

1 EXECUTIVE COMMITTEE MEETING ON THE BIPARTISAN TRADE
2 PROMOTION ACT OF 2001, WHICH THE CHAIRMAN WILL PROPOSE AS
3 A SUBSTITUTE FOR H.R. 3005

4 WEDNESDAY, DECEMBER 12, 2001

5 U.S. Senate,
6 Committee on Finance,
7 Washington, DC.

8 The meeting was convened, pursuant to notice, at
9 10:07 a.m., in room SD-215, Dirksen Senate Office
10 Building, Hon. Max Baucus (chairman of the committee)
11 presiding.

12 Present: Senators Rockefeller, Breaux, Conrad,
13 Graham, Jeffords, Kerry, Torricelli, Lincoln, Grassley,
14 Hatch, Murkowski, Nickles, Gramm, Lott, Thompson, Snowe,
15 Kyl, and Thomas.

16 Also present: John Angell, Staff Director; Michael
17 Evans, Deputy Staff Director; Kolan Davis, Republican
18 Staff Director and Chief Counsel; Carla Martin, Chief
19 Clerk.

20 Also present: Grant Aldonas, Under Secretary for
21 International Trade, U.S. Department of Commerce; Greg
22 Mastel, Chief, International Trade Counsel/Chief
23 Economist; and Peter Davidson, General Counsel, U.S.
24 Trade Representative.

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1 OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR FROM
2 MONTANA, CHAIRMAN, COMMITTEE ON FINANCE

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4 The Chairman. The committee will come to order.

5 Let me start off by commending my good friend from Iowa,
6 Senator Grassley, on working to develop a joint bill on
7 fast track.

8 I use the term "fast track" because, frankly, we talk
9 about TPA, TAA, ATPA, and the Andean Trade Preferences
10 Act, and it gets a little confusing. So I am just going
11 to stick with fast track so it is a little easier to
12 distinguish it from, say, TAA and some of the others.

13 I believe that it is possible to establish a broad
14 consensus on trade policy. I know it is work, but with a
15 little effort, it is clear to me that we can get together
16 and respond to a lot of the issues that many have
17 legitimately raised, including the need to get fast track
18 passed, as well as addressing labor and environmental
19 issues. I know that most of my colleagues agree with me
20 on that.

21 The fast track bill recently passed by the House
22 included a number of provisions which I favor. I worked
23 with Democrats in the House to refine those provisions.
24 I also worked with some Republicans in the House to
25 refine those provisions. In particular, I commend the

1 work of Congressman Dooley, Congressman Tanner, and
2 Congressman Jefferson in helping craft the House
3 legislation.

4 It is unfortunate that the House bill became tangled
5 and mired in partisan politics. I say that, because I
6 think that that partisan debate distracted attention from
7 some of the very significant provisions in the bill on
8 labor and on environment, and on some other issues that
9 got lost.

10 Nonetheless, as I said last week, the bill that
11 passed the House is a step forward and, with some
12 improvements, provides the basis for developing a
13 consensus.

14 Over the last several weeks, I have worked with
15 Senator Grassley to develop a bill that improved upon the
16 House bill in several respects. I admit that there were
17 times when the going was a little tough, but we sat down.
18 I want to thank you very much, Senator, for working so
19 cooperatively. It is very important to the committee,
20 but more important to the country.

21 I am certain that none of us thinks this bill is
22 perfect, but it is a good bill. It provides the
23 authority needed to advance multilateral and bilateral
24 trade negotiations. The authority will run until June of
25 2005, with a possible two-year extension.

1 As I will outline in a moment, I believe it also
2 makes significant progress on the issues of labor rights,
3 environmental protections, protection of trade laws, and
4 meaningful Congressional oversight.

5 This is far more progressive than any fast track bill
6 supported by this committee in recent years, particularly
7 with respect to labor and environment provisions. This
8 bill is not just an academic exercise. It has an
9 excellent chance of becoming law.

10 Before I continue my description of the fast track
11 before us, I want to speak for a moment on Trade
12 Adjustment Assistance.

13 Last week, this committee reported a major expansion
14 of the Trade Adjustment Assistance program. I want to
15 make one point clear. An expansion of Trade Adjustment
16 Assistance, I think, is essential, even without the
17 passage of new fast track authority.

18 Beyond that, it is inconceivable to me that the
19 Congress would pass fast track without passing, in the
20 same legislation, a major expansion of Trade Adjustment
21 Assistance.

22 If fast track is to be taken up on the floor, I will
23 use everything in my option of procedures and other
24 matters to ensure that Trade Adjustment Assistance and
25 fast track are joined. I believe I have broad support

1 from both sides of the aisle on that point.

2 Let me turn to the bill before us. This legislation
3 takes important steps. Perhaps the most important
4 measure in the bill in this regard is taken from the
5 House bill. The standards set by the U.S.-Jordan FTA
6 labor and environment is essentially enshrined in
7 negotiating objectives.

8 Advancing the core International Labor Organization
9 standards and ensuring compatibility between trade policy
10 and environmental objectives are part of the overall
11 objectives.

12 There is also an overall objective aimed at
13 convincing trading partners not to weaken their labor or
14 environmental laws as an inducement to trade, one part of
15 the U.S.-Jordan standard.

16 I might also note that, under this legislation, these
17 overall objectives are every bit as important as the
18 principle negotiating objectives listed in the section
19 listed in Section 2(b).

20 Reviews of both the environmental and labor rights
21 practices of potential negotiating partners are also
22 mandated by this legislation. Principal negotiating
23 objectives include ensuring enforcement of both existing
24 labor and environmental laws, and eliminating policies
25 that run counter to the goal of sustainable development.

1 Importantly, the Chairman's mark includes an
2 extensive provision to address the potential threat to
3 environmental laws and other national and local
4 regulations arising out of investor-to-State dispute
5 settlement provisions, as under Chapter 11 of NAFTA.

6 All the labor and environmental issues are explicitly
7 given parity with other trade issues in dispute
8 settlement proceedings, so environment and labor issues
9 are no longer relegated to a lesser status than other
10 trade issues.

11 Further, unlike previous fast track bills, efforts to
12 address environment and labor matters are no longer
13 forced to face the additional test of being directly
14 related to trade.

15 In my view, this was a very significant weakness of
16 previous bills because the linkage could be used to
17 unduly constrain negotiations on these topics.

18 There is one issue I particularly want to highlight
19 in connection with enforcement of these provisions. As
20 was the case in the U.S.-Jordan FTA, this bill makes
21 clear that government agencies have discretion in
22 administering environment and labor laws.

23 The discretion acknowledged in this objective,
24 however, is limited to administrative, regulatory, and
25 enforcement decisions. The bill also directs the

1 President to address potential conflicts between the WTO
2 and multilateral environmental agreements and pursue
3 consultation and capacity building efforts with their
4 trading partners on trade and environmental issues.

5 Another topic of great importance. This legislation
6 takes significant steps to prevent U.S. trade laws from
7 being weakened in trade negotiations. Especially given
8 the dubious results of the recent negotiations in the
9 WTO, this topic is particularly important.

10 First, the bill focuses attention on addressing the
11 problems arising from recent--and in my view, errant--WTO
12 decisions against U.S. trade laws. Dispute settlement
13 panels have greatly overstepped their boundaries under
14 the WTO, second-guessing administrative agencies and
15 creating out of whole cloth obligations that undermine
16 U.S. laws.

17 The legislation lists these problems and directs the
18 Secretary of Commerce to report to Congress on addressing
19 those problems, or lose fast track authority.

20 Second, the bill includes the specific direction to
21 the President to preserve U.S. antidumping,
22 countervailing duty, and safeguard laws.

23 The President is also directed to address and remedy
24 the underlying causes of dumping, such as over-capacity,
25 which depressed markets for many industrial markets, like

1 steel.

2 Third, the President is required to report to the
3 Senate Finance and Ways and Means Committee Chairmen and
4 Ranking Members on any changes contemplated in U.S. trade
5 laws before they are agreed to, and then address concerns
6 raised by these members.

7 Finally, a word about Congressional oversight. I
8 feel strongly that trade negotiations require a unique
9 degree of Congressional involvement. The Constitution
10 explicitly gives Congress authority to regulate
11 international trade.

12 Trade negotiations are a shared responsibility of the
13 Congress and the President. To recognize this, the bill
14 creates a new consultation procedure to ensure access to
15 information and Congressional input. It will also allow
16 Congress to withdraw fast track by a vote of both Houses
17 of Congress.

18 I was initially concerned about this provision and
19 preferred a veto that could be accomplished by either
20 House. However, after consultations with several
21 authorities on congressional rules and procedures, I am
22 confident that either House could change its rules if it
23 felt the need to do so.

24 The bill also includes a resolution calling for
25 expanding Congressional staffing to allow for meaningful

1 oversight of trade negotiations. I plan to pursue this
2 issue aggressively in the appropriations process to
3 ensure that Congress can play a meaningful role in
4 overseeing trade negotiations.

5 I want to wrap up my remarks by, again, thanking
6 Senator Grassley. At a time when partisan rancor seems
7 to be the rule, I am pleased that we have been able to
8 find the exception, the two of us.

9 I also want to reassure those interested in
10 international trade that this is an ongoing concern for
11 me, the passage of this bill. I plan to vigorously
12 oversee trade negotiations to ensure that environmental
13 and labor issues are addressed, and to preserve the
14 integrity of U.S. trade laws.

15 I believe this fast track bill is more progressive
16 and far superior to any previously produced. In
17 connection with Trade Adjustment Assistance, I plan to
18 work to see it made law.

19 Thank you.

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1 OPENING STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S.
2 SENATOR FROM IOWA

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4 Senator Grassley. Mr. Chairman, I am going to put
5 my statement in the record.

6 I have spoken several times this year on the
7 importance of trade promotion authority, why this
8 committee should act, urging the committee to act,
9 speaking on the floor, speaking before groups in town
10 about this important issue.

11 It is probably more important now than previous times
12 when I have spoken because of the President's leadership
13 in the war on terrorism and the downturn in the economy
14 of the world because of terrorism.

15 Consequently, all the more reason, not only for
16 political reasons but for the economic revival of the
17 world economy, for ~~this~~ ^{the trade} process to move forward ~~and~~ ^{under}
18 President Bush's leadership, ^{as it has under other} ~~or any~~ American president's
19 leadership, ~~in this area of trade, which has been the~~
20 ~~process since 1947.~~ It is even more important now than
21 before September the 11th that it continue.

22 I thank you very much for your cooperation, number
23 one, because you are doing what you said you would do: if
24 the House passed the bill, you would have a mark-up. You
25 are doing that now and I appreciate that very much.

1 Second, the bipartisanship with which this product
2 before us was done, I thank you for that. Let me say
3 that it is much more pleasant to work in a bipartisan way
4 on this committee. I find it very easy to work with you
5 on most of the issues that come before this committee.

6 But, even more important than that bipartisanship of
7 the committee's work generally, it has really been more
8 so in trade over the years that I have served on this
9 committee than any other issue.

10 So what we are doing here today ought to be expected
11 within that tradition, to make sure that it happens.
12 That tradition continues under your leadership and your
13 chairmanship. I thank you for doing that because, as you
14 said, it is for the good of the country.

15 So, thanking you for the product we have before us,
16 and hopefully moving in tandem on the floor in the same
17 way, I hope we can get a product to conference and to the
18 President.

