



## California Legislature

### Senate Subcommittee on International Trade Policy and State Legislation

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May 25, 2005

Mr. Christopher A. Padilla  
Assistant U.S. Trade Representative  
For Intergovernmental Affairs and Public Liaison  
1724 F Street, N.W.  
Washington DC, 20006

Dear Mr. Padilla:

We are writing regarding your May 3, 2005 memo to the State Points of Contact (SPOCs) and the Intergovernmental Policy Advisory Committee (IGPAC) asking for comments regarding ongoing negotiations at the World Trade Organization (WTO) on the General Agreement on Trade in Services (GATS). A copy of this memo was recently obtained by our offices.

This letter respectfully requests three actions:

- 1 We ask that future correspondence on trade negotiations be sent directly to the California State Legislature.
- 2 We ask that the USTR provide the California State Legislature and other appropriate California state officials with the proposed schedule of commitments as it would appear in the agreement.
- 3 We ask that the USTR carve out California state and local government actions from the scope of international trade agreements until such time as we have the opportunity to review and analyze the language of the proposed commitments.

While we appreciate the United States Trade Representative (USTR) providing the IGPAC and the SPOCs an opportunity to weigh in on pending GATS commitments, we strongly request that future correspondence also be sent directly to state legislators. As you may recall, on March 28, 2003, twenty-nine California legislative leaders wrote to your office expressing our concerns over the GATS, and its potential implications on our state and municipal lawmaking authority. In that letter we posed a series of questions regarding the service sectors in which your office would be making commitments, the specific substance of the commitments, how the commitments would affect general powers of domestic regulation, and the process your office would use to consult with state legislatures regarding these negotiations. We have yet to receive any response from your office addressing our concerns.

As you know, this is a crucial time in the GATS negotiations, particularly in light of recent WTO Appellate Body rulings that have greatly elevated our concerns about the massive scope of the GATS and the lack of clarity surrounding the extent to which GATS rules will apply to state and local laws. Your office has made statements that “GATS fully respects the sovereign right to regulate services and to introduce new regulations as necessary.” However, the WTO Appellate Body panel ruling in the Antigua Internet gambling case appears to undermine those assurances.

First, the WTO Appellate Body’s ruling that regardless of U.S. intentions, U.S. “gambling and betting services” are subject to GATS coverage is quite troubling. While this case concerned cross-border trade in gambling services via the Internet, the panel’s determination that the gambling sector is subject to all GATS requirements means that an array of common U.S. gambling regulations, including limitations on the number of casinos or slot machines, state monopoly lotteries or exclusive Indian gaming rights are now subject to challenge before future WTO tribunals as violating U.S. GATS obligations. We hope your office is now taking the necessary steps to withdraw the sensitive gambling sector from the U.S. schedule, as was suggested as an alternative if the Appellate Body upheld the lower panel’s ruling on this point.

Secondly, the WTO Appellate Body’s ruling that a ban on any activity in a committed service sector is equivalent to a “quota of zero” and therefore a violation of GATS’ market access rules “unreasonably and absurdly deprives Members of a significant component of their right to regulate services by depriving them of the power to prohibit selected activities in sectors where commitments are made,” as the United States unsuccessfully argued in its Appellant Submission.

This new “zero quota” standard has implications for both service sectors in which the U.S. has existing GATS commitments, as well as the new sectors proposed for coverage. We believe that the Appellate Body ruling in the Antigua Internet gambling case has implications for diverse areas of regulation, including those proposed for GATS expansion. For example, if a commitment is made in “Pipeline Transportation in Fuels,” as proposed, it would seem that any ban on the passage of such a pipeline through ecologically-sensitive areas could also be considered a violation of Market Access rules. In light of the WTO Appellate Body ruling on the Antigua Internet gambling case, we find assurances from the USTR that “nothing in the GATS impedes the ability of a state to maintain or develop regulatory requirements as appropriate to each jurisdiction,” to be unsubstantiated and insufficient.

If the GATS market access rules’ requirements in practice extend far beyond what U.S. negotiators believed, and which U.S. service sectors are committed to comply with GATS rules are not limited to those sectors intended by U.S. negotiators, but rather subject to arbitrary interpretation by WTO tribunals, common sense dictates a second look at not only *existing* GATS rules but also the current U.S. commitments. However, based on your office’s May 3, 2005 memo, it appears that you are seeking to expand this problematic agreement by binding additional service sectors, rather than reviewing the commitments that have already been made in light of the new interpretation of the rules.

In the May 3<sup>rd</sup> memo from your office, you ask for comments from the SPOCs and the IGPAC regarding the proposed service sectors for GATS expansion, however, the proposed schedule of commitments as it would appear in the agreement is not provided. As your office only provided short summaries of the commitments, it is impossible for our state to analyze the extent of the

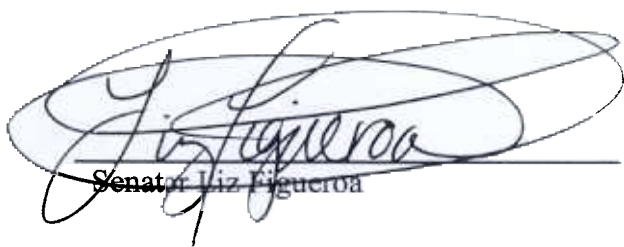
commitments being made and the adequacy of any exceptions or limitations. The Antigua Internet gambling made clear that the manner in which commitments are incorporated into the schedule has substantial implications for their interpretation. We respectfully request that we be provided with the actual language as it will appear in the U.S. offer so that we can more carefully evaluate the extent of the proposed commitments.

Additionally, in the summaries of the commitments, the memo indicates that the "U.S. submission will reflect the current market situation" for each state. However, reflecting the "current market situation" is not a sufficient standard for evaluating whether or not to commit a service sector to the GATS. As you well know, local, state and federal policies are constantly evolving. Changes in technology, the environment, and economic reality require governments to be able to adapt. It is important that the GATS rules not compromise the ability of policymakers to enact future laws and regulations in the specific service sectors proposed for commitment.

While we recognize the economic and social importance of trade for California, we believe that trade and investment agreements that undermine the ability of governments to enact domestic safeguards, standards, preferences and regulations jeopardize the public welfare and pose grave consequences for democratic governance throughout the world. Until such time as we have the opportunity to review and analyze the actual language of the proposed commitments, it will remain our position that state and local government action be carved out of the scope of international trade and investment agreements.

We look forward to engaging with your office during the remaining negotiations of this agreement.

Sincerely,



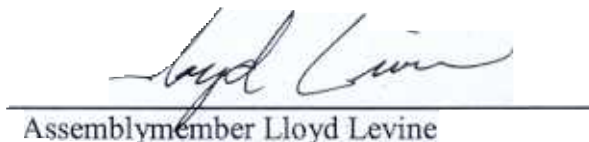
Senator Liz Figueroa




Senate Pro Tempore Don Perata



Senator Sheila Kuehl



Assemblymember Lloyd Levine



Assemblymember Loni Hancock

cc: Governor Arnold Schwarzenegger  
California State Points of Contact  
California Congressional Delegation