

# WORKING P A P E R S

## A GREENER FAST TRACK

Putting  
Environmental  
Protection on the  
Trade Agenda

*John J. Audley*

Trade, Environment,  
and Development  
Project

GLOBAL POLICY  
PROGRAM



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### **About the Author**

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WITH THE RELEASE of his 2001 International Trade Agenda,<sup>1</sup> President George W. Bush outlined both his vision for U.S. trade policy and his proposal for congressional renewal of fast track<sup>2</sup> negotiating procedures. Bush's fast track proposal comes at a pivotal time for U.S. trade policy. The Free Trade Area of the Americas (FTAA) negotiations, begun during President Bill Clinton's second term, have reached a midpoint, and the final negotiated outcome has begun to take shape.<sup>3</sup> In addition to the FTAA negotiations, U.S. trade officials are working with their counterparts from around the world to reach consensus on the scope of a new round of multilateral negotiations, scheduled to be launched during the November 2001 World Trade Organization (WTO) Ministerial in Doha, Qatar.<sup>4</sup> President Bush will likely use the WTO Ministerial to push for fast track authority agreement in the fall of 2001 and thus avoid any additional complications caused by the 2002 election season.

Ongoing trade negotiations and renewed efforts to secure fast track have also energized a number of citizens groups that feel strongly that U.S. trade and investment priorities are bad for America, the environment, and working people worldwide. Groups like the Sierra Club, Public Citizen, and the AFL-CIO have already announced their opposition to renewed fast track authority, arguing instead for a new "right track" for U.S. trade policy.<sup>5</sup>

In June 2001, Congress began its fast track deliberations.<sup>6</sup> If these discussions result in new fast track authority, it will likely substantially revise the Omnibus Trade and Competitiveness Act of 1988.<sup>7</sup> An important part of U.S. trade policy making, the 1988 trade act outlines general and specific negotiating priorities, the role played by the Office of United States Trade Representative as lead negotiator, its relationship with Congress, and the procedures under which Congress would consider agreements negotiated under its authority.<sup>8</sup> Revising or replacing the 1988 trade act presents the President and Congress with an opportunity to engage in a debate regarding U.S. trade and investment policy priorities, a debate badly needed if the Bush Administration hopes to negotiate agreements that will win support from Congress and the American public.

To contribute to this much-needed debate, this paper makes three points:

- First, the time has come for Congress and the President to agree to explicit negotiating goals to address environmental concerns. Nations around the world are struggling to understand the linkage among trade, environment, and development policies, and the challenge facing U.S. public officials is no longer *whether* to address the environment in trade policy, but *how* to incorporate it into fast track procedures.<sup>9</sup> Using language found in the 1988 trade act and other international agreements, I offer specific fast track language proposals that build upon the President's international trade agenda.

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- Second, no amount of green fast track language can—or should—make trade policy the sole policy vehicle to ensure that globalization helps put communities on a path toward sustainability. Fast track policy objectives should guide U.S. trade negotiators to consider fully the environmental implications of trade and investment liberalization, as well as shape interactions between Congress and the administration throughout the negotiations and into the domestic legislative process. However, using fast track as the principal policy vehicle to develop a plan for addressing long-term capacity building and technical assistance policy objectives is wrong because it gives trade policy and its advocates too much influence over other equally important foreign policy objectives.
- Therefore, my third point is that, instead of relying solely on fast track, the President should simultaneously develop environmental policy priorities to ensure that globalization enables developing countries to create and implement their own capacities to protect the environment and human health.

## BACKGROUND

In exchange for a commitment by the President to negotiate trade agreements consistent with congressionally approved policy objectives, since 1975 Congress has agreed to consider these agreements under rules that limit debate and prohibit amendments to the implementing legislation. Historically, such so-called fast track legislation articulated broad negotiating objectives, supplemented by more specific objectives targeted at various industry sectors or policy priorities. For example, in the 1988 trade act, Congress stipulated “more open, equitable, and reciprocal market access” as one of the overall priorities for U.S. trade policy. Regarding trade liberalization in the services sector, Congress instructed the President to “reduce or eliminate barriers to, or other distortions of, international trade in services, including barriers that deny national treatment and restrictions on establishment and operation in such markets” for trade in U.S. services.<sup>10</sup>