19 Thank you very much.

20 The Chairman. Well, thank you very much, Senator.

21 [The prepared statement of Senator Grassley appears
22 in the appendix.]

23 The Chairman. Before we have the walk-through of
24 this, I would recognize Senators who wish to be
25 recognized. I can mention the early bird order, which

1 is: Senator Rockefeller, Senator Kyl, Senator Breaux,
2 Senator Thomas, Senator Conrad, Senator Thompson, Senator
3 Nickles. That is a lot right now. Any Senators wish to
4 be recognized for statements?

5 Senator Rockefeller. Yes.

6 The Chairman. Senator Rockefeller?

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1 OPENING STATEMENT OF HON. JOHN D. ROCKEFELLER IV, A U.S.
2 SENATOR FROM WEST VIRGINIA

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4 Senator Rockefeller. Where is Ambassador Zoellick?

5 Mr. Davidson. Ambassador Zoellick was hoping to be
6 able to be here today, and expresses his strong support
7 for what the committee is doing.

8 Senator Rockefeller. Where is Ambassador Zoellick?

9 Mr. Davidson. I do not know where he is this
10 instant. But he expresses his strong support for the
11 product that has been produced.

12 Senator Rockefeller. He is not here.

13 Mr. Davidson. No, he is not here.

14 Senator Rockefeller. I express strong frustration,
15 before I begin my statement, about that. If he is
16 interested in consulting with the Congress, all the work
17 that he purported to do to talk about that, it would have
18 been nice if he had been here on a vote. He chose not to
19 be. I take that as symbolic.

20 It will come as no surprise to my colleagues that my
21 top priority is the American steel industry. We have
22 made a lot of progress. The International Trade
23 Commission has found that we have been grievously
24 injured.

25 The question is, is the administration going to move

1 quickly on 201 or will it wait until the February
2 deadline, with an average of, every nine days, another
3 steel company going bankruptcy?

4 The President also has to deal, the administration
5 has to deal, with the whole concept of legacy costs.
6 Legacy is not a TV program at 10:00 on Thursdays. It is
7 the health care of tens of thousands of steelworkers and
8 their dependents who have been thrown out of work.

9 So I do not know when the 201 remedy is going to
10 come. I do not know in what force it is going to be. I
11 hope it is better than what the ITC recommended. I will
12 say that the Democratic members of that ITC commission
13 disgraced themselves; the Republican members did rather
14 better.

15 I also do not know when the administration is going
16 to declare itself on legacy costs. But I understand that
17 high-level meetings have been held, but no commitments
18 have been made. In the steel industry, you live by
19 commitments and commitments only. Words mean nothing.

20 The steelworkers need relief. There are a number of-
21 -maybe not so many on this committee--who care a great
22 deal about that. We need the legacy costs.

23 I also need to have full confidence in this
24 administration's commitment to our trade laws, hence the
25 absence of our trade representative, especially

1 antidumping, countervailing duty laws, and safeguard
2 measures. Those are the touchstone of trade policy for
3 something called fair trade, which merges with free
4 trade, but only becomes free trade if it is fair trade.

5 I have supported trade agreements that opened up
6 markets for others and opened up U.S. markets. The U.S.
7 Trade Representative's conduct in trade policy in the
8 past month has given me extremely serious reservations,
9 profound reservations, about granting this administration
10 a blank check for a new round of agreements.

11 The USTR negotiates trade agreements. The President
12 does not negotiate trade agreements. Fast track
13 authority is talked about as a grant of authority to the
14 President. We say that in here. It is not. It is a
15 grant of authority to be implemented by the USTR. So, it
16 is the USTR, not the President, who will be sitting at
17 the WTO negotiations that are coming up.

18 At the ministerial last month, after a talk I had
19 with Ambassador Zoellick in which he promised me, facing
20 me, looking directly in my eye, in my office that he
21 would not in any way compromise countervailing duty or
22 antidumping laws, he immediately did so within the first
23 five minutes of the ministerial.

24 I will never forget that. Words mean nothing. Words
25 mean nothing. Only agreements count. He made an

1 agreement and it hurt us tremendously. He knew that. It
2 opened us up to unfair competition even more.

3 This represented a dramatic reversal from the
4 administration's previous position that no weakening of
5 U.S. trade law was warranted or appropriate, and seemed
6 to ignore that a majority of both House and Senate had
7 explicitly stated to the administration that we should
8 not agree to weaken our trade laws in the WTO round. By
9 letter, by voice, by many visits, and with great
10 determination we said that. That was ignored.

11 Despite that, the administration made an
12 unprecedented concession to "improve our trade laws." I
13 will be happy to debate. The Chairman would not prefer
14 that. It would be a waste of our time here because the
15 vote is preordained, but not mine.

16 He used the words "to improve our trade laws." I am
17 sorry, it did not work that way. If you read the text
18 and how the text is to be interpreted--and I can read it
19 to you backwards from memory--it was an abrogation of
20 exactly what he had promised to me face-to-face, man-to-
21 man, to do.

22 For that reason, I am increasingly concerned that the
23 administration cannot be trusted to negotiate trade deals
24 that protect American interests where they are valid.

25 I am equally concerned that the administration has

1 not yet recognized that we need to expand TAA assistance.
2 That has been part of the deal since 1934. That is even
3 before John BreauX was born. It is a long time ago.
4 That is a long history and we have chosen to ignore that.

5 I regret the administration has yet to endorse the
6 TAA bill, which I would think would be a matter of
7 course. Our committee put it out last week. It improves
8 income support, and other things.

9 So I cannot, in good conscience, vote for fast track
10 authority for the President without a complete
11 understanding of what the administration is willing to do
12 to preserve our Nation's steel industry and our basic
13 trade laws, which is the business of this committee.

14 I have reason to hope that the President will act
15 affirmatively to maintain the American steel industry. I
16 choose to believe that. I want to believe that. But I
17 am worried that the USTR, based upon history, precedent,
18 conversations, et cetera, may spend his tenure
19 undermining the very trade laws that have preserved the
20 steel industry up to this point.

21 Thank you, Mr. Chairman.

22 The Chairman. Thank you, Senator. I might say, I
23 think you make a very good point. It is regrettable that
24 Ambassador Zoellick is not here. He was present at the
25 House mark-up. He is not present here. If the Congress,

1 and particularly this committee, is going to have a good
2 relationship with the administration on trade, we have to
3 have a good relationship with the USTR.

4 I would not be surprised to learn that he decided not
5 to come today because he did not want to face the music.
6 Any one in public service has to take the good with the
7 bad in trying to serve. It is critical that we have
8 trust between the Ambassador and this committee.

9 So, I would encourage you, sir, to take back to Mr.
10 Zoellick, it is my recommendation that he err on the side
11 of attending rather than not.

12 Mr. Davidson. Mr. Chairman, I appreciate that. I
13 will take that back to Ambassador Zoellick. Let me
14 reiterate again his strong support for what you have
15 done. I think what is happening here is not the bitter,
16 but the sweet, in the sense of coming together to support
17 the product.

18 So, he is very supportive of the process moving
19 forward. He is supportive of what you have done, what
20 Senator Grassley has done, and all the other members, to
21 pull this together. So, I will communicate your views to
22 him.

23 The Chairman. Thank you.

24 Does anybody else wish to speak?

25 Senator Rockefeller. Would you communicate mine

1 also?

2 Mr. Davidson. Yes. Absolutely, sir. Thank you.

3 The Chairman. Senator Breaux?

4 Senator Breaux. Thank you, Mr. Chairman.

5 Just very briefly. I see the vote has started. Let
6 me congratulate you, Mr. Chairman, and also the Ranking
7 Member Senator Grassley, for bringing this very
8 complicated and very important piece of legislation
9 together in the fashion that you have done it. I think
10 it is to both of your credits.

11 I think that probably Ambassador Zoellick was present
12 for the House handling of this legislation because he had
13 never seen an auction before and wanted to be present for
14 that great event, whereas he thinks that it is going to
15 be much smoother over here. Perhaps that is one of the
16 reasons why he is not with us today.

17 But this is important. I mean, I am concerned about
18 what happened in the House. They have a lot of things
19 that were added, obviously to get votes, that are going
20 to say that, unless these things are enacted, they are
21 not going to bring up any other trade legislation. I
22 think that is pretty unfortunate and not the best way to
23 handle it. I think that that obviously has to be
24 addressed.

25 But I think that, in the last 20 years, presidents

1 have had fast track authority in both Democratic and
2 Republican administrations. I think the concerns that
3 Congress has spelled out need to be followed very closely
4 by the administration. I mean, I, for instance, want to
5 report when these objectives cannot be met, not just when
6 they can be met.

7 For instance, when we have these negotiating
8 objectives on labor and environment, state some goals,
9 sometimes those goals will be met and sometimes they will
10 not be met.

11 I think it is very important that we clearly know the
12 good and the bad as a result of those sessions. I think
13 the legislation requires that. I want to make sure the
14 administration follows it.

15 With that, that is it. Thanks.

16 The Chairman. Thank you, Senator.

17 Senator Thomas?

18 Senator Thomas. Mr. Chairman, I guess I was just
19 confused. I thought this was a mark-up, not a hearing.

20 The Chairman. Any other statements?

21 Senator Nickles. Mr. Chairman?

22 The Chairman. Senator Nickles?

23 Senator Nickles. What is your intention as far as
24 floor activity?

25 The Chairman. Well, that is not my call.

1 Senator Nickles. A lot of us would like to get it
2 done this year, if possible. I want to compliment you
3 and Senator Grassley for working together. That is the
4 tradition in the Finance Committee not only on trade, but
5 on taxes. A lot of us would like to see us return to
6 that tradition.

7 I compliment you for doing it on TPA. I would love
8 to see us move this bill through before we adjourn this
9 week or next week.

10 The Chairman. I appreciate that. But that is a
11 matter that various Senators are going to have to bring
12 up with the leadership, clearly.

13 Senator Nickles. I will bring it up.

14 The Chairman. Senator Conrad?

15 Senator Conrad. Mr. Chairman, what are your
16 intention in terms of going to the floor vote?

17 The Chairman. My thought was, those who want to
18 make statements, do so now. Then we would all go to the
19 vote, then come back for the walk-through.

20 Senator Conrad. Well, I would make my statement
21 now, then.

22 The Chairman. There is about 12 minutes left on the
23 vote.

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1 OPENING STATEMENT OF HON. KENT CONRAD, A U.S. SENATOR
2 FROM NORTH DAKOTA

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4 Senator Conrad. Mr. Chairman, I want to just make a
5 few brief remarks on fast track before we proceed. I
6 have long been a believer in free trade. That has the
7 opportunity to improve the standard of living for
8 American consumers and open markets for our producers and
9 exporters.

10 But, Mr. Chairman, my constituents have had a bitter
11 experience, a very bitter experience. We have learned
12 that the devil is in the details. My job, first and
13 foremost, is to represent the interests of the people of
14 North Dakota.

15 I can say to you that the bitter experience that we
16 have had with the Canadian Free Trade Agreement and the
17 NAFTA agreement has left many in my State highly
18 skeptical of these agreements.

19 As I look at the proposal before us, I see at least
20 three significant deficiencies. I call them the three
21 Cs: inadequate consultation, a lack of a corrections
22 mechanism for mistakes that are made, and a failing to
23 address currency differentials with countries with whom
24 we negotiate.

