

States Get Savvy on Trade Strategy



Demand for increased state input in federal trade agreements grows as state governments assess local impacts of globalization

By Karen Imas

Discussion of globalization and trade liberalization is often embedded in “pro” or “anti” rhetoric. State government officials, whose jurisdictions are significantly affected by federal trade agreements, are working towards striking a balance by seeking trade rules that allow for responsible management of trade and that permit states to govern their own affairs.

The states’ roles in evaluating trade agreements may be strengthened through new legislation being passed around the nation. Legislation signed by former Gov. Gary Locke in May 2003 created the Joint Legislative Oversight Committee on Trade Policy in Washington state. The legislature found that World Trade Organization agreements, the North American Free Trade Agreement (NAFTA) and proposed Central American Free Trade Agreement (CAFTA) have implications for agriculture, services, environmental regulation, and economic subsidies. The committee will monitor the impact of trade agreements on Washington state laws, and will provide a way for legislators and citizens to voice their opinions and concerns about the potential effects of trade agreements.

Consisting of four senators and four representatives from the legislature and three ex officio members, the group can maintain active communication with the state trade representative’s office, the office of the United States Trade Representative (USTR), Washington’s congressional delegation, and any other bodies the committee deems appropriate regarding ongoing developments in international trade agreements and policy.

A bill recently introduced in the Washington legislature by Sen.

Paull Shin seeks to expand the office of Washington state trade representative by including a minimum of two trade policy professionals. The representatives would be appointed by the governor with the consent of the Senate. The bill was passed in the Senate and the House Economic Development, Agriculture and Trade Committee was considering it in April.

These steps are not unique to the state of Washington; around the nation, state governments are considering legislation to strengthen the roles they play in discussions of federal trade agreements.

Watchful Management of Trade Liberalization at the State Level

In the current economic climate of manufacturing job losses, outsourcing, and the erosion of local control stemming from participation in federal trade agreements, state lawmakers are anxious. According to the U.S. Bureau of Labor Statistics, New England lost more than 175,000 manufacturing jobs from July 2000 to October 2003. Maine has lost 22,000 manufacturing jobs in the last four years. Pennsylvania lost nearly one of every five of its manufacturing jobs between 2001 and 2004, according to the AFL-CIO.

“There has been a lot of devastation in the manufacturing sector in Maine, so I understand the concerns, particularly from members of the legislature representing those districts,” said Richard Coyle, president of the Maine International Trade Center. “Opening new markets, however, increases market access for the state’s exporters.”

Striking a balance is a difficult task, particularly when the federal government, governors and legislators see a unique role for

A Primer on Procurement in Federal Trade Agreements

How does State Purchasing Work within the Framework of Federal Trade Agreements?

- 37 states have committed to participate in the WTO-Agreement on Government Procurement. (WTO-AGP)
- State commitments to cover government procurement in trade agreements are voluntary.
- States that join are required to give the products, services and suppliers of any other country party to the Agreement treatment "no less favorable" than that they give to their domestic products, services and suppliers and not to discriminate among goods, services and suppliers of other countries.
- Certain federal trade agreement rules specify that a state participating may exclude sensitive goods and services.

Question of Constitutionality

- Government contracts are traditionally regulated by states.
- The Foreign Commerce Clause of the U.S. Constitution gives Congress the power to "regulate Commerce with foreign Nations..." This applies to federal trade agreements.
- This clause is where the fracture between states and the federal government appears.

State Government Responses

- In May 2004, Gov. Baldacci rescinded Maine's commitment to be bound by CAFTA's procurement rules.
- Baldacci will review future trade agreements on a case-by-case basis but will not withdraw from existing trade agreements.
- Trade agreements to be reviewed include those with Morocco, the countries of the Central American Common Market, the South African Customs Union, and the Free Trade Area of the Americas.
- Four other states—Iowa, Missouri, Minnesota and Pennsylvania—have told the federal government they will also decline foreign company's access to millions of dollars of purchasing contracts in their states.
- In May, Tennessee became the first state in the nation to enact procurement legislation favoring companies that do not offshore jobs.
- In Vermont, a joint resolution was introduced which calls, among other things, for the removal of Vermont from the WTO-AGP saying it "significantly hampers the state's ability to set procurement policies which benefit Vermonters and use our tax dollars for the most strategic benefit."

themselves in trade policy. Largely, the state executive, with little accountability to elected legislatures, coordinates state activity related to trade agreements through its relationship with the USTR. Legislators from Maine to Washington are calling for a more transparent process.

Maine Sen. Margaret Rotundo, chair of the Citizen Trade Policy Commission (ME), said that while trade is an important piece of Maine's future, "Businesses and jobs are threatened by unfair trade policies." She added, "NAFTA and similar agreements are also undermining Maine's very ability as a state to make laws and govern ourselves."

One particular aspect of trade agreements getting the attention of state lawmakers concerns state contracting rules. NAFTA and CAFTA may challenge many states' high standards in making laws guiding labor, environmental and minimum wage policies, among other areas. Also, many state legislators are uncomfortable letting foreign firms bid against American firms for projects paid for with taxpayer dollars and want to maintain preference for local contractors.

