

07-0773



# STATE OF MINNESOTA

## Trade Policy Working Group *Report of Findings and Recommendations*

**March 20, 2008**

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## EXECUTIVE SUMMARY

Minnesota Laws 2007, chapter 35, article 2, section 35 established a Trade Policy Working Group to develop recommendations for setting policies and procedures regarding the role of the state in federal trade policy and trade agreements. A copy of the legislative mandate and list of members of the Working Group are provided in Appendices A and B, respectively.

Since trade policy and trade agreements are the jurisdiction of federal authorities, namely of the Office of the United States Trade Representative (USTR), the President and Congress, States only have a very limited role in such matters. Nonetheless, there are a variety of formal and informal ways in which the Governor's Office, Minnesota Legislature, non-government organizations, industry associations and private citizens can, and do, influence federal trade policy and agreements. The most prevalent methods include, but are not limited to, lobbying Congress, actively participating in various USTR trade advisory programs, and giving State consent to government procurement agreements. However, present efforts by Minnesota state government to influence trade policy and trade agreements are ad hoc and uncoordinated at best.

The Trade Policy Working Group recommends four actions to establish a more coordinated approach.

**Recommendation #1:** Establish a Trade Policy Advisory Committee, appointed by the Governor's Office, Minnesota Legislature and Attorney General, to advise the State on the Government Procurement Agreement (GPA) portion of new U.S. trade agreements. Additionally, upon specific request from the Governor (by executive order) or the Legislature (by joint resolution), the committee may provide advice on other issues related to trade agreements besides GPA. The advisory committee's work should be evaluated after five years and state policy makers should decide whether to reauthorize it. Appendix C of this report includes proposed legislative action establishing the committee.

**Recommendation #2:** Strengthen the State's implementation of the USTR Single Point of Contact (SPOC) system. The SPOC system is a USTR program that facilitates information sharing between the USTR and relevant state offices.

**Recommendation #3:** Actively seek appointments to relevant USTR trade advisory groups that provide guidance to the USTR. The most important group for state government representatives to join is the Intergovernmental Policy Advisory Committee (IGPAC). Presently, the Executive Director of the Minnesota Trade Office has been invited to join the IGPAC and is awaiting his security clearance.

**Recommendation #4:** Resolve the matter of who has authority to commit the State to Government Procurement Agreements of U.S. trade agreements. Specifically, the question is

whether the Governor can act alone or whether legislative action is required to commit the State of Minnesota as a party to Government Procurement Agreements (GPA), which allows foreign entities to compete for state procurement contracts as long as they meet established thresholds. It is the Working Group's recommendation that both the Governor and the Legislature be involved in future decisions regarding GPA. Just as Congress must approve trade agreements, the Working Group suggests that it is reasonable to institute a similar approach at the state-level requiring the Minnesota Legislature to vote on whether to bind the State to a GPA.

## FINDINGS

The following findings respond directly to the issues the Trade Policy Working Group was chartered to address in accordance with the legislative mandate.

**1. State's jurisdiction regarding federal trade policy and trade agreements:**

States do not have authority to establish federal trade policy, to negotiate official international trade agreements, or to act in ways contrary to U.S. trade agreements. It is the jurisdiction of the federal government, specifically the Office of the United States Trade Representative (USTR) in the Office of the President, to determine U.S. trade policy and to negotiate international trade agreements with Congressional approval.

States, however, may lobby on federal trade policy, as they do on other issues, and are occasionally asked to formally endorse specific provisions of some agreements (e.g. GPAs). This issue is addressed more fully in paragraph 3.

**2. State's current policies, procedures, roles and responsibilities for providing advice and consent on federal trade policy and trade agreements:**

Other than the actions noted in the subsequent section (paragraph 3), the Trade Policy Working Group is unaware of any established state-level policies and procedures governing this subject.

**3. Current means through which the state interacts with the USTR and Congress regarding trade policy and trade agreements:**

There are a number of formal and informal means by which state governments, trade and industry associations, citizen groups, and other non-government organizations in Minnesota can, and do, influence federal trade policy and trade agreements. The most notable means by which state government currently interacts with the USTR and Congress include:

- a. *Lobbying* - Interested parties may take independent action to lobby the three main organizations responsible for international trade policy and trade agreements – the USTR, the President, and Congress.

