



# Committee On Finance

Max Baucus, Ranking Member

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## NEWS RELEASE

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### **Floor Statement of Senator Max Baucus The Finance Committee and Trade Agreements**

**(WASHINGTON, D.C.)** U.S. Senator Max Baucus issued the following statement regarding the Senate Finance Committee's role in crafting trade agreements during today's Senate debate. The floor statement follows:

"Mr. President, I rise to address the value of free trade, and of the process by which we get it. From ancient times, people have learned that trade among nations means more economic growth and higher incomes. People have better standards of living, thanks to trade.

Free trade allows each nation to devote more resources and energy to those things for which it has a comparative advantage. Partners to free trade thereby get goods and services at lower cost than they would in isolation.

Conversely, protectionism stunts growth and reduces income. Tariffs are taxes. And like other taxes, they can impede the efficient allocation of resources. Where nations impose quotas and tariffs, goods and services cost more. People live less well than they would with free trade.

But you don't have to take my word for it. Look at the record. Take America's two biggest recent trade agreements.

America entered into the North American Free Trade Agreement – NAFTA – in 1993, and the Uruguay Round Agreements – the WTO – in 1994. And in the years following those major trade agreements, America experienced one of its strongest economic expansions. Yes, balancing the budget and funding education also had something to do with it. But trade helped.

America experienced 8 years of economic growth. The America economy created more than 20 million new jobs. The average household's real income rose 15 percent. Americans' standard of living improved.

Put the other way around: The opponents of free trade have a difficult job to explain how those major trade agreements hurt the American economy in the 1990s.

And so, I am a proud advocate of trade. I am an advocate of stronger economic growth and higher incomes. I want a better standard of living for Americans.

So, how can we achieve freer trade? How do we lower barriers to trade? That brings us to a discussion of trade procedures.

Mr. President, the Senate considers trade agreements under somewhat unique procedures. These special procedures go by several names: fast-track, trade negotiating authority, or trade promotion authority.

Under these procedures, legislation to implement a trade agreement gets an up-or-down vote within a limited time. Debate is limited to 20 hours. No amendments. No filibusters.

The Senate is about to consider legislation under these procedures to implement the United States-Australia Free Trade Agreement. We may also soon consider legislation under these procedures to implement the United States-Morocco Free Trade Agreement.

Two other agreements – with six Central American countries and Bahrain – are signed and ready for us to consider whenever the administration chooses to move them. With so much trade activity, it is a good time to review the applicable procedures.

It all begins with the Constitution. Article I, section 8, clause 3 says that: “The Congress shall have the power . . . to regulate Commerce with foreign Nations.” Since the founding of our Country, it is, and has always been, Congress that holds primary responsibility for trade.

Now, 535 members of Congress can not negotiate trade agreements. The logistics are unimaginable. So our predecessors figured out fairly early that the actual negotiating would have to be delegated to the executive branch.

But that does not mean that Congress has delegated its Constitutional responsibilities. To the contrary, under United States law no trade agreement is self-executing. It has no effect on domestic law until Congress passes implementing legislation.

A system where one branch of Government negotiates trade agreements and another must accept them and turn them into domestic law presents challenges.

The system worked well enough in the early days of the General Agreement on Tariffs and Trade. Back then, the executive branch was negotiating agreements to reduce tariffs. Congress would delegate authority to the President to agree to cuts within a specific range. All the President had to do was proclaim those changes once agreed to.

In the 1960s, however, the United States and its trading partners in the GATT began to expand the scope of trade negotiations to non-tariff measures. Without any advance authorization from Congress, the administration negotiated several deals on non-tariff measures in the GATT’s Kennedy Round.

It brought those agreements back to Congress. Congress rejected the agreements, refusing to implement them into domestic law. This embarrassed the administration. And it frustrated our trading partners. They learned that negotiating with the executive branch is not enough. The final word lies with Congress.

