

Maine Citizen Trade Policy Commission



Senator Margaret Rotundo, Co-Chair

Representative John Patrick, Co-Chair

MEMORANDUM

July 27, 2006

The Honorable Olympia J. Snowe
United States Senate
154 Russell Senate Office Building
Washington, D.C. 20510-1903

The Honorable Susan M. Collins
United States Senate
154 Russell Senate Office Building
Washington, D.C. 20510-1903

The Honorable Thomas H. Allen
United States House of Representatives
1717 Longworth House Office Building
Washington, D.C. 20515

The Honorable Michael H. Michaud
United States House of Representatives
437 Cannon House Office Building
Washington, D.C. 20515

Dear Senator Snowe, Senator Collins, Congressman Allen and Congressman Michaud:

The Maine Citizen Trade Policy Commission writes to express our concerns about recent developments regarding the negotiations taking place in the GATS Working Party on Domestic Regulations (WPDR). The WPDR's mandate is to develop binding international rules for implementing Article VI.4 of the GATS, which calls for services regulation to be "no more burdensome than necessary...to ensure the quality of the service." As we understand it, the WPDR negotiations are unaffected by the overall collapse of the Doha Development Round negotiations, because the WPDR mandate was part of the previous (Uruguay) round of trade talks. Because the Uruguay Round has already been ratified by Congress, U.S. trade negotiators have asserted the right to complete and adopt binding international rules on domestic regulation and apply them to all levels of government.

As you are aware, on July 10, 2006, the WPDR Chairman's "consolidated text" for proposed rules was released in Geneva. The Chairman created a "streamlined" text that tried to note major points of agreement, as well as different Options (#1, #2, #3, etc.) based on different proposals submitted by parties to the negotiations where interpretations/preferences differed. On

July 13, 2006, the multi-state Working Group on Services met by conference call to discuss the implications of this text. While there are no formal mentions of "necessity tests" there are still some problems with "relates to" tests, and other language that the Chairman adopted from different proposals.

We are deeply concerned on two levels about the phrase in the Chairman's consolidated text, "not more trade restrictive than required to fulfill national policy objectives." First, it appears to be a "back-door" attempt to impose operational necessity tests on regulation. We understand that the United States has continued to oppose necessity tests and consequently, USTR should argue strenuously against the language of "not more trade restrictive than required..."

Second, the Citizen Trade Policy Commission requests, in the strongest possible terms, that you oppose and urge USTR to oppose language in the Chairman's text that calls for services to meet "national policy objectives." At a minimum, it needs to be clarified in the body of the text that national policy objectives are also defined with reference to sub-federal (state and local) policy objectives. Moreover, we recommend that the language of "*domestic* policy objectives" be used instead of "national policy objectives." Since these discussions are taking place in the "Working Party on Domestic Regulation," we see no reason why the phrase "domestic regulation" should not suffice. In addition, we urge a specific note in the text to clarify that "domestic regulation" in this context refers to actions taken at all levels of government.

The ability of states to play their "laboratory of democracy" role should remain unhindered. A "national policy objective" test is intrinsically hostile to such innovation, and its prominent use in "Objectives" and "General Provisions" in the Chairman's text—and its absence in the list of "Definitions"—is deeply troubling. Maine is one of several states to have expressed concerns about the possible restrictions on sub-federal government regulatory authority and administrative discretion resulting from proposed language in the WPDR text. We ask you to communicate our concerns to USTR negotiators and work to ensure that the language of the WPDR rules does not constrain state action.

Thank you for your willingness to listen to our concerns and consider our recommendations.

Sincerely,

Senator Margaret Rotundo
Co-Chair

Sincerely,

Representative John Patrick
Co-Chair