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OFFICE OF THE GOVERNOR  
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04333-0001

JOHN ELIAS BALDACCI  
GOVERNOR

March 20, 2006

Ambassador Rob Portman  
United States Trade Representative  
600 17th Street, N.W.  
Washington, DC 20508

Dear Ambassador *Rob* Portman:

I am writing in response to a letter from your predecessor asking the state of Maine to participate in the Panama and Andean Free Trade Agreements currently under negotiation. Specifically, Ambassador Zoellick sought authorization to include the state of Maine in the government procurement provisions within those agreements. I write today to notify you that the state of Maine does not consent to its inclusion in the Panama and Andean Free Trade Agreements.

In a letter I sent to you dated December 2, 2005, I expressed deep concerns that the General Agreement on Trade in Services (GATS) being negotiated by your office would not provide adequate protections for workers, the environment or democratic governance. I noted that my concerns were compounded by the failure to adequately inform or consult with the states on the negotiations. I reiterate those same concerns today.

The state of Maine's procurement laws have been developed to protect the interests of Maine's citizens and businesses and to reflect the state's commitment to spend its citizens' tax dollars in a socially and environmentally responsible way. This commitment is reflected in the state's policies, initiatives and preferences such as buying recycled paper when practicable; buying fuel efficient vehicles; favoring in-state suppliers; and, requiring retailers bidding for the state's business to sign a purchasing "code of conduct."

The proposed government procurement provisions in the Panama and Andean agreements pose a threat to Maine's procurement policies. These agreements prohibit states from adopting or applying any technical specifications for a good or service with the purpose or effect of creating an "unnecessary obstacle" to trade. This constraint could presumably prohibit the state of Maine from adopting or enforcing its current preferences because such preferences could be seen either in purpose or effect as creating obstacles to trade. While the agreements do admittedly allow states to exempt certain "sensitive local programs" from coverage, this does not allay my concerns—primarily because there is no way of predicting today how procurement needs and priorities will change in the future. Twenty years ago, the state of Maine did not have the same



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environmental concerns it has today. These concerns are manifest in the state's current preference of buying recycled paper and hybrid vehicles, and underlie its current commitment to research and develop local alternative energy sources like wind farms. Put simply, by signing onto these trade agreements, states could be bound in twenty years by the procurement standards they set today. I cannot jeopardize this state's ability to reevaluate its procurement policies in the future to respond to changes in social and environmental needs and priorities.

I am also concerned by the method currently used to encourage states' participation in these agreements. A "Fact Sheet" produced by your office claims a new "reciprocity" policy is an "incentive" for states to join the agreements, namely businesses within signatory states will be guaranteed the opportunity to compete for sub-central procurement contracts in Panama and the Andean countries. The practical effect of this policy, however, is to penalize those states, and the businesses within those states, that do not join the agreements. This approach—pitting states against each other—is simply incongruous with the USTR's mission to develop and coordinate trade agreements which encourage economic development for the nation as a whole. More fundamentally, it conflicts with the time honored democratic principles that govern federal-state relations.

These agreements also create a potential threat to state sovereignty. It is particularly troubling that under these agreements, when a signatory state enacts a law with the intent to benefit the environment or the health and safety of its citizens, the federal government could, and in fact may be required to, preempt the law if it is challenged by a partner nation as an obstacle to trade. While the full extent of federal authority in this realm is as of yet undefined, other similar agreements have been interpreted to require the federal government to take all constitutionally available actions to force states' compliance with the agreement. States should not be forced to forego the economic benefits associated with international trade agreements because of the potential for harm to their ability to legislate freely to protect public health, safety and the environment. Rather, states must be assured their sovereign right to establish and maintain appropriate regulations will not be jeopardized.

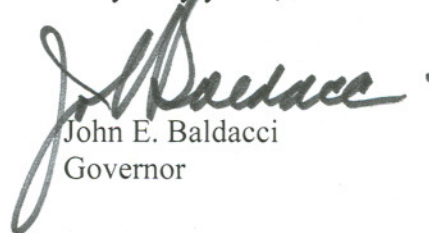
Finally, I am deeply concerned with the lack of effort to-date to adequately involve the states in a meaningful way in trade negotiations. In its February 1, 2006 report to you, the Intergovernmental Policy Advisory Committee (IGPAC) highlighted this concern when it concluded that "the structure for federal-state trade policy consultations remains insufficient." IGPAC questioned the efficacy of the current "Single Points of Contact" arrangement between the USTR and the states, and recommended the USTR "broaden its outreach to include multiple key state contacts." I support that recommendation. State legislatures and stakeholders, not just governors, must be kept informed and given the opportunity to participate in the negotiating process.

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We must also be able to rely on what information the USTR does provide regarding the impact these agreements will have on states. Currently, as IGPAC noted in its report, “[r]eliable, objective, unbiased information regarding the impact of trade liberalization is not readily available[.]” Providing states with oversimplified “Fact Sheets” containing broad unsupported assertions is inadequate and unacceptable. Full and detailed information should be made available to allow states to make wise and informed policy decisions. To that end, I would encourage you to consider IGPAC’s recommendation to create a “Federal-State International Trade/Investment Policy Commission.” As IGPAC noted in its report, this Commission would serve as a central liaison for “bipartisan consultation about US federal-state trade policy.” The Commission would not only facilitate more inclusive dialogue between the federal government and the states, it would also provide independent expert analyses of the legal and policy implications of an agreement. Based on such analyses, it would develop and offer informed recommendations for federal, state and local government officials to consider. This Committee would be an invaluable resource to ensure that states have both the education and the opportunity to participate meaningfully in the trade negotiating process.

Mr. Ambassador, the state of Maine has long welcomed and encouraged new international trade opportunities. My decision today to not permit the inclusion of the state of Maine in the government procurement sections of the Panama and Andean Free Trade Agreements is not a regression from that historic principle. Rather, the decision reflects my sincere and deep concern for the unknown and unforeseen effects these agreements could have on states and my dissatisfaction with the level of response states have received to address these concerns. Until more is known about the impact the Panama and Andean Free Trade Agreement will have on states, I respectfully cannot authorize your inclusion of the state of Maine in the negotiations.

Very truly yours,



John E. Baldacci  
Governor

cc: Senator Olympia Snowe  
Senator Susan Collins  
Congressman Tom Allen  
Congressman Mike Michaud  
Senator Margaret Rotundo, Co-Chair, Maine Citizen’s Trade Policy Commission  
Representative John Patrick, Co-Chair, Maine Citizen’s Trade Policy Commission  
Richard Coyle, President, Maine International Trade Center