Frye,

Below is an interesting article I just received about WTO agreements and what other states have started to enact pertaining their state purchasing of goods. I thought it would be interesting for you to look at. I also attached the legislation that the Maryland legislators passed this week pertaining to this. It does not seem to be a good deal for the State of NC to be bound by the WTO to purchase from other countries. This leads to purchases being made based on a small difference in price. This causes us to lose the NC jobs that could have produced the product. The taxes paid and unemployment benefits saved by NC employers/employees would make up the difference many times over in my opinion. Paul Fogleman will be talking to you about this today before your Trade Committee Meeting. If you have any questions, please advise.

Thanks
Dan

Dan St Louis
Director
The Hosiery Technology Center
2550 Highway 70 SE
Hickory, NC 28602
Phone 828 327 7000 ext 4292
Fax 828 322 5455
Web Address http://www.legsource.com
http://www.hosetech.com
Directions to the HTC http://www.legsource.com/HTC/directions_to_the_hkyhtc.htm

National Journal's Technology Daily

PM Edition

April 15, 2005 Friday

LENGTH: 515 words

HEADLINE: TRADE: State Lawmakers Challenge Gubernatorial Authority On; Deals

BYLINE: Danielle Belopotosky

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 800
PROPOSED COMMITTEE SUBSTITUTE H800-PCS50384-RF-7

Short Title: State Contracts/Report Outsourcing. (Public)

Sponsors:

Referred to:

March 21, 2005

A BILL TO BE ENTITLED

AN ACT REQUIRING VENDORS BIDDING ON STATE CONTRACTS TO DISCLOSE WHETHER SERVICES WILL BE PERFORMED OUTSIDE THE UNITED STATES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-59.4. Contracts performed outside the United States.**

A vendor submitting a bid shall disclose in a statement, provided contemporaneously with the bid, where services will be performed under the contract sought, including any subcontracts, and whether any services under that contract, including any subcontracts, are anticipated to be performed outside the United States. Nothing in this section is intended to contravene any existing treaty, law, agreement, or regulation of the United States."

SECTION 2. This act becomes effective October 1, 2005, and applies to all bids submitted after that date.

State Point of Contact System

- Mechanism for the United States Trade Representative (USTR) to contact states about international trade agreements and issues

- Established by the implementing legislation for NAFTA and the WTO Uruguay Round

- Recognition of the expansion of trade agreements beyond tariff reductions

Trade Agreements and State Laws

- Government Procurement
- Subsidies
- Services
- Investment

WTO Government Procurement Agreement

Background

- Uruguay Round Government Procurement Agreement (GPA) covered sub-federal and services procurement

- Multilateral Agreement

- Goals: 1) expand export opportunities; 2) create savings for taxpayers; and 3) reduce corruption

GPA Continued

- Went into effect January 1, 1996
- State thresholds:
  - $ 460,000 for goods and services
  - $6,481,000 for construction services

GPA Continued

Basic Provisions

- Non-Discrimination:
  - Most Favored Nation (MFN)
  - National Treatment

- Tendering, Procedures and Transparency

- Based on Reciprocity

GPA Continued

GPA and State

- 37 states have agreed to adhere to the agreement
- Most state laws consistent
- Exemptions
- Little impact on procedures and staff time

WTO Subsidies Agreement

Background

- Aim is to reduce distortions of trade flows caused by subsidies and provide a mechanism to offset injury caused by subsidies

- In general, applies to industrial subsidies, not agricultural subsidies.

Subsidies Agreement Continued

Basic Provisions

- Export and import substitution subsidies are prohibited
- Remaining subsidies are allowed but "actionable" if they are both "specific" and cause "adverse effects"
- Subsidies are broadly defined to involve a "financial contribution" by a government that confers a "benefit," including tax breaks

WTO Subsidies Agreement Continued

Agreement and State

- 1995 - reported no prohibited subsidies
- 1998 and 2001 - responded to notification requirements
- Notification does not prejudge the measure
- No NC subsidy has been challenged in the WTO

WTO General Agreement on Trade in Services (GATS)

Background

- First multilateral trade agreement covering services
- Designed to progressively liberalize trade in services and to establish a system of rules for such trade
- Original GATS did not provide much liberalization

GATS Continued

Basic Provisions

- Government services are excluded
- Non-Discrimination
  - most favored nation
  - national treatment
- Transparency

GATS Continued

- Domestic regulations to be administered in a reasonable, objective and impartial manner

- ensure that procedures, technical standards and licensing requirements "do not constitute unnecessary barriers to trade in services" and that they should be "no more burdensome than necessary"

GATS Continued

GATS and State

- Basic Telecommunication, Financial Services and Accountancy Agreement

- No NC law pertaining to services has been challenged under GATS

WTO Dispute Resolution

Background

- Under Uruguay Round Agreement, the defending party can no longer block an unfavorable judgement

- Three outcomes if defending party loses:

  - modification of the offending law
  - compensation
  - retaliatory tariffs

WTO Dispute Resolution Continued

States and the Uruguay Round Implementing Legislation

- States will be notified within 7 days and be consulted within 30 days
- USTR will make "every effort" to involve states in every step of the dispute process
- USTR will consult with states to develop a mutually agreeable response if the WTO rules against the state

WTO Dispute Mechanism Continued

- Uruguay Round Agreements and dispute panels do not automatically preempt state laws

- State law may only be declared invalid by a challenge brought by the federal government.

NAFTA Chapter 11

- Investor-state dispute resolution mechanism allows investors to directly pursue claims against a NAFTA government

- Not just physical takings but also to measures "tantamount to nationalization or expropriation"

- More than a dozen such disputes, many involving sub-federal measures

Chapter 11 Continued

- Rulings cannot overturn state laws unless the federal government brings a court action against a state

- Federal government, not the state, obligated to pay any monetary damages

WTO Negotiations

- Primary Focus: Services and Agriculture
- Services - Primarily Market Access
- Exceptions:
  - safeguards
  - subsidies
  - government procurement
  - regulation

Additional Wednesday Meeting Notice

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on Federal Relations and Trade Issues will meet as follows:

DAY & DATE: Wednesday, **April 13, 2005**

TIME: **2 pm**

LOCATION: **Auditorium**

Special Guest Speaker

Ambassador John Bruton
European Union Ambassador to the United States

Respectfully,
Representatives Phillip Frye and Mark Hilton
Co-Chairs

I hereby certify this notice was filed by the committee assistant at the following offices at **2pm** on April 11, **2005.**

___Principal Clerk
___Reading Clerk - House Chamber

Carol Wilson (Committee Assistant)

Carol Wilson (Rep. Hilton)

From: Carol Wilson (Rep. Hilton)

Sent: Monday, April 11, 2005 5:38 PM

To: @All Exchange Users

Subject: Invitation to hear Ambassador John Bruton, EU Ambassador to the US

Representatives Hilton and Frye, co-chairs of the Federal Relations and Trade Issues Committee, would like to invite everyone to a special briefing on European Union - US Relations from Ambassador John Bruton, European Union Ambassador to the United States on Wednesday, April 13th in the Legislative Auditorium from 2-3 pm.

Carol Wilson
Legislative Assistant for
Representative Mark Hilton
Legislative Building - Room 1021
733-5988

Minutes
Federal Relations and Trade Issues Committee
April 13, 2005

Chairman Hilton called the public meeting to order and welcomed Ambassador John Bruton, Head of Delegation to the European Union since November 2004. He held the title of Ambassador of Agriculture for the State of North Carolina, an honor conferred on him by the late Jim Graham, former Agriculture Secretary of North Carolina in 1980.

Ambassador Bruton said the EU was formed to ensure that the European countries were interdependent on each other, to establish an economic block, and prevent wars between countries of Europe, all done on a voluntary basis. This structure is based on peace not on economics. The EU represents 450 million people. The EU commission makes treaties and pacts and the commission has authority to negotiate. The US has a large ally in the EU and agreements can be made with the EU not necessarily with individual European countries.

He said disputes can sometimes be resolved with the EU, but sometimes these issues must be handled the WTO panel with the panel having the final say-so. Just 10 years ago, there was no panel to settle these disputes, so this panel is a great advance for negotiations between countries.

Agriculture and textiles are subsidized in Europe presently, but recently Europe is moving away from these subsidies. Farmers are presently being subsidized, similar to what is being done in the US to control over production.

He commends the NC Legislature for forming this committee because it can assist the US and the EU in their work.

Q and A

Rep. Jean Farmer Butterfield asked what the composition of the WTO panel was, how are they selected, and are there term limits for the panel members?

Ambassador Bruton said he was not sure on how the panel members are selected, but he was sure they were knowledgeable, have experience in their area of expertise, and are selected for each individual dispute.

Mr. Paul Fogleman, Director of the Hosiery Governmental Affairs Council, asked if the EU manufactures are having problems with Chinese imports in the same fashion as the US, and if so, what safeguards are being implemented to reverse the trend?

Ambassador Bruton said EU manufacturers are being affected by Chinese imports and negotiations are in place asking China to limit some of their exports. This problem has been expanded because expiration of a treaty that limits certain goods from China. One answer is to produce goods, which China cannot thus give the market alternatives to Chinese goods.

Rep Cole asked if many agreements have been based not only on economics but on

human rights, and if so, how is it that China continues to violate these rights? Why are they not held accountable?

Ambassador Bruton said these violations are hard to prevent since you have to prove that the price of Chinese goods is affected by violating someone's human rights.
Also, if they are allowed to join the WTO, why weren't these issues brought to light at that time? He added it might be too late now for this to be an issue.
He also said the US wanted Chinese tariffs to be reduced so they were allowed to enter the WTO and they did reduce the tariffs after they joined.

Laura Devivo asked if the EU negotiates directly with the world energy market?

Ambassador Bruton said the EU doesn't negotiate energy costs but does regulate pricing on energy costs through tax policies. He added that energy costs have not risen at the same rate as other goods and services. Coal reserves in the US keep energy costs down while Europe doesn't have these resources.

Bo Mills, lobbyist for League of Municipalities asked about outsourcing in Europe and especially in Ireland?

Ambassador Bruton said Americans are resourceful and flexible, but Europeans are not. He said education is the most important aspect for continued growth.

Rep Frye asked about major exports that Europe and the US are able to export to China to offset the imbalance in trade?

Ambassador Bruton said China needs infrastructure, roads, housing, engineering needs, etc. so these are China's needs, but I am not sure about the specifics.

John Yarborough, asked about China's manipulation of currency so that we are at a disadvantage, especially in the textile market.

Ambassador Bruton said China is buying a lot of dollars so the value of the dollar stays low. But every time they do this, American consumers gain while manufacturers lose. In the long run this is still good for America.

Chairman Hilton thanked Rep Joe Hackney and his staff for helping get Ambassador Bruton to Raleigh.

Chairman Hilton adjourned the meeting.

Mark Hilton

Representative Mark Hilton
Presiding Co-Chair

Carol Wilson
Committee Assistant

Ambassador John Bruton
European Union Ambassador to the United States
Raleigh, North Carolina
Wednesday - April 13, 2005

Other Speakers & Guests

Kristal Alley *– Special Advisor Europe & Eurasia, U.S. Chamber of Commerce*
Marie Geiger *– Director Trade Policy Division, U.S. Department of Commerce*
Hubert van Vliet *– Principal Administrator, Legal Service of the EU Commission*

8:00am – 9:00am	**Breakfast – *Institute for Emerging Issues*** *Governor Jim Hunt plus 40-50 attendees* *42nd Street Oyster Bar*
10:00am – 10:45am	**Editorial Meeting – The *News & Observer*** *Amy Martinez – Staff Writer, International*
11:00am	**Meet with Governor Mike Easley** Governor's Office, North Carolina State Capitol
11:30am – 12:30pm	**Reception Luncheon** *(by Invitation)* ***Sponsored by North Carolina State Ports Authority*** *Forty Invited NC Business and Political Leaders* *The Glass Box – NC Museum of History*
1:00pm – 3:00pm	**Public Briefing** *Daniels Auditorium – NC Museum of History*
12:30pm – 1:00pm	*Registration & Networking*
1:00pm – 1:15pm	*Opening Comments & Introductions*
1:15pm – 1:45pm	*Amb. John Bruton, EU Ambassador to the United States**
1:45pm – 2:15pm	*Marie Geiger, Director Trade Policy Division, U.S. DoC*
2:15pm – 2:45pm	*Kristal Alley, Advisor Europe & Eurasia, U.S. Chamber of Commerce*
2:45pm – 3:00pm	*Questions & Answers* ** Amb. Bruton meets with Agriculture Commissioner Steve Troxler; Charles Hall NC Agriculture International Marketing; and Erica Peterson, NC Agribusiness Council*
2:00pm – 3:00pm	**House Committee on Federal Relations & Trade Issues**
2:00pm – 2:15pm	*Committee Chairmen: Rep. Phillip Frye & Rep. Mark Hilton*
2:15pm – 3:00pm	*Special Session of the Committee*
3:15pm – 4:00pm	**Address the North Carolina Senate**
3:15pm – 3:30pm	*Senate President Pro Tempore, Marc Basnight*
3:30pm – 4:00pm	*Comments to NC Senate and Q&A*
4:15pm	**Depart Raleigh for Return to Carolina Inn - Chapel-Hill**

WORLD TRADE CENTER

Special Invitation - RSVP

Ambassador John Bruton

European Union Ambassador to the United States
and former Prime Minister of Ireland

Invitation-Only
Welcoming Luncheon
April 13, 2005
11:30am - 12:30pm
the "Glass Box"
North Carolina Museum of History
5 East Edenton Street, Raleigh NC
between Salisbury & Wilmington Streets
Please arrive by 11:15am

Luncheon Sponsored by
NC State Ports Authority

RSVP
World Trade Center NC 919.281.2740

Ambassador Bruton Biography

Before being appointed EU Ambassador to the United States, John Bruton served as a leading member of the caucus that drafted the first-ever European Constitution that was signed in Rome on October 29, 2004 and is now before the 25 EU Member States for ratification.

John Bruton is a former Irish Prime Minister (Taoiseach). During his term (1994-1997), he helped transform the Irish economy into the "Celtic Tiger," one of the fastest growing economies in the world. He was also deeply involved in the Northern Irish Peace Process leading to the 1998 Good Friday Agreement.

While Prime Minister, Ambassador Bruton presided over a successful Irish EU Presidency in 1996 and helped finalize the Stability and Growth Pact which governs the management of the single European currency, the Euro. He represented the EU at Summit meetings with the President of the United States, the Prime Ministers of Canada, Japan, China and Korea, as well as Chairman Arafat of the Palestinian Authority.

He was first elected to the Irish Parliament ("Dáil Éireann") in 1969 at the age of 22 as a member of the Fine Gael Party, becoming Party Leader in 1990 and leading it to victory in 1994. He previously served as Ireland's Minister for Finance (1981-1982 & 1986-1987); Minister for Industry & Energy (1982-1983); Minister for Trade, Commerce & Tourism (1983-1986). He resigned his seat effective November 1, 2004 to take up appointment as EU Head of Delegation in the United States.

John Bruton graduated from University College Dublin with a Bachelor of Arts degree before studying to become a barrister. He is married to Finola Bruton and has 4 children.

WORLD TRADE CENTER

North Carolina & The European Union
Economic Futures Inextricably Linked

The EU is the #1 investor in North Carolina ***(Foreign Investment)***

North Carolina exported $3.85 billion to the EU 25 – 2004
Accounting for over 21% of North Carolina's Total Exports...
Greater than our total exports to Mexico and Japan combined.

NC's Top 5 Exports to the EU 25 – 2004

1.	*Chemicals*	*$838 million*
2.	*Computers and Electronics*	*$610 million*
3.	*Machinery*	*$460 million*
4.	*Transportation Equipment*	*$362 million*
5.	*Agricultural Products*	*$254 million*

NC's Top 10 EU 25 Trading Partners – 2004

1.	*United Kingdom*	*$812 million*
2.	*Federal Republic Germany*	*$643 million*
3.	*France*	*$554 million*
4.	*Italy*	*$504 million*
5.	*Netherlands*	*$344 million*
6.	*Belgium*	*$308 million*
7.	*Denmark*	*$164 million*
8.	*Switzerland*	*$151 million*
9.	*Spain*	*$120 million*
10.	*Ireland*	*$ 79 million*

Note: Ambassador Bruton was previously Prime Minister of Ireland

Source: Office of Trade and Industry Information (OTII), Manufacturing and Services.
International Trade Administration, U.S. Department of Commerce

EU Member Countries / Candidates / Pending

EU25 Member States*			Candidate Countries:
• Austria • Belgium • Cyprus • Czech Republic • Denmark • Estonia • Finland • France • Germany • Greece • Hungary • Ireland	• Italy • Latvia • Lithuania • Luxembourg • Malta • The Netherlands • Poland • Portugal • Slovakia • Slovenia • Spain • Sweden • United Kingdom		• Bulgaria • Croatia • Romania • Turkey **Application Pending:** • Former Yugoslav Republic of Macedonia

* Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic and Slovenia joined the European Union on May 1, 2004 – increasing the EU from 15 to 25 States

The European Union

The European Union--previously known as the European Community--is an institutional framework for the construction of a united Europe. It was created after World War II to unite the nations of Europe economically so another war among them would be unthinkable. Twenty-five countries are members of the European Union (with more to follow), and some 500 million people share the common institutions and policies that have brought an unprecedented era of peace and prosperity to Western Europe.

Chronology

1952 Six countries - **Belgium**, **France**, the **Federal Republic of Germany**, **Italy, Luxembourg** and the **Netherlands** - create the European Coal and Steel Community (ECSC) by pooling their coal and steel resources in a common market controlled by an independent supranational authority.

1958 The Rome Treaties set up the European Economic Community (EEC) and the European Atomic Energy Community (Euratom), extending the common market for coal and steel to all economic sectors in the member countries.

1965 The Merger Treaty is signed in Brussels on April 8. It provides for a Single Commission and a Single Council of the then three European Communities.

1967 The Merger Treaty enters into force on July 1.

1973 The **United Kingdom**, **Ireland**, and **Denmark** join the European Community (EC).

1979 The European Parliament is elected, for the first time, by direct universal suffrage and the European Monetary System (EMS) becomes operative.

1981 **Greece** becomes the 10th member state.

1985 The program to complete the Single Market by 1992 is launched.

1986 **Spain** and **Portugal** become the 11th and 12th member states.

1987 The Single European Act (SEA) introduces majority voting on Single Market legislation and increases the power of the European Parliament.

1989 The Madrid European Council launches the plan for achievement of Economic and Monetary

Union (EMU).

1990 East and West Germany are reunited after the fall of the Berlin Wall.

1991 Two parallel intergovernmental conferences produce the Treaty on European Union (Maastricht) which EU leaders approve at the Maastricht European Council.

1992 Treaty on European Union signed in Maastricht and sent to member states for ratification. First referendum in Denmark rejects the Treaty.

1993 The Single Market enters into force on January 1. In May, a second Danish referendum ratifies the Maastricht Treaty, which takes effect in November.

1994 The EU and the 7-member European Free Trade Association (EFTA) form the European Economic Area, a single market of 19 countries. The EU completes membership negotiations with EFTA members Austria, Finland, Norway and Sweden.

1995 **Austria**, **Finland** and **Sweden** join the EU on January 1. Norway fails to ratify its accession treaty. The EU prepares the 1996 Intergovernmental Conference on institutional reform.

1997 The Treaty of Amsterdam, resulting from the 1996 Intergovernmental Conference, is signed on October 2.

1999 The Euro is introduced on January 1 electronically in 12 participating member states, with complete introduction to occur in 2002. The Amsterdam Treaty enters into force on May 1.

2001 The Treaty of Nice results from the 2000 Intergovernmental Conference.

2002 The Euro is fully launched on January 1. The European Convention begins, as part of the debate on the future of Europe, to propose a new framework and structures for the European Union--geared to changes in the world situation, the needs of the citizens of Europe and the future development of the European Union. On October 9, the European Commission recommends that candidate countries Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic and Slovenia be the first to join the EU under the latest enlargement process, possibly in time for the elections to the European Parliament scheduled for June 2004.

2003 The Treaty of Nice enters into force on February 1.

2004 Ten countries (**Cyprus**, the **Czech Republic**, **Estonia**, **Hungary**, **Latvia**, **Lithuania**, **Malta**, **Poland**, the **Slovak Republic** and **Slovenia**) joined the European Union on May 1, 2004.

(Bulgarian and Romanian accession are anticipated for 2007. At the summit on December 16 and 17, the European Council decides whether Turkey is ready to begin accession negotiations. On June 18, the European Council accepted Croatia as a candidate country. On March 22, the Former Yugoslav Republic of Macedonia [FYROM] applied for EU membership.) A new European Parliament is elected on June 10 to 13. A new European Commission takes office on November 22.

FEDERAL RELATIONS AND TRADE ISSUES COMMITTEE
APRIL 12, 2005
AGENDA

I. Welcome by Representative Mark Hilton, Co-Chair

II. Presentation by Dr. Nancy Cassill, Professor, Department of Textile and Apparel Technology and Management, College of Textiles, North Carolina State University

III. Further Discussion, Questions and Answers

IV. HB 341 A House Resolution Urging the Committee on the Implementation of Textile Agreements to Approve the Safeguard Petitions Filed by the United States Textile Industry – Gibson and Current

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on Federal Relations and Trade Issues will meet as follows:

DAY & DATE: **Tuesday, April 12, 2005**

TIME: **1 pm**

LOCATION: **415**

The following bills will be considered (Bill # & Short Title & Bill Sponsor):

HB 341 - A House Resolution Urging the Committee on the Implementation of Textile Agreements to Approve the Safeguard Petitions Filed by the United States Textile Industry - Gibson and Current

Respectfully,
Representatives Phillip Frye and Mark Hilton
Co-Chairs

I hereby certify this notice was filed by the committee assistant at the following offices at **2pm** on April 7, **2005.**

___Principal Clerk
___Reading Clerk - House Chamber

Mary Hayes (Committee Assistant)

Minutes
Federal Relations and Trade Issues
Tuesday, April 12, 2005

The House Committee on Federal Relations and Trade Issues met on Tuesday, April 12, 2005, at 1 pm in Room 415 in the Legislative Office Building. Members present were: Representatives Hilton and Frye, Cochairs; and Representatives McMahan, Current, Glazier, Almond, Brown, Coats and Cole. Barbara Riley, Staff Attorney, was also present. Representative Hilton recognized the Pages and Sergeant-at-Arms staff serving the committee.

Dr. Nancy Cassill, Professor in the Department of Textile & Apparel, Technology & Management at NCSU, was introduced to the committee and recognized for a presentation.

Dr. Cassill distributed handout packets with power point including an executive summary. She noted that many legislators on the committee represent areas that have been hard hit by textile job losses. Also some legislators have global textile complexes in their regions that compete. She began with an overview detailing the textile market concentrating on the impact that North Carolina plays in the world textile market and emphasized the major role it plays in the world textile market place. She also said NCSU had the largest textile program in the country and second largest in the world.

Dr. Cassill then outlined textile trade issues including safeguards that are in place, some that have expired, and others that are being negotiated, especially the safeguards in regard to China's place in the world textile market and in the WTO in general. She gave specific points about safeguards on the manufacturing of socks, knit shirts, and other entities in the textile marketplace. She also referenced the legislative resolution on trade issues dealing with safeguards for the North Carolina textile industry.

She emphasized safeguards specifically in the manufacturing of bras, knit fabrics, and dressing gowns. She called attention to men and boys' woven shirts and their import penetration from China had increased. In the women and girls' knit shirts category, safeguards have been filed.

She said China had a full program for the textile industry, which includes fabric manufacturing, finished apparel, and distribution, which usually equates to lower prices. She continued her remarks with an overview of the textile market in North Carolina. Many North Carolina companies have a major presence in China. She stressed the importance of safeguards in the marketplace due to the strong presence of China and their national textile business, including subsidies, currency exchange issues, tax incentives, and product dumping.

Dr. Cassill said that the job market had shifted from manufacturing jobs to pre-production jobs such as design, information technology, and property protection and also post-production jobs like merchandising and sales. She said these types of jobs are growing in

numbers. Other increases are in the highly focused textile marketplace, which includes products such as women's and men's apparel, and home goods.

Dr. Cassill said that those connected to the textile industry are divided over many of the trade issues. Some in the textile complex favor a *downstream* approach that is characterized by free trade and/or no restrictions of any kind. Some advocates of this strategy are sourcing the globe for existing and new business. She also said the resolution should note that not all of the textile industry favor safeguards, only specific parts of the industry. Others promote an *upstream* tactic, which can also be defined as *Protectionism* that includes job and industry protection and strict market presumptions. Most of this sector includes yarn and fiber manufacturers and mills. This group emphasizes a *level playing* field as a must for conducting business.

She continued with other trade issues facing this business sector such as the Central American Free Trade Agreement better known as CAFTA. As to any trade agreement, there are differing opinions. Some in the textile community favor many safeguards with this treaty, noting the loss of many jobs with the enactment of NAFTA. Most textile people involved believe that the CAFTA agreement is a better treaty than ones in the recent past. She recognized that a compromise would probably be in the final draft of any proposal including some type of safeguards.

Dr. Cassill wrapped up her lecture with comments concerning North Carolina's textile interests and what the future might bring. She noted that North Carolina is still a major player in the textile industry and should look for considerable growth in this industry. She said legislatures must study these issues closely to be prepared to act when the situation becomes necessary. She stressed that every industry player must be involved in these issues to ensure that North Carolina knows what to expect for its entire textile industry complex.

Rep. Farmer-Butterfield moved that proposed committee substitute for House Resolution 341 be placed before the committee for discussion. Rep. Gibson said the bill had been updated with accurate figures on the impending issues. He said the entire economy - transportation, manufacturing, and engineering- is affected by the textile industry.

Barbara Riley said there were 3 places in the resolution that needed to be modified by removing "*and apparel*" on page 1, line 19, line 24, and page 2, line 27.

Rep. Glazier moved for the adoption of the amendment, motion carried.

Rep Glazier asked for specific petition limitations on safeguards. Chairman Hilton said 7.5% increase over previous years' limit. Dr. Cassill agreed.

Chairman Hilton recognized Jim Bell, President and General Counsel for the North Carolina Manufacturers Association. Mr. Bell urged passage of the resolution.

John Yarboro, Director, Government Relations for Employers Coalition of North Carolina, was recognized for comments. He also supported the resolution and offered more data if needed.

Rep. Glazier moved that the amendment be rolled into a committee substitute resolution and that it be given a favorable recommendation, unfavorable to the original resolution. The motion carried.

Meeting adjourned at 1:45 p.m.

Respectfully submitted,

Representative Mark Hilton
Presiding Co-Chair

Carol Wilson
Committee Assistant

Attachments:

LOOKING BACK AND LOOKING FORWARD: THE TEXTILE COMPLEX AND TRADE ISSUES (INCLUDING SAFEGUARDS)

North Carolina House Committee on Federal Relations and Trade
Nancy L. Cassill, NCSU College of Textiles
April 5, 2005

I. Textile Complex

- Industry Sectors:
  - Fiber, yarn, mills, apparel manufacturers and marketers, importers, retailers
- Textile End Uses:
  - Apparel, home textiles, nonwovens, medical, industrial/technical, transportation
  - North Carolina is key state in providing leadership in textiles

II. Background: Trade (including Safeguards)

- Ending of WTO Multi-Fiber Agreement, January 1, 2005
- Safeguard provision put into place with China's accession to WTO
  - Textile/apparel only sector specific safeguard
- Safeguard filings
  - North Carolina industry has taken very active role

III. Why Safeguards are Key Issue

- China *industry competition* == REAL
  - Clusters
  - All sectors, including "full package"
  - Foreign investment (inside, outside China)
  - China industry = RESPONSIVE
  - *Distance disadvantage with production capabilities*
  - Low prices (price deflation issues)
  - North Carolina has strong presence in China!

III. Why Safeguards are Key Issue

- China *government structure* == ISSUES
  - Subsidies to industry
  - Currency issues (value)
  - Rebates
  - Tax incentives
  - Transshipments
  - Dumping
  - "Level playing field"????

IV. Textile Complex in North Carolina

- Power shift in supply chain
  - Production orientation to marketing orientation
- Job shifts and losses
  - Production losses and closing of plants
- Jobs in NC still exist (and growing)
  - Pre-production and Post-production
  - Mass production → specialty ("niche" and high-tech products

V. Textile Complex is Divided over Trade Issues

- "Downstream" favor:
  - Free trade (and fair) = NO SAFEGUARDS
  - Legal action against safeguards
    - Proof of market disruption
  - Sourcing the globe
  - Have developed contingency plans
    - If/When safeguards in place (short-term)

V. Textile Complex is Divided over Trade Issues

- "Upstream" favor:
  - Protectionism (and fair trade) = SAFEGUARDS
  - Market presumption
  - Industry and job protection and retraining
  - Trade restrictions to current trade legislation
    - "Yarn forward"
    - Attempted delayed quota elimination
    - "Level playing field"

VI. Other Textile Trade Issue Looming: CAFTA

- CAFTA = Central American Free Trade Agreement
  - Safeguards enacted to get CAFTA passed????
  - Textile complex differs on CAFTA
    - Agree with two-way trade
    - Cumulation is issue
    - "Downstream" is pushing
    - TPA – CAFTA has been negotiated

VII. Moving Forward: North Carolina Textile Interests

- Global production and consumption will increase (Datamonitor, 2004)
  - 2008: 21.4% increase, from 2003 (estimated for apparel and unprocessed textiles)
  - 2008: 4.3% increase, from 2003 (estimated for fibers and fabrics)
- North Carolina has expertise to garner growth!

VII. Moving Forward: North Carolina Textile Interests

- What can NC Legislators Do?
  - Study safeguard issue closely
    - Impact on communities
    - Impact on total textile complex
  - Education
    - Keep abreast of global industry issues, and how these impact North Carolina based businesses
    - Keep abreast of global trade issues, and impact on North Carolina (communities, businesses)
  - Listen to the ENTIRE textile complex
    - Fiber, yam, mills, manufacturers, marketers, importers, retailers, consumers

Questions?