However, Congress has never articulated explicit environmental policy objectives in fast track. The reason is simple: environmental policy issues and politics did not impact U.S. trade policy until about 1990, midway through the Uruguay Round of the General Agreement on Tariffs and Trade (GATT).<sup>11</sup> Fast track has, however, explicitly targeted social policy objectives, including specific negotiating objectives to promote respect for worker rights.<sup>12</sup> Despite the absence of any specific reference to the environment, Presidents George H. W. Bush and Bill Clinton negotiated environmental provisions in both the North American Free Trade Agreement (NAFTA) and the Uruguay Round under the terms of the 1988 trade act. According to some trade scholars, provisions of the 1988 act that require the President to negotiate agreements that “take into account legitimate U.S. domestic objectives including, but not limited to, the protection of legitimate health or safety, essential security, environmental, consumer or employment opportunity interests and the laws and regulations related thereto” provided both presidents with the authority they needed to negotiate specific references to the environment. In addition, an argument could be made that NAFTA’s “side agreements” on labor and the environment can be justified because trade agreement legislation may include changes to existing law or new statutory authority “necessary or appropriate” to implement the agreement.

Whether or not NAFTA and the Uruguay Round's environmental provisions are consistent with the 1988 trade act, over the past twelve years circumstances surrounding trade negotiations have changed so dramatically that future fast track authority without specific provisions for the environment is inappropriate for three main reasons. First, trade politics now include environmental and other non-governmental organizations (NGOs). Starting in 1994, environmental organizations that supported NAFTA began insisting that future fast track authority must include specific environmental protection objectives.<sup>13</sup> Failed efforts to secure fast track in 1994, 1995, and 1997 further polarized the fast track debate, culminating in the 1998 vote against fast track reauthorization, in which environmental opposition played a small but significant role.<sup>14</sup>

Second, evidence detailing the trade-environment nexus continues to grow in volume and improve in quality.<sup>15</sup> To take just one important example, there are legitimate concerns among citizens groups, as well as officials from the three NAFTA countries, that trade disputes brought under the provisions of NAFTA's investment chapter (Chapter 11) exert too much influence over national regulatory authority.<sup>16</sup>

The third and perhaps most important reason that future fast track authority should include environmental objectives is that governments, including the United States, *already* integrate the environment into trade policy. Spurred by an OECD effort to establish policy guidelines to address this relationship, a growing number of industrialized countries have established policies designed to factor environmental issues into trade negotiations and to share that information with the public.<sup>17</sup> In the fall of 1999, the Clinton Administration issued its own policy, *Environmental Reviews of Trade Agreements* (Executive Order 13141), which subsequently received support from President Bush during the April 2001 Summit of the Americas.<sup>18</sup> U.S. Trade Representative Robert Zoellick committed to conducting environmental reviews of the FTAA, the WTO "built-in" agenda on agriculture and services, and the bilateral negotiations with Chile and Singapore. To support these new environment and trade efforts and to better implement E.O. 13141, the Office of the U.S. Trade Representative is expanding its Office of Environment and Natural Resources.<sup>19</sup>

## ENVIRONMENTAL POLICY PRIORITIES IN FAST TRACK

In his 2001 International Trade Agenda, President Bush acknowledges the linkage between trade and the environment, arguing that strong economies promote the political and economic conditions necessary for countries to protect their environments and worker rights: "As we dismantle trade barriers around the world . . . we help create the economic and social conditions necessary for countries to make progress on the environment, observance of labor standards, the protection of children, and other critical issues."

Among other things, the President specifies in this 2001 agenda that U.S. negotiators would pursue this relationship in the following way:

Encouraging mutually supportive *trade and environmental protection* policies, in accordance with the objective of sustainable development and in a manner consistent with U.S. sovereignty and trade expansion;

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Improving the *transparency and management* of international trade organizations and agreements; and

Work to ensure that trade agreements are compatible with important domestic policy objectives, such as health, safety, environmental protection, and improved employment opportunities [emphasis in original].