Federalism and Trade Agreements

As federal efforts towards trade liberalization affect state and local authority, state legislators are becoming savvier about the impact of these agreements on state sovereignty, asking questions of their governors and the federal negotiators.

A pending suit in California, brought by the Canadian company Methanex, has spurred an era of more watchful state officials. The case highlights a controversial provision of NAFTA whereby foreign investors may sue states that pass legislation which affects their ability to make a profit. Methanex said its business of selling methanol to petroleum refiners in California has been effectively expropriated by the state through the state ban on the chemical additive MTBE. The case will not go before a California court, but rather an international dispute resolution panel that would meet behind closed doors. State officials are monitoring this case as it could have widespread implications.

Provisions in trade agreements to provide fair access to all parties have led to unintended consequences such as the Methanex case. Peter Riggs, director of the Forum on Democracy and Trade, explains that certain provisions in trade agreements are "intellectual unfunded mandates." Legislators may be unaware that existing state laws can bring about lawsuits based on federal trade rules.

The governments of Antigua and Barbuda brought a case to WTO stating that gambling regulations in some states interfered with America's obligation under a trade agreement to not discriminate against foreign companies providing "recreational services." Antigua and Barbuda's economies are heavily reliant on internet gambling operations. WTO judges ruled in their favor. The United States has won 10 decisions in WTO cases, but has lost 24.

"The threat of law suits leads to 'trade chill,' which might prevent states from pursuing initiatives that might otherwise benefit policy," said Matt Schlobohm, coordinator of the Maine Fair Trade Campaign. The federal government may be taking note of the discrepancies. President Bush recently met with Mexican President Vicente Fox and Canadian Prime Minister Paul Martin to discuss NAFTA; it is the first major examination of the trade agreement since its ratification 11 years ago. The leaders pledged to develop more uniform regulations throughout the three countries in the areas of energy, financial services and technology to speed the

United States Export Trade Values for 1996, 2002–2004

Annual 1996	Annual 2002	Annual 2003	Annual 2004	2002–2003 % Change	2003–2004 % Change	1996–2004 % Change
622,827,062,949	693,257,299,708	723,743,176,992	817,935,848,814	4.4	13.0	31.3

Source: Eastern Trade Council, CSG/ERC

movement of goods and services.

The recently passed U.S.-Bahrain Free Trade Agreement contains provisions reaffirming the countries' commitments as members of the International Labor Organization, and pledging the enforcement of domestic labor laws that provide internationally recognized worker rights.

Much work remains in improving state-federal relations concerning trade agreements. CAFTA, which would remove trade barriers between the United States and five Central American countries plus the Dominican Republic, includes provisions that have some governors concerned.

Advocacy group Public Citizen has raised awareness at the state level on how CAFTA may conflict with state contracting laws and potentially hurt economic development. Weak regulation in developing countries not only conflicts with many state laws, but can hurt the playing field for U.S. companies. Differences in requirements for recycled content in goods or the use of energy from renewable sources, policies targeting companies' environmental conduct, living wages and labor agreements, and policies targeting countries' human rights—also known as non-tariff barriers—all threaten states' ability to compete.

In a letter to the USTR's office, Gov. Ed Rendell stated that he is removing Pennsylvania from the government procurement rules contained in CAFTA, emphasizing that his state had suffered manufacturing job losses for 44 consecutive months and that he wanted to ensure that "Pennsylvanians had a fair shot at staying employed."

The newly appointed U.S. Trade Representative, Rep. Robert Portman (OH), will have a tough fight in Congress to win approval for CAFTA. While the administration sees the pact as a continuation of its efforts to open markets for American manufacturers and farmers, it has attracted opposition from groups ranging from organized labor to U.S. sugar producers and textile manufacturers.

At a public hearing on trade issues held in Maine in February, Allyn Beecher, owner of Monroe Millworks, said, "I am willing to compete with any worker in the world for labor knowing that rising oil prices mean rising transportation costs that help to offset labor rates... but I do not want to compete with companies that are allowed to pollute the air and water to gain a price advantage."

Do Trade Agreements Benefit States and Small Businesses?

State governments, collectively, are the largest purchasers of goods and services in the country, spending billions of dollars each year according to the National Association of State Procurement Officials.

The USTR's office reminds states to leverage that purchasing power to their advantage: "At a time when many demands are being made on U.S. state and federal government budgets, open-

ing state procurement to a wider list of potential bidders can result in lower prices and more choices for state government agencies, thus saving taxpayer dollars."

Moreover, state trade offices are shaping their trade development strategies around new opportunities created through federal trade agreements. New Hampshire's trade office recently led a trade mission of ten companies to Chile, a country that signed a bilateral trade agreement with the U.S. in 2004. Dawn Wivell, director of the state's Office of International Commerce and the International Trade Resource Center, described diverse opportunities in Chile, including new export markets, industry alliances, and educational exchanges. "When a company tries to increase sales, it makes sense to look at the opportunities available through trade agreements, including lower tariffs," said Wivell.