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EXECUTIVE SUMMARY

LOOKING BACK AND LOOKING FORWARD: THE TEXTILE COMPLEX AND TRADE ISSUES (INCLUDING SAFEGUARDS)

Presentation to North Carolina House Committee on Federal Relations and Trade
Dr. Nancy L. Cassill, Professor, NCSU College of Textiles

April 5, 2005

I. Textile complex contains many sectors with diverse textile end uses --- all have a presence in North Carolina

- Industry sectors: fiber producers, yarn producers, mills, apparel manufacturers and marketers, importers, retailers
- Textile end uses: apparel, home textiles, nonwovens, medical, industrial/technical textiles, transportation textiles
- North Carolina is the key state providing leadership in textiles
    - Several global leaders in the textile complex have corporate headquarters in North Carolina
    - North Carolina has the largest College of Textiles in the United States (and potentially the second largest in the world!), and is the world leader in textile complex education and research
    - Numerous textile-related trade associations are located in North Carolina

II. Background: Trade (including Safeguards)

- Ending of World Trade Organization (WTO) Multi-Fiber Agreement, January 1, 2005, resulted in the last phase-out of textile and apparel quotas
    - Phase out was in 4 stages (1995, 1998, 2002, 2005), with U.S.'s most "vulnerable" products phased out in last two phases (2002, 2005)
- Safeguard provision was put into place with China's accession to WTO in 2002
    - Only sector specific safeguard negotiated at China's accession was textiles and apparel
    - Safeguards impose 7.5% growth rate from previous year
    - Safeguards remain in effect until 12/31/08 (with some extension possibilities)
- Safeguard filings:
    - In 2003, four petitions filed, with three safeguards enacted: bras, knit fabric, dressing gowns
    - In 2004, safeguards were filed: socks, wool trousers, knit shirts, man-made fiber shirts, non-knit cotton and man-made fiber shirts, cotton and man-made underwear

III. Why Safeguards are a key issue

- China *industry competition* is REAL (see attached data, January 2005, OTEXA)
  - Developed industry with "clusters"
  - Producing in all sectors, as well as "full package"
  - Foreign investment into China as well as Chinese investment worldwide (take advantage of trade opportunities including quota, expertise, speed to market)
  - China textile complex known as flexible, responsive to market, short runs, working closely with companies, savvy business practices, suspect with IP issues, IT investments
  - Captured, in essence, the distance disadvantage with production capabilities, flexibility, and competitive drive to capture market share
  - Known for "low prices" on both commodity and fashion goods, contributing in part to price deflation in textiles
  - Several North Carolina companies are doing A LOT of business with China and/or Chinese owned companies
- China *government structure*: Issues related to textiles ("unfair advantages"?)
  - Subsidies to industry
  - Currency issues (value)
  - Rebates
  - Tax incentives
  - Transshipments
  - Dumping

IV. Textile Complex in North Carolina

- Power shift in supply chain, given global competition
  - Move from production orientation to marketing orientation
  - Power of the "downstream" (retailers and importers)
- Job shifts and losses (production, closing of companies)
  - Labor-intensive jobs have moved offshore
  - Reasons for losses: labor costs, flexibility, expertise, fiber/fabric resources, total product cost
  - Import penetration for U.S. apparel market is 96.6%
  - Household textiles' import penetration is approximately 65%
- Jobs in North Carolina still exist (and growing)
  - Pre-production and post-production processes ("Value-added")
    - Design, development, merchandising, marketing, branding, logistics, sourcing, sales, financial, information technology, intellectual property protection
  - Movement from mass production of commodity goods to design/development of specialty ("niche") and high-tech products
    - Nonwovens, medical, industrial/technical, apparel, transportation
    - Production of specialty products, plus replenishment, sampling, short runs

V. Textile Complex is divided over trade issues

IN GENERAL

- "Downstream" (apparel manufacturers, marketers, importers, retailers) favor:
  - Free Trade (and Fair Trade) = No Safeguards
  - Legal action against safeguards – want data proof of market disruption
  - Sourcing the globe for products to meet consumers' needs
    - "Industry knew since 1995 re: quota elimination, and did not respond"
    - "Textile industry is attacking their own customers --- better approach is to develop partnerships between mills and customers"
    - "If I can't get goods from China, will turn to other non-U.S. suppliers"
  - Have developed contingency plans (short-term) if/when safeguards put into place

- "Upstream" (fiber producers, yarn producers, mills; "traditional textile industry") favor:
  - Protectionism (and also Fair Trade) = Safeguards
  - Market presumption with safeguards ("threat of injury")
    - "Don't wait until the house has burned down to call the fire department"
  - Job protection and retraining (job losses most severe)
  - Trade restrictions
    - Past examples include "yarn forward" provisions, delayed quota elimination of most vulnerable products (4th phase-out, 2005)
    - Delayed quota elimination (Istanbul Declaration)
    - "Have made investments in capital, but still can't compete without "level playing field" (safeguards would partially help level the playing field)

VI. Other Textile Trade Issue Looming: CAFTA

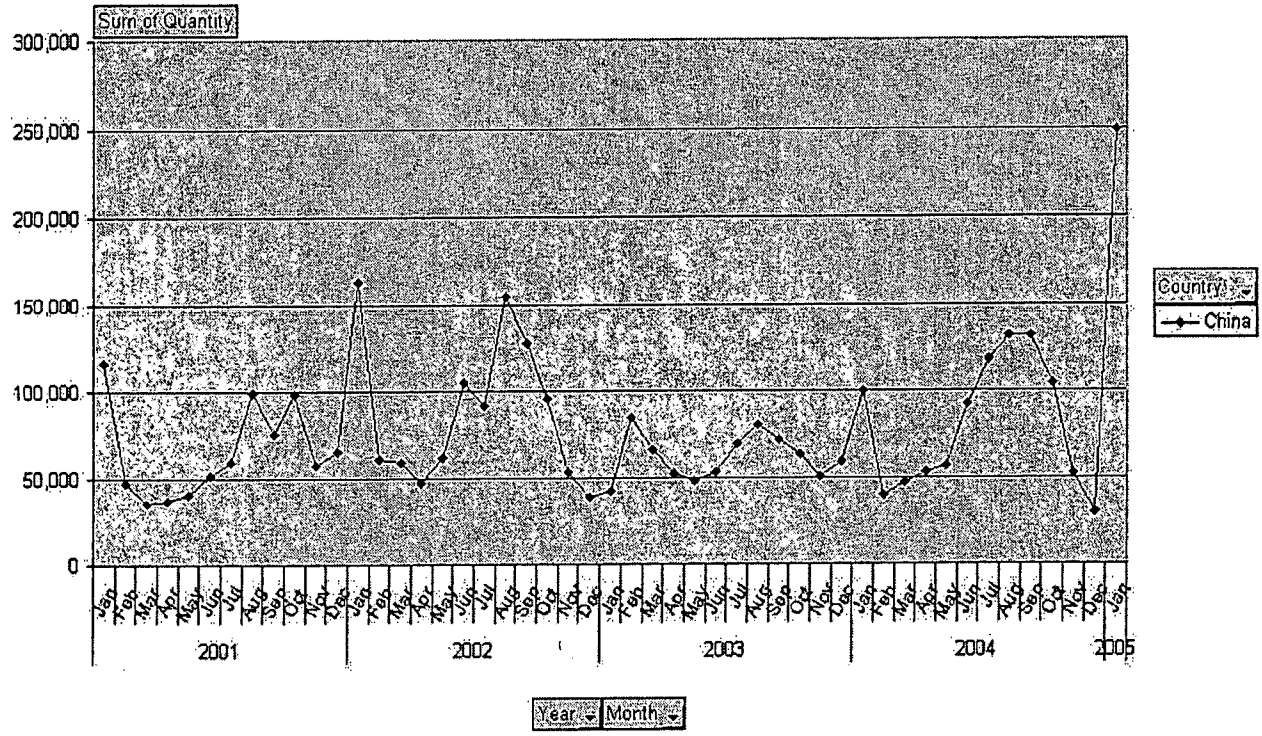
- CAFTA (Central American Free Trade Agreement)
  - Speculation that safeguards will be enacted to get CAFTA passed (Spring 2005)
  - Textile complex differs on views of CAFTA
    - Two-way trade (CBTPA is essentially one-way trade to U.S.)
    - Cumulation is issue
    - Downstream is "pushing"
      - "Americas' chance for textiles and apparel to compete with China due to market proximity, two-way trade, but Central America needs fabric resource base"
    - TPA → CAFTA will not be renegotiated

VII. Moving Forward: North Carolina Textile Interests

- Global production and consumption of textile products will increase (Datamonitor, 2004)
    - Apparel and unprocessed textiles:
        - Current $935.1B (RSP, apparel; MSP, unprocessed textiles)
        - Expected growth 2008: $1,135.2B (21.4% increased since 2003)
    - Textile industry sector (fibers and fabrics):
        - Current $958.6B (MSP)
        - Expected growth 2008: $1.18 trillion (~4.3% growth rate since 2003)
- North Carolina has expertise throughout textile supply chain to garner this growth
- What can legislators do:
    - Study safeguard issue --- impact on communities and companies (short-term and long-term)
    - Education: Industry and trade issues
    - Listen to entire textile complex

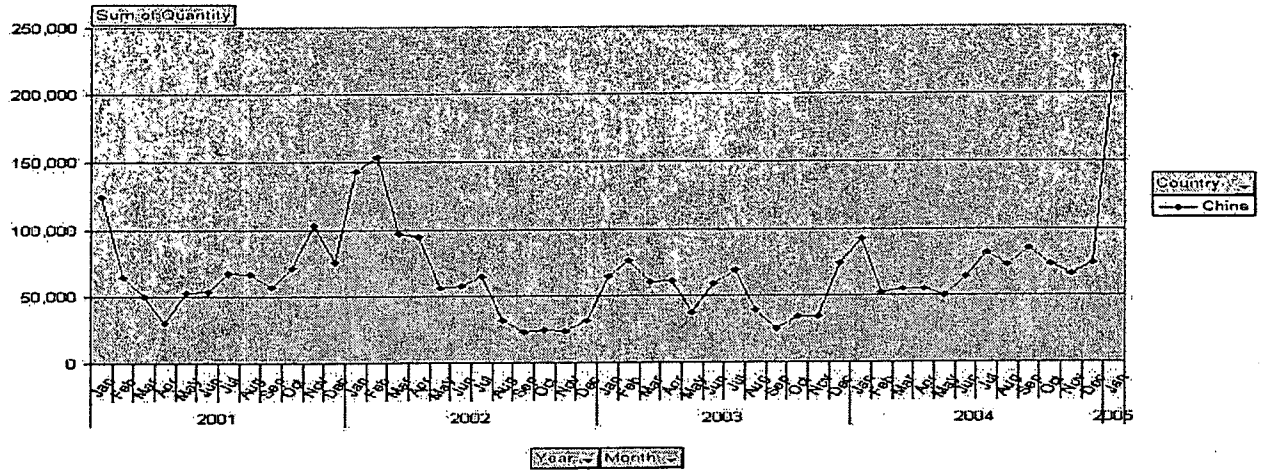
Category 340 – M/B Woven Shirts

China



Category 341 – W/G Woven Shirts

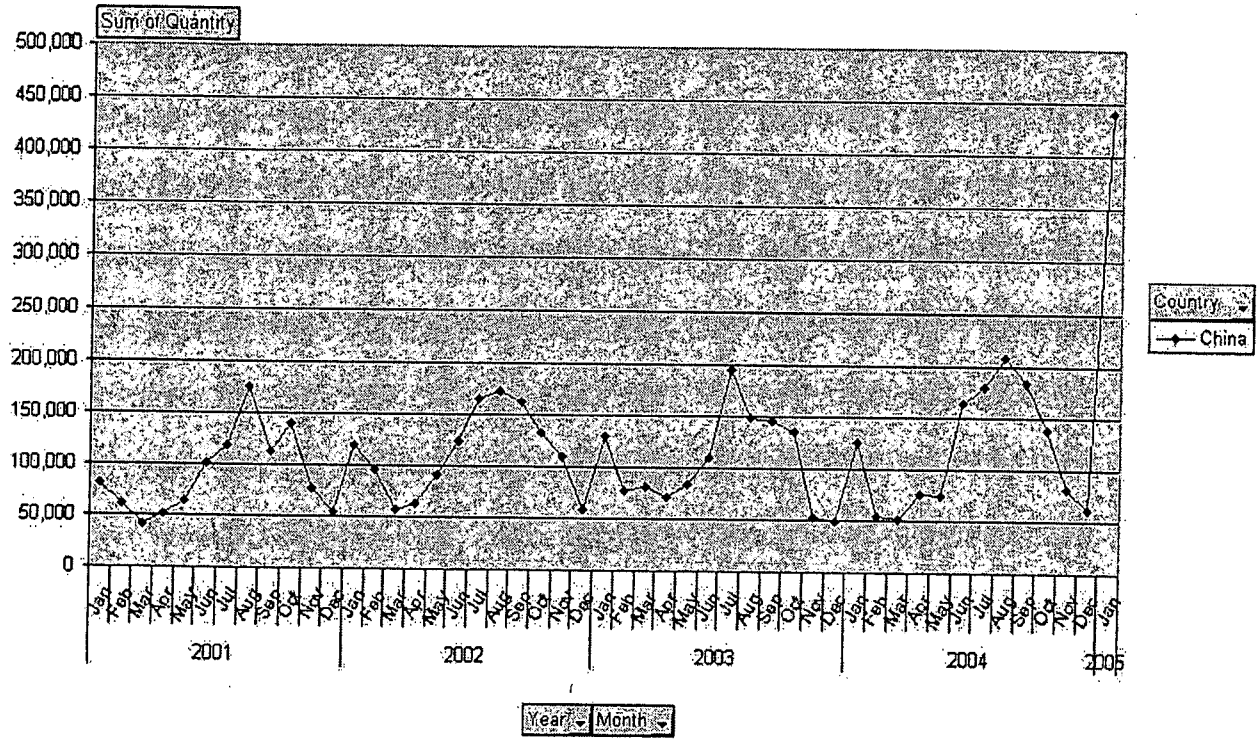
China



Data Source OTEXA
U.S. Department of Commerce 2005

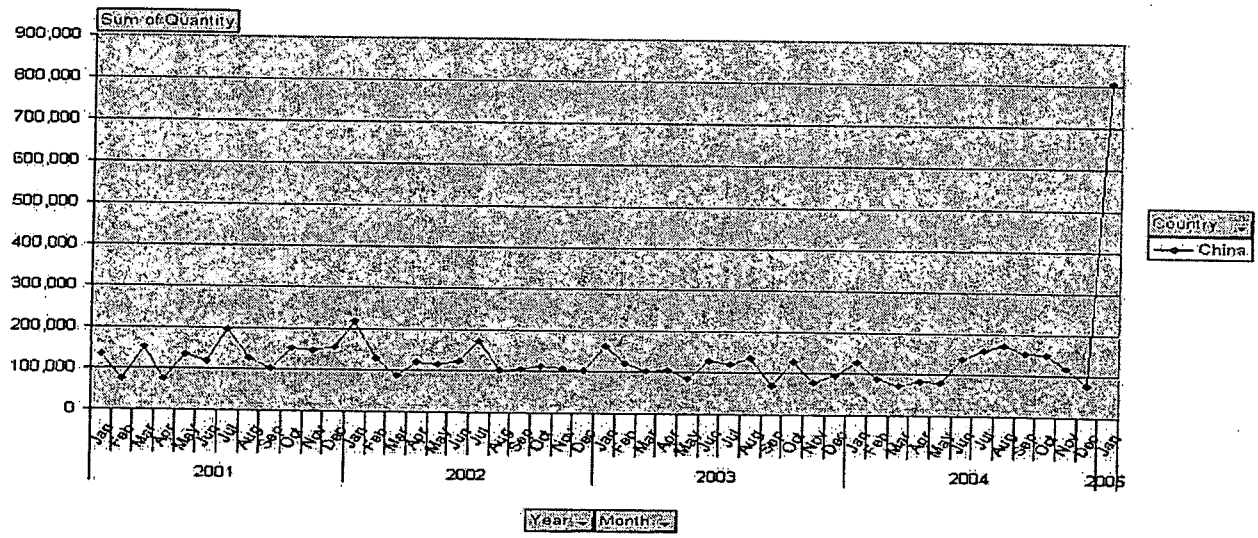
Category 338 -- M/B Knit Shirts

China



Category 339 -- W/G Knit Shirts

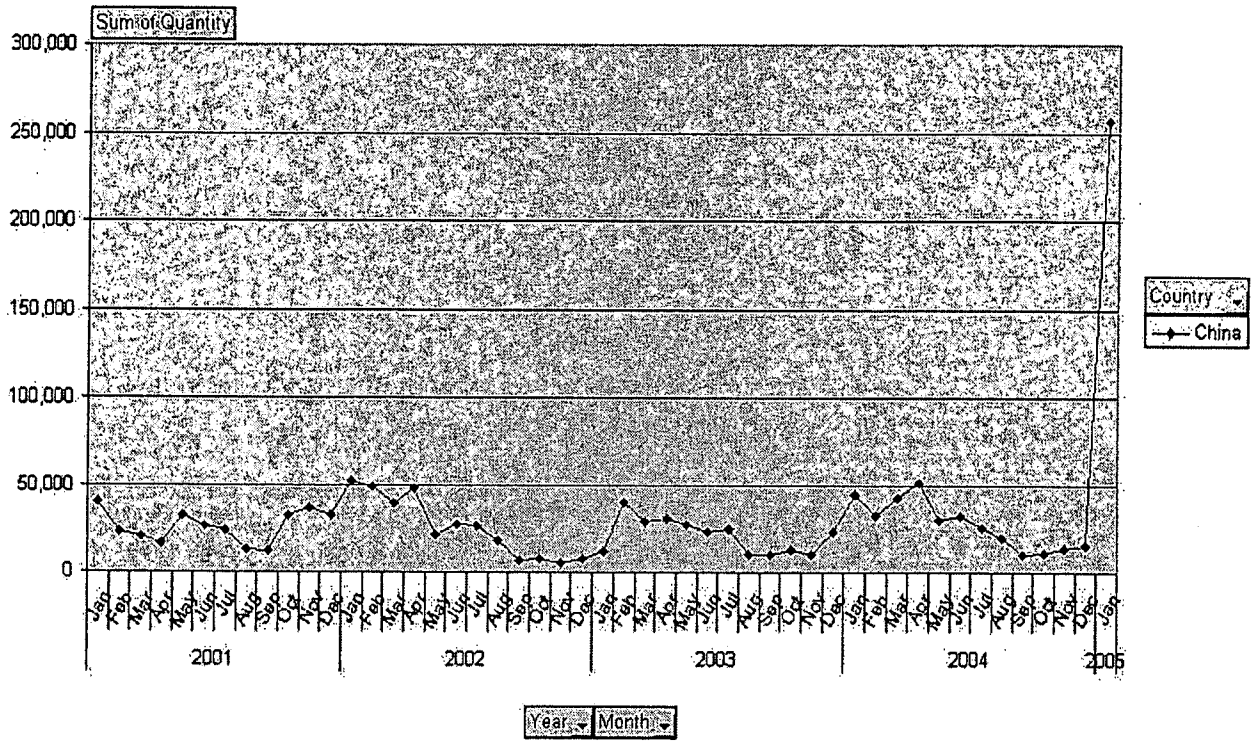
China



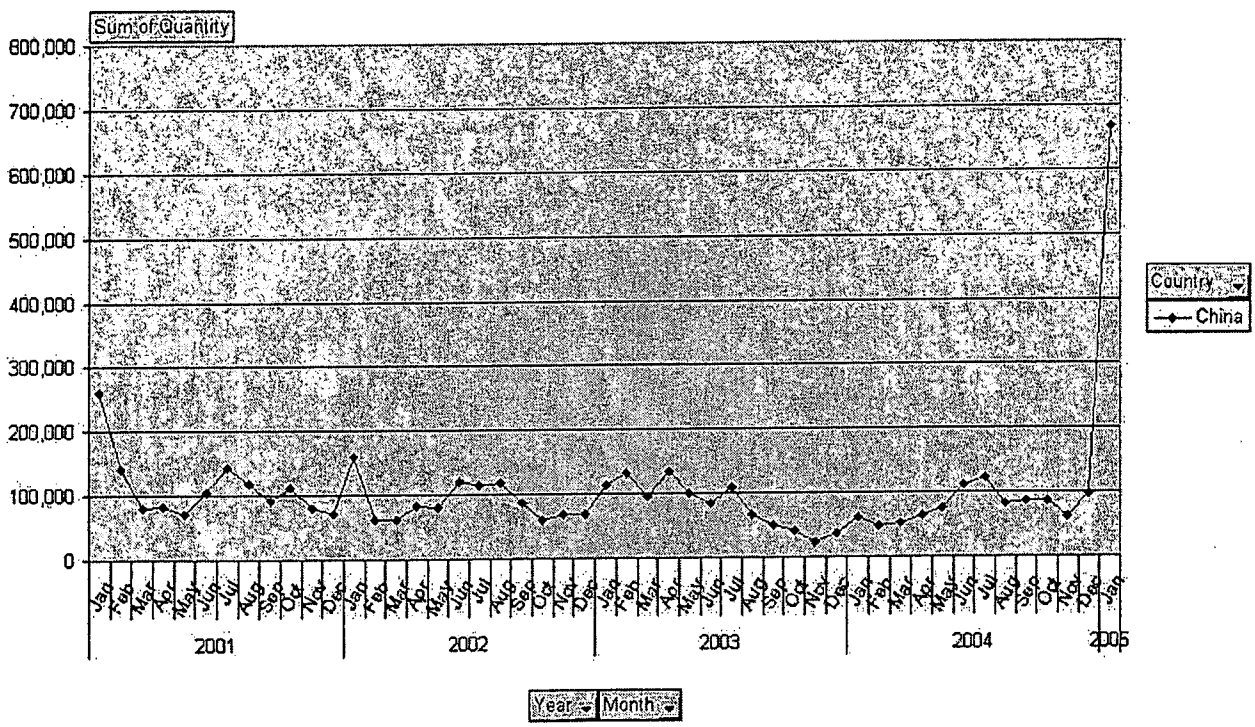
Data Source OTEXA 2005
U.S. Department of Commerce

Category 342 – Cotton Skirts

China



China



DATA SOURCE
U.S. Department of... OTEXA 2005

Subject: CITA Self-initiates A Few China Safeguard Cases
From: "Jock Nash" <jock@millikendc.com>
Date: Mon, 4 Apr 2005 15:13:23 -0400
To: undisclosed-recipients:;

COMMERCE NEWS
UNITED STATES DEPARTMENT OF COMMERCE
[illegible]

FOR IMMEDIATE RELEASE:
Gunderson/Dan Nelson
MONDAY, APRIL 4, 2005

CONTACT: Christine

202-482-4883

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS (CITA) ANNOUNCES SELF-INITIATION OF CHINA SAFEGUARD PROCEEDINGS

The Committee for the Implementation of Textile Agreements (CITA) announced today its decision to initiate safeguard proceedings to determine whether imports of certain Chinese origin textile and apparel products are contributing to the disruption of the U.S. market.

"This decision is the first step in a process to determine whether the U.S. market for these products is being disrupted and whether China is playing a role in that disruption," said Commerce Secretary Carlos Gutierrez. The United States is permitted, under the provisions of China's WTO Accession Agreement, to apply safeguards on textile products from China in instances where those criteria are met. "This Administration is committed to enforcing our trade agreements and to providing assistance to our domestic textile and apparel industry consistent with our international rights and obligations. Free trade must be fair trade and we will work to ensure that American manufacturers and workers compete on a level playing field."

The products subject to review will be cotton knit shirts and blouses (Category 338/339), cotton trousers (Category 347/348), and cotton and man-made fiber underwear (Category 352/652). The decision was made to initiate this review based on substantial increases in imports of these products from China over the first quarter of this year, following the removal of textile quotas under the World Trade Organization as of January 1. Preliminary data for the first quarter of 2005 show imports from China in these categories growing by approximately 1,250 percent, 1,500 percent, and 300 percent, respectively, relative to the same quarter of last year.

In accordance with its published procedures, CITA will shortly publish in the Federal Register notices seeking public comments regarding each product subject to safeguard proceedings, providing relevant information, and specifying the date by which comments must be received. The comment period shall be 30 calendar days, after which CITA has up to 60 days to render a final determination.

Next Steps:
CITA will publish a Federal Register notice that will launch a 30-day period during which interested parties and stakeholders may submit comments on each product subject to safeguard proceedings.

The Committee will make a determination within 60 calendar days of the close of the public comment period on whether to request consultations with China. If the Committee is unable to make a determination within 60 calendar days, it has the authority to extend the 60-day period. If such an extension is necessary, a notice will be published in the Federal Register, including the date by which it will make a determination. If the Committee makes a negative determination, this determination and the reasons for the determination will be published in the Federal Register.

If the Committee makes an affirmative determination that imports of Chinese origin textile and apparel products are contributing to the disruption of the U.S. market, the Committee will request consultations with China with a view to easing or avoiding such market disruption. As of the date such consultations are requested by the United States, a quota will be put in place to limit U.S. imports of the product. Consultations with China will be held within 30 days of the

Government of China's receipt of the request for consultations, and every effort will be made to reach agreement on a mutually satisfactory solution within 90 days of receipt of the request for consultations.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS (CITA)

The Committee for the Implementation of Textile Agreements (CITA), an interagency group chaired by the Department of Commerce, is responsible for matters affecting textile trade policy and for supervising the implementation of all textile trade agreements.

CITA is comprised of the Departments of Commerce, State, Labor, and Treasury and the Office of the U.S. Trade Representative's Office. CITA is chaired by the Commerce Department's Deputy Assistant Secretary for Textiles and Apparel. The Commerce Department's Office of Textiles and Apparel (OTEXA) provides the staff support for the Committee, monitors all agreements and provides economic analysis and relevant data upon which the Committee relies in taking action.

###

CO 4-12-2005

Textile industry: Forget quotas, seek innovation

By Gary Heiman
Washington Post

The American textile industry, my industry, should stop asking the American people to bail it out because of its failure to adapt to the global economy. That is essentially what industry trade groups have been doing with their efforts to retain artificial barriers to Chinese textile and apparel imports.

The ending of trade restrictions on textiles and apparel once and for all could force a once-distinguished U.S. industry to transform itself.

Why have hundreds of thousands of American textile and garment workers lost their jobs in the past decade, with 12,000 becoming unemployed just in January, the first month after the agreement to end quotas went into effect? The conventional answer is that their companies couldn't compete with cheap imports made with cheap labor from the developing world. But I never hear anyone mention another key reason: American textile companies didn't discard failed business models and evolve when they had the chance.

My 65-year-old company produces and distributes textile products and apparel to hotels, hospitals and manufacturers. We are a blip on the economic radar screen, with about 3,000 employees. But I have seen firsthand the mistakes made by the larger industry, especially during the past three years, when we bought two defunct mills in Georgia, refurbished them, then reopened them to manufacture sheets, pillowcases and other products.

The companies that had owned these mills bet that they could meet the threat of imports by borrowing heavily, investing in larger and faster machines, laying off workers and boosting productivity. Most of their competitors made the same bet. The problem was that these companies were content to churn out the same old products more quickly, rather than investing in research and development and coming up with innovative new products. What my industry needed was senior managers and researchers with the frontier mentality found at Apple or Intel or biotech start-ups. What it got was too many 19th-century-style industrialists just trying to replace people with machines.

Companies that make garments in the United States have known about the coming end to quotas for more than a decade; if they couldn't compete with mass-produced clothes made in China and elsewhere, they had plenty of time to shift production to more specialized products that the world wants to buy.

Instead of looking for new markets overseas, too many companies kept vying for diminishing shelf space in the Wal-Marts and other large retailers close to home, which used their leverage to ratchet down wholesale prices and cut into their suppliers' profits. And so, overcapitalized and in debt, making products that were both generic and too expensive, not geared up for the global marketplace, the companies that we bought and others like them collapsed in the past two decades.

A small minority of U.S. textile companies, including ours, took a different approach. These companies chose to pour resources into R&D to come up with new manufacturing technologies, giving themselves the ability to create the kinds of specialized products that were not being developed elsewhere. These include synthetic towels and sheets made with new weaving technologies; surgical gowns; fabrics used in agriculture, high-fashion apparel, and fire-resistant workwear.

Now, it is true that such products generally don't require as many workers as, say, mass-produced sneakers, underwear and the other commodities that are being churned out mainly in developing countries. But they do require a highly educated, or easily educable, workforce and the kinds of skill sets that, in my experience, are still easier to find in the United States and other developed countries.

If more American textile and apparel manufacturers had been less insular and more willing to look for customers overseas, they would have improved their chances to grow, even as the U.S. market was shrinking. We, for example, sell to 49 countries.

It's not too late for more U.S. textile companies to shift course and adapt. Their survival will depend in large part on their ability to innovate.

There is no doubt this industry's American manufacturing base will continue to shrink. But desperately clinging to protectionism is not the way to meet this challenge. The answer is to innovate, export, become active in the global marketplace and become competitive again.

Gary Heiman is president and chief executive of Standard Textile Co., based in Cincinnati.

HR 341:
House Resolution Urging CITA to Approve Safeguard Petitions

BILL ANALYSIS

Committee:	Federal Relations and Trade	**Introduced by:**	Represenatitve Gibson
Date:	March 29, 2005	**Summary by:**	Barbara Riley
Version:	Proposed Committee Substitute		Committee Counsel

SUMMARY:

House Resolution 341 requests the Committee on the Implementation of Textile Agreements to enact safeguard provisions for textiles and apparel due to market disruption as petitioned by the American Textile Industry and the US government.

BACKGROUND:

International trade in textiles has been governed over the past 30 years under a series of international agreements. From 1974 to 1995, trade in textiles was governed by the Multifibre Arrangement (MFA). In 1995, the MFA was replaced by the World Trade Organization (WTO) Agreement on Textiles and Clothing (ATC). The ATC provided for a phase out of textile and apparel quotas over a ten-year period. The phase out ended on January 1, 2005 and the ATC no longer exists. Textiles and apparel are now governed under the WTO General Agreement on Tariffs and Trade (GATT). As of January 1, 2005 there are no more quotas for textile and apparel imports. As a result of the end of quotas, there has been a tremendous surge in textile and apparel imports particularly from China which has had a disruptive impact on the American textile and apparel industry. The impact on the US domestic industry has caused petitions for safeguard action to be filed by both the American textile and apparel industry and the US government.

Safeguard actions are temporary restrictions on imports of products imposed by a country when an increase in imports causes or threaten to cause serious injury to the country's domestic industry. The purpose of a safeguard is to allow the domestic industry time to adjust. Industries may petition their governments for safeguard protections, such as has been done by the American textile and apparel industry. In some circumstances, the government itself will initiate a safeguard petition.

Safeguard actions are provided for under the rules of the WTO. Those rules set forth the requirements for investigations by a member country to determine whether a safeguard action is warranted. In the US, textile policy matters, including the investigation market disruption and imposition of safeguards, are handled by the Committee on the Implementation of Textile Agreements (CITA). CITA is an interagency group chaired by the US Department of Commerce. The committee was established by Executive Order in 1972 and consists of the Departments of Labor, Commerce, State, Treasury and the US Trade Representative.

BILL ANALYSIS:

House Resolution 341 urges and requests CITA to enact safeguard provisions on textiles and apparel based on the disruption to the US market caused by the flood of textile imports due to the January 1, 2005 expiration of import quotas.

Paul Fogleman

[redacted] "jim schollaert" <jim.schollaert@verizon.net>
"qhog" <hogahl@erols.com>
Sent: Tuesday, April 12, 2005 8:51 AM
Subject: Maryland Legislature Overrides Gov. on Free Trade; Vote Halts Foreign Bids on Procurement

The Washington Post

April 12, 2005 Tuesday
Final Edition

MD Legislature Overrides Ehrlich on Free Trade; Vote Halts Foreign Bids On Md. Procurement

BYLINE: Paul Blustein, Washington Post Staff Writer

BODY:

The Maryland legislature gave new impetus yesterday to a growing movement among politicians at the state level to reject provisions of **free-trade** agreements that apply to state governments.

The General Assembly yesterday joined the Senate in voting to override a veto by Gov. Robert L. Ehrlich (R) of a bill concerning Maryland's willingness to open state contracts to foreign competition. The legislature's override vote effectively rescinds a commitment Ehrlich made to allow foreign firms to compete for state business under the terms of international accords such as the Ce[redacted]American **Free Trade** Agreement.

C[redacted]**of trade pacts hailed the vote as one of the strongest signs yet that the nation's statehouses are rebelling against portions of trade agreements that lawmakers view as threatening their sovereign rights.** Fueling the rebellion are fears that the trade pacts undermine states' ability to set policy in a wide range of areas, including land use and the environment. In California, for example, a bill mandating the use of recycled U.S. tires for asphalt in road construction was reluctantly vetoed by Gov. Arnold Schwarzenegger (R) on the grounds that it would discriminate against Mexican and Canadian rubber exporters in violation of NAFTA, the North American **Free Trade** Agreement.

The Maryland legislature's override is "the latest evidence of state officials' growing demands for accountability in international trade negotiations," said a statement by Public Citizen's Global Trade Watch, a Ralph Nader-affiliated group. **It makes Maryland the first state to withdraw from a World Trade Organization** pact on government procurement, the group said.

The Bush administration denounced the vote. "This is a big step backwards for Maryland, because it could result in Maryland suppliers of goods and services losing access for opportunities to bid on overseas government contracts," said Neena Moorjani, a spokesman for the U.S. trade representative's office.

At issue is an effort at the federal level by the Bush administration and its predecessors to open up the worldwide market for government contracts and procurement to businesses regardless of their nationality. Washington has long contended that foreign governments discriminate against U.S. multinational firms and fail to follow transparent procedures in the awarding of contracts.

By striking agreements that open government procurement to foreign firms, the argument goes, U.S. companies will benefit by winning a greater share of contracts abroad. But opponents contend that the accords restrict states' ability to favor local firms and set pay standards.

Under a WTO agreement, 27 member countries of the Geneva-based trade body have agreed to open their government procurement markets to one another's firms. In the 1990s, 37 U.S. states agreed to cover some of their procurement under that ac[redacted] with the expectation that their companies could win contracts from local governments overseas.

[redacted]sh administration sought to expand the concept in 2003, when then-U.S. Trade Representative Robert B. Zoellick asked all of the nation's governors to open some of their states' procurement to countries such as Australia, Morocco and the five nations of Central America he was negotiating **free-trade** pacts with.

But that move has been only partially successful. According to Moorjani, 29 governors agreed to cover their procurement under the

U.S.-Australia accord; 23 agreed to do so under the Morocco deal; and 22 signed on to the Central American agreement. Congress has yet to approve CAFTA, which has been expanded to include the Dominican Republic.

Virginia has declined to cover its procurement under the new pacts, and the District was not asked, Moorjani said, because it does not have statehood status.

Under then-Gov. William Donald Schaefer (D), Maryland allowed some state procurement to be covered by the WTO agreement in 1993, and Ehrlich agreed to Zoellick's request to bind the state's procurement to the rules of the other trade deals as well. But lawmakers have now rescinded those commitments and required that future commitments be approved by the legislature.