But while he acknowledges the trade and environment nexus, President Bush warns against establishing a relationship that results in “self-defeating protectionism.” During a June 20 meeting with members of the U.S. business community, the President stated

We should not let legitimate environmental and labor concerns undermine the capacity for the president to make good free trade agreements. . . . There are some who are legitimately concerned about the environment and labor, but I remind them that if you believe in trade, you believe that prosperity will spread. If you believe in trading with a country, it’ll help that country grow economically and a country that is more prosperous is one more likely to be able to take care of [its] environment. . . . And if you believe in improving the environment, in helping the labor conditions in countries, don’t wall off those countries.<sup>20</sup>

To avoid making this mistake, the President proposes that U.S. negotiators select the appropriate policy response to specific trade/environment tensions. Among the policy tools the President references are: improving the effectiveness of United Nations environmental programs; expanding environmental programs under the United States Agency for International Development (USAID); and using environmental policies established by the U.S. Export-Import Bank (EXIM) and the Overseas Private Investment Corporation (OPIC) to “build respect for, and adherence to, environmental protection laws and regulations.”

Other Republican leaders share the President’s concern that environmental issues might stand in the way of trade policy. Along with 62 cosponsors, on June 13 Congressman Phil Crane (R-Ill.) introduced trade promotion authority legislation that severely limits the President’s ability to negotiate environmental provisions into the framework of a trade agreement.<sup>21</sup> In response, members of the New Democratic caucus have urged the President to seek fast track authority but give parity with traditional trade objectives to labor and the environment as negotiating objectives, including enforcement of environmental laws.<sup>22</sup> Senator Finance Committee Chairman Max Baucus (D-Mont.) has urged the administration to help “build a new trade policy consensus,” suggesting that “those who would blame . . . labor and environment for delaying trade liberalization would be well-advised to catch-up with political, social, and economic reality. Dismissing these issues will cause continued delay.”<sup>23</sup>

Congress can and should build upon President Bush’s proposed 2001 International Trade Agenda to produce fast track legislation that responsibly incorporates environmental priorities into trade policy. Together, the President and Congress must, first, determine which environmental issues are relevant to fast track procedures and then incorporate them in a way that provides guidance to trade negotiators without unduly restricting their hand during negotiations. Failure to do so will result in continuous battles in Congress, bad trade policy, growing public disappointment in political leadership, or all three. Second, recognizing that long-term sustainability requires a focus on more than just trade policy, the President should develop a long-term strategy to ensure that globalization spurred by international trade and

investment rules is accompanied by strengthened capacities in developing countries to set and implement high standards for human health and environmental protection. What follows are three specific policy proposals designed to build on the President's trade policy vision to incorporate environmental priorities.

### **Proposal 1: Include the environment or sustainable development in overall trade policy objectives.**

To make international trade and environment policies mutually supportive in favor of sustainable development;

To clarify the role of WTO, UNCTAD, UNEP, UNDP and other international organizations in dealing with trade, environment and development-related issues, including, where relevant, conciliation procedures and dispute settlement; to encourage international productivity and competitiveness and encourage a constructive role on the part of industry in dealing with environment and development issues;

To make WTO and other trade institution proceedings more transparent and accountable to the public worldwide.<sup>24</sup>

Basing overall U.S. negotiating objectives on Agenda 21 commitments sends an important message to our negotiating partners that the environment will be included in trade negotiations in a manner consistent with broad guidelines negotiated by all countries. Developing countries are legitimately worried that environmental policies will become another unfair condition for market access used by U.S. citizens or companies to pursue their own interests.<sup>25</sup> Agenda 21 language also urges the United States to establish trade objectives that clarify the relationship between the WTO and other multilateral obligations. With the important exception of the United States, most countries, business interests, and NGOs support efforts to clarify the relationship between trade rights and obligations and those undertaken by parties to multilateral environmental agreements. The general negotiating language proposed above is also consistent with the President's recommendation to improve the effectiveness of United Nations environment programs. Finally, by including a reference to an open and more transparent trading system, it validates a long-standing concern regarding the WTO's lack of procedural transparency shared by U.S. business, environmental organizations, and government officials alike.

