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## NEWS RELEASE

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### **What Is at Stake for States in Global Trade Talks in Geneva?**

#### ***Public Citizen Unveils New, Searchable Directory That Demystifies WTO Services Talks and Highlights Hazards for State Laws, Sovereignty and Funding***

WASHINGTON, D.C. – As an intensified new set of World Trade Organization (WTO) services negotiations gets under way this week in Geneva, Public Citizen’s Global Trade Watch division today unveiled a new, online directory designed to demystify the negotiations and highlight the danger they pose to state laws on issues ranging from higher education to health care.

U.S. domestic laws governing the provision of services and the regulation of foreign service companies must conform with commitments that U.S. trade officials make under the WTO’s General Agreement on Trade in Services (GATS). Despite recent outrage over the increasing ownership and operation of U.S. ports by foreign service firms, the WTO talks are geared toward facilitating the sale of U.S. firms and assets to foreign investors and making state regulation of these service operations more difficult. State and local governments have been provided little information about these talks; nor have they been asked whether their state sovereignty should be traded away in global negotiations.

The new Public Citizen GATS directory highlights U.S. service-sector commitments and proposals that pose the most serious concerns for state sovereignty and the public interest. Users can search the directory in three ways: 1) by specific service sector (such as higher education, insurance, road and rail transportation); 2) by key issue area (each issue category such as energy, land use, offshoring or domestic regulations contains information from multiple service sectors); or 3) by keywords. The directory is available at [http://www.citizen.org/trade/forms/gats\\_search.cfm](http://www.citizen.org/trade/forms/gats_search.cfm).

“Unfortunately, the U.S. government has not been up front about the hazards posed by the GATS for state and local governments, which have primary responsibility for regulating all service providers to protect public health and welfare, ensure reasonable rates and prevent fraud,” said Maine state Rep. Deborah Hutton. “The Bush administration has not asked states for permission before signing up sensitive service sectors such as health care and higher education, and U.S. documents are practically undecipherable. This type of directory is long overdue.”

GATS was first negotiated as part of the “Uruguay Round” of trade talks that established the WTO in 1995. At that time, the U.S. government committed many aspects of the services economy to GATS rules and subjected regulations in those sectors to challenge as “barriers to trade” on numerous grounds. Now federal trade

negotiators are working behind closed doors in Geneva as part of the current “Doha Round” of WTO talks to expand the scope of the GATS to new service sectors. Also being negotiated are new GATS rules called “disciplines on domestic regulation” that could subject almost all services regulations at the federal, state and local levels to challenge in trade tribunals if they are perceived by U.S. trading partners as “more burdensome than necessary to ensure the quality of a service.” Current negotiations will impact public and private services, public funding for services and government procurement.

“Right now, numerous states have laws, or are considering new policies, that have nothing to do with trade, but these seemingly distant, allegedly trade-related WTO negotiations could expose these same policies to attack as WTO violations in foreign tribunals,” said Lori Wallach, director of Public Citizen’s Global Trade Watch division. “If states don’t ramp up the pressure on federal trade officials, state and local regulatory sovereignty will be gutted, so the next time the public expects something to be done about a problem, like the recent port deal, taking action could be WTO-illegal.”

The potential effects of GATS commitments on U.S. federal, state and local policy are multifaceted – and can be very difficult to understand without a tool such as Public Citizen’s new Web-based database. The GATS covers every conceivable way a service might be delivered. In addition to granting foreign corporations the right to buy or establish new companies within the United States, GATS facilitates the immigration of workers to the United States on a temporary basis to provide a service. GATS also facilitates the offshoring of service jobs by encouraging cross-border trade (via the Internet and phone). GATS “nondiscrimination” rule requires that no domestic policy can alter the “conditions of competition” in a way that results in less favorable treatment for a foreign service provider, even if the law applies equally to domestic and foreign firms. This rule applies to public subsidies and grants, unless these funds are specifically exempted from the terms of the agreement. GATS rules guaranteeing foreign service firms “access” to U.S. markets go well beyond requiring equal treatment. They prohibit limits on the number of services providers in the form of quotas, public or private monopolies and exclusive service provider contracts. Regulatory bans in covered service sectors are considered barriers to market entry, and many other policies can be considered trade barriers if they limit the “value of a service transaction.”

While GATS proponents say that government services are exempt from the agreement, in reality, few government services qualify for the poorly written exemption. GATS rules on government procurement are equally vague and cover certain types of procurement, yet state officials and state legislatures have not been consulted, as they have been with other procurement pacts. If a nation seeks to withdraw a sector from the terms of the agreement, GATS requires that nation to compensate its WTO trading partners for real and theoretical lost business opportunities, making the reversal of commitments extremely difficult.

State officials have not been consulted as to whether or not to sign up service sectors, largely regulated by states, to the terms of the agreement and subject them to challenge as WTO violations. Service sectors of particular concern to state and local officials include:

**Gambling** – In 2004, the WTO ruled in a case brought by Antigua against U.S. laws banning Internet gambling that the United States had signed up gambling services to the GATS under the category of “recreational services.” Thus, current state and local bans on gambling are likely violations of GATS rules requiring market access for foreign firms. State lotteries and Indian gaming compacts could also be challenged as GATS-prohibited monopolies or exclusive service provider arrangements. To date, the United States has failed to respond to the urgings of 29 state attorneys general who wrote to the U.S. Trade Representative urging him to safeguard state gambling laws from future WTO challenges by withdrawing the gambling sector from GATS coverage.

