

Fast Track and the GATS

Fast Track Endangers Service-Sector Areas of State Authority



Today's international trade agreements delve deeply into matters of state law. Pacts like the World Trade Organization's (WTO) General Agreement on Trade in Services (GATS) contain numerous policy obligations and constraints to which U.S. federal, state and local governments are bound to conform their domestic policies. Like the WTO's procurement agreement, the GATS was also part of the Uruguay Round package of agreements that was pushed through Congress in 1994 by the Clinton administration utilizing Fast Track. Areas of state regulatory authority undermined by the GATS include:

Health Care: The United States signed up many "financial services" to comply with GATS strictures, including health insurance. While states attempt to address the scandalous lack of health care coverage for the 43 million uninsured Americans, states' policy options are being curtailed. Certain health care reform proposals, especially those that create a subsidized low-cost health plan that successfully competes with private-sector plans in the market, may violate GATS anti-monopoly rules.

Energy: Under the category of "services incidental to energy," the system of organizing and regulating many public and private electric utilities would appear to violate GATS prohibitions on monopolies or exclusive service suppliers. State Renewable Portfolio Standards (RPS) may constitute GATS violations, as they could be perceived as changing competitive conditions in a way that "discriminate" against foreign distributors of energy. Proposed new U.S. GATS commitments on "warehousing" implicate the safety and zoning regulations governing highly controversial liquid natural gas terminals (LNG) which are front page news in many states.

Higher Education: The United States is proposing to commit private and *public* "higher education" to WTO jurisdiction even though trading partners have requested access only to U.S. private higher education (i.e., for-profit commercial and technical training colleges). As a result, state subsidies for public institutions and students would be put at risk of WTO attack.

Environment: The United States has made GATS commitments that are described as "incidental" to forestry, fishing and mining. However, the explanatory notes defining this category in a related United Nations list of services definitions suggest that this commitment also covers the activities of forestry, fishing and mining. Therefore, bans on these activities, such as bans on fishing to preserve certain classifications of fish, could be considered a barrier to trade for foreign fishers. The United States also committed wholesale distribution of waste, which could make Michigan's recent decision to ban waste imports from Canada a GATS violation. U.S. commitments on public water services under the categories of "construction" and "engineering" are a first step toward further coverage of municipal water and sewerage systems.

Other service-sector areas at risk include financial services, transportation, land use, distribution, information services, telecommunication services and more. To find out more about the nearly 100 service sectors the United States has committed to the GATS, check out Public Citizen's GATS database – with the WTO jargon translated into plain English – at www.citizen.org/GATSdirectory. We also have a key that will help you decipher the actual U.S. commitments at www.citizen.org/GATSGlossary.

States Lead the Fight for Fairer Trade Policies

Alarmed at the role the WTO's GATS has already had in accelerating the offshoring of service-sector jobs and worried about the problems the agreement could pose for quality health care and higher education, in 2006 four state governors took decisive action to safeguard their states from the worst aspects of the GATS. Governors Baldacci of Maine, Kulongoski of Oregon, Granholm of Michigan and Vilsack of Iowa wrote to the U.S. Trade Representative (USTR) demanding that their states be carved out of prior and future U.S. GATS commitments, as did members of the Maine and California state legislatures.

While the WTO's Doha Round of talks has had an on-again/off-again course in the recent past, it is still extremely important for more governors and state legislators to communicate to the USTR their concerns about carving out any service sectors in their state that they do not want to submit to the complex rules of the GATS and to WTO jurisdiction.

Should federal trade negotiators have authority to bind your state to comply with international trade rules that:

- dictate how your state can spend its taxpayer dollars?
- prohibit certain types of policies your state can enact on health care, higher education or land use planning?
- allow foreign corporations to challenge your state laws in closed-door international tribunals?

Fast Track allows this sort of outrageous international preemption via trade agreements – which is just one reason Fast Track must be replaced.

Today's trade agreements are a backdoor form of international preemption to state regulatory authority. Agreements like the North American Free Trade Agreement (NAFTA) and the General Agreement on Trade in Services (GATS) at the World Trade Organization (WTO) contain numerous provisions that have nothing to do with trade and everything to do with what kinds of non-trade policies state and local governments can pursue.

How did we get into these types of trade agreements in the first place?

Bad process resulted in bad policy. Under the “Fast Track” trade negotiating process, Congress delegates away to the president its exclusive constitutional authority to set U.S. trade policy. Congress’ only role is a rubber stamp vote after a trade agreement is signed. Fast Track eliminates all leverage that state officials, or even Congress, would have in order to safeguard domestic policy space and regulatory authority – state and local governments have no leverage to hold U.S. Trade Representative (USTR) accountable to their concerns and respect official state requests.

Fast Track railroads democracy by delegating Congress’ constitutional authority over trade policy to the executive branch, sweeping away vital checks and balances. Not surprisingly, President Bush wants more “Fast Track” so he can stay the course on our disastrous trade policy, expanding the NAFTA-WTO model to cover more essential services, affecting your state’s regulation of services from health care and public education to land use and energy distribution.

“Despite the fact that an array of vital public services are under negotiation, state officials are not being consulted in these negotiations...If states are not allowed to protect our interests now, during negotiations, we will have no opportunity to do so after the negotiations due to the Fast Track procedure which does not allow for amendments.”

- Wisconsin state legislators on GATS negotiations, March 2003
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TAKE ACTION: REPLACE THE FAILED FAST TRACK SYSTEM

The good news is Fast Track sunsets on June 30, 2007, providing a unique opportunity for a new direction.

Congress will soon be deciding what happens after Fast Track expires. We have a once-in-a-decade opportunity to replace the archaic Fast Track system with a new process that respects the **principles of federalism, sets rules about what must and must not be in trade agreements** and **keeps trade policy-makers accountable** to elected officials and the public. Contribute to this critical national debate by taking action at both the federal and state level!

➤ **Federal Action: Tell Congress to respect state sovereignty in trade agreements.**

Join the wave of states passing a resolution this year calling for replacing Fast Track with a more democratic U.S. trade negotiating process – one that requires proof of states’ *prior informed consent* before they can be bound to comply with the terms of any trade agreement. This means trade negotiators cannot sign up states to comply with the services, investment and procurement rules in trade agreements without their explicit approval.

Also, write a letter to your entire congressional delegation urging them to replace Fast Track with a process that guarantees states cannot be bound to trade agreements without states opting in, and alerting them to the fact that state regulatory authority and your state policies are being undermined by current trade pacts.

➤ **State Action: Make sure your state legislature, not only the governor, gets a say.**

Many state legislatures are working to pass a bill that provides for the state legislature, and not just the governor, to cast the deciding vote on whether or not the state will agree to comply with the services, investment and procurement terms of trade agreements. Without this process, governors can simply sign on unilaterally.