### **Proposal 2: Pursue explicit environment negotiation objectives.**

Regarding trade and the environment, we should seek to develop internationally agreed-upon rules, including dispute settlement procedures, and related multilateral agreements that will:

- Ensure that environment-related regulations or standards, including those related to health and safety standards, do not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade;
- Ensure that trade and investment liberalization does not occur as a result of unjustifiable pattern of failure to effectively enforce environmental measures, including human health and safety measures;

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- Eliminate tariffs on environmental goods, liberalize trade in environmental services, and eliminate harmful subsidies that contribute to unsustainable natural resource use;
- Ensure that the U.S. right to safeguard the environment is preserved; and
- Strengthen the capacity of U.S. trading partners to develop and implement high standards for environmental and human health protection.<sup>26</sup>

These specific negotiating proposals begin by using Agenda 21 language to remind negotiators that including the environment in trade negotiations must not result in protectionism. They instruct U.S. officials to focus on the relationship between trade and environmental policy in investment and the elimination of tariffs and subsidies, while ensuring that regulatory authority is safeguarded. They do not dictate that the administration negotiate the use of trade measures or sanctions to accomplish these objectives, nor do they rule them out. Instead, they tell negotiators to ensure that reasonable national environmental and human health policies do not disadvantage U.S. companies competing in foreign markets.

Negotiating environmental obligations in trade agreements is a difficult but important task for modern trade policy. This language is intended to guide negotiators toward that goal by providing them with direction, but not by dictating a specific remedy. One possible approach would be to deploy one tool in the administration's environmental policy toolbox: the environmental policy guidelines established by Congress for EXIM and OPIC.<sup>27</sup> Experts argue that EXIM and OPIC guidelines are effective because they place conditions on private party behavior in exchange for receiving their products or services. If a party does not meet the environmental performance conditions, both organizations are required by Congress to take steps to bring the party into compliance with the conditions. Persistent failure to meet these conditions ultimately results in the withdrawal of benefits.

While trade agreements are normally agreements between and among countries, NAFTA's investment chapter (Chapter 11) is an example of a trend in trade negotiations to create a private right of action for investors to seek compensation for property lost as a result of a government's noncompliance with the terms of an international agreement. For the President's EXIM/OPIC tool to be effective, a similar conditional obligation must be negotiated between countries to provide the behavior incentives to promote compliance. Without explicit guidance from Congress, such linkages will not become a U.S. trade policy priority.

One significant challenge presented by this goal is balancing a new condition with the fact that a majority of U.S. trading partners currently lack the capacity to meet such obligations, thereby creating a situation in which U.S. negotiators may compel countries to undertake unrealistic obligations. Such was the case in the WTO Uruguay Round, when developing countries undertook market access obligations they have not yet implemented. In response to this challenge, and consistent with the proposed fast track language, the administration could consider a range of remedies during negotiations, not all of which involve the use of trade sanctions. For example, the U.S.-Jordan agreement allows the two countries to determine the "appropriate response," ranging from withdrawal of trade benefits to nothing at all. The Canada-Chile agreement uses fines paid by the offending regulatory ministry.

A second possible category of response is to negotiate programs designed to strengthen the capacity of U.S. trading partners to develop and implement their own high standards for

environmental and human health protection. Addressing the relationship between trade and investment liberalization and the need for enhanced capacity building as part of trade negotiation is growing in popularity. To address similar concerns, the Clinton Administration concluded NAFTA negotiations with “side agreements” on labor and environment issues, as well as a bilateral agreement with Mexico to build environmental infrastructure in the Mexico-U.S. border region. The United States negotiated a less ambitious version of NAFTA’s side agreements with the Kingdom of Jordan. Canada and Chile negotiated an environmental side agreement as part of their bilateral trade agreement, and Canada has made “parallel” environmental agreements part of its negotiation strategy for expanded economic relationships with Central America.

These responses are not mutually exclusive. As with EXIM/OPIC guidelines, responses could begin with cooperative mitigation measures that ultimately would end with a withdrawal of benefits or the imposition of a financial penalty. But while these explicit negotiating objectives guide U.S. trade officials, they do not specify the exact means of accomplishing the environmental goal. Determining the appropriate solution is left to consultations involving the administration and Congress, advisory committees, negotiating partners, and the interested public.

Whatever the negotiated outcome, there clearly is a growing consensus for formal action among environmental ministers to meet the challenge of building capacity to address environmental and human health issues associated with globalization. On March 30, 2001, environmental ministers attending the first-ever meeting of Western Hemisphere Environment Ministers issued a report saying that:

A major cause of the continued deterioration of the global environment is the unsustainable pattern of consumption and production which is a matter of grave concerns, aggravating poverty and imbalances. We intend to maximize the potential for mutually supportive policies regarding economic integration and environmental protection. Strengthening environmental management systems in our countries, starting with improved knowledge, appropriate tools and incentives and better partnerships, is of the utmost importance. We intend to work, in particular, to ensure that the process of economic integration supports our ability to adopt and maintain environmental policy measures to achieve high levels of environmental protection.<sup>28</sup>

### **Proposal 3: Secure congressional support for internalizing environmental considerations throughout negotiations.**

The President shall seek information and advice with respect to trade and investment agreements from the Departments of Agriculture, Commerce, Defense, Interior, Labor, State, Treasury, Energy, Health and Human Services, Justice, and Transportation, and the U.S. Agency for International Development and the U.S. Environmental Protection Agency.