- b. *Single Point of Contact (SPOC) System* - The SPOC system is a USTR program that permits the Governor to designate one person in state government to whom the USTR will forward information. The SPOC can then disseminate information to other relevant state offices.
- c. *Intergovernmental Policy Advisory Committee (IGPAC)* – The USTR hosts several advisory committees to offer advice to the USTR, the President and Congress. Currently, one state official – the Executive Director of the Minnesota Trade Office – has been appointed to the IGPAC.
- d. *Government Procurement Agreements (GPA)* - Free Trade Agreements often contain provisions to permit parties in each country to compete equally for federal and state-level government procurement contracts as long they meet defined thresholds. These provisions commonly are called Government Procurement Agreements (GPA). States voluntarily can agree to become party to a GPA and may define the scope of their participation.

4. **Identify trade agreements for which the State of Minnesota has given consent:**

The only official means for which state governments presently can become designated parties to trade agreements is by giving consent to allow foreign entities to compete for state government procurement contracts. The section of Free Trade Agreements (FTA) identifying the terms of the procurement rules and the list of parties is commonly known as Government Procurement Agreements (GPA). It is important to note that state governments can define the scope of their participation in a GPA. For instance, some states do not allow foreign entities to compete for contracts for sensitive procurement areas such as steel, motor vehicles, etc.

According to the USTR, the State of Minnesota is listed as being a party to GPAs of the following trade agreements and only extends to contracts tendered by executive branch agencies. Technically, the only GPA that Minnesota has explicitly given consent to is the WTO GPA. For the other two agreements listed below (Singapore and Chile), the Office of the USTR took it upon itself to include the same states listed in the WTO GPA. Therefore, Minnesota is listed in the Singapore and Chile FTA GPAs although no expressed consent was given by the State. The USTR subsequently has changed this practice and now will explicitly request authorization from states before listing them in future GPAs.

a. *World Trade Organization (WTO)*

Minnesota is one of 37 states that have given consent to the WTO GPA. The agreement provides companies from the other 39 countries that are parties to the WTO GPA the authority to compete only for procurement contracts that are equal to or exceed the following thresholds as set forth in Executive Order 12260:

*For procurement of good and services –*                      \$528,000

*For procurement of construction services – \$7,443,000*

*The WTO GPA Members are:* United States; European Union States (Austria, Belgium, Bulgaria, Czech Republic, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom); Canada; Hong Kong; China; Iceland; Israel; Japan; Liechtenstein; Norway; the Republic of Korea; Singapore; and Switzerland.

**b. Singapore Free Trade Agreement (FTA)**

The Singapore FTA incorporates by reference the list of states, including Minnesota, that are covered by the WTO GPA, but it does not add any additional obligations beyond those specified in the WTO GPA. The USTR took this action without expressed consent from the State since Minnesota and Singapore are parties to the WTO GPA.

**c. Chile Free Trade Agreement (FTA)**

The USTR did not seek state approval when it incorporated the states listed in the WTO GPA into the Chile FTA because from the USTR's perspective the obligations of the Chile FTA are essentially the same as the WTO GPA. States have objected to this action and the USTR subsequently has made a practice of now explicitly requesting authorization from the states.

The agreement provides Chilean companies the authority to compete only for procurement contracts that are equal to or exceed the following:

*For procurement of good and services – \$460,000*  
*For procurement of construction services – \$6,481,000*

**5. Trade policy models of other States:**

Although the Working Group did not conduct a comprehensive survey of other States' trade policy programs, it is commonly known that a majority of States, including Minnesota, do not have a formal trade policy advisory program. However, just like the State of Minnesota, other States are beginning to take action to do so. Colorado, Indiana, Maine, New Hampshire, New York, Pennsylvania, Utah, and Washington are among the States known to have taken action recently either to formally establish offices or committees responsible for reviewing trade agreements. At least two states, Hawaii and Rhode Island, passed legislation designating which state government entity has authority to bind the state to Government Procurement Agreements (GPA).

A few of the states have established formal review procedures ranging from citizen advisory committees to creating an office specifically to address trade policy. For instance, the Governor of Pennsylvania formed the Office of Trade Policy headed by a lawyer who

specializes in international trade and who maintains an office in Washington, DC in order to be near the USTR and Congress.

A summary of recent actions by some other States follows.

*Colorado:* Enacted a law in 2007 establishing an International Trade Office to assess the impact of trade agreements on Colorado and inform the General Assembly about ongoing trade negotiations and the potential impact on Colorado's economy and laws.

*Hawaii:* The Hawaii legislature enacted a law during the 2007 legislative session requiring the legislature to vote on whether to bind the state to an international trade agreement.

*Indiana:* The Indiana State Senate passed a resolution calling on Congress to place a moratorium on any new free trade agreements. It urged Congress "to investigate and review" all free trade agreements signed so far by the United States and also called on Congress to review U.S. participation in international trade organizations.

