ANDEAN TRADE PREFERENCE EXPANSION ACT—Continued

The PRESIDING OFFICER. The Senator from Mississippi.

AMENDMENT NO. 3406

Mr. LOTT. Parliamentary inquiry, Madam President. What is the pending order of business?

The PRESIDING OFFICER. There is a motion to table the Allen amendment.

Mr. LOTT. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The question is on agreeing to the motion.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) and the Senator from Arkansas (Mr. HUTCHINSON) are necessarily absent.

The yeas and nays resulted—yeas 49, nays 49, as follows:

[Rollcall Vote No. 119 Leg.]

YEAS—49

Allard	Enzi	Murkowski
Baucus	Frist	Nelson (FL)
Bennett	Gramm	Nelson (NE)
Bond	Grassley	Nickles
Breaux	Gregg	Reid
Brownback	Hagel	Roberts
Burns	Hatch	Santorum
Byrd	Hutchison	Smith (NH)
Campbell	Inhofe	Smith (OR)
Chafee	Inouye	Stevens
Cochran	Jeffords	Thomas
Conrad	Kyl	Thompson
Craig	Lincoln	Torricelli
Crapo	Lott	Voinovich
Daschle	Lugar	Wyden
Domenici	McCain	
Ensign	McConnell	

NAYS—49

Akaka	Dorgan	Mikulski
Allen	Durbin	Miller
Bayh	Edwards	Murray
Biden	Feingold	Reed
Bingaman	Feinstein	Rockefeller
Boxer	Fitzgerald	Sarbanes
Bunning	Graham	Schumer
Cantwell	Harkin	Sessions
Carnahan	Hollings	Shelby
Carper	Johnson	Snowe
Cleland	Kennedy	Specter
Clinton	Kerry	Stabenow
Collins	Kohl	Thurmond
Corzine	Landrieu	Warner
Dayton	Leahy	Wellstone
DeWine	Levin	
Dodd	Lieberman	

NOT VOTING—2

Helms	Hutchinson

The VICE PRESIDENT. On this question, the yeas are 49, the nays are 49. The Senate being equally divided, the Vice President votes ''yes,'' and the motion to table is agreed to.

Mr. GRAMM. I move to reconsider the vote.

Mr. LOTT. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. REID. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mrs. CLINTON). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Madam President, I ask unanimous consent there be 30 minutes equally divided in the usual form prior to a vote in relation to the Hutchison amendment No. 3441; that upon disposition of the Hutchison amendment, the Kerry amendment No. 3430, be the pending business, with 60 minutes for debate equally divided and controlled in the usual form prior to a vote in relation to the amendment; that upon disposition of the Kerry amendment, the Senate resume the Dorgan amendment No. 3439, there be 30 minutes of debate controlled by Senator DORGAN, and that at the use or yielding back of that time, the amendment be withdrawn without further intervening objection or debate; that no second-degree amendments be in order to either the Hutchison or Kerry amendments covered under this unanimous consent agreement prior to a vote in relation to the amendments.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. This last vote took a long time; the vote this morning took a long time. The Democrats and the Republicans are now even. We will have 25 minutes, the majority said, before we will cut off the votes. Everyone should be on notice. That means whether we have a hearing with the Defense Department or we are in a car wreck in front of the Labor Department, it doesn't matter, after 25 minutes we will cut off the vote.

Mr. LOTT. Having been in the same position on how long these votes require, I understand and support what the assistant majority leader stated. We need to bring these votes to a conclusion.

I must add, though, in the last vote we did have a Senator who had been involved in a little accident and had to take a little extra time to get here; otherwise, we would not have asked it be held so long. I think it is fair notice that everyone realize we have a lot of work to do. We cannot hold every vote open 20 or more minutes. We will try to cooperate with the democratic leadership in that effort.

Mr. REID. If the Republican leader will yield, the votes are 15 minutes; we will extend them an extra 10 minutes. The votes are still 15 minutes.

The PRESIDING OFFICER. The Senator from Texas.

AMENDMENT NO. 3441

Mrs. HUTCHISON. Madam President, I call up amendment No. 3441 and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. CARPER). The Senator from Texas is recognized.

Mrs. HUTCHISON. I introduce this amendment to the trade package. I strongly support the bill on the floor, including the Andean Trade Preference Act and the Generalized System of Preferences. These programs seek to help the Andean countries of Bolivia, Columbia, Ecuador, and Peru, and other developing nations, by applying preferential treatment for their exports.

We want to reduce and eliminate tariffs on imports from these countries to help them develop stronger economies. These programs benefit both countries. They improve the lives of the citizens of the exporting countries through improved economic conditions. These programs give open access to the U.S. market, the best market in the world.

For example, since the Andean Trade Preference Act went into effect in 1991, the Andean nations have experienced $3.2 billion in new output and $1.7 billion in new exports. This has led to the creation of more than 140,000 legitimate jobs in the region. These programs help the United States by developing better markets for our exports. If we can help developing countries increase economic growth and prosperity, they, then, will demand more imports, which will, of course, provide U.S. manufacturers with more consumers for their products.

Another important benefit of the Andean Trade Preference Act is that by providing for the people of these regions employment opportunities in legitimate businesses, we hope to keep them from needing or wanting or in any way being drawn to narcotics businesses. This contributes greatly to promoting stability in the area and to our efforts to reduce the flow of illegal drugs across our borders.

It is clear that the Andean Trade Preference Act and the Generalized System of Preferences help both sides. Since we are giving a benefit to these countries, however, we do have the right to expect something in return to ensure that we do not help countries that may work against our interests in other ways. For this reason, we have established conditions that a country must meet in order to qualify as a beneficiary.

Conditions we have required in the past include that a beneficiary not be a Communist-controlled country; that it has not nationalized or expropriated property of U.S. citizens; that it enforce the protection of intellectual property of U.S. citizens; certainly we want it to recognize binding arbitration awards in favor of U.S. citizens; we want to make sure they give preferential treatment to the United States if they give it to other developed nations; we want to make sure that any country with which we have these preferences is a signatory to an extradition treaty with the United States; and we want to make sure they recognize workers' rights.

In the bill before the Senate today we add seven more criteria that the President must consider before designating a country a beneficiary, including whether the country has demonstrated a commitment to the WTO and to negotiating a Free Trade Area of the

Americas; that the protection of intellectual property rights is consistent with the Uruguay Round agreement; that the country provides specific workers rights; demonstrates a commitment to eliminating the worst forms of child labor; that the country has met counter-narcotics certification criteria; that the country has taken steps to implement an anti-corruption convention; and that government procurement procedures are transparent and nondiscriminatory.

As I have looked at this list of criteria, I noticed a glaring omission. We are in the middle of a war on terrorism; yet there is no requirement that a country with which we would have fair trade and give preferences would support us in that war. It is clear we are fighting a war for freedom itself. We can't win this war alone. We need the help of our friends and allies around the world, for example, to track down terrorist cells or to cut off funds. More than $100 million in assets of terrorists and their supporters have been frozen around the world. Of that $100 million, the United States has frozen about $30 million. The other $70 million has been cut off by various allies. We must have the cooperation of allies and friends if we are going to defeat the enemy of freedom.

I am introducing an amendment today that establishes a requirement in addition to the seven new requirements that we have included in the bill before the Senate that the country support our efforts in the war on terrorism in order to receive beneficiary status under the Andean Trade Preference Act or Generalized System of Preferences. The kind of help that each country can give will vary and it may depend on the circumstances a particular country faces, the opportunity presented to it. Some will help us militarily, some will cut off funds, while others will share intelligence which can be very helpful, very important. Some may do so publicly, some privately. It is even possible a country may not have an opportunity to provide anything but moral support, but we want that moral support.

We want the country to be on the record helping us in the fight for freedom and making sure that a terrorist network cannot gain a foothold in any country with whom we have trade preferences.

I don't think it would be appropriate to try to specify the kind of help that a country must give. But I believe we must make it clear that we expect the country receiving preferences from the United States with whom we will start trade, we will have commerce, we will send goods in, and we will hopefully export goods from that country to the United States—there will be a lot of commerce. We need to make sure that the people with whom we are trading will respect this war on terrorism and be helpful to our country in rooting out terrorism wherever it may be.

I hope my colleagues will support this effort. I certainly think it is going to be very important for us to have the help of every nation on Earth. Every nation that is freedom loving is also a nation that is at risk, if we don't win this war on terrorism. If these terrorists can defeat the United States of America, they will try to take over the world and wipe out freedom wherever it may be. We are in this together. We must have the full cooperation of every country with whom we are trading.

The bill before us today is going to put America, I hope, in a much better position to have better trade relations with countries around the world. The Andean Trade Preference Act has been in place but has lapsed. These poor countries are certainly good partners. We want to continue to have good trade relations with these countries and help them build democracies and stable governments.

There are 130 free trade agreements in the world. The United States is party to only three. The Andean Trade Preference Act has lapsed. We will hopefully renew it with passage of this legislation. But there are 130 agreements in the world, and the United States is party to only three. That is not a tenable situation.

We need to open our markets. We need to provide more jobs in America by exporting products. We need to help other countries have access to the great market of the United States of America which has the greatest consumer capacity in the world. We need to be open to these countries that need this kind of help to stabilize their own governments. It is in everyone's best interest that we have free and fair trade. It promotes freedom and democracy.

If we are going to have free and fair trade to promote freedom and democracy, we should certainly require that people help us in the war on terrorism. The war on terrorism is the war to protect freedom in the world. It goes hand in hand with free and fair trade, democracy, free enterprise, and open government. But we must also win the war on terrorism and protect freedom for ourselves, our allies, and our trading partners throughout the world.

I urge my colleagues to support this amendment to add the eighth criteria to the seven that the President would use to select countries that would receive the preferences of our country.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? At the moment, there is not a sufficient second.

The Senator from Montana.

Mr. BAUCUS. Mr. President, parliamentary inquiry.

Mrs. HUTCHISON. I asked for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mrs. HUTCHISON. Mr. President, I inform the Senator from Montana that if there is no one on the other side, I am prepared to yield back the time.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I think the Senator from Texas has a good idea. Under current law, there is discretion but this would extend benefits. Certainly strong consideration should be given to a country's support or lack of support for our war on terrorism.

I think the Senator has added a very valuable additional criteria to the President's which should be considered. I urge all Senators to support the amendment.

I yield the remainder of our time. We are ready for a vote.

The PRESIDING OFFICER. All time is yielded. The question is on agreeing to the amendment. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS), the Senator from Tennessee (Mr. THOMPSON), the Senator from Arkansas (Mr. HUTCHINSON), and the Senator from New Hampshire (Mr. GREGG) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 96, nays 0, as follows:

[Rollcall Vote No. 120 Leg.]

YEAS—96

Akaka	Domenici	Lugar
Allard	Dorgan	McCain
Allen	Durbin	McConnell
Baucus	Edwards	Mikulski
Bayh	Ensign	Miller
Bennett	Enzi	Murkowski
Biden	Feingold	Murray
Bingaman	Feinstein	Nelson (FL)
Bond	Fitzgerald	Nelson (NE)
Boxer	Frist	Nickles
Breaux	Graham	Reed
Brownback	Gramm	Reid
Bunning	Grassley	Roberts
Burns	Hagel	Rockefeller
Byrd	Harkin	Santorum
Campbell	Hatch	Sarbanes
Cantwell	Hollings	Schumer
Carnahan	Hutchison	Sessions
Carper	Inhofe	Shelby
Chafee	Inouye	Smith (NH)
Cleland	Jeffords	Smith (OR)
Clinton	Johnson	Snowe
Cochran	Kennedy	Specter
Collins	Kerry	Stabenow
Conrad	Kohl	Stevens
Corzine	Kyl	Thomas
Craig	Landrieu	Thurmond
Crapo	Leahy	Torricelli
Daschle	Levin	Voinovich
Dayton	Lieberman	Warner
DeWine	Lincoln	Wellstone
Dodd	Lott	Wyden

NOT VOTING—4

Gregg	Hutchinson
Helms	Thompson

The amendment (No. 3441) was agreed to.

Mr. BAUCUS. Mr. President, I move to reconsider the vote.

Mr. REID. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3430

The PRESIDING OFFICER. Under the previous order, there is 60 minutes on the Kerry amendment No. 3430.

Mr. BAUCUS. Mr. President, the next amendment is the Kerry amendment,

as the Chair announced, with 60 minutes evenly divided. I am just going to take a few minutes until the Senator from Massachusetts is back, so he can speak on his amendment.

Very briefly, this amendment may sound good on the surface, but for very compelling reasons it is not a good idea. It is a very bad idea. I will tell you why. It is true that under current law, one has the argument that foreign investors are at an advantage compared to domestic investors in seeking to protect their rights, say, in a fifth amendment takings question regarding, say, an environmental statute. The Methanex case dealing with MTBEs in California has not yet been resolved, but there is an argument that foreign investors in this case are in a more advantageous position than a U.S. investor with respect to the same kind of proceeding, and that is because of the way investor-state relationship rights are written under chapter 11 of NAFTA.

There are many treaties which govern investor-state relations that are causing some question. One is the one I mentioned. I will not get into great detail as to why the amendment offered by the good Senator from Massachusetts should not be adopted. Suffice it to say that in this underlying bill we have made major changes to ''level the playing field'' between foreign and domestic investors, as well as the rights of those seeking to uphold municipal and State regulations with respect to public health, safety, and the environment. It is totally a level playing field.

To make that point even further, we adopted in the underlying bill a provision suggested by the Senator from Massachusetts, Mr. KERRY, which made it crystal clear the rights of foreign investors in America do not enjoy an advantageous position over the rights of American investors to make sure the playing field is exactly level.

As a matter of comity, I can now let the Senator from Massachusetts go ahead and explain his amendment. I thought I would get started while we were waiting for the Senator to come to the Chamber. He has had some other matters to attend. He is here immediately, and we are glad to have him here to speak to the amendment.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KERRY. Mr. President, are we operating under any time constraints?

The PRESIDING OFFICER. There is 60 minutes of debate equally divided.

Mr. KERRY. Mr. President, I yield myself such time as I may use.

I want to acknowledge the hard work the chairman and ranking member and those who are trying to press this issue have made. The issue I am raising does not threaten the capacity of investor-state relationships to be protected.

Let's be very clear about what is happening. As is so often the case on the floor of the Senate, especially when we are limited in time as to how much debate we are going to have, and when we get into these pressure situations, big arguments are thrown out. People raise these red herrings and these notions of sort of a threat to business or to treaties or other things. I respectfully submit that a careful analysis of what we do does not in any way threaten the capacity of the investor-state relationships to be protected under treaties and, specifically, for this trade relationship that somehow we are going to approve on the floor—and I am going to vote for it. I am not trying to disrupt the process. I am here trying to make this process fair and sensible.

The fact is that chapter 11 of NAFTA is designed to provide foreign investors with the means to seek compensation when a government takes action to decrease the value of the investment. We obviously want that; other investors want that. If a government takes an action that decreases the value of the investment, people have a right to recourse. Either the action of the government might be through the direct physical seizure of property or it might be indirect regulatory action of some kind. That process, which we set up in this legislation, is the model for how that will be done. So it is appropriate that we do that here.

But I am not coming to the floor expressing a concern that is mine alone. The U.S. Conference of Mayors supports this amendment. The National Council of State Legislatures supports this amendment. The National Association of Attorneys General supports this amendment, and countless other State and government entities do. The attorney general of the chairman's home State of Montana supports it.

On May 14 he wrote:

> I applaud the Baucus amendment, but remain concerned that the amendment would not be adequate to protect United States sovereign interests and preserve the authority of the U.S. Government at all levels to enact and enforce reasonable measures to protect the public welfare.

A lot of people have grown upset and concerned about the effect of NAFTA's investment settlement dispute process and the effect it has had on the ability of those States to promulgate legitimate health and safety laws. The National Association of Manufacturers—no supporter of this amendment—has acknowledged that investment provisions such as you find in chapter 11 of NAFTA merit improvement. They have even acknowledged it needs improvement.

So the test here is not whether we ought to be doing this, but whether we are improving it. The reason it is so important is the following: When we passed NAFTA, there wasn't one word of debate on the subject of the chapter 11 resolution—not one word. Nobody knew what was going to happen. Nobody knew what the impacts might be. And, steadily, foreign investment in the United States is increasing. That trend will be accelerated as we have a free trade area of the Americas agreement that is being developed. A recent report by the Taxpayers for Common Sense at Tufts University shows that, unless we change the chapter 11 model, claims against the United States will average $32 billion annually. That is just in terms of claims. It doesn't even address the millions of dollars the Federal Government is going to spend defending against these claims.

Let me explain this in sort of graphic terms. I want to add that among the groups supporting the amendment are the National Conference of State Legislatures, Conference of Mayors, National League of Cities, Conference of Chief Justices, Taxpayers for Common Sense, Consumers Union, League of Conservation Voters. All of them support the notion that we have to change this particular amendment.

The letters of the attorneys general of New York, California, and Montana are particularly instructive.

The attorney general of New York wrote:

> The rights granted foreign investors under H.R. 3005 could go far beyond the carefully fashioned taking and due process jurisprudence articulated by the U.S. Supreme Court under the 5th and 14th amendments.
>
> In other words, unless we change this, we are giving to foreign investors the right to have an application of standards that go well beyond the fourth and fifth constitutional amendments, which are applied to businesses here at home.

