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FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED AGENCIES APPROPRIATIONS ACT, 1995 (Senate - July 13, 1994)

THE EURASIA FOUNDATION

Mr. President, I want to say a few words about the Eurasia Foundation, a privately managed, small-grant making organization funded through our program of assistance to the New Independent States of the former Soviet Union. The Foundation supports public sector reform and private sector development through technical assistance, training and education grants to nonprofit organizations in the former Soviet Union, and to U.S. nonprofits with partners there.

The Foundation's success can be attributed to its unique approach. By awarding small grants, usually between \$50,000 to \$75,000, and relying on the input of local nonprofits and field staff who understand the situation on the ground, the Foundation is able to respond quickly and effectively to changing needs in the NIS. Another benefit of this flexible, grass roots approach is the ability for U.S. assistance to be delivered by a wide range of diverse organizations.

This program does not finance consultants to do prefeasibility studies, following by feasibility studies, which lead to more studies. These are grants made to local groups with the expertise to provide hands on assistance and produce tangible results. Eurasia Foundation grants have supported training in management techniques and market economics. They have provided technical assistance to establish surveying and mapping systems to assist land privatization. Another grant supported an ecology information center and press offices.

Mr. President, I have heard that AID is considering scaling back its original plans to fund the Eurasia Foundation at \$75 million over 4 years. If true, this concerns me. The Eurasia Foundation is one of the more promising programs we are funding in the NIS. From what I have heard, the Eurasia Foundation could serve as a model for other programs.

I realize, of course, that the foreign aid program faces tight budget pressures. The amount of assistance we are recommending for the NIS in fiscal year 1995 is significantly less than in fiscal year 1994. However, before any decision is made to cut funding for a successful program like the Eurasia Foundation, I would expect AID to consult with the Appropriations Committee.

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THE SUMMIT OF THE AMERICAS

Mr. President, this December, an important event will take place in Miami, FL, which should be of interest to all senators. On December 9 and 10, President Clinton will host the first meeting of democratically elected leaders in the Western Hemisphere. It is the first summit of its kind in over a generation, and it is intended to follow up on the signing of the NAFTA Treaty with Mexico which created the world's largest free trade zone.

While Presidential summits are often long on photo ops and self-congratulatory press releases and short on substance, I am hopeful that this summit will produce significant results. By bringing Western Hemisphere heads of state together, many for the first time, there will be an opportunity to begin to build secure relationships which can advance common interests. The discussions will focus on ways to stabilize democracy, promote greater trade and investment, and support sustainable development.

This summit is of enormous importance to all the countries in the hemisphere. It is no secret that relations between the United States and our southern neighbors have not always been easy. For much of this century we treated the Central American countries as virtual colonies. Banana republics, we called them. In recent years we were involved militarily in bloody conflicts in Nicaragua and El Salvador that deeply divided the Congress and the American people. The concern we all have about the possible use of U.S. troops in Haiti is but one reflection of this uneasy history.

Yet even during this period, there was progress toward democracy and free enterprise in Latin America, and with the recent peace agreement in El Salvador and the possibility of a settlement of the conflict in Guatemala, we seem to be entering a new era. For perhaps the first time in history, we can look forward to a period of peace, of strengthening democracy, and of building stronger economic ties that benefit both North and South America.

In the long run the United States and the region could benefit enormously from achieving the goals of this summit. Democracies tend not to attack one another. Political stability is the key to economic growth. United States exports to the region have more than doubled in the past 7 years, and they will continue to rise. This in turn has created thousands of jobs for Americans. As NAFTA is extended, I believe it will be, the prospects for stronger economic ties will greatly increase.

From the very beginning, this has been a cooperative effort. Vice President **Gore** traveled to Bolivia, Argentina, Brazil, and

Mexico at the end of March to lay the groundwork for the conference. President Clinton has been in touch with his counterparts to develop a productive schedule for the summit. The Organization of American States and the InterAmerican Development Bank have been included in these preparations, and there have been consultations with the business community and nongovernmental organizations from Latin America and the United States to get their input. NGO's have traditionally been either ignored or harassed by Latin governments who have often regarded the NGO's with suspicion, as a threat to government authority and control. This summit is an opportunity to demonstrate the important role NGO's can play in building democracy, and in addressing many of the most acute problems these countries face.

