



RAYMOND E. BASHAM  
8TH DISTRICT  
P.O. BOX 30036  
LANSING, MICHIGAN 48909-7536  
PHONE: (517) 373-7800  
FAX: (517) 373-9310  
senrbasham@senate.michigan.gov

THE SENATE  
STATE OF MICHIGAN

SENATE STANDING COMMITTEES:  
LOCAL, URBAN AND STATE AFFAIRS,  
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ECONOMIC DEVELOPMENT, SMALL BUSINESS  
AND REGULATORY REFORM  
NATURAL RESOURCES AND ENVIRONMENTAL  
AFFAIRS  
TRANSPORTATION

3/31/2006

Governor Jennifer Granholm  
Executive Office, George Romney Building  
111 South Capitol Avenue  
Lansing, MI 48909

Dear Governor Granholm,

I am writing to express my concern about the incursion of the World Trade Organization (WTO) into state and local regulatory authority. Specifically, I am concerned about the expansion of the General Agreement on Trade in Services (GATS) which would empower foreign countries to use the WTO dispute resolution system as an international venue to challenge a range of Michigan's state and local laws. As the negotiations are ongoing and their deadline for completion is nearing, I ask that you take executive action to safeguard Michigan's sovereignty and regulatory authority in current GATS talks.

The GATS is one of 17 major agreements enforced by the WTO. This agreement – unlike other trade agreements – only covers service sectors that countries have specifically listed to be included in a document called the "schedule of service commitments." The United States initially committed a number of service sectors to the GATS in 1995, and federal trade representatives are currently negotiating at the WTO to expand the coverage of the GATS to more service sectors, as well as establish broad new rules that could impact the vast majority of state service-sector regulations.

The application of GATS rules to committed service sectors would allow a WTO tribunal to second-guess state and local decision-making in many domestic matters of public concern. For example, the state's ability to regulate in the following areas, among others, may be eroded:

**Land use and the environment.** Many zoning and land use policies pursued by local governments, for instance those which limit the location, size or design of "big box" stores or those that limit development in environmentally sensitive or historic districts, could be challenged as GATS-illegal "barriers to trade." Unlike many other countries in Europe and Asia, the United States failed to carve out (or exempt) land use policies from its commitments in "hotels" and "restaurants," "franchising" and "retail distribution" service sectors. Major retailers

in the U.S. and Europe have been lobbying in support of the GATS in an effort to get rid of these policies which restrict their designs for unfettered development.

**Waste imports.** Michigan's recent ban on the importation of wastes from Canada, which is awaiting congressional approval, could, if implemented, be challenged at the WTO as a barrier to trade because of the U.S. commitment in wholesale distribution of waste. The ban potentially violates the "market access" rights of foreign waste-management companies, based in the United States or abroad.

**Public transportation.** The United States made commitments for both "road and rail transport" without specifically safeguarding taxpayer dollars, which could implicate municipally owned public transportation services. Federal and state subsidies to support these public transportation systems may have to be shared with private foreign service providers which would undermine the vital role that public transportation plays in many communities, including those in Wayne County.

**Health care.** The United States signed up many "financial services" to GATS strictures, including health insurance. While Michigan attempts to address the needs of our citizens who lack health insurance, our policy options are being curtailed by the GATS. 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.

**Higher education.** Federal trade negotiators are proposing to offer higher education, which could jeopardize a long list of education policies including, accreditation and admission standards, public funding and scholarships, in-state tuition fees and more. The U.S. has made some attempt to protect these policies in their negotiating documents, however, the safest course of action is not to commit higher education to the GATS at all, especially since no one in Michigan has been given an explanation of these proposals or has been asked whether or not we want to see our institutions of higher education covered by the binding terms of an international trade agreement.

Once a state or local law is challenged, a closed-door WTO tribunal is empowered to decide if the law complies with WTO rules. Neither state nor local governments have standing in these tribunals. If Michigan's laws are determined to be noncompliant, the federal government is obligated to use all constitutionally available measures to force Michigan to eliminate or change the law or face perpetual trade sanctions.

While the United States Constitution places the regulation of trade with foreign countries within the prerogative of the federal government, primary responsibility for governing services to protect public health, welfare and safety is left to the states. Unfortunately, federal trade negotiators have not consulted with state governments before trading away the state's regulatory authority. The GATS restricts the state's ability to make decisions to protect Michigan's health and environment through a democratic system of governance, and instead allows trade agreements and trade tribunal to set parameters around the kinds of policies that state governments can enact.

Reports from Geneva indicate that the United States will be making preliminary decisions about service sector commitments by April 30, 2006. Therefore, I urge you to write to the U.S. Trade Representative Ambassador Robert Portman requesting 1) that Michigan be carved out from all new service sectors proposed for inclusion in the GATS, including higher education; and 2) that Michigan be carved out of service sectors committed in 1995 that give the state particular concern (e.g. land use-related sectors, wholesale distribution, transportation, environmental and health-care related sectors).

Thank you for your consideration of this urgent issue. I look forward to working with you to ensure that Michigan's interests are reflected in the WTO negotiations.

Sincerely,

A handwritten signature in black ink, appearing to read "Ray Basham". The signature is fluid and cursive, with a large initial "R" and "B".

RAYMOND E. BASHAM

State Senator

8<sup>th</sup> District

REB/jrm