



Committee On Finance

Max Baucus, Chairman

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**Statement of Senate Finance Committee Chairman Max Baucus
July 26, 2001 Markup**

Today, the Committee continues its markup of S. 643, the implementing bill for the U.S.-Jordan Free Trade Agreement. Last Tuesday, the Committee adopted the Baucus substitute, which makes various technical changes. The Committee also defeated the Gramm amendment number 2. Much of the debate last week focused on the provisions of the Agreement regarding labor rights and the environment. To help frame today's discussion, I wanted to begin with a recap of the actual provisions of the U.S.-Jordan Agreement.

First and foremost, the Agreement relies upon a largely consultative dispute settlement process, not a binding system as is present in some other trade agreements. If the trade ministers of the United States and Jordan are unable to resolve a dispute within 150 days, either side may request that a three person panel be established to consider the dispute. Each party will name one of the panelists and those panelists will choose the third. The panel then has 90 days to consider the dispute and release its conclusion. The panel's conclusions are nonbinding and have no automatic force of law. Let me repeat, the panel's conclusions are non-binding and can in no way change U.S. or Jordanian law.

If the panel's decision does not result in resolution of the dispute, the prevailing party is entitled to take "appropriate and commensurate" actions. This does not necessarily mean trade sanctions; many different types of actions might be deemed "appropriate and commensurate." A virtually identical provision in the U.S.-Israel agreement has not resulted in the imposition of sanctions even once in eighteen years of operation. Considering the strong and cooperative relationship between the United States and Jordan, I would fully expect a similar result from the U.S.-Jordan FTA.

The provisions regarding labor and the environment are found in Articles 5 and 6. Because these provisions are quite similar, I will address my analysis here only to Article 5, but the same points all apply to Article 6. I have had a copy of Article 5 placed at the desk of each Committee Member for their reference. Article 5.1 states: "The parties recognize that it is inappropriate to encourage trade by relaxing domestic environmental laws. Accordingly, each party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or

otherwise derogate from, such laws as an encouragement to trade with the other party.”

Essentially this calls on both the U.S. and Jordan to refrain from changing their environmental laws in order to encourage trade with each other. Frankly, I do not believe we should sign a trade agreement with a country that would weaken its environmental laws to distort trade with the United States, nor do I believe we should ever take such a step ourselves. Beyond that, the provision calls on both countries to “strive” for this goal, not necessarily to achieve it. Further, it applies only to measures taken “as an encouragement to trade with the other party,” not to all environmental law changes.

At the last session, some argued this could prevent the United States from opening ANWR to oil drilling. First, I want to note that I and many of my colleagues would steadfastly oppose such a step. But as this brief analysis demonstrates, if the United States chose to take it, the U.S.-Jordan agreement would not come into play. In this regard Article 5.2 continues: “Recognizing the right of each party to establish its own levels of domestic environmental protection and environmental development policies and priorities. . . .” Clearly, this phrase explicitly recognizes the right of both parties to amend their laws as they see fit.

On the issue of enforcement of current laws, Article 5.2(a) does go on to state: “A party shall not fail to effectively enforce its environmental laws. . . .” But Article 5.2(b) specifically notes in this connection: “The parties recognize that each Party retains the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other environmental matters determined to have higher priorities. Accordingly, the Parties understand that a Party is in compliance with subparagraph (a) where a course of action or inaction reflects a reasonable exercise of such discretion, or results from a bona fide decision regarding the allocation of resources.”

In my view, Article 5.2(a) does appropriately oblige both the United States and Jordan to refrain from systematically not enforcing their environmental laws to affect trade with each other. This is appropriate. That said, the prospect that the agreement would prevent the United States from allowing cities some flexibility in meeting Clean Air Act standards is simply beyond the pale. I am an author of the Clean Air Act and want to see it enforced, but flexibility is established in the enforcement regime, and Article 5.2(b) clearly allows the United States to exercise such discretion – or any reasonable degree of discretion – in enforcing its environmental laws.

As all Members can see from the copy of Article 5 on their desks, this is the plain language of the provision, not a matter open to interpretation. Without question, the agreement provides U.S. authorities wide discretion in enforcing our labor and environmental laws.

Finally, if worst comes to worst and all these mechanisms and safeguards fail, the United States could face the prospect of retaliation from Jordan. The United States could likely prevent

this through any number of diplomatic means, including simply asking Jordan – an ally and friend -- to be reasonable. I suspect this would resolve any conflict.

In sum, the scenarios raised by some are simply not realistic.