LOAD-DATE: April 12, 2005

PUBLIC BILL

H.R. 0341 RESOLUTION ________

A HOUSE RESOLUTION URGING THE COMMITTEE ON THE IMPLEMENTATION OF TEXTILE AGREEMENTS TO APPROVE THE SAFEGUARD PETITIONS FILED BY THE UNITED STATES TEXTILE INDUSTRY.

Introduced by Representative(s): Gibson/CURRENT (Primary sponsors).
Stamm

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ON Federal Relations and Trade Issues

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Published: Apr 3, 2005
Modified: Apr 4, 2005 7:28 AM

Imports from China rise

Imports are up, why aren't clothing prices down?

Aiko Ogata, right, 27, a translator in Laurinburg, shops at SoHo in Cameron Village in Raleigh on Wednesday with her friend, Rieko Yamamoto.

Staff Photo by Mel Nathanson

MORE PHOTOS

By SUE STOCK, Staff Writer

If 30 percent off your next pair of jeans seems like a good deal, here's how to get it: Do absolutely nothing and wait a few months. Recent changes to the way clothes are made and distributed all over the globe will eventually have ramifications on store shelves in the Triangle and throughout the country.

Here's the Reader's Digest version of what has changed: The quota system that limited the amount of clothing and other textiles that retailers and importers could buy from low-cost manufacturers in some developing countries was lifted Jan. 1.

Those countries, particularly China, then flooded the clothing pipeline with mass volumes of merchandise in January and February.

China's apparel imports alone rose 47 percent in January. Imports of some items increased dramatically. For instance, imports of women's slacks were up 1,081 percent and nonwool coats were up 3,070 percent from January 2004.

The sudden influx of inexpensive clothes should result in prices taking a nosedive, up to 30 percent by some estimates.

However, it will take almost a year for those items to reach store shelves and the prices to come down -- in time for holiday shopping and possibly in time for back to school. And, of course, not every retailer will lower prices.

"There's going to be a lot of shifting and figuring it out on the part of retailers," said Laura Jones, executive director for the U.S. Association for Importers of Textiles. "This system really delayed many things. "[Retailers] don't want to ship fabric all over the world. Now that the quotas are gone, they're looking for a place where they can streamline."

End of quotas

The end of the quota system means big changes for the U.S. retail industry. It already imports between 60 percent and 90 percent of its goods from all over the world and has seen retail prices dropping over the past several years because of competition and tough economic times.

A study released in June 2004 by the U.S. International Trade Commission concluded that the

removal of import quotas would result in increased demand for goods – up to 11 percent for apparel and 19 percent for home furnishings – and a decrease in prices for retailers -- 3 percent for apparel and 2 percent for home furnishings.

But the true difference in costs could be much greater than that, some experts say. Typical quotas have been estimated to add anywhere from 11 percent to 20 percent to an item's cost.

"In many cases, the cost of the quota was more than the cost of producing the item itself," Jones said.

Still, it's unclear how much of the savings will be passed on to consumers. The quota restrictions have been phased out over time. In 2002, when similar quotas were lifted on Chinese imports of luggage, change in the supply chain for retailers was fast, but prices decreased only slightly for consumers, said Peter Cunningham, director of the international trade division of the N.C. Department of Commerce.

"As soon as the quotas were taken off, within six months, the Chinese had dominated the market," he said.

Concerns over China's dominance in the textile arena had U.S. textile manufacturers and textile unions and trade groups fighting to keep the quotas, saying lifting them would mean even more job losses for the beleagured industry.

The apparel manufacturing sector has seen its number of employees drop by 65 percent in the past decade.

In North Carolina, the number of apparel manufacturing jobs has dropped from 43,800 at the end of 2000 to 26,400 in February, according to the latest data from the Employment Security Commission of North Carolina.

But Laura Baughman, president of a Washington trade research firm called The Trade Partnership, said apparel manufacturing jobs in the United States will never be completely phased out.

"They're basically saying every apparel worker in America is going to lose his or her job," she said. "But there's still steady demand for textile stuff made here, even if it's just because of the quicker turnaround."

There are other factors at play that account in part for the shrinking number of workers nationally, Baughman added.

"[Jobs] won't necessarily be lost to rising imports," she said. "They're being lost to increasing productivity."

But the jobs seem less important to the average shopper than the price they'll pay for a new pair of jeans.

Shopper perspective

Even a little savings can't come fast enough for shoppers such as Monica Davis, who traveled from her Washington, N.C., home to the Carolina Outlets in Smithfield on Wednesday to shop for her 3-year-old son, Tucker, and 11-week-old daughter Lilly.

"I haven't noticed any changes yet, but it would be a good difference," she said. "With children, they need a lot of play clothes because they get them dirty a lot. Any help would be good."

With consumers thinking along those lines, there's one big question plaguing the retail industry now: how to keep shrinking profit levels from shrinking even more now that consumers are expecting lower prices and that heavy competition may force stores to offer them.

Some stores, especially discounters such as Wal-Mart, are expected to pass the savings on to consumers, driving down both prices and profits for competitors. Basics such as underwear that Wal-

Mart sells in high volumes are expected to be among the items most highly contested in the price arena.

To help maintain their profit levels, many retailers will move toward higher-quality merchandise so they can justify a higher price. Instead of 200-thread-count sheets, customers will be able to buy 400-thread-count sheets for the same price.

"You'll see things, like, instead of a straight A-line kind of skirt, there will be more pleats now, and stores will have items made with better fabrics," Baughman said.

Still other retailers, such as J.C. Penney, have said they will use the extra profit to reinvest in stores -- either in customer service, new merchandise or renovations.

"Frankly, the situation is very fluid," said Margery Myers, spokeswoman for Talbots, which imports roughly 70 percent of its merchandise. "All retailers are expecting this to come back to the consumer in some way."

Indeed, the extra profits are welcomed by an industry that has seen its profit margins on clothing shrink. Limited Brands only had a 1.2 percent profit on apparel last year, according to the company's annual report.

Many retailers have been forced to move toward accessories and other items to boost their bottom line.

"Companies are ordering less at a higher price point and really focusing on having a particular look to bring shoppers in," Baughman said. "They're trying to stay competitive and not raise prices by having much better inventory control."

Some retailers play down the impact of the changes.

"There are plenty of countries other than China that produce excellent products," said David Ullman, executive vice president of men's store Jos A. Bank Clothiers, which bought three-quarters of its inventory from overseas in 2003. "[The changes] certainly help in terms of the cost of production, but it's hard to quantify."

Not all retailers will experience drastic price drops. Among those who will see fewer changes will be those who import few goods, and smaller boutiques and independent stores that don't have huge global distribution chains.

"It won't mean much change, because we barely get 5 percent of our merchandise through direct importing," said David Gunter, spokesman for women's clothing chain Coldwater Creek.

Still, smaller retailers and nonimporters stand to see some price declines because of competitive pressure. At Cameron Village, SoHo owner Martha Parks said she has noticed price drops of about 10 percent to 20 percent on her one line of clothing from Asia. She has passed those savings on to customers, but that's only one of more than a dozen designer lines SoHo carries.

Parks said specialty designers are more affected by global economics surrounding the euro and European economics.

Government action

There's one last global caveat to throw into the mix.

Concern over the sudden boom of Chinese imports may spur restraints or price setting by either the U.S. or Chinese governments. The Bush administration is discussing capping the number of new goods that China can ship into the United States at no more than a 7.5 percent increase annually. And the Chinese government may lay down restrictions, too, if wages in China don't rise to reflect the increase in production.

"If the wage rates don't rise along with productivity, then [U.S. textile manufacturers] will be competing in China for customers who can't afford to buy their goods," Lester said.

How dramatically prices will drop or if either country's government is going to step in is still very much up in the air. But making global commerce less restrictive probably means more international collaboration, said the Commerce Department's Cunningham.

"I see a lot of joint ventures," he said. "China has pockets of entrepreneurialism, and North Carolina has already seen some outside investment from places like Israel. I think there's more collaboration coming."

As far as retailers go, each chain's reaction will be different, depending on where they are located, how their distribution system is arranged and how much importing they do, said Cliff Waldman, global economist with the Manufacturers Alliance in Arlington, Va.

"There's not going to be a national uniform answer," he said. "We're all waiting to see."

Staff writer Sue Stock can be reached at 829-4649 or sstock@newsobserver.com.

FEDERAL RELATIONS AND TRADE ISSUES COMMITTEE
MARCH 29, 2005
AGENDA

I. Welcome by Representative Phillip Frye, Co-Chair

II. Discussion of HB 341 A House Resolution Urging the Committee on the Implementation of Textile Agreements to Approve the Safeguard Petitions Filed by the United States Textile Industry – Gibson and Current

III. Presentation by Paul Fogleman, Lobbyist for the Hosiery and Textile Industries

IV. Presentation by Dan St.Louis, Director of The Hosiery Technology Center

IV. Further Discussion

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on Federal Relations and Trade Issues will meet as follows:

DAY & DATE: **Tuesday, March 29, 2005**

TIME: **1 pm**

LOCATION: **415**

The following bills will be considered (Bill # & Short Title & Bill Sponsor):

HB 341 - A House Resolution Urging the Committee on the Implementation of Textile Agreements to Approve the Safeguard Petitions Filed by the United States Textile Industry - Gibson and Current

There will also be a short presentation by the Hosiery Association.

Respectfully,
Representatives Phillip Frye and Mark Hilton
Co-Chairs

I hereby certify this notice was filed by the committee assistant at the following offices at **2pm** on **March 23, 2005.**

___Principal Clerk
___Reading Clerk - House Chamber

Mary Hayes (Committee Assistant)

FEDERAL RELATIONS AND TRADE ISSUES COMMITTEE MEETING
MINUTES
March 29, 2005

The House Committee on Federal Relations and Trade Issues met on Tuesday, March 29th, at 1 pm. Representatives Current, Farmer-Butterfield, Glazier, Alexander, Almond, Brown, Coates, Cole, Faison, Holloway, McMahan were present along with Co-Chairs Phillip Frye and Mark Hilton.

Representative Frye called the meeting to order. He explained to the committee that HB 341 will not be voted on today. It has been decided that it needs a little more work before it is put to a vote but would like to open it up for discussion.

Representative Frye introduced Representative Pryor Gibson to explain the resolution. Representative Gibson said this resolution is modeled after Georgia's bill. In his part of the world there is probably nothing that affects our life, our lifestyle and our economy more than international trade has in just a wink of an eye. Growing up in Yancey County fully 85% of the jobs were textile related and now it is hard to find anybody that has any true vocation that involves the textile trade. It has been very difficult for folks in his part of the state to understand how something so far away could affect them at their back door. We looked around the country to see who was doing something constructively to address these issues. We liked what the state of Georgia has done and modified it into our resolution. We need a vehicle in place so that when the statistical numbers came into being we can numerically, statistically and rationally put in perspective what international trade agreements have done to North Carolina.

Representative Gibson recognized the co-sponsor of the resolution Representative Bill Current. Rep. Current stated CAFTA is very important. One of the largest cotton brokers in the country said CAFTA is very important to the textile industry and China needs to get into it. It is a matter of making people abide by the rules and regulations.

Representative Brown asked if the bill was being delayed so that statistical information can be included?

Representative Gibson said yes he would like to be able to include in the bill how many jobs have been lost.

Representative Cole asked if any phrases that will speak to the human rights conditions that exist specifically in the Far East countries have been considered for inclusion in the bill?

Representative Gibson said we might already be overstepping where we are supposed to be. The list regarding human rights could be endless. We are asking that there be a level playing field.

Representative McMahan asked if this is all related to quotas?

Representative Gibson said there is an assumption that the statistics will bear out the Far East is the clear aggravator of the agreement. There are still industries in North Carolina that are saying we must have CAFTA in order to survive. If we lose CAFTA we are going to lose our equipment purchasers and the market for our yarn and thread.

Representative Frye said we would probably have to devote a full session one day to CAFTA because there are people here that have feelings on both sides of the issue.

Representative Frye introduced Paul Fogleman from the Hosiery Industry. There is a common denominator here that people want to protect jobs in America. We want to get out to the public we are not a dying industry.

Mr. Fogleman introduced Darrell Frye, CFO of Harriss and Covington Hosiery Company. Mr. Frye told the committee his company was started in 1920. As recently as 30 years ago there were 28 mills in High Point. Now they are the only one left in the town. After 9/11 they had to layoff 80-90 people and in 4 months they hired them back. Last year from their mill they lost over 1 million dozen pairs of socks for Fila and Champs. This represented about 40% of their business. All of these socks went to China. We had to cut back on our work force by about 30% because of this. The environmental issues we have to address cost us hundreds of thousands of dollars last year. Our dye house levels are monitored weekly by the City of High Point. If they are off we can be fined. In China they run the dye house right out to the river and 50 miles downstream women are washing their clothes or cleaning the supper dishes. In the US one hour of work is equal to almost a week's work in China and that equals to 65-70 hours of work. We are only asking that it be made fair.

Mr. Dan St.Louis, Director of the Hosiery Technology Center, spoke to the group and passed out a handout from the Department of Commerce (attachment #1). Mr. St. Louis said in 2000 China was #10 in production and in 2004 it was the top of the list of sock imports. If you look at our industry we have lost 8000 – 10,000 jobs in that period of time.

Representative Brown questioned Mr. St. Louis if there were any projections of Chinese products filtering in through other countries? Mr. St. Louis stated there was no real way to tell.

Representative Almond asked if imports bring lower prices to the consumer and Mr. St. Louis said they do. The dollar cost per dozen pairs of socks in 2001 was $9.00 and now it is $3.15 a dozen. He also said the retailers are not lowering the prices to the consumers. The retailers want the lower cost because their profit is larger.

Mr. St. Louis said NC is focusing on market development on things that cannot come from overseas such as quick turn around. Everyone wants to get to the US marketplace.

We are here and we know the trends, styles and do it quickly before others have time to do knockoffs. China is two months away and if there is a problem with the shipment and it has to go back you are out two more months to have it replaced for a total of 4 months. Trends can change quickly so we are trying to take advantage of the quick turn. We are going to do everything we can to keep these jobs here in North Carolina.

Meeting was adjourned at 1:55 pm.

Phillip D. Frye

Representative Phillip Frye, Co-Chair

Attachment

Quota Query: General First Unit of Quantity by Quantity Description and General First Unit of Quantity For ALL Countries

U.S. General Imports

Annual Data

[redacted]

Quantity Description	Country	2000	2001	2002	2003	2004	Percent Change	Percent Change
		In Actual Units of Quantity					2003 - 2004	2000-2004
dozen pairs	China	503,647	976,411	5,873,978	21,999,835	56,057,380	154.80%	11030.29%
.	Korea	10,489,478	13,608,237	20,729,438	23,363,112	23,440,957	0.30%	123.47%
.	Pakistan	2,789,594	5,170,387	10,519,954	15,351,881	22,801,777	48.50%	717.39%
.	Dominican Rep	6,585,704	5,082,558	5,784,066	11,613,694	20,363,821	75.30%	209.21%
.	Mexico	21,699,587	24,515,096	26,121,921	21,148,168	19,998,974	-5.40%	-7.84%
.	Costa Rica	7,724,245	11,537,803	11,825,526	11,732,013	12,479,894	6.40%	61.57%
.	Honduras	2,373,922	3,066,566	6,980,733	7,641,235	11,779,609	54.20%	396.21%
.	Taiwan	10,010,214	11,505,917	13,234,390	10,893,798	8,306,101	-23.80%	-17.02%
.	Turkey	1,867,440	2,873,968	4,302,934	5,526,917	5,610,388	1.50%	200.43%
.	Canada	7,844,376	6,087,396	7,877,154	6,795,544	4,473,348	-34.20%	-42.97%
.	Colombia	1,152,525	1,039,021	1,773,101	2,936,268	3,939,117	34.20%	241.78%
.	Ghana	0	0	104,709	1,603,461	2,362,086	47.30%	NA
.	Guatemala	74,948	214,814	482,837	1,029,430	2,263,825	119.90%	2920.53%
.	Philippines	815,747	1,116,312	1,334,753	1,150,474	1,313,038	14.10%	60.96%
.	India	334,970	430,379	949,674	1,156,417	1,124,401	-2.80%	235.67%
Subtotal - dozen pairs		74,266,397	87,224,865	117,895,168	143,942,247	196,314,716	36.40%	164.34%
All Other:		3,619,301	2,942,251	3,538,363	3,339,311	4,161,170	24.60%	14.97%
Grand Total		77,885,698	90,167,116	121,433,531	147,281,558	200,475,886	36.12%	157.40%

Sources: Data on this site have been compiled from tariff and trade data from the U.S. Department of Commerce, the U.S. Treasury, and the U.S. International Trade Commission.

FEDERAL RELATIONS AND TRADE ISSUES COMMITTEE
MARCH 22, 2005
AGENDA

I. Introductions

II. Presentation – Forum on Democracy and Trade

Peter Riggs, Director
William Warren, Policy Director

III. Further Discussion, Questions and Answers

Carol Wilson (Rep. Hilton)

From: Mary Hayes (Rep. Frye)
Sent: Thursday, March 17, 2005 1:51 PM
Subject: Federal Relations and Trade Issues Committee Meeting

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
2005-2006 SESSION

You are hereby notified that the Committee on **Federal Relations and Trade Issues** will meet as follows:

DAY & DATE: **March 22, 2005**

TIME: **1 pm – 2:30**

LOCATION: **Legislative Auditorium**

Speakers will be Peter Riggs, Director, Forum on Democracy and Trade and William Waren, Policy Director; Forum on Democracy and Trade The Forum is affiliated with the Harrison Institute for Public Law, Georgetown University Law Center.

Mr. Riggs' and Mr. Waren's presentations will provide background on international trade agreements and organizations. In particular, the presentations will focus on the erosion of State sovereignty resulting from such agreements, the impact of these agreements on different trade sectors, including textiles, furniture and agriculture, and action the State might consider to protect its interests in economic development, environmental regulation, procurement and other areas that may be preempted by international trade agreements under negotiation.

Respectfully,
Representative Phillip D. Frye

Representative Mark Hilton
Chairmen

I hereby certify this notice was filed by the committee assistant at the following offices at 4:10 pm on March 17th, **2005.**

___Principal Clerk
___Reading Clerk - House Chamber

Mary Hayes (Committee Assistant)

FEDERAL RELATIONS AND TRADE ISSUES
MINUTES
MARCH 22, 2005

The Federal Relations and Trade Issues Committee met on Tuesday, March 22, 2005 at 1 pm in Room 415 in the Legislative Office Building. Representatives Frye and Hilton, Co-Chairs; and Representatives Current, Farmer-Butterfield, Glazier, Alexander, Brown, Coates, Cole, Faison and Holloway attended.

Representative Hilton called the meeting to order and recognized pages. He thanked those in attendance and recognized Peter Riggs, Director of Forum on Democracy and Trade, for a presentation. See attachment .

Mr. Riggs began by giving an overview on current conditions of US Trade Issues. He stated that one problem we have is in enforcement. He clarified differences in federal and state issues and changes in the laws after 1995. He explained how new laws impacted various state agencies and regulations.

Mr. Riggs expounded on WTO's vision and rules affecting the global economy, quoting Renato Ruggerio, former WTO Director General,

> "We are writing the constitution of a single global economy."

Mr. Riggs then pointed out how state and local measures might conflict with WTO regulations. He gave specifics in the textile industry which have adversely affected the textile manufacturing business in NC. He then identified the role that states can play in assuring they get a *fair deal.*

Mr. Riggs introduced Bill Waren, Policy Director for the Forum on Democracy and Trade. Mr. Warren presented case studies outlining local global conflicts in the trade sector.

For more detailed information please reference Power Point and Case Study attachments.

Meeting was adjourned at 2:30 pm.

Respectfully submitted,

Representative Mark Hilton
Presiding Co-Chair

Carol Wilson
Committee Assistant

THE FORUM ON DEMOCRACY & TRADE

International tribunals review U.S. state & local law: Three examples of local/global conflict

Handout prepared for the North Carolina House of Representatives
Committee on Federal Relations and Trade Issues
by staff of the Forum on Democracy & Trade
March 22, 2005

1. **Introduction: International tribunals have the authority to review state policies and the power to enforce their decisions.** NAFTA, the WTO, and subsequent trade agreements, the so-called post-1994 agreements, place limits on state government. Prior to 1994, states had little reason to closely monitor the course of trade negotiations and the text of proposed agreements because, as noted earlier, they focused on tariffs, quotas, and overt discrimination against foreign products, almost always at-the-border issues within the jurisdiction of the federal government.

   The post-1994 agreements deal not only with issues of discrimination, but also impose absolute rules related to government regulation, taxation, purchasing, and economic development policies that are regarded as non-tariff barriers to trade. In other words, a large number of measures within state policy jurisdiction are now regulated as a matter of international law.

   In addition as we noted earlier, the pre-1994 agreements had no effective enforcement mechanism. But, NAFTA, the WTO agreements and other post-1994 agreements can be effectively enforced. The federal government may bring lawsuits to preempt state and local measures found to violate international law (though private suits are barred). Or even if the feds decline to sue, state legislatures may be compelled to repeal or amend state law simply as a result of the political pressure resulting from unlimited money damages assessed against the United States under investment agreements like NAFTA's chapter 11 or from the impact on local economies and jobs resulting from retaliatory trade sanctions, such as higher tariffs on state exports, imposed under the WTO and other trade agreements. When international tribunals decide that a state measure violates international law, it is no longer easy to ignore.

2. **Examples of cases involving a local global conflict.** Here are a few examples of how it works.

   a. **Hazmat Global: a hypothetical case.** Imagine the following hypothetical case. Hazmat Global, a (mythical) Canadian corporation, wants to invest in North Carolina. Hazmat is encouraged by officials at the U.S. Department of Commerce to open a hazardous waste disposal facility near Durham.

      The feds tell Hazmet executives that Durham is the perfect site and that state and local authorities can be Ataken care of.@ Hazmat invests $20 million in the Durham site.

Durham residents are furious. The proposed Hazmat plant site is located on top of an aquifer from which local residents draw their drinking water. Public meetings are held. The local land use board denies the permit needed to open the plant.

Attorneys for the U.S. Department of Commerce assure Hazmat that the local land use board has acted illegally and that Hazmat should go ahead with the project. Durham officials and the North Carolina Attorney General seek an injunction to stop the company from opening the plant. A North Carolina state court issues the injunction.

Hazmat then sues the United States under the investment chapter of the North American Free Trade Agreement (NAFTA). Hazmat seeks $50 million in compensation for the actions of the Durham land use board and the North Carolina court.

An international tribunal is constituted under the auspices of a unit of the World Bank to hear Hazmat=s claims against the United States. Under World Bank rules the proceedings are closed to the public. After two years of secret deliberations, the tribunal awards Hazmat $16 million. A key question in the case is whether the local permit process in North Carolina is preempted by federal law on hazardous waste licenses, an issue which Hazmat, inc. never pursued in U.S. courts, after losing the initial injunction. The NAFTA tribunal decides for itself that U.S. federal law should have preempted North Carolina law, despite expert opinion to the contrary. The tribunal, then, finds that the Durham land use board and the North Carolina court Aexpropriated@ Hazmat=s property and failed to satisfy standards of Aminimum treatment@ for foreign investors under international law.

Is this hypothetical example far fetched? Probably not. In a real-life case with similar facts involving land use regulation by a Mexican locality, a NAFTA tribunal found Mexico liable for damages.

In *Metalclad v. Mexico*, an American corporation, Metalclad, brought a NAFTA investment case against Mexico, claiming its property had been expropriated and that it had not been accorded minimum treatment under international law when Mexican state and local governments used their environmental regulatory and zoning authority to stop Metalclad from opening a waste disposal site located on top of an aquifer. A NAFTA tribunal agreed that Metalclad=s property rights had been violated and ordered Mexico to pay over $16 million in damages.

b. **Antigua v. United States: a WTO case.** Blackjack, roulette, baccarat, craps, poker. It is all available on the internet. And, some state legislators and prosecutors do not like it. Many states are cracking down on internet gambling, enacting laws and pursuing enforcement actions in response to traditional concerns about organized crime, money laundering, gambling by minors, and the effect of gambling on public morals generally. But now, state legislatures find that they may have themselves broken the law, international trade law that is, by regulating the gaming industry in a way that disadvantages the nation of Antigua

and Barbuda.

As it happens, the U.S. crackdown was a major blow to the internet gambling industry on Antigua and Barbuda, population 67,000. In 2001, 119 off-shore internet casinos employing 5,000 people operated from Antigua and Barbuda. Today, after the crackdown, fewer than 30 on-line casinos, with fewer than 1,000 employees, are still operating.

As a consequence, Antigua sued the United States in an action brought before a World Trade Organization (WTO) tribunal, alleging that federal law and the laws of all 50 states regulating internet gambling violate international trade law.

In late March, the WTO tribunal issued a confidential interim ruling and found that measures adopted by U.S. federal and state governments effectively banning internet gambling violate the WTO's General Agreement on Trade in Services (GATS). The United States is now appealing the decision.

c. **The *Glamis Gold* case: a NAFTA case.** The *Glamis Gold* case is another example of the threat to state legislative authority from international litigation made possible by the overbroad language of global investment agreements.

In July of 2003, Vancouver-based Glamis Gold Ltd. filed a NAFTA chapter 11 claim, seeking $50 million from the United States government. Glamis wants compensation from the United States for alleged financial losses resulting from California land use regulations that require extensive reclamation of open pit gold mining sites, especially where they are on or near Native American sacred sites and similar sites of special environmental or cultural value.

The *Glamis* case is remarkable because it illustrates how NAFTA's investment chapter allows a transnational corporation to bring a complaint against a state law for performing a core governmental function, regulating land use to preserve or at least reclaim landscapes of significant cultural or environmental value.

In this case the California State Mining and Geology Board acted in 2003 to require that the holes dug by open pit mines be backfilled and recontured after mining operations are completed. The California legislature also acted at this time to require reclamation of open pits near sacred sites and other sites of special concern.

In the early 1990s, Glamis acquired dozens of mining claims in the Imperial Valley, a pristine desert east of San Diego, and proposed constructing a large, open pit mine that would use the "cyanide heap-leach" process to extract gold from low grade ore, in this case requiring approximately 422 tons of ore to be mined to produce an once of gold.

Glamis proposed to build the mine next to a protected wilderness in a woodland area that provides a habitat for desert wildlife. The proposed Glamis project, also, would have tapped 389 million gallons of water every year from the acquifer lying under the Imperial Valley desert.

The area where Glamis proposed digging its gold mine is sacred to the Quechen

Indian Nation,and they use it to practice of their religion and venerate their ancestors. Ancient trails of sacred significance to the Quechen people stretch across the area, which abounds in archeological sites.

As noted earlier, NAFTA's investment chapter is unique among multilateral trade and investment agreements. It allows a transnational corporation like Glamis to act on its own initiative to bring the United States before an international tribunal. And, it allows such a transnational investor to seek hundreds of millions of dollars in damages for the acts of state and local governments.

In pending NAFTA investment cases, Canadian corporations are making claims for compensation that would not be accepted by domestic courts applying the U.S. Constitution.

In this case, Glamis challenges California's exercise of its sovereign power to engage in traditional land use regulation to ensure the reclamation of an area of important environmental and cultural value. If Glamis wins, the United States will have to pay to allow California to engage in land use regulation.

d. **Additional examples of NAFTA cases.** Several other cases are pending against the United States under NAFTA's investment chapter. For example:

X ***Methanex v. United States.*** Methanex Corporation of Canada seeks $1 billion in damages, as a result of California's ban on the gasoline additive MTBE, a carcinogen which is polluting the state's groundwater and causing the drinking water to taste like turpentine.

X ***Grand River Enterprises v. United States.*** A Canadian tobacco manufacturer is claiming damages as a result of the U.S. state attorneys general settlement with the tobacco industry.

THE FORUM ON DEMOCRACY & TRADE

International investment agreements: Do they give greater rights to foreign investors?

Talking points prepared for the North Carolina House of Representatives
Committee on Federal Relations and Trade Issues
March 22, 2005

by William Waren
policy director
The Forum on Democracy & Trade
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Summary of analysis

(1) **The investor-to-state dispute process.** International investment agreements allow foreign multi-national corporations and other investors to seek monetary compensation for the actions of U.S. state and local governments.

- (a) *Frequent claims & radical theories.*
- (b) *Secret tribunals.*
- (c) *No right to representation.*
- (d) *Enforcement by judgments for money damages.*
- (e) *Federal government may preempt states.*

(2) **International investment agreements do not incorporate principles of deference to the judgment of legislatures and courts.**

- (a) *No deference to legislatures.*
- (b) *No deference to domestic courts.*

(3) **The international definition of investment compared to the U.S. constitutional standard.**

- (a) *A broad definition of investment at international law.*
- (b) *A narrow definition of property under the U.S. constitutional standard.*

(4) **International investment obligations compared to U.S. constitutional standards.**

- (a) *"National treatment" can be compared to the U.S. foreign commerce clause, but it incorporates an effects test that sweeps more broadly.*
- *(b) "Expropriation" can be compared to the U.S. takings clause, but international tribunals have broadly construed its undefined terms.*
- *(c) "Minimum treatment under international law" can be compared to the U.S. due process clause, but international tribunals, in interpreting its vague terms, do not temper their own notions of substantive due process or natural justice with deference to legislative political judgments that meet a minimum*

rationality standard.

THE FORUM ON DEMOCRACY & TRADE

International investment agreements: Do they give greater rights to foreign investors?

Talking pointss prepared for the North Carolina legislature
March 22, 2005
by William Waren
policy director
The Forum on Democracy & Trade
wtw2@law.georgetown.edu; (202)662-4236

(1) ***The investor-to-state dispute process:*** Investment agreements, such as NAFTA's chapter 11, CAFTA's chapter 10 and most of the recently-approved bi-lateral investment agreements and treaties, empower foreign investors to file claims against national governments. This extraordinary investor-to-state dispute resolution process allows multi-national corporations to directly challenge government policies before international tribunals. Thus, the agreements confer on such foreign investors a standing before international tribunals previously enjoyed only by nation-states and allow these investors to challenge public policies as if they were terms in an international commercial contract.

(a) *More frequent claims & more radical theories.* Because investor claims do not have to be brought by a national trade ministry, they are likely to occur with greater frequency than trade complaints between nations and are more likely to be based on radical theories of international law.

(b) *Secret tribunals.* International investment tribunals meet in secret. On the model of international commercial arbitration, each of the two parties to the dispute picks one arbitrator and the third is either agreed to mutually, or appointed by a World Bank official. Members of tribunals are expert on international commercial law, but they may have little familiarity with the U.S. system of constitutional federalism or with the U.S. constitution generally. Tribunals make their decisions based on the text of the agreement and international law, in light of the general purpose of facilitating international investment.

(c) *No right to representation.* State governments have no right to represent themselves before international investment tribunals when a state law or policy is alleged to be in violation of the United States' international obligations.

(d) *Enforcement by judgments for money damages.* International investment tribunals can effectively enforce their decisions by ordering the federal government to pay money damages to the foreign corporation or individual investor. There is no cap on the amount of money damages that may be assessed,

and damages are to be paid automatically from the U.S. treasury, without the need of congressional appropriations. The federal government has refused to assure state governments that it will not seek to recover from states any monies paid from the U.S. treasury to satisfy international tribunal judgments.

(e) *Federal government may preempt states.* U.S. implementing legislation authorizes the federal government to sue to preempt any state law or measure that is in violation of a tribunal decision or the text of an international investment agreement.

(2) International investment agreements do not incorporate principles of deference to the judgment of legislatures and courts.

(a) No deference to legislatures. International investment agreements do not require tribunals to show deference to legislative judgments, as U.S. courts do. Tribunals might well see broad international law concepts like Aindirect@ or Acreeping@ expropriation or Aminimum treatment under international law@ as a source of general and wide-ranging authority to second guess legislative judgments.

(b) *No deference to U.S. courts.* In the same way, no provision in these agreements requires deference to national courts. NAFTA tribunals have determined that national and sub-national court decisions are Ameasures@ subject to their review under chapter 11.

(3) International definition of investment compared to U.S. constitutional standard. The broad definitions of investment under NAFTA chapter 11, CAFTA chapter 10 and similar agreements protect economic interests, including an expectation of gain or profit, that would not be protected under the definition of property under the "takings" clause of the fifth amendment to the U.S. constitution.

(a) *A broad definition at international law.* International investment agreements define "investment" very broadly. For example, CAFTA provides that "investment" means "every asset that an investor owns or controls, directly or indirectly, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk..."Moreover, international investment tribunals, convened under NAFTA, have interpreted similar language to include "market access" and "market share" within the scope of protected investments.

