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Testimony of

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BEFORE THE U.S. HOUSE COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON TRADE

HEARING ON THE OPERATION, IMPACT,
AND FUTURE OF THE U.S. PREFERENCE PROGRAMS

NOVEMBER 17, 2009

INTRODUCTION

Chairman Levin and members of the subcommittee, on behalf of the Sierra Club's 1.3 million members and supporters, I want to thank you for this opportunity to address the critical issue of environment, development and trade in the context of the review of U.S. trade preference policy.

My name is Margrete Strand Rangnes, and I direct the Sierra Club's Responsible Trade Program. I am here primarily as a representative of the Sierra Club, but I am also speaking on behalf of a broad array of organizations, including the Center for Biological Diversity, the Center for International Environmental Law, Defenders of Wildlife, Demos, Environmental Investigation Agency and Friends of the Earth.

The United States has long granted trade preferences to developing countries that meet various criteria. These criteria, which are stipulated by the Generalized System of Preferences (GSP), have changed with time—reflecting U.S. economic and foreign policy priorities. While the criteria include non-support for terrorism, enforcement of intellectual property rights, and respect for internationally recognized worker rights, the GSP does not include environmental criteria. With the current U.S. GSP program set to expire at the end of December and environmental issues taking on growing urgency, now is the time to correct that omission.

Trade policy is one means by which the United States expresses its values and advances both foreign and domestic policy goals. The evolution of the GSP criteria has reflected this and revising the GSP to include environmental criteria would be consistent with the law's history and intent. The stated purpose of the GSP is to promote economic growth in the developing world. Environmental sustainability underlies economic growth and development. As we discuss U.S. trade preference policy, the world faces the interwoven challenges of

alleviating extreme poverty and protecting our natural environment. Achieving these goals in unison is the only way to improve human development while ensuring the continued prosperity of future generations.

This hearing could not be more well-timed; in just a few weeks, world leaders will gather in Copenhagen, Denmark, to address the critical issue of global climate change. The science is clear. Climate change is happening, and those hit hardest are those who are least responsible for causing it—the developing world. The question now is whether we can avoid planetary tipping points that once crossed, will lead to catastrophic impacts for all nations. While there is no silver bullet that offers a simple and immediate fix to these challenges, amending the GSP to include environmental criteria is one of the tools we have available. Preserving the planet's ecosystem is becoming a primary domestic and global priority for the United States. Trade policies must be updated to reflect this goal.

Positive changes are already under way. Recent bilateral U.S. trade agreements have included progressively stronger environmental provisions, and I want to thank Chairman Levin and members of this committee for their leadership on this front. The intent of these provisions is not simply to strengthen environmental protections by U.S. trading partners, but also to reassure American citizens and workers that these partners are not cutting ecological corners as they compete with the United States. Moreover, such provisions provide important leverage for environmentalists in developing countries as they fight entrenched interests. However, since bilateral trade agreements cover only a limited number of countries, including environmental criteria in the GSP would greatly reinforce the ways that trade policy supports the U.S.'s environmental goals.

A BACKDROP OF ENVIRONMENTAL CRISES

A quick snapshot of the state of the global environment tells a rather grim story of which climate change is only one aspect. We are facing a collision of environmental crises ranging from alarming rates of biodiversity loss, to vanishing fresh water supplies, to pervasive chemical pollution. The combination of these crises has led scientists to warn of planetary boundaries that, if passed, will cause irrevocable harm to both the developing and developed world. Sadly, today it is the developing world that is at risk for suffering the greatest harm.

The world water crisis is one of the largest public health issues of our time. According to the World Health Organization, nearly 1.1 billion people (roughly 20 percent of the world's population) lack access to safe drinking water, which in turn is estimated to kill almost 4,500 children per day. In fact, the World Health Organization reports that out of the 2.2 million unsafe drinking water deaths in 2004, 90 percent were children under the age of five, nearly all in the developing world. The current rate of species extinction is hundreds of times higher than the natural rate of extinction.¹ If climate change continues unchecked, the Intergovernmental Panel on Climate Change predicts we are likely to lose another 30 percent of remaining species, primarily in tropical countries in the developing world. Finally, the World Resources Institute estimates that more than 80 percent of the Earth's natural forests have already been destroyed, a natural resource upon which the developing world is heavily dependent.

