

Testimony for Citizen's Trade Policy Commission February 3, 2005

Good evening, and thank you for giving me this opportunity to speak with you. My name is Bonnie Preston, and I'm with the Downeast chapter of the Alliance for Democracy (AfD), which is a national organization that is concerned that the power of huge multi-national corporations is diminishing democracy in our country and the world. The AfD, with other organizations, has worked tirelessly to make sure that every vote counts and democracy is safeguarded in the US. The world trade agreements create a legal framework that can be used to challenge state and local laws. It is deeply troubling that Maine citizens and their elected representatives may have to bow to a totally unrepresentative legal entity such as the WTO. As you would no doubt infer, I want to address the "democracy" part of the Jobs, Trade and Democracy bill that created this commission. I will do so using water issues as an example.

The various trade agreements under the WTO umbrella along with the regional agreements like NAFTA and CAFTA are based on the premise that most government regulations are "non-tariff" barriers to trade. This is the fundamental challenge to local and state democratic authority. Clearly these agreements are written with the interests of the transnational corporations foremost in mind. It is, after all, these corporations that have the lobbyists and lawyers and budgets that provide access to the trade representatives negotiating these treaties. Small businesses, family farmers, workers, the self-employed and ordinary citizens--the mainstays of the Maine economy-- have no representation. Nor is the public sector represented. In fact, the public sector is considered competition by these big corporations. One of the unvoiced aims of free trade is to privatize everything that could possibly be a source of profit to a major corporation.

This brings me to water. Maine is a water-rich state, and water is replacing oil as the most important world resource. Water of course, not oil, is the resource essential to life. As clean, fresh water, unpolluted by industry and agribusiness, becomes more scarce, it becomes more valuable. It is already a multi-billion dollar industry, and it is growing. The major water companies are European, and they have targeted the United States for future growth. Some like Nestle profit from water as a natural resource by bottling spring water. Others, like Suez, RWE and Veolia profit from water services by taking over municipal water and sewer systems. They all benefit from the way trade rules are written.

The question for Maine becomes one of control over our water. Will Maine's water be used to sustain and benefit our communities and our environment, or will it become merely a source of profit for the transnational corporations?

Water is covered under WTO/GATT and NAFTA (and future trade agreements like CAFTA) as a resource, and under WTO/GATS, the General Agreement on Trade in Services, as a service. This raises complex questions of exactly what rules will apply to water and under which circumstances.

GATS has as its goal "progressive liberalization," in other words less and less regulation by our elected officials. While GATS exempts services supplied in "the exercise of government authority," this is only if those services are not supplied on a commercial basis or in competition with other providers. Also, GATS allows countries to choose which services will be covered by

two of the most powerful GATS rules, national treatment and market access, by placing them on their schedule of commitments. Currently, the US does not include drinking water services as a sector open for negotiation, although it does include water services for commercial and industrial use. The European Union is pushing hard for the US to list drinking water services under GATS. How long will the US continue to resist that? Many questions are raised regarding these details. Can the fact that municipalities charge for water be used to argue that water is a commercial service already? If a company is supplying sewer service, while a town supplies drinking water, can the company claim that the town is offering a competing service? This and other questions remain unanswered.

Some GATS trade rules apply whether or not the US adds water for human use to its schedule of services open to trade. For example, GATS requires that domestic regulations not be "more burdensome than necessary." Of course it is the transnational corporations that are not to be burdened, and the WTO that gets to decide if something is burdensome. A foreign corporation needing to comply with a variety of municipal codes, or make application to many different agencies, to do business in Maine may consider these rules burdensome. This could make Maine cities and towns reluctant to set their own standards for fear of being challenged by the other WTO countries, removing the opportunity of protecting ourselves from corporate harm. Depending on the outcome of on-going negotiations to expand GATS, trade rules might conflict with rate setting, quality standards, limits on public funding of private services, continuation or reorganization of local monopolies, regulatory mandates for staff levels or capital investment, and prevailing wage requirements. Also, the US has already committed certain business services under GATS which could be applied to the provision of water, such as billing, meter reading, asset management, and contract management. All of these have an impact on the basic service of providing drinking water. How much will a locality's water bills increase if all of these parts of the service are turned over to private corporations with no community ties?