(b) *A narrow definition under the U.S. constitutional standard.* By contrast U.S. courts generally refer to state law to define "property" interests protected by the fifth amendment to the U.S. constitution and generally limit regulatory "takings" claims, that are comparable to international "indirect expropriation" claims, to interests in real property. Justice Scalia has stated that "property" does not include "business in the sense of the activity of doing business, or the activity of making a profit."

(4) International investment obligations compared to U.S. constitutional standards. Three types of international investment obligations are generally of most concern to state governments:

- *national treatment*, which can be compared to the foreign commerce clause of the U.S. constitution;
- *direct and indirect expropriation*, which can be compared to the fifth amendment "takings" clause in the U.S. constitution; and
- *minimum treatment under international law*, which can be compared to the due process requirements of the U.S. constitution.

This comparison of U.S. and international law standards for the protection of corporate property rights would seem to reveal, however, that NAFTA, CAFTA, and similar agreements provide greater rights to foreign corporations and investors than are enjoyed by U.S. citizens under the U.S. constitution.

International Investment Obligations of Concern to States

Type of Investment Rule	NAFTA Provision
National treatment: no discrimination - effects test	**NAFTA art. 1102**
Expropriation: compensation for lost expected profits	**NAFTA art. 1110**
Minimum treatment under international law	**NAFTA art. 1105**

(a) *National treatment: no discrimination – effects test.* National treatment under NAFTA chapter 11, CAFTA chapter 10,and similar agreements requires the United States and individual U.S. states to treat covered foreign investments and investors "no less favorably" than they treat their own.

National treatment covers not only intentional discrimination, but also neutral laws that have the effect of changing the conditions of competition in favor of domestic firms.

The effects test for national treatment appears to be significantly more stringent than limits imposed on states by the commerce clause of the U.S. Constitution.

(b) *Compensation for expropriation.* NAFTA chapter 11 and similar agreements require member nations to compensate investors if national or sub-national governments "directly or indirectly nationalize or expropriate" an investment of the other countries' investors in its territory. Expropriation includes measures "tantamount to nationalization or expropriation."

The terms of expropriation articles in international investment agreements and the concept of "indirect expropriation," in particular, are undefined and wide-open to multiple, alternative constructions by tribunals. And, several NAFTA claims seek compensation for losses due to "indirect expropriations" that U.S. courts have not in the past compensated as "regulatory takings."

For example, U.S. courts generally do not consider temporary government regulatory measures to be "takings," for which the fifth amendment requires the government to pay compensation. And, U.S. courts focus a "takings" inquiry on

the impact of a government measure on the "parcel as a whole," not just one section of the property. By contrast, a NAFTA investment tribunal concluded that temporary government measures or measures that may affect only part of an investment may constitute acts of regulatory or indirect expropriation under international law for which compensation must be paid.

Similarly, U.S. courts read the constitution to typically require the complete or near complete destruction of economic value in a property before government is compelled to compensate the owner. By contrast, NAFTA tribunals have indicated that only a "significant" or "substantial" adverse impact on the value of an investment is necessary to trigger an obligation to pay compensation.

And as noted above, U.S. courts as a practical matter largely restrict their consideration of regulatory takings claims to cases involving real property, and would never consider a claim based on "lost expected future profits of an enterprise," as is allowed under international investment agreements.

(c) *Minimum treatment under international law.* NAFTA-style investment agreements require member nations to provide other members' investors with "treatment in accordance with international law, including fair and equitable treatment and full protection and security."

While the meaning of minimum treatment under international law is wide open, the due process clause of the U.S. constitution generally only requires (1) procedural due process, such as a right to notice of proceedings and a right to be heard, and (2) a "minimum rationality" standard for substantive due process that is highly deferential to the judgments of legislatures and agencies.

All terms under the minimum treatment standard were undefined, until July 1, 2001, when the trade ministers of the three NAFTA parties, acting as the Free Trade Commission, issued an interpretation of the minimum treatment standard. The interpretation provides that "minimum treatment" does not by reference incorporate other treaties or agreements and refers only to the unwritten customary international law standard for the treatment of aliens' economic interests.

The interpretation again fails to define the elements of that standard. The net result is that tribunals have great discretion to strike at legislative acts based on a creative reading of customary international law. For example, U.S. courts in analyzing substantive due process claims generally require only that there be a minimum rational basis for governmental action, not that it comport with the courts' own view of natural justice. By contrast, one NAFTA tribunal opined that a violation of the minimum treatment standard might be understood as a manifest failure of natural justice,

Trade Agreement Trade-offs

International trade tribunals challenge state law and policy.

By William T. Waren

Blackjack, roulette, baccarat, craps, poker. It's all available on the Internet. And some state legislators don't like it. Many states are cracking down on Internet gambling in response to concerns about organized crime, money laundering, gambling by minors and the effect of gambling on public morals generally. But now, some state legislatures and law enforcement officials find that they themselves may have broken law—international trade law that is—by ng to curb Internet gambling.

, it happens, the United States crackdown was a major blow to the Internet gambling industry on the island nation of Antigua and Barbuda, population 67,000. In 2001, 119 offshore Internet casinos employing 5,000 people operated from the Caribbean islands. Today, after the crackdown, fewer than 30 online casinos, with fewer than 1,000 employees, are still operating.

So, Antigua and Barbuda sued the United States in an action brought before a World Trade Organization (WTO) tribunal, alleging that federal law and the laws of all 50 states regulating Internet gambling violate international trade law.

In late March, the WTO tribunal issued a confidential interim ruling and found that measures adopted by U.S. federal and state governments that restricted Internet gambling violate the WTO's General Agreement on Trade in Services (GATS). The United States is now appealing the decision.

The reaction to the WTO ruling was swift. "This unwarranted interference by an inter- tional body in domestic legislation erodes sovereignty," says U.S. Senator Jon Kyl of ona. "It has absolutely nothing to do with free trade, but would deny us the right to set our own social policy."

Many state legislators also express concern about the Antigua case and similar cases brought against the United States based on allegations that state law and policy violate international law. But they also often argue for a balanced response that takes into account the benefits to American business and the economy that are promised by the North American Free Trade Agreement (NAFTA), WTO and other agreements.

Representative Peter Lewiss of Rhode Island puts it this way: "We support international trade agreements that generate jobs and economic growth in our communities, provided that the agreements respect the constitutional and traditional authority of state governments."

REPRESENTATIVE PETER LEWISS RHODE ISLAND

THE LIMIT TO STATE POWER

As the Antigua case demonstrates, NAFTA, the WTO and subsequent trade agreements, the so-called "post-1994 agreements," do place limits on state government. Prior to 1994, states had little reason to monitor the course of trade negotiations closely because they focused on tariffs, quotas and similar "at the border" discrimination against foreign products, almost always the business of the federal government. The post-1994 agreements deal not only with "at the border" discrimination, but also impose strict rules related to government regulation, taxation, purchasing and economic development policies that are regarded as non-tariff barriers to trade by the drafters of the agreements. In other words, a large number of measures within state policy jurisdiction are now affected by international law.

In addition, the pre-1994 agreements had no effective enforcement mechanism. But NAFTA, the WTO agreements and other post-1994 agreements (in combination with federal implementing legislation) do. The federal government may bring lawsuits to

TRADE TALK

Articles on trade are sprinkled with alphabet soup. Here's a key to some of the initialisms.

WTO—The World Trade Organization was adopted in the Uruguay Round of negotiations in 1994. It is both the mechanism for negotiating new multilateral agreements for trade in goods or services and the forum in which disputes under multilateral agreements are decided. It is headquartered in Geneva, Switzerland.

GATT—The General Agreement on Tariffs and Trade dealt exclusively with trade in goods and the lowering of tariff barriers. It was folded into the WTO during the 1994 negotiations.

GATS—The General Agreement on Trade in Services establishes multilateral agreements on service industries, such as telecommunications and insurance, under the auspices of the WTO. GATS is an ongoing negotiation.

NAFTA—The North American Free Trade Agreement is a regional free trade area established in 1994, that includes Canada, the United States and Mexico.

USTR—The U.S. Trade Representative is a federal executive office charged with leading U.S. negotiating teams for all bilateral, regional and multilateral trade negotiations.

William T. Waren is policy director of the Forum on Democracy and Trade and adjunct professor of law at Georgetown University.

preempt state and local measures found to violate international law (though private suits are barred). Or even if the feds decline to sue, legislatures may be compelled to repeal or amend state law simply as a result of the political and economic pressure resulting from WTO or NAFTA sanctions. In this sense, with their power to authorize sanctions, WTO and NAFTA serve the "constitutional" function of regulating legislatures at the federal, state and local levels. Indeed, Renato Ruggiero, the past director general of the WTO, has been widely quoted as saying, "We are writing the constitution of a single global economy."

International tribunals that find state laws to be in violation of international trade agreements now have the power to authorize retaliatory trade sanctions, like higher tariffs on U.S. exports, until the United States complies. In investment cases under NAFTA's Chapter 11 and similar agreements, tribunals can order the United States to pay monetary damages. For example in one NAFTA Chapter 11 case, *Methanex v. United States*, a Canadian corporation is seeking $1 billion in damages from the United States because of its alleged loss of future profits resulting from the California Legislature's ban on the toxic gasoline additive MTBE.

RECENT AND PENDING CASES

Methanex is only one of several NAFTA investment cases that have proved controversial. NAFTA's Chapter 11 on investment is novel among international agreements in several respects. International litigation may be initiated by private parties, usually transnational corporations, without working through trade ministries. Failure to comply with the agreement can result in uncapped awards of money damages that are automatically appropriated from the U.S. treasury. Tribunals meet in secret. And the legal standards for protecting investor and property rights are vague. They arguably sweep far more broadly than the protections for business and property rights found in the U.S. Constitution, such as the Fifth Amendment's "takings" clause.

Local government officials in the United States, as represented by the National League of Cities and similar associations, have expressed serious concern that NAFTA's investment chapter gives foreign investors greater rights, particularly with respect to complaints about local zoning and land use regulation, than are provided to U.S. property owners under the U.S. Constitution. The concern of local officials became acute after a NAFTA tribunal's decision in a case called *Metalclad v. Mexico*.

In *Metalclad*, Mexican state and local officials used their authority over land use regulation and business permitting to stop a U.S. multinational from operating a hazardous waste facility. It was on top of an aquifer that provided drinking water to a town in the state of San Luis Potosi. Metalclad then brought a suit against Mexico under NAFTA's Chapter 11, claiming that the company's property rights had been violated. A NAFTA tribunal agreed that Metalclad's rights had been violated and directed the Mexican national government to pay $16.5 million in damages. The Mexican federal government paid and is now seeking to recover its costs from the Mexican state and local governments that stopped Metalclad's operation.

A similar case, *Glamis Gold v. United States* pending. It involves a claim that a Californ land use regulation violates NAFTA's investment chapter.

UNINTENDED CONSEQUENCES: EXPROPRIATING STATE SOVEREIGNTY

What's the biggest fear that an investor has when deciding whether to plunk down big money for a new processing plant in a foreign territory? He fears expropriation, nationalization or other seizure that not only deprives him of any revenue from the property, but also of the property itself, in a political or judicial system that offers no recourse.

This is not likely to happen in Great Britain, Germany or Japan, but it has happened in other parts of the world. And many businessmen worry that it could happen again.

Ambassador Robert Zoellick, the U.S. trade representative (USTR), often says that "capital is a coward." So in the face of fears of expropriation, how do you coax capital out of the safe and secure United States and into more risky places where it can make more money, improve trade and bolster economic and political development?

One solution is the "investor-state dispute resolution" process that serves this purpose for businessmen, but may have the unintended consequence of infringing on state sovereignty.

First elaborated in Chapter 11 of the North American Free Trade Agreement (NAFTA), the investor-state dispute resolution process offers companies that feel their property or profitability are hampered by government action the opportunity to bring a claim. It will not be heard in U.S. court in full view of the free press, but instead will be reviewed by an ad hoc international tribunal that meets behind closed doors. Although the U.S. federal government has to pay any cash awards, many of the cases that foreign companies have brought against the United States under NAFTA Chapter 11 have related to state environment, health and public welfare laws or constitutional processes. So far, the United States has not lost a case. But states fear that a decision against the United States could one day translate into preemption of state law or other infringements on state authority.

A classic example is *Methanex Corp. v. United States*, where a Canadian corporation claimed nearly a billion dollars in compensation from the United States for lost profits as a result of a California statute that effectively banned the use of the fuel additive MTBE. California outlawed the fuel additive because it contaminated drinking water supplies. The dispute resolution tribunal originally made several rulings in favor of the United States. But late last year, Methanex asked the tribunal revisit its decision and is seeking access to state documents regarding how it arrived at the measu Methanex's latest petition is under review.

Using NAFTA's Chapter 11 as a blueprint, variations of the investor-state dispute resolution mechanism continue to be interwoven into new trade agreements: Singapore, Chile, Central American Free Trade Area and Morocco. But state groups continue to have concerns.

Earlier this year, the National Conference of State Legislatures, along with other organizations representing state and local officials, convinced the U.S. trade representative to exclude the dispute resolution mechanism in the trade pact with Australia.

This victory will be the exception rather than the rule. But state and local organizations will continue to work with USTR to develop a provision that protects American investors while also protecting state sovereignty and authority.

"States need to get aggressive," says Oklahoma Representative Clay Pope. "No one expected NAFTA to produce the results it did. Legislators must protect the role of the states."

—Jeremy Meadows and Nick Steidel, NCSL

CONSULTING WITH STATES ON TRADE

When the Office of the U.S. Trade Representative (USTR) begins to negotiate an international agreement, a broad cross-section of federal officials are involved. But typically state governments are not represented. So how do states have their say?

State and local officials serve on USTR's Intergovernmental Policy Advisory Committee on Trade (IGPAC). Utah Representative Sheryl Allen, Alabama Representative Johnny Ford, Rhode Island Representative Peter Lewiss, Oklahoma Representative Clay Pope and Hanna Shostack of New Jersey's Office of Legislative Services are NCSL's members on the committee.

As negotiations begin, the committee highlights issues of importance to states. When agreements are completed, it reports state and local perspectives so Congress has that information when adopting implementing legislation.

USTR also consults with states through the "single point of contact" (SPOC) system. Recommended by governors, the contact person is usually the state chief economic or trade development officer. USTR information is sent to them for dissemination and to elicit input during negotiations. You can find your state's SPOC at www.ustr.gov/outreach/spoc.htm

State legislators also can take advantage of several unofficial methods to have their say. USTR's Office of Intergovernmental Affairs and Public Liaison welcomes legislative input. The office works with representatives of state and local government and keeps them informed of the current status of trade agreement negotiations and their effects.

USTR is also amenable to working with state and local officials on specific issues. Idaho Representative George Eskridge, for example, chairs an unofficial working group on energy that is discussing electric utilities, state policies and industry regulation, and USTR's negotiations on the subject in the next round of GATS talks. Eskridge says the discussions are beneficial to the trade negotiators, as well as "helpful to me in designing Idaho's energy policy to fit with international trade agreements."

—Jeremy Meadows, NCSL

COMMITTEE IS LEGISLATURES' VOICE ON TRADE

The NCSL Standing Committee on Economic Development, Trade & Cultural Affairs monitors international trade negotiations and works with the U.S. trade representative and other federal agents. Its members lobby Congress on state-federal trade policies. See the committee's Web site at www.ncsl.org/standcomm/scecon/scecon.htm

If you have questions about the implications of trade agreements on states, call Jeremy Meadows or Nick Steidel in NCSL's Washington, D.C., office at (202) 624-5400.

SENATOR
LIZ FIGUEROA
CALIFORNIA

"California laws are already being challenged under these trade rules," says California Senator Liz Figueroa, who chairs a special committee conducting oversight investigations on the impact of international trade and investment agreements on state legislation.

"Just a few months ago, the Canadian gold mining corporation, Glamis Gold, used NAFTA investor rules to claim that California's mining law protecting Native American sacred sites interfered with their right to future profits," she says. "Should Glamis prevail in this $50 million case, California could be forced to change the law in question. This has been a grim wake-up for those of us who are concerned about preserving democracy at the state and local level."

Perhaps no group of state officials, however, has been more dismayed by certain NAFTA investment cases than chief justices. Through their association, the Conference of Chief Justices, they have asked Congress to act " to preserve the integrity of the courts of this country and their ability to adjudicate fairly and finally the rights of all parties who seek justice in them."

The chief justices' concern results from two recent cases that, while dismissed on the merits, made clear that international tribunals have the right to consider claims from foreign investors that U.S. courts decisions violate NAFTA investment rules.

Chief Justice Margaret H. Marshall of Massachusetts was unaware until recently that a Canadian real estate firm, which the state high court had ruled against and which had been denied review by the U.S. Supreme Court, was able to sue under NAFTA's Chapter 11 for monetary compensation for the acts of the Massachusetts court.

"To say that I was surprised to hear that a judgment of this court was being subjected to further review would be an understatement," Marshall said in an interview with the New York Times.

A BALANCING ACT

Going back to the Antigua and Barbuda on-line gambling case, the WTO ruling came as a surprise to many policymakers and scholars. But not to Georgetown Law Professor Bob Stumberg who has long argued that Antigua and Barbuda might very well be successful. "Global trade and investment agreements," Stumberg says, "are designed to limit the sovereignty of American states."

And certainly they are written to reduce the number and variety of possible barriers to trade. These often include policies or regulations in the 50 different states or the thousands of American municipalities.

"A paramount virtue of federalism," argues Stumberg, " is that cities and states serve as the 'laboratories of democracy.' That tradition of experimentation, progressive change and diversity creates the potential for conflict with international agreements that promote uniformity on a global scale." In fact, the European Union has argued that the local-global conflicts that emerge from the U.S. federal system amount to "market fragmentation."

Another leading scholar of trade and federalism finds these developments less alarming. University of Nebraska Professor Matt Schaefer says that "the conscientious legislator must ask the question whether the legislation he or she crafts or votes on is in conformity with the additional constraints imposed by international trade agreements."

Stumberg makes a point similar to Schaefer's but with a different spin. "The challenge for state and local legislatures," he says, "will be to develop their ability to respond to the layering global rules on top of our federal system."

In particular, Stumberg compliments legislatures in Washington, California and Idaho for establishing effective oversight of international trade and investment agreements. These states have focused not simply on

compliance, but also on educating the Office of the U.S. Trade Representative, Congress and the public on trade and federalism issues.

This is particularly important, Stumberg says, because international trade laws, such as the investment, services, subsidies and procurement regimes that seek to constrain state legislatures, are still at an early point in development. The vague text of the NAFTA and WTO agreements is still being interpreted and elaborated. Also major new agreements, like the proposed Free Trade Area of the Americas, are still being negotiated.

HOT TOPICS

Utah Representative Sheryl Allen says that it is particularly important for legislators to pay attention to upcoming negotiations regarding the expansion of the WTO's General Agreement on Trade in Services. "Legislators must understand the importance of these upcoming negotiations on energy and other services," she says.

The procurement chapters of upcoming trade agreements like the Central American Free Trade Agreement also are hot topics. The Office of the U.S. Trade Representative (USTR) has requested that governors bind their state to the procurement rules in upcoming agreements that would limit state anti-outsourcing policies.

Representative Peter Lewiss of Rhode Island sums up the views of many legislators on this debate. "Legislators continue to have strong concerns about the effect that these agreements have on American principles of federalism, state sovereignty and lawmakers' ability to address the concerns of their constituents."

At the same time, Lewiss says, U.S. trade negotiators are willing to work with state and local officials. He is confident that we "find language and understandings that will allow us to wholeheartedly support efforts to expand international trade opportunities."

REPRESENTATIVE SHERYL ALLEN UTAH

TRADE IS VITAL TO AGRICULTURE

Trade agreements that open markets and lower tariffs are essential to farmers and ranchers. Foreign markets account for 25 percent of the nation's farm income. More than $55 billion in U.S. agricultural product were exported last year.

"We have to expand international trade," says Oklahoma Representative Clay Pope who raises beef cattle. "It pumps all sectors of the rural economy."

Seventy percent of all U.S. almonds are sold overseas. Foreign markets purchase 65 percent of all sunflower oil, 60 percent of cattle hides and 60 percent of dried plums. Half of the wheat and rice crops are exported.

Trade agreements open foreign markets to these goods, but they don't necessarily protect products from being blacklisted. When bovine spongiform encephelophy (BSE) was discovered in Washington state, Japan banned American beef. The loss? $100 million. And the market is still gone.

But without trade agreements, exporting as well as importing any product is difficult. Tariffs, customs and duties, sanitary standards and international shipping requirements all are determined through trade agreements.

"Everything in the world now affects the small farmer, from the price of oil to patent law in Argentina," says Texas Representative Pete Laney, who grows cotton.

—Doug Farquhar, NCSL

INTERNATIONAL TRADE COMMITTEES

Although foreign policy and international commerce are the domain of the federal government, a few state legislatures have formed committees to examine the complex interplay of international trade and state policy. In Texas, the Senate's Committee on International Relations and Trade is charged with examining the North American Free Trade Agreement and the state's unique economic relationship with Mexico.

The California Senate Select Committee on International Trade Policy and State Legislation weighs the various impacts of international trade agreements on state laws. It explores what the appropriate relationships should be between states and the federal government when international trade policy intersects with traditional state roles. Committee members keep an eye on issues of environmental protection, natural resource management, human rights protections and public safety.

During their interim session, the Washington State House of Representatives' Trade and Economic Development Committee will discuss offshore outsourcing, what impact current trade agreements are having on the state, the role of the state trade representative and any possible related legislation. Maine passed a bill this session that established a commission to advise legislators regarding the economic impact of trade agreements on the state. And legislatures in Alabama, Alaska and Indiana (among others) also have committees charged with examining and exploring issues relating to international trade.

—Nick Steidel, NCSL

STATES WITH COMMITTEES ON TRADE AGREEMENTS

■ Fourteen states have legislative, executive or public commissions to examine international trade agreement implications on the state.

Source: National Conference of State Legislatures, May 2004

22 March 2005

International Trade and U.S. Federalism: State Roles in the Global Economy

Presentation to the Committee on Federal Relations and Trade Issues, North Carolina House of Representatives

Forum
on democracy & trade

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Agenda for Discussion

1. How Did We Get Here?
   - Reviewing a Decade of Progress in Global Trade Talks
2. How Do Trade Agreements Work?
   - Background on the WTO, NAFTA, and other Agreements
3. How Are Trade Disputes Resolved?
   - WTO and NAFTA Dispute Resolution
   - Key Cases
4. How Can States Respond? What Roles Can They Play?
   - Identify Threats to State Sovereignty
   - Craft Safeguards for State Legislative Authority
   - Strengthen Legislative-NC Commerce Dept Cooperation
   - Integrate Oversight with Economic Development
   - Work with Other States
   - Work with National Associations
   - Communicate with Congress and USTR

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Which trade rules cover state & local law?

Foreign investor rights
- Compensate to regulate

Government procurement
- Consider price only

Trade in goods
- Least trade-restrictive

Trade in services
- Least-burdensome

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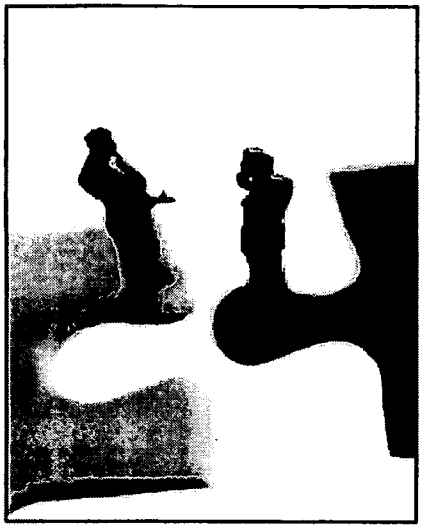
Clarifying Terms, Adopting Common Rules



National Treatment

seeks to prevent discrimination in the provision of goods and services

Domestic Regulation

requires laws to be "no more burdensome than necessary"

Market access

prohibits quantitative limitations

Expropriation

requires compensation for loss of value

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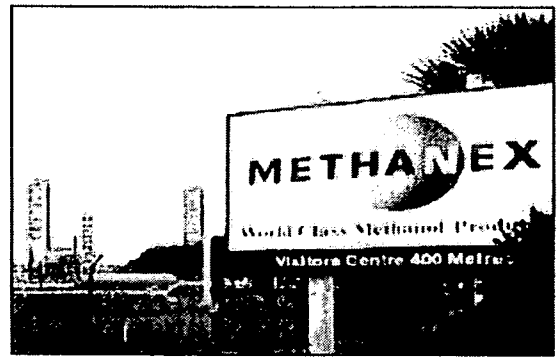
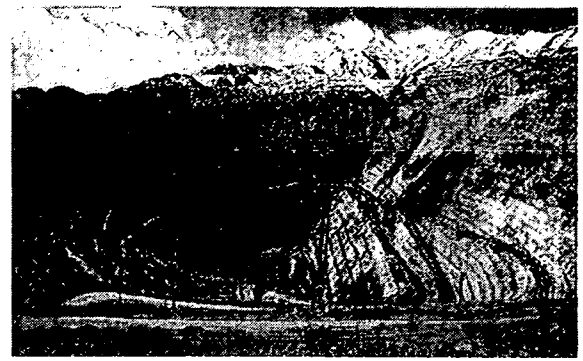
New Rights for Foreign Investors





Water allocations **Groundwater protections** **Mine Clean-up**

NAFTA Chapter 11 provides special dispute process for investors

- Expropriation—compensate to regulate?
  --U.S. legal standards don't apply

- National Treatment / Minimum Treatment provisions
  --foreign entities to be given treatment "no less favorable"
  --use of standards from "principal legal systems of the world"

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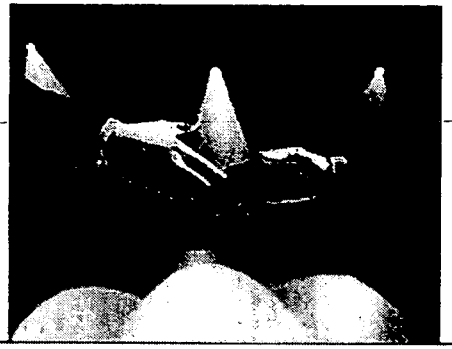
Impacts on State Procurement

"Buy Local" Preferences

Reputation of Company

Environmental Standards

Labor Standards

States can *only* consider bid price and performance; no other criteria allowed

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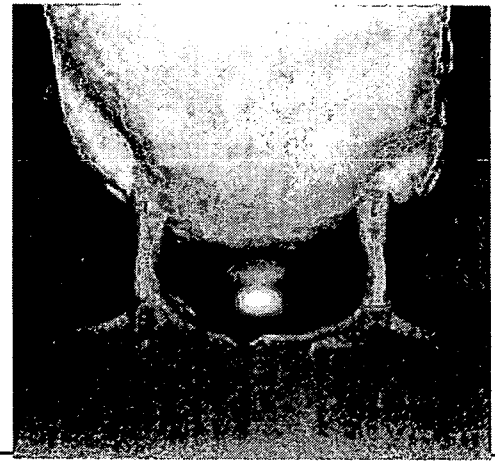
Impacts on State Use of Subsidies

Preferred Financing



Local Grants

Tax Incentives

- Linking subsidies to exports—*not allowed*
- Requiring domestic content—*not allowed*
- Advantaging in-state producers—*subject to review*

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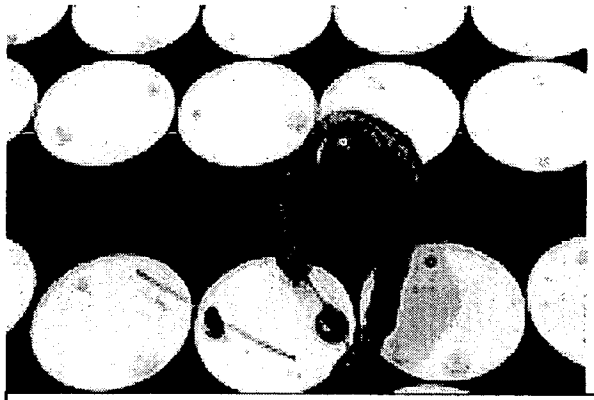
Impacts on State Regulation of Goods



Hazardous Chemicals

Auto Emissions

Recycled Content

- WTO members must use "least trade restrictive" approach to regulating goods supply
- Use of permanent precautionary measures are not recognized

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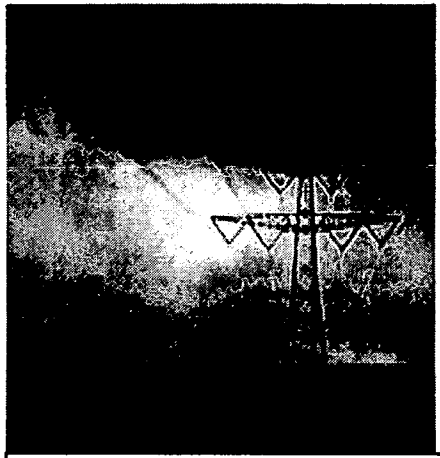
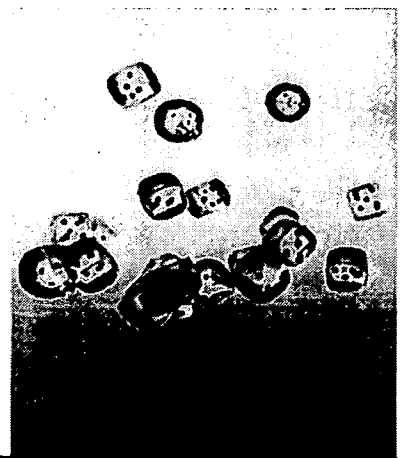
Impacts on Services Regulated by the States



Electricity **Drinking Water** **Medical Care** **Gambling**

- State law cannot be "more burdensome than necessary to assure quality of the service"
- State law cannot limit the number of service providers

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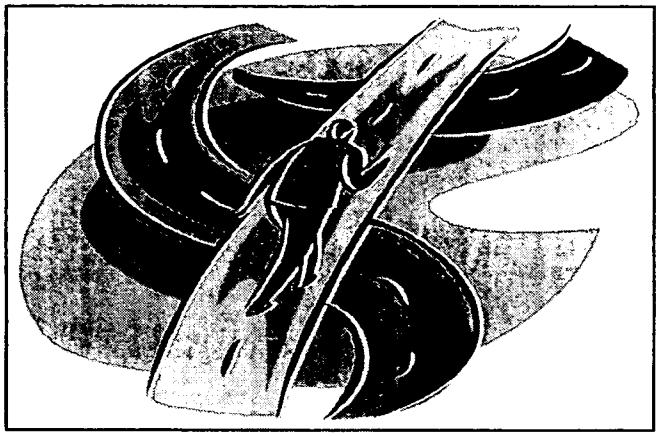
Trade as a Three-Lane Highway



The United States pursues trade agreements in the setting where it can make the most progress

Global Agreements

The World Trade Organization WTO: 140+ Members

Regional Agreements

NAFTA: 3 Members

CAFTA (proposed): 6 Members

FTAA (proposed): 34 Members

Bilateral Agreements

Most recent include US-Chile, US-Singapore, US-Jordan, US-Australia

Now Negotiating: US-Thailand, US-Bahrain, others

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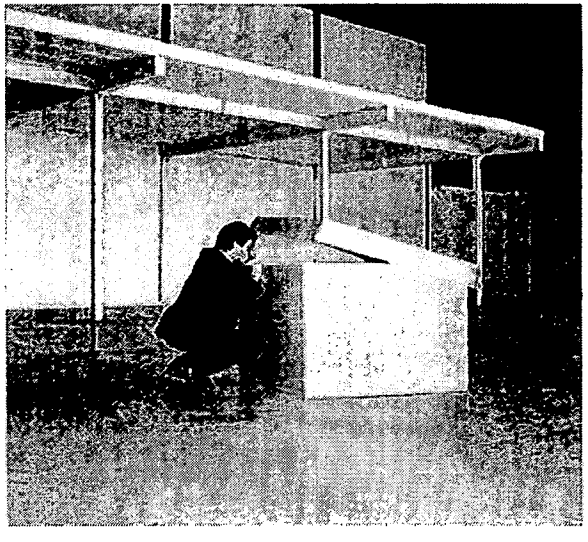
Can Trade Agreements "Trump" State Law?



