

The ABCs of Free Trade Agreements

A Primer on International Trade for the
RACSS/LSSS/LRL Professional Development
Seminar – September 10, 2007

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Presentation & Session Objectives

- Provide an introduction to international trade, the key players, reasons for state interest, and NCSL's efforts
- Share details of current 'hot topics' in international trade arena of interest to states
- Open a dialogue about issues or concerns
- Facilitate ever greater involvement of state-level officials in the issue
- Provide resources for engagement

Presentation Overview

- The ABCs – the alphabet soup of international trade
- State Interests
 - Investor-State
 - Services
 - Trade/Export Promotion
 - Consultation
- NCSL's Engagement
 - Consultation
 - Education & Tools
 - Policy & Washington, D.C.
- Your Involvement

The ABCs – the alphabet soup

As with most things governmental, there is an alphabet soup of organizations and important players in international trade to know.

- USTR = U.S. Trade Representative
 - Office within Executive Office of the President
 - Not dependent upon a federal Department
 - Headed by Senate-confirmed Ambassador
 - Ambassador Susan Schwab
 - Organized by sector and by region
 - www.ustr.gov

The ABCs – the alphabet soup

- WTO = World Trade Organization
 - Created in 1994
 - U.S. joined as Congress enacted GATT Uruguay Round agreement
 - 151 members
 - Based in Geneva
 - Provides forum for oversight of implementation of existing WTO agreements, for negotiations of new agreements, and for resolutions of disputes among members
 - www.wto.org

The ABCs – the alphabet soup

- TPA = Trade Promotion Authority = “Fast Track”
- FTA = Free Trade Agreement
- GATT = General Agreement on Tariffs & Trade
- GATS = General Agreement on Trade in Services
- MFN = Most Favored Nation
 - Agreement to treat a nation for trade purposes in the same way as the most favored or privileged trading partner
- NAFTA = North American Free Trade Agreement
- CAFTA-DR = Central American-Dominican Republic Free Trade Agreement

The ABCs – the alphabet soup

- IGPAC = Intergovernmental Policy Advisory Committee
 - Created by Trade Act under Federal Advisory Committee Act (FACA) rules
 - Previously composed only of principals; redesigned in 2001-2002 to incorporate organizations and staff
 - Required to review FTAs upon signing and advise USTR and Congress on possible state and local impacts
 - Convened by USTR

The ABCs – the alphabet soup

- IGPAC, con't
 - Chaired by USTR-appointed member
 - Kay Alison Wilkie, International Policy Analyst, New York State Department of Economic Development
 - NCSL-recommended members
 - Jeremy Meadows, NCSL-Washington
 - Representative Sheryl Allen, Utah
 - Representative Peter Lewiss, Rhode Island
 - Hannah Shostack, New Jersey
 - Members must obtain federal security clearance to view negotiating documents via secured website

The ABCs – other key players

- U.S. Congress
 - “Foreign Commerce Clause”
 - House Ways & Means Committee
 - Senate Finance Committee
- U.S. Department of Commerce
 - International Trade Administration
 - U.S. Foreign Commercial Service
- U.S. Department of State
- U.S. Department of Agriculture, Foreign Agriculture Service
- U.S. Environmental Protection Agency, Office of International Affairs

State Interests

- Investor-State Dispute Resolution Mechanism
 - Private Right of Action
 - Preemption Concerns
 - Potential Costs
- Services
 - Regulatory Authority
 - Forced Privatization
 - Licensing
- Trade/Export Promotion
- Procurement
- Consultation

State Interests – Investor-State

- Previously, dispute mechanisms were state-to-state, as is currently the case in WTO.
- Investor-state mechanism blossomed with NAFTA and created a private right of action based upon expropriation.
- Companies bring complaints to an international arbitration panel for settlement.
- National governments, as the parties to the agreement, are liable for the settlement.
- Intention is to assure corporate investors a reliable dispute resolution mechanism apart from a potentially corrupt or otherwise untrustworthy judicial system.