25 Let me just illustrate each of those. What fast

1 track means, is that Senators give up their rights to
2 offer amendments. That is the most fundamental right of
3 a U.S. Senator. That is the way we protect the
4 constituents that send us here.

5 We all understand the reason that is done, is it is
6 very difficult to negotiate a trade agreement without
7 fast track authority. So, there is a reason to do so.

8 But for a Senator to give up that ability to protect
9 his constituents, there has got to be something in
10 return. That something is meaningful consultation. It
11 has not happened with past agreements. I fear very much
12 that, under the terms of this legislation, it will not
13 happen here.

14 Second, with respect to corrections. Again, we were
15 assured in the Canadian Free Trade Agreement that it
16 would not have a meaningful impact on trade flows of
17 cereal grains into the United States. We were told that
18 repeatedly. It was not true. It was not even close to
19 being true.

20 Just in one commodity that is critical to my State,
21 durham, which is the wheat that makes pasta, the
22 Canadians went from zero percent of our market to 20
23 percent virtually overnight.

24 Not because they were more competitive, not because
25 they were more efficient, but because of a loophole in

1 the agreement. That did enormous damage, economic
2 damage, to the people of my State, over \$500 million of
3 damage.

4 Now, Mr. Chairman, finally, on the question of
5 currency valuation, NAFTA is a perfect example. There we
6 negotiated a 10 percent reduction on tariffs, on average,
7 and then soon thereafter Mexico devalued their currency
8 by 40 to 50 percent, completely wiping out what we had
9 accomplished. We went from a positive balance of trade
10 with Mexico to a negative balance of trade in very short
11 order.

12 Mr. Chairman, I think it is very important that we
13 address those areas. I cannot support any fast track
14 legislation that does not contain amendments that deal
15 with those three areas.

16 I would also like to address, very briefly, the
17 notion that has been put forward about our farm crisis in
18 fast track. There are some that argue that fast track is
19 the answer to the crisis facing American agriculture,
20 that we can solve the farm crisis by simply passing fast
21 track.

22 I do not believe that is correct. Clearly, exports
23 are absolutely critical to American agriculture, and we
24 should be doing everything we can to promote them.

25 But exports are different from fast track. In and of

1 itself, fast track will do nothing to help American
2 farmers. Fast track does not increase our wheat exports
3 one bushel, or increase grain prices one penny. It does
4 not eliminate export subsidies by other countries. It
5 does not reduce foreign tariffs our goods face. It does
6 not level the playing field for American farmers.

7 It does, however, unfortunately, allow our
8 negotiators to sell out farmers to get a better deal for
9 other sectors of the economy, knowing that farm State
10 Senators cannot defeat the overall agreement on a
11 straight up or down vote. That is the bitter experience
12 we have had with both the Canadian Free Trade Agreement
13 and NAFTA.

14 Even though some farm groups here in Washington are
15 cheerleading for fast track, real-life farmers outside
16 the beltway have learned the hard way that, when it comes
17 to trade agreements, the devil is in the details. All
18 too often, our negotiators have gotten the details wrong.

19 Let me just say, I add my voice to those disappointed
20 that the trade ambassador is not here. The trade
21 ambassador is a friend of mine. He is someone that I
22 have high regard for. But he should have been here
23 today.

24 As I have indicated, the Canadian Free Trade
25 Agreement contained a serious flaw that allows Canada to

1 unfairly export to this country at less than their cost
2 of production, costing our farmers hundreds of millions
3 of dollars.

4 The Uruguay Round, while it took a first step in
5 disciplining European farm subsidies, adopted a formula
6 that allows the EU to out-spend the U.S. 10 to 1 on a
7 per-acre basis. Ten to one. This is a level playing
8 field? This is fair? I do not think so.

9 So farmers do not just want any trade deal, they want
10 good trade deals that improve their bottom lines. They
11 do not want just any fast track, they want fast track
12 that protects their interests.

13 Mr. Chairman, that is why it is critical to get fast
14 track right, to make sure that it produces agreements
15 that help U.S. farmers, businesses, and workers. That is
16 why I will offer amendments to fix what I call the three
17 Cs. That is why I support a trade policy for the 21st
18 century that has as its goal expanding markets for U.S.
19 products and increasing American jobs and incomes.

20 I thank the Chair.

21 The Chairman. Are there other Senators who wish to
22 speak? We have about four or five minutes left on this
23 vote.

24 Senator Lincoln?

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1 OPENING STATEMENT OF HON. BLANCHE L. LINCOLN, A U.S.
2 SENATOR FROM ARKANSAS

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4 Senator Lincoln. Thank you, Mr. Chairman. Thank
5 you for scheduling the mark-up.

6 I think our mark-up today is very timely, not only
7 because the House has just approved a TPA bill, but also
8 because we in the Senate are finally addressing some of
9 the other very important needs that are necessary
10 components of comprehensive trade strategy.

11 First, as was mentioned earlier, we are finally
12 considering a farm bill. For the rural parts of this
13 country, the farm bill represents more than just a
14 commitment to preserve a rural way of life. It also
15 represents a commitment to inject a crucial shot in the
16 arm, a rural economic stimulus package, if you will.

17 This is important because, for rural America, TPA is
18 long-term strategy, increasing our market access, opening
19 foreign markets, eliminating the nontariff barriers.
20 These things are absolutely vital to the survival of our
21 farm sector, but they can take years to develop.

22 In the meantime, our farmers need a farm bill with a
23 strong safety net to ensure that they are not displaced
24 from their places of business and their way of life by
25 the unfair trading practices of our overseas competitors.

1 So, I think it is very important that we look at TPA
2 as long-term strategy, particularly on behalf of
3 agriculture and our farm economy, but that we do not
4 forget the immediate responsibility that government has
5 to work with our agricultural producers to provide the
6 safety net. That is why I am very pleased we are taking
7 up the farm bill on the floor now.

8 The second component of a comprehensive trade
9 strategy is a good TAA bill, trade assistance, which
10 represents our commitment to those that are suffering
11 from the economic dislocations that trade liberalization
12 invariably causes. This committee has just recently
13 approved a strong TAA bill that extends assistance to all
14 parts of our economy, to businesses, to workers, and to
15 farmers.

16 I want to say to the Chairman that I really look
17 forward to working with the Chairman to wed the TPA bill
18 with the TAA bill on the floor, and working for their
19 joint passage at the same time.

20 I think today our job is to consider the TPA bill and
21 to provide the long-term component of our trade strategy,
22 to extend to the President the authority he needs to
23 negotiate trade agreements. Lord knows, it is difficult
24 to make an agreement with 535 of us; we barely have an
25 opportunity to do it just within the committees.

1 But to move our entire economic structure forward,
2 obviously, our Nation needs that authority through the
3 administration and I look forward to working with the
4 Chairman, particularly in wedding the TAA and the TPA on
5 the floor. I hope that we will do that.

6 The Chairman. Thank you very much, Senator.

7 Senator Graham? We probably have about two minutes,
8 but we would love to hear you.

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1 OPENING STATEMENT OF HON. BOB GRAHAM, A U.S. SENATOR FROM
2 FLORIDA

3

4 Senator Graham. Mr. Chairman, I appreciate that
5 adoring comment, and I will try to be brief.

6 The Chairman. It is very adoring.

7 Senator Graham. I am very pleased that we are here
8 today, and that we are here today in the manner that we
9 are. This is not going to be a partisan, contentious
10 mark-up. But I think, because of the good work of the
11 Chairman and the Ranking Member, it will be a bipartisan
12 and strong vote for America continuing to be the leader
13 in international economics.

14 There are a number of issues within this legislation
15 that have had their origin in legislation that Senator
16 Murkowski and I introduced some six months ago. I am
17 very pleased at that and pleased at the spirit with which
18 this has gone forward.

19 On an issue that relates to what the Senator from
20 Arkansas was just saying, there are provisions in here
21 relative to agriculture which gives some encouragement to
22 our trade negotiators to focus particularly on opening up
23 markets elsewhere and establishing some broad principles
24 of agricultural trade as a predicate to then moving to
25 individual regional and bilateral negotiations on

1 specific commodities.

2 The American farmer is prepared to compete with the
3 world and has demonstrated his and her ability to compete
4 with the world, but we need to have open markets in order
5 to do that.

6 So, I look forward to the consideration of this
7 legislation and to the power of the President through is
8 designated representative to commence the process of
9 negotiating in the interest of Americans.

10 The Chairman. Thank you, Senator.

11 The committee stands in recess until the call of the
12 Chair.

13 [Whereupon, at 10:43 a.m. the meeting was recessed.]

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1 AFTER RECESS

2 [11:10 a.m.]

3 The Chairman. The committee will come to order.

4 We are now finished with statements. The Chairman's
5 mark is before the committee.

6 We also developed a modification which is drawn from
7 amendments that were filed by members on both sides, and
8 which have been agreed to by myself and also by Senator
9 Grassley. The modification is hereby incorporated into
10 the mark.

11 I will now ask Mr. Mastel, of the staff, to briefly
12 describe the mark, as modified.

13 Mr. Mastel. Thank you, Mr. Chairman.

14 Section 1 of the mark puts forth certain findings
15 that Congress makes on trade, the value of trade, and the
16 role of trade agreements in the modern world. They also
17 highlight some problems and concerns about various WTO
18 dispute settlement issues regarding U.S. trade remedies.

19 Section 2 sets forth negotiating objectives. (a)
20 describes some overall negotiating objectives to apply to
21 all negotiations, including improved market access,
22 cleaner environment, advancing core labor standards, et
23 cetera.

24 Section (b) sets forth 14 principal negotiating
25 objectives on topics ranging from intellectual property

1 to labor and the environment, agriculture, et cetera.

2 Section (c) puts forth promotion of certain other
3 priorities, including several reports on labor and
4 environment. It outlines the currency issue as addressed
5 in this bill. And, probably most importantly, it touches
6 on the topic of U.S. trade law protection of U.S. trade
7 remedies and directs the President not to undermine those
8 in future negotiations.

9 Section 3 of the bill is probably the core of the
10 bill. It actually describes the fast track. As the
11 Chairman noted, it has a fast track that runs through
12 June of 2005, with the possibility of a two-year
13 extension. It also provides the President proclamation
14 authority.

15 Section (c) of this section provides for disapprove
16 resolutions on extension. Either House may disapprove a
17 request of extension by a majority vote through
18 resolution. That process is laid out in the bill.

19 Section 4 describes consultation provisions under the
20 bill between the administration and Congress, with
21 particular mention of agriculture and textile issues in
22 consultations.

23 Section 5 is about implementation of trade
24 agreements. It sets certain requirements on the
25 President regarding implementing trade agreements,

1 including a report of the impact on U.S. trade remedies,
2 impact on U.S. staffing and budget, et cetera.

3 This also describes the so-called reverse fast track
4 issue which the Chairman noted in his opening remarks
5 that allows fast track to be withdrawn by resolution
6 passed through both Houses that is continued by Finance
7 and Ways and Means.

8 Section 6 indicates that certain trade agreements
9 that are already under negotiation are exempt from some
10 of the pre-negotiation requirements.

11 Section 7 describes the new Congressional oversight
12 group that, in addition to Finance and Ways and Means,
13 will provide a key role in working with the
14 administration on future trade negotiations.

15 Section 8 provides some additional implementation and
16 enforcement requirements regarding Customs impact, et
17 cetera.

