

Congress of the United States

House of Representatives

Washington, DC 20515

November 7, 2001

Dear Democratic Colleague:

As members of the California delegation, we are writing to express our opposition to H.R. 3005, the fast track trade legislation introduced by Ways and Means Chairman Bill Thomas (R-California). We are troubled that the Thomas bill's call for future agreements to include investment provisions fails to address the threats to domestic environmental and public health safety laws already posed by such investment rules in NAFTA Chapter 11.

California has witnessed firsthand the danger of allowing foreign investors to challenge our right to enact environmental and other public interest laws. It is under NAFTA Chapter 11, that the Canadian-based Methanex corporation is suing the United States because of California's decision to phase out MTBE, a highly toxic gasoline additive that leaked from vehicle and storage tanks, poisoning California water supplies and putting citizens at risk for liver, kidney and nervous and gastrointestinal damage. Methanex is seeking \$970 million in compensation, asserting that California's phase-out impeded its business interests and profits.

A closed-door NAFTA dispute settlement panel will decide Methanex's challenge, with no possibility of consideration or appeal in U.S. courts. Chapter 11 is also being used by foreign investors to challenge a jury verdict in a Mississippi fraud case and a Buy American steel requirement on a highway project in Virginia.

These examples illustrate the need to take a new look at investment provisions in international trade agreements to ensure that foreign investors' rights are not broader than those enjoyed by U.S. citizens and companies under our laws. The Thomas bill gives us no assurances that the mistakes of NAFTA Chapter 11 will not be repeated in future trade agreements, and in fact the United States Trade Representative Robert Zoellick has already indicated that he intends to continue pressing for similar provisions in future trade agreements.

A few of the important improvements that must be made to this legislation are the following:

Ensure that foreign investors will enjoy no greater protection than that afforded to domestic U.S. investors under U.S. domestic law in challenging environmental, public health, safety, consumer and employment opportunity laws and regulations;

Clarify the standards for such critical terms as "expropriation" and "minimum treatment" so that foreign investors receive no greater rights than under U.S. law;

Require that all proceedings, submissions, findings, and decisions of trade dispute tribunals are open to the public.

We call your attention to the attached op-ed from the Los Angeles Times written by Sheila James Kuehl, chair of the California Senate Select Committee on International Trade Policy and State Legislation, and we strongly urge you to oppose the Thomas fast-track bill.

Sincerely,

Ken A. Waxman *Robert J. Matar* *James [unclear]*
Liz Coops *Bob Filner* *Lynn C. Walberg*
Jim [unclear] *Jim [unclear]* *Mike Thompson*
Madeline Waters *Nancy Pelosi* *Brad Sherman*
Tom Lantos *Bill Stark* *George Miller*

Diane E. Watson
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Hilda J Solis
Burland Lee

Go Slow on Fast-Track Bill

By SHEILA KUEHL

This week, Congress could take up the issue of renewing presidential trade negotiating authority, also known as "fast track." Fast track is a procedure that permits the president to negotiate trade and investment agreements with limited participation from Congress, allowing only an up or down vote without possibility of amendment.

As with so many other proposed measures, free trade and the president's authority to move quickly and independently are being clothed as a response to terrorism.

The president maintains that fast-track authority goes hand in hand with fighting terrorism, but this is simply an opportunistic attempt to link unrelated issues to exploit our newfound sense of unity.

The battle over fast-track authority has been long and highly contentious.

A similar measure failed to gain passage in 1997 and again in 1998 because Congress declined to cede its negotiating authority and because the measure did not address environmental and labor concerns.

As chair of the California Senate Select Committee on International Trade Policy and State Legislation, which was created to examine international trade agreements and their potential effect on state and local lawmaking authority, I have come face to face with the consequences of trade bills negotiated under fast-track procedures.

The current fast-track bill sponsored by California Rep. William Thomas (R-Bakersfield) carries the

promise of new compromise yet merely maintains the substance of old policies. It gives foreign corporations greater rights than U.S. citizens, allowing them to claim that a state has expropriated or "taken" their property simply by passing laws or rendering unfavorable court decisions. It also allows closed proceedings to which the public has no access.

California is already facing a challenge to its phaseout of the gasoline-additive MTBE.

Under the investor rules of the North American Free Trade Agreement, a measure negotiated under previous fast-track authority, the Canadian-based supplier of one of the ingredients of MTBE is suing the U.S. for almost \$1 billion, claiming that California's law represents an expropriation of expected profits.

The claim is being heard in secret by a nonjudicial panel that is accountable to no one and that has authority to rule that U.S. taxpayers must either pay Methacox Corp. almost \$1 billion in damages or ask California to change its law.

The current debate is not a conflict between free trade and protectionism. The real battle is over the legitimacy of, and need for, regulatory balance, including regulation to protect ecosystems, human health, product safety, local security and traditional objectives of democratic governance.

Today, when trade agreements have profound consequences for the environment, for the safety of our food, for labor standards and even for the rights of individual property owners, it is important to find a new middle ground that brings us the benefits of a global

trading system while taking into account new economic realities.

California Reps. Robert Matsui (D-Sacramento) and Anna Eschoo (D-Alhambra) understand this new reality. Each is a longtime free trader.

While continuing to voice support for free trade, they also are strongly stressing the need to establish new and meaningful rules on labor, the environment, food safety and investment. Matsui has offered a fast-track alternative bill that speaks to the needs of our state in this new economic age. In a similar vein, Eschoo, in a letter to President Bush, has called for fundamental changes in NAFTA's investment rules.

We are at a crossroads. California is the world's fifth-largest economy. Without question, trade is important to our continued economic growth.

That trade, however, must also be fair and not undermine the traditional checks and balances set out in the U.S. Constitution. The fast-track model being proposed again for new trade agreements requires the state to abdicate its power to guarantee the safety of our food, to regulate air and water pollution, to take measures to protect the safety of citizens and to guarantee democratic public participation.

We should adopt new models that support trade policy but also provide the protections we need. Trade negotiation authority that fails to address these protections should be soundly rejected.

Sheila Kuehl (D-Santa Monica) represents the 23rd District in the state Senate.

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