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Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable JOHN SUNUNU, a Senator from the State of New Hampshire.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Eternal spirit, You have set up the sky like a canopy and spread it out like a tent. You placed in order the chorus of the stars to praise Your goodness. Drive us from wrong desires and teach us to live for Your honor. Preserve us with Your mighty power that we may not fall into sin, nor be overcome by adversity. Guide our lawmakers today that in their labors for country they may serve Your providential purposes. Make them willing to stand for right, regardless of the consequences. May they strive foremost to please You. Guide and govern us by Your spirit that in all the cares and occupations of life we may never forget You. Direct us to the fulfilling of Your divine design. We pray in Your Holy Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable JOHN E. SUNUNU led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, July 15, 2004.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JOHN E. SUNUNU, a Senator from the State of New Hampshire, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

Mr. SUNUNU thereupon assumed the Chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, today's session will begin with a period for morning business for up to 60 minutes. Following morning business, we will proceed to the FSC/ETI or the JOBS bill as the order from last night provides. That agreement allows for one amendment to be considered under a 3-hour time agreement.

Following the disposition of that DeWine-Kennedy amendment, we will proceed to passage of the bill and then request a conference with the House. I do want to express my appreciation to everyone for last night as we reached this agreement well into the evening. With the tariff's increasing impact on our manufacturers, it is imperative that we get this bill to conference so we can finally produce a bill to send to the President.

Again, I want to thank the Senators on both sides of the aisle, especially the Democratic leadership, working with our leadership in bringing this bill to conference.

Today we will also consider another important bill, the Australia free-trade bill, under the statutory time limit of 20 hours. Several Senators spoke on that issue yesterday, and I hope that on both sides we will be able to yield back a lot of that time and complete this bill at an early hour today. We will stack the vote in relation to the FSC/ETI amendment for later this afternoon, possibly with a vote on passage of the Australia free-trade measure. The timing for those votes will be discussed and we will let our colleagues know a little bit later this morning.

Senators should therefore expect votes later this afternoon, those two votes for sure.

I yield the floor.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will be a period for the transaction of morning business for up to 60 minutes, with the first half of the time under the control of the Democratic leader or his designee and the second half of the time under the control of the majority leader or his designee.

Who seeks time?

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The minority leader is recognized.

Mr. DASCHLE. Mr. President, I will use my leader time and not have that time counted against the Democratic time.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The Senator from South Dakota is recognized.

ISSUES CONFRONTING RURAL AMERICA

Mr. DASCHLE. Mr. President, farming, ranching, and agriculture and agri-related businesses continue to play a

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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vital role in our economy. Food and fiber jobs account for 16 percent of our total workforce. Agriculture makes up 12 percent of our gross domestic product, and 9 percent of our trade exports. In fact, we have a $10 billion positive balance on agricultural trade, in sharp contrast to our overall $490 billion trade deficit.

In many States, like my home State of South Dakota, agriculture is the number one industry. Communities rely heavily upon the agricultural economy. Many rely almost solely upon it. That is why, as the national spotlight focuses on rural America, it is so important to ask: Are we doing right by rural America? Are we doing all we can to ensure that the deep heritage in our Nation's rural way of life remains not only viable, but strong and vibrant?

Unfortunately, over the past 4 years, our Government has not done right by rural America. It has not provided the fair policies that our family farmers, ranchers, and rural business people deserve. And while I am sure rural residents appreciate the attention their communities have received this campaign season, short snippets on the evening news do not do justice to the serious challenges they are facing.

Per capita income for rural residents is less than 70 percent of that for urban residents, and rural workers are roughly twice as likely as urban workers to earn only the minimum wage. Rural workers also have higher rates of underemployment, and they have less prospects for improving their employment situation in the future.

Ninety-five percent of the poorest counties in the country are located in rural areas—95 percent. The poverty rates in many parts of rural America are worse than in countries we often consider to be ''developing.''

Of the many intractable pockets of poverty in rural America, several are on Native American reservations. One of those pockets is on the Pine Ridge Indian Reservation in my home State of South Dakota. President Clinton called Pine Ridge, ''Ground Zero of poverty.'' Places like Pine Ridge have a severe lack of basic infrastructure, of roads and bridges; of water and waste systems; of housing and public utilities, all of which lead to a lack of opportunity for businesses and job creation.

I have said it before, and will say it again: This is a quiet national crisis that we must address. Today, I would like to talk about just a few of the specific issues confronting rural America, and how we can do better.

At this time last year, Mother nature was a little kinder than the previous year to farmers and ranchers across much of the Nation, including the Great Plains and much of the Midwest. Producers took time to rebuild cattle herds and grow new crops lost by the historic drought of 2002. That drought, by the way, was the worst drought since the Dust Bowl days of 1936. It was a horrible and devastating drought that cried out for Federal assistance, but rural America received very little help from the Bush administration.

Unfortunately, this year, farmers and ranchers are dealing with new weather-related natural disasters. We have pockets of drought in South Dakota. There has been extreme flooding in many areas—including South Dakota and our northern neighbor, North Dakota.

In April, even before we knew that many areas of my State would be impacted by weather-related disaster this year, I wrote to President Bush and urged him to change his long-standing opposition to supplemental disaster aid for farmers and ranchers. The national policies regarding weather-related natural disasters are—by any legitimate standard—failing to address the concerns of farmers and ranchers. That is why dozens of national farm, ranch, and rural-related organizations supported my disaster amendment in 2002.

I had hoped the President would take a fresh look at what could be done to put in place some more adequate, and permanent, disaster-related assistance policies. I suggested that he establish an inter-agency working group to provide a legislative proposal that the administration would send to Capitol Hill.

Many of us pledged to work, in a bipartisan fashion, to move such a thoughtful package forward. I wanted to see if there was a way to work with the President to ensure that farmers and ranchers are treated more like victims of other natural disasters, such as tornadoes or hurricanes. I was hopeful the President would respond favorably to my request by working in a bipartisan fashion to craft thoughtful disaster assistance that more adequately provides what is needed in rural States.

In mid-July, I received a response to my letter. I can't express how disappointed I was that the letter made no mention whatsoever—none—about my request for a legislative proposal. In essence, the letter was a mere regurgitation of the insufficient steps that the Agriculture Department had taken under existing authorities.

I am sorry to report that as long as the Bush administration is around, it appears that we will be at a stalemate on disaster assistance. I believe if we want to do right by America, we must fulfill our obligations as Federal officials and respond to the legitimate disaster-related needs of all Americans. The Bush administration doesn't agree. They oppose disaster aid, pure and simple. That is unfortunate.

We have also spoken many times on the floor about the need to move energy policy forward. Doing right by America means taking care of our people here at home, and that means investing in renewable fuels such as ethanol, wind, and biomass. There is overwhelming support for the renewable fuels standard which would double the use of ethanol over the next 10 years. The RFS would increase corn prices by as much as 50 cents per bushel, create 214,000 new jobs throughout the economy, and reduce our dependence on Middle Eastern oil supplies, saving the country at least $4 billion annually in imported oil.

Unfortunately, the RFS has been held hostage by a select group of House leaders who are insisting on special interest protection for groundwater polluters. The President has been unwilling to tell these House leaders to back off, and as a result, this important bipartisan ethanol legislation has been stalled in Congress for over 7 months.

It is time for the President to show some leadership and choose rural communities and American consumers over special interests.

In American today, meatpackers control roughly 80 percent of the beef market. They have been establishing what many consider a dangerous monopoly, allowing them to manipulate markets. But the Bush administration has opposed doing anything about what many think are glaring problems with concentration in the meatpacking industry.

For example, instead of helping our farmers and ranchers, the administration opposed the ban on packer ownership that the Senate approved as part of the 2002 farm bill. They insisted that the provision be removed from the bill, essentially holding the farm bill hostage until the provision was removed.

But that is not all. As we are now seeing through the Australia Free Trade Agreement, the administration has decided to promote international trade policies that will penalize our independent beef producers.

Cattle prices have dropped $30 and $40 per hundredweight in the last year, and the Bush administration proposes a trade agreement that will, over time, depress our cattle and beef markets and increase unfair competition.

Coupled with the issues of concentration and discriminatory trade agreements is the ongoing concern about how the Bush administration has addressed Canadian border issues in the wake of the mad cow scare. Last August, the Secretary of Agriculture announced a lifting of the ban on certain Canadian beef products but said that before anything further was done, there would be a public rulemaking.

That did not happen. Only as a result of a lawsuit—yes, there had to be a lawsuit—USDA was forced to reverse their policies, policies that appear to have benefited the Canadians and select meatpackers who had private knowledge about special permits granted under reduced food safety standards. All the while, the American public was kept in the dark.

That may sound unbelievable to some. And I don't claim to know all of the facts, which is why several of us asked for an oversight hearing on the matter and for the Department's Inspector General to conduct a thorough investigation.

I am pleased that the IG has agreed to look into the matter. Trust in government is very important. I am hopeful that the investigation, and an oversight hearing, will shed some light on what happened at USDA, and pave the way for more effective and transparent policymaking under this administration's watch. I don't think anyone would dispute that we are not doing right by rural America when we hide things and provide special treatment for large corporations. One thing we can do here in the Congress to help ranchers is to take up my bill to reinstate the date adopted in the 2002 farm bill for implementation of country-of-origin labeling.

I have asked the majority leader to allow us to consider this legislation, but as I have mentioned, there appears to be another agenda at work in the Senate.

To refresh memories on the labeling law, which we call ''COOL,'' the purpose of the provision was simply to allow for certain fruits, meats, and vegetables to be labeled with their country of origin.

it was a way to add value to our domestic products by offering American consumers and others around the world a choice about the food they feed their families. Polls show that Americans, in particular, want to ''Buy American.'' But when it comes to food, they don't have that choice. Labels tell us where the clothes we put on our bodies come from, but not where the food we put in our bodies comes from.

To fix this discrepancy, Congress passed COOL in 2002, despite the Bush administration's opposition—opposition that reflected the position of the large meatpackers who said they didn't want the labels because it might add a few pennies to the cost of doing business. Never mind that consumers say, by a large majority, that they are willing to pay a few cents more to have this information.

Notwithstanding Congress's clear decision to implement labeling, the administration and the meatpackers wouldn't give up. In the middle of the night in January, in a meeting that was closed to Democrats, Bush administration officials and the majority leadership added a small provision to the Omnibus Appropriations bill to delay the labeling law until 2006—essentially paving the way to killing this important consumer information tool.

People ask me all the time, Why do you object to going to conference? Why can't you go to conference on these bills and allow the process to work?

I have to say that it is exactly situations like this that demonstrate how things don't work in Congress sometimes. That is why, once again, the agreement that we reached last night on the so-called FSC bill was critical in ensuring adequate confidence and participation on the part of Democrats as we go into yet another very important conference.

Are we doing right by America when we allow the Bush administration and a few in leadership to override the clear majority of the House and Senate? After all, both the House and Senate passed COOL with bipartisan votes.

Are we doing right by America when we allow these sorts of back-room deals? We are not—clearly.

Another topic I want to discuss for just a minute is conservation.

I believe that we have the best farmers in the world. I also believe that farmers are the true American conservationists. They work the land they love and they take care of the land. They are the best stewards that we could hope for.

But, as a Nation, we value conservation to such an extent—and this is a testament to the character of the American people—we value conservation to such an extent that we have supported programs to encourage farmers and ranchers and rural residents to do even more than they already do to protect wetlands and to preserve grassland and other natural areas.

Programs such as the Conservation Reserve Program, the new Grasslands Reserve Program, the Environmental Quality Incentives Program, and the Conservation Security Program championed by Senator HARKIN all reflect a tremendous and important commitment to conservation. In fact, I have said that the 2002 farm bill was the ''greenest'' farm bill ever. Many of us remain extremely proud of those efforts.

But administration officials found a way to reallocate critical conservation funds away from many of these important programs. They have, by their actions, failed to allow government to follow through on the promises we made to the American people in 2002.

The Bush administration's approach doesn't recognize the important weight that Americans place on conservation—on protecting our natural resources.

It is also out of step with what Congress and the American people want and expect from a farm bill that was supported by a wide bipartisan majority only 2 short years ago.

These are only a few examples of the deficient rural policies that fail to address the very troubling figures I discussed earlier.

If we ask, Are we doing right by rural America? The answer is clearly no.

In the future, I will discuss other issues that impact rural America. But on these critical issues—disaster aid; energy policy; livestock, trade and conservation issues—on all of these matters, the answer is that we need a change.

The Bush administration is not doing right by American farmers, ranchers, rural residents, or the communities in which they live.

We can, and we should, do better. And I am optimistic about the future of rural America because I believe we will do better.

In the coming months, rural America will get a chance to learn more about those who have a positive vision for the future; those who understand that rural residents should not be taken for granted; and those who know that they have an obligation to provide serious leadership and strive to make progress.

Together, I am confident we will make that progress.

I yield the floor.

ORDER OF PROCEDURE

Mr. REID. Mr. President, on behalf of the minority leader, we designate our time to Senator KOHL, 5 minutes; Senator DORGAN, 5 minutes; Senator CONRAD, 5 minutes; and Senator CANTWELL, 15 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Under the previous order, the Senator from Wisconsin is recognized.

Mr. KOHL. Mr. President, I want to take a moment to address an issue of serious concern to families across the United States—the continued high cost of gasoline. Over the last few years, spring has always meant gas price spikes to southeastern Wisconsin. This year, that trend has gone nationwide, with consumers and businesses from coast to coast experiencing gas prices of over $2 a gallon.

The current average price for a gallon of gas is $1.89, up 40 cents over last year. That means that a family owning one car can expect to spend an additional $286 this year on gas over last year. If a family has more than one car, then they are looking at almost an additional $600. With job losses plaguing the manufacturing sector and stagnant wages for those who have been lucky enough to keep their jobs, that kind of increase in the cost of transportation is a serious problem.

And it is not only families who are feeling the pinch of high gas prices. Wal-Mart, the country's biggest retailer, has expressed concern that these higher fuel prices will result in lower sales—and in fact, the Commerce Department reported yesterday that retail sales saw their largest drop in 16 months. Our economy's health is dependent on consumer spending. If consumers are buying less because of high transportation costs, the family van will not be the only thing out of gas; our nascent economic recovery will also stall.

Much of the gas money squeezed out of our economy heads to OPEC countries, the result of their blatant price fixing. To address that, Senator DEWINE and I have introduced the ''No Oil Producing and Exporting Cartels Act'' or NOPEC. NOPEC will, for the first time, establish clearly and plainly that when a group such as the OPEC nations act together to restrict supply or set prices, they are violating U.S. law. The bill will not authorize private lawsuits, but it will allow the Attorney General or the FTC to file suit under the antitrust laws for redress. Our bill will also make plain that the nations

of OPEC cannot hide behind the doctrines of ''Sovereign Immunity'' or ''Act of State'' to escape the reach of American justice. This legislation would be a powerful tool to combat the illegal price fixing behavior of OPEC, behavior that would be severely prosecuted if it happened inside the U.S. or was carried out by U.S. companies.

Although OPEC is a big part of the problem of high gas prices, the lack of refining capacity across the country also contributes. Every day our economy demands almost nine million barrels of gasoline to keep the marketplace moving, but we lack enough oil refining capacity to meet the demand. Refineries are operating at 95 percent of capacity—and so we are forced to import 1 million barrels of refined gasoline a day.

The antitrust subcommittee on which I am the ranking member has looked into the issue of whether insufficient refining capacity is a manufactured crisis designed to raise prices by reducing the supply of refined product. No new refineries have been built in this country for 25 years, while scores have been closed. Some believe that this has allowed the remaining refiners to keep gasoline prices abnormally high. We are going to have to be vigilant if we are to keep the short supply of refineries from allowing another Enron-like gouging of consumers.

Indeed, I was gratified by the news last week that the FTC had begun a formal investigation into Shell's plans to close an important refinery in Bakersfield, CA, a refinery that produces 70,000 barrels of gasoline a day. Should the FTC conclude that the closure of this refinery results from efforts by Shell to control supply and raise prices, it must pursue all legal measures to protect consumers. The FTC must be tougher on all mergers in the oil and gas industry and act quickly and decisively to prevent oil companies from manipulating supply and prices. And Congress has important oversight responsibilities to make sure the FTC uses the powers we have given them.

The high price of gas is an issue that affects everyone, but to those on the bottom of the economic ladder it can be devastating. It is a serious problem when—because of the cost of gas—getting to work, finding a new job, or visiting the grocery store or the doctor become a luxury out of the reach of working families. It is a serious problem that we need to address seriously—and there are simple steps, like some I have outlined today, that we can take this year. We can and should act—not sit on our hands while working families again reach for the bill.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

STANDING FOR AGRICULTURE

Mr. DORGAN. Mr. President, my colleague from South Dakota described the circumstances on the family farms and ranches in this country and why folks who are out there living on the land trying to grow a crop and raise some animals wonder whether the Government is on their side, wonder what is happening here in Washington, DC, with this administration and this Department of Agriculture, and why they won't stand up for their interests.

My colleague described many circumstances. Let me describe at least one. I am going to talk later today about the United States-Australia Free Trade Agreement, so-called, that I think undermines once again our agricultural interests.

Let me describe one example of this administration again deciding we are not going to stand for farmers and ranchers. It deals with China. It deals with wheat. An official from the U.S. Trade Ambassador's office in the last week in which he served in the Government gave a speech. He said the recommendation was that inside the administration they take action against China because China has been unfair in its decisions on trade with respect to U.S. agriculture.

If I can interpret that, we have farmers and ranchers who are trying to make a living, who are trying to raise some products and move them around the world and the Chinese, with whom we have a very large trade deficit—the largest in human history—have decided they are not going to play fair with us.

What is the result of a recommendation inside this administration to take action against China because China is not playing fair with respect to our ability to sell wheat to China? They say we are not going to take action against China because that would upset the Chinese. What do you think it does to farmers and ranchers out there who are trying to make a decent living?

About a week ago, I was out on a ranch in North Dakota, owned by the Ebers. They are out there by themselves. They are not a big conglomerate or a big corporation, only themselves. They run some cattle. They run a ranch, try to do a good job and try to make an income at the end of the year. I asked them, Where do you buy your groceries? It is an hour and a half away to go buy groceries. They are way out in the country.

You would expect and they would expect their Government would at least stand up for them when it comes to fairness with respect to trade agreements, whether it is CAFTA, or U.S.-Australia, or NAFTA, or the bilateral with China. Nobody is willing to stand for them.

This administration says with respect to China that we know the Chinese Government made commitments. We know the Chinese Government was supposed to do certain things and has not done them with respect to agriculture, but we are not going to do anything about it.

March 17 of last year is when a U.S. Trade Ambassador's official in the USTR office told a wheat industry meeting here in Washington, DC, that the USTR should file a case against China at the World Trade Organization in response to the failure of the Chinese to keep their commitments. He was leaving the USTR and going to another agency. Finally, somebody was candid about what was happening inside the administration.

This official expressed his frustration with the Chinese Government. He noted that Chinese officials have never disagreed with U.S. technical criticism of how China has been administering these so-called tariff rate quotas. He said the Chinese only make the political argument: You have to understand China. China is a special case, they say.

So this fellow said publicly that the trade policy review group in this interagency process in the Bush administration has given the U.S. Trade Ambassador's office the green light to move forward with a WTO case against China. That means in English that China is being unfair to our farmers and ranchers. So the technical folks said clearly we ought to take action against them. But he noted that many in the administration decided we can't do that; that would be an ''in your face'' action with respect to the Chinese.

Right after this official made these candid remarks, the administration disavowed those comments saying: No, no, he was not speaking for the administration. Of course he was. He made a very big mistake. He told the truth. He was candid.

My colleague from South Dakota asked the question: Why will they not stand up for the interests of farmers and ranchers? These are the bedrock entrepreneurs of our country who live on the land and try to do a good job and make a decent living. They expect their government to stand for them, to be on their side, to help them.

When they are confronted with an unfairness—and the example here is with respect to the Chinese who are mistreating our farmers and ranchers in international trade—they expect their government to stand for them. This administration, this trade ambassador, this trade policy from this administration fails to do so. It is a shame.

The PRESIDING OFFICER (Ms. MURKOWSKI). The Senator from North Dakota.

Mr. CONRAD. Madam President, in this discussion of farm policy and policy toward the rural parts of the country, I looked at the President's Web site for his campaign. It says, ''President Bush understands that America's farmers are the heart and soul of this country. That is why he has worked so hard to help protect the rural way of life. He has proven his commitment to rural America time and time again. He pushed for and signed the 2002 farm bill.''

I was one of the negotiators of the farm bill representing the Senate in

the conference committee with the House. We spent well over 100 hours in negotiation. To say the President's assertion that he ''pushed for'' the farm bill is within hailing distance of the truth is to totally rewrite history.

Those who were involved in writing the farm bill have quite a different recollection of the history of that period than the President now portrays it. Let's go back to the time when we were negotiating the farm bill and see what the administration said then and see if it stacks up to the claim he is making now that he pushed for the new farm bill.

When the House of Representatives was working on the farm bill, on October 3, 2001, the President put out this Statement of Administration Policy:

> [T]he Administration does not support H.R. 2646 and urges the House of Representatives to defer action on the bill.

Does that sound like pushing for the bill? Or is that pushing for delay of the bill?

Then the statement of administration policy said:

> [N]ow is not the appropriate time for consideration of this bill.

And

> More time is needed for the fiscal picture to clear.

Then the administration said:

> The Administration believes that acting now on the significant fiscal and policy commitments of H.R. 2646 would be premature.

Does that sound like they were pushing for the farm bill, or were they pushing for delay of the farm bill?

Then when the Senate turned to the farm bill, the administration put out another Statement of Administration Policy. This is what they said:

> The Administration believes it is unwise, in this time of uncertain and changing federal resources and priorities, to enact policies that create unknown and potentially huge future demands on taxpayers.

Was that pushing for the farm bill? Or was that pushing for delay of the farm bill?

The President now claims he was pushing for the farm bill. The truth is, he was pushing for delay. He was pushing for deferment. He was pushing to wait.

What would have happened had we followed that advice? What would have happened?

First, the money that had been set aside in the budget for the farm bill would have run out. Then with the deteriorating fiscal condition of the Federal Government, resources for a new farm bill would have evaporated. In addition, a new estimate was about to come out about the cost of a farm bill that would have increased the cost and made it impossible to write the farm bill that was written.

For those who are concerned about taxpayers, they should understand, the farm bill that was written has thus far cost significantly less than projected. That almost never happens around here. The farm bill was projected to cost $18 billion this year alone. Instead, it will cost $14 billion, dramatically less than forecast.

But it is not just that savings. The even larger savings is to compare the current policy with the previous policy. If we make that comparison, we find the savings under this farm bill are even more dramatic, a huge reduction in expenditure, and yet this is a much more favorable piece of farm legislation for which the President now says he pushed. But at the time what he was pushing, he was pushing for delay. The fact is, delay would have killed the farm bill.

I remember working feverishly to convince my colleagues to move ahead, telling them that from my position on the Budget Committee I could see where this was all headed. If we had followed the Secretary of Agriculture's advice in this administration, we would have waited and waited and waited and the opportunity would have been lost.

The PRESIDING OFFICER. The Senator from Washington.

ENERGY RELIABILITY

Ms. CANTWELL. Madam President, I rise this morning to talk about our legislative priorities, and something I think this body needs to address before we adjourn next week. It is the issue of the reliability standards for our electricity grid and the fact that I think we are still putting the grid in jeopardy by not adopting reliability standards.

Even Enron activities in California, by its own admissions, jeopardized the reliability of the western electricity grid. That is certainly unacceptable. We need to have in place rules that explicitly ban market manipulation and rules that make reliability standards mandatory and enforceable.

In the documentation that has now been acquired through the Enron task force, federal agencies and organizations such as the Snohomish County Public Utility District, which is trying to get out of lawsuits and manipulated contracts that Enron is pursuing against it, it became clear that Enron continued to manipulate the market until its bankruptcy. Even in one scheme, called Get Shorty, Enron discussed in detail, and I quote from their comments and documents:

> This [Get Shorty] is obviously a sensitive issue because of reliability concerns. It would be difficult to justify our position if the lights go out because ancillary services were not available. The reason these services were not available is because we were selling them without actually having them in the first place.

In the Enron documentation and memos shared among various employees in the company about ways to scheme and make more money, they very well knew they were manipulating the market. They did not have these services, but sold them anyway at a higher cost, and thereby jeopardizing reliability.

Another summer is upon us and we have yet to take action on legislation that would move us forward in ensuring the integrity of the electricity grid by protecting consumers from these market manipulation schemes and putting regulatory standards in place for reliability.

Next month, in fact, will mark the first anniversary of the blackout in the Northeast and the Midwest that caused basically 50 million consumers and businesses in the Northeast and Midwest to lose power. In some cases that power was lost up to 4 days.

That blackout could have been avoided. When you think about not just the inconvenience to consumers but the fact it cost our economy $4 to $10 billion as a loss of economic activity, it is outrageous we are not stepping up and passing electricity reliability standards legislation as a stand-alone bill before we recess for the summer.

We know why the blackout occurred. A few months ago, in April, the U.S.-Canadian power system outage task force issued a report and the Department of Energy, together with the Canadian counterpart, convened a panel of experts that concluded this was something we could avoid if we put reliability standards in place. In fact, the No. 1 recommendation of that task force, which was reported to various Members of Congress and various committees, is to ''make reliability standards mandatory and enforceable, with penalties for non-compliance.''

That was the No. 1 recommendation out of that task force that investigated what happened in the Northeast and what happened in the Midwest.

So the question is, Why are we not passing reliability legislation before we adjourn, to make sure there are mandatory enforceable rules in place? After the task force's 7-month investigation was complete, Congress has been given an opportunity, many times on the floor, to pass reliability standards. Yet we have not done that. I think some of my colleagues are trying to get a larger energy bill passed first. There are many aspects of the comprehensive Energy bill this Senator would support and many I would not. But I guarantee you this, when this electricity reliability standards bill comes to the floor and is voted on, it will have unanimous support.

So the question is, why we are not peeling off something as important as reliability standards as we approach the summer's hottest months, to make sure businesses and utilities know they will have electricity supply and blackouts will not occur. What if the lights go out again this summer? What if they go out in August? God forbid they go out in September as many of my colleagues will be in New York doing their business and having meetings.

We know various Western States now, such as in Arizona, are putting in place programs to reduce demand because they have concerns. In a BusinessWeek article, FERC Chairman

Pat Wood basically described the summer as ''a rosary bead summer'' in California because he has concerns that region is going to have some close calls.

We also know, according to the North American Electric Reliability Council's own Reliability Assessment for 2004, New York City ''might be susceptible to reliability problems'' again this summer.

So folks across the country could be affected by the cascading outages that happen to them or in nearby areas. In the words of Michael Gent, who is the president of the North American Electric Reliability Council:

> Whether legislation is adopted on a stand-alone basis or as part of a comprehensive energy bill, passage is essential. If reliability legislation had been enacted when first proposed, I believe that the blackout would not have occurred.

Why is that? Because right now, while consumers may think there are standards by which supply needs to be on the grid and reliability maintained, there are actually no mandatory rules. What happened in the Midwest and in New York was the fact that people did not have the supply available at a time that the demand was really there, or the transmission available to move the power. So consumers were caught in the dark—many senior citizens, individuals in hospitals. A whole variety of things occurred that were very unfortunate circumstances.

Now, we in the Northwest know this situation all too well. It was actually my predecessor, Senator Gorton, who first proposed this legislation and actually passed it out of this body, and then it languished in the House of Representatives. We waited again in 2002 and 2003 to get this legislation moved forward through the process. So I think it is critically important before this body adjourns next week that we pass the reliability standards legislation and implement it.

UNANIMOUS CONSENT REQUEST—S. 2236

So, Madam President, I ask unanimous consent that the Senate now turn to Calendar No. 465, S. 2236, a bill to enhance the reliability of the electric system; that the bill be read a third time and passed, and the motion to reconsider be laid on the table, without any intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. BOND. Madam President, reserving the right to object, we have had an energy bill pending that has been filibustered by our colleagues on the other side. We are not in a position where one Senator, unfortunately, can pass a bill. There may be many bills I would like to pass. We do not pass bills in this manner. We should get on with passing an energy bill. And, therefore, I object.

The PRESIDING OFFICER. Objection is heard.

Ms. CANTWELL. Madam President, I hope my colleagues on the other side of the aisle will reconsider their position because we are not, in the next 5 to 6 days of legislative action, going to get a comprehensive energy bill. But we can get an energy reliability standards bill passed and put in place, and send a message sent to electricity providers across the country that there are going to be reliability rules and standards in place.

We cannot continue to hold hostage good energy reliability legislation for a comprehensive bill when consumers are at risk. We cannot continue to deny the reports across the country that more blackouts are coming. We need to act.

Now, Madam President, I would like to take a few minutes to expand on some of the other news and events that relate to this energy policy.

As my colleague mentioned an energy bill, I certainly would like to get an energy bill that did something to prevent market manipulation, or even just a stand-alone bill that would prevent market manipulation. We in the West have been astounded by the lack of response by the Federal Energy Regulatory Commission to the news and information about markets being manipulated.

I do not mean there is speculation about manipulation; I mean there are documents that have now been uncovered through organizations such as Snohomish County PUD; they are actually signed documents by various day traders at the Enron Trading Portland office that showed exactly how the trading schemes worked. While those utilities harmed will continue to pursue their case legally, it is absurd that the Federal energy regulators who are supposed to do their job in protecting consumers are failing to do anything. Basically they are the policemen on the watch and they are letting the crime continue to be committed.

When I say ''continue to be committed,'' I would like to submit for the record an article that was recently published that shows the chances that these schemes might still be continuing in the State of Texas. The Texas Public Utilities Commission has an ongoing investigation, and there are a couple of companies down there that are actually pursuing this case. Some of the same Enron traders who were involved in the Portland office in these schemes have now moved on to other companies. CBS and others now have audiotapes showing that some of these Texas power giants might still be manipulating the market in the same ways that Enron did. So the question is, When are we going to stand up and do something about this?

I ask unanimous consent to have printed in the RECORD an article entitled ''Accusation: Trader Recordings Show TXU Schemed to Spike Power Prices.''

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From CBS–11, July 8, 2004]

ACCUSATION: TRADER RECORDINGS SHOW TXU SCHEMED TO SPIKE POWER PRICES

(By Robert Riggs and Todd Bensman)

Audiotapes allegedly show traders for Texas power giant TXU carrying out illegal market manipulation schemes to spike electricity prices, much as Enron traders now stand accused of doing in California, according to several state competitors who claim the schemes damaged them.

CBS–11 obtained 250 hours of previously sealed telephone recordings of TXU trader transactions from Allen-based competitor Texas Commercial Energy. Company executives say the recordings prove TXU cornered Texas's newly deregulated electricity market last year and refused to sell until prices spiked many hundreds of dollars per megawatt hour above normal rates.

Officials for TXU, by far the state's largest energy company, deny that its traders ever illegally cornered Texas energy markets or squeezed competitors and said state regulatory investigators cleared the company of any wrongdoing.

The recordings of telephone trader transactions surfaced from a Texas Commercial Energy anti-trust lawsuit that claimed illegal market manipulation schemes by TXU drove the nascent energy company into bankruptcy after several cold fronts last year. A judge dismissed Texas Commercial Energy's lawsuit in June on grounds that the court did not have proper jurisdiction.

The company says it will appeal for a trial on the actual merits of its allegations.

''Now, the consumers get a chance to hear what their intentions were and how they were being damaged,'' said Steve Ousley, President of Texas Commercial Energy.

In one tape reviewed by CBS–11, TXU traders appear to gloat about excessive prices charged to Garland Power & Light.

TXU Trader 1: ''They got a little power plant out there. I think they've got 250, 300 (megawatts). And if they're short, you know, they buy it from me sometimes.''

TXU Trader 2: ''Is that right?''

TXU Trader 1: ''When I, when I bend them over the bench and give it to them (laughter).

TXU spokesman Chris Schein dismissed the discussion about the city of Garland as mere ''boasting'' and ''verbosity.''

''It's embarrassing, but there is no factual basis to what he said in terms of taking advantage of that customer,'' Schein said.

Texas Commercial Energy and other competitors tell CBS–11 that many other audio recordings prove that TXU imported and then put to use, during several 2003 cold fronts, the kind of market manipulation schemes that have resulted in federal action against traders for Enron, and also the Houston-based Reliant Energy Services, for trading abuses California.

In April, the Houston energy company Reliant and four of its officers were indicted in San Francisco on six counts of creating false energy shortages to spike prices.

In the course of its investigation of the TXU allegations, CBS–11 News learned that TXU had hired five ex-Enron traders, including one who came under FBI investigation for his previous work in Enron's indictment-plagued Portland, Ore. office and figures prominently in some of the Texas tapes.

''I think Texans should be outraged that they have adopted these Enron-like market manipulation schemes and even hired some of the same people that implemented the schemes out in California,'' Ousley said. ''In Texas, market manipulation is all about the money. At the end of the day the consumers are going to end up paying for the market manipulation.''

Until now, TXU has largely escaped the kind of public allegations of illegal market manipulation that has recently bedeviled former Enron traders and Reliant Energy. Last month, the release of the so-called ''Grandma Millie'' tapes of foul-mouthed Enron traders in Portland boasting of illegal trading schemes spurred widespread condemnation and pressure on Congress to investigate other energy companies.

Many of the taped TXU trader conversations reviewed by CBS–11 News are infused with jargon and would be difficult for industry outsiders to interpret. Interpretation of the Texas tapes has become central to the emerging controversy over them.

TXU's Chris Schein said his firm's interpretation of the tapes is that they show no wrongdoing at all.

''The kinds of shenanigans that you saw in California did not take place in Texas,'' he said. ''And state regulators have been very concerned about that occurring.''

Little is known about four of the five former Enron traders who have come to work for TXU, and Schein said affiliation with the scandal-plagued company should not automatically preclude employment at TXU.

But a fifth former Enron employee, Holden Salisbury, was hired by TXU from Enron's scandal-plagued Portland office in 2002, the company confirms.

Those who worked the Enron office remain under an active FBI investigation for market manipulation schemes known euphemistically inside the office as ''Deathstar,'' ''Get Shorty,'' and ''Fatboy,'' California authorities say. Federal prosecutors have indicted and convicted several of Salisbury's former Enron supervisors on charges that they used market manipulation schemes, including Deathstar, to rip off millions from California ratepayers.

The 31-year-old Salisbury, who shows up repeatedly in the Texas tape recordings, has not been indicted or accused of any crime. His trading logs from Portland, obtained by CBS–11, indicate that he conducted multiple ''Deathstar'' transactions while working there.

In a brief interview with CBS–11 outside his Allen home, Salisbury would not say how he came to work for TXU but insisted he has done nothing wrong as a trader for either Enron or his current employer.

''I don't think I did anything wrong in Portland, and I don't think I have done anything wrong in Dallas,'' he said, declining to talk further without TXU permission.

TXU's Schein said the company would not allow Salisbury to talk further and that executives were angry that CBS–11 had tried to interview him at home.

Robert McCullough, a former utility executive in the Pacific Northwest, has worked as an expert witness in lawsuits against TXU and Enron. He said he was surprised TXU would hire anyone else from Enron's tainted Portland office.

''We found hundreds, literally hundreds, of documents where the different traders would sign off on specific schemes,'' McCullough said. ''So it's very surprising to us that you would actually want one of those people on your team.''

Asked why TXU would hire a trader from Enron's Portland office, Schein said Salisbury had passed a TXU background check. He later indicated the FBI had fully investigated and cleared Salisbury.

FBI officials in San Francisco, Ca., however, say the investigation of the personnel in Enron's Portland office was by no means complete and could yet yield additional cases.

''The FBI is in no way vouching for the character of Mr. Salisbury,'' said Special Agent LaRae Quy.

Salisbury figures prominently in some of the TXU recordings made during last year's February ice storm in North Texas.

Texas Commercial Energy officers and lawyers say the scheme Salisbury and others used involved buying up as much available energy on the open market as bad weather approached and then, cutting TXU's scheduled sales. According to Texas Commercial Energy, TXU traders would then refuse to sell, even lying to customers about ostensible shortages, until average $50 prices per megawatt hour spiked to a rare $1,000 per hour high.

In the following days, they say, TXU traders working together maintained tight control over prices, keeping them artificially high, but not so high as to trigger the unwelcome attention of state regulators.

Company officials say this 10:12 a.m. conversation on Feb. 25, 2003 between Salisbury and buyer Norm Berthusen of Cirro Energy occurred after an extended buying spree by TXU. They say it is but one of many recorded conversations supporting their contention that TXU traders conspired to withhold energy from the market.

Holden Salisbury: ''TXU, this is Holden.''

Norm Berthusen: ''Hey Holden, Norm Bertheson at Cirro.''

Holden Salisbury: ''Yes sir.''

Norm Berthusen: ''Anything happening here in some of the short term power?''

Holden Salisbury: ''Um, it's not looking too good right now. I don't think I'm going to have anything. . .''

Norm Berthusen: ''Where's all the energy going?''

Holden Salisbury: ''It's cold man.''

Norm Berthusen: ''I mean, it is, but hell, nobody's at work. Very few people. I mean. . .''

Holden Salisbury: ''I don't know. . .''

Norm Berthusen: ''Strange. . . Strange how we can have 56,000 available in the summertime and we can't get 40 together in the wintertime.''

Holden Salisbury: ''Yeah. I don't know. I mean there's (power plant) units that are down in the state.''

Norm Berthusen: ''What units are down?''

Holden Salisbury: ''I don't know, but I know there are some . . . Look I've gotta go man.''

Norm Berthusen: ''Alright.''

In an interview with CBS–11, Berthusen said he was suspicious that something nefarious was afoot but didn't know for sure until much later.

''I believe as a result of those actions that took place in February 2003 there may be a lot more overview from the (Public Utilities Commission) side of the fence in terms of monitoring some of this activity,'' he said.

TXU's spokesman, Chris Schein, said the recording shows no wrongdoing. He said Salisbury's apparent refusal to say which plants were off was in line with federal regulations prohibiting the trader from divulging such protected details.

Texas Commercial Energy officials point to recordings a month earlier as further evidence that TXU traders carried strategy of using market dominance to set prices at artifically high levels.

Traders Tim Drennan and Jim Dunkin discuss the ''strategy.''

Tim Drennan: ''It's sitting at, uh, thirty-five percent . . . uh thirty four point, uh . . . thirty four and a half percent . . . uh forty six bucks, forty five bucks.''

Jim Dunkin: ''Yeah.''

Tim Drennan: ''So, eh, pretty much right in there where I think you wanted to be.''

Jim Dunkin ''Excellent, excellent.''

Tim Drennan ''Yeah. No, I agree. I eh, we eh, we're all on board with the, the, eh—with what we're doing here.

Jim Dunkin: ''Good.''

Later in the same discussion, according to Texas Commercial Energy officials, traders talk about cutting large amounts of scheduled energy deliveries to create an artifical scarcity in the market, thereby driving prices up.

Jim Dunkin: ''What are you doing?''

Jerry 'Doc' Gatty ''I'm pulling my thumb wondering what Tim's gonna do here.''

Jim Dunkin: ''Well, cut it.'' (laughter)

Jerry 'Doc' Gatty: ''We, we've got some big cuts in for nine o'clock, so . . . I'm ready to get to 9 o'clock and get it cutting so I know where I'm going. No, I know where I'm going.''

Jim Dunkin: ''To the bottom.''

Jerry 'Doc' Gatty: ''To the bottom.''

Several hours later, according to Texas Commercial Energy officials, prices began to rise sharply to nearly $274, and the traders demonstrate that they have achieved control of prices.

Jim Dunkin: ''That's just like yesterday. Everything's goin' just like we planned yesterday, except eh, except eh . . . on the prices. But that's fine. I mean, I don't really want to bump the prices unless we're 40 percent.

Tim Drennan: ''I understand . . . We'll just keep them where they're at here, uh, for the rest of the day, unless we're, uh, unless we're super long. You know, if it gets over 40 percent, maybe I'll take em up to over a hundred. But right now . . .''

Jim Dunkin: ''You can take them back up over to that . . .''

Tim Drennan: ''Okay.''

Jim Dunkin: ''. . . if you get up over 40 percent.''

Tim Drennan: ''I understand, I understand.''

Four hours later, the traders discuss price manipulation strategy for the following day by ''cutting the load,'' or reducing scheduled energy sales, to create the appearance of shortages, according to Texas Commercial Energy officials.

Jim Dunkin: ''I'd still go the same strategy tomorrow of having plenty on, but cut the load.''

Tim Drennan: ''Hey, cut-cut the load, go short, but just hold the price below 100 bucks.

Jim Dunkin: ''Yeah, hold the price below 100 bucks. But I wouldn't roll a hundred bucks until I got the CT.''

After some additional discussion about price bidding, Drennan said ''And what we'll do is we'll just . . . we'll pull those prices back and keep it under 100, and I'll pass that on to Chad. And we're going to be fine.''

Said Texas Energy Commission Vice President Bill Silliman: ''They've got control over the prices. They only want to double the price, not create a five-fold increase that everyone would notice.''

TXU's Schein says the recordings fall far short of proving that anyone at TXU has ever committed a crime or behaved unethically in business. He called the price spikes that occurred last winter ''anomalies'' due to a variety of natural causes and normal market circumstances.

''Those things don't occur, have not occurred in Texas,'' TXU's Schein said. ''All of the market anomalies have been thoroughly investigated and found to have been no wrongful activities.''

Schein was referring to a January 2004 staff inquiry into the allegations by the Public Utilities Commission's Market Oversight Division.

''At this point,'' the report concluded, in part, staff ''has found no evidence of widespread, egregious price gouging in the . . . energy market by TXU.''

But commission spokesman Terry Hadley conceded that investigators were only able

to listen to a tiny fraction of the recordings, very late in their inquiry, before issuing the report in January. And, he said, court-ordered restrictions at the time prevented Texas Commercial Energy attorneys from helping investigators interpret the recordings beforehand. By contrast, TXU did work with investigators before the report was completed, Hadley said.

The investigation remains open, he said.

''Obviously, we don't have the resources to listen to everything,'' Hadley said. ''They were considered to the extent that some had been reviewed. With our resources, we're not able to review all the thousands of hours of recordings. But . . . we can continue to review the situation.

Robert McCullough, the former utility executive who worked as an expert witness in lawsuits against TXU and Enron, questions whether the utility commission is capable of investigating anything. The number of investigators available to enforce complex deregulation rules, he said, is pitifully small.

''Unfortunately, in Texas, we don't have many police. We have one small office,'' McCullough said. ''I don't doubt that those gentlemen work very hard, but it's like one policeman to patrol Dallas at the moment.

''The budget for the state PUC is $600,000,'' he said. ''That amount of money could be purloined, taken from the consumers in an hour. It's like having the entire budget for the police force for the city of Dallas being the same amount as what's in the till of a Ma and Pa grocery store.''

Ms. CANTWELL. The issue is really before us in the sense that we need to continue to push the Federal regulators to do their job, the Federal regulators being the Federal Energy Regulatory Commission. They have failed to do their job. We had an Enron collapse and scandal in which markets were manipulated, shareholders were conned, books were cooked, and various aspects of this investigation and prosecution are taking place. My hat is tipped to DOJ in their effectiveness in pursuing this case against various Enron employees, including their recent indictment of Ken Lay, even though that is a process in which Mr. Lay has his opportunity and will have his day in court. But I take great offense to Mr. Lay's PR campaign in which he goes on television saying that all that happened in California was California's fault, that it was wrong for them because they deregulated without proper supply.

Well, I think it is very clear there has been market manipulation as shown by the documents that are being provided, and it is a question of whether the Federal regulators are going to do their job.

Madam President, I ask unanimous consent to have printed in the RECORD an editorial from the Washington Post from this week in which the paper criticized the Federal energy regulators for not doing their job. I think that is what we need, more attention to show that those Federal regulators have not had the bright light of day shown on them and that they are failing to do their job.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, July 12, 2004]

ENRON'S LEGACY

It has long been clear that ill-starred Enron Corp., whose founder and chief executive, Kenneth L. Lay, was indicted last week, deliberately manipulated electricity markets to intensify the California power crisis of 2000–01, forcing electricity prices up across the West. But recently released tapes of conversations between Enron traders have reminded the victims of just how cynical that manipulation really was. ''I want to see what pain and heartache this is going to cause Nevada Power Company,'' gloats a trader on one of the tapes, just before completing a deal. ''I'm still in the mood to screw with people.''

The ratepayers of Nevada—and the rest of the West—are right to feel angry about what Enron did and right to feel aggrieved about the billions of dollars they overpaid for electricity as a result. It's hardly surprising that their anger has spread to Congress, particularly during an election year. Rep. Anna G. Eshoo (D–Calif.) recently got the House to pass an amendment to an energy appropriations bill, effectively requiring the Federal Energy Regulatory Commission (FERC) to give the public easier access to Enron documents. Some, including Sen. Maria Cantwell (D–Wash.) and Sen. Dianne Feinstein (D–Calif.) want the Senate to do the same.

But while calling for access to documents lets off political steam, it doesn't address the more fundamental problems with federal energy regulation, as many in Congress know perfectly well.

The much larger concern is that FERC's failure to resolve quickly the gaggle of multimillion-dollar lawsuits and regulatory cases filed by public utility commissions across the West has hampered investment and left energy markets in turmoil.

The fault is partly FERC's. Each case involves different legal issues, but on the whole, the commission's reaction to them has been slow, overly cautious and narrowly legalistic. At the same time, Congress has refused to heed the regulators' continued pleas for more powers, and particularly for the right to exact the same kinds of civil penalties other regulatory bodies do. Because FERC was set up in a different era, it is a quasi judicial body, with little ability to enforce rules. Its commissioners argue that they have acted according to their interpretation of the law, which among other things does not allow them to invalidate old contracts retroactively. Spokesmen also point out that some of Enron's behavior was ugly but legal, which limits what FERC can do now. Indeed, much of what happened can be attributed to the poor design of California's electricity markets—a design that FERC opposed.

Nevertheless, it is becoming clear that FERC's overly cautious approach to the Enron aftermath, the fault of both FERC and Congress, has damaged the regulatory commission's standing and even its ability to oversee market regulation in the future. In California, Nevada, Washington state and elsewhere, the acronym FERC has become a byword for impotence. Its job was to protect consumers, the argument goes; it didn't protect consumers, and it doesn't deserve more powers. Yet the future success of deregulated energy markets depends on the existence of a reliable regulator, with enhanced powers to enforce standard market rules and to penalize companies that fail to comply with reliability requirements or that manipulate markets. It's probably too late to undo all of the damage, but in upcoming cases FERC should take far more seriously the spirit of the law, which was designed to protect consumers, and Congress should quickly act to give FERC the powers it needs to prevent market manipulation.

Ms. CANTWELL. The article basically says:

. . . FERC's overly cautious approach to the Enron aftermath . . . has damaged the regulatory commission's standing and even its ability to oversee market regulation in the future. In California, Nevada, Washington state and elsewhere, the acronym FERC has become a byword for impotence. Its job was to protect consumers, the argument goes; it didn't protect consumers. . . .

So I think we need to continue to push. In fact, the editorial goes on to say:

. . . Congress should quickly act to give FERC the powers it needs. . . .

We must do our job in continuing to protect consumers from this market manipulation. When we have evidence now that shows it has taken place, and we cannot get the cop on the beat to investigate, and we now have documentation and suspicion that it may still be going on in other parts of the country, Congress needs to do its job.

Just as we did with the SEC in passing new accounting rules, we need to make sure the Federal Energy Regulatory Commission does its job on regulating wholesale power rates, making sure that they are just and reasonable and that the manipulation stops.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maine.

(The remarks of Ms. COLLINS and Mr. BOND pertaining to the introduction of S. 2659 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

IRAQ INTELLIGENCE

Mr. BOND. Madam President, I come to the Senate floor once again this week to talk about the Intelligence Committee report and what we know and what we have learned about the intelligence prior to this body authorizing the President to go into Iraq.

We have seen over the past year a concerted effort by outside groups, partisan attack machines, and even Members of this body going after the credibility and attacking the President and Vice President, sometimes personally. We have seen breathless media coverage of every word of those who profess to be nonpartisan but who prove to be anything but nonpartisan.

We have seen headlines alleging all types of wrongdoings. We have heard accusations of lying and misleading repeated as if they were the simple, obvious truth.

Now, after the Senate Intelligence Committee spent a year painstakingly reviewing these accusations, attacks, and smears, we can set the record straight, while only hoping that the media will devote at least some of the same attention to the facts as they did to the accusations and unfounded allegations. Yes, we found there were significant problems with the intelligence

mechanisms, the lack of human intelligence, the failure to share information, the wall that had been built between intelligence agencies, and that we need to correct with appropriations and legislation. That is what I hope the Intelligence Committee can do. But we also need to correct the outright inaccuracies and political attacks.

Let's just review an example. First, let me take the interesting story of the initially anonymous former Ambassador, one Joe Wilson. As we point out in the additional views of Chairman ROBERTS, which Senator HATCH and I signed, Joe Wilson went on a media blitz with his allegations, appearing on more than 30 television shows in order to tell anyone and everyone that the President lied to the American people and that he was the ''patriot'' who debunked the claim of what he called in his book ''the 16-word lie.'' Joe Wilson states on the ''JOHN KERRY for President'' Web site:

The President misled the Nation in his State of the Union Address.

Then there was an ABC news story in which ABC said:

A former Ambassador told ABC news that almost a year before Bush's speech he informed the CIA that the information was not credible. The Ambassador, who asked not to be identified, said the CIA asked him in February 2002 to investigate reports that Iraq was trying to buy uranium from Niger. After spending 8 days in the west-central African nation, the Ambassador said he told the CIA the information about uranium was ''bogus and unrealistic.''

That is pretty hard hitting.

This was a CNN headline:

Diplomat: U.S. knew Uranium Report Was False.

Then Joe Wilson did Internet interviews. In one on Buzzflash, he said:

I urged the Government to come clean with this story that was patently not true.

Then he went on Meet the Press and stated that he believed he had ''effectively debunked the Niger arms uranium sale.''

Andrea Mitchell asked him:

Were they not properly briefed on the fact that you had the previous February been there and that it wasn't true?

Wilson said:

No. No. In actual fact, in my judgment, I have not seen the estimate either, but there were reports based upon my trip that were submitted to the appropriate officials. The question was asked of the CIA by the office of the Vice President. The office of the Vice President, I am absolutely convinced, received the very specific response to the question it asked and that response was based upon my trip out there.

