

1 EXECUTIVE BUSINESS MEETING TO REVIEW AND MAKE  
2 RECOMMENDATIONS ON PROPOSED LEGISLATION IMPLEMENTING THE  
3 U.S.-PERU TRADE PROMOTION AGREEMENT, AS WELL AS THE  
4 ASSOCIATED PROPOSED STATEMENT OF ADMINISTRATIVE ACTION;  
5 AND TO CONSIDER THE AMERICAN INFRASTRUCTURE INVESTMENT  
6 AND IMPROVEMENT ACT; AND THE HABITAT AND LAND  
7 CONSERVATION ACT OF 2007  
8 THURSDAY, SEPTEMBER 20, 2007  
9 U.S. Senate,  
10 Committee on Finance,  
11 Washington, DC.

12 The hearing was convened, pursuant to notice, at  
13 4:05 p.m., in room 215, Dirksen Senate Office Building,  
14 Hon. Max Baucus (chairman of the committee) presiding.

15 Present: Senators Conrad, Bingaman, Lincoln,  
16 Stabenow, Salazar, Grassley, Hatch, Lott, Bunning, Crapo,  
17 and Roberts.

18 Also present: Russ Sullivan, Democratic Staff  
19 Director; Bill Dauster, Deputy Staff Director and Chief  
20 Counsel; Kolan Davis, Republican Staff Director and Chief  
21 Counsel; Dean Zerbe, Tax Counsel and Senior Counsel to  
22 the Ranking Member; Carla Martin, Chief Clerk; Mark  
23 Blair, Deputy Clerk; and Jewel Harper, Hearing Clerk.

24 Also present: Edward D. Kleinbard, Chief of Staff,  
25 Joint Committee on Taxation; Thomas Barthold, Deputy

1 Chief of Staff, Joint Committee on Taxation; Everett  
2 Eissenstat, Assistant U.S. Trade Representative for the  
3 Americas; Michael Desmond, Tax Legislative Counsel,  
4 Department of the Treasury; Amber Cottle, International  
5 Trade Counsel; David Johanson, International Trade  
6 Counsel; Elizabeth Paris, Tax Counsel; Warren Maruyamma,  
7 General Counsel; Pat Bousliman, Natural Resource Advisor;  
8 Jo-Ellen Darcy, Senior Environment Advisor.

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## I N D E X

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9-20-07  
22 pp.

1 OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR FROM  
2 MONTANA, CHAIRMAN, COMMITTEE ON FINANCE

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4 The Chairman. The committee will come to order.

5 The committee meets today to consider three items:  
6 the U.S.-Peru Trade Promotion Agreement, an original bill  
7 entitled "American Infrastructure Investment and  
8 Improvement Act", and an original bill entitled "The  
9 Habitat and Land Conservation Act of 2007".

10 With the U.S.-Peru Trade Promotion Agreement,  
11 Congress can turn a new page on trade. The committee  
12 considered an earlier version of the agreement in July of  
13 last year. The committee ultimately approved that  
14 version, but did so by a closely divided vote. We have  
15 worked since then to build support and we have worked  
16 with the administration to address the issues that  
17 troubled many Senators last year, and we succeeded.

18 The revised agreement includes historic new labor  
19 and environmental provisions. For the first time in any  
20 free trade agreement, the Peru agreement requires the  
21 parties to implement the five core International Labor  
22 Organization standards. For the first time in any free  
23 trade agreement, the Peru agreement requires the parties  
24 to implement key environmental treaties.

25 Since last year, the United States and Peru also

1 concluded a new side letter on beef. Peru pledged to  
2 open its market to American beef products, regardless of  
3 the age of the cattle, and it has since done so.  
4 American beef is now flowing freely into Peru. Peru's  
5 actions serve as a model for those countries like Korea  
6 that still contain unacceptable and non-science based  
7 restrictions on American beef exports.

8 We have, in short, fully addressed the issues that  
9 most concerned committee members last year, and I urge my  
10 colleagues to approve this draft bill.

11 Today we will also consider legislation on  
12 transportation trust funds. Today's Chairman's mark will  
13 reauthorize the Airport and Airway Trust Fund, and  
14 today's mark will also restore the Highway Trust Fund.

15 Thirty-seven years ago, Congress enacted a series of  
16 taxes that comprised the Airport and Airway Trust Fund,  
17 otherwise known as the Aviation Trust Fund. The Aviation  
18 Trust Fund collects taxes on planes, on passengers, and  
19 on parcels, and the trust fund finances the bulk of our  
20 aviation system's infrastructure and operating costs.

