

State of
Washington
House of
Representatives



October 5, 2001

The Honorable Patty Murray
173 Russell Senate Office Building
Washington, D.C. 20510-0238

We write to express our concerns regarding current trade negotiations and Fast Track.

As Washington State elected officials we continue to be deeply distressed about the September 11th attack and the need to provide safety for all Americans. During this process of analyzing how we can best protect the people of the United States, we have become increasingly concerned that highly controversial legislation is now being pushed through Congress. As Washington State lawmakers we view this legislation as requiring a full and open debate by the Congress. In addition, we are very concerned that this divisive legislation could fracture the unity that is needed at this time.

We also have specific concerns about current trade negotiations and about Fast Track. Two key aspects of current trade negotiations particularly concern us. The first is the investor-state suit provision currently included in the Free Trade Area of the Americas Agreement (FTAA). This provision is very similar to the investor-state provision in NAFTA's Chapter 11 on investment, which has proven very problematic to date. NAFTA's investment provisions have opened the door to a number of unexpected legal challenges brought before international tribunals by foreign companies seeking financial compensation from governments. Foreign companies have sued for compensation due to public actions in the United States that include a California ban on a highly toxic gasoline additive (MTBE), a federal Buy America law for government contractors, and a jury verdict in a fraud case in Mississippi. Investor challenges have already been successfully brought against the Mexican and Canadian governments.

Many of these challenges have been brought on the grounds that foreign investors must be compensated when regulation entirely within the scope of traditional governmental authority over the environment, health and safety or government purchasing negatively affects their business interests. Under the vague and overly broad language in the substantive provisions of Chapter 11, the actions against the United States could result in outcomes that would not be possible if the challenges were brought in domestic courts, thereby granting to foreign investors greater rights than those that are available to U.S. citizens.

Moreover, challenges under Chapter 11 are conducted before tribunals whose proceedings are not open to the public or even to elected state representatives when a state law is being challenged. Their rulings are not required to follow any judicial precedent and their decisions are not subject to

any standard appeals process. Therefore, these tribunals allow undemocratic challenges to laws enacted through democratic processes.

Secondly, we are also concerned by the proposed FTAA provisions relating to services. These provisions would cover many services that have traditionally been provided or regulated by state and local governments, including land use, construction, insurance, banking, health facilities, environmental services, liquor sales, business services and professional services, just to name a few. There are several disconcerting aspects of these provisions.

1) "National treatment" provisions could allow challenges to public funding of public services as "discriminatory." Certain provisions that the United States wants to apply to all services and countries ("national treatment" provisions) could result in challenges to public funding of essential public services. Such public funding could be challenged as discriminatory unless public funds were also made available to foreign service corporations wishing to provide services in the United States. Such challenges could result in reduction of public funding of critical public services including health care, education, social services, mail delivery, public transportation, and other essential services.

2) "Market access" provisions could result in an absolute reduction in our law-making powers. The FTAA service provisions related to "market access" could diminish our governmental powers in troubling ways. Specifically, if these provisions apply to all service sectors and all countries as the United States advocates, local or state governments may not be able to place any restrictions on the number of service providers providing a particular type of service within their jurisdictions. This could end the ability of local governments to limit the number of waste dumps or oil refineries operating within their boundaries. Likewise, these provisions could harm the ability of state governments to condition the granting of a service contract on a service provider's commitment to offer a minimum level of service in unprofitable regions.

3) Democratically-enacted laws could be challenged as "more burdensome than necessary." We are also concerned by the "domestic regulation" proposals advocated by Canada and the European Union. Specifically, these nations, both quite powerful in the negotiations, propose tough tests that many laws regulating services would have to meet. Either one of these tests would be a radical change from the traditional standard under which legislatures are free to adopt compromise measures, so long as they are not explicitly discriminatory.

4) Reporting requirements amount to an un-funded mandate. Lastly, we are also concerned by the potential costs associated with the "transparency" requirement promoted by the United States. Under this requirement, local and state governments would incur broad new requirements to provide advance notification of all new proposed laws governing services to international trade bodies and foreign governments. Given the large number of services we regulate at the state and local level, this reporting requirement could prove quite burdensome to implement.

As our concerns indicate, modern trade agreements can have impacts that are quite far-reaching. Increased accountability must therefore be built into the treaty negotiation process to ensure that the United States does not assume irreversible obligations that negatively affect the operations of state and local governments in unanticipated ways. This is particularly true when U.S. negotiators seek to draft extensive provisions regarding subjects that have traditionally not been matters of federal

jurisdiction. We urge you to oppose any "Trade Promotion Authority" bill that does not contain mandatory negotiating provisions that explicitly address the serious concerns we outline above.

We look forward to working with you to protect important state and local governmental authorities.

Sincerely,

Rep. Velma Veloria
Rep. Hans Dunshee
Sen. Debbie Regala
Sen. Jeri Costa
Sen. Jeanne Kohl-Welles
Rep. John Pennington
Rep. Sandra Romero
Sen. Adam Kline
Sen. Lisa Brown
Rep. Karen Keiser
Rep. Michael Cooper
Rep. Sharon Tomiko Santos
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Rep. Jim McIntire
Rep. Bill Eickmeyer
Rep. Phil Rockefeller
Rep. Steve Conway
Rep. Paull Shin
Sen. Rosa Franklin
Rep. Shay Schual-Berke
Sen. Darlene Fairley

Cc: The Honorable Patty Murray
The Honorable Maria Cantwell
The Honorable Jay Inslee
The Honorable Rick Larsen
The Honorable Brian Baird
The Honorable Doc Hastings
The Honorable George R. Nethercutt, Jr.
The Honorable Norm Dicks
The Honorable Jim McDermott
The Honorable Jennifer Dunn
The Honorable Adam Smith