18 Section 9 provides for additional committee staff to
19 address oversight of trade negotiations.

20 Sections 10 and 11 provide conforming amendments and
21 some definitions.

22 The modification presented today is made up of nine
23 member amendments that were accepted by both sides, after
24 some discussion.

25 There were five amendments from Senator Snowe, the

1 first of which provides a study by the ITC on the impact
2 of past fast track agreements.

3 The second through fourth make small business
4 objectives an objective in negotiations, creating or
5 renaming a USTR assistant to address small business
6 issues and making small business a U.S. priority at the
7 WTO.

8 The last Snowe amendment provides for Congressional
9 consultation on fishing trade to ensure that the House
10 Committee on Resources and the Senate Committee on
11 Commerce are fully informed of those developments.

12 There are three amendments from Senator Conrad, the
13 first of which is an objective on eliminating export
14 subsidies.

15 There is a Conrad amendment on no secret side deals.
16 This is to address the problem in past of informal
17 discussions between negotiators becoming part of an
18 agreement.

19 The last Conrad amendment makes certain changes in
20 the agricultural language, including the definition of
21 "sensitive agricultural product" and some additional
22 direction on export subsidies.

23 The last modification in the mark is the Graham
24 amendment on sensitive agricultural commodities regarding
25 their tariff negotiations.

1 That is a summary of the modification. Thank you.

2 The Chairman. Thank you very much, Mr. Mastel.

3 I notice that some of the key language protecting
4 U.S. trade law is listed in the other priority section of
5 the bill. The question is whether members should take
6 this to mean that protecting U.S. trade law is less
7 important than other objectives that are listed as
8 principal negotiating objectives.

9 No, I certainly do not think so. I would say, in
10 fact, that protection of U.S. trade laws or trade
11 remedies is one of the most important, or perhaps the
12 most important, priority that has been put to us by
13 members of the committee.

14 I would note that protecting trade remedies is
15 actually something mentioned in the findings and in all
16 three levels of objectives. Actually, this issue came up
17 in the House Ways and Means Committee mark-up as well.

18 In response, the House Ways and Means Committee
19 inserted some language in the report indicating that the
20 language on protection of trade laws in Section C of the
21 objectives was every bit as important as that of language
22 in other provisions in Section B or Section A. I think
23 we will probably want to echo that in our report.

24 The Chairman. And in the House debate, some
25 language was added suggesting that administrating

1 authorities should have wide latitude in setting labor
2 and environment standards, and in enforcing those
3 standards.

4 In your view, would this language limit our ability
5 to negotiate an agreement on the lines of the U.S.-Jordan
6 model? Further, would it limit our ability to challenge
7 another country's use of environmental or labor standards
8 to disguise trade barriers?

9 Mr. Mastel. We looked very carefully at this issue
10 at your direction, Mr. Chairman. It is our view that, in
11 fact, the language inserted in the House makes it clear
12 that the U.S. administering authority has wide latitude
13 in enforcing current environmental and labor laws and
14 making decisions regarding the devotion of resources to
15 those efforts.

16 But we do not believe that in any way infringes on
17 the ability of the U.S. to negotiate an agreement on the
18 U.S.-Jordan FTA model. We also believe we still have our
19 full range of options that deal with problems of
20 disguised trade barriers. That is, trade barriers that
21 are disguised as environmental protection, as is the case
22 in some European agricultural issues.

23 I think that the administration also has some
24 comments on this issue that they may want to add.

25 The Chairman. Mr. Aldonas, do you have something?

1 Mr. Aldonas. Mr. Chairman, I appreciate your
2 raising the point, which is to say, our understanding of
3 the language is that it is designed to ensure that future
4 trade agreements preserve Congress' exclusive power to
5 set U.S. labor and environmental standards, and that the
6 U.S. will not suffer trade retaliation for the standards
7 we establish, or the exercise of prosecutorial discretion
8 under U.S. law.

9 At the same time, as you suggested, Mr. Chairman, it
10 is important to distinguish those actions, the setting of
11 labor and environmental standards and the exercise of
12 prosecutorial discretion, from those instances covered by
13 Subparagraph 211(g), where governments, for example,
14 might use phytosanitary standards to discriminate against
15 U.S. agricultural exports.

16 We understand Congress' intent is to ensure that such
17 practices will be addressed in future trade agreements,
18 which we would regard as nullification impairment of
19 commitments otherwise entered into with our trading
20 partners.

21 The Chairman. The point here is that, essentially,
22 agencies have a fairly wide latitude and operate under a
23 kind of rule of reason in determining whether actions do
24 or do not distort trade. There are also provisions in
25 the WTO anyway, impairment nullification, that might be

1 available here.

2 This is an evolving issue. I think that we have come
3 a long way in this bill. It has some very progressive
4 provisions in it which address the reality, namely that
5 labor issues, environmental issues, are now part of
6 trade. We will be working our way through this through
7 the years.

8 But this, I think, is an excellent first step. It is
9 going to take a little working with to see where we have
10 to make adjustments. Congress will always meet another
11 day to deal with any changes that might be necessary.

12 But I think it is a solid, reasonable, good first
13 step. It is the most progressive provision in any trade
14 laws that have yet to come before this committee with
15 respect to these issues and trying to address the real-
16 world as it is today. I commend you, frankly, Mr.
17 Aldonas and members of the House, for incorporating it.

18 I might note to the committee that I would hope that
19 we could vote very quickly on the mark. We have about 10
20 minutes left. I know Senators may have amendments. I
21 urge Senators to refrain from offering amendments. We
22 can work out any suggestions that the Senators may have
23 between now and date on which the legislation is to come
24 before the full Senate.

25 But I ask Senators, if they have any short statements.

1 or amendments they wish to make, or obviously if the
2 Senator wishes to push his or her amendment, that is
3 certainly within his or her right. But we have a short
4 period of time within which to mark this up. I ask
5 Senators to exercise discretion at this point.

6 Senator Conrad?

7 Senator Conrad. Mr. Chairman, I have a number of
8 amendments that I feel strongly about. I have offered
9 these before, and I would like to offer them again. But
10 I am mindful of the 11:30 time. I would like to at least
11 have the opportunity to offer my currency amendment, and
12 I would be willing to dispose of it in very short order.

13 The Chairman. Go ahead.

14 Senator Conrad. Mr. Chairman, members of the
15 committee, one of the things that I think soured a lot of
16 people on the NAFTA agreement was what occurred where we
17 negotiated a 10 percent reduction, on average, in the
18 tariffs. Then, very soon thereafter, Mexico devalued by
19 about 50 percent. That left us in a much worse position
20 than before we negotiated the agreement.

21 Mr. Chairman and members of the committee, my
22 amendment protects against this sort of devaluation in
23 the future. It simply says that, before fast track
24 procedures will apply to a trade agreement, the President
25 must certify that the U.S. has adequate data to judge the

1 stability of a country's currency and that he does not
2 think it is likely to be devalued.

3 We cannot protect against every currency shift that
4 occurs, but we can at least look before we leap. We can
5 at least ask an administration to take a look at the
6 currency stability of the country with whom we are
7 negotiating so we do not wind up in a worse position
8 afterwards than before we have negotiated tariff
9 reductions.

10 So I would ask our colleagues to give serious
11 consideration to this. We are not asking for a
12 guarantee. No guarantee can be provided. But we are
13 asking that at least the administration has looked at the
14 currency stability of the country with whom we are
15 negotiating, and say to us that they have some confidence
16 that it is not going to be subject to a devaluation.

17 The Chairman. Is there any discussion? Senator
18 Gramm?

19 Senator Gramm. Mr. Chairman, I would just like to
20 say, with regard to Mexico, that right after, or
21 coincidental with NAFTA, Mexico went into a depression
22 deeper than our depression of the 1930s. Yet, because of
23 the free trade agreement, Mexican demand for American
24 goods held up remarkably well.

25 Mexico has become our second-largest trading partner

1 under NAFTA. I think this is an unworkable amendment, in
2 part, because the United States has a flexible exchange
3 rate.

4 So, every day the value of the dollar relative to
5 every other currency in the world is set by free market,
6 where literally tens of billions of dollars of currency
7 are traded virtually on an hourly basis.

8 So, from moment to moment, we have no way of knowing
9 what the value of the dollar is, other than that value
10 which is determined on the market.

11 I would say, with regard to Mexico, that, verifiably,
12 the free trade agreement dramatically helped American
13 producers because Mexican demand for U.S. products held
14 up during an economic downturn deeper than our great
15 depression. There is no way that would have happened
16 without the free trade agreement.

17 Finally, free trade agreements, by definition, are
18 aimed at eliminating trade barriers. Whatever happens to
19 currency values, they are no barriers to trade.

20 So I understand what the Senator is doing, but I
21 think it is unworkable. I think we cannot certify it for
22 our own currency. We do not want to go back to the kind
23 of fixed exchange rates and chaos we had before we went
24 on flexible exchange rates in the 1970s.

25 Senator Conrad. Mr. Chairman?

1 The Chairman. Senator Conrad?

2 Senator Conrad. Mr. Chairman, I would just say to
3 my colleagues that anybody that took a serious look at
4 Mexico's situation before the agreement was made would
5 have known that that currency was due for a significant
6 correction. That is something we ought to know when we
7 are negotiating trade agreements because the two are
8 directly linked.

9 This is not a suggestion of going off any regime that
10 we currently have adopted with respect to our own
11 valuations. This simply says to any administration,
12 before you reach conclusion on a negotiation, you ought
13 to have examined the currency stability of the country
14 with whom you are negotiating. It is completely
15 workable.

16 There is nothing difficult about this. It means that
17 the U.S. Treasury looks at the stability of the currency
18 of the country with whom we are negotiating and says to
19 us they have some confidence that they are not going to
20 be subject to a substantial devaluation that can
21 completely undo everything we have tried to accomplish.

22 I would say to my colleagues, the reason support for
23 the trade agreements is slipping is because we keep
24 having unintended consequences. If we do not do some
25 common-sense things to counter it, I think you are going

1 to have a very difficult time getting future trade
2 agreements arranged. I believe we ought to enter into
3 trade agreements. I believe it is important to do so.
4 But the devil is in the details.

5 The Chairman. Senator, I deeply appreciate the
6 points that you are making. Currency fluctuations have a
7 great bearing on trade. That is clear. It is one reason
8 why our export market is not doing a little bit better,
9 is because of currency differentials.

10 We have provisions in the bill here addressing
11 currency changes. I think they are a good start in that
12 direction. I appreciate what you are saying. But I am
13 going to have to urge the Senators not to, at this point,
14 take that amendment.

15 The vote is on the amendment. All those in favor,
16 say aye.

17 (A chorus of ayes)

18 The Chairman. Those opposed, no.

19 (A chorus of nays)

20 Senator Conrad. The ayes appear to have it.

21 [Laughter].

22 The Chairman. The amendment is not agreed to.

23 I move that the mark be before the committee now,
24 subject to further amendment.

25 Senator Rockefeller. Mr. Chairman?

1 The Chairman. Senator Rockefeller?

2 Senator Rockefeller. I recognize what I could do
3 here, and I am not going to do it because of my
4 colleagues. But I would like to have Mr. Zoellick's
5 answer to the five questions which I was going to ask him
6 by the end of this day.

