

**RESOLUTION REGARDING UNITED STATES
TRADE NEGOTIATIONS**

2005 GENERAL SESSION

STATE OF UTAH

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LONG TITLE

General Description:

This joint resolution of the Legislature urges the United States Trade Representative to maintain the regulatory authority of states and to consult with representatives of state and local governments and industry regarding trade issues.

Highlighted Provisions:

This resolution:

- ▶ urges the United States Trade Representative (USTR), negotiating with other nations, to preserve the responsibility of states to maintain and develop their own regulatory structures;
- ▶ urges the USTR to take further steps to enhance the level of consultation during negotiations on any trade commitments under the World Trade Organization's General Agreement on Trade in Services (GATS);
- ▶ commends the USTR staff for its willingness to learn about the potential impacts of GATS rules on state and local regulation of the energy sector;
- ▶ urges the USTR to disclose, as appropriate, public requests from the United States for GATS commitments from other nations;
- ▶ urges the USTR to give prior notice of the next United States offer or counter offer for GATS commitments, so that state and local governments have time to discuss its

potential impact; and

- ▶ urges the USTR to participate in public discussions of trade policy and energy.

Special Clauses:

None

Be it resolved by the Legislature of the state of Utah:

WHEREAS, although the United States Constitution places the regulation of trade with foreign countries within the prerogative of the Federal Government, the primary responsibility for protecting public health, welfare, and safety is left to the states;

WHEREAS, the United States Congress has consistently recognized, respected, and preserved the states' power to protect the health, welfare, and environments of their states and their citizens in a variety of statutes, such as the Clean Air Act, Clean Water Act, and Safe Drinking Water Act;

WHEREAS, it is vital that the Federal Government not agree to proposals in the current negotiations on trade in services that might in any way preempt or undercut this reserved state authority;

WHEREAS, proposed changes should not, in the name of promoting increased international trade, accord insufficient regard for existing regulatory, tax, and subsidy policies, and the social, economic, and environmental values those policies promote;

WHEREAS, statutes and regulations that the states and local governments have validly adopted, that are plainly constitutional and within their province to adopt, and that reflect locally appropriate responses to the needs of their citizens, should not be overridden by federal decisions solely in the interests of increased trade;

WHEREAS, states are concerned about retaining a proper scope for state regulatory authority in actual commitments in agreements with one or more United States' trading partners;

WHEREAS, it is crucial to maintain the principle that the United States may request, but not require, states to alter their regulatory regimes in areas over which they hold constitutional authority;

WHEREAS, if the United States makes broader offers later in the negotiations and the legislation is "fast tracked," there will be little opportunity for states to have improper positions reversed;

WHEREAS, it is critical that there be full and effective coordination and consultation with the states before the United States Trade Representative (USTR) makes any binding commitments;

WHEREAS, while the State Point of Contact system was meant to create a clearly marked channel for two-way communications, the reality has not lived up to those intentions;

WHEREAS, a broader and deeper range of contacts with a variety of state entities, particularly with those bearing regulatory and legislative authority, must be improved and maintained over the next several years;

WHEREAS, it is important for state authorities to engage with the USTR in the communications process and to respond to timely requests in any equally timely manner;

WHEREAS, as negotiations with other nations continue, they should also be conducted in ways that will avoid litigation in world courts;

WHEREAS, the United States is the signatory to the World Trade Organization's General Agreement on Trade in Services (GATS);

WHEREAS, the United States Trade Representative has published proposals that would apply trade rules under GATS to regulation of electricity by state and local governments;

WHEREAS, these proposals would cover regulation of services related to transmission, distribution, and access of energy traders to the grid and, if implemented, might conflict with state energy policy and alter the balance of domestic authority between states and the Federal Energy Regulatory Commission (FERC);

WHEREAS, concerns include the impact of market access rules on the structure of Regional Transmission Organizations (RTO), state jurisdiction over utilities that are part of an RTO, RTO contracts for reliability of the electricity grid, and potential roles for the RTO to structure or facilitate wholesale trade and brokering services;

WHEREAS, another question is the impact national treatment rules may have on tax

incentives to produce wind energy, and market access rules that may impact renewable portfolio standards that mandate minimum quotas for acquisition from renewable sources;

WHEREAS, another question is the impact that GATS rules on domestic regulation may have on rate setting and the public interest standard for exercising regulatory authority by state public utility commissions; and

WHEREAS, in early 2004, a working group of state and local officials consulted three times with staff of the USTR who described the meetings as timely, productive, and unprecedented:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah urges the United States Trade Representative to conduct trade negotiations in a manner that will preserve the responsibility of states to develop their own regulatory structures and that will avoid litigation in world courts.

BE IT FURTHER RESOLVED that the Legislature of the state of Utah urges the USTR to take further steps to enhance the level of consultation before negotiations commence on any trade commitments under the World Trade Organization's General Agreement on Trade in Services (GATS).

BE IT FURTHER RESOLVED that the Legislature of the state of Utah commends the USTR staff for its willingness to consult with the working group and learn about the potential impacts of GATS rules on state and local regulation of the energy sector.

BE IT FURTHER RESOLVED that the Legislature urges the USTR to disclose to the public the United States' requests for GATS commitments from other nations.

BE IT FURTHER RESOLVED that the Legislature urges the USTR to give prior notice of the next United States' offer or counter offer for GATS commitments so that state and local governments have time to discuss its potential impact.

BE IT FURTHER RESOLVED that the Legislature urges the USTR to participate in public discussions of trade policy and energy.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to the United States Senate Finance Committee, the House Ways and Means Committee, the Senate Subcommittee on

International Trade, the House Subcommittee on Trade, the Secretary of the Department of Energy, the United States Trade Representative, the National Association of Attorneys General, the National Conference of State Legislatures, the President of the United States, and Utah's Congressional delegation.