- Congress has authorized the federal government to preempt states laws under WTO and NAFTA agreements
- Under NAFTA, private actors have used a special investor-state dispute process to attack state laws, rather than meet the legal standards imposed by state courts

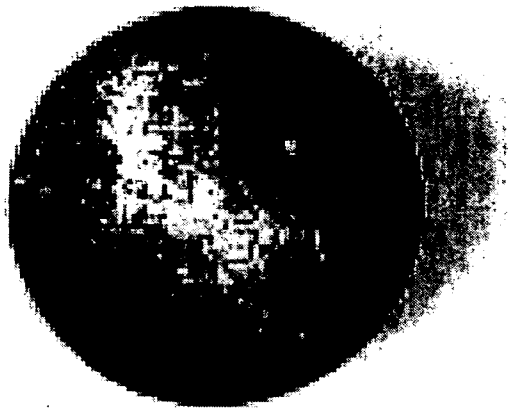
WTO and NAFTA agreements cannot directly overturn state laws, but they could provide a political rationale for:

Congress to withhold federal funding

Federal agencies to veto state programs

Pressure on governors to veto legislation

The World Trade Organization's Vision



"We are writing the constitution of a single global economy."

--Renato Ruggerio
former WTO Director General

WTO rules, and Congressional implementing legislation for free trade agreements, shift the balance of powers under U.S. federalism

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Crafting New Rules in the Global Economy

"We are entering a golden age for international dispute lawyers."

--member of the international corporate bar, Georgetown legal education seminar, 3/2004

WTO, NAFTA, and bilateral dispute tribunals have just begun to interpret the language of international trade agreements

For the global economy's constitution, it's 1789

Trade and Investment Disputes

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Examples of actual investment conflicts

Which local measures might conflict with which investor protection rule?

Local measure	Investor protection rules
Glamis Gold v. United States California law mandates reclamation of open pit mines	> Expropriation Must compensate investor if a measure significantly or substantially affects the value of an investment
Methanex v. United States California banned MTBE, a methanol-based gasoline additive	> National treatment Must not change conditions of competition so as to favor domestic firms
Metalclad v. Mexico City government refused to issue a building permit for a hazardous waste site, which the federal government had approved	

Trade and Textiles—Some Observations

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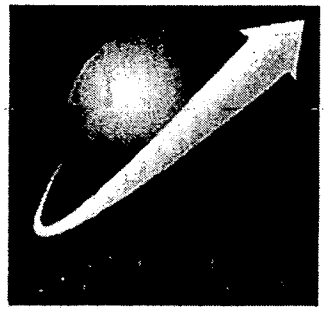
Textiles in the Global Trading System

- **1974: Origins of the Multi-Fibre Agreement**
  includes export constraints
- **1992: Textiles/Apparel as Percent of NC's Exports at its Highest**
  two sectors contribute 20% of manufactured output
- **1994: WTO Uruguay Round Agreement on Textiles and Clothing**
  requires the U.S. to phase out important restrictions over 10 years
- **1994: NAFTA comes into effect**
  Mexico sees immediate benefits in terms of textile exports
- **2004: Central American Free Trade Agreement negotiated**
  Several CAFTA countries have a strong apparel sector
- **2005: All textile and apparel quotas are eliminated on January 1st**
  But ongoing discussions with China re: voluntary export restraints

Two Views on Textiles



"*The U.S. failure [to implement the WTO Agreement on Textiles and Clothing]...contributed to the breakdown of...WTO talks....* Developing countries were outspoken about the failure of rich-country policies to live up to their rhetorical promise."

---Dan Ikenson, Cato Institute, Center for Trade Policy Studies (October 2003)

NCCBI

The expiration of Chinese import quotas will result in further reduction of the textile industry..."*I see a negative effect on the United States labor market, and especially in North Carolina, South Carolina and Georgia.*"

---Allen Gant, Jr., Chairman National Council of Textile Organizations (February 2005)

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What's Next?

UTILIZING SAFEGUARDS?

- United States *did* negotiate safeguards as part of China's WTO accession agreement
- These safeguards have a lower injury standard: "threat of material injury," specifically from Chinese imports
- Chinese government to voluntarily restrain exports?

BUILDING A REGIONAL INDUSTRY?

- Quotas under the MFA may actually have encouraged more countries to enter the textiles & apparel sectors
- NAFTA caused shift of production to Mexico
- Top ten US apparel firms all relied on Mexico and Central American factories
- Most CAFTA countries also have significant apparel sectors
- North/South "division of labor"?

State-Level Oversight on Trade Policy

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What Role Can States Play?

- Identify Threats to State Sovereignty
- Craft Safeguards for State Legislative Authority
- Strengthen Legislative-NC Commerce Dept Cooperation
- Integrate Oversight with Economic Development
- Work with Other States
- Work with National Associations
- Communicate with Congress and USTR

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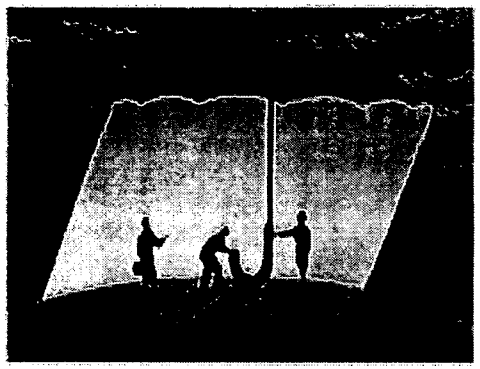
Road Map for State Oversight



Checklist for 2005

- ✓CAFTA ratification
- ✓GATS offers
- ✓Procurement talks
- ✓US-Thailand FTA
- ✓New BITs

Define sectors of particular concern

Pose questions for USTR

Analyze the impact of international trade on a particular sector (using standing committees)

Convene hearings on state oversight of international trade (under new committee?)

Ask staff experts to participate in a working group on key trade issues

Work with NCSL committees on key trade issues

Communicate with NC Congressional delegation regarding state concerns

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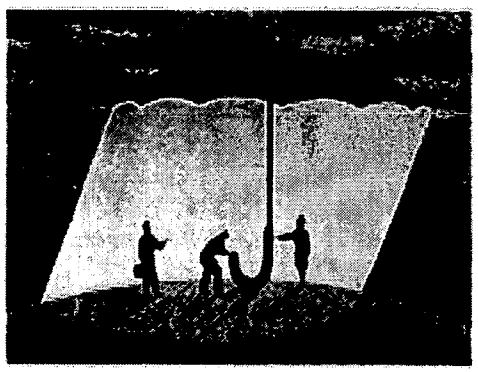
Identifying Potential Safeguards/Challenges



Communicate concerns to Congressional Delegation and the Office of the U.S. Trade Representative

- **Carve Out State Laws**
  - **Gambling under CAFTA?**
  - **Gambling under GATS?**
  - **State Medicaid Programs under GATS?**
  - **Key sectors under new Procurement agreements?**
- **Limit Cost Shifting**
  - **Don't withhold federal funds to force compliance**
  - **Limit use of administrative veto**
- **Document Exporters' Challenges**
  - **China rescind furniture import tariffs?**
  - **Fair trade for semi-conductors?**
  - **Textile transshipment problems continue?**

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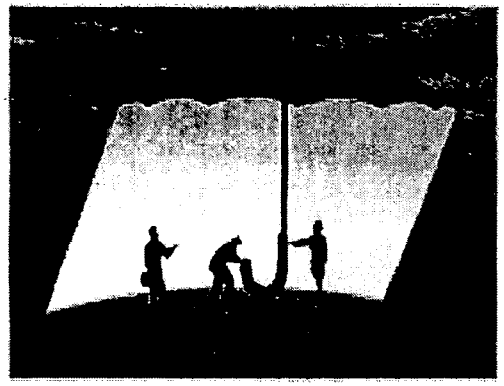
Connect with Others States (1)



Many states are now conducting hearings and assessing the risk of preemption from trade conflicts

- **Other State Oversight Committees**
  - **California Senate Select Committee on International Trade**
  - **Washington Joint Legislative Committee on International Trade**
  - **Maine Citizens Commission on Int'l Trade**
- **Standing committees with a trade interest**
  - **Idaho Committee on Energy**
  - **Utah Committee on Energy**
  - **Vermont Health Care Committee**

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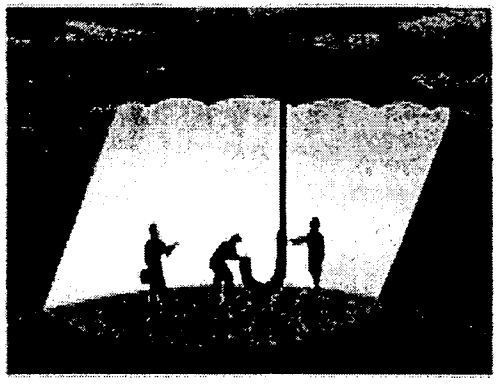
Connect with Other States (2)



Multi-state Working Groups provide an excellent opportunity for peer-to-peer networking and sharing of state experiences, and offer other avenues to connect to USTR and Congress

Multi-state Working Groups are Active on:

-Electricity Services

working with USTR staff to review US offers and commitments regarding RTOs, renewable energy

-Foreign Investor Rights

attention to CAFTA, new BITs, NAFTA cases

-Prescription Drug Purchasing

National Legislative Network on Prescription Drugs (NLARx)

-Water services? Gaming?

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Connect through National Associations

Communicate concerns to Congress and the Office of the U.S. Trade Representative

- **NCSL Economic Development, Trade, and Cultural Affairs Committee**
- **CSG/State Int'l Development Officers**
- **Connect through other national associations (NAAG, IMLA, etc.)**

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For more information about the Forum....

Peter Riggs, Director
riggs@forumdemocracy.net
tel/fax 718 797 9472

Bill Waren, Policy Director
wtw2@law.georgetown.edu
tel 202 662 4236

THANK YOU VERY MUCH!

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Trade Rules on Prescription Drugs: Facts

- **Medicaid costs are crushing many states; states are designing innovations to keep drug costs down**
- **Some state innovations, such as Preferred Drug Lists (PDLs), were challenged in the courts**
- **Remedies pursued unsuccessfully in the U.S. courts resurfaced in a recent trade agreement:**
  US-Australia FTA Annex 2-C

Trade Rules and Drug Purchasing: The US-Australia FTA

Under US-Australia ANNEX 2-C…

- **Cost is not mentioned as a relevant criterion for listing under a Preferred Drug List**
- **Government must tell drug makers why their drugs were not listed on a PDL**
- **Drug companies get access to an independent (perhaps federal) review process**

The Annex defines a "Federal healthcare program" as one in which "the Party's federal health authorities make the decisions regarding matters to which this Annex applies."

Would this include Medicaid reimbursements?

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Trade Rules and Drug Purchasing: Reimportation

- **Federal law allows states to import drugs with permission from Health & Human Services**
  but: HHS repeatedly denies permission to states

- **8/19/04: Vermont files suit against FDA regarding denial of state's right to import drugs from Canada**
  "The United States intends to vigorously defend against the lawsuit." --HHS Press Statement

- **Re-exportation of drugs banned under US-Australia FTA**
  but: Australian *domestic* law already bans re-export, so why include it in the text of the agreement?
  Was Canada the real target?
  Or pending federal legislation? **(Dorgan-Snowe S2328)**

Would the Federal Government use trade agreements to limit state power to control prescription drug costs?

FEDERAL RELATIONS AND TRADE ISSUES COMMITTEE
MARCH 15, 2005
AGENDA

I. Introduction of Committee Members and Staff

II. Presentation by Peter Cunningham from the International Trade Division of Commerce Department.

III. Presentation by Research Staff regarding other State Committees on Trade Issues

IV. Further Discussion

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
2005-2006 SESSION

You are hereby notified that the Committee on **Federal Relations and Trade Issues** will meet as follows:

DAY & DATE: **March 15, 2005**

TIME: **1 pm**

LOCATION: **415**

The following bills will be considered (Bill # & Short Title & Bill Sponsor):
(Organizational Meeting)

Respectfully,
Representative Phillip D. Frye

Representative Mark Hilton
Chairmen

I hereby certify this notice was filed by the committee assistant at the following offices at 4:10 pm on March 9th, **2005.**

___Principal Clerk
___Reading Clerk - House Chamber

Mary Hayes (Committee Assistant)

FEDERAL RELATIONS AND TRADE ISSUES
MINUTES
MARCH 15, 2005

The Federal Relations and Trade Issues Committee met on Tuesday, March 15, 2005 at 1 pm. Representatives Frye and Hilton, Co-Chairs; and Representatives Current, Farmer-Butterfield, Glazier, Alexander, Brown, Coates, Cole, Faison and Holloway attended.

Representative Frye called the meeting to order. He told the committee it will be very interesting to see what attention we can get drawn to North Carolina in this committee with the loss of so many jobs. He explained the reason Speaker Black assigned two republicans to chair the committee was because this is a very important committee to him and he thought by having republican chairs they would be able to open doors in Washington. Representative Frye assured the committee that he and Representative Hilton intended to do everything they could to open the doors of communication to Washington and to have a good non-partisan relationship with this committee to get things done for North Carolina. Representative Frye had handouts for the committee about the NCSL meeting in Washington and several articles regarding CAFTA and informative international trade relations handouts (attachment #1)

Representative Frye introduced Mr. Peter Cunningham, Director of International Trade with the Department of Commerce. Mr. Cunningham gave a broad overview of what is happening in the trade policy arena. As states we do not have much say in trade policy typically this is the jurisdiction of the US Government. The International Trade Divison of the Department of Commerce in North Carolina has 25 professionals worldwide who work to help North Carolina companies expand and find new markets, maintain present businesses and help North Carolina find new business. This year alone the Division has helped over 200 companies generate over 26 million dollars in actual sales working with our companies helping them to find markets overseas. The challenge now is to make the playing field equal for all. Mr. Cunningham gave a PowerPoint presentation to the Committee (attachment #2).

Representative Hilton asked Mr. Cunningham if our Governor supported CAFTA. Mr. Cunningham responded that he did not support CAFTA. We are concerned with the job losses we have seen in textiles and furniture in North Carolina. We need to see the administration more actively engaged in providing assistance to our displaced employees. We are not one of the 36 states that have signed on to the CAFTA.

Representative Glazier asked if the committee could get copies of the briefing books on CAFTA from USTR. Barbara Riley said this is a pretty substantial document and she will provide them for those members who would like to read it.

Representative Cole said the seriousness of the issues is that many countries play by different rules than ours such as labor laws. He questioned the justification for signing up with them when we have disadvantages in competing with them.

Mr. Cunningham said this is a good point. They do not have the strict environmental or labor laws we have. WTO does set the standards the same. There will be another meeting in Hong Kong in December of this year but it will be two years before the standards are in place worldwide to make it a level playing field. This is the goal but the concern is in the developing countries such as China.

Representative Cole followed up with how many industries will be destroyed in North America during the two years before the level playing field is in place?

Barbara Riley asked if the Global Agreements would trump all state and local environmental laws.

Mr. Cunningham replied that is where it is headed. There will be challenges though.

Research Staff presented Members with information from other State Committees on Trade Issues (attachment #3).

The meeting adjourned at 1:50 pm.

Respectfully submitted,

Mary Hayes
Committee Assistant

Phillip D. Frye
Representative Phillip Frye

3/15/05

Rep. Phillip D. Frye

From: Kristin Shassetz [returnmail@ncsl.org]
Sent: Monday, March 14, 2005 2:50 PM
To: Rep. Phillip D. Frye
Subject: NCSL Spring Forum--Register Today! for Honorable Phillip Frye

NCSL's 2005 Spring Forum

April 14-16 in Washington, D.C.

Come hear the latest on . . . The Farm Bill - Unfunded Federal Mandates - Federal Tax Reform - Emerging Technologies - Economic Development - The Energy Bill - Clean Air - Federal Insurance Initiatives - Medicare - Welfare Reauthorization - Social Security - Tort Reform - The Partisan Caucus - Driver's Licensing

Register Online
Registration Form

Contact the Hyatt
and book your room
by March 16
to guarantee the
Special rate $189

(202) 737-1234

Leading Off . . . **Plenary Sessions**

Medicaid, Medicare and Welfare Reform

New Secretary of Health and Human Services Michael Leavitt will address three of the most pressing issues on the federal agenda this year: Medicaid, welfare reauthorization and Medicare, all critical issues for state legislatures. Mr. Leavitt was the administrator of the U.S. Environmental Protection Agency and former governor of Utah.

International Trade and Preemption

One of the greatest threats to state authority comes not from the federal government, but from various international trade agreements and trade organizations. Hear both sides of this compelling issue at this session, which will feature Acting U.S. Trade Representative Peter Allgeier and Vermont Attorney General William Sorrell.

Questions?
Email-us!

NCSL Home Page

Battling Unfunded Mandates
NCSL estimates that state budgets absorb nearly $30 billion each year in cost shifts from the federal government. And there could be even more unfunded mandates on the horizon. A congressional champion will speak about plans to beef up the Unfunded Mandate Reform Act and prevent additional cost shifts.

Triple Header . . . **Special Briefings**

- Seven Reasons Why State Legislators Should Care About Social Security Reform
- Federal Tax Reform and the States
- NCSL's Report on No Child Left Behind

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229921

Economic Development, Trade and Cultural Affairs Commitee

International Trade, Preemption, and the States

A Policy and Legal Primer for State Legislative and Legal Officials

In conjunction with the NCSL Spring Forum

Friday, April 15 – Saturday, April 16, 2005
Hyatt Regency on Capitol Hill
Washington, D.C.

Special Seminar AGENDA *as of March 6, 2005*

Friday, April 15, 2005

3:00 pm – 3:15 pm **Welcome**

Conveners for this special seminar will welcome participants, provide a brief history of the genesis of this joint NCSL/NAAG activity, overview the seminar's structure, and open the seminar.

Representative Sheryl Allen, Utah *and* Chair, Committee on Economic Development, Trade & Cultural Affairs, NCSL

Elliot Burg, Assistant Attorney-General, Public Protection Division, Vermont

3:15 pm – 4:00 pm **Why Should States Care about International Trade?**

There are a variety of reasons that states should care about international trade and the agreements that govern the commerce: export promotion, state purchasing power, economic development, population migration, state-regulated monopoly service providers, etc. This presentation and discussion will outline some of these important reasons, which will set the stage for the balance of the seminar.

Presiding
Representative Sheryl Allen, Utah *and* Chair, Committee on Economic Development, Trade & Cultural Affairs, NCSL

Speakers
Honorable Heidi Heitkamp, former Attorney General, North Dakota *and* Board Member, Forum on Democracy & Trade (*invited*)

Peter Cunningham, Director, International Trade & Investment, Department of Commerce, North Carolina (*invited*)

4:00 pm – 6:00 pm **The Alphabet Soup of the World Trading System: An Overview of the Status Quo**

GATT, WTO, GATS, NAFTA, CAFTA ... what does this alphabet soup mean? What is the current law of the land regarding trade agreements? What agreements are already in place and what has been the states' experience so far? NAFTA Chapter 11 claims like Metalclad (challenging local land use and environmental safety standards), Methanex (challenging state environmental law), and Loewen (challenging state court authority), among others, will serve as case studies. In addition to answering some of these important questions, this session will also explain many of the key provisions and terms – such as 'least burdensome,' 'no greater rights,' and 'investor-state dispute resolution' – in trade agreements and what states need to know about them.

Presiding

Elliot Burg, Assistant Attorney-General, Public Protection Division, Vermont

Speakers

Peter Riggs, Director, Forum on Democracy & Trade, New York

Robert Stumberg, Professor, Georgetown University Law Center, District of Columbia (*invited*)

Taylor S. Carey, Special Assistant Attorney General, Department of Justice, California (*invited*)

Andrea Menaker, Department of State, District of Columbia (*invited*) NAFTA litigators

6:30 pm – 8:00 pm **Reception**

Ronald Reagan Building
Atrium, 1300 Pennsylvania

Avenue, N.W.

Transportation to and from the reception will be available from the hotel main entrance.

Saturday, April 16, 2005

7:30 am **Breakfast**

A continental breakfast will be available outside the meeting room beginning at 7:30 am and throughout the morning's first session.

8:00 am – 10:00 am **On and Beyond the Horizon: Current Issues and New Negotiations**

Empowered by the "fast track" of the Trade Promotion Authority, USTR has been busily negotiating new bilateral, regional, and multilateral agreements. At the same time, the United States has faced challenges that may affect both what sectors are negotiated and how agreements are negotiated in the future. During this session, panelists will survey what is in the pipeline and where states may have concerns. The Antigua Internet gambling case challenging state law, inclusion of state purchasing in procurement chapters, electricity or water under the GATS, and pharmaceuticals under the Australia FTA will serve as case studies.

Presiding

Representative Sheryl Allen, Utah *and* Chair, Committee on Economic Development, Trade & Cultural Affairs, NCSL

Speakers

Representative George Eskridge, Idaho *and* Chair, State & Local Working Group on Energy & Trade Policy (*invited*)

Matthew Porterfield, Professor, Georgetown University Law Center, District of Columbia (*invited*)

Richard Vanduizend, National Center for State Courts, Virginia (*invited*)

Liz Wyman, Office of the Attorney General, Maine *and* Member, Maine Citizen Commission on International Trade (*invited*)

U.S. Trade Representative (*invited*)

National Association of State Procurement Officers (*invited*)

10:00 am – 11:00 am **"Bottom-Up" Oversight and State Engagement**

What are states doing on international trade issues? How are states currently engaged with the Administration or the Congress regarding trade? This session will examine the national formal – the Intergovernmental Policy Advisory Committee (IGPAC) – and informal – State & Local Working Group on Energy & Trade Policy – ways in which states are working with the U.S. Trade Representative as well as some more local reactions.

Presiding

Elliot Burg, Assistant Attorney-General, Public Protection Division, Vermont

Speakers

Senator Liz Figueroa, Chair, Senate Select Committee on International Trade and State Legislation, California (*invited*)

Kay Wilkie, International Policy Analyst, Empire State Development, New York *and* Chair, Intergovernmental Policy Advisory Committee (*invited*)

11:00 am – 11:45 am **NCSL Policy Forum and Business Meeting**

LEGISLATORS During this plenary meeting, Forum delegates will debate and vote on NCSL Policy Statements and Resolutions passed out of Committee this Spring Forum. Legislators are encouraged to attend.

Presiding

Representative Joe Hackney, North Carolina *and* Chair, Standing Committees' Steering Committee, NCSL

11:00 am – 11:45 am **The Legalese of Trade Agreements**

ATTORNEYS-GENERAL *and* LEGISLATIVE ATTORNEYS During this professional development session, state legal officials will review a few useful skills for parsing the legal language of international trade agreements. Suggestions for how state legal experts can quickly and effectively analyze trade agreements will be discussed. Participants will also survey the resources – Internet and otherwise – available to help state legal officials find and understand agreement materials.

Presiding

Elliot Burg, Assistant Attorney-General, Public Protection Division, Vermont

Speaker

Robert Stumberg, Professor, Georgetown University Law Center, District of Columbia (*invited*)

12:00 pm – 1:30 pm Closing Plenary Lunch

International Trade and Preemption

States are threatened constantly with erosion of their authority. One of the greatest threats comes not from the national government, but from various international trade agreements and trade organizations. This panel will explore thepros and cons of preempting state authority in the international arena.

Speaker

Honorable William Sorrell, Attorney-General, Vermont

U.S. Trade Representative, District of Columbia *(invited)*

1:30 pm – 3:00 pm **What Next for States and Trade?**

States are increasingly concerned about various facets of international trade agreements. Seminars on the issues are building awareness among state policymakers and officials around the country. But what can they do with this newfound information? Work with USTR to change the rules? Mount congressional lobbying efforts? Pass state legislation on the matter? Consider legal challenges? During this final session, NCSL and NAAG members will discuss individual and collaborative options.

Presiding

Representative Sheryl Allen, Utah *and* Chair, Committee on Economic Development, Trade & Cultural Affairs, NCSL

Facilitators

Jeremy D. Meadows, Committee Director, Committee on Economic Development, Trade & Cultural Affairs, NCSL

Karen R. Cordry, Bankruptcy Counsel, NAAG

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Washington Office: Tel: 202-624-5400 | Fax: 202-737-1069 | 444 North Capitol Street, N.W., Suite 515 | Washington, D.C. 20001

Rep. Phillip D. Frye

From: John Yarboro [jyarboro@ecnc.us]
Sent: Thursday, March 10, 2005 10:01 AM
To: Rep. Phillip D. Frye; Rep. Mark Hilton
Subject: Textile World -- Washington Outlook -- By James A. Morrissey,

By James A. Morrissey,
Washington Correspondent

Textile Makers Outline Agenda

A coalition of trade associations representing cotton, man-made fiber, yarn and fabric manufacturers and the New York City-based labor union UNITE HERE has outlined its Unity 2005 international trade agenda. Industry officials see this agenda as a blueprint for survival in a world of textile trade that has changed dramatically with the end of the import quota system. Citing the loss of 447,400 textile and apparel jobs and numerous plant closings in the last five years, coalition members decried what they say is a "relentless outsourcing of US jobs and US wealth." The textile manufacturers and labor leaders said the US government should take "vigorous and immediate actions" to strengthen domestic manufacturing, preserve jobs and reduce the $600 billion US trade deficit.

To achieve these goals, the coalition has endorsed a six-point platform asking US elected officials to: commit to the reimposition of import quotas on Chinese textiles using a safeguard mechanism that permits quotas when market disruption or a threat of market disruption can be demonstrated; support efforts to prevent global dominance of textile trade by countries that use unfair trade practices; support expansion to other federal procurement agencies of a Defense Department requirement to Buy American; oppose any free trade agreements that contain unnecessary loopholes to requirements to use participating-country fiber, yarn, thread, fabric, and fabric dyeing and finishing and printing; oppose any reduction of US textile and apparel tariffs or weakening of US trade laws through the World Trade Organization (WTO); and support enforcement of US trade laws to address illegal activities.

China Hit For Role In Record Trade Deficit

Textile trade officials in Washington are blaming rapidly growing textile and apparel imports — particularly those from China — and slow-growing exports as major factors in the record US international trade deficit in 2004 of $617 billion.

The textile and apparel trade deficit amounted to $73.1 billion, an increase of 8.7 percent over 2003. China's textile trade deficit was a record $17.5 billion, up by $3.5 billion — a 25-percent increase.

In a development that is of concern to importers and textile manufacturers, imports from free trade and trade preference regions like Canada, Mexico, the Caribbean Basin and Central America fell sharply. Imports from those countries generally contain yarn and fabric made in the participating countries, including the United States.

The American Manufacturing Trade Action Coalition (AMTAC), Washington, which represents a range of US industries, called for a moratorium on new free trade agreements and urged the US government to "aggressively use access to US markets" to force countries such as China to halt what AMTAC calls "predatory practices" such as currency manipulation and other types of government subsidies.

Retailers Mount Counterattack

The National Retail Federation (NRF), Washington, put international trade at the top of its 2005 agenda. The NRF cited its opposition to the textile industry's efforts to limit its overseas sourcing by attempting to clamp down on Chinese imports and the industry's opposition to the Central American Free Trade Agreement.

Predictably, the NRF puts an entirely different spin on how textile and apparel manufacturers and their customers — the retailers — should deal with global trade issues. The NRF and the New York City-based US Association of Importers of Textiles and Apparel believe it is a mistake to become too dependent on Chinese trade, but they also want the flexibility to make sourcing decisions on their own and not be encumbered with quotas, the threat of quotas or what they view as "onerous" rules of origin in free trade agreements. The NRF's trade expert, Eric O. Autor, said retailers have been "loath to put all their eggs in the Chinese basket," but unreasonable and counterproductive rules of origin in free trade agreements have pushed them in that direction.

In testimony before the US-China Economic Security and Review Commission, Autor said textile rules of origin have made it difficult for importers to do business with countries that could be alternatives to China. He said retailers have been seeking trade with India, Pakistan, Honduras and other countries rather than dealing with some of the uncertainties surrounding trade with China. He said that while price is an important consideration with importers, more critical factors are proximity to the retailer; quick turnarounds; and the ability of fiber, textile and apparel manufacturers to deliver fully integrated packages. He noted some textile companies — including Milliken & Company, Spartanburg; and Wilbur L. Ross's International Textile Group, Greensboro, N.C. — have adjusted to the global trade environment, and other companies are currently developing export opportunities.

Foreign Trade Groups Join In The Fray

Contending that global textile trade problems require a global solution, a group of trade associations from 54 countries comprising the Global Alliance for Fair Textile Trade (GAFTT) has joined with US industry and labor in supporting many of the positions in the 2005 platform. Representatives of trade associations in the United States, Mexico, the European Union, and a number of other developed and developing countries held a summit meeting in Washington to address their concerns and recommend solutions. They focused on the possibility that China and India could capture the bulk of international trade in textiles now that virtually all import quotas have been abolished. They urged the United States, Canada and the European Union to immediately implement the WTO China safeguard mechanism to prevent China from monopolizing worldwide trade, and they called on the WTO to undertake "an urgent review" of the impact of the quota elimination on what they say are "market distorting practices."

GAFTT cited an analysis by the Washington-based National Council of Textile Organizations (NCTO) that shows imports from China in product categories removed from quota control in 2002 had taken 73 percent of the US market by November 2004, compared with 10 percent before quotas were removed. The next-biggest supplier is Thailand, with 3 percent of the market for those products. In terms of overall textile and apparel imports, according to US Department of Commerce data, China accounts for 24.8 percent of imports, and Canada and Mexico — which at one time were the leaders — now have 7 percent and 8.8 percent, respectively.

Trade Official Sees Completion Of Doha Round In 2006

A top US trade official believes the 148 nations in the WTO can complete the Doha round of trade liberalization negotiations by the end of next year, but he sees anything but a smooth road ahead. Following a series of meetings with both developed and developing country trade officials, Deputy US Trade representative Peter F. Allgeier said he senses "widespread readiness among WTO members to accept the challenge of completing the negotiations successfully next year." Allgeier added that much needs to be done in terms of market access, eliminating or reducing tariffs and phasing out subsidies to agriculture and industrial products. US textile manufacturers and importers are poles apart with respect to tariff cuts, as the textile industry is hanging tough on its insistence that other countries reduce their tariffs before the United States makes any further concessions.

With China very much on everyone's mind, Allgeier said the best way to deal with Chinese trade issues is "within the system of rules and dispute settlement in a non-discriminatory way." He said he would strongly object to withdrawing Normal Trade Relations status for China in the United States, as has been suggested by some, saying that is not "the most productive way" to deal with China trade. Allgeier strongly defended US anti-dumping and countervailing duty laws, which have been criticized by many countries.

Summing up his comments, Allgeier said no nation can succeed these days without being "effectively integrated" into the global economy.

March 2005

STATE LEGISLATURES
July/August 2004

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Trade Agreement Trade-offs

International trade tribunals challenge state law and policy.

By William T. Waren

PDF Format

Blackjack, roulette, baccarat, craps, poker. It's all available on the Internet. And some state legislators don't like it. Many states are cracking down on Internet gambling in response to concerns about organized crime, money laundering, gambling by minors and the effect of gambling on public morals generally. But now, some state legislatures and law enforcement officials find that they themselves may have broken the law--international trade law that is--by seeking to curb Internet gambling.

As it happens, the United States crackdown was a major blow to the Internet gambling industry on the island nation of Antigua and Barbuda, population 67,000. In 2001, 119 off-shore Internet casinos employing 5,000 people operated from the Caribbean islands. Today, after the crackdown, fewer than 30 on-line casinos, with fewer than 1,000 employees, are still operating.

So, Antigua and Barbuda sued the United States in an action brought before a World Trade Organization (WTO) tribunal, alleging that federal law and the laws of all 50 states regulating Internet gambling violate international trade law.

In late March, the WTO tribunal issued a confidential interim ruling and found that measures adopted by U.S. federal and state governments that restricted Internet gambling violate the WTO's General Agreement on Trade in Services (GATS). The United States is now appealing the decision.

The reaction to the WTO ruling was swift. "This unwarranted interference by an international body in domestic legislation erodes our sovereignty," says U.S. Senator Jon Kyl of Arizona. "It has absolutely nothing to do with free trade, but would deny us the right to set our own social policy."

Many state legislators also express concern about the Antigua case and similar cases brought against the United States based on allegations that state law and policy violate international law. But they also often argue for a balanced response that takes into account the benefits to American business and the economy that are promised by the North American Free Trade Agreement (NAFTA), WTO and other agreements.

Representative Peter Lewiss of Rhode Island puts it this way: "We support international trade agreements that generate jobs and economic growth in our communities, provided that the agreements respect the constitutional and traditional authority of state governments."

THE LIMITS TO STATE POWER

As the Antigua case demonstrates, NAFTA, the WTO and subsequent trade agreements, the so-called "post-1994 agreements," do place limits on state government. Prior to 1994, states had little reason to monitor the course of trade negotiations closely because they focused on tariffs, quotas and similar "at the border" discrimination against foreign products, almost always the business of the federal government. The post-1994 agreements deal not only with "at the border" discrimination, but also impose strict rules related to government regulation, taxation, purchasing and economic development policies that are regarded as non-tariff barriers to trade by the drafters of the agreements. In other words, a large number of measures within state policy jurisdiction are now affected by international law.