Consistent with Executive Order 13141 and its relevant guidelines, and in particular Section VIII(A)(6) of the Guidelines for the Implementation of Executive Order 13141, the President shall instruct all federal agencies to seek adequate resources to carry out their responsibilities in developing U.S. trade policy, especially in the preparation of the International Trade Commission/U.S. Trade Representative’s environmental report to the President.

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Consistent with Executive Order 13141 and its relevant guidelines, within six months after receipt of the proposed negotiations, the Commission/USTR shall prepare a report for the President advising him or her on environmental matters raised by the proposed trade negotiation agenda.

Among other things, the report should include information pertaining to possible positive and negative environmental effects of trade negotiating objectives, and it should include mitigation measures in response to possible trade-related environmental concerns.

The report shall assist the President in making an informed judgment as to the impact such mitigation measures might have on U.S. trade negotiation objectives, as well as other domestic policy considerations.<sup>29</sup>

Despite extensive U.S. experience in conducting environmental reviews, U.S. environmental review policy relies on the effectiveness of an executive order to mobilize federal agency resources and ensure congressional oversight. The fast track language proposed above addresses this problem in several important ways. First, it incorporates the process of considering environmental issues throughout negotiations by explicitly including the federal regulatory agencies with technical expertise in environmental quality issues in the trade policy making process. In turn, it directs these agencies to devote resources to staff their involvement in trade policy. There is no way that federal agencies can play an effective role in trade policy using a hit or miss approach; agencies must be willing to devote considerable human and financial resources to successfully implementing an environmental review policy. Finally, by elevating the role environmental reviews play in trade policy development, it encourages congressional oversight of the wider range of federal agency involvement in trade policy.

The policy suggestions offered in this section provide U.S. negotiators with the instructions they need to negotiate trade and investment agreements that focus more narrowly on an appropriate range of trade and environmental issues, yet do not constrain them to produce predetermined (and perhaps inappropriate) solutions in any given circumstance. They are consistent with the growing trend among countries to link trade and environmental policies and are based on commitments already made by the United States in other trade agreements. These proposals also validate current U.S. practices to more fully integrate the environment into the routine of trade policy making and implementation because they formally recognize the role played by regulatory agencies and they give environmental reviews parity with other trade policy tools. Finally, these proposals acknowledge that, while not integral to the narrow market expansion or tariff reduction goals, related multilateral negotiations designed to build trade partner capacity to protect the environment and human health demonstrate U.S. commitment to ensuring that trade and investment liberalization benefits the lives of all people.

## **A BROADER STRATEGY TO PROMOTE ENVIRONMENTAL PROTECTION IN A GLOBAL SOCIETY**

As ambitious as these proposals are, neither Congress, the administration, nor the interested public should expect fast track procedures—indeed trade policies alone—to bridge the gap between the potential benefits of trade and investment liberalization and the environmental and

development challenges facing countries worldwide. Sound environmental provisions in fast track can, however, make a substantial contribution to that effort *when* they are accompanied by a more comprehensive strategy designed to ensure that trade liberalization is accompanied by an equal commitment to strengthen the capacity of our trading partners to set and implement their own standards for human health and environmental protection. Two steps are required to move toward this kind of policy coordination.

