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## "A Partnership for an Effective Trade Policy", American Bar Association and U.S. Chamber of Commerce

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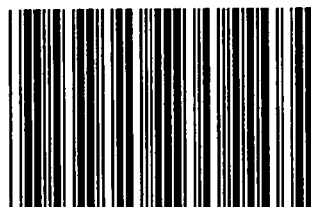
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BAUCUS

## A PARTNERSHIP FOR AN EFFECTIVE TRADE POLICY

Delivered before the American Bar Association and the U.S.  
Chamber of Commerce on March 21, 1991

Thank you, Judy (Bello). It is a pleasure to be here.

Two weeks ago, the President requested that Congress extend his authority to negotiate two new trade accords: a new GATT agreement and the North American Free Trade Agreement. This request and the ensuing debate in Congress have brought into sharp focus the division of power between the President and the Congress.

The United States government is built around the concept of division of power. The framers of the Constitution mistrusted centralized authority; they divided power among the three branches of government, allowing each branch to check and balance the others.

The delicate balance between the Congress and the President is particularly apparent in the area of international trade policy.

Article I, Section 8 grants the Congress the power "To regulate Commerce with foreign nations..." establishing it as the primary actor with regard to foreign trade. The same section of the Constitution also grants Congress the authority to impose duties on imports.

But the President also has a role to play. International trade must be regulated by treaties and international agreements. As a practical matter it is not the Congress, but the President, as head of state, who must conduct trade negotiations. The Congress simply speaks with too many voices to conduct negotiations with another country. But to implement any agreement that is reached, the President must gain the approval of Congress.

In short, both the Congress and the President have a legitimate and Constitutionally sanctioned role to play in making trade policy. And the effective conduct of trade policy requires cooperation between the Congress and the President.

### THE FAST TRACK

But what does this Constitutional theory mean in practice?

Today, the balance of power between the Congress and the President is best illustrated by what is commonly called "fast track negotiating authority."

Congress first authorized fast track negotiating authority

in the 1974 Trade Act. The fast track allows the President to negotiate trade agreements with the assurance that Congress will vote on the agreement without offering amendments.

In return, the President agrees to consult closely with Congress in setting objectives for trade negotiations.

Without the fast track, it would be virtually impossible to negotiate trade agreements.

Most of our trading partners have a parliamentary form of government. Thus, when their head of state concludes an agreement the consent of their parliament is essentially automatic.

This is not so in the U.S. The Congress is quite independent of the President. Were it not for the discipline of the fast track, Members of Congress would be sorely tempted to amend trade agreements in order to protect particular interests. This would likely lead to offsetting foreign actions, and then further Congressional action. This cycle would soon pull apart any trade agreement.

The fast track is critical to trade negotiations, but it is also a precarious balance. Many in Congress resent surrendering their power to offer amendments and fillibuster. They rightly view the fast track as an extraordinary grant of Congressional authority.

#### EXTENDING THE FAST TRACK

Today, those concerns are coming into sharp focus. The U.S. is engaged in sweeping and controversial trade negotiations -- both multilateral and bilateral. If successful, these negotiations could result in agreements requiring sweeping changes in U.S. law.

The President has recently asked the Congress to extend the fast track for another two years to allow these negotiations to be completed. Under the 1988 Trade Act, the President's request is automatically approved unless either House disapproves it by June 1st.

Disapproval resolutions have already been introduced in both the House and the Senate, and a floor fight seems likely in both Houses.

A significant number of Members in both Houses are deeply concerned about both the substance of current trade negotiations and the perceived lack of meaningful consultation by the Administration.

The outcome of the floor battle is in serious question. Keep in mind, either the Senate or the House of Representatives, acting alone, can derail the fast track.

I believe that the underlying balance of power between the President and the Congress on trade policy is sound. But both need to work hard and work together to forge a cooperative policy to respond to the trade policy challenges we now face.

#### CONGRESSIONAL ACTION

The Congressional contribution to the continuing cooperative relationship should be an extension of the fast track.

The two major trade negotiations that the U.S. is now engaged in -- the Uruguay Round of GATT negotiations and North American Free Trade Agreement negotiations -- both promise to expand trade opportunities.

#### The Uruguay Round

In the Uruguay Round, the U.S. is pushing a full slate of trade reforms. The U.S. is attempting to convince the world trading community to extend trading rules to agriculture and services, lower tariffs, and provide protection of intellectual property.

If successful, these negotiations could provide great benefits to the U.S. economy. By the Administration's estimate, these negotiations could result in a \$1 trillion boost to the U.S. economy over ten years.

The U.S. is already the world's leading agricultural exporter. But if all agricultural trade barriers were eliminated, U.S. exports could expand by as much as \$8 billion per year.

The U.S. is also the leading exporter of intellectual property -- movies, books, recordings, etc. But the International Trade Commission has concluded that piracy of U.S. intellectual property is costing the U.S. as much as \$60 billion in lost exports each year.

In a number of industrial sectors -- ranging from semiconductors to wood products, the U.S. has proposed the abolition of tariffs. If tariffs in these sectors are eliminated, U.S. exports will expand by tens of billions of dollars.