It has the ability to apply a takings standard, an expropriation standard that, in effect, is subject to a whole looser standard than that required by the Constitution of the United States.

What my colleagues are being asked to vote on is, Do you believe that American businesses ought to be subject to a fair playing field and that foreign investors should not be advantaged over American investors and the standards by which our businesses do business at home?

There are a lot of examples. Let me share quickly the concern of Montana Attorney General Mike McGrath. He wrote:

> I frankly believe an overwhelming majority of American people and Montanans would react with outrage to the idea that an otherwise final and definitive ruling of our domestic courts would be reversed by foreign arbitration panels and could provide the basis for monetary claims against United States taxpayers.

He could not put it better. That is exactly already what is happening. It is happening right now. Let me share with my colleagues a few of the cases in which that is now happening.

First of all, there is the Methanix case, the most notorious of the cases, in which a Canadian corporation is suing for California's ban on MTBE. The details are fairly straightforward.

In 1998, the Governor of California banned the fuel additive MTBE because it has a tendency to leak out of gasoline storage tanks at a much faster rate than other blended gasoline, such as ethanol. We have just been through an ethanol fight on the floor of the

Senate. We decided that we think it is preferable to use ethanol to MTBE. MTBE travels quickly through the ground water, contaminating drinking water, leaving it foul smelling and bad tasting. It is also a known carcinogen and suspected carcinogen in humans.

Methanix, whose subsidiaries produce methanol, which is the M in the MTBE, filed a chapter 11 claim on the grounds that the ban diminishes their expected profits. Methanix claims that this public health law discriminates against the flow of capital and therefore discriminates against the goals of NAFTA.

I am not sure any of us would say that makes a lot of sense, but the arbitration panel has yet to agree, and the case demonstrates exactly why we need to protect legitimate health and welfare laws.

The Methanix case is the most expensive of any pending claim. They are seeking compensation and almost $1 billion in damages. It is not just California that would suffer. All of us as a consequence would suffer because each State is subject to the same kind of problem, and that State, California in particular, would lose money out of education funds, highway funds, or other grants from the Federal Government were that case to succeed.

A less well known case, but perhaps more egregious, is the case against a jury finding by a Mississippi court against the Lowen Group, which is a Canadian-owned funeral parlor chain. Lowen was sued by a Biloxi funeral home for unlawful anticompetitive actions designed to drive up local insurance costs, forcing smaller funeral parlors into selling. A Mississippi State court agreed with the Biloxi funeral home and awarded $500 million in damages.

Lowen appealed to the State supreme court which refused to reduce the bond amount needed to receive a stay. Instead of paying a bond, Lowen settled the case for $175 million. It then proceeded to the NAFTA tribunal to file a claim. Lowen's chapter 11 case is predicated on the argument that the trial court's refusal to vacate the verdict was tantamount to an expropriation, and the case is now pending.

The message of this case and of the Methanix case could not be more clear: Anytime a foreign corporation dislikes the outcome of a U.S. jury trial, it can run to an international arbitration panel and try to get the ruling reversed. That is not what we wanted to have or intended to have happen in NAFTA, but the only way to protect it is to change that law now.

There are other cases. Let me call attention to the Mondev case which has nothing to do with the environment but everything to do with our sovereignty. The doctrine of sovereign immunity is centuries old in this country, and it holds that you cannot sue a government unless such a lawsuit is expressly permitted. But a claim against an action taken by the city of Boston by Mondev International, a Canadian real estate developer, has challenged this concept before a NAFTA tribunal.

The Mondev case is an example of those cases where we ultimately see the sovereignty of the Supreme Court of the United States being subjected to second-guessing and questioning by a secret tribunal of NAFTA, over which we have no control of the standards because the standards have not been set to respect the Constitution of the United States.

I can remember how many times Senator HELMS from North Carolina has come to the Senate Chamber and said we should not sign a treaty that somehow obviates the demands of the Constitution of the United States. It seems to me that is precisely the principle which is at stake here, which is why Senator HELMS, who I know will not be here to vote, supports this amendment as others who believe the Constitution should not be subjected to second-guessing by an international tribunal.

These second-guessing efforts will have a chilling effect in the end on investment. They create expensive litigation. Just the threat of the litigation is, in and of itself, a chilling effect. I believe, based on these claims, chapter 11, as it currently stands, can be used to threaten governments from enacting public health measures.

The Canadian Government has now sought to ban the use of the words ''light,'' ''mild,'' and ''low tar'' from cigarette advertising. Philip Morris recently issued a warning to Canada under NAFTA that Canada must compensate investors when measures expropriate investments in Canada. We are going to go back and forth on this. We are going to have a constant second-guessing and a constant challenging of these standards.

It seems to me we ought to recognize that the Baucus bill, as amended, does not ensure that long-held U.S. case law on expropriation is upheld. The Baucus bill allows cases still to be decided against the United States when regulatory or statutory actions result in a partial taking. Such a case would stand on far more tenuous grounds in U.S. courts based on U.S. law and legal precedents.

My amendment would ensure that foreign companies could use investment dispute mechanisms. We do not say they cannot do it. We honor the concept of NAFTA or any treaty creating a dispute mechanism, but when a Government action causes physical invasion of property or denial of economic use of that process, that should be consistent with U.S. Supreme Court holdings.

In the Concrete Pipe case which was decided by the Supreme Court in 1993, the Court said:

> Our cases have long established that the mere diminution of a value of property, however serious, is insufficient to demonstrate a taking.

We should not subvert that holding of the Supreme Court by refusing to embrace in this legislation a recognition of American sovereignty in court procedure.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. GRAMM. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. I yield 10 minutes to the Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas is recognized for 10 minutes.

Mr. GRAMM. Mr. President, we just heard a wonderful dissertation on the trade equivalent of single-entry bookkeeping. Our dear colleague has talked on and on about investment protections in the United States, but he has not said one word about investment protections in other countries for American investors.

I want to take a moment to remind my colleagues of a little history that I think is critically important in understanding this issue.

At the end of World War II, we negotiated a series of treaties known as Friendship, Commerce, and Navigation Treaties. Later, in the 1980s, we began entering into what are known as bilateral investment treaties, and today we have 45 such treaties. In both the FCN treaties and the bilateral investment treaties, we established procedures to protect our investors overseas. These protections, which were modeled on familiar concepts of American law, became the standard for protection of private property and investment around the world. And they made sure that our investors were protected from unfair treatment by foreign nations.

Why does the business community in America adamantly opposed the Kerry amendment? It is not because of concerns about foreign investor protections here in America. It is because they are concerned about protections for Americans overseas. Investment is a reciprocal process. We negotiated 45 bilateral investment treaties in order to protect American investment from being confiscated by actions of other countries.

As for foreign investment in America, our colleague argues that billions of dollars will be lost to foreign investors. But he fails to point out that never, ever, have we lost a case since these 45 treaties have been in effect. Not once since chapter 11 of NAFTA has been in effect have we ever lost a case. Not once has there ever been a judgment against the United States of America for failing to protect private property or investments.

The problem with this amendment is very simple and straightforward. The problem is that we are not talking only about foreign investors in America. We are talking about American investors around the world as well. These investment agreements are reciprocal.

In countries all over the world, if an investor is a large American company,

for the most part that company is protected. The governments of those countries are not likely to mess with the company's investments. Nor are they likely to let their local units of government mess with those investments. But a real problem arises when smaller American businesses want to invest abroad. They may not be granted the protections they need.

If we take away the investor protections we have worked for years to establish, if we carve out certain areas where investor protections will not apply, if we narrow the scope of investor protections, we will be leaving American investors vulnerable to actions by foreign governments. And in turn we will be discouraging our businesses from investing around the world. Keep in mind that United States investment abroad helps create a market for American goods, promote capitalism, promote democracy, and do everything else that we in the United States want to see done around the world. It is critically important that that investment be protected.

Every day these investment treaties protect American investment around the world. Meanwhile, we have never lost a case under these same investment treaties.

Let me explain further to my colleagues what happens if we do not provide investment protections. American businesses in certain countries often end up being forced to deal with government corruption. Congress passed the Foreign Corruption Practices Act to try to stop such corruption. But under this amendment to lower investor protections, hundreds of billions of dollars of American investment abroad would be jeopardized. We are the largest investor in the world, and these protections are critically important to us.

Let me just recap, then. Today, we have 45 bilateral investment treaties in effect, and each one of them contains a procedure whereby if American investors have their property taken, if they are discriminated against, if they cannot send their earnings back to their home country, they have in place procedures under which they can get access to justice.

In 57 years since we have had investment treaties, never, ever has the United States of America lost a case. But every day these same treaties protect American investments in Central and South America, in Africa, in Asia, in the developing world, in the very countries we say we want to see develop capitalist and democratic systems.

If we adopt the Kerry amendment, not only would we be responding to a circumstance that has never existed, since America has never lost a case, but we would be undercutting protections for the hundreds of billions of dollars' worth of American investments abroad. And, because of the massive economic damage that would result, we would lose the support of the business community for the trade promotion authority bill.

What would we gain if we adopted the Kerry amendment? We simply would gain some ''degree of protection'' in cases that seem silly on their face. It is hard for me to imagine that any of the cases mentioned could possibly result in an affirmative judgment, but that is speculation since no judgment has been made. In 57 years we have never had a judgment against the United States of America.

Remember, investment agreements are reciprocal. If the Kerry amendment applied only to investment in America, this would be a largely symbolic but not a very harmful amendment because American protections are solid. But investment protections are reciprocal. Therefore, whatever protections we pledge to apply to foreign investors in America are going to apply to our investors in Mexico, our investors in Africa, our investors in South America, and our investors in developing countries in Asia. Since the Kerry amendment would affect not only foreign investors here but our investors there, we would be stripping away the protections that American investment now have. We would be hurting American companies, and their hundreds of billions of dollars of potential investment, and we would lose the jobs, economic growth, and economic opportunity that has resulted from our status as the world's largest investing nation and the world's largest exporting nation.

The Kerry amendment should not be adopted. There is no basis for adopting it. It does our interests virtually no good in America, but it does massive harm to our interests everywhere else in the world.

I reserve the remainder of my time.

Mr. KERRY. How much time do I have remaining?

The PRESIDING OFFICER (Mr. JOHNSON). Fifteen minutes twenty-four seconds.

The Senator from Montana.

Mr. BAUCUS. I ask unanimous consent that the underlying time agreement be extended an additional 30 minutes equally divided.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Massachusetts.

Mr. KERRY. Mr. President, let me answer my friend from Texas. There is no stronger debater, there is nobody obviously we know who is more capable of making an argument, but this is an argument in which the Senator is flat, dead wrong.

Only five cases are pending today that were brought against the United States in which we are a defendant under chapter 11. No case has yet been decided. When he says we have never lost a case, no case has been decided in which the United States is a defendant. We are currently a defendant in five cases, and there were only six cases until 1998. Since then, there have been another five cases. What the attorneys general of our States and the conference of mayors of our States and those responsible for the taxpayer—I mean, the businesses are sitting there, many of them with offshore interests, many of them not paying any taxes. It is not going to come out of their pocket, but the average American taxpayer is going to feel the bite if we have an expropriation case decided against an American company that comes against, say, the State of California or another State, and that is going to come out of the pockets of our citizens.

Secondly, the Senator from Texas is absolutely incorrect when he suggests this is going to leave our companies defenseless abroad. Let me be very specific. If a foreign government overreaches, the same investor-state mechanism will exist. We do not take away the investor-state relationship. We honor it. We do not take away the investor-state mechanism for resolution of disputes. We leave it in place. All we do is say the standard by which it should apply should not be less than the standard applied by the Constitution of the United States. It is very simple. Our businesses, our States, our taxpayers, should not have another country or another business from another country suing us and claiming that one of our health laws or one of our environmental laws has taken away the profits of that company and then some international arbitration panel, without any American judge who applies the standards of the American courts' case law that has been settled, are going to decide, oh, yes, we think that is a great idea. Let's hit the taxpayers of California to pay us because our investors are losing a lot of money.

No one should doubt this is coming down the road. Chapter 11 has yet to be put to the test. Before it is put to the test, we ought to have the courage to say we are happy to honor the concept of an international standard, but don't undo the case law established by the Supreme Court of the United States. That is all we are saying.

My colleague from Texas tries to say we will undo years of settled procedure for companies doing business abroad. That is just not true. That is not what we are going to do. We are suggesting a U.S. investor abroad can still win a claim, provided the investor can show they are discriminated against on the grounds of national treatment, which is the international standard we have agreed to; a performance requirement is the basis of the offensive State action; the offending legislation as enacted or applied is discriminatory in purpose; and if there is a wrongful expropriation under the standards by the Supreme Court.

I remind my colleague that under the standards of the Supreme Court is Justice Scalia who has argued what that appropriate standard ought to be. Let me be specific. In the 1999 case College Savings Bank vs. Florida Prepaid Postsecondary Education Expense Board,

the Supreme Court ruled the activity of doing business or the activity of making a profit do not constitute forms of property that can be the basis of takings claims.

That is an opinion authored by Justice Scalia. We are suggesting what the Senator from Texas is allowing for is some arbitration panel with a group of people who do not believe in the Supreme Court standard, to suddenly say we will apply a different standard to the takings. That does a disservice to our businesses and a disservice to the American taxpayer.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. I have 2 minutes, and I would like to respond very briefly.

First, under the Kerry amendment, if you were an American investor, you could not even file a claim against a developing country that has taken your property unless the U.S. Government agrees to it. And what if the U.S. Government were in some sensitive negotiation with that country? They would want you to simply go away. Whoever heard of having investor protections that are determined on a case by case basis by a government rather than pursuant to an agreement?

Second, it is one thing for an amendment to say that we should borrow part of the evolving takings standard—and we all know that the takings doctrine is evolving—from the Supreme Court. But it is another thing to convert that evolving standard into a new international principle, with the result that if a developing country takes only 99.9 percent of an investor's property, the investor has no claim or protections.

Clearly, governments that are interested in shaking down American investors are not interested in taking the investor away; they are interested in being paid off for the right to do business in their country. A key purpose of the investment treaties we negotiated over the past 57 years was to prevent our investors from being forced to pay off corrupt governments abroad. That is what we have been trying to stop. Through the Cold War, where we did not have these agreements in place, American businesses had no choice but to pay off corrupt local governments, which the Communists then pointed to as capitalism. That caused us problems all over the world. We negotiated these agreements to put an end to those problems and instill the rule of law worldwide.

When we start imposing these limits requiring compensation only for total confiscation, requiring governmental approval in order to claim your protections, and then carving out specific areas where your protections and the rule of law do not apply, it does not take a corrupt government long to figure out that they can impose ''regulations'' or ''special fees'' or ''targeted taxes'' in the unprotected areas.

The net result is to extract money from American businesses. Not only is that profoundly wrong, not only is it corrupt, it discourages investment, it hurts American companies, and it hurts American jobs.

It is one thing to say we do not need these protections for people who invest in America. But it is another to say that we do not need them for Americans who invest overseas. The plain truth is America has never had a judgment against it under our investment treaties in some 57 years. There has never been a judgment against the United States of America for violating investor protections.

We can't adopt the Kerry amendment so that it would apply only to investment in the United States and would not affect protections for our investments around the world. If we could, it would be a useless amendment. And we should not adopt the Kerry amendment and carve out areas where American investors are not protected. If we did, we would be asking for big-time problems with corruption. This is why every business group in America is adamantly opposed to this amendment, and why I urge my colleagues to reject it.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Once again, I say with respect to the Senator from Texas, he is both missing and distorting the point at the same time. I hope my colleagues notice for the first time in history since I have known the Senator from Texas to be in the Senate he is defending the right of lawyers to sue without any kind of screening or any kind of effort to restrict a frivolous suit.

I have never heard the Senator from Texas do that. I am delighted that he is protecting the right of lawyers to sue without any screening. This screening is exactly what was recommended, I might add, in a letter from Chairman BAUCUS to Ambassador Zoellick on March 26. Here is what the letter said:

> It may be prudent to establish screening mechanisms in other sensitive areas such as environmental regulation as a way to ensure that frivolous or inappropriate claims can be dismissed as early as possible. In general, I view this concept as consistent with the objective of the TPA bill to eliminate frivolous claims and deter their filing in the first place.

The amendment I have offered includes a small screen to help weed out the frivolous lawsuits, and it would require the approval of the home government to do that, which only works to our benefit. If someone is going to sue in another country they are going to sue anyway. But in order to sue in our country it seems to me we would like to have, once again, the standard applied as to what is frivolous or not.

I used to practice law. I remember when we did medical malpractice cases we finally set up a screening mechanism. Many States in America have set up a board which reviews cases using members of the profession to make a determination of whether or not it is a legitimate claim so we don't tie up the court system with a whole set of illegitimate claims. That is all this seeks to do. It does not change the standard whatsoever. We are not changing the standard with respect to any capacity of our companies to be protected abroad or otherwise. We are simply applying, frankly, a standard that most of them can understand; that most would have a full expectation of receiving if they were being tried in a court in our country.

I am surprised the Senator from Texas does not want American companies to know that if they are engaged in one of these processes abroad, they are going to have a higher standard applied to them. The standard as developed by the court system of our country, in which most of us believe, we think, is one of the highest standards in the world.

