

Prepared Statement of Rodger Schlickeisen, President of Defenders of Wildlife  
concerning the U.S.-Jordan Free Trade Agreement

delivered to the

United States Senate Committee on Finance

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Thank you, Mr. Chairman and Senator Baucus, for inviting me to testify on an issue that is very important for my organization and the more than 430,000 members and supporters we represent.

Defenders of Wildlife is a national, not-for-profit organization dedicated to the protection of wild animals and plants in their natural communities. We focus our programs on what scientists consider two of the most serious environmental threats to the planet: the accelerating rate of extinction of species and the associated loss of biological diversity, and habitat alteration and destruction. Because we have long recognized that trade can both contribute to and help alleviate these threats, Defenders has worked for more than a decade now to encourage trade rules that are consistent with sound environmental policy. Our work in this field is premised on the belief that trade agreements are merely a means to an end, they are not an end in themselves. The real value of any trade agreement is determined not by whether it leads to increased trade, but by whether it leads to better living conditions, and a cleaner environment, for the people of the United States—or the people of the Western Hemisphere, or of the World, for that matter.

It was with an eye to this principle that Defenders of Wildlife provided input last fall to the negotiations of the United States-Jordan Free Trade Agreement. And it is in light of this principle that we view the outcome of those negotiations. From an environmental perspective, that outcome represents a small but significant step toward sustainability. We urge you to support that step.

Before I explain the reasons for our support, I wish to make clear that the Jordan FTA is far from perfect in reflecting and responding to environmental concerns. In fact, there are very significant weaknesses in the agreement. To give but a few examples:

• The U.S. and Jordan recognize in the FTA "that it is inappropriate to encourage trade by relaxing domestic environmental laws." (Art. 5 (1)). But the FTA does not prohibit the Parties from doing so; instead, it simply urges the Parties to "strive to ensure" that their standards are maintained.

• In a similar vein, the Jordan FTA expressly declares that a Party to the agreement "shall not fail to effectively enforce its environmental laws." (Art. 5(3)). This is an eminently sensible provision and one environmentalists have long sought, but the "rule" set out in Article 5, paragraph 3 is subject to so many caveats and exceptions that, in reality, it is hard to imagine any circumstance egregious enough to constitute a "violation" of the rule.

ÿ The Jordan FTA recognizes the right of Parties not to issue patents for inventions that may threaten animal or plant life or health or prejudice the environment. At the same time, however, it forbids either Party from denying a patent for an invention "merely because the exploitation [of the invention] is prohibited by their law." (Art. 4(18)) This creates the nonsensical result that a species might be protected from commercial exploitation under the Endangered Species Act but nonetheless subject to patenting under this agreement.

ÿ Finally, the Jordan FTA includes a savings provision which expressly provides that the Parties' rights and obligations under the WTO supersede those under the FTA. (Art. 1(3)) But it makes no mention of the relationship between the FTA and other treaties, such as multilateral environmental agreements, to which the U.S. and Jordan may be Parties. Thus, it leaves unresolved one of the most persistent issues in the trade and environment debate—what happens when a Parties' obligations under an environmental treaty conflict with its obligations under a trade agreement?

In light of all these concerns, you might wonder why I am here to offer Defenders' support to the Jordan FTA. The answer is simple: as meager as it may be, the Jordan FTA represents an important step forward in our efforts to reconcile trade and environmental policy. This agreement should not be a model for future negotiations; but it is most certainly a building block. There are important developments both in the process and the substance of the agreement that make it worthy of support.

ÿ First and foremost is the fact that this agreement represents a cooperative effort between two very different countries on a very difficult issue. The United States and Jordan are separated by vast cultural, economic and technological divides. Yet they were able to bridge these divides in this agreement, establish some common (if modest) goals for sustainable development, and adopt concrete measures to advance toward those goals. This is a tremendous symbolic victory and a powerful demonstration that the gaps that separate North and South, industrialized and developing countries, can be overcome.

ÿ Although the provisions in the Jordan FTA on maintaining and enforcing high environmental standards do not go far enough, they are nonetheless important. They reflect a recognition by both Parties of the important principle that environmental standards should never be reduced or waived in pursuit of trade objectives. This is a principle we have been struggling to resurrect since it was first acknowledged in the NAFTA package.

ÿ The Jordan FTA encourages both Parties to "strive for continual improvement" in their environmental laws. (Art. 5(2)) To this end, it establishes a truly cooperative process for environmental protection. In an Annex to the agreement, the Parties have identified "Selected Environmental Technical Cooperation Programs" on which they can cooperate to improve the Jordanian environment and the lives of the Jordanian people. These programs include joint efforts to protect water resources and improve water resource management; improve the management of solid and hazardous wastes; strengthen Jordan's environmental laws and regulations; improve Jordan's capacity to conduct environmental impact assessments; and help safeguard important nature reserves and protected areas in Jordan, as well as the country's fragile and threatened coral reef ecosystems. Properly implemented and properly supported, this cooperative program could have

tremendous benefits for Jordan and could contribute significantly to improving U.S. relations with the Arab world.

ÿ The Jordan FTA establishes a Joint Committee process for "reviewing the results of this Agreement in light of the experience gained . . . and considering ways of improving trade relations between the Parties, and furthering the objectives of the Agreement, including through further cooperation and assistance." (Art. 15(2)) The FTA makes clear that the Joint Committee may "seek the advice of non-governmental persons or groups" in developing guidelines, explanatory materials and rules under the Agreement. This formal recognition of a role for NGOs is a significant step forward in increasing public participation and improving transparency in trade agreements.

ÿ Perhaps most importantly, the Jordan FTA is the first trade agreement to include a Memorandum of Understanding expressly providing for public participation and transparency in the dispute resolution process. Specifically, the MOU requires parties to "solicit and consider the views of members of their respective publics" promptly after receiving a request for consultations under the Agreement. In the event that a dispute is referred to a dispute resolution panel, Parties must make their submissions to that panel available to the public in a timely manner. Moreover, the MOU requires that at least a portion of every hearing be open to the public. Finally, each panel must accept and consider *amicus curiae* submissions by NGOs or other members of the public. For the first time, therefore, the public's right to receive information on ongoing disputes and provide input to the dispute resolution process is explicitly recognized.

Each of these provisions represents a small but important improvement over the status quo. Together, they represent a significant step forward in the development of the trade and environment dialogue, and bring us one step closer to successfully reconciling the often competing policies underlying that dialogue. We do not believe that the Jordan FTA should become a model for future trade agreements. Nonetheless, it will serve as an important building block for future cooperation across geographic and ideological lines. Adopting the Jordan FTA will not have a substantial affect on U.S. trade flows. But it could prove an important milestone in U.S. trade policy.

For this reason, we offer our support for the agreement, and ask that you support it.

Thank you.