21 Much has changed in aviation over the last 37 years.  
22 In 1970, about 170 million passengers took to the skies;  
23 this year, nearly 770 million will. In 1970, an arm of  
24 the Federal Government set airfares and routes; today,  
25 markets do. In 1970, there were a small number of

1 private jets; now there are 11,000.

2 But one thing has not changed. Air passengers are  
3 still frustrated. Consider the following headlines: "Air  
4 Travel System Flirts With Gridlock". That is one. The  
5 other, "FAA Head Predicts Summer Air Jam". The first  
6 headline is from 1968, the other, this year. That is  
7 what we are here to address. The mark before us today  
8 will add \$400 million of new revenue per year. With  
9 this, the committee will provide four years of funding  
10 necessary to finance NextGen, a new satellite-based air  
11 traffic system.

12 In future years, we will need substantially more.  
13 The mark will protect the funds that it raises for  
14 NextGen by dedicating it to a sub-account solely for  
15 NextGen. Pretty much everyone agrees that we need  
16 NextGen to manage the growing demands on our aviation  
17 system. NextGen will improve passenger safety and  
18 provide pilots and controllers with a better view of the  
19 traffic near them.

20 NextGen will boost fuel efficiency. It will reduce  
21 the amount of time that planes have to circle before  
22 landing. NextGen will reduce flight delays. It will  
23 allow planes to fly closer together in congested hub  
24 areas. Flight delays cost Americans about \$9.5 billion a  
25 year.

1           So who should pay for all of this? We are all aware  
2 of the controversy surrounding the share of taxes paid  
3 into the trust fund by commercial and general aviation.  
4 With the rapid growth of private corporate jet travel,  
5 commercial carriers argue that general aviation is not  
6 paying its fair share. General aviation counters that  
7 the system is built primarily for the airlines and, thus,  
8 should be largely financed by them.

9           This committee has heard both arguments--made  
10 vigorously, I might add. Over the last several months,  
11 through meetings with everyone involved, gatherings among  
12 committee members, and three public hearings, we have  
13 heard impassioned debate. The Chairman's mark heeds both  
14 sides' arguments.

15           First, the mark more than doubles general aviation's  
16 contribution to the Aviation Trust Fund. The mark would  
17 set the general aviation jet fuel tax at 30 cents per  
18 gallon. That is up from the current 21.8 cents. Second,  
19 the mark also makes changes to the taxation of fractional  
20 aircraft. Those are general aviation airplanes with  
21 shared ownership, often used in the corporate sector.  
22 Taken together, these two changes will provide about \$280  
23 million a year. That is about 70 percent of the funds  
24 needed to pay for this step of NextGen. That is in  
25 addition to what general aviation is already paying.

1           The mark would increase by 80 percent the share of  
2 trust fund taxes borne by general aviation. The  
3 remaining portion of investment in NextGen will come from  
4 the commercial sector. The mark, as modified, increases  
5 the international departure and arrival tax from \$15.10  
6 to \$16.65. That is an increase of \$3.10 per round trip  
7 international flight, about the cost of a Big Mac with  
8 cheese.

9           Now, the major commercial airlines have proposed an  
10 alternate. The trust fund currently receives about half  
11 of its funding from a 7.5 percent ticket tax. The  
12 airlines would change that to a system based partly on  
13 mileage. Structured appropriately, a mileage-based model  
14 could provide a fairer means of measuring use of the  
15 aviation system, and I will continue to work with the  
16 airlines to develop this proposal. But it is also  
17 important to proceed with this reauthorization. The  
18 trust fund expires in just 10 days.

19           I want to thank Senators Rockefeller and Lott,  
20 Chairman and Ranking Member of the Commerce Committee's  
21 Aviation Subcommittee, for their work on this issue.  
22 They have both invested a tremendous amount of energy  
23 into moving this reauthorization. Their persistence has  
24 been critical to moving this committee toward action on  
25 the mark before us today, and I very much appreciate



1 their efforts.

2 The product before us represents a compromise that  
3 we can enact in a reasonably short order, and I urge the  
4 members of this committee to support it. The mark also  
5 includes changes to the Highway Trust Fund. Last year,  
6 the Highway Trust Fund celebrated its 50th anniversary.

7 Unfortunately, just a few months after the golden  
8 anniversary we learned that the Highway Trust Fund's  
9 finances are in trouble. The trust fund has a deficit  
10 that, if left unfixed, will threaten critical investment  
11 in this Nation's roads and bridges.