Mr. President, this historic event, the largest gathering of democratically-elected leaders that the United States has ever hosted, deserves our attention and support. Having said that, I will end with a warning. Promoting democracy is a central theme of this summit, which is why Cuba and Haiti have not been invited to send representatives. However, the Dominican Republic

recently held an election was marred by irregularities. International observers have yet to certify that it was a fair election. There is reason to believe that the party of the winning candidate, President Balaguer, engaged in widespread fraud which could have affected the result. I do not know whether, in the final analysis, the election will be ruled fair or not. But we do not want to implicitly ratify a stolen election, it that is what this was. The Dominican Republic should be invited to participate in the summit only if there has been a credible finding that the election was fair.

Mr. LEAHY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CRAIG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CRAIG. Mr. President, I rise today to add my support to an amendment offered by Senator **Thurmond** and to voice my growing concern about the Uruguay round agreement and the General Agreement on Tariffs and Trade and the General Agreement on Trade in Services.

The amendment raises a number of concerns about a provision in the Uruguay round which would establish an international entity which is referred to as the World Trade Organization. This amendment, which is a nonbinding resolution, states that it is the sense of the Senate that a joint Senate administration commission should be convened to perform a 90-day blue ribbon panel report on whether or not the World Trade Organization should be considered as a treaty rather than an Executive agreement. It also requests further hearings, both in Washington, DC, and in the field so that the ramifications of the World Trade Organization can be fully examined and understood.

Mr. President, let me be very clear. This amendment does not make the GATT agreement a dead-on-arrival agreement. It simply reflects, I think, the importance of the agreement and the need to fully understand the development of a new international organization prior to our country's acceptance of this agreement.

The World Trade Organization is not a minor change to the structure of the GATT. It creates an entity that is, to me, more than an international organization. Rather, it is a regime with powers that are structurally stronger than those of the United Nations.

Mr. President, when forming the United Nations, very special care was taken to ensure that the United States would have both veto power and a permanent seat on the Security Council. However, it is apparent that no such effort has been made with regard to the World Trade Organization. In the WTO, the United States could be outvoted by a small coalition of a handful of any given number of nations, regardless of their overall size, population, geographic size, their contribution to world trade itself, their funding contribution to the organization, or their commitment to fair trade and democracy.

The World Trade Organization would initially consist of a diverse coalition of 117 nations. Each member nation of the WTO, including the United States, would have one vote in resolving

trade disputes under the auspices of the two agreements, the GATT and the GATS.

The World Trade Organization would vote on amendments and interpretations of GATT provisions. Again, Mr. President, the United States would be only 1 of 117 votes. Therefore, we could easily be outvoted by Third World countries of the World Trade Organization, as often happens in the United Nations. We have the history of the United Nations to demonstrate that that can clearly occur.

Another point of frustration is that we will be paying 20 percent of the World Trade Organization budget with a voice behind it of only one vote. Under the GATT, as it currently exists, the United States has veto power and can block a panel decision by denying the necessary consensus to adopt the panel's decision. Consensus is also replaced in the World Trade Organization with the following agreements: A two-thirds vote to amend the World Trade Organization, a three-fourths vote to impose an amendment on parties and to adopt the interpretation of World Trade Organization provisions.

There have been previous attempts to establish a supranational body to cover trade relations and dispute settlements. In other words, Mr. President, this is not the first time these concerns and ideas have been expressed on the floor of the U.S. Senate.

There have been previous attempts to establish, as I mentioned, these supra-national organizations. The fear of granting broad authority over our trade rules to a mostly foreign entity led to the repeated rejection by the Senate of the International Trade Organization between 1947 and 1950, and a similar body known as the Organization for Trade Cooperation in 1955.

