

United States Senate

WASHINGTON, DC 20510

December 5, 2005

The Honorable Robert Portman
U.S. Trade Representative
600 17th St., N.W.
Washington, D.C. 20508

Dear Ambassador Portman:

It has come to our attention that in the context of World Trade Organization (WTO) negotiations regarding the General Agreement on Trade in Services (GATS), a number of countries are attempting to persuade you to make Mode 4 commitments that would affect the immigration policies of the United States.

We are writing to urge you to reject these demands and also to reaffirm the commitment made by former USTR Robert Zoellick to Members of the U.S. Senate and House that this Administration will not entertain making any commitments regarding U.S. immigration policy in the context of multilateral or bilateral trade agreements.

We should not give the bloc of countries making Mode 4/immigration demands any false hopes that the Administration would be amenable at any time to agreeing to include, bind or modify U.S. immigration policy in trade agreements. We request that you make a clear public statement prior to the December WTO Hong Kong Ministerial Conference that the United States will not be making any commitments affecting immigration policy during this on-going Doha Round of WTO negotiations.

During the congressional debate surrounding the Free Trade Agreements (FTA) with Chile and Singapore, many of us expressed passionately the inappropriateness of making any commitments in any trade agreements regarding U.S. immigration policy. Article I, section 8, clause 4 of the Constitution gives Congress the power to "establish an uniform Rule of Naturalization", and the Supreme Court has long found that this provision of the Constitution grants Congress plenary power over immigration policy.

Inclusion of immigration matters in free trade agreements degrades Congress' ability to exercise its plenary power. In addition, under fast track authority, Congress does not have the ability to debate and offer amendments to immigration provisions in trade agreements, a process so vital to creating sound immigration law. Further, because of the permanent nature of the commitment made in these agreements, Congress would be unable to subsequently modify U.S. immigration commitments made in trade agreement to adapt to changing national circumstances without placing the United States

in violation of those agreements.

We were gratified that USTR Zoellick acceded to these principles and agreed that U.S. immigration policy would not be affected by trade negotiations or agreements, but rather that immigration policy would be considered through the normal legislative process. We would expect you to adhere to this agreement.

Many of us have been supporters of past trade agreements. However, as many of us also stated during the Chile and Singapore FTA debate, if future trade agreements extend beyond their appropriate scope and into subject matter for which Congress' plenary powers are explicitly reserved, such as immigration policy, we would be unable to support such agreements. In writing now, we are seeking to avoid a situation in which we would be forced to oppose a trade agreement solely because its terms invaded subject matter over which we retain exclusive domestic policymaking authority.

Thank you for your attention to this issue. We look forward to receiving your assurances and to your issuance of a clarification of U.S. policy regarding this matter prior to the Hong Kong summit this month.

Sincerely,

Dianne Feinstein

L. Chang

Murrell D. Feingold

Byron L. Dorgan

Saxby Chambliss

Robert A. Minkoff

[Signature]