Our businesses are better protected by having the continuity of that standard and the certainty of the way in which our case law has been interpreted.

I reserve the remainder of my time.

Mr. MCCAIN. Mr. President, this amendment jeopardizes foreign investment and seeks to place unnecessary and harmful restrictions on the protections afforded to U.S. investors abroad. The amendment would substitute the carefully crafted language of the managers' amendment for language that would bind the Administration to a set of negotiating mandates.

The stated purpose of the Kerry amendment is to ''ensure that any artificial trade distorting barrier relating to foreign investment is eliminated in any trade agreement entered into under'' trade promotion authority. Unfortunately, the amendment language would do just the opposite.

Foreign investment is critical to international trade and vital to the development of economies around the world. Foreign direct investment provides for the expansion of industries and infrastructure while promoting economic development and the rule of law.

As the world's largest foreign investor, the United States invests an average of $150 billion a year in private capital in foreign nations. This involvement not only benefits the countries receiving such investments, it also results in the creation of more American jobs and new markets for U.S. products abroad.

American companies investing in foreign nations are generally more successful and typically pay employees higher salaries than those that do not. Not surprisingly, these companies are also among America's top exporters, comprising over 75 percent of U.S. exports over the past 25 years. American companies invest abroad to expand market share, establish local relationships, promote visibility, and establish a more efficient means of distribution to foreign consumers—enabling these companies to become more competitive globally.

Because many nations lack legal systems that afford protections similar to those afforded in the United States, the U.S. has entered into investment agreements for over 70 years in order to provide U.S. companies that invest abroad with the same level of protection they enjoy under U.S. laws. Without these investment agreements, the risk of investing in developing nations would simply be too great for most U.S. companies.

This amendment would restrict investment agreements from providing the full investor protections granted to them under U.S. law. In turn, the amendment would weaken the protections granted by the 45 bilateral investment treaties negotiated by the U.S., in addition to the protections under NAFTA and the U.S. Vietnam Trade Agreement.

Should the Kerry amendment pass, foreign investing in the U.S. will retain access to the protections granted to investors by U.S. laws, regardless of the terms of an investment agreement, but U.S. investors abroad will not be afforded these same protections.

Under the amendment, in order for environmental, health, or safety laws to be considered in violation of an investment agreement, an investor must demonstrate that a foreign country enacted such laws solely to discriminate against foreign investors. This high burden of proof that a foreign country intended to discriminate will enable foreign nations to arbitrarily use or establish environmental, health, or safety laws as a veiled means of protectionism. This is precisely the type of action that U.S. investment protections have historically attempted to prevent.

Legitimate concerns have been raised regarding the investor-state dispute settlement procedures contained within NAFTA's chapter 11. Last summer, Ambassador Zoellick met with the NAFTA ministers to discuss these concerns. Progress was made and the ministers agreed to work to improve the tribunals, particularly in the area of transparency.

The managers of this legislation have dedicated themselves to addressing concerns regarding the protections given to investors, and, in particular, investor-state dispute settlement procedures. They should be complimented for establishing a valuable set of investment negotiating objectives which will improve future investment agreements while not tying the hands of our trade negotiators in the process.

Through both the Trade Act of 2002 and the Baucus-Grassley-Wyden amendment which passed the Senate last week, Senators Baucus and Grassley made considerable efforts to address concerns regarding investment agreements while strengthening the negotiating position of the U.S. The Trade Act instructs U.S. negotiators to adhere to a list of well-founded objectives while crafting investment provisions. Among those objectives are instructions to ''establish protections consistent with U.S. legal principles and practice'' and not to afford foreign investors greater rights than those currently enjoyed by U.S. citizens and companies domestically.

To address concerns regarding the lack of oversight of tribunal decisions, the managers appropriately recommend the establishment of an appellate body to review tribunal decisions. In order to prevent potential abuse of process, the Trade Act encourages the creation of a mechanism to eliminate frivolous claims. Further, it addresses concerns regarding transparency, by encouraging that tribunal hearings be open to the public, with a mechanism for accepting amicus curiae briefs.

The thorough principles established by the managers of this bill are unprecedented in breadth and scope. No such principles have ever been written into previous trade promotion authority bills, and I believe this language will result in an improvement of the protections that are afforded to U.S. companies in future agreements and the process by which investor-state disputes are mediated.

The Kerry amendment represents a continuation of the trade-distorting, protective measures we have dealt with recently. Not only is this amendment potentially damaging to U.S. companies, it once again calls into question our nation's dedication to our trade-related commitments.

Existing U.S. investment agreements and the negotiating objectives included in the compromise Trade Act provide more than adequately for the legitimate concerns regarding investor-state dispute settlement procedures. This amendment could seriously damage U.S. interests and I strongly urge my colleagues to oppose it.

Mr. BIDEN. Mr. President, I support Senator KERRY's amendment to strengthen the protections for State and local government to achieve their environmental and other important priorities. The Kerry Amendment adds to the objectives that our negotiators will seek to achieve in future trade discussions. While we cannot mandate specific outcomes in those negotiations, we here in Congress will be able to look at future trade agreements to make sure that they include additional safeguards for the kinds of regulations that some international investors have challenged under NAFTA's Chapter 11.

We all agree that to make trade work, to bring the benefits of expanding markets to American workers and consumers, we must give investors the confidence that the countries they move into will not discriminate against them. They need to know that they will not have plants and equipment expropriated, or rendered worthless through some government regulation or other action.

But such protections can go too far, as many observers of actions taken under NAFTA investor-state provisions have concluded. The Kerry Amendment makes sure that our negotiators will be careful to balance the need for investor protections with the need for state and local governments to protect their citizens as they see fit. That is the kind of balance that will help to restore popular support for the many real benefits of expanded trade, and will help to secure Congressional support for future trade agreements.

Mr. ALLEN. Mr. President, I rise to oppose the amendment that Senator KERRY has offered. The Kerry amendment unfortunately seeks to impose highly detailed negotiating mandates on the President, and would give those mandates the force of law in the United States.

The bipartisan bill that is currently before us provides balanced guidance to U.S. negotiators both to protect U.S. investors abroad and to address the legitimate concerns that have been raised about investment rules.

The purpose of our investment agreements, and the dispute resolution provisions in them, is to level the playing field; to ensure that Americans operating abroad obtain the same benefits and protections provided to Americans and foreign investors operating in the United States.

NAFTA's rules on investment—the so-called chapter 11—are not novel or unusual; they are modeled on longstanding international and U.S. practice. Arbitral dispute-resolution panels were not invented by NAFTA; they have been in use for more than 40 years.

Chapter 11 is only one of over 1,600 bilateral investment treaties worldwide, the vast majority negotiated by the European Union's member-states, Japan, and Canada. These investment agreements ensure that investors are treated fairly when operating abroad.

These treaties contain an arbitral dispute-resolution process similar to that found in chapter 11. The arbitrators selected on these panels frequently are distinguished lawyers, jurists and statesmen including Warren Christopher, Benjamin Civiletti, Attorney General for President Carter, and Abner Mikva former Member of Congress and White House Counsel for President Clinton.

The United States has thus far entered into 43 bilateral investment treaties of this nature. If not for these treaties, U.S. investors operating in these countries could be disadvantaged, especially in comparison to their competitors from the European Union, Japan, and Canada.

Many U.S. companies and major trade associations tell us that these provisions are extremely important to protecting Americans against abuses in other countries. U.S. investors invest $3 trillion abroad and these investments account for more than a quarter of all U.S. exports. In short, foreign investment by U.S. firms keeps us competitive and builds jobs for Americans.

Several domestic constituencies, including environmental groups, have expressed great concern about the potential for use of these provisions to undermine important U.S. laws and regulations especially those protecting health, safety and the environment. The U.S. Government is vigorously defending U.S. environmental laws against any such charges.

The current administration is working with all interested parties in an effort to address these concerns for NAFTA and future investment agreements while continuing to protect American companies against abuse in other countries.

Steps have already been taken. For example, in July, 2001, the United States, Canada, and Mexico, through the NAFTA Trade Commission, issued an interpretation on two matters relating to chapter 11.

Some have concerns regarding the confidentiality of the panels.

It has been agreed that the parties would make publicly available all documents issued by or submitted to a NAFTA arbitration panel.

Others have complained that one type of investment protection called ''general treatment'' provides rights to foreign investors beyond U.S. law.

It was clarified that this provision affords no more than the minimum standard of treatment under customary international law and that provisions of other agreements (WTO) do not form part of the minimum standard, as some claimants were arguing in chapter 11 cases.

The United States, Canada, and Mexico have and will continue to utilize of our right under NAFTA to provide guidance to arbitral panels. Chapter 11 does not provide novel rules on what constitutes an expropriation beyond that covered by traditional investment agreements or by U.S. courts.

The truth of the matter is that overall trade helps the American family. The lower tariffs and higher incomes that followed the signing of the North American Free Trade Agreement (NAFTA) and the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) resulted in benefits of $1,300 to $2,000 a year for the average American family of four.

According to a recent University of Michigan study, a new trade round could deliver an annual benefit of $2,450 for this same family. Trade does not discriminate against the rich or the poor; it seeks to elevate all economic levels.

Contrary to popular belief, trade on balance, provides American workers with more opportunities to obtain higher-paying jobs than are lost due to international competition.

It gives more people the chance to make a better life for themselves and their family.

The U.S. Department of Commerce reports that, on average, jobs tied to exports earn 13 percent to 18 percent more than earned in other jobs.

In other words, trade brings prosperity and opportunity to more workers than are lost.

The effect of the North American Free Trade Agreement are as follows.

U.S. exports to our NAFTA partners increased 104 percent between 1993 and 2000, while U.S. trade with the rest of the world grew only half as fast.

In the 8 years since NAFTA's implementation, U.S. exports to Mexico and Canada have grown to support nearly 3 million American jobs today—one-third more than in 1993.

We trade about $2 billion a day with our NAFTA partners—that's almost $1.4 million a minute.

As U.S. government data indicate, without NAFTA, the United States would have lower-paying jobs and would export less, and Mexico and the United States would have lower environmental standards.

In the Commonwealth of Virginia, export sales of merchandise in 2000 totaled $10.5 billion, up nearly 30 percent from the 1993 export total of $8.1 billion. Virginia businesses recorded export sales of $1,490 for every person in the State.

And, unlike what some of my colleagues may have you believe, trade is also beneficial for the environment.

Studies have shown that countries that open their markets actually spend more money in efforts to preserve and protect the environment as a result of gains through trade. Attempts to impose environmental regulations have often been self-defeating because they have stifled the trade necessary for economic growth, which would enable countries to afford to adopt environmental protection policies. The overall track record of the United States in promoting initiatives to protect the environment provides evidence that environmental freedom and the economic development it engenders are correlated with sound environmental policies.

Fair and free trade agreements must not and will not compromise American sovereignty.

In response to concerns that trade deals may be unconstitutional and could undermine U.S. sovereignty.

It should be stressed that the United States will always determine our own domestic laws.

Even if future trade agreements allowed some disputes to be submitted to an international tribunal for initial determination, no trade agreement could grant an international organization the power to change U.S. laws.

Proper trade agreements foster adherence to the rule of law and protect private property and intellectual property rights.

Free trade forces participating countries to play fair. For example, because of its membership in the World Trade Organization, China will now have to crack down on software piracy, which has been a growing problem for sometime to many U.S. manufacturers.

China has long been the world's largest source of pirated compact disks and software.

In China last year, software firms lost over $1 billion in profits to piracy.

Furthermore, while many criticized China's WTO membership, American industry will benefit because, to comply with agreements of the organization, China now has to lower tariffs and non-tariff barriers.

The bottom line is that the United States needs to negotiate more free trade agreements. Of the more than 130 trade and investment agreements that exist throughout the world, the United States is party to only three: specifically, with Jordan, Israel, and the NAFTA countries of Canada and Mexico.

Free and fair trade and the chapter 11 issues are immensely important to the high-tech sector as well. The U.S. high-tech sector invests more abroad than any other industry. Leading, innovative U.S. companies have benefited from a set of stable and predictable rules governing investment in overseas markets.

Investments in foreign markets by high-tech companies, which support manufacturing and rapidly growing information technology services, are an integral part of a virtuous cycle that keeps this sector growing and strong.

The fact that large and small companies alike can reach customers in other countries with goods and services means that they can continue to provide great opportunities here at home for our engineers, researchers and other highly-paid and highly-skilled workers.

The bipartisan trade package includes a number of needed reforms that have arisen out of cases of foreign investors bringing actions in the U.S. These reforms include provisions for increased transparency, consistency in the rights afforded to foreign and domestic investors in the U.S., and improvements to dispute settlement procedures. And, it includes clarification of the definition of expropriation, although, Mr. President, Senator KERRY's amendment is not one of them.

The Kerry amendment would go far beyond these important and necessary changes and would impose new negotiating mandates in the area of investor protections.

These rigid requirements would tie U.S. negotiators' hands while giving our trading partners greatly increased leverage to make demands on their own.

The bipartisan trade package includes needed changes in the area of investment provisions and these should be passed by the Senate and implemented in trade agreements.

The Kerry amendment, in its attempt to address these concerns, goes too far and will create uncertainty and undermine the investment protections for U.S. companies as they do business in overseas markets.

These are only a few of the many reasons that my colleagues should join me in opposing this amendment and press

forward to pass this trade legislation in order to benefit America.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I yield myself such time as I may consume.

The PRESIDING OFFICER. The Senator is recognized.

Mr. BAUCUS. Mr. President, we sympathize with the general concern of the Senator from Massachusetts; namely, making sure that foreign investors do not have greater rights in the United States compared to domestic investors in challenging whether an action by a government body, say a State, city or county, is a takings under the Constitution of the United States. We all recognize that.

This is an area that is complex. It requires us to step back a little bit and find a ''level playing field'' between foreign investors and U.S. investors.

The Senator from Texas is absolutely correct. The main reason we are addressing this situation really began years ago when U.S. investors were being discriminated against overseas. It caused quite a few problems in many countries. So over the years, various treaties have been written between the United States and other countries trying to create a balance between foreign and domestic investors in the United States and in other countries. That is the whole goal here.

When NAFTA was written, including chapter 11, there probably was too much emphasis given to protecting U.S. investors' rights overseas rather than the interests of government here at home because that was the biggest concern at that time. Since then, there has been a rising concern that perhaps NAFTA went too far and gave too great a protection to foreign investors versus domestic investors in the United States, which led to concerns raised by the Senator from Massachusetts.

In this bill, we attempted to correct that problem with various provisions. We have lots of provisions in the bill to even the playing field.

We also took a provision suggested by the Senator to make it crystal clear that there is absolutely no favoritism given to domestic versus foreign investors who sued the United States challenging whether certain regulations were takings under the fifth amendment. It makes no difference whether it is foreign or domestic investors; an investor will be treated exactly the same whether he or she were in the other category. We took that language and added to that the amendment in the underlying bill to make that very clear.

But we have to make sure that American investors—while we are protecting ourselves by making sure foreign investors don't have an advantage over U.S. domestic investors in the United States—overseas are treated fairly and are not discriminated against.

There are some very glaring problems with the amendment offered by the Senator from Massachusetts.

First, he tries to define what constitutes a taking under the fifth amendment. His definition, first, is simplistic and, second, it is wrong.

First, it is simplistic, because all of us who have studied these issues know—believe me; I spent quite a bit of time a few years ago on the Environment and Public Works Committee—that the Supreme Court's definition of what constitutes a taking, and, therefore, requires compensation is extremely complicated. It is extremely complex. It depends totally upon the facts and circumstances of the case.

I will not take the Senate's time to quote all of the language of the Supreme Court opinions on takings which makes this point very clear. But that is the case.

The Senator from Massachusetts, however, wants to define in a sentence what ''takings'' is. His definition is wrong. With all due respect to my good friend from Massachusetts, it is also irrelevant because we can't define takings. The Supreme Court says what takings is. The Supreme Court under Marbury v. Madison interprets the Constitution. The Congress doesn't say what the Constitution says. We could say a lot. When it comes to what constitutes a fifth amendment taking, the Supreme Court decides that; we can't make that decision.

Here is how the Senator from Massachusetts defines takings. It is wrong. He says a measure is not a taking if it causes a mere diminution in the value of property. You can't define takings like that. It is wrong. You can't define it here in the statute. The Supreme Court is going to define what a taking is.

With the Senator's language, we are adding a huge incorrect and irrelevant complexity. It just shouldn't happen. It just fouls things up. It is not the right thing to do.

He has in his amendment another provision which is a real problem; namely, that investors—in the United States or any country—who want to bring an action in the other country—say a Canadian investor in the United States is claiming that actions are takings. That Canadian investor has to get permission from his country. Turn that around. Obviously, other countries are going to do the same thing, or turn that around in our case. We Americans would have to get permission from the U.S. Government to bring an action against another country claiming expropriation, an additional hurdle which the Senator from Massachusetts places in the way of a U.S. investor seeking redress overseas.

Now, I ask you. The Senator from Texas made the point: What if the U.S. State Department is in negotiations with, let us say, France over some matter, no matter what it is. Maybe it has to do with the Middle East; who knows what it is. Let us say a major American investor wants redress because he believes the French Government took action which was an expropriation of his property. He would have to get the approval of the U.S. Government. Knowing the State Department as we do, they are going to get very involved, or could get very involved, and impede or prevent that American from exercising his rights.