12 Taxes on gasoline, diesel, and heavy trucks finance  
13 the trust fund. The trust fund is, thus, sensitive to  
14 changes in the use of these items. As Americans drive  
15 less and as vehicle fuel efficiency increases, the trust  
16 fund's balance has taken a significant hit.

17 A trust fund deficit of \$4.3 billion is projected  
18 for 2009. That number will grow to more than \$5 billion  
19 if an amendment to increase funding for bridge repair  
20 becomes law. The Chairman's mark fills the projected  
21 deficit in highway funding for 2009, and I urge my  
22 colleagues to support it. We have to fill that deficit.

23 The third item we will consider today is The Habitat  
24 and Land Conservation Act of 2007. This mark provides  
25 incentives to landowners to protect and conserve valuable

1 land. We are making permanent the tax deduction for  
2 landowners who place their land in conservation  
3 easements.

4 Thanks to the initiative of Senators Crapo and  
5 Lincoln, we established new tax credits and deductions  
6 for taxpayers who aid in the recovery of threatened or  
7 endangered species. We extend the brown fields expensing  
8 provision to help with environmental clean-ups, and we  
9 clarify a property exchange provision in the Tax Code.

10 The committee has a full agenda to consider this  
11 afternoon, and I appreciate my colleagues' help in moving  
12 this business along. We have got a lot to do, but I  
13 think we can do it fairly expeditiously.

14 I now recognize Senator Grassley for his statement.  
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1 OPENING STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S.  
2 SENATOR FROM IOWA

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4 Senator Grassley. Mr. Chairman, I am going to  
5 spend my time just talking about the trade agreement. I  
6 am going to put statements that deal with the three  
7 issues we have on the agenda in the record, because most  
8 of the points that you made on the airline portions of  
9 our work today, I would say similar to what you have  
10 said.

11 [The prepared statements of Senator Grassley appear  
12 in the appendix.]

13 Senator Grassley. On the trade issue, I do not  
14 want to deal just with Peru. By inference, I am talking  
15 also about Colombia and Panama. First of all, Democrats  
16 won in the last election and control Congress. There are  
17 a lot of things that had to be negotiated over these  
18 trade agreements because of the reality of that new  
19 majority. If I were in a minority for a long period of  
20 time and became a majority, I would expect to make things  
21 a little bit different as well.

22 It happens that I do not agree with a lot of these  
23 things that were negotiated, but they are kind of minor  
24 compared to the goals of the agreements of Peru which are  
25 before us today, and hopefully Panama will be before us,

1 and Colombia will be before us shortly.

2 But the point being this: those agreements were  
3 announced on May 10 with the congressional leadership,  
4 with the leaderships of this committee and the Ways and  
5 Means Committee participating. Here we are, three months  
6 and more later, and we still are just now working on the  
7 first one. If we get them done, it doesn't matter  
8 whether it is now or two months from now. But the  
9 important thing is, there seems to be a lot of foot  
10 dragging, particularly on Colombia.

11 If we have negotiated in good faith with the  
12 administration to do a lot of things that maybe  
13 Republicans would not do, but the reality of it is that  
14 they need to be done to get something greater done, well,  
15 the greater good are these trade agreements. So I would  
16 expect, in good faith, that we would all move ahead on  
17 doing what the agreement announced on May 10th would  
18 imply.

19 The second one is, with regard to the people in  
20 Congress--and I am one who sometimes raises questions  
21 about other countries not trading fairly, so I am not  
22 speaking just to people that are always talking about  
23 China currency, or always talking about the trade  
24 deficit, or always talking about out-sourcing of jobs,  
25 because sometimes I talk about those as well.

1           But for all of us, if we are concerned about trade  
2           deficits, about things with China, about things that are  
3           not going right with trade generally, all of these  
4           agreements that ought to be before Congress, and Peru  
5           being before us today, we should all be for them,  
6           uncompromising, because there is not anything about the  
7           trend towards protectionism, or all of the things that we  
8           find fault with U.S. trade or globalization, that these  
9           bilateral agreements do not solve.

10           Because, you see, they do for the United States what  
11           we have been doing for these other countries for decades.  
12           They have had preferential treatment of getting their  
13           products into this country and we have not had any  
14           preferential treatment getting our products into their  
15           country.

