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November 27, 1999.

MEMORANDUM FOR JEFFREY SHESOL

FROM: IAN BOWLES, NSC/CEQ

RE: POTUS REMARKS TO TRADE MINISTERS IN SEATTLE

For the purposes of your development of the speech, I suggest dividing the "human face" agenda into three parts: (1) transparency reforms, (2) environment, and (3) labor. I have addressed the first two in this memo and provided some of the background materials on all three issues.

### Transparency Reforms

One overarching objective for the "human face" agenda at the WTO is transparency reforms. ~~We have made progress on document de-restriction and public and timely release of dispute panel submissions. Our two remaining objectives face deep opposition from the rest of the WTO. They are opening dispute panel and appellate body hearings to public observers and creating procedures for public submissions of amicus briefs. We should hit these points clearly. In doing so, we can make reference to the wide open nature of public participation in the United Nations organizations and the significant progress made in the I-ETS, where institutions like the World Bank have de-restricted many documents and gone so far as to create an Independent Inspection Panel to review compliance with World Bank policies.~~

### Environment Issues

*Environmental Benefits of Trade:* This is the least developed concept in our agenda, but perhaps of greatest importance. Conceptually, our approach is ~~to use the disciplines (rules) of the trading system to accomplish environmental objectives that are also good for the economy - win/wins.~~ The most tangible examples are two: (1) ~~lowering tariffs and other barriers to free trade in environmental goods and services~~ - the President has been saying, for example, that economic growth does not have to proceed in lock step with growth in pollution and emissions of greenhouse gases. ~~Greater trade in clean energy technology can, in and of itself, lead to environmental benefits, and (2) reduction of certain environmentally damaging subsidies that lead to unsustainable overuse of natural resources.~~ We have pressed for negotiations on subsidies for fisheries, but this

using trade  
to address  
env.  
- i.e.   
overcoming  
- clean energy  
(↓ barriers  
to this  
tech.)  
(i.e. China -  
through  
don't  
mention)

concept can be applied to other sectors. For example, we have reduced our subsidies for certain forestry activities in our National Forest lands. We could try to use WTO disciplines to force other countries to do the same. This is a powerful concept and one we should highlight.

we've done dom. to open trad. process

which P announced

trying to get this to play a greater role

WB esp: lending targets - putting some stds on it (IFIs)

trying to get world to ↑ stds (i.e., G8) - Bowles + Steinberg are working on this

Environmental Reviews: The US has taken the lead in developing a domestic system for environmental "review" and analysis of trade agreements. The President's Executive Order goes further than the policy of any other WTO member to bring environmental considerations into the process of developing trade policy positions. We should call on other governments to build similar systems in their own countries.

*Mechanisms for Environment Issues at the WTO:* The US lead the call for the creation of a WTO Committee on Trade and Environment (CTE) - an analog for the labor committee we are now seeking. We are now seeking a greater role for the CTE in considering the environmental implications of each negotiating group's work.

*Environmental Standards for Trade and Development Finance Institutions:* In both the IFIs and the G8, the US has been a leader in calling for higher environmental standards. At the IFIs, we have pressed the World Bank to maintain global environment objectives as part of its corporate strategy. You will recall the mention of clean energy lending targets in the World Bank annual meeting speech. At the G8, we have pressed for higher & common environmental "guidelines" for G8 "export credit agencies." The US has strong environmental guidelines for OPIC, ExIm, USAID and our other USG international finance agencies. These higher standards create a disadvantage for US businesses when competing against businesses whose government backers require lower standards. If it can fit with our overall message, we should continue to call for greater action on standards/guidelines to "green" international finance.

## China WTO Agreement and the Environment

The agreement with China on WTO accession includes several provisions that have the potential to facilitate cleaner economic development by promoting the export of environmentally-friendly goods and services to China and improving the environmental performance of economic activity in China.