The Kerry amendment requires the investor to get permission from his host country before he can bring an action before the dispute panel where the investor thinks the action of the other country amounts to expropriation. There is another problem. It is a huge loophole. Essentially, this loophole says a foreign investor in the United States has to first prove that the primary purpose of the regulation was not discriminatory.

No U.S. investor is going to be able to prove that the primary purpose of a foreign regulation was not discriminatory. That creates a huge additional burden for the U.S. investor that a foreign investor in the United States does not have.

Most Americans say: Gee, what is wrong with that? Let us make those foreigners have to prove a much higher and an almost impossible standard compared with the domestic investors. It is going to happen. Do you think other countries are going to just sit back and take that? They are going to do the same thing. They are going to say: Wait a minute. In France, in Canada, or in whatever country, an American investor who wants to come to that country, assuming he can first get permission from his own United States State Department has to show that the primary purpose in France, or in Canada, or in whatever country is to discriminate against Americans. The American investor cannot prove that. It is almost impossible to prove that the primary purpose in that country was to discriminate against Americans. It is almost impossible.

That is why this amendment, while on the surface it talks about all these cases—and there are going to be cases. There are always going to be cases pending for a dispute settlement action. There will always be. But the mechanism which the Senator from Massachusetts prescribes here, when one reads the exact language of his amendment, has all these very deep flaws. To say there are unintended consequences is to say blithely that there will be dramatic consequences as a result in the consequence of this action, if we are so foolish enough to pass this amendment.

I know that is strong language. I have the utmost respect for my good friend from Massachusetts. But that is what this language does. One has to read the language.

As I said from the outset, we have gone overboard to take the earlier language suggested by the good Senator to make sure that the playing field is in fact level. We have done that. That is in the bill. That is in the bill. But to go further and adopt the provisions now offered by the Senator will have very

dire consequences for American investors overseas, and also boomerang against the various municipalities and States.

I hear about a letter stating that the States basically are a little fearful Uncle Sam might do some things that will override their prerogatives. But I don't think the persons who wrote that letter really thought through the full implications of this amendment offered by the Senator from Massachusetts because, if they had, I doubt very seriously many of them would have signed the letter.

I reserve the remainder of my time.

Mr. KERRY. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Massachusetts has 22 minutes 24 seconds.

Mr. KERRY. Mr. President, I yield myself such time as I may use.

The PRESIDING OFFICER. The Senator is recognized.

Mr. KERRY. Mr. President, I will speak to what the distinguished chairman has just said because, once again, this amendment does not do the things that have just been alleged. Let me be very specific about it.

First of all, the chairman sort of brushes off the serious consequences to U.S. interests by the status quo. I would ask him, and I would ask my colleagues, does anybody here believe that the Governor of California made the decision he made with respect to methanol on a discriminatory basis? There isn't anybody in America who would suggest that he did. Yet that case is being brought now. It exists.

The fact is we do nothing to change the standard by which a business would have the opportunity to resolve its investor-state relationship. In fact, we are not declarative as to the issue of expropriation.

What we do in this amendment is seek to define over 80 years of Supreme Court decisions as to what is not an expropriation. We do not say what it is, which is what the Senator was just arguing. We do not define ''expropriation.'' All we do is point out what it is not. We clarify exactly what the Supreme Court has said in the 1993 Concrete Pipe case, where they said: Our cases have long established—this isn't hard to define; these are the words of the Supreme Court—we have long established that mere diminution in the value of property, however serious, is insufficient to demonstrate a taking.

So the Supreme Court of the United States has established a standard which they say we have long established, which Justice Scalia reaffirmed as recently as 1999 in the College Savings Bank case.

So all we are doing is saying that is not an expropriation. But if you allow this law to stand as it does today, it could be an expropriation by the standard that an arbitration panel decides to apply. So we are subjecting our States and ourselves to the resolution of a dispute by a standard that we know has long been established by the Supreme Court to be otherwise. They might define an expropriation to be exactly what the Supreme Court has said it is not.

All I seek to do in this amendment is to say we embrace the definition of the Supreme Court as to what it is not. We do not try to establish what it is beyond what it is not. So, once again, people are grabbing at things to try to make this seem more perilous than it really is.

Moreover, with respect to the screening, the screening applies to a U.S. company applying to a U.S. screening process. It is in our interest to have knowledge that we are not, in fact, engaging in some wholesale discriminatory process that works contrary to the intent of the treaty and that there is a legitimate claim.

But what happens in another country is up to that country. It is up to that country now. If they want to go ahead and bring suit against us, just like the Canadian corporation has done, suing California for $1 billion because they are trying to protect its citizens from the effects of MTBE—and now they are at risk for $1 billion under this silly law the way it stands. It is silly law, and nobody even debated it when it was put into place originally. It has not even been debated. This is the first time we have debated it on the floor of the Senate.

We are seeing a growing number of lawsuits now where companies are coming in and saying: Hey, we don't like that health law. We don't like the definition of ''cigarettes.'' We are going to come in and tell you you can't use those words; you are diminishing our ability to sell cigarettes in your State. So you are taking away our property. Your citizens owe us money.

This is common sense. Sure, we have a lot of people who like the status quo because they profit from the status quo. But that doesn't mean it is good law. And that doesn't mean it protects the interests of the United States. And that doesn't mean it is based on common sense.

I respectfully suggest that what we are doing is a sensible way of trying to establish the high standards of the court system of the United States. What other people want to do in their countries is their business, but this is the way we should set up the screening in ours.

There isn't anybody here who is going to argue that the international business structure is the cleanest or most devoid of corruption today. The United States is one of the few countries that has the anticorrupt businesses practice. As far as I know, in recent years, the French were allowed to deduct bribes on their income taxes. And there are a whole bunch of folks who run around the country offering money under the table, all kinds of different ways.

This will be the first time I have heard people on the floor of the Senate defending the capacity of these other countries to do clean business.

I think we ought to raise the standard. That is precisely what I am trying to do.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. How much time is remaining on each side?

The PRESIDING OFFICER. The Senator from Massachusetts has 16 minutes. The Senator from Montana has 19 minutes.

Mr. BAUCUS. Mr. President, I yield to my good friend from Nebraska—how many minutes?

Mr. HAGEL. Seven minutes.

Mr. BAUCUS. Mr. President, I yield 7 minutes to the Senator from Nebraska.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. HAGEL. Mr. President, I rise today in opposition to the Kerry amendment. Almost every American who has a pension plan has an interest in maintaining strong investment protections, the kind that we now have in the current trade promotion authority bill.

Almost every pension plan carries company portfolios that invest overseas. If those investments lose value due to unfair, arbitrary, or discriminatory action by a foreign government, then the U.S. company deserves compensation. It is what the U.S. courts offer American companies invested in the United States. It is what U.S. courts offer foreign companies invested in the United States.

The current TPA bill ensures that U.S. companies abroad are afforded the same fair and transparent arbitration procedures that are consistent with U.S. law, practice, and principles.

The Kerry amendment puts into jeopardy this protection. U.S. companies that invest overseas make important contributions to the U.S. standard of living that, in many cases, are greater than those of purely domestic firms. These contributions help to increase U.S. productivity and include: research and development, exports, and investments in capital equipment.

Since 1982, these companies have performed well over half of all U.S. research, and not only research but significant development as well.

Since 1977, these companies have shipped over half to three-quarters of all U.S. exports. Their affiliates are important recipients of these exports and accounted for nearly half of these shipments in 1997.

These companies undertake the majority of all U.S. investment in physical capital in the manufacturing sector; as much as 57 percent in that sector. More than 70 percent of the net income earned by overseas affiliates of American companies returns to the United States. It is a significant number.

More than 70 percent of the net income earned by overseas affiliates of American companies returns to the

United States. That means jobs, opportunity, and growth for this country—not overseas, not other markets, but this country. The well-being of these companies is important, obviously, to our economy.

Investing abroad has similar risks that investing in the U.S. has. There is a chance that a local regulation may change the value of your property or your asset. No one wants to have their property expropriated but sometimes the Government determines a public policy need to do so. When that happens, U.S. law and these investment protection provisions in the TPA bill say that the company is entitled to at least compensation.

The purpose of the investment protections is to afford the same protections to U.S. companies in foreign countries that foreign investors get in U.S. courts. Given the developing world's lack of sound judicial systems, there is a need for an investor-state dispute mechanism that is based on U.S. law, practice and legal principles.

The investment provisions in the current TPA bill direct U.S. negotiators to obtain the following, clearly: protections for U.S. companies invested abroad against discrimination in expropriatory actions by foreign governments or for their unfair and inequitable treatment; transparent and open investor-state panels; mechanism to weed out frivolous claims and deter the filing of such claims; procedures for the efficient selection of arbitrators and the expeditious disposition of claims; enhanced public input into the development of government positions; a review mechanism to deal with potential aberrant decisions; protections on expropriation consistent with U.S. legal principles and practice; and protections on fair and equitable treatment consistent with U.S. legal principles and practice.

The TPA bill contains mechanisms that address the legitimate criticisms we have heard over the past year about the investment provisions in the North American Free Trade Agreement chapter 11 investment section. We have heard much about that in the debate this afternoon.

As plainly and clearly as I can say it, there is no need for the Kerry amendment. I urge my colleagues to oppose the Kerry amendment.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time? The Senator from Montana.

Mr. BAUCUS. Mr. President, I appreciate the remarks of my friend from Nebraska. I might go further and say, not only is there no need for the Kerry amendment but it would create huge problems for Americans in America and problems for Americans overseas. Whether they are intended or unintended consequences, I am not sure, but those consequences are real.

I must repeat, the underlying bill was changed in the Chamber to include language suggested by the Senator from Massachusetts, Mr. KERRY, that solves all the problems he has now been talking about.

What are they? Essentially if you listened closely to the cases he has been talking about, the concern is that a foreign investor might have superior rights compared to a domestic investor. The language we adopted says clearly that foreign investors have no greater rights than a domestic investor. That is the language in the underlying bill. We are talking about trade promotion authority. We are talking about fast track. We are talking about negotiating objectives. We are talking about what we would like our executive branch trade negotiators to work toward, the guidelines under which we are giving them to work.

One of the guidelines in the current bill is that foreign investors would have no greater rights than domestic investors in investor-state dispute settlements. That is clear. All the problems the Senator from Massachusetts talked about are already taken care of. That is why in many respects the statement by the Senator from Nebraska is true. It is unneeded. The problem is already cured in the bill with the inclusion of the language that foreign investors enjoy no greater rights than domestic investors.

If you look at the actual language of the amendment, not only is it not needed, it creates a whole host of additional problems we just don't need to have. One is when we try to define what expropriation is. We can't redefine the Supreme Court's definition of what expropriation is. That is up to the Supreme Court to define so long as it applies equally to domestic and foreign as the underlying language provides.

Second, he creates an initial hurdle that a domestic investor has to get approval from his host government before he or she could seek redress of rights in the foreign country. For an American investor that means the United States Government and the State Department and, who knows, the Treasury Department can get involved and say, we have problems with the other country. We don't know if we want you to proceed with your case in the other country; we don't want you to do that. That is what is called for by the Senator's language.

In addition, he suggests that a foreign investor cannot bring a claim presumably in the United States unless that foreign investor can prove that the underlying action by the municipality or the State was primarily to discriminate against the foreign investor, an almost impossible burden to meet. Clearly, if we create that almost impossible burden for foreign investors in the United States, other countries can do the same. This means that other countries, under the guise of public health and safety and environmental protection, could discriminate against the United States in a very subtle way and discriminate against U.S. investors as opposed to their own investors, but make it very difficult, if not impossible, for the U.S. investor to prove that the primary purpose of that other country was to discriminate against the United States. That is what this language says.

I am not talking about potential problems. I am talking about the exact language of the bill. I will run through them again. It tries to define—incorrectly—what constitutes a taking under the fifth amendment of the Constitution and, B, it requires that a host investor get permission of the host government and, C, sets the impossible standard that a foreign investor must show that the primary purpose was to discriminate against him in seeking redress in a foreign country.

That is going to boomerang against the United States. The main point, taking care of all the problems suggested by the Senator from Massachusetts, there are no problems left. We handled it. It is in the bill. Second, the additional language that he suggests is just going to cause a whole host of problems that we don't need, to put it mildly.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. BAUCUS. Mr. President, how much time remains on both sides?

The PRESIDING OFFICER. The Senator from Montana has 8 minutes, and the Senator from Massachusetts has 16 minutes.

Mr. BAUCUS. Mr. President, I yield 4 minutes to the Senator from Iowa.

Mr. GRASSLEY. Mr. President, I thank Senator BAUCUS for how he has worked in a team with those of us who worked this compromise out to defeat a lot of crippling amendments. I see this as the last crippling amendment. Senator BAUCUS and my colleagues on this side of the aisle have already made strong arguments why the amendment ought to be defeated. I add my thoughts to theirs.

Senator BAUCUS and I took great care to address concerns raised about potential abuse of the investor-state dispute process. At the same time, the bill recognizes that protecting U.S. citizens abroad is also an extremely important objective.

This amendment threatens to undermine the bill's careful balance in two ways.

First, it ignores the delicate political compromises needed to pass this bill. In doing so, it jeopardizes passage of both trade adjustment assistance and trade promotion authority.

Second, the bill undermines the careful substantive balance outlined in the bill. Under the guise of protecting Government's ability to apply health, environmental and safety regulations, it takes away the rights of U.S. citizens to receive a fair and impartial hearing when their property is confiscated overseas.

Let me give you an example. In 1972, the Pakistani Government nationalized ten schools belonging to the Presbyterian Church of America. For the

past 30 years, the Presbyterian Church has been trying to recover their investment. Even after the Pakistani Supreme Court ruled in 1992 that the state could not take their land, Pakistan continued to deny the church its property.

It should not take 30 years for a church to recover its own property, but that is what the current state of play in too many parts of the world. And that is why we need strong investor-state dispute settlement procedures. Let me give another example.

Nearly 30 years ago, Richard Bell, a U.S. citizen living in Costa Rica, had his property expropriated by the Costa Rican Government for a national park. Despite assurances from several Costa Rican administrations that the matter would be resolved, it took until October 2001 before Costa Rica entered into a framework agreement with Mr. Bell to submit the issue to arbitration. And that agreement would never have been reached without hundreds of hours of U.S. government assistance. Mr. Bell declined to use the Costa Rican courts due to extensive delays associated with the judicial system. In hindsight, 10 years in the judicial system does not seem so bad.

Not every country in the world provides quick access to justice like the United States. The amendment would hurt our ability to help these citizens. And I think that is a mistake.

As Stuart Eizenstat, former deputy Secretary of the Treasury during the Clinton administration wrote recently in an editorial:

> By demanding that the Senate both reduce investors' protection against expropriation and force investors to obtain permission to file claims before tribunals, the critics would strip U.S. investors of key protections and potentially to politicize the dispute settlement process.

The ability of U.S. citizens to invest abroad and foreign citizens to invest in the United States is not something to be taken for granted. For the last 25 years, each successive administration has recognized that it is critical to negotiate strong, objective and fair investment protections in our international agreements to continue to promote such investment. These traditional investment protections are largely based on U.S. law and policy and established international law.

The bill carefully balances concerns about the investor-state dispute settlement process without weakening core investment rules that serve America's interests. The degree of support for the final product is demonstrated by a strong bipartisan committee vote of 18 to 3 in favor of the bill.

I urge my colleagues not to upset this careful balance. Again, let me quote from a recent editorial by Stuart Eizenstat:

> The Senate should approve the Baucus-Grassley Fast Track bill without delay and should resist attempts to weaken investment protection rules that embody core values of the United States: respect for private property, nondiscrimination, and the right to appear before an independent and impartial tribunal.

This amendment undermines these core values. I urge my colleagues to reject it.

The PRESIDING OFFICER. Who yields time?

Mr. KERRY. Mr. President, what is the time situation?

The PRESIDING OFFICER. The Senator from Massachusetts has 16 minutes.

Mr. KERRY. And the opponents?

The PRESIDING OFFICER. They have 4 minutes.

Mr. KERRY. Mr. President, I yield myself such time as I may use.

Let me respond to the distinguished ranking member. What he read was a Supreme Court case about eminent domain. That is completely separate from what I am seeking to address. It has nothing to do with what my amendment does. He talked about the Supreme Court and the standard with respect to the right of our companies to seek redress if a government takes their property. That stays exactly the way it is today. That is expropriation by eminent domain.

What we are talking about is exclusively regulatory action, when a government takes regulatory action, passes a law to implement environmental standards, or a health standard, and a company then comes in and claims that the particular regulation was purposefully to discriminate against that company, not for the welfare of its citizens.

Now, are the Senators saying we should not require that appropriate standard, that you ought to be able to win a regulatory expropriation when it is discriminatory? That is not a problem; that is a standard. That is an appropriate way to measure whether or not a regulation reaches too far or is appropriate.