Now I will turn to Maine's water resources, which, under the trade agreements, are treated as a commodity if traded across national borders and as a good when put in bottles, and which depend on transportation and wholesale and retail sales services to reach the consumer, all of which are subject to the powerful GATS rules.

Nestle, which bought out Maine's local Poland Spring company, is seeking to greatly expand its water extraction and bottling in Maine. Already, local communities are concerned about the noise, pollution, and danger from the increased truck transportation in their communities. Will GATS domestic regulation rules make it difficult for Maine to regulate the trucking?

So far, Nestle is only planning to transport bulk water within the US. What if they set up a bottling plant in Canada and truck the bulk water across the border? (Canada is not far from Nestle's Spruce Spring site). This would trigger the WTO and NAFTA trade rules which severely limit government authority to regulate the quantity of water exported. If water is considered renewable, as the Canadian government has declared for Great Lakes water, then the only WTO exception allowing for some regulation of the quantity of water exported would be restrictions "necessary to protect human, animal or plant life or health" and this could only be temporarily applied. Further, a secret WTO tribunal, where Maine has no right to represent itself, could decide if Maine's regulations met this requirement. NAFTA rules further restrict

the type of temporary regulation allowable and would allow a Nestle subsidiary in Canada doing the bottling to sue the US directly to protect its future profits.

Suppose we give Nestle a 30 or more year contract allowing a huge amount of water extraction per year, and Nestle ships the water to Canada for bottling. Now suppose a severe drought or, even worse, increased levels of long-term drought in the state because of climate change. Maine could not reduce the amount of water being exported for Nestle in order to protect local water supplies for our citizens, industry, or farms unless it also reduced all use in Maine by the same percentage as it reduces the amount exported. This could have devastating effects on local communities and Maine's economy, while protecting Nestle, the world's wealthiest agribusiness corporation.

In the same circumstance, under the investor-suit rules in NAFTA and CAFTA, Nestle may even be able to sue the state for lost profit. Nestle is a Swiss company, but may be covered by NAFTA or CAFTA if it has a subsidiary in one of the countries covered by them, or perhaps even if there are individual investors in those countries who believe their investments are diminished by Maine's actions. These are issues the Commission needs to explore in depth; the answers may not be apparent until a suit is brought.

Finally, the bottled water itself is considered a food and is regulated by the Food and Drug Administration (FDA) if sold outside of Maine. Food is regulated by a separate WTO agreement--the Sanitary and Phytosanitary Standards Agreement (SPS)--which sets constraints on government policies related to food safety. Most importantly, the SPS rejects the FDA's use of the precautionary principle when there is scientific uncertainty. So, when bottled water is traded, the WTO rules say it is safe unless governments can prove it is not safe, instead of the industry first having to prove that it is safe before putting it on the market, as required by the FDA. Of course studies are calling into question the safety of bottled water, especially in the circumstances under which endocrine disrupters leach out of the plastic bottles into the water.

These trade agreements raise broader issues relating to drinking water resources. How will they impact the ability of state and local governments to regulate and enforce land use planning and zoning? How can Maine protect surface and groundwater resources, recharge zones, wetlands and sensitive habitats? What will happen to our land trusts and conservation areas? Maine is justly proud of its leadership in environmental protection. Will we be able to continue this tradition?

We return full circle to my earlier question: will Maine benefit from these trade treaties, or will the transnational corporations? It is clear to me that the rules have been written for the benefit of the transnational corporations. Our challenge in Maine is to determine how we can protect this very special piece of the planet even unto the seventh generation and beyond. I urge you to formally request that the USTR answer a series of questions related to the issues I have raised and to make these responses available to the public.

Thank you.