

ANNEX I

US FAST TRACK AND THE ENVIRONMENT

Steve Charnovitz*

The recent decision by the US Congress to postpone indefinitely the consideration of new trade legislation may reduce opportunities for multilateral and regional trade negotiations over the next few years. This decision mainly resulted from domestic political factors. Republicans — who control the US Congress — manoeuvred for political advantage over President Bill Clinton, a Democrat. Consideration of the environment also played a role in the denial of new trade authority.

Under the US Constitution, control of foreign policy is split between the President and the Congress. The President negotiates with other countries, but significant treaties have to be approved either by the Senate (acting by supermajority), or by the Congress in the form of a law approved by the House and Senate. Because the US does not enjoy a parliamentary form of government, policymakers have devised the "fast track" process whereby trade agreements are submitted to the Congress for an up or down vote. The process is called "fast track" because both houses must vote within pre-set times and may not amend the legislation approving and implementing the trade agreement.

Fast track began in 1974 and has been renewed since then for every President up to President Clinton. President Clinton's authority expired in March 1993. Because the Uruguay Round was ongoing, the Congress gave an extension until December 1993 only for the Round. This extension was not available for expanding NAFTA to include Chile. Since December 1993, President Clinton has lacked new fast track authority.

There have been several attempts to extend fast track authority since then. The most recent came in 1997 when the Clinton Administration and Republican leaders in Congress agreed upon new legislative language. This language was bitterly opposed by many Democrats in the US House of Representatives and by labour unions. Environmental groups, human rights groups and public interest groups ranged from being opposed to non-supportive. The business community, on the other hand, supported the 1997 legislation and lobbied hard to get it passed.

The draft legislation would have provided fast track authority for four years with an option to the President for four more. The legislation listed several principal negotiating objectives for the US, one of which related to the environment and labour. The language of this objective was:

to address the following aspects of foreign government policies and practices regarding labour, the environment, and other matters that are directly related to trade:

(A) To ensure that foreign labour, environmental, health, or safety policies and practices do not arbitrarily or unjustifiably discriminate or serve as disguised barriers to trade.

(B) To ensure that foreign governments do not derogate from or waive existing domestic environmental, health, safety, or labour measures. . . . as an encouragement to gain competitive advantage in international trade or investment.

In addition, the legislation listed several non-binding international environmental, labour, and intellectual property objectives. One of these was to "ensure that trade and environmental policies are mutually supportive." Another was to "seek to protect and preserve the environment and enhance the international means for doing so . . ." But these objectives were in a separate section from the trade objectives. More importantly, the legislation seemed to say that fast track could not be used to implement agreements involving such environment, labour, or other objectives. In other words, if the WTO countries came to an agreement as to new ways to ensure that trade and environmental policies became were supportive, the fast track legislation might prevent the US from implementing that agreement via fast track. Furthermore, if the multilateral trade negotiation repeated the Uruguay Round one-package approach, the legislation could have prevented the US from implementing the entire agreement. Thus, while the environmental language of this section looked innocuous, environmentalists were worried that a new US President could use it to insist that any new trade agreement not have environmental provisions because that could potentially disqualify the entire agreement from fast track treatment.

The most seemingly constructive environmental language in the fast track bill was the provisions about avoiding arbitrary discrimination and negotiating agreements to prevent countries from derogating from their own standards. Some environmentalists considered these to be constructive provisions. Others pointed out that it should make no difference to the

world community whether a particular country enforces its own parochial domestic standards. What is important is whether a country's internal standards are adequate in situations where those standards lead to spillover effects on the environment outside that country.

Environmentalists were also troubled that the new fast track legislation seemed a step back from the environmental accord achieved in the North American Free Trade Agreement (NAFTA). In 1992-93, there seemed to be agreement within the US that environment was an important issue in trade and had to be addressed to some extent. In 1997, however, the Republicans in Congress refused to accept NAFTA's environmental provisions as a baseline.

Although large US business groups are not opposed to environmental protection, their goals in the political process were to keep environment out of the trade legislation as much as possible. These groups feared that President Clinton, or his successor, might try to use trade leverage to force other countries to raise their environmental standards in a way that might make it less profitable for new foreign investment by US multinationals. There was also a concern that any attention to the environment by US negotiators could, at best, detract from more important commercial issues and, at worse, prevent or delay new trade agreements.

Having explained the politics of environment in the trade authority process, it should be noted that the environment was not the most pivotal issue in the Congressional debate. The majority in Congress that opposed the bill did so for one of three reasons. First, many members, particularly Democrats, did so for protectionist motivations. The US labour federation — the AFL-CIO — lobbied hard against the bill on grounds that it would cost US jobs and that US worker retraining programmes were inadequate. This camp also included members of Congress concerned about human and labour rights in other countries. These members were upset that the bill did not include strong negotiating goals on worker rights. The second camp of opponents were Republicans seeking to embarrass or weaken President Clinton. Some of this group came from the isolationist wing of the Republican party skeptical of trade agreements because they detract from US sovereignty. The third camp of fast track opponents were members primarily concerned about environmental or health concerns. This was the smallest of the three groups of opponents.

At this point, it is uncertain what will happen to fast track next year. The Chairman of the House Ways and Means Committee, Bill Archer, reportedly wants to start again with the same bill next year. The Clinton

Administration is not eager to risk another embarrassing defeat in Congress and may prefer to let the issue lie awhile. Many environmental groups would like to see a revision of the 1997 bill to improve attention to the environment. The business community is the key uncertainty. Some want to try to find common ground with environmentalists while others are wary of offending Chairman Archer. The most likely outcome is continued delay in re-enacting fast track, thus hobbling US negotiators and delaying new trade talks.

NOTES

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TABLE OF CONTENTS

PREFACE by James Cameron.....9

OPENING SESSION OF THE CONFERENCE.....12

RECENT DEVELOPMENTS IN DISPUTE SETTLEMENT

1. DISPUTE SETTLEMENT AND CONFLICTING TRADE AND ENVIRONMENT REGIMES.....16
James Cameron
I. Introduction.....16
II. Jurisdiction.....17
III. Dispute Settlement Regimes.....18
IV. Integration.....20
V. The *Shrimp/Turtle Case*: Facts and Law.....21
VI. Policy Recommendations.....24
VII. Conclusion.....25
Notes.....25

2. BUILDING CONSENSUS ON THE ISSUES OF TRADE AND ENVIRONMENT.....27
Janet Martinez
I. Talloires Policy Dialogue on Trade and Environment.....28
II. Schlangenbad Workshop on Climate Change.....30
III. Parallel Information Negotiation As A Model for Consensus Building 32
IV. Parallel Informal Negotiation and MEA Implementation.....33
Notes.....34

WTO LAW AND ENVIRONMENTAL POLICIES

3. FINDING NEW PACKAGES OF ACCEPTABLE COMBINATIONS OF TRADE AND POSITIVE MEASURES TO IMPROVE THE EFFECTIVENESS OF MEAS: A GENERAL FRAMEWORK.....38
Chiedu Osakwe
I. Introduction.....38
II. The Status of the MEA Debate.....39
III. The Trade Policy Community.....40
IV. Issues in the MEA Debate.....45
V. A Framework for the Improved Effectiveness of MEAs.....48
 V.A Trade Measures.....48
 V.B Positive Measures.....48
VI. Conclusion.....53
Notes.....54