*Maine:* In 2004, the Maine legislature passed a bill creating a Citizens' Trade Policy Commission to investigate and hold hearings on the impact of trade.

*New Hampshire:* In 2007, the legislature passed a resolution urging the USTR to provide the state with the chance to give input on trade agreements that impact state and local governments and to exempt New Hampshire from the General Agreement on Trade in Services until given explicit authority to do so by the state legislature; the governor to inform the USTR that the legislature retains the authority to regulate business affairs with the state; and Congress and USTR to preserve the traditional powers of state and local governments. In addition, the New Hampshire legislature passed a bill establishing a Citizens' Trade Policy Commission to evaluate the impact of existing and proposed international trade agreements on the ability of the state and local governments to pass laws regarding public health and safety, environmental protection, labor standards, state and local procurement and the provision of public services. The commission includes representatives from business, farm, labor and nonprofit communities.

*Pennsylvania:* Governor Ed Rendell announced a comprehensive strategy in December 2004 intended to protect Pennsylvania manufacturing jobs and businesses. Major items in the governor's strategy include the formation of the Office of Trade Policy to protect the state's interests in regards to trade agreements and the appointment of the state's first Manufacturing Ombudsman to assist businesses with questions about business finance, workforce training programs, permits and other regulatory issues.

*Rhode Island:* The legislature passed the law in its 2007 session requiring any state official, including the governor, obtain legislative approval in order to bind the state to any international trade agreements.

*Utah:* In 2005, the Utah legislature passed H.J.R. 15 urging the USTR to maintain the regulatory authority of the states and to consult with representatives of state and local governments and industry regarding trade issues. The legislature also passed S.R. 1 and H.R. 9 urging Congress to oppose entering into the Free Trade Area of the Americas agreement.

## RECOMMENDATIONS

The Trade Policy Working Group agrees that Minnesota state government should be better prepared to review, and when asked to do so, to act on provisions in U.S. trade agreements. The goal of these efforts should be to promote and protect Minnesota's interests. The Working Group further concludes that the State's initial actions should be measured and reasonable rather than pursuing a more aggressive strategy of establishing and funding a standing office solely for the purpose of addressing trade policy. Instead, the Working Group proposes to more fully leverage existing advisory programs, establish an advisory committee, and clarify legislative and gubernatorial authority.

### Establish Trade Policy Advisory Committee

The Trade Policy Working Group recommends establishing a nine-member Trade Policy Advisory Committee, appointed by the Governor, Minnesota Legislature, and Attorney General primarily to provide advice on whether to commit the State to future Government Procurement Agreements (GPA) of U.S. trade agreements. Additionally, the Governor, by executive order, or the Legislature, by joint resolution, may convene the committee to obtain advice on other issues related to trade agreements besides GPA. The advisory committee's work should be evaluated after five years and state policy makers should decide whether to reauthorize it.

The Working Group drafted proposed legislation (Appendix C) governing the Trade Policy Advisory Committee and recommends the legislation be addressed during the 2008 Legislative Session.

### Strengthen Minnesota's Implementation of the USTR Single Point of Contact System

The Working Group's second recommendation is to strengthen the State's implementation of the USTR Single Point of Contact (SPOC) system. The SPOC system is a USTR program that permits the Governor to designate one person in state government to whom the USTR will forward information and who will be the primary person to relay the state's advice to the USTR. Currently, the Executive Director of the Minnesota Trade Office, Tony Lorusso, is Governor Pawlenty's SPOC appointee.

SPOCs regularly receive USTR press releases, Federal Register notices, and other pertinent information. The SPOC is expected to disseminate information to other relevant state and local offices. However, USTR communications presently are not being disseminated beyond the SPOC. The Working Group recommends the Minnesota SPOC take action to more fully



implement the SPOC system to relevant state and local offices by taking the following actions: 1) identify other relevant State offices that should receive information on trade policy and trade agreements, 2) obtain contacts for each relevant office, and 3) institute regular dissemination of correspondence received from the USTR.

#### **Seek Appointments to USTR Trade Advisory Groups**

The USTR regularly meets with local governments, business groups, legislators and public interest groups to gather input on trade issues and explain the president's trade policy positions. Additionally, the USTR has seven primary advisory groups that offer input to the USTR, the President, and Congress. The Trade Policy Working Group encourages the State to actively seek appointments to relevant USTR trade advisory groups.

