

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

MAY 25 2006

The Honorable John E. Baldacci
1 State House Station
Augusta, ME 04333-0001

Dear Governor Baldacci:

Thank you for your letter in which you urge me to exempt Maine from a broad range of service sector commitments applicable to your state under the WTO General Agreement on Trade in Services (GATS) and to exclude Maine from any further commitments under that agreement.

Your letter asserts that the GATS threatens Maine's ability to regulate services in the public interest. This is simply not the case, and I want to share additional information with you. Moreover, if I were to act on your request and seek to reverse longstanding, internationally-agreed services rules and commitments that apply to your state, it would risk sending the signal that Maine no longer welcomes foreign trade and investment. I am confident that is not a message you wish me to convey.

I could certainly appreciate your concern if, as stated in your letter, the GATS constrains Maine's ability to regulate healthcare, education, and other important services sectors and land use. However, this is not the case and there is no evidence for this claim.

The GATS has been in place for more than ten years, as have the U.S. GATS commitments with respect to Maine that you urge me to withdraw. In that entire period, not one WTO member has brought a complaint against any Maine law or regulation across the long list of services sectors that you would like to see exempted. Indeed, as far as I know, no WTO member has voiced any concern about any measure Maine has adopted, or has considered adopting, to regulate those sectors. Nor does your letter mention any instance in which Maine has felt compelled to change or withdraw a regulatory measure in any service sector out of deference to the GATS.

Thus, far from preventing Maine from regulating services for the public good, the GATS has imposed no demonstrable restraint on your state's ability to regulate in the public interest.

It took years of hard work under both Democratic and Republican administrations for the United States to convince governments around the globe to begin leveling the trade playing field for American services workers and companies, the most competitive in the world. As you know, Maine is home to some world-class services companies that trade around the globe, such as those in the retail distribution and financial services sectors. The GATS works to their advantage and to the advantage of the many men and women in Maine who work for them.

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The GATS calls for WTO members to open their services markets to foreign suppliers and to afford them the same non-discriminatory treatment as local firms. The United States was, and is, a clear winner under the agreement. Most of our services markets have long been open to foreign firms, unlike the case abroad.

At the heart of the international trading rules that the GATS establishes is the principle of non-discrimination. The GATS commits WTO members to give equally favorable treatment to foreign and domestic service firms, a free-trade concept enshrined in our Constitution for well over two centuries.

Were I to honor your request to withdraw U.S. GATS commitments as they apply to Maine, it would necessarily imply that Maine is no longer prepared to provide non-discriminatory treatment to foreign firms across a wide range of services sectors. It would be hard for me to convince our trading partners otherwise given Maine's experience under the GATS over the past decade. Moreover, it would be difficult to explain why Maine perceives a need to discriminate against foreign services companies, who support some 20,000 jobs in your state, in order to carry out the state's public policy initiatives.

While the GATS includes a mechanism that authorizes any participating government that can no longer meet a specific services commitment to withdraw it, there is no reason to believe that Maine's laws and regulations governing services are not fully compatible with U.S. commitments. Therefore, I see no reason to invoke that provision. Moreover, unless the United States were to provide offsetting market-opening services commitments that our trading partners found to be adequate – and here I note that your letter offers none that Maine is prepared to provide – other governments would be free to withdraw GATS commitments of their own. The impact of those withdrawals would not necessarily fall on Maine alone. I am sure you understand that as United States Trade Representative, I must consider the interests of our nation as a whole.

You also ask for Maine to be exempted from the services offer that U.S. negotiators have tabled in the GATS negotiations currently under way. Because the GATS does not impede Maine from regulating services in the public interest as you suggest, I would ask you to reconsider your request. While you ask for Maine to be carved out of every sector included in our pending offer, you cite only one – higher education services – as grounds for your request. The view that Maine would seek to provide quality education opportunities for its citizens by barring schools with foreign owners – because they are foreign – or by limiting the number of institutions permitted to serve Maine's students does not seem credible. I would point out, moreover, that under our offer Maine would remain entirely free to provide public funds exclusively to U.S.-owned schools.

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In addition, you will be pleased to know that the concern expressed in your letter that the GATS could preclude local regulators enforcing local zoning and land-use regulations is also without foundation. As a recent WTO publication addressing myths and facts about the GATS states: "foreign suppliers operating on the basis of a market-access commitment are subject to exactly the same domestic regulations as national suppliers; they have no right to exemption from planning or zoning rules, or any other kind of regulation."

In closing, I share your interest in enhancing federal-state collaboration on trade matters. As you may know, last fall, USTR staff traveled to Augusta to meet with Maine officials and non-governmental groups, and recently followed up with a conference call to discuss GATS and other trade issues. We welcome the opportunity to collaborate further and look forward to any suggestions you may have on that or any other subject.

Sincerely,


Rob Portman