Climate change is also an economic development issue since it is projected to reduce gross domestic product by up to 10 percent in the developing world, greatly reducing the ability of countries to respond to these monumental challenges.² In order to minimize the worst impacts of climate change, we must take action now. We must use all tools available to us, including the access to our markets we grant through preference programs and trade agreements.

A country example of how climate change and resulting environmental threats can impact development, can be found in the Niger Delta, which spans more than 20,000 square kilometers and is home to approximately

25 percent of Nigeria's population, diverse plant and animal species, and natural resources.³ Niger Delta inhabitants rely heavily on economic activities closely tied to the vitality of their environment, such as fishing, farming and trading.⁴ These resources and economic activities are threatened by a myriad of impacts caused by rising sea levels brought on by climate change. It is projected that nearly 15,000 square kilometers of land in the Niger Delta could be lost over the course of the next century if there is a one meter rise in sea level.⁵ Rising sea levels are already causing coastal flooding and erosion, damage to coastal vegetation such as mangroves, and saltwater intrusion of freshwater water supplies, all of which could lead to the forceful relocation of nearly 80 percent of the Niger Delta population.⁶

Uganda provides another example of the impacts of climate change and development. Uganda relies heavily on the water resources of Lake Victoria's basin; however, lake levels have decreased due to high evaporation rates.⁷ Of particular concern is the impact of low water levels on hydroelectric power in Uganda, which is "central to the economic prosperity" of the country.⁸ Uganda recently invested over \$260 million in the Nalubale/Owen Falls and Kiira Dams to produce upwards of 380 MW of electricity; however, low water levels have led to power generation far short of predicted numbers—a mere 120 MW.⁹ Such low levels of power generation have resulted in a situation where the dams cannot provide enough electricity for domestic and industrial needs, leading to increased electricity costs for a population of people where more than 37 percent live below the poverty line.¹⁰ These higher costs have "restrict[ed] access" and "affect[ed] the well being and economic activities" of the Ugandan people.¹¹

THE PROPOSAL FOR INCLUDING ENVIRONMENTAL PROVISIONS IN GSP

Substantive Provisions

In the absence of a set of internationally agreed upon environmental standards (akin to the internationally recognized worker rights standards currently included as a criterion in the U.S. GSP program), ratification and implementation of Multilateral Environmental Agreements (MEA) that the United States has also ratified and implemented can be used as a bench mark. While some MEAs are regional in scope, a number of global MEAs are signed by a majority of countries, including our GSP partners. MEAs aim to protect the very fabric of the planet's ecology and address different dimensions of our urgent environmental challenges; they deal with 3 issues ranging from climate change and protection of the ozone layer to protection of endangered species.

An example of a critical MEA can be seen in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which aims to ensure that international trade in specimens of wild animals and plants does not threaten their survival.

Wildlife trade is a booming global activity which generates significant income for numerous local, regional, national and international communities. Illegal wildlife poaching and resultant international trade is also a massive and destructive activity, ranking behind only drug and human trafficking and ahead of arms in annual value.¹² Recognition that the extinction of valuable plant and animal species from the wild would represent both a natural tragedy and an economic travesty—both for resource-dependent communities and commercial traders—led to the ratification of CITES. The Convention requires countries to base decisions about commercial trade in such species on rational, scientific criteria, and creates mechanisms so that countries struggling to reduce trafficking and poaching crimes receive support from their trading partners. Implementation of CITES requirements on a national level requires strengthened natural resource and enforcement institutions.