- **Cleaner energy generation.** China agreed to adhere to the APEC sectoral initiatives once they are adopted by the WTO. The energy sector initiative would reduce tariffs for a variety of energy generation and transmission technologies. Since western power technology is 25% more efficient than current Chinese technology, expanding the use of these more efficient energy technologies will allow China to generate more electricity with lower rates of carbon dioxide, sulfur dioxide, and nitrogen oxide emissions.
- **Increase exports to China of environmental control technology.** By agreeing to adhere to the APEC sectoral initiatives upon WTO adoption, China has agreed to reduce tariffs on environmental control technologies. These environmental technologies will allow China to significantly reduce air pollutant emissions that currently exceed WHO recommended levels and have significant detrimental impacts on both the local population and the environment.
- **Cleaner transportation.** China agreed to accelerated tariff reduction for automobiles that would allow for greater market penetration by foreign-made vehicles. Since current domestic-made vehicles consume nearly 40% more fuel than comparable import vehicles, increasing market share by imports could significantly slow the growth in transportation carbon dioxide emissions. With per capita vehicle ownership projected to nearly triple by 2010, the transportation sector is a fast-growing market with substantial opportunities for improvements in fuel economy.
- **Increase access to Chinese market for environmental services.** China agreed to grant much greater access to its market for a variety of environmental services, including sewage, solid waste disposal, noise abatement, and nature and landscape protection services. In addition, the Chinese agreed to provide access for environmental consultation services and to allow joint ventures to provide such services.
- **Increased interest in environmental quality will stimulate demand for environmental technology.** Prior to this WTO accession agreement, China and the United States began a partnership to explore the opportunities for China to address sulfur dioxide pollution through a domestic cap and trade program. Such a program could result in cost-effective reductions of sulfur dioxide similar to that experienced by the United States. Further, it could stimulate demand for sulfur scrubbing technologies, other pollution control equipment, and more efficient coal combustion equipment. In addition, the United States and China have agreed to a \$100 million clean energy facility through the Export-Import Bank to finance environmentally-friendly energy projects in China.

# The Washington Post

AN INDEPENDENT NEWSPAPER

## Toward Greener Trade

THE PREPARATORY talks for next week's trade summit in Seattle have failed to yield a clear agenda, confirming that progress against protectionism is going to be hard to achieve. The World Trade Organization's 135 member countries cannot decide which industry should be targeted next for tariff cutting, nor how trade-related issues such as labor standards should be worked into the talks. Environmental standards pose yet another dilemma. The United States wants these incorporated into future trade agreements, arguing that foreigners should not be allowed to undercut American producers at the expense of the environment. Poor countries retort that the United States should not impose its standards on them—especially since America was happy to pollute extravagantly when it was a developing nation.

Despite these disagreements, it would be wrong to be defeatist—partly because trade does so much to spread prosperity, and partly because many areas of possible advance exist. Take the environment. The United States cannot hope to persuade poor countries immediately to adopt First-World pollution standards, nor should it aspire to do so. But there are two more modest goals that it could and should adopt. *Transparency &*

The first concerns the fuzzy line between national and international environmental regulation. Everybody accepts—and the WTO's rules affirm this—that countries may pass measures that reflect their sense of the environment's worth. Equally, everybody accepts that a country may not order other countries what to do internally. Sometimes, however, these beliefs conflict. The United States has sought to protect turtles, so upholding its environmental values. But in so doing it has barred shrimp from entering its market unless these were caught with turtle-safe nets.

In theory, the WTO is supposed to allow environmentalist import bans, so long as the reason for them is not disguised protectionism. In practice, however, the WTO is con-

fused on the issue: At its first hearing it dismissed the turtle law entirely; at the appellate stage it accepted the logic of the law but still found against it. This ambiguity has eroded trust in the WTO's objectivity. To rebuild confidence, the Clinton administration wants to open up the WTO panels that sit in judgment over trade disputes, rather than shrouding them in secrecy. It also says it wants environmental groups and other interested parties to be allowed to argue before WTO panels, so that all feel they have had their fair say. *subsidies &*

The second area in which a better balance between trade and the environment should be possible concerns subsidies. In a whole range of industries, governments subsidize producers in ways that both distort trade and harm the environment. By cutting subsidies, rather than defining trade liberalization narrowly as a drive to cut tariffs, the administration could promote trade and the environment at once.

Farmers across the developed world get government help to cultivate marginal land; this hurts the soil and discriminates against farmers in developing countries. Some oil-producing nations such as Mexico and Russia subsidize gasoline; this pollutes the air and discriminates against other oil-producing countries. Canada, Indonesia and many other nations sell forestry concessions below cost, another distortion of trade and a further blow against the environment. The world's fishermen get a fifth of their income from direct or indirect subsidies; small wonder that some fish species are in danger of extinction.

