

INTERNATIONAL TRADE ASPECTS OF E-COMMERCE

AN ADDRESS BEFORE THE NATIONAL LAW CENTER FOR INTER-AMERICAN FREE TRADE ORGANIZATION OF AMERICAN STATES BUSINESS SOFTWARE ALLIANCE

Senator Max Baucus (D-Mont.)
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Thanks very much for the introduction. Ladies and gentlemen, I really appreciate the chance to speak with you today about electronic commerce. It's an area where the issues move really fast. I feel like I better speak quickly. The electronic commerce world moves so quickly that some things I say will be out of date by the time I'm finished.

I'm delighted to address a group with which I share so many interests.

First, we share an interest in trade with Latin America. Just last month I invited a group of Latin American officials to my home state of Montana in order to increase trade ties.

Second, I share your interest in commercial infrastructure. By that I mean more than physical infrastructure, such as ports and warehouses. I also include institutional infrastructure. Exchanging goods and services depends on an underlying legal system which governs contracts and guarantees property rights, including intellectual property rights.

Building the right institutions is just as important as building roads and airports. Nowhere is institution building more challenging than in the area of electronic commerce. I commend the National Law Center and the co-sponsors for bringing this group together to discuss the legal infrastructure, and to launch some new work on them.

Rapid Development of World Wide Web

Think back to where you were ten years ago, on September 30, 1989. How many of you imagined that you would be faced with the issues you're addressing today? Issues like electronic authentication, electronic banking procedures, electronic tax regimes. Ten years ago, the only people who ever imagined the World Wide Web were a handful of scientists at a research institute in Geneva. Even six years ago, there were only about five web sites in existence.

Think about how far we've come in half a decade. If you watch U.S. television, when was the last time you saw a commercial that didn't have a "www dot something" at the bottom of the screen? When was the last time someone handed you a business card without an email address?

The growth has been phenomenal! As of last month, the number of Internet users topped 170 million, a fifty percent rise over 1998. If you pick five people at random in the United States, at least two of them use the Web at home or at work. I'm sure that if I picked five people at random out of this group, all five would be plugged in.

Commercial applications are booming. Last year the Web hosted over eighty-five million sites, with at least two-thirds of them in the United States. And forty percent of those sites are "dot com" commercial sites. Just five years ago, most business planners could not even imagine such a world.

I know speeches with a lot of figures are hard to listen to, so I promise this is the last of the numbers. They are astounding. The estimate early last year was that e-commerce would account for \$300 billion in sales by 2002. The current estimate is over four times as high: \$1.3 trillion. In Latin America, online sales are projected to increase by a factor of fifty—that's five thousand percent—over the next five years.

E-Commerce and Globalization

Our ancestors could never have imagined such a breathless pace of change. Five thousand years passed between the invention of the written word and the development of the printing press. It took another four hundred years to go from the printing press to the telegraph. Neither technology was very user-friendly. But then things speeded up. Going from telegraph to telephone took only about forty years. Going from personal computers to World Wide Web took only eight years.

Times are compressed and the effects are magnified. New information and communications technology will affect our lives as profoundly as the industrial age did a century ago. In the United States, the railroad and the steam engine provoked explosive growth by linking producers to new consumers. They created a nationwide market. Today, information technologies link domestic producers to global consumers, creating a single, instantaneous, world market.

The Internet is integrating the Americas more closely commercially. This happens to companies of all sizes. Lou Gerstner, head of IBM, said that the Internet is the great leveler between big and small companies. Even small companies now customize their products for specific foreign markets.

That's not just smart business. It is necessary for long-term survival. We all face electronic competition in our home markets. We see it in the United States, where a Japanese web site offers the world's first integrated credit/cash/debit card. In Latin America, three-fourths of the money spent on e-commerce related transactions went outside the region—most likely to North America.

Any company, large or small, that can't face global competition is in trouble. E-commerce creates tremendous opportunities and imposes tremendous discipline. On the retail level, customers have access to price and product

information from many sources. We've already seen the impact of this in retail areas such as travel services. Routing and ticketing offered via the Internet have expanded significantly. So has flower delivery.

I know from my own experience how easy it is to compare book prices at Amazon.com against barnesandnoble.com, choose the better buy, and have a book in hand within two days. Retail customers participate in web-based auctions, eliminating the costs of travel and search for product information. In wholesale markets, online exchanges provide industry-wide pricing and market information cheaply. Aggregators build virtual one-stop malls where buyers and sellers find each other quickly.

Government Role in E-Commerce

All of this private sector expansion was built on a government project. Twenty years ago, the United States government financed the Internet. But how should we define the government's role today? In his recent book about globalization, journalist Tom Friedman said that governments today must work better, faster, and smarter to regulate the free market without choking it.

That is especially true with regards to electronic commerce. Government cannot move fast enough to keep up with advances in electronic commerce. Regulations are likely to be outmoded by the time we enact them, especially when they are technology-specific. So we would like to assign government a minimal role.

Granted, in some areas governments must be involved. Tariffs, taxes, and commercial law are inherently the domain of the government. Outside these areas, governments should restrict themselves to providing a predictable, consistent, and simple legal environment. This environment should ensure competition, protect intellectual property and privacy, prevent fraud, and foster transparency. The tough question in both domestic and international e-commerce policy is: "How can governments do that without stifling electronic commerce?"

International Aspects of E-Commerce

Let me focus this evening on international trade aspects of this question. In trade, if you say to someone "I want to eliminate market barriers," most people know what sort of actions you have in mind. Cut tariffs. Eliminate export subsidies. Adopt science-based standards.