Trade liberalization allows small and medium sized business to access new markets for their products, increasing their economic competitiveness in the global marketplace and potentially creating new jobs.

"Trade agreements have expanded market opportunities for US businesses... in the aggregate, they have been a plus," said Riggs.

In 2004, Pennsylvania exported approximately \$6.4 billion worth of merchandise to Canada, a 61 percent increase since 1993, and approximately \$1.2 billion worth of merchandise to Mexico, a 95 percent increase.

"NAFTA and the Uruguay Round were a huge boost to opening market opportunities for companies," said Kay Wilkie, an international policy analyst with the New York State Department of Economic Development.

Recently, the United States entered into a trade agreement with Australia, effectively eliminating almost all tariffs for U.S. manufactured goods exported to Australia. With virtually all U.S. manufactured exports becoming duty-free, the National Association of Manufacturers estimates that the manufacturing sector could sell \$2 billion more per year to Australia and that U.S. national income could grow by nearly that much. Wivell said that New Hampshire is considering a trade mission to Australia.

Working Towards Solutions with Multiple Stakeholders

The state of Washington and others are passing legislation aimed to give states more input when it comes to trade agreements.

For example, in May 2004, Gov. John Baldacci signed into law The Maine Jobs, Trade and Democracy Act. It created the Citizen Trade Policy Commission which will examine the legality of Maine's participation in federal trade agreements. The commission comprises citizens, business owners, civic leaders

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risk and wellness account. Another innovative program, Delaware's Health Rewards, is aimed at reducing insurance costs by helping state employees make positive health decisions.

In addition to fostering healthier lifestyles, achieving equity of care is an important issue facing policy-makers. A growing body of research has documented the differences in health care quality, access and outcomes for different population groups in the United States, particularly between whites and minorities. An American Journal of Public Health study estimated that 886,000 African American deaths could have been prevented in the 1990s, if African Americans had received equitable care.

The 2004 National Healthcare Disparities Report published by the Agency for Healthcare Research and Quality found that differences in health care quality and outcomes are pervasive, affecting a variety of racial, ethnic and socioeconomic groups. For example, when judging quality of care, African-Americans received poorer care as compared to whites on approximately two-thirds of the quality measures. Further, Hispanics received poorer quality care on half of the quality measures and had worse access to care on about 90 percent of the access measures compared to non-Hispanic whites.

Again, states are using a variety of strategies to close the gap in quality and access to care between racial and ethnic groups,



women and men, and rural and city residents. Maryland HB 883 established special training for health care providers on health disparities and treatment for minorities. In the Midwest, Minnesota established its Eliminating Health Disparities Initiative in 2001 to close gaps in health outcomes between demographic populations.

—Magda Mook is director of development at The Council of State Governments.

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and legislators. Their aim is to strengthen Maine's voice in the debate over current and future trade agreements and monitor their state and local effects.

Some critics contend that the commission's focus is unbalanced. Only three of the seventeen commission members represent trade or business interests.

Sen. Rotundo emphasizes that the commission functions in a bipartisan way with no political agenda. "Its role is to help the citizens of Maine get a handle on the economic impacts in areas ranging from health to the environment," she said.

Separately, *An Act to Safeguard Federalism in Trade* (LD 1135) was introduced in the Maine state legislature recently by Rep. Deborah J. Hutton. The bill suggests two legislative points of contact must be appointed at the beginning of each legislative session by the House and Senate majority parties to serve as the state's official liaisons with the federal government and the legislature's liaisons with the governor on trade-related matters.

In Maryland, the Senate voted to prohibit the governor from entering into international trade agreements without the legislature's approval. Sen. Paul G. Pinsky, the bill's sponsor, said that the measure will allow the legislature to make sure that any international trade agreements conform to proper environmental, safety and wage standards.

—Karen Imas is publications manager for The Council of State Governments Eastern Regional Conference.

Intergovernmental Policy Advisory Committee

A recently formed national multi-stakeholder organization is hoping to improve the state-federal relationship governing trade. The Intergovernmental Policy Advisory Committee (IGPAC) recently submitted a memorandum to the USTR outlining recommendations to improve coordination. Kay Wilkie, an international policy analyst with the New York State Department of Economic Development, is the chair of IGPAC and also a member of the Eastern Trade Council, a CSG/ERC affiliate. IGPAC's main recommendation is the creation of a Federal-State International Trade Policy Commission. Membership would be drawn from federal and state officials responsible for trade policy. The goal of the Commission would be to:

- Foster consultation among officials from various levels of government on trade and investment concerns;
- Be a resource for objective nonpartisan trade policy and trade law analysis; and
- Author reports and make recommendations about trade policy for consideration by the federal, state and local governments.

Source: Intergovernmental Policy Advisory Committee, *Recommendations for Improving Federal-State Trade Policy Coordination* (August 5, 2004).