Fast track gladiators must, first, look beyond this unique legislative procedure to develop trade, environment, and development capacity building and technical assistance programs that build upon the role federal agencies other than the Office of the U.S. Trade Representative (USTR) play in trade policy development. As trade policy has expanded in scope and complexity, USTR policy coordination exerts a broader impact on U.S. laws and regulations. As evidenced by its Office of Environment and Natural Resources, USTR has strengthened its ability to understand these overlaps. But while broadening USTR's influence over U.S. policy is appropriate to a degree, at some point its ability to effectively coordinate trade policy will be compromised. Furthermore, by taking on responsibilities beyond its mandate and competence, it inappropriately exerts too much influence over agencies' environment and development policies that are related to trade liberalization or economic expansion but are not necessarily solved by negotiating language into the terms of a trade agreement itself. For example, working with other agencies during the NAFTA negotiations, the Department of State coordinated negotiation of its environmental side agreement. Now, the USTR staff more directly controls such negotiations, as it did during the U.S.-Jordan negotiations and the ongoing negotiations with Singapore and Chile and the FTAA trade negotiations.<sup>30</sup> This comment is not meant to suggest that agencies other than USTR should lead U.S. trade negotiations; however, there are an increasing number of new issues raised during trade negotiations—like international development and environmental policies—that are best covered by agencies other than USTR.

One possible solution to USTR's expanding influence is to assign environmental and development policy coordination with trade negotiations to other agencies. One proposal discussed by federal agency staff is a "trade, environment, and developing capacity building" (TEDCAB) program, whose objective would be to strengthen the capacity of developing countries to establish effective environmental policies, both in the context of global economic integration and in a manner consistent with the principles of sustainable development.<sup>31</sup> TEDCAB would provide partner countries with the technical assistance they need to assess the effectiveness of their own environmental policies that are connected with trade and investment liberalization. Once a country's needs were assessed, the next step would be to design and implement plans to strengthen the environmental management systems of developing countries regarding trade and investment-related challenges and opportunities.

There are four key elements to the TEDCAB approach. First, policy coordination among federal agencies—especially among the Department of State, USAID, USTR, and federal agencies that possess relevant technical skills—is necessary to promote more efficient use of U.S. foreign assistance. Second, officials would need to develop a general methodology for assessing the effectiveness of environmental policies in connection with trade and investment liberalization. Assessments should review such issues as environmental regulations; a trading partner's main export sectors and areas of foreign investment; trade measures used in connection

with multilateral environmental agreements; trade in environmental goods and services; enforcement of existing domestic environmental regulations; environmental infrastructure; and public availability of environmental information.<sup>32</sup> Third, the program should ensure that partner country officials are fully involved in its implementation. Without the full participation of potential partner countries, a project like this is too easily regarded as an attempt by more powerful countries to determine development paths of other, less powerful ones.<sup>33</sup> The methodology should be flexible enough to respond to a country's unique circumstances. Finally, to be effective, a program like this would require coordinated funding involving a variety of government and intergovernmental sources. U.S. foreign assistance should play an important role, but the United States has many opportunities to work with other donor countries, as well as intergovernmental organizations like the World Bank and the United Nations' sponsored capacity building programs.

The second step that Congress and the administration must take is to determine how to link trade negotiations with other policy objectives to promote trade liberalization that is more sensitive to environmental and development concerns. Taking this step could be the most difficult because, as with NAFTA, policy linkages are most often political and are thus difficult to craft into meaningful legislation. However, without clear political linkages between trade policy objectives outlined in fast track and those developed through other policy programs, important capacity building and technical assistance programs will not be adopted because currently there is insufficient political capital to produce environmental and development programs on their own. Traditional trade advocates will argue against this approach, saying that only aspects directly related to the trade agreement itself should become part of the politics of trade policy negotiation. Indeed, efforts to build such linkages have made poor progress, as the connections between trade liberalization and environmental quality remain difficult to quantify.<sup>34</sup> However, the same can be said between trade agreements and healthy economies. Despite repeating the "fact" that both NAFTA and the Uruguay Round trade agreements are responsible for the state of the U.S. economy, there is little direct evidence to support these claims. What we do know is two things: first, trade liberalization has occurred during a period of tremendous economic prosperity, both here in the United States and elsewhere; and, second, environmental degradation continues at an incredible pace, matching the rate at which countries liberalize trade and increase consumption.

The time has come to recognize the trade and environment linkages that U.S. and other government officials have tacitly accepted. Specific objectives like conducting environmental assessments, increasing transparency in trade institutions, and eliminating environmentally damaging subsidies should not prove controversial, as they have already become part of the fabric of U.S. trade policy making. The failure to engage in a public debate regarding the merits of a broader environmental agenda will doom future fast track authority to the same public criticisms that continue to polarize U.S. public opinion over trade liberalization. But while Congress and the administration would be well served to engage in this debate before seeking a vote on fast track, at the same time all parties must accept the fact that many of the long-term solutions to trade and environment tensions lie outside fast track authority.

