

STATEMENT

OF

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BEFORE THE
COMMITTEE ON FINANCE
UNITED STATES SENATE

ON

THE US-CHILE AND US-SINGAPORE
FREE TRADE AGREEMENTS

June 17, 2003

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I am Paul Joffe, Senior Director, International Affairs of the National Wildlife Federation, the nation's largest conservation education and advocacy organization.

For over a decade, the National Wildlife Federation has been involved in the development of United States trade policy. Our members are America's mainstream and main street conservation advocates who share a commitment to United States leadership in building a global economy that protects the environment while raising living standards for all people throughout the world.

A New Consensus on Trade and Environment

Today, we have an historic opportunity to demonstrate leadership and forge a new consensus on trade policy in the United States and around the world. We can do this by developing trade agreements that reflect the values and interests of all Americans and of people everywhere. A new consensus on trade is achievable and within reach.

As we consider today the results of the first in a series of important trade negotiations that are under way, we can note some progress on the environment but also the even greater challenges that lie ahead.

First, we can note that virtually all parties recognize that environmental issues must be addressed in trade negotiations. I believe we have dispelled the false stereotype that the environmental community wants to "shut down" international trade. Indeed, the greatest risk to the trade agenda has been in attempts to exclude environmental issues, which polarizes debate and undermines public support for trade expansion.

The National Wildlife Federation wants to get to yes on trade. Even more, the National Wildlife Federation wants international trade to achieve its fundamental goal – improving the quality of

life for individual citizens in the nations that join international trade agreements. To do this, we need to make progress on development and on the environment at the same time, which of course is the origin of the idea that our goal must be sustainable development. Because the quality of our air, water, land and wildlife is inextricably linked with our quality of life, progress on the environment must be inextricably linked with trade.

The National Wildlife Federation supports further trade liberalization if U.S. and international trade policies and institutions are reformed with common sense measures to integrate economic and environmental priorities.

The debate has progressed to the point where there is beginning to be recognition of the necessity for trade and environment to move forward together. However, we should not rest on our laurels. It is time to move to the next phase in this debate – beyond rhetoric to results.

The United States-Chile and United States-Singapore Free Trade Agreements (FTA's) make modest progress in addressing environmental issues in trade agreements, but they leave significant gaps between rhetoric and results. We urge the Committee to address these gaps and to reject the use of these agreements as a model for the environment for future trade agreements such as the Central America Free Trade Agreement (CAFTA) and the Free Trade Area of the Americas (FTAA).

We suggest three, common sense principles to guide this effort: Trade liberalization should support rather than undermine environmental protection. Trade negotiations and dispute procedures should be reformed to make them more open, democratic, and accountable. The United States should lead a grand coalition to build a global consensus for sustainable development. As I will explain, the U.S.-Chile and U.S.-Singapore agreements have shortcomings on these points so that they should not be a model for future agreements. But they are shortcomings we believe can be remedied. We will be pleased to work with the Committee to address the issues highlighted here as well as other flaws in the agreements.

The National Wildlife Federation's Three Principles

1. Trade Liberalization Should Support, Not Undermine, Environmental Protection.

Expanding trade and protection for the environment can be compatible. The problem is that some have tried to use trade rules to undermine environmental protection, and there is a danger that environmental protection will be weakened in a misguided effort to gain trade advantages.

Congress took a significant step toward recognizing this principle when it provided in fast track trade promotion authority that investment provisions in trade agreements must “ensure[e] that foreign investors are not accorded greater substantive rights with respect to investment protections than United States investors in the United States. . . .”

This language was meant to address a serious problem. NAFTA's Chapter 11 investment provisions have recently been used in major challenges to environmental safeguards in all three NAFTA countries. Chapter 11 creates the potential for challenges to environmental protections using trade agreements when such challenges would be rejected under U.S. law. Trade law and policy should preclude the type of private right of action created under Chapter 11 which has been used by investors to challenge domestic laws such as those relating to water contamination, hazardous waste, and bulk water exports.

We are pleased that the question is no longer whether, but how the defects of Chapter 11 need to be corrected. Unfortunately, the attempted correction in the Chile and Singapore agreements contains a number of gaps, as well as loopholes relating to government action to safeguard the environment and the definitions of “expropriation,” “minimum treatment,” and the like. The problems with Chapter 11 need to be corrected and must not be replicated in new trade agreements.

More generally, trade agreements must recognize legitimate national and international environmental standards. The Chile and Singapore agreements fall short on this, containing only weak language about consulting in the future regarding Multilateral Environmental Agreements.

Trade agreements should also provide that nations enforce and strengthen environmental laws and agree not to lower environmental standards to gain trade and investment advantages. While the Chile and Singapore agreements have such language, it is ambiguous, does not put the environment on par with commercial issues, and provides little assurance that the promises will be fulfilled. We recommend below the creation of a new framework to begin to provide such assurance.

2. Trade Negotiation and Dispute Procedures Should Be Reformed to Make Them More Open, Democratic, and Accountable.

The era of international trade negotiations being insulated from public concerns, including respect for the environment, is over. Trade institutions and negotiations must adopt modern, democratic principles of due process, including recognition of the right of the public to review and comment on the written record of a trade dispute, access to the working text of agreements and a permanent role for nongovernmental organizations (NGOs) in trade institution activities. Environmental review of proposed trade agreements should be ensured so that the environmental ramifications are carefully evaluated and taken into account in deciding whether to join in an agreement and on what its terms should be.