Under the interstate and foreign commerce clauses of the Constitution, States cannot discriminate against foreign businesses, including the application of State tax law. Therefore, under the GATT currently, the failure of a State to comply with these provisions would result in a U.S. court action where the parties involved would be able to receive fair and open redress of their complaints. The dispute settlement mechanism included in the Uruguay round agreement, on the other hand, would require such matters involving State tax policy and foreign businesses to be brought before the World Trade Organization itself.

It is my understanding, Mr. President, that the World Trade Organization dispute settlement panel can meet in secret and need not consider U.S. constitutional standards nor follow the constraints of U.S. jurisprudence. This is a serious concern, and it must be clarified before this agreement is brought to the Senate floor for ratification.

It is also my understanding that no individual U.S. State government is guaranteed representation on the World Trade Organization's dispute panel, and the United States cannot reject a World Trade Organization dispute panel mandate without facing foreign retaliation and trade penalties enforced by the World Trade Organization. This may be a worse case scenario, but if it is a scenario that could occur under the World Trade Organization, then that provision in the Uruguay round agreement must be changed.

In short, Mr. President, States rights must be protected at all costs.

We said it in 1947 in a similar debate. We said it again in 1955, and I would hope that the U.S. Senate would confirm the Thurmond amendment which would examine and clarify those most important issues.

Our Nation's Founders, in framing the Constitution, and in the development of our Federal system, never intended that a State relinquish the development and enforcement of its tax policy to a foreign entity like the World Trade Organization.

It is my understanding that many States have expressed serious concerns over these provisions of GATT and GATS.

A letter, signed by 42 attorneys general, including Idaho's Attorney General Larry Echohawk, expresses the concerns of our States. It also requests a summit with Federal officials to review States rights issues.

Mr. President, the attorneys general of the States of our Nation are now requesting of our Government that a similar summit be held, and this similar summit has been included in the Thurmond amendment we are now offering today.

Let me share with you, Mr. President, what this letter says, and I ask unanimous consent that the full text of the letter from the States Attorneys General be printed in the Record.

There being no objection, the letter was ordered to be printed in the **Record**, as follows:

STATE OF MAINE, DEPARTMENT OF THE ATTORNEY GENERAL,
Augusta, ME, July 6, 1994.

Hon. William J. Clinton,
President of the United States,
Washington, DC.

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Dear President Clinton: As defenders of State laws, State Attorneys General have a particularly keen interest in State sovereignty. The Uruguay Round of the General Agreement on Tariffs and Trade (GATT), which is to be submitted to Congress under fast-track authority soon, appears to have broad implications for State self-government. Given the paramount importance that the U.S. Constitution assigns to State's rights, we would like to request a State-Federal Consultation Summit on this issue, to be held in July or August, before the Administration submits implementing legislation. Although we have agreed to take the lead on this issue, because it affects all State officials, an invitation would be extended to State executive and legislative branches as well.

We are requesting a Summit to give State officials the benefit of a thorough airing of concerns about how the Uruguay Round and the proposed World Trade Organization (WTO) would affect State laws and regulations. Many State officials still have questions about how some of our State laws and regulations would fare under the WTO and its dispute resolution panels. This is of particular concern given that some of our trading partners have apparently identified specific State laws which they intend to challenge under the WTO .

As you know, the U.S. Trade Representative's Office (USTR) is charged with an interesting set of responsibilities. On one hand, its primary responsibility is to promote U.S. exports and international trade. Yet, on the other hand, the Trade Representative's Office is charged with the responsibility of protecting State sovereignty and defending any State law challenged in the various international dispute tribunals. Given the inevitable conflict in fulfilling both sets of

these responsibilities, we would like to take advantage of the proposed Summit to clarify a range of serious concerns, including:

Whether the implementing legislation adequately guarantees States that the federal government will genuinely consider accepting trade sanctions rather than pressuring States to change State laws which are successfully challenged in the WTO .

Whether States have a guaranteed right and a formalized process in which they can participate in defending their own State laws.