16           So this levels the playing field so we can get our  
17           products into their countries, so that we can create  
18           export-related jobs in this country, or maintain those  
19           export-related jobs in this country, and those jobs pay  
20           15 percent above national average of salary. So, there  
21           is everything about these agreements that are win-win-  
22           win, and ought to be a response to everybody who finds  
23           fault about what is wrong with the trade policy of the  
24           United States. It levels the playing field. It gives us  
25           a fair shake, the same fair shake we have given these

1 countries over the last several decades because we wanted  
2 to help their economy along.

3 Now we have earned the right to get into their  
4 economy on the same basis they got into our economy, so I  
5 hope we will approve this trade agreement. I hope we  
6 will move to Panama. I hope we will move to Colombia,  
7 because it is win-win-win. If you believe in level  
8 playing fields -- how many people -- we are always  
9 talking in Washington about, all I want is a level  
10 playing field. This gives us a level playing field. We  
11 ought to move forward.

12 The Chairman. Thank you, Senator.

13 I now recognize other Senators who wish to make any  
14 statements.

15 Senator Conrad. Mr. Chairman?

16 The Chairman. Senator Conrad?

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1 OPENING STATEMENT OF HON. KENT CONRAD, A U.S. SENATOR  
2 FROM NORTH DAKOTA

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4 Senator Conrad. Mr. Chairman, just on the matter  
5 of Peru, Senator Reid and others traveled in a  
6 delegation--Senator Salazar was part of it--that went to  
7 Peru earlier this year. We did so in part because,  
8 frankly, they have not had a lot of attention from our  
9 country for an extended period of time. It is very  
10 clear. I want to report to my colleagues that Mr. Chavez  
11 is working to form an anti-American bloc in that part of  
12 the world that is very much not in our Nation's interest.  
13 One of the things that we could do that would be most  
14 helpful to having a different view of our country in Peru  
15 is to approve this agreement.

16 And Senator Grassley, I would agree with your  
17 analysis. I think changes have been made here that do  
18 level the playing field. It is not, perhaps, perfectly  
19 level, but that is really not the point. There is a  
20 larger issue here. I hope Senator Salazar will comment  
21 on what we saw there as well, as we spent a number of  
22 days, meeting with the leadership of Peru and meeting  
23 with many constituent groups there. I think this is  
24 something that we need to do in our own national  
25 interest.

1           The Chairman.    Senator Hatch?  
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1 OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR  
2 FROM UTAH

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4 Senator Hatch. Thank you, Mr. Chairman. I  
5 appreciate the efforts of you and your staff, along with  
6 those of Senator Grassley and his staff, in bringing us  
7 to this point on the important issues before us today.

8 Now, I believe that the FAA reauthorization bill  
9 should achieve two goals. First, it should provide  
10 funding for the critical modernization of the air traffic  
11 control system, and second, it should update the  
12 financing of such a system to better reflect the changes  
13 we have seen in aviation that are consistent with the  
14 demands on the system.

15 In recent years there has been a fundamental shift  
16 on the demands of our air traffic control system as the  
17 number of business jets has proliferated. According to  
18 the FAA, general aviation incurs about 16 percent of the  
19 costs of ATC, but pays only about 3 percent of the taxes.

20 Now, I do not advocate moving to a pure cost-based  
21 system, but I do believe that we need to make an  
22 adjustment of the tax burden to a more equitable  
23 allocation. And while the Chairman's mark achieves the  
24 first goal of providing NextGen funding and takes a step  
25 towards the second goal, in my judgment it does not go

1 far enough.

2 Now, I recognize the growing importance of business  
3 aviation in Utah and across the Nation, and I do not  
4 want--I do not want--to unduly burden any segment of this  
5 vital industry. However, we need to keep in mind that  
6 millions of airline passengers, not the airlines  
7 themselves, are paying more than a fair share, but we  
8 must make our decisions based on the best interests of  
9 all of our constituents.

10 Utah airline passengers pay, on average, 20 percent  
11 more in taxes than they should because the current excise  
12 taxes are based on ticket prices and a segment fee that  
13 doubles every time a passenger connects at a hub. The  
14 jobs and economics of a hub like Salt Lake City's are  
15 highly dependent on connecting traffic from 47  
16 communities that receive daily service. Therefore, Mr.  
17 Chairman, I will support changes in the proposal before  
18 us to more fairly allocate the burden of the taxes that  
19 pay for our airtraffic system.

20 Now, Mr. Chairman, on The Habitat and Land  
21 Conservation bill before us today, I support the efforts  
22 of the committee to encourage the application of  
23 conservation practices and habitat restoration to assist  
24 with the thoughtful recovery of endangered species. Utah  
25 landowners have a strong tradition of being good

1 stewards, but I welcome these additional steps to provide  
2 tax benefits that encourage greater conservation.