Clearly, a successful Uruguay Round would pay huge dividends to U.S. exporters and create tens of thousands of new American jobs.

#### The North American Free Trade Agreement

The President is also seeking to conclude a free trade agreement with Mexico and Canada known as the "North American Free Trade Agreement," or NAFTA.

If successful, the NAFTA could create a single market of 360 million consumers -- the largest in the world. Preferred and secure access to this market could be an enormous competitive advantage for U.S. business vis-a-vis their European and Asian competitors.

There are very large problems to be addressed in the NAFTA negotiations, but the potential benefit is great.

Congress would be making a grave error if it pulled the plug on these negotiations prematurely by killing the fast track.

There is no need to rush to judgement. Even under the fast track, no trade agreement will ever be approved unless both House of Congress vote to support it. If we find an agreement wanting, Congress can reject it.

#### PRESIDENTIAL ACTION

But the burden of cooperation is not just on the Congress. Cooperation is a two way street, and the President must hold up his end of the deal if the working relationship with the Congress is to survive.

#### Consultations

First, the President must consult with Congress on objectives in current trade negotiations.

Those consultations must be more than just talk. There must be action to respond to congressional concerns.

Many Members of Congress would like the Administration to focus more upon winning concessions of practical benefit to U.S. exporters, and less upon promoting the abstract principle of free trade.

In particular, Congress believes that the agricultural negotiations should be focused primarily upon eliminating export subsidies -- the most serious agricultural trade barrier. Congress has also demanded that the Administration increase the priority given to elimination of tariffs in the Round.

Finally, many feel that the President must become more personally involved in the Uruguay Round negotiations. If they are to succeed, these negotiations will require our trading partners to make some tough choices on agriculture and other issues. Those choices will only be made if the President personally makes the case to his counterparts around the world.

Only the President has the political capital necessary to move Prime Minister Kaifu, Chancellor Kohl, and President Mitterand.

If it is to succeed, the President must devote as much time and energy to the Round as he did to the war with Iraq.

Congress is also concerned about a number of issues in the NAFTA talks. Specifically, there is wide consensus that some non-trade issues, such as the environment, must be addressed with Mexico.

Mexico does not adequately enforce its environmental standards. Under the present conditions, concluding an FTA could convince some U.S. businesses to move to Mexico to avoid U.S. environmental regulations.

This is unacceptable. We cannot conclude a trade agreement until we have assurances that it will not damage to the environment. The U.S. must have assurance that Mexico will impose adequate environmental protection before a trade agreement can be concluded.

The wide wage disparity between the U.S. and Mexico also makes additional safeguard measures and worker adjustment assistance important adjuncts to a NAFTA.

The Administration has said it will develop a plan to address these concerns regarding the NAFTA by May 1st. I look forward to reviewing this plan. I believe a sound plan could help address Congressional concerns.

But this plan is only a first step. If it expects to win Congressional approval for either agreement, the President would do well to pay much closer attention to congressional recommendations throughout the negotiations.

#### SECTION 301

Congress also wants the President to pursue a balanced market-opening strategy. That balanced strategy must include use of Section 301 to open markets in conjunction with multilateral and bilateral negotiations.

The Administration has seemed tentative in its use of Section 301 during the GATT negotiations. Some in the Administration complain that Section 301 cases are unnecessary and undesirable while the GATT negotiations are proceeding.

That is unacceptable. Section 301 and GATT negotiations are actually complementary. Section 301 gives our trading partners an incentive to negotiate and provides a means for enforcing GATT agreements.

Specifically, the Administration can demonstrate that it is willing to pursue a balanced strategy by initiating Section 301 cases this year to combat intellectual property piracy.

Under the 1988 Trade Act, the Administration is due to identify those countries that pirate U.S. intellectual property and initiate Section 301 cases against those countries by April 30th. Congress will be watching this decision.

Additionally, Congress will be looking for vigorous pursuit of other bilateral trade issues with Japan, such as the renewal of the Semiconductor Trade Agreement with Japan.

The Administration should also work with Congress to win passage of responsible trade legislation, such as the Trade Agreements Compliance Act. I introduced this legislation earlier this year with the support of the majority of my colleagues on the Senate Finance Committee. It is designed to increase the priority that we give to enforcing trade agreements.

This legislation seems the perfect complement to ongoing trade negotiations. After all, it does little good to negotiate trade agreements, if we don't enforce them.

We must send a clear message to our trading partners that we expect them to live up to the trade commitments they have made to the U.S.

#### CONCLUSION

Sometimes, I suspect both the Congress and the President wish they were rid of the other in the trade policy arena.

But that is impossible. Each has a legitimate role to play in the making of trade policy. Neither can ignore the other.

Progress can only be made if we work together.

I will continue to attempt to convince my colleagues on Capitol Hill to do their part to cooperate and extend the fast track to allow trade negotiations to continue.

But I look to the President and Ambassador Hills to hold up their part of the bargain.

The next few months will be a test of the ability of the President and the Congress to work within the Constitution to build an effective trade policy. Cooperation is the price we must pay under our Constitution for the benefit of shared power.

If the President and Congress cooperate on trade policy, great things can be accomplished. But if they choose conflict over cooperation, all they can do is ensure that great things are never accomplished.