Our trading partners became wary. They didn’t want to devote years of effort to another round of trade negotiations in the GATT if American negotiators could not keep the promises they made. The executive branch wanted advance authorization from Congress to negotiate non-tariff trade agreements.

The administration proposed treating tariff and non-tariff agreements the same. The executive branch said: Congress should simply authorize the President in advance to negotiate and implement the deals that the President makes.

The Finance Committee resisted. Yes, tariff deals are easy to approve in advance. All Congress has to do for a tariff deal is to tell the Executive how low the negotiators can go.

But non-tariff deals are more complicated. They can cover things like Customs rules, trade remedies, food safety rules, and intellectual property rights. It would be too difficult for Congress to approve parameters for these kinds of agreements in advance. Congress would want to see the details before deciding to approve and implement these deals.

Congress and the President reached a compromise and enacted it in the Trade Act of 1974. That Act created the so-called “fast-track” process. Fast-track has something for everyone. It gives the Executive express authority to negotiate tariff and non-tariff agreements, so long as our trade representatives meet general negotiating objectives set out by Congress. And it guarantees our trade partners that any agreement will receive an up-or-down vote by a date certain. That way, when they negotiate with the United States, they know that Congress cannot later amend the agreement or kill it with a filibuster.

But, most importantly, fast-track preserves Congress’s Constitutional primacy on trade. No agreement gets implemented unless a majority of Congress approves. Fast-track procedures require close collaboration between the Executive and Congress at every stage. The President must notify committees of jurisdiction and consult with them before a negotiation begins and regularly throughout the negotiations. Once talks are complete, the President must notify Congress 90 days before signing the agreement, to permit Congress time to review the terms of the deal.

Once the agreement is signed, the President must submit it to Congress, along with a draft implementing bill, for approval. Congress has no more than 90 days in which the Congress is in session to act. And amendments are not in order.

But the time when close coordination between the Executive and Congress is most critical is the period between when the agreement is signed and when the President submits the agreement to Congress.

This is the time when the administration and the trade committees sit down together to craft an implementing bill. The law requires the Executive to consult with the committees of jurisdiction. But because the details of this consultative process are not spelled out by law, some call this stage the “informal process” or the “mock process.”

No one should be fooled by these titles. This cooperative drafting venture -- while not spelled out in the law -- is the centerpiece of the fast-track process.

It is at this stage -- before the implementing bill becomes unamendable -- that the trade committees can weigh in and bring their own ideas to the table.

Congress and the President first used the procedures adopted in the Trade Act of 1974 to implement the GATT Tokyo Round agreements in 1979. The Government has since used these procedures to implement the WTO Uruguay Round Agreements, as well as free trade agreements with Israel, Canada, Mexico, Singapore, and Chile.

From the beginning, the Finance Committee has strived to make the informal process operate as much as possible like the normal legislative process.

For that reason, the Finance Committee always holds a mock markup of the draft implementing bill. Like any markup, this event is open to the public. And Members are free to offer amendments to the draft bill that has been developed by the administration and Committee staff.

The Committee holds a recorded vote on each amendment offered. It then votes on whether to approve the draft bill, as amended, in a recorded vote.

Amendments are common events at mock markups.

- When the Committee considered the United States-Israel Free Trade Agreement in 1984, Committee Members offered 13 amendments, and the Committee adopted 3.

- In 1988, when the Committee considered the Canada-United States Free Trade Agreement, Members offered 9 amendments, all of which were adopted.
- When the Finance Committee considered draft implementing legislation for the North American Free Trade Agreement in 1993, members offered at least 15 amendments, of which 14 were adopted. There were more than thirty differences between the Senate and House versions of the bill at the end of the mock markups.
- By contrast, no amendments were offered last year when the Committee considered the Singapore and Chile implementing bills. That was unusual.

In each of these cases, consideration of amendments was followed by a Committee vote to approve the draft bill, as amended.

In every case except Singapore and Chile, amendments added in the mock markup led to differences between the versions of the draft bill approved by the Finance Committee and the bill approved by the Ways and Means Committee.