To secure support for a comprehensive international trade and investment agenda, President Bush and Congress must move beyond the stale debate about the environment in fast track and develop a strategy to simultaneously negotiate technical assistance and capacity building

programs designed to put communities on a path toward real sustainability. Trust, not legislation, will link these policy objectives. On the trust factor, given President Bush's current reputation on environmental matters, he is faced with a difficult road.

## NOTES

1. President George W. Bush, "The President's 2001 International Trade Agenda: Expanding Trade, Expanding Freedom, Expanding Prosperity," The White House, May 10, 2001. Unless noted otherwise, all references to President Bush's trade agenda are taken from this document.
2. The terms "fast track," "trade promotion authority," and "trade negotiating authority" are all currently in use; while each term has its own history, this paper will use the older term "fast track" to try and avoid the politics associated with one phrase or another. Selection of this term should in no way be understood to be critical of the Bush Administration's use of the phrase "trade promotion authority."
3. During the sixth FTAA ministerial (April 7, 2001), trade ministers agreed to conclude negotiations no later than January 2005. For full details on these negotiations, including their history, see <[www.ftaa-alca.org](http://www.ftaa-alca.org)>.
4. Jonathan Guthrie, "Doha Pact Vital to WTO's Future," *Financial Times* (London), June 14, 2001; and "Zoellick Signals Support for Narrow WTO Negotiating Agenda," *Inside U.S. Trade* vol. 19, no. 21, May 25, 2001. For official news of the fourth WTO Ministerial, visit <[www.wto.org](http://www.wto.org)>.
5. Among other web sites, see AFL-CIO, "Words Without Substance: Bush on FTAA," at <[www.aflcio.org](http://www.aflcio.org)> and Sierra Club, "Stop Fast Track," at <[www.sierraclub.org/trade](http://www.sierraclub.org/trade)>.
6. See Senate Finance Committee hearing, Trade Promotion Authority, June 21, 2001.
7. "Omnibus Trade and Competitiveness Act of 1988," Public Law 100-418. 102 STAT. 1107.
8. To learn more about fast track, see works by I. M. Destler, including *American Trade Politics* (Washington, D.C.: Institute for International Economics, 1994) and *Renewing Fast-Track Legislation* (Washington, D.C.: Institute for International Economics, 1997).
9. The Carnegie Endowment for International Peace and the Cambridge, Massachusetts-based Consensus Building Institute have launched a project designed to facilitate consensus among policy makers, non-governmental organizations, business interests, and representatives from intergovernmental organizations regarding concrete solutions to the intersection of trade, environment, and development policies. For more information on this project, visit <[www.ceip.org](http://www.ceip.org)>.
10. "Omnibus Trade and Competitiveness Act of 1988," Sections 1101(a)(1) and (b)(9)(A)(i).
11. See John J. Audley, *Green Politics and Global Trade: NAFTA and the Future of Environmental Politics* (Washington, D.C.: Georgetown University Press, 1997).
12. "Omnibus Trade and Competitiveness Act of 1988," Section 1101(b)(14).
13. See written testimony by Mark Van Putten, President and CEO, National Wildlife Federation, before the House Ways and Means Committee, August 5, 1999.
14. See Destler, *Renewing Fast-Track Legislation*. HR 2621, Fast Track Authority, was defeated in September 1998; see the Sierra Club Letter from Carl Pope to Members of the United States House of Representatives, "Oppose HR 2621," September 25, 1998, at <[www.sierraclub.org/trade/fasttrack](http://www.sierraclub.org/trade/fasttrack)>.
15. For a general reading on the growing evidence of the trade-environment linkage, see Commission for Environmental Cooperation, *Assessing Environmental Effects of the North American Free Trade Agreement* (Montreal: Commission for Environmental Cooperation, 1999); Carolyn Deere, *Net Gains: Linking Fisheries Management, International Trade, and Sustainable Development* (Washington, D.C.: International Union for the Conservation of Nature, 2000); United Nations Environment Program, *Environment and Trade: A Handbook* (Geneva: United Nations Environment Program, 2000); and World Resources Institute, *A Guide to World Resources, 2000-2001* (New York: United Nations Development Program, 2001).
16. International Institute for Sustainable Development, *Private Rights, Public Problems: A Guide to NAFTA's Controversial Chapter on Investor Rights* (Winnipeg, Manitoba: International Institute for Sustainable Development, 2001).
17. See Organization for Economic Cooperation and Development, *Assessing the Environmental Effects of Trade Liberalisation Agreements* (Paris: OECD, 2000); Government of Germany, *Taking Responsibility for the Future: Environmental Policy as a Global Challenge* (Berlin: Federal Ministry for the Environment, Nature Conservation, and Nuclear Safety, 2000); and Government of Canada, *Framework for Conducting Environmental Assessments of Trade Negotiations* (Ottawa: Environment Canada, 2000).
18. See Executive Order 13141, Environmental Reviews of Trade Agreements, and supporting implementation guidelines; and "USTR Reaffirms Environmental Review of Trade Agreements," USTR Press Release, April 20, 2001.

