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July 2, 2003

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Ambassador Robert Zoellick  
United States Trade Representative  
600 17th Street, N.W.  
Washington, DC 20508

Dear Ambassador Zoellick:

We write to convey to you our concerns regarding the ongoing GATS–2000 negotiations. 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. Congress has consistently recognized, respected, and preserved the States' power to protect the health, welfare, and environments of their States and their citizens in a variety of statutes, such as the Clean Air Act, Clean Water Act, and Safe Drinking Water Act. As the chief legal officers of our respective states, we view it as crucial that the federal government not agree to proposals in the current negotiations on trade in services that might in any way preempt or undercut this reserved state authority.

The 1995 General Agreement on Trade in Services (GATS) removed certain barriers to the competitive participation of foreign companies and individuals in service sector areas. We understand that the GATS–2000 negotiations are aimed at removing additional perceived barriers and setting additional rules and commitments in areas as diverse as municipal water and sewage services, zoning and land use controls, utilization of natural resources, health care and insurance, schools, construction and engineering services, regulation and licensing of professionals, financial services and accounting, energy, procurement preferences, and taxation and subsidies. This vast range of topics and the requests submitted by other countries clearly implicate the entire scope of state police and regulatory power. As these negotiations continue, it is critical that the United States seek appropriate concessions from other member states that recognize our systems of state regulatory frameworks.

One of the primary bases for our concern is our understanding that the general structure of these agreements does more than to simply remove discriminatory treatment. Rather, to the extent that the general framework seeks to promote trade in services by neutralizing regulations,

programs and policies that other nations consider to be inappropriate, burdensome or unnecessary, this can have a serious impact on our ability to defend the public interests that are at the core of those regulations. Many of the United States' trading partners have identified specific laws that they view as imposing such burdens, and, indeed, the very existence of varying state regulatory schemes has been asserted as imposing an undue burden. In seeking not only market access to our service sectors, but also an assertion of federal authority over state and local regulatory controls, including the creation of standardized, federal systems of regulating industries, these requests seek to fundamentally change the allocation of regulatory authority within this county.

We are equally concerned to ensure that these proposed changes do not, in the name of promoting increased international trade, accord insufficient regard for existing regulatory, tax, and subsidy policies, and the social, economic, and environmental values those policies promote. Statutes and regulations that States and local governments have validly adopted, that are plainly constitutional and within their province to adopt, and that reflect locally appropriate responses to the needs of our residents, should not be overridden by federal decisions solely in the interests of increased trade. Instead, they signal areas where federalism should tread lightly, if at all. That position was endorsed by Congress last year with the inclusion of the "no greater rights" language in the Trade Promotion Authority legislation and we believe that adherence to that guideline should be a bedrock principle of negotiations.

The United States provided its initial responses to the requests of our trading partners on March 31, 2003. Those offers, and the negotiating positions developed therefrom, will effectively determine in which service sectors the United States will make commitments and what it will offer regarding the modes of access and limits on state regulatory authority.

The initial offers did make substantial efforts to retain a proper scope for state regulatory authority and we are appreciative of those efforts. However, we remain concerned about the extent to which those broad reservations will be translated into actual commitments in agreements with one or more of our trading partners. We also think it is vital to maintain the principle that the United States may request, but not require, states to alter their regulatory regimes in areas over which they hold constitutional authority. In addition, we are concerned that the United States may make broader offers later in the negotiations. If that happens, under "fast-track" legislation, there will be little opportunity for states to have improper positions reversed. Thus, it is critical that there be full and effective coordination and consultation with the states before the USTR makes any binding commitments.

To date, as we believe your office recognizes, the process for providing information to the states and soliciting their assistance and comments has proven to be inadequate. While the State Point of Contact system was meant to create a clearly marked channel for two-way communications, the reality has not lived up to those hopes. Rather, as your representatives have indicated, a broader and deeper range of contacts with a variety of state entities, and particularly with those bearing regulatory and legislative authority, must be initiated and maintained over the next several years. In addition, requests for information and comments must be made in a sufficiently timely fashion so that an informed response may be made at a time that will be meaningful in the development and negotiation of United States' positions.

We understand that your office has generally supported these principles and we welcome that understanding. However, we would appreciate a written commitment that the states' consent will be obtained before making offers that would impinge on our regulatory authority.

In return, we recognize that it is important for state authorities to commit themselves to engaging with your office in this process and to responding to timely requests in any equally timely manner. We look forward to working with you, as well as with the other involved state and local groups, such as the National Conference of State Legislatures, the National Association of Counties, and the National League of Cities on these issues.

As we would like to keep our congressional delegations apprised of our concerns and your response, we have copied them on this letter and anticipate sharing your reply with their offices.

We look forward to your fullest responses.

Very truly yours,

Attorney General Eliot Spitzer  
Attorney General of New York

Attorney General Bill Lockyer  
Attorney General of California

Attorney General M. Jane Brady  
Attorney General of Delaware

Attorney General Lisa Madigan  
Attorney General of Illinois

Attorney General Tom Reilly  
Attorney General of Massachusetts

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Attorney General Jerry Kilgore  
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Attorney General Peg Lautenschlager  
Attorney General of Wisconsin

cc: Senator Charles E. Grassley, Chair, Senate Finance Committee  
Senator Max Baucus, Ranking Member, Senate Finance Committee  
Senator Craig Thomas, Chair, Subcommittee on International

Representative William M. Thomas, Chair, Ways and Means Committee  
Representative Charles B. Rangel, Ranking Member, Ways and Means Committee  
Representative Philip M. Crane, Chair, Subcommittee on Trade  
Representative Sander M. Levin, Ranking Member, Subcommittee on Trade