A prime example of CITES' positive impact on development in poor nations can be seen in Africa, where the international community's agreement through CITES to reduce or end commercial trade in elephants (1989) allowed populations that were crashing towards disappearance from over-hunting for ivory to rebound to healthy levels today. This action, within a short time, cut off huge amounts of corrupt payment that weakened governments throughout sub-Saharan Africa; helped to simplify and improve enforcement activities; protected the broader ecosystems around elephant populations, and paved the way for massive increases in tourism revenue and associated local employment. Tanzania's 2008 tourism income, for example, was over \$1 billion dollars, and is centered on the wildlife in its national parks.¹³

Many countries ratify MEAs but do not successfully implement them. The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which includes 175 countries and which aims to ensure that international trade in specimens of wild animals and plants does not threaten their survival, provides one example. The CITES "National Legislation Project" shows that 51 of the countries currently in the GSP program are within Category 1 or 2, lacking or with inadequate national implementation. Including compliance with MEAs as an environmental criterion in the GSP will provide increased incentive for countries to implement MEAs. Furthermore, the United States should provide adequate technical and capacity building assistance as well as financial assistance for countries that are currently unable to bring themselves into compliance. This support can be effectively channeled through the institutional structures established in the MEAs, as well as through the capacity-building initiatives of the UN Environment Programme.

Countries may have national laws that accomplish similar levels of protection as the MEAs. Essentially, beneficiary countries should either be a party to MEAs or have enacted domestic legislation that provides similar protections of the same form. Furthermore, the revised GSP statute should also require countries to effectively enforce their domestic environmental laws.

Process and Implementation

The eligibility criteria of the GSP, such as in the area of labor standards, are currently enforced through a petition system. That is, any person can petition the United States government to remove the trade preferences granted to a Beneficiary Developing Country (BDC) based on its violation of GSP criteria. Every year, eligibility issues are reviewed by the Trade Policy Staff Committee (TPSC) during the Annual GSP Product and Country Eligibility Review. The TPSC is made up of trade practices experts from 19 different government agencies, including departments related to environmental standards (i.e. the Council on Environmental Quality, Department of Agriculture, Department of Energy, and Environmental Protection Agency). The inclusion of these departments as members of the TPSC means that it is in a good position to judge the relevance of potential environmental petitions, and adequately assess the eligibility of countries in this area.

A number of improvements can further enhance the petition process, making it more accessible and transparent. There should be more frequent opportunities for the submission of petitions, rather than in limited filing windows as is currently the case. Furthermore, clear timelines should be established for the review and investigation processes. Another important reform is the acceptance of both country and sector-based petitions. That is, environmental standards that are being broken in one sector should not necessarily mean that the entire country loses its GSP privileges. Limitation or suspension of GSP privileges should be applicable by sector as well as by country. Finally, countries found in violation of environmental criteria should have the opportunity to develop a National Plan of Action rather than suffer the loss of preferences. All final decisions should be in writing and be made public.

Including environmental standards in the GSP Program, and thus bringing MEAs into the petition system will help to promote and enforce compliance with those agreements by empowering a range of actors to draw attention to compliance failures. This is especially helpful for countries that may need additional outside assistance in enforcing their environmental laws. Often, there is desire to comply with these agreements, but limited capacity to do so. The United States should work with countries that are named in petitions to establish National Plans of Action and help bring them into compliance with the GSP criteria.

What will happen to countries that are currently granted GSP preferences but do not meet the new environmental standards?

The objective of preference programs is to expand trade and enhance development. Thus, including environmental criteria in the GSP is not intended to lead to the exclusion of beneficiary countries from preferential treatment. Rather, eligibility criteria are meant as a way to help ensure that expanded trade can actually promote sustainable development, instead of provoking a race to the bottom through weak and unenforced labor and environmental standards. The ultimate aim of these new standards is to help improve environmental conditions in developing countries while still helping them to expand trade.

A phase-in period should be established during which countries that received GSP benefits prior to the revised environmental criteria going into effect would be allowed a set period of time during which they must bring their actions into accordance with those standards. This transition phase should include capacity building, technical support and financial assistance.