They may not want to do them, but you both agree on the definition. But if you say to someone "I don't want to stifle electronic commerce," it is not at all clear what actions you have in mind, especially in the government realm. If governments do *anything* at all, they might stifle e-commerce. If they do *nothing* at all, they might stifle it. I believe there are certain actions that governments should take to encourage the development of e-commerce. Let me list five of them.

First, open up telecommunications to competition. That's the only way to keep connection charges affordable. You can't have electronic markets without electronic buyers. It is no accident that Internet access is four times higher in the United States than in Japan. It's because phone charges are four times as high in Japan. High connection charges are the reason that only ten percent of the Germans have Internet access.

High communication charges are an impediment in Latin America, where the average monthly phone charge is fifty-three dollars. That's twice as high as the U.S. average. No wonder only twenty percent of the computers in Latin America are connected to the Internet. The best thing Latin America could do right now is to sign on to the WTO Telecommunications Agreement, including the attached reference paper on competitive principles. Countries which commit to an open telecommunications market will attract the investment and technology required to keep pace with the online world.

I've seen estimates that Latin America will need at least seventy billion dollars in direct telecom investment over the next five years. Moves by countries to close off their market, like China's recent move to enforce a ban on Internet investments, are counterproductive. If I were in a developing country, my chief concern right now would be that I am missing the next technology wave. While developing countries struggle with basic access questions, the United States is working to provide widespread, high-speed broadband access.

Let me mention here that we all have something to learn from each other in telecommunications. In my home state of Montana, we are determined to provide universal access with sufficient bandwidth, even in sparsely populated areas. Perhaps we could benefit from Brazil's experience with the "wireless local loop." It connects the customer to the switched network by radio when wiring is too expensive. Opening up the telecoms market is a domestic action with international implications. There are also things which nations can do together.

The second action governments should take is make the Internet a permanent "duty free zone." That simply means that electronic goods, such as software, recordings, and e-magazines, will not be subject to import duties. Electronic transmissions—and that's what these things are now—have never been dutiable. Right now there is no technology that enables a Customs Service to collect them. So there is no actual revenue impact to a permanent ban. The World Trade Organization agreed to a temporary moratorium last May. At the Seattle WTO meeting this coming November, trade ministers are expected to extend the moratorium. They should do more than extend it—they should make it permanent.

Third, governments should give digital products the most liberal treatment possible. I have introduced legislation that makes this a goal of the upcoming round of global trade negotiations. We don't know what sort of products might be developed in the coming years. But some issues have already arisen. Some products straddle the line between "goods" and "services." You may have followed the court ruling in Texas earlier this month on self-help legal

software. It guides people through questions and then produces a customized legal document, such as a will or a power of attorney. A question that arose was, "Is the manufacturer of this software selling a product or offering a legal service?"

Many products on the market today such as movies on video or CD-Roms, music on tape and software on diskettes, are considered "goods." Most countries base their import duty on the value of the underlying medium. So ten blank diskettes receive the same tariff as ten diskettes with Microsoft Word. But if a country considers sending software over the Internet a *computer service* rather than a *computer good*, a different set of trade rules kick in. We should agree that in such cases, the more liberal set of rules apply. This may become especially important in the entertainment industries, where some countries have imposed restrictions for cultural or other reasons.

Fourth, governments should make rules that are technologically neutral. Digital products should get the same treatment whether they arrive over a copper wire, a co-axial cable, from a microwave transmitter, or from an orbiting satellite. This can be particularly challenging for some of the issues which were on your meeting agenda today. It requires crafting commercial laws in a way which does not lock in today's technologies. Over-specifying rules on matters such as electronic signatures can make it difficult for legal regimes to incorporate more efficient technologies in the future.

Fifth, and finally, governments should increase cooperation on consumer protection. This is an area where people with your expertise can be especially helpful. Customers won't come to electronic shopping malls if they don't have confidence in the market. Each of our countries has laws governing contracts, written or oral, between buyers and sellers. For cross-border Internet transactions, whose laws apply? Where does a woman in Peru go to resolve a dispute with an Internet vendor with a server in Canada delivering from a warehouse in Mexico?

We need an international agreement on jurisdiction. And we need international cooperation on enforcement. The case announced last week was a good example of what's required. U.S. Internet users were being "pagejacked" and "mousetrapped" by pornographers. You may have had the experience yourself. Someone clicks on a normal-looking web site, and the screen fills with pornography. The "Back" and "Close" buttons are disabled, so it's impossible to escape the trap. In a recent case, U.S. authorities worked with their counterparts in Australia and Portugal to track down the culprits, who disguised themselves under titles like "Harvard Law Review."

Protecting consumers in the marketplace is an inherent responsibility of government. But consumer protection doesn't have to be strictly governmental activity. Private firms can contribute to the effort. With over ten thousand web sites forming every week, governments need private sector support. We already have some. To ensure privacy, firms like OnLine Privacy Alliance and BBB-OnLine offer a "seal of approval" and third party enforcement of self-established privacy rules.

E-Commerce as a Tool For Economic Development

Let me close by leaving you with this thought. I believe that advances in technology have produced a vastly better world. The printing press was vital to disseminating knowledge in pre-Renaissance Europe. The telegraph and the telephone were as important to our economic development as the steam engine and the railroad. And I am convinced that the widespread use of personal computers improves productivity, expands education, and improves the quality of life.

It's the quality of life that is the key here. We should encourage expansion of electronic commerce because it can improve our lives. It can give us access to products, services and information that were out of our reach just ten years ago. I can now get direct, same-day access to the news from Montana. When I joined the Senate more than twenty years ago, that could take days.

The relationship between e-commerce and quality of life is especially important for developing countries and for geographically remote areas of developed countries. I strongly believe that we need to provide universal access with sufficient bandwidth to people everywhere. The Information Revolution won't be complete until we do.

Thank you.