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Rules of trade: Should we care?

On June 12, 1999, President Bill Clinton prohibited federal acquisition of products made by children who are indentured or forced to work. There were, however, some notable exceptions to the ban: the 29 countries that have signed either NAFTA or a World Trade Organization government purchasing agreement.

Why were these countries exempted from such a seemingly basic ethical standard? Because the Clinton administration feared it would violate government purchasing rules in the trade agreements. According to one such rule, for example, governments may only require that suppliers have "the legal, technical, and financial abilities" to fulfill a contract. Disqualifying a supplier for using indentured children to manufacture their products or committing other human rights violations would be an illegal barrier to trade.

Fast forward to August 2003: U.S. Trade Representative Robert Zoellick asked all governors to authorize trade negotiators to offer their state government purchasing markets in an array of new trade agreements. Such offers were necessary to leverage access to other countries' state and >local government purchasing markets for U.S. corporations. However, these new trade deals - with 38 new countries including the Central America and South African regions - would require states to conduct their government purchasing according to NAFTA and WTO-style rules that, for example, allow forced child labor. The governors could not know what rules they were agreeing to because none of the agreements had been completed or were publicly available when they were asked to commit.

After giving Zoellick an initial nod of approval, Gov. John Baldacci recently amended his response, saying the state would study the agreements on a case-by-case basis before making any commitments. The Maine Fair Trade Campaign, a coalition that educates the public about the impact of trade policies and advocates for fair trade, had argued that the purchasing rules in the trade agreements do not necessarily provide any economic benefit for the state and could jeopardize a number of our public policy objectives.

The rules of the Central American Free Trade Agreement (CAFTA), for example, conflict with such policies as: favoring Maine businesses that employ Maine workers for state contracts; requiring recycled content in paper purchased by the state government; or insisting that state suppliers do not sell products made in sweatshops. Failure to conform to the trade rules could lead to a challenge of state purchasing laws in private trade tribunals and result in taxpayer liability.

Six other governors, both Republican and Democratic, have recently withdrawn their state purchasing markets from trade deals such as CAFTA, citing similar concerns about their economic and public policy objectives. The governors are not closing their states to international trade; they are simply reserving the right to continue to make policy for the benefit of the people of their states.

According to the U.S. Trade Representative office (USTR), the trade rules help U.S. workers and firms by opening markets in other countries. However, the same trade deals that are increasing exports and creating jobs are increasing imports at a faster rate than exports, leading to mounting U.S. trade deficits and job losses. Liberalizing trade in government purchasing markets could have the same negative net result for Maine if our companies lose more opportunities to supply goods and services to Maine's government than they gain in contracts with foreign governments. Even if Maine can leverage the opening of an additional small foreign state or local government purchasing market, a large transnational firm - that is neither based in Maine nor employing Maine workers - is more likely to gain the additional contracts than most small Maine businesses.

USTR denies that trade rules threaten most state policies, claiming that trade agreements contain exceptions that states can use to protect policies that otherwise violate trade rules. It is true that CAFTA's trade rules, for example, do not apply to government preference programs for small businesses and businesses owned by minorities, disabled veterans, and women. However, other so called "exceptions" to the trade rules are written in weak and sometimes circular language that does not provide much protection for a government policy that is challenged as an illegal barrier to trade. For example, according to CAFTA, government purchasing policies to protect the environment are fine as long as such restrictions are not "disguised barriers to trade." But the WTO has ruled repeatedly that taking into account how a product is made or harvested - for example, rejecting clear-cut tropical timber or fish caught with "curtain of death" drift nets - is just that: a "disguised barrier to trade."

Another "exception" safeguards environmental measures "necessary to protect human, animal or plant life or health." But the party defending a challenged environmental measure must show that there is no other less-trade-restrictive means of obtaining its goal. Absent such proof, the WTO has deemed environmental policies "not necessary." When California decided to phase out the MTBE (methyl tributyl ethanol) gasoline additive - like Maine just did - because it pollutes groundwater, the Canadian maker of methanol sued the U.S. under NAFTA arguing that the least trade restrictive measure to obtain California's goal is not banning MTBE but inspecting and improving underground tanks. The company is claiming nearly a billion dollars in damages to their reputation and future profits.

States can, in fact, decide whether or not to offer their purchasing markets in trade deals and can also exempt sensitive purchasing policies, goods, and services from coverage in trade agreements. The first problem is, earlier in this not-so-public process, who knew? The second: once we commit to the trade rules it is prohibitively difficult to withdraw goods or services from the agreements since the federal government would have to compensate trading partners for the loss of the Maine market.

Gov. Baldacci's historic action has given us the opportunity to correct this democracy deficit. Maine does not need to rush into any trade agreement that limits state government policy capacity in the name of free market competition without public debate and, ultimately, legislators' decision. To learn more or get involved, contact PICA at 947-4203 or see www.pica.ws/mftc

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