State Interests – Investor-State

- NAFTA Cases that Sounded the Alarm
 - Methanex
 - Canadian company challenged California environmental/water quality law
 - Nearly \$1 billion claim
 - Loewen
 - Canadian company challenged Mississippi supreme court decision
 - Metalclad
 - U.S. company challenged Mexican local zoning and environmental standards
 - Losing Mexican government exacted compensation from locality
 - Glamis Gold
 - Canadian company challenges California land use/cultural preservation laws

State Interests – Investor-State

- Process has been modified since NAFTA went into effect and concerned states are invited to support federal litigators and provide *amicus briefs*.
- But states are not/have not been compensated for the time and effort of this support.
- U.S. has never lost a case.
- Fear of a dispute has been cited as reason for gubernatorial veto of a California recycling bill.
- Concern exists that should the U.S. lose a case, the federal government may seek compensation from the ‘agrieving’ state in some manner.
- Possible complication in CAFTA allowing U.S. subsidiaries abroad to bring claims, but this has not yet been tested.

State Interests – Services

- Pre-1994 trade discussions focused on tariffs and duties; post-1994 talks have shifted to non-tariff barriers and services.
- Broad commitments already made under General Agreement in Trade in Services.
- Services chapters appear in FTAs.
- Services are often governed, regulated, or licensed at state and/or local level, not federally.
 - Telecommunications
 - Insurance
 - Energy, electric utilities
 - Gaming, gambling, lotteries
 - Higher education
 - Legal services

State Interests – Trade Promotion

- Trade and tourism promote economic development and job creation.
- Most states have trade promotion offices that focus on export promotion or attraction of foreign direct investment (FDI) to the state. Typically, state efforts focus on small- and medium-sized businesses.
- Governors often lead trade missions.
- Many states have offices or consultants around the world to promote trade and tourism.

State Interests – Procurement

- WTO Agreement on Government Procurement (GPA)
- Procurement chapters in FTAs
- USTR has acknowledged that it has no authority, legally or politically, to obligate state government procurement practices or policies to international trade agreements. USTR therefore solicits state concurrence to be bound by these agreements, but there is much concern about this process.
- Maryland and Hawaii laws

State Interests – Consultation

- State policymakers need more and better information.
- Federal trade negotiators are not/can not be experts on state- or local-level laws or regulations, but need this expertise in order to effectively negotiate agreements that open opportunities while protecting American federalism.
- IGPAC
- State Single Point of Contact (SPOC)
 - Role/Function
 - Washington State model

NCSL Engagement

- Consultation
 - IGPAC
 - Working Groups
 - State & Local Working Group on Energy & Trade Policy – ID Representative Eskridge, Chair
 - IGPAC Services Working Group – Kay Wilkie, Chair
 - Public Lawyers Working Group on International Investment Agreements and Federalism – UT Assistant AG Bryan Farr, Chair
 - Coalitions
 - Conversations with Trade Partners

NCSL Engagement

■ Education & Tools

■ Seminars & Sessions

■ Trade Policy Leadership Seminar

- November 27 – 28, 2007 in Phoenix
- Fall Forum Preconference
- NGA & CSG/SIDO to co-convene

■ 2007 Annual Meeting

- Divestment, “Bipartisan Trade Deal,” Services
- <http://www.ncsl.org/standcomm/sclaborecon/07LEDAnnualMtgAgenda.htm>

■ State Legislation Databases

■ Trade:

<http://www.ncsl.org/programs/econ/tradedb.cfm>

■ Divestment:

<http://www.ncsl.org/standcomm/sclaborecon/statedivestbills.htm>

NCSL Engagement

- Education & Tools, con't
 - NCSLnet Economic Development & Trade Issue Page:
<http://www.ncsl.org/programs/econ/et.htm>
 - NCSLnet Labor & Economic Development Committee Page:
http://www.ncsl.org/standcomm/sclaborecon/sclabor_econ.htm
 - Listservs
 - InternationalTrade – public NCSL-distribution-only informational list
 - StatesOnTrade – restricted discussion list

NCSL Engagement

- Policy & Washington, D.C.
 - Policies
 - Labor & Economic Development Committee
 - Free Trade & Federalism, Presidential Trade Promotion Authority, Export Promotion, etc.
 - Lobbying
 - Small Business Trade Act
 - Gaming “recreational services” withdrawal
 - Investor-State in Australia & South Korea FTA
 - Trade Adjustment Assistance
 - Trade Promotion Authority

Your Involvement

- Become a member of NCSL's Labor & Economic Development Committee.
- Sign up for NCSL's international trade listservs.
- Contact your governor's/state's Washington, D.C./federal affairs office.
- Identify and engage your state's SPOC.
- Continue your trade education at the 2007 TPLS.
- Learn how other legislatures are engaging on trade.
- Consider international trade implications whenever you get a drafting or research request.

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