



Maine Fair Trade Campaign

*Working together for fair trade
and a just, sustainable and democratic
global economy*

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MEMO

FROM: Maine Fair Trade Campaign
TO: Governor Baldacci

Coalition Member Organizations

Alliance for Democracy
Auburn WAGE Committee
Food and Medicine
Greater Bangor Area Central Labor Council
Greater Brunswick Peace Works
IAMAW Machinists Local 1821
Institute for Local Self-Reliance
International Brotherhood of Electrical Workers (IBEW) 567
IBEW 1768
IBEW 1837
IBEW 2327
Laborers Local Union #327
Maine AFL-CIO
Maine Council of Churches
Maine Labor Council – United Steel Workers
Maine Labor Group on Health
Maine Organic Farmers & Gardeners Association (MOFGA)
Maine Peoples Alliance
Maine State Employees Association SEIU Local 1989
National Association of Letter Carriers (NALC) Local 391
Peace Action Maine
Peace and Justice Group of Waldo County
Peace through Inter-American Community Action (PICA)
People Organized to Win Economic Rights (POWER)
Physicians for Social Responsibility
Maine Sierra Club
Southern Maine Central Labor Council
Sustainable Harvest
Teamsters 340
Unitarian Universalist Church of Brunswick
United Steelworkers (USW) Local 1-9
USW Local 1-36
USW Local 261
USW Local 1188

RE: Maine's Authority at Stake in WTO Service Sector Talks
DATE: March 13, 2006

Dear Governor Baldacci:

This is to bring to your attention that at the December 2005 World Trade Organization (WTO) Ministerial in Hong Kong, U.S. federal trade negotiators agreed to push for an expansion of WTO powers. As part of a proposed expansion of the WTO's General Agreement on Trade in Services (GATS) that the U.S. federal government has agreed to negotiate, foreign countries would be empowered to use the WTO dispute resolution system as an international venue to challenge a range of Maine state and local laws. We ask that you take executive action with regards to these negotiations to safeguard Maine's sovereignty and ability to adopt and maintain service-sector policies that promote good jobs and a clean environment.

Background:

The GATS is one of the 17 "Uruguay Round" agreements enforced by the WTO. In the United States, Congress first approved the GATS in 1994. Rules about actual trade in services across borders are only a small element of the agreement. The GATS defines "trade" in services in an extraordinarily broad way that not only includes cross-border provision of a service via Internet, phone, or mail, but also the commercial presence of a foreign corporation in a WTO member country. Because the very notion of placing services (including some public services) under the rubric of a "trade agreement" was so controversial, GATS – unlike other WTO agreements – only covers sectors that countries have specifically listed as covered by the terms of the agreement in a document called their "schedule of service commitments."

New negotiations are underway, called "GATS 2000," to expand the coverage of existing GATS' rules to more service sectors and to establish new rules that could affect a wide variety of service-sector regulatory policies at all levels of government. In 2001, the new GATS negotiations were rolled into the larger "Doha Round" of WTO negotiations. The final deadline for the GATS talks is 2006. In 2005, the extent to which GATS rules make state laws and regulations vulnerable to foreign challenge was exposed when the WTO ruled on Antigua's challenge to the U.S. ban on Internet gambling. Many state and local officials have become increasingly aware that the WTO GATS is serving as a backdoor form of international preemption of service sector regulation, and have begun to voice their concerns. You raised these exact concerns in your December 2005 letter to

Ambassador Portman. The Maine Citizen Trade Policy Commission has also raised these concerns on several occasions. Unfortunately, the Ministerial Declaration signed by U.S. federal trade negotiators at the Hong Kong WTO Summit reveals that U.S. negotiators have ignored Maine's concerns and are working to expand the GATS agreement.

Effects:

Current GATS rules could be used to second-guess state and local decision-making in many areas of traditional state and local authority under the U.S. system of federalism – including those in which Maine has developed innovative solutions to pressing economic and environmental problems. Just a few examples include:

- **Health care:** Unless healthcare services are taken off of the current schedule of U.S. service commitments, federal, state and local governments' ability to effectively regulate health care facilities and implement certain health care reform measures designed to expand access and reduce the cost of health care insurance could be jeopardized. The United States committed insurance (including health insurance), hospitals and health facilities, placement and supply services of personnel (which covers cross-border nursing services), wholesale distribution (of pharmaceuticals) and construction (of nursing homes) to the GATS in 1994. The Maine Citizen Trade Policy Commission's 2005 Annual Assessment highlights the risk of a WTO challenge to the Dirigo Health plan and the Maine Rx program on the basis of these commitments.
- **Gambling:** As a result of the 2005 WTO Appellate Body's ruling on the U.S. gambling case, an array of common state gambling regulations, including limitations on the number of casinos or slot machines, state lotteries (which would be considered monopolies) and exclusive Indian gaming compacts, are now subject to challenge before future WTO tribunals as violating U.S. GATS obligations. The United States failed to carve out federal, state and local regulations on gambling from its 1994 GATS commitments in other recreational services.
- **Land Use and Zoning:** Multiple zoning and land use policies pursued by local governments, for instance those which limit the location, size or design of "big box" stores or those that limit development in environmentally sensitive or historic districts, could be challenged as GATS-illegal "barriers to trade." The United States failed to carve out land use policies from its 1994 GATS commitments in hotels and restaurants, franchising and retail distribution.
- **Education and Libraries:** The United States committed libraries, archives, museums, and other cultural services in 1994, as well as adult education and other educational services. As library services are increasingly commercialized, the subsidization of public libraries, historical societies, museums, and archives may be challenged under GATS rules. In addition, in May 2005, the United States proposed to commit the higher education sector to GATS rules. Institutional accreditation standards and procedures, varying admissions policies including those providing equal opportunity for students, and state subsidies for U.S. institutions and students may be put at risk if the United States signs up higher education to GATS rules as planned.
- **Water:** The United States has not made any indication that it intends to commit the sensitive sector of water for human use, which, if offered, would undermine public ownership of municipal water systems. However, the United States did commit a variety of water-related sectors (such as construction, wastewater management, and repair and maintenance of equipment) that give us cause for concern.

Furthering the Problem:

On May 3, 2005, the U.S. Trade Representative (USTR) sent correspondence to its state contacts

with notice of intent to introduce additional service sectors to be covered by GATS, including higher education. (See copy, attached.) States were informed that no further action was required to safeguard existing laws or regulations in service sectors. However, the memo failed to mention that existing and future state policies could be challenged under GATS, and that if the WTO found a Maine law in a covered service sector to be inconsistent with GATS rules, the federal government would be obligated to use all constitutionally available measures (including passing preemptive legislation, withholding highway funds, and suing state or local governments) to pressure Maine to change or eliminate the offending law.

The USTR requested a response by May 26, 2005. On May 27, 2005, the Maine Citizen Trade Policy Commission (CTPC) responded by faxed letter asking USTR to carve out all Maine state and local government actions from the new GATS offer. The CTPC received no official response to its communication. The commission later learned informally that USTR believed that the commission lacked authority to represent the interests of the state of Maine – such authority rested in the Governor – and that its letter was untimely. However, there were few developments in services negotiations prior to the Hong Kong Ministerial in December. At the Ministerial, negotiators agreed to submit to the WTO on or before July 31, 2006 a new “offer” to commit additional service sectors to GATS rules. Reports from Geneva indicate that the European Union is pushing for an assessment of countries’ positions with regards to the new offers as soon as April 30, 2006. Thus, Maine has a new window of opportunity to review commitments that federal trade negotiators are making on the state’s behalf, but action will need to be taken soon.

Our Requests:

While the United States Constitution places the regulation of trade with foreign countries within the prerogative of the federal government, primary responsibility for protecting public health, welfare and safety is left to the states. To preserve the state’s ability to set domestic policies based on what’s best for Maine’s working families and the environment, we request that you notify the Office of the U.S. Trade Representative that:

- Maine does not agree to be bound by any new service sector commitments in ongoing WTO GATS negotiations, including but not limited to those proposed in the May 31, 2005 offer (e.g. higher education);
- Maine also requests that the state be carved out of service sectors committed in 1994 that give the state particular concern, specifically those sectors related to health care, gambling, land use, and education and libraries.
- Maine does not support the development of new rules by the WTO Working Party on Domestic Regulations that would create new grounds for the challenge of nondiscriminatory state laws in the service sector and would like to discuss with USTR about how the state could be exempted from these rules.

If realized, the federal government’s proposed GATS expansion would undermine Maine’s ability to address issues of public concern. The WTO’s ruling on the U.S.-Gambling case carries an urgent message: we must actively safeguard Maine’s existing laws and guarantee Maine’s ability to develop innovative solutions to public policy issues such as access to affordable health care, local control of retail box-store development, and support for public higher education without constraint or challenge under GATS.

Sincerely,

Matt Schlobohm
Maine Fair Trade Campaign, coalition coordinator