In addition, the pre-1994 agreements had no effective enforcement mechanism. But NAFTA, the WTO agreements and other post-1994 agreements (in combination with federal implementing legislation) do. The federal government may bring lawsuits to preempt state and local measures found to violate international law (though private suits are barred). Or even if the feds decline to sue, legislatures may be compelled to repeal or amend state law simply as a result of the political and economic pressure resulting from WTO or NAFTA sanctions. In this sense, with their power to authorize

sanctions, WTO and NAFTA serve the "constitutional" function of regulating legislatures at the federal, state and local levels. Indeed, Renato Ruggiero, the past director general of the WTO, has been widely quoted as saying, "We are writing the constitution of a single global economy."

International tribunals that find state laws to be in violation of international trade agreements now have the power to authorize retaliatory trade sanctions, like higher tariffs on U.S. exports, until the United States complies. In investment cases under NAFTA's Chapter 11 and similar agreements, tribunals can order the United States to pay monetary damages. For example in one NAFTA Chapter 11 case, *Methanex v. United States*, a Canadian corporation is seeking $1 billion in damages from the United States because of its alleged loss of future profits resulting from the California Legislature's ban on the toxic gasoline additive MTBE.

RECENT AND PENDING CASES

Methanex is only one of several NAFTA investment cases that have proved controversial. NAFTA's Chapter 11 on investment is novel among international agreements in several respects. International litigation may be initiated by private parties, usually transnational corporations, without working through trade ministries. Failure to comply with the agreement can result in uncapped awards of money damages that are automatically appropriated from the U.S. Treasury. Tribunals meet in secret. And the legal standards for protecting investor and property rights are vague.

They arguably sweep far more broadly than the protections for business and property rights found in the U.S. Constitution, such as the Fifth Amendment's "takings" clause.

Local government officials in the United States, as represented by the National League of Cities and similar associations, have expressed serious concern that NAFTA's investment chapter gives foreign investors greater rights, particularly with respect to complaints about local zoning and land use regulation, than are provided to U.S. property owners under the U.S. Constitution. The concern of local officials became acute after a NAFTA tribunal's decision in a case called *Metalclad v. Mexico*.

In *Metalclad*, Mexican state and local officials used their authority over land use regulation and business permitting to stop a U.S. multinational from operating a hazardous waste facility. It was on top of an aquifer that provided drinking water to a town in the state of San Luis Potos?Metalclad then brought a suit against Mexico under NAFTA's Chapter 11, claiming that the company's property rights had been violated. A NAFTA tribunal agreed that Metalclad's rights had been violated and directed the Mexican national government to pay $16.5 million in damages. The Mexican federal government paid and is now seeking to recover its costs from the Mexican state and local governments that stopped Metalclad's operation.

A similar case, *Glamis Gold v. United States,* is pending. It involves a claim that a California land use regulation violates NAFTA's investment chapter.

"California laws are already being challenged under these trade rules," says California Senator Liz Figueroa, who chairs a special committee conducting oversight investigations on the impact of international trade and investment agreements on state legislation.

"Just a few months ago, the Canadian gold mining corporation, Glamis Gold, used NAFTA investor rules to claim that California's mining law protecting Native American sacred sites interfered with their right to future profits," she says. "Should Glamis prevail in this $50 million case, California could be forced to change the law in question. This has been a grim wake-up for those of us who are concerned about preserving democracy at the state and local level."

Perhaps no group of state officials, however, has been more dismayed by certain NAFTA investment cases than chief justices. Through their association, the Conference of Chief Justices, they have asked Congress to act "to preserve the integrity of the courts of this country and their ability to adjudicate fairly and finally the rights of all parties who seek justice in them."

The chief justices' concern results from two recent cases that, while dismissed on the merits, made clear that international tribunals have the right to consider claims from foreign investors that U.S. court decisions violate NAFTA investment rules.

Chief Justice Margaret H. Marshall of Massachusetts was unaware until recently that a Canadian real estate firm, which the state high court had ruled against and which had been denied review by the U.S. Supreme Court, was able to sue under NAFTA's Chapter 11 for monetary compensation for the acts of the Massachusetts court.

"To say that I was surprised to hear that a judgment of this court was being subjected to further review would be an understatement," Marshall said in an interview with the New York Times.

A BALANCING ACT

Going back to the Antigua and Barbuda on-line gambling case, the WTO ruling came as a surprise to many policymakers and scholars. But not to Georgetown Law Professor Bob Stumberg who has long argued that Antigua and Barbuda might very well be successful. "Global trade and investment agreements," Stumberg says, "are designed to limit the sovereignty of American states."

And certainly they are written to reduce the number and variety of possible barriers to trade. These often include policies or regulations in the 50 different states or the thousands of American municipalities.

"A paramount virtue of federalism," argues Stumberg, "is that cities and states serve as the 'laboratories of democracy.' That tradition of experimentation, progressive change and diversity creates the potential for conflict with international agreements that promote uniformity on a global scale." In fact, the European Union has argued that the local-global conflicts that emerge from the U.S. federal system amount to "market fragmentation."

Another leading scholar of trade and federalism finds these developments less alarming. University of Nebraska Professor Matt Schaefer says that "the conscientious legislator must ask the question whether the legislation he or she crafts or votes on is in conformity with the additional constraints imposed by international trade agreements."

Stumberg makes a point similar to Schaefer's but with a different spin. "The challenge for state and local legislatures," he says, "will be to develop their ability to respond to the layering global rules on top of our federal system."

In particular, Stumberg compliments legislatures in Washington, California and Idaho for establishing effective oversight of international trade and investment agreements. These states have focused not simply on compliance, but also on educating the Office of the U.S. trade representative,

Congress and the public on trade and federalism issues.

This is particularly important, Stumberg says, because international trade laws, such as the investment, services, subsidies and procurement regimes that seek to constrain state legislatures, are still at an early point in development. The vague text of the NAFTA and WTO agreements is still being interpreted and elaborated. Also major new agreements, like the proposed Free Trade Area of the Americas, are still being negotiated.

HOT TOPICS

Utah Representative Sheryl Allen says that it is particularly important for legislators to pay attention to upcoming negotiations regarding the expansion of the WTO's General Agreement on Trade in Services. "Legislators must understand the importance of these upcoming negotiations on energy and other services," she says.

The procurement chapters of upcoming trade agreements like the Central American Free Trade Agreement also are hot topics. The Office of the U.S. trade representative (USTR) has requested that governors bind their state to the procurement rules in upcoming agreements that would limit state anti-outsourcing policies.

Representative Lewiss of Rhode Island sums up the views of many legislators on this debate. "Legislators continue to have strong concerns about the effect that these agreements have on American principles of federalism, state sovereignty and lawmakers' ability to address the concerns of their constituents."

At the same time, Lewiss says, U.S. trade negotiators are willing to work with state and local officials. He is confident that we will "find language and understanding that will allow us to wholeheartedly support efforts to expand international trade opportunities."

William T. Waren is policy director of the Forum on Democracy and Trade and adjunct professor of law at Georgetown University.

Trade Talk

Articles on trade are sprinkled with alphabet soup. Here's a key to some of the initialisms.

WTO--The World Trade Organization was adopted in the Uruguay round of negotiations in 1994. It is both the mechanism for negotiating new multilateral agreements for trade in goods or services and the forum in which disputes under multilateral agreements are decided. It is headquartered in Geneva, Switzerland.

GATT--The General Agreement on Tariffs and Trade dealt exclusively with trade in goods and the lowering of tariff barriers. It was folded into the WTO during the 1994 negotiations.

GATS--The General Agreement on Trade in Services establishes multilateral agreements on service industries, such as telecommunications and insurance, under the auspices of the WTO. GATS is an on-going negotiation.

NAFTA--The North American Free Trade Agreement is a regional free trade area established in 1994 that includes Canada, the United States and Mexico.

USTR--The U.S. trade representative is a federal executive office charged with leading U.S. negotiating teams for all bilateral, regional and multilateral trade negotiations.

Unintended Consequences: Expropriating State Sovereignty

By Jeremy Meadows and Nick Steidel, NCSL

What's an investor's biggest fear when deciding whether to plunk down big money for a new processing plant in a foreign territory? He fears expropriation, nationalization or other seizure that not only deprives him of any revenue from the property, but also of the property itself, in a political or judicial system that offers no recourse.

This is not likely to happen in Great Britain, Germany or Japan, but it has happened in other parts of the world. And many businessmen worry that it could happen again.

Ambassador Robert Zoellick, the U.S. trade representative (USTR), often says that "capital is a coward." So in the face of fears of expropriation, how do you coax capital out of the safe and secure United States and into more risky places where it can make more money, improve trade and bolster economic and political development?

One solution is the "investor-state dispute resolution" process that serves this purpose for businessmen, but may have the unintended consequence of infringing on state sovereignty.

First elaborated in Chapter 11 of the North American Free Trade Agreement (NAFTA), the investor-state dispute resolution process offers companies that feel their property or profitability are hampered by government action the opportunity to bring a claim. It will not be heard in U.S. court in full view of the free press, but instead will be reviewed by an ad hoc international tribunal that meets behind closed doors. Although the U.S. federal government has to pay any cash awards, many of the cases that foreign companies have brought against the United States under NAFTA Chapter 11 have related to state environment, health and public welfare laws or constitutional processes. So far, the United States has not lost a case. But states fear that a decision against the United States could one day translate into preemption of state law or other infringements on state authority.

A classic example is *Methanex Corp. v. United States*, where a Canadian corporation claimed nearly a billion dollars in compensation from the United States for lost profits as a result of a California statute that effectively banned the use of the fuel additive MTBE. California outlawed the fuel additive because it contaminated drinking water supplies. The dispute resolution tribunal originally made several rulings in favor of the United States. But late last year, Methanex asked the tribunal to revisit its decision and is seeking access to state documents regarding how it arrived at the measure. Methanex's latest petition is under review.

Using NAFTA's Chapter 11 as a blueprint, variations of the investor-state dispute resolution mechanism continue to be interwoven into new trade agreements: Singapore, Chile, Central American Free Trade Area and Morocco. But state groups continue to have concerns.

Earlier this year, the National Conference of State Legislatures, along with other organizations representing state and local officials, convinced the U.S. trade representative to exclude the dispute resolution mechanism in the trade pact with Australia.

This victory will be the exception rather than the rule. But state and local organizations will continue to work with USTR to develop a provision that protects American investors while also protecting state sovereignty and authority.

"States need to get aggressive," says Oklahoma Representative Clay Pope. "No one expected NAFTA to produce the results it did. Legislators must protect the role of the states."

Consulting with States on Trade
By Jeremy Meadows, NCSL

When the Office of the U.S. trade representative (USTR) begins to negotiate an international agreement, a broad cross-section of federal officials is involved. But typically state governments are not represented. So how do states have their say?

State and local officials serve on USTR's Intergovernmental Policy Advisory Committee on Trade (IGPAC). Utah Representative Sheryl Allen, Alabama Representative Johnny Ford, Rhode Island Representative Peter Lewiss, Oklahoma Representative Clay Pope and Hanna Shostack of New Jersey's Office of Legislative Services are NCSL's members on the committee.

As negotiations begin, the committee highlights issues of importance to states. When agreements are completed, it reports state and local perspectives so Congress has that information when adopting implementing legislation.

USTR also consults with states through the "single point of contact" (SPOC) system. Recommended by governors, the contact person is usually the state chief economic or trade development officer. USTR information is sent to them for dissemination and to elicit input during negotiations. You can find your state's SPOC at www.ustr.gov/outreach/spoc.htm

State legislators also can take advantage of several unofficial methods to have their say. USTR's Office of Intergovernmental Affairs and Public Liaison welcomes legislative input. The office works with representatives of state and local government and keeps them informed of the current status of trade agreement negotiations and their effects.

USTR is also amenable to working with state and local officials on specific issues. Idaho Representative George Eskridge, for example, chairs an unofficial working group on energy that is discussing electric utilities, state policies and industry regulation, and USTR's negotiations on the subject in the next round of GATS talks. Eskridge says the discussions are beneficial to the trade negotiators, as well as "helpful to me in designing Idaho's energy policy to fit with international trade agreements."

Trade Is Vital to Agriculture
By Doug Farquhar, NCSL

Trade agreements that open markets and lower tariffs are essential to farmers and ranchers. Foreign markets account for 25 percent of the nation's farm income. More than $55 billion in U.S. agricultural products were exported last year.

"We have to expand international trade," says Oklahoma Representative Clay Pope, who raises beef cattle. "It pumps all sectors of the rural economy."

Seventy percent of all U.S. almonds are sold overseas. Foreign markets purchase 65 percent of all sunflower oil, 60 percent of cattle hides and 60 percent of dried plums. Half of the wheat and rice crops are exported.

Trade agreements open foreign markets to these goods, but they don't necessarily protect products from being blacklisted. When bovine spongiform encephalopathy (BSE) was discovered in Washington state, Japan banned American beef. The loss? $100 million. And the market is still gone.

But without trade agreements, exporting as well as importing any product is difficult. Tariffs, customs and duties, sanitary standards, and international shipping requirements all are determined through trade agreements.

"Everything in the world now affects the small farmer, from the price of oil to patent law in Argentina," says Texas Representative Pete Laney, who grows cotton.

States Study Trade Policy

By Nick Steidel, NCSL

Although foreign policy and international commerce are the domain of the federal government, a few state legislatures have formed committees to examine the complex interplay of international trade and state policy. In Texas, the Senate's Committee on International Relations and Trade is charged with examining the North American Free Trade Agreement and the state's unique economic relationship with Mexico.

The California Senate Select Committee on International Trade Policy and State Legislation weighs the various impacts of international trade agreements on state laws. It explores what the appropriate relationships should be between states and the federal government when international trade policy intersects with traditional state roles. Committee members keep an eye on issues of environmental protection, natural resource management, human rights protections and public safety.

During their interim session, the Washington State House of Representatives' Trade and Economic Development Committee will discuss offshore outsourcing, what impact current trade agreements are having on the state, the role of the state trade representative and any possible related legislation. Maine passed a bill this session that established a public commission to advise legislators regarding the economic impact of trade agreements on the state.

Committee is Legislatures' Voice on Trade

The NCSL Standing Committee on Economic Development, Trade & Cultural Affairs monitors international trade negotiations and works with the U.S. trade representative and other federal agents. Its members lobby Congress on state-federal trade policies. See the committee's Web site at www.ncsl.org/standcomm/scecon/scecon.htm

If you have questions about the implications of trade agreements on states, call Jeremy Meadows or Nick Steidel in NCSL's Washington, D.C., office at (202) 624-5400.

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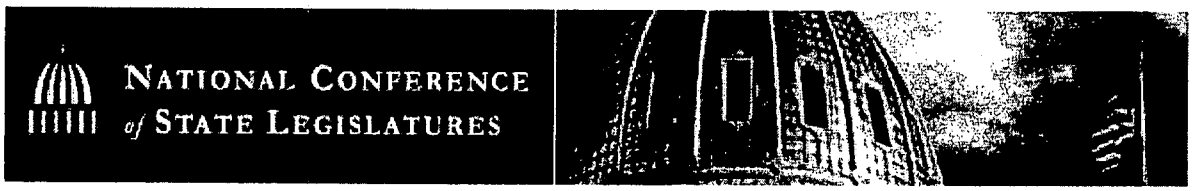

National Conference of State Legislatures

The Forum for America's Ideas

January 19, 2005

The Honorable Robert Zoellick
United States Trade Representative
600 17th Street, N.W.
Washington, DC 20508

Dear Ambassador Zoellick:

In October, your office was invited to attend NCSL's recent Fall Forum in Savannah, Georgia. We were very sorry to learn that a representative from USTR could not attend. The Fall Forum included a session on December 9 regarding international trade and state government procurement which was heavily attended by state legislators and legislative staff representing three of our Standing Committees. In attendance that day were legislators and legislative staff from the Economic Development, Trade & Cultural Affairs Committee, the Environment & Natural Resources Committee and the Labor & Workforce Development Committee. NCSL policy positions and lobbying efforts in Washington, D.C. are set by the Standing Committees. Representatives from various interest groups including the AFL-CIO and Public Citizen made a point to attend. We fully realize and appreciate the time constraints placed upon you and your staff regarding the various activities and functions in which you are invited to participate. Nonetheless, our members consistently raised extremely detailed and pointed questions regarding the extent to which state laws are impacted by international trade agreements and particularly the GPA; questions that we feel your office is best fit to answer directly. USTR's absence was indeed noted and we find it extremely regrettable that state legislators myriad concerns were not addressed.

Questions concerning international trade agreements are generating a great deal of interest in and around state capitols. You were no doubt aware this past year of the extraordinary amount of state legislation introduced across the country seeking to limit the potential effects of offshore outsourcing as just one example of state legislators' reluctance to sit idly by while their constituents' jobs are lost to competition from overseas. Additionally, NCSL's January 2005 edition of *State Legislatures* magazine lists concerns regarding international trade law and trade agreements as one of the top 10 key policy priorities as 2005 legislative sessions begin around the country. We believe that it would only behoove you and your staff to take every available opportunity to participate in further discussions with NCSL on these and other important issues, especially as the Standing Committee on Economic Development, Trade & Cultural Affairs prepares to debate its Presidential Trade Promotion Authority and WTO Negotiations policies which are up for renewal this summer. We would therefore like to take this opportunity to inform you that NCSL's Spring Forum will take place April 13-16 in Washington, D.C. We anticipate discussions surrounding international trade and state legislation to factor prominently in the Committees' and perhaps even the full Forum's agenda.

In the spirit of promoting more communication and cooperation with state legislatures, we again offer NCSL's services in providing contact information for all state legislative leaders so that they can be carbon copied on communication from your office to governors and their designated Single Point of Contact (SPOC) representatives concerning state policies, positions on trade issues, or negotiations updates. Your letter to all governors dated September 1, 2003 asking each to voluntarily commit his or her state to be covered under the government procurement provisions of new and recently negotiated free trade agreements precipitated a flury of legislative interest in the procurement issue and USTR's methods of communication. We encourage you to keep state legislators informed by way of carbon copy and NCSL stands ready to assist. We would appreciate a timely response from your office regarding this offer and instructions on how we can best provide this information to make it as useful as possible for your staff.

We very much look forward to working with you on these and other significant issues affecting state legislatures in the coming year. Should you have further questions, please feel free to contact Jeremy Meadows (202-624-8664; jeremy.meadows@ncsl.org), Michael Bird (202-624-8686; michael.bird@ncsl.org) or Nick Steidel (202-624-8673; nick.steidel@ncsl.org) in our Washington, D.C. office.

Sincerely,

Representative Sheryl Allen
Utah House of Representatives
Chair, NCSL Standing Committee

Delegate Jim Hubbard
Maryland House of Delegates
Chair, NCSL Standing Committee

on Economic Development, Trade & Cultural Affairs

on Environment & Natural Resources

cc: Senator Chuck Grassley, Chair, Finance Committee
Senator Max Baucus, Ranking Member, Finance Committee
Representatives Bill Thomas, Chair, Ways & Means Committee
Representative Charles B. Rangel, Ranking Member, Ways & Means Committee
Ms. Kay Alison Wilkie, Chair, Intergovernmental Policy Advisory Committee

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News Release

Senator
Liz Figueroa
Tenth Senatorial District

For Immediate Release
March 14, 2005

Contact: Laura Metune
(916)322-8616 or (916)203-7600

WTO RULING MAY IMPACT STATE GAMBLING REGULATIONS

Senator Figueroa faults USTR for lack of consultation in case against U.S.

November 11 – The World Trade Organization yesterday released the full text of the decision in Antigua and Barbuda's 2003 claim that U.S. gambling laws prohibiting Internet gambling violate trade obligations under the General Agreement on Trade in Services (GATS). The decision, which implicates both federal and state laws, could have far-reaching consequences for local oversight and control of gambling. The United States has indicated it will appeal the panel decision.

"This decision could lead to future challenges of California's laws regulating gambling, since the WTO ruled that state laws are covered by commitments the U.S. made under the services agreement," commented California State Senator Liz Figueroa, chair of the Senate Select Committee on International Trade Policy and State Legislation. "This new development is particularly dismaying because in March of 2003 the California Senate raised questions over GATS commitments in a letter to the United States Trade Representative. USTR never answered our letter, but now it appears that our concerns were fully justified."

In the late 1990s, internet casinos became an important source of employment and revenue for Antigua, a Caribbean island nation eager to diversify its economy away from a dependence on agriculture and tourism. When the U.S. clamped down on these off-shore betting havens, citing concerns about money laundering and "public morals," Antigua lost its biggest market.

Antigua argued that the U.S. made a GATS commitment on gambling under "Other Recreation Services." The United States claimed it specifically excluded gambling by carving out "sporting" from the commitment. The WTO sided with Antigua, and indicated the decision may be applicable to a range of federal *and* state laws. Some such regulations were designed to protect minors and safeguard against the use of internet casinos for money laundering and wire fraud.

"The timing of this decision is ironic. Just last week California voters rejected two ballot measures that could have expanded gambling in the state," said Figueroa. "It would be a shame if this clear expression of our citizens concern over the expansion of gambling were trumped in a future decision by unelected and unaccountable trade lawyers in Geneva."

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Even if Antigua wins the appeal, this small Caribbean nation has little ability to retaliate economically against the United States. More worrisome is the dangerous precedent established by the Antigua decision. The European Union submitted a brief supporting Antigua's claim, and some of the largest internet casinos in the world are based in England. Many of the on-line casinos that were in Antigua prior to the ban re-organized their operations in Costa Rica. The U.S. has commitments to Costa Rica pending under the Central American Free Trade Agreement (CAFTA). The CAFTA is likely to be submitted to Congress within the year.

"We are concerned that this case from Antigua lays the groundwork for other nations to bring claims against our laws," said Figueroa. "Between European and Caribbean gambling interests, could we see a range of U.S. trading partners come together in an attempt to force legislative changes in our gambling laws?"

Another area of concern is the implications of this decision for state-tribal compacts that govern gambling on Indian lands. "Over the past two years, Governor Schwarzenegger and the legislature have been working closely with California's many tribal groups to improve relations. Gaming has been a special revenue source for the tribes and is important for local economic development. Does this decision open the door to future WTO decisions that could impact the ability of state-tribal compacts to guide how proceeds from gaming should be used? Could future WTO decisions impact the rights of tribes under the Indian Gambling Regulatory Act?" said Figueroa. "I look forward to working closely with Governor Schwarzenegger to address these questions, and to examine other issues surrounding the effects of global trade rules on state laws."

The "US v. Antigua" case was decided in March of this year, but initially both parties agreed not to release the text of the decision and pursue further consultations. Citing an inability to reach a "mutually agreeable resolution" through negotiations, Antigua announced on October 22 that it would call for the release of the decision. The full 400+ page decision was made available yesterday at the WTO website (www.wto.org).

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California State Senate

SENATE SELECT COMMITTEE ON INTERNATIONAL TRADE POLICY AND STATE LEGISLATION

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March 10, 2004

Honorable Arnold Schwarzenegger
Governor, State of California
State Capitol, First Floor
Sacramento, CA 95814

Dear Governor Schwarzenegger,

I am writing regarding correspondence sent to Governor Davis' office last fall by the United States Trade Representative (USTR). The letter requested that the Governor's office commit California to coverage under the procurement chapters of upcoming international trade agreements, including the Central American Free Trade Agreement (CAFTA), the Free Trade Area of the Americas (FTAA) and the South African Customs Union (SACU).

I would like to set up a meeting with you as soon as possible to discuss this issue.

As you may know, I chair the Senate Select Committee on International Trade Policy and State Legislation, a committee which examines the impacts of international trade agreements on state law making authority. I am very concerned that any state consent to international procurement agreements without consulting the Legislature could jeopardize important California procurement laws promoting economic development, environmental protection, and human rights.

Moreover, at a Joint Hearing the Select Committee convened yesterday with the Senate Business and Professions Committee entitled, *Outsourcing California: Our Jobs and Privacy at Risk*, serious questions were raised concerning the potential impact of international procurement rules on our ability to prevent the outsourcing of public sector jobs.

In addition, I am concerned by the process the USTR is using to bind states under the procurement chapters of international trade agreements. As you are aware, determining procurement policies is a responsibility of state legislatures and city councils, and this request to state governors by the USTR undermines this authority.

California's procurement laws allow us to use our market power to reflect the values of our constituents and ensure that tax dollars are spent in a responsible manner. International trade agreements generally prohibit governments from basing purchasing decisions on either the identity of a contract bidder or the way in which a product is manufactured. Although recent agreements seem to offer some exceptions to these principles, many of our priorities are not protected, including important existing and proposed

California purchasing preferences. Procurement laws at risk under the existing language of trade agreements include, but are not limited to:

- California's law prohibiting purchasing from companies that use sweatshop labor;
- California's recycled content procurement requirements for paper and other products;
- Preferences for California companies in contract bidding; and
- Potential legislation to address outsourcing of public sector jobs.

Significant questions about the scope and substance of the agreements need to be answered or California risks losing its traditional authority over state procurement policy.

While the Legislature maintains a strong position of support for international trade, we feel equally strongly that our laws be protected and that the Legislature be consulted on all trade agreements that may affect state laws. Cooperation between my committee and your office will ensure that the state's communications with the USTR demonstrate our shared commitment to protecting California laws and our lawmaking authority.

I look forward to working with you to protect California's interests and ensure that future agreements adequately balance the promotion of international trade with the need to protect state procurement laws and lawmaking authority.

Thank you for your consideration of these concerns.

Sincerely,

Senator Liz Figueroa
Chair, Senate Select Committee on International Trade Policy and State Legislation

Cc: Members of the Committee
Speaker of the Assembly
CA Congressional Delegation

California State Senate

SENATE SELECT COMMITTEE ON INTERNATIONAL TRADE POLICY AND STATE LEGISLATION

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SENATOR
LIZ FIGUEROA
CHAIR

September 10, 2004

California Congressional Delegation
United States Congress
Washington D.C. 20515

We are writing to express our deep concerns with the Central American Free Trade Agreement (CAFTA) and to urge your no vote when this agreement comes before you in Congress. As members of the California State Legislature, we are concerned that, as currently written, this trade and investment agreement could have far reaching impacts on our law making authority. There is no question of our State's economic interest and long-standing commitment to international trade. However, as the reach of trade agreements expands beyond tariffs and quotas to the ways in which we regulate the environment, the quality of food and water, public health and labor protections, state actions have increasingly fallen within the scope of these new trade rules. This disrupts the traditional plenary power of the states in our federal system as the principle guardians of the health, safety and welfare of our citizens and undermines more than two centuries of American constitutional values.

Of specific concern to us in the CAFTA is the inclusion and expansion of the troubling NAFTA investor to state provisions. These provisions undermine state and local laws by providing private foreign investors extraordinary powers to challenge legitimate governmental regulations before international tribunals, bypassing domestic courts. This provision exists in the agreement in spite of the Trade Act of 2002, which directed trade negotiators to ensure that greater rights are not given to foreign investors than United States investors enjoy under the United States Constitution. The CAFTA investment provisions not only fall short of that standard, but in fact include language that would allow foreign investors to challenge government decisions on natural resource agreements, such as oil extraction and mining contracts with a government. Additionally, the definition of "investment" has been expanded to include intellectual property, an expansion that could threaten the ability of governments to secure affordable drugs for their citizens. With California laws, yet again, being challenged in a private NAFTA dispute panel, we have cause to be alarmed.

The most recent NAFTA case, filed by Glamis Gold Ltd., provides a stark illustration of the threats posed to the traditional regulatory power of state governments as a result of current models of trade and investment agreements. In December, Glamis Gold, a Canadian gold mining corporation, used the NAFTA Chapter 11 provisions to file a $50 million claim alleging that California's recently enacted reclamation requirements for open-pit mines located near Native American sacred sites violate the NAFTA investor protection provisions. After extensive debate, California found this reclamation law to be necessary to mitigate the devastating impacts

of hardrock mining, and took legitimate actions consistent with the authority granted to states. Domestic courts have repeatedly upheld the authority of states to regulate mining claims covered by the Mining Law of 1872, particularly in the context of environmental regulations. Accordingly, under domestic law, in a court the Glamis claim would fail. A victory in this case for Glamis Gold would represent a substantial expansion of foreign investor rights beyond the rights granted to domestic investors under domestic law.

In addition, the massive scope, broad definitions and lack of clarity to which the Services Chapter of the CAFTA will apply to state and local law is troubling to us. The services language suggests that a wide range of public protections could be considered barriers to trade, including any law, regulation, rule, procedure or decree that has an effect on trade in services. This would include laws regulating a multitude of publicly provided services such as health care, the delivery of water, postal services, garbage delivery, education and many other services commonly provided in the public interest. The text exempts services "supplied in the exercise of governmental authority," but this is defined as a service "supplied neither on a commercial basis, nor in competition with one or more service suppliers." Currently, many public services are provided in that manner. For example, some government services include fees, such as water and electricity rates, national park fees or postal fees, and few government services, such as transportation and water delivery, are provided as an exclusive monopoly.

Finally, we remain concerned over the process being used by the U.S. Trade Representative (USTR) to bind states to procurement chapters of international trade agreements. In spite of repeated attempts by state and local legislators to be consulted on trade related matters, last fall the USTR sought approval only from state governors when committing states to the procurement chapters of upcoming trade agreements, including the CAFTA. As you are aware, determining procurement policies is a responsibility of state legislatures and city councils, the USTR's efforts undermine this authority. Any state consent to procurement agreements without consulting the Legislature could jeopardize important California procurement laws promoting economic development, environmental protection and human rights.

For these reasons, we urge you to vote no on the Central American Free Trade Agreement (CAFTA), and send a signal to the Administration that future trade agreements based on this model are unacceptable.

Thank you for your attention to our concerns. We look forward to continuing to work with you towards the creation of trade and investment agreements that preserve the efficacy and integrity of our long standing democratic institutions.

Sincerely,

Senator Liz Figueroa, Chair
Senate Select Committee on
International Trade Policy and State Legislation

Senator Sheila Kuehl, Vice Chair
Senate Select Committee on
International Trade Policy and State Legislation

Senator Gloria Romero

Assemblymember Hannah-Beth Jackson

Assemblymember Sally Lieber

Assemblymember Pat Wiggins

Senator Don Perata

Assemblymember Leland Yee

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BUSINESS

Mills decry explosion of imports

3-8-05

By Donald W. Patterson Staff Writer
News & Record

When the walls of protection came tumbling down, the imports came flooding in.

That's the assessment of key leaders in the textile industry as they begin to digest what their world will be like without trade restraints that have shielded them from imports for the past four decades.

With those restraints, known as quotas, gone as of Jan. 1, textile and apparel shipments from China to the U.S. surged that month in eight key categories by 546 percent.

In two of those categories — cotton knit shirts and cotton trousers — imports increased by 1,836 percent and 1,332 percent respectively.

The Chinese shipped more garments in those two categories during January than they did all last year, officials at the National Council of Textile Organizations said Monday.

"We feared something like this could happen," Cass Johnson, president of the Washington-based trade association, said, noting that the numbers were higher than expected. "This is not a blip. This is a trend."

The January numbers come from Chinese customs data and cover the amount of garments China shipped to the United States. The U.S. government will not release its own import figures until Friday. Those numbers likely will be more accurate because they will be used to levy taxes on the items imported.

"It's a function of the system," said Johnson, who noted that the

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Chinese numbers "give us a rough idea of what is hitting the shores right now."

Johnson said China shipped nearly 2 million cotton trousers in January 2004; that number shot up to 27 million exported this past January. Chinese exports of cotton knit shirts jumped from 941,000 to 18 million during the same period.

At the same time, prices for cotton knit shirts and cotton trousers dropped by 45 percent and 28 percent respectively.

Textile leaders say China is able to undercut its competition on price because it uses a variety of unfair labor practices.

Importers and retailers say the American consumer will benefit as prices drop.

"Quotas basically imposed a hidden tax on the American consumer," said Erik Autor, vice president and international trade counsel for the National Retail Federation in Washington. "Consumers are no longer paying that tax."

China's surge in exports occurred in eight product groups that represent the major employment and production sectors of the U.S. yarn and fabric sectors. The categories include brassieres, dressing gowns and underwear.

Textile leaders have asked the government to take steps

to curb Chinese imports now that quotas have ended. They want the government to approve temporary quotas that would cap but not roll back imports.

Late last year, the industry submitted a variety of such petitions based on the threat that Chinese imports will damage the textile and apparel industry. A legal challenge by an importer and retailer group has stalled those requests.

