

Senator Jacalyn Cilley Senator Kenney Representative Nord Representative Tahir  Patrick Murphy, Legislative Aide		Arnold Alpert Karla Armenti Tom Blais Jon Bresler Kevin Cash John Friede Denise Hart Richard Head Paul O'Connor Alan Reische Dawn Wivell
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# **New Hampshire Citizens Trade Policy Commission**

**RSA Chapter 19-L:1**

**2008 Annual Report**

## Committee Membership

<b>Member</b>	<b>Appointed by</b>	<b>Name</b>
One member of the House Labor, Industrial and Rehabilitative Services Committee	Speaker of the House	Rep. Saghir Tahir
One member of the House Commerce Committee	Speaker of the House	Rep. Susi Nord
One member of the Senate Executive Departments and Administration Committee	Senate President	Sen. Joseph Kenney
One member of the Senate Energy, Environment, and Economic Development Committee	Senate President	Sen. Jacalyn Cilley
The attorney general, or designee.	Attorney General	Richard Head
One representative for small business	Governor	Vacant
One representative for small farms	Governor	Vacant
One representative of a non-profit organization that promotes fair trade	Governor	John Friede
One representative of a New Hampshire based corporation that is active in international trade	Governor	Tom Blais
The New Hampshire state point of contact for the United States Trade Representative	USTR	Dawn Wivell
One health care	Governor	Karla Armenti

professional		
One representative of a New Hampshire based manufacturing business with 25 or more employees	Governor	Jon Bresler
One representative of an economic development organization	Governor	Alan Reische
One member who is active in the organized labor community	Speaker of the House	Kevin Cash
One member of a nonprofit human rights organization	Speaker of the House	Arnold Alpert
One member of a nonprofit environmental organization	Speaker of the House	Denise Hart
One member who is active in the business community in a managerial capacity	Speaker of the House	Vacant
One member of the Advisory Committee on International Trade		(Sen. Cilley, Tom Blais, Kevin Cash, and Alan Reische are all members of the Advisory Committee, which advises the agency headed by Dawn Wivell.)

## **1. Formation of the Commission**

The New Hampshire Citizens Trade Policy Commission was created by Senate Bill 162, which was introduced in 2007 with the sponsorship of Senators Jacalyn Cilley and Betsi DeVries, and Representatives Susi Nord, Jim Splaine, and James Pilliod.

The bill passed the Senate April 5, 2007, and passed the House May 31 in an amended form, with which the Senate concurred on June 13, 2007. The Commission was formed when Gov. John Lynch signed SB 162 into law on July 17, 2007. The Commission's purpose and membership are now codified as RSA 19-L.

According to RSA 19-L, the purpose of the Commission is to "assess and monitor the legal and economic effects of trade agreements on state and local laws, working conditions, and the business environment; provide a mechanism for citizens and legislators to voice their concerns and recommendations; and make policy recommendations designed to protect New Hampshire's jobs, business environment, and laws from any negative impact of trade agreements." The law also defines membership in the Commission, which is to be made up of legislators, state officials, and citizens from a variety of walks of life.

RSA 19-L gives the Commission four specific duties:

1. Meet at least twice annually.
2. Hear public testimony and recommendations from the people of the state and qualified experts, when appropriate, at no fewer than 2 locations throughout the state each year on the actual and potential social, environmental, economic, and legal impacts of international trade agreements and negotiations on the state.
3. Conduct a bi-annual assessment of the impact of international trade agreements on New Hampshire state laws, municipal laws, working conditions, and business environment, and identify new and emerging concerns that merit further attention.
4. Publish an annual report, beginning in 2008

In addition, the law states the commission may:

1. Recommend or submit legislation to the general court.
2. Recommend that the state support, or withhold its support from future trade negotiations or agreements.
3. Examine any aspects of international trade, international economic integration, and trade agreements that the members of the commission consider appropriate.
4. Seek and accept outside funding in the form of gifts, grants, and donations to fulfill commission duties

## **2. Commission Meetings, October 1, 2007 to November 10, 2008**

The Commission held its first meeting October 1, 2007. Additional meetings were held Oct. 22, 2007, March 3, 2008, March 31, 2008, April 28, 2008, June 2, July 7, 2008, July 16, 2008, August 4, 2008, September 8, 2008, October 6, 2008, and November 10, 2008.

