



STATE OF MICHIGAN  
OFFICE OF THE GOVERNOR  
LANSING

JENNIFER M. GRANHOLM  
GOVERNOR

JOHN D. CHERRY, JR.  
LT. GOVERNOR

June 22, 2006

The Honorable Susan C. Schwab  
U.S. Trade Representative  
600 17th Street, NW  
Washington, DC 20508

Dear Madam Ambassador:

The State of Michigan supports the negotiation — and subsequent strong enforcement — of trade agreements that open key foreign markets to U.S. exports of goods and services, create jobs and raise standards of living. In the past, I have urged the Office of the U.S. Trade Representative to take strong positions that create new opportunities for Michigan agricultural and manufactured products and services, and advance key rules-based objectives such as protection of intellectual property rights and preservation of strong rules against unfair trade.

The purpose of this letter is to bring to your attention serious concerns regarding the ongoing negotiations related to the General Agreement on Trade in Services (GATS) at the World Trade Organization (WTO). GATS rules should ensure fair and nondiscriminatory market access. They should not be used to empower foreign countries to challenge the way in which the State of Michigan and its localities administer vital public services, including health, education, transportation, land use and zoning, and waste disposal.

Yet, unfortunately, as detailed in the Illustrative List, that is precisely what a number of U.S. proposals in the GATS negotiations would do. Accordingly, I am writing to urge you in the strongest terms to modify or withdraw these proposals. The positions that I am urging you to adopt are consistent with those of the vast majority of other WTO countries. Accordingly, there should be no negotiating disadvantage to the United States from making the necessary modifications to its proposal. The United States already has by far the most open major services market in the world.

There is no disagreement as to the importance of the GATS negotiations to the United States or that the United States needs to take a leadership role in these negotiations. What is difficult to understand is why the Bush Administration has decided to expose vital state and local – and in some cases federal – public services to privatization and private sector competition when there is so much to be done to open foreign markets far more protected than our own in ways that do not endanger essential public services. The Bush Administration's approach on this issue has led many to question whether the Bush Administration has a domestic agenda that is superceding – and thereby undermining – in the GATS negotiations a legitimate agenda to open foreign markets to the benefit of workers and businesses in United States.

If you are unwilling to take these steps, the United States should negotiate exemptions as to Michigan. Specifically, I request that the United States include in its negotiating position in the WTO exemptions for the State of Michigan from the potential new obligations described in the attached list— at least until such time as I am satisfied that the concerns stated in the paper have been fully and successfully addressed.

The attached list also includes existing commitments under which the U.S. is currently bound. As to these existing commitments, I additionally request that USTR include in its current negotiating position a proposal exempting the State of Michigan from the stated existing obligations so that the identified measure or practice no longer applies to Michigan.

If you do not take these actions, I would like to make clear that Michigan does not agree to be bound by the United States as to these service sector commitments.

Finally, the attached list contains practices that the State of Michigan has been able to identify that are affected by an existing U.S. commitment or new U.S. proposal. I have been informed, however, that there are current discussions concerning the development of rules that would impact domestic regulations more generally, which may in turn affect a number of additional practices in Michigan. This aspect of the negotiations raises additional concerns, and I would like to discuss with USTR the appropriate exemptions for the State of Michigan from these rules.

Given the history of other countries using GATS and other international trade and investment agreements to challenge legitimate American regulatory requirements, I am deeply troubled by USTR's persistence in exposing further the State of Michigan and other states to such a broad array of unknown international

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legal consequences. Liberalized trade need not and should not be promoted at the expense of legitimate concerns of states and localities to deliver essential services to their residents and our nation's founding democratic principles.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'J. Granholm', written over the words 'Sincerely yours,'.

Jennifer M. Granholm  
Governor

## **Illustrative List of Problems with Current U.S. GATS Positions and Proposals**

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### **Health Care**

Michigan uses the requirement of a “certificate of need” (CON) to help ensure that health care industry resources are directed in ways that provide the greatest benefits to the people of Michigan. However, existing U.S. commitments with respect to “Hospitals and Health Facilities” (GATS Category 9311) do not exempt the CON process in regard to nursing homes (among other health care delivery entities). This failure creates the real possibility that a foreign country could interfere with Michigan’s regulation of this key — and increasingly important — segment of health care service delivery.