Well, now we have the facts, Madam President. The facts don't square with the claims. We not only have the Senate committee report, but yesterday we had Lord Butler's report investigating the intelligence obtained by British intelligence services that was shared with the U.S. and cited in the President's State of the Union Address. The Butler report states at paragraph 499:

We conclude that, on the basis of the intelligence estimates at the time, covering both Niger and the Democratic Republic of Congo, the statements on Iraqi attempts to buy uranium from Africa in the Government's dossier, and by the Prime Minister in the House of Commons, were well founded. By extension, we conclude also that the statement in President Bush's State of the Union Address of January 28, 2003, ''The British Government has learned that Saddam Hussein recently sought significant quantities of uranium from Africa,'' was well founded.

That is what they said after looking at all the evidence. Paragraph 503 of the Butler report goes into detail and says:

From our examination of the intelligence and other material on Iraqi attempts to buy uranium from Africa, we have concluded that:

A. It is accepted by all parties that Iraqi officials visited Niger in 1999.

B. The British Government had intelligence from several different sources indicating that this visit was for the purpose of acquiring uranium. Since uranium constitutes almost three-quarters of Niger's exports, the intelligence was credible.

C. The evidence was not conclusive that Iraq actually purchased, as opposed to having sought, uranium and the British Government did not claim this.

D. The forged documents were not available to the British Government at the time its assessment was made, and so the fact of the forgery does not undermine it.

Well, that is the first pitch. Facts 1, Joe Wilson 0.

What does the Senate Intelligence Committee say? On page 44 of our report, it says:

When the former Ambassador spoke to Committee staff, his description of his findings differed from the DO intelligence report and his account of information provided to him by the CIA differed from the CIA official accounts. . . .

. . . The former Ambassador said he discussed with his CIA contacts which names and signatures should have appeared on any documentation of a legitimate uranium transaction. In fact, the intelligence report made no mention of the alleged Iraq-Niger deal or signatures that should have appeared on any documentation of such a deal.

Then we went on to page 45:

The former Ambassador [Wilson] also told Committee staff that he was the source of a Washington Post article (''CIA Did Not Share Doubt on Iraq Data: Bush Used Report of Uranium Bid''), which said, ''Among the Envoy's conclusions was that the documents may have been forged because 'the dates were wrong and the names were wrong.' '' Committee staff asked how the former Ambassador could have come to the conclusion that the ''dates were wrong and the names were wrong'' when he had never seen the CIA reports and had no knowledge of what names and dates were in the reports. The former Ambassador [Joe Wilson] said that he may have ''misspoken'' to the reporter when he said he concluded that the documents were ''forged.'' He also said he may have become confused about his own recollection after the International Atomic Energy Agency reported in March 2003 that the names and dates on the documents were not correct and may have thought he had seen the names himself.

Second pitch: Facts 2, Joe Wilson 0.

Joe Wilson said in his book about how he was selected for the trip to Niger that his wife ''Valerie had nothing to do with the matter. . . . She definitely had not proposed that I make the trip.

A Time Magazine article stated that Wilson ''angrily said his wife had nothing to do with his trip to Africa.'' ''That is bull [expletive]. That is absolutely not the case.''

Page 39 of our report looks into the facts. Facts can come back to bite you when you make all kinds of charges. That conclusion was:

Interviews and documents provided to the Committee indicated that his wife, a CPD employee, suggested his name for the trip. The CPD reports officer told the Committee staff that the former Ambassador's wife ''offered up his name'' and a memorandum to the Deputy Chief of the CPD on February 12, 2002, from the former Ambassador's wife says, ''My husband has good relations with both the PM and the former Minister of Mines (not to mention lots of French contacts) both of whom could shed light on this sort of activity.''

The report also states:

On February 19, 2002, CPD hosted a meeting with the former Ambassador, intelligence analysts from both the CIA and INR, and several individuals from the DO's Africa and CPD divisions. The purpose of the meeting was to discuss the merits of the former Ambassador traveling to Niger. An INR analyst's notes indicated that the meeting was ''apparently convened by [the former Ambassador's] wife who had the idea to dispatch [him] to use his contacts to sort out the Iraq-Niger uranium issue.'' The former Ambassador's wife told Committee staff she only attended the meeting to introduce her husband and left after about 3 minutes.

Third pitch: Facts 3, Wilson 0. Three strikes and you are out—and you should be.

Let me add a couple of other things. This is from the additional views of Chairman ROBERTS. These are findings that the staff made that were not accepted by our Democratic colleagues for inclusion in the final reports. The former Ambassador's public comments suggested that the Vice President had been briefed, but that is not correct. While the CIA responded to the Vice President's request for the agency's analysis, they never provided the information gathered by the former Ambassador.

The former ambassador, on ''Meet the Press,'' said he was absolutely convinced the Vice President received the specific response based on his trip. The former ambassador was speaking on the basis of what he believed should have happened based on his Government experience, but he had no knowledge that it did happen.

These and other comments from the ambassador about his report debunking the Niger-Iraq uranium story were incorrect and has led to a distortion in the press and the public's understanding of the facts surrounding the Niger-Iraq uranium story.

The committee staff found that for most analysts, the former ambassador's report lent more credibility, not less, to the reported Niger-Iraq uranium deal. When we looked into it, not only was the trip by Joe Wilson to drink mint tea with his friends in

Niger not a debunking of the British intelligence that Iraq had sought uranium from Africa, but he did include things that suggested that it was even more likely.

Why did he go off on such a tangent? In an interview with the committee staff, Joe Wilson was asked how he knew some of the things he was stating publicly with such confidence. On at least two occasions, according to the committee staff report, he admitted he had no direct knowledge to support some of his claims, and that he was drawing on either unrelated past experience or no information at all.

For example, when he was asked how he knew that the intelligence community had rejected the possibility of a Niger uranium deal, as he wrote in his book, he told committee staff that his assertion may have involved ''a little literary flair.''

''A little literary flair,'' when you charge the Vice President of lying based on information you had that was insufficient, inaccurate, and did not relate to the basic underlying information the British Government intelligence service provided? I think ''a little literary flair'' is not accurate. It is a fraud and a hoax. His statements were fraud. They were a hoax.

I have talked before about the people who owe some apologies for the assertions they have made about the President and Vice President. Let me add Joe Wilson as one who owes the Vice President a public apology—a public apology—for the unfounded, unbased accusations he made with just ''a little literary flair.'' I think he owes the Vice President one, but I guess I will not hold my breath waiting until he provides it.

Unfortunately, that has been the practice. We have seen too often in too many places grand charges made and covered in the news media, and the committee goes back and we search and we search and we search to find what were the actual facts.

Democratic friends said the administration pressured analysts to change it or they influenced the views of the analysts. Chairman ROBERTS pursued every angle, invited everybody, pursued everyone, over 200, I think 240 interviews, and we came up with some conclusions.

Conclusion No. 83—and this is unanimously agreed to by Republicans and Democrats on the Senate Intelligence Committee:

> The committee did not find any evidence that administration officials attempted to coerce, influence or pressure analysts to change their judgments related to Iraq's weapons of mass destruction capabilities.

Conclusion 84:

> The committee found no evidence that the Vice President's visits to the Central Intelligence Agency were attempts to pressure analysts, were perceived as intended to pressure analysts by those who participated in the briefings on Iraq's weapons of mass destruction programs, or did pressure analysts to change their assessments.

I read an op-ed piece by one of my colleagues saying the administration did not do a good enough job of checking up on the analysis by the intelligence agencies. And in another breath, another one of my colleagues said they asked too many questions.

Madam President, let me tell you something I have learned as one new to the workings of the intelligence field. A good intelligence analyst puts forth his best or her best judgment on what to conclude from the often sketchy, incomplete facts they have before them and the reports that have to be evaluated, and they expect to be questioned. They want to know that the policymakers who are using that information have the best sense of what they know. And the Vice President, who was diligent—he was doing due diligence—went over and questioned them time and time again. Did he tell them to change their analysis? Did he tell them what judgment they wanted? No. What he told them was what the intelligence community knew they had to do, and that was to do their very best job to get it right.

There has been a lot of criticism of how the intelligence agency analyzed it. But we have lots of good people who work very hard. There are structures in place that have kept them from sharing. They did not have the information they needed. But to the best of their ability, they gave the Vice President what they thought was the best analysis.

The report also found in conclusion No. 1—most important:

> The committee found no evidence that the IC's—

Intelligence community's—

> mischaracterizations or exaggeration of the intelligence on Iraq's weapons of mass destruction (WMD) capabilities was the result of political pressure.

Conclusion No. 11:

> No analyst questioned by the committee stated that the questions were unreasonable, or that they were encouraged by the questioning to alter their conclusions regarding Iraq's link to al-Qaida.

That is, the link to terrorism.

As I said before, all of the charges, all of the outline of the Democrats' secret memo of November 2003 on how they were going to use the Intelligence Committee to attack the President, to influence the election have been debunked.

A lot of apologies are owed for the baseless charges that have been made against the President, the Vice President, the Department of Defense, and particularly Douglas Feith, who is attempting to serve the Secretary of Defense by asking questions and trying to get the best he could out of the intelligence community for the decision-making in the Department of Defense.

I hope, I trust—maybe I am gullible, but I trust now we can move beyond this and recognize that the intelligence that the administration had, the same intelligence that this body had when we approved going into Iraq, the same intelligence the world had when they said that Saddam Hussein was a bad guy and U.N. Resolution 1441 said that we need him to disarm, that was the best information we had at the time.

When we look back on it, we were absolutely dead right to go into Iraq to depose Saddam Hussein. As David Kay said after he finished, Iraq was a far more dangerous place than we knew. It had the capability, it had the equipment, it had the scientists ready to turn out weapons of mass destruction, chemical and biological, to turn over to terrorist groups. Let us hope and pray they were not able to turn over any.

The world is safer, the Iraqi people are safer, and the United States is safer because of the bold leadership of President Bush and Vice President CHENEY and our magnificent men and women in the military who are putting their lives at risk in Afghanistan and Iraq. We remember them and thank them in our prayers, and we also offer our best wishes and support for the Iraqi people to regain a decent country out of the mess that Saddam Hussein left.

I thank the Chair and yield the floor.

Mr. DEWINE. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill 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 (Mr. ENSIGN). Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

FEDERAL MARRIAGE AMENDMENT—MOTION TO PROCEED

The PRESIDING OFFICER. Under the previous order, the motion to proceed to S.J. Res. 40 is withdrawn.

Under the previous order, the majority leader or his designee is recognized for the purposing of making a motion.

AMERICAN JOBS CREATION ACT OF 2004

Mr. MCCONNELL. Mr. President, pursuant to the order entered last night, I move to proceed to H.R. 4520.

Mr. REID. No objection.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion is agreed to.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

> A bill (H.R. 4520) to amend the Internal Revenue Code of 1986 to remove impediments in such Code and make our manufacturing, service, and high-technology businesses and workers more competitive and productive both at home and abroad.

AMENDMENT NO. 3562

(Purpose: To provide a substitute for the bill)

Mr. MCCONNELL. Mr. President, on behalf of Chairman GRASSLEY, I call up a substitute.

The PRESIDING OFFICER. The clerk will report the substitute.

The legislative clerk read as follows:

The Senator from Kentucky [Mr. MCCONNELL], for Mr. GRASSLEY, proposes an amendment numbered 3562.

(The text of the amendment (S. 1637) is printed in the RECORD of May 18, 2004.)

Mr. REID. Mr. President, before the distinguished majority whip leaves the floor, I want to say something. We get things done around here in a number of different ways. One of the ways we get things done is we have to trust each other. To be at the point we are on this piece of legislation today took a lot of trust.

Last night, about 9:30, the floor leaders met right here in the aisle and the Senator from Kentucky indicated he wanted to do something differently. I today extend to him, through the chairman, my appreciation. There was a slight misunderstanding, nothing intentional, and that is certainly underlined and underscored. We could have had a big puff-up here this morning and had name-calling—You should have understood, you didn't, it is your fault—but I have to say the Senator from Kentucky is a man of his word and indicated if there was any misunderstanding he would take care of it. And he did.

I want the record to reflect I appreciate that very much. We are now going to go forward with a very important piece of legislation. But we could not have done that with good will prevailing but for the act of the Senator from Kentucky, for which I, on behalf of the whole Senate, extend my appreciation.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, let me say to my friend and colleague, the assistant Democratic leader, I do think we had a good discussion last night, and reached an agreement on moving forward with this important piece of legislation. The minor snafu my friend referred to we were able to work out in short order this morning, and that is the way the Senate ought to work.

I congratulate him for his important contribution to moving this matter forward as well.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

AMENDMENT NO. 3563

(Purpose: To protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to eliminate the Federal quota and price support programs for tobacco, and to provide assistance to quota holders, tobacco producers, and tobacco-dependent communities)

Mr. DEWINE. Mr. President, I have an amendment at the desk that I call up.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Ohio [Mr. DEWINE], for himself, Mr. KENNEDY, Mr. MCCONNELL, Mr. HOLLINGS, and Mr. DURBIN proposes an amendment numbered 3563.

Mr. DEWINE. Mr. President, I ask unanimous consent that reading of the amendment be suspended.

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

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

Mr. DEWINE. Mr. President, I am offering the amendment on behalf of myself, Senator KENNEDY, Senator MCCONNELL, and Senator DURBIN.

Mr. President and Members of the Senate, the amendment I offer this morning is a long time coming, but it is an amendment that I think has historic meaning for this Senate and for this country. It really is two amendments that we are combining. One is Senator MCCONNELL's bill, the tobacco buyout. The other part of the amendment is Senator KENNEDY's and mine and Senator DURBIN's FDA regulation of the tobacco bill. Each of these bills has been worked on for a long time. These bills are being combined in this amendment.

There is a time and a place for legislation. The time for both of these bills has come. This amendment is in a sense a marriage, a merger. Some people have referred to this as a shotgun marriage or an interesting marriage, an interesting alliance. I happen to think it is a proper marriage. I think it is a marriage that makes sense, and I believe it is a marriage that will last. I believe it is a marriage that will last not only through today when the Senate will vote on this amendment, and I believe will pass this amendment, I believe it is a marriage that will last through the conference committee that will come. I believe it is a marriage that will last to see this amendment and this bill become law. So I believe it will be a permanent marriage, a lasting marriage.

I will talk this morning about the FDA side. But before I do, let me say, I support Senator MCCONNELL's bill because, you see, I understand the problems of tobacco farmers. We have, along the Ohio River, north of the Ohio River, tobacco farmers, certainly not as many as my colleague does from Kentucky, but we have them. I understand the problems they have. They need this bill. They need the tobacco buyout.

My colleague from Kentucky and I have had many conversations about the need and the necessity to merge these two bills. It makes eminent sense to do it. So I thank my colleague for his good work. I thank him for his good counsel. It has been a pleasure to work with him for, frankly, over a year, as we have worked together.

Let me also say to my colleague from Massachusetts, it has been a great pleasure to work with him as we have worked on the FDA part of this bill.

Let me talk about the FDA regulation of tobacco. Senator KENNEDY and I have worked on this issue for some time. We introduced this amendment. This part of the amendment is designed to help protect consumers, especially children, from the dangers of tobacco.

Simply put, our amendment would finally—finally—give the Food and Drug Administration the authority it needs to effectively regulate the manufacture and sale of tobacco products. I say ''finally'' because many of my colleagues—first Senator MCCAIN, back in 1997, 1998, began working on this. Senator FRIST did great work, as well as Chairman GREGG, who put a great deal of effort and work into this as well; and then Senator KENNEDY and myself. We have all been seeking FDA regulation of tobacco products. Congressman DAVIS and Congressman WAXMAN have a companion piece of legislation in the House of Representatives.

I say ''finally'' because the bill we are offering today is the product of long and hard discussions and negotiations that I have had with Senator KENNEDY and others and public interest groups and industry. Our bill has the support of the Campaign for Tobacco-Free Kids. Our bill has the support of Philip Morris. Our bill has the support of the American Heart Association, the American Lung Association, and the American Cancer Association.

It is a bill of which I am proud. It is worth the Senate's consideration and passage. It will provide the FDA, finally, with strong and effective authority over the regulation of tobacco products.

Why do we need this bill? I think we all know why we need it. Every day, nearly 5,000 young people under the age of 18 try their first cigarette. In my own home State of Ohio, 33 percent—one-third—of children smoke. These kids in Ohio by themselves go through 45 million packs of cigarettes each year. If that is not bad enough, think about this: 90 percent of smokers start smoking before the age of 19. More than 6.4 million children across this country will die prematurely because of a decision they will make as adolescents; that is, the decision to start smoking.

While States may have limited the options available for tobacco advertising under the 1998 master settlement agreement, the reality is tobacco companies are still able to choose the content of their advertisements, their ads that they run in magazines such as Sports Illustrated.

Sports Illustrated is read by tens of thousands of children across this country every single day. Kids read it every single day. These companies are savvy. They are smart. They have changed their marketing strategies. They have concentrated more money into different advertising markets. As a result, years after the major tobacco companies agreed to stop marketing to children as part of the tobacco settlement, children are still twice as likely as adults to be exposed to tobacco advertising. That is who is reading it. That

is who is seeing it. That is who is hearing it.

According to the Federal Trade Commission's ''Annual Report on Cigarette Sales and Advertisement''—just to take 1 year, the year 2000—that year represented the largest increase ever in tobacco company spending on ''promotional allowances.'' That is the money tobacco companies pay retailers to promote their products in prominent locations in stores or for highly visible shelf space such as near the cash register on an aisle that a customer must walk by to pay the cashier. That particular year, cigarette manufacturers spent a record $9.57 billion on advertising and promotion.

That is an increase of 16 percent from $8.24 billion spent in the previous year. Tobacco companies also spend billions of dollars advertising enticing promotional items—lighters, hats, other products—they give away for free at the point of sale or, in other words, the cash register or the place of checkout in a grocery or convenience store. In fact, spending on such promotional or value-added items increased by 37 percent in just 1 year.

Let's not fool ourselves. These promotional strategies and advertisements reach our children. Three-fourths of the children visit convenience stores at least once a week. The places where tobacco products are marketed influence their decisions. It is that simple. We must not allow the industry to continue targeting children.

This isn't just about an advertising and marketing scheme. It is about that, but it is about more. Our bill not only addresses advertising, it also addresses the second problem. What is the second problem? It is also about tobacco manufacturers' failure to disclose the specific ingredients in their products. While simply listing the ingredients, toxic as they might be, might not seem like much to some, think of it this way: Current law makes sure we know what is in products to help people quit smoking, such as the patch or Nicorrette gum but not the very products that get people addicted in the first place, the cigarettes themselves. Isn't that crazy?

Think about this: Right now the Food and Drug Administration requires Philip Morris to print the ingredients in its Kraft macaroni and cheese but not the ingredients in its cigarettes, a product that contributes to the deaths of more than 440,000 people a year.

I ask unanimous consent to display in the Senate three different products: macaroni and cheese, a milk carton, as well as a cigarette carton I have right here.

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

Mr. DEWINE. Right now, the FDA requires Philip Morris-owned Nabisco to print the ingredients contained in Oreo cookies and Ritz crackers but not the ingredients in its cigarettes, even though cigarettes cause one-third of all cancer deaths and 90 percent of lung cancer deaths. It is unfathomable to me that we would require the listing of ingredients on these products yet not require the listing of ingredients for one of the leading causes of death and disease.

Right now, the FDA requires printed ingredients for chewing gum, lipstick, bottled water, ice cream, but not for cigarettes, a product that causes 20 percent of all heart disease deaths and is the leading cause of preventable death in the United States.

A product that I consumed this morning, this carton of milk, we see all the ingredients on here. We can read them right on here: Reduced fat milk, vitamin A, et cetera, nutrition facts. It goes into great detail on the back. We can read all the details right here. It tells you anything you want to know. There it is. Here is the macaroni and cheese. We can turn it over and get the calories and all the ingredients: enriched macaroni product, durum wheat flour, wheat, niacin. It goes on and on and on and on, all the way down.

We see people, when they go to the grocery store, today they are so health conscious. They pick these things up and they start reading through to see if they have an allergy to something, to see what their kids are eating. They will read down to see if they want to buy the product. The same company that makes this, makes cigarettes. Yet certain brands of cigarettes they will get, there is nothing on here. There is the warning that has to be on here. It has been on here a number of years. There is nothing else on here—absolutely unbelievable.

Another way to look at this, another problem, if a company wants to market a food product that is fat free or reduced fat or light, that company is required to meet certain standards regarding the number of calories, the amount of fat grams in that product. Yet cigarette companies can call a cigarette, light or mild, and not reveal a thing about the amount of tar or nicotine or arsenic in that supposedly light cigarette.

Not having access to all the information about this deadly product makes no sense. It is something that needs to change. By introducing this bill, we are finally saying we are not going to let tobacco manufacturers have free reign over markets and consumers anymore. Today we are taking a step toward making sure the public gets adequate information about whether to continue to smoke or even to start smoking in the first place.

With this bill, we are not just saying: Buyer beware. We are saying: Tobacco companies, be honest. We are saying: Tobacco companies, stop marketing to innocent children. Tobacco companies, tell consumers about what they are really buying.

I realize full well that tobacco users and nonusers alike recognize and understand that tobacco products are hazardous to health. They understand that. But that is not what I am talking about. I am talking about requiring the tobacco companies to list the ingredients that are in their products, things such as trace amounts of arsenic and ammonia. It is time we finally give the FDA the authority it needs to fix these problems. The legislation that we are introducing would do just that.

First, the bill would make changes regarding tobacco advertising. It would give the FDA authority to restrict tobacco industry marketing, consistent with the first amendment, that targets our children. Additionally, our bill would require advertisements to be in black and white text only, unless they are an adult publication and would define adult publication in terms of readership. Tobacco advertising is in magazines and on billboards along the highway. Tobacco advertising is in convenience stores, along the aisles and at the checkout counter, right beside the candy, where children are likely to see it. Tobacco advertising is at sporting events, part of promotional items where consumers can buy one and get one free. Tobacco advertising is on the Internet and in the daily delivery of mail.

Our bill would make changes regarding tobacco advertising. It would give the FDA authority to restrict tobacco advertising marketing content, consistent with the first amendment, that targets our children. Our bill would require advertisements to be in black and white text only and would define adult publications in terms of readership.

An issue that is related to advertising and marketing of tobacco products has to do with the flavored tobacco products which clearly target our children. We have probably all seen the flavored cigarettes—flavors such as strawberry, chocolate, and wild rum. The scent of strawberries filters through the unopened pack of cigarettes. Guess what. The cigarettes smell like candy.

A recent New York Times article described the scent of chocolate-flavored cigarettes ''as if someone had lifted the lid on a Whitman Sampler.''

We need to stop this. Children will be curious about something that smells or tastes like candy. Cigarettes should not be flavored and marketed in such a way to attract children and to encourage children to smoke. Our bill bans the use of flavors such as strawberry and grape, orange, cinnamon, pineapple, vanilla, coconut, and coffee, and other flavorings that would attract children to the product.

Second, our legislation would give consumers more information about what is in tobacco products. Specifically, the bill would provide the FDA with the ability to publish the ingredients of tobacco products. Despite the fact that 40 million Americans use tobacco products, many of them do not know what is inside the cigarettes or the tobacco product they ingest. They do not know the ingredients like tar and nicotine that are in the product they use. Consumers do not know what

additives are included in the product, additives such as ammonia which makes the tobacco product more addictive because it increases the delivery of nicotine.

Tobacco companies do not disclose the specific ingredients in their products because they don't have to. Tobacco products are unregulated. Our legislation would give consumers more information about what is in tobacco products.

Specifically, the bill would provide the FDA with the ability to publish the ingredients in tobacco products. It would require a listing of all ingredients, substances, and compounds added by the manufacturer to the tobacco paper or filter.

It would require the description of the contents, delivery, and form of nicotine in each tobacco product. It would require information on the health, behavior, or psychological effect of the tobacco product. Finally, it would establish the approval process for all new tobacco products entering the market, new products like Advance, with this ''trionic filter,'' which claims to have all of the taste but less of the toxins of other cigarettes.

One of the most dramatic changes our bill makes is that tobacco products will now have to be approved before they reach consumer hands. It makes sense that tobacco products should not be able to imply that they may be safer or less harmful to consumers because they use descriptions such as ''light,'' ''mild,'' or ''low tar'' to characterize the substance in the product. The National Cancer Institute found that many smokers mistakenly believe that low-tar and light cigarettes cause fewer health problems than other cigarettes. Our bill would require specific approval by the FDA to use those words so the consumers could be informed.

Mr. President, this bill will make a difference. It is a bill that will save lives. I will have more to say about this later in the debate.

At this point, I yield the floor to my colleague, Senator MCCONNELL.

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). The assistant majority leader is recognized.

Mr. MCCONNELL. Mr. President, this is indeed a historic moment for Kentucky. Tobacco and the growing of tobacco has been an integral part of my State since it came into the Union in 1792. In fact, if you look carefully around the Capitol, you will find tobacco leaves actually painted here in the Capitol of the United States of America. Many people argue—and this is probably an exaggeration—that if it hadn't been for tobacco, the United States might not have been colonized because it was far and away the most profitable agricultural activity. That is most of what the people of that era did back in the beginning of our country.

The Senator from Ohio has correctly stated the important health consequences of the use of tobacco. It has taken us several hundred years to figure that out and to reach the point where we are today.

I want to start by commending my colleague, Senator MIKE DEWINE from Ohio. I have never observed a more skillful legislator than he during my time in the Senate. You can always tell when the senior Senator from Ohio has an idea on his mind: He will come up to you quietly and pull you off in the corner and begin to twist your arm. You know he is a formidable force who, when he has made up his mind about an issue, never lets go. Many bills that have cleared the Senate in the 10 years the Senator from Ohio has been here obtain the fingerprints of MIKE DEWINE. He is truly an extraordinary legislator. I know he is excited today that the bill he believes so deeply in has a chance to be added to this bill. It is very likely to be added to this bill as it goes to conference. I congratulate him for his outstanding work.

Having said that, the Senator is correct; this was a marriage of convenience. I can recall as recently as 1996, when I was running for reelection in my State, we were wearing T-shirts that said ''keep FDA off the farm.'' The idea of FDA regulating this product, particularly if it went down to the farm, was universally unpopular in my State. I am not a great fan of FDA regulation today, but these two issues needed to be married in the U.S. Senate if we were to get either one of them out of the Senate and on the way down the legislative road toward some accomplishment.

Mr. President, there is simply no way to overstate how central tobacco has been to the history of my State. We started growing it from the beginning of the country. Kentucky's soil and climate were particularly suitable for this cash crop. Even with all of the problems tobacco has today, we always laughingly say in Kentucky that tobacco is the most profitable thing you can grow on a per-acre basis in our State that is legal. We also have a little marijuana problem in the mountains that we try very hard to stay on top of, and I expect that growing marijuana is more profitable. But even with all of these problems, tobacco is the most profitable thing to grow on a per-acre basis, far more profitable than corn, wheat, and the other crops we also grow.

In the 1930s, tobacco got in serious trouble, as a lot of agriculture did. Part of the New Deal, in establishing farm programs, included the establishment of the Tobacco Program. Unlike the other farm programs, it was a permanent program. It didn't have to be reauthorized periodically, like the other commodities that are under a Federal farm program. It was a permanent program. It assigned the land, based on how much tobacco was being grown in the 1930s, a certain amount, a certain acreage, and it did that in Kentucky, Tennessee, Virginia, the Carolinas, and Georgia. In that acreage, you had a legal right to grow. It was like owning some stock—you could sell it; you could lease it; it had value. We called them ''quotas.'' By the time I started moving around the State in the early eighties and learning more about tobacco, we had 100,000 growers in 119 of our 120 counties.

In many of these counties, there is not much flatland; but since tobacco was so profitable on a per-acre basis, even if you had a tiny little plot, or quota, you could make pretty good money. You would see these quotas tucked back up in the hollows, right up on the edge of where the mountain went straight up. We had it in 119 of 120 counties. It was sold at auction around Thanksgiving. Farmers would cut the tobacco, strip it, put it into the barns, where it would dry for a month or two. It would be sold at these auctions, and the auctions would start around Thanksgiving, go through the Christmas season, and finish up in the early part of the year. Many of these farmers were part time.

When I came to the Senate, the average grower in Kentucky had three-quarters of an acre. That was the average. A lot of these folks were part time. But this was dependable cash. They could count on it being produced around Christmastime. For many very low-income Kentuckians, it provided Christmas money; for some it provided the opportunity to send their kids to college. It has been an integral part of our culture for a very long time.

None of these folks, of course, are engaged in selling the product to kids. They were making a legal living producing an agricultural crop that is older than America itself. But beginning with the Surgeon General's report in 1964, it was increasingly clear that this is a product that is not good for you.

The campaign that has gone on over the last 40 years is legitimate. In Lexington, KY, today, the heart of tobacco country, you cannot smoke in a restaurant. That is in Lexington, KY, the heart of tobacco country. And in Louisville, KY, my hometown, they have been having a big debate about the same issue.

I say to my friend from Ohio, if anything sums up how this has all changed, it is when you cannot smoke in a public place in Kentucky. So I think the health argument has been made. It is, however, a legal product. The health groups are not trying to make smoking illegal. That, of course, would produce an enormous black market and no good result.

So it occurred to this Senator back in 1998 when we were considering another tobacco proposal that it was time for a buyout. I never will forget joining Senator LUGAR of Indiana in advocating a buyout back in 1998. I was rimracked—rimracked—by the two big newspapers in my State. They said I turned my back on Kentucky culture; I had gone Washington; I had been up

there so long I had forgotten what it was like in the hollows and the tobacco fields of Kentucky.

I was criticized by the Farm Bureau and the Burley Tobacco Co-op and all the establishment: How could you possibly be for a buyout? You are turning your back on us.

I took a survey of tobacco growers. I got a pollster and said: Let's go out and ask them how they feel about it. Frankly, they were against it, too. Fifty percent were against it; about 35 percent were for it. So the whole tobacco establishment was against the buyout in 1998 when I first advocated it.

Now, Mr. President, I am treated as a visionary. I was ahead of my time. If we had only joined you 6 years ago, we would have gotten this job done sooner.

Being treated as a visionary is kind of fun, but it does not get the job done. What is happening here today is we have an opportunity to move on down the road toward achieving something that neither the Senator from Ohio nor I thought was going to be achieved, which is some kind of FDA proposal, which I am not, as I said, very wild about, and a buyout which I enthusiastically support, and I cannot find a tobacco grower in Kentucky today who is not for the buyout.

The occupant of the Chair I know has tobacco farmers in his State as well. I bet he has not run into any lately who are not favorable to a buyout. There has been a complete shift in thinking, and the reason for that is apparent. This quota, this asset, is a shrinking asset. As the asset shrinks, the land values go down, and it has a real impact on our people.

Some people say: Why should the Government buy out this program? The answer to that is the Government created the asset. The Government, by establishing the quota program, created the asset, and now if the Government is going to terminate the asset, it is appropriate for the Government to compensate those for whom the asset was created.

As I said earlier, 20 years ago, we had 100,000 growers in 119 of the 120 counties in my State, and the average quota was about three-fourths of an acre. We do quotas by poundage these days, but three-quarters of an acre, which gives you the sense of the size, was the average.

Today, we are still growing burley in 117 of Kentucky's 120 counties, but the average has gone up to 5.7 acres. So we can see, Mr. President, tobacco farmers are leaving, consolidation is occurring even with the program.

The 2002 census of agriculture, which was released a year and a half ago, reflected about a 40-percent drop in the number of farms growing tobacco in all of the States—not only Kentucky, in all of the States. A 40-percent drop in the number of farms from 93,000 in 1997 down to 56,000 in all of the States. In Kentucky, from 1997 to 2002, we have gone from 46,850 tobacco farms down to a little under 30,000. That is still a lot of farmers—a lot of them—but their asset is shrinking.

That brings us to today. The House of Representatives—and I particularly commend two Congressmen, Congressman RICHARD BURR of North Carolina and Congressman RON LEWIS of Kentucky, who spearheaded that effort over on the House side and very skillfully leveraged the votes they had on a bipartisan basis in tobacco country to make it possible for the FSC/ETI JOBS bill to pass the House at all. So that proposal, a buyout only, is in the House bill.

The occupant of the Chair and the rest of us from tobacco-growing States in the Senate knew we could not get a buyout only through the Senate. That would have been our first preference. I say to my friend and colleague from Ohio, he knows that would have been my first preference. So we have a marriage of convenience here, not a shotgun marriage. It is a marriage of convenience. These two issues converge, and in the best of the legislative process, we put them together and believe we will be able to pass them later this day to go into conference. Congressman BURR and Congressman LEWIS deserve a lot of credit.

I also commend my colleague from Kentucky, JIM BUNNING, who has been a stalwart on this issue from the beginning and extraordinarily helpful in every way.

I would be remiss if I did not mention Senator ELIZABETH DOLE, who has been every bit as intense and committed to achieving this issue as anyone I have ever seen. It was a big issue in her election in 2002. She came into the Senate and said it was her top priority for North Carolina agriculture, and she has pursued it with intensity, with conviction, with one-on-one meetings, with Senators who were in a critical place to make a difference. I know she and others are going to be speaking on this issue later. But I say to her, we would not be here today without her extraordinary effort on behalf of this proposal.

This does not guarantee a buyout. I want to make it perfectly clear to my folks at home the job is not finished. But we have come further than I, frankly, thought we would get. Toward the end of last year, I had pretty much given up on the prospects of being able to get this proposal through. But now we are on the verge of having a buyout. They are a little different. The Senate version will be different from the House version—that frequently happens in the legislative process—but we are on the verge of having the tobacco quota buyout in both the Senate bill and House bill in conference, and that is closer than we have ever been before.

So we have made extraordinary progress, but I do want to caution those folks at home who care deeply about this issue that we are not there yet. We have come a long way, but we are not there yet. I know all of us in the Senate from tobacco-growing States on a bipartisan basis are going to continue to press this issue as hard as we can and hopefully conclude the buyout process.

I say in conclusion, it will be a big change. We have had a tobacco program in the burley and flue-cured States going back to 1938. It has been a way of life. But change is already occurring. The warehouse system is basically going away. People are growing tobacco under contract now, not selling it to warehouses in the way they used to. Change is coming. This is an opportunity to manage that change in such a way that people will be fairly compensated for the value of today's quota.

Mr. President, I am optimistic that we may be able to succeed, and I thank all of those who contributed to this process.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, I thank my good friend and colleague from Kentucky for his very kind comments. Those of us who work with Senator MCCONNELL in the Senate every day know he is a visionary. We know he understands his State.

We also know if Senators want to know how to get something done, they go to MITCH MCCONNELL. I do go to him and I do talk to him and I do get him aside, and I do not know if I twist his arm or not. I do talk to him and seek his counsel and advice. I am kind of a pest sometimes.

He was the one who said these two bills are natural to come together. He said that well over a year ago, and here we are today. It was his idea or his thought that these two bills could be married, and now we are sort of at the altar today. Yes, it is a marriage of convenience, but I happen to believe it is going to be a good marriage. I think it is going to be a marriage that will last, not only through this vote today, but I think it is going to be a marriage that will last through conference, and it is going to be a marriage that will make its way to the President's desk.

I think it is going to be for the benefit of the American people, the tobacco farmers, and the children of this country. I think it will be for the benefit of all Americans and for the health of all Americans. So I think it is going to be a good marriage, and I thank him for his help in bringing it about.

I yield time now to my colleague and friend who has worked so very hard on the FDA portion of this bill and has brought us to the Senate floor, the Senator from Massachusetts, Mr. KENNEDY.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I join in commending my friend and colleague from Ohio, Senator DEWINE. Today I am joining him in presenting this amendment. We welcome obviously the workings and the contributions of Senator MCCONNELL together

with the proposal that has been described as a shotgun wedding because, on the one hand, as we have heard a very informative and eloquent statement of the history of the growth of the tobacco industry, the industry itself—not the farmers but the industry itself—by and large has resisted the ability of the Food and Drug Administration, which generally has the overall jurisdiction in dealing with health issues, to be able to deal with this issue in order to protect the children of this country.

I was here in 1964 when we received the Surgeon General's report. It arrived like the crack of a whip when we read the Surgeon General's report and found for the first time the dangers of tobacco and its impact in terms of the health of the population generally, in particular with regard to children.

For years, those of us who were trying to deal with the health aspects of this issue, and particularly the health aspects of these issues as they relate to children, found strong opposition by the tobacco industry. They resisted the commonsense efforts that were being made to try and provide protections for the children of this country.

Now we have a working partnership with those who are interested in the tobacco farmers, which I am interested in, and those who are interested in protecting the children. We have come together to try to make a recommendation, the result of which will provide equity and fairness to tobacco farmers, paid for by the industry itself and not by the taxpayers, but also to provide the Food and Drug Administration with the kind of authority to help protect the children of this country from the No. 1 preventable health disease for people that the Federal Government can do something about. Tobacco causes one out of every three deaths from cancer, one out of five deaths from heart disease and 87 percent of lung cancer cases. We must slow down the amount of children smoking and the addiction that has taken place.

We have had a considerable period of time since the 1964 Surgeon General's report. We have the efforts that were made in the 1970s and 1980s to try to provide labeling on cigarettes to give information to those who were going to start smoking, and it has not been very effective. On the contrary, it was used by the tobacco industry as an offset, saying, look, we are not responsible. There was information that was on the various tobacco products and people were acting on their own.

We tried to strengthen the Office of Preventive Health. We tried to put some labeling on smokeless tobacco. We made some very modest steps forward in trying to deal with this issue. Then in 1998, when we had the great debate on the tobacco issue about compensation, there was a provision in that legislation which had a good deal of the kind of protections that are included in the DeWine-Kennedy amendment. A great deal of that was actually fashioned by our majority leader, Senator FRIST, who was very much involved in helping shape that particular proposal.

It is interesting, as we had this long debate on the Senate floor on tobacco, there was not a single amendment to try and alter that authority. It was generally agreed that that was a pretty good balance, going back to 1998. From that time, Senator DEWINE has picked up this opportunity and has continued to press this in the committee, and a number of our colleagues have been particularly involved in this issue. I think of our colleagues from Iowa and Illinois, Senator HARKIN and Senator DURBIN, and a number of others who have been extremely involved in trying to make sure we were going to provide some protections.

I mentioned the 1964 Surgeon General's report. I will include in the RECORD an appropriate part of the new Surgeon General's report that was issued on May 27, 2004. This is from the U.S. Surgeon General appointed by President Bush. He is this administration's Surgeon General, and this is what his findings are:

> U.S. Surgeon General Richard H. Carmona today released a new comprehensive report on smoking and health, revealing for the first time that smoking causes diseases in nearly every organ of the body. Published 40 years after the surgeon general's first report on smoking—which concluded that smoking was a definitive cause of three serious diseases—this newest report finds cigarette smoking is conclusively linked to diseases such as leukemia, cataracts, pneumonia and cancers of the cervix, kidney, pancreas and stomach.

It goes on:

> Statistics indicate that more than 12 million Americans have died from smoking since the 1964 report. . . .
>
> Another major conclusion, consistent with recent findings of other scientific studies, is that smoking so-called low-tar low-nicotine cigarettes does not offer a health benefit over smoking regular ''full-flavor'' cigarettes.

Then it continues:

> There is no safe cigarette, whether it is called ''light,'' ''ultra-light,'' or any other name, Dr. Carmona said. The science is clear: The only way to avoid the health hazards of smoking is to quit completely or to never start smoking.
>
> The report concludes that quitting smoking has immediate and long-term benefits.

And then it illustrates these, which is very hopeful.

> Dr. Carmona said it is never too late to stop smoking. Quitting smoking at age 65 or older reduces a person's risk of dying from a smoking-related disease by 50 percent.

This is an enormously important document. It updates the science and it demonstrates what an extraordinary challenge we are facing.

Now why do Senator DEWINE and I feel so strongly about giving the FDA the power to give particular focus with regard to children?

This chart, ''Smoking begins early, adults who are daily smokers began smoking,'' shows that 16 percent of all of the smokers begin smoking by age 12; 37 percentage by age 14; 62 percent by age 16; and 89 percent begin smoking by age 18.

This is a very clear indication of what is happening out across this country. For children, starting at the age of 12, 16 percent are smokers. Five thousand start every day, and 2,000 become regular smokers. Every single day, 5,000 children start smoking, and 2,000 continue.

We have to ask ourselves, what are the circumstances? Why does DeWine-Kennedy give the FDA the power, as he has mentioned—and I will go over that shortly—why particularly about children? As we see, the children are the ones who get started, they are the ones who get addicted to cigarettes. Now we ask ourselves, why is that?

This is the result of International Communications Research:

> Have you seen any advertising for cigarettes or spit tobacco in the last 2 weeks?
>
> Teens, 64 percent; adults, 27 percent.

Do we understand that? It is 64 percent of teens, 27 percent of adults. All we have to do to understand this is to look at the various magazines that are coming out. In Rolling Stone, here it is: the large Winston cigarette, ''Leave The Bull Behind.'' Everybody is young, beautiful, and enjoying themselves. All they have to do is light up a Winston in order to reach those circumstances.

Take Sports Illustrated. It is filled with the same kinds of advertising. Camels, here it is:

> The Roaring Twenties. Get it with a Camel. Smoke back-alley blend with a hint of bourbon.

My friend talked about the new chocolate cigarettes. This is what we are seeing.

The appeal is to children. The danger is to children. What we are trying to do is give the FDA the authority and the power to do something about protecting children.

As the Senator from Ohio knows, we lag behind virtually every other country in the world. Our neighboring country of Canada has done something about it; Australia has done something about it; and now the European Union is doing something about this issue. Now we have the opportunity to do something about it with our particular proposal.

This is a very modest program. As the Senator from Ohio has pointed out, it is a fair and balanced approach to the FDA regulation. It creates a new section in FDA for the regulation of tobacco products with standards that allow for consideration of the unique issues raised by tobacco use. It is sensitive to concerns of tobacco farmers, small businesses and nicotine-dependent smokers, but it clearly gives the FDA the authority it needs to prevent youth smoking and reduce addiction to this highly lethal product. This amendment also provides the financial relief for the hard-pressed tobacco farmers that has been outlined and commented about earlier by Senator MCCONNELL.

This proposal is a legitimate buyout plan designed by tobacco State members for the benefit of their tobacco farming constituents. It is far superior to the ill-conceived proposal in the House.

The heart of this amendment is the FDA provision which will lead to fewer children starting to smoke and to fewer adults suffering with tobacco-induced disease. Public health groups tell us it is the most important legislation we can pass to deal with the Nation's No. 1 health hazard. We must deal firmly with the tobacco companies' marketing practices that target children and mislead the public. The Food and Drug Administration needs broad authority to regulate the sale, distribution, and advertising of cigarettes and smokeless tobacco.

The tobacco industry currently spends over $9 billion a year to promote its products. Much of that money is spent in ways designed to tempt children, as I pointed out, to start smoking before they are mature enough to appreciate the enormity of the health risk. When you get 16 percent of children 12 and younger to start smoking, they certainly do not understand the health risks they are going to be faced with so that they can make a judgment or decision about the risk. The industry knows that more than 90 percent of smokers begin as children and are addicted by the time they reach adulthood. If we are serious about reducing youth smoking, the FDA must have the power to prevent industry advertising designed to appeal to children wherever it will be seen by children.

This legislation would give the FDA the ability to stop tobacco advertising which glamorizes smoking where it will be seen by significant numbers of children; it grants FDA full authority to regulate tobacco advertising ''consistent with and to the full extent permitted by the first amendment.''

The FDA authority must also extend to the sale of tobacco products. Nearly every State makes it illegal to sell cigarettes to the children under 18, but the survey shows those laws are rarely enforced and frequently violated. The FDA must have the power to limit the sales of cigarettes to face-to-face transactions in which the age of the purchaser can be verified by identification. This means an end to self-service displays and vending machines.

We have the chart that will show where cigarettes are being sold. It is right next to the candy in stores. This is an average store where you see the candy bars. Who eats the candy bars? The children will eat this candy. Right above it are all the advertisements for tobacco products as well as tobacco products that have the same smell, the same scent and taste as candy as well.

This legislation will give youth access and advertising restrictions already developed by the FDA the immediate force of law, as if they had been issued under the new statute. There are rules that have gone through the process extensively. They are ready to be implemented. This legislation provides that.

Nicotine in cigarettes is highly addictive. The medical experts say it is as addictive as heroin or cocaine. Yet for decades tobacco companies have vehemently denied addictiveness of their products, and no one should forget the parade of tobacco executives who testified under oath before Congress that smoking cigarettes is not addictive. Overwhelming evidence in industry documents obtained through the discovery process proved the companies not only knew of this addictiveness for decades but actually relied on it as the basis for their marketing strategy. As we now know, cigarette manufacturers chemically manipulated the nicotine in their products to make it even more addictive.

Given the addictiveness of their products, it is essential the FDA have the authority to effectively regulate them for the protection of public health. Over 40 million Americans are currently addicted to cigarettes. The FDA should be able to take the necessary steps to help addicted smokers overcome their addiction and to make the product less toxic for smokers who are unable or unwilling to stop. To do so, the FDA must have the authority to reduce or remove the hazardous ingredients from cigarettes to the extent it becomes scientifically feasible. The inherent risks in smoking should not be unnecessarily compounded.

This legislation will give the FDA the legal authority it needs to reduce youth smoking by preventing tobacco advertising which targets children, to prevent the sale of tobacco products to minors, to help smokers overcome their addiction, to make tobacco products less toxic for those who continue to use them, and to prevent the tobacco industry from misleading the public about the dangers of smoking.

Now is the time for the Senate to address the critical health issues. The interest of tobacco State members in passing a tobacco farmers buyout provides a golden opportunity. By joining a strong FDA bill with relief for tobacco farmers, this amendment should receive broad, bipartisan support. We can accomplish both of these worthy goals during the session. This approach is supported by the public health community and by the farmers' organizations. Most importantly, it is the right thing to do for America's children.

(Disturbance in the Visitors Gallery.)

The PRESIDING OFFICER. Order will be restored in the gallery.

Mr. DEWINE. I thank my colleague for his very strong statement. Again, I congratulate him for all his great work. He has been just a wonderful advocate. His advocacy for this issue goes back many, many years.

Let me yield to my friend and colleague from Virginia just for 2 minutes.

Mr. WARNER. Mr. President, I thank the distinguished manager. I commend him, Senator KENNEDY, and many others who have worked on this legislation which I wholeheartedly support.

We are privileged to have, in my State, a number of tobacco farmers who are enduring extraordinary economic hardships. Also, I serve on the committee on which serves the distinguished manager of this legislation, the Health Committee, as it relates to the Federal Drug Administration.

I understand you have coupled the two together.

That has been the objective of our committee some several years now during which we have looked at this, and the two will be put together. I once again indicate my support and accommodation to those who made it possible.

Mr. President, I speak today with a great deal of anxiousness and anticipation. As a result of the World Trade Organization's finding of U.S. noncompliance with international trade obligations, retaliatory tariffs have been exacted on U.S. exports. Each month these tariffs will increase until Congress passes the FSC/ETI bill. The costs to the American economy can be avoided. I am pleased that we can pass this bill today and am hopeful that it can move swiftly through conference.

Oftentimes things move at a glacial pace here in the U.S. Senate. But if there is one thing I have learned in my many years as a Member of this institution, it is that there are rare instances that the pace becomes so swift that one could miss something if he or she were to blink. The announcement that we would return to consideration of the FSC bill with an amendment on tobacco may have struck many of us as an indication that today was to be one of those days. However, today is just the next step in the long journey for many of us in this room.

For a number of years I have worked with many of my colleagues in the Senate and Members of the House of Representatives to address an issue of vital importance to the rural communities of the South. We have met with our farmers, drafted numerous pieces of legislation, consulted with experts in economic and agriculture policy—and we have done it over and over again. Today, the Senate finally stands poised to speak as a body to end the outdated tobacco quota system.

Our tobacco-growing communities, long dependent on the cultivation of tobacco, have been devastated by foreign competition and the quota system that keeps the price of leaf artificially high. The amendment submitted by the Senator from Ohio contains language from a bill crafted by a coalition of members from the tobacco farming States of Kentucky, North Carolina, Tennessee, South Carolina, Georgia, and Virginia. The Tobacco Market Transition Act will end the current tobacco quota system, provide compensation to growers and owners of quota, and provide grants to States and institutions of higher education to reduce

community reliance on the production of tobacco.

I have been a member of this body for 26 years and can say without equivocation that for the farm communities of southside and southwest Virginia there is no more important national policy. I can also say that not much is more controversial and polarizing than tobacco legislation. There are concerns with a buyout that ''makes farmers instant millionaires,'' or that it raises taxes, or that it imposes a cost to the general treasury. I am pleased to say that this amendment does none of those things.

Still, many have stated that a buyout will not pass the Senate without being coupled to legislation specifically giving the Food and Drug Administration the authority to regulate tobacco products. While these two policy goals have for years seemed mutually exclusive, sometimes in the legislative process major national needs that appear to be in conflict come together to forge a comprehensive national policy. Such is the case today, as we consider both a tobacco quota buyout and FDA regulation of tobacco as part of one amendment.

While many tobacco farmers vehemently opposed FDA regulation of tobacco not even 10 years ago, the issue has evolved since then. Today, the simple fact today is that most tobacco farmers support FDA regulation so long as it is coupled with a tobacco quota buyout. That has certainly become the predominant view of Virginia tobacco farmers who I have spoken with over the last several years. And, that is clearly the view of several groups who represent growers in my State. The Virginia Farm Bureau; the Virginia Tobacco Growers Association; the Virginia Sun-cured Growers Association; the Virginia Dark-Fired Growers Association; the Virginia Agricultural Growers Association; Allies for Tobacco, Inc.; and Concerned Friends for Tobacco all have signed on to a set of core principles stating that it is in the best interests of the public health community and the tobacco producer community for the FDA to have authority to establish fair and equitable regulatory controls over tobacco products.

But not only has the farm communities' position on FDA regulation of tobacco evolved over the years, so has the position of the largest tobacco company in the United States, if not the world. Less than 10 years ago, Phillip Morris actively opposed efforts to grant the FDA authority over tobacco. Today, that same company, now known as Altria, which is headquartered in the Commonwealth of Virginia, is actively supporting legislation to grant the FDA the authority to regulate tobacco.