Ever since Congress denied it "fast-track" trade negotiating authority, the Clinton administration has sought to rebuild support for trade by reaching out to labor and environmental critics. If it can get subsidies and WTO transparency on the Seattle agenda, it may win over some of trade's critics and promote trade liberalization at the same time.

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Accounts of a major FBI [news story] beef up its fight against espionage and accompanying this firm FBI commitment the "Levi guidelines" that no investigation without credible evidence.

The Levi guidelines by then-U.S. al Edward Levi administration, and even criminal FBI and the CIA both the Senate

## ROUNDTABLE DISCUSSION WITH ENVIRONMENTAL LEADERS

### KEY OBJECTIVES

- Hear from environmental leaders about their concerns regarding the WTO and USG trade policy.
- Present your vision of how trade liberalization can contribute to environmental protection worldwide.
- Discuss USG environmental goals at the WTO and solicit their support in achieving outstanding objectives.

### BACKGROUND AND CONTEXT FOR THE DISCUSSION

The U.S. environmental community has had mixed experience with trade issues. A handful of major organizations joined you in supporting the North American Free Trade Agreement (NAFTA) and its environmental provisions. Since that time, environmentalists have complained that the NAFTA environmental institutions have shown limited results, that your proposal to Congress for fast track negotiating authority did not meet their standards for environmental protections, and that the WTO has been hostile to environmental issues.

**Environmentalists' concerns about the WTO:** With regard to the WTO Ministerial, the environmental community has called for three main actions: (1) no further expansion of the WTO negotiating agenda, (2) reforms of the WTO rules that they argue are inimical to environmental protections, and (3) proactive assessment of the environmental impacts of major trade agreements. Environmentalists have also been highly critical of the Accelerated Tariff Liberalization (ATL) measure in the forest products sector, arguing that it will lead to increases in logging worldwide. A subset of NGOs have also recently won a District Court case in Seattle that enjoins USTR and Commerce to add an environmental representative to their industry advisory committees for the forest and paper product sectors.

Environmentalists argue that the WTO rules and evolving jurisprudence harm the environment. They point to high profile WTO cases such as Shrimp/Turtle and Venezuela Gasoline as evidence that the WTO dispute resolution decisions lead to the weakening of U.S. environmental regulations. In these cases, the WTO found fault with discriminatory elements of the way we were implementing the environmental laws, but never questioned the law's objectives. U.S. environmental laws have not been

weakened by WTO decisions. Environmentalists also oppose the launch of comprehensive investment negotiations in the WTO, arguing, among other things, that the investment provisions of the failed MAI and of NAFTA create too many rights for private parties to sue governments over the economic impact of regulations.

**U.S. agenda on environment at the WTO:** Your environment agenda at the WTO has focused on transparency reforms, "win/win" opportunities such as liberalization of trade in environmental goods and serves as well as language that will lead to the launch of negotiations to eliminate environmentally-damaging subsidies that lead to overcapacity in fishing fleets. As appropriate, we are seeking other opportunities to promote additional such "win/win" approaches. We have also been seeking - and at Seattle will have - agreed to a plan for enhanced cooperation between the WTO and the United Nations Environment Program (UNEP). We are also seeking to ensure that environmental issues get full consideration throughout the course of the negotiations, including through Ministerial Declaration language establishing sustainable development as a negotiating objective and through an expanded role for the WTO's Committee on Trade and Environment (CTE) to consider the environmental implications of each negotiating group's work. As called for in your recent Executive Order, we will be undertaking a thorough USG review of the environmental issues for the new Round and will be encouraging other nations to follow your lead to do the same thing.

We have a substantive and credible set of negotiating objectives and a reasonable shot at achieving them. Our challenge in Seattle relates more to public communication because we and the NGO community have fundamentally different views about whether or not WTO rules and jurisprudence adequately protect our domestic environmental, health, and safety laws and regulations. You have taken greater steps to incorporate environmental issues into trade policy than your predecessors or any other world leader, however, credit for these significant actions has been limited due to threshold disagreement over the risks of WTO rules for the environment.