**Higher Education** – The United States is proposing to commit public and private “higher education” in this new round of talks, when trading partners have demanded access only to private higher education (i.e., for-profit commercial colleges). As a result, state subsidies of public institutions and students could be jeopardized. The state of New York’s recent moratorium on new commercial colleges, due to concerns over false advertising and misuse of federal and state financial aid, is a clear GATS market access violation, because it serves as a “barrier” to foreign firms who want to enter the market.

**Energy** – Under the category of “services incidental to energy” many public and private electric utilities, as well as rural electrical co-operatives, would appear to violate GATS prohibitions on monopolies or exclusive service-suppliers. State Renewable Portfolio Standards (RPS) may constitute GATS violations, as they could be perceived as “discriminating” against foreign distributors of energy. Proposed new commitments on pipeline services would greatly increase foreign ownership and operation of this extremely hazardous service, at a time when the selling off of sensitive U.S. assets is front page news.

**Health Care** – The United States signed up many “financial services” to GATS strictures, including health insurance. While states attempt to address the scandalous lack of health care coverage for America’s 43 million uninsured, their policy options are being curtailed. Certain types of health care reform legislation, especially those that create a subsidized low-cost health plan, which successfully competes with private-sector plans in the market, may violate GATS rules.

**Land Use** – The United States committed “retail services,” “franchising” and “hotel and restaurant” development to GATS rules but failed to safeguard local land use laws that prohibit development in certain areas, or that place limits on the size or number of retail operations, unlike other countries that made retail commitments. These rules are considered GATS violations by giant retailers such as Wal-Mart, according to a document the big box retailer submitted to the U.S. Trade Representative. Zoning for historic preservation or environmental reasons, such as limits on beach development, also were not listed as exempt from U.S. commitments in these areas.

**Offshoring and Immigration** – GATS rules cover every conceivable way a service might be delivered, including cross-border trade via the Internet and the importation of workers to provide the service in the United States. In almost every service category covered by the GATS directory, the U.S. is agreeing to facilitate the offshoring of U.S. jobs, including in the following service categories: legal, accounting, taxation, architectural, engineering, computer, real estate, communications, higher education, maintenance and repair of equipment, commission agents and nursing services. In addition, the United States recently received a request from a block of trading partners led by India to allow more workers to enter the United States to perform these services, and many more, on a temporary basis. Under the proposal, these workers would not have to be paid the same salary as U.S. workers. A response by the United States to this request is due in the coming months.

**Environment** – The United States has made GATS commitments that are described as “incidental” to forestry, fishing and mining. However, the explanatory notes defining this category in a related United Nations list of services definitions suggest that this commitment also covers the activities of forestry, fishing and mining. Therefore, bans on these activities, such as bans on fishing to preserve certain classifications of fish, could be considered a barrier to trade for foreign fishers. The United States also committed wholesale distribution of waste, which could make Michigan’s recent decision to ban waste imports from Canada a GATS violation. U.S. commitments on public water services under the categories of “construction” and “engineering” are a first step toward further coverage of municipal water and sewerage systems.

**Libraries** – The United States committed public libraries, archives and museums to the rules of the GATS without specifying that public funds for these institutions are limited to public institutions only. Since aspects of these services are provided in competition with other service providers, they may not qualify for the GATS exception for government services.

**Media and Culture** – U.S. trade officials safeguarded federal arts grants from GATS requirements that they be shared on a nondiscriminatory basis with foreign providers, but they failed to protect arts grants provided by states or localities. The proliferation of low-cost, community broadband as a public service may violate GATS prohibitions on monopolies services. Also, the U.S. GATS commitments in advertising do not safeguard state bans on billboard advertising, and bans on tobacco and alcohol advertising to minors. Potential federal ramifications on these areas are also extremely worrisome.

**Procurement and Public Works** – Except in rare instances, the United States failed to specifically exclude state and local procurement from GATS obligations to provide foreign service companies equal access to service contracts. This implicates “buy local” policies in certain service sectors and state prohibitions on the offshoring of

state service contracts. As there is no threshold for procurement contracts in the GATS, as there are in other trade agreements, even the smallest contracts may have to be opened up to foreign service providers. While the scope of the GATS procurement rules is subject to debate, certain projects procured by governments but slated for commercial operation, such as the construction of sports stadiums, are clearly covered by U.S. “construction and related engineering” commitments. The proposed new GATS disciplines on domestic regulation could subject state laws that require payment of a prevailing wage to construction workers on such public projects to WTO challenge as more “burdensome” than necessary.

**Public Transportation** – Because the United States failed to exempt public transportation systems from its GATS commitments on “road and rail transport,” municipally owned public transit systems, and even public school bus services, may have to be opened up to competition from private foreign companies to meet GATS obligations to provide market access to foreign firms. Also, public subsidies or grants may have to be shared with foreign firms on a “nondiscriminatory” basis.

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Public Citizen is a national, nonprofit consumer advocacy organization based in Washington, D.C. For more information, please visit [www.citizen.org](http://www.citizen.org).