What we have seen over the last 10 years is an amazing coming together of public health advocates, tobacco farmers, and a major tobacco company. Many in the Congress have helped lead the way. The amendment that stands before us is the culmination of the hard work of many, including Senators FRIST, MCCONNELL, KENNEDY, DEWINE, and the chairman of the HELP Committee, Senator GREGG, who always helped keep this issue on the committee's agenda. My colleague from Virginia, Congressman TOM DAVIS, also played an important role.

The compromise that has been reached in the Senate is an important one not only because, as I stated earlier, it will provide the help that our tobacco farmers so desperately need. It is also important because it will improve our public health. And that second point is an important one to me.

You see, my father was a doctor. He was a surgeon gynecologist, and he dedicated his life to medical research. Much of his research was spent on efforts to eradicate cancer. Ironically enough, though, it was ultimately this same devastating illness that my father worked so hard to find a cure for that ultimately took his life.

So, as I think about my father today, I know that he is smiling down because the Senate is about to pass a bill that could help reduce the cases of cancer and reduce the number of premature deaths in this country related to tobacco.

We know that smoking is one of the foremost preventable causes of death in the United States. It is estimated to cause over 400,000 deaths in America each year. That is why we have warning labels on cigarette packages and public awareness campaigns against smoking. The dangers of smoking are clear.

The bill before us today will help us reduce those dangers in many ways. Most notably, in my view, is the modified risk section, which I believe is the hallmark of the FDA portion of this amendment. This section provides the FDA the authority to approve modified risk tobacco products that reduce harm of tobacco-related disease and benefit the public health. With the imprimatur of the FDA, current users of high-risk tobacco products could be encouraged to use these reduced risk products. And, as they move down the continuum or risk with the products they use, we should see a corresponding decrease in the number of tobacco related illnesses as well.

While the public health benefits of this amendment are strong, it is also very important to make clear that the FDA legislation before us today is balanced. I worked extensively with Senator DEWINE and Senator KENNEDY to make sure of that. For example, this legislation will in no way restrict the rights of adult Americans who wish to smoke or use other tobacco products. At my request, and the request of others, Senator DEWINE and Senator KENNEDY modified their original legislation to make it clear that the FDA would not have the power to ban all cigarettes and other tobacco products. Under this amendment, that power is reserved to Congress, where it properly belongs.

Today we take a great step to protect the public health of all American citizens and the economic health of our tobacco farmers, their families, and their communities. The passage of this amendment is a great triumph for this body and represents the spirit of legislative cooperation and compromise that has long been the cornerstone of this institution. It is my sincere hope that we can soon celebrate the final conference report for this bill and the inclusion of the amendment on which we vote today.

Thank you, and I yield the floor.

Mr. DEWINE. Mr. President, I thank my colleague for his support and for his very good statement.

I yield at this time to my friend and colleague from Kentucky.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. BUNNING. Mr. President, I rise today in support of the FSC/ETI bill that will end tariffs on our manufactures. But also, it will finally bring much needed relief to the tobacco growers of my State.

The bill before the Senate today addresses many important tax issues that face American companies, both at home and abroad.

The many international provisions that are contained in the bill are important changes to a badly outdated part of the Tax Code.

The centerpiece of this bill, of course, is a provision to expand tax incentives to America's manufacturing sector. During debate on this bill, I was pleased that we adopted the bipartisan amendment that I offered with Senator STABENOW.

Under our amendment, America's manufacturing companies—small and large—will see their tax rate decline by almost 1.5 percent this year. That is compared to the rate cut this year of only one-third of 1 percent that was previously contained in the bill. It is imperative that we get this relief to our U.S. manufacturers as quickly as possible.

We were also able to include in this bill my amendment to extend the net operating loss period to 5 years rather than the 3-year period included in the original bill. This important provision, which will allow companies facing financial challenges to see increased cash flow to assist them in investing and hiring, is one that Senator CONRAD and I have worked on together in committee.

The WTO ruling on the FSC-ETI regime authorized the European Union to start imposing sanctions of over $4 billion on U.S. exports. During the first month of tariffs we have seen products from apparel to paper hit with penalties approaching 10 percent. Many other products important to my State, such as horses, are on the initial retaliation list and will also face this tariff.

They have a list of over 1,600 U.S. products from nearly every part of the

U.S. economy that will be penalized because we have not repealed the FSC/ETI regime.

But most importantly, this amendment will help my tobacco growers.

Since Daniel Boone first came through the Cumberland Gap, farming has been both the economic and cultural backbone of the Commonwealth. The family farm is the basis of Kentucky culture and it has been based around tobacco.

For years we in Kentucky have tried to diversify from the tobacco crop.

We have had some success, vegetables, beef cattle, cat fish, corn, chicken and other crops have been quite successful, worm farms and other have not been as successful. But nothing brings as much as a return as tobacco.

Most of the tobacco farmers in my State are not full-time tobacco farmers. They either have an off-farm job, or primarily raise other crops or raise livestock.

But the money they get from tobacco, pays their mortgage, or puts their kids through school or allows them to keep farming. Outside of the western part of Kentucky, we do not have tens of thousands of acres of flat land. We need a crop that grows on rolling hills and that thrives in our climate. Tobacco does that.

But a number of things have conspired against tobacco in the last few years.

The previous administration declared war on tobacco and by extension, tobacco farmers. The Asian economic crises have hurt exports. The Master Settlement Agreement and State tax increase have dramatically raised the price of cigarettes. And although American tobacco is still superior, the companies have invested so much overseas that the gap has narrowed between American tobacco and cheap foreign tobacco.

As I am sure most of my colleagues know, there are no direct payments to tobacco farmers, but we do have a price support and production control program. Growers own quota which they can buy, sell, or lease. The government administers this program to make sure it runs effectively and that growers only sell what they are allowed to under the quota system. If you grow too much, you can't sell it.

But the quotas have lost 60 percent of their value since 1998. Not many businesses would be around if they lost 60 percent of their income in 5 years, and we have lost a lot of growers. We have many who are barely holding on. They need help, we can give that to them and get the government out of the tobacco business at the same time.

We don't have big tobacco in my State. The last big tobacco company pulled out a few years ago.

What we have is little tobacco. We have over 30,000 tobacco growers. We also have over 100,000 tobacco quota owners. Many of those are elderly who can no longer work their land, so they lease their quota and that income becomes a major part of their retirement security.

That quota is tied to the land. It has a direct effect on the property taxes Kentuckians pay.

Those taxes build and fund schools, provide clean water, pay for emergency services, pave roads and help fund every community in Kentucky. If we don't help my growers get relief, we face the very real prospect of having ghost towns in Kentucky.

The amendment we have before us today will buy out the tobacco program.

We will give our growers relief and end the federal price support program. We will also let many growers, whose average age is 62, retire and get out of the business. Dr. Will Snell, of the University of Kentucky, estimate 70–75 percent of tobacco growers will get out of the business with a buyout. We will allow growers to pay off their debts and enjoy their retirement.

The amendment also has FDA Authorization of tobacco. This is a dramatic increase in the regulatory authority of the FDA.

I am not comfortable with it. I do not want the FDA inspecting my growers' crop.

FDA regulation is a bad idea. My growers are in dire straits. They desperately need help. FDA regulation is a very steep price to pay for a buyout, but if it is the only way to get my growers relief, this Senator will vote for it.

Make no mistake about it, the program will end. The only question is whether we end it on our terms or big tobacco terms. Please, please support the tobacco growers in this country and give them an equitable solution for the little tobacco growers all across this country.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, I thank my colleague from Kentucky for his very good statement. I assure my colleague that with the language which has been drafted in the FDA section, we have taken certainly one of his concerns into consideration and the FDA is not allowed on the farm. There is protection in there. I appreciate his comments.

I ask unanimous consent to add Senator COLLINS as a cosponsor of this amendment.

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

Mr. DEWINE. Mr. President, one of the very enlightening aspects about this legislation, the FDA part of this legislation, is how many of the editorial writers—not just in the national papers but many of the papers throughout the country—have weighed in on this issue and they have done this very eloquently. Frankly, they have been more eloquent about this than I have been in the Senate.

I will take a couple of minutes and read what some of the editorials have said about this issue. I start with the Lexington Herald Leader, Lexington, KY, May 21 of this year.

> Tastier poison; New cigarettes prove need for FDA control.
>
> Mandarin Mint. Smooth Fusions. Midnight Berry. We're not talking herbal teas or fruit smoothies, folks. We're talking cigarettes.
>
> The latest evidence that the tobacco industry has no shame is the marketing of sweet-flavored cigarettes. . . . Straight-faced company spokesmen say the new brands are aimed at adult palates. Please. The goal is obvious: Appeal to kids and hook new smokers.

This lethal version of candied cigarettes, along with the appearance of the new generation of ''safer cigarettes'' is also the latest evidence that Congress should at long last give the Food and Drug Administration oversight of tobacco.

The FDA has the authority to monitor a manufacture's claim about a pack of breath mints or chewing gum but the tobacco industry can roll out new brands of cigarettes and claim they pose less risk of emphysema and cancer or help smokers quit, and the FDA has no say-so at all.

This is from the Columbus Dispatch, Columbus, OH, June 26, 2004:

> The legislation to allow FDA regulation of the tobacco industry is far from frivolous. It has the support of many anti-smoking groups, along with cigarette maker Philip Morris. The tobacco industry has operated irresponsibly for decades, and every time it shows a sign of turning over a new leaf, it does something to remind people that it is not trustworthy. FDA regulation should have happened decades ago.
>
> That smoking-cessation products are heavily regulated, but the products that actually kill people are not is the ultimate absurdity. . . .
>
> Congress has a duty to protect public health, not to shield an industry that has a long history of deceit and death.

Mr. KENNEDY. Will the Senator yield?

Mr. DEWINE. I yield to my colleague from Massachusetts.

Mr. KENNEDY. There was reference made by our friend, the Senator from Kentucky, about the FDA and its ability to interfere with farmers, to somehow impose their guidance or will upon farmers.

I ask if the Senator from Ohio does not agree with me that we addressed this issue on page 23 of the amendment, which says:

> The provisions of the chapter shall not apply to tobacco leaf that is not in possession of a manufacturer of tobacco products, or to the producers of tobacco leaf, including tobacco growers, tobacco warehouses, and tobacco grower cooperatives, nor shall any employee of the FDA have any authority to enter on to a farm owned by a producer of tobacco leaf without the written consent of such producer.

This issue is of concern. This was not what we were looking for. Looking at it is enormously important. Those under that view will have assurances from the Senator from Ohio. Not only our assurances but the legislative assurances that the FDA is not in any way going to have any role whatever in

dealing with any of the producers themselves, the farmers.

Mr. DEWINE. I thank my colleague for the question. I am looking at the same language. He read it correctly. It is directly in the amendment. It was originally in the bill that my colleague from Massachusetts and I wrote and introduced.

I have penciled in here ''FDA can't go on the farm,'' which is a shorthand version of what he said. But actually it goes further than that. It is not just on the farm but it is basically any kind of FDA interference in this area.

In earlier versions, years ago, the bill may have given my colleague from Kentucky something to worry about but this version clearly makes it abundantly clear the FDA cannot do this. I am glad my colleague has pointed this out.

I have other editorials I can read but I see my colleague from Illinois is in the Chamber. If he is ready to speak, I am more than happy to yield him time.

Mr. DURBIN. I thank the Senator from Ohio. I don't know how much time is remaining. I don't want to take too much.

Mr. DEWINE. I inquire of the Chair how much time remains.

The PRESIDING OFFICER. Thirteen minutes remain.

Mr. DEWINE. Mr. President, I say to my colleagues, the Chair, and to my colleagues in the Chamber, I have only had one Senator come to me requesting time in opposition. I probably would propound a unanimous consent request to take some time from the opposition with the understanding that—I have not done that yet—anyone who wants to speak in opposition, obviously, we would make that time available.

I yield 10 minutes to my colleague from Illinois.

Mr. DURBIN. Mr. President, I thank the Senator from Ohio and the Senator from Massachusetts for their leadership.

This is an issue which hits close to home for many Americans. It is an issue we have faced in our families where people we dearly love have been victims of tobacco-related disease. It is an issue which we face every day in America when children make the decision to start using tobacco products—either spit tobacco or cigarettes—and become addicted, and one out of every three of those children who choose the addiction will die from it. That is a reality.

Tobacco is still the No. 1 preventable cause of death in America today. It is preventable if we do our job, regulating the product.

The bill before the Senate says we will give to the Food and Drug Administration the authority to regulate tobacco. The Food and Drug Administration operates under a law which specifically excludes tobacco. It said tobacco is neither a food nor a drug. It falls between the cracks.

So the Food and Drug Administration has the responsibility, when it comes to macaroni and cheese, to make sure it is wholesome, to make certain it is safe, but it does not have that same opportunity or authority when it comes to Marlboro cigarettes or any other package of cigarettes. When you look at the back of the macaroni and cheese, it states the contents and ingredients. You can look all over the Marlboro cigarette package and you will never figure out what is in it. It is more than just natural tobacco. There are a lot of chemicals in here, and these chemicals are harmful.

What Senator DEWINE and Senator KENNEDY do today is to call us together and say, finally, after so many years—40 years of being convinced that tobacco causes cancer, heart disease, stroke, lung problems—after all these years we are going to give to the Food and Drug Administration the authority to regulate this product.

This is not a radical idea. This is common sense. Mr. President, 15 years ago, as a Member of the House of Representatives, I offered an amendment to ban smoking on airplanes. It was an amendment that was opposed by the tobacco lobby, opposed by the leadership, Democrat and Republican, in the House of Representatives, and no one thought I had a chance. But I won, and I passed it. It became the law of the land. Now, if you went into an airplane and said: ''Incidentally, we decided to change the rules. Anybody who wants to smoke, go ahead,'' people would just stand up and say: ''Are you crazy? Secondhand smoke can kill you. We're not going back to those old days.''

What Senator DEWINE and Senator KENNEDY are doing is telling us: Look forward to a future where we start making commonsense health decisions that are going to save the lives of millions of Americans.

Now, what is going on politically here? Sadly, there is an effort coming out of the House of Representatives to put together an $8 or $9 billion buyout of those who have tobacco allotments in America. It is an old piece of agricultural law that some people were able to claim the right to grow tobacco and be given a Government allotment. It is the closest thing to being given some title or royalty that you can imagine because those folks are then entitled to grow tobacco and have special treatment under the law.

What they have said is, if we want to end this program, you have to pay us to end it. We have made money over the years with it, but you have to pay us to end it, $8 or $9 billion.

Well, I swallow hard when I think about that notion of giving $8 or $9 billion from hard-working taxpayers across America to these tobacco growers. But I finally was brought to the conclusion that if that is the only way we can get FDA regulation of tobacco products in America, all right, I will buy that compromise. It is a painful compromise to think of that much money, but that is the reality.

What we have today with this proposal from Senator KENNEDY and Senator DEWINE is to move us in the direction of what we need: to put into FDA law the power to regulate tobacco; for the first time in our history, to give the Food and Drug Administration the authority to restrict tobacco advertising.

Cross the border into Canada and look at a package of cigarettes. There is a clear warning—not the worthless warnings we have been stuck with for four decades—clear warnings that might give somebody some pause before buying this dangerous product. Our FDA ought to have that same authority.

We also need more authority to aggressively stop the sale of these deadly tobacco products to our kids. The Food and Drug Administration can do that, but they need the authority to do that.

We also need to make sure the Food and Drug Administration has stronger warning labels that prevent the tobacco industry from making terrible misrepresentations about their product.

Do you remember ''light'' cigarettes—lower in tar, lower in nicotine, and so forth? It turns out it was a complete fraud on the public. A class action lawsuit brought against the tobacco companies disclosed that they knew they were lying to the American consumers but did it anyway. They made so much money at it they were going to do it anyway.

Well, they were nailed with a lawsuit that a lot of people are talking about. But it is because of their deliberate misrepresentations about the facts of their product that they were nailed by this lawsuit.

The passage of this law gives the Food and Drug Administration the right to police tobacco advertising, to make certain they do not lie and mislead American consumers.

It also sets standards for reduced-risk products. There is a lot of research going on here. I do not know if it will lead to anything positive, but it leads us in the right direction, as far as I am concerned.

I know there are others on the floor who want to speak. I am happy to cosponsor this measure. I believe this is a historic moment that the Senate has a chance to acknowledge what the tobacco companies themselves have acknowledged. When they entered into an agreement with the States' attorneys general across America, they acknowledged that the Food and Drug Administration needed to have the authority to regulate their product. A major company, Philip Morris, has come forward and said they accept that. They are prepared to accept this proposal from Senator DEWINE and Senator KENNEDY. Now we have a chance to put it in law.

What we are going to do with this legislation is save lives in America. We are going to reduce the incidence of pulmonary disease, the incidence of disease and stroke and heart attack and death associated with tobacco.

If we did nothing else in this session—and we may do nothing else—this

is the single most important thing we can do to make America a healthier place and to give our kids a fighting chance. I stand in strong support of this proposal by Senator KENNEDY and Senator DEWINE.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, I ask unanimous consent that Senator SNOWE be added as a cosponsor of S. 2461, the Family Smoking Prevention and Tobacco Control Act.

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

Mr. DEWINE. Mr. President, I see my colleagues on the floor. Before I yield time, I want to read one more editorial. As I said, to me, it is interesting how the editorial boards across this country have spoken out about this bill, and I think have done so very eloquently.

On June 19, 2004, the Cleveland Plain Dealer wrote as follows in their editorial:

> Most people know that smoking cigarettes is risky. But no one can say for sure what's in them, or if ''low tar'' cigarettes and other ''safer'' smokes live up to their claims.
>
> The bill would give the FDA the power to approve cigarettes, to force them to live up to their billing and to allow the states to regulate advertising. Altria, alone among cigarette makers, has blessed the DeWine-Kennedy bill—possibly as a shield from lawsuits, although aggressive trial lawyers will try to turn that shield into a smoke screen.
>
> However, the bill does not exceed its grasp. For example, it forces companies to eliminate tutti-frutti scents that appeal to youngsters, but it prevents the FDA from banning nicotine, that poisonous active ingredient in cigarettes.
>
> The growth of so-called ''low-tar'' or ''mild'' cigarettes, the lure of fruit scents and the biochemical stew of ingredients stuffed into smokes demand some government supervision.
>
> Cigarettes can't be banished. That would make outlaws of thousands whose only crime is destroying their own health. But the FDA should know exactly what Americans are smoking when they light up. The DeWine-Kennedy bill will help clear the air.

Mr. President, I yield to my colleague, Senator REED from Rhode Island.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, I commend and thank my colleague Senator DEWINE and my colleague Senator KENNEDY for this legislation. They have been in the vanguard for many years of protecting the health of all Americans, but particularly protecting the health of children. I have also been active, along with Senator DURBIN and others, in this effort.

Actually, in August of 1996, the FDA promulgated rules to regulate the tobacco industry. But these rules were litigated to the Supreme Court. In a very closely divided decision—5 to 4—the Court essentially said: Congress, you must make it clear that the FDA has the authority to regulate the tobacco industry. That is what the DeWine-Kennedy amendment is doing—making it very clear, very explicit that the Food and Drug Administration may regulate the tobacco industry.

Now, there was a question about the law, but there was no question in the minds of the Justices about the effect of tobacco as a public health issue. Justice Sandra Day O'Connor stated, in her majority opinion, that tobacco was ''perhaps the single most significant threat to public health in the United States.'' Justice Breyer, who was in the minority, recognized that the FDA should already have this power because essentially their mandate is ''the overall protection of the public health.'' And this is the gravest crisis in public health we face in terms of a product that is unregulated, certainly in our economy.

The DeWine amendment brings this issue to, I hope, resolution today. I hope we will give authority to the FDA to involve itself in the greatest public health issue that faces the United States; that is, the consumption of tobacco products.

This DeWine-Kennedy amendment also is very timely because less than a month ago a 50-year study was published in the British Medical Journal chronicling the outcomes of almost 35,000 British doctors who smoked.

This detailed, longitudinal study is the first one to clearly link cigarette smoke to lung cancer and show that on average, a life of smoking will be a decade shorter than a life without smoking. Of the 35,000 subjects, epidemiologist Richard Doll reports that almost half of all persistent cigarette smokers died because of smoking, and a quarter died before age 70. Perhaps more striking was a finding that quitting smoking can mitigate or even reverse these effects. For instance, stop smoking by the time you are 30 and you will have the same average life expectancy as a nonsmoker. Stop at 50 and you will lose only 4 years of life instead of 10.

Clearly, there is still time to help, and particularly to help the children of America. But that can only be done if the FDA has the power to regulate the sale and distribution of cigarettes.

That is something at the heart of the Kennedy-DeWine amendment. It will ensure that children will not have easy access to tobacco products by restricting tobacco advertising and limiting the sale of cigarettes to face-to-face transactions where the purchaser's age can be verified. It will provide for stronger warning labels and allow the FDA to change their text over time to keep their impact strong. And it would help the 46 million Americans addicted to cigarettes by authorizing the FDA to reduce or remove hazardous ingredients from cigarettes, as science allows. These are important provisions that will have a real impact on the health of all Americans, and it is no surprise that this legislation has enlisted the strongest possible support of, among others, the American Cancer Society, the American Heart Association, the Campaign for Tobacco-Free Kids, and the American Lung Association.

We understand the dangers of cigarette smoking. This legislation will empower the Food and Drug Administration to confront those dangers head on, to confront the most significant public health problem that faces America. It will allow them particularly to protect children. It is typical of the concern and the conscientious efforts of the two principal sponsors, Senators DEWINE and KENNEDY. I thank them for their effort, and I join them in this endeavor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, I thank my colleague for his eloquent statement.

There are still some who question whether the tobacco industry is targeting young people. If anybody doubts that, I refer them to what the tobacco industry is continuing to do as far as advertising. Sports Illustrated is read by adults, but it is certainly read by kids, anybody who has a teenager who is interested in sports. And you don't have to be a teenager. Kids start reading Sports Illustrated when they are 9, 10 years old. I did. When you look at some of the advertising in Sports Illustrated, it is absolutely, unbelievably focused on kids.

Here is an example. This is Sports Illustrated, 2002 NFL preview. Look at the back. An awful lot of kids are going to see that. Here is advertising for smokeless tobacco. Just take a look at that. ''Where's the chicks? Intense premium tobacco taste, Rooster, icy minute, the bold one.'' If that isn't targeted to kids, teenagers, I don't know what is.

The next one, if that is not targeted to young kids, I don't know what is. I suppose it is targeted to someone 22, 23, but it is also targeted to someone 16. We know where they are going and what they are doing.

Let me get back to some of the editorials. The Hartford Courant said it very well on June 14:

> Four decades ago the Government linked smoking to lung cancer and urged Americans to kick the habit.
>
> Now the Surgeon General Richard Carmona says the impact on health is ''even worse than we knew'' and has added nine diseases to a growing list conclusively linked to cigarettes. The latest includes leukemia, cataracts, pneumonia and cancers of the cervix, kidney, pancreas, and stomach.
>
> Although many people have quit, smoking remains the leading contributor of death in America, killing 440,000 people each year. Smokers typically die 13 to 14 years younger than do nonsmokers. With 2 percent of adults smoking, the rate is declining so slowly that the Government concedes it will not meet its goal of 12 percent by 2010. The Surgeon General's sobering report ought to stir Members of Congress to take up legislation to give the Food and Drug Administration authority to regulate tobacco. A proposed bill would let the FDA prohibit the marketing of tobacco to minors, require stronger warning labels, a listing of ingredients on packages, and limit the use of harmful chemicals in the product.

That was from the Hartford Courant.

An editorial from the Columbus Dispatch, May 30:

Congress needs to grant FDA the power to regulate big tobacco. Because of its long history of reckless disregard for the truth, the tobacco industry is in dire need of strong Federal regulation. The latest demonstration of industry irresponsibility is the introduction of cigarettes in flavors such as mandarin mint and mocha taboo. Such cigarettes would seem to be a violation of the multibillion-dollar 1998 tobacco settlement which was supposed to prohibit tobacco companies from marketing to minors. This isn't the first time the tobacco companies have blown smoke in the face of the tobacco settlement. A study in the New England Journal of Medicine reported in August 2001 that tobacco companies spent more on advertising in youth-oriented magazines in the 2 years after the agreement was signed than they did in the year it was signed. Let's not forget the years of lies spewed by the tobacco companies as they claimed cigarettes posed little or no danger to smokers, all the while knowing the deadly truth. Congress needs to pass it. Then the FDA needs to take aggressive action. The tobacco companies have operated for far too long with inadequate oversight, leaving death in their wake. It is time for Congress to stand up for the people and grant the FDA the power to crack down on this irresponsible industry.

So said the Columbus Dispatch on May 30 of this year.

The Hartford Courant again, another editorial, January 26, 2004:

The U.S. Food and Drug Administration regulates food, drugs and medical devices, but it has no authority over tobacco products which annually are linked to millions of deaths.

When he was FDA commissioner in 1994, David Kessler proposed regulation of cigarettes, but the Supreme Court nixed the idea, saying only Congress could give the agency such power.

Giving the FDA oversight of a product that is detrimental to public health seems like a matter of common sense. Congress, however, hasn't seen it that way.

The FDA has long performed a critical service by testing and regulating consumer products to ensure safety. That authority should extend to tobacco.

Another editorial, this one from the Akron Beacon Journal, dated June 28 of this year:

The Federal Food and Drug Administration can make manufacturers disclose what goes into your bottled water, foods and medications. [But] it can't make tobacco companies reveal what goes into their cigarettes and other tobacco products. The agency can demand that drug companies support with research the health claims they make for their products. [But] not so with tobacco companies.

Tobacco products were identified as leading causes of cancers, heart disease, and other serious ailments decades ago. They account for billions of dollars in health care costs and are a factor in the deaths of several hundred thousand people every year. It is long past time to put the products under regulations at least as strict as those for ice cream.

The Akron Beacon Journal continues:

It has been four years since the U.S. Supreme Court told the Food and Drug Administration and its commissioner at the time, David Kessler, that Congress had not given the authority to regulate tobacco products. Congress has an opportunity to fill the void through bipartisan bills recently introduced in the Senate by Ohio's Mike DeWine, a Republican, and Democrat Edward Kennedy, and in the House by Tom Davis, a Virginia Republican, and Henry Waxman, a Democrat from California.

This legislation would grant the FDA the necessary authority, none too soon, to protect the public health and guard children, in particular, against addictive and risky tobacco use.

Among other provisions, the legislation would give the FDA approval authority over all new tobacco products entering the market, bar the use in tobacco products of flavors that are enticing to children, and restrict advertising and promotions that target children. It also would require companies to provide research information for claims on reduced-risk products and to submit a list of product contents and components, including the paper and filters.

This is an editorial from the Akron Beacon Journal, June 28, 2004.

Mr. President, we are getting close to the end of this debate. I say to any of my colleagues who have any desire to come to the floor of the Senate and argue in favor of this amendment or come to the floor and argue in opposition to the amendment, we are getting close to closing out this debate. I invite them to come to the Senate floor. We are getting very close to coming to the end of the debate. Now would be the appropriate time to come to the floor.

At this point, I yield to my colleague, Senator LAUTENBERG.

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

Mr. LAUTENBERG. Mr. President, I thank my colleague from Ohio for the good work he so often does on behalf of the safety and well-being of young people. Therefore, it is no surprise to see Senator DEWINE sponsoring or creating this kind of amendment—something that can markedly affect the well-being of children in our society in general.

I want to lend my support to the DeWine-Kennedy amendment, to see if we cannot finally get past these years of delay and obstruction, to permit the FDA to have jurisdiction over tobacco products. It is long overdue, and I am hopeful that the Senate will take this historic step today.

There are very few people my age who weren't induced to smoke by all kinds of influences. When I was a soldier many years ago in Europe during the war, the thing we used to look for in our emergency pack was the little packet of four free cigarettes. We never realized it, but the military was marketing for the cigarette companies, because once someone had a few cigarettes, that was it for almost a lifetime. Nothing, other than perhaps some illegal drugs, illicit drugs, such as cocaine, is more addictive than tobacco. Perhaps even they don't compare.

I used to smoke. I smoked a lot. Fortunately, my youngest daughter, who was about 7 years old at the time, had more sense than I did. She said to me: Daddy, today we learned in school that if you smoke, you get a black box in your throat.'' She said, ''I love you; I don't want you to have a black box in your throat.'' That was after dozens of times that I tried to stop smoking. I smoked for 25 years. There were dozens of times I swore I would stop smoking and never could quite muster the energy or conviction to do it. But when she gave me that message, within 3 days I was no longer smoking. All I had to do was remember how her eyes looked at me so pleadingly and said, ''Daddy, stop smoking.'' That was it for me.

When I came to the Senate, I was determined to do something where I might be able to protect Americans, especially our young people, from the dangers of tobacco. I am pleased to have worked on tobacco control, starting long before it became a mainstream issue.

In 1987, along with now-Senator DURBIN, formerly Congressman DURBIN, we authored the law banning smoking on airplanes. It was a tough fight and it was said, ''You will never get it done.'' But we persisted and convinced a lot of people that changing the rules about smoking in airplanes was worthwhile. It had a long, arduous trip. First, we were able to negotiate for 3 hours, or 2 hours, and settle for 2 hours, with a promise that we would examine the result and maybe change our minds in 18 months and relent.

I had a friend in the tobacco business, and one day he said to me, ''Frank, come on, this hasn't been proven dangerous yet.'' This goes back to the 1980s. I said, ''I'll tell you what. If you can convince your father and the other members of your family to start smoking and confirm that they smoke two packs a day, and do it for a year, I will call off my opposition.'' Obviously, that never happened. They knew how dangerous tobacco was, as did the manufacturers of tobacco products going back to the 1930s.

The addiction and the harm that comes from nicotine was widely known by the people in the industry, again, in the 1930s. We saw that once nonsmokers could experience a smoke-free environment in the cabin of an airplane, they began to demand it in more places than that. It changed things radically for people who were unable to fly because they had respiratory conditions. And they learned something. If cabin attendants who didn't smoke were on a flight, they learned that the nicotine residue could last for many days after in their body fluids. So it was pervasive. The attitude on tobacco began to change radically.

I had an opportunity to write further law, and I put into the statutes a law that required that any building that children inhabited, whether it was a library, hospital, youth hostel, daycare center, could not have any smoking present unless it was in a confined room, a single room that was ventilated to the outside, as long as Federal

money was being given there. That succeeded in turning into law and protecting our children even further.

I have long supported FDA jurisdiction over tobacco—a milestone I hope we will reach today.

Mr. President, make no mistake, tobacco addiction is still a huge problem in America. Tobacco continues to be the No. 1 cause of preventable death and disease in our Nation.

Each year, tobacco claims over 430,000 lives in the United States and serious health impairment occurs as a result of tobacco—emphysema, heart trouble, all kinds of terrible conditions associated with tobacco.

According to the Centers for Disease Control, if current tobacco use continues in the United States, an estimated 6.4 million children will die prematurely from a smoking-related disease. This is alarming because every day nearly 5,000 young people buy cigarettes for the first time.

Once again, that addiction is enormous. In addition to the human costs, huge economic costs occur in our Nation. It is estimated that direct medical expenditures attributed to smoking total now more than $75 billion each and every year.

Despite all of this, the Food and Drug Administration has not been able to take action to reduce tobacco's harm on society. By way of example, right now the FDA, as we have seen on a poster displayed here, can regulate a box of macaroni and cheese but not a pack of cigarettes. If you want to know the ingredients in macaroni and cheese, it is on the label. But for cigarettes, there is scant information on ingredients, toxins, chemicals, et cetera. It makes no sense.

Today, we have worthless health warnings, no control over what tobacco companies claim about the relative health effects of their products, no authority to curtail tobacco marketing to kids, and no ability to order the industry to remove especially hazardous ingredients.

The amendment before us today has the support of the entire public health community, including the American Cancer Society, the American Heart Association, the American Lung Association, and the Campaign—an effective campaign, by the way—for Tobacco-Free Kids.

Today, we have a historic opportunity to give the FDA the legal authority it needs to prohibit tobacco advertising that targets children, the authority to prevent sale of tobacco products to minors, and the authority to make tobacco products less toxic than they need to be, although I am very suspicious about that because there is much misleading advertising talking about tobacco light cigarettes, et cetera. There is no assurance they are less lethal than ordinary cigarettes. We want to give them the authority to prevent the tobacco industry from misleading the public about the dangers of smoking.

I join with other colleagues and hope that we can muster enough support for this bill to give the U.S. Food and Drug Administration the authority it needs to regulate tobacco, as it does other drugs. We owe it to families across this country. We owe it to young people who think it is going to be a kick, but it is a kick they will remember for the rest of their lives once they start.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, I thank all the cosponsors of this amendment for their good work. Senator HOLLINGS has done an excellent job. I congratulate him, as well as the other cosponsors. I thank my colleague, Senator LAUTENBERG, for his very eloquent remarks. He and I have worked on issues that affect public safety. He has been a leader in highway safety. He and I have been on this floor together and have worked on legislation that we hope has saved the lives of children. He has been a good partner. I appreciate his comments again today. It is good to be working with him again.

Mr. LAUTENBERG. If I may intervene, Mr. President, for one moment, with Senator DEWINE's approval, we worked on issues that focus on protecting children's health in particular. We want the drunks off the highways. We want to get tobacco out of the grasp of children. We want them not to be seduced into smoking to look like they are bigshots, like they have grown up to a point. I remember the days—and I am sure the Senator from Ohio does—when athletes were endorsing tobacco products and doctors were endorsing tobacco products. Thank goodness we do not have that anymore.

I commend the Senator from Ohio. I have always enjoyed working with him on issues. I pay my respects to his excellent work on this amendment. I hope it is adopted.

Mr. DEWINE. Mr. President, I appreciate my colleague's good comments but, more importantly, I appreciate his good work.

I know from talking to a few of my colleagues that there is some reluctance to grant the FDA this authority. I want to make a few comments directly to those colleagues.

I do not think there should be this reluctance. We do not worry about having a product, such as macaroni and cheese, that has labeling information on it. We have come to accept that. We have come to think it is a pretty good idea to know what is in a product. If tomorrow we went to the grocery store and all this information on the side panel, nutrition facts, was all blank, some of us would think that was rather strange. We have come to accept that. We think it is OK. In fact, we expect it. It is the right thing to do. We want to know what is in the product.

Every product we buy, from bottled water to macaroni and cheese, we know what is in it, every product except tobacco. Every product we consume we know what is in it; there is a label; it is regulated, except tobacco.

How did we get here? We got here because there is an anomaly in the law. Without going through all the lawyer talk and all the constitutional and statutory history, basically the Supreme Court looked at Congress and said: If you guys want to change that and give FDA the authority to regulate tobacco, too, you have to do it. You are the ones who have to do it. That is why we are here today. We are the ones who have to do it. It makes sense for us to pass legislation that says to the FDA: You go ahead and do it. That is what this is all about.

This is not exactly a radical idea or a revolutionary idea. The only reason it sounds strange is we have just never done it before. But it is time to do it.

It is also time, when the tobacco companies make outlandish claims about low tar and ultra light, for them to be held to the same standards as the macaroni and cheese is or the milk. There are certain standards, and when you say the food product is thus and so, it has to be thus and so. There are certain standards. It ought to be the same way with tobacco.

Again, all we are saying is they ought to be held to the same standards as anything else we put into our bodies.

We all know that even tobacco, a legal product, if used as it is intended to be used, is still dangerous.

So it still makes common sense to have some regulation and have the FDA do it. So this is not a radical, crazy idea. This just makes good, common sense. The reason it is in front of us is because the courts have said, if the FDA is going to have this authority, it has to be given to them and it has to be given to them by statute, and we are simply giving it to them by statute. So in a sense, it is a simple bill that a quirk in history, a quirk in the law previously, has brought us to this point. So we are the ones who are doing it.

That is one major part of the bill. The other major part of the bill is to say we are going to control how they market this dangerous product, and there is no doubt it is a dangerous product. That debate ended years ago. Legal, yes, but dangerous, yes. We have a right, as a society, to control how this dangerous product is marketed to children, and we are going to control that within the bounds of the first amendment.

The court is going to confine us to the first amendment. We are not going to violate the first amendment because the courts are not going to allow us to do that. But we are going to confine it and say there are limits. Kids cannot be targeted because it is a dangerous product. There is no dispute it is a dangerous product. We know it is a dangerous product. We cannot make it illegal for all the reasons we know we cannot make it illegal because that just is not going to work. Prohibition will not work. But it is dangerous.

We do not want kids to get addicted. We know that most people who smoke today started smoking when they were minors. We know if one makes it to 19 or 20 and they have not started smoking they are probably never going to smoke in their life. So there is an inherent societal interest in not having our kids smoke before they are 19 or 20. If they can make it that far, they are probably going to be OK.

So we have an interest in not allowing these companies to target young kids, and we are going to do everything we can within the confines of the Constitution, and that is what this bill is trying to do and will do.

This bill will save lives. It will save lives because we are going to allow the FDA to do what it can in regard to regulation, and because we are going to allow more regulation in regard to advertising a lot of lives will be saved by this bill. It is the right thing to do. The time for the bill is now.

I see my colleague from Georgia is on the floor, and I yield to him.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. CHAMBLISS. I thank the Senator from Ohio for yielding me some time to talk a about this bill today. I want to talk about three things. First, with respect to the issue of smoking, all of us know and now understand that smoking is hazardous to one's health. There is simply no question about that. That is not even in the debate. Fortunately, I am one who has never smoked in my life, but I come from a part of the country, as does the Presiding Officer, where tobacco has been a mainstay. So I want to talk about the effect of what we are doing today is going to have on tobacco-growing regions of our country.

Tobacco has been a mainstay of the agricultural community since the Indians first inhabited this country. Tobacco has been a product that has been traded and bartered for literally hundreds of years, both in America as well as outside of America. In my part of the country, which is a heavy growing tobacco area, it has been the mainstay and the staple product of small family farms for literally hundreds of years. That is going to be coming to an end, in my opinion, with the passage of this legislation.

The tobacco industry has taken any number of hits over the last two decades, and some of it for the right reasons. We need to educate people about the hazards of smoking tobacco. We need to educate people that if they do smoke, it is likely going to kill them.

The fact is, there are a number of individuals in this country who having been educated have still made a conscious decision to use tobacco products. The last thing I think we need for the Federal Government to do is to intrude further into the lives of Americans and say they cannot do this.

Now, that is one thing we are doing with this legislation. I think it goes that far. Maybe not saying one absolutely cannot do it but it is pretty well going to limit the number of customers to future tobacco growers and future tobacco manufacturers in this country, which means that jobs in the tobacco industry are going to be moving out of this country and we are going to see a complete overhaul and change in that manufacturing sector, as well as in the growing sector.

I can remember very well in my hometown where we had three tobacco markets, and we used to sell all tobacco at the auction market. We would have buyers come in every summer and all of the farmers and their families would go to the tobacco market on opening day. We would literally have an auction bale by bale or pile by pile of tobacco that would be bought by one of the tobacco companies and used in the manufacturing of various tobacco products.

As soon as that auction was completed on the sale of the farmer's tobacco, he would take his family downtown in my hometown, and this happened literally across dozens of other communities in the South, and he would buy the family clothes for school that year. The opening day of the tobacco markets was a big deal because that is the product that provided the income for the family farmer for literally hundreds of years in the South.

Today, it still does. Even though over the years with the attacks that have been made on the tobacco industry and we have seen the tobacco quota cut in half, our farmers are generating half the income today with about double the expenses that they were 20 years ago. This is simply because the demand for tobacco has decreased due to Federal regulations and because we are seeing imported tobacco replace domestic tobacco. This is a result of the price that the farmer needs to receive due to the cost of production that he faces each and every year.

What we are doing today to that farmer is we are going to increase the price even more. We are going to make him less competitive and we are, as a practical matter, going to drive the American farmer out of the tobacco-growing business, which is going to be a change in a way of life for many small towns across the South. Is it the right thing to do?

Well, I am not sure everything in this bill, outside of the FDA, is perfect, but I do agree with the way we are doing it and the reasons why we are doing it. Now I am going to talk about the FDA for a minute.

What we are saying to the tobacco farmer is, look, we gave you a quota that you earned over the years through your growth of tobacco. We know you bought this quota in some instances and in some instances it was passed down from father to son to grandson. In some instances you bought it when you bought the farm. But in any event, a price was paid for the ownership of the tobacco quota. Today, we have cut your asset that you bought and paid for by 50 percent just in the last 5 years. We have taken the ability away from you to generate an income sufficient to meet the needs of the quality of life that your family is used to living.

So what we are doing is compensating those farmers. We are going to give some money to them for this quota that we have taken away. We are now going to take it all away and, even though we did not compensate them for that 50 percent they have lost in the past 5 years, we are going to compensate them for the remaining quota that they have. I think that is a fair and reasonable thing for us to do.

I have been adamant from the very first day that we engaged in this issue regarding the buyout, and I have been working on this for 4 years now, but we have been very adamant that the taxpayer ought not to fund this buyout.

I don't think that is right. I don't think we should use money from other valuable programs to pay for this buyout. I think it can be funded in the right way, by those folks who use tobacco products.

Is that going to be injurious to the tobacco industry? You bet it is. But that is the only way it should be funded in a reasonable and rational society in which we live today when you are dealing with such a controversial product.

What this bill does is it provides compensation to the tobacco grower, compensation to the quota holder, and the funding of that compensation to be paid for by those individuals who use tobacco products. That is fair and reasonable, and I support that aspect of this particular amendment wholeheartedly.

Last, I want to talk about FDA. I have been very strongly opposed to the inclusion of FDA regulation in any tobacco buyout bill or as a stand-alone without a buyout. However, I intend to support this today because it is the only means by which we are going to get this buyout bill done. I support it because I hope that in conference we are going to be able to change some of the provisions that are included in the FDA portion of this amendment. I want to mention some of those specifically.

First of all, what we are granting to the FDA in this amendment is this: It will grant FDA indirect authority to mandate changes in farming practices. This bill places no limits whatsoever on FDA authority to reduce or ban compounds found naturally in tobacco leaf. Many new mandates FDA is likely to adopt will be achievable only through dramatic changes in tobacco farming operations—for example, changes in things like types of soils where tobacco may be grown, changes in cultivation practices or even curing techniques. If we think that by passing this bill we are not going to put FDA on the farm, we are wrong. That is simply going to happen.

Next, the bill would give FDA extremely broad authority to regulate

advertising, sale, and promotion of tobacco products, thus giving the bigger tobacco companies a tremendous advantage over smaller tobacco companies. The effect of that is going to be this: Anyone who does smoke—and I encourage everybody to quit smoking—but if you are going to smoke and you are going to buy tobacco products, when you go into the 7–Eleven to buy a pack of cigarettes, they are not going to be visible. The only thing you are going to be able to do is either tell the proprietor of that store, Let me see all of your tobacco products, or you are going to walk in and announce what brand of cigarettes you want to buy.

We all know that name-brand identification is key to marketing of any product, particularly when it comes to something like tobacco. The bigger companies who have been around for years and years and have made brand names very popular and very identifiable are going to be the successful entrepreneurs and the successful companies at the end of the day. The smaller companies that have come into business in the last several years do not have a chance. We are telling those companies: We are sorry but nobody knows the name of your product, so, in effect, nobody is going to walk up to the counter and say: I want a pack of that cigarette brand that was started just a couple of years ago. That is not going to happen. We are going to put the smaller companies totally out of business, in my opinion, and we are going to make the bigger companies bigger. They are going to still keep marketing tobacco, they are still going to keep selling tobacco, and it will continue to have the same harmful effect it has today.

Again, the FDA should focus on its primary business. It is widely acknowledged that the FDA approval process for new drugs is not as fast as it could or should be. If the FDA has additional regulations to administer to make cigarette products safe, it will no doubt remove the primary mandate of ensuring a safe food supply and safe effective drugs.

In effect, what we are going to do with the passage of this bill is to put the FDA on the fender of every tractor that is driving across a tobacco field in the South. It is going to be a new day for a lot of us who come from very rural areas where tobacco has been a mainstay of the economy of our particular counties and communities. It is not going to be a very pleasant day. But on that day, if it is going to happen, we need to make sure those individuals who have made it their life's work to grow a legal product and send it to a manufacturer to manufacture in a legal way will get some compensation to offset the negative impact this is going to have on their lives. We need to make sure as we do this we do not get unreasonable with respect to the thousands and thousands of jobs that are dependent upon this industry.

Tobacco products are going to be sold anyway. My guess is it is going to be manufactured by offshore manufacturing facilities in Europe or some other country and shipped into the United States. These jobs are going to be lost here and moved to those facilities. If it is going to happen, we need to make sure that the individuals at the very lowest level, at the grower level, are compensated for the loss they are going to have.

I compliment my friend from Ohio, who has been very open to discuss this issue. I know he feels just as passionately about his amendment and making sure that we strengthen FDA regulations. I respect that. We just happen to disagree on this particular issue.

But I say, too, my friends over on the House side—Congressman RICHARD BURR from North Carolina, Congressman JACK KINGSTON from my State of Georgia, Congressman BILL JENKINS from Tennessee—that have been real stalwarts in making sure they included the buyout provision in the FSC/ETI bill, thank you for your hard work. We are here today to make sure a buyout is included the Senate bill.

I am very hopeful in the conference committee, as it moves forward, they will look at the result of this FDA regulation. What we as conservatives need to think about is keeping the Government out of our daily lives on a more regular basis rather than putting the Government on the shoulder of every individual in the tobacco industry, more than they are today. I believe that is wrong. I do not think that is the route we ought to take. But I am going to support this amendment simply because it appears that is the only way we can get a buyout that is going to adequately compensate our tobacco farmers.

I thank the Senator from Ohio for yielding the time. I thank him for his cooperation in moving this amendment forward.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, I thank my colleague from Georgia for his statement. Obviously we have a disagreement about the impact of FDA on farmers. He knows I do not agree with him in regard to that impact. The language of this bill is pretty clear. I believe we have done a good job keeping the FDA away from the farmers, but that is certainly something we can discuss in the future.

Let me yield to my colleague from North Carolina who has just come to the Senate floor, Senator DOLE.

The PRESIDING OFFICER (Mr. CHAMBLISS). The Senator from North Carolina.

Mrs. DOLE. Mr. President, significant progress has been made toward achievement of a tobacco quota buyout which our farm families and rural communities in North Carolina and other tobacco-producing States so desperately need. A few weeks ago, thanks to the commitment and hard work, in particular, of RICHARD BURR and MIKE MCINTYRE from the North Carolina delegation as well as Chairman THOMAS and House leadership, a tobacco buyout passed the floor of the U.S. House of Representatives. Today, we have the historic opportunity to get a tobacco buyout across the floor of the U.S. Senate. I thank Senator MCCONNELL for his legislation and his leadership in bringing us to this point.

Why should we go along with the tobacco buyout on the FSC/ETI bill? Why is a buyout necessary? Because the status quo is simply not an option. If nothing happens this year, according to noted agricultural economist Blake Brown, tobacco families and farmers face a 33-percent cut in quotas for the 2005 crop year.

Let's take a look at how we got where we are today. Look at this chart. By 1996, tobacco farmers had experienced 7 straight years of a stable and significant supply of quota. In 1997, quota increased 12 percent, leading many farmers to expand their operations. Barns were bought to cure more tobacco, equipment was bought to replace that which was worn out, and land and quota was bought to make their operations more efficient. Significant amounts of money were borrowed to make these investments.

Since 1997, quota has dropped almost 60 percent. Farmers still have outstanding loans at the bank to pay for quota they no longer have. To put this in layman's language, this type of cut in quota is equivalent to cutting your paycheck more than half while you are still paying the bank for an asset you no longer own.

The current devastation our farm families and their rural communities face is certainly not of their making. The current tobacco program was never designed to accommodate the significant changes that have engulfed this industry. It is an outdated New Deal program that is discouraging purchases of American tobacco by domestic and foreign buyers because it has made the United States uncompetitive on the world market. Foreign buyers who once looked to the U.S. market are now purchasing tobacco from other countries and bypassing the U.S. market altogether for their supply.

The numbers do not lie: The U.S. now accounts for only 7 percent of all flue-cured tobacco production in the world. Let me be clear: All we are doing under current policy is allowing countries such as Brazil and China to reap the economic benefits of worldwide tobacco production. We are not reducing overall tobacco production—we are simply allowing it to be siphoned off by other countries.

Let me bring a little more perspective to the buyout of quota. People in North Carolina and other tobacco-growing States invested in tobacco quota since the 1930's. The Government created this asset—allowing it to be bought and sold. As a result, the value of quota makes up a substantial portion of many farmers' balance sheets.

The value of quota is recognized by county governments; it is taxed just like land and other assets. In fact, tobacco quota is even subject to the inheritance tax.

It is estimated that more than 60 percent of the tobacco farmers today will exit the business entirely if a tobacco buyout is achieved. Most are at retirement age, just hanging on a little while longer in hopes of being able to pay off their debts. They have hung on and continued to produce in hopes that things would get better, knowing that if they got out now they would have to sell their farm and liquidate other assets to settle up with their lenders. Even with a buyout, many will still be short.

Every week my office continues to receive numerous calls from tobacco farm families in desperation. There is a deep feeling of helplessness. And all they can do is get on their knees and pray that those of us who have been given the privilege of serving in Congress will act—and act soon.

A tobacco quota buyout is sorely needed. It will allow those who want to pay off their debts, and who want to retire, the opportunity to do so with dignity. The opportunity to know that all they have worked for has not been in vain. It will allow the widow whose sole source of retirement income is from quota rent and social security the opportunity to get a fair return in exchange for the taking of her quota.

If nothing happens this year, these farmers will be forced to give up all that they have. After 6 years of loaning on collateral, there is nothing left for the banks to do except foreclose, especially with another 33 percent cut in quota for the 2005 crop year on the horizon. There will be no holding out for just a while longer. This may sound like rhetoric to some, but it is the precise truth for countless thousands of farm families. I have been there to see it and I could not be more dead serious about this. Status quo is simply not an option.

It is absolutely critical that this legislation is achieved this year, and I am grateful for the progress that has been made to get this bill to conference. I look forward to working with my colleagues to ensure that this much needed legislation becomes reality.