Although some progress has been made on these issues, a serious omission in the U.S.-Chile and U.S.-Singapore agreements is the failure to include a “citizen submission process” that allows citizens of both Chile (or Singapore) and the United States to complain about a failure to effectively enforce environmental laws. Modest provisions of this kind are contained in NAFTA and the Canada-Chile environmental side agreements. The omission under the Chile and Singapore agreements is a significant step backward.

3. The United States Should Lead a Grand Coalition to Build a Consensus for Sustainable Development.

The need to build a global consensus for sustainable development presents a great challenge and a great opportunity. The trade promotion authority legislation contains language about assistance to improve environmental performance. The Chile and Singapore agreements mention assistance to improve environmental performance (for Chile there is a partial list of projects) and then each tells us that more details will be forthcoming in another agreement. But it is time to move from rhetoric to results. No trade agreements should go through this Committee without both parts on the table in sufficient detail so the Committee knows what to expect. There can be no progress on trade that will be sustainable without safeguards for the environment.

It is time to recognize that sustainable development is not a luxury for any country on the planet. Developing countries have no interest in poisoning their own citizens and the future of industrialized countries will remain precarious as long as the global tide of environmental degradation and poverty continues to rise.

Nevertheless, developing countries are rightly skeptical of calls from industrialized countries for change when industrialized countries resist needed reforms on subsidy reduction and market access and assistance for sustainable development. For liberalized trade to be widely perceived as part of the solution among the world's disadvantaged, it must promote improvement in the quality of life for all, not just the few. For the sustainability part of the equation to become a reality, industrialized countries must do their part to provide the meaningful levels of capacity building and technical assistance that would make a difference in fueling real sustainable development.

For decades there has been a deadlock on sustainable development, with many in developing countries saying they do not have the resources to invest in sustainability and with many in the industrialized countries saying nothing can be done until someone else takes action.

The responsibility to break this deadlock does not fall exclusively on any one party, but it is equally true that American leadership to overcome it is indispensable. It is time for the United States to lead the world to a new global compact in which progress on development and the environment proceed together.

The remarkable fact is that the tools to the solutions are within reach. This Committee can leave a legacy in keeping with its great constructive accomplishments of the post World War II era if it reaches for these tools in its deliberations on these trade agreements and the ones it will review in the coming months. The National Wildlife Federation proposes the following steps:

The Road to Consensus

The United States should promote consensus between the global North and South on trade,

investment, and the environment through capacity building, environmental cooperation, technology transfer and by addressing developing country concerns regarding market access and subsidy reduction.

Liberalized trade abroad can help in securing the means for less developed nations to implement policies for sustainable development and environmental protection. But these results are not a given. They do not occur automatically. In the context of agreements on international trade, these steps should be taken:

- **Environmental Performance Program:** Trade agreements should be accompanied by a systematic, ultimately multilateral, program with specific goals, timetables, and funding to assess and improve international environmental performance.
- **Environmental Reviews:** Environmental reviews of trade agreements should be used as an element in a systematic work plan for bilateral and multilateral cooperation and capacity building. Gaps identified in reviews should be addressed under the work plan even if the trade agreement proceeds.
- **Cooperative Institutions:** The United States should evaluate the lessons of NAFTA and strengthen and extend institutions for environmental cooperation under bilateral agreements and at the regional, hemisphere, and global levels. The absence of such an institution under the Chile and Singapore agreements is a backward step from NAFTA. Among other things, permanent cooperation institutions can provide ongoing collaboration on the performance program mentioned above.
- **Technology Transfer:** Mechanisms should be established to facilitate transfer of environmental technology to ensure that the consequences of production are not injurious to human health and the environment, especially to the poor. The environmental performance program (above) and the status report (below) should include plans and progress on technology transfer.
- **Adequate Funding:** All of these initiatives should be supported with adequate funding, and not funding taken from other assistance programs. Trade agreements should not be approved without plans and commitments for adequate support for these functions.
- **Monitoring Progress:** Based on the initiatives noted above and others, a status report and recommendations on regional and global progress on trade and environment should be developed by the administration and submitted to Congress annually. The report should explain how the work on trade and environment is integrated with other sustainable development initiatives. It should include recommendations to help fulfill the performance programs referenced above and to help fulfill and strengthen commitments to sustainable development generally.

Conclusion

It is in the interest of everyone who wants trade to succeed to establish public confidence in the institutions and policies governing trade. Fortunately, consensus solutions are within reach and we look forward to working with this Committee and all concerned to find common ground.

In this effort, the National Wildlife Federation is engaged and committed to advancing the cause of conservation in the global economy. I can summarize by saying that we need to recognize for the new international economy what we began to recognize about our own national economy as the 20th century opened – that trade is not an end in itself. It is a tool to achieve human aspirations, to improve standards of living and to enhance the quality of life. Our environment, our wild places and wild things are part of humanity's quality of life.

Our laws and policies are beginning to speak a language that recognizes the connection between trade and the environment. It is now time to move from rhetoric to results.