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19. See Office of the United States Trade Representative, *USTR Strategic Plan: FY 2000–FY 2005* (Washington, D.C.: USTR, 2000), section XI.
20. “Remarks by President George W. Bush at a Meeting with the Business Roundtable,” The White House, June 20, 2001.
21. Representative Phil Crane, “Trade Promotion Authority Act of 2001,” H.R. 2149, June 13, 2001.
22. “New Democrats Call for Trade Promotion Authority,” Press Release, Office of Representative Calvin Dooley, May 25, 2001.
23. Senator Max Baucus, “Building a New Trade Policy Consensus,” Speech delivered at the New America Foundation Conference, “What’s All the Commotion over Trade Promotion? Taking Stock of Domestic and International Views on America’s Stake in Global Trade,” Washington, D.C., March 19, 2001.
24. United Nations Environment and Development, “Agenda 21: Programme of Action for Sustainable Development,” 1992, Sections 21.2.21a-c.
25. The U.S.-Jordan Free Trade Agreement includes language that accomplishes this objective: “Recognizing the objective of sustainable development, and seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development.” Preamble to the U.S.-Jordan Free Trade Agreement, Office of United States Trade Representative, 2001.
26. The language in the first four proposed objectives was taken from the following sources (in order from top to bottom): United Nations, “Agenda 21,” Section 2.22(f); U.S.-Jordan Free Trade Agreement, Chapter 5(3)(a); adapted from “Declaration of Principles on Trade and Environment,” Office of United States Trade Representative web site; and Letter from President George H. W. Bush to Congress, May 1991. The language in the fifth is the author’s.
27. See Overseas Private Investment Corporation at <[www.opic.gov/subdocs/public/publications/envbook.htm](http://www.opic.gov/subdocs/public/publications/envbook.htm)> and United States Export-Import Bank at <[www.exim.gov/menvprog.htm](http://www.exim.gov/menvprog.htm)>.
28. Ministerial Communique, Meeting of Environment Ministers of the Americas, March 29–30, 2001.
29. Proposed language is modeled on the “Omnibus Trade and Competitiveness Act of 1988,” Sections 131(a)(b).
30. Observation based upon author’s personal experience in each of these negotiations, 1999–2001.
31. Following the 1999 Seattle WTO Ministerial, National Economic Council aide Richard Samans convened a series of meetings with representatives from federal agencies to develop a project proposal dedicated to reporting on environment and labor conditions among U.S. trading partners. EPA’s version of this project, currently titled “Trade and Environment Capacity Building” (TECAB), emphasizes cooperation to define and resolve environmental infrastructure needs (author’s personal notes).
32. Other methodologies are being developed by intergovernmental organizations, with the support of the U.S. government. In particular, see UNEP-UNCTAD, “Capacity Building Task Force on Trade, Environment, and Development (CBTF),” at <[www.unctad.org/trade\\_env/unep-unctad.htm](http://www.unctad.org/trade_env/unep-unctad.htm)>.
33. This approach differs from the one used by the State Department when it prepares its human rights reports. In many instances, working with officials from the Department of Labor, the Department of State prepares this report without the active involvement of the subject country. Given the controversial nature of the report’s subject, while it is useful in U.S. domestic politics, it often generates diplomatic tension between the United States and other countries.
34. For an example of the difficulties associated with establishing linkages between trade liberalization and environmental quality, see the report by the North American Commission for Environmental Cooperation, *Assessing Environmental Effects of the North American Free Trade Agreement (NAFTA)* (Montreal: Commission for Environmental Cooperation, 1999).

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