It is either now—or never. These rural citizens—the very ones who have helped make this country great—are barely hanging on for their very survival. And it is not just them. It is the retailers, equipment dealers, chemical and fertilizer dealers and a whole array of small local businesses. These are the very small businesses that create the majority of new jobs in tobacco-producing States—and jobs that are much needed. With enactment of a tobacco buyout, rural communities will be able to grow back the jobs that have since left our borders and restore hope to countless families who have labored all of their lives under the sun to feed and clothe America and the world.

My State has thrived on traditional industries such as textiles, furniture and tobacco. In recent years, thousands upon thousands of jobs have been lost—leaving rural economies devastated and creating pockets of poverty in many of North Carolina's counties.

And now, as tobacco farmers and rural communities reach for a life-line, we have the opportunity to help them. Rather than conceding tobacco production to countries such as China, rather than allowing foreclosures to thousands of farmers, rather than allowing the negative economic ripple effect to be felt throughout rural southeastern America, let us do the right thing for our farmers and rural communities.

It is way past the time for us to take action, and getting this bill to conference is a very important and critical step.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, I thank my colleague from North Carolina for her eloquent comments.

At this time, I yield time to my friend and colleague from the State of Virginia.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. ALLEN. Thank you, Mr. President. I thank my colleague, Senator DEWINE, for yielding.

Let me commend the eloquent remarks of the Senator from North Carolina, Mrs. DOLE. Her remarks are the same sentiments that I will be expressing, maybe not with the same eloquence but with the exact same concern we both share for the citizens of North Carolina and Virginia.

I also thank Senator CHAMBLISS for looking out for the people of his State. But most importantly, when we listen to the remarks of the Senators from Virginia, from North Carolina, from Georgia, South Carolina, Kentucky, and Tennessee, it is common sense why this is such an important issue for the people of our States, for our economies, and the opportunities for many people.

I commend Senator DEWINE for his efforts in this regard. But mostly I want to commend Senator MCCONNELL of Kentucky for his leadership. He has worked very hard, along with the others of us in the tobacco-growing States in this effort to achieve a tobacco quota buyout.

In the other body, as was stated by Senator DOLE, Congressman BURR and Congressman MCINTYRE worked very hard, as well as Congressman VIRGIL GOODE from Southside Virginia. I know many of my colleagues have said on many occasions that it is all important to be advocating policies and ideas that promote freedom, that promote job opportunities, and improve the competitiveness of America. That is why I think we must equitably find a way to end this tobacco quota system.

As I said, I agree with the comments of Senator DOLE and Senator CHAMBLISS who spoke before me. But some people question, ''Why is it so important to end this outdated, old, punitive quota system?'' The reason it is important is because it is antiquated, it is a restrictive quota system which harms the ability of tobacco-growing families to earn a living by artificially increasing their costs of production because they have to pay the quota holder.

If you are producing a product and you have added costs per pound, those dollars per pound for the right to grow has to go into the price for which you sell that product. Otherwise, you keep running a loss and you go bankrupt. Senator DOLE was talking about the similar experiences farmers are having in her State. I know these tobacco-growing families are hard-working families in Southside and Southwest Virginia who have worked long and hard hours on these farms. Their families have owned those farms and those lands for many years. Growing is not easy. You have to prepare the soil, you have to get seedlings going, you have to plant them at the right time, and you have to tend the crop. You have to worry about pests and mold. Then there is the harvesting which has to be done, whether it is flue-cured or whether it is a burley tobacco which has different harvesting requirements, and then the curing of that crop after you have harvested. It is a lot of hard work.

In Virginia, there is estimated to be about 8,400 tobacco farmers and more than 120,000 tobacco-related jobs throughout the Commonwealth of Virginia. Virginia is the fifth largest tobacco-producing State. It is the second largest manufacturer of tobacco products. Virginia is the largest exporter of tobacco products. Clearly, tobacco plays an important role in Virginia's economy, agricultural or otherwise.

These tobacco-growing families and farmers and communities in my own State of Virginia, as well as many other tobacco-growing States, need this quota buyout to remain competitive in the world marketplace. They have to be competitive because our States are not the only places in the world that grow tobacco. It is grown all over the world, whether it is in South America, Africa, or Asia. Without getting rid of this quota system, we stand to lose thousands of jobs at a time when a lot of our manufacturing base is being lost to other countries.

There are provisions—and I know the Senator from Georgia, Mr. CHAMBLISS mentioned this—in this amendment which I do not favor, specifically, the potentially burdensome oversight by the FDA on merchants who sell tobacco products. However, I believe this buyout is needed to allow an important element of our American economy to survive. This buyout will allow farmers who wish to continue to grow tobacco to do so in a competitive environment or at least allow them to better compete. If they do not care to grow it any longer, they will be able to use this buyout in a way to find a transition to

some other farming or another line of work, rather than allowing this just to continue, which will be a long suffering collapse and disaster economically for those families.

We talk about many of the farmers. One of the farmer's name is Kevin Mottley, a fourth-generation young farmer who says he wants to carry on with his family tradition. That is something to be proud of. We are happy to hear that. Of course, he is talking about a tough situation with international competition, but he wrote that, ''With the recent cuts in tobacco quotas and prices on other farm commodities down, it's harder to keep our farm operating.''

That is the economic impact on a real farmer, a real person, in Virginia. He understands this buyout is not only important for individual families; it is also important for the communities that depend on the strength of the tobacco-growing segment of our economy. The current quota system makes Virginia-grown tobacco less competitive versus foreign-grown tobacco. While U.S.-grown tobacco is generally a better quality, it does cost much more due to this onerous quota system. Thus, the cigarette manufacturers are using or have an incentive to use more foreign-grown tobacco.

As less tobacco is grown, it is less profitable, obviously, to growing families in this country and also in their communities and counties in which they are farming. If we can achieve this buyout, it will make U.S. tobacco more competitive, thus positively impacting the economies of rural communities and towns.

Some will grouse about the cost of this buyout. I believe it is fair compensation to end this government program. Well, look at how much the Federal Government taxes tobacco. There is a 39-cent tax per pack of cigarettes. The Federal Government garners about $8 billion a year on tobacco taxes. Throw in all the State and local taxes, heck, it is around $30 billion. Beginning July 1st, 2005, Virginia cigarette taxes will increase to 30 cents a pack. Those that will be hurt by this increase are all the businesses along the Tennessee and North Carolina borders. Raising those taxes means they will lose sales at those convenience stores and country stores.

The Federal Government gets plenty of money, $8 billion a year, from taxing tobacco. We need to realize when farms are hurt, it also hurts our economy. When the tobacco farming sector suffers, there are other non-tobacco sectors that are affected, as well. The economic losses associated with the recent changes in the tobacco sector have resulted in the loss of more than 57,000 jobs in the six major tobacco-growing States. While the primary sector affected is the tobacco-growing sector, losing more than 39,500 jobs, these tobacco sector job losses created an additional loss of nearly 18,000 jobs in the non-tobacco sectors.

It demonstrates that the tobacco production prices impact such diverse businesses as local farm supply stores, banks, health care providers, manufacturers, retail businesses, and many others in the non-farm sector in these communities.

One needs to understand there is no crop that produces the yield per acre that tobacco does. When the tobacco quota is reduced, that affects all of the money, all of the revenues available within these rural communities.

I have previously stated I am not in favor of FDA regulation. The reality, however, is that it has been joined to this measure. It is the way that the salutary, vitally necessary quota buyout will be addressed today in the Senate.

I am voting for this because of the quota buyout. I hope the conference report—I know Senator DEWINE may not have the same hopes but I will express my views—I hope the conference report will knock out or diminish the harmful impact of FDA on convenience stores and advertising consistent with First Amendment rights.

I have heard Senator DEWINE state this will not have an impact on growers. I hope it will not have an impact on growers. There may be some certain aspects we ought to look at. Maybe it ought to be done through USDA in making sure foreign-grown tobacco meets the same standard we want for tobacco grown in this country, for pesticides or chemicals that are not naturally occurring in the tobacco plant.

I do believe, however, that we do not need FDA regulation to prohibit and protect children from purchasing cigarettes. That is usually the argument, that we have to protect the children. That is fine, but I think it can be done without onerous FDA regulations. I fear, if FDA has regulatory authority over tobacco manufacturers and producers, we will end up with decisions being made further away from the people, given to officious and meddling regulators. Rarely do I see the federal government or any agency resisting a temptation to expand its power. Once the FDA has control over tobacco retailers and manufacturers, they will be subject to ever changing restrictions dictated by future political considerations.

I do commend the efforts of Senator DEWINE and Senator MCCONNELL and others who worked on this; I will be voting for this measure to keep this bill moving and gaining momentum. It is very important. We are taking a major step forward with this measure in making sure our tobacco-growing families can be competitive with foreign-grown tobacco.

It is also important that we understand there are a number of aspects in the underlying bill, the JOBS bill, which are important to our economy. There are aspects of it I have worked with my colleagues on to put in, including the Homestead Preservation Act which helps displaced workers who have lost jobs due to international competition. There are folks, and many are in the same areas as the tobacco farmers, in rural communities who have lost textile jobs. The Homestead Preservation provision will help them with mortgage assistance for 1 year to help them keep their homes and protect their credit ratings as they work toward strengthening and updating their skills and getting back on their feet with a new job. That is an important provision.

There are also provisions that help make the United States more attractive for foreign companies to invest and create jobs in this country.

The main point is this is an amendment that advances a long talked about, long sought after, absolutely essential provision, the tobacco quota buyout, which is so important to people not only in Virginia but also tobacco-growing States across this country.

I am glad, while there may be some differences clearly on the FDA provisions, that the Senate has come together and has put forth this, on balance, very positive, competitive idea in an amendment. I hope my colleagues will vote for it, it will be passed, and we can move to the conference committee, and, ultimately, next fall pass this JOBS bill which is so important for our country.

I thank my colleague Senator DEWINE and yield the floor.

The PRESIDING OFFICER (Mr. ENSIGN). The Senator from Ohio.

Mr. DEWINE. Mr. President, I thank my colleague from Virginia for his good statement. I thank him for his support of the amendment. I just say that our hope for this bill, after passage, obviously, is different. I hope this marriage continues. He hopes for a divorce. I hope the marriage will be a long-lasting one. As I have said earlier, I think it will. It is a logical marriage. I think the FDA regulation will not be onerous. It is logical.

I think tobacco farmers will not in any way be burdened by this legislation. But the children of tobacco farmers, as well as the children of all Americans, will be benefited by FDA regulation, just as they are benefited by FDA regulation of milk and macaroni and cheese and of every other product we consume. It just makes sense to me, and it makes absolutely no sense we would not be regulating products such as tobacco. The time is finally here that we will recognize this, and the American people will recognize it today, that we should, in fact, be regulating a tobacco product.

At this time, let me yield to my colleague Senator HARKIN. Before I do that, let me inquire of the Chair, how much time is remaining?

The PRESIDING OFFICER. Seventeen and a half minutes.

Mr. DEWINE. Seventeen and a half minutes.

Mr. SESSIONS. Seventeen and a half minutes total?

The PRESIDING OFFICER. Seventeen and a half minutes total.

Mr. DEWINE. Seventeen and a half minutes total is remaining.

How much time would my colleague from Iowa need? I ask my colleague from Alabama, do you seek time as well?

Mr. SESSIONS. Seven minutes.

Mr. DEWINE. Senator KENNEDY wants some time at the end, I know. He told me he wants 5 minutes at the end. I probably will want a minute or so.

I ask the Senator from Iowa how much time he would like.

Mr. HARKIN. I would ask for 15 minutes, if I could have it.

Mr. DEWINE. We only have 17½ minutes.

The PRESIDING OFFICER. Seventeen minutes.

Mr. DEWINE. Seventeen and a half, and Senator LOTT wants some time.

Mr. HARKIN. We only have 17½ minutes left on the whole debate?

Mr. DEWINE. Seventeen and a half minutes total.

Senator LOTT is going to speak in opposition.

I ask the Senator from Alabama, are you in opposition?

Mr. SESSIONS. In opposition.

Mr. DEWINE. I say to the Senator, Senator LOTT and my colleague from Alabama both have preference because it is all opposition time.

Mr. HARKIN. Mr. President, parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. I ask the floor leader, the Senator from Ohio, did I hear correctly, there is only 17½ minutes left on the side that is for the amendment?

Mr. DEWINE. No. There is no time.

The PRESIDING OFFICER. Under the total time, the total time on the amendment.

Mr. HARKIN. Is it 17½ minutes?

The PRESIDING OFFICER. Sixteen minutes now.

Mr. DEWINE. We need to move.

I wonder if I give my colleague, to start with, 4 minutes, and then go from there.

Mr. HARKIN. I will try. Thank you.

Mr. DEWINE. And then maybe an additional minute, if you need it, and we can go from there.

Mr. SESSIONS. Mr. President, I know Senator LOTT wants to speak, also. I will try to keep my comments to 6 minutes or 5 minutes. So I don't want to object to the 4 minutes, but I think the Senator would need to come in on that time or there won't be enough for this side to be heard effectively. So I will not object.

Mr. DEWINE. Let me ask the Chair, is the time now controlled by the opposition or is it total time?

The PRESIDING OFFICER. The remaining time can be controlled by the opposition.

Mr. DEWINE. All right.

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

The PRESIDING OFFICER. The Senator from Iowa is recognized for 4 minutes.

Mr. HARKIN. Mr. President, I rise in support of the amendment. We have an opportunity to address one of the most significant health threats of our lifetime; and that is tobacco use.

Quite frankly, we have been trying for some time to get FDA jurisdiction so they could better control advertising. I have a couple charts to show why we need to do that. The tobacco companies continue to say they do not advertise to minors, but here is Kool cigarettes. They have advertisements for hip-hop and rappers and all that. They are not going after me. They are going after kids. This is what Big Tobacco is doing. That is why we need to regulate tobacco.

Here is another one: Liquid Zoo flavored cigarettes. This happens to be strawberry. They are not going after adults. They are going after kids to get them hooked on tobacco.

Then we get this fraudulent kind of advertising. This is Eclipse cigarettes: The best choice for smokers who worry about their health is to quit. Here's the next best choice. But there is absolutely nothing to back up their claim that it is some kind of a healthier cigarette, of which I say there is no such thing. That is why we do need to get FDA authority.

Secondly, as a member of the Agriculture Committee, and as ranking member, I am sorry this did not come to the Agriculture Committee. It is the committee of jurisdiction.

But I will say this, that we have a lot of farmers who hold quotas on tobacco. They have held them for many, many, many years. They are now seeing that the amount of tobacco they can produce under the quotas is being reduced, so their future and their ability to earn a living from tobacco is slipping away. This buyout will help them to build a better future. For many, it will not be in tobacco growing, and they need help to move to something else. But at least this tobacco buyout will give them some equity, some hope. Many of these farmers are growing tobacco because their parents did. Many of them have small plots of tobacco. They are using that for their family income.

Now, as we try to phase out tobacco use in this country, to get people to smoke less and less because of the health costs and health risks, we cannot forget about a lot of these farmers who, let's face it, their family incomes are based on this, so they need help. That is why I have been for a tobacco buyout in the past, to help these farm families. As they transition out of growing tobacco—maybe into other crops—they need help. I hope those of us on the Agriculture Committee will help them to do so. I think this amendment is a good amendment. It will tend to move us in the right direction on both fronts.

I say, in closing, in my estimation, the FSC bill needs this. The House approached it the wrong way. They put it on the backs of taxpayers, when it ought to be paid for by the manufacturers, which I assume would pass the cost on to users of tobacco. That is the way it ought to be done. That is the way we had agreed upon doing it prior to the House adding that amendment.

So I say the conference committee must adopt the approach that insists on combining a strong FDA regulation with an industry supported buy-out for tobacco farmers unlike the approach the House took by putting the buy-out on the backs of the taxpayers and completely disregarding FDA regulation.

So again, this amendment moves us in the right direction, both to help a lot of family farmers but also to help our kids, to help future generations so they will not be bombarded with this kind of phony advertising we are seeing from the tobacco companies.

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

The Senator from Alabama.

Mr. SESSIONS. Mr. President, I guess it is only in the Congress that we can have one bad bill that cannot be passed on its own, and we can add to that another bad bill that cannot be passed on its own, and, lo and behold, we can have two bad bills that you would think would not have a dog's chance of passage, and here we are on the verge, I am sure, of passing this amendment.

I do not know how the quotas need to be paid out, and how much people ought to get, but we really need to spend some time on it. It was basically suggested to me recently that we ought to be thankful this bill started out at $18 billion in buyout costs and that now it is only $13 billion. We are supposed to say thank you for saving us. But I wonder how we started out at that figure to begin with.

Mr. President, I ask to be notified when I have used 5 minutes.

The PRESIDING OFFICER. The Chair will do so.

Mr. SESSIONS. Mr. President, the chairman of the Committee on Health, Education, Labor, and Pensions, Senator JUDD GREGG, has worked very hard on the tobacco regulation issue. He has had hearings. He has studied it. His staff has worked on it. Members of the committee have been engaged in it. His ideas have been completely bypassed in this amendment that is going forward today.

Senator MIKE ENZI is a champion of small business, who has spent a lot of time dealing with small convenience stores and working with them on their problems. The breadth of this language they feel very strongly about. He had amendments and some ideas to fix that. All of that has been bypassed.

The trade bill is a critically important bill. We want to see that pass. It is just too typical of how we have to do business or feel we have to do business that the bill gets these two pieces of legislation—neither one of which has been thoroughly considered and effectively analyzed—attached to it. I don't believe it is about public policy, and it is something we ought not support.

They say they are going to tax the manufacturers. I can understand some of my colleagues on the other side of the aisle believing that is not a tax on consumers, but everybody knows a tax on the manufacturer drives up the cost of the product and is, in fact, a tax on the people who consume the product. We might as well put it on the cigarette package so the citizens will know how much the Federal Government has made them pay extra for the cost of the product they wish to consume.

I do not favor tobacco. I believe it is a deadly product. We ought to eliminate it in any way we possibly can in a reasonable way. But I also believe in freedom, and I know that there are people who believe that they have a right to smoke and have been given that right. To just exorbitantly continue to exercise more and more of our ability to put taxes on it is not a good idea.

The regulations in the FDA bill are very troubling. We know there was a lawsuit over this issue sometime ago, and the courts ruled that the FDA did not have the power to regulate tobacco. As a result of that, we now come back with this legislation.

I know there are some good people involved in this, wanting to see this bill pass for various reasons. One group is absolutely committed to increased regulation of tobacco, and they don't care if we spend $50 billion on the buyout. Another group wants a big buyout, and they don't care what kind of regulations we put on convenience stores or on the sale of this product.

The net result is an unhealthy deal for public policy in America. I wish we had more time to get into it. I am told that the cost of the buyout per acre is $20,000. I know Senator LOTT has some fine farmland in Mississippi. I don't know how much he could buy at $20,000. It would be more than one acre, I am sure. He probably could buy land in Jackson, MS. I am just kidding.

I think we are moving in the wrong direction. I want to be on record as objecting to this process. I am sorry that it was sprung on us this way. It is adding too much. We should not allow this to happen. I hope we can make this thing better as time goes by.

I yield the floor and reserve the remainder of the time for this side.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. Mr. President, are we still operating under the 3-hour time agreement with regard to the tax bill and the tobacco issue?

The PRESIDING OFFICER. That is correct. The opposition has approximately 6 minutes remaining. The proponents have no time.

Mr. LOTT. Mr. President, I yield myself such time as I may consume. I am not sure whether I could be considered pro or in opposition to in this particular case, but I do want to be heard on the broader issue and also on the tobacco provisions.

I begin by congratulating and expressing my appreciation to leaders on both sides of the aisle for finally coming to an agreement on a process that will get us into conference on this important legislation. It is unfortunate that it has been delayed for weeks. We should have been in conference a month ago or more. Some of the demands about how we would go to conference or what would happen in that conference have been very inappropriate. One can't preordain what will come out of a conference. They can't say that any one person will determine whether a conference is reported, whether it is a leader or anybody else. But this issue is so important that we need to go into conference. It is about some important tax provisions that will help manufacturing, service, and our high-technology businesses and workers.

It is a way to deal with a problem we have caused by a ruling by the World Trade Organization saying that our tax provisions, our alleged subsidies, were not in compliance with WTO, and we are being penalized in an increasing amount each month on a lot of American products because we have not dealt with this issue. We should have dealt with it a year or two ago, but at least now we will have an opportunity.

Without rewriting the history, I think we need to get this bill into conference. We need to deal with this problem caused by the World Trade Organization's ruling, and we need to deal with the funds that are available because of that in a way that will help job growth and the economy.

This is all well-intentioned. I have been pushing to go to conference. I must say, I am very worried about what is going to come out of conference. This bill and the one from the House have acquired a lot of barnacles. If you allow enough barnacles to be attached to the hull of a ship, it will sink. This one is in real jeopardy of sinking.

First of all, as has become our pattern in the Congress, we are greedy. A bill that should be revenue neutral or should be somewhere around $50 billion has become—I don't know how much—$150 billion. How far is it going to go? The distinguished chairman of the Budget Committee tells me it is $170 billion. We do have a little deficit. Anybody notice that?

Here we have taken a good opportunity to do something good that would be responsible in dealing with trade practices and protecting our own producers and creating jobs, and we are going to distort it way out of proportion. It has become a pretzel. I went along with adding the energy tax provisions to the bill. I didn't think that was the way to do it; I said so at the time. But it was at least the tax provisions, and it gave us some way to maybe deal with the energy needs of the country. But that was the first of the barnacles that was added.

And then in the House, I saw on the media this week where all these provisions have been added that will benefit General Electric, that would give them additional tax breaks and will contribute probably to more jobs going overseas. How did that happen? Did somebody miss that? Did it get in there without anybody being aware of it?

Then the House added about $10 billion for a tobacco allotment buyout. I assumed that was just an aberration in the House and that Democrats and Republicans would say they are not going to do that and we would get back to the basics of this bill. Now the Senate is going to join the stampede. We are going to regulate tobacco with the FDA, and we are going to have a buyout even bigger. I guess this alternative would be paid for by the industry. What in the world is tobacco policy, whether it is the amount of the allotment or the FDA, doing in this bill?

I am very worried that this bill is going to—and we are adding to the confusion—sink under its own weight in conference, and our companies and producers in America will be hit with an ever-increasing import fee every month.

Here is what we ought to do. We need to get a grip, cut out all of this unrelated stuff in this bill. Some of it I would have to sacrifice, too. I want an energy bill. This may be the only vehicle leaving town. I would like to put the entire energy bill, with some modifications that may be necessary, in this bill. But this bill, on its own, needs to be done. It needs to be done clean. It needs to be cut by probably two-thirds. And we need to get all the undergrowth that has been added to it off of it.

If we could do that and still find a way to get an energy bill, a highway bill, and a jobs growth bill done without all of the adds that are costing billions of dollars, we could go out of this session with our heads held high. But we are setting up a box that we may not be able to get out of.

I oppose this proposal on tobacco. I am very much concerned about how we are going to get through conference and get this bill down into the $50 billion range where it should be instead of $170 billion. We have all contributed to the problem. I plead guilty. We all have. But now is the time where generally, when you go to conference, you get over your temporary political fantasies and you do the right thing. You produce a bill that can pass and will help the economy.

Will we do it this time? I am sure that the distinguished chairman of the Finance Committee, who enters the Chamber smiling, can work miracles in this conference. I am expecting it and looking forward to supporting him in that effort.

With that, I yield the floor.

The PRESIDING OFFICER. All time has expired.

The Senator from Oklahoma is recognized.

Mr. NICKLES. Mr. President, I ask unanimous consent to speak on the FSC/ETI bill for 10 minutes.

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

Mr. NICKLES. Mr. President, most of the speakers have been proponents. I compliment Senator DEWINE and Senator MCCONNELL for getting included this deal. I want to make two or three comments. One is on the process. The FDA bill we are now going to vote on—I venture to say nobody knows much about it because, and correct me if I am wrong, it has not been reported out of any committee. The very extensive bill, very important bill, has 155 pages of regulations and not 1 paragraph that says the FDA has regulatory authority over tobacco. It is a lot of regulatory statute proposed to be the law of the land.

There is a tobacco buyout provision that costs $12 billion. I have yet to see the language. Neither of these bills was reported out of committee, and neither should have had a time agreement. I wasn't consulted on a time agreement on these particular amendments. All of a sudden, we find out at 9:30 there is a time agreement and we are talking about spending $12 billion—and, oh, yes, you cannot amend it. I am kind of offended by that.

Senator GRASSLEY used to say we should have some kind of limitation on payments. We find out, according to some analysis, some farmers will make millions of dollars on the tobacco buyout. I would say, wait a minute, if we are going to buy out a quota—a quota is a Government benefit basically which we have given and which has benefited a few. We find out that 85 percent of the quotas go to nonfarmers. I would like to have the benefits go to the farmers. We don't have a chance to offer that amendment. I would like to say the benefit should be going to tobacco farmers. We don't have a chance to offer that. We have an FDA bill before us. Senator GREGG has a proposed amendment; I would like to offer that or consider it. We don't have a chance to do that. We don't have a chance to offer one amendment. Yet we are saying let's add this to the FSC/ETI bill.

I agree with Senator LOTT, who says we should pass the FSC/ETI bill, and we are held up for weeks after we already passed it on the floor of the Senate.

The House, in my opinion, made a mistake. The House made a mistake when they passed FSC/ETI. They put in a $9.6 billion tobacco buyout as part of their package. Now we are getting ready to say that two wrongs make a right. Since they do it, we will do it, too, except where they spent $9.6 billion, we will spend $12 billion. At least, to their credit, they got out of the tobacco program when they spend $9.6 billion. They are going to pay the tobacco farmers and get out of the Federal price support program for tobacco. But we don't do that on this proposal. We are going to spend $12 billion on supposedly buying out quota. Guess what. At the end of the day, you still have a tobacco program, a price support program. That is ludicrous. What a waste of money. We are going to spend $12 billion and not end the program? I cannot imagine doing that. I cannot imagine that we would pay people for a quota, most of whom are not farmers, and then we are going to continue a price support program at the end of the day. That is in this bill. It is all tied together. You don't have a chance to break it apart, don't have a chance to amend it. This is very offensive to the legislative process. It is very offensive to the taxpayers.

The regulatory authority I have heard many people bragging on is very broad. For example, I don't know if people are aware of it, but maybe we want to give the Secretary of HHS a blank check to regulate and/or outlaw tobacco. In reading on page 45, it says:

> The Secretary may, by regulation, require restrictions on the sale and distribution of a tobacco product, including restrictions on the access to and the advertising of and promotion of the tobacco product, if the Secretary determines such regulation will be appropriate for the protection of public health.

The Secretary can do anything he darn well pleases, including banning tobacco, I guess. I am no fan of tobacco. Frankly, I have had family members who got cancer as a result of it. It almost took my mother's life—lung cancer, emphysema, all probably directly related to tobacco. I had a brother with serious cancer. I am no fan of tobacco. I don't use it. I don't want my kids to use it. I urge people not to use it. I question having a new Federal program where we are going to have $12 billion to buy people out of their quotas, including most of the people who don't even grow tobacco, and then we are going to say, yes, at the end of the day, we are going to continue the tobacco program, and then we are going to put it on a FSC/ETI bill where it doesn't belong.

We need to pass the tax bill and resolve conflicts with the WTO so we can eliminate surcharges and tariffs on products coming into the U.S. We need to do our work.

This tobacco provision, which has not had a hearing in the Agriculture Committee or in the HELP Committee, and hasn't had a hearing on either FDA or a markup of the appropriate legislation before the appropriate committees—all of a sudden we are getting ready to pass legislation that is going to make, according to one estimate, over 500 people millionaires—millionaires—and we don't even have a chance to amend it. I wonder how many of my colleagues are aware of that. I wonder how many have a clue what is in this proposal. I venture to say that very few do. Maybe the sponsors do. Maybe there was some deal cooked up last night. I don't know. I am looking at the size of that amendment and saying, Mr. President, that is pretty thick. I wonder how many billions of dollars are going to be spent as a result of this amendment without people really knowing what they are voting on.

I will vote no on the amendment. I urge my colleagues to vote no on this amendment. If we pass this, there is going to be a tobacco provision in the House bill and the Senate bill, and that will make it difficult to delete in conference. As a conferee, I plan on opposing tobacco. I was going to oppose energetically having the House pass that as part of the FSC/ETI bill. It doesn't belong there. If we put a similar provision in the Senate bill, it more than likely will be there. I will tell you it may be too much of a load for that bill to pass conference. I can see all kinds of ways that this could bog down the conference totally, and we will end up having no bill. Who wins out of that? Certainly not the tobacco growers. Certainly not tobacco.

Some people allege that the regulations benefit one tobacco company at the expense of the others. I don't know. I just know this is a crummy way to legislate. This is not the way we should be doing business in the U.S. Senate. We should not be gumming up an already overloaded bill by including this provision.

I urge my colleagues to vote no on this amendment when we vote later today.

I yield the floor.

Mr. COCHRAN. Mr. President, I am pleased that we are finally able to proceed with this legislation and remove serious barriers to American agricultural exports.

Since the World Trade Organization ruled against the United States over our Foreign Sales Corporation and Extraterritorial Income tax rules, we have had ample time to address this issue. In fact, the Senate Finance Committee reported legislation that would bring the United States into compliance with our trade obligations on October 1, 2003.

European Union tariffs on our farm exports have steadily increased, making them increasingly less competitive in international markets. The EU retaliation list includes about 400 agricultural, food and forest product tariff lines of imports from the United States. Proceeding with this legislation will help us regain market share and export opportunities that will have added benefit for truckers, rail lines, shippers and related businesses. This will help the export of U.S. agricultural products to hit a projected record of more than $60 billion this year.

In addition, I am pleased that an agreement could be reached to allow for the consideration of a tobacco buyout amendment to this legislation. I commend our members of the Senate Agriculture Committee who have worked diligently to reach this point. Particularly, Senators MCCONNELL, CHAMBLISS, DOLE and MILLER and their staffs have brought us to this point through careful negotiation.

Over the past decade, tobacco producers have seen their tobacco quota cut in half and resulting in an economic crisis among tobacco-dependent communities. This buyout provision will provide the estimated 57,000 tobacco farms in the United States the

necessary resources to continue their livelihood or transition into more diversified operations. The amendment is also a move in the right direction in eliminating the archaic tobacco quota system. It is my hope that this important provision will enable tobacco producers the ability to better compete in a free market system.

As chairman of the Committee on Agriculture, Nutrition, and Forestry, I look forward to working with my colleagues in both the Senate and House of Representatives to ensure that farmers in the United States who choose to continue to grow tobacco will have that opportunity. I urge my colleagues to support this amendment and the underlying bill.

Mr. ROBERTS. Mr. President, I discuss the amendment we are about to vote on. Let me state at the beginning: I am supportive of a tobacco buyout for our tobacco producers and quota holders, and I will work to help them achieve this goal. However, it should be a buyout without strings attached and that will truly end the program.

Unfortunately, this legislation does not achieve this goal. While the bill does provide a buyout, it then implements annual restrictions on acreage and production. I have previously stated on this floor my opposition to acreage and production controls for all crops and commodity programs. This program should be no different.

I am also concerned that these acreage controls may not be legal under our World Trade Organization commitments. If these controls would indeed be declared illegal under our commitments, we could be subject to a ruling that would put us far above our WTO agriculture spending caps. This would not only have significant impacts for tobacco and this program, it could have a significant impact on all our commodities and farm programs. I cannot support voting for this proposal and putting all our other commodities at risk.

If these provisions were removed, I believe there would be no question that this proposed program would be WTO legal, and I would have no trouble supporting the buyout. I will let my colleagues that serve on the conference of this bill make their own decision regarding FDA regulation and the funding mechanism for the buyout. But, I urge them to support the House language implementing a buyout with no future acreage and production restrictions being put in place.

Mr. FEINGOLD. Mr. President, I will support the amendment offered by the Senator from Ohio, Mr. DEWINE, and the Senator from Massachusetts, Mr. KENNEDY, but in doing so I also want to note my concern about the potential for unconstitutional infringement on commercial speech that the amendment may engender in the regulations it directs to be promulgated to regulate tobacco advertising. There is little doubt that the health of our citizens, and in particular the health of our children, are a substantial governmental interest. And given that substantial interest, some regulation of tobacco advertising may be appropriate.

Further, the amendment appropriately sets forth some safeguards that strive to prevent unconstitutional infringement on commercial speech, and I commend the authors for including that sensible protection. Moreover, in the wake of the Lorillard case in 2001, we now have a somewhat clearer legal standard in this area that can guide these proposed regulations.

But the rights spelled out in the first amendment of our Constitution are so fundamental to our liberties that we must be especially sensitive to the potential for Government overreaching. For that reason, while I will support the amendment, I will also be monitoring this aspect of the amendment closely as regulations of tobacco advertising are developed and implemented.

Mr. HATCH. Mr. President, I address the DeWine-Kennedy amendment to H.R. 4520, the American Jobs Creation Act of 2004.

Let me say at the outset that I will vote for this proposal tonight, because I am fully supportive of measures to end tobacco use in the United States. I can think of few public health dangers worse than tobacco, and this is especially true for young people. Certainly, in my home state of Utah, I hear time and time again from concerned parents and health advocates who point out the devastating health consequences of tobacco use.

So, I think it is critical that we go to conference on this issue. However, my support for the amendment is not without some serious reservations, and I hope they can be addressed and corrected in conference.

My first concern is that the committee of jurisdiction, the HELP Committee, should have had the opportunity to consider fully the text of S. 2461, the Family Smoking Prevention and Tobacco Control Act, which is included in the DeWine-Kennedy amendment, before it is brought to the floor for this vote.

Having been the chairman of that committee for several years, I know full well the complexities of the Federal Food, Drug and Cosmetic Act. Three hours of debate are not enough time to consider legislation that makes such dramatic changes to current law.

I have only had a short time to review this legislative language but I believe there are several troubling components. For example, the tobacco company marketing provisions alone in this amendment raise serious 1st Amendment issues, as do the provisions granting authority to state and local governments to impose specific bans or restrictions on the time, place and manner of tobacco advertising. I would have preferred we have a more lengthy debate on about the implications of these provisions before we vote.

I also think we need to give serious study to the drafting of the language providing the FDA with the authority to regulate tobacco products. This area of the law is extremely complex. In addition, I must point out that the FDA already has been charged with numerous responsibilities and has been criticized time and time again for its inability to meet statutory requirements due to funding constraints. In fact, just yesterday, I held a hearing in the Senate Judiciary Committee on the safety of imported drugs where FDA officials told members of my Committee how difficult it would be for them to ensure the safety of imported drugs because the agency is already strapped for resources. How can we expect the FDA to take on new responsibilities without supplying the agency sufficient funding for performing its current duties?

In closing, let me address the tobacco buyout provisions.

Mr. President, I am all for measures to reduce our Nation's dependence on tobacco, and measures to encourage less tobacco production are an important part of that equation.

I am encouraged that the amendment we are considering tonight does not use taxpayer funds to accomplish the buyout. That is an important point. I also recognize that the program will help get the Government out of the farming business while making temporary assistance available to farmers as they adjust to the free market. That being said, questions worthy of serious consideration have been raised about where this assistance will go, and I think we need to study that more.

Mrs. FEINSTEIN. Mr. President, I rise today to support the amendment offered by my colleagues Senators DEWINE and KENNEDY. The amendment they have offered today is the product of many years of hard work and leadership.

The amendment combines legislation to empower the Food and Drug Administration, FDA, to regulate tobacco products with Senator MCCONNELL's tobacco buyout bill.

I believe this is the right approach. Last week, seven of my colleagues and I wrote to Senators FRIST and DASCHLE to express our view that no tobacco buyout plan should move ahead if it does not include meaningful and effective FDA oversight of tobacco.

The 5-year, $9.6 billion tobacco buyout provision in the House FSC/ETI bill is not only worse for tobacco growers than the McConnell bill, but it does nothing to protect public health and to reduce tobacco's tremendous toll in health, lives and money.

The DeWine-Kennedy amendment gives the FDA the authority to: Restrict advertising and promotions that appeal to children; stop illegal sales of tobacco products to children; require changes in tobacco products, such as the reduction or elimination of harmful chemicals, to make them less harmful or less addictive; prohibit unsubstantiated health claims about so-

called ''reduced risk'' tobacco products that would have the effect of discouraging current tobacco users from quitting or encouraging new users to start; and require the disclosure of the contents of tobacco products and tobacco industry research about the health effects of their products.

This amendment is supported by the American Cancer Society, the American Heart Association, the Campaign for Tobacco-Free Kids, and the American Lung Association.

Tobacco use is the leading preventable cause of death in the United States. Every year in America, tobacco use kills more than 400,000 people and costs our Nation more than $75 billion in health care bills. Today approximately 4,000 children under age 18 will try smoking for the first time and 2,000 children will become regular smokers. Smoking is the cause of one-third of all cancers.

Unless we act to pass FDA regulation of tobacco, this number will only get worse.

During my time in the Senate, I have become very involved with cancer. I am the co-chair of the Senate cancer caucus and the vice-chair of C-Change, formerly the National Dialogue on Cancer, which is chaired by former President and Barbara Bush.

The cancer community is united in the belief that the single most important preventive measure is to place tobacco products under the regulatory control of the Food and Drug Administration. I stand behind the cancer community and express the same belief.

I firmly believe that cancer cannot be conquered without addressing smoking and the use of tobacco products.

Smoking results in death or disability for over half of tobacco users, according to the Centers for Disease Control, CDC.

Over the past two decades, we have learned that tobacco companies have manipulated the level of nicotine in cigarettes to increase the number of people to their product.

There are more than 40 chemicals in tobacco smoke that cause cancer in humans and animals, according to the CDC. Tobacco smoke has toxic components, as well as tar, carbon monoxide and other dangerous additives.

It is long past time to reduce the addictive nature of cigarettes and curtail the marketing of these products to young people. I believe that empowering the FDA to regulate tobacco will help do that.

The U.S. Surgeon General and the Centers for Disease Control and Prevention have unequivocally demonstrated that, for example, antismoking campaigns can reduce smoking, a major cause of cancer.

California is a good example. My State started an aggressive tobacco control program in 1989 and throughout the 1990s. As a result of California's aggressive approach, is the first State in the Union to see a decline in lung cancer among women, as a result of the State's active prevention efforts.

This amendment will provide meaningful regulation by the Food and Drug Administration of the content and marketing of tobacco products, especially the addicting and carcinogenic components.

I am pleased to note that even the Philip Morris companies has acknowledged the need for FDA to regulate tobacco.

It is long past time to reduce the addictive nature of cigarettes and curtail the marketing of these products to young people. This amendment gives FDA the power to regulate tobacco products' content, design, sale, and marketing.

I am a strong supporter of this amendment. However, I will not support any final proposal that weakens the DeWine-Kennedy amendment or contains a tobacco buyout provision that is fully funded by general revenues.

Mr. ENZI. Mr. President, I cannot support this amendment that would place the regulation of tobacco products under the jurisdiction of the Food and Drug Administration.

The question is not whether the Federal Government should regulate tobacco products. It should and it does already, through a variety of agencies. The regulations are based on a variety of laws that Congress has passed over the past few decades.

We have Federal laws to require health warnings on all packaging and in all print and outdoor advertisements. We have prohibited the advertisement of tobacco products on television and radio. We require the Secretary of Health and Human Services to report to us every 3 years on research findings about tobacco and addiction.

We also require States to prohibit the sale of tobacco products to anyone under age 18. States that do not comply with this requirement risk the loss of Federal block grant funding.

The question again is not whether Federal regulation of tobacco products is appropriate. It is whether the FDA should be responsible for a broad new regulatory scheme that would cover everything from the manufacture of smokeless tobacco to the sale of cigarettes at the corner store.

At a time when the FDA's challenges have never been greater or more significant, the last thing we need is to give the FDA a huge task that will draw attention and focus away from its already considerable responsibilities.

The FDA is already overworked and underfunded. We ask the FDA to be responsible for so many things: ensuring that new drugs and medical devices are safe and effective, safeguarding the Nation's blood supply, regulating the manufacture and distribution of food additives and drugs that will be given to animals, and increasing the security of our food supply. Consumer and industry groups regularly complain that the FDA's budget is inadequate and its mandate is too broad to enable the agency to manage its current workload.

Yet here we are, proposing to give the FDA another huge responsibility, for which it will have to create another huge bureaucracy within its already sprawling structure. Now, more than ever, our families and children need to know that the FDA can meet its current obligations.

I recognize that a number of important voices in the public health community are calling for FDA regulation of tobacco products, but I fail to understand why regulation by this particular agency is so critical.

Those who support FDA regulation of tobacco say that they are not interested in banning cigarettes or other tobacco products. This makes no sense to me. With everything we know about the dangers of tobacco use, how would the FDA arrive at any other conclusion but to ban tobacco products?

One of the purposes of the bill would ''vest the FDA with the authority to regulate the levels of tar, nicotine, and other harmful components of tobacco products.'' Well, we know that nicotine is an addictive drug and by itself may cause health problems. And we also know that tar and other chemicals in tobacco products are very harmful to our health.

How would the FDA remain true to its mission without requiring manufacturers of tobacco products to reduce the level of nicotine to zero? Reducing the level of the addictive drug in tobacco products would effectively result in a ban of tobacco products—after all, how would a smoker get their ''nicotine high'' from a nicotine-free product?

Having said that, I believe an outright ban on tobacco products is impractical. If I thought that banning cigarettes would stop people from smoking, I would say let's pass a law and make it so. Banning cigarettes will not stop people from smoking, though, just like prohibition failed to stop people from drinking.

So if we are not going to ban tobacco products, then what is the point of FDA regulation of tobacco? We already have the necessary tools to address the other concerns that some use to justify giving the FDA this new power.

For instance, the Federal Trade Commission has broad authority to prevent false or misleading claims for consumer products, and Congress has given the FTC the explicit authority to oversee the labeling and advertising of tobacco products.

For health or safety claims in advertising, the FTC generally requires a high level of substantiation, including competent and reliable scientific evidence. The record shows that the FTC has not hesitated to exercise its enforcement authority to prevent or correct false or misleading tobacco product advertising, including express or implied claims about exposure and other health-related issues.

So, if a cigarette manufacturer were to promote a ''reduced-risk'' product

with misleading advertising or unsubstantiated claims, I am confident that the FTC would take decisive action against them. In fact, researchers supported by the National Institutes of Health are already studying ''reduced-risk'' products with a skeptical eye, providing the type of independent scientific review that goes well beyond anything the FDA customarily produces on its own. This suggests to me that manufacturers of ''reduced-risk'' products are not going to be able to count on the Government's silence in response to any advertising claims they may make.

I would rather have the FTC continue its vigorous enforcement against dangerous or deceptive advertising claims rather than set up a regulatory scenario under which the FDA puts its ''stamp of approval'' on a reduced-risk cigarette. Most Americans see the FDA as the protector of the public health, yet everyone agrees that smoking kills, and that there is no such thing as a ''safe'' cigarette. The FDA would send a mixed and confusing message if it were suddenly to begin approving tobacco products that would still kill the user, just at a slower pace.

Another argument for FDA regulation of tobacco products is that we need to involve the FDA if we are going to crack down on illegal sales of tobacco products to children. Right now, this job belongs to State and local governments, and I believe it should stay that way.

Every State has laws against selling tobacco to people under the age of 18, so the issue is enforcing these laws, not creating new ones. And these current laws are working. The number of kids who have purchased tobacco in retail stores has dropped by 50 percent since the implementation of the Federal Synar amendment in the late 1990s.

Working together with States, communities and retailers, we already are making great strides in preventing kids from purchasing tobacco. Our current efforts are working, so it makes no sense to change horses in midstream and bring the FDA into every convenience store across America.

To reduce underage access to tobacco, we ought to build upon the successes of the Synar amendment. This Congress is due to reauthorize the agency that oversees the implementation of the Synar amendment. This gives us the perfect opportunity to consider how the Synar amendment is working and what we could do to make it even more effective.

Combining greater education with tougher enforcement is the answer to tobacco prevention. The States that take the most comprehensive approaches to tobacco prevention, particularly those that work closely with local programs and coalitions, have achieved some of the best records, in preventing the initiation of tobacco use by kids.

We should hold these States out as models for others, instead of inserting a new Federal bureaucracy into the equation. Our Federal efforts should support our communities by providing tools and information for adults on the dangers of tobacco use, teaching our kids about these dangers so that they don't start using tobacco, and on enforcing the laws we already have on the books. But our local communities and states should take the lead.

Stopping kids from smoking will require continuing collaboration between State governments, local governments, community organizations, academic institutions, and Federal agencies like the FTC and the Department of Health and Human Services. And this partnership is working. It has successfully reduced the prevalence of smoking in the United States by 22 percent from 1990 to 2002. It also has reduced the prevalence of smoking by high schoolers by 22 percent from 1997 to 2001.

These numbers show that we are making progress. Let's not mess with success. Let's stick with what is working.

I am no fan of tobacco, but I am going to vote against giving a huge new responsibility to the already overburdened FDA. Giving tobacco regulation to the FDA will not stop adults from smoking, and I doubt whether the FDA would to any better at keeping cigarettes out of the hands of kids than our States and communities are doing.

I reject the notion that the way to show you're ''for kids'' and ''against big tobacco'' is by voting for the creation of a new and unnecessary bureaucracy that would operate under a mandate that is simultaneously too broad and too vague.

This vote is not a choice between kids and big tobacco. This vote is about the best way for the Federal Government to continue regulating tobacco products.

I will oppose this amendment because I believe the best role for the Federal Government in tobacco prevention is to focus on education and enforcement. We already have the laws and regulations in place. Let's use them to the fullest before we create new ones.

Mr. DASCHLE. Mr. President, for several years, those in tobacco country have been working to enact a program to transition tobacco farmers out of the current tobacco quota program. At the same time, many of us have been working to give the Food and Drug Administration regulatory authority over tobacco. Today we have the opportunity to pass legislation that does both.

In the finest tradition of the U.S. Senate, this amendment embodies compromise that represents a careful balance of often disparate and competing interests. While no member got everything they wanted, each participant has won important victories that made this proposal stronger.

Senators from tobacco areas have been pushing for a tobacco buyout, to transition tobacco farmers from the antiquated quota system. Being from a rural State, I understand the economic engine that agriculture provides rural America. And, I appreciate the struggles that tobacco farmers have faced in recent years.

The tobacco buyout included in this amendment provides tobacco farmers and quota holders important economic assistance as they transition from the current tobacco quota program to the free market. The buyout has several features that are superior to the House-passed buyout bill. First, the buyout is paid for through assessments on the tobacco manufacturers instead of by the taxpayers. Second, the legislation limits the production of tobacco to traditional growing areas. This ensures that tobacco farmers who choose to continue growing tobacco do not have to unfairly compete with startup tobacco production in other parts of the country. Third, this legislation provides impacted states with economic development grants to help diversify tobacco dependent economies.

On the Democratic side, both Senator EDWARDS and Senator HOLLINGS have been working tirelessly on tobacco for several years. And, Erskine Bowles has personally called scores of my colleagues to let them know how important a buyout is, and how important it was to get this done. In large part, his efforts to educate members about the effects the quota cuts have on farmers and communities helped ensure passage of the buyout today. His advocacy also helped ensure an additional $50 million in economic support for North Carolina was included in the bill.

Many of us also feel very strongly that we need to provide FDA with authority to regulate tobacco. Each year, I am visited by South Dakota youth advocates who volunteer their free time to discourage tobacco use by their peers. They are some of the most impressive young people you could hope to meet. And their cause couldn't be more important.

In the United States, over four million high school students are current or past smokers—29 percent. Thirty-three percent of South Dakota high school students smoke. In South Dakota alone, 5,100 kids try cigarettes for the first time each year. Of those, 2,300 South Dakotans under the age of 18 become regular, daily smokers each year. These numbers are alarming because it is truly a matter of life and death.

Four-hundred thousand people die each year from their own cigarette smoking. Forty thousand die because other people smoke. In South Dakota, 900 children have lost at least one parent to a smoking-caused death. And, in addition to the human cost, there are significant financial costs. The total public and private health care expenditures caused by smoking in this country total over $75 billion each year. Medicare alone has over $20 billion each year in smoking-related expenditures.

Today, we are considering legislation to address this critical public health

need. I thank Senators DEWINE and KENNEDY for their hard work on this issue. The bipartisan bill we have before us would give the FDA the authority to restrict tobacco advertising, particularly advertising that targets children. Under this bill, the FDA could prevent tobacco sales to children and limit cigarette sales to face-to-face transactions in which age can be verified. The bill calls for stronger warnings on packaging and allows the FDA to prevent cigarette manufacturers from misrepresenting the facts. It would also allow the FDA to reduce or remove hazardous ingredients from cigarettes, when feasible, in order to help those who are addicted.

The FDA authorities provided by this amendment are critical to reducing smoking, particularly among our children. And the provision to assist tobacco farmers are critical to remedy a growing problem. This bipartisan amendment represents a true compromise and I urge my colleagues to support it.

Mr. HARKIN. Mr. President, we have a chance today to address one of the most significant public health threats of our lifetimes—tobacco use. For my entire tenure in Congress I have been working to protect our children from big tobacco and the horrendous health risks associated with the deadly habit. It was in 1977 that I first introduced legislation calling for repeal of the tax deductibility of tobacco advertising and marketing so taxpayers would not have to subsidize billions to promote smoking. Back in 1998, I introduced the KIDS Deserve Freedom Act to give FDA authority to regulate tobacco and more specifically set up a plan to cut the number of kids who start smoking in half. More recently, I introduced the HeLP America bill to reform our health care system to focus more on prevention and wellness. It would require tobacco companies to reduce teen smoking rates or instead face a stiff financial penalty.

Unfortunately, victories in the tobacco wars have come few and far between. But I am more hopeful now than ever that we can pass a comprehensive plan that would once and for all change how this Nation deals with tobacco and dramatically cut the number of our kids addicted to this deadly product. More that 400,000 Americans die of tobacco related illness at a cost of over $100 billion. And the tobacco industry has been engaged in a systematic campaign of distortion and deceit to hook kids and hide the facts from the American people.

Our goal is to be on the Senate floor 3 years from now announcing that, indeed, child smoking has been cut in half.

The time is ripe for regulation. Every day, 4,000 children under age 18 start smoking, of which 1,000 will ultimately die of smoking-related diseases. Almost 90 percent of adult smokers started using tobacco at or before age 18; the average youth smoker begins at age 13 and becomes a daily smoker by age 14½.