3         However, I am concerned about the offset being used  
4 to pay for these provisions. I do not like the so-called  
5 "silo lease" transactions, and I am glad we have shut  
6 down these tax shelters. But I do not think it is fair  
7 for us to retroactively take away the benefits of  
8 transactions entered into in good faith by taxpayers  
9 before the effective date of our repeal. I hope that we  
10 can find a better way to pay for these provisions.

11         I am also concerned about a provision in the  
12 modification in the proposal to allow Treasury to  
13 unilaterally declare any or all conservation easements as  
14 "potentially abusive" and to require prior approval  
15 before taking the deduction. This is likely to have a  
16 chilling effect on conservation donations and thwart the  
17 purposes of the bill. So, I hope you and Senator  
18 Grassley will consider this restriction before this bill  
19 goes to the floor.

20         Now, finally, Mr. Chairman, let me thank you for  
21 bringing the Peruvian trade agreement before the  
22 committee today. I support the Peruvian trade agreement  
23 and am anxious to see it enacted. But in my 31 years of  
24 service in the Senate, I have never voted against a free  
25 trade agreement. I fundamentally believe that trade can

1 be very positive, not only for the United States'  
2 economy, but for the economies of our foreign trading  
3 partners as well.

4 I only have two small amendments this afternoon that  
5 address very basic concerns, and it would be my desire to  
6 see them accepted by the committee so that they can all  
7 vote in favor of the amendment. Those two amendments  
8 involve intellectual property provisions of the trade  
9 agreement, and also the labor provisions, which I believe  
10 fly in the face of all of my 31 years as we fought to  
11 keep the United States on an even keel from a labor  
12 standpoint, with the delicate balance that we have  
13 between management and labor.

14 I personally have gone to the ILO a number of times,  
15 and personally worked with our whole delegation,  
16 including the great Irving Brown, who was the  
17 international vice president of the AFL-CIO, who made  
18 clear that we cannot accept any more of the conventions  
19 than we did because of the difficulties of interpretation  
20 internationally that would put the United States at a  
21 severe disadvantage.

22 I look at the language of this Peruvian trade  
23 agreement and I am very concerned that we make sure that  
24 we put some clarification language in on both of these  
25 issues, and I intend to bring those amendments to the

1 committee. I hope my colleagues will see the value of  
2 them and support me on those amendments.

3 Senator Lott. Mr. Chairman?

4 The Chairman. Senator Lott.

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1 OPENING STATEMENT OF HON. TRENT LOTT, A U.S. SENATOR FROM  
2 MISSISSIPPI

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4 Senator Lott. Mr. Chairman, I understand the  
5 desire to move forward on these issues. But, as I have  
6 indicated personally to Senator Grassley and to you, Mr.  
7 Chairman, I do not believe we are ready to move forward  
8 on the FAA air traffic control issue. There are just too  
9 many problems with it. If we insist on going forward  
10 with it, I have a number of amendments that I would have  
11 to offer.

12 It also now has become much more than just the FAA.  
13 We have the Highway Trust Fund issue, which I understand  
14 we may need to address. But I want to make sure that the  
15 numbers are legitimate. I would be interested in Senator  
16 Conrad's comments on that.

17 Plus, it also now has become a railroad issue. I  
18 understand that there is an amendment by Senator Schumer  
19 that would put in \$2 billion for a new railroad from  
20 ground zero to La Guardia, or somewhere. If that is the  
21 case, then I would feel compelled to offer our Amtrack  
22 bonding amendment that Senator Lautenberg and I have been  
23 pushing for years. It goes back years, with Senator  
24 Biden, Senator Daschle. So, we have a number of  
25 amendments that would be pending.

1           I also would note that there has been an objection  
2 to the committee meeting while the Senate is in session.  
3 The two-hour rule was not waived, and I have just gotten  
4 a call making note of that.

5           The Chairman.    Senator, I appreciate that.  As you  
6 have said, a Senator has objected to our meeting at this  
7 time.  This means that the committee will need to meet  
8 after the Senate adjourns this evening.  It is my hope  
9 that the Senate adjourns before 6:00.  And unless the  
10 Senate allows consent to move forward at this point, we  
11 will need to reconvene at 6:00 this evening, and I urge  
12 my colleagues to return at 6:00.

13           The committee is adjourned.

14           [Whereupon, at 4:28 p.m. the committee was  
15 recessed.]

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