Let me be very precise about how this works. Consider the MTBE ban in California. Nine States have now followed California's lead. California—and the Governor or the State—is being sued by a Canadian company claiming their removal of methanol is discriminatory. It is geared as an expropriation that has taken their value. Nine States have now done the same thing. Are they all going to be subjected to suit? Are we going to have every company have the ability to come in and say, we think you are just passing this, whether or not you have hurt our business, so they settle for just $175 million? That is what I talked about—a nuisance settlement of $175 million that comes out of the taxpayers.

Chapter 11, as it currently stands, is being used to threaten governments from enacting public health measures. Here is an example: The Canadian Government has sought to ban the use of the words ''light,'' ''mild,'' and ''low tar'' from cigarette packaging, and Philip Morris recently issued a warning to Canada that, under NAFTA, Canada must compensate foreign investors when measures expropriate investments in Canada. So Philip Morris is warning Canada that their use of the words ''light,'' ''mild,'' and ''low tar''—banning those words—is taking value away from Philip Morris. Should that be subjected to a standard of being discriminatory against Philip Morris, or to a standard of, is that a legitimate health concern of the Canadian Government? It works both ways. It absolutely works both ways.

Now, there are three significant areas where the Baucus bill, as amended, falls short. No. 1, it does not ensure that the long-held U.S. Supreme Court case law on expropriation on what is not expropriation is upheld. I reiterate, we are not defining expropriation. We are simply saying that under the long-held U.S. case law this particular kind of reduction of business is not when an expropriation ought to apply because otherwise a secret—we don't have any right to know what the deliberations are, we don't know what the standards are. It is an arbitration panel of three judges of another country that is going to decide. We think that is an expropriation.

The second thing is that I do not rule out the possibility that an investor could bring an expropriation case. We simply limit the use of an expropriation standard to those cases in which U.S. case law recognizes regulatory taking. Secondly, we provide a protection for legitimate public interest law.

The amended bill does not guarantee that a legitimate domestic law is protected. My amendment provides safe harbor for Federal, State, and local laws and regulations protecting public health and safety and the environment, except when the action taken is primarily discriminatory. That is an appropriate standard to apply, and that is what we ought to vote for.

The current bill allows claims to be decided on a question of whether the free flow of goods or capital is impeded by public health. That is not a standard we should want to adopt in our country.

Thirdly, we uphold the principle of due process. The principle of due process is somewhat close to the international law of what is called fair and equitable treatment. But fair and equitable treatment is completely vague. We don't know what it means. We don't know how that standard has been applied. It can mean many things. One thing we have tried to do over the years in this country is define clearly under the due process clause of the U.S. Constitution what process is, what rights attach to people. If the concept of fair and equitable treatment remains the guiding principle of the investor-state dispute panels, without further clarification, then you have a very real risk that those panels import a different legal standard into their consideration than that which our U.S. companies have a right to expect.

I believe American companies win with the passage of this amendment because, in fact, it has the practical effect of making future investor-state arbitration panels have their rulings based on concrete, well-defined U.S. laws, rather than nebulas, uncertain, unclear, international precedents.

Under my amendment, an American investor can win before an arbitration panel if they show they were discriminated against on the grounds of national treatment or if the offending regulation is enacted or applied in a discriminatory, purposeful fashion.

If a foreign government passes legislation that is discriminatory, of course, an investor will be able to seek compensation. There is nothing in this legislation that diminishes their capacity.

What I sought to do in my amendment originally was to guarantee that no foreign investor would have greater rights than a U.S. investor. The amendment by the chairman simply says they will not have lesser rights. It does not protect their right to guarantee that a foreign investor will not have greater rights. That is what this is about.

I hope my colleagues will help American businesses to be properly and adequately protected and our States to be protected with their laws of public purpose: to protect the environment and protect our health standards.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time? If no one yields time, time will be charged equally to both sides.

The Senator from Montana.

Mr. BAUCUS. Mr. President, there are many statements the Senator made with which I take issue because they are inaccurate. One of the most inaccurate is the last statement the Senator made, that there is nothing in the bill to make sure foreign investors are not accorded greater rights than domestic investors. This is the Kerry language which we provided for in the underlying bill—not the Kerry amendment now being offered, but Kerry language he suggested earlier.

Let me read it:

> Insert the following: foreign investors in the United States are not accorded greater rights than United States investors in the United States.

That is what is in the bill. So his statement to the contrary, that there is nothing in the bill that assures foreign investors do not have greater rights than domestic investors, is inaccurate. We already include it in the underlying bill.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, the Senator is correct, that is the language that was used, but it is preamble language. It is in the preamble. It has no teeth. There is no substance to it. What I am trying to do is guarantee in each of these categories that there are teeth, there is substance in the law that, in fact, guarantees you will not have those greater rights because still all of this is subject to the international panel's application of standards; they ultimately will decide.

Unless we establish some standard by which to measure it, that is literally a statement without any enforcement mechanism whatsoever.

I reserve the remainder of my time.

Mr. BAUCUS. Mr. President, how much time remains?

The PRESIDING OFFICER. Six minutes to the Senator from Massachusetts and 2 minutes to the Senator from Montana.

Mr. BAUCUS. Mr. President, I will take 1 minute. This debate is devolving into little details. In my 1 minute, let me say, again, the Senator is inaccurate because we are talking about negotiated objectives in the bill. They all have the same force and effect. That is, the language referred to has the same effect as it would for another part of the bill. We are talking about negotiated objectives given to our negotiators as they try to negotiate other agreements.

The PRESIDING OFFICER. Who yields time?

The Senator from Texas.

Mr. GRAMM. Mr. President, I will take just 1 minute of time. Let me first say there is much about the argument by the Senator from Massachusetts that, first, I do not understand and, second, I do not agree with.

First, let me say I was puzzled by his reference to lawsuits and Republican opposition thereto. If there is any principle I believe in, it is the right of people to protect their property.

Second, it seems to me that the Senator has written an amendment that addresses no legitimate concern because in the 57 years we have had investment treaties giving investors in America the right to go to arbitration to have their investment protected, no one has ever won a suit against the United States of America.

And meanwhile, American investors use these rights every day in every developing country in the world. They make the difference between confiscation and destruction of American investments, and the protection of American investments and the jobs that flow from them.

The Senator argues that nothing in his amendment lessens the rights of American investors. Nothing could be further from the truth. His amendment would require investors to get government permission to protect their basic property rights. Governments would have to sign off in order for investors to obtain protection of their property. Nothing could be more alien to the American system than that notion.

His amendment also deems exempt those State and local laws and ordinances related to a series of issues—such as health, safety, environment, or public morals, whatever that is—unless the laws and ordinances were intended solely to take investor property. That new standard would run counter to our notion of discrimination—which looks at impact not intent—and would be much harder to breach. Finally, the Kerry amendment says that your property is protected only if the taking is complete. That is little consolation to an American investor.

I urge the rejection of the Kerry amendment.

The PRESIDING OFFICER (Ms. CANTWELL). The Senator's time has expired.

All time remaining is that of the Senator from Massachusetts.

Mr. KERRY. Madam President, how much time remains?

The PRESIDING OFFICER. Six minutes.

Mr. KERRY. I will not use all that time.

The Senator from Montana is correct, we are reaching the end. Let me once again answer my friend from Texas and say we have established screening mechanisms with respect to certain kinds of cases all through our country. Lawyers have accepted the notion—we even have rules in the Federal court under rule 11, if I recall it correctly, which seek to deal with the question of frivolous lawsuits.

What we are trying to do is recognize that we want to establish some order in the system. I think most people would agree that the challenge by the Canadian company to the California statute with respect to MTBE is frivolous. No one here would believe that is somehow discriminatory or a taking; nevertheless, we have a lawsuit. California taxpayers are exposed for the potential of $1 billion for what was a legitimate health effort.

If people think that ought to be tying up the arbitration panels of rule 11, go ahead and vote for it, but I do not think it should. There ought to be some kind of mechanism by which you have a signoff on whether there is a legitimacy to the claim. Since it is your own Government making that judgment, particularly with respect to a U.S. business interest, it is really hard to conjure up a scenario within which they are not going to be pretty permissive if there is some legitimacy to a claim.

What we really see here is resistance to the notion that we should raise the standard of international behavior with respect to the potential of what is or is not a cause for action in an expropriation. I submit to my colleagues that the standard here is vague. The standard is now carried out in secret. It is carried out according to standards that our businesses do not know and cannot anticipate.

It is carried out by a standard that is less than the rights afforded our businesses under the U.S. Constitution; less than those rights, according to the due process clause, the fourth and fifth amendments; and less than those rights according to the settled case law of the Supreme Court of the United States for a long period of time, to quote the Supreme Court itself.

I believe we should put in some objectives which state clearly what we would like to have negotiated. All of this is a negotiating objective. I do not deny what the Senator has said. These are goals. But why not be precise about what we want negotiated and the standards that we think ought to apply?

If they find the kind of problems the Senator from Texas is saying, they will not negotiate it the same way. These are all objectives. Let us vote for a standard and an objective in the negotiations so we arrive at the better protection of American businesses with respect to expropriation and we do not submit our States to a series of frivolous lawsuits as they are currently and we do not allow a process of intimidation to take place between company and government as we see in the Phillip Morris-Canada situation with respect to smoking.

That is what this vote is about. Since this is not the meat and potatoes in the end anyway, what we vote is not the final word. What we are voting is an intent and a direction, and I hope my colleagues will vote the intent and direction of raising the standard by which the U.S. businesses are going to be treated in the trade resolution process.

I yield the remainder of my time.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Madam President, is all time yielded back?

The PRESIDING OFFICER. All time has expired.

Mr. BAUCUS. Madam President, I move to table the Kerry amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Arkansas (Mr. HUTCHINSON), the Senator from New Hampshire (Mr. GREGG), the Senator from North Carolina (Mr. HELMS), and the Senator from New Mexico (Mr. DOMENICI), are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 55, nays 41, as follows:

[Rollcall Vote No. 121 Leg.]

YEAS—55

Allard	Cochran	Hutchison
Allen	Craig	Inhofe
Baucus	Crapo	Kyl
Bennett	DeWine	Landrieu
Bingaman	Ensign	Lincoln
Bond	Enzi	Lott
Breaux	Feinstein	Lugar
Brownback	Fitzgerald	McCain
Bunning	Frist	McConnell
Burns	Graham	Miller
Campbell	Gramm	Murkowski
Cantwell	Grassley	Nelson (NE)
Carper	Hagel	Nickles
Chafee	Hatch	Roberts
Santorum	Snowe	Thurmond
Sessions	Specter	Voinovich
Shelby	Stevens	Warner
Smith (NH)	Thomas	
Smith (OR)	Thompson	

NAYS—41

Akaka	Dorgan	Lieberman
Bayh	Durbin	Mikulski
Biden	Edwards	Murray
Boxer	Feingold	Nelson (FL)
Byrd	Harkin	Reed
Carnahan	Hollings	Reid
Cleland	Inouye	Rockefeller
Clinton	Jeffords	Sarbanes
Collins	Johnson	Schumer
Conrad	Kennedy	Stabenow
Corzine	Kerry	Torricelli
Daschle	Kohl	Wellstone
Dayton	Leahy	Wyden
Dodd	Levin	

NOT VOTING—4

Domenici	Helms
Gregg	Hutchinson

The motion was agreed to.

Mr. REID. Madam President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CHANGE OF VOTE

Mr. REID. Mr. President, on rollcall vote No. 121, Senator BIDEN voted ''aye.'' It was his intention to voted ''no.'' Therefore, I ask unanimous consent that Senator BIDEN be permitted to change his vote since it will not affect the outcome of the vote.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The foregoing tally has been changed to reflect the above order.)

Mr. REID. Madam President, the Senator from West Virginia, Mr. ROCKEFELLER, wishes to speak in morning business in regard to the American soldier who was killed the day before yesterday in Afghanistan. I ask unanimous consent that the Senator from West Virginia be recognized for up to 10 minutes to speak as if in morning business.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

(The remarks of Mr. ROCKEFELLER are printed in today's RECORD under ''Morning Business.'')

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, I ask unanimous consent that amendment No. 3442 be temporarily set aside. I have spoken to Senator DORGAN, and he is in agreement. The managers of the bill are trying to work something out on this amendment. So I ask that it be set aside.

I also say, for the edification of Members, that immediately Senator DORGAN is going to speak, as there is a unanimous consent agreement pending allowing him to do so, for up to half an hour on the Cuba amendment he offered. Following that, Senator TORRICELLI is going to offer amendment No. 3415, under a half-hour time agreement, evenly divided. Then we are going to go to a Grassley amendment that he is going to offer.

This is about as far as we will be able to get this evening, the majority leader has indicated. So that is where we are. We will have something more definite as soon as Senator DORGAN finishes his statement on Cuba. We will have something written up so people know more definitely what this will be.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from North Dakota.

AMENDMENT NO. 3439 WITHDRAWN

Mr. DORGAN. Madam President, it is my intent not to take the 30 minutes. But I do want to make some comments about an amendment I have offered that is now pending, amendment No. 3439. This amendment deals with language that was in the farm bill that passed the Senate and went to conference dealing with the ability to sell food to Cuba.

As my colleagues know, we have had an embargo with respect to the country of Cuba for some four decades. That embargo included, for most of those four decades, an embargo on the shipment or sale of food to Cuba. That changed a couple years ago because my colleagues and I decided that an embargo ought not include an embargo on food shipments, that using food as a weapon is not the appropriate thing to do.

So we lifted that embargo with respect to food, though it was lifted in a very narrow way. And the Cubans have been able to buy American food, especially following the hurricane in Cuba. They have purchased $75 to $90 million worth of food from this country now. It has to be purchased with cash, and they have to do it through a French bank in order to accomplish the transaction.

In fact, following the vote in September of 2000, where we allowed food to be sold to the Cubans, one of the people who opposed that, a Congressman from Florida, said he was satisfied that the language in the legislation was restrictive, making it difficult for the United States companies to do business in Cuba because they will have to go through third countries for financing. In point of fact, he was saying it is going to make it very difficult for us to sell food to the Cubans.

We agree that it is difficult. As a result of that, we put legislation on the farm bill in the Senate by a very significant vote. That legislation says that Cuba could access private financing in this country for the purchase of food from the United States. No government subsidies at all, just private financing, if they can find private financing. We included that in the farm bill that left the Senate and went to conference and got stripped out of the conference, even though the House of Representatives had a vote. They voted 273 to 143 to endorse the Senate plan for more trade with Cuba.

So the House has spoken on this issue. The Senate has spoken on it. By far, the vast majority of both the House and the Senate said we do not want to use food as a weapon. Let's be

able to sell food to the Cubans, if they want to buy food. If they want to access private financing, they can access private financing, if they can find it somewhere. But let's not make it more difficult for those in the world who need access to that which our farmers grow in such abundance to have access to that food—let's not make that more difficult.

There are some who still are rooted in the 1960s. This 40-year embargo with Cuba has not succeeded through 10 United States Presidents. It just has not succeeded.

I do not stand here suggesting that I have any sympathy for the Castro regime. We need to, as a country, persuade Cuba to move towards democracy, move towards greater human rights. I believe we will best do that by doing just as we do with China and Vietnam—both Communist countries—engaging them with trade and commerce and travel.

I believe we will best do that in Cuba in exactly the same manner. That is why I believe that changing our laws with respect to trade, especially with respect to food, and also with respect to travel, will be the method by which we move Cuba and move the Castro government towards a day when there will be open elections in Cuba, democracy, and a better record on human rights in Cuba.

There are some in this town who do not agree with me. And I respect that. But I tell you, I wonder, for the life of me, how does someone really believe that our selling chicken gizzards, turkey legs, pork lard, wheat, and dried beans to Cuba undermine the interests of the United States? Does anybody really believe that, that the sale of these agricultural products to Cuba undermines the economic interests or the security interests of the United States? No one really believes that any longer.

So I do not believe we ought to use food as a weapon anywhere in the world, under any circumstance. That does not hurt Fidel Castro. He has never missed breakfast or dinner because this country decided it will not sell food to Cuba. But the poor, sick, and hungry people in Cuba, who have missed a lot of meals, they are the ones who hurt from this country's policy of using food as a weapon.

So this amendment is very simple. It lifts, ever so narrowly, that portion of the embargo that deals with food and allows Cuba to purchase food from this country with private financing—not public financing, just private financing.

Why should our farmers be the victims of a foreign policy that doesn't work? Why should our farmers be told that they cannot sell their crops to Cuba using the kinds of private financing that are common to agricultural sales involving other countries? That doesn't make any sense to me.

I know my colleague from New Jersey has a different view on this. Let me, if I might, out of my time, yield to my colleague from New Jersey for 4 minutes.

(Mr. REED assumed the chair.)

Mr. TORRICELLI. Mr. President, I thank my colleague from North Dakota for yielding me this time.

There are profound differences in the Senate over American policy towards Cuba, as there are divisions in the United States. For 40 years, the Cuban people have seen their nation enslaved by an alien ideology. The Cuban people, who by their nature are independent, industrious people, entrepreneurial in spirit, strong of faith and nationalism, have seen their country's independence compromised by foreign alliances, their sense of entrepreneurship compromised by communism, and the free spirit of the Cuban people dampened by state control over almost every facet of life.