**U.S. trade/environment policy package:** In the six months leading up to the WTO Ministerial, your staff have met frequently with environmentalists to hear their outstanding concerns. Last Tuesday, you and Vice President Gore announced a set of new trade and environment policies to respond to these concerns. These include:

- An Executive Order requiring written environmental reviews of major, environmentally significant trade agreements. This order resolves a major policy debate that has lasted for more than a decade and, for the first time, formalizes a system for timely analysis and consideration of environmental issues in the development of U.S. positions for trade agreements. The order has generally been very well received by environmentalists, many of whom commend you for your leadership.
- A White House Declaration of Environmental Trade Policy Principles. This statement outlines your policy with regard to the WTO on major issues of concern to environmentalists and provides instructions to U.S. negotiators to promote sustainable development objectives in the WTO. The statement has been viewed by environmentalists generally as a more forceful restatement of U.S. policy, but as not going far enough to proactively lead to reform of WTO rules they view as inimical to environmental protections. The statement did not go further because we do not share their views regarding perceived flaws in the current WTO rules.
- A paper that summarizes USG efforts to build capacity for environmental management and regulation in developing countries.

**Where NGOs can help:** The most important place where NGOs can help is with transparency reforms at the WTO. NGOs share our commitment to these objectives. There is a reasonable chance that we will win on making WTO dispute settlement panel reports available sooner and making all briefs public. However, two additional reforms are facing broad and deep opposition from other countries: (a) formalizing an amicus brief submission process and (b) opening dispute resolution panel and appellate body hearings to public observers. You should solicit the NGOs' assistance on these issues.

**Positioning with the EU:** The EU has worked with U.S. NGOs to present themselves as more progressive on issues like deference to regulatory decisions, use of the "precautionary" approach, and deference to multilateral environmental agreements (MEAs). Some of these positions are long held, but they also may serve to divert attention away from the EU's opposition to transparency reforms, its resistance to your proposals for "win/win" approaches like the elimination of subsidies for overfishing, its support for certain investment negotiations of

concern to NGOs, and its objectives to make the Biosafety Protocol more restrictive of trade in GMOs. The EU is also pushing for the WTO to develop guidelines on ecolabelling, which NGOs strongly oppose.

**Forest Products ATL:** The environmental community remains opposed to forward progress on the ATL in Seattle. In response to their concerns, USTR and CEQ undertook a thorough environmental analysis of the forest products ATL. The report found no significant environmental risks in the United States and very small, but mixed (both positive and negative) potential environmental impacts on forests worldwide. NGOs are also concerned about the elimination of non-tariff barriers to trade in forest products. Although these issues are not part of the ATL package, NGOs have lumped the ATL together with non-tariff issues and claimed the U.S. is pushing a "Global Free Logging Agreement." This is an unfair characterization. Your staff have carefully analyzed and evaluated the environmental risks of the forest products ATL and found them to be insignificant, and have further committed to close consultation with NGOs if non-tariff measures in the forest products sector come up in the future.

**ISACs Court Decision:** Two weeks ago, the 10<sup>th</sup> District Court in Seattle ruled that part of the suit brought by NGOs had merit and enjoined USTR and Commerce to add one environmental representative to industry advisory committees for the forest and paper products sectors. The Court did not enjoin the government from holding additional meetings of the ISACs prior to Seattle. Some NGOs have now called for further environmental representation on other trade advisory panels. Your staff are currently reviewing the court decision and, aside from pledging to comply with the court's order, will not make a substantive public response to the decision until after the Ministerial meeting.

**Your vision for trade and environmental protections:** You may also want to lay out your vision for how trade liberalization can promote environmental protection. For example, reducing tariffs and certain subsidies should lead to greater investments in clean energy development, which will lead to lower emissions of greenhouse gases.

