



Buyers Up • Congress Watch • Critical Mass • Global Trade Watch • Health Research Group • Litigation Group
Joan Claybrook, President

U.S. Trade Negotiators Poised to Expand WTO Powers at the Expense of North Dakota State Sovereignty and Local Control

Did you know that at the December 2005 World Trade Organization (WTO) Ministerial Conference in Hong Kong, U.S. federal trade negotiators agreed to push for an expansion of WTO powers, which would put an alarming array of existing and future North Dakota state and local laws at risk of challenge in closed-door WTO tribunals?

As part of a proposed expansion of WTO service sector rules 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 commonplace U.S. state and local policies that multinational service sector firms argue are WTO-illegal barriers to their plans for global expansion.

The WTO agreement in question – the General Agreement on Trade in Services (GATS) – went into effect in 1995 as one of the original 17 Uruguay Round agreements enforced by the WTO. The WTO GATS goes far beyond our traditional concept of trade rules, such as tariffs and quotas on goods. Instead, the WTO GATS sets international rules to which every signatory government must conform their **domestic** policies regarding control and ownership of public services and regulation of private-sector service providers. In 2000, a new round of GATS talks was launched and it is now part and parcel of the broader “Doha Round” of global trade talks slated to conclude by the end of 2006.

The WTO GATS, when applied to areas of traditional state and local authority, such as land use, health care, utilities, higher education, and more, treads on the delicate balance between the federal government and the states established by the U.S. Constitution. Unfortunately, over the decade-long track record of the WTO, tribunals have revealed repeatedly their judgment that the U.S. system of federalism is largely irrelevant when it comes to the WTO’s enforcement of global “trade” rules.

What is a service?

One easy definition of a service is anything that you cannot drop on your foot – for example, retail stores, banking, hotels, insurance, energy, telecommunications, maintenance and repair, construction, toxic waste processing, mining, restaurants, laundry, cleaning, and transport (trains, passenger and cargo airlines, ships trucking). Also included are “essential public services,” such as education, hospitals, social security, libraries, mail delivery, police and prisons, water and sewage systems and more.

State attorneys general weigh in on the GATS:

“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... 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.” (*Letter to USTR, 7/2/03*)

TAKE ACTION!

Trade negotiators are now working behind closed doors to add more service sectors and expand the scope of the GATS rules even further. This WTO expansion of power means a group of trade officials, rather than democratically elected policy-makers, will be making decisions about local laws that affect our communities.

- **Write to your state legislators and local elected officials and alert them to the fact that our federal trade negotiators are bargaining away state and local authority without North Dakota’s consent.** Ask them to work with Governor Hoeven to request that the federal government exclude North Dakota from WTO service sector commitments that undermine state and local authority.
- **Write to Governor Hoeven and urge him to request that federal trade negotiators “carve out” North Dakota from current and future WTO service sector commitments that undermine state and local authority.**

For more info or sample materials, see www.tradewatch.org or contact Public Citizen’s Global Trade Watch. Saerom Park 202.454.5127 spark@citizen.org ♦ Sara Johnson 202.454.5193 sjohnson@citizen.org

North Dakota State and Local Laws at Risk

If the United States makes full GATS commitments in a service sector, GATS rules prohibit certain domestic laws that limit: 1) the number of service suppliers – whether in the form of quotas, monopolies or economic needs tests (regulatory bans constitute a “quota of zero”); 2) the total value of service transactions or assets; 3) the total quantity of service output; 4) the total number of natural persons that a service supplier may employ; 5) the specific types of legal entity or joint venture through which a service is supplied; and 6) foreign ownership.

Until U.S. service sector commitments are modified, the following examples are a sampling of state and local measures that are at risk of a WTO challenge *if they affect foreign service firms*:

Limitations on the size and number of retail operations.

So-called “Big Box” stores are proliferating in U.S. communities, destroying small town business corridors and contributing to sprawl. Efforts to restrict the number, size or location of Big Box stores or impose an economic needs test, would violate U.S. WTO commitments under **retail distribution services**.

State gambling regulations. In early 2005, the WTO ruled that all U.S. federal, state and local gambling laws and regulations are subject to GATS rules because the US inadvertently committed these services under “**other recreational services**.” This ruling paves the way for future challenges to limitations on the number of gaming operations, “monopolistic” state lotteries, and “exclusive” Indian gaming compacts. Revenues from North Dakota’s State Lottery are used to fund education, health care, and other essential services – but those revenues could be decimated if the WTO were to rule that states are required to allow competition from for-profit, foreign lotteries.

Bans on billboards. North Dakota law places strict restrictions on billboard advertising. Billboards are banned on highways and size limitations are placed on different sign types that are otherwise permitted in commercial zones. These restrictions could be challenged as a violation of U.S. **advertising services** commitments. The WTO has ruled that regulatory bans in covered sectors constitute a GATS-illegal quota of zero.

Rural electricity cooperatives. North Dakota’s rural electricity cooperatives could be challenged as potential violations of US **energy distribution** commitments, as monopolies and exclusive service providers are discouraged under GATS rules. This could mean that the state could be required to allow the entry of foreign, for-profit energy providers into rural areas currently served by RECs.

Community Internet. Many communities in the Great Plains are experimenting with providing low-cost community broadband (wireless internet services), categorized under **information services** in the GATS. Across the border from Fargo, the City of Moorhead, Minnesota has established a city-wide wireless network operated by the city's electric and water utility, and financed by a city loan. Because the establishment of this type of low cost public service creates a *de facto* monopoly, it could be challenged as a violation of GATS.

Public support for North Dakota universities. As if the above examples are not alarming enough, U.S. federal trade negotiators are proposing to expand GATS commitments to cover additional service sectors, such as **higher education**. 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 the higher education sector to GATS rules.

What happens if North Dakota state and local laws violate WTO rules?

- Other WTO nations are empowered to challenge a nonconforming measure as a violation of the agreement in the binding WTO dispute resolution tribunal system.
- State government officials have no standing before these tribunals and thus must rely on the federal government to defend a challenged policy.
- The tribunals are staffed by trade officials who are empowered to judge if state policy has resulted in a violation.
- Policies judged to violate the rules must be changed, or trade sanctions can be imposed.
- The federal government is obliged to use all constitutionally available powers – for instance preemptive legislation, lawsuits and cutting off funding – to force state and local government compliance with trade tribunal rulings.