

# City of Philadelphia



Council of the City of Philadelphia  
Office of the Chief Clerk  
Room 402, City Hall  
Philadelphia

(Resolution No. 030753)

## RESOLUTION

Calling upon a variety of public officials and decision makers to monitor, review and revise the proposed Free Trade Agreement of the Americas to insure that the public services, regulatory powers, and procurement policies of local governments are preserved.

**WHEREAS**, Trade agreements pertaining to services, investment and government procurement constrain the exercise of local government authority to protect the health and welfare of its citizens; and

**WHEREAS**, The United States government through the Office of the U.S. Trade Representative (USTR) is presently negotiating multilateral, regional and bilateral trade agreements covering all these areas, including the Free Trade Agreement of the Americas (FTAA) extending NAFTA to 34 countries in the Western Hemisphere; and

**WHEREAS**, The National League of Cities has resolved that "the Administration and Congress should consult with state and local officials prior to negotiating any provisions of the FTAA to ensure that trade negotiators do not undermine the scope of local governmental authority under the Constitution..."; and

**WHEREAS**, The proposal for the FTAA investment agreement is based on current provisions of NAFTA Chapter 11 on investment which:

\* empowers foreign investors to sue nation-states for compensation before closed-door arbitration panels that follow NAFTA and international law, not domestic constitutional law.

\* creates foreign investor rights that exceed the constitutional protections for domestic investors; and

**WHEREAS**, In such NAFTA claims against the United States, foreign investors have challenged core functions of state and local government, including regulatory power to protect groundwater (California), the power of civil juries to use punitive damages to deter corporate fraud (Mississippi), the right of states to regulate in the public interest and to claim sovereign immunity (Massachusetts), and state compliance with "buy-America" requirements for spending federal highway funds (Virginia); and

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**WHEREAS**, Foreign investor claims may create fiscal pressure on the United States to preempt or push for changes in state or local law as illustrated by the \$970 million claim challenging California's decision to phase out a gasoline additive (MTBE) and the fact that the first four claims based on state action exceed \$1,800,000; and

**WHEREAS**, Proposed FTAA rules would change the traditional scope of government authority under the U.S. Constitution. For example:

1. The standard of non-discriminatory treatment in the U.S. Constitution is violated by the proposed standard of "National treatment" which says foreign corporations must be treated *at least as favorably* as domestic companies. Further, this standard would allow a U.S. law to be challenged by other countries even when the Constitutional standard of non-discrimination has been met.

2. The proposed "market access" rules would forbid many traditional strategies for protecting the public interest, such as exclusive supplier contracts, certificates of need for hospitals and schools, or limits on the corporate form of ownership of assets used to deliver public services. Even the location of pipelines, the size of landfills, and certain zoning regulations can be challenged; and

**WHEREAS**, The risk of conflict between FTAA rules pertaining to services and state or local law is relatively high because over 75 percent of the economy is now in the service sector and many services are regulated or provided by state and local government. For example: water treatment and distribution, waste disposal, zoning and other land use controls, health insurance, health facilities, schools, construction, alcoholic beverage sales, municipal and state energy authorities, procurement preferences; and

**WHEREAS**, The proposal for the FTAA procurement agreement incorporates most provisions of the WTO Government Procurement Agreement (GPA) that affect state and local government; and

**WHEREAS**, The GPA and proposed FTAA rules limit procurement to considerations of price and performance. These international limits would conflict with numerous purchasing preferences used by state and local governments to promote environmental resource conservation, small business development, and labor and human rights; and

**WHEREAS**, From November 17-21, 2004 trade ministers from around the Americas will gather in Miami for talks on the Free Trade Agreement of the Americas; which talks may well determine whether or not terms onerous to city and state interests will be adopted.

**NOW THEREFORE RESOLVED BY THE COUNCIL OF THE CITY OF PHILADELPHIA THAT IT:**

**Calls on** the United States Trade representative to hold a hearing in Philadelphia to address potential local implications of bilateral and multilateral trade agreements being negotiated; and

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*RESOLUTION NO. 030753 continued*

**Calls on** the Pennsylvania Attorney General and the Philadelphia City Solicitor to actively oversee trade policy as it affects local sovereignty by the carrying out the following functions:

- a. assessing the potential impact of trade and investment agreements on local sovereignty;
- b. monitoring the status of implementation and negotiations to expand international agreements; and
- c. advising federal trade negotiators with respect to preserving local sovereignty; and

**Calls on** Congress to bar the United States government, if it loses or settles a trade or investment dispute, from recovering economic losses from state or local government, either directly or indirectly by reducing federal funding based on compliance with trade or investment agreements; and

**Calls on** the U.S. government to shoulder the fiscal burden of compliance, disclosure, and economic adjustment costs that trade or investment agreements impose on state and local governments; and

**Calls on** the U.S. Trade Representative to assure the exclusion of local jurisdictions from requirements of bilateral and multilateral trade agreements covering services, investment, procurement; and

**FURTHER RESOLVED**, That a true and correct copy of this Resolution shall be provided to the United States Trade Representative, the Attorney General, the City Solicitor, and Philadelphia's delegation to the Pennsylvania General Assembly, and the Congress of the United States.

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*RESOLUTION NO. 030753 continued*

CERTIFICATION: This is a true and correct copy of the original Resolution, Adopted by the Council of the City of Philadelphia on the thirteenth of November, 2003.

Anna C. Verna  
PRESIDENT OF THE COUNCIL

Patricia Rafferty  
CHIEF CLERK OF THE COUNCIL

Introduced by: Councilmember Ortiz

Sponsored by: Councilmembers Ortiz, Goode, Nutter, Kenney, Tasco, Krajewski, Mariano, Miller, Reynolds Brown, Cohen and DiCicco