Ten years ago, this Congress recognized that America was maintaining a fiction in its policy toward Cuba. We pretended to have an embargo but allowed American corporations to trade with Cuba through Europe. We said we were offended at human rights violations in Cuba, the denial of all basic rights, but we maintained normal economic enterprise through our allies. The Cuban Democracy Act and then the Helms-Burton Act, under the Clinton administration, changed these circumstances. That issue is now before the Congress again, and it is a good debate.

As certainly as Senator DORGAN feels the need for change, I rise in the belief that what is required is not change but more time. It has admittedly been a long time. I cannot say with any satisfaction that the policy has yielded any results. I can only tell you that American policy is justifiable, morally and strategically, and that the burden of change is not with us. The United States Government has no argument with the Cuban people. It is for this reason that American law has exempted food and medicine and cultural exchanges and media visits from the embargo.

For 10 years since the modern embargo was written, the U.S. Government has made concession after concession. To the Castro government we allowed the opening of news bureaus in the hope that Castro would institute some reform, and there was none. The Clinton administration allowed charter flights so tourists could visit in the hope there would be some concession from Castro, and there was none. We believed that if we would loosen up visas for tourists to begin to visit in some small numbers, we would get some reciprocal action by Castro, and there was none—time and time and time again. Indeed, in the licensing of food deliveries and other economic enterprise, every single request that was made of the Treasury Department was granted, concession after concession.

What is it we sought? Some small indication from Havana of change. If Fidel Castro had done anything, a single opposition newspaper, one; an election in a small town, one province; a single political party in opposition—anything—there would be no embargo today.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. TORRICELLI. I ask for 1 more minute.

Mr. DORGAN. I yield an additional minute.

The PRESIDING OFFICER. Without objection, the Senator is recognized.

Mr. TORRICELLI. Under American law, the moment the President of the United States has certified there is a free election in Cuba, by law there is no embargo. I know Senator DORGAN and I will address the Senate on this issue at another day, another time, on another piece of legislation. It is an important debate for the Senate. On this day I did not want Cuban Americans to believe that this Senate is of one mind. I believe in defeating Fidel Castro. I believe the Cuban people can still live to see a free day. I don't intend to yield the fight until we reach that day.

I thank the Senator from North Dakota for yielding the time.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, my colleague and I share the goal of democratic reforms in Cuba and human rights in Cuba. It is just that I believe that the quickest route to changing the Government of Cuba is not through a policy that for 40 years has been a failure but, instead, by developing policies that we have decided work in China, Vietnam, and elsewhere, policies of engagement.

I believe very strongly that having unfettered trade with Cuba and United States citizens traveling in Cuba is the quickest way that exists in order to bring democratic reform and human rights to Cuba.

It is interesting to me that in the early 1970s, it was Richard Nixon who went to China. When he went to China, do you know who was the leader of China? Mao Tse Tung, a repressive Communist leader who virtually obliterated human rights in China. Richard Nixon went to China and began an engagement with China to open and expand trade and travel with China over a period of years.

Now in the Senate we hear people say, when we have these votes, engagement with China is the way to bring China along on human rights and democratic reforms. Engagement with China, a Communist country, is the way for us to accomplish that goal. They say that with Vietnam as well, a Communist country. Engagement with Vietnam, more trade, more travel, more engagement will move us towards greater human rights and greater democratic reforms in China and Vietnam. But they say that logic does not exist with respect to Cuba. Why? For 40 years this policy has existed, and for 40 years it has failed.

Despite the fact we have opened a crevice dealing with the sale of agricultural products to Cuba, the State Department and the administration are not helping us move food to Cuba when Cuba wants to buy it for cash. The head of Alimport, which is the agency that buys food for Cuba, applied for a visa to come to the United States. That visa was revoked. Why? Because they indicated on a previous visit to the United States, the head of Alimport, Mr. Pedro Alvarez, seemed to do things that were undermining our country's interests. What were these things? He said in the United States that he hoped Cuba could buy more food from the United States. That undermines our country's vital interests? I think not.

I always find it interesting the way our country handles these issues, not just this but trade issues generally. We use trade as a way of creating foreign policy to punish and reward. I have spoken before about this. We have this little trade disagreement with Europe. Europe slaps some prohibitions on hormone beef coming from the United States. What is our response to Europe? We slap big penalties on Europe. We take aggressive, tough action against goose liver, truffles, and Roquefort cheese. That is enough to scare the devil out of anybody. We are going to take action against your goose liver.

Going to Cuba, Pedro Alvarez wants to come to this country because he wants to buy—if you don't mind my reading a few of these things—chicken innards, chicken gizzards, chicken entrails, pork trimmings, yes, pork loins, wheat, corn, soybeans, dried beans, eggs. The list is a long list.

Does anybody really think that any part of this as a sale to Cuba is going to undermine the interests of our country? Does anybody really think that? I don't think so.

My colleague from New Jersey always states his case well. I understand his point. Neither he nor I wants to give comfort to a government that doesn't respect human rights.

But this isn't about giving comfort to the government. This is about our responsibility. Our responsibility, in my judgment, is to decide as a country that it is not a moral policy to use food as a weapon. I hope we never again use food as a weapon.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. DORGAN. In the final 30 seconds I have remaining, I intend to withdraw my amendment No. 3439, and I will explain why that is the case. Some of those who have cosponsored amendment No. 3439, and who support us on all of these issues when we vote on Cuba issues, have indicated to me they would feel constrained to support a tabling motion only because it would exist on trade promotion authority, and they don't want to jeopardize that legislation in any way. They have indicated they would support this proposition that I offer on future legislation. So it is my intention to offer it on an appropriations bill.

I ask unanimous consent to withdraw amendment No. 3439 at this moment.

The PRESIDING OFFICER. The amendment is withdrawn.

AMENDMENT NO. 3415

Mr. REID. Mr. President, it is my understanding now that the business before the Senate would be No. 3415, the Torricelli-Mikulski amendment.

The PRESIDING OFFICER. That is correct.

Mr. REID. I thank the Chair.

The PRESIDING OFFICER. The Senator from New Jersey is recognized.

Mr. TORRICELLI. Mr. President, for more than a century, American workers have made enormous progress in their working conditions and securing their most basic rights in the sale of their labor. It is the foundation of our very economy that the United States uniquely created circumstances where those who made products had decent enough wages to buy them. Those who were engaged in the production had sufficient leisure time to enjoy the fruits of their own labor. People fought and died for these rights in the labor movement. They were not given easily, not simply established, but fought for by a generation of workers.

Those rights are very much now at issue as the Senate debates the expansion of international trade and fast-track authority for the President in new bilateral agreements.

The question arises on the sanctity of these rights and their ability to be defended in an international context. What does it mean to American workers to have the right of association, the right to organize and bargain collectively, the prohibition of forced or compulsory labor, minimum wage, prohibitions on child labor, maximum hours, or safety conditions?

Regarding the issue before the Senate, if we are to engage in these new international labor agreements, are we creating a situation where Americans can continue to have pride that we afford these things to our own people, to our own workers, while seeking the benefits of lower prices and cheaper goods through cheaper labor? Are we sending American workers into competition with those who enjoy none of these rights?

Is there not some degree of hypocrisy? We want these things for our workers, but we put our workers in a situation of competition with workers in China, Latin America, or Africa who enjoy none of these rights. Indeed, what meaning will it have to claim these things for ourselves if we allow products into America from nations that guarantee none of these rights?

The examples around the globe are as striking as they are compelling. Human Rights Watch recently released a report documenting child labor; obstacles to unionizing on banana plantations in Ecuador, the world's largest exporter of bananas. The report cited children as young as 8 years old working long hours in hazardous conditions, exposed to toxic pesticides, drinking contaminated water, using sharp tools, hauling heavy loads and, in some cases, suffering sexual harassment.

I am told that it is progressive to be arguing on the Senate floor for fast track, for labor agreements with all nations, with no conditions on labor rights. I am told that is progressive.

What is progressive in allowing products into the United States made from child labor, exploited children? What is progressive about not insisting that these basic rights be afforded to those whose products will come into America, those who use the products. Nations who import these goods cannot morally separate themselves from the means of production. If you buy it, if you import it, if you negotiate with the countries that cast a blind eye to the sexual harassment, the exploitation, the long hours, the unsafe conditions, the contamination, the sickness, and the death, you are part of the problem. You are not only condoning it, you are encouraging it by providing a market for it.

So I rise today not only for our own workers who will be forced into competition with these conditions to survive, making the right for minimum wage, to organize, for health benefits, for retirement, for safe conditions meaningless given the competitive circumstances in which we place our own companies; I also rise for their people because in this competition no one succeeds. It is a competition of exploitation. Everybody loses.

The same report documenting abuses in Ecuador found that workers feared dismissal if they even attempted to unionize and are replaced by ''permanent temporary'' workers. So not only are these conditions horrific, there is no chance through collective bargaining, through the exercise of union rights, to redress the grievance. If you told me that conditions in these nations were abhorrent but that through trade workers would organize themselves, they would be guaranteed better rights, conditions, and labor, it would be something worth attempting. The marketplace will not improve these conditions. Forcing American workers to compete with these companies in these circumstances will become a near permanent condition.

There are many industries that are facing these same circumstances. It is not simply agriculture. It is the garment industry, it is the footwear industry, and it is not simply Latin America.

Indeed, China in some cases may be the most egregious, offering low wages, weak labor laws, and suppression or control of all trade activity. In China, this has been particularly true in garments and footwear in which retailers subcontract orders to the absolutely lowest bidders with no inquiry, no control, perhaps not even any interest, in the degree of exploitation.

There is something wrong with this system, and I do not know how it is

corrected. Amendment after amendment is lost on this Senate floor. People rise for footwear, but it can be lost for garments and for agriculture. If it was exploitation of somebody else in another country, it is their problem, not ours. On the contrary.

I want affordable goods for the constituents of my State as much as any Senator. I believe in free, fair, open competition as much as anybody. I believe in the ability of the American worker, American business to compete with anybody, anywhere, anytime on a free and fair basis. But who here believes there is something to be gained by competing with what amounts to slave labor in conditions of death and exploitation? Who believes any American worker in any industry could survive that competition? And, indeed, are we not replete with examples of the fact that they cannot?

I do not know how these circumstances ever change. I know that if America were going to the lowest bidder for businessmen, I know if we were looking around the world for the cheapest possible bankers and financiers, I know if there were no working conditions for lawyers in India, Pakistan, or Latin America and we were importing that labor, it would get someone's attention. But garment workers, footwear workers, agricultural workers, have they no advocates? Is there no concern for the competition in which we put our people in these circumstances? There is concern, but there is a minority.

I have heard enough of this debate. I have watched enough votes. I have seen every Member defeated on every amendment to know mine will be no different. They are hollow words, but they will be read again. We do an injustice to the American workers. We do an injustice to those in developing countries who only want the right to form their own unions, the basic protection of themselves and their families.

The monarchies of Europe in the 18th and 19th centuries faced similar circumstances. Europeans, even in those governments, could have raised their standard of living by getting cheaper products from nations that practiced slavery, and very often they would not; they would not be part of it.

What, I say to my colleagues, is the difference from importing products during that exploitation—from the exploitation of children who are worked at 8 years old for little or no wages; people who are locked in dormitories at night so they cannot leave the factory; people who are paid in script, not money; people who work because they have no choice or die? Different centuries, different words, same results: Human exploitation.

The President wants authority to negotiate with a series of Third World nations to enter into free trade agreements with the United States. If we were here on a different basis, I not only would vote for that authority, I would offer the bill. I would be here arguing for it every day. What separates us is not a desire to open markets or have free trade, it is the simple conditions of doing so.

If I believed George W. Bush would negotiate free trade agreements insisting on the rights of foreign workers to organize, or a minimum wage, or child labor, this would be the right thing to do.

The language before this Senate does not contain any requirements to bring the domestic laws of any nation into the compliance of the ILO conventions, guaranteeing protection against the most egregious violations of workers. It requires nothing, so that is exactly the kind of support I intend to give it: Nothing.

Under my amendment, workers' rights provisions would be assured just as we are protecting intellectual property or investor rights because it is not as if there are not some assurances to some Americans in fast track. If you own a patent, we will defend you. If you have intellectual property, the U.S. Government will respect it. But if you are the heirs of garment workers and agricultural workers, the rights you fought for—protection from being in competition with a child for labor, not to compete with someone who earns under the minimum wage—you will get none of those protections at all.

I regret the Senate has come to this point, and I regret that we could not come to common terms in how to engage in international agreements to open borders. It did not have to be. While I know my amendment may not succeed, I assure the Senate we will visit this subject again. There is just so much we can lose, so many industries that can be lost, so many American workers we put in competition with people in desperate circumstances.

The downward spiral of living circumstances of working families in America, the loss of benefits, wages, industries, communities, is just so much of a burden that can be borne until we insist not simply on opening markets, but opening them on some common basis of respect for human rights and human dignities in international labor.

I thank my colleagues for the opportunity to offer the amendment and to address this subject.

Mr. CORZINE. Mr. President, I rise to lend my support to Senator TORRICELLI's amendment which would require prospective trading partners to ensure that their domestic laws provide adequate labor protections. The amendment calls on countries interested in trading with the United States to conform their labor protection regime to the labor standards of the International Labor Organization's Declaration. The amendment would further require that the worker rights protections including in the underlying legislation be subjected to the same dispute resolution mechanism as other areas.

For far too long American businesses have been operating at a comparative disadvantage. Through years of improvements, the United States today provides its workers with a market basket of protections: the 40-hour workweek, the minimum wage, OSHA standards. But, as the business community has long pointed out, each of those protections comes with a cost as well as a benefit. It costs more to provide workers with a fair wage. It costs more to provide a safe workplace and allow workers to associate freely. It costs more to treat workers with dignity. It is a cost of doing business in a democratic society.

Other countries take advantage of lax worker protections to attract manufacturing companies away from proworker regulatory regimes. Developing countries desperate for economic improvement are in a regulatory race to the bottom, putting downward pressure on international wages and working conditions. Sacrificing decent working conditions and base salaries may give these countries an edge in industry, but it puts their workers at risk.

The Baucus-Grassley bill was correct to put worker rights on the agenda of U.S. trade negotiators, but it did not go far enough. This amendment would guarantee that the worker protections included in the bill can be enforced through the dispute resolution process. If it makes sense to enforce the investment protections included in international agreements, it makes as much sense to enforce labor protections.

We must establish a level playing field for all countries. No country should feel pressured to exploit children or undermine worker safety in an effort to attract development dollars. And no country should be put at a competitive disadvantage for providing its workers with basic protections or with basic dignity.

I urge my colleagues to support Senator TORRICELLI's amendment, which seeks to ensure that the United States puts its national values into practice and considers the rights of workers throughout the world when it frames international trade agreements.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, the question is on agreeing to amendment No. 3415.

The amendment (No. 3415) was rejected.

Mr. GRAMM. I move to reconsider the vote.

Mr. REID. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, it is my understanding, pursuant to the previous order, that the Republicans have indicated they want to offer an amendment.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Montana.

Mr. BAUCUS. Mr. President, we are waiting for Senators GRASSLEY and BROWNBACK with respect to a sense of the Senate regarding granting Russia PNTR benefits. I hope those Senators can come fairly quickly because as soon as they do we can take up that resolution.

In the meantime, I will say a few words about the health provisions included in the pending legislation. I say from the outset that I am extremely pleased about these provisions. They represent, first, a true bipartisan compromise, the result of months of negotiations, and, I might add, lots of concessions on both sides.

After all that effort, I believe we have reached an agreement that will provide real, genuine help to families affected by new trade policies.

Before describing the proposals, I commend Senator GRASSLEY from Iowa. Many people spend a lot of time talking about bipartisanship in this town, but Senator GRASSLEY does more than just talk. He is bipartisan. His efforts on this issue and others were crucial to getting a workable bipartisan compromise. I am happy to have him as my partner on the Finance Committee.

What is the proposal? The proposal provides a 70 percent tax credit for health insurance premiums to workers who participate in trade adjustment assistance, known as the TAA program. This tax credit is advanceable and it is refundable. That means workers displaced by trade will not have to pay the full cost of their health insurance and then wait to be reimbursed when they file their tax returns the next year. They get the help up front, when they need it.

Employees can also use this credit for a number of health insurance options. Those include maintaining their existing health insurance under what is known as COBRA coverage; purchasing insurance through a State high-risk pool or comparable coverage that the State has established; a State employee benefit plan or comparable coverage; they can purchase through a State-operated health plan; or coverage purchased through a private pool.

Some Senators expressed concern about the impact on workers with individual market policies. And they argue it will take a long time to establish a State group coverage option. These are good points. They are valid. We attempted to address them.

Workers covered by individual market policies before losing their jobs will be able to keep those policies and take full advantage of the 70 percent tax credit. In addition, because we believe it will take some time for the Treasury Department to set up the tax credit mechanism and because it will take States some time to establish group purchasing agreements, we have included interim coverage under the National Emergency Grant Program.

In short, it is not everything that Senators on either side of the aisle wanted. There are some provisions and concessions made on both sides of the aisle. We dropped on our side the Medicaid provisions. We yielded on the issue of requiring those eligible for COBRA to purchase only COBRA coverage. Most importantly, we moved from a premium subsidy to a tax credit, something that Republicans and centrists support.