Whether the USTR is required to engage in regular consultation with the States, and involve any State whose measures may be challenged in the defense of that measure at the earliest possible opportunity.

Whether parties challenging a State measure under GATT will be able to prevail based on the fact that one State is simply more or less restrictive than another State's.

Whether GATT grants any private party a right of action to challenge a State law in federal court.

Whether an adverse WTO panel decision can be interpreted as the foreign policy of the United States without the subsequent ratification of the Congress and the President.

Whether GATT panel reports and any information submitted by the States to the USTR during the reservation process are admissible as evidence in any federal court proceeding.

Whether a panel decision purporting to overturn State law shall be implemented only prospectively.

Whether the federal government may sue a State and challenge a State measure under GATT without an adverse WTO panel decision.

How will adverse WTO panel decisions impact State laws covering pesticide residues, food quality, environmental policy including recycling, or consumer health safety, where State standards are more stringent than federal or international standards.

Whether so-called 'unitary taxation,' which assesses the State taxes corporations pay on the basis of a corporation's worldwide operations, be illegal under GATT.

Whether States may maintain public procurement laws that favor in-State business in bidding for public contracts.

How well protected is a State law if it is included within the coverage of U.S. reservations to new GATT agreements.

Whether the United States can import some due process guarantees into the WTO dispute resolution system, now that the negotiations are over, the WTO panel proceedings remain closed and documents confidential.

In responding to our request for this GATT Summit, please have staff contact Christine T.

Milliken, Executive Director and General Counsel of the National Association of Attorneys General, at (202) 434-8053. Although the Association has taken no formal position on this issue, the Association provides liaison service upon request when fifteen or more Attorneys General express an interest in a key subject.

Further, the Association through action at its recent Summer Meeting has instructed staff to develop in concert with the Office of U.S. Trade Representative an ongoing mechanism for consultation. The Association participates in several federal-state work groups, principally with the U.S. Department of Justice and also with the U.S. Environmental Protection Agency that might serve as a starting point for developing a model for an effective ongoing dialogue with the USTR on emerging issues in this key area.

Respectfully yours,

Michael E. Carpenter,
Attorney General of Maine.

The following attorneys general signed the letter:

Alabama: Jimmy Evans.

Alaska: Bruce M. Botelho.

Arizona: Grant Woods.

Colorado: Gale A. Norton.

Connecticut: Richard Blumenthal.

Delaware: Charles M. Oberly, III.

Florida: Robert A. Butterworth.

Hawaii: Robert A. Marks.

Idaho: Larry EchoHawk.

Illinois: Roland W. Burris.

Indiana: Pamela Fanning Carter.

Iowa: Bonnie J. Campbell.

Kansas: Robert T. Stephan.

Kentucky: Chris Gorman.

Maine: Michael Carpenter.

Maryland: J. Joseph Curran, Jr.

Massachusetts: Scott Harshbarger.
Michigan: Frank J. Kelley.
Minnesota: Hubert H. Humphrey, III.
Mississippi: Mike Moore.
Missouri: Jeremiah W. Nixon.
Montana: Joseph F. Mazurek.
Nevada: Frankie Sue Del Papa.
New Hampshire: Jeffrey R. Howard.
New Jersey: Deborah T. Poritz.
New Mexico: Tom Udall.
New York: G. Oliver Koppell.
North Carolina: Micheal F. Easley.
North Dakota: Heidi Heitkamp.
Northern Mariana Islands: Richard Weil.
Ohio: Lee Fisher.
Oregon: Theodore R. Kulongoski.
Pennsylvania: Ernest D. Preate, Jr.
Puerto Rico: Pedro R. Pierluisi.
Rhode Island: Jeffrey B. Pine.
South Carolina: T. Travis Medlock.
Tennessee: Charles W. Burson.
Texas: Dan Morales.
Utah: Jan Graham.
Vermont: Jeffrey L. Amestoy.
Virginia: James S. Gilmore, III.

Washington: Christine O. Gregoire.

West Virginia: Darrell V. McGraw, Jr.

Wyoming: Joseph B. Meyer.

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