We cannot wait another day to end these senseless and preventable statistics. The Dewine-Kennedy-McConnell amendment will once and for all give the FDA the authority they need to regulate this industry while at the same time give tobacco farmers the ability to get out. I want to be clear, though, there has already been a tremendous amount of compromise to get to this deal and this FDA authority/buyout combination must be kept together for any FSC conference to occur. But the time has come for desperately needed regulation.

Five years after the multi-billion-dollar settlement with big tobacco, I think we can all agree that we still have a great deal of work to do to protect our Nation's children from tobacco. While the tobacco settlement prohibits television and billboard marketing of tobacco and direct advertising to children, the end result has been less than perfect.

The tobacco companies have perceived kids as young as 13 years of age as a key market. As an RJR Tobacco document put it, ''Many manufacturers have 'studied' the 14–20 market in hopes of uncovering the 'secret' of the instant popularity some brands enjoy to the almost exclusion of others. . . . Creating a 'fad' in this market can be a great bonanza.''

The tobacco industry spent an estimated $10 billion on advertising and promotion in 2001. That is $30 million every day. This number is more alarming in light of the fact that this $11 billion is a 67 percent increase in spending from 1998 when the settlement took effect.

I suppose the tobacco industry can respond by saying that none of this spending was directed specifically at young people. But we do know that in 2000, $60 million was spent on advertising in youth-oriented magazines. We know that, while promotional items such as t-shirts, backpacks, and CD players are ostensibly for smokers over 21 the end result is that 30 percent of kids 12 to 17 years old own at least one of these promotional items. This is frightening because students who own a promotional item are 4 times more likely to be smokers than kids who don't own these items. Even though we don't see tobacco packaging as blatant as Joe Camel, the industry has become more sophisticated in their approach. Let's take a look at some of these products. You tell me a hip-hop picture on Kool cigarettes is not directed at kids.

A package of Liquid Zoo cigarettes looks more like a candy package than anything.

And there is more. Big tobacco is using promotions and more creative marketing strategies but they are also using slicker tactics than that. Take for example a study that found 50 percent of tobacco retailers had tobacco ads at young kids' eye level. That is tobacco marketing at three feet or lower. Twenty-three percent of these tobacco retailers had cigarette product displays within 6 inches of candy. How can we say that this is not marketing directed at our kids? These are the kinds of tactics that are unconscionable and must be stopped. The FDA must be given the necessary authority to regulate tobacco.

And what about disclosing ingredients? Tobacco can make claims that their cigarette is safer, and we have no way of proving that.

Today, the Senate will consider an amendment that is critical to the health of both the kids and the adults in our country. This amendment would give the Food and Drug Administration the authority to protect ourselves from the dangers of starting smoking. This amendment would give the FDA the authority to regulate the sale, distribution, and advertising of cigarettes and smokeless tobacco in order to stop tobacco company marketing practices that target children and mislead the public. It would also give the FDA the authority to crack down on vendors who continue to sell cigarettes to kids.

HHS Secretary Tommy Thompson testified just this morning that over $150 billion was spent on tobacco-related illness last year. That is only the monetary cost of this lethal product. Forty-seven million Americans smoke, and 400,000 people a year die because of it. Smokers have a one in three chance of dying from smoking-related conditions. This is not the future that we want to doom our children to. I hope my Senate colleagues will join me in protecting the health of our youth by supporting this important amendment.

This quota buyout is far from perfect, but I can go along with it as long as it is inextricably bound together with the FDA authority. It is absolutely essential that these two components remain tied together in any final legislation that is sent to the President for signature.

The quota buyout has been sought by tobacco growers and by the tobacco companies. Basically, they say that the current system, begun in the Great Depression, is out of date. It cannot accommodate the present-day global market in tobacco and tobacco products.

A new system without quotas will be easier for tobacco growers and the tobacco companies to operate under. The buyout of quota will help farm families who face a bleak economic future in tobacco farming make the transition to other opportunities. Clearly, ending the quota and price support system will lower the cost to the tobacco companies of acquiring tobacco for manufacturing.

If we are giving the tobacco companies an easier system—a less costly system—in which to procure tobacco and conduct their business of manufacturing and selling tobacco products, then it is absolutely critical—even more critical—that the FDA have basic

authority to regulate the marketing of tobacco to the public—and to children most importantly.

It is also essential that the quota buyout be paid for through assessments on the tobacco companies, as it is in this amendment. That is so for several reasons. In essence, the funding approach in this amendment is a continuation of the principle that has been in effect for over two decades, called the No-Net-Cost Tobacco Program.

The No-Net-Cost principle—although it has not been followed 100 percent—is that the taxpayers do not bear the cost of operating the tobacco quota and price support loan program. By the same token, if we are ending the tobacco quota and price support loan program in this amendment then the taxpayers should not be forced to bear that cost. If the taxpayers pay for the quota buyout that would take our policy backwards and abandon the principle established, as I say, more than 20 years ago.

We have learned much in the intervening years since the No-Net-Cost principle was adopted in 1982 about the actions and behavior of the tobacco companies. In the face of the companies' infamous record, it would be a blatant travesty of justice to use taxpayer dollars now for the benefit of the tobacco companies through ending the quota and price support loan program.

In any case, the taxpayers don't have the money to fork over for a tobacco quota buyout. The House of Representatives has adopted a quota buyout spending $9.6 billion of taxpayer money. In this time of record budget deficits, it would be irresponsible to saddle our children and grandchildren with another nearly $10 billion in debt plus interest costs for years into the future. And it would be even more irresponsible to use taxpayer funds for that purpose when critically important farm bill programs for conservation, rural development, research and renewable energy have been cut.

One last point. This legislation should have been considered by the Committee on Agriculture, Nutrition and Forestry prior to floor action. It is unfortunate that something as significant as the elimination of an existing agricultural program and the creation of a new program did not benefit from consideration by the committee of jurisdiction.

I would like to turn my attention very briefly at this time to the issue of overtime. We are about to go to conference on the FSC/JOBS bill, and as we all know, our Senate version of that bill contains my overtime provision, which passed this body with 52 votes.

We voted in the Senate to ensure that any worker who currently has the right to earn overtime as a result of his or her job duties, would not lose that right under the Bush administration's new rules, due to take effect next month.

When we debated the new rules back in May, I and others argued that they represented a shameful assault on the paychecks of millions of hard-working Americans. We were right. Earlier this week, three former Department of Labor, DOL, officials, who worked under Republican and Democratic administrations, released a report that detailed their assessment of the new rules. It states unequivocally that in every instance where DOL has made a change to existing rules, with the exception of the salary-level adjustment, it has weakened the criteria for overtime exemptions.

The portion of the rule that expands overtime eligibility for low-income workers by raising the minimum-salary threshold is a good step. My amendment allows that portion of the rule to go forward. I believe the salary threshold should be raised even higher than in DOL's proposal, to take inflation into account.

Also this week, the Economic Policy Institute, EPI, released its analysis of DOL's final rule, which found that 6 million workers will lose their right to overtime when the new regulations take effect. EPI's analysis of the administration's new rules include these findings:

Nearly 2 million administrative workers will lose overtime rights under a rule change that makes ''team leaders'' ineligible, even when they don't supervise others on the team.

A change in the definition of who is a ''learned professional'' will mean the end of overtime eligibility for about 920,000 workers without a college or graduate degree.

Overtime rights will end for about 1.4 million workers reclassified as executives under the new rules, even though they do little supervision and a great deal of manual or routine work, and they only recommend ''changes in status'' of other workers.

Others who will lose their current overtime rights under various provisions of the new law are: 130,000 chefs, sous chefs, and cooks (to be reclassified as ''creative professionals''); 160,000 financial services workers; 117,000 teachers and computer programmers.

The stakes for workers—and for our economy—are high. Time-and-a-half pay accounts for about 25 percent of the total income of Americans who work overtime. I hope the conferees will retain our provision. Millions of American workers deserve an iron-clad guarantee that their overtime rights are safe.

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

● Mr. BAUCUS. Mr. President, I support the Kennedy-DeWine tobacco amendment to the JOBS bill. I believe that FDA authority must go hand-in-hand with any tobacco buy-out. I am pleased that we were able to reach this compromise. Although I was unable to cast my vote for this important amendment, I did want to be on the record in support of the amendment.●

Mr. INHOFE. Mr. President, we have repeatedly regulated tobacco consumption because it is a real public health hazard and we need to make certain that people are aware of the risks they take in using it. Of course, that does not mean that any law that regulates tobacco is a good one. The amendment we are discussing would indeed not make good law. I would like to call your attention to troubling aspects of this current amendment that authorizes Food and Drug Administration, FDA, regulation of tobacco.

This amendment would create more bureaucracy and increase the size of government by giving the FDA more control over the tobacco industry. This increased bureaucracy will lead to the need for more funding and personnel to enact the new regulations. This amendment would give the Secretary the power to impose ''restrictions on the sale and distribution of a tobacco product, including restrictions on the access to, and the advertising and promotion of, the tobacco product, if the Secretary determines that such regulation would be appropriate for the protection of the public health.'' Here are some further examples of the increased FDA authority: It would allow the Secretary to require warning labels to cover half a pack of cigarettes, even requiring colors, graphics, and formats.

It would give the Secretary authority to require disclosure of any cigarette or other tobacco product constituent including any smoke constituent that he deems to benefit public health. This could very easily be an impossible burden levied at the Secretary's whim.

When it comes to record keeping, this bill simply says that the Secretary of the FDA will take into account the size of businesses when putting the regulations into place. This new authority is too vague, and it could be interpreted as giving the FDA the ability to discriminate based on arbitrary ideas of what size a business should be. This amendment would give the FDA wholesale authority to regulate every aspect of construction, ingredients, components or properties, including the sale, distribution, access, marketing and labeling, through the application of ''product standards.''

I am also troubled by the fact that we do not have the option to make amendments to such an expansive bill since it is being rushed through the Senate attached to the FSC/ETI bill instead of following traditional committee procedures such as hearings and markup and floor amendment.

This amendment cites underage tobacco use as a reason for increased regulation. Underage use is troubling, but the fact is that there are already decisive laws in place to prevent minors from purchasing tobacco. There is a need for better enforcement, not more FDA regulation. The authority given to the FDA in this amendment no longer focuses on reducing youth usage, but rather, on adult consumption by stating that the new restrictions focus on protecting the public health.

Another problem is that this amendment holds retailers accountable for labeling when it is the manufacturer's responsibility. ''This paragraph shall not relieve a retailer of liability if the retailer sells or distributes tobacco products that are not labeled in accordance with this subsection.''

These FDA regulations would reduce competition by increasing regulatory costs and restricting the ability to communicate with adult smokers.

These proposals place so many barriers to the introduction of new conventional products, those making no health claims and potentially reduced risk, that it discourages their development.

It increases black market attractiveness. The numerous restrictions and regulations provide ample incentives to illegal operators.

I ask unanimous consent that the text of several statements made by the National Association of Convenience Stores, the American Conservative Union, the Association of National Advertisers, the American Association of Advertising Agencies, the American Advertising Federation, the American Wholesale Marketers Association, and many on the HELP Committee, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NATIONAL ASSOCIATION
OF CONVENIENCE STORES,
Alexandria, VA, June 17, 2004.

Re KEY VOTE ALERT.

Hon. Senator FRIST,
Dirksen Senate Office Building,
Washington, DC.

DEAR SENATOR FRIST: I am writing on behalf of the National Association of Convenience Stores (NACS) to inform you that as drafted, and without significant changes, the Kennedy-DeWine amendment to the FSC/ETI bill, regarding FDA's authority to regulate the sale of tobacco products has a significant negative impact to the retailing community and therefore, NACS urges you to oppose this effort.

NACS is an international trade association that represents the over 130,000 convenience stores across the United States whom employ over 1.4 million hard working Americans. Small family- owned operations predominant in the convenience store industry, and in fact, 70 percent of NACS members own and operate 10 or less stores.

This legislation, introduced by Senators TED KENNEDY and MIKE DEWINE and Representatives HENRY WAXMAN, TOM DAVIS and MARTY MEEHAN, has several fundamental problems.

Convenience Stores Receive Unequal Treatment: Under this legislation, all tobacco retailers are NOT treated equally. To be comprehensive, all retailers of tobacco, including those selling over the internet, through the mail, through adult-only locations, and on Indian reservations, must abide by the same regulations, however, these bill fall far short. Further the bill does not specify how the law will be enforced (state, local or federal authorities), thereby neglecting the issue of Native American sovereignty and enforcement on tribal lands (to which all consumers have access through the internet).

Responsible Retailers Treated Unfairly: Authors of this legislation continue to hold retailers liable for actions out of their control. For example: If a company trains its associates in an agreed-upon age-verification course, that company should not lose its tobacco license if a trained associate makes a mistake (knowingly or accidentally). If the company is irresponsible and does not prepare its associates properly, only then should the store have its tobacco license suspended. Additionally, retailers should not be held responsible for the numerous warning labels being required on product delivered to them.

Missing Penalties on Minors: Minors, not retailers, initiate attempted illegal transactions. There should be adequate penalties to discourage both supply and demand of underage tobacco consumption. These bills have no such provision.

Lacking Key Provision: Retailers need tools to help continue to crack down on illegal sales. Another provision missing would allow for easier electronic age verification for retailers choosing to use this tool.

Unconstitutional Provisions Included: There are also advertising restrictions, which the U.S. Supreme Court has already struck down as unconstitutional. Moreover, these restrictions could negatively impact signage inside a store since it may be visible from outside the store.

Although the authors indicated that retailers' concerns were addressed in this legislation bill, they fell short in several areas and failed to address several major points of contention. Without significant changes to the Family Smoking Prevention and Tobacco Control Act (S. 2461 and H.R. 4433), NACS urges Members to oppose this legislation and will KEY VOTE AGAINST any similar amendment that negatively impacts the retailing industry.

Sincerely,

ALLISON R. SHULMAN,
Director, Government Affairs.

AMERICAN CONSERVATIVE UNION,
Alexandria, VA, July 15, 2004.

DEAR SENATOR: The American Conservative Union has learned that anti-smoking and public health advocates are dropping their support of the proposed FDA legislation which is scheduled for consideration on the Senate floor today. Members of these groups have concluded that no evidence exists that links established performance standards by the FDA to safer products and fewer deaths, as argued by Philip Morris.

In fact, public health advocates are convinced that the basic regulatory framework established by the FDA bill will make it virtually impossible for reduced-risk products to enter the marketplace. When the economic incentive for companies to fund comprehensive and meaningful research into significantly safer products is taken away, the economic enticement of profit ceases to exist.

FDA regulation could potentially be used to encourage research, develop and market actual reduced risk products, but the proposed legislation does the opposite. It acts as a roadblock preventing development and marketing of these constantly evolving products.

The passage of FDA regulation is good for only one thing: padding Philip Morris' bottom line.

This new information further reinforces ACU's opposition to the current FDA regulation legislation. On behalf of our one-million members and supporters, the American Conservative Union strongly urges you to oppose and vote against FDA regulation of American tobacco, an industry that already is sufficiently regulated by the federal government. This harmful prospect is bad for American business, and more importantly, curbs the incentive for continuing the research and development of safer products, as public health experts have concluded.

JUNE 1, 2004.

Hon. JUDD GREGG,
Chairman, Committee on Health, Education, Labor and Pensions, U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: On behalf of the Association of National Advertisers (ANA), the American Association of Advertising Agencies (AAAA) and the American Advertising Federation (AAF), we are writing to express our opposition to several of the marketing provisions of S. 2461, the ''Family Smoking Prevention and Tobacco Control Act.''

We oppose section 102 of the bill, which would direct the Secretary of Health and Human Services to publish an interim final rule that is ''identical in its provisions'' to the proposed rule promulgated by the FDA in 1996. Legal experts from across the political spectrum agree that the sweeping and unprecedented restrictions in that proposal, which would result in a de facto ban on tobacco advertising, would violate the First Amendment. In fact, the U.S. Supreme Court held in the Lorillard case in 2001 that a Massachusetts tobacco regulation that was virtually identical to one part of the FDA proposal was unconstitutional.

Section 201 of the bill would add new disclosure requirements for all tobacco advertising on top of those contained in the FDA's 1996 proposed rule. In addition, the bill would require the FDA to conduct a rulemaking to determine whether it should mandate the inclusion of tar and nicotine yields in all labels and advertising. All of the various disclosure requirements of S. 2461 place the government in the role of copywriter. By ''seizing'' a substantial portion of every tobacco ad for government-mandated disclosures, the bill raises First Amendment concerns about ''compelled speech'' and could result in an unconstitutional ''taking'' of a company's commercial property in violation of the Fifth Amendment.

We also oppose section 203 of S. 2461, which would grant new authority to state and local governments to impose ''specific bans or restrictions on the time, place and manner'' of tobacco advertisements. Much of the advertising for tobacco products occurs in interstate commerce. Allowing individual states and local governments to impose their own bans or restrictions would result in a crazy-quilt of inconsistent laws, making tobacco advertising virtually impossible.

We take no position on the provisions of the bill that would generally grant the Food and Drug Administration (FDA) the authority to regulate tobacco products.

Enacting the FDA's 1996 Tobacco Advertising Restrictions Would Violate the First Amendment

We believe that the sweeping tobacco advertising restrictions promulgated by the FDA in 1996 violate the First Amendment rights of tobacco companies to communicate with adults. The FDA's proposal would impose the following restrictions on tobacco advertising:

Ban all outdoor advertising for tobacco products within 1,000 feet of any elementary or secondary school or playground;

Require all permitted tobacco advertising, including direct mail, to be black text on a white background, except in magazines, newspapers or other periodicals with adult readership of 85% or more, or fewer than 2 million readers under the age of 18;

Require all advertisements and labels to identify the tobacco product as a ''nicotine delivery device'';

Require all advertisements to contain a government-dictated ''brief statement'' (in

addition to the current Surgeon General's warning) to serve as a warning about possible dangers associated with the use of tobacco products;

Ban the use of promotional items such as hats or T-shirts containing the name or logo of a tobacco product, and prohibit other promotional techniques such as product giveaways, rebates or refunds;

Require sponsorship of athletic, musical, social or other cultural events in corporate name only;

Require all advertisers of tobacco products to fund and participate in a national public education campaign designed to discourage the use of tobacco products by minors. The FDA would require the annual fund established for this campaign to total $150 million;

Require compliance with more stringent requirements as enacted by state and local governments; and

Authorize the enactment of additional restrictions seven years after implementation of a final rule if the number of minors who use tobacco products has not decreased by 50% from 1994 levels.

The net effect of the FDA proposal would be a de facto ban on advertising tobacco products. This regulatory package violates the First Amendment protections for commercial speech.

The U.S. Supreme Court has made it clear that truthful, nondeceptive commercial speech cannot be banned or restricted unless the restriction ''directly and materially advances'' a ''substantial governmental interest'' and is ''narrowly tailored'' to ''reasonably fit'' that interest. See *Central Hudson Gas and Electric Corporation* v. *Public Service Commission of New York*, 447 U.S. 557 (1980).

In *44 Liquormart, Inc.* v. *Rhode Island*, 517 U.S. 484 (1996), a unanimous Supreme Court reaffirmed that all truthful, nondeceptive advertising about a legal product is entitled to the same level of First Amendment protection, regardless of the product.

In the *Lorillard* case, the Supreme Court struck down a regulation promulgated by the Attorney General of Massachusetts that was similar in many respects to the FDA's proposed rule. The Massachusetts regulation banned outdoor ads within 1,000–feet of schools, parks and playgrounds and also restricted point-of-sale advertising for tobacco products. See *Lorillard Tobacco Company* v. *Thomas Reilly, Attorney General of Massachusetts*, 533 U.S. 525 (2001).

In finding that the Massachusetts regulation was not narrowly tailored, Justice O' Connor actually noted a similar problem with the FDA regulation: ''First, the Attorney General did not seem to consider the impact of the 1,000–foot restriction on commercial speech in major metropolitan areas. The Attorney General apparently selected the 1,000–foot distance based on the FDA's decision to impose an identical 1,000- foot restriction when it attempted to regulate cigarette and smokeless tobacco advertising. (Citations omitted) But the FDA's 1,000–foot regulation was not an adequate basis for the Attorney General to tailor the Massachusetts regulations. The degree to which speech is suppressed—or alternative avenues for speech remain available—under a particular regulatory scheme tends to be case specific. (Citations omitted) And a case specific analysis makes sense, for although a State or locality may have common interests and concerns about underage smoking and the effects of tobacco advertisements, the impact of a restriction on speech will undoubtedly vary from place to place. *The FDA's regulations would have had widely disparate effects nationwide. Even in Massachusetts, the effect of the Attorney General's speech regulations will vary based on whether a locale is rural, suburban, or urban. The uniformly broad sweep of the geographical limitation demonstrates a lack of tailoring*.'' (Emphasis added)

Thus, the Supreme Court has already examined one provision of the FDA proposal—the 1,000-foot ban on outdoor ads—and suggested that it violates the First Amendment because it is not narrowly tailored.

The Supreme Court rejected the efforts of the Massachusetts Attorney General to ''childproof' the flow of information in our society. Children deserve to be protected from inappropriate or harmful material, but the government may not use the guise of protecting children to impose sweeping restrictions on information intended for adults. In *Bolger* v. *Youngs Drug Products Corporation*, 463 U.S. 60 (1980), the Court stated that efforts to restrict advertising cannot lower discourse in society ''to the level of the sandbox'' and citing *Butler* v. *Michigan*, 353 U.S. 383 (1957), that ''Government may not reduce the adult population . . . to reading only that which is fit for children.'' 463 U.S. at 73.

One of the most vocal critics of the tobacco industry, Harvard Law School Professor Laurence Tribe, argued that the tobacco advertising bans included in the master settlement agreement between the tobacco companies and the states, if legislated, would raise serious First Amendment concerns. So have a broad range of public policy groups, from the Washington Legal Foundation to the American Civil Liberties Union (ACLU). In testimony to the Senate Judiciary Committee on February 20, 1998, the ACLU stated: ''The ACLU believes that . . . both legislation and proposed regulation by the Food and Drug Administration (FDA) . . . on tobacco advertisements . . . is wholly unprecedented and, if enacted, will most likely fail to withstand constitutional challenge. Moreover, we believe that the enactment of the proposed tobacco advertising restrictions would impose a drastic curtailment of commercial speech and could have a chilling effect on the right of the public and businesses to engage in free speech about controversial subjects.''

A number of legal scholars, including Judge Robert Bork; Burt Neuborne, Professor of Law at New York University School of Law; Rodney Smolla, Professor of Law at the College of William & Mary; and First Amendment expert Floyd Abrams have all publicly testified regarding the constitutional problems with legislating this type of speech restriction. In a Washington Legal Foundation publication in 1996, Judge Bork stated: ''[T]he recent proposal of the Food and Drug Administration (FDA) to restrict severely the First Amendment rights of American companies and individuals who, in one way or another, have any connection with tobacco products [is] patently unconstitutional under the Supreme Court's current doctrine concerning commercial speech as well as under the original understanding of the First Amendment.''

While the government has a legitimate interest in fighting the use of tobacco products by minors, the FDA's proposed regulations sweep far too broadly and result in massive censorship of truthful speech aimed at adults.

New Disclosure Requirements Would Overload Advertisements

As noted above, the FDA's proposed rule from 1996 would require that all ads identify the tobacco product as a ''nicotine delivery device'' and contain a government-dictated ''brief statement,'' in addition to the current Surgeon General's warnings. Section 201 of S. 2461 would add another layer of disclosures to all ads. It would require the ''label statement'' to comprise at least 20% of the area of the ad, to be placed at the top of each ad with specific type-sizes. Further, section 206 of the bill requires an FDA rulemaking to determine whether the agency should also mandate the inclusion of tar and nicotine yields in all labels and advertising.

These various disclosure requirements would result in information overload for all tobacco product ads. By mandating these disclosures and requiring specific type sizes, the bill would place the government in the role of copywriter. It raises serious First Amendment concerns about ''compelled speech.'' It could ultimately result in an unconstitutional ''taking'' of the company's commercial message in violation of the Fifth Amendment. Advertising is not free. When a tobacco company purchases advertising space, it acquires an important property interest. The multiple disclosure requirements of S. 2461 would literally ''seize'' a substantial portion of the company's space and conscript it for government-mandated messages. This would be an interference with both free speech and property rights.

New State/Local Ad Restrictions Would Make Tobacco Advertising Impossible

We are strongly opposed to section 203 of S. 2461. That provision would authorize states and thousands of local governments to impose ''specific bans or restrictions on the time, place and manner, but not content,'' of tobacco advertising. This could result in a crazy quilt of inconsistent advertising restrictions, both intra-state and inter-state. For example, tobacco advertising is often placed in publications with regional or national distribution. How could a tobacco company place an ad in a popular magazine that complies with hundreds or potentially thousands of inconsistent restrictions on the ''time, place and manner'' of tobacco ads?

This provision would make tobacco advertising impossible on a regional or national basis and result in a *defacto* ban on this category. It would authorize state and local governments to engage in censorship of one form of speech based solely on its content.

Conclusion

Some claim that tobacco products are unique, so that it is permissible to ignore the First Amendment just for those products. The Supreme Court has rejected this theory in a series of cases, including *Lorillard* and the *44 Liquormart* case. What you do to tobacco advertising today, you will be urged to do to advertising for many other ''controversial'' products tomorrow. Justice Thomas recognized this in his concurring opinion in the *Lorillard* case: ''Nevertheless, it seems appropriate to point out that to uphold the Massachusetts tobacco regulations would be to accept a line of reasoning that would permit restrictions on advertising for a host of other products.''

Don't start down this road to content-based censorship of advertising. We urge you to remove these marketing provisions from S. 2461. The government can take strong, effective steps to restrict tobacco sales and access to minors without trampling on the First Amendment.

Thank you for your consideration of our views.

Sincerely,

Daniel L. Jaffe, Executive Vice President, Association of National Advertisers, Washington, DC.

Richard F. O'Brien, Executive Vice President, American Association of Advertising Agencies, Washington, DC 20036.

Jeffry L. Perlman, Executive Vice President, American Advertising Federation, Washington, DC 20005.

The Association of National Advertisers (ANA) is the industry's premier trade association dedicated exclusively to marketing

and brand building. We represent more than 340 companies with over 8,000 brands that collectively spend more than $100 billion annually in marketing communications and advertising. Our members market products and services to both consumers and businesses. More information is available at www.ana.net.

The American Association of Advertising Agencies (AAAA), founded in 1917, is the national trade association representing the American advertising agency business. Its nearly 500 members, comprised of large multinational agencies and hundreds of small and mid-sized agencies, maintain 2,000 offices throughout the country. Together, AAAA member advertising agencies account for nearly 80 percent of all national, regional and local advertising placed by agencies in newspapers, magazines, radio and television in the United States. AAAA is dedicated to the preservation of a robust free market in the communication of commercial and non-commercial ideas. More information is available at www.aaaa.org.

As the ''Unifying Voice for Advertising,'' the American Advertising Federation (AAF), headquartered in Washington, D.C., with a Western Region office in Newport Beach, California, is the trade association that represents 50,000 professionals in the advertising industry. AAF's 130 corporate members are advertisers, agencies and media companies that comprise the nation's leading brands and corporations. AAF has a national network of 210 ad clubs and connects the industry with an academic base through its 210 college chapters. More information is available at www.aaf.org.

DEAR SENATOR: I am taking this opportunity to write to urge your opposition to the Kennedy-DeWine amendment to the FSC/ETI bill, regarding FDA's authority to regulate the sale of tobacco products.

As President of the American Wholesale Marketers Association (AWMA), I represent convenience distributors nationwide and our distributor members represent more than $85 billion in US Convenience product sales. Many of our members are your constituents. On behalf of my AWMA members, I am writing to let you know of our deep concerns over the devastating impact this legislation would have upon our industry.

Tobacco products are among the many goods distributed by our members and many of these businesses are small, family-owned operations. The burdensome recordkeeping requirements and the onerous regulations resulting from this legislation would work a tremendous hardship on these business owners. In addition, there are concerns that this legislation could be ''the camel's nose under the tent'' and create a back door ban on tobacco products through additional restrictions on the approval, sale, distribution and advertising of these products. And, the costly layer of regulation to be imposed by this legislation would cause problems for these family-owned businesses while providing no real benefit to the public.

Our AWMA members consider this issue to be of vital importance and, therefore, I urge you to vote against any legislation that would provide for FDA regulatory authority over tobacco products. Thank you in advance for your kind consideration of these concerns.

Sincerely,

SCOTT RAMMINGER,
President,
American Wholesale Marketers Association.

STATEMENT BY MEMBERS OF THE HEALTH, EDUCATION, LABOR AND PENSIONS COMMITTEE

Many on the HELP Committee have concerns with the FDA aspect of the amendment based on the following reasons, ''In our view it does not represent principles of good government. It does not produce a strong uniform FDA. For example, we are concerned about the preemption provisions—we are concerned about the lack of due process in the reissuance of a Clinton era tobacco rule—also we are concerned about the claims of the provisions of the bill.''

Mr. INHOFE. These groups are all concerned about the bill. I echo their concern. This proposal will greatly increase Federal mandates and regulations on tobacco that lead to more Government control. I find it troubling that Congress is willing to grant so much authority to an executive agency while not allowing us adequate time to evaluate and possibly amend this legislation.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. DEWINE. I ask unanimous consent to proceed for 5 minutes.

Mr. REID. Mr. President, I ask unanimous consent that whoever is in opposition have an equal amount of time.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Ohio is recognized.

Mr. DEWINE. Mr. President, as we close debate, I thank Jeff Tites, Senator KENNEDY's very able assistant, who has worked on this legislation, and I also want to thank my assistants, Abby Kral, Paul Callogi, Mike Dawson, and Carla Carpenter, who could not be here because she had a baby. We miss Carla, and we welcome into the world Ravis Mathew, her son who was just born. We are very glad about that.

Let me respond very briefly to my friend from Oklahoma and his comments about the FDA bill not having seen the light of day. The amendment that is in front of us is the DeWine-Kennedy bill, which is now an amendment. The DeWine-Kennedy bill was actually introduced in May of this year. It is the only FDA regulation of tobacco bill that was introduced, so it has been out here for people to look at for a long time. It was the product of lengthy negotiations between health groups and others. We went back and forth for a long time. It is not really dissimilar to other bills that have been talked about before in other negotiations. It has evolved over a long period of time. It is the work product of Senator KENNEDY and myself, but it is the second generation or third generation of what others have done.

So the concepts in this bill are not fundamentally new. There is nothing in this bill that should come as a surprise to anyone.

As I said, this has been on the floor for a long time. People have had an opportunity to look at it. Interested parties have had a chance to examine it.

Mr. President, I ask for the yeas and nays. I think we are getting close to closing this down.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. DEWINE. Mr. President, Senator KENNEDY would like to close at this point. I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I will take a moment to once again thank Senator DEWINE for his strong leadership in our Health, Education, Labor, and Pensions Committee on this issue. I thank our leaders for bringing us to where we are. I thank Senator MCCONNELL for the opportunity to work with him on this issue. And I thank our colleagues for the strong support we have seen during the course of this discussion.

This health issue is the most important health issue we are facing on which we can make serious progress, progress that is almost the equivalent of conquering cancer—it is that important—because we have an epidemic of smoking that is affecting the children of this Nation. It is enormously adverse to their health conditions, and it is a source of premature death to them as they grow and develop in the future, causing all kinds of health ailments.

This is a children's issue, a health issue, a family issue because with this legislation, there are going to be more children who are going to be able to see their parents when they grow older and there are more children who will see their grandparents when they grow older. We have an opportunity to make a major downpayment and major progress in the quality of health for these children.

I thank those who have spoken in favor of the legislation. Hopefully, we will get strong support for it when the votes are cast.

Mr. President, I ask unanimous consent that a list of supporters be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

LIST OF SUPPORTERS OF DEWINE-KENNEDY FDA BILL

American Academy of Family Physicians, American Academy of Nurse Practitioners, American Academy of Pediatrics, American Cancer Society, American College of Cardiology, American College of Chest Physicians, American College of Physicians, American College of Preventive Medicine, American Dental Association, American Heart Association, American Lung Association, American Medical Association, American Public Health Association, American Psychological Association, American School Health Association, American Society of Addiction Medicine, American Society of Clinical Oncology, American Thoracic Society, Association of Maternal and Child Health Programs, Association of Schools of Public Health.

Campaign for Tobacco-Free Kids, Center for Parish Nursing & Health Ministries, Center for Tobacco Cessation, Children's Defense Fund, Church of the Brethen Witness/Washington Office, Church Women United, Evangelical Lutheran Church in America, General Board of Church and Society of the United Methodist Church, General Board of Global Ministries The United Methodist Church, Special Program on Substance Abuse and Related Violence (SPSARV), Health Ministries Association, Interreligious Coalition

on Smoking or Health, Islamic Society of North America, National Latino Council on Alcohol and Tobacco Prevention, National Association of County and City Health Officials (NACCHO), National Association of Local Boards of Health, National Center for Policy Research for Women & Families, National Education Association, National Woman's Christian Temperance Union, National Women's Law Center, Oncology Nursing Society.

Office of Family and Children's Ministries of Disciples Home Missions of the Disciples, Praxis Project, Presbyterian Church (USA), Washington Office, Seventh-day Adventist Church, Society for Public Health Education, Tobacco Program, Interfaith Center on Corporate Responsibility, United Church of Christ.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I have a couple comments. Again, I compliment my colleagues, Senator KENNEDY and Senator DEWINE. They have been steadfast in their advocacy. Senator DEWINE is right, he and Senator KENNEDY introduced this a long time ago. If I am correct, it did not pass out of a committee, it is not on the calendar, and all of a sudden it appears on the floor.

These are two bills combined, and my biggest objection is with the buyout. The buyout is $12 billion. How often do we spend $12 billion around here without having any hearing on it? The buyout did not pass out of a committee. It did not pass out of the Agriculture Committee. It certainly was not considered by the Budget Committee.

There is no payment limitation, I say to Senator GRASSLEY. In the House bill, with the $9.6 billion, it is estimated by one group to be 480 millionaires. Some estimates are 85 percent of the quota owners are not farmers. I do not know how many of those will be made millionaires.

The Senate bill we are going to vote on does not even eliminate the tobacco program. A lot of people are thinking we will spend this money, we will buy the quotas back, and then be done with it. No, there will be a Federal board set up by the Secretary. The Secretary will establish a permanent advisory board for the purpose of setting what kind of tobacco shall be in the Acreage Limitation Program, I tell my colleague from Nevada, where they limit acres, make recommendations on acres.

The Secretary, with the Tobacco Quality Board, shall establish and maintain the Acreage Limitation Program for each crop, each kind of tobacco. If we have an acreage limitation program, that is a price support program. That is a continuation of the tobacco program.

So we are going to throw away $12 billion and maybe benefit one tobacco company versus all the other tobacco companies, spend a whole lot more money, have another 100 some-odd pages of regulations, some of which were so intrusive—I have not had a chance to review these regulations in detail, but in past years, some of these regulations dealt with convenience stores. If a convenience store did not check IDs of people up to age 21 or age 25, they could be penalized and fined and successively with higher penalties. If they did not check IDs three or four times of somebody who is 24 years old—they are military and obviously old enough to smoke—if they did not check their ID, the fines could be in the thousands of dollars.

That was in previous regulations. I am not sure if it is in these regulations because I have not had enough time to decide. I know there is a blank check for the Secretary to outlaw tobacco if he so desires, to ban advertising if he so desires.

I don't like tobacco consumption. I don't want people to smoke. If Congress wants to ban tobacco, let's do it. Let Congress do it. Let the elected officials do it, not the Secretary of HHS. These regulations are too broad. I know Senator GREGG had a proposal that was not quite as aggressive. I would like to vote on it. I would like to consider the two. We don't even have the option. The option is take these regulations, 155 pages—and my guess is most were promulgated by the Clinton administration which we rejected earlier—and then let's add a $12 billion buyout program that almost guarantees we will have a buyout program that comes out of conference on the FSC/ETI bill.

My final comment is, two wrongs do not make a right. The House was wrong to put in a tobacco buyout in the FSC/ETI bill. Now we are going to double that wrong and almost ensure it is going to come back from conference with a multibillion-dollar buyout, where some people are going to make millions of dollars. We are going to pay people a whole lot of money and maybe even continue the program. That is absurd. That is a waste of money. That is paying people for the privilege—frankly, if they had a quota, the Government gave them a quota; they had a special benefit over all other landowners in the United States. Oklahoma did not have a quota. We could not grow tobacco if we wanted to. We could not get the higher prices. Now we give a special reward to people who have a quota. We buy them out, and we are going to have a price support program in addition if we pass the Senate language.

That is bad legislation. I hope our colleagues will recognize if they vote for this today and if it comes back from conference in any way resembling this, they are going to be embarrassed because a year or so from now, somebody is going to do a report saying XYZ tobacco quota owner—and there are several in the District of Columbia. I don't know how much tobacco is grown in the District of Columbia, but quotaholders in the District of Columbia get millions of dollars. They are going to be reading about this and be upset, and they are going to say: Congress, how could you do this? Then they are going to go back and say: Congress didn't debate this much.

I compliment my colleague from Ohio. Most of the debate has been on the FDA regulations, not the buyout.

I hope my colleagues reject the amendment.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, this has been a very good debate. In closing the debate, I thank all those who have participated. I ask my colleagues to vote yes. Ultimately, this is a question about common sense, having the FDA regulate this product, and it is a question of saving lives. That is what we will do.

I thank the Chair, and I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill 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.

UNITED STATES-AUSTRALIA FREE TRADE AGREEMENT IMPLEMENTATION ACT

Mr. GRASSLEY. I now ask unanimous consent that the FSC bill be temporarily set aside and I now move to proceed to H.R. 4759, the Australia Free Trade Agreement. I further ask consent that there be 6 hours equally divided between the chairman and ranking member or their designees; provided further that all other provisions of the statute remain applicable to the bill.

Further, I ask unanimous consent that following the use or yielding back of the time the Senate proceed to a vote on the passage of H.R. 4759, and immediately following that vote the Senate resume consideration of the FSC bill and proceed to a vote in relation to the DeWine amendment as provided under the order.

Finally, I ask unanimous consent that there be 2 minutes equally divided for debate prior to the second vote.

The PRESIDING OFFICER. Is there objection?

The Senator from Nevada.

Mr. REID. Mr. President, it is my understanding that we would have 2 minutes on each side, if there is opposition to this, which I think there will be. Is that right?

Mr. GRASSLEY. Yes. That would be on the DeWine amendment?

Mr. REID. Yes.

The PRESIDING OFFICER. Does the Senator modify his request?

Mr. GRASSLEY. Yes.

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

Mr. REID. Before the distinguished chairman makes his statement, for the

3 hours on our side, I would ask that 90 minutes of that time be assigned to Senator DORGAN, 60 minutes to Senator CONRAD, 15 minutes to Senator DAYTON, and 10 minutes to Senator FEINGOLD.

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

The question is on agreeing to the motion.

The motion was agreed to.

The PRESIDING OFFICER. The Senate will now proceed with 6 hours of debate equally divided.

The Senator from Iowa.

Mr. GRASSLEY. Mr. President, for staff and Senators who are not on the floor, I call attention to the fact that we are starting the debate on the United States-Australia Free Trade Agreement. We have 3 hours on this side. I have not had many requests for time, and I know that two or three Members want to speak. I urge those Members to come over early to speak because if we can yield back time we do want to do so.

I was only going to speak about 7 or 8 minutes. The Senator from Oklahoma wanted to speak 5 minutes. Is there any problem if I give the Senator from Oklahoma 5 minutes right now and then I speak 7 or 8 minutes and then the Senator from North Dakota can have the floor?

Mr. DORGAN. No problem.

Mr. GRASSLEY. I yield 5 minutes to the Senator from Oklahoma.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 4759) to implement the United States-Australia Free Trade Agreement.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I congratulate Senator GRASSLEY and Senator BAUCUS for the way they have managed this bill. They have conducted their work in a very appropriate way. They had hearings on this bill. I want to compliment Ambassador Zoellick. Our trade negotiator did an outstanding job in putting this together.

This trade agreement is a win/win. It is a win for Australia and it is a win for the United States. I am pleased to see the Senate work as it is supposed to work. We had hearings on it. We had a markup in committee. We are now having it considered on the floor.

This is going to open additional markets and reduce tariffs for the United States. It is going to be a win for Australia as well. Both countries, strong allies, will benefit as a result.

Prime Minister Howard of Australia has been a good friend and ally of the United States. He has been steadfast in helping us in many ways, trade being one of them. Again, free trade, equal trade, open access, we are winning or gaining more because the tariffs were higher on their side in many respects and so this is positive for United States consumers and for Australian consumers.

Again, I want to compliment the administration for proposing this agreement, for the work that was done by our trade negotiators, and also by Senator GRASSLEY and Senator BAUCUS for bringing this up so quickly on the floor, getting it through the Finance Committee and ultimately through the Senate today. I also want to compliment our leader, Senator FRIST, for making this happen.

I led a delegation to Australia earlier this year. We felt very strongly in our support not only for this agreement but frankly in strengthening our relationships with such a great ally and friend as Australia. So I am very pleased to support this agreement. I urge our colleagues to support it with an overwhelming vote later this afternoon.

I yield the floor.

Mr. GRASSLEY. Mr. President, I yield 2 minutes to the Senate majority leader.

The PRESIDING OFFICER. The majority leader.

UNANIMOUS CONSENT REQUEST—AUTHORIZING THE JUDICIARY COMMITTEE TO MEET

Mr. FRIST. Mr. President, the agreement we have underway provides for two votes later this afternoon. The first is final passage of the Australia free-trade bill and the second is the DeWine amendment to the FSC legislation. I hope we will not need all 6 hours set aside for the Australia bill. Some members have already spoken over the course of yesterday, and therefore we may be able to expedite consideration of this bill over the course of the afternoon by yielding back some time.

In any event, for the benefit of Senators, I wanted to notify them we will be stacking these two votes later today.

On another matter, I have been notified that the minority objected to the Judiciary Committee meeting today at 2. The other 12 committee requests were granted, and that one request was objected to. There is a lot of important work to be done by the Judiciary Committee. As I look at it, the chairman has four judges on the agenda, as well as legislation. As I look at the schedule, I note that the Hatch-Feinstein constitutional amendment on flag desecration was scheduled as well today. I feel it is important to get to both the nominations as well as the legislation.

It was only the other day there were complaints on the floor about not taking constitutional amendments through committee, and that is on their agenda today. Now we have objections to going through the process of having the committee meet to consider the nominations and legislation. I hope my colleagues on the Democratic side will rethink their objection so we can proceed and the Judiciary Committee can proceed with this important business and allow these committees to do their work.

I ask unanimous consent that the Committee on the Judiciary be authorized to meet to continue its markup on Thursday, July 15, 2004, at 2 p.m. in the Dirksen Senate Office Building, Room 226.

Mr. REID. I object.

The PRESIDING OFFICER. The objection is heard.

Mr. REID. Mr. President, while the distinguished majority leader is on the floor, we have already started receiving calls in the cloakroom and I am sure the Republican cloakroom has received similar calls. If we are able to finish the work on the trade bill and the FSC conference legislation that is now before the body, will we have votes tomorrow?

Mr. FRIST. Mr. President, before I commit to no votes tomorrow, these two bills we are voting on today are very important and I would think we would not have votes tomorrow, but before people take that and sort of run with it, let me have some conversations over the next 30 minutes or so.

Mr. REID. Also, I ask the leader, through the Chair, would he also give some indication before the day is out as to what he plans on Monday?

Mr. FRIST. We will. There are a lot of Members whose schedules very much depend on when we vote either tomorrow or later tonight—hopefully not later tonight, but earlier tonight as well as on Monday night or Tuesday morning. We will work all of that out within the next hour or so, so we can notify Members.

Mr. DORGAN. Will the majority leader yield for a question?

Mr. FRIST. Be happy to.

Mr. DORGAN. Mr. President, the majority leader is speaking of schedules, in this case the schedule of the Senate Judiciary Committee. I inquire of the majority leader about the schedule with respect to legislation he and I have spoken about at great length. The last occasion was about midnight on the floor of the Senate, after which I allowed the nomination of Dr. McClellan to proceed. As a result of that, the issue of allowing prescription drug reimportation in this country and legislation that is bipartisan in scope with over 30 Senators now cosponsoring it, I had intended and hoped we would have an opportunity to vote on that on the Senate floor. I have not had the opportunity to speak with the majority leader at length in recent days, but my hope would be we could go back and revisit what is put in the CONGRESSIONAL RECORD. And my hope is what was put in the CONGRESSIONAL RECORD will then allow us to have an opportunity on the floor of the Senate to advance the legislation that we previously discussed dealing with the reimportation of prescription drugs and allowing us to put downward pressure on prescription drug prices in this country.

I ask the majority leader whether he has had an opportunity to go through that and whether he could give me some advice as to when he would allow that to be debated on the floor of the Senate?

Mr. FRIST. Mr. President, I will be happy to be in discussion with my colleague. Since our discussion, now many weeks ago, we have made real progress in terms of understanding the potential impact of allowing the reimportation of drugs. I think there has been a lot of discussion on both sides of the aisle. We had an extended meeting yesterday talking about the safety issue surrounding it.

Since our discussion, there have been hearings in the appropriate Health, Education, Labor and Pension Committee. There has been a bill put together by the principals in the committee, the responsible committee. There have been scheduled markups, and I believe there is a markup scheduled for next week on that particular bill. So progress is being made.

It is a very important issue. We are talking about not just reimportation and the cost of drugs, but we are talking about the safety of drugs being used. I think we have made a huge amount of progress over the last several weeks, so in terms of scheduling and looking at what time that might be considered on the floor of the Senate, I will be happy to be in discussion with my colleague.

I yield the floor.

The PRESIDING OFFICER (Mr. CRAPO). The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I am happy to bring to my colleagues the United States-Australia Free Trade Agreement Implementation Act. This is a bill that Congress must pass to actually implement what has been negotiated as the United States-Australia Free Trade Agreement. This is under the process that we call trade promotion authority. This is a process by which Congress, which has the constitutional power to regulate interstate and foreign commerce, has delegated negotiating authority to the President to negotiate certain trade agreements. But because we have that constitutional authority, we cannot give to the President of the United States the authority to change U.S. law as it might be negotiated.

So we are now dealing with legislation that changes U.S. law and makes the United States-Australia Free Trade Agreement not a treaty approved just by the Senate of the United States, as we know treaties are, by two-thirds vote, but this is basic law. It has passed the House of Representatives by a majority vote, hopefully it will pass the Senate by a majority vote, and it is to be signed by the President.

We are dealing with the constitutional authority of the Congress to regulate foreign and interstate commerce, but understanding that it is not reasonable to expect 535 Members of Congress to deal with foreign countries, we have asked the President to do that for us but under guidelines that we have set down and with Congress having the final authority. We are in the process of exercising that final authority.

As is true of almost any agreement, this one might not be perfect. However, I believe it will provide significant benefits to the United States, our economy, and particularly to the economy and the people of my home State of Iowa.

During committee consideration of the agreement, we heard from a number of different sectors of the economy which stand to benefit from the agreement. At the top of the list is the U.S. manufacturing sector and all the jobs that exist in that sector that will be stabilized and enhanced as a result of American manufacturing selling a lot more to Australia because certain duties that now are on those products will be gone.

Under the agreement, more than 99 percent of U.S. manufacturing exports to Australia will become duty free immediately after this agreement is signed by the President. This is the most significant reduction of manufacturing tariffs ever achieved in any U.S. free-trade agreement.

This is very good news for manufacturers such as the Al-jon company of Ottumwa, IA, employing 100 people. Today, about 10 to 15 percent of Al-jon's production is exported. They are confident that with a level playing field they can do even better. This bill helps level that field.

During testimony before my committee, John Kneen, chairman of the board of Al-jon, testified that while they have had some success selling in Australia, their exports are currently limited by two factors: First, Australia currently imposes a 5-percent tariff on their exports. And, second, the cost of shipping heavy equipment to Australia is very high. While we cannot do much about the cost of shipping, we surely can eliminate the 5-percent barrier with the enactment of this trade agreement.

It is not just the company of Al-jon that will benefit. Mr. Kneen testified that over 19,000 U.S. companies that currently export to Australia are likely to benefit from what he termed the ''instant competitive advantage'' provided by the elimination of these tariff barriers on U.S. manufacturing exports.

These companies include other Iowa manufacturers such as John Deere, which has four manufacturing plants in my State. John Deere anticipates increased exports to Australia on account of this free-trade agreement.

The U.S. agricultural sector stands to benefit from the agreement as well, as duties on all U.S. farm exports will be eliminated, reducing tariffs on U.S. agricultural exports by over $700 million. Processed food, soybeans, oilseed products, fresh and processed fruits and vegetables, all will benefit from these duty reductions. For U.S. farmers and our ranchers who compete with Australian agriculture, special safeguards and tariff rate quotas are included as part of the agreement to make sure that trade is not only free but fair.

The free-trade agreement negotiating process also opened the door to eliminate scientifically unfounded barriers to the importation of U.S. pork and U.S. pork for processing. These are all major Iowa products because we are No. 1 of the 50 States in the production of pork. While Australia made its scientific determination regarding pork outside of the free-trade agreement negotiations, the intensive consultation process that naturally flows from engaging in bilateral trade negotiations helped in the resolution of that very important matter. Dermot Hayes, an economist at Iowa State University, estimates that the elimination of these unfounded barriers could increase U.S. exports of pork to Australia by over $50 million annually.

The United States-Australia Committee on Sanitary and Phytosanitary Measures, and the Standing Technical Working Group on Animal and Plant Health Measures, which are established under the FTA, will help to ensure that all Australian standards on United States agricultural imports are based on sound science and are not used as a basis for protectionism.

Iowa's service providers will also benefit from new market-access openings in Australia for our service exports. These commitments, along with new, transparent trading rules, should provide a lot of important new market opportunities for Iowa's service exports.

And, for the first time, this agreement opens much of Australia's lucrative government procurement market to United States exporters. The government procurement provisions are especially important, as Australia is one of only a few developed countries that are not members of the World Trade Organization Agreement on Government Procurement.

In sum, the United States will benefit from the United States-Australia Free Trade Agreement. I urge my colleagues to vote for S. 2610, the United States-Australia Free Trade Agreement Implementation Act.

