

Today the State of Maine (U.S.) Citizen Trade Policy Commission transmitted three letters to the US Trade Representative to urge action to protect access to affordable medicines in the Trans-Pacific Partnership Agreement (TPP), and to assure that negotiations on a trade agreement with the European Union (Trans-Atlantic Trade & Investment Agreement or TTIP) will not override Maine's agricultural and local food policies. In addition, the state-authorized trade commission called for a period of public consultation and the public release of investor-state dispute settlement proposals, consistent with recent announcements of the European Union to increase transparency and consultation in ongoing EU-US trade negotiations.

The bipartisan trade commission voted unanimously on February 24, 2014 to send the letters detailing these policy goals and requesting greater transparency and consultation by U.S. Trade negotiators with state governments and civil society. The three letters are posted here:

TPP- PHARMACEUTICAL REIMBURSEMENT & IPR:

<http://www.maine.gov/legis/opla/CTPCpharmaceuticalslettertoUSTR.pdf>

TTIP- PROCUREMENT & FOOD POLICIES:

<http://www.maine.gov/legis/opla/CTPCprocurementlettertoUSTR.pdf>

TTIP – ISDS PERIOD OF CONSULTATION & RELEASE OF TEXT:

<http://www.maine.gov/legis/opla/CTPC%20letter%20ISDS%20to%20USTR.pdf>

Rep. Sharon Treat, co-chair of the Maine Citizen Trade Policy Commission, stated:

“These actions by the Commission continue the longstanding engagement of Maine citizens, legislators, businesses and civil society with the USTR, seeking to insure that our international trade policies do not undermine our state’s constitutionally guaranteed authority to pass laws and implement policies on a wide range of domestic issues, including access to affordable healthcare, procurement policies governing use of taxpayer dollars and promotion of local food and agricultural products. In addition, the Commission has acted to urge that sweeping provisions included in the investor protections in trade agreements are publicly vetted and that state policymakers are consulted before state policies are essentially preempted or overridden.”

With respect to the investor-state system, the letter notes longstanding concerns with overbroad investor challenges and dispute settlement fora that bypass domestic courts. The letter states: "In concert with many U.S.-based organizations representing labor, health, consumers, family farms, the environment and small business interests, we write to urge you to join your counterparts from the European Union and embark upon a thorough, open, public consultation process to review the costs and benefits of the investor protection policies in the TTIP. The Commission specifically urges the USTR to release proposed text for public review and analysis and to postpone negotiation of the investment chapter pending an opportunity for this public consultation.” The letter further asserts, **"A public consultation process in which American workers, families, communities, small businesses and civil society organizations have a real voice will be an important step toward creating more balanced investment policies that reflect the diverse needs and interests of real people and their communities, not simply large, global corporations.”**

The pharmaceutical letter focuses on the pricing and reimbursement text in the TPP (the so-called “healthcare transparency” annex) and the intellectual property provisions governing access to generic versions of biomedical products. The letter states: "We also wish to reiterate the longstanding position of the CTPC that the TPP’s Intellectual Property Chapter must balance encouraging innovation with assuring affordability. The publicly reported USTR position pushing for a lengthy 12-year data exclusivity period for biologics is excessive and will significantly delay the development of generic versions of these pricey and life-saving medicines. The CTPC urges the USTR to modify its position to a more reasonable timeframe that will better protect the affordability of these important medicines"

With respect to pharmaceutical pricing, the Maine commission noted recent public reports that the USTR may be considering provisions similar to the Australia-US trade agreement, and stated that it "has never supported including pharmaceutical reimbursement provisions in any trade agreement, including AUSFTA, because these provisions reduce access to affordable medicines and insert policy into trade agreements that is best left to domestic regulation.” The commission urged that if such a provision is included in the TPP it should be changed to address several concerns. The letter states:

"As noted above, however, even the AUSFTA provisions raise concerns. The CTPC strongly urges the inclusion of the following provisions in any healthcare reimbursement and transparency annex in the TPP to address

these concerns:

1. The Agreed Principles should specifically include language specifying that healthcare and medicines affordability, safety and efficacy are recognized criteria in government reimbursement decisions governed by the Annex.
2. There should be no appeal of reimbursement decisions but instead a review based on domestic law and limited to beneficiaries.
3. If applicants are afforded an opportunity to provide comments during the reimbursement decision process, beneficiaries and the public should also be allowed to provide comments.
4. Internet posting and other provisions relating to dissemination of information about pharmaceuticals must be bound by a Party's domestic laws and regulations. In other words, the provisions of the TPP must respect domestic policies concerning direct-to-consumer advertising and off-label marketing.
5. The Annex must specifically state that a decision regarding the listing of a pharmaceutical product or setting a reimbursement price through a program covered by the Annex may not be challenged under the country-to-country dispute settlement nor under the investor-state dispute settlement provisions (ISDS) of the Chapter on Investments. Both of these changes are critical, and the greater concern lies with the possibility that investors could use the ISDS to challenge these domestic policy decisions.”

Finally, the commission wrote to USTR urging that outreach to state

governments seeking procurement commitments should be in consultation with the USTR's Intergovernmental Policy Advisory Council, and that any procurement provisions in the TTIP should protect state initiatives promoting Maine farms and local products. The letter communicates the Commission's "concerns over possible measures in the Transatlantic Trade and Investment Partnership (TTIP) that could undermine our efforts to rebuild local food systems that are healthy, fair and sustainable, and the possibility that European Union officials are directly reaching out to state governments seeking their agreement to be bound by procurement provisions under consideration in the TTIP." The letter further states: "We are concerned that proposals being advanced in the TTIP negotiations could restrict or even eliminate criteria that favor local or regionally-grown foods as "localization" barriers to trade. We understand that the EU is pushing for procurement commitments in the trade agreement at all levels of government, including municipal, state and federal contracts. These commitments could open these publicly funded contracts to bids from EU firms, and could restrict the kinds of criteria that local communities deem important in making those decisions. We understand from public reports that the EU is insisting on procurement commitments that "go beyond" those already agreed to in the multilateral Government Procurement Agreement (GPA), which currently includes 37 U.S. states." The letter urges USTR to protect state procurement and other initiatives focused on promoting local food and agriculture in the EU agreement.