7 Is that possible, Mr. Davidson?

8 Mr. Davidson. Senator, I will do my best to get
9 that through the process. I will communicate that
10 immediately.

11 Senator Rockefeller. No, I need to have an answer
12 because I can talk past 11:30.

13 Mr. Davidson. Yes. We will answer your questions
14 by the end of the day. [Laughter].

15 Senator Rockefeller. All right.

16 Mr. Davidson. Since you put it that way.

17 The Chairman. I move that we report out the mark,
18 subject to further amendments. That is the motion before
19 us.

20 All those in favor, say aye.

21 (A chorus of ayes)

22 The Chairman. Those opposed, no.

23 (A chorus of nays)

24 The Chairman. The ayes have it. The Clerk will
25 call the roll.

1 The Clerk. Mr. Rockefeller?
2 Senator Rockefeller. No.
3 The Clerk. Mr. Daschle?
4 The Chairman. Aye, by proxy.
5 The Clerk. Mr. Breaux?
6 [No response]
7 The Clerk. Mr. Conrad?
8 Senator Conrad. No.
9 The Clerk. Mr. Graham?
10 Senator Graham. Aye.
11 The Clerk. Mr. Jeffords?
12 Senator Jeffords. Aye.
13 The Clerk. Mr. Bingaman?
14 The Chairman. Aye, by proxy.
15 The Clerk. Mr. Kerry?
16 Senator Kerry. Aye.
17 The Clerk. Mr. Torricelli?
18 Senator Torricelli. No.
19 The Clerk. Mrs. Lincoln?
20 Senator Lincoln. Aye.
21 The Clerk. Mr. Grassley?
22 Senator Grassley. Aye.
23 The Clerk. Mr. Hatch?
24 Senator Hatch. Aye.
25 The Clerk. Mr. Murkowski?

1 Senator Murkowski. Aye.

2 The Clerk. Mr. Nickles?

3 Senator Nickles. Aye.

4 The Clerk. Mr. Gramm?

5 Senator Gramm. Aye.

6 The Clerk. Mr. Lott?

7 Senator Lott. Aye.

8 The Clerk. Mr. Thompson?

9 Senator Thompson. Aye.

10 The Clerk. Ms. Snowe?

11 Senator Snowe. Aye.

12 The Clerk. Mr. Kyl?

13 Senator Kyl. Aye.

14 The Clerk. Mr. Thomas?

15 Senator Thomas. Aye.

16 The Clerk. Mr. Chairman?

17 The Chairman. Aye. Senator Breaux votes aye, by
18 proxy.

19 The Clerk. Mr. Chairman, the vote tally of members
20 present is 15:3. The vote tally, including proxies, is
21 18 ayes, 3 nays.

22 The Chairman. The bill is reported favorably out of
23 committee. The bill is reported.

24 We do have some nominations, and we can take other
25 amendments.

1 Senator Kerry. I said there was an objection.

2 The Chairman. There may be at this point. The
3 committee cannot meet. Let us find out whether it was
4 entered or not. It has been entered. There is a two-
5 hour time limit which is now invoked.

6 Senator Kerry. Mr. Chairman, can we do the
7 nominations off the floor after the next vote?

8 The Chairman. I will try to do that.

9 Senator Grassley. Before Senator Kerry goes, I
10 think that the Chairman has allowed us to report this
11 bill, subject to amendment. Senator Kerry has a right to
12 offer his amendment when we can meet, legally, under the
13 rules.

14 I think, at least for my side of the aisle, I hope
15 that we will come back and give the proper quorum to
16 Senator Kerry, and anybody else who wants to offer
17 amendments. We owe that to the members, but particularly
18 we owe it to the Chairman for moving this bill along.

19 The Chairman. I appreciate that, Senator. It is
20 absolutely true. Senator Kerry, and any Senator,
21 clearly, has the right to offer amendments. I will
22 schedule a time this afternoon or tomorrow at the
23 earliest time so that we can take up amendments to this
24 bill.

25 Senator Kerry. Mr. Chairman, can I say something?

1 Look, I respect very deeply the difficulties of trying to
2 move legislation here in the Senate. We all do. But we
3 are supposed to operate under a process that gives people
4 confidence that we are really doing more than just sort
5 of rushing something through.

6 If we are going to have to come back here anyway in
7 order to afford me rights and the committee its rights to
8 properly do some amendments, the question is, why would
9 we not wait for that vote at that point in time?

10 Now, we have done it. We have acted the way we have
11 acted. But I do not think it does a service to the kinds
12 of arguments that some of our colleagues have raised
13 about very serious issues with respect to this.

14 I came here prepared to vote for it, and you saw the
15 difficulty. I felt like I was put in a bad position.
16 But it seems to me that, to hold the consensus for trade
17 together, we have got to be thoughtful about how we
18 approach these issues. There are important dialogues to
19 have with the trade representative, and so forth.

20 I think we have done ourselves a disservice in not
21 allowing that to happen today. We can come back and find
22 two hours. We are not doing anything around here,
23 anyway. We all know we are going to be here until next
24 week. The notion that we could not come back here----
25 [Laughter].

1 The Chairman. Senator, you were doing very well
2 until that last statement. [Laughter].

3 Senator Kerry. Well, it is my understanding, unless
4 we get the farm bill off the floor, we have got an
5 education conference still to complete, we have got
6 defense appropriations to complete, economic stimulus is
7 still at issue.

8 So, you tell me. I am told we will be on the farm
9 bill until Friday. Now, if your folks are prepared to
10 stop amending it, maybe we can move on some of those
11 other things.

12 The Chairman. Senator, I appreciate your concerns
13 and I deeply respect them. We will give you and any
14 other Senator more than ample opportunity to offer
15 amendments to this bill within the next couple, three
16 days. I appreciate that.

17 We can no longer meet. The committee is adjourned.

18 [The prepared statements of Senators Byrd and
19 Jeffords appear in the appendix.]

20 [Whereupon, at 11:33 a.m. the meeting was concluded.]

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I N D E X

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**Statement of Senator Chuck Grassley On TPA Mark-Up
Wednesday, 12 December 2001**

Mr. Chairman, thanks to your leadership, today's mark-up is a bipartisan success story. First, it is a bipartisan success story for American trade policy. With our work here today, we will move one step closer to restoring America's historic half-century of world trade leadership.

Today's mark-up is also a bipartisan success story for the Finance Committee. For the second time this year, we have put aside partisan differences to do what is right for America. Earlier this year, we set aside partisan rhetoric to pass a major tax bill that put more money back into the pockets of the hard-working taxpayers who earned it. There were some people that tried to stop our bipartisan efforts.

⊖ But Mr. Chairman, we got together, we worked it out, and we got it done. We did it because we thought it was the right thing to do. When we forego the opportunity to seek partisan advantage at each other's expense, we can accomplish great things for America. That's the way it should be. That's what the American people expect. And it's the way this Committee in particular has always tried to operate.

⊖ Finally, Mr. Chairman, I want to commend you for your dedication and perseverance. We negotiated for many months to get this deal. It wasn't always easy going. At times, it looked like things might not work out. But you stuck it out and kept going, even during those tough moments. And for that, you and your staff deserve much credit.

○

⊖ Our end product may not satisfy everyone.

There are some who think it goes too far on labor and the environment. There are others who may think it does not go far enough.

Maybe so. But our legislative system only works when people are willing to compromise, and to keep their eyes on the prize. That's what we have done here. In the long run, I am confident that the bipartisan approach we take today will reap rewards for years to come.

⊖ In that vein I will abide by our agreement to oppose all amendments to this bill in Committee and on the Senate floor with two exceptions. First, Sense of the Senate may be offered today that Trade Adjustment and Assistance and Trade Promotion Authority should move in tandem. I understand your need to express your support for this resolution.

Second, on the Senate floor we are both free to offer Trade Adjustment Assistance related amendments should they become part of the debate over Trade Promotion Authority, which I expect they will.


But back to our today. In my view, this is one of this Committee's finest moments. I am proud of our accomplishment. And, Mr. Chairman, I hope you are too.

I also hope, without prejudging the outcome too much, that when we are through here today, Senator Daschle will bring this legislation up on the floor as soon as possible.

○
Our farmers, agricultural producers, ranchers, fishermen, service providers and workers know this bill means more market access, more jobs, more income, and, ultimately, greater prosperity for the American people.

○ Let's do the right thing for them, pass this bill by a wide margin today, and approve this legislation in the Senate this year.

○



Statement of Senator James M. Jeffords
Senate Finance Committee Mark-up of Trade Promotion Authority Legislation
December 12, 2001

Mr. Chairman,

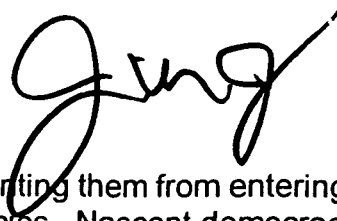
I will vote today in favor of reporting out the trade promotion authority bill. "Trade promotion authority," which used to be called "fast track negotiating authority," gives the President (or, more frequently, the U.S. Trade Representative) the right to negotiate a trade agreement and submit it to Congress for an up or down vote, with no amendment. Strictly speaking, it is merely a procedural bill. Until it expired in 1994, every President since Gerald Ford has had this authority. I supported President Clinton's efforts to reinstate trade promotion authority.

There are two reasons why trade promotion authority makes sense. First, it gives us credibility with our trading partners. If another country thinks that Congress is going to endlessly amend a negotiated trade deal, negotiators will be reluctant to put their best offers on the table out of fear that Congress will later insist on a return to the bargaining table and further concessions. Under trade promotion authority procedures, Congress still has the right to approve or disapprove a trade deal. It just can't amend it.

The second reason I think trade promotion authority makes sense is that it gives Congress an important role in shaping the debate about the scope and content of trade negotiations. In exchange for giving up its right to amend trade agreements, Congress gets to tell our trade negotiators what it wants to see in trade agreements. The bill specifically sets out a list of Congressionally-approved objectives to serve as a guide in future trade negotiations. These include traditional trade-related goals such as lowering tariffs and eliminating discrimination against U.S. investments, as well as trade-related labor and environmental objectives to ensure that our trading partners live up to their environmental and labor laws. These objectives will serve as a sort of measuring stick by which we can evaluate trade agreements submitted for Congressional approval. The bill calls for extensive consultations between trade negotiators and Congress as agreements are developed. During these consultations, I will examine future trade agreements to make sure that the President has taken seriously Congress' directive to negotiate labor and environmental issues.

The debate about trade promotion authority is really a debate about globalization of the economy. Admittedly, globalization may have negative aspects. To address the negative ramifications of trade, it is imperative that passage of trade promotion authority be accompanied by an extension and expansion of the trade adjustment assistance program, which serves workers and industries adversely affected by foreign competition.

Regardless of what we do here, integration of the world economy will proceed and we must have some influence over how it develops. Economic globalization can have very serious consequences for nations left behind. The current trading system

A handwritten signature in black ink, appearing to read "Jung", is positioned at the top center of the page. The signature is fluid and cursive, with a large initial "J" and a long, sweeping tail.

locks many less-developed nations out, preventing them from entering the very markets that would allow them to develop their economies. Nascent democracies need to develop their economies so that they can raise standards of living and encourage the growth of civil society. The experience of the last century has shown that foreign aid has been largely unsuccessful in generating long-term sustainable development. Most underdeveloped countries realize there are greater opportunities for growth from a more open trading system that will give them access to critical markets. We have an obligation to advance that cause. The legislation before us requires attention to the environmental and labor conditions in all parties to a trade agreement. While we cannot force changes in the domestic laws of trading partners, we can insist that trade agreements promote an improvement in labor and environmental conditions. The fairer we can make the international trading system, the more likely it is that economic growth will be more evenly distributed in the coming years. Passage of this legislation will allow the United States to re-engage in international trade negotiations.