Least developed countries should be allowed more time to come into compliance with the new standards. Failure to comply with the environmental criteria will be examined on a case by case basis. The United States (through the TPSC) should work with these countries to develop National Plans of Action, and provide financial assistance if necessary to assist in reaching environmental standards. LDCs that work with the United States to develop these National Plans of Action and then work to implement them should continue to be granted GSP preferences.

How will developing countries meet the costs associated with compliance with environmental standards?

The initial phase-in period should be accompanied by adequate technical and capacity building assistance, as well as financial assistance for countries that are unable to bring themselves into compliance with the new environmental criteria.

Furthermore, a number of the major multilateral environmental agreements are supported by financial mechanisms through the agreement themselves. That is, developing countries are afforded financial assistance to meet compliance standards when they sign/ratify the treaty itself. For example, as part of the Montreal Protocol, a Multilateral Fund was set up to assist developing countries whose annual per capita consumption and production of ozone depleting substances (ODS) is less than 0.3 kg to comply with the control measures of the Protocol. Currently, 146 of the 194 Parties to the Montreal Protocol meet these criteria. The fund is financed by 49 industrialized countries (including some countries with economies in transition).¹⁴ The Global Environmental Facility (GEF) provides funding for developing nations to meet their obligations under the Stockholm Convention, Convention on Biological Diversity, Cartagena Protocol on Biosafety and the UN

Framework on Climate Change Convention.¹⁵ CITES largely relies on funding from governments, international agencies and the private sector, but generally does not provide substantial assistance for developing nations.

Countries that make reasonable strides towards compliance but cannot realistically be expected to meet the environmental standards without additional financial assistance (beyond that which is provided through the individual agreement), should be provided a grace period during which they will be given provisional preferential treatment.

Coordination with Other GSP Granting Nations

The United States should not be alone in requiring environmental standards to be met as a condition for GSP eligibility. A multilateral effort would not only be much more effective, but it would also send a strong message that maintaining the integrity of the environment is a vital component of development and needs to be more adequately addressed. There are currently 13 national GSP schemes in place according to the UNCTAD secretariat. The following countries grant GSP preferences: Australia, Belarus, Bulgaria, Canada, Estonia, the European Union, Japan, New Zealand, Norway, the Russian Federation, Switzerland, Turkey and the United States of America. Only the European Union's GSP + program currently include environmental criteria.

CONCLUSION

The U.S. GSP is set to expire on December 31, 2009. This means that unless Congress passes legislation to renew it, the U.S. Customs and Border Protection will begin to collect duties on imports from GSP countries on January 1, 2010. Ideally, Congress would renew the GSP program with these additional environmental standards before the legislation expires at the end of this year. However, more often than not the GSP has been allowed to expire and then is later renewed retroactively. This places developing countries at a huge financial disadvantage, especially in light of the current economic downturn. If the GSP is allowed to expire, BDCs will be forced to pay customs duties on exports to the United States starting January 1, 2010. Although these funds would be returned retroactively when the program is ultimately renewed, this places a large financial burden on firms in these poor countries. Uncertainty about the renewal of GSP can have the effect of discouraging its use because it makes sourcing plans uncertain and potentially costly. Furthermore, while exporters may be reimbursed for the duties accrued, American consumers are not reimbursed for the higher costs of imported goods.

It is time to revisit U.S. trade preference policy to create an avenue for increasing environmental protection and thus sustainable development. The climate change crisis has highlighted the need for the international community to work together on environmental issues; this coordination must extend into the trade arena. This moment of crisis provides an opportunity to rethink patterns of growth, ways of measuring progress, and the means to build more resilient systems. Environmental sustainability underpins economic growth and development. If development is to be sustainable, economy, society and the environment must be interconnected in ways which are mutually reinforcing.

We look forward to working with this Committee and the U.S. Congress to include meaningful and binding environmental criteria in U.S. trade preference policy.

ENDNOTES

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