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Joan Claybrook, President

BIG BOX BACKLASH:

THE STEALTH CAMPAIGN TO PRE-EMPT LOCAL CONTROL OVER LAND USE

As communities across the United States and elsewhere are increasingly successful in their effort to limit “big box” store expansion and destructive retail practices through transparent and accountable measures at the local level, Wal-Mart and other retailers have pursued rules at the World Trade Organization (WTO) which threaten to preempt, or at the very least chill, these local laws. These rules are part of the General Agreement on Trade in Services (GATS).

GATS is one of the 17 major “Uruguay Round” agreements administered by the WTO. When nations originally signed on to the GATS in 1994, national governments agreed to ensure that all levels of government conformed to the agreement. Even though there was little consultation with state or local governments about the implications of the GATS for state and local regulatory authority, the GATS is now federal law that applies to authorities at all levels of government.

The GATS’ most powerful rules apply only to those service sectors which nations sign up to the agreement. In 1994, the United States signed up its hotel and restaurant sector as well as retail and wholesale distribution to GATS rules. Unlike many other countries, U.S. negotiators at the time failed to exempt state and local land use laws that limit the location, number, size or design of service businesses. Unless the United States takes action to fix this problem in the current round of WTO negotiations slated to conclude in 2006, we may lose our ability to regulate foreign service firms and may see WTO challenges to local land-use laws.

Wal-Mart Meets GATSilla

The retailing giant Wal-Mart is the world’s largest company with annual sales of \$286 billion – a number that dwarfs the annual incomes of many small nations. In the United States, numerous studies and investigative reports have documented Wal-Mart’s impacts on local communities, which include: sprawl, poverty-level wages, union shut-outs, shifting of health care costs onto taxpayers, the erosion of downtown business corridors and loss of smaller retailers unable to compete with Wal-Mart prices.

Thus, from small towns to big cities, local officials are taking measures to safeguard their communities, environment, and wage base by placing a variety of land use limits on “big box” retailers like Wal-Mart. But Wal-Mart and other retailers are fighting back. They are supporting global rules at the WTO which limit the type of measures governments can use to curtail destructive development and promote vibrant downtowns. These rules are contained in the WTO GATS and apply to governments at the federal, state and local level.

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 governor and request that your state be “carved out” from any GATS commitments implicating zoning and land use laws (including retail distribution, wholesale distribution, hotel and restaurant sectors). Ask that your state be carved out from future GATS commitments as well.**
- **Write to U.S. Trade Representative Ambassador Robert Portman, and request that WTO GATS commitments be clarified to exempt existing and future zoning and land use laws.**

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

Common Land Use Laws at Risk

What happens if my city or county's land use laws are in conflict with the GATS provisions?

- Other WTO nations are empowered to challenge a nonconforming land use measure as a violation of the agreement in the binding WTO dispute resolution tribunal system.
- Local government or state officials have no standing before these tribunals and must rely on the federal government to defend a challenged law.
- Tribunals are staffed by trade officials, who are empowered to judge if a local law has resulted in a violation.
- Laws 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 withholding of funds – to force state and local government compliance with trade tribunal rulings.

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. GATS commitments are modified, the following local measures are at risk of a WTO challenge if they affect foreign service firms:

Limits on the height or size of buildings. For instance, common policies such as the law in Hailey, Idaho which limits the roof area of commercial buildings to 36,000 sq. feet could be at risk, because such restrictions reduce the value of the service asset and total quantity of service output. In comparison, Home Depots are often 125,000 sq. feet and Wal-Mart Superstores 250,000 sq. feet.

Economic impact analyses. The Los Angeles Superstore Ordinance may constitute a GATS-prohibited economic needs test. Los Angeles, CA requires retailers wanting to build stores larger than 100,000 sq. feet in economically depressed areas to pay for an extensive economic impact statement examining 10 factors, in order to enable the City Planning Commission to weigh the costs and benefits of the proposed store.

Limits on formula restaurants and chain stores. More and more communities are placing limits on the number and design of formula restaurants and chain stores. For instance, Arcata, California limits the number of formula restaurants to no more than nine at one time, a numerical quota in potential violation of GATS.

Limits on development in ecologically sensitive areas or coastlines. For instance, Westfield, Idaho rejected yet another Wal-Mart, citing the negative environmental impact of paving over of 450,000 sq. feet of “rolling, wooded land” and proximity to sensitive wetlands. Bans on development in environmentally sensitive areas could be considered a GATS-illegal “quota of zero.”

Hours of operation rules. In Des Moines, Iowa, a 24-hour, seven days a week Wal-Mart Superstore was blocked because of the nighttime noise, traffic and quality-of-life concerns of nearby residents. The store could have been built if it limited its hours from 8 a.m.-10 p.m. Restrictions based on hours of operation could be considered GATS-illegal efforts to limit the quantity of a service output or the total number of persons employed at a service operation.

Historical district preservation rules. Historic area rules, such as those in Bristol, Rhode Island which restrict formula businesses to 2,500 sq. feet and 65 feet of street frontage in the town's historic downtown area, may be considered GATS-illegal constraints on the value of the service asset or output.

Wal-Mart is a powerful global player who has lobbied the United States and WTO for the application of global rules that handcuff local officials with regards to land use policies. **In Their Own Words:**

“Countries also should be encouraged to remove any size limitations on individual stores, numeric limits on the number of stores in country and geographic limitations on store locations in the country.”

*Wal-Mart Executive Vice President to USTR
Robert Zoellick, May 1, 2002*

“...zoning and store size restrictions, and hours of operation restrictions, although frequently imposed on a national basis, make investment unattractive in some markets. European hours of operation regulations are particularly troublesome.”

International Mass Retail Association (whose members included Wal-Mart, Target, and Home Depot) to USTR Trade Policy Staff Committee, May 1, 2002