The primary advisory groups are:

- Advisory Committee for Trade Policy and Negotiations (ACTPN)
- Trade and Environment Policy Advisory Committee (TEPAC)
- Intergovernmental Policy Advisory Committee (IGPAC)
- Labor Advisory Committee (LAC)
- Agricultural Policy Advisory Committee (APAC)
- Agricultural Technical Advisory Committee for Trade (ATAC)
- Industry Trade Advisory Committees (ITAC) – *there are 16 ITAC committees organized by industry sectors.*

The most important group for state government is the Intergovernmental Policy Advisory Committee (IGPAC). The IGPAC has broad representation from state and local officials from all three branches of government, as well as state and local associations and regulators. Presently, the Executive Director of the Minnesota Trade Office has been invited to join the IGPAC and is awaiting his security clearance.

One of the responsibilities of the State's Trade Policy Advisory Committee identified in the first recommendation is to work closely with the USTR to ensure Minnesotans are appointed to various advisory groups.

#### **Resolve Issue of Gubernatorial and Legislative Authority**

Which state government entity – the Governor or the Minnesota Legislature – has the authority to give the state's consent to Government Procurement Agreements is not clearly defined by Minnesota statute. While the USTR sends its inquiries to the Governor of each state when seeking their state's consent, the USTR does not mean the Governor has the authority to decide alone. Again, most states, including Minnesota, have not openly addressed this issue.

To resolve this issue, the Trade Policy Working Group recommends the State adopt rules similar to the federal government thereby requiring action by both the Governor and the Legislature in order to commit the State to Government Procurement Agreements of U.S. trade agreements. The Governor and Legislature should seek advice from the state's Trade Policy Advisory Committee and share responsibility for any decision to give the State's consent by

following normal legislative procedures. The draft legislation in Appendix C also establishes the requirement for shared responsibility in binding the State to GPAs.

## APPENDIX A - LAWS OF MINNESOTA 2007 – Ch. 135, Art 2

### Sec. 35. WORKING GROUP ON STATE ROLE IN TRADE POLICY.

Subdivision 1. Work group members. The Department of Employment and Economic Development must convene a working group to develop recommendations for establishing policies and procedures regarding the role of the state in federal trade policy and trade agreements. The working group must be comprised of 17 members as follows:

- (1) the governor or his designee;
- (2) the commissioner of the Department of Employment and Economic Development or his designee;
- (3) the commissioner of the Department of Agriculture or his designee;
- (4) the commissioner of the Department of Administration or his designee;
- (5) the attorney general or her designee;
- (6) two members of the Minnesota senate one of whom is appointed by the senate majority leader and one appointed by the minority leader;
- (7) two members of the Minnesota house of representatives, one of whom is appointed by the speaker and one appointed by the minority leader;
- (8) two members designated by the Minnesota AFL-CIO;
- (9) two members representing labor organizations other than the AFL-CIO with one to be appointed by the speaker of the Minnesota house of representatives and one to be appointed by the majority leader of the Minnesota senate;
- (10) two members designated by the Minnesota Chamber of Commerce; and
- (11) two members representing business organizations other than the Minnesota Chamber of Commerce appointed by the governor.

The Department of Employment and Economic Development must provide administrative support to the working group.

Subd. 2. Duties; responsibilities. The working group may obtain input from other state and federal agencies as appropriate and may conduct public hearings to allow input from interested stakeholders. The working group must:

- (1) determine the state's jurisdiction regarding federal trade policy and trade agreements;
- (2) assess the state's current policies, procedures, roles and responsibilities for providing advice and consent on federal trade policy and trade agreements;
- (3) review the current means through which the state interacts with the Office of the United States Trade Representative (USTR) and Congress regarding trade policy and trade agreements;
- (4) inventory the federal trade policies and trade agreements that the state of Minnesota has formally approved or signed on to;
- (5) examine trade policy models established by other states;
- (6) develop recommendations for defining responsibilities and procedures for the state's role in federal trade policy and trade agreements; and
- (7) prepare legislative recommendations to implement the recommendations of

the working group.

The working group must report its findings and recommendations to the governor and the legislature by December 1, 2007.