As a new Commission charged with study of complex matters, the Commission chose to invite a number of speakers to provide testimony. These were:

*Oct. 22, 2007*

Cynthia Phinney and Rep. John Fitzpatrick, members of the Maine Citizen's Trade Policy Commission

Bill Waren, Policy Director of the Forum on Democracy and Trade and an Adjunct Professor at the Georgetown University Law Center

*March 3, 2008*

Robin Lunge, New England Regional Director of the Forum on Democracy and Trade

*March 31, 2008*

Maude Barlow, National Chairperson of the Council of Canadians

*June 2, 2008*

Ellen Shaffer, Co-Director of the Center for Policy and Analysis on Trade and Health

Robin Lunge, New England Regional Director of the Forum on Democracy and Trade

David Wirth, Professor of Law and Director of International Program at Boston College Law School

*July 7, 2008*

Elliot Burg, Assistant Attorney General, State of Vermont, and member of Vermont Commission on International Trade and State Sovereignty

*August 4, 2008*

Benoit Lamontagne, North Country Regional Resource Specialist with the NH Division of Economic Development, Department of Resources and Economic Development.

*September 8, 2008*

Peter Riggs, Director, Forum on Democracy and Trade

*October 6, 2008*

Massood Samii, Professor of International Business at Southern New Hampshire University and a member of the Advisory Committee on International Trade

We note that the office of the United States Trade Representative was invited to send a representative to speak to the Commission, in person or by phone, about their procedures for consulting with states, but that no such meeting has yet been arranged. We still look forward to a direct meeting with the USTR.

### **Public Hearing**

In addition, the Commission held a public hearing on September 25, 2008 at White Mountains Community College, at which seven citizens provided testimony.

## **3. Internal Organization**

Sen. Cilley was elected Chairperson at the Commission's first meeting. At the same time, Arnold Alpert was elected Vice Chairperson, and Jon Bresler was elected Secretary.

The Commission has been fortunate to have the able assistance of Patrick Murphy, a member of the Senate Staff.

The Commission has established a rudimentary web page, and hopes to be able to post announcements, minutes, materials presented by guest speakers, and audio/video recordings of Commission proceedings. The URL for the web page is:

<http://www.gencourt.state.nh.us/statstudcomm/committees/1890/>

Because the legislation which created the Commission did not dictate quorum requirements, a quorum is determined by RSA 21:15 (a majority of the total number of members designated by statute). Due to the number of vacant positions on the Commission, and the fact that some members who were appointed have not attended any Commission meetings, it has been difficult on occasion to obtain a quorum for meetings.

## **Findings**

Commission meetings and the public hearing held in Berlin were rich in information, and stimulated energetic discussions among the members and guests. The Commission is pleased to present its conclusions and recommendations.

A. The Commission finds that the rules established by various trade agreements have infringed on the constitutional authority of state and local government and may undermine the ability of state and local governments to act in the interests of their citizens in such areas as public health and safety, environmental protection, labor standards, defense of human rights, and decisions over planning and zoning. The Commission notes with alarm that the government of the People's Republic of China has intervened in legislative proceedings in the states of Maryland and Vermont concerning measures designed to protect public health. The Commission is concerned that proposed trade rules threaten to further infringe on the authority of state and local government.

Maude Barlow explained that the investment chapters of NAFTA and CAFTA create opportunities for foreign investors to directly sue for compensation before an arbitration panel if they believe state policies directly or indirectly reduce the value of their investments. Elliot Burg said these provisions go beyond what is allowed under domestic constitutional standards, and described several NAFTA cases in which arbitrators sided with investors against government policies restricting toxic chemicals and regulating land use.

Maude Barlow characterized the WTO General Agreement on Trade in Services (GATS), which places strict limits on what governments at all levels can do to regulate foreign companies, as "a frontal attack on the right of local governments to regulate on behalf of their citizens." Both Ellen Shaffer and Elliot Burg noted that GATS rules, which state that regulations which are "more burdensome than necessary to ensure the quality of a service" can be challenged as barriers to trade, and agreed that such rules put numerous state laws and regulations at risk. Burg referred to licensing requirements for nursing and other professions as areas that could be placed at risk. Shaffer added a number of other measures, such as certificates of need for health facilities, quality standards for health care services, patient protection policies, and restrictions on distribution of alcohol, tobacco, and firearms as addition areas in which state regulation could be jeopardized.

Robin Lunge called attention to proposed Maryland laws prohibiting the production and sale of children's products that contain lead, which were challenged by the People's Republic of China as a violation of the WTO agreement on Technical Barriers to Trade.

