

PETER A. DEFAZIO
4TH DISTRICT, OREGON

TRANSPORTATION AND
INFRASTRUCTURE
SUBCOMMITTEES:
AVIATION, BANKING
COAST GUARD AND
MARITIME TRANSPORTATION
RAILROADS

SELECT COMMITTEE ON
HOMELAND SECURITY
SUBCOMMITTEES:
INFRASTRUCTURE AND
BORDER SECURITY
EMERGENCY PREPAREDNESS
AND RESPONSE



Congress of the United States
House of Representatives
May 6, 2004

- PLEASE RESPOND TO:
- 2134 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-3708
(202) 225-6416
 - 151 WEST 7TH AVENUE, #400
EUGENE, OR 97401-2648
(541) 466-6732
1-800-344-3803
 - 125 CENTRAL AVENUE, #350
COOS BAY, OR 97420
(541) 263-2609
 - 512 SE JACKSON STREET, #3
ROSEBURG, OR 97470
(541) 440-3523
 - defazio.house.gov

Governor Ted Kulongoski
State Capitol, Room 160
900 Court Street NE
Salem, OR 97301-4047

Dear Governor  Kulongoski:

As you may know, U.S. Trade Representative Robert Zoellick has asked governors to legally bind their states to complying with any government procurement rules the federal government negotiates in all new trade agreements. States won't be at the table during the trade negotiations of course, but no matter, the Bush Administration would like you to bargain away, in advance, your right to object. The Administration is particularly interested in getting states to commit to the procurement rules negotiated in the Central American Free Trade Agreement (CAFTA) and the Free Trade Area of the Americas (FTAA), which expand the North American Free Trade Agreement (NAFTA) to Central America and, eventually, the entire Western Hemisphere.

I am writing to strongly urge you to reject this request, which represents an unwarranted usurpation of state and local sovereignty. Oregonians have a right to establish procurement rules that reflect our shared values and promote local economic development. The Bush Administration's request would make state and local control and accountability impossible.

Agreeing to the Administration's request means Oregon would be forbidden from enacting procurement rules that: prevent the exporting of jobs by giving preference to local contractors; promote the development of environmentally-friendly ("green") products or services; provide preferences for small businesses; restrict contracts from going to companies or countries with poor human rights, environmental or labor records; provide preference for pro-union or pro-public bidding assistance; or provide for prevailing or living wages and project-labor agreements. The CAFTA text is actually retroactive; requiring states to change existing procurement rules that conflict with its provisions.

I recognize that Oregon's procurement flexibility is already somewhat limited by international trade agreements. As you discovered as a result of the controversy about an overseas subcontractor handling calls about eligibility for State benefits, prior action by

former Governor Barbara Roberts has limited Oregon's rights with respect to procurement. But, the Bush Administration's request would magnify this mistake several-fold.

Governor Roberts committed Oregon to complying with the World Trade Organization's (WTO) Agreement on Government Procurement (AGP). Oregon's commitment, along with similar commitments from 36 other states, was incorporated into the law Congress enacted to join the WTO, which I opposed.

However, the AGP only requires that Oregon provide non-discriminatory treatment to the 28 other signatories to the agreement. The signatories are primarily industrialized countries in Europe and U.S. allies in Asia, which have not been the primary destination for jobs exported from the U.S.¹ Notably, China and India, two of the largest destinations for jobs shipped out of the U.S., are not signatories to the AGP. Nor are the CAFTA and FTAA countries signatories. Therefore, Oregon is free to enact procurement restrictions with respect to these countries and any others not a party to the AGP. I would encourage you to do so.

Unfortunately, as I understand it, Oregon's flexibility has been further limited because the Bush Administration committed Oregon and these 36 other states who are parties to the AGP, without consultation or consent from the states in most, if not all, cases, to the procurement rules in the 2003 U.S.-Chile FTA and U.S.-Singapore FTA. Oregon is also listed as a party to the procurement section of the U.S.-Australia FTA.

You should reject the Administration's request to apply future procurement provisions to Oregon. You should also closely monitor negotiations to make sure the Administration does not include Oregon in future agreements without your knowledge or consent and, if the Administration tries, investigate your legal options to protect Oregon's sovereignty.

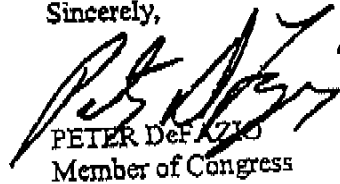
Finally, you should consider withdrawing Oregon's prior commitment to complying with the WTO AGP. The Bush Administration has already set a precedent for ignoring the WTO AGP by refusing to consider companies from particular countries for reconstruction contracts in Iraq. If Oregon chose to ignore the prior Governor's commitment, then, it's true that theoretically, another country could file a complaint at the WTO. It would then be up to the federal government to defend (or not) the Oregon position since states have no standing in the WTO dispute settlement process. The WTO dispute process can take two years or longer to work its will. In the event the U.S. government ultimately lost, the WTO members who filed the complaint could impose financial penalties, but those penalties would fall on the federal government, not the State of Oregon. It is possible the federal government would then try to impose a financial penalty on the State of Oregon, but, at that point, several years down the road, Oregon could just change its procurement practices to come back into compliance with the WTO.

¹ AGP signatories are: Austria, Belgium, Canada, Denmark, European Communities, Finland, France, Germany, Greece, Hong Kong China, Iceland, Ireland, Israel, Italy, Japan, Korea, Liechtenstein, Luxembourg, Netherlands, Netherlands with respect to Aruba, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, United Kingdom, United States

This result, which would merely return Oregon to the procurement rules being followed today, would help expose the threat the WTO poses to the right of American citizens and their elected officials to establish laws and regulations - for example, a procurement law that prohibits taxpayer funded contracts from being carried out by foreign labor - in the public interest.

Thank you for your attention to this issue. Please don't hesitate to contact me if you would like to discuss it further.

Sincerely,



PETER DeFAZIO
Member of Congress