Fast Track: Assault on the Constitutional Balance
Statement for the Senate Finance Committee on December 12, 2001
by U.S. Senator Robert C. Byrd

In the midst of terrorist attacks and economic uncertainty at home, and military action overseas, Americans rightfully expect their leaders to work together to protect the national interest.

But there is one bump on the road: The Administration continues to aggressively advance a proposal that would overlook the Constitution, undermine national unity, and pose a serious threat to industries essential to national security. I am referring to the Administration's request for Fast Track trade authority, that is, the authority to have Presidentially negotiated trade deals considered by Congress under special rules that limit debate and preclude amendments. The House of Representatives, by the narrowest of margins, has acceded to this request. It is now up to the Senate – always a bastion of defense for the Constitution – to turn back the tide of this ill-considered legislation.

Plainly stated, the Administration is requesting that Congress surrender its authority over “commerce with foreign nations” as set out in Article I, Section 8, of the Constitution. This latest attempt to push Fast Track through Congress is the wrong idea, at the wrong time, with the wrong justifications.

Our nation's Founders wisely understood that international trade plays a key role in determining the life prospects of each and every American. The impact of trade cannot be reduced to a simple set of economic equations and statistics. Rather, it cuts across all aspects of our lives and livelihoods. That is why trade issues must be debated and shaped by the people's representatives. Under the Constitution, when it comes to trade, Congress cannot be treated as an afterthought.

Although the most prominent proponents of Fast Track claim to favor free and open trade, they seem deathly afraid of free and open debate. Not only would they restrict the prerogatives of Congress with respect to trade agreements, they are even attempting to distort the debate about Fast Track itself. Instead of basing their arguments on the world as we know it, in which the costs and benefits of further globalization must be balanced against one another, the Fast Track promoters base their arguments on economic models that are absurdly lacking in realistic assumptions.

For example, Fast Track supporters cite a University of Michigan study which allegedly demonstrates that Fast Track could deliver an annual benefit of \$2,450 to the average American family of four. They neglect, however, to articulate the assumptions behind the Michigan study. According to an analysis prepared by economist Peter Dorman on behalf of the Economic Policy Institute, the study is based on such premises as (1) there is no unemployment in the United States (or in any other country) and (2) no country maintains labor or environmental standards.

The wrong-headedness of the Michigan study should not surprise anyone who has seen how similar models were used in forecasting the impact of NAFTA. Contrary to predictions of 5-10% wage growth in Mexico after NAFTA's implementation, Mexican wages fell by 16% between 1994 and 1999, causing severe problems on both sides of the border. Overly optimistic economic models have also failed to forecast, or suggest remedies for, the U.S. trade deficit, which last year totaled \$435 billion – 4.5% of our national output and the worst trade performance in American history.

We must also recognize that, in the real world, our nation's physical security is inextricably linked to its economic security. Thus, we cannot permit cheap imports to be used to decimate efficient U.S. industries, such as the steel industry, that produce key components of our national defense. Past experience with Fast Track indicates that it leads inexorably to the weakening of those laws that stand in the way of unfair foreign trade practices such as injurious dumping and subsidization. In fact, several of our trading partners have made it clear that one of their primary objectives in any future trade round is to gut the framework of fair trade. If they succeed, the United States – which already maintains the most open markets in the world – will have given up its last defenses against beggar-thy-neighbor foreign trade practices.

The news from Doha, Qatar, confirms my worst fears about what our trading partners may be about to achieve. According to the *Wall Street Journal*, our trade negotiator, Ambassador Robert Zoellick, "led the way in making extraordinary concessions to developing countries," including "agreeing to renegotiate America's antidumping laws." He also agreed to renegotiate the U.S. countervailing duty law.

In the face of these developments, I am shocked about the speed with which Fast Track is moving through the Finance Committee. I am also disconcerted to find that preservation of the framework of fair trade is not even a "Principal Negotiating Objective" in the legislation to be considered by this committee. The sovereign authority of Congress to determine the conditions under which merchandise trades in the U.S. market is at stake here, and we must not be complacent.

Let us, once and for all, reject the claims of those who unfairly attack our laws against unfair trade. Contrary to the claims of the so-called "free-traders," those laws are not protectionist. The antidumping law is based on a very simple requirement for foreign manufacturers: Do not injure producers in our market by selling below cost or charging less here than you charge in your home market. The plain fact is that foreign producers of certain products, such as steel and automobiles and lumber, dump in America year after year after year, and put all of their efforts into weakening our antidumping laws. Their home governments, whose markets are much less open than ours, work fist-in-glove with these predators.

Our countervailing duty law is no more protectionist than our antidumping law. That law is based on a very simple requirement for foreign governments: Do not seek

trade advantages by subsidizing the production of merchandise that your companies sell in the United States. Shall we permit our trading partners to eviscerate this law?

As the world watches to see whether our system can withstand its current challenges – as it has weathered so many in the past – it is time to stop railroading Fast Track. Let the Senate dedicate itself to preserving the Constitutional balance between the President and Congress. Let us negotiate trade agreements that enable efficient U.S. industries that have been picked apart by illegal imports to recover and, eventually, to prosper. We owe at least that much to our industries, our workers, and our national security.

Trade Promotion Authority Mark-up
Senate Committee on Finance
December 12, 2001
Statement by Senator Jeff Bingaman

Thank you Mr. Chairman. Let me begin by congratulating Senators Baucus and Grassley on reaching an agreement on this legislation. I know the process was difficult, but I think the effort was significant and worthy of recognition.

I will keep my comments brief as the Chairman has requested.

Mr. Chairman, I was planning to offer an amendment on Trade Adjustment Assistance to the fast-track mark today, but I have decided not to do that. I would, however, like to comment on the increasing connection that exists between the two pieces of legislation.

As I have mentioned before, I believe Trade Adjustment Assistance legislation is a stand-alone bill worthy of passage in its own right. I have said this because there are people and communities in America who are being hurt by trade at this very moment, and they deserve our help. I agree with those that say trade helps Americans in the aggregate, and I feel strongly that we should continue to pursue trade agreements to open markets for our products.

That said, we simply cannot ignore the fact that there is a negative side to trade, and that with advantages come disadvantages that need to be addressed. We have signed into law trade agreements that impact some Americans in very serious and negative ways, and from where I sit I believe we have an obligation as a government to help them.

We passed a bill last week in the Finance Committee that would revise, expand and enhance the Trade Adjustment Assistance programs that now exist in the United States. Once the fast-track bill passes today – and I believe it will pass – we will face the issue of how we move both pieces of legislation forward on the Senate floor.

I am of the view that fast-track legislation cannot move forward in any way without S. 1209, the Trade Adjustment Assistance legislation as marked. Indeed, I believe that the two bills should be combined on the Senate floor and a vote be made on them as one.

I think it is premature to give the President fast-track authority without requiring him to recognize that these trade agreements have real costs for Americans. There is no better time for the Administration to recognize that this issue has to be addressed than now. I hope my colleagues agree, and the statements by some of them today clearly suggest that they do.

I have always supported fast-track, and I will very likely support it again in the future. But I want to take this opportunity to say that while I will vote for it today, I do so with a caveat. I think it is imperative that the Administration make a serious and concrete

commitment to Trade Adjustment Assistance, and do so in the expanded form we have put forth in S. 1209. Fast-track legislation is incomplete without Trade Adjustment Assistance, and I hope the Administration will commit today to supporting S. 1209 on the Senate floor, in the conference, and in their future budgets.

As always, I am prepared to sit down with anyone to discuss this issue. There has been a lot of talk about doing this, but no one has called me yet. I state for the record that I am ready when you are.

Thank you Mr. Chairman.

STATEMENT OF SENATOR TRENT LOTT

TRADE PROMOTION AUTHORITY

DECEMBER 12, 2001

Mr. Chairman: This is a momentous day. We are poised to add another weapon in the arsenal of the United States as we wage the war for freedom across the globe. Let there be no mistake, free trade is a national security issue and its importance was made crystal clear on September 11.

To win the war imposed on us three months ago, we must harness the entire military, spiritual, and economic might of the American people. What we do today sends a message to the world, that the United States stands ready to offer a helping hand to all people through the power of our ideas and the vitality of our markets. We also send a signal to millions of our farmers, businessmen and

entrepeneurs that it will be easier to send their goods and services around the globe. *Freedom abroad means prosperity at home.*

Earlier this year, President Bush laid out his vision, *“I urge the Congress, restore our nation's authority to negotiate trade agreements. And I will use that authority to build freedom in the world, progress in our hemisphere, and enduring prosperity in the United States....History has shown that expanded trade – imports as well as exports – leads to more prosperous U.S. businesses, more choices of goods and lower prices for consumers, and more opportunities for American farmers and workers leading to higher wages, more jobs and economic growth.”*

This legislation will help provide higher-paying American jobs, strengthen our economy, and boost America's small- and medium-size businesses that employ 3 out of 4 American workers. This bill will ensure that the President has the authority to promote U.S. economic leadership, help invigorate the global economy, and negotiate the best

deals for America's farmers, businesses, workers, and consumers.

According to one economist at Harvard University, "*A successful multilateral trade negotiaion eventually could boost world income by 2 percent. That means it could enrich Americans by \$200 billion a year, while spreading prosperity abroad also.*"

Trade is essential to America's economic growth and prosperity.

The United States exported \$780 billion in goods and services to more than 200 markets last year. Exports account for more than one-fourth of all U.S. economic growth . Jobs dependent on exports pay wages 13 to 18 percent higher than the national average. One-in-ten Americans – 12 million people – work at jobs that depend on exports of goods and services.

The President needs TPA to open markets for U.S. exporters through a new round of global trade negotiations in the WTO, the Free Trade Area of the Americas, and further bilateral Free Trade

Agreements. Reducing tariffs on agricultural and industrial products, and tearing down barriers to services, as part of a new round of WTO negotiations, could boost the world economy by as much as \$613 billion – of which, \$177 billion would be the annual gain for the United States.

Every day that America delays, other countries throughout the world are entering into trade agreements without us, nefitting their workers, their farmers, their businesses and their economies at the expense of ours.

Our competitors in Europe, Asia, and Latin America have sealed deals on approximately 130 preferential trade compacts – many within our own hemisphere. Yet the United States is party to only three, with Canada and Mexico (NAFTA), Israel and Jordan. Only 11 percent of world exports are covered by American trade agreements, compared with 33 percent for European Union FTAs and customs agreements. *For example, Brazil and Canada have preferential trade*

agreements with Chile, that place their exporters at an advantage and American exporters at a disadvantage:

A \$187,000 Caterpillar 140 H Motor Grader tractor made in America and shipped to Chile is slapped with \$14,960 in tariffs and duties – or 8 %.

The same tractor made in Brazil and sold to Chile faces \$3,740 in tariffs and duties – or 2%. The same tractor made in Canada and shipped to Chile faces ZERO tariffs or duties.

Trade is Good for America's Farmers and Ranchers. One in three U.S. farm acres is planted for exports. American farmers exported \$51 billion in agricultural products and crops last year, supporting 750,000 jobs.

Trade is Good for America's Families. Removing trade and investment barriers improves living standards by giving consumers a

wider choice of goods at better prices. The typical American family of four realizes benefits of roughly \$1,300 to \$2,000 annually because of trade agreements such as NAFTA and the Uruguay Round.