## APPENDIX B - TRADE POLICY WORKING GROUP

	APPOINTING AUTHORITY	DESIGNEE
1	Governor or his designee	<b>Beth Kadoun</b> Senior Policy Advisor, Office of Governor Tim Pawlenty
2	DEED Commissioner or designee (CHAIR)	<b>Tony Lorusso</b> Executive Director, Minnesota Trade Office
3	Commissioner of Agriculture or designee	<b>Kurt Markham</b> Director of Agricultural Marketing Services <i>Alternate: Michael Yost</i>
4	Commissioner of Department of Administration or designee	<b>Jim Rhodes</b> Legislative Director
5	Attorney General or designee	<b>Alan Gilbert</b> Solicitor General
6	Minnesota Senate <i>appointed by majority leader</i>	<b>Senator David Tomassoni</b>
7	Minnesota Senate <i>appointed by minority leader</i>	<b>Senator Amy Koch</b>
8	MN House of Representatives <i>appointed by speaker</i>	<b>Representative Kate Knuth</b>
9	MN House of Representatives <i>appointed by minority leader</i>	<b>Representative Bob Gunther</b>
10	Minnesota AFL-CIO designee	<b>Stan Daniels</b> United Steelworkers (USW) <i>Alternate: Charlie Olson</i> United Steelworkers (USW)
11	Minnesota AFL-CIO designee	<b>Rick Ryan</b> International Association of Machinists & Aerospace Workers <i>Alternate: Julie Anderson</i> IAMAW
12	Labor designee (other than AFL- CIO) <i>appointed by speaker of the House</i>	<b>Don Gerdesmeier</b> Teamsters
13	Labor designee (other than AFL-CIO) <i>appointed by Senate majority leader</i>	
14	Minnesota Chamber of Commerce	<b>Bill Blazar</b> Senior Vice President <i>Alternate: Tom Hesse</i>
15	Minnesota Chamber of Commerce	<b>Tom Schabel</b> President, Alexandria Extrusion
16	Business designees (other than the MN Chamber) <i>appointed by the Governor</i>	<b>Mike Zumwinkle</b> Director of State Government Relations, Cargill, Inc.
17	Business designees (other than the MN Chamber) <i>appointed by the Governor</i>	<b>Kate Rubin</b> President, Minnesota High Tech Association

## APPENDIX C – PROPOSED LEGISLATION

A bill for an act relating to state approval of Government Procurement Agreements of U.S. trade agreements and establishment of a Trade Policy Advisory Committee.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

### Section 1. STATE APPROVAL OF GOVERNMENT PROCUREMENT AGREEMENTS

- (1) Any decision to provide the State's consent to Government Procurement Agreements (GPA) of U.S. trade agreements shall require approval of the Governor and Legislature.

### Section 2. TRADE POLICY ADVISORY COMMITTEE

- (1) The state legislature approves the formation of a Trade Policy Advisory Committee.
- (2) The Trade Policy Advisory Committee shall be comprised of 9 (nine) members as follows:
  - a. the governor or his designee;
  - b. the commissioner of the Department of Employment and Economic Development or his designee;
  - c. the commissioner of the Department of Agriculture or his designee;
  - d. the commissioner of the Department of Administration or her designee;
  - e. the attorney general or her designee;
  - f. the senate majority leader or his designee;
  - g. the senate minority leader or his designee;
  - h. the speaker of the house or her designee; and
  - i. the house minority leader or his designee.
- (3) Members of the Trade Policy Advisory Committee shall serve for a term of two years and may be reappointed.
- (4) The Trade Policy Advisory Committee may invite representatives from other state agencies, industry, trade and labor organizations, non-governmental organizations, local governments, etc. to join the committee as ex officio members.
- (5) The commissioner of the Department of Employment and Economic Development or his designee shall:
  - a. coordinate with the other appointing authorities to designate their representatives;
  - b. convene the first organizational meeting of the Trade Policy Advisory Committee; and
  - c. provide administrative support.
- (6) At the first organizational meeting of the Trade Policy Advisory Committee, the committee members shall elect a chair. The chair will assume responsibility for convening future meetings of the committee when called upon by the Governor or Legislature.
- (7) The Trade Policy Advisory Committee shall:

- a. serve as the state's advisory committee to the Governor and Legislature on matters relating to Government Procurement Agreements of U.S. trade agreements;
- b. assess the potential impact of Government Procurement Agreements on the state's economy; advise the Governor and Legislature of the committee's finding; and develop recommendations for the Governor's and Legislature's consideration;
- c. determine on a case-by-case basis how it wishes to proceed in determining the impact of a specific GPA. The committee may request input from state agencies, seek expert advice, convene public hearings, or take other reasonable and appropriate actions;
- d. provide advice on other issues related to trade agreements besides GPA when specifically requested by the Governor (by executive order) or the Legislature (by joint resolution);
- e. request information from the Office of the United States Trade Representative (USTR) necessary to conduct an appropriate review of GPAs and/or other trade issues as directed by the Governor or Legislature; and
- f. receive information obtained by the USTR's Single Point of Contact (SPOC) for Minnesota;