

COMMITTEE: Labor & Economic Development
POLICY: China's Challenge to State Law-Making Authority
SPONSOR: Senator Ginny Lyons, Vermont
TYPE: Action Calendar Resolution
VERSION: New/Introduced (July 11, 2008)
HISTORY:

1 The People's Republic of China (PRC) this year challenged several bills
2 introduced by state legislators concerned about public health and the
3 environment. In several separate notices sent to lawmakers in Maryland and
4 Vermont, China sought to persuade these legislators to withdraw bills that would
5 regulate lead content in toys, ban certain hazardous chemicals in children's
6 apparel and toys, or establish recycling programs for electronic waste.

7
8 In each case, it appears that the Office of the United States Trade
9 Representative (USTR) had alerted China's "WTO/TBT National Notification and
10 Enquiry Center" about the introduced bills. (The WTO/TBT—the World Trade
11 Organization agreement dealing with 'Technical Barriers to Trade'—deals with
12 technical standards in areas ranging from food labeling to manufacturing
13 standards. The TBT agreement allows only federal governments the right to
14 regulate human health and safety standards.)

15
16 NCSL deplores China's interference in the normal exercise of state lawmaking
17 authority by raising the specter of possible trade challenges to state measures
18 that are designed to limit the exposure of children to possible carcinogens and
19 toxic chemicals.

20
21 Also disquieting is the evidence that USTR provided China the information
22 necessary for the PRC to prepare its written challenges—which in one case even
23 included the home address of a state legislator. NCSL understands that the
24 United States does have a commitment to notify and publish state laws with

25 potential international trade impacts, as part of our WTO commitments. But
26 providing information on *pending* bills—thus affording China the opportunity to
27 interfere with normal democratic debate at the state level—is totally unwarranted.

28

29 USTR has responded to state legislators whose bills have been targeted by the
30 Chinese only by saying such the challenges were 'a mistake' and can be ignored.
31 This explanation might have been acceptable had China's notification challenges
32 happened only once. But these challenges have taken place over the last six
33 months, and have involved several states, and different issue areas.

34

35 This pattern suggests to NCSL that the PRC has recently decided on a policy of
36 confronting state lawmakers when their bills are still at the drafting stage, or in
37 the process of consideration by legislatures prior to passage. Consequently,
38 NCSL seeks a clarification from the United States Trade Representative as to
39 why notification and challenges are now occurring.

40

41 At a minimum, NCSL seeks a statement from USTR affirming that states' abilities
42 to pass laws and regulations protecting human health and the environment
43 should not be abridged, and that USTR will aggressively defend states'
44 regulatory powers as a matter of U.S. federalism.