But according to international trade rules, the federal government can act on its own to slow imports. Textile leaders say they have asked the government to do just that, but so far the government has not responded.

Textile leaders say that if they have to collect sufficient data to prove that Chinese imports have actually disrupted the U.S. market — a process that could take up to six months — the damage will already be done.

Temporary quotas, also known as safeguards, are based on the amount

of imports allowed into the country during the previous year. So a rush of imports now means that a new cap — or safeguard — will be just that much higher.

"Our government has to self-initiate the safeguard," said Jim Chesnutt, president and CEO of National Spinning Co., which has two plants in Glen Raven. "We can't wait. We just can't wait."

Contact Donald W. Patterson at 373-7027 or donpatterson@news-record.com

California State Senate

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SENATOR
LIZ FIGUEROA
CHAIR

May 28, 2004

Honorable Arnold Schwarzenegger
Governor, State of California
State Captiol, First Floor
Sacramento, CA 95814

Dear Governor Schwarzenegger:

We are writing to express our deep concern over the commitment you recently made to the Office of the United States Trade Representative (USTR), with no consultation with the state legislature, in which you volunteered California to be bound under the procurement chapters of the U.S. - Australia Free Trade Agreement. We also understand that in the coming weeks you will be making a decision on committing California to procurement chapters of additional trade agreements, including the Central American Free Trade Agreement (CAFTA), the Free Trade Area of the Americas (FTAA), and the South African Customs Union (SACU).

We are concerned that your consent to international procurement agreements could jeopardize important California procurement laws promoting economic development, environmental protection, and human rights. We consider the failure to consult with the legislature on this vital matter extremely problematic. We are particularly dismayed in light of correspondence dated March 10, 2004 in which Senator Figueroa requested a meeting to discuss this important issue prior to committing California to any upcoming procurement chapters of trade agreements. As you know, determining procurement policies is a responsibility of state legislatures and city councils. Therefore, the USTR's decision to request consent solely from state governors, without consulting state legislatures, undermines this authority.

California's procurement laws allow us to use our market power to reflect the values of our constituents and ensure that tax dollars are spent in a reasonable manner. For example, California uses procurement laws to strengthen our economy, reduce environmental damage, and promote fair labor standards. International trade agreements generally prohibit governments from basing purchasing decisions on the method of production, and only allow governments to set standards for the performance or quality of the purchased materials. Although recent agreements offer some exceptions to these principles, many of our priorities are not protected, including important existing and proposed California purchasing preferences, including but not limited to:

- California's laws prohibiting purchasing from companies that use sweatshop labor.

  Procurement chapters of trade agreements generally restrict states from using purchasing criteria beyond those standards "that are essential to ensure that the supplier has the legal, technical and financial abilities to fulfill the requirements and technical specifications of the

procurement." Therefore, "sweat-free" procurement rules that ban the purchase of goods from companies using sweatshop or child labor are forbidden, as is the exclusion of companies based on their international human rights and environmental records.

- California's recycled content procurement requirements for paper and other products, and California's standards for renewable energy purchasing.

  Procurement chapters of trade agreements generally require that "procuring entities not prepare, adopt or apply any technical specification describing a good or service with the purpose of the effect of creating unnecessary obstacles to trade... and that technical specifications are limited to performance requirements rather than design or descriptive characteristics." Therefore, California would be prohibited from making purchasing decisions based on how a good is made or how a service is provided. This would place laws requiring the state to purchase paper with recycled content and laws requiring partial energy procurement from renewable sources in violation of trade agreements.

- Preferences for California companies in contract bidding and potential legislation to address outsourcing of public sector jobs.

  Procurement chapters of trade agreements generally require "national treatment" for all goods and services that a government purchases. Therefore, laws giving preference to local firms or firms employing local workers, or laws prohibiting state tax dollars from being spent on companies that outsource work overseas would be in violation of trade rules. California's commitment to procurement chapters of trade agreements could place our established "Buy California" or "California Grown" policies in violation of trade agreements, as well as current outsourcing legislation.

We support trade and fully acknowledge the economic and social benefits trade brings to the economy of California. In addition, we feel equally strongly that California must act to ensure that our laws are protected. It is critical for California to maintain our ability to protect current procurement laws and enact future laws that reflect our values.

For these reasons, we request that you write to the Office of the U.S. Trade Representative and withdraw California from the list of states volunteering to be bound by the procurement rules in upcoming trade agreements. Furthermore, we ask for the opportunity to meet with you and discuss these important issues before you commit California to be bound by future procurement chapters of trade agreement.

Thank you for your consideration of these important concerns, and we look forward to working with you.

Sincerely,

Senator Liz Figueroa, Chair
Senate Select Committee on
International Trade Policy and State Legislation

Senator Sheila Kuehl, Vice-Chair
Senate Select Committee on
International Trade Policy and State Legislation

Senate President Pro Tem John Burton

Assembly Speaker Fabian Núñez

Assemblymember Jackie Goldberg

Assemblymember Patty Berg

Assemblymember Paul Koretz

Senator Debra Bowen

Assemblymember Loni Hancock

Assemblymember Carol Liu

Senator Gloria Romero

Senator Don Perata

Assemblymember Pat Wiggins

Assemblymember Leland Yee

Assemblymember Lloyd Levine

Assemblymember John Longville

Senator Gilbert Cedillo

Assemblymember Sally Lieber

Assemblymember Fran Pavley

Assemblymember Marco Firebaugh

Assemblymember Darrell Steinberg

State Laws Take Back Seat to Trade

Global pacts are foiling California's attempts to protect public health and the environment.

By Evelyn Iritani
Times Staff Writer

December 5, 2004

California Assemblyman Lloyd Levine thought he had found an eco-friendly way to help the state dispose of millions of scrap tires: use recycled U.S. tires in asphalt for road construction.

The Van Nuys Democrat hadn't counted on Canadian and Mexican rubber exporters crying foul. And though Gov. Arnold Schwarzenegger supported Levine's idea, he vetoed the assemblyman's bill in September, saying it would violate international trade pacts and invite retaliation against California goods.

Nobody in Sacramento was very happy with the outcome. "It's very disconcerting to think the federal government can make agreements that can compromise the state's ability to regulate for the health and welfare of its citizens," said Susan Durbin, a deputy attorney general for the state.

For state legislators, the veto highlighted the serious threat that international trade agreements pose to states' sovereignty. This is of particular concern in California, where state officials are caught between their economic dependence on trade and their concerns about the constraints on their ability to protect public health and the environment.

In the last year, the threat of conflicts with global trade pacts helped derail proposed state laws that would have beefed up screening for lead in imported candy from Mexico and created a tax on energy imports from Mexico to improve air quality at the border.

The problem arises because the U.S. is a member of the World Trade Organization and has signed such pacts as the North American Free Trade Agreement that prohibit discrimination against foreign firms or products.

A U.S. trade official in Washington, who spoke on the condition that his name not be used, said the Bush administration respected the rights of state and local officials to legislate as they saw fit. But he said trade-dependent states such as California had a lot to gain from agreements that force foreign governments to drop barriers to imports or open up their government contracts to U.S. firms.

"What we've done simply is to urge them to take into account the balance of interest as they make their individual decisions," the official said.

Under global pacts like the WTO, foreign entities can't force federal or state officials to change offending laws. But if the U.S. loses a trade case and doesn't revise the offending statute, it may face trade sanctions or large fines.

That tension has intensified as the U.S. government has expanded its trade liberalization efforts beyond lowering tariffs; Washington has moved into new areas, such as the regulation of services, investment rules and government procurement.

"California has a rich tradition in being creative in government," said Robert Stumberg, director of the H rrison Institute for Public Law at Georgetow University. "Those kinds of experiments tend to t off alarms in American trade policy."

Many sub-federal laws around the world violate global trade pacts. So far, however, foreign governments have shied away from filing costly challenges to U.S. state laws because doing so would invite retaliation and feed growing concerns that global trade agreements are weakening the power of federal or state officials.

"It seems to me the proponents of the WTO have been very cautious about picking their fights because they don't want to be seen as brazenly undermining democracy," said former state Sen. Tom Hayden, an outspoken critic of the threat posed by global trade pacts.

That could be changing. After the U.S. cracked down on Internet gambling, the Caribbean nation of Antigua and Barbuda saw its offshore gaming industry shrink by more than half. It filed a WTO complaint challenging the restrictions U.S. federal and state governments impose on Internet gambling.

Last month, the WTO announced that it had found those U.S. laws in violation of a global agreement regulating trade in services, including recreational services such as gambling. Under that pact, the U.S. had agreed not to discriminate against foreign providers or impose unnecessary restrictions on the number of service providers. Because the U.S. forbids Internet gambling within its borders, the only operators affected were foreign firms.

The Bush administration is appealing the WTO ruling, arguing that it didn't intend its commitment to the services agreement to include gambling. A U.S. trade official, speaking on background, said the ruling was "deeply flawed" and the U.S. government would "vigorously defend not only federal gambling laws but state gambling laws."

If the ruling is upheld, Stumberg said, it will open the door to foreign trading partners challenging federal or state regulation of other types of gambling, such as state-run lotteries or tribal monopolies. Here in California, voters recently voted down two initiatives that would have expanded casino-style gambling.

States such as Utah and Hawaii that ban gambling would be vulnerable, Stumberg said. Under WTO rules, a government can protect "public morals"
but must use the least trade-restrictive method. With gambling, Stumberg argued, it would be difficult to prove the need for a complete ban because other states allow gambling under controlled situations.

State Sen. Liz Figueroa (D-Fremont), chairwoman of the state Senate Select Committee on International Trade Policy and State Legislation, said these potential conflicts were cropping up with greater frequency and had a chilling effect on legislators. One reason is because opponents have become more aggressive in using international trade laws to fight measures that impose tougher safety or environmental standards.

That's what happened with Levine's bill, Figueroa said. The measure was prompted by the ballooning environmental problem posed by the more than

32 million scrap tires California generates a year, which pile up in landfills or illegal dumps and are hazardous to dispose of. By encouraging the recycling of those tires into crumb rubber used in asphalt, the state could recycle scrap tires and provide more eco-friendly road construction.

Canadian and Mexican producers have been big providers of crumb rubber to California, and "we just didn't want California to be a dumping ground for Canada and Mexico," said Stuart Waldman, Levine's chief of staff. "This wasn't protectionist."

Under NAFTA, the state's efforts to clean up its groundwater and mining waste are being challenged by foreigners.

The trade pact's so-called Chapter 11 provision allows foreign investors to sue a government for taking actions that impede trade and are "tantamount to expropriation."

In 1999, Vancouver, Canada-based Methanex Corp., one of the world's leading producers of methanol, sued the U.S. for $970 million in damage because of California's phaseout of methyl tertiary butyl ether (MTBE), a methanol-based gasoline additive. The state imposed the ban because of concerns that the additive was contaminating groundwater. That case is pending.

In a separate case, Glamis Gold Ltd. of Vancouver filed a multimillion-dollar claim alleging that state restrictions on open-pit mining have destroyed the value of a large gold mine in the California desert near sacred Indian sites. That case is also being adjudicated.

If the U.S. loses those Chapter 11 cases, the federal government will pay the penalties. But critics fear that California will be pressured to amend its laws to prevent future costly legal actions or will shy away from enacting future measures that could trigger foreign scrutiny.

States have become more aggressive in trying to head off conflicts, in part because of California's experience. Last year, the National Conference of State Legislatures and other state organizations helped persuade U.S. trade officials to remove a Chapter 11-style provision from the U.S.-Australia free trade agreement. The states argued that such a provision was unnecessary in a trade pact with a country that has a strong judicial system.

"We definitely don't want state authority or state sovereignty taken away in any shape or form," said Chris Whatley, director of international programs for the Council of State Governments.

Government procurement is another area in which states are wary of signing away their rights. When the U.S. negotiated recent trade agreements with Australia and Central America, state governments were asked to agree not to discriminate against foreign providers in their procurement of goods and services — which some states see as restricting their ability to use procurement to prevent the outsourcing of jobs or to promote socially conscious or environmentally friendly policies.

California hasn't yet committed to the procurement portion of the proposed Central American Free Trade Agreement, which is expected to face a tough battle in Congress because of concerns over labor and environmental standards. Twenty- three other states have signed up.

California State Senate

SENATE SELECT COMMITTEE ON INTERNATIONAL TRADE POLICY AND STATE LEGISLATION

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SENATOR
LIZ FIGUEROA
CHAIR

August 31, 2004

California Congressional Delegation
United States Congress
Washington D.C. 20515

We are writing to express our deep concerns with the Central American Free Trade Agreement (CAFTA) and to urge your no vote when this agreement comes before you in Congress. As members of the California State Legislature, we are concerned that, as currently written, this trade and investment agreement could have far reaching impacts on our law making authority. There is no question of our State's economic interest and long-standing commitment to international trade. However, as the reach of trade agreements expands beyond tariffs and quotas to the ways in which we regulate the environment, the quality of food and water, public health and labor protections, state actions have increasingly fallen within the scope of these new trade rules. This disrupts the traditional plenary power of the states in our federal system as the principle guardians of the health, safety and welfare of our citizens and undermines more than two centuries of American constitutional values.

Of specific concern to us in the CAFTA is the inclusion and expansion of the troubling NAFTA investor to state provisions. These provisions undermine state and local laws by providing private foreign investors extraordinary powers to challenge legitimate governmental regulations before international tribunals, bypassing domestic courts. This provision exists in the agreement in spite of the Trade Act of 2002, which directed trade negotiators to ensure that greater rights are not given to foreign investors than United States investors enjoy under the United States Constitution. The CAFTA investment provisions not only fall short of that standard, but in fact include language that would allow foreign investors to challenge government decisions on natural resource agreements, such as oil extraction and mining contracts with a government. Additionally, the definition of "investment" has been expanded to include intellectual property, an expansion that could threaten the ability of governments to secure affordable drugs for their citizens. With California laws, yet again, being challenged in a private NAFTA dispute panel, we have cause to be alarmed.

The most recent NAFTA case, filed by Glamis Gold Ltd., provides a stark illustration of the threats posed to the traditional regulatory power of state governments as a result of current models of trade and investment agreements. In December, Glamis Gold, a Canadian gold mining corporation, used the NAFTA Chapter 11 provisions to file a $50 million claim alleging that California's recently enacted reclamation requirements for open-pit mines located near Native American sacred sites violate the NAFTA investor protection provisions. After extensive debate, California found this reclamation law to be necessary to mitigate the devastating impacts

of hardrock mining, and took legitimate actions consistent with the authority granted to states. Domestic courts have repeatedly upheld the authority of states to regulate mining claims covered by the Mining Law of 1872, particularly in the context of environmental regulations. Accordingly, under domestic law, in a court the Glamis claim would fail. A victory in this case for Glamis Gold would represent a substantial expansion of foreign investor rights beyond the rights granted to domestic investors under domestic law.

In addition, the massive scope, broad definitions and lack of clarity to which the Services Chapter of the CAFTA will apply to state and local law is troubling to us. The services language suggests that a wide range of public protections could be considered barriers to trade, including any law, regulation, rule, procedure or decree that has an effect on trade in services. This would include laws regulating a multitude of publicly provided services such as health care, the delivery of water, postal services, garbage delivery, education and many other services commonly provided in the public interest. The text exempts services "supplied in the exercise of governmental authority," but this is defined as a service "supplied neither on a commercial basis, nor in competition with one or more service suppliers." Currently, many public services are provided in that manner. For example, some government services include fees, such as water and electricity rates, national park fees or postal fees, and few government services, such as transportation and water delivery, are provided as an exclusive monopoly.

Finally, we remain concerned over the process being used by the U.S. Trade Representative (USTR) to bind states to procurement chapters of international trade agreements. In spite of repeated attempts by state and local legislators to be consulted on trade related matters, last fall the USTR sought approval only from state governors when committing states to the procurement chapters of upcoming trade agreements, including the CAFTA. As you are aware, determining procurement policies is a responsibility of state legislatures and city councils, the USTR's efforts undermine this authority. Any state consent to procurement agreements without consulting the Legislature could jeopardize important California procurement laws promoting economic development, environmental protection and human rights.

For these reasons, we urge you to vote no on the Central American Free Trade Agreement (CAFTA), and send a signal to the Administration that future trade agreements based on this model are unacceptable.

Thank you for your attention to our concerns. We look forward to continuing to work with you towards the creation of trade and investment agreements that preserve the efficacy and integrity of our long standing democratic institutions.

Sincerely,

Senator Liz Figueroa, Chair
Senate Select Committee on
International Trade Policy and State Legislation

Senator Sheila Kuehl, Vice Chair
Senate Select Committee on
International Trade Policy and State Legislation

California State Senate

SENATE SELECT COMMITTEE ON INTERNATIONAL TRADE POLICY AND STATE LEGISLATION

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SENATOR
LIZ FIGUEROA
CHAIR

February 16, 2005

Ambassador Zoellick
United States Trade Representative
1724 F Street NW
Washington, DC 20006

Dear Ambassador Zoellick,

We the undersigned members of the California State Legislature are writing to express our concerns with readily identifiable ambiguities found in current and pending international trade agreement language. We believe that the vague nature of such language will infringe upon California's authority to provide quality and affordable health care services to our citizens.

Several components of U.S. obligations in the Australia-U.S. Free Trade Agreement (AUSFTA) and draft Free Trade Agreements (FTAs) conflict with California health policy. Legislation in California and in the Congress attempts to limit patent abuses, increase access to affordable drugs, and implement cost containment strategies. Trade negotiations, however, continue to promote the contrary by strengthening the resolve of patent holders and restraining the free market. We support government actions that encourage competition and achieve significant cost savings which include:

> Imports and internet access to approved Canadian outlets that sell FDA-approved medicines.
> Access to generics consistent with the options that the Food and Drug Administration and members of Congress have already proposed.
> Preferred drug lists that favor cost-saving generics.

Importing Drugs: Since Canada and Europe have succeeded in keeping prices reasonable at a time when prescription drug prices have increased significantly in the U.S., the California legislature approved legislation to create a website for consumers to compare the prices of Canadian and U.S. pharmacies. Congress is also considering changes to current U.S. patent law, which allows patent holders to control the resale or importation of its product specifically to avoid U.S. consumer access to lower prices. Meanwhile, provisions of the AUSFTA and draft FTAs supersede congressional revision of those patent laws, creating international trade obligations where prior patent law language has been included in the agreements. California's interests, as well as those of the other states, have been best served when expanding competition through trade, not suppressing it. We urge you to exclude private import controls, which sustain the monopoly of highly priced prescription drug costs, from the language of future trade agreements.

Access to generics: The Medicare Modernization Act of 2003 regulates the legal retort of patent holders while encouraging generic manufacturers to file patent challenge applications. The McCain-Schumer Bill (S.812) further ensures that patent challenges do not promote anti-competitive business practices. These policies are consistent with Australia's new requirement that all patent extensions be in good faith. Separate and divergent from such regulatory efforts, are trade provisions in the U.S.-Australia, Central American, U.S.-Singapore, and U.S.-Morocco FTAs that all contain stanch limitations on government authority to allow the makers of generic drugs to challenge invalid patents and utilize data from prior clinical trials. California is a leader in biotechnology and surely recognizes the importance of patent-rights. However, our State cannot be a part to current trade rules that delay the production of generic drugs beyond a patent's reasonable, allotted expiration. These trade rules, shortsightedly negotiated by the U.S.T.R., impede access to affordable drugs for elderly, poor, and terminally ill patients, and further serve to undermine the work of state legislatures and the U.S. Congress in providing those most in need with state and federal relief.

Preferred drug lists: The AUSFTA undercuts the ability of states to consider cost effectiveness as a factor when deciding to grant preferred status to a drug. California's preferred drug list (PDL) promotes the most cost-effective and therapeutically advantageous products, while discouraging more expensive alternatives that are found to have no real benefit in regard to patient care. Any loss in bargaining power on behalf of the State will increase costs, thus limiting the overall effectiveness of California programs.

> *Coverage* – The AUSFTA's Pharmaceutical Annex 2C covering "federal health care programs" defines such programs as those "in which the Party's federal health authorities made the decisions to which the annex applies." Given that California's Medi-Cal program operates under federal guidelines and that California must submit a State plan for federal approval in order to change or expand that program, it is certainly with the scope of reason to conclude that a closed-door, FTA dispute panel could potentially interpret the federal guidelines and approval process as a "decision," thereby making state programs "federal" and covered by the provisions of the trade agreement.

We implore the USTR to make a precise, internationally-accepted interpretation of Annex 2C known to the states and to develop language in concurrence with Australia that explicitly excludes state and local government programs. We believe that actions taken by the USTR in this regard will aid in the avoidance of future conflicts due to any misconstrued language under the current provisions.

2) *Principles* – Under the AUSFTA, "the need to promote timely and affordable access to innovative pharmaceuticals" is an apparent core-principle. However, for the State, while the term "affordable access" could apply to ensuring that California's program is affordable, the language also implies an assurance that individual consumers have access to each drug on the market, which is more affordable when every drug is listed. A dispute panel could interpret this imprecise definition to promote an overtly liberalized market; one that maximizes innovation in place of state interests to promote cost containment. Is the office of the USTR willing to clarify its interpretation of "affordable access" in this context?

3) *Independent review* – The AUSFTA requir s the United States to provide an independent review panel for drug manufacturers whose pplications to list a drug have been rejected. However, the AUSFTA fails to state wheth r this would be a case-by-case, federal review of state decisions regarding drug lis.ngs, what the panel's authority or responsibilities would include, and whether the panel would have enforcement powers to reject or change decisions made by the states. Further questions as to how states would gain representation at review panel proceedings and whether review panel findings will influence federal approval of state programs remain to be answered.

We thank you in advance for your prompt response to our questions and concerns. We would appreciate a written reply, along with copies of relevant documents that outline how you either have addressed or plan to address these concerns.

Sincerely,

Senator Liz Figueroa
Chair, Senate Select Committee on
International Trade Policy and State Legislation

California State Senate

SENATE SELECT COMMITTEE
ON
INTERNATIONAL TRADE POLICY AND STATE LEGISLATION

SENATOR
LIZ FIGUEROA
CHAIR

CALIFORNIA: OUR LAWS AT RISK

California is a global leader on issues of economic development, labor standards, human rights, consumer protection and environmental sustainability. Yet under multilateral trade agreements such as the WTO and NAFTA, enforcement of California's laws could be at risk.

As the reach of trade rules and the sanctions they evoke increases, there is a growing imbalance between federal primacy in establishing and implementing trade policy and the obligations now being thrust upon states. As presently administered, NAFTA and the WTO diminish the sovereignty of states such as California and, in doing so, shift decision making power from publicly elected officials to non-elected international trade officials, and can detrimentally diminish the role of public input.

Chaired by Senator Liz Figueroa, the Senate Select Committee on International Trade Policy and State Legislation was established by the California Legislature in 2000. The committee works to assess the impact of trade agreements on California laws and regulations and developing an oversight and advice role for the state legislature. We hope to bring more accountability, balance and participation to the current state-federal relationship in the making of international trade policy and its implementation. As states become increasingly obligated under trade rules and policy, our involvement in these processes must increase.

As the first state in the nation to create an institutional committee that addresses these issues, we have a responsibility not only to our citizens, but to other states to pave the way for this growing movement toward protecting state and local authority within a newly global economy. We hope to apply California's boundless potential in contributing to the global economy, while preserving our historic preference for California-based businesses, responsible labor and human rights standards and strong environmental and public health standards.

STATE SOVEREIGNTY

WHO DECIDES WHAT IS IN THE BEST INTERESTS OF THE STATE?

. . . Ultimately the federal government, through its Constitutional authority and the [NAFTA] implementing bill, retains the authority to overrule inconsistent state law through legislation or civil suit . . .

The North American Free Trade Agreement Implementation Act, Statement of Administrative Action, Section A(2)(e).

Trade and investment agreements limit the sovereignty of American states. The debate over trade issues has thus far been cast largely in false terms. Rather than a conflict between "free trade" and "protectionism," the real battle is over the legitimacy of, and need for, regulatory balance, including regulation to protect ecosystems, human health, product safety and traditional objectives of democratic governance. The trade law system that has thus far been constructed is explicitly designed to place enforceable restrictions on the capacity of local, state and national governments to obtain and retain laws to advance goals important to their constituencies.

Trade rules of NAFTA or the WTO do not regulate trade; they regulate the power of governments to regulate or influence trade. The challenge for state and local legislatures will be to develop legislative capacity to respond to the threats and opportunities that come from layering global rules that regulate government on top of a federal system that has traditionally respected cities and states as "laboratories for democracy."

In the United States, the sovereignty debate focuses on the shifting balance of political power – a shift away from state legislatures, away from national courts, and away from public proceedings by which voters could hold elected officials accountable. The resulting trade policy is less accessible and accountable to the people of each nation and more accessible and responsive to multinational corporations that do not see themselves as citizens of any particular country. The work of this committee is not an argument against trade; it is an argument in favor of assuring that the process of negotiating trade agreements does not undermine the traditional checks and balances of the U.S. Constitution.

California has an important role to play in the export of technology and products; we also have an equally important role to play in setting environmental standards, ending abusive working conditions which dehumanize employees abroad and undercut California wages, preventing our tax dollars from subsidizing regimes that employ slave or prison labor here and abroad and ensuring the best opportunities for our local businesses. It is time to integrate global trade policies with California's agenda for promoting local economic development, decent wages and working conditions, civil rights, clean air, environmental protection and restoration and democratic processes.

For more information about this growing alliance of concerned citizens, local and state legislators and non-governmental organizations, please contact the California State Senate Committee on International Trade Policy and State Legislation at (916) 322-8616.

SB 348 - Accountability in International Trade Policy

The Problem

California is a global leader on issues of economic development, labor standards, human rights, consumer protection and environmental sustainability. Yet under international trade agreements, many existing California laws are at risk of international challenge. International trade agreements being negotiated today, modeled on the North American Free Trade Agreement (NAFTA) and the World Trade Organization (WTO), extend far beyond traditional trade matters such as tariffs and quotas and include constraints on domestic policy and policymaking in areas as diverse as zoning and land use, health care, education, procurement, environmental policy, and access to affordable medicines.

The enforcement mechanisms of NAFTA and the WTO and those proposed for future pacts, enforce limits on state legislative authority by subjecting state laws to challenge as illegal barriers to trade and by placing limits on future policy options. If a domestic law is found to violate trade rules, the federal government is obligated to take all constitutionally available steps to force state compliance, such as enacting preemptive legislation, suing state or local governments, or withholding federal funding until the state changes or eliminates nonconforming laws. Under NAFTA, the U.S. – Singapore and U.S. – Chile Free Trade Agreements, the proposed Central American Free Trade Agreement (CAFTA) and other bilateral agreements, corporations themselves can use closed trade tribunals to sue governments for cash compensation for federal, state or local regulatory measures that negatively impact their profits, leaving U.S. taxpayers to foot the bill.

While states find themselves bound to many aspects of these trade agreements, currently there is no mechanism in state or federal law to systematically notify state legislators when agreements containing terms affecting state authority are under negotiation, much less to obtain the consent of state legislators before federal negotiators offer to permanently bind state laws.

On January 19th, 2005, the National Conference of State Legislatures appealed to the United States Trade Representative (USTR) to send carbon copies of the letters of consent that are sent to state governors. Since then, the USTR has made clear that they will continue to ignore the state legislatures and their concerns.

Absent a mechanism that requires informed consent from states prior to being committed to trade agreement provisions that undermine existing state laws and future state policy making authority, California's ability to protect the public interest will increasingly be put at risk. As state legislatures become increasingly obligated under trade rules and policy, our involvement in these processes must increase.

The Solution

SB 348 will require the Governor to inform the State Legislature of any requests from the USTR and require the Governor and the State Legislature to jointly agree through legislation on the degree of consent to any provisions of international trade agreements. SB 348 restores democratic control over these important issues by assuring that the merits and demerits of consenting to these trade agreements are fully debated in the public forum.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Chapter 6 (commencing with Section 10700) is added to Part 2 of Division 2 of Title 2 of the Government Code to read:

CHAPTER 6. CONSENT TO BIND CALIFORNIA TO INTERNATIONAL TRADE AGREEMENTS

10700. The Legislature finds and declares all of the following:

(a) The United States participates in international trade bodies, including the World Trade Organization (WTO), and international trade agreements such as the North American Free Trade Agreement (NAFTA).

(b) The consultation between the federal and state governments required by both the WTO and NAFTA protocols has not included formal or organized consultation with the California State Legislature.

(c) California's role as a global leader on issues of economic development, labor standards, human rights, consumer protection, and environmental sustainability, and the Legislature's role in enacting those standards, is subject to challenge by international trade agreements.

(d) California laws are already being challenged under existing international trade rules. NAFTA, which grants foreign firms new rights and privileges for operating within a state that exceed those granted to U.S. businesses under state and federal law, has already generated two regulatory takings cases against California laws protecting public health and governing land use.

(e) Government procurement provisions contained in international trade agreements affect the ability of states to enact common economic development and environmental policies, such as "buy local" laws, recycled content laws, and renewable energy purchasing requirements. Government procurement provisions subject such laws to challenge as barriers to trade as they contradict the obligations in the international trade agreement.

(f) International trade agreements curtail State regulatory authority by placing constraints on future policy options. The WTO services agreement could undermine California's efforts to expand health care coverage and rein in health care costs, and places constraints on land use planning. New negotiations in the services area will have additional implications for California's regulation of water, energy, higher education, professional licensing, and more.

(g) Existing international trade agreements have been implemented and pending trade agreements are being negotiated by federal government trade officials without providing for review by California public officials concerned with state laws and state lawmaking authority. Furthermore, federal government trade negotiators have failed to consult with state legislators when seeking the consent of states to comply with international trade agreement provisions.

(h) Consequently, a mechanism for federal government international trade negotiators to consult with the California Legislature prior to binding California to conform its existing laws to the terms of international trade agreements is necessary to ensure democratic accountability in international trade agreements.

SECTION 2. (a) Whenever the President of the United States, or the appointed trade representative of the President, the United States Trade Representative (USTR), submits a letter to the Governor of the State of California requesting the State's consent to be bound to any provisions of international trade agreements, including Free Trade Agreements (FTAs) such as, but not limited to, the Central America Free Trade Agreement (CAFTA), and the South African Customs Union (SACU), the degree of consent shall be determined solely by statute.

(b) Upon receipt of said letter, the Governor shall notify the State Legislature within seven (7) days of receiving the letter by submitting the letter, or copies of the letter, to the Senate Rules Committee and the Office of the Speaker of the Assembly. The Senate Rules Committee and the Speaker of the Assembly shall then distribute the letter (or copies) to the appropriate committees for review.

(c) The State Legislature shall take legislative action to define the degree of consent to provisions of international trade agreements, including, but not limited to, identifying which branches, departments, and agencies shall be bound to such provisions.

(d) If the State Legislature takes no legislative action that shall mean that the State shall not be bound to any provision of the international trade agreement.

SECTION 3. (a) Consent for the State of California to sign on to any provision of a international trade agreement shall only occur through a joint affirmative action of the State Legislature and the Governor.

(b) The Governor, or his designated trade representative, shall inform the USTR of the State's decision regarding the degree of consent to any provisions of any international trade agreements.

Background Information

TRADE AND CALIFORNIA: California is the 6th largest economy in the world. The 90's brought unprecedented economic growth to California, in large part due to our success as an export economy. The state's foreign exports grew almost forty percent during the 1990's to nearly $130 billion annually. An estimated 1 in 7 of the state's jobs are directly or indirectly supported by foreign trade, an increase from 1 in 12 a decade ago.

- California has become a world leader in high -value-added industries ranging from electronics to computing, entertainment and environmental and health care technologies. Almost all would agree that state government should actively promote international commerce and investment.

INTERNATIONAL TRADE AGREEMENTS AND THE STATE - U.S. trade policy is increasingly encroaching on state responsibilities that previously were unaffected by international trade obligations. As economic global integration increases, trade rules and institutions are expanding their reach, thereby subjecting state measures and practices to scrutiny as well as to economic sanctions.

- **The World Trade Organization (WTO) and the North American Free Trade Agreement (NAFTA) agreements,** as will the pending Central American Free Trade Agreement (CAFTA and Free Trade Area of the Americas (FTAA), bind the states, just as they bind the federal government, subjecting state laws and regulations to the basic trade principles of national treatment and non-discrimination. State measures are thus subject to international trade challenges by any trading partner (including private investors) that believes a state measure violates either of these principles, as well as numerous other trade rules. The implementing language of both the WTO and NAFTA require that there be a state consultative process by requiring that the USTR maintain a state point of contact (SPOC) in each state. With the recent elimination of the Technology, Trade and Commerce Agency, the Governor's office has been acting as the informal state point of contact.