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

• Mr. BAUCUS. Mr. President, today the Senate begins consideration of the U.S.-Australia Free Trade Agreement. I support this agreement for one simple reason: Trade means jobs.

The U.S. economy is the most flexible, vibrant, and dynamic in the world. We owe that to the ingenuity of the American people and their relentless thirst to create and to innovate.

We also owe it to the policies we have put in place to support the innovation that keeps our economy growing and creating jobs. That includes embracing open trade.

Twelve million Americans—1 out of every 10 workers—depend on exports for their jobs. And these jobs pay thousands of dollars more than jobs unrelated to trade.

Now, some think of trade as helping only big multinational companies. In reality, trade helps companies of all sizes. Firms with fewer than 20 workers

make up two-thirds of American exporters.

Trade also creates benefits for communities across the country. In Montana, nearly 6,000 jobs depend on manufacturing exports. And more than 730 Montana companies, mostly small and medium-sized businesses, export products overseas.

Despite the well-known benefits of trade and the vibrancy of the U.S. economy, the last few years have been difficult ones.

Since January 2001, the American private sector has lost nearly 2 million jobs—mainly in manufacturing. And service-sector jobs—once virtually immune to international competition—have begun to move offshore in increasing numbers.

When people talk about jobs moving overseas, they frequently talk about trade. Too often, the proposed solution is to retreat into isolationism and raise barriers to trade. In my view, that's exactly the wrong approach. We should engage in more trade, not less.

But we must be smart about trade. We must enforce our trade laws and our trade agreements. We must ensure that markets remain open to U.S. companies, and that U.S. companies can compete on a level playing field.

We should reject the notion that we must lower standards in this country to compete. Instead, we must look to raise standards in the countries we trade with. The Trade Act of 2002 made tremendous progress in this regard, but we must continue to ''race to the top.''

The free trade agreement with Australia is the kind of agreement we should be negotiating. It offers both broad commercial benefits and high standards.

Australia is one of the few countries with whom the U.S. enjoys a trade surplus, with the bulk of this surplus in manufactured goods.

With this agreement, U.S. manufacturers predict that U.S. exports will grow by an additional 20 percent—$2 billion per year. Montana already exports $3.4 million per year in industrial goods to Australia. And these exports will grow with this agreement.

This is great news to manufacturing workers who have been hard hit by massive job losses. It is especially important in a State like Montana, where we have lost 3,300 manufacturing jobs in the past 4 years. These losses represented 15 percent of the Montana manufacturing workforce.

But it's not just about manufacturing. This agreement will also benefit U.S. service providers. Australia will expand access for cross-border services, and to enhance regulatory transparency. That will mean greater opportunities in financial services as well as those services provided through new and innovative technology.

Beyond these benefits, the agreement also increases protections for intellectual property. And it requires Australia to offer greater opportunities to U.S. bidders in government procurement.

All of these improvements will translate into a more fair and open market for U.S. producers. That will mean more jobs and higher wages for U.S. workers.

At the same time, this agreement opens the door to a greater relationship with one of the most vibrant and promising economies in the world. Australia stands as a gateway to the fast growing markets of Southeast Asia. This agreement will help U.S. companies further develop their export potential.

Now, some have expressed concerns regarding agriculture. Australia exports many of the same commodities that the U.S. produces—most notably, beef, dairy, and sugar. Yet Australia offers a much smaller consumer market in return.

Those of us from States that produce these commodities were concerned. However, given the close relationship between the U.S. and Australia, and given the substantial benefits to the manufacturing and service sectors, it was clear to me that Congress would approve an Australia agreement.

The only solution to this challenge for U.S. agriculture was good, old-fashioned tough negotiating. I urged Ambassador Zoellick to work hard to preserve the interests of rural America, by treating U.S. commodities sensitively.

I pushed him to ensure a long transition period, and to provide strong safeguards where necessary. I am pleased to report that U.S. negotiators responded to these concerns and met me more than half way.

For beef, there is an 18-year transition period and two automatic safeguards. As we drafted the implementing legislation for this agreement, I worked hard to ensure that there were significant protections for Montana's ranchers.

For dairy, the agreement ensures a slow pace for increased market access, while maintaining over-quota tariffs—a chief priority for U.S. producers.

Finally, U.S. negotiators preserved current sugar policy, in order to enhance our prospects to achieve global reform in the WTO.

These protections help shape an agreement that is balanced and sound. It enhances opportunities for U.S. companies and workers, while also being sensitive to the interests of our farmers and ranchers.

Let me turn to one final issue that has been receiving attention lately. In the last couple of days, some Members have questioned whether this agreement affects U.S. government regulation of prescription drugs.

These concerns involve the potential impact of trade agreements on U.S. healthcare programs, including Medicare, Medicaid and the VA and DOD programs, and the implications of the agreement on the adoption of drug reimportation legislation in the future.

USTR has assured Congress that the provisions in the agreement will not require any changes to the administration of U.S. health programs. And that no changes to current U.S. law or administrative practice are necessary to implement the agreement.

Furthermore, because Australia itself does not permit most pharmaceuticals to be exported, we are assured that this agreement will not impede Congress from considering and enacting reimportation legislation.

My own view is that the concerns raised by these provisions are more hypothetical in nature than concrete. Nonetheless, this is an issue that Congress—and the Finance Committee—should explore more thoroughly as we move forward on trade negotiations in the future.

I urge my colleagues to vote for this agreement. This is an agreement that will help our long-term competitiveness. This is an agreement that will create jobs. This is an agreement that is good for Montana and good for America. I hope it will receive strong support.●

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, we meet here in the Senate again to talk about the issue of international trade, a very important issue for our own country.

I would like to follow up on my colleague's comments about the Constitution. The Constitution does, indeed, talk about trade. It talks about who is responsible for international trade in this country. It is article I, section 8 of the Constitution. It says:

> The Congress shall have power to regulate commerce with foreign nations.

Yet Congress has largely given away that opportunity and the responsibility with respect to trade.

What the Congress has done, strangely enough, is to put itself in a straitjacket by voting and passing legislation called ''fast track''—which doesn't sound like English, perhaps, to most people—fast-track trade authority.

Fast track means that Members of Congress will promise that when a trade agreement is negotiated somewhere else in the world in secret, behind closed doors, by our trade ambassador, when it is finally brought back to the Senate for a vote up or down, the Congress will prevent itself from ever being able to offer amendments to change it if it thinks something in it is wrong. That is fast track. The Congress has decided to limit its own ability to fix problems. I didn't vote for fast track, but the majority of my colleagues did.

So we have a situation where we have a rather innocuous trade agreement today between the United States and Australia. There is not much in this agreement that is of great moment. There are a couple of bad things in it that should be taken out. We should have a vote on the provision dealing with pharmaceutical drugs. We ought to have an opportunity to amend this trade agreement in a way that deals with trading authorities, such as the

Australian Wheat Board and the authority in Australia that deals with the sale of cattle. These are state trading enterprises that would be illegal in this country. We are actually having to say, let's trade with someone else who has a monopoly in marketing operations in agriculture, and we will consider that fair. It is not fair at all. I will talk about that at some length.

In any event, the Congress, through its lack of wisdom, I must say, has decided to use what is called fast-track trade authority, which means this agreement is here now and no one may offer any amendments because Congress decided to put itself in a straitjacket. So we have a circumstance with no amendments.

Let me at least describe where we are with international trade. Most people do not want to talk about it.

This is a massive failure. This is a colossal failure of this country on international trade.

This chart shows the countries with which we have trade surpluses. They are not in red, they are in green. All these countries in red are countries with which we have trade deficits—some very large. You look at a map of the world and you will see that we have on only a very few occasions trade surpluses. One of them happens to be with Australia. That will soon be gone after we pass this trade agreement. That is the case with every trade agreement we have done. But Australia, Egypt, Belgium—there are just a few countries with whom we have a surplus. With the rest of the world, of course, we have a large, abiding, substantial trade deficit.

Last month, I put this on a chart and showed it on the floor of the Senate. The Washington Post says, ''U.S. Trade Deficit Set Another Record In April.'' That trade deficit was $48 billion in 1 month, almost $50 billion in 1 single month. Month after month after month we see this trade deficit.

Let me go through a bit and perhaps show some charts that might give us the opportunity to ask the question, Are we really doing well here?

This is all about jobs, as you know. It is about where the jobs are located. It is about outsourcing. It is about moving jobs from here to another country.

Let us look at what is happening to our trade balance. This is the merchandise trade deficit. You will see this is dangerous, in my judgment, and very alarming. You won't hear anybody come to talk much about it. This is sort of the unseen, the hidden part of our policy that will cause, in my judgment, substantial problems in the future. You can make a case that the budget deficit, the big budget deficit—incidentally, it is the biggest in history—will be repaid. It is a deficit the American people will repay to themselves. You can make that point. But you cannot make that point with the trade deficit. This large trade deficit will inevitably be repaid by a lower standard of living in this country. It is getting worse and worse year after year after year. And every single year, when another trade agreement is brought to the Senate floor, we are told what a wonderful agreement it is and how much we are going to sell and what good times we are going to have as a result of this agreement. Yet in every single case our trade deficit grows, jobs leave this country, and you will see that we are mortgaging this country's future.

Let me talk about some specifics, if I might. This is our trading partner to the north, Canada, a country with which we have a wonderful relationship. They, of course, have a terrific relationship with us with respect to this trade balance.

When we passed something called the North American Free Trade Agreement, we had a relatively modest trade deficit with Canada—somewhere in here. But now it has grown to be a very substantial trade deficit with Canada. I will talk a little about why in a few moments.

China is the granddaddy of trade deficits. You will see what is happening in China. We are seeing massive and record trade deficits, of $130 billion a year. It is getting worse, worse, worse, and it is going to hurt this country.

What about the European Union? We used to actually have a bit of a trade surplus with the European Union. That has gotten worse and worse. It is now nearly as large as the merchandise trade deficit we have with China.

Japan is another interesting one. Japan, while not quite as large as Europe and China, demonstrates the fundamental and relentless incompetence of policymakers in trade. Over and over again, year after year, every single year, we have this deficit with Japan, somewhere between $50 billion, $60 billion, $70 billion a year, every single year.

Now Mexico. We had this big old NAFTA, North American Free Trade Agreement we negotiated with Mexico and Canada. When we negotiated it, we had a trade surplus with Mexico and a modest deficit with Canada. We turned that into a big deficit with Mexico and a larger deficit with Canada. So much for whether this North American Free Trade Agreement worked.

We could not offer any amendments to any of these agreements because of this foolishness called fast track, which, incidentally, inhibits us today in the Senate on this trade agreement with Australia.

I will go through some of the examples. I could start by talking about Japan. I mentioned the circumstance with Japan. We have a large trade deficit with Japan, and it just keeps on going every single year, $45, $60, $70 billion, forever. Europe will not allow that, by the way, but we do. I am talking about Europe and its relationship with Japan. We are a country that, in most cases, converts what should be hard economic policy—that is, trade policy—into softheaded foreign policy and we do not want to take action anywhere to stand up for America's interests.

I will talk about Japan in the context of my State. We produce a lot of beef. We have a lot of ranchers who work hard. They get up in the morning and work on that ranch. They are hoping to make a decent living. They want to sell some beef to Japan. But guess what. Nearly 15 years after a beef agreement with Japan between our country and Japan, which was trumpeted on the pages of all the newspapers—the United States and Japanese trade negotiators reach agreement on beef—15 years later, there is a 50-percent tariff on every single pound of American beef that goes into Japan. That would be considered a failure under any circumstance here, but in our relationship with Japan, it is just fine—a 50-percent tariff on every pound of beef. Should we be able to send more T-bones to Tokyo? I think so, sure. The tariff actually went down to 38 percent, and because we got a little more beef in to Japan, it snapped back to 50 percent. It is symbolic of the trade problems we have.

Does anyone want to do anything? Do we hear anyone rushing off to try to solve that problem? No. No one talks about that problem.

Let me use the Chinese tariffs on cars for a moment. Two years ago we did a bilateral agreement with China—actually, almost 3 years ago, now—a bilateral trade agreement with China. Our country decided, through our negotiators with China—a country with which we have a large deficit and it is growing dangerously high—we decided in our bilateral trade in automobiles we would agree to the following: China, you can put a 25-percent tariff on any cars that we try to sell in China after a long phase-in and we will apply a 2.5-percent tariff to any cars that you might want to sell in our marketplace.

In other words, our negotiators signed up to a deal that said, we know you have a really big surplus with us, or we have a big deficit with you, but with respect to automobile trade, you go ahead and impose a tariff that is 10 times higher than the one we will impose on automobiles going back and forth between China and the United States.

Of course, right now, China is gearing up an auto industry for exports and our negotiators said it is fine for them to have a tariff that is 10 times higher than we would have. That is fundamentally incompetent. We do not know who negotiated that, of course. This is not a matter of Democrats or Republicans. It is just incompetence, gross incompetence.

I will talk a little about Korea and automobiles, and I have used this example many times. I don't have the latest year's data, but trust me, it is about the same. Over 600,000 Korean vehicles are coming into this country. Ships are on the high seas, packed with Korean cars, coming in so the American consumers can purchase them.

Good for our consumers. But when 618,000 Korean cars come into our country for our consumers to purchase, guess how many American cars are in the Korean marketplace for Koreans to purchase? There are 2,800 U.S. cars able to be sold in Korea and over 600,000 Korean cars in the United States.

With respect to Korea, I might point out that we actually were making some progress recently. It was with a vehicle called the Dodge Dakota. When it looked as if that was beginning to pick up, we were actually going to be able to sell some in Korea, they did not like that and took action quickly to begin to shut that down.

The question is, Why will this country, when all of this translates to jobs here or there, why will this country decide it is all right in our relationship with Korea to have them ship 600,000 cars this way and then keep American cars out of Korea? It does not make any sense to me. What that means is fewer jobs in the United States and more in Korea. That means people are laid off here and people are hired there.

I know the agreement we are debating involves Australia, and I will talk about Australia in a couple of minutes, but it is important to put this discussion in a frame of reference. We will hear today by those who support this trade agreement that this is a wonderful agreement, this is nirvana, and if we just step back and we can see into the future, this will be new jobs, new economic growth, new opportunity. Nonsense. Total nonsense.

In each and every circumstance, our trade negotiations have resulted in trade agreements that have undermined our jobs and undermined our economic growth.

Want to talk about specifics? I will put the charts back up. Europe, Japan, China, Korea, Canada, Mexico—show me one of these circumstances where the trade agreement has buttressed the producers in this country, the employers in this country, the workers in this country toward new opportunities. In the aggregate, with each of those circumstances, we have lost ground rather than gained ground.

I know when we talk about this, people, especially the more institutional thinkers on this subject, say, well, your discussion demonstrates you do not get it, you do not see over the horizon, you do not understand what is happening internationally. This is a global economy. Why not shape up and listen and you will finally begin to understand this. You are nothing but a xenophobic isolationist stooge. Join the rest of the protectionists and just sit down.

I am not a protectionist, unless that means you want to protect the economic interests of this country, and if so I plead guilty and demand to be called that. I want to protect the economic interests of this country. I believe it is in this country's best interest to expand opportunities to trade. I believe that strongly.

For the first 25 years after the Second World War, our trade policy was almost exclusively foreign policy because we were trying to help others get back on their feet. But in the second 25 years after the Second World War, trade policy continued to be foreign policy when, in fact, it should have been harder nosed economic policy.

I began to raise questions about trade as a result of a trade agreement with Canada some long time ago. I suppose it was around 14 years ago. I was serving in the House of Representatives and I was on the Ways and Means committee. They were going to vote on the United States-Canada Free-Trade Agreement. It, too, was done with fast track, where no one was able to offer an amendment. A little provision was stuck in that agreement that allowed the Canadian Wheat Board, a sanctioned monopoly in Canada and which sells Canadian wheat through the monopoly—and that would be illegal in this country—to continue to move massive quantities of Canadian grain, underselling our farmers with unfair prices and secret prices into our country, into our marketplace. I raised those issues but to no avail.

So we came to the final vote on the United States-Canada Free-Trade Agreement and the vote in the Ways and Means Committee of the House of Representatives was 34 to 1. I was the one who opposed it.

I was told by all my colleagues: We want this to be a unanimous vote. It is very important for our committee. You must join us to get a unanimous vote on this trade agreement. I said: But the agreement is bad. The agreement is wrong. The agreement is going to hurt farmers and ranchers in an awful way in this country. So I voted no.

About 3 years later, I drove to the Canadian border one day, the border between North Dakota and Canada. I rode with Earl Jensen, who was driving a 12-year-old orange truck. It was a little old 2-ton orange truck. We rumbled up to border with some durum wheat on the back of his truck, all the way to the Canadian border.

On this windy day, we saw 18-wheel trucks coming from Canada to the United States, all loaded with Canadian grain, all of them headed to our marketplace, all of them with secret pricing, all marketed by the Canadian Wheat Board—a monopoly—which would be illegal in this country. All the way to the border we saw those trucks, dozens and dozens of trucks. The Canadians were saturating our marketplace, injuring our farmers in dramatic ways.

Well, we got to the border in this little old orange 12-year-old truck. We had about, I guess, 100 bushels of durum wheat in the back. When we got to the border station, the Canadian folks said: What do you have in the back of this truck? We said: We have durum wheat from North Dakota.

Remember, all the way to the border, we had 18-wheel trucks full of durum wheat from Canada going into our marketplace at secret prices. We found later, incidentally, they were at prices that were dumped prices that were designed to undermine our farmers. But we were told at the border station entering Canada we could not get just a small amount of wheat from the United States into Canada. Why? Because you just cannot. It is the way this works. It is a trade agreement. One side gets to dump all their products into our marketplace, and a little orange truck gets stopped going into their's.

A woman from Bowman, ND, married a Canadian. She told me she came home to Bowman one day, and because she liked to make whole wheat bread, her dad from the farm loaded up some grain in a couple grocery sacks. She drove back to Canada after Thanksgiving. She got to the border. Again, all these 18-wheel trucks were hauling Canadian durum south. She got to the border, and they forced her to throw out these two bags of wheat from a North Dakota farm that she was going to take back into Canada to make whole wheat bread. It was because you could not take that into Canada.

There is not one person in this Congress, in my judgment, not one in the U.S. House, not one in U.S. Senate, who will stand up and say: Yes, that is fair. That is right. We support it. We stand by it. That is what we intended. Not one. Yet none will lift a finger to change it. And that is just one small example that got me involved in this question of fair trade. Why on Earth will this Congress not stand up for this country's economic interest?

When it comes to international trade issues with respect to the production of manufactured goods—I have mentioned before and let me do it again because I am not at all embarrassed by repetition, so let me do it again and again and again—the Huffy bicycles that are made in this country, which I have spoken about repeatedly, are a wonderful bicycle, but they are no longer American bicycles. Huffy bicycles, most people know, are bought at K-Mart and Wal-Mart and Sears. They are 20 percent of America's marketplace for bicycles. They were made in Ohio by workers who made $11 an hour. They were proud of their jobs. In fact, the Huffy bicycles had a decal on the front just below the handlebar with the American flag. But those workers in Ohio do not make $11 an hour. They were fired. Huffy bicycles are made in China for 33 cents an hour by people who work 7 days a week, in some cases 12 to 14 hours a day. And the people in Ohio, who were proud to make these bicycles, had to go home one day to say to their spouse: Honey, I've lost my job. It wasn't because I didn't do a good job. It wasn't because I didn't like my job. It was because I can't compete with 33-cents-an-hour labor.

I don't know, I guess this truly is a globalized economy. Globalization has galloped along, and we are not going to change it. Have the rules for globalization moved along quite so

quickly? I don't think so. What are the rules for globalization?

The next picture is of a little red wagon most of us have ridden in. The little red wagon is called the Radio Flyer. This little red wagon was an American fixture for 100 years. For 100 years, they made the little red wagon in our country. Not anymore. It is gone. You buy labor for pennies an hour somewhere and have them make the little red wagon, and then make sure you have them make it in a way that allows them to sell it back into the American marketplace.

Yes, you can still buy the little red wagon. You can still buy Huffy bicycles in the American marketplace. But they are not made here. They show up as a big red bar on that trade chart I showed you, and that big red bar means jobs, and it means jobs that left here and went there. It means a worker in Ohio who made the Huffy bicycle now does not have a job. Because they are bad workers? No. Because they will not work for 33 cents an hour. They cannot do that.

So there are all kinds of elements to this issue of international trade, something that, in my judgment, is going to impose a substantial burden on this country with the kind of Federal deficits and kind of trade deficits we are now waging. You cannot experience these deficits year after year after year and not be forced, at some point, to turn to them, face them, and deal with them.

We ought not, in my judgment, deal with them by saying that we want to retreat from trade. Our country, in my judgment, should lead the world in trade—but lead the world in saying to others: There is an admission price to the American marketplace. There is an admission price here. You cannot, as a country, decide you are going to hire kids, pay them pennies, put them in unsafe plants, fire them if they try to form a labor union, and then produce your product and ship it to Pittsburgh or Fargo or Los Angeles or Denver. You cannot do that because we won't let you do that.

I will give you an example in China. This is a story from the Washington Post that I was interested in. It is a tragic story, but it is a story that mirrors a story of a couple of young women who came to a hearing I held a few months ago from Honduras who worked in a factory. You can find them all over the country—the young kids who work in a carpet plant at age 11. They tell us they have their fingertips burnt deliberately so that when these young kids are making these carpets with needles and they stick their fingers, it won't hurt because the burning of the fingertips creates scarring, so it does not hurt the kids when they stick themselves. You can find this all over the world.

Let me describe this story. This happened to be in China. In this article, it says:

On the night she died, Li Chunmei must have been exhausted.

Co-workers said she had been on her feet for nearly 16 hours, running back and forth inside the Bainan Toy Factory, carrying toy parts from machine to machine.

It was the busy season before Christmas. Orders peaked from Japan and the U.S. for stuffed animals.

Long hours were mandatory, and at least two months had passed since Li and the other workers had enjoyed even a Sunday off.

Lying in her bed that night, staring at the bunk, the 19-year-old claimed she felt worn out.

The factory food was so bad, she said she felt as if she had not eaten at all.

''I want to quit,'' one of her roommates . . . remembered her saying. ''I want to go home.''

Finally the lights went out. [She] started coughing up blood. They found her in the bathroom a few hours later, curled up on the floor, moaning softly in the dark, bleeding from her nose and mouth. Someone called an ambulance, but she died before it arrived.

The cause of Li's death remains unknown. But what happened to her last November . . . in southeastern Guangdong province is described by family, friends and co-workers as an example of what China's more daring newspapers call guolaosi.

The phrase means ''over-work death,'' and applies to young workers who suddenly collapse and die after working exceedingly long hour days, day after day.

Stories of these deaths highlight labor conditions that are the norm for a new generation of workers in China. Tens of millions of migrants have flocked from the nation's impoverished countryside to its prospering coast.

Perhaps more evidence is in a story about child labor in El Salvador—a country that our trade ambassador has just signed a new trade deal with:

Jesus Franco has scars crisscrossing his legs from his ankles to his thighs, and many more on his small hands. For more than half of his young life—he is age 14—he has spent long days cutting sugar cane, and he has the machete scars to prove it. And so do his four brothers age 9 to 19.

The point of this is simple: The rules of trade, in my judgment, have to be rules that recognize what we have accomplished in this country. We had people die on the streets in this country, demonstrating for the right to organize as workers. We had people demonstrate and die in the streets over that principle. It was a hard-fought battle to demand that workplaces be safe for workers in this country but which got there. It was not easy to get kids out of coal mines and kids out of manufacturing plants with child labor laws, but we did it.

This country battled long and hard on the question of what is fair compensation, and we have a minimum wage. We fought all of those issues and established standards. Do we now believe the conditions of international trade shall be that anyone who produces anything anywhere should have admission to the American marketplace to sell that product in our marketplace? I don't think so. We ought to lead on the basis of what fair trade relationships really are.

There are so many more issues dealing with international trade, many of them that affect our farmers, affect ranchers, affect workers. They affect businesses, small businesses trying to make a living.

The Australia trade agreement is brought to us as an innocent, rather innocuous agreement. It is not the CAFTA agreement, the Central American Free Trade Agreement, which is completed but will not be brought to this Congress before the election. That, of course, is for political reasons. The Australia agreement, despite the fact that I will vote no—and perhaps a few of my colleagues will vote no—will pass today. It is not as controversial as the Central American Free Trade Agreement, which is going to have difficulty in the Senate. But CAFTA won't come before the Senate in the coming months, because the President and the trade ambassador decided they don't want to bring it here before the election. They don't want to have this debate.

I want to have this debate. I don't think that is a Republican or Democratic problem. I think both political parties have shortchanged the country over two decades on trade policy. But we ought to have the debate now because it is about jobs, growth, and opportunity in the future.

Let me talk for a moment about Australia. As I indicated earlier, the Australia trade agreement is with a country that is similar to ours in many respects, a much smaller economy but similar. I don't allege this is the kind of problem we had when we were trying to connect a trade agreement with the country of Mexico, where you were trying to connect two countries with dissimilar wages and dissimilar standards. That is not the case with Australia. Australia is a wonderful country with great people. I would love to visit Australia. I have not yet visited Australia and would love to do that at some point.

My complaint is that we reach a trade agreement that consigns farmers and ranchers to great jeopardy. Let me tell you why. The Australians, like the Canadians, sell their grain, their wheat, through an Australian wheat board. In fact, it is the second largest exporter in the world, with 16 percent of the global share. Every grain of that that is sold internationally is sold through the Australian wheat board which is a sanctioned state monopoly, a state trading enterprise that would be illegal in our country.

We have been told time and again by the trade ambassador that we are going to deal with that. In future trade agreements we will not allow state trading enterprises to exist in circumstances where they can undercut our prices and dump their products into our country.

I described the circumstance in Canada with the massive quantity of grain coming down to our country and my not being able to get into Canada with a little orange truck with a few bushels. We have for years attempted to get

information from the Canadian wheat board about the conditions under which they are selling into our marketplace at secret prices, and they have said: Go take a hike. We don't intend to tell you a thing. The prices are secret. We don't intend to disclose them. Get out of here. They told that to the GAO, which went up there at my request: We don't intend to tell you a thing.

What evidence we do have suggests that they, as most monopolists will do, abused their pricing power and decided at secret prices to undercut our marketplace, and they have dramatically injured our farmers. That is not only me speaking. That is from studies that have been done by the Center for Agriculture and Trade Research. They have calculated the dramatic amount of money lost by family farmers as a result of unfair trade.

Now we have an Australia trade agreement. The Australian wheat board continues to exist in this trade agreement. There is nothing in this agreement that says, as we hitch together and connect our two countries in a trade relationship, you must divest yourself or create a circumstance where you are not using a state trading authority unfairly. Nothing here prevents them from doing exactly what the Canadians do.

The Australians are also positioned to do great harm to our country on beef trade. There are almost no export benefits for our cattle and beef producers with this free-trade agreement. Given Australia's relatively small population, its very large cattle herd, and its position as the world's largest beef exporter, the potential of Australia becoming any kind of an importer of our beef is almost nil. Instead, the only significant benefit I can see and many can see as a result of this with respect to cross-beef trade will be the U.S. beef packing industry which will profit from increased imports brought in under this agreement.

The beef industry is highly concentrated in a way that is pretty dangerous. I mean dangerous to consumers because the more concentration you have, the more pricing power they have and the more they price profits away from ranchers and towards themselves. They price it in a way that is disadvantageous to consumers.

There are serious problems that could exist with respect to agriculture, and there is nothing anybody can do about that. I would love to offer an amendment that deals with these two issues, but you can't because of fast track.

Finally, there is a provision in this agreement that is particularly pernicious. This is a trade agreement with Australia that includes a provision on prescription drugs. This is from the New York Times:

> Congress is poised to approve an international trade agreement that could have the effect of thwarting a goal pursued by many lawmakers of both parties: The import of expensive prescription drugs to help millions of Americans without health insurance.
>
> The agreement, negotiated with Australia by the Bush administration, would allow pharmaceutical companies to prevent imports of drugs to the United States.

This is a trade agreement, and they stick in a provision about prescription drugs. They did the same in Singapore. My guess is, they will do it every chance they get. What is this? It is anticonsumer, pro-pharmaceutical industry. It is an attempt to thwart those in this country who want to find a way to put downward pressure on prescription drug prices. How might one do that? By allowing the market system to act.

We pay the highest prices for prescription drugs in the world, and yet we are not able to purchase the identical prescription drug, the same pill put in the same bottle, made by the same manufacturer, from a pharmacist who is 5 miles north of the United States-Canada border.

A man talked to me the other day in North Dakota. He said his wife had breast cancer and she has taken the drug Tamoxifen for her breast cancer for 5 years and has just finished. She is now off the drug. For 5 years they traveled to Canada to buy their 90-day supply of Tamoxifen and bring it back across the border because they will allow 90 days of importation for personal use of prescription drugs. A pharmacist can't do it, but an individual can if they live near the border. So for 5 years they traveled to Canada. Why? Because you can buy Tamoxifen in Canada for 10 percent or 20 percent of the price you will pay in the United States.

Why can't a pharmacist or a distributor go to Canada and buy that prescription drug? It is FDA approved, a drug that is put in the same bottle, made by the same company.

Another example is Lipitor. Lipitor is made in Ireland. It is one of the best-selling drugs in our country for the lowering of cholesterol. It is sent from Ireland to two places. It is made in Ireland in an FDA-approved plant. It is sent to Winnipeg and then Grand Forks, ND, and all over the world, of course. But the difference between the same bottles that are sent to Grand Forks, ND and Winnipeg is in Winnipeg you will pay $1.01 per tablet, and in Grand Forks you pay $1.81 per tablet. What is the difference? About 100 miles and a border and a provision that protects the pharmaceutical industry from reimportation. That is helped, with respect to Australia and other countries this administration intends to negotiate trade agreements with, by their sticking in this trade agreement a provision dealing with the reimportation of prescription drugs. It is anticonsumer, and it shows how little regard those who negotiated this have for the marketplace. Let's let the marketplace be the arbiter of consumer prices on prescription drugs. Let consumers have opportunities to access prescription drugs in other areas where there is a safe supply.

The Australia Free Trade Agreement is going to be passed by the Congress today—not with my vote, I might add, because I think it undercuts and potentially injures family farmers and ranchers and our senior citizens who need affordable prescription drugs.

I hope that even as we do this, as the Congress addresses this issue, those who care about the long-term economy, long-term economic health of this country, opportunities and growth of this country—I hope they will take a hard look at these trade relationships and about our aggregate trade deficits that are growing alarmingly. I am not asking that we today do anything that is particularly radical. I am saying we need to address these things. Can we, will we, should we address the trade deficit with Europe that is growing rapidly? Should we, can we address the trade deficit with China that is moving rapidly up, the highest in the world? Mexico? Canada? Korea? Can we address any of those? All of them relate to American jobs.

It is safe to say there is not one Member of the Senate who comes to work with a blue suit every day and takes a shower in the morning, not at night, because that's the nature of our job—it is safe to say there is not one Member of the Senate that ever lost his or her job because of a bad trade agreement. It is probably safe to say there is not one journalist in this country who consistently writes about trade issues and seldom talks about these trade balances. It is safe to say they have never lost their job because of a bad trade agreement. But we can talk about a lot of people who have. We have a chart that shows the number of people who have lost their jobs with respect to NAFTA. This is not my speculation; these are companies that actually applied to the Department of Labor as a result of laying off workers due to the North American Free Trade Agreement. There was a provision in NAFTA that if you lay off workers as a result of NAFTA, you can apply for trade adjustment assistance. Here are the top 100 companies certifying they laid off United States workers due to our trade agreement with Mexico and Canada—mostly Mexico in this case.

Levi Strauss is No. 2. They laid off 15,676 people. Levis are all-American. That is like bicycles and little red wagons, right? When you buy Levis these days, you are not buying American.

Fruit of the Loom shorts and T-shirts used to be made in America. I always said it is one thing to lose your shirt but now Fruit of the Loom is gone.

From these 100 companies alone, a couple hundred thousand people lost their jobs. They all had hopes, dreams, and aspirations. They love this country and try to do their best. They were told by any one of these companies, sorry, you are out of work, we are moving to Mexico.

Next time you buy a Fig Newton cookie, guess what. You are eating

Mexican food. Fig Newtons were made in America for a long, long, long time. But Fig Newtons, like Levis, like Fruit of the Loom, are now Mexican. When somebody says let's have Mexican food, go buy some Fig Newtons.

The point is this: We had people working in all these areas producing these products. I will go back to the chart that I used when I began about what has happened in the aggregate to our trade deficit year after year after year. It shows this very substantial failure. All of these big deficits represent jobs that moved, jobs that should have been here but are not, jobs that could have been created here but weren't, or jobs that were here and left.

Let me again say I don't believe the solution to this is putting up walls, deciding that we are isolationist, that this is not an international economy. I believe the answer to this is to finally use the term fairness in the context in which it ought to really mean fair trade for all countries. Trade agreements should be mutually beneficial. But these trade agreements, the ones I have described, consistently and relentlessly have been unfair to this country. We were big and strong enough in the 25 years after the Second World War to withstand that. We were the biggest, strongest, and best in the world, and we could take any country on in economic competition and beat them with one hand tied behind our back. After World War II, we were that good. As other countries grew and became stronger and better, they became tough international, economic competitors. Our trade policy never changed. It largely remained foreign policy.

Last year, the administration's Trade Policy Review Group recommended take action against China, for failing to live up to its obligations on China trade. But the administration didn't. Why? Because the administration concluded that this would upset the Chinese. That is foreign policy; it has nothing to do with hardnosed economic policy.

This country lives in a world in which we have incredibly tough competitors. It requires us, it seems to me—if we are going to maintain this standard of living, it requires us to care a little about the preservation of that standard of living, and that in turn depends on both the entrepreneurs and those who work, the producers and the workers.

We have not done nearly what we should do in this country to stand up for our economic interests on international trade. I believe trade can be good, but much of the trade we have been engaged in in recent years has resulted in the largest trade deficit in history and will inevitably detract from this country's opportunity to grow, prosper, and create new jobs in the future, unless and until this Congress and this administration stand up and understand we need to take action on behalf of our country to protect our economic interests. All I ask for is fair trade.

I will vote against the Australia Free Trade Agreement because it contains three bad trade provisions, because we cannot get these removed due to fast track, which itself is an unfairness perpetrated in the Congress.

My expectation is that, even without my vote, this free-trade agreement will pass. But I will be back to talk about trade issues in the future.

I yield the floor.

The PRESIDING OFFICER (Mr. SMITH). The Senator from Ohio.

Mr. VOINOVICH. Mr. President, with a sense of regret, I come to the Senate floor to speak in opposition to the legislation before us to implement the free-trade agreement negotiated by the administration with our good friend and ally, Australia.

One thing I have made clear throughout my career in Government is the fact that I believe in free trade. As Governor of Ohio, I supported NAFTA and the establishment of the WTO. As a Senator, I supported permanent normal trade relations for China, the Andean Trade Preference Expansion Act, and the so-called ''fast track'' trade negotiating authority. I also supported our FTAs with Jordan, Chile, and Singapore.

Until very recently, our economy has been bleeding jobs—23,000 manufacturing jobs lost in my State of Ohio between May of 2003 and May of 2004, which is over half of the total 41,000 jobs lost in all sectors.

While I still firmly believe in free trade, I cannot stand idly by while our trade laws are ignored by other countries and go unenforced by our own. I will no longer allow the illegal trade practices of other countries that put good, hard-working Americans in the unemployment lines to be disregarded, because that is exactly what is happening.

When it comes to trade, China is the elephant in the room that everyone is afraid to acknowledge because they fear it will rear its ugly head. It seems as if we want to waltz with the Chinese and, for some reason, we are afraid to step on their toes for fear they might get mad.

As I and many of my colleagues see it, the two most prevalent trade issues we face are the manipulation of China's currency and their resistance to reform and enforcement of their intellectual property rights laws as required by their WTO accession agreement.

My good friend and colleague from South Carolina, Senator LINDSAY GRAHAM, and I held a press conference last month to highlight a finding in a report by the United States-China Economic and Security Review Commission, a Commission we in Congress created to suggest changes to current U.S. policies with regard to China.

The report issued by the Commission was quite alarming, and I suggest that every Member of both this and the other body read the trade sections of that report.

The Commission reinforces what I have been hearing from Ohio businesses and what I have been saying for years: China is not trading fairly and is hurting Ohio workers and American workers. As we know, since the early 1990s—this is the early 1990s—China has pegged its currency at 8.28 yuan per dollar, which is believed to be anywhere between 15 and 40 percent lower than it should.

This action has the effect of making U.S. products more expensive than items produced domestically. It also makes the retail prices paid here in the United States for Chinese goods artificially low, generating less demand for our domestic products. If demand is lowered both here and overseas of U.S.-manufactured goods, companies will lose money and lay off workers. They already have.

The Commission's report states that if China were to end its currency manipulation, it is believed other East Asian countries, such as Japan, Taiwan, and South Korea that have also manipulated their currencies in order to remain competitive with China, would also follow suit and end their manipulation.

The Commission has arrived at a unique solution to China's currency manipulation. They do not believe China's currency should be floated, as are most developed countries' currencies, because China's banking system and financial markets are simply not prepared. Instead, they recommend that it be pegged to a ''market basket'' of several trade-weighted currencies to avoid fluctuation of any one country. That is exactly the kind of ''outside the box'' thinking Congress had in mind when we created the Commission as part of the fiscal year 2001 Defense authorization bill.

The Commission recommends that the administration take strong action to thwart China's exchange rate practices, something I have repeatedly urged the administration to do myself.

Last fall, I introduced the Currency Harmonization Initiative through Neutralizing Action, CHINA, of 2003. This legislation requires the Secretary of the Treasury to analyze and report to Congress within 60 days whether China is manipulating its currency to achieve an advantage in trade. The CHINA Act also expresses the sense of Congress that the administration should pursue all means available to remedy China's currency manipulation.

The other pressing trade issue is China's lack of enforcement of intellectual property rights laws. This issue at least is getting some traction in the Senate. Unfortunately, not enough of my colleagues are aware of how bad this situation is or of how long the situation has persisted.

In April 1991, China was named a priority foreign country by the USTR under section 301. After further investigation, the U.S. threatened to impose $1.5 billion in trade sanctions if an IPR agreement was not reached by January

1992. While that deadline was met, by 1994, the USTR again listed China as a priority foreign country because they failed to properly enforce their laws. New talks failed for almost a year before a new agreement regarding Chinese IPR laws was reached.

As part of their new commitment, China agreed to take immediate steps within 3 months, establish mechanisms for long-term, effective enforcement, and provide greater market access for U.S. products. In 1996, USTR again listed China as a priority foreign country for not fully complying with the latest agreement. Talks stalled until China was threatened with $2 billion in sanctions when they reportedly satisfied U.S. demands.

However, the problem remains as estimates show the piracy rate for IPR-related products in China to be around 90 percent. Chinese law enforcement officials often lack the resources or the will needed to vigorously enforce IPR laws. Under the terms of the Chinese accession to the WTO, they were to immediately bring their IPR laws into compliance with the WTO Agreement on Trade Related Aspect of Intellectual Property Rights.

This also has not happened as promised. U.S. firms are still losing billions of dollars per year in China alone, and all we have to show for it is a string of broken promises that started in 1991.

I remember being in China in 1995 with a trade mission and speaking to the Chinese Government about the importance of enforcing their intellectual property rights. They said: Yes, we are going to do it. Here we are, 2004, and they have not continued to do the job they are supposed to be doing.

Regardless of China's staggering piracy and counterfeiting operations, they are far from being the only problem area in the world. The U.S. Trade Representative lists 18 countries as ones with which we have ''significant concerns'' with respect to their IPR laws and enforcement. In my opinion, this is far too many countries flouting their international obligations.

In the Governmental Affairs Subcommittee which I chair, I held a hearing on April 20, 2004, that focused on intellectual property violations in the manufacturing sector of the economy, and another on December 9, 2003, which examined the ability of the Department of Commerce and the U.S. Trade Representative to negotiate, monitor, and enforce our complex trade laws in a rapidly shifting global trade environment.

Also, just last month, I participated in a hearing held by Chairman LUGAR in the Foreign Relations Committee which focused on China's inability to enforce intellectual property rights when it comes to music, films, and software. To quote the testimony of Jack Valenti, the head of the Motion Picture Association of America:

Piracy problems are only becoming more severe. In 2002, the piracy rate in China for American films, home videos, and television programs was about 91 percent. In 2003, the pirates captured at least 95 percent of that market. The current level of piracy is worse than it has been at any time since 1995 when it was 100 percent.

But these industries are only the beginning of those suffering from China's disregard for international standards.

Perhaps the greatest problem to overcome is to change the perception in many countries that intellectual property rights do not exist. For U.S. manufacturers, artists, filmmakers, and others, the protection of intellectual property is not an abstract concept because at stake are their livelihoods and those of the people who work with them and for them.

We must make it clear we will not tolerate these trade violations. If the United States were to, in some way, violate a trade pact, the whole world would be beating down our door demanding we change our ways and pay for damages. But when we ask that countries follow the trade pacts to which they already agreed, we are denounced as bullies. Well, I say, let's be bullies.

My concern is that we may not be able to be bullies because, as I learned in my hearings, we do not have the mechanism in place to enforce our trade laws. In other words, we do not know who we should bully around because we do not know who is breaking what agreement. Moreover, testimony indicated that our Government is not doing anything to help the companies that are having their intellectual property stolen.

The state of enforcement is nothing short of abysmal. Amazingly, USTR only employs a grand total of 225 people. It has become painfully obvious that this is an insufficient number of employees to negotiate, monitor, and enforce our trade deals.

Given the impact of changing global economic forces, it is important for our trade agencies to have the right people with the right skills and knowledge to effectively monitor and enforce our complex trade agreements.

It was clear from the testimony delivered at the hearing that our Department of Commerce, the Customs and Border Protection Agency at the Department of Homeland Security, the USTR, and the rest of the 17 or more Federal agencies responsible for monitoring and enforcement of our trade agreements cannot do so effectively.

This could accurately be described as a case of the left hand not knowing what the right hand is doing. In my days of service in government as a Senator, Governor, and mayor, I have never seen such a hodgepodge of agencies and departments struggle with a relatively simple mission to enforce our trade laws.

Following my April hearing, I visited the Web site given as an example of what the Federal Government was going to do to help manufacturers that had become victims of counterfeiting. On that Web site was a telephone number, which I called. However, the person on the other end of the line had no idea that anyone but those with problems relating to immigration would ever be calling that number.

So I called later and I told them who I was, GEORGE VOINOVICH, U.S. Senator, and that I wanted to know what resources were available to victims of counterfeiting, and eventually I was connected to the correct person. Small business owners should not have to deal with such nonsense when asking their Government for assistance.

I am pleased to say that those answering the line are now aware of this other function. But the way it works is, if I am an Ohioan who has an IPR problem, I call this number and then they give me the number of my local Customs office and ask me to call them to begin my complaint. That is ridiculous. It is absolutely no help whatsoever to smaller manufacturers in this country.

I have been pressuring this administration at the highest levels to address the many issues we have with China. In March of this year, along with Senators LINDSEY GRAHAM, SCHUMER, and DURBIN, I sent a letter to President Bush requesting an emergency meeting with the President, Treasury Secretary Snow, and Ambassador Zoellick to discuss concrete action regarding continuing illegal undervaluation of China's currency. That was 5 months after I wrote to Ambassador Zoellick, Secretary Snow, and Commerce Secretary Evans urging them to initiate a 301 investigation into China's practice of currency manipulation.

The response we received from the administration? None. Nothing was known about the stance of this administration until April 28 of this year when Secretaries Snow, Chao, Evans, and Ambassador Zoellick held a press conference to announce they would reject a yet-to-be-filed 301 petition requesting an investigation into China's currency manipulation. Needless to say, I was extremely disappointed that the administration would announce such a position before even receiving the petition documents.

China continues to tolerate rampant piracy of copyrighted U.S. material, with rates of piracy running above 90 percent across all copyright industries for 2003.

This year, piracy is estimated to cost U.S. industries $2.6 billion. Technology has made it much easier to copy or steal the engineering, packaging, and so forth of a product than in the past.

I was talking with a shareholder in a golf club manufacturing outfit 6 months ago. He said that within 3 days after they put a golf club out on the market they were already counterfeiting it in China and sending it to the United States.

Another example, in my own State, Gorman-Rupp Company of Mansfield, which testified at my April hearing,

since 1933 has designed and manufactured pumps used for many applications, including water, wastewater, petroleum, government uses, and agriculture. A Chinese company has not only copied and exploited Gorman-Rupp product manuals and performance specifications, but the Gorman-Rupp logo is still displayed on the products in the Chinese company's literature. In other words, this is a case where they copied the machine, the pump, to a ''T,'' then they used the same promotional material that Gorman-Rupp uses for their material. They copied it line and verse and are using it to promote their pirated product.

Unfortunately, patents do not protect American manufacturers.

America's competitive edge is derived from innovation and the resulting steady influx of new products and services. Intellectual property rights protect and promote this innovative spirit. In too many cases with too many foreign countries, our intellectual property is the last edge we have because of a fundamentally unbalanced playing field.

Many of our competitors do not have to consider environmental standards, labor laws, employee safety, litigation costs—and this Congress has to do something about litigation costs in this country. It is a tornado cutting through the economy and we just sit here and do nothing—health care costs. Losing our intellectual property is the last edge we have.

The United States-China Economic and Security Review Commission believes the administration should file a WTO dispute on the matter of China's failure to protect IPR and to promulgate and enforce WTO-required laws. To quote the report:

> Follow through and action have been limited. . . . The Commission believes that immediate U.S. action is warranted.

I hope my colleagues read the report. The Commission believes that immediate U.S. action is warranted on this issue. There is a sense of urgency. We are just going to Tweedledee Tweedledum? We have done nothing since 1991 on IPR and it is now 2004 and we are still doing nothing?

As I said, I believe in a fair playing field in which competitive and comparative advantage wins the day. We cannot continue to let countries walk all over us. The one country that everyone seems to be afraid to call on the carpet for flagrant violations of their international agreements is China. I do agree with some of my colleagues that maybe the reason we are not doing it is because of foreign policy decisions, but we have to put a stop to China's illegal and unethical trade practices.

There are people who come into my office and literally shed tears, people who have been in business for years, and they are going out of business because of competition from China because of the fact they have taken their patents. So we need to do something. We have to do something now.

Despite these overwhelming problems facing our Nation's manufacturers, I must say I have yet to see any significant action on behalf of the administration to respond. Now I have talked to some people and they say, oh, yes, GEORGE, we are working on this; we are talking to people; we are negotiating and we are doing this.

Well, it is time to bring it to the surface. Let the American people know what they are doing instead of hiding out. Make it an issue. Let the Chinese know we are serious about this thing. Let them know the U.S. Congress is serious about it. Let them know the administration is serious about it. So we can get some action.

Last month I made it known that I would not support any new trade agreements until there was a movement on these two fronts, and that makes me feel very bad. I am a free trader. I believe in free trade. But we do not have fair trade. Maybe the only way this Senator from Ohio, who has a lot of people who are on the edge of losing their businesses, can maybe get someone's attention in the administration to get out and start talking about this the way they should be so the American people, and particularly the voters in Ohio and the manufacturers and the people losing their jobs, is to say to them I will not support any other trade agreement on the Senate floor until they do something about the currency manipulation in China and the enforcement of intellectual property rights.

I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. ALEXANDER. Mr. President, I see the Senator from South Carolina. I know he wants to speak so I will be succinct in my remarks.

I have listened to the Senator from Ohio, whom I greatly respect. I believe there are good free-trade agreements and there are bad free-trade agreements. I believe the proposed United States-Australia Free Trade Agreement is a good free-trade agreement. I intend to vote for it. I believe it will strengthen our economy. I believe it will create more jobs in the United States and it will also strengthen the historic close ties between our two countries.

I have a special fondness for Australia. In 1987, when I finished two terms in the Governor's Mansion, our family moved to Australia and we lived there for 6 months, my wife and I and three teenagers and a 7-year-old. I remember my 7-year-old son wanting to know if there would be McDonalds there. I remember fly fishing in Tasmania with my older son Drew, and thinking I was about as far from Nashville as I could get on Earth. I think maybe I was.

We didn't know much about Australia when we went, but we learned about Australia there, and we found it a great place to learn more about our own country. In spite of the distance between our countries, our countries could not be closer. Australians and Americans are literally cousins, almost first cousins. We are both pioneers. We both started out as underprivileged people. In some cases, our ancestors started out as prisoners, stuck in a new place, far from home, trying to find a new life.

They lived hard lives, those earlier ancestors, but each generation worked hard to make life better for the ones who came next. We successfully settled continents and, from a patchwork of natives and immigrants, created a unique identity, of which we are each proud.

It is our similarities that have led us to the close relationship we enjoy today. Australia has been one of our staunchest allies in our toughest times. We stood together in World War II, in Korea, in Vietnam, in the first gulf war, and in Iraq today. Australia contributed more than 2,000 troops to the effort in Iraq and has been a strong supporter in the war on terror. Their F–18 fighter aircraft have joined ours in air strikes on enemy military targets. Few countries in this world have been stronger allies of ours than the Australians.

Even before this agreement, Australia has been one of our major trading partners—$28 billion in two-way trade annually passes back and forth between the United States and Australia. In fact, the United States enjoys a rare trade surplus with Australia, $9 billion last year.

This agreement means our relationship can only grow stronger. It is good for us. It is good for them. The U.S. Trade Representative estimates the agreement will generate at least $2 billion per year in dollars for both countries by the year 2010. More than 99 percent of United States exports of manufactured goods to Australia will become duty free immediately upon ratification of this agreement—the most significant, immediate reduction of industrial tariffs ever achieved in a United States free-trade agreement. Australia in turn will see the elimination of tariffs on more than 97 percent of its exports. U.S. investment in Australia will increase, and closer ties with the United States economy will generate investment in Australia from all over the world.

I believe the United States-Australia Free Trade Agreement is good for our economy and it is good for our alliance. It benefits the farmers and manufacturers and investors and citizens of Australia as well. It further opens the door to trade in Southeast Asia, one of the fastest growing regions in the world.

I am pleased to add my voice in support of this momentous agreement and to celebrate the further strengthening of the tie between the United States and our first cousins in Australia.

The Senate will be talking about the tobacco buyout later today. I will be voting for the proposed amendment when it comes up.