Trade is Good for America's Small Businesses. Small business is the backbone of our nation's economy, creating 3 out of every 4 jobs and producing one-half of the U.S. gross domestic product. 97 percent of America's exporters are small businesses with fewer than 500 employees. To stay at the forefront of innovation, U.S. small businesses need access to foreign markets and a level playing field globally.

Trade is Good for American Global Leadership. Trade spreads American values and reinforces the habits of liberty that sustain democracy. Trade promotes growth and creates stronger partners for regional stability. Trade has been a powerful force for overcoming poverty in the developing world.

Mr. Chairman, we have turned a corner today. It is imperative that the Majority Leader follow your lead and get this legislation to the floor as quickly as possible. We must do it for American farmers and businessmen and we must do it for the sake of our collective national security.

December 12, 2001

AMENDMENT LIST

The Chairman and Ranking Member will offer a modification to the Chairman's Mark.

| AMENDMENTS FILED IN SENATE FINANCE COMMITTEE | | |
|--|-------------|---|
| NO. | SENATOR | SUMMARY |
| | Rockefeller | |
| | Daschle | |
| | Breaux | |
| # 1 | Conrad # 1 | Consultations: This amendment would add a requirement that, upon completion of negotiations, USTR could not initial the agreement for at least 10 days, during which time USTR would have to consult with the Committees as required in the Chairman's mark. |
| # 2 | Conrad # 2 | Consultations: Add a provision in Section 4(a) that allows the Finance Committee to disapprove of the proposal noticed in Section 4(a)(1) during the 90 day period before negotiations commence. |
| # 3 | Conrad # 3 | Corrections: The amendment adds an additional negotiating objective to the section on dispute settlement. |
| # 4 | Conrad # 4 | Corrections: Adds a provision to law that would allow a U.S. industry to petition USTR to seek redress in cases where an agreement results in a significant, detrimental change in the condition of the industry |
| # 5 | Conrad # 5 | Currency: This amendment will guard against future devaluations by a free trade agreement partner by requiring the President to certify that the currency is sound before fast track procedures would apply. |
| # 6 | Conrad # 6 | Agriculture Negotiating Objectives |
| # 7 | Conrad # 7 | No secret side deals |
| # 8 | Conrad # 8 | Import Sensitive Agriculture products |
| # 9 | Graham # 1 | To insert as a separate title, the text of H.R. 3009, as reported by the Finance Committee on November 29 |
| # 10 | Graham # 2 | To add an agriculture negotiating objective that, with respect to import-sensitive agriculture commodities, the United States should complete a comprehensive round in the World Trade Organization prior to implementing tariff reductions or import-sensitive commodities as part of a regional or bilateral agreement other than the U.S.-Chile or U.S.-Singapore Free Trade Agreements. |
| # 11 | Bingaman #1 | The proposed amendment is S. 1209 as amended by Senator Baucus. As written, it harmonizes and enhances Trade Adjustment Assistance and provides Trade Adjustment Assistance to farmers, ranchers, fishermen and communities. |

| AMENDMENTS FILED IN SENATE FINANCE COMMITTEE | | |
|--|--------------|--|
| # 12 | Kerry # 1 | Multilateral Environmental Agreements |
| # 13 | Kerry # 2 | Working Group on Trade and Labor |
| # 14 | Kerry # 3 | State Investor Dispute |
| | Torricelli | |
| | Lincoln | |
| | Grassley | |
| | Hatch | |
| # 15 | Murkowski #1 | Strike and replace the text of the Bi-Partisan Trade Promotion Authority Act of 2001 with the text of H.R. 3005 as referred in the United States Senate. |
| | Nickles | |
| # 16 | Gramm # 1 | Amend section 3(b)(3) to provide that implementing legislation for a trade agreement may not contain extraneous provisions setting domestic labor or environmental standards that are not necessary to implement the agreement. |
| | Lott | |
| | Thompson | |
| # 17 | Snowe # 1 | Study on Impact of TPA |
| # 18 | Snowe # 2 | Require the promotion of small business in the negotiating objectives |
| # 19 | Snowe # 3 | Create an Assistant U.S. Trade Representative for Small Business |
| # 20 | Snowe # 4 | Require that the U.S. Trade Representative pursue the establishment of a small business advocate within the World Trade Organization as a matter of U.S. Policy, and report back to the Senate Finance Committee and the House Committee on Ways and Means on its progress one year after enactment and annually thereafter. |
| # 21 | Snowe # 5 | Congressional Consultation on Fishing Trade |
| # 22 | Snowe # 6 | Sense of Senate on TAA |
| | Kyl | |
| | Thomas | |

Consultations

Background

Often the Congress has not had an opportunity to consult in any meaningful way on details of a proposed agreement in the crucial period just before an agreement is reached and initialed. In practice the consultation period between the U.S. initialing an agreement and the President signing it has not afforded Congress this opportunity because negotiations are considered complete once the agreement is initialed. This amendment would ensure that the Congress has a meaningful opportunity to affect individual provisions of an agreement before being presented with a take-it-or-leave-it choice on the agreement as a whole by requiring USTR to make changes requested by the Finance (or Ways and Means) Committee or explain why it didn't and what it will do instead to respond to the request.

Amendment

The Chairman's mark requires USTR to consult closely and on a timely basis (including immediately before initialing an agreement) with the Committee on Finance and the Committee on Ways and Means (section 2(d)(2)). This amendment would add to that requirement by requiring that, upon the completion of negotiations, USTR could not initial the agreement for at least 10 days, during which time USTR would have to consult with the Committees as required in the Chairman's mark. Additionally, if either committee requests specific changes to an agreement before the agreement is initialed, USTR must either negotiate the requested changes or submit a detailed explanation in writing why it was not possible to achieve the requested changes and what actions the Administration will take to respond to the concerns that led to the request for a change.

Consultations

Background

In prior grants of fast track, when initiating trade agreements under fast track authority, the President was required to consult with the Finance and Ways and Means Committees. If either committee disapproved of the proposal – or simply found that it was insufficiently detailed to constitute adequate consultation – the committee could vote to disapprove the negotiation, in which case fast track procedures would no longer apply. Although this power has never been exercised (an attempt to block the Canada-US FTA negotiations failed on a 10-10 vote), it nevertheless served an important role in preserving the Congress's constitutionally mandated responsibility to regulate Commerce with foreign nations. Giving the Finance Committee the power to block negotiations that do not have the support of the Senate enhances the role of Congress as an equal partner with the President in devising trade policy and helps to ensure that any agreement negotiated under fast track will have the support of the Senate at the end of the process.

Amendment

Section 4(a)(1) requires the President to provide to the Congress, at least 90 days before initiating negotiations, written notice of his intent to enter into trade negotiations and the specific U.S. objectives for the negotiations. This amendment would add a provision in Section 4(a) that allows the Finance Committee to disapprove of the proposal noticed in Section 4(a)(1) during the 90 day period before negotiations commence. If the Finance Committee were to do so, fast track would not apply to any agreement resulting from the negotiation. (The President would retain the ability to resubmit the proposal with modifications to satisfy the concerns raised by the Committee and have the modified proposal form the basis for negotiations that would be covered by fast track.)

CONRAD AMENDMENT # 3

3

Corrections

Background

Under current law, once the U.S. has implemented an agreement, it is virtually impossible to fix flaws in the agreement even if these flaws produce results not anticipated by the Congress when it considered the agreement.

Amendment

This amendment adds an additional negotiating objective to the section on dispute settlement. The amendment establishes as a negotiating objective that USTR should build into trade agreements a mechanism for renegotiating a trade agreement in cases where mistakes were made in negotiating the original agreement and these mistakes lead to outcomes not anticipated by the Congress (based on submissions of USTR and the required ITC report) at the time it approved implementation of the agreement.



Corrections

Background

Sometimes our negotiators make mistakes – either in precisely drafting language of agreements or in projecting the outcome of certain changes in tariffs or other U.S. laws. Such flaws in trade agreements can have severe consequences for affected U.S. industries. Under current law, once the U.S. has implemented an agreement, it is virtually impossible to fix flaws in the agreement even if these flaws produce results not anticipated by the Congress when it considered the agreement.

Amendment

Adds a provision to law that would allow a U.S. industry to petition USTR to seek redress in cases where an agreement results in a significant, detrimental change in the condition of the industry that was not expected by our negotiators (based on submissions of the Administration and the ITC to Congress describing the expected results of the agreement). If USTR determines that, in fact, the industry has been the victim of unintended consequences of a trade agreement, USTR is required to enter into negotiations with affected parties to the negotiation to correct the mistake in the trade agreement. If these negotiations are not successful, the President is given compensation authority and required to “snapback” relevant provisions of U.S. law to their status before the flawed trade agreement was approved.

5

CONRAD AMENDMENT # 5

Currency

Background

Currency movements can, as the NAFTA experience demonstrated, swamp the gains from tariff concessions in a trade agreement. This amendment will guard against future devaluations by a free trade agreement partner by requiring the President to certify that the currency is sound before fast track procedures would apply.

Amendment

Adds a provision to section 4(d) (regarding consultations with Congress before trade agreements are entered into) that requires the President, for any bilateral free trade agreement, to submit to the Congress assurances that--

1) he has sufficient information regarding the economic position of the other party to the agreement (and any other factors affecting currency values) to make a judgment regarding the stability of the currency of the other parties; and

2) based on the information in paragraph (1), the President does not expect a marked change in currency value that would significantly nullify any tariff concessions achieved by the United States in the proposed agreement.

CONRAD AMENDMENT # 6

6

Agriculture Negotiating Objectives

Background

The Chairman's mark contains detailed agricultural negotiating objectives.

Amendment

Strengthens the negotiating objectives by—

1) striking lines 3-7 on page 16;

2) striking lines 11-14 on page 16 and inserting:

“(iii) immediately eliminating all export subsidies on agricultural commodities worldwide while maintaining bona fide food aid and preserving United States agricultural market development and export credit programs that allow the United States to compete with other foreign export promotion efforts;”

3) striking lines 18-21 on page 16 and inserting:

“(v) leveling the playing field for United States agricultural producers by disciplining domestic supports such that no other country can provide greater support, measured as a percentage of total agricultural production value, than the United States does, with a view toward forcing production in excess of domestic food security needs to be sold at world prices;”

4) striking lines 9-16 on page 17 and inserting:

“(I) unfair or trade-distorting activities of state trading enterprises and other administrative mechanisms, with emphasis on—

(i) requiring price transparency in the operation of state trading enterprises and such other mechanisms, and

(ii) ending cross subsidization, price discrimination, price undercutting or other practices that amount to de facto export subsidies or allow the enterprises or other mechanisms (except in the case of bona fide food aid) to sell agricultural commodities in foreign markets at prices below the full costs of producing, acquiring and delivering agricultural commodities to the foreign market;”

5) adding, at the end of paragraph (10), the following:

“(C) Sense of Congress. It is the sense of Congress that if the primary export competitors of the United States fail to reduce their trade distorting domestic supports and eliminate export subsidies in accordance with the negotiating objectives expressed in this section, the United States should take steps to increase the leverage of United States negotiators and level the playing field for United States producers.”

7

CONRAD AMENDMENT # 7

No Secret Side Deals

Background

In some previous trade agreements, negotiators have reached agreements that were not part of the official record transmitted to Congress. Nonetheless, these understandings have bound the United States when provisions become subject to dispute settlement procedures, even if these understandings appear to contradict a plain reading of the text of the agreement submitted to the Congress for approval.