Consistent with normal legislative practice, the two Committees resolved these differences in an informal or “mock” conference. Each House appointed Conferees to participate.

To begin the conference process, staff from both parties and both Houses jointly prepared a document identifying all the differences between the two versions of the draft bill. Where agreement was possible, staff recommended a resolution.

Typically, the House and Senate exchanged offers on more difficult issues, which were then resolved at the Member level. In each case, Members and staff were able to resolve all or virtually all conflicts. Both Committees could then recommend identical draft bills to the administration for formal submission.

This time-tested process really works. It allows Congress to exercise its Constitutional prerogatives in full, while still guaranteeing the President and our trading partners a timely vote on trade agreements.

Although these informal procedures are not statutory, they were certainly on my mind when I worked to secure a renewal of the President’s trade negotiating authority in the Trade Act of 2002. I firmly believe that Congress should continue to insist on a meaningful and robust informal process.

One of the keys to a meaningful informal process is time. In the case of the U.S.-Canada Free Trade Agreement, the informal process took 7 months. That is how much time elapsed between when the U.S. signed the agreement and when the President formally submitted the implementing bill to Congress. During that time, the Finance Committee held hearings, conducted several weeks of informal drafting, and held four mock markup sessions. The informal conference alone included 3 days of Member-level meetings and took close to 2 months to complete.

The informal process for NAFTA lasted a full year. It included five hearings in the Finance Committee as well as hearings in five other Committees. The Finance Committee staff worked with the administration for months on legislative drafting. The Finance Committee’s markup involved 3 sessions over 2 weeks, followed by a conference. The informal process for the Uruguay Round Agreements Act took about 9 months. The Singapore and Chile FTAs took

less time. That makes sense. The agreements required many fewer changes to U.S. law than those that came before.

After walking through the draft bills in detail with the administration, with Committee staff, and with legislative counsel, Members were satisfied. They chose not to offer any amendments at the mock markups. No conference was necessary.

Affording sufficient time to the process pays off. After the President formally submits an implementing bill, the fast-track procedures allow Congress up to 90 days to complete action. That is 90 days on which Congress is in session – not calendar days.

But nowhere near that much time has ever been used. The formal process took 56 calendar days for the U.S.-Canada Agreement -- including the August recess. NAFTA, Singapore, and Chile took a mere 16 days each. What lesson can we learn from all this experience? Process matters.

Congress needs to be engaged throughout the negotiations. The trade committees need to play an active role in drafting implementing legislation. Committee Members need to have enough time to give meaningful consideration to amendments and to resolve any differences between the Houses before the Government completes an implementing bill. When that happens, the formal fast-track process goes quite smoothly.

What does this mean for the future? First, we should not get overconfident. Just because the process works smoothly and quickly for some agreements, like Singapore and Chile, doesn't mean we can start skipping steps. In fact, with a vote on whether to extend the President's trade promotion authority for an additional 2 years possible next summer, now is no time to get sloppy.

More complex agreements may be ahead. CAFTA involves six countries and could raise controversial new issues. Any agreements that come out of the WTO Doha Round or the FTAA talks could require extensive new implementing legislation. In sum, we would be foolish to assume the process of developing implementing bills will always be as easy in future as our recent experience with Singapore and Chile.

Second, timing should always be Member-driven. Members should have the time that they need to review the relevant materials and participate in the informal process. We should never cut that time short just to meet artificial deadlines.

When we shortchange the process, we shortchange the Constitution. When we start cutting corners on process, we begin to abdicate Congress's constitutional role in making trade law.

A good agreement is no excuse for bad process. A good agreement is no excuse for Congress to surrender its Constitutional role. The ends do not justify the means.

Mr. President, let us work together to advance the process of free trade. Let us ensure a fair process for reaching our trade agreements, and thereby make future trade agreements easier to achieve. And by advancing those agreements, let us work together to earn those benefits of free trade – of greater economic growth and higher standards of living – for generations of Americans yet to come.”

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