Tobacco farmers in Tennessee have increasingly struggled to succeed under the antiquated federal supply and price controlled tobacco programs. I grew up in East Tennessee, and small family tobacco farms were a part of the lifestyle and economic vitality of that area where my family has lived for seven generations. Because of the Depression-era federal tobacco programs, the number of tobacco farmers in Tennessee has decreased from more than 35,000 farms in 1980 to roughly 20,000 today. Revenue has gone down by $25 million. We have 80,000 Tennesseans who depend on quota lease payments for some part of their income.

This legislation, that I intend to vote for, will provide a short term bridge to tobacco growers and quota holders and the communities in which they live. Tennesseans who own quotas will receive a fair transition away from lease income they have received. Growers will receive transition payments as well. The buyout would last over ten years and mean roughly $1 billion to the family farmers, quota lease owners, and communities in Tennessee.

I believe if we pass this legislation that it can be combined with what has passed the House of Representatives to be a program that is fair to the tobacco growers, good for the economy and doesn't cost the American taxpayer one red cent. It's hard to come up with a combination that good very often.

I have not been a fan historically of FDA regulation of tobacco, a legal product, and while I am not 100 percent satisfied with the FDA proposal, I am willing to accept this compromise in order to move the tobacco buyout forward.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. HOLLINGS. Mr. President, I ask unanimous consent to speak for 20 minutes of the time under the control of the Democratic manager.

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

Mr. HOLLINGS. Mr. President, right to the point with respect to the Australia trade agreement, I join my friend from Tennessee in endorsing this particular trade agreement. Trade is what we say it is, a trade for the benefit of the particular countries involved. It is not aid. People wonder why we are in such difficulty. The difficulty lies in the proposition that the old David Ricardo doctrine of comparative advantage has been superseded now, not by any doctrine of natural advantages, such as Ricardo had in the early 19th century when he enunciated that particular doctrine, but it is contrived and we are the contrivers. We are looking at them, my colleagues in the Senate and the House, the Government itself.

If anybody wants to improve our position on trade, we can go right to the particular beef with respect to the distinguished Senator from Ohio. He said he called the Secretary of Treasury and asked that there be a petition for an investigation of China's trade practices, a 301 proceeding. He didn't get any results.

I see the distinguished ranking member, former chairman of our Budget Committee, on the floor. If you looked at 11 o'clock this morning, the public debt to the penny is $484 billion. Last year we ran a deficit of $562 billion. Don't give me this off-budget and on-budget, public budget, Government budget, private budget, or whatever else. No, that is how much more we spent than what we took in. It is already $484 billion and I will take all bets it will exceed $600 billion.

In fact, although they talk about the war and everything else of that kind, during the 5 years of World War II from 1941 to 1945, during that 5 years we added to the debt $200 billion, in the war to end all wars. We add that every 4 months under this administration, some $200 billion.

I mean, we are up, up, and away. So when you call over to the Secretary of Treasury and the Secretary of Treasury calls over to the Minister of Finance in Beijing, China, and he says: You know, you have good Senators. They are on my back. They are complaining. We have to get something done.

He says: Well, I am sorry, but we will have to quit, we will have to stop buying your bonds, quit financing your debt.

Japan has $400 billion of this Treasury. The Chinese have over $150 billion. So when we do not pay the bill and everybody says tax cuts, got to have tax cuts to get reelected—you now meet yourself coming around the corner. That is why you can't get the Secretary of Treasury to do anything on trade.

But let me go to Australia. The general measure of a good trade agreement is that it is with those countries that have relatively the same standard of living. The reason I point this out is because they would be amazed for me to come up in favor of a trade agreement. They have me down as a textile protectionist, and I have passed four textile bills that have gone through the House and Senate and been vetoed by Presidents Carter, Reagan, and George Herbert Walker Bush.

But be that as it may, yes, I voted for the Canadian Free Trade Agreement but against the Mexico Free Trade Agreement on NAFTA. Why? I can see my friend Senator Moynihan from New York saying: Wait a minute, down in Mexico they have to have a free market before they can have free trade.

There was the common market approach in Europe. Before they allowed Greece and Portugal into the common market, they taxed them as members of the European Union over a period of years for $5 billion, so that it could develop the entities of a free market, labor rights, respected judiciary, property rights, and the other things that go along with capitalism. Obviously, Australia, we always whine. I can hear my labor friends: We have to have labor rights, we have to have environmental protection. They have better labor rights in Australia and better environmental protection in Australia. But they have relatively the same standard of living.

Right to the point: We have a plus balance on trade. You don't get every one of the protections. There are some protections in there for beef, and there is a gradual opening. They phase out the tariff rate quota on dairy products over an 18-year period. And they import sugar. It is not liberalized in any way. That has been protected for the United States. Australia has maintained its monopolies on wheat, barley, and rice. They receive the right to maintain or restrict the foreign content of television programs.

In other words, they protect local production and the pharmaceuticals. We thought a bill was coming up shortly with respect to pharmaceuticals in Australia. They subsidize the drugs for the population there. Therefore, they wanted to restrict drugs coming from Australia into the United States because they didn't want to start subsidizing American consumers.

There are a few exceptions. But it is a solid agreement.

We don't have a better friend—whether we were going into Korea, whether we were going into Vietnam, whether we were going into Iraq. I am telling you right here and now that the best friend we have ever had is Australia.

We have relatively the same standard of living with different restrictions here, there, and yonder. If we can't get an agreement with them, who?

Let me talk about another particular point. There is none better in the Senate than my distinguished colleague from North Dakota, Senator BYRON DORGAN. He was talking about fairness.

After World War II, we started the Marshall Plan, and financed the development of Europe and the Pacific rim countries. We sent the equipment, the expertise, the money, the technology, and it worked. We spread capitalism. It has prevailed over communism in the Cold War, and everybody is happy. But in that 50-year period, instead of following our example by giving up a good part of the textile industry, giving up a good part of the automobile industry, giving up a major part of the electronics industry—and I could go right on down the list, steel and otherwise—they didn't follow suit.

When they talk about free trade, it is interesting to look at the 1992 foreign trade barriers. Some act like we have to set the example. We tried that for 50 years and flunked. We have flunked the course.

In 1992, they had 265 pages of restrictions in the foreign trade barriers—the Office of the U.S. Trade Representative. Then in 2002, 10 years later, they had exactly 455 pages. It went up by 200 pages. Since I have been doing this, the Trade Representative has put out a

newer one in smaller print. No kidding. They are clever over there. They don't think you are watching.

The movement is to protectionism. How in the Lord's world do you think we are going to survive in a trade war? That is what we are in—protectionism for free trade.

The question before this body is how to get there. Come on.

It is like world peace. Everybody is for world peace, but the best way to preserve the peace is to prepare for war. The best way to attain free trade is raise the barrier to a barrier. We then remove both. It is competition.

It is trade. The word ''trade,'' free trade is an oxymoron. There is nothing free. There is no free lunch.

I can tell you now in this globalization, come on. Senator, you don't know anything about globalization. You don't want to compete. You don't understand. We have globalized. We have globalization going on.

Did you know that the United States of America invented globalization? We invented it under Alexander Hamilton. We had just won our freedom as a fledgling colony.

The Brits said, Wait a minute, to Hamilton, we will trade with you what Britain produces best, and you in the new United States of America trade back with us what you produce the best. Hamilton started globalization. He told the Brits to bug off in his Report on Manufacturers.

We started globalization, and we have continued it.

Do you know what it takes for protectionism? We didn't even pass an income tax until 1913. We financed government for 100 and some years.

Theodore Rex said, on page 21—this is the turn of the last century under Teddy Roosevelt.

> This first year of the new century found her worth twenty-five billion dollars more than her nearest rival, Great Britain, with a gross national product more than twice that of Germany and Russia. The United States was already so rich in goods and services that she was more self-sustaining than any industrial power in history.
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> Indeed, it could consume only a fraction of what it produced. The rest went overseas at prices other exporters found hard to match. As Andrew Carnegie said, ''The nation that makes the cheapest steel has other nations at its feet.'' More than half the world's cotton, corn, copper, and oil flowed from the American cornucopia, and at least one third of all steel, iron, silver, and gold.
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> Even if the United States were not so blessed with raw materials, the excellence of her manufactured products guaranteed her dominance of world markets. Current advertisements in British magazines gave the impression that the typical Englishman woke to the ring of an Ingersoll alarm, shaved with a Gillette razor, combed his hair with Vaseline tonic, buttoned his Arrow shirt, hurried downstairs for Quaker Oats, California figs, and Maxwell House coffee, commuted in a Westinghouse tram (body by Fisher), rose to his office in an Otis elevator, and worked all day with his Waterman pen under the efficient glare of Edison lightbulbs. ''It only remains,'' one Fleet Street wag suggested, ''for [us] to take American coal to Newcastle.'' Behind the joke lay real concern: the United States was already supplying beer to Germany, pottery to Bohemia, and oranges to Valencia.

We walked into the World War II Memorial and over on the right-hand side you see a saying by President Roosevelt in 1942 of how we won that war. He gave tribute to Rosie the Riveter, the American production machine. That is how we built it, with protectionism.

Now for 50 years, we have given it away. We continue to want to give it away and put ourselves in the hands of the Chinese and Japanese by not paying our bill. They are financing our debt.

There you are. That is the reason for the situation we are in. We are the ones to blame. Before you open up Smith Manufacturing, you have to have clean air, clean war, Social Security, Medicare, Medicaid, minimum wage, plant closing notice, parental leave, safe working place, safe machinery, the Americans with Disabilities Act—I can keep on going. But you can go to China for 58 cents an hour and have none of those requirements.

America is leaving and organized against us and the U.S. Chamber of Commerce has turned into the International Chamber of Commerce. The multinationals are taking it over and they are all hollering, ''free trade,'' ''free trade,'' continuing to produce overseas, dump back into the United States. And we are in the hands of the Philistines; namely, WTO.

Every time we bring a dumping case, they say it is violative of WTO. You can't sell a product at less than cost in the United States but you can take a foreign Lexus automobile and sell it for $35,000. That same automobile sells for $45,000 back in the Tokyo market. The competition is market share; it is not profit.

This is a very complicated subject. We have to come to grips with it. There are going to be exceptions to those countries that have the same standard of living. You have your national interests and national concerns.

I voted for free trade with Jordan. She is our only friend out there helping us with Israel in the Middle East. So you make those exceptions because it is in our national interest to do so.

But the general rule of thumb is, it is the standard of living, and on trade itself, we have to get organized. We need, instead of a Department of Commerce, a Department of Trade and Commerce. We need to transfer the special Trade Representative over there. We need to start enforcing our laws, get a U.S. attorney, an assistant U.S. Secretary of the Department of Justice as we have on the antitrust division and put him in there in the trust division with us in trade.

We have to get more Customs agents. We have to get in and start competing and quit whining against each other and understand we are not getting anywhere. We are going out of business every day. Exports and imports have been going up years on in, but, for the first time, our exports, now, have gone down in the last 4 years, rather than up.

Yes, thank Heavens for the farmer. I see the American farmer on the floor of the Senate. Thank Heavens we have the plus balance of trade there. Other than that, we are not making anything anymore.

Of course, in Europe, which was a good market, they do not want to buy anything from us on account of Iraq. We have turned them off. We are not only having to pay for Iraq in human tragedy and otherwise, but we have to pay for it in our trade balance now with Europe.

I could go right on down the list. Just one word. Yesterday, I picked up the article with respect to William Safire. Safire said we had no agents in Iraq, none. I have seen one figure $30 billion and another figure $40 billion intelligence effort and we had nobody in Iraq. It reminds me when I served for 8 years on the Intelligence Committee and we came back in before the gulf storm—the ''we'' being Senator Bill Cohen and myself—and we wanted to get briefing on Saddam going into Kuwait. They told us the CIA didn't have anybody that could brief us. We had to send over to the Defense Department.

George Tenet was the staff director at the particular time. Here, some 10 years later, we still don't have anybody. Do you know what they told me why we didn't have anybody? Because Israel will tell us. Mossad is the best intelligence in the world. And all of this dog chasing its tail about whether the intelligence was distorted or misinterpreted or pressured or what have you, I can tell you now the survival of Israel, our best friend, depends on having intelligence on what is going on in downtown Baghdad, all over Iraq, all over Syria, all over Iran, and in Egypt. They know. They got to know. And therein you do not need intelligence. That is the dog that didn't bark.

My friend Bob Novak was talking about the dog that didn't bark. If there had been any weapons of mass destruction, our friend, Israel, would have said: Go there, go here, go there. They knew it. And George Herbert Walker Bush said:

> I firmly believe we should march into Baghdad. . . . It would take us way beyond the imprimatur of the international law bestowed by the resolutions of the Security Council, assigning young soldiers to a fruitless hunt for a securely entrenched dictator and condemning them to fight in what would be an unwinnable urban guerilla war. It could only plunge that part of the world into even greater instability and destroy the credibility we were working so hard to reestablish.

It would turn the whole Arab world against us.

That is where we are.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I thank the Senator from North Dakota for his courtesy in letting me make a brief statement before he makes his statement.

I rise today to express my strong opposition to the United States-Australia Free Trade Agreement and the legislation that has been introduced to implement it. This is the latest in a string of deeply flawed trade agreements. It is a bad deal for dairy farmers, it is a bad deal for consumers, and it is a bad deal for Wisconsin.

The agreement undermines our dairy industry by displacing the domestic milk supply. It proposes to increase quota access to the U.S. market for Australia's dairy producers, while failing to address the flood of milk protein concentrate imports that is entering the country through a tariff loophole and that has been harming U.S. dairy farmers for some time. There can be no doubt that this agreement will put downward pressure on dairy prices and will further accelerate the loss of dairy farms in Wisconsin and across the Nation, which is something I have been working hard to stop.

Wisconsin is still the No. 1 producer of cheese in the United States. But this agreement will hurt Wisconsin cheesemakers as they attempt to compete against the ever-rising flood of Australian imports. By signing this agreement without addressing MPCs, the administration turned a blind eye to the concerns of the Wisconsin dairy industry.

The adverse effects of the agreement are not limited to our dairy farmers. During the informal mock markup, a majority of the Senate Finance Committee expressed concerns about safeguards to protect American ranchers and cattle producers from unfair imports of beef products. Those concerns underscore the importance of the administration consulting and working with Senators in the drafting of the implementing legislation.

Instead of honoring the informal process set forward in the trade promotion authority, the administration and the Senate leadership ignored these concerns. The result is to further undermine the ability of the Senate to weigh in on trade agreements, which was already greatly weakened by the passage of fast-track authority.

This is not the only problem with the trade agreement between the United States and Australia. As an original cosponsor of bipartisan legislation that would allow Americans to safely purchase prescription drugs from countries including Australia, I am particularly troubled by reports that this agreement would effectively ban reimportation of prescription drugs from Australia.

In February, I wrote to the Senate Finance Committee and urged them to address this issue before the unamendable legislation implementing the trade agreement was brought to the Senate floor for a vote. Now, reports raise real questions about whether Congress can repeal the trade agreement's ban on reimportation of prescription drugs from Australia, even if it later passed legislation permitting reimportation. I do not see why we should be voting now on a trade agreement that would potentially tie the hands of both Australia and the United States on this vitally important issue.

This legislation may well be a template for future trade agreements to include similar provisions that restrict the safe reimportation of drugs. I strongly disagree with efforts by trade negotiators to address an issue that Congress is currently actively considering. Congress should be setting policy on an issue as important as the importation and the reimportation of prescription drugs, not our trade negotiators.

There continue to be many concerns about the impact of this agreement on the U.S. health care system, particularly the Federal programs aimed at helping our veterans, our seniors, and our neediest citizens. These questions need to be resolved to ensure access to safe and affordable prescription drugs.

I have introduced a bill, S. 1994, which would address what I believe is one of the biggest flaws of the new Medicare prescription drug benefit. My bill would allow Medicare to negotiate the prices of prescription drugs offered under this new benefit. There is widespread support for giving Medicare this authority. It only makes sense we let Medicare use its considerable leverage to help lower the cost of prescription medicines for seniors. But there are questions about how this agreement would impact Medicare's ability to negotiate drug prices, should legislation such as mine be passed by Congress.

We need more time to answer these questions and to fully understand the possible interaction of this agreement with legislation to allow the safe reimportation of prescription drugs. Trade promotion authority provides expedited consideration of trade agreements, but we are well ahead of any deadlines imposed. This Chamber could easily have waited until next week or even into September to consider this measure. With only 20 hours of debate allowed, the Senate should not have rushed headlong into this debate today. There is simply no excuse for Congress hastily taking up the Australia Free Trade Agreement before resolving these questions.

The administration presented a bad deal to Congress and the American people. Not only will this agreement hurt Wisconsin's dairy industry, but the whole process has undermined Congress's constitutional authority over trade policy and it has weakened our ability to make policy. For those reasons, I will oppose the United States-Australia Free Trade Agreement implementing legislation, and I urge my colleagues to vote against this measure.

I yield the floor.

The PRESIDING OFFICER (Mr. CORNYN). The Senator from North Dakota.

Mr. CONRAD. Mr. President, I rise to express my strong opposition to the so-called United States-Australia Free Trade Agreement. This is really not a free-trade agreement at all. This is a negotiated trade agreement, and our side, once again, lost the negotiation.

I believe the United States-Australia Free Trade Agreement is one more example of the United States trading away its economic strength for some other agenda. Somebody once said: The U.S. has never lost a war and never won a negotiation. That certainly is true of this agreement.

First, I believe the focus of our trade policy should be opening markets to U.S. exports where we have the most to gain. We need to level the playing field for our producers, and we need to open major markets around the world that remain closed to us. Unfortunately, that is not the trade policy or agenda being pursued by this administration.

Our current trade policy is completely off course. Our negotiators have failed to secure a good deal for agriculture in the WTO talks. Instead, they have opened trade talks with countries that offer few new export opportunities for the United States.

Commercial gain should drive our trade policy. But it has become clear that foreign policy considerations are the primary factor influencing our trade agenda. It is no secret here in Washington what this agreement is about. It is not about a trade advantage for the United States. It is not about improving the economic strength of America. This is a payoff. This is a payoff to Australia for backing our Iraq policy. That is what this is about.

Not surprisingly, the results of this flawed trade policy are abysmal. Our trade deficits are skyrocketing. Last year, the trade deficit hit an all-time record of $497 billion. And this year, what do we anticipate? Well, it is going to be much worse.

Mr. President and colleagues, we can look back and see what has happened under this trade agenda. In 1997, we had a trade deficit of $108 billion. That was only 7 years ago, and look what has happened. Every year it has jumped, and jumped dramatically. From 1998 to 1999, it went up almost $100 billion; from 1999 to 2000, almost $100 billion; from 2001 to 2002, up, up, and away again, approaching $100 billion for 2002 to 2003. Goodness knows where it will be this year.

These developments have serious consequences for our economy. This is not just numbers on a page. This is not just columns on a chart. This has real-world consequences for the U.S. economy.

Earlier this year, the Washington Post carried an article expressing the concerns of economists about our trade and budget deficits and the falling value of the dollar. It reported:

The twin trade and budget deficits are both approaching a half trillion dollars, and with

U.S. consumer debt also at record levels, it is up to foreigners to keep the U.S. economy afloat.

Let me repeat that: ''it is up to foreigners to keep the U.S. economy afloat.''

The U.S. economy now borrows $1.5 billion a day from foreign investors, said Sung Won Sohn, chief economist of Wells Fargo & Co., and that level could reach $3 billion a day in the near future.

Where are we getting the money from? The Senator from South Carolina had it right. We are approaching $600 billion from Japan, $150 billion from China. We are even borrowing money from the so-called Caribbean banking centers—$80 billion from the Caribbean banking centers. And we have yet our tin cup out, even in South Korea. Who would have guessed that the mighty and powerful United States would have to go hat in hand to South Korea and borrow $40 billion?

The Washington Post article went on to say:

Currency traders fretting over that dependency have been selling dollars fast and buying euros furiously. The fear is that foreigners will tire of financing America's appetites. Foreign investors will dump U.S. assets, especially stocks and bonds, sending financial markets plummeting. Interest rates will shoot up to entice them back. Heavily indebted Americans will not be able to keep up with rising interest payments. Inflation, bankruptcies and economic malaise will follow.

On agricultural trade, the story, regrettably, is much the same.

Things are getting worse, not better. Our surpluses have gotten steadily smaller since 1996. Always agricultural trade has been one of our leading areas of surplus, but that surplus is shrinking and shrinking steadily. Last year we had the smallest agricultural trade surplus since 1987. We are going full speed in reverse in every sector. This is an ominous warning to the American people of the direction of this flawed and failed trade policy.

The fact is, this administration is not leveling the playing field for our producers or opening major new markets for U.S. exports. Instead, it is opening our markets to a flood of agricultural imports unfairly traded that threaten American family farmers. To me, focusing on this free-trade agreement and more like it and neglecting a successful WTO agreement is a recipe for disaster for American agriculture. Mark my words, friends: We are going in the wrong direction.

Those with whom we compete are not playing according to some fair set of rules. They are subsidizing at a rate, in Europe alone, five times our rate here. They account for over 87 percent of the world's agricultural export subsidy in Europe, 30 times the rate here. And the results are clear. They are gaining market share year after year after year and now rival our own share of the world market.

America needs to wake up to the gathering threat. I regret to say, this agreement with Australia is a perfect example. On agriculture, the United States had almost nothing to gain and a lot to lose. The simple fact is that Australia is never going to be a large export market for U.S. commodities, but it poses a serious threat to certain commodities produced here at home such as beef and dairy. It is very clear. Any objective analyst can look and see what was the opportunity for America and what was the threat. The threat totally overwhelms the opportunity.

In addition, Australia has an export state trading enterprise known as the Australian Wheat Board. Grain growers in my State have had a bitter experience with these State trading enterprises. Ever since passage of the so-called Canadian Free Trade Agreement—again, that was no free-trade agreement; it was another negotiated trade agreement, and our side lost the negotiation there as well, especially when it came to agriculture—the United States has been flooded with a tidal wave of unfairly traded Canadian grain, undercutting our producers, undercutting our prices, putting our people at risk, costing my State nearly half a billion dollars.

Our neighbor to the north maintains a government-sponsored monopoly known as the Canadian Wheat Board. The Canadian Wheat Board is the only exporter of western Canadian grain. It is a monopoly. It uses this monopoly power to undercut prices to our producers, not just in my State of North Dakota but in Montana, in Idaho, in Minnesota, and all across the northern tier of the United States, undercutting through unfair trade practices the family farmers who are the heart of the heartland of America.

We have been fighting for 15 years to resolve problems created by the Canadian Wheat Board, and we have learned a bitter lesson. We have learned that once something is permitted in a trade agreement, it is virtually impossible to fix. That is why I was disappointed to learn that the Australia Free Trade Agreement does nothing—I hope my colleagues are listening—to curb the unfair trading activities of the Australian Wheat Board. This was a priority for many farmers. The U.S. wheat industry has decided to oppose this agreement because of this one defect alone.

Some will argue that we have a trade surplus with Australia, and, therefore, it is a good country with which to enter into a trade agreement. That argument sounds good, but history teaches us something quite different. I remember so well when we debated NAFTA. I want to make clear my own position on trade. I supported the agreement with China. I supported WTO. I opposed NAFTA. I opposed the Canadian Free Trade Agreement because in those cases, I believed our negotiators got taken to the cleaners. I will tell you, our negotiators got taken to the cleaners on this one as well.

The record, I believe, will be clear. Back in NAFTA, remember what we were told. We were told: We have a trade surplus with Mexico, and if we just approve this agreement, the surpluses will grow.

We can now go back and check the record. Did the $2 billion trade surplus that existed with Mexico before NAFTA increase? No. Did it stay the same? No. There is no trade surplus with Mexico anymore. Now we have a trade deficit, not a small trade deficit, not $2 billion, not $4 billion, not $8 billion, but $40 billion of trade deficit. And some come on this floor and call it a success. What would it take to call it a failure? I am amazed to hear people come out on this floor and call NAFTA a great success. We went from a $2 billion trade surplus to a $40 billion trade deficit, and they call that a success? What are they thinking of? We are full speed in reverse in this country in terms of our trade position in the world.

Trade agreements are no guarantee of trade surpluses, and opening our market to further import competition without creating new export opportunities is a serious mistake. That is exactly what this agreement that is before us today does when it comes to agriculture. There will be virtually no new agricultural exports to Australia as a result of this agreement. But when it comes to the American beef and dairy industries, there will be significant increases in imports that they will face—and on an unfair basis—because we know of all the hidden subsidies they have in Australia for those industries. We know how they play the game.

I have concluded that from the perspective of the farmers and ranchers I represent, this agreement is a bad deal.

Second, the mistake has been compounded by a massive loophole in implementing this bill with regard to beef safeguards. Ever since the Australia Free Trade Agreement was signed, the administration has said over and over that the agreement had an automatic guaranteed safeguard to protect our U.S. beef industry against unfairly traded imports. That is what they told us. That is what they told American ranchers and farmers, that it was automatic, that it was guaranteed. But check the fine print. See what they have done in the final hours. They have slipped you a Mickey. It is not guaranteed. It is not automatic. It is all subject to a waiver and a decision by one person who doesn't happen to be in the Congress of the United States.

We were told that the industry would not have to worry if imports of Australian beef surged or prices in this country plummeted. The safeguards were automatic and were guaranteed.

But now we find the safeguard is not automatic and not guaranteed. In fact, this safeguard has a loophole big enough to drive a cattle truck through. The implementing bill before us specifies that the USTR can waive the beef safeguards whenever it determines that extraordinary market conditions make it in the national interest to do so.

Here is what it says:

The United States Trade Representative is authorized to waive the application of this subsection if the Trade Representative determines that extraordinary market conditions demonstrate that a waiver would be in the national interest of the United States.

Who decides? The Trade Representative of the United States. That is not what the Constitution says. The Constitution doesn't say the Trade Representative decides these questions of international commerce. The Constitution of the United States says:

The Congress shall have power . . . to regulate commerce with foreign nations. . . .

Not the Trade Representative or Ambassador, but the Congress. And the Congress has given away its responsibility in these free-trade agreements with the fast-track procedure. We have done that based on a promise that is being violated in this agreement for the first time in a trade agreement.

Listen well, my friends. Listen well. Understand what is about to happen on the floor of the Senate. For the first time, in an unprecedented way, the role of Congress is being further reduced. The legislation before us does not require the Trade Representative to even consider the effect on the beef industry of waiving the safeguards. If he or she determines that a lower price for hamburger is in the national interest, it can waive the safeguard, even if doing so clearly injures the U.S. beef industry, which the safeguards are supposed to protect. The legislation doesn't give Congress, the body charged in our Constitution with regulating tariffs, any meaningful say in this decision.

As I show on this chart, Article I, section 8 of the Constitution says Congress shall have the power. In this agreement, it is the Trade Representative who has the power. The statement of administrative action says, ''The United States Trade Representative will notify Congress of its decision to waive the safeguard at least 5 days before the waiver goes into effect.''

The Congress shall have the power to get a 5-day notice of what the Trade Representative has decided. That is not what the Constitution of the United States intended. It didn't intend for a Trade Representative to give 5 days' notice to the Congress of the United States before their decision is made, with no role for the Congress of the United States. That is not what the Constitution says.

This agreement does not in any way commit the USTR to even listen if the Congress expresses concerns or objections. I don't think that is right. I don't think that is how this agreement had been sold to the American people. I know that is not the way it was sold to the ranchers and farmers of North Dakota, South Dakota, Montana, Idaho, and every other State. They were told there was automatic guaranteed protection for them.

That is why, when the Finance Committee conducted its markup of the Australia agreement 2 weeks ago, I offered an amendment. My amendment insisted that Congress have a say before the Trade Representative decides unilaterally to waive this safeguard.

This is where it gets interesting, because my amendment was adopted on a vote of 11–10. Here is the vote: 11 votes for the Conrad amendment, 10 votes in opposition. The Conrad amendment is not in the agreement that is before us. Have you ever heard of that happening before? Have you ever heard of an amendment passing in a committee that has jurisdiction and it is excluded when it comes out here on the floor? It is as though those 11 Senators never voted.

The administration ignored the amendment passed in the Finance Committee and, as a result, the legislation before us contains the very same loophole that was rejected by a majority of the Senate Finance Committee. That is profoundly unfair to America's ranchers and cattlemen. It ignores the express will of the Senate Finance Committee, and it is yet another example of why I have concluded this legislation is a bad deal.

Before moving on to discuss why I find this process so troubling, let me address one other issue that has been raised with respect to my amendment. Some have argued that my beef safeguard amendment was unconstitutional. That argument is simply a red herring designed to avoid a discussion of the merits of the amendment. I have yet to hear anyone argue that Congress should not have any say before the U.S. Trade Representative unilaterally waives the safeguard that was promised to America's cattlemen. The Finance Committee has a long history of considering conceptual amendments rather than requiring legislative language. That is how the Finance Committee of the United States does its work. We offer conceptual amendments that are later translated into legal language. That is the way it works.

My amendment said fundamentally that Congress must act before the U.S. Trade Representative can waive the safeguards promised to the beef industry. I have consulted with the Congressional Research Service, because one of their staff members asserted there might be a constitutional problem with what I proposed. I now have a memo from the very same gentleman who raised the constitutional question saying there were at least two ways to take my conceptual amendment and make it constitutionally permissible. But that is not what happened. As I have said, CRS has concluded in a memo to me that the concept expressed in my amendment could have been implemented in at least two ways without raising any constitutional problems.

First, the Conrad amendment could have been implemented through the statement of administrative action. The statement of administrative action is a document submitted to the Congress that explains the agreement on how the administration intends to implement it. Since the statement of administrative action is an executive branch document, it explains how the executive branch will choose to operate. No separation of powers problems would exist.

Moreover, this is precisely how a commitment to Senator BAUCUS with respect to the beef safeguard was implemented. It was not included in the legislation. It was put in the statement of administrative action.

Alternatively, it would have been entirely consistent with my amendment to implement it through a congressional disapproval process. This process is very familiar to Senators. For years, the Congress voted annually on a resolution extending normal trade relations, or most-favored-nation status, as it was then called, treatment for China. There has never been any question that this waiver process was fully constitutional. Thus, had there been any interest in making my amendment work, it would have been easy to find a way to do it.

So I can only conclude that those who talk about the Constitution are simply avoiding the real issue. The real issue is whether the U.S. Trade Representative should be given the power unilaterally to revoke a safeguard that was sold to our beef producers as an absolutely automatic guaranteed protection against surges of unfairly traded Australian beef imports that would damage our U.S. beef industry.

On that issue, a majority of the committee clearly said no. They didn't just say no, they voted no. I have yet to hear anyone make a persuasive argument why the USTR should be able to unilaterally take away this safeguard. It is unfair to those who supported my amendment. The process was short-circuited to drop the Conrad amendment. In particular, it is unfair to our ranchers and cattlemen to take away that safeguard.

Let me address the process the Finance Committee followed in dropping my amendment, and why it is so troubling.

The chairman of the Senate Finance Committee is a fine man. He is, in fact, a good friend of mine. But with all respect to the chairman, the process that was followed to subvert the will of the majority of this committee was egregious. It sets a very dangerous precedent that threatens the underpinnings of the fast-track process.

As all Members of this body already know, the Constitution gives the Congress—not the President—the responsibility for regulating foreign trade. Yet in recognition that we cannot have 535 trade negotiators, the Congress has agreed to the fast-track process for considering trade agreements.

In agreeing to fast track, each Senator gives up the most fundamental rights of a Senator. We give up our right to amend, the most fundamental right of all Senators. And we give up our right to extended debate, a second

of the most fundamental rights of any Senator. In essence, we are giving up our right to protect our constituents.

In return, there is supposed to be a detailed consultation—a detailed consultation—with the Congress throughout the process of negotiating trade agreements and developing the implementing legislation.

In practice, the Finance Committee in the Senate is the focus of this consultation because the Finance Committee has jurisdiction over trade policy. In theory, the committee has extensive input during the process of negotiating trade agreements and developing the legislation to implement them. Theoretically, it does not then need to amend the implementing bill once it is formally introduced.

Understand, here we are on the floor of the Senate. There is a treaty. Normally, every Senator would have the right to offer amendments to it. We would have the right to extended debate. We have given up those rights under the fast-track process. We do not have the right to amend. This bill will be considered in less than 20 hours. There is not the right to extended discussion, to illuminate, to educate so that people fully understand what is happening. Those fundamental rights of any Senator have been given up in the fast-track process.

When it comes to developing the implementing bill, this consultation occurs through what is known as the mock markup process because it is not a real markup because we have given up those rights. Instead, we have what is called a mock markup. The mock markup is the Finance Committee's opportunity to amend the implementing bill before it is formally introduced, and then cannot be amended under fast-track rules.

This informal process has a long history. For past agreements, the process has lasted months and produced a host of changes. To give just one example, 14 amendments were adopted during the mock markup of the North American Free Trade Agreement. The amendments added during mock markups were addressed in a mock conference and then included in the final formal implementing bill. I recall this history to make several points because people need to understand what is happening.

Everything has changed. We have never dealt with a trade matter in the way we are dealing with it today. My colleagues need to understand the consequences of what is about to happen because they are enormously serious for every Senator, and they are enormously consequential for this country.

First, in the past, the committees have always insisted on sufficient time for all members of the committee to review the draft implementing bill and have their concerns addressed.

Second, it is not at all unusual for changes to be made, for amendments to be made during the mock markup process, including many that did not have the support of the administration.

Third, when the mock markup process produced changes, it did not spell doom for the agreement.

Fourth and finally, the chairman of the Finance Committee did not vote down the package simply because it included a provision with which the administration or the chairman disagreed.

But what happened during the mock markup of this bill, the Australia free trade agreement, threatens to make a mockery—a mockery—of the process of congressional consultation. In the Australia agreement, we got the bum's rush.

The agreement was completed on February 13, but we did not see implementing legislation until June 18. More than 4 months went by with no implementing bill to review. And then after 4 months of delay, we were told we would have 4 business days before the mock markup to respond to a provision on the beef safeguards that was totally unexpected.

When I indicated my intent to offer an amendment, the Trade Representative made clear that my input was unwelcome. He simply did not want to entertain a serious substantive concern that is important to the ranchers and cattlemen whom I represent. Yet addressing these concerns before an unamendable fast-track bill is precisely the purpose of the mock markup process. That is the whole point of going through this exercise, is to give Senators a chance in the committee of jurisdiction to make changes if they prevail in a vote.

I did prevail in a vote. My side won, but it is not in this agreement. That has never happened before. Mr. President, I say to Senators, they better think long and hard about what that means. They better think long and hard about what that means for the process. They better think long and hard about what that means for fast track because if this trade of giving up our right to amend and our right to extended debate is a hollow one without meaning, that there is supposed to be a congressional consultation, that there is supposed to be a parallel process that allows Senators to alter the package before it comes to this floor, if that is all hollow, if that is all a sham, if that is all a phony exercise, then Senators better think long and hard about giving up that power to amend and that right to extended debate because the rest of this process has become an absolute sham.

I offered my amendment. It prevailed on an 11-to-10 vote, but the normal process was not allowed to play out. Instead, the committee followed the unprecedented course of voting down the amended recommendation in its entirety. Then the administration submitted its original proposal all over again without the amendment. That is good; that is arrogant.

In essence, what the administration is saying is that voting down a recommendation is tantamount to approving it. They are ignoring the clearly expressed will of a majority of the members when it comes to the language on beef safeguards. It is like voting down a bill on the Senate floor after it has been amended and trying to claim that defeat is the same as adopting the bill that was originally brought to the floor. What a sham.

That strikes me as dangerous. It opens the process to abuse, and it reduces the committee's role in crafting trade policy. It may have been expedient in this instance, but I believe that we will come to regret this precedent and this day. It invites a future President to ignore any recommendations made by the committee on future trade-implementing legislation.

Remember what the Constitution says? The power is with the Congress on the question of regulating commerce with foreign nations.

This is not a dictatorship. This is not a circumstance where the power was vested by the Constitution of the United States in the President of the United States. The Constitution of the United States says:

> The Congress shall have the power . . . to regulate commerce with foreign nations. . . .

The Australia Free Trade Agreement promises few, if any, benefits to U.S. agriculture and has little or no positive effect on our overall economy or perilously large trade deficits. Instead, it puts certain sectors of American agriculture at extreme risk.

Before I move on, I remind my colleagues that the fast-track process is up for renewal next year. To the extent that it becomes clear to colleagues that the consultation promised in the fast-track process is a sham, a snare, and a dilution, it will become infinitely more difficult to extend fast track. Who is going to want to give up their right to amend, who is going to want to give up their right to extended debate, if there is no right to serious consultation by the committees of jurisdiction; if it is all just a game and there is no meaning to votes that are cast? That is what is about to happen. It is a sham.

Moreover, the safeguards that were supposed to protect ranchers and cattlemen from excessive and unfairly traded Australian imports turned out to be a false promise. They are not automatic or guaranteed as promised. Instead, they can be waived at any time without any input from Congress. That is unfair to our ranchers, our beef industry.

Finally, the process that the Finance Committee followed sets a terrible precedent. No Senator should welcome the precedent that the administration can simply ignore the votes of the committee of jurisdiction on a particular trade issue important to the people we represent, secure in the knowledge that a trade-implementing bill can be pushed through as part of a larger take-it-or-leave-it package.

For all of these reasons, I will strongly oppose the Australia Free Trade Agreement that is before us.

I conclude by saying to my colleagues if anybody does not think we are setting a precedent that has enormous consequences down the road, think again. I have been here long enough to see what happens when this is done. For the purpose of expedient action one year, that precedent can grow like a cancer. Right now, I believe what is being done is so egregious and so wrong that it sows the seeds for undermining the entire fast-track procedure.

When Senators awaken to what is being done, I think they will be very reluctant to give up their fundamental rights to amend legislation implementing a trade agreement. I think they will be very reluctant to give up their right to extended debate. Those are the most fundamental rights of any Senator.

There is a reason those rights were extended to Senators. It is so they can protect the rights of the minority, so they could slow down a process so people could think carefully about the effects and the implications of legislation before this body. That is the fundamental constitutional role of the Senate. It is being jeopardized by this fast-track process that has become not just a fast track, it has become a railroad job.

When votes do not matter, when consultation does not matter, when one person decides the commerce with foreign nations, this country and this body has gone off the track.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I was hoping that the Senator from North Dakota would stay around. First, I support the Australia Free Trade Agreement because it is for the sole purpose that it is in the economic interest of the United States of America. I do it within our constitutional power to regulate interstate and foreign commerce. I do it in the tradition of the last 70 years, since the 1930s, of the United States doing everything it could to lead the rest of the world in the reduction of barriers to trade; to enhance not only the economy of the United States of America but the economy of the entire world.

Let no one have any doubt in their mind, this is in the economic interest of the United States and that is the only thing the United States ought to be considering as we consider this legislation.

The charge was made that the only reason we are doing this is because of the friendship of Australia and their support in our efforts in Iraq. If I can do something in the economic interest of the United States and at the same time enhance our relationships and show our respect for a friend in the world community of nations, I am not going to back away from doing that, because through almost 100 years of the involvement of the United States in military activity for the promotion of peace and liberty around the world Australia has been an ally on which we could count.

Australia is not going to agree to this agreement because they might like the United States of America. Australia is going to look at this and ask: Is it in their economic interest? Now, their administration has already said that it is because it is signed. I do not know whether Congress has acted down in Australia, but nobody is going to be concerned about the economic interests of America except Americans and the elected representatives of America. Nobody is going to be concerned about the economic interests of Australia except the people of Australia and their elected representatives.

It just happens that everything does not have to be black and white, that when we do things in public policy and in international trade and in our foreign relations sometimes things can be done to accomplish more than one thing, and it happens that we have an opportunity in this vote today not only to do something in the economic interests of the United States of America but also to enhance our relationship with a friend in the world.

From a member of a political party who is always badmouthing our President of the United States because he is engaged in world activities, military activities without seeking enough help from other nations and from the United Nations, I think it is talking out of both sides of your mouth when you condemn us for trying to do something for a nation that has been a friend of ours—in this case, Australia.

The other thing I noticed about the debate that just went on is the charts that have been put up all afternoon by people on the other side of the aisle bemoaning the unfavorable balance of trade we have. What do they want to do? Do they want to tell the consumers of America that you cannot buy from anywhere in the world you want? Why do we have the balance of trade we do? It is because the U.S. consumers are king and they can do anything they want to do and they are doing it. They are exercising their economic freedom. They are also exercising the opportunity of the marketplace to buy from what they think is the place to get the best quality for a certain price. That opportunity happens to be enhanced the greater the competition. The freer the trade around the world and the fairer the trade around the world, the more opportunities there are for our consumers to buy whatever they want to buy, of the quality they want, at what they consider a fair price.

I don't know that any Member of this Congress who has been complaining about the unfavorable balance of trade has introduced any legislation saying the consumers of America cannot buy this product or that product. Are they going to tell the consumers of North Dakota what they can buy or not buy? Are they going to certify to their people that their judgment as political leaders is better than the judgment of the consumer of America and the marketplace, including the consumer of North Dakota? I don't see them doing that.

The other thing is, why do we have an unfavorable balance of trade? One of the reasons is the people of America are not saving as much. But what do we get from the other side of the aisle when it comes to giving the taxpayers of America an opportunity to have more discretionary income? We hear complaints from the other side of the aisle that this side of the aisle is giving too many tax cuts because they happen to believe that 535 Members of Congress are smarter and better able to decide how to spend the money than the 130 million taxpayers of America. I don't believe that. But when taxes are high, there is less discretion for savings, and it impacts negatively upon our balance of trade.

The other thing I wonder about, with the other side of the aisle talking about the high trade deficit—one-third of that trade deficit comes from the importation of energy into America, mostly petroleum. We had an energy bill up last November, and that energy bill is defeated by a filibuster on the other side of the aisle. When we want to set an energy policy, so we import less energy, so we reduce our unfavorable balance of trade to some extent, they deliver 13 out of 49 Democrats to break a filibuster. When they want to kill the confirmation of judges who the President appoints, they can deliver 46 out of 49 Democrat votes to kill those judges. But when their own leader votes for a motion to bring about a national energy policy so we are not importing so much energy, so the balance of trade is not so unfavorable, what do we get from the other side? They don't even support their own leader when he says he needs it for his State.

So don't complain about the unfavorable balance of trade in America when you espouse policies that tend to make it worse, or question the wisdom of the consumers of America, to put your judgment above the judgment of 280 million people in America, that you know more than they do about what they ought to be doing with their money.

Now I want to address whether Congress is giving up constitutional power. I am addressing specifically the accusation that has been made by the Senator from North Dakota, Mr. CONRAD, who just finished his remarks. First of all, I have yet to see the memo obtained by Senator CONRAD from the Congressional Research Service which he says supports his claim that his amendment could be made constitutional. But in any event, with respect to his argument that one way to implement his amendment in a constitutional fashion would be in the statement of administrative action—and it is on that point that I want to comment—this is precisely the type of revisionist history that I warned of earlier, yesterday, in our committee meeting.

I read from the amendment that he put before the committee:

The amendment enhances the consultation requirement in the waiver provisions by adding a requirement in paragraphs 202(c)(4) and 202(d)(5) that the Finance and the Ways and Means Committees must both affirmatively approve a proposed waiver before the USTR can waive the application of a safeguard.

This amendment calls for specific changes to two sections of the implementing legislation. How could language added, then, to the statement of administrative action possibly effectuate this amendment, which calls for changes to the implementing bill? The answer is, very clearly it couldn't. But even if it could, this argument ignores the fact that the statement of administrative action is a statement of administrative action, not a statement of congressional action. But the amendment calls for action by two committees of Congress, not for action by the administration.

I would like to remind my colleague from North Dakota of the principle of separation of powers. In fact, that principle underlies the Supreme Court Chadha case and is the reason why the amendment as drafted and as voted on by the Finance Committee is unconstitutional. So any argument that the statement of administrative action offered a way to implement the amendment in a constitutional way is without merit.

What about the argument that the amendment could have been implemented in a constitutional way if requirements for action by the full Congress and presentation to the President for his signature were added, according to the decision of Chadha? In effect, under this interpretation, the amendment would require additional legislation to be enacted before a beef safeguard measure could be waived. That is the only way you could remain consistent with our Constitution. And it requires a contorted reading of the language of the amendment that was actually introduced and was voted on by the committee that day.

But let us assume that a legislative procedure was intended by the amendment, as contorted as that may be. The problem is, such a procedure conflicts with the obligations assumed by the United States in annex 3(a) of the agreement. In sections (b)(4) and (c)(5) of annex 3(a), the United States commits to retain the discretion not to apply a beef safeguard measure.

If the President is required to wait for congressional action before granting a waiver, that deprives the administration of the discretion to grant a waiver. Even if the amendment were to be implemented consistent with the U.S. Constitution, it would at the same time be inconsistent with the terms of the agreement.

Again, we see this amendment for what it truly is. It was political maneuvering, pure and simple. It was intended to obstruct the process. It was intended to force the administration to explain its rejection of an unconstitutional amendment or, based on these new arguments about constitutionality, the administration would be forced to explain its rejection of an amendment that was inconsistent with the agreement.

In either case, the administration's rejection of the amendment would have been used by some to argue that the trade promotion authority process was flawed, that the administration ignored the will of the Finance Committee.

They would have also argued that the administration had not done enough to protect the U.S. beef industry from imports, an allegation that is completely without merit if you read the terms of this agreement.

Any way that you revise the reading of the amendment, its purpose was to delay formal consideration of the bill and give opponents a political issue to try to exploit.

Again, as chairman of the Finance Committee, I did not want to see that happen. I wanted to end the obstructionism, end the political gamesmanship, and end the consideration of an unconstitutional amendment.

The majority of the committee voiced their will, and the amended recommendation was not approved. The trade promotion authority process was on and the process moved forward, leading us to the consideration of this very important legislation today, much in the economic interests of our people.

Again, I call on my colleagues to recognize the value of the underlying agreement with Australia and to support the implementation bill when we vote on it in a short period of time.

I yield the floor.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, I will be brief. I thank my colleague from Iowa. I don't want to get into a debate about the Energy bill right now. We have our differences there. The only point I would make is, without six Members on his side of the aisle, we never would have succeeded. It was not just this side of the aisle.

I definitely want to reduce energy dependence, as do most of my colleagues. The bill had virtually no conservation, which many of us are for. I am for both new production and conservation. The bill had no conservation, and, of course, there is the ''e'' word which is very good for Iowa but not so good for New York. I will not get into the ''e'' word issue here. But there are different ways to increase conservation.

In the views of many of us, this bill was not a bill that would have reduced energy dependence the way it should have. Certainly, it didn't get much bang for the buck. I don't want to get into a debate with my colleague. I know we all want to vote. I appreciate the sincerity and eloquence which he brings to all of the debates. I enjoy having them with him, but today we will not.

I rise reluctantly against the US-Australia Free Trade Agreement before us today, for one reason only. There have been other issues with this agreement. In my State, we are very concerned about dairy. But I think the people who put the agreement together were mindful of that. While the dairy farmers of New York State are not overwhelmingly pleased with the provisions in the agreement, they believe they have come a long way. I think the agreement does do some good for manufacturing export, and I care about that. But what bothers me is one provision in this agreement. It bothers me so that it leads me to vote against the agreement; that is, the provision dealing with the importation of drugs.

It has become clear in recent weeks that the pharmaceutical industry has not only done everything in its power to thwart drug reimportation legislation before this Congress, but now they have hijacked the trade agreement negotiation process as well. That practice has to end.

Given that we have fast-tracked, many of us, when we see an odious provision put into the agreement, have no choice but to vote it down and hope it will come back without that provision. Frankly, that provision has very little to do with the guts of the Australia Free Trade Agreement. Prescription drug reimportation is a policy that has gained more and more bipartisan support as this year has progressed. My guess is that if, say, the bill from the Senator from North Dakota would get a vote on the floor, it would pass. It would pass in a bipartisan way. That, of course, is because the cost of drugs is going through the roof, and it is harder and harder for our citizens to pay for these miracle drugs. They are great drugs. I salute the pharmaceutical industry for coming up with them.

But one of the great problems we face is that the research is borne not by the citizens of the world but only by the citizens of the United States, even though the drugs are sold throughout the world. We have to do something to change that.

But as usually happens these days, as a proconsumer idea such as reimportation gains more and more momentum and support, the pharmaceutical industry begins to see the writing on the wall, and they look for every way possible to prevent it from becoming reality.

Now it seems, of all things, the US-Australia Free Trade Agreement has become the perfect vehicle to begin the march to put the kibosh on importation.

It is no longer enough that this administration refuses to stand up to PhRMA and negotiate lower drug prices.

The Medicare prescription drug bill, now law, that we have before us, is a failure. It is not even being mentioned by the President in his campaign because they refuse to let Medicare negotiate with the pharmaceutical industry

for lower prices. That costs about $200 billion, and that means there was not enough money to create a good program. But that is not enough.

Now that we have come up with another way to deal with the high cost of drugs, reimportation, the administration actively, through trade agreements, is helping the big drug companies ensure that they can get the same exorbitant prices in every market around the globe, and at the same time putting up a barrier around our borders to prevent lower drug costs from coming in. That has gone too far.

The administration says it is unacceptable that foreign price controls leave American consumers paying most of the cost of pharmaceutical research and development—I couldn't agree more. That hits the nail on the head.

We have to relieve U.S. consumers of some of the burdens of the cost of research and development by making sure that other equally developed countries pay their fair share. But that is not what we are talking about with the US-Australia Free Trade Agreement. Absolutely not.

What the administration is doing is giving the drug companies the tools to raise prices in other countries while pushing policies that keep low drug costs out of this country.

Is that fair? Does that provide any relief to the American consumer? Absolutely not.

I have heard the argument that this provision doesn't have a practical effect because the Australian Government doesn't allow the exportation of its drugs anyway.

First of all, if you look closely at the way it is written, it isn't limited to restricting importation from Australia.

As they say in Shakespeare, there's the rub.

If they really were just concerned with Australia, they would say nothing in this provision would affect importation anywhere else. But that is not the case.

This proposal creates an obligation for the United States to pass laws that prohibit importation not just from Australia but from everywhere, including Canada.

If it truly doesn't have a practical effect, or if it is not reasonable to assume that Australia would hold us to our obligations—who knows—for all we know, the Australian Government could make a deal with the pharmaceutical company to lower their prices—why is the provision in the agreement at all?

