

J. JOSEPH CURRAN, JR.
Attorney General



DONNA HILL STATON
MAUREEN M. DOVE
Deputy Attorneys General

(410) 576-7036

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

(410) 576-6311

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June 23, 2005

The Honorable Rob Portman
Ambassador
United States Trade Representative
600 17th Street, N.W.
Washington, D.C. 20508

Dear Ambassador Portman:

I have been advised that there may be some confusion concerning the law governing Maryland's participation in international trade agreements between the federal government and foreign parties. At the request of the Honorable Michael E. Busch, Speaker of the Maryland House of Delegates, I am writing to clarify the status of Maryland law.

As your staff has previously been advised, during its most recent session, the Maryland General Assembly passed two bills governing our State's participation in international trade agreements. Copies of those bills, known as House Bill 401 and Senate Bill 514, are enclosed.

Section 1 of the bills added a new §3-308 to the State Government Article ("SG") of the Annotated Code of Maryland. Under that provision, the Governor of Maryland and other State officials are barred from either directly binding the State to an international trade agreement or consenting to a federal action to bind the State to such an agreement unless the Maryland General Assembly passes a law specifically authorizing the State's participation in the agreement.¹ Section 2 of the bills states that any consent given by a Maryland Governor or other State officials to be bound by government procurement rules in an

¹ The provision only applies to international trade agreements between the federal government and foreign countries in which the federal government invites the State to participate. It does not apply to a trade agreement between the State and a foreign country that does not involve the federal government.

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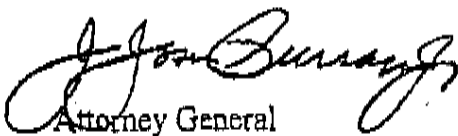
international trade agreement prior to the effective date of the bills is declared invalid and that Maryland is not bound by any such agreements.

Maryland Governor Robert L. Ehrlich, Jr. vetoed those bills on April 8, 2005. However, the General Assembly overrode the vetoes on April 11, 2005 and the bills were enacted as Chapter 2 and 3 of the Laws of Maryland 2005. The bills became effective as Maryland law on June 1, 2005. As noted above, Section 2 of each bill has retroactive effect. This Office has previously concluded that such a provision is valid under the Maryland Constitution. See Letter of Attorney General J. Joseph Curran, Jr. to Governor Robert L. Ehrlich, Jr. (April 4, 2005) (copy enclosed).

Prior to the enactment of these laws, Maryland law had not previously addressed the process under which our State decides whether to participate in such agreements. In the absence of such a statute, the Maryland Governor had authority to make commitments concerning Executive Branch procurement to the extent those commitments were consistent with Maryland law.² SG §3-308 now governs the process for Maryland's participation in such agreements in that it explicitly restricts the Governor's authority in the absence of a law passed by the Maryland General Assembly that specifically authorizes the Maryland's participation in a particular trade agreement. For example, there is no Maryland law that authorizes the State to participate in the Central American Free Trade Agreement.

I hope that this information eliminates any confusion concerning the current status of Maryland's participation in international trade agreements.

Very truly yours,


Attorney General

cc: Honorable Robert L. Ehrlich, Jr.
Honorable Michael E. Busch
Honorable Thomas V. "Mike" Miller, Jr.
Maryland Congressional Delegation

² Maryland's participation in international trade agreements and their consistency with Maryland law was the subject of a recent advice letter of this Office. See Letter to Honorable John Adams Hurson from Robert N. McDonald, Chief Counsel, Opinions and Advice (February 15, 2005) (copy enclosed).