- **The World Trade Organization (WTO)** was created as part of the Uruguay Round agreements of the General Agreement on Tariffs and Trade (GATT), a multination effort to remove barriers to trade. The contents of this round was approved by Congress in 1994 and went into effect on January 1, 1995 and effected a major shift in the relationship of

international law to national and sub-national law. While GATT was voluntary, the WTO agreements contain measures which render them binding and enforceable. If a violation of WTO rules by one member country is suspected, another member country may bring a challenge against it. In practice, member countries often bring challenges at the urging of corporations that operate within their borders; for example, the United States has brought challenges on behalf of the beef industry and Chiquita banana. Challenges will be heard by a three-member trade dispute panel. A law found in violation of the WTO rules must be changed, or the country retaining the law will face heavy tariffs. The WTO presently has 147 member countries.

- **NAFTA** is a trade agreement negotiated between Mexico, the United States and Canada. It was approved by Congress in 1993 and went into effect on January 1, 1994. NAFTA is based on a model and philosophy very similar to that underlying the WTO and has a similar dispute resolution system. NAFTA goes a step farther than the WTO in that it empowers corporations to sue governments directly and authorizes corporations to seek monetary damages for loss to their property or profits caused by governmental actions. This is known as Chapter 11. (see below)

- **The Central American Free Trade Agreement (CAFTA)** was recently negotiated and currently awaits congressional approval. The agreement would extend the NAFTA model to five Central American nations: Guatemala, El Salvador, Honduras, Costa Rica and Nicaragua.

- **Free Trade Area of the Americas (FTAA)** is presently being negotiated. The FTAA would extend the NAFTA model to all 34 countries in the Western Hemisphere, with the exception of Cuba.

THE DISPUTE RESOLUTION PROCESS - Should a state's measure be faced with an international trade challenge, it is heard by a dispute resolution panel. The design and operation of the WTO's dispute resolution system is established in the Uruguay Round Dispute Resolution Understanding (DSU). The DSU provides only one specific operating rule – that all panel activities and documents are confidential. In comparison, the dispute resolution panel developed under NAFTA allows the complaining party to determine the level of confidentiality. WTO disputes are heard by tribunals composed of three panelists. According to the Western Governors Association, "the consistency of state laws or practices with the governing trade rule would be determined by a panel of international trade experts likely to have little knowledge of the United States' federal system of government and likely to be biased toward the removal of trade barriers." States would not be allowed to represent themselves, but instead would be represented by the USTR. If a state law is found to be inconsistent with U.S. trade obligations, it would not be automatically preempted by the international ruling. Rather, a state would be urged in consultations with the federal government to voluntarily change its law or enforcement practices to comply with the ruling, or face trade sanctions or a lawsuit by the federal government.

NAFTA CHAPTER 11 - NAFTA Chapter 11 provides private parties a right to submit claims for arbitration when they believe a governmental action will result in a future loss of profits, or expropriation. Private companies now have standing to bring claims for economic loss due to a state's implementing its own domestic law. This policy provides corporations unprecedented powers to challenge the authority of sovereign, signatory states. In the past, when private parties doing business with or in foreign states, there were practical and legal limitations on their ability to seek redress. If it was a contract dispute, an investor could pursue judicial or administrative remedies in the courts of the foreign state, or in its own home state. An aggrieved investor could also petition its home government to take up the claim as a state to state dispute before the International Court of Justice (ICJ).

NAFTA's Chapter 11 has essentially created an "open class" of legal equals. Investors can now bring claims against the United States, Canada and Mexico "at will" without first consulting their own governments, and can exert unprecedented control over the adjudication process. Unlike litigants in a judicial system of courts, public documents and governing law, aggrieved investors can now select the arbitrators, the substantive law and the procedural laws governing the arbitration of their dispute, including whether or not they want the proceedings to be confidential. If the ruling finds in favor of the aggrieved party, pressure can be applied to states and localities to change the law, or they could face trade or economic sanctions. Some cases filed under Chapter 11 include:

- **MTBE/Methanex** - In 1999 Governor Gray Davis issued an executive order banning the use of MTBE, a gasoline additive that was found to be a carcinogen and was contaminating the California water supply. Methanex Corporation, the Canadian makers of the M (methanol) of MTBE, filed a notice of intent to arbitrate shortly after the executive order was signed and is claiming $970 million in damages, which they describe as "expropriation" of their expected business profits. The case is currently being arbitrated.

- **Glamis Gold Ltd.** - In 2003 Governor Davis signed legislation requiring that new open pit mines located in protected areas of the California desert be backfilled and re-contoured. The Canada-based gold mining company Glamis Gold filed a notice of intent to arbitrate just months after the law was passed claiming the state's laws violate NAFTA investment rules by expropriating their investment. Glamis is seeking a sum no less than $50 million for damages.

- **Metalclad** - A tribunal under NAFTA ruled that Mexico must pay California-based Metalclad Corporation a total of $16.7 million as compensation for the refusal by a Mexican municipality to allow the company to run a hazardous waste dump. This case may have ominous implications for localities seeking to fend off environmentally damaging or discriminatory siting of waste dumps. It is also the first award of "takings"-like damages to a corporation under NAFTA's Chapter 11 provision. Legal scholars predict that this provision may over time result in major takings damages awards, long declined by our domestic legal system.

SUBSIDIES - California spends $7.6 billion annually on economic development and job growth programs. We do this through the use of subsidies, tax incentives, grants of goods and services and other economic development programs. Many of these programs are intended to increase the economic competitiveness of California industries in the trade arena. Tax credits and exemptions accounted for more that $4.1 billion of these 1997 state subsidies.

For example,

- The California Agricultural Export Program (CAEP) provides trade development activities to promote the growth of California's exports of food and agricultural products by creating and expanding global market opportunities.

- The California Wine Commission, Market Development and Research program is intended to increase the sale of California Wine by expanding domestic markets and creating new and larger foreign markets.

- The California Export Finance Office arranges private financing via loan guarantees for California exporters to enhance their export performance of California business.

Under the Subsidies and Countervailing Measures Agreement (SCM) of the WTO, these programs could be considered illegal. The purpose of the SCM is to reduce international barriers to trade in order to provide multinational corporations with improved access to foreign markets. Other countries could challenge California's subsidy laws under the SCM because it obligates the United States to eliminate economic development programs that adversely affect international trade. This runs against the grain of the entire range of economic development, which is to identify, nurture and sustain competitive advantage for one's own country, municipality or state.

The Council for Urban Economic Development, representing national and regional economic development organizations, stated in their policy recommendations to President George Bush regarding subsidies, "Given the substantial impact that trade agreements have on the fortune of communities, state and local governments should have someone to represent their interests on the WTO. Some of the more recent international trade treaties and agreements may conflict with state and local economic development efforts. Many of the newer treaties looking to lower regulatory barriers to free trade are targeting restrictions on foreign investor rights, subsidies, business regulations, permit and licensing practices, and procurement practices as being anti-competitive to global trade. Common tools economic developers use regularly such as export promotion assistance, living wage requirements and support for women and minority owned businesses could be banned by trade agreements that bar signatory countries from playing favorites."

CALIFORNIA LAWS AT RISK - Working in collaboration with the Senate Select Committee on International Trade Policy and State Legislation, the Harrison Institute of Public Policy has identified over 100 California laws that may be at risk of WTO or NAFTA challenge.

These include:

- food labeling laws including Proposition 65
- laws governing food safety inspection
- laws governing pesticide residue levels
- laws covering air pollution abatement
- laws governing acceptable levels of lead in products
- laws requiring that workers be informed when they are being exposed to toxic materials in the workplace
- laws creating preferences for small and minority owned businesses
- laws creating incentive grants to promote the development of alternative fuel markets
- laws setting limits on the maximum allowable levels of toxins in packaging
- laws setting recycled content requirements
- laws on trade in endangered species
- laws governing waste treatment
- community right to know disclosure laws
- laws governing hazardous materials, emergency planning and insurance requirements
- laws governing medical waste handling, laws governing migratory bird protection

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NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on Federal Relations and Trade Issues will meet as follows:

DAY & DATE: **Tuesday, March 1, 2005**

TIME: **1 pm**

LOCATION: **415**

The following bills will be considered (Bill # & Short Title & Bill Sponsor):

Respectfully,
Representatives Phillip Frye and Mark Hilton
Co-Chairs

I hereby certify this notice was filed by the committee assistant at the following offices at **9:30 am** on **April 26, 2005.**

__x_Principal Clerk
__x_Reading Clerk - House Chamber

Mary Hayes (Committee Assistant)

Minutes
House Committee on
Federal Relations and Trade Issues
Tuesday, March 1, 2005

The House Committee on Federal Relations and Trade Issues met on Tuesday, March 1, 2005, in Room 415 of the Legislative Office Building at 1 PM. Representative Mark Hilton and Representative Phillip Frye, Co-Chairs, held an informal organizational meeting for the Federal Relations and Trade Issues Committee. Representatives Current, Farmer-Butterfield, and Glazier, Vice Chairs, were present. Ms. Barbara Riley and Ms. Karen Cochrane-Brown, Staff Counsel were in attendance.

Representative Hilton called the meeting to order and suggested that the committee contact the eleven other States that have a similar committee and see what they do about State procurement.

Representative Glazier mentioned NCSL dealing with CAFTA trade agreements. N&O had three articles about free trade; two favoring CAFTA and one against. Peter Cunningham, with the Department of Commerce, could help with US Trade issues.

Representative Hilton brought up the Clean Smoke Stack Bill that was just passed. TBA doesn't want to comply with what we've done. It might be good to get the message out.

Representative. Frye mentioned a Press Conference where clean air proponents requested our NC Congressmen not to vote for the Clear Skies Act. All Federal issues will be referred to this committee. Incentives and tax breaks need to be studied. Barbara Riley said out sourcing would be an issue. If we join CAFTA we would not be able to legislate bills.

Karen Cochrane-Brown mentioned Club Acquisitions and calls back that left Allegany County holding the bag.

Representatives Glazier and Farmer-Butterfield commented that Regional, Advantage West, and Economic developers will tell us what needs to change.

Barbara Riley recommended that the committee look at what other states are doing as far as CAFTA, NCSL and FR & TI committees are concerned; how effective they are and what they are addressing. She questioned the State's regulation involved with the clean smoke stacks bill, clean skies act outsourcing and what affect it has had on the state and how to deal with people who renege on contracts.

Representative Glazier asked what other Trade Issues are in the works?

Representative Hilton wanted to know if there was a time line and where they are incrementally done? It's a work in progress and it has negative impact on our area. What can we do to help our businesses with economic development and commerce?

Representative Farmer-Butterfield wanted to look at the state first.

Representative Frye suggested that the committee meet with the eleven other states that have FR and TI committees and find out how they function; what are the successes and failures.

Barbara Riley suggested that Inter-Governmental Advisory Council is a good group to hear from early on.

Representatives Gibson and Current sponsored a resolution to encourage world trade organizations and make sure they are enforced.

Representative Current mentioned going on line to check our American Manufacture Trade Act Coalition (AMTAC), and that Mike Hubbard should be asked to appear before the committee for input.

Representative Hilton reminded everyone that there are two sides to this issue and we need to know both.

Representative Frye said this committee should share information with other states. Representative Current was asked to pursue what Mike Hubbard can offer this committee.

Representative. Hilton thinks that bills need to be an ongoing with Commerce and China. China will be a main issue concerning trade issues. We need two presentations about 15 minutes each. One needs to be a thorough overview with 2 or 3 people.

Karen Cochrane-Brown said that US Trade benefits NCSL Washington and they should share ideas of eleven other states to have written and accurate information to distribute that represents both sides.

Representative Glazier asked what do NC trade offices have to do with commerce?
Representative Hilton asked is there anybody from the coast here? We need to improve our port situation also.

Representative Current said train hub and trucking to SC exports are greater than our imports.

Representative Hilton commented on the need to look at our Airline situation.

Barbara Riley said this committee was more of a study committee and could choose the issues to study.

Karen Cochrane-Brown said we need long-term strategy.

Rep. Rick Glazier agreed to look at what other states are doing with CAFTA.

There being no further business, the Chair adjourned the meeting at 1:45 PM.

Respectfully submitted,

Representative Mark Hilton
Residing Chair

Carol Wilson
Committee Assistant

Citizen Trade Policy Commission

Thursday, December 16, 2004 @ 9:00 a.m.
Business, Research & Economic Development Committee
Cross State Office Building Room #208

AGENDA

1. **Call to Order. (9:00 a.m.)**
   Commission Chairs, Commission Members, Staff

   - Welcome and introductions
   - Preview of meeting agenda and expectations

2. **Commission Work Session. (9:15 a.m.)**
   Commission Chairs, Commission Members, Staff

   A. Review draft introductory letters

   B. Discuss first public hearing in Bangor

   - Finalize date, time and location
   - Discuss how to conduct & structure public hearing

   C. CAFTA

   - Discuss proposal to generate list of commission's questions about CAFTA to send as letter to USTR, Maine's Congressional delegation, etc.

   D. Discuss draft legislation

   E. Review Commission workplan & suggested framework for subcommittees

   F. Schedule future meetings

   Break 11: 00 a.m.

3. **Subcommittee Work Session. (11:15 a.m.)**

   Healthcare Subcommittee (Utilities Committee Room - # 209)
   Labor/Economic Development Subcommittee (BRED Committee Room - #208)
   Natural Resources/Environment Subcommittee (Criminal Justice Committee - Room #211)

   - Develop workplans
   - Plan future meetings
   - Generate CAFTA questions for CTPC letter

4. **Reconvene full committee for subcommittee workplan report backs (15 minutes)**

5. **Adjournment. (1:00 p.m.)**

* *All times tenative*

Citizen Trade Policy Commission
November 9, 2004
AGENDA

9:00 – 9:15 **Introductions**

9:15 – 12:00 **Presentation:** Forum on Democracy & Trade, Director Peter Riggs and Jennifer Gerbasi will discuss how U.S. trade commitments impact States' regulatory powers. During this presentation, the following areas will be covered:

- A brief over-view of U.S. trade policy and the World Trade Organization;
- New developments in trade agreements and in upcoming negotiations;
- Key rules;
- Sectors of interest to Maine – Agriculture, prescription drugs;
- Who makes decisions regarding U.S. trade commitments
- What can Maine do;
- What are other States doing;
- Where Can States Go for Assistance; and
- Discussion

The Forum on Democracy & Trade is a nonprofit organization that provides legal and technical assistance, and networking support, to State legislators and other public officials working on trade issues in their jurisdictions. The Forum is pro-trade and pro-democracy, dedicated to ensuring that States can use trade to advance economic development while safeguarding local authority.

12:00 – 1:00 **Lunch break** (Cross Office Building cafeteria will be open)

1:00 **Commission Work Session**

- The Commission should develop a short and long term work plan and, if needed, establish sub-committees to cover specific areas of interest. Both Peter Riggs and Jennifer Gerbasi will be available to provide assistance to the Commission as needed.
- Schedule public hearings

Citizen Trade Policy Commission

Friday, February 25, 2005 @ 9:00 a.m.
Transportation Committee Room
State House Room #126

AGENDA

1. Call to Order. (9:00 a.m.)
Commission Chairs, Commission Members

- Welcome and introductions
- Preview of meeting agenda and expectations

2. Briefing and Discussion with Representatives from Maine's Congressional Delegation (9:15 a.m.)

- Senator Snowe – Erik Heilman
- Senator Collins – Jane Alonso
- Representative Allen – Mark Ouellette or Todd Stein
- Representative Michaud – Kim Thompson and Rosemary Winslow

3. Discussion of Panamanian and Andean Trade Agreements (11:15 a.m.)
Alan Stearns, Senior Policy Advisor to Governor Baldacci

- USTR request for gubernatorial action on state government procurement components of trade agreements being negotiated with Panama and Andean countries
- How the Commission can provide input to the Governor
- Timeline for Governor's response to USTR

(Lunch Break. 12:30 p.m.)

4. Discussion of Public Hearing in Bangor (1:30 p.m.)
Commission Chairs, Commission Members

- Review Summary of Testimony
- Follow up/Next Steps
- Schedule Next Public Hearing

5. Subcommittee Work Session.

Healthcare Subcommittee (Health and Human Services Committee Room – Cross Office # 209)
Labor/Economic Development Subcommittee (IFW/ACF Committee Room – Cross Office #206)
Natural Resources/Environment Subcommittee (Transportation Committee Room –Statehouse #126)

- Continue to develop/implement workplans
- Plan future meetings
- Generate CAFTA questions for CTPC letter

6. Reconvene full committee for subcommittee report backs (3:30 p.m.)

7. Adjournment. (4:00 p.m.)

Prepared by the Office of Policy and Legal Analysis, NAD

Citizen Trade Policy Commission

Friday, January 21, 2005 @ 9:00 a.m.
Taxation Committee Room
State House Room #127

AGENDA

1. Call to Order. (9:00 a.m.)
Commission Chairs, Commission Members

- Welcome and introductions
- Preview of meeting agenda and expectations

2. CAFTA Briefing (9:15 a.m.)
Bill Waren and Sylvia Tonova, Forum on Democracy and Trade

3. Commission Work Session. (11:15 a.m.)
Commission Chairs, Commission Members, Staff

A. Discuss structure of the February 3rd public hearing in Bangor

B. Report Back from the Legislation Working Group

C. Schedule future meetings

(Lunch Break. 12:15 p.m.)

4. Subcommittee Work Session. (12:45 p.m.)

Healthcare Subcommittee (Health and Human Services Committee Room - # 209)
Labor/Economic Development Subcommittee (IFW/ACF Committee Room - #206)
Natural Resources/Environment Subcommittee (Utilities Committee - Room #211)

- Continue to develop/implement workplans
- Plan future meetings
- Generate CAFTA questions for CTPC letter

(Forum on Democracy and Trade Staff will be available to consult with subcommittees)

5. Reconvene full committee for subcommittee report backs (3:30 p.m.)

6. Adjournment. (4:00 p.m.)

Prepared by the Office of Policy and Legal Analysis, NAD

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

Simple Resolution Adopted

HOUSE RESOLUTION 341
Committee Substitute Favorable 4/13/05
Adopted 4/20/05

Sponsors:

Referred to:

February 22, 2005

A HOUSE RESOLUTION URGING THE COMMITTEE ON THE IMPLEMENTATION OF TEXTILE AGREEMENTS TO APPROVE THE SAFEGUARD PETITIONS FILED BY THE UNITED STATES GOVERNMENT AND THE UNITED STATES TEXTILE INDUSTRY.

Whereas, the World Trade Organization agreement placing quotas on imported textile and apparel products expired on January 1, 2005; and

Whereas, since the expiration of those quotas there has been a surge of textile and apparel imports into the United States, in particular imports from China; and

Whereas, independent studies and polling from the United States importing and retailing community show that China could capture from fifty to ninety percent total United States market share in textiles and apparel in short order unless the United States government imposes safeguards; and

Whereas, the preliminary monitoring data on textile and apparel imports compiled by U.S. Department of Commerce shows huge increases in the quantity of imports from China for the first quarter of 2005 in many product categories including an increase of 1,521% in the quantity of cotton trousers, a 1,257% increase in the quantity of cotton shirts, and a 308% increase in the quantity of underwear; and

Whereas, this increase in imports of textiles and apparel has disrupted the United States textile market; and

Whereas, since January 1, 2005, there have been an additional 14 plant closings in the United States, three of which were in North Carolina; and

Whereas, the United States government, as of April 6, 2005, has self-initiated a number of safeguard actions against Chinese imports; and

Whereas, the American textile industry has filed an additional seven petitions for safeguard protections; and

Whereas, the People's Republic of China is a signatory to the rules set by the World Trade Organization governing fair trade between sovereign nations and that that

set of rules allows for the implementation of textile-specific safeguards against imports from China on the basis of market disruption or threat thereof; and

Whereas, exporters of textile products from the People's Republic of China have benefited from practices specifically prohibited by the World Trade Organization, including government subsidies, intellectual property piracy, tax rebates, and currency manipulation; and

Whereas, these illegal and unfair practices have enabled Chinese producers to undercut world manufacturers with artificially low prices; and

Whereas, the American textile and apparel industry is the most innovative, efficient, and productive in the world, well able to compete within the sphere of legitimate, lawful global trade; and

Whereas, the American textile and apparel industry is crucial to the defense of the nation, providing over 8,000 separate items to the Armed Forces of the United States, the ability to do so being immediately threatened by predatory Chinese trade practices; and

Whereas, over 100,000 workers in North Carolina are employed in the textile and apparel industry and depend on fair trade policies and practices for their continued employment; and

Whereas, since the phase out of quotas began in 1995, North Carolina has experienced at least 290 plant closings or major layoffs in the textile and apparel industry resulting in approximately 60,000 persons losing their jobs; and

Whereas, the government of the People's Republic of China, in joining the World Trade Organization, explicitly agreed to desist from illegal trade strategies and to accept safeguard provisions in the event the disruption, or the threat of disruption to, of the American textile and apparel market could be shown; Now, therefore,

Be it resolved by the House of Representatives:

SECTION 1. The House of Representatives commends the United States government for initiating safeguard actions to protect the nation's textile industry.

SECTION 2. The House of Representatives strongly urges and requests the Committee on the Implementation of Textile Agreements to enact the safeguard provisions on textile and apparel categories on the basis of market disruption as petitioned by the American textile industry and as petitioned by the United States government.

SECTION 2. The Principal Clerk shall transmit a certified copy of this resolution to the Committee on the Implementation of Textile Agreements and to North Carolina's congressional delegation.

SECTION 3. This resolution is effective upon adoption.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

HOUSE BILL 800
RATIFIED BILL

AN ACT REQUIRING VENDORS BIDDING ON STATE CONTRACTS TO DISCLOSE WHETHER SERVICES WILL BE PERFORMED OUTSIDE THE UNITED STATES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-59.4. Contracts performed outside the United States.**

(a) A vendor submitting a bid shall disclose in a statement, provided contemporaneously with the bid, where services will be performed under the contract sought, including any subcontracts, and whether any services under that contract, including any subcontracts, are anticipated to be performed outside the United States. Nothing in this section is intended to contravene any existing treaty, law, agreement, or regulation of the United States.

(b) The Secretary of Administration shall retain the statements required by subsection (a) of this section regardless of the State entity that awards the contract and shall report annually to the Joint Legislative Commission on Governmental Operations on the number of contracts which are anticipated to be performed outside the United States."

SECTION 2. This act becomes effective October 1, 2005, and applies to all bids submitted after that date.

In the General Assembly read three times and ratified this the 30th day of June, 2005.

CHARLIE S. DANNELLY

Charlie S. Dannelly
Deputy President Pro Tempore of the Senate

JAMES B. BLACK

James B. Black
Speaker of the House of Representatives

Michael F. Easley
Governor

Approved _____.m. this _____ day of _____, 2005

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

SESSION LAW 2005-169
HOUSE BILL 800

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SECTION 2. This act becomes effective October 1, 2005, and applies to all bids submitted after that date.

In the General Assembly read three times and ratified this the 30th day of June, 2005.

s/ Charlie S. Dannelly
Deputy President Pro Tempore of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 12:59 p.m. this 7th day of July, 2005

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

Simple Resolution Adopted

HOUSE RESOLUTION 1366
Adopted 5/24/05

Sponsors: Representatives Hilton, Tolson, Miller, Johnson (Primary Sponsors); Clary, Cleveland, Folwell, Frye, Glazier, Jones, Justice, Lewis, Starnes, and Yongue.

Referred to: Rules, Calendar, and Operations of the House.

April 21, 2005

A HOUSE RESOLUTION URGING CONGRESS TO ENACT LEGISLATION TO PROVIDE THAT FUNDS RECEIVED AS UNIVERSAL SERVICE CONTRIBUTIONS AND THE UNIVERSAL SERVICE SUPPORTS PROGRAMS ARE NOT SUBJECT TO CERTAIN ACCOUNTING RULES.

Whereas, since its creation in 1996, the E-Rate has had overwhelming success in connecting our nation's schools and classrooms to the Internet; and

Whereas, the program continues to be a vital source of assistance in maintaining connectivity and enhancing learning; and

Whereas, prior to the program's inception, only 3% of the nation's classrooms were connected to the Internet, but today, 93% of classrooms are connected; and

Whereas, the Universal Service Administration Corporation (USAC), the entity that administers the E-Rate, estimates that 82% of public schools and 61% of public libraries receive E-Rate funds; and

Whereas, despite the program's remarkable success, schools and libraries still have considerable technology gaps and a continuing need for E-Rate assistance. Each year, applications for E-Rate funds far exceed the amount available for disbursement; and

Whereas, for the 2004 funding year alone, the Federal Communications Commission received more than 39,000 applications totaling $4.3 billion in requests to help pay for telecommunications services and Internet services, which was $2 billion more than available funding; and

Whereas, the E-Rate program has provided schools with $10.3 billion since its creation and annually provides $2.25 billion, making it the fourth largest source of non-State/nonlocal federal funding to schools; and

Whereas, North Carolina has received over $231 million in E-Rate funds as of October 2004; and

Whereas, in 2004, the Federal Communications Commission began subjecting the E-Rate program to accounting rules that effectively stopped the flow of funds to schools and libraries; and

Whereas, at the end of 2004, Congress passed a one-year exemption from these rules for the E-Rate program; and

Whereas, a bill (S. 241) has been introduced in the United States Senate to create a permanent exemption for the E-Rate program; Now, therefore,

Be it resolved by the House of Representatives:

SECTION 1. The House of Representatives urges Congress to enact Senate Bill 241 to ensure that students and schools have the technology and connectivity necessary to succeed academically and to prepare tomorrow's workers.

SECTION 2. The Principal Clerk shall transmit a certified copy of this resolution to each member of North Carolina's congressional delegation.

SECTION 3. This resolution is effective upon adoption.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

Simple Resolution Adopted

HOUSE RESOLUTION 1614
Committee Substitute Favorable 6/8/05
Adopted 6/9/05

Sponsors:

Referred to:

May 9, 2005

A HOUSE RESOLUTION ENDORSING THE RECOMMENDATIONS OF THE INTERGOVERNMENTAL POLICY ADVISORY COMMITTEE'S REPORT ON THE US-CENTRAL AMERICA FREE TRADE AGREEMENT.

Whereas, the Intergovernmental Policy Advisory Committee (IGPAC) recommended in its report on the US-Central America Free Trade Agreement (CAFTA) in March 2004 that the Trade Promotion Coordinating Committee (TPCC), the Trade Policy Review Group (TPRG), and the Trade Policy Staff Committee (TPSC) be expanded or reconfigured to include state and local government representation; and

Whereas, issues for the attention and action on the part of a newly expanded trade promotion and trade policy consultative process should include:

(1) Establishing and fully funding a formal, regularly scheduled mechanism for US federal-state trade policy consultations in light of the increasing state role in trade policy formulation, negotiation, and dispute resolution.

(2) Increasing awareness by state officials of the recent and ongoing efforts on the part of the United States Trade Representative (USTR) and other TPCC federal agencies to proactively discuss trade issues with national associations of state officials exercising regulatory functions.

(3) Establishing a clear priority for federal support of high technology manufactured goods and services exports.

(4) Assessing the comparative costs and benefits to the federal budget and US economy, particularly in terms of employment creation/retention and trade value, of the allocation of resources and trade protections to agricultural commodities, technology research and development, industrial goods, manufactured products, and services sectors.

(5) Collecting and disseminating better national, state, regional, and zip-code-level data on merchandise and services exports and imports, and on international investment flows, deploying mapping technologies and other tools to better inform analysis and planning.

(6) Encouraging TPCC federal agencies to: (i) deepen the state/federal trade development partnership; (ii) prioritize support by overseas posts for state-led trade initiatives in global markets; (iii) increase cooperation in domestic trade development program delivery; and (iv) integrate further Eximbank trade finance and delegated authority activities with those of states and the private sector, improving small firms' awareness of and access to trade financing.

(7) Substantially transforming, expanding, and fully funding the Trade Adjustment Assistance program.

(8) Emulating our nation's effective responses to natural disasters, in order to mobilize resources for economic disasters, TPCC and related entities should collaborate on the creation of an Economic Federal Emergency Management Agency.

Whereas, IGPAC also suggests that the USTR: (i) intensify the focus of its consultative process on reaching out to State Points of Contact, advisory committees, and other interested parties for their input as trade policy is being formulated and as trade agreement negotiations are being initiated; and (ii) utilize the existing corporate, government, and academic relationships of the US states abroad as a bridge to foster cooperation and understanding in preparation for future trade policy, trade capacity building, program development, and trade agreement initiatives and meetings; Now, therefore,

Be it resolved by the House of Representatives:

SECTION 1. The House of Representatives endorses the recommendations of the Intergovernmental Policy Advisory Committee's report on the US-Central America Free Trade Agreement from March 19, 2004.

SECTION 2. The Principal Clerk shall transmit a certified copy of this resolution to the members of the North Carolina congressional delegation, the United States Trade Representative, and the Chair of the Intergovernmental Policy Advisory Committee.

SECTION 3. This resolution is effective upon adoption.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

Simple Resolution Adopted

HOUSE RESOLUTION 1787
Adopted 7/18/05

Sponsors:	Representatives Glazier, Farmer-Butterfield, Frye, Hilton (Primary Sponsors); Alexander, Harrison, Martin, Rapp, and Weiss.
Referred to:	Rules, Calendar, and Operations of the House.

June 15, 2005

A HOUSE RESOLUTION URGING THE PRESIDENT OF THE UNITED STATES TO CONTINUE IN EFFECT THE CURRENT SAFEGUARDS LIMITING THE INCREASE IN IMPORTS OF CHINESE TEXTILES AND URGING THE CONGRESS TO EXPAND THE TRADE ADJUSTMENT ASSISTANCE PROGRAM AND RAISE THE FUNDING CAP.

Whereas, international trade agreements have contributed to the loss of more than 65,000 jobs in the North Carolina textile and apparel industry since 2001; and

Whereas, imports of textile goods from China have increased dramatically since January 1, 2005, when the quotas restricting import levels for textile and apparel products expired pursuant to agreements negotiated through the World Trade Organization (WTO); and

Whereas, China's ability to flood the global market with cheap textile and apparel products is facilitated by its unfair subsidization of its textile and apparel manufacturers and its currency manipulation, in violation of WTO agreements; and

Whereas, North Carolina's political leaders have repeatedly called on the President and his administration to limit the unfair and illegal growth in Chinese imports; and

Whereas, the recent and dramatic increase in imports has disrupted the United States textile industry to the degree that the current administration has imposed safeguards as allowed under the WTO rules, to limit the growth in Chinese imports in certain categories to 7.5 percent a year; and

Whereas, these safeguards can provide North Carolina with vital time to diversify the State's economy and retool its textile industry, thereby reducing the State's vulnerability to global pressures and increasing the State's competitiveness worldwide; and

Whereas, the rise in Chinese imports since January 1, 2005, has been accompanied by an increase in the number of textile and apparel jobs lost in North

Carolina, with more than 3,300 North Carolina announced job losses due to business closings and permanent layoffs in the first four months of this year; and

Whereas, the federal government has recognized its responsibility to assist workers who lose their jobs as a result of the globalization of trade with the transition to new, gainful employment through the creation of the U.S. Department of Labor's Trade Adjustment Assistance (TAA) program; and

Whereas, workers whose jobs are lost to China and other countries with which the United States may not have a preferential trade agreement are not currently eligible for the TAA program, and the resources provided by the TAA program are insufficient to meet its intended goals; Now, therefore,

Be it resolved by the House of Representatives:

SECTION 1. The House of Representatives urges the President of the United States and his administration to continue the imposition of China safeguards limiting the growth in imports of targeted textile and apparel products.

SECTION 2. The House of Representatives urges Congress to provide desperately needed assistance to North Carolina's dislocated textile and apparel workers through reforming the TAA program by:

(1) Expanding eligibility to include workers whose jobs are lost to China and other countries with which the United States may not have a preferential trade agreement;

(2) Raising the national funding cap on the TAA program in order to ensure that there are adequate dollars available to serve all workers who are eligible for services;

(3) Increasing the Health Coverage Tax Credit to cover eighty percent (80%) of dislocated workers' health care premiums, so that more workers can afford to take advantage of the TAA program;

(4) Providing automatic eligibility for the TAA program for textile and apparel workers; and

(5) Allowing the State to use a portion of the TAA program funding for administrative purposes.

SECTION 3. The Principal Clerk shall transmit a certified copy of this resolution to the President of the United States, the Committee on the Implementation of Textile Agreements, and the members of the North Carolina congressional delegation.

SECTION 4. This resolution is effective upon adoption.