Similarly, the compromise is not everything the other side wanted. There is a tax credit, but not for the purchase of individual coverage. Indeed, the size of the tax credit, 70 percent, represents a sacrifice on both sides. Those on our side started at 75 percent; the other side wanted 60 percent. In the end, we split the difference at 70 percent—not exactly an even split, but a good split.

None of the sacrifices were easy. Each side had to swallow a bit of their pride. While we may have given up a little, displaced workers and their families gained a lot. I am proud we proved our ability to work together and compromise to help Americans in need.

The trade adjustment assistance provisions are very significant. They are a huge improvement over current law. These provisions give health insurance benefits to displaced employees. They give substantial benefits for a couple of years to employees displaced because of trade. They are a main driver of this bill. In addition, we are giving fast track negotiating authority to the President under certain negotiating objectives. But the real substance of the legislation that is about to be passed here that has immediate legislative effect is the trade adjustment assistance provisions. They are significant. That is the legislation that will be enacted as a consequence of the trade bill we are now negotiating. I urge all colleagues to remember that.

When we hear complaints of displaced employees, rest assured there are significant provisions that help those employees that will be displaced because of trade.

The underlying bill develops a greater consensus on trade so more and more Americans are able to gain the benefits of trade—not just the multinational companies, but small business, so all the people that work in America so diligently to try to improve their income and have health insurance for their family and children can live a good life, take vacations and so forth.

In the past, there has not been sufficient consensus on trade, and there still is not sufficient consensus, but the provisions help move us in that direction.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 3446 TO AMENDMENT NO. 3401

Mr. BROWNBACK. I call up amendment 3446 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kansas [Mr. BROWNBACK] proposes an amendment numbered 3446 to amendment No. 3401.

Mr. BROWNBACK. Mr. President, I ask unanimous consent reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To extend permanent normal trade relations to the nations of Central Asia and the South Caucasus, and Russia, and for other purposes)

At the appropriate place, insert the following:

SEC. ____. DEMOCRACY AND FREEDOM THROUGH TRADE ACT.

(a) FINDINGS.—Congress makes the following findings:

(1) The United States is now engaged in a war against terrorism, and it is vital that the United States respond to this threat through the use of all available resources.

(2) Open markets between the United States and friendly nations remains a vital component of our Nation's national security for the purposes of forming long, lasting friendships, strategic partnerships, and creating new long-term allies through the exportation of America's democratic ideals, civil liberties, freedoms, ethics, principles, tolerance, openness, ingenuity, and productiveness.

(3) Utilizing trade with other nations is indispensable to United States foreign policy in that trade assists developing nations in achieving these very objectives.

(4) It is in the United States national security interests to increase and improve our ties, economically and otherwise, with Russia, Central Asia, and the South Caucasus.

(5) The development of strong political, economic, and security ties between Russia, Central Asia, the South Caucasus, and the United States will foster stability in this region.

(6) The development of open market economies and open democratic systems in Russia, Central Asia and the South Caucasus will provide positive incentives for American private investment, increased trade, and other forms of commercial interaction with the United States.

(7) Many of the nations in this region have secular Muslim governments that are seeking closer alliance with the United States and that have diplomatic and commercial relations with Israel.

(8) The nations of Russia, Central Asia and the South Caucasus could produce oil and gas in sufficient quantities to reduce the dependence of the United States on energy from the volatile Persian Gulf region.

(9) Normal trade relations between Russia, Central Asia, the South Caucasus, and the United States will help achieve these objectives.

(b) SENSE OF CONGRESS.—(1) Prior to extending normal trade relations with Russia and the nations of Central Asia and the South Caucasus, the President should—

(A) obtain the commitment of those countries to developing a system of governance in accordance with the provisions of the Final Act of the Conference on Security and Cooperation in Europe (also known as the ''Helsinki Final Act'') regarding human rights and humanitarian affairs;

(B) ensure that those countries have endeavored to address issues related to their national and religious minorities and, as a member state of the Organization for Security and Cooperation in Europe (OSCE), committed to adopting special measures for ensuring that persons belonging to national minorities have full equality individually as well as in community with other members of their group;

(C) ensure that those countries have also committed to enacting legislation to provide protection against incitement to violence against persons or groups based on national, racial, ethnic, or religious discrimination, hostility, or hatred, including anti-Semitism; and

(D) ensure that those countries have continued to return communal properties confiscated from national and religious minorities during the Soviet period, facilitating the reemergence of these communities in the national life of each of those countries and establishing the legal framework for completion of this process in the future.

(2) Earlier this year the Governments of the United States and Kazakhstan exchanged letters underscoring the importance of religious freedom and human rights, and the President should seek similar exchanges with all nations from the region.

(c) PERMANENT NORMAL TRADE RELATIONS FOR RUSSIA.—

(1) PRESIDENTIAL DETERMINATION AND EXTENSION OF NONDISCRIMINATORY TREATMENT.—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President, after certifying to Congress that all outstanding trade disputes have been resolved with Russia, may—

(A) determine that such title should no longer apply to Russia; and

(B) after making a determination under subparagraph (A) with respect to Russia, proclaim the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of that country.

(2) TERMINATION OF APPLICATION OF TITLE IV.—On or after the effective date of the extensions under paragraph (1)(B) of nondiscriminatory treatment to the products of Russia included under paragraph (1)(B), title IV of the Trade Act of 1974 shall cease to apply to that country.

(d) PERMANENT NORMAL TRADE RELATIONS FOR KAZAKHSTAN.—

(1) PRESIDENTIAL DETERMINATION AND EXTENSION OF NONDISCRIMINATORY TREATMENT.—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may—

(A) determine that such title should no longer apply to Kazakhstan; and

(B) after making a determination under subparagraph (A) with respect to Kazakhstan, proclaim the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of that country.

(2) TERMINATION OF APPLICATION OF TITLE IV.—On or after the effective date of the extension under paragraph (1)(B) of nondiscriminatory treatment to the products of Kazakhstan included under paragraph (1)(B), title IV of the Trade Act of 1974 shall cease to apply to that country.

(e) PERMANENT NORMAL TRADE RELATIONS FOR TAJIKISTAN.—

(1) PRESIDENTIAL DETERMINATION AND EXTENSION OF NONDISCRIMINATORY TREATMENT.—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may—

(A) determine that such title should no longer apply to Tajikistan; and

(B) after making a determination under subparagraph (A) with respect to Tajikistan, proclaim the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of that country.

(2) TERMINATION OF APPLICATION OF TITLE IV.—On or after the effective date of the extension under paragraph (1)(B) of nondiscriminatory treatment to the products of Tajikistan included under paragraph (1)(B), title IV of the Trade Act of 1974 shall cease to apply to that country.

(f) PERMANENT NORMAL TRADE RELATIONS FOR UZBEKISTAN.—

(1) PRESIDENTIAL DETERMINATION AND EXTENSION OF NONDISCRIMINATORY TREATMENT.—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may—

(A) determine that such title should no longer apply to Uzbekistan; and

(B) after making a determination under subparagraph (A) with respect to Uzbekistan, proclaim the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of that country.

(2) TERMINATION OF APPLICATION OF TITLE IV.—On or after the effective date of the extension under paragraph (1)(B) of nondiscriminatory treatment to the products of Uzbekistan included under paragraph (1)(B), title IV of the Trade Act of 1974 shall cease to apply to that country.

(g) PERMANENT NORMAL TRADE RELATIONS FOR ARMENIA.—

(1) PRESIDENTIAL DETERMINATION AND EXTENSION OF NONDISCRIMINATORY TREATMENT.—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may—

(A) determine that such title should no longer apply to Armenia; and

(B) after making a determination under subparagraph (A) with respect to Armenia, proclaim the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of that country.

(2) TERMINATION OF APPLICATION OF TITLE IV.—On or after the effective date of the extensions under paragraph (1)(B) of nondiscriminatory treatment to the products of Armenia included under paragraph (1)(B), title IV of the Trade Act of 1974 shall cease to apply to that country.

(h) PERMANENT NORMAL TRADE RELATIONS FOR AZERBAIJAN.—

(1) PRESIDENTIAL DETERMINATION AND EXTENSION OF NONDISCRIMINATORY TREATMENT.—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may—

(A) determine that such title should no longer apply to Azerbaijan; and

(B) after making a determination under paragraph (1) with respect to Azerbaijan, proclaim the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of that country.

(2) TERMINATION OF APPLICATION OF TITLE IV.—On or after the effective date of the extensions under paragraph (1)(B) of nondiscriminatory treatment to the products of Azerbaijan included under paragraph (1)(B), title IV of the Trade Act of 1974 shall cease to apply to that country.

(i) PERMANENT NORMAL TRADE RELATIONS FOR TURKMENISTAN.—

(1) PRESIDENTIAL DETERMINATION AND EXTENSION OF NONDISCRIMINATORY TREATMENT.—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may—

(A) determine that such title should no longer apply to Turkmenistan; and

(B) after making a determination under subparagraph (A) with respect Turkmenistan, proclaim the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of that country.

(2) TERMINATION OF APPLICATION OF TITLE IV.—On or after the effective date of the extensions under paragraph (1)(B) of nondiscriminatory treatment to the products of Turkmenistan included under paragraph (1)(B), title IV of the Trade Act of 1974 shall cease to apply to that country.

Mr. BROWNBACK. Mr. President, I thank my colleagues and I thank the chairman of the Finance Committee and the ranking member for the consideration of this amendment.

This amendment is particularly important in light of what has taken place recently in this country and around the world. The attack on September 11 has been an issue that is front and center of our minds since that date.

I came from a secure briefing where we were talking about what was known prior to that time period. This week, the President of the United States heads to Russia to work with the Russians on several issues. One is reduction of nuclear weaponry.

A two thirds reduction of missiles announced last week was an incredible reduction of nuclear missile material and nuclear missile capacity. There are United States troops in regions of the former Soviet Union that prior to September 11 we probably would not have dreamed of having present, in places such as Uzbekistan, Kazakhstan, and Georgia. the United States has troops there, training or on missions, dealing with the war on terrorism.

We have had a great deal of cooperation from these countries in the war on terrorism. It is an important point. It is an incredible point of safety for our people in the United States, and it is an incredible moment for the United States and the world that are seeing taking place post-cold war when you consider where we are with Russia. Even last week in the NATO meeting, Russia said, OK, we will come closer to joining in with NATO. This is something that 5 years ago could not have even been contemplated. Yet we are seeing that growing closeness taking place between the United States and Russia. We see a growing cooperation on terrorism taking place there and in central Asia. We are seeing the United States troops in this region.

We need to reduce our dependence on Middle East oil. A key part of that is what is taking place in Russia and central Asia.

Our Nation was brutally and callously attacked September 11, 2001. We continue to mobilize with diplomatic and military action abroad, as well as bolstering defenses at home. We are facing a sustained war effort against international terrorism and a sustained readiness at home not seen since World War II. Let there be no doubt those individuals and organizations responsible for terrorism against the

United States will be found and brought to justice and America's shores will be safe again.

As America continues to mobilize military, intelligence, and law enforcement assets to confront our enemy, there is one asset we have yet to mobilize which can be just as valuable as a bomb or a bullet. I believe that is trade. Trade with America can be an effective catalyst for the long-term viability of the institutions of democracy, the economic strength that bolsters them and our friends abroad.

Economic prosperity, civil rights, and liberties are an extension of the democratic society, which, in turn, ameliorate internal strife and dissatisfaction that can lead to extremism, evil, and terror.

By reaching out to our friends and struggling nations, by opening our markets to their products and vice versa, we can deploy the entrepreneurship of America as a weapon to help solidify the foundations of democracy, civil liberty, human right and economic prosperity abroad.

As we continue to debate trade promotion authority, it is also important we take this opportunity and ensure the nations seeking the benefits of increased and improved economic relations with the United States also benefit from certainty in their trading relationship with us; certainty that we will remain committed to their continued development, and certainty that, while the path of democratic and market reforms will not always be smooth, our commitment to their efforts will remain unwavering.

Today I offer an amendment that would make such a clear, strong, and principled statement. My amendment would extend permanent normal trade relations to Russia and the nations of Central Asia and the South Caucasus: Kazakhstan, Tajikistan, Uzbekistan, Turkmenistan, Armenia, and Azerbaijan, which will join Georgia and Kyrgystan in this regard.

Title IV of the Trade Act of 1974, the Jackson-Vanik provision, denies unconditional normal trade relations to certain countries, Russia and the former Soviet Republics in particular, that had non-market economies and that restricted immigration rights. Given the importance of strengthening our economic relationships, and encouraging continued democratic and market reforms, I believe that now is the time to permanently waive Jackson-Vanik for Russia and all of the nations of Central Asia and the South Caucasus.

Unfortunately, not everyone agrees.

Currently, the United States and Russia are engaged in a poultry trade dispute. Earlier this year Russia implemented a comprehensive ban on U.S. poultry imports, apparently in an effort to protect its developing domestic poultry industry. Some are concerned that Russia is contemplating similar actions on other products.

Russia should have strong domestic industries. However, we have learned the hard lesson throughout the first half of the twentieth century that nations cannot build lasting economic strength through protectionism. I am pleased to have signed letters along with many of my colleagues in support of the U.S. poultry industry on this issue. The statement inherent in those letters is that nations cannot make unilateral, anti-trade decisions as if they operate in a vacuum.

Unilateralism, or more specifically bypassing unilateralism in favor of open markets and cooperation, is the very reason that we are debating trade promotion authority today. Theoretically we have come to recognize that open markets, not protectionism, best serves the common good. Even though, in practice, our debate over trade promotion authority demonstrates even an American interest in at least some forms of protectionism, I hope that my colleagues who have also opposed Russia's actions on poultry keep these important principles in mind as we finish our debate on trade promotion authority.

Some are also concerned that Russia, Central Asia, and the South Caucasus are not yet ready to graduate from Jackson-Vanik. Jackson-Vanik was intended to ensure that Soviet Jews could freely emigrate, but has also come to symbolize human rights more generally. The process of graduation from Jackson-Vanik has come to include several steps that nations operating under Jackson-Vanik must take to protect human rights, religious freedom, and equality for ethnic and religious minority groups. Jackson-Vanik graduation also includes the return of communal property confiscated from national and religious minorities during the Soviet period, which is intended to facilitate the reemergence of those communities in the national life of each such country, as well as the establishment of a legal framework for the completion of this process in the future. Finally, graduation has come to require an exchange of letters between nations under Jackson-Vanik and U.S. representatives at the most senior levels, which underscore the importance of human rights and religious freedom.

I have worked closely with organizations such as the National Council on Soviet Jewry, B'nai B'rith, and others, organizations I have the utmost respect for, to help bring this region into the Western community. I believe these important steps towards supporting human rights and religious freedom should be pursued by all nations, and I will continue to work towards that end. Progress has been made in the nations we are discussing here today.

In February of this year, Assistant Secretary of State Beth Jones secured the commitment from Uzbek President Islam Karimov that his government would allow the International Committee of the Red Cross, ICRC, to view the conditions of detainees. This is an important step that will allow the international community to identify potential human rights violations.

In Kazakhstan prison conditions are harsh, however, the Government is taking an active role in efforts to improve prison conditions and the treatment of prisoners, and observers have noted significant improvements in prison conditions.

In Azerbaijan, though the Government largely controls radio and television, the primary source of information for most of the population, the Government took significant steps towards improving the media. These steps include the announcement that five private television stations would be granted long sought-after operating licenses by the frequencies committee.

In Armenia, prison conditions are Spartan and medical treatment is inadequate, however, according to domestic human rights organizations, conditions continue to improve.

I do not rise today in support of permanent normal trade relations with Central Asia and the South Caucasus because they are perfect—far from it. I do so because they continue to demonstrate a commitment to improving human rights and religious freedom, and the extension of permanent normal trade relations will only create an impetus for further reforms through increased economic and political association with the United States. By continuing to grow our relations with these countries, together we are going to improve their human rights and religious freedom conditions.

For years Congress went through the process of debating the merits of extending normal trade relations to the Peoples Republic of China, and just last year the Congress approved China's accession to the World trade Organization. Trade with China has always been conditioned on the premise that increasing trade with China would increase China's contact and acceptance of the values, liberties, and fundamental beliefs that make our nation great. I do not believe anyone in the Senate is prepared to suggest China has a commendable record on human rights. Certainly not this Member, particularly in view of what is taking place even today in their dealing with the North Koreans entering China, to be forced back, sometimes with bounties. If trade can achieve these goals in regard to China, the positive impact of trade on Russia, Central Asia, and the South Caucasus is no less than a foregone conclusion. If a trading relationship with China will improve their human rights record, the same will hold true for Central Asia, the South Caucasus, and Russia as well.

In addition to improvements over human rights and religious freedom, we must also be mindful of the remarkable developments that have taken place in this region of the world since September 11.

This week President Bush travels to Moscow and will sign an historic agreement between our nations to eliminate

two thirds of our nuclear weapons stockpiles. Five years ago that would have been world news for a month. Today it is hardly passing news for a day. Just last week the North Atlantic Treaty Alliance and Russia announced the formation of the NATO-Russia council, a decision-making body to counter terrorism and other security threats to our common interests.

Think, where would we be today if we didn't have the bases and the operations that took place out of Uzbekistan, Kazakhstan, bases to be able to land in Azerbaijan, troops right now working on counterterrorism in Georgia?