**TALKING POINTS**  
**MEETING WITH ENVIRONMENTAL LEADERS**

- Welcome this opportunity to talk with you about my environmental objectives for the WTO and the new Round.
- As you know, I have made putting a human face on trade one of my personal priorities. Integrating sustainable development objectives throughout our trade policy is essential.
- This starts with openness and dialogue. Like you, I have pushed very hard for a more open and transparent WTO, yet we are alone in calling for these reforms. Welcome your assistance to open WTO panel hearings to the public and creating procedures for outside submission of *amicus* briefs.
- Trade liberalization can also make direct contributions to environmental and sustainable development goals. In the WTO, I have pushed for liberalization in trade in environmental goods and services, incorporation of sustainable development as a core negotiating objective, and new negotiations leading to elimination of certain environmentally-damaging subsidies, such as those that promote overcapacity in fishing fleets.
- Freer trade will promote access to clean energy development technologies. If we are to make progress on global warming, we need open trade and capacity building.
- I have also taken major steps to open up our trade policy process to environmental issues. My Executive Order will change the dynamic on these important issues by requiring environmental reviews of all major trade agreements.
- On WTO rules, we have struck a careful balance. These rules reduce discrimination, yet protect our science-based regulatory system. We will continue to be vigilant that they never undermine our environmental, health and safety laws and regulations.
- On forests, I know you are concerned about the impact of tariff reduction. CEQ and USTR talked them through with your staffs and produced a thorough written analysis that tells us your concerns are misplaced. I have long been an advocate for forest protection and our roadless policy and Lands Legacy initiative show my commitment. Look forward to working with you on international forest conservation issues after Seattle.

# U.S. to Give Trade Pacts Eco-Review

By CECI CONNOLLY  
Washington Post Staff Writer

SEATTLE, Nov. 16—Vice President Gore, with an eye to environmental protests planned at World Trade Organization talks here later this month, announced today that the United States will require environmental impact reviews before it signs new trade agreements.

Concluding a four-day West Coast swing, Gore said an executive order being signed by President Clinton today will "revolutionize the way the environment is dealt with in all future trade talks."

"In this debate about trade and the environment, some folks have kind of taken the idea they're necessarily in conflict," Gore said in a brief statement here before flying home. "I've never believed that."

The order calls for a team of experts from government and the private sector to produce written assessments of how any future trade deals would affect air, land, water and wildlife. "From day one, we will be considering environmental issues and integrating them throughout the negotiation process, Susan Esherman, deputy U.S. trade representative, said in an interview.

Officials declined comment on how often such concerns would car-

ry the day but promised they would get a fair hearing.

Among the administration's other goals, Gore said, is eventually ending subsidies that it says promote over-fishing, eliminating trade barriers to environmentally friendly technologies and giving citizens a voice in the process.

Some environmental groups welcomed the order, but only as a first step. "It could help environmentalists get to the table on trade agreements in the future," said Daniel Selligman, who follows trade issues for the Sierra Club. But "it does nothing to address the problems we have with current trade agreements."

Public Citizen, part of the Ralph Nader organization, had a more critical view. Federal law already requires environmental reviews, said Lori Wallach, director of the group's Global Trade Watch. The government is instead going to substitute "a meaningless insider review," she added.

The WTO, formed five years ago, polices international commerce

from its Geneva headquarters. Opponents say the 134-nation body favors corporate interests over labor and environmental concerns. When delegations from the member states meet here Nov. 30 to plan a new round of global negotiations on reducing trade barriers, environmental and labor groups plan large street protests.

Events leading up to the talks are already drawing demonstrators. On Monday, a speech at the University of Washington by Martin Baily, chairman of the White House's Council of Economic Advisers, was canceled due to security concerns. Protesters had announced plans to show up at the speech.

Gore, meanwhile, is trying to walk the fine line between pro-growth, free-trade policies and his fealty to core Democratic constituencies such as unions and environmental activists. "America can and should use its trade policy to strengthen environmental protection both at home and abroad," he said.

As a boost to his political campaign, White House officials let Gore

make the announcement today, virtually ensuring extensive television coverage in a city that is both heavily dependent on trade and sensitive to quality-of-life issues.

In a private meeting last night with 15 leaders of area environmental groups and Washington Gov. Gary Locke (D), Gore pleaded with the activists to look beyond disappointments of the past seven years, according to two participants.

"They are not happy with the pace with which the administration has addressed environmental issues, but he promised as president he'll be

out there fighting for the environment," said one Gore aide.

