



March 30, 2007

Via Mail and Facsimile

The Honorable Susan C. Schwab
United States Trade Representative
600 Seventeenth Street, NW
Washington, DC 20508

Dear Ambassador Schwab:

We are writing to express our concerns about the ongoing World Trade Organization (WTO) negotiations related to the General Agreement on Trade in Services (GATS), and specifically, about proposals that some WTO Members have made that, if adopted, could preclude states from maintaining services regulations that are “more burdensome than necessary” to ensure the quality of the service being offered. We urge you to reject these proposals, and to continue to insist that any new WTO rules related to the domestic regulation of services be limited to advancing regulatory transparency.

We recognize that neither the GATS, nor WTO GATS rulings are self-executing, and that the regulation of foreign trade falls generally within the prerogative of the federal government. We also favor expanding U.S. exports, opening new markets for U.S. products and services, and ensuring that our trading partners are required to abide by their international commitments. We fully understand the importance of the international economy: together, our states exported an estimated \$210 billion worth of goods and services in 2006, representing nearly 15 percent of the national total. WTO rules and disputes, and the threat of such disputes, however, can directly impact the economies of all states, impose significant burdens on resources, and affect policy initiatives at all levels of government.

As you know, U.S. states regulate an array of services, including education, health care, transportation, utilities, communications, and financial and professional services. Many non-discriminatory regulations that govern these services are adopted, after considerable debate and care, to advance important state or regional policy objectives that are unrelated to ensuring the quality of the particular service at issue. These objectives include, but are not limited to, advancing economic development, environmental protection, historic preservation, land conservation, and preserving fair competition. U.S. law generally permits states to pass non-discriminatory rules related to such considerations that may burden economic transactions, as long as a rational basis for these rules can be demonstrated. Adopting a necessity test could alter this basic principle and improperly replace it with a standard less deferential to state authority.


We are also concerned that other GATS proposals that are currently being advanced before the WTO could have the effect of imposing an “operational” necessity test. One such proposal would require state services regulations to be “relevant to the services to which they apply.” If this rule were interpreted narrowly, it could preclude states from, among other things, balancing economic policy initiatives against important consumer and environmental protection needs. Other proposals, including a proposal to prevent states from adopting regulations that do not relate to, or advance a “national policy” objective, also appear to be inconsistent with principles of constitutional federalism. Such proposals improperly restrict the inherent power of states to maintain measures that are different from those advanced at the federal level.


Given these potential conflicts with U.S. legal standards, we urge you to reject any proposal before the WTO that seeks to restrict the states’ authority to regulate the services sector, and to insist that any new WTO rules governing the domestic regulation of services be limited to transparency disciplines. We appreciate and commend your commitment to advance this position thus far, and urge you to maintain this position, regardless of any pressure that may exist to conclude the WTO Doha Round. Our nation’s commitment to preserve bedrock principles of constitutional federalism must be maintained.

Thank you in advance for your attention to our concerns. We look forward to working with you on this important issue.

Sincerely,


Christine Gregoire
Governor of Washington


Edward G. Rendell
Governor of Pennsylvania


Eliot Spitzer
Governor of New York