Later, Peter Riggs described a similar occurrence in Vermont, in which China called for revision or withdrawal of a bill creating procedures for recycling of electronic consumer products containing toxic components.

The provisions of agreements on trade in services and technical barriers to trade enable foreign countries to initiate trade disputes if they believe policies of state or local governments create barriers to trade. Should such a challenge be launched by a foreign government, Elliot Burg explained that the states would not even participate directly in arbitration proceedings. He also said that if arbitrators were to rule against a state, the federal government can sue to pre-empt the “offending” law and monetary penalties.

Peter Riggs stated that ongoing World Trade Organization negotiations over disciplines for domestic regulations and market access threaten to further undermine the ability of the state and local governments to act in the interests of their citizens. Negotiations in the WTO “Doha Round” are now stalled, but that talks on domestic regulations are ongoing as part of what the WTO calls its “built-in agenda.”

B. The Commission finds that the decisions to bind the state’s procurement policies to the terms of several trade agreements (the WTO Agreement on Government Procurement, and the Procurement Chapters US-Singapore, US-Chile, US- Australia, US-Morocco, and DR-CAFTA) were made by the office of the Governor without public comment and without the approval of General Court. Elliot Burg explained that procurement rules could prohibit “green purchasing” policies, limits on off-shoring of state services, prevailing wage agreements, and any kind of preferences based on human rights standards.

C. The Commission recognizes that impact of imports and exports on the state’s economy is significant. We are pleased that New Hampshire businesses have generated business activity and created employment through enterprises that export goods and services. We are distressed that many New Hampshire manufacturers have shut their doors and laid off workers due to outsourcing, off-shoring, and foreign competition. Paul Robitaille, a laid-off paper mill worker and member of the Gorham Board of Selectmen, testified at the September 25 public hearing about the devastating impact of trade-related plant closures on the Berlin area. “There’s nothing wrong with trade in itself,” he said, “but you’re leaving behind a whole class of citizens.” Professor Massood Sami said there are benefits and drawbacks to the globalized economy. He described transitions in the U.S. economy, in which advanced technology products such as software are replacing textiles. Rather than a fully de-regulated global economy, he suggested that emphasis should be put on fair rules that deal with matters such as product safety and environmental protection.



## **6. Actions**

The Commission endorsed a resolution brought to the National Conference of State Legislators by Vermont Senator Virginia Lyons concerning the procedures by which foreign governments may challenge proposed state laws based on trade rules.

## **7. Recommendations**

- A. New Hampshire citizens and elected officials should be better informed about the impact of trade agreements on the authority of state and local governments to represent the interests of their citizens.
- B. The Commission should engage in active outreach to key stakeholder groups including groups representing business, agricultural interests, local government, workforce development, concerns for human rights, and the state's Congressional delegation.
- C. The Commission has not yet been able to assess data that sheds sufficient light on the relationship between trade, investment, business activity, levels of employment, and job quality. In the coming year, the Commission should conduct or encourage a deeper analysis of the impact of trade on the New Hampshire economy. Such analysis might be accomplished through the Economic and Labor Market Information Bureau of New Hampshire Employment Security, New Hampshire institutions of higher learning, or by the Commission itself through its regular meetings.
- D. The Commission should engage in further study of State procurement policies and USTR procedures to commit states to inclusion in procurement agreements, and should consider the role of the states in decisions to opt in and/or opt out of such agreements or whether these agreements should continue to be made solely by the Governor or whether there should be a role for the General Court. Such analysis should include consideration of Legislative and Constitutional authority, and the policy issues involved in decisions in opt in or opt out decisions.
- E. The Commission should hold additional public hearings, including one in the southern part of the state, where the ebb and flow of manufacturing continues to be a significant part of the economy.
- F. As provided by RSA 19-L, the Commission should seek funding to support its activities.

- G. The Commission should communicate with the Governor and Speaker of the House concerning filling the vacant seats on the Commission.
- H. RSA 19-L should be amended to specify a quorum requirement.

Respectfully submitted,

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Senator Jackie Cilley  
*CHAIR*  
District 6

Report Date: November 14, 2008

CC: The Honorable John Lynch, Governor  
The Honorable Sylvia Larsen, Senate President  
The Honorable Terie Norelli, Speaker of the House  
The New Hampshire Senate Clerk  
The New Hampshire House of Representatives Clerk  
The New Hampshire State Library