After talking for 60 minutes about salmon protection, coal mining, the WTO and oil spills, Gore concluded with an impassioned political pitch, said the two sources. If recent cut-backs at some environmental agencies have seemed discouraging, just imagine how terrible life would be under a second President George Bush, Gore warned.

Staff writer John Burgess contributed to this report from Washington.

# Who Gets Spectrum When Sale Goes Bad?

## Budget Negotiators Try to Resolve Issue

By PETER S. GOODMAN  
*Washington Post Staff Writer*

What ought to happen when a company that bought a chunk of the public airwaves to provide cellular telephone service can't pay its bills? Should it keep its licenses, or should the spectrum revert to the federal government to be sold again?

Yesterday, congressional leaders, joined by the Clinton administration's chief budget officer, huddled inside the Capitol to try to resolve those questions as part of last-minute budget talks that were still running last night.

The dispute resides at the intersection of telecommunications policy, bankruptcy law and the highly competitive wireless telephone business. At the center sits a New York-based company called NextWave Telecom Inc., now in bankruptcy, and the national cellular provider Nextel Communications Inc. of Reston, which is hopping to buy the unused spectrum for as much as \$6 billion. For the Clinton administration, now seeking to stave off budget cuts, those dollars would come in handy.

Four years ago, in an auction supervised by the Federal Communications Commission, NextWave bid successfully for the right to transmit wireless phone calls over specific frequencies in markets that

together are home to 165 million people. The price: \$4.7 billion. But after putting 10 percent down, NextWave declared it had paid too much. It couldn't borrow the money to build out its network. It never paid another dime. Last year, the company landed in bankruptcy.

It is not alone. NextWave secured a part of the spectrum set aside by the government for "small businesses"—defined as those with gross revenue under \$40 million. But of the 56 companies that made successful bids, only about 15 are offering service and nine declared bankruptcy, according to the FCC.

The FCC has argued that the airwaves don't belong to NextWave and the licenses should return to the government so someone else can buy them and put them to use, giving consumers more choices and lower prices. The company has asserted that would amount to an unfair confiscation of its property.

So far, NextWave's claims have carried the day. Last year, a federal bankruptcy court in New York found the licenses were worth just over \$1 billion, declaring that's all NextWave must pay to get out of hock. The FCC appealed to the Second U.S. Circuit Court of Appeals. There the case sits.

Meanwhile, matters have shifted to Capitol Hill. Last year, Sen. Judd Gregg (R-N.H.) attached an amendment to an appropriations bill that would have returned such licenses to the government when holders go bankrupt. The amendment died in the face of strenuous opposition in the House, particularly House Majority Leader Dick Army (R-Tex.). He maintains the companies have been victimized by the government.

Others have suggested Army's real interest is General Wireless Inc., a paging company in his district that claimed small-business spectrum, then landed in bankrupt-

cy—a charge Army rejects. "There's 50 or more companies affected," said Army's spokeswoman, Michele Davis. "One happens to be in Texas."

This year, Gregg tried again: Same fate. But last month, President Clinton vetoed the appropriations bill. Among the dozens of reasons he cited: "Currently, \$5.6 billion of bid-for-spectrum is tied up in bankruptcy court, with a very real risk that spectrum licensees will be able to retain spectrum at a fraction of its real market value." The issue was back on the table.

If the driving force behind the argument was once policy, it is now clearly about money. Nextel has floated proposals with the FCC, Congress and the bankruptcy court that would have it claim NextWave's licenses after paying the company's stockholders and creditors as much as \$2.5 billion, while handing the federal government as much as \$3.5 billion.

Nextel's initial proposals were tailored to make it difficult for anyone else to land the licenses, sources said, though Nextel has since removed those restrictions.

Yesterday, the Cellular Telecommunications Industry Association, which represents Nextel's major wireless rivals, floated its own proposal: It would bring the licenses back to FCC, but allow virtually anyone to bid. The Clinton administration on Monday produced its own proposal, according to Army's office. It would affect only NextWave's licenses.

NextWave, which is under a gag order imposed by the bankruptcy judge, has portrayed all the proposals as a violation of the original auction rules, since they would waive requirements that the licenses be held only by small businesses.

The ending wasn't clear last night. Army again declared the issue dead. But with dollars in short supply, the possibility remained that Congress would act.