The United States is also negotiating new disciplines on domestic regulation that could jeopardize existing hospital standards and licensing requirements administered by the State of Michigan, if those requirements are found by an international tribunal to be “more burdensome than necessary to ensure the quality of a service.” It is widely known that international tribunals, including ones in the WTO, have interpreted this requirement in unexpected ways that do not take appropriate and adequate account of the legitimate regulatory goals of states to provide essential services to their residents. In Michigan, consequences of the misapplication of this ill-defined standard could well include the inability of the State and localities to maintain emergency wards, provide emergency care to the uninsured, provide obstetrical care and/or maintain certain nursing/patient ratios.

### **Waste Importation**

The current U.S. proposal has fully committed, with no limitations, the privately contracted disposal services of solid or hazardous waste under Environmental Services and the Wholesale Trade of Waste under Distribution Services. This proposal would likely allow foreign waste-management companies to urge Canada or another foreign government to mount a serious challenge to Michigan’s ban on imports of waste from Canada under both the market access and national treatment obligations of the GATS. A precedent for a successful challenge in this sector exists under the “investor-state” dispute resolution system of Chapter 11 of the North American Free Trade Agreement (NAFTA). In 2002, Canada lost a NAFTA case, filed in 1998, when a panel ruled that its ban on exports of PCBs was a violation of a U.S. investor’s right to import and treat Canadian waste in the United States.

## **Public Transportation**

In this sector, the United States has committed fully both road and rail passenger transport services, with very narrow exceptions. The implications of this broad commitment for the State of Michigan may be far-reaching.

The United States purports to protect public transport services in general with a broad exemption under GATS Article I, which exempts services supplied in the "exercise of governmental authority." The problem with this exemption is that it contains two enormous loopholes: namely, it may not apply if fees are charged, or if the service competes with private service suppliers in the market. Thus, municipally-owned public transit systems, which often compete to some extent with private suppliers, may have to be subjected to competition from private foreign service providers. Even school buses may well be subjected to challenge as these services are provided by local governments in some communities and the private sector in others.

Further, the "no more burdensome than necessary" standard noted above could also threaten Michigan's safety-first based licensing and qualification requirements for drivers, particularly of buses and taxis. The disciplines may also threaten the ability of local governments to regulate taxi fares, as "fee setting" has been identified in these GATS negotiations as an example of regulation that should be disciplined.

This U.S. commitment could undermine the vital role that public transportation plays in many Michigan communities. The United States should follow the sensible lead of the European Union, which has made numerous exceptions for its Member States, and Canada, which has also taken a number of key reservations.

## **Land Use and Zoning**

Once again, the United States, out of step with many of our trading partners, has committed fully its hotels and restaurants, retail distribution, and franchising sectors. Such a commitment could lead to the invalidation as GATS-illegal "barriers to trade" of zoning and land use policies used by Michigan to protect Michigan's scenic, historically significant or environmentally sensitive areas, or its "smart growth" policies that affect the location, size or design of "big box" stores, hotels, housing developments and retail service suppliers.

## **Higher Education**

Yet again, unlike many other countries, including Canada, the E.U. and New Zealand, the United States has chosen to commit fully, subject to no limitation whatsoever, the entire higher education sector — public and private. (The EU and

New Zealand have committed only private educational institutions, while Canada has not committed any sector of education to WTO regulations.) Obviously, this commitment could jeopardize a long list of key education policies to the State of Michigan, including accreditation and admission standards, public funding and scholarships, and in-state tuition fees.

When these concerns were raised, the United States responded that a footnote would be added to these new obligations purporting to safeguard these vital public education policies. However, it is highly doubtful that a footnote alone, even if accepted fully by U.S. trading partners, would be sufficient. Indeed, the United States itself has argued against the use of footnotes in this context, stating: "Existing footnotes might probably have to stay and be grand fathered, while the inclusion of new notes should be prohibited." (S/CSC/M/10). Therefore, both the Bush Administration's commitment to ensuring that this footnote is included in a final GATS agreement as well as the efficacy of any such footnote is highly questionable.