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STATE OF MAINE

Citizen Trade Policy Commission

April 22, 2008

Ambassador Susan C. Schwab
United States Trade Representative
Office of the United States Trade Representative
600 17th Street N.W.
Washington, DC 20508

VIA FACSIMILE:(202) 395-3692
& U.S. MAIL

Re: Requesting information on USTR and WTO Procedures

Dear Ambassador Schwab:

The Maine Citizens Trade Policy Commission (commission), established by the Maine Legislature and charged with monitoring and analyzing the impact of trade agreements on the State of Maine, requests information about the process by which the U.S. federal government informs the World Trade Organization (WTO) of impending state legislation.

This issue came to our attention after the People's Republic of China (PRC) challenged legislation proposed by Maryland (House Bill 8) to regulate lead in toys and other products likely to be handled by children. We were alarmed by the fact that the PRC appeared to be applying pressure on the Maryland General Assembly to not pass this law. The commission members feel this is an absolutely unwarranted intrusion into the decision-making processes of states.

China's complaint raises several questions regarding the procedure by which the U.S. notifies the WTO about pending state legislation. In particular, the commission requests information regarding: 1) what agency/entity within the U.S. federal government is responsible for notifying WTO member nations of state legislation; 2) how often or how routinely such notification occurs; and 3) what mechanism or process is used to monitor state legislation.

Finally, we seek information as to why the WTO was notified of impending state legislation. We fully understand that the federal government has a requirement to notify the WTO of new legislation passed at federal or state levels. But given that thousands of proposed bills are advanced through state legislatures in any given year, of which only a fraction are eventually passed into law, it seems unusual that China would have been notified about a bill prior to its consideration in the General Assembly. This raises questions about possible 'selective notification', as well as unwarranted intrusion by foreign interests into state lawmaking practices.

In addition, Maryland House Bill 8 has brought to our attention the fact that, unlike other WTO agreements, the Technical Barriers to Trade (TBT) does not have a 'general exception' regarding "the protection of human life and health." The commission is very concerned that the right of a sovereign state government to enact legislation to protect the life and health of its citizens is being challenged under this WTO agreement.

This is of significant concern because it is the role of the state government to protect the health and safety of our citizens. Maine citizens are alarmed that products, especially children's toys, contain harmful toxins like lead that put consumers and workers at risk, and indeed Maine is considering legislation not dissimilar to that proposed in the state of Maryland. We are aware of several other states in a similar position, and are very concerned about how those efforts may be impacted by statements or complaints issued by foreign governments, such as the PRC's complaint regarding Maryland's House Bill 8.

The commission will hold their next general meeting on May 16th, 2008, at 10:00 a.m. and would like to extend an invitation to you to participate in this discussion, via phone link, at this meeting.

The commission would appreciate a written response to our inquiry from your office by May 9th, 2008. Thank you for your help with this matter and we look forward to your response.

Sincerely,

Senator Margaret R. Rotundo, Co-Chair

Representative John L. Patrick, Co-Chair

CC: Senator Susan Collins
Senator Olympia Snowe
Representative Michael Michaud
Representative Tom Allen