



STATE OF MAINE  
OFFICE OF THE GOVERNOR  
1 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0001

JOHN ELIAS BALDACCI  
GOVERNOR

August 7, 2006

Ambassador Susan Schwab  
United States Trade Representative  
600 17<sup>th</sup> Street, N.W.  
Washington, DC 20508

Dear Ambassador Schwab:

I write today to again express my concerns with new and existing service sector commitments under the General Agreement on Trade in Services (GATS). I continue to be troubled by the USTR's approach to state-federal dialog during trade negotiations, and the effect this approach will ultimately have on state sovereignty. I have raised these concerns in past communications, but I have yet to receive any convincing evidence to assuage my concerns.

Of major concern is the lack of meaningful information given to states regarding the impact GATS will have on state regulatory authority. We are often forced to rely on USTR "Fact Sheets" which are so oversimplified as to be misleading, if not entirely false. The most recent fact sheet proclaims boldly and without substantive explanation: "Under the GATS, states remain free to regulate foreign and domestic firms in every service sector to protect the public interest." USTR Fact Sheets, (May 2006) (emphasis in original). This statement, without more, is neither helpful nor convincing. Yet, it is the USTR's standard response to states, including the State of Maine, that have raised concerns that state powers are being eroded by GATS.

These concerns are not unfounded. The recent WTO ruling in the Antiguan challenge against the U.S. internet gambling ban provides a prime example of the myriad of issues that could be the subject of future challenges to state regulations. Specifically, in the Antiguan case the tribunal found that an absolute ban on an activity in a committed service sector is equivalent to a "quota of zero" and is thus a violation of GATS' "market access" rules. This ruling strongly suggests that other non-discriminatory bans, like Maine's ban on highway billboards or the state's moratorium on the development or expansion of commercial landfills, could also be challenged as violating GATS' market access rules. To that end, GATS inherently limits the ability of states to regulate, and where necessary ban, certain activities as they see fit.

Moreover, although the ruling in the Antigua case was limited to a federal law, had the tribunal found a state regulation to violate GATS, it would have been incumbent upon the United States government under Article XVI.4 of the Agreement Establishing the WTO, to then "ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements." In other words, the United States would be required to take all constitutionally available steps to ensure conformity of all domestic laws, including sub-federal laws, with the agreement. This necessarily includes, as provided in 19 U.S.C. § 3512 (b)(2)(A), filing suit against the state "for the purpose of declaring such law . . . invalid." If the federal government did not take action to preempt or enjoin any inconsistent state law, it would no doubt face the undesired threat of trade sanctions from foreign governments.



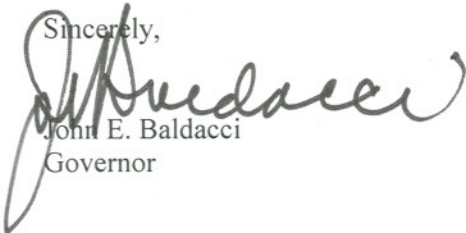
PRINTED ON RECYCLED PAPER

Despite some assertions to the contrary, the lack of legal challenges to date to any state regulations is not proof that GATS does not hinder a state's ability to regulate. While it is true that there have been no WTO suits brought against Maine since GATS' inception, that fact brings little comfort. That a challenge has not yet materialized does not insulate the State of Maine from a future challenge. The Antigua case is an unfortunate example of this reality. It also brings to light the unintended consequences that can result when a service-sector commitment is made before adequate attention and analysis are given to the implications.

I want to emphasize that my fears concerning GATS' impact on the State of Maine in no way suggest that Maine is no longer prepared to offer nondiscriminatory treatment to foreign service-providers. Nothing can be farther from the truth. Maine welcomes and encourages foreign investment in our state. We are firmly invested in the economic opportunities presented by more trade, more exports, and greater competition in the marketplace. However, Maine is not naïve in matters of foreign trade. While we recognize that a well-drafted services agreement could bring prosperity to Maine and our trading partners, we also know too well the dangers of trade agreements adopted with too much hope and not enough forethought or balance.

To date, states have received no reasonable assurance that GATS will in fact have no impact on state sovereignty. Consequently, we are forced to extraordinary remedies like requesting delays or broad carve-outs in order to ensure our interests are not negotiated away. You must take affirmative steps now to involve the states in the trade negotiations that will ultimately affect their regulatory authority. It is my hope that you will begin by consulting and engaging state governments, in meaningful ways, prior to offering any additional commitments. Proceeding with anything less than a united effort will be a true failure to recognize and respect the core tenets of our federalist system and will no doubt lead to the irremediable breakdown of our national trade objectives.

Sincerely,



John E. Baldacci  
Governor

cc: Senator Olympia Snowe  
Senator Susan Collins  
Representative Tom Allen  
Representative Mike Michaud  
Senator Margaret Rotundo, Co-Chair, Maine Citizen's Trade Policy Commission  
Representative John Patrick, Co-Chair, Maine Citizen's Trade Policy Commission  
Janine Bisailon-Cary, Interim President, Maine International Trade Center