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International Trade Agreements and Government Procurement *New Trade Agreements Handcuff State Governments, Undermine State Authority*

Should an international trade agreement determine how we are allowed to spend our domestic tax dollars? Prior to the passage of the Central America Free Trade Agreement (CAFTA) by a one-vote margin in July 2005, the majority of state governments agreed: Subjecting decisions about how to spend state taxpayer dollars to second-guessing by foreign trade tribunals is a bad idea!

As a result, a bi-partisan group of governors from eight states withdrew their initial agreement to bind their states to comply with the government procurement rules in CAFTA. Many other governors simply avoided binding their states to CAFTA's procurement rules in the first place. The Maryland General Assembly even passed legislation over the governor's veto withdrawing the state's consent, and establishing that the legislature must approve all requests for the state to sign on to international trade agreement terms. All told, upon passage of CAFTA, only 19 U.S. states consented to the agreement's restrictive procurement provisions.

Why such opposition? Common state economic development and environmental policies are prohibited by trade agreement procurement rules. Such policies include:

- Measures to stop the offshoring of state jobs;
- "Buy Local" or "Buy America" policies;
- Preferences for recycled content, renewable energy, and alternative fuel vehicles, and more.

Currently, the Bush administration is working to expand further the same CAFTA model. The USTR is negotiating various free trade agreements with 27 additional countries that will contain constraints on procurement policy similar to CAFTA's. These agreements, including the Andean Free Trade Agreement (AFTA) and the U.S.-Panama Free Trade Agreement, could expand the threat of a trade challenge to state laws where state officials commit to be bound.

Although setting state procurement policy is generally the job of legislatures, state legislators were not consulted by the U.S. Trade Representative (USTR), only governors. In fact, the USTR has rejected a National Conference of State Legislatures request to simply carbon copy state legislative leaders on requests to governors to bind states to trade agreements.

Keep the legislature in the loop! Require legislative approval before your governor binds your state to trade agreement terms at the federal government's request.

State Officials Say "No" to
CAFTA's Procurement Terms

"We must retain the ability to use every policy tool available to help out our state's workers in this time of crisis.

Procurement policy is just such a tool, and I believe that Iowa must have maximum flexibility to use our state tax dollars to create good jobs and meet other important social needs in our state."

*Iowa Governor Tom Vilsack to USTR
Robert Zoellick, May 3, 2004*

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"I was elected by the residents of this Commonwealth to ensure the prosperity and stability of Pennsylvania. I cannot live up to this promise without taking action to ensure that Pennsylvanians have a fair shot at remaining employed... I am rescinding my commitment."

*Pennsylvania Governor Ed Rendell to
USTR Robert Zoellick, May 11, 2004*

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"By excluding the Legislature from this process, the federal government has effectively eliminated future opportunities to comment as to how their state tax dollars are spent. Good government demands more."

*State Senator Chris Beutler of
Nebraska to Gov. Mike Johanns*

How to find your state's status on pending trade agreements:

Trade agreement texts, including the lists of states slated to be bound by trade agreement procurement rules, are withheld from the public until negotiations conclude. Check www.tradewatch.org for correspondence between governors and USTR obtained through periodic Freedom of Information Act requests or call your governor and inquire how s/he responded to the USTR's January 25, 2005 request regarding AFTA and the U.S.-Panama FTA.

Common State Purchasing Policies at Risk

If a state signs up and agrees to comply with the government procurement provisions of international trade agreement, the following policies are prohibited:

Anti-offshoring policies. "Anti-offshoring" measures and an array of other local development policies aimed at keeping state dollars paying in-state wages and giving preference to locally-produced goods and services (so-called "Buy America" policies) are forbidden under trade agreement procurement rules.

"Green" procurement policies. Requirements for recycled content in goods or a percentage of energy from renewable sources are at risk, as are preferences for certain environmental or consumer safety labels and eco-friendly packaging requirements.

Policies targeting companies' human rights, environmental, labor conduct. Under trade agreements' procurement rules, suppliers cannot be disqualified because of the companies' labor, human rights or environmental records or practices. "Sweat free" rules that ban purchase of goods from companies using sweatshop labor or child labor are prohibited.

Prevailing and living wages and project-labor agreements. Trade agreements' procurement rules that place limits on the requirements that can be imposed on contractors also forbid conditions such as prevailing wage and living wage requirements. Project labor agreements that require fair treatment of workers and their unions in order to avoid labor disputes in public works projects also cannot be required for a bidder to qualify for state business.

Pro-union or pro-public bidding assistance. Trade agreements' procurement rules prohibit policies that provide aid to employees and unions in bidding for public contracts, and laws that require favorable consideration of such in-house bids. Also in conflict are costing requirements that require private bidders to provide substantial savings over public providers in order to get a public contract, but do not allow savings due to lower wages or benefits to be factored in.

Policies targeting countries' human rights, labor rights, other conduct. Under trade agreements' procurement rules, governments cannot treat foreign companies differently based on the human rights, labor rights or environmental records of the countries in which they are based or in which they operate. This removes tools used by states in the past to demand corporate responsibility in the face of human rights abuses.

What happens if my state is bound to trade agreement procurement rules and our purchasing laws are in conflict with the agreement's rules?

- Other nations that are party to the agreement are empowered to challenge a nonconforming state policy as a violation of the agreement in a binding dispute resolution system established in the text.
- State government officials have no standing before these tribunals and thus must rely on the federal government to defend a challenged policy.
- The tribunals are staffed by trade officials who are empowered to judge if state policy has resulted in a violation.
- Policies judged to violate the rules must be changed, or trade sanctions can be imposed.
- The federal government is obliged to use all constitutionally-available powers – for instance preemptive legislation, lawsuits and cutting off funding – to force state and local government compliance with trade tribunal rulings.

For more information, see www.tradewatch.org or contact Public Citizen's Global Trade Watch: Sara Johnson at 202.454.5193 or sjohnson@citizen.org