Today in Central Asia and the South Caucasus, multiple nations are seeking to embrace democracy, make market reforms, and build a closer relationship with the United States. Our friends in this region have been instrumental in our ability to bring the war effort directly to enemy al-Queda forces in Afghanistan. These nations represent immediate targets for increased economic ties with the U.S., and are representative of the types of nations that must have strong economic ties to the U.S. to help address internal difficulties. Plus, if they are not building ties with the U.S. they will be building them with nations in the region, some much less friendly towards the U.S., some of which have significant internal militant Islamic forces that want to move forward in these countries today. Clearly, we don't want that to take place.

In light of these crucial developments, I continue to believe that now is the right time to send the strong message to Russia, Central Asia, and the South Caucasus that they are on the right path, that we recognize the importance of the steps they have taken, and we are committed to continue working with them to strengthen democracy within their borders and open their markets to the world around them. I continue to feel that extending permanent normal trade relations with these important nations is the right way to make such a statement, and it is in the best interests of the United States that we do so now.

Permanently waiving Jackson-Vanik for these important allies would cost us nothing. Yet we have much to gain from the certainty created in our economic relationship with these nations to permanent normal trade status. Particularly, if we can do this with China, given their human rights record, we can do that in this region. Russia itself owns immense fossil fuel reserves which could reduce our reliance on oil from the volatile Middle East. Kazakhstan, Turkmenistan, Uzbekistan, and Azerbaijan are also valuable sources of oil. Kyrgyzstan has made impressive progress in making market reforms since its days as a Soviet Republic, which can provide fertile ground for American investment. Georgia is making significant progress towards market reforms as well.

It is also the case that several of these Central Asian and south Caucasus nations are suffering from internal strife caused by corruption and extremist Islamic fundamentalists. Kyrgyzstan's and Uzbekistan's Governments are currently targets of the terrorist organization, Islamic Movement of Uzbekistan, which seeks to create Islamic states in the region. Tajikistan is especially vulnerable in this regard as the flow of narcotics and refugees from Afghanistan, its neighbor to the south, have weakened that nation.

These nations are in dire need of American influence. They need access to our markets, as well as investment from American industry. By providing them with permanent normal trade relations, we will send a clear signal that the United States is prepared to engage this region permanently through trade and help bolster the democratic, market-opening reforms that are currently underway.

As strong as I believe that on balance extended permanent normal trade relations to these nations is the right thing to do today, I again recognize the difference of opinion held by some of my colleagues. It seems clear to me that however appropriate such action might be, permanent normal trade status will not be approved by this Senate today. Senator GRASSLEY has filed a second-degree amendment to mine, which expresses the sense of the Senate supporting the President's trip to Russia to meet with President Putin and deepen the friendship between our nations. I certainly thank Senator GRASSLEY for offering this amendment, and I endorse it.

I suggest, however, that some additions might be made to this sense of the Senate, if possible. I think it is fully appropriate, as well as consistent with the provision, that we include language recognizing the considerable efforts the nations of central Asia and the south Caucasus have made in assisting our antiterrorism efforts. I remind my colleagues that we have troops based in some of these nations.

Finally, I also encourage my colleagues to support including language supporting the extension of permanent normal trade relations to our friends at the appropriate time.

I think this is an important and significant geopolitical issue for the United States. This goes beyond trade. It is an important trade issue, but it is important geopolitically for us to do this.

While I recognize the votes are not here today, I hope in the near future the votes will be there for us to extend PNTR to the countries which I have identified. They are on the front lines of our war on terrorism. They will be countries that will fight terrorism internally, and they will increasingly do so in the future. If the United States is not dramatically engaged in this region, you can pay me now or pay me later. They are going to be involved in this fight, and we are going to have more difficulty doing it in the future if we don't engage these nations now. Their populations are hungry for us to say: Yes, the United States wants to help. Work with us. Work with us in a positive way so we can have jobs and some opportunities and not be pulled by a militant Islamic group that says: Look, the West doesn't care for you. The West is opposed to you. The West doesn't like you. They do not believe in you.

We shouldn't be saying that. We should be engaging them as rapidly as we possibly can. Certainly, in the case of the former Soviet Union, we would be welcoming them with open arms as fast as we possibly could. They have already taken action. Do not quibble about that. Instead, let us engage these countries that seek our engagement, and let us do it in a constructive manner so we can help them. We will be helping ourselves as well.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

AMENDMENT NO. 3474, AS MODIFIED, TO AMENDMENT NO. 3446

Mr. GRASSLEY. Mr. President, I would like to offer a second-degree amendment to Senator BROWNBACK's amendment. I send a modified amendment to the desk.

The PRESIDING OFFICER. The amendment is so modified. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Iowa [Mr. GRASSLEY] proposes an amendment numbered 3474, as modified, to amendment No. 3446.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

In lieu of the matter proposed to be inserted insert the following:

SEC. ___. SENSE OF THE SENATE REGARDING THE UNITED STATES-RUSSIAN FEDERATION SUMMIT MEETING, MAY 2002.

(a) FINDINGS.—The Senate finds that—

(1) President George W. Bush will visit the Russian Federation May 23-25, 2002, to meet with his Russian counterpart, President Vladimir V. Putin;

(2) the President and President Putin, and the United States and Russian governments, continue to cooperate closely in the fight against international terrorism;

(3) the President seeks Russian cooperation in containing the war-making capabilities of Iraq, including that country's ongoing program to develop and deploy weapons of mass destruction;

(4) during his visit, the President expects to sign a treaty to significantly reduce American and Russian stockpiles of nuclear weapons by 2012;

(5) the President and his NATO partners have further institutionalized United States-Russian security cooperation through establishment of the NATO-Russia Permanent Joint Council, which meets for the first time on May 28, 2002, in Rome, Italy;

(6) during his visit, the President will continue to address religious freedom and human rights concerns through open and

candid discussions with President Putin, with leading Russian activists, and with representatives of Russia's revitalized and diverse Jewish community; and

(7) recognizing Russia's progress on religious freedom and a broad range of other mechanisms to address remaining concerns, the President has asked the Congress to terminate application to Russian of title IV of the Trade Act of 1974 (commonly known as the ''Jackson-Vanik Amendment'') and authorize the extension of normal trade relations to the products of Russia.

(b) SENSE OF THE SENATE.—The Senate—

(1) supports the President's efforts to deepen the friendship between the American and Russian peoples;

(2) further supports the policy objectives of the President mentioned in this section with respect to the Russian Federation;

(3) supports terminating the application of title IV of the Trade Act of 1974 to Russia in an appropriate and timely manner; and

(4) looks forward to learning the results of the President's discussions with President Putin and other representatives of the Russian government and Russian society.

Mr. GRASSLEY. Mr. President, before I talk about my approach and my feelings on this whole issue of our relationship with the former Soviet Union countries, I commend Senator BROWNBACK for the very thoughtful approach that he has on these issues, and the attention he has given this foreign policy consideration, as well as foreign trade-connected issues of the former Soviet Union.

I understand his interest in seeing normal trade relations extended to Russia, central Asia, and the south Caucasus.

The Democracy and Freedom Through Trade Act introduced today may be an appropriate vehicle to do just that. I certainly think this issue deserves a hearing. But I am not sure it is appropriate for this bill. Instead, I offer this sense-of-the-Senate amendment on the upcoming U.S.-Russian Federation Summit. It expresses a sense of the Senate in support of our President's efforts to strengthen our relations with Russia. The amendment itself seeks to build upon that relationship by expressing the Senate's support for restoring permanent normal trade relations with Russia.

Given the upcoming meeting between President Bush and Russian President Vladimir Putin, this resolution is a timely opportunity for the Senate to express its support for recent developments between our two countries, and also to express encouragement for these two Presidents when they meet later this week.

Since September 11, a new partnership has grown between the United States and Russia as a result of our close cooperation and common efforts in the fight against international terrorism.

This enhanced relationship recently produced a new strategic framework between Russia and the United States to significantly reduce stockpiles of nuclear weapons by the year 2012.

In addition, the United States and Russia, along with our NATO partners, have further institutionalized the U.S.-Russian security cooperation through the establishment of the NATO-Russia Permanent Joint Council. That Council meets for the first time May 28 of this year in Rome. It is clear that historic progress is being made between the United States and Russia, and that even more forward movement would be beneficial for both countries. I hope that movement continues.

I am not oblivious to the fact that there have been decades of tension between our countries. And I don't think we can be so naive as to think that there are not problems down the road. But it surely is important, particularly when there are opportunities such as the last few months to grow our relationship based upon those opportunities. Since there is this opportunity for benefit to both countries, I believe the time has come for Congress to seriously consider the elimination of Jackson-Vanik requirements with regard to Russia, and, thus, begin debate on the extension of normal trade relations.

President Bush has recently asked Congress to restore permanent normal trade relation status for Russia based on this policy of free and unfettered immigration. However, there are important issues that must be addressed during this discussion that go beyond just the issue of the Helsinki accords as it dealt with the subject of immigration. For example, there are some outstanding trade issues that need to be addressed. Among these are recent problems dealing with the U.S. poultry exports to Russia.

We also need to see greater progress on religious freedom and human rights, and the concerns of many people within Russia and also people outside of Russia who have concerns that Russia have more religious freedom.

I am pleased that President Bush has stated his commitment to work with Russia to help freedom and tolerance become fully protected in Russian law and Russian life.

President Bush has also stated his commitment to work with Russia to advance free immigration, safeguard religious liberty, and enforce legal protections for ethnic and religious minorities. I am surely hopeful that President Bush will further address these concerns openly and candidly in his discussions with President Putin during his upcoming visit.

So I believe the best hope for a positive future between our two countries is to develop an understanding of, and appreciation for, each culture, with both personal and business relationships. The development of commerce, international trade, and the sharing of ideas will further advance economic and political stability for both Americans and Russians.

I have said so many times on the floor of the Senate—particularly when trade issues are before this body, and even sometimes when trade issues are not before this body—that we political leaders and diplomats should not be so smug as to think that the only way we are going to have peaceful relations between us—between the United States and some other country—is if political leaders and diplomats do it.

In fact, I have expressed the view that our efforts are kind of a spit in the ocean compared to the efforts that can be made through commerce. That is why I have stated that this trade promotion authority bill is so important to world peace, to the development of relationships, because as we break down the barriers of trade, as we enhance opportunities for commerce, individual businesspeople in one community doing business in another country, and vice versa, we are going to build relationships that will enhance opportunities for peace much greater than what political leaders can do, not denigrating the efforts of political leaders in the process.

This is particularly true as we look forward to doing away with Jackson-Vanik vis-a-vis Russia, as we look forward to Russia coming into the World Trade Organization, very much as we have looked at improving our relationship with China, with China now being a member of the World Trade Organization.

So what the Senator from Kansas is doing may be a small step by political leaders, but it is an important small step. I just think his doing it on this trade promotion bill is not the ideal place to do it. So that is why I have offered this second-degree amendment.

I encourage my colleagues to support this resolution which, in turn, supports President Bush's policy objectives with respect to the Russian Federation and calls for the termination, in an appropriate and timely manner, of the application of Jackson-Vanik provisions to Russia.

When it comes to the issue of this substitute that is before us, I hope we can get it adopted in a consensus way because this is one opportunity for us to show support for the President. Whether we are Republicans or Democrats, we have to admit that when it comes to enhancing our relationships with Russia, it has to be done through our head of state, through our chief diplomat, our Chief Executive, the President of the United States.

We should do everything we can to support the President at the time of his trip to Europe, to Moscow and St. Petersburg to further refine our relationships with the President of the Russian Federation and, in turn, with the Russian people.

I yield the floor.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. DAYTON). Without objection, it is so ordered.

Mr. REID. Mr. President, the majority leader has asked me to announce there will be no more rollcall votes tonight. The managers may have some other business to do. But basically this is the end of rollcall votes for tonight.

Mr. President, I ask unanimous consent—I have cleared this on the other side—the pending amendment be set aside temporarily to offer an amendment. I have cleared this with Senator GRAMM.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

AMENDMENT NO. 3521 TO AMENDMENT NO. 3401

Mr. REID. Mr. President, I send an amendment to the desk. This would be the Democrats' next in order.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. JEFFORDS, proposes an amendment numbered 3521 to amendment No. 3401.

Mr. REID. Mr. President, I ask unanimous consent reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To authorize appropriations for certain staff of the United States Customs Service)

At the end of the title relating to Customs Reauthorization, insert the following:

SEC. ___. AUTHORIZATION OF APPROPRIATIONS FOR CUSTOMS STAFFING.

There are authorized to be appropriated to the Department of Treasury such sums as may be necessary to provide an increase in the annual rate of basic pay—

(1) for all journeyman Customs inspectors and Canine Enforcement Officers who have completed at least one year's service and are receiving an annual rate of basic pay for positions at GS–9 of the General Schedule under section 5332 of title 5, United States Code, from the annual rate of basic pay payable for positions at GS–9 of the General Schedule under section 5332, to an annual rate of basic pay payable for positions at GS–11 of the General Schedule under such section 5332; and

(2) for the support staff associated with the personnel described in subparagraph (A), at the appropriate GS level of the General Schedule under such section 5332.

The PRESIDING OFFICER. The Senator from Nevada.

CLOTURE MOTION

Mr. REID. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on Calendar No. 295, H.R. 3009, the Andean Trade Preference Act.

Max Baucus, Zell Miller, Harry Reid, Tom Carper, Joseph Lieberman, Tom Daschle, Jeff Bingaman, Christopher Bond, Larry E. Craig, Gordon Smith of Oregon, Chuck Grassley, Orrin Hatch, Pete Domenici, Pat Roberts, Chuck Hagel, and Robert F. Bennett.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business with Senators allowed to speak therein for a period not to exceed 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE DEATH OF SGT. GENE VANCE IN AFGHANISTAN

Mr. ROCKEFELLER. Mr. President, we received confirmation yesterday that Sergeant Gene Vance of Morgantown, West Virginia, was killed on Sunday in an exchange of gunfire near the village of Shkin, near Afghanistan's border with Pakistan. Sergeant Vance was a member of the 19th Special Forces Group of the West Virginia National Guard. His unit was patrolling southeastern Afghanistan in an effort to locate and eliminate any pockets of al Qa'eda and Taliban resistance. Sergeant Vance was the first American killed in combat in Afghanistan since March.

On behalf of all the Member of the Senate—I believe I can so speak—I want to express to Sergeant Vance's wife, Lisa, and daughter, Amber, our deepest sympathy at their loss and ours.

I extend those condolences to other members of Sergeant Vance's family who must be going through the kind of grief to which some people have become accustomed, but not many.

He was a member of the West Virginia National Guard. I had the honor to be Governor of West Virginia for 8 years. I know it just so happens that the West Virginia National Guard has top rankings all across the country in all respects—professionally audited, so to speak. There is no stronger embodiment of the patriotism that runs so deep in the mountains of my State of West Virginia.

America's early success in the war in Afghanistan, and in driving the Taliban from power, has created for many Americans the illusion that things have returned to normal. A few more metal detectors, a few more security guards, a longer line to board airplanes, but otherwise life seems to be getting back to the way it was before September 11. That is foolhardy thinking.

Sergeant Vance knew it, and he was doing his duty. The Vice President asserted, I think correctly, that there will be more attacks, that we are foolish if we are not prepared, if we are not mindful of this fact.

But if we Americans are managing to live our daily lives without fear, that may bring us some comfort, but it is entirely due to the courageous efforts being made by men such as Sergeant Vance and women in uniform in Afghanistan and elsewhere. Their efforts are not always the lead stories anymore, but they are taking the time to do the job right—eliminating the terrorists who perpetrated the attacks on this country on September 11.

In an era, as they say, of asymmetric threats, when small groups can develop weapons of mass destruction—and now we are looking at the probability of suicide bombers—and a group of 19 fanatics can carry out with relative ease an attack of unprecedented devastation on American soil, it is clear that our security will not be assured until we eliminate—not defeat but eliminate—the terrorists who are committed to hurting us.

Our forces in Afghanistan continue to perform a vital national task, and we had all darn well better recognize that. The death of Sergeant Vance is a reminder that they continue to put themselves at considerable risk, in unbelievably hostile territory, and often in a hostile society.

I do not know what it is that makes fine Americans feel so deeply the love of their country that they are prepared to risk their life for it. I want to say that I know what it is. But I think it is a mystery that all of us revere, and it is within the soul and the heart of each individual person who goes over to fight and to defend our way of life. In other words, we can never know that entirely. But we can know, and what we must never forget, is that we Americans, who enjoy the freedoms and comforts our society provides, only do so because men such as Sergeant Vance are willing to do what they did: Engage in firefight and lose their life.

So we mourn the death of Sergeant Vance in Afghanistan, and we are reminded yet again that America's strength is built on the individual decisions of hundreds of thousands of people who make those decisions in their own individual ways. Sometimes, of course, they cannot foresee what will happen. They sign up. They go. They cannot foresee what is going to happen. Sometimes what happens brings great sadness to many people.

To Sergeant Vance's wife and daughter, as you grieve, let your sense of loss be joined by the knowledge that Gene Vance died for a just and noble cause. He was prepared to put himself on the line for America, for Americans, and for the society that he wanted you, Lisa, and you, Amber, to be able to live in, in peace.

I thank the Presiding Officer and yield the floor.