Amendment

At an appropriate place in the bill, add the following language, which is based on language adopted by the Senate during consideration of the Africa-CBI bill in November 1999 and included in the conference report of the Trade and Development Act of 2000:

DISCLOSURE OF COMMITMENTS- Any agreement or other understanding with a foreign government or governments (whether oral or in writing) that—
relates to a trade agreement with respect to which Congress enacts implementing legislation under trade authority procedures, and
that is not disclosed to Congress before legislation implementing that agreement is introduced in either House of Congress
shall not be considered to be part of the agreement approved by Congress and shall have no force and effect under United States law or in any dispute settlement body.

CONRAD AMENDMENT # 8

8

Import Sensitive Agricultural Products

Background

The Chairman's mark requires special consultations before the initiation of negotiations that could result in the lowering of tariffs on import sensitive agricultural products. These consultations cover only the impact of further tariff reductions on the citrus industry and whether citrus products face unjustified sanitary and phytosanitary restrictions.

Amendment

This amendment would broaden the coverage of agricultural products and the scope of consultations as follows:

- 1) In section 4(b)(2)(A)(i) add any agricultural products currently subject to a tariff rate quota;
- 2) In section 4(b)(2)(A)(ii) add at the end a new subclause (III) that reads: "whether other nations producing products so identified maintain export subsidies or other programs, policies or practices that distort world trade in such products and the impact of such programs, policies or practices on United States producers of such products."
- 3) At the end of paragraph 4(b)(2)(A) add a new clause (v) that reads: "with respect to any product for which the International Trade Commission assessment prepared under clause (iii) indicates that there will be a probably adverse economic effect on the United States industry, submit a proposal to the Committee on Ways and Means and the Committee on Agriculture of the House of Representatives and the Committee on Finance and the Committee on Agriculture, Nutrition and Forestry of the Senate to remedy the adverse economic effects."

9

Graham Amendment #1

To insert as as separate title, the text of H.R. 3009 as reported by the Finance Committee on November 29.

10

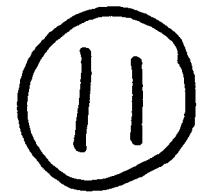
Graham Amendment #2

To add an agriculture negotiating objective that, with respect to import-sensitive agriculture commodities, the United States should complete a comprehensive round in the World Trade Organization prior to implementing tariff reductions on import-sensitive commodities as part of a regional or bilateral agreement other than the U.S.-Chile or U.S.-Singapore Free Trade Agreements.

Chairman's Mark: No provision

Cost: Zero

Rationale: The WTO agriculture agenda is set to address tariffs and government market distortions on a multilateral basis. Producers of import-sensitive agricultural commodities need to know that there is progress on achieving market access multilaterally prior to phasing out tariffs on U.S. import-sensitive products.



Bingaman Amendment

Amendment: The proposed amendment is S. 1209 as amended by Senator Baucus. As written, it harmonizes and enhances Trade Adjustment Assistance and provides Trade Adjustment Assistance to farmers, ranchers, fishermen and communities.

Effective Date: Effective upon date of signature into law

Current Law: Trade Act of 1974 and NAFTA Implementation Act

Reason for Change: Among other issues, the current program is flawed in terms of:

- lack of harmonization between existing programs, including income support and training periods
- lack of coverage for secondary workers, workers affected by shifts in production, and family farmers, ranchers, and fishermen
- lack of efficiency and accountability in the existing programs
- lack of technical and financial support for trade-impacted communities
- lack of health care support for dislocated workers

Cost: Approximately \$700m over ten years.

12

Senator John Kerry
Amendment # 1

Background

Multilateral Environmental Agreements are treaties among groups of countries that can call for trade restrictions to protect the environment.

Chairman's Mark

The Chairman's mark does not specifically address MEAs.

Amendment.

The amendment would provide that a trade agreement shall establish that a law or regulation of a party to the trade agreement is fully consistent with the trade agreement if a major purpose of such law or regulation is to promote the objectives of a multilateral environmental agreement to which the party is a signatory.

13

Senator John Kerry
Amendment # 2

Background

Previous legislation, including the 1994 Uruguay Round, has called for a Working Group on Trade and Labor.

Chairman's Mark

The Chairman's mark does not specifically call for a working group on trade and labor.

Amendment

This amendment is intended to ensure that a trade and labor working group remains a priority when this administration negotiates trade agreements. The amendment would require, as a principle negotiating objective, the prompt establishment of a Working Group to do the following: explore the link between international trade and investment and worker rights, taking into account different levels of development in different countries; examine what impact the denial of worker rights has on trade and investment; to consider ways to address that impact and to coordinate the working group's objectives with the ILO.

Senator John Kerry
Amendment # 3

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Background

State Investor Dispute

In NAFTA, provisions known as "Chapter 11" were provided to give companies or investors a forum by which complaints could be heard regarding the impact of other countries' laws on their investments or profit making ability. Under traditional constitutional "takings" law, it is unlikely that a US company would be successful in a court action challenging a state safety or environmental regulation simply because it caused a loss of profits. But, under Chapter 11, and under the Thomas bill, foreign investors have greater rights to successfully challenge such regulations. Moreover, Chapter 11 tribunals are secret and provide no opportunity for nongovernmental organizations to provide input to the proceedings.

Chairman's Mark

The Chairman's mark improves upon the Thomas bill on the Investor-State dispute issue providing objectives to ensure that U.S. investors in the United States are not accorded lesser rights than foreign investors in the United States. It also seeks to establish standards for "fair and equitable treatment" consistent with US legal principles and practice, including the principle of due process; seeks mechanisms to deter and eliminate frivolous claims; seeks to enhance opportunities for public input into the formulation of government positions in investor-state dispute settlement; and seeks to ensure that the scope of appellate review of investment disputes is not restrained.

Amendment

In addition to the requirements for meaningful procedures for resolving investment disputes; the improved mechanisms to resolve such disputes; and the transparency requirements as provided in the Chairman's mark (Sec. 2(b)(3)(F),(G), and (H)) the Kerry amendment would further improve upon the Chairman's mark.

It would provide that any trade agreement preserves the authority of Federal, State and local governments to enact measures intended to protect the environment, consumers, and public health so long as such measures are not enacted for discriminatory purposes.

The amendment would ensure that foreign investors do not receive greater protection than US investors or citizens under the Constitution.

It would establish standards for expropriation that protect investors only when a government action causes a physical invasion of property or the denial of all economic or productive use of that property.

The amendment would also require approval by the investor's home government that the investor may file a claim for compensation against the country in which the investment is made.

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Murkowski Amendment 1

TO THE DECEMBER 12, 2001, FINANCE COMMITTEE MARK-UP OF THE BIPARTISAN
TRADE PROMOTION AUTHORITY ACT OF 2001.

AMENDMENT:

Strike and replace the text of the Bi-Partisan Trade Promotion Authority Act of 2001 with the
text of H.R. 3005 as referred in the United States Senate.

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Gramm Amendment # ____
(Bipartisan Trade Promotion Authority Act)

Amendment: Amend section 3(b)(3) to provide that implementing legislation for a trade agreement may not contain extraneous provisions setting domestic labor or environmental standards that are not necessary to implement the agreement.

Reason for Change: This amendment would prevent abuse of the legislative process by ensuring that extraneous unnecessary changes to U.S. domestic labor or environmental standard would not be made through fast-tracked implementing legislation, but rather would be considered through the normal legislative process of debate and amendment.

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Senator Snowe Amendment 1

Study on Impact of TPA: Require the International Trade Commission to submit a study, within one year of enactment, to the Senate Finance Committee and the House Committee on Ways and Means which delineates the economic impact of the five trade agreements adopted under fast track authority since it was first granted in 1974. The study is to include information on the economic impact by state as well as by industry sector. 

Senator Snowe Amendment 2

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Require the promotion of small business in the negotiating objectives

19

Senator Snowe Amendment 3

Create an Assistant U.S. Trade Representative for Small Business

20

Senator Snowe Amendment 4

Require that the US Trade Representative pursue the establishment of a small business advocate within the World Trade Organization (WTO) as a matter of U.S. policy, and report back to the Senate Finance Committee and the House Committee on Ways and Means on its progress one year after enactment and annually thereafter.

21

Senator Snowe Amendment 5

Congressional Consultation on Fishing Trade: Require that, with regard to any negotiations and agreement relating to fishing trade, the Administration keep fully appraised of the negotiations – and consult closely and on a timely basis (including immediately before initialing an agreement) with -- the House Committee on Resources and the Senate Committee on Commerce, Science and Transportation. Also defines trade objectives for trade negotiations regarding fisheries products.

22

Senator Snowe Amendment 6

Sense of Senate on TAA: Sense of Senate that the Trade Adjustment Assistance (TAA) legislation and the Trade Promotion Authority (TPA) legislation shall be linked during upcoming Senate floor consideration.

Modifications to the Chairman's Mark

Snowe # 1

Study on the Impact of TPA: Require the International Trade Commission to submit a study, within one year of enactment, to the Senate Finance Committee and the House Ways and Means which delineates the economic impact of the five trade agreements adopted under fast track authority since it was first granted in 1974. Also when President requests extension of fast track procedures, the International Trade Commission is to submit a study on the impact of the agreements negotiated or initialed under the prior grant of fast track.

Snowe # 2

As an overall negotiating objective:

Seek to ensure trade agreement provisions that small businesses are afforded equal access to international markets, receive equitable benefit of trade agreements, expand competitive export market opportunities for U.S. small businesses, and obtain reciprocal elimination of barriers to trade with particular attention to barriers that disproportionately impact small businesses.

Snowe # 3

Designate in the bill that the current AUSTR for Industry and Telecommunications is now the AUSTR for Industry, Telecommunications and Small Business.

Snowe # 4

Require the USTR to pursue the identification of a small business advocate within the WTO. Require the USTR to report back to Senate Finance and House Ways and Means on its progress one year after enactment and annually thereafter.

Snowe # 5

Congressional Consultation on Fishing Trade: Add a new section stating that for negotiations and agreements relating to the fishing trade, the Administration keep fully apprized of negotiations and on a timely basis consult with, the House Committee on Resources and the Senate Committee on Commerce, Science and Transportation.

Conrad # 6 Agriculture Negotiating Objectives

Strikes Section 2(b)(10)(A)(iii) and inserts "seeking to eliminate all export subsidies on agricultural commodities while maintaining bona fide food aid and preserving United States agricultural market development and export credit programs that allow the United States to compete with other foreign export promotion efforts."

Conrad # 7 No Secret Side Deals

Conrad # 8 as modified, include:

In section 4(b)(2)(A)(i) add any agriculture products currently subject to a tariff rate quota.

In section 4(b)(2)(A)(ii) add at the end of a new subclause (III) that reads: "whether other nations producing products so identified maintain export subsidies or other programs, policies, or practices that distort world trade in such products and the impact of such programs, policies or practices on United States producers of such products."

Graham # 2 as modified:

Add as an additional negotiating objective under Reciprocal Trade in Agriculture:

(ix) Strive to complete a general multilateral round in the World Trade Organization by January 1, 2005, and seek the broadest market access possible in multilateral, regional, and bilateral negotiations, recognizing the effect that simultaneous sets of negotiations may have on U.S. import-sensitive commodities (including those subject to tariff rate quotas).