



Auto Safety • Congress Watch • Energy Program • Global Trade Watch • Health Research Group • Litigation Group
Joan Claybrook, President

Trade Pacts Undermine State Sovereignty

Trade is no longer simply a federal matter. Today's international trade agreements delve deeply into matters of state law. Pacts like the North American Free Trade Agreement (NAFTA) and 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. These types of "trade" agreements – which were passed in the United States using an extremely outdated, and now expired, trade negotiating process called Fast Track Trade Authority – undermine state regulatory authority in three major areas:

Government Procurement

The government procurement rules contained in trade pacts such as the WTO's Government Procurement Agreement (GPA) and the Central America Free Trade Agreement (CAFTA) threaten a variety of common state purchasing policies, including:

- Measures to prevent offshoring of state jobs;
- "Buy Local or "Buy America" policies;
- Preferences for recycled content, renewable energy, fuel efficient vehicles and more.

Investment

Under NAFTA, not only can countries challenge state laws as barriers to trade, but corporations can also launch trade suits against state policies in trade tribunals. Corporate investors have used NAFTA's Chapter 11 investor-state enforcement system to challenge domestic state court rulings, state environmental laws, local land use policies, public health measures and even the provision of public postal services.

Services

The WTO's GATS provides a platform for offshoring services jobs in scores of different service sectors. The convoluted rules of the GATS also threaten innovative state programs, such as efforts to expand low-cost health care coverage to the uninsured. In 1995, the federal government bound many service sectors to the GATS rules without consulting states, including:

- | | | |
|--------------------|----------------------|--|
| Financial services | Transportation | Telecommunication services |
| Health insurance | Distribution | Services related to mining, fishing, forestry and energy |
| Gambling | Information Services | Higher education might be next! |

What happens if my state laws conflict with international trade agreement rules?

- Other nations that are party to the agreement are empowered to challenge a nonconforming state policy as a violation of the agreement. The case is heard in a binding, closed-door dispute resolution system established in the text of the agreement.
- State government officials have no standing before these tribunals and must rely on the federal government to defend a challenged law.
- Policies judged to violate the rules of the agreement must be changed or trade sanctions can be imposed on the United States.
- 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 the tribunal rulings.

States Demand a New Direction for U.S. Trade Policy

Procurement

Due to the growing awareness that states have much to lose and little to gain by signing up to the restrictive procurement rules of trade agreements, 31 states rejected CAFTA's procurement provisions in 2005. In the recent trade agreements with Peru, Panama and Colombia, all but eight governors declined to sign up to the agreements' procurement rules. State legislators, who are authorized with setting procurement policy in the state, have been active in weighing in with governors. Since 2005, three state legislatures have taken the extra step of clarifying the legal procedure at the state level regarding trade agreements' procurement provisions. Maryland, Rhode Island and Hawaii have all passed laws that ensure the power to sign up to the procurement terms of any trade agreement rests exclusively with the state legislature.

Services

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.

Fast Track

On June 30, 2007 the current grant of President Bush's "Fast Track" trade authority – the undemocratic Nixon-era law that transfers Congress' constitutionally-mandated control over U.S. trade agreements to the White House – expired, thanks in part to states' demands. Fast Track, which by design excludes many interested parties from the trade policy-making process, has only ever been used a dozen times. Since its 1974 inception, it has lapsed – including for six of President Clinton's eight years in office. Despite this, Fast Track was key to getting us into NAFTA, the WTO and CAFTA. Reflecting the broad interest of state and local officials to replace Fast Track once and for all, over a dozen of these resolutions passed this year:

- Alabama – House Resolution 121
- California – California Democratic Party and San Francisco Board of Supervisors resolutions
- Hawaii – House Resolution 63
- Maine – Senate Joint Resolution 649
- Montana – Senate Resolution 17
- Nevada – Joint Resolution 10
- New Hampshire – Senate Concurrent Resolution 3
- Oregon – Hermiston City Council resolution
- Pennsylvania – House Resolution 276
- Rhode Island – Senate Resolution 986
- Utah – Senate Joint Resolution 9
- Vermont – House Resolution 26
- Wisconsin – Senate Resolution 8

Take Action!

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

Write a letter to your entire congressional delegation demanding a new direction for U.S. trade policy which includes 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 bills 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.