Why aren't pharmaceuticals at least exempted? Everyone knows what is going on in this Chamber about reimportation. Everyone knows what is going on in this country. In my State of New York, citizens from Buffalo, Rochester, the North Country, and even New York City get on buses and go for hours to buy drugs in Canada.

If this provision has no practical effect in this trade agreement, then its only purpose must be to make it more difficult to pass a drug importation bill. It can and might become precedential—we have it in Australia; we should put it elsewhere.

The provision was put in the Australia Free Trade Agreement to set a precedent, to lay the groundwork. The Industry Advisory Committee to the USTR on these issues has clearly stated this purpose. Their report states that ''each individual FTA should be viewed as setting a new baseline for future FTA/s''—that this should be setting a floor, not a ceiling.

If that is the case, that is bad news for the millions of Americans who must pay for prescription drugs and had hoped lower costs of imported drugs would prevail.

Simply put, this provision fortifies the administration's opposition to importation and makes the law that much harder to change. Beyond that, this trade agreement may even affect our ability to negotiate prices in the few programs in which the Federal Government still has some control.

The provision is nothing more than a backdoor opportunity to protect the big pharmaceutical companies' profits and keep drug prices high for U.S. consumers. I have had some talks with the heads of the pharmaceutical industries. Some of the more forward-looking progressive ones realize that something has to give; that the U.S. consumer cannot pay for the cost of research for drugs for the whole world; that the prices are getting so high that we have to do something; that the balance between the dollars of profit that are put into research versus the balance of dollars that are put into all kinds of salesmanship has to change. I hope those leaders in industry understand that putting this provision in this agreement undercuts that kind of view.

The nature of trade agreements is changing. They are not just about tariffs anymore. They are getting into other substantive policy issues which dictate the parameters for health care delivery around the world.

These are fundamental policy decisions with serious implications for access to affordable health care which can and will affect millions of people both overseas and, of course, here at home. Yet PhRMA is the only health care expert at the table for these negotiations. That has to end.

I also argue that adding provisions such as this, virtually extraneous provisions that come from someone else's agenda, and putting them into trade agreements hurts the argument for fast track. This is just what people who are opposing fast track said would happen. Here it is, a year later, it has.

There are all kinds of questions swirling about how this trade agreement may affect Medicare, Medicaid, the VA, and DOD programs, and to be honest, no one seems to be able to explain what its effects on these programs will be.

My view is we cannot, we must not wait until after these agreements are put together to consider their potential effects on U.S. policy. I warn my colleagues, vote for this and then you find out that you have locked yourself into something on drug policy that you never imagined. This Member is not going to do that. This Senator is not going to do that.

This provision can be stripped from the agreement and we can come back and pass it next week, next month. We cannot have it as an afterthought—something we are all scrambling to understand the day before the vote.

Frankly, drugs are not the same as tractors. There are huge public health implications to the decisions made by the USTR. It is frightening to think these decisions are being made without the input of a neutral public health advisory committee. We have to put an end to the practice of PhRMA inserting provisions into trade agreements that affect policy elsewhere. There must be someone at the table to protect access to affordable drugs and other health care in this country. The risks are too great to ignore.

For that reason, I will vote no on this agreement in the hopes we can strip out this odious provision and then move forward with the proposal which I will then support.

I ask unanimous consent that a related article from the New York Times be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, July 12, 2004]

TRADE PACT MAY UNDERCUT INEXPENSIVE DRUG IMPORTS

(By Elizabeth Becker and Robert Pear)

WASHINGTON, July 11.—Congress is poised to approve an international trade agreement that have the effect of thwarting a goal pursued by many lawmakers of both parties: the import of inexpensive prescription drugs to help millions of Americans without health insurance.

The agreement, negotiated with Australia by the Bush administration, would allow pharmaceutical companies to prevent imports of drugs to the United States and also to challenge decisions by Australia about what drugs should be covered by the country's health plan, the prices paid for them and how they can be used.

It represents the administration's model for strengthening the protection of expensive brand-name drugs in wealthy countries, where the biggest profits can be made.

In negotiating the pact, the United States, for the first time, challenged how a foreign industrialized country operates its national health program to provide inexpensive drugs to its own citizens. Americans without insurance pay some of the world's highest prices for brand-name prescription drugs, in part because the United States does not have such a plan.

Only in the last few weeks have lawmakers realized that the proposed Australia trade agreement—the Bush administration's first free trade agreement with a developed country—could have major implications for health policy and programs in the United States.

The debate over drug imports, an issue with immense political appeal, has been raging for four years, with little reference to the arcane details of trade policy. Most trade

agreements are so complex that lawmakers rarely investigate all the provisions, which typically cover such diverse areas as manufacturing, tourism, insurance, agriculture and, increasingly, pharmaceuticals.

Bush administration officials oppose legalizing imports of inexpensive prescription drugs, citing safety concerns. Instead, with strong backing from the pharmaceutical industry, they have said they want to raise the price of drugs overseas to spread the burden of research and development that is borne disproportionately by the United States.

Many Democrats, with the support of AARP, consumer groups and a substantial number of Republicans, are promoting legislation to lower drug costs by importing less expensive medicines from Europe, Canada, Australia, Japan and other countries where prices are regulated through public health programs.

These two competing approaches represent very different ways of helping Americans who typically pay much more for brand-name prescription drugs than people in the rest of the industrialized world.

Leaders in both houses of Congress hope to approve the free trade agreement in the next week or two. Last Thursday, the House Ways and Means Committee endorsed the pact, which promises to increase American manufacturing exports by as much as $2 billion a year and preserve jobs here.

Health advocates and officials in developing countries have intensely debated the effects of trade deals on the ability of poor nations to provide inexpensive generic drugs to their citizens, especially those with AIDS.

But in Congress, the significance of the agreement for health policy has generally been lost in the trade debate.

The chief sponsor of the Senate bill, Senator Byron L. Dorgan, Democrat of North Dakota, said: ''This administration opposes re-importation even to the extent of writing barriers to it into its trade agreements. I don't understand why our trade ambassador is inserting this prohibition into trade agreements before Congress settles the issue.''

Senator John McCain, an author of the drug-import bill, sees the agreement with Australia as hampering consumers' access to drugs from other countries. His spokesman said the senator worried that ''it only protects powerful special interests.''

Gary C. Hufbauer, a senior analyst at the Institute for International Economics, said ''the Australia free trade agreement is a skirmish in a larger war'' over how to reduce the huge difference in prices paid for drugs in the United States and the rest of the industrialized world.

Kevin Outterson, an associate law professor at West Virginia University, agreed.

''The United States has put a marker down and is now using trade agreements to tell countries how they can reimburse their own citizens for prescription drugs,'' he said.

The United States does not import any significant amount of low-cost prescription drugs from Australia, in part because federal laws effectively prohibit such imports. But a number of states are considering imports from Australia and Canada, as a way to save money, and American officials have made clear that the Australia agreement sets a precedent they hope to follow in negotiations with other countries.

Trade experts and the pharmaceutical industry offer no assurance that drug prices will fall in the United States if they rise abroad.

Representative Sander M. Levin of Michigan, the senior Democrat on the panel's trade subcommittee, voted for the agreement, which could help industries in his state. But Mr. Levin said the trade pact would give a potent weapon to opponents of the drug-import bill, who could argue that ''passing it would violate our international obligations.''

Such violations could lead to trade sanctions costing the United States and its exporters millions of dollars.

One provision of the trade agreement with Australia protects the right of patent owners, like drug companies, to ''prevent importation'' of products on which they own the patents. Mr. Dorgan's bill would eliminate this right.

The trade pact is ''almost completely inconsistent with drug-import bills'' that have broad support in Congress, Mr. Levin said.

But Representative Bill Thomas, the California Republican who is chairman of the Ways and Means Committee, said, ''The only workable procedure is to write trade agreements according to current law.''

For years, drug companies have objected to Australia's Pharmaceutical Benefits Scheme, under which government officials decide which drugs to cover and how much to pay for them. Before the government decides whether to cover a drug, experts analyze its clinical benefits, safety and ''cost effectiveness,'' compared with other treatments.

The trade pact would allow drug companies to challenge decisions on coverage and payment.

Joseph M. Damond, an associate vice president of the Pharmaceutical Research and Manufacturers of America, said Australia's drug benefit system amounted to an unfair trade practice.

''The solution is to get rid of these artificial price controls in other developed countries and create real marketplace incentives for innovation,'' Mr. Damond said.

While the trade pact has barely been noticed here, it has touched off an impassioned national debate in Australia, where the Parliament is also close to approving it.

The Australian trade minister, Mark Vaile, promised that ''there is nothing in the free trade agreement that would increase drug prices in Australia.''

But a recent report from a committee of the Australian Parliament saw a serious possibility that ''Australians would pay more for certain medicines,'' and that drug companies would gain more leverage over government decisions there.

Bush administration officials noted that the Trade Act of 2002 said its negotiators should try to eliminate price controls and other regulations that limit access to foreign markets.

Dr. Mark B. McClellan, the former commissioner of food and drugs now in charge of Medicare and Medicaid, said last year that foreign price controls left American consumers paying most of the cost of pharmaceutical research and development, and that, he said, was unacceptable.

Mr. SCHUMER. I yield the floor.

The PRESIDING OFFICER (Mr. ALEXANDER). The Senator from Arizona.

Mr. MCCAIN. Mr. President, the United States-Australia Free Trade Agreement negotiated by the administration is not perfect. The distinguished chairman and ranking member of the Finance Committee would agree with me on that point.

It is often said around here that we should not let the perfect be the enemy of the good. This agreement for which we vote on implementing legislation today passes the ''good'' test, but barely.

Throughout my career in public service, I have been an ardent supporter of free trade. Opening markets to the free flow of goods and services benefits America, benefits our trading partners. Trade liberalization creates jobs, expands economic growth, and provides consumers with access to lower cost goods and services. The North American Free Trade Agreement, despite criticism from some, has increased our cross-border trade between our northern and southern neighbors by incredible amounts of money, creating economic growth and prosperity on both sides of the border.

In my judgment, free trade should mean truly free trade. There are some portions of this agreement which take admirable steps in that direction. For example, over 99 percent of the manufactured goods traded between our two countries—manufactured goods—will be duty and quota free and textile and apparel tariffs will be phased out.

According to the International Trade Commission, U.S. consumers will receive a net welfare benefit increase of between $438 million and $639 million if the agreement is fully implemented.

Ideally, this free-trade agreement would reach 100-percent duty-free treatment and tariff elimination immediately but I recognize that may not be possible.

What I find truly offensive are protections for special interests such as dairy, beef, and sugar. Even these protections, however, pale in comparison with the language in this agreement that covers patented pharmaceutical products.

I am astonished by the decision of the U.S. Trade Representative, Mr. Zoellick, for whom I happen to have the greatest admiration and appreciation. I am astonished that he would include language which would impair our ability to pass and implement drug importation legislation.

The Singapore Free Trade Agreement, which went into effect on January 1, was the first free-trade agreement to include language that could impact drug importation. In a side letter of understanding between our respective Trade Representatives, both nations agreed the language would not prevent Singapore from engaging in the parallel importation of pharmaceuticals. Thus, the U.S. Trade Representative effectively made the provisions applicable only to the United States.

USTR claims this language is consistent with longstanding U.S. patent law. If that is indeed the case, and if Singapore is not obligated to abide by the language, then why is the language included in the agreement? I suspect it was included in order to protect powerful special interests and to provide a template on which to base intellectual property provisions in future free-trade agreements.

In fact, the Industry Sector Advisory Committee for Chemicals and Allied Products, which advised U.S. negotiators on this provision, stated that this language ''should not be viewed as setting any ceilings for the intellectual

property chapters for future free-trade agreements; rather, each individual free-trade agreement should be viewed as setting a new baseline for future free-trade agreements.''

This pharmaceutical language was slipped into the Singapore FTA below the radar screen, without recognition of its potential implications for drug importation. Since that time, similar drug provisions have cropped up again in both the Australia FTA before us and the recently completed Morocco FTA.

Let's be clear about this language. It is antithetical to the spirit of free trade and serves only to block American consumers from accessing lower cost goods and services.

Not only does the intellectual property language in the Australia FTA offend all free traders, it also contravenes clear congressional intent. Let's look at the facts. In 2000, Congress passed the Medicine Equity and Drug Safety Act, MEDS Act, to allow American consumers to import lower cost prescription drugs from 25 industrialized countries with regulatory systems similar to ours. Although language added to that law acted as a poison pill and effectively prevented importation from taking place, congressional intent was crystal clear: We want to allow Americans to import safe prescription drugs.

In the years after the MEDS Act passed, the cost of prescription drugs has continued to rise, the number of uninsured Americans has continued to grow, and Congress has continued to debate the issue of drug importation. This week, a study from Boston University found that drug spending, as a share of income, rose by 50 percent between 1998 and 2002.

In the last 3 years, several additional importation measures have passed both Houses of Congress with substantial bipartisan support. In States, cities, and counties across the country, governments are implementing programs that would allow their residents to import lower cost prescription drugs. Today, approximately two-thirds of Americans believe they should be able to import lower cost drugs.

Where does this leave us? Congress has repeatedly voted, with bipartisan majorities, to allow drug importation. States and local governments are doing the same. An overwhelming majority of Americans believe they have a right to import cheaper medicine. AARP, the leading advocacy group for senior citizens, recently joined the battle.

So a simple question comes to mind: What is our U.S. Trade Representative, who is charged with representing the interests of the American people, doing? Why deliberately include language in bilateral trade agreements that could thwart importation efforts? Why flagrantly disregard the intent of Americans and their elected representatives? It seems to me that the special interests have found friendly territory.

Now, supporters of this language will claim that nothing in this agreement prevents the Congress from passing legislation with respect to drug importation. They are absolutely correct. No trade agreement can prevent Congress from exercising its constitutional right to pass laws that govern our Nation. However, the language in this trade agreement does tie the hands of Congress, further complicating our efforts to pass a drug importation law.

The USTR general counsel, John Veroneau, testified along these lines last month. He told the House Ways and Means Committee that new legislation on drug importation ''could give rise to an inconsistency between U.S. law and a commitment under this trade agreement.'' Given that similar language is now in not one but three trade agreements, it will presumably present the same problem for each.

Let's be intellectually honest here. It is simply bad policy to enter into bilateral agreements knowing we want to modify domestic law and thereby place ourselves in violation of these various agreements. Imagine Americans' response if they knew that domestic health care policy was being crafted not by their elected officials in Congress but, instead, by free-trade negotiators.

Now that this language is in three agreements, a precedent has been established for future FTAs. Indeed, USTR officials have indicated they intend to pursue similar language in all future FTAs. This means that future drug importation legislation will leave us in violation of our obligations to an ever greater number of trading partners and allies, undoubtedly creating a greater challenge to enacting and implementing importation law.

When Americans wonder how this continues to happen, maybe they should take a glance at the list of intellectual property ''advisors'' who worked with the negotiators. These advisors include representatives from—guess who—drug companies—guess who—the pharmaceutical industry as a whole, and other lobbyists with a direct interest in blocking drug importation. How many public health and consumer advocacy groups were included on this committee? Zero.

There is a popular philosophy among coaches known as game slippage which offers that you can make your team practice all you want, but, invariably, come gametime, some of what was taught in practice will not be applied during the game. I fear the administration is suffering from game slippage. It appears that Congress's intent over the last several years to address drug importation has slipped from the collective conscience of the administration and the U.S. Trade Representative when negotiating gametime comes around.

Our trade negotiators must be less mindful of special interests and more responsive to the express intent of the Congress. We granted the President trade promotion authority in 2002 to demonstrate our Nation's reenergized commitment to negotiating strong free-trade agreements. TPA was designed to lead to free trade, not more protection. Yet we have protectionist measures in this FTA for the pharmaceutical, sugar, beef, and dairy industries that will likely result in higher prices and, in some cases, less supply.

This agreement is not the first in which the administration has made use of TPA to promote its legislative priorities. Last year, immigration provisions were included in the Singapore and Chile FTAs. If the administration is to continue to enjoy the privilege of TPA, trade agreements must no longer be vehicles that include items rightfully addressed by Congress under the Constitution.

The United States has been and should be the leading promoter of an open global marketplace. Steel tariffs, agricultural subsidies in the farm bill, and other forms of protection, however, have damaged America's free-trade credentials. If special interest carve-outs, as the one for the pharmaceutical industry in this FTA, continue to pollute our trade agreements, we will all be worse off. Our economy will suffer and our leadership role on trade will further decline.

I have spoken at length about the very serious drawbacks of the Australia FTA. I will reluctantly support this implementing legislation because it, nevertheless, will have a net positive impact on the American economy. I also will vote for it because of my profound respect for the Government and the people of Australia. They have bravely stood by us for many decades and have shown enormous courage in helping us to fight the global war on terror. We are privileged to call the Australian people friends, and my comments here today should in no way reflect poorly on the proud nation with which we will embark on a new trading relationship.

Mr. President, I will vote yes. But the administration must understand that continuing down a protectionist path harms American consumers and engenders ill will among our allies and trading partners. I support passage of this legislation, but should another FTA being negotiated now or in the future come before the Senate with similar protections for special interests, I will find it extremely difficult to do so again.

FSC/ETI TAX BILL

Mr. President, before I continue, I would like to mention just a word about the FSC/ETI tax bill that we apparently have an agreement to go to conference.

The June 19 editorial in the Washington Times, not known for liberal propaganda, stated:

> The ideal solution would have been a quick, simple repeal of FSC–ETI, which is bad economic policy in any case. . . .

Unfortunately, both the House and the Senate versions of the bill became magnets for special interests. A steady train of lobbyists tacked on $167 billion

in tax breaks over the next 10 years to the Senate bill, while the House bill expanded by $143 billion in similar additions. The Senate bill, for example, includes breaks for NASCAR racetracks and foreign dog-race gamblers, while the House version lavishes its attention upon tobacco growers, timber owners and alcohol distillers. The imminent House-Senate conference, predictably, promises to be a de facto food fight between congressmen, lobbyists and tax watchdogs. And so while the lobbyists duke it out, EU sanctions will continue to rise, and American manufacturers and the U.S. economy will deal with the consequences.

There are many other editorials about how incredible this bill has become and how we have lost any possible sense of what we are doing to our deficit and to the American people. If we pass this bill in its present form, I will do whatever I can to make sure every American knows what we have done here for the special interests in this town. Despite the passage of campaign finance reform, they rule in a way which is almost unprecedented at least in the 22 years I have been a Member of Congress.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. REID. Mr. President, 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 dispensed with.

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

Mr. REID. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. REID. Mr. President, there is an order in effect allowing 2 minutes per side on the matter that will follow the Australia Free Trade Agreement, the tobacco amendment. I ask unanimous consent that there be a total of 4 minutes on each side.

The PRESIDING OFFICER. Is there objection?

Mr. INHOFE. Reserving the right to object, when would this time begin?

Mr. REID. I would say through the Chair to my friend, we are going to vote immediately on the free-trade agreement. We yield back any time on this side.

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

Mr. GRASSLEY. I yield back time on this side.

The PRESIDING OFFICER. The question is on the third reading and passage of the bill.

The bill (H.R. 4759) was ordered to a third reading and was read the third time.

Mr. HATCH. Mr. President, I rise today to support the United States-Australia Free Trade Agreement. I do so because it is good for the cause of free and fair trade, it is good for the United States, and it is good for Utah.

I wish to commend my colleagues on the Senate Finance Committee, particularly Chairman GRASSLEY and ranking minority member BAUCUS. They have assiduously worked with the administration to complete the legislation implementing years of negotiations. Working with our colleagues on the Ways and Means Committee, we have prepared legislation that, I believe, will pass overwhelmingly in both Houses. That it does so reflects on the strengths of this agreement, and on the hard work of members in both committees. To date, the process for putting this agreement in place has been fair. Members have been given ample opportunity to voice any concerns they may have about the substance of this agreement both on the Senate floor and in briefings with the U.S. Trade Representative's office. No one can legitimately say this has been a partisan process. No one can legitimately say they have not had a chance to review and comment on this historic agreement.

However, this agreement would not have been completed had Congress failed to provide the President with fast-track trade promotion authority. These agreements are complex, and the interests are vast, and, as we know, Congress can slow the process by endlessly nitpicking details for political advantage. Without trade promotion authority granted by a majority of this body to the President in 2002, the President would have failed to advance his agenda of creating American jobs by leveraging the strength of our economy into free and fair trade regimes created by us.

Toward that last point, I wish to commend the small team at the United States Trade Representative's Office, led by the extremely able Robert Zoellick, for their work through these years in advancing the President's free trade agenda. The Australia Free Trade Agreement before the Senate will boost our economy while advancing bilateral relations with our strongest partner in Asia as a result of the dedication of Bob Zoellick and the people at USTR.

Australia stood with us in our foreign policy challenges throughout the 20th century. In the beginning of this century, which was marked so soon after by the attacks of September 11, and our response with the global war on terror and the war to destroy the regime of Saddam Hussein, Australia has continued to stand with us. We have a history of friendship, based on shared civic values of democracy, individual freedom and free markets. We have no closer ally in Asia.

Of course this is not a sufficient reason to grant a free trade agreement, or FTA. The necessary and sufficient agreements in granting FTAs have to do with opening markets in a way that will fairly allow U.S. products to compete. I am pleased to observe that in this area, the Australia FTA does a superb job. In fact, the Australia FTA eliminates 99 percent of Australia's manufacturing tariffs immediately, giving U.S. firms an average 5 percent price advantage over international competitors in the Australian market. As well, the FTA grants tariff-free access to Australia's agricultural market for U.S. exporters, grants enhanced preferential access to U.S. services exporters to Australia, and removes foreign investment screening for several types of U.S. investment.

For my home State, this FTA gives Utah businesses a distinct advantage over their international rivals when trading with Australia. Australia's market is the 12th largest market for Utah goods, with total exports valued at over $67 million in 2003. The implementation of the Australia FTA will provide a large boost to Utah's auto parts, processed foods, sports equipment and medical equipment companies. These important and large industries within the State of Utah will now be able to export 99 percent of their goods to without facing manufacturing tariffs, this gives them, on average, a 5 percent price advantage over international competitors in the Australian market.

There are nine Australian-owned companies currently operating in Utah which insource several hundred jobs for Utahns. In all, there are over 320 jobs in Utah that are directly supported by trade with Australia, and hundreds more that are indirectly supported by Australian trade.

No agreement is perfect, whether it is with a developing economy, or a modern and developed economy, like Australia's. This FTA will provide an immediate opening to Australia's large market for agricultural products from our States. Currently, our prolific U.S. agricultural producers export more than $400 million in products to Australia.

In terms of granting access for Australian beef, the agreement allows for us to increase the beef import quota over an 18-year period. Quota increases to be granted in the first 3 years are conditional upon U.S. beef exports reaching 2003 levels, so that Australian beef exporters will not be able to exploit recent drops in U.S. beef exports caused by the mad cow scare. While quotas within tariffs will be removed, above-quota tariffs will also be phased out over time. The Congressional Research Service reports that ''initial quota increases represent an estimated $50 million in additional imports—less than ¼ of 1 percent of the value of annual U.S. beef output, and 1.6 percent of the value of U.S. beef imports.'' In addition, the agreement provides safeguards that will protect U.S. beef producers from surges in imports from Australia. These safeguards are permanent and apply to the transition periods, as well as after the transition periods.

This agreement is going to be good for the American economy. In addition to manufacturing and agricultural products, it provides an immediate opening in Australian markets for financial services, electronic commerce and U.S. investment. In the latter category, we should appreciate the implications of allowing U.S. investment to now use Australia as a base for greater expansion into the rapidly growing Asian markets. The benefits of this FTA to the U.S. economy equate to about $500 million per year. This translates into more U.S. jobs.

And, for me, this is the bottom line. Economic policymakers both in Congress and in President Bush's administration recognize that the most fundamental goal of economic policy is to support the economy and create American jobs. American workers, farmers and cattlemen are the most industrious and productive in the world. That is why, as the U.S. has expanded trade regimes based on the principles of fairness and transparency that define our economy, the U.S. has always been a net winner. The rest of the world wants to buy our goods because they are the best quality at the most affordable prices. The rest of the world wants to sell in our markets, because to do so, they must create products that compete in the most open and efficient market in the world. Successful U.S. free trade agreements protect our principles, advance our values, and provide opportunity for all those who compete fairly. And fair competition is something the citizens of Utah support. For these reasons and more I support the swift approval of this implementing legislation.

Mr. DURBIN. Mr. President, I rise today in support of the United States-Australia Free Trade Agreement. I maintain reservations about certain sections of this agreement, but overall I believe that this free-trade agreement succeeds in lowering tariffs on American goods entering Australia and will benefit my home State of Illinois.

The United States-Australia Free Trade Agreement, FTA, includes strong and comprehensive commitments by Australia to open their goods, agricultural and services markets to U.S. producers. The agreement would reduce a number of tariffs and duties currently affecting trade between the United States and Australia, reduce barriers for services and increase protections for intellectual property.

Under the trade agreement, as ratified by the bill, more than 99 percent of U.S. exports of manufactured goods to Australia would become duty-free immediately upon entry into force of the agreement. This is good for our country because increasing exports means more jobs here at home. This is beneficial to U.S. manufacturers, who expect to realize an additional $2 billion in exports a year.

Australia is a major trade and investment partner of the U.S. and is the ninth largest market for the export of U.S. goods, with a total trade close to $28 billion last year. Australia purchases more goods from the U.S. than any other country, and the U.S. enjoys a bilateral trade surplus of $9 billion. This is quite a difference from the $130 billion dollar trade deficit we have with China.

My home State of Illinois will benefit from the U.S.-Australia FTA. In 2003, Illinois' export shipments of merchandise to Australia totaled $925 million and Australia is the sixth largest export market for Illinois in 2003. Australia is an important market for Illinois goods as Illinois exports to Australia have grown significantly during a time when Illinois exports have fallen. While exports of goods from Illinois to Australia grew 12 percent over the 1999–2003 period, exports from the States to the world declined 10 percent over the same time.

Illinois exports range from agricultural and construction machinery, to engines, turbines and power transmission equipment, to motor vehicle parts, to general purpose machinery and to agricultural products. In short, people through nearly every sector of our economy will benefit from this agreement.

Illinois has lost 140,000 manufacturing jobs since January 2001 to many countries who do not have the same labor and environmental standards as the U.S. However, labor and environment have not been a source of controversy in this FTA. The Australian and U.S. economies are both modern and industrialized, and are at similar levels of development and environmental standards. In fact, Australia has a higher minimum wage than the U.S.

This agreement also extends protections for all forms of intellectual property rights. Australia agrees to extend the longevity of copyrights in order to accord protections to existing U.S. standards. Both countries also agree to ratify two international treaties involving recorded music and copyrights.

This agreement also gives our farmers new opportunities. All U.S. agricultural exports to Australia totaling more than $400 million will receive immediate duty-free access. Key agricultural products that will benefit from immediate tariff elimination include soybeans and oilseed products, fresh and processed fruits, vegetables and nuts, and pork products.

In addition, Australia also agreed to resolve outstanding sanitary and phytosanitary, SPS, disputes, chiefly affecting U.S. pork, citrus and corn. Since conclusion of the negotiations, Australia has taken steps to lift the SPS barrier against U.S. pork. This is good news for the many pork producers in Illinois.

While some of the provisions in these FTAs could serve as a model for other agreements, a number of provisions clearly cannot be, nor should they be. I believe that each country with whom we negotiate is unique; and while the provisions contained in the Australia FTA work for Australia, they may not be appropriate for FTAs with other countries, where there may exist very different circumstances.

Concerns about labor and environmental standards, however, should receive careful scrutiny on a case-by-case basis as different circumstances and situations warrant. Use of the ''enforce your own law'' standard is invalid as a precedent—indeed is a contradiction to the purpose of promoting enforceable core labor standards—when a country's laws clearly do not reflect international standards and when there is a history, not only of nonenforcement, but of a hostile environment towards the rights of workers to organize and bargain collectively. Using a standard in totally different circumstances will lead to totally different results. Many of us support the Australia Free Trade Agreement not only because they have good labor laws, but because they have the ability and willingness to enforce them.

I also noted that all commodities were not included in this FTA and that sugar was excluded. This exclusion should not be a precedent for future trade agreements as this could inhibit other export-oriented industries from their opportunity to win market access in future FTAs.

Without a doubt, there are parts of this agreement that I feel are less than perfect. This agreement has one very troublesome aspect to it, which has U.S. pharmaceutical industry fingerprints all over it.

This agreement gives the exclusive right of a patent holder to prevent the importation of a patented product without the consent of the patent holder.

By including this provision in this agreement, the ban on reimportation of prescription drugs into the United States becomes more than just a U.S. law, it becomes a matter of trade law.

That means that we are giving another country the right to challenge us if we pass the important Dorgan-Snowe bill allowing Americans to reimport prescription drugs from other countries, many of which have cheaper prices than the U.S. for the same drugs.

Congress is currently considering several bills to allow Americans to safely reimport prescription drugs from other countries. In fact, there was just a hearing in the Senate Judiciary Committee about this issue and the Senate Health, Education, Labor and Pensions Committee will mark up a proposal next week.

Why then is the trade negotiator for the Bush administration negotiating an issue that is being actively debated in Congress? Allowing this language in this agreement is effectively end-running the legislative branch.

On July 23, John Veroneau, general counsel for the Office of the U.S. Trade Representative, confirmed that new

legislation on drug reimportation ''could give rise to an inconsistency between U.S. law and a commitment under this trade agreement.''

Once again, the Bush administration has chosen big pharmaceutical companies over the American people. Prescription drug prices are rising between 14 and 19 percent per year, making already expensive drugs unaffordable for some. As Congress searches for solutions, the Bush administration is preserving the protections from international price competition for the prescription drug industry.

Further, this agreement may jeopardize the lower prices the Veterans Administration and Medicaid are currently able to negotiate. Under Article 15.11 of the agreement, ''suppliers'' have the right to challenge VA procurement decisions, including listing and pricing pharmaceuticals.

I do think, because of the positive provisions in this FTA relating to manufacturing, agriculture services, that we should approve this agreement. However, my vote for the Australia FTA should not be interpreted as support for using this agreement as a model for future trade negotiations. I will evaluate all future trade agreements on their merits and their applicability to each country. We need to ensure that core international labor rights and environmental standards are addressed in a meaningful manner and the rights of American consumers are protected.

Mr. KOHL. Mr. President, the writing appears to be on the wall where the U.S. Australia Free Trade Agreement is concerned. I suspect it will pass this body by a substantial margin. Still, I want to take a few moments to reflect on this agreement and what it may mean for Wisconsin.

Wisconsin has about 16,000 dairy farms. Altogether, production and processing activities in the state generate close to $20 billion in economic activity. Dairy accounts for about 200,000 Wisconsin jobs. I could go on at length, but my colleagues already know that I care deeply about Wisconsin agriculture and the families who depend on dairy.

And that is why I will vote against the U.S.-Australia Free Trade Agreement. While the final agreement maintains over-quota tariffs on dairy products, I remain very concerned that the overall effect on dairy farmers will be negative, particularly as it affects cheese markets which are of critical importance to Wisconsin dairy.

I am also concerned that this agreement sets up roadblocks for us to pass legislation that would allow Americans to buy less expensive prescription drugs from other countries. It includes a provision that protects the current right of drug companies to prevent importation of its patented drugs by other parties, in this case, parties in Australia.

I understand that his provision will have no practical effect in Australia, since Australian law already prohibits drug exports. However, I am concerned about the dangerous precedence this sets. A bipartisan majority in Congress supports legislation to allow drug importation from other countries, and I believe that at some point, it will be the law of the land.

Even though it may not matter for Australia, the United States will likely seek trade agreements with other countries in the future that do allow exports. The pharmaceutical industry must be put on notice that this kind of end-run around the will of Congress is not acceptable. And the administration must be put on notice that future trade agreements will have a hard time getting approval if we see these kinds of provisions again.

Trade negotiations, simply put, are nothing more than an elaborate process of setting priorities and making trade offs. Where the U.S.-Australia trade agreement is concerned, it seems clear to me that U.S. negotiators were willing to trade quite a bit away in order to protect and promote the interests of pharmaceutical manufacturers.

Unfortunately, dairy interests ended up on the wrong side of that deal. And though we avoided disaster after several of us made a final push to get our negotiators to focus on the impact their deals could have on our dairy industry, avoiding disaster is not enough to recommend the final agreement. This implementing bill does not improve—and probably harms—the chances for Wisconsin dairy producers to enhance their markets. As such, I cannot support it.

I believe in free and fair trade. But this bill implements neither of those principles. The massive benefits won by the pharmaceutical industry were not free, they were bought by concessions from other industries, dairy and I am sure others of importance in my colleagues' States. And the economic balance struck by the deal—where some favored industries do well at the expense of others—is not fair. I urge my colleagues to look carefully at the trade-offs this deal represents before casting your vote.

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

• Mr. BAUCUS. Mr. President, I appreciate the comments by my colleagues on the importance of U.S. beef and the impact upon it by this Agreement. The U.S. cattle industry is a cornerstone of rural America. Virtually every rural community in America is supported, in some way, by domestic beef production. This is especially true in Montana, where cattle and beef account for 25 percent of our State's economy. Nearly half of our State's economy depends on agriculture, overall. Since it's pretty tough to survive on one-half of an economy, it's easy to see how important this industry is to Montana. The cattle industry creates thousands of jobs and supports thousands of families.

This is why I fought so hard to ensure that this agreement reflected the particular needs and interests of Montana and U.S. cattlemen. When the administration first indicated their intention to negotiate an agreement with Australia, I was frankly concerned. Australia is one of the world's largest exporters of beef, offering a relatively small consumer market in exchange for access to ours.

I was faced with a choice. I could oppose the agreement from the beginning, or I could engage the process and try to forge as strong an agreement as possible. Opposing the agreement from the beginning would mean taking myself out of the process. At that point, I would be unable to best defend the interests of my constituents who had much at stake in the negotiations. Engaging the process would allow me a seat at the table, and an opportunity to insist on provisions that preserve the interests of Montana's cattlemen. Thus, engagement was the better choice.

After nearly a year and a half of tough negotiations, including countless meetings and conversations with U.S. negotiators, and Australian officials, as well, I am satisfied that we got as good a deal as we could. The agreement treats beef as a particularly sensitive product, taking into account the loss of U.S. global exports due to the discovery last year of BSE. It provides a long transition period for duty phase-out, and a slow, gradual increase in beef access to Australia. Most importantly, the agreement creates two safeguards that are triggered automatically whenever the volume or price-based conditions are met.

While the administration is given authority to waive the application of a safeguard—if certain, rare conditions are met—I also worked with Ambassador Zoellick and his staff to establish procedural requirements that must be met before a safeguard could be waived.

All in all, I am confident that the provisions in the agreement are strong and adequate. Still, our efforts illustrate the importance of these issues, not just for this FTA but for future agreements, as well. The United States traditionally exports 10 percent of its beef production, and this figure was growing until our export markets were blocked in the wake of last December's discovery of a single dairy cow infected with BSE.

Clearly, expanded trade is important to the U.S. cattle industry. Yet, extreme distortions in global beef markets pose a serious threat to the future of U.S. ranchers. All the hard work in the world won't amount to a hill of beans if we don't tackle the sources of these distortions—such as massive subsidies, high tariffs, and the like. I ask that a position paper, describing distortions in the global cattle and beef markets, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

GROSSLY DISTORTED GLOBAL CATTLE AND BEEF MARKETS—HARMING U.S. CATTLE AND BEEF PRODUCERS AND RURAL AMERICA: IMMEDIATE STEPS NEEDED TO LEVEL THE PLAYING FIELD

I. INTRODUCTION

The global market place for cattle and beef trade is amongst the most heavily distorted of any sector of economic activity. The distortions have seriously harmed US cattle producers by reducing prices paid for U.S. product in the U.S. and around the world and by limiting export opportunities other than the United States for other major producing nations. The domestic cattle industry suffered staggering losses since the early 1990s measured in the billions of dollars, with more than 100,000 cattle ranches and farms ceasing operation or ceasing handling cattle in that time. The decline of the cattle industry in America—the largest part of American agriculture, has decimated rural communities across the country which depend on a healthy agricultural sector for survival.

While the United States market is very open (we are the largest importing nation despite being the largest producing nation and have very low tariffs on cattle and large volumes of beef that enter duty free under a TRQ system) and is characterized by little government support and science-based sanitary and phytosanitary measures, this is not true of most of the rest of the world. Our trading partners often employ (1) high tariffs, (2) massive subsidies (for some), (3) unscientific SPS measures, (4) misuse of state trading enterprises in grains to artificially lower costs of production in certain major exporting nations and (5) failure to open markets even where FTAs have been negotiated through the exclusion of large segments of agricultural trade (including cattle and beef) in violation of WTO obligations and requirements. Such actions ensure that many markets are closed, US exports are limited and global export prices and prices in the U.S. are lower than they would be in an environment of harmonized tariff levels, elimination of export and domestic subsidies and harmonized SPS standards.

While the European Union is the worst offender with combination tariffs well north of 100% ad valorem, more than $9.5 billion in subsidies to the sector and SPS measures that have been found inconsistent with WTO obligations, they are not alone. The U.S. government has estimated that bound tariffs in the sector by our trading partners average 85%. Subsidies are provided to expand exports and build up industries in major producing nations, such as Australia, Brazil, Canada as well as the EU. Two major trading partners, Australia and Canada, have state-trading enterprises for grains which are believed to distort prices for major inputs to domestic cattle production in those countries. Indeed, the Australian Wheat Board has acknowledged publicly that they do so. Fifty-eight countries closed their markets in whole or in part to U.S. exports after a single imported cow from Canada was found in Washington state to have BSE and have maintained restrictions without risk assessments to justify such action and contrary to the international standards established by the OIE. The result is artificially high prices in major consuming markets like Europe and Japan (in 2002 the average slaughter steer price in the EU was $127.42/cwt and in Japan Holstein steers sold at $171.57/cwt while U.S. steer prices never went above $75/cwt in any month of the year) and artificially low prices in open markets like the United States. U.S. producers who are blessed with abundant land and are highly educated and entrepreneurial are being destroyed not because they are not competitive but because the global market place is stacked against them.

While tariffs and subsidies are being negotiated as part of the ongoing WTO Doha Development Round, it is critical that the United States obtain parity for U.S. producers with both developed and developing countries on these critical issues through the negotiations. Based on discussions to date, such parity is unlikely without a sectoral approach being adopted for cattle and beef within the Doha Round.

Similarly, it is critical that other distortions be eliminated through harmonization of SPS standards actually applied by major consuming nations, that state trading enterprises be eliminated (or forced to end their distortive practices) and that countries not be allowed to maintain FTAs where in fact substantially all trade is not covered.

Without such comprehensive actions, current efforts to negotiate FTAs with many countries including most of the major producing nations—but few of the major consuming nations—has the potential perverse consequence of worsening the position of U.S. cattle producers and the rural communities which depend on them by further opening the U.S. market without ensuring that U.S. producers (and other producers) can compete in a non-distorted manner globally.

Finally, Congress has recognized that perishable products like live cattle and beef need special rules included in trade agreements to facilitate trade and provide the tools necessary to address pricing or volume problems quickly when they occur. The U.S.-Australia FTA includes such a provision for beef. It is critical that every trade agreement (whether bilateral, plurilateral or multilateral) have such special rules and that they be applicable to cattle and beef and be automatic in operation.

II. GLOBAL DISTORTIONS

A. Tariffs

The United States allows various categories of beef to be imported duty-free pursuant to free trade agreements (ex. Mexico and Canada under NAFTA) and preferential treatment programs (ex. Peru under Andean Trade Preference Act). Beef from all other countries is subject to a Tariff Rate Quota system and imports within the TRQ (covering 696,621 MT) are subject to a tariff that is nearly zero. Import volume that falls outside the TRQ is subject to a 26.4% duty. In contrast, major consuming and several producing nations maintain high tariffs and/or highly restrictive tariff-rate quotas (TRQs) to limit market access, which limits both export opportunities for U.S. producers, and leads to other producing nations focusing on the same open beef markets like the United States resulting in lower prices in the United States than would otherwise be the case.

COMPARISON 2003 EFFECTIVE TARIFFS ON BEEF

Code	Description	U.S. effective rate	Japan	China	Jamaica	Korea	EU [1]	Turkey
020130	Meat of bovine animals, fresh or chilled: Boneless	.274%	50% (safeguard) (normally 38.5% of CIF)	34%	40%	40.5%	79.5%	227.5%
020230	Meat of bovine animals, frozen: Boneless	2.15%	50% (safeguard) (normally 38.5% of CIF)	34%	40%	40.5%	[2] 93.1%	227.5%

[1] EU effective rate based on 2002 data.
[2] Based on tariff rates for 0202.30.10 and 0202.30.50.

B. Subsidies

Major beef producing nations have lavished billions of dollars in aid to support and expand beef productions in their respective countries. For example, the EU is largest agricultural subsidizer in the world, projected to spend over $9.5 billion for both export and domestic subsidies on their beef and cattle sectors in 2005. Likewise, Brazil has spent hundreds of millions of dollars to expand their beef sector through both domestic and export subsidies and is understood to be more than doubling the amount of subsidies to the sector in 2004 to roughly a half billion dollars. Further, both Australia and Canada are engaged in providing hundreds of millions of dollars in support to their respective cattle and beef sectors in an effort to artificially prop up those industries:

Country	*Est. Subsidy per Head*
EU	$87.94
Canada	6.12
Brazil	5.38
Australia	2.96

Conversely, outside of disaster assistance or drought relief, the cattle and beef producer in the United States receives no support from the government.

C. State Trading Enterprises

State Trading Enterprises maintained in Australia and Canada operate to distort internal prices for key feedstuffs through the use of wheat boards supporting larger herds than would otherwise be the case. The Australian Wheat Board Director has stated that: ''By controlling the export of grains used as feeds—wheat, barley, and sorghum—these entities are able to influence the domestic prices of feed, and thus benefit Australian cattle producers.''

D. Unjustified Sanitary and Phytosanitary Measures

Many of the major consuming countries have imposed restraints on U.S. exports of cattle and beef that are not based on risk assessments or otherwise comply with WTO SPS obligations. While all governments accept the fact that some trade restrictions may be necessary to ensure food safety and animal and plant health protection, the use of sanitary and phytosanitary restrictions to shield domestic producers from competition is unacceptable. For many years, the EU has unjustifiably banned U.S. exports of beef on the grounds of hormones despite adverse WTO panel and Appellate Body reports. Beginning in December of last year U.S. beef has been banned in fifty-eight markets around the world on the basis of BSE without adequate scientific justification or WTO notification. Such restrictive actions have largely eliminated in 2004 the export markets for U.S. beef, markets that have been built up over many years of business.

Global BSE Trade Ban in place as of Feb. 1, 2004 ([a] partially removed as of June 11, 2004; [b] country joined EU and ban lifted; [c] banned applies to Washington State only):

1. Argentina; 2. Australia; 3. Bahrain; 4. Barbados; 5. Belize; 6. Bolivia; 7. Brazil; 8. Brunei; 9. Bulgaria; 10. Canada [a].

11. Cayman Islands; 12. Chile; 13. China; 14. Colombia; 15. Costa Rica[a]; 16. Dominican Republic[a]; 17. Ecuador; 18. Egypt; 19. El Salvador; 20. Grenada.

21. Guatemala[a]; 22. Honduras; 23. Hong Kong; 24. Indonesia[a]; 25. Israel; 26. Jamaica; 27. Japan; 28. Jordan; 29. Kenya; 30. Korea.

31. Kuwait; 32. Latvia[b]; 33. Macau; 34. Malaysia; 35. Mexico[a]; 36. Nicaragua[a]; 37. Oman; 38. Panama; 39. Peru; 40. Philippines[a].

41. Poland[b]; 42. Qatar; 43. Republic of South Africa; 44. St. Kitts; 45. St. Vincent & Grenadines; 46. Saudi Arabia[c]; 47. Russia; 48. Singapore; 49. Surinam; 50. Taiwan.

51. Thailand; 52. Trinidad & Tobago[a]; 53. Turkey; 54. Ukraine; 55. United Arab Emirates; 56. Uruguay; 57. Venezuela; 58. Vietnam.

III. WTO INCONSISTENT FTAS RESULT IN LARGE VOLUMES OF BEEF COMING TO THE UNITED STATES THAN WOULD OTHERWISE BE THE CASE

Many countries have entered into free trade agreements (FTAs) where large portions of agricultural trade, including trade in cattle and beef, have been excluded from tariff concessions. Such actions raise serious questions about FTA compliance with obligations of GATT Article XXIV:8(b), which requires that FTAs eliminate duties and other restrictions on ''substantially all'' of the trade between parties to the FTA. Correct implementation of Article XXIV in the FTAs would result in expanded market opportunities for FTA partners and provides alternative markets to traditional export markets such as the U.S. Lack of alternative markets funnels product into the U.S. lowering prices here as well as into other markets not covered by FTAs. An examination of five of the EC's FTAs, as an example, shows the following product exclusions:

PERCENTAGE OF PRODUCTS EXCLUDED FROM TARIFF CONCESSIONS IN FIVE EC-FTAs

Country	HS 0102 Live bovine animals	HS 0201 Meat of bovine animals, fresh or chilled	HS 0202 Meat of bovine animals, frozen	Total % of agricultural products excluded
Mexico	100	100	100	35
South Africa	100	100	100	25
Tunisia	100	100	100	68
Morocco	100	100	100	67
Israel	100	100	100	87

IV. SPECIAL RULES FOR PERISHABLE AND CYCLICAL AGRICULTURAL PRODUCTS

In 2002 Congress recognized that producers of perishable, seasonal, and cyclical agricultural products, like cattle and beef, face unique challenges in the market. Some proposals have been made by the U.S. in the Doha Round in the Rules area but to date nothing has been put forward in the agriculture negotiations. In the United States-Australia Free Trade Agreement (FTA) this requirement was recognized by the Administration as it negotiated an agricultural safeguard for beef. While the terms within the U.S.-Australia FTA are discretionary and limited to beef, it is an important precedent for the type of automatic provisions that should be part of every FTA and part of the WTO.

V. THE HIGHLY DESTRUCTIVE EFFECT OF GLOBAL MARKET DISTORTIONS ON THE U.S. CATTLE AND BEEF SECTOR

Cattle and beef production comprises the single largest sector of U.S. agriculture. Cattle are raised in all fifty states and half of all U.S. farms have beef cattle as part of their operations.

Because cattle prices for U.S. producers are highly sensitive to demand movements, the combination of an open U.S. market, coupled with the global distortions outlined above, has resulted in massive dislocations to U.S. producers and the rural communities which depend on them in the last fifteen years.

BEEF CATTLE OPERATIONS, LOSSES AND 2002 CATTLE RECEIPTS

	No. of operations			Declines (% of 1993)	2002 Cash Receipts	
	1993	2002	Declines		(000s $s)	Rank
AL	32000	24000	8000	25.0	2,378,278	14
AK	90	90	0	0.0	27,906	49
AZ	2600	2100	500	19.2	1,094,056	29
AR	27000	27000	0	0.0	2,951,745	10
CA	15000	12500	2500	16.7	6,241,632	2
CO	10500	10900	0	0.0	3,501,589	9
CT	800	800	0	0.0	154,364	45
DE	230	230	0	0.0	546,329	39
FL	18000	16500	1500	8.3	1,239,225	28
GA	23000	21000	2000	8.7	2,889,736	12
HI	800	650	150	18.8	84,789	46
ID	7500	7600	0	0.0	1,998,531	17
IL	21000	15800	5200	24.8	1,562,297	22
IN	17000	12000	5000	29.4	1,551,019	23
IA	29000	26000	3000	10.3	5,074,754	5
KS	29000	28000	1000	3.4	5,325,329	4
KY	44000	40000	4000	9.1	1,960,679	18
LA	18000	13000	5000	27.8	614,049	38
ME	1400	1000	400	28.6	230,471	42
MD	3800	2700	1100	28.9	810,343	32
MA	1000	750	250	25.0	83,250	47
MI	8000	8000	0	0.0	1,259,700	27
MN	16000	15500	500	3.1	3,644,854	8
MS	27000	20000	7000	25.9	1,949,698	19
MO	62000	58000	4000	6.5	2,302,053	15
MT	11800	11400	400	3.4	985,498	30
NE	23000	21000	2000	8.7	5,824,295	3
NV	1400	1300	100	7.1	211,157	43
NH	500	530	0	0.0	56,276	48
NJ	1200	700	500	41.7	192,609	44
NM	7000	6500	500	7.1	1,382,052	26
NY	7500	6200	1300	17.3	1,870,160	20
NC	26000	21000	5000	19.2	3,944,013	6
ND	13200	11500	1700	12.9	723,656	37
OH	19000	17000	2000	10.5	1,630,227	21
OK	51000	50000	1000	2.0	2,893,460	11
OR	16000	12800	3200	20.0	808,131	33
PA	12500	12200	300	2.4	2,682,401	13
RI	160	160	0	0.0	6,300	50
SC	13000	9500	3500	26.9	760,227	35
SD	18000	16500	1500	8.3	2,059,513	16
TN	55000	45000	10000	18.2	913,073	31
TX	130000	133000	0	0.0	8,087,670	1
UT	5000	5600	0	0.0	807,752	34
VT	1100	1200	0	0.0	400,174	40
VA	24000	23000	1000	4.2	1,451,127	25
WA	14000	9700	4300	30.7	1,495,317	24
WV	15000	11000	4000	26.7	300,197	41
WI	9800	12000	0	0.0	3,768,302	7
WY	5100	5200	0	0.0	749,571	36

No. of Operations are for Beef Cattle & Calves, from USDA NASS, ''Cattle Final Estimates'' 1994–98 & 1998–2002. Cash receipts are for Livestock and products from USDA ERS.

For example, in a global market where there was a level playing field for U.S. cattle producers, the U.S. would have a huge and growing trade surplus as there are only a handful of countries with the capacity to supply large quantities of quality beef for export. Yet, prior to the BSE outbreak in Canada in 2003, the U.S. has been running a trade deficit in cattle and beef:

UNITED STATES BEEF AND CATTLE TRADE FLOWS, 1999–2003

[$1,000]

	1999	2000	2001	2002	2003
Cattle Imports	1,007	1,157	1,464	1,448	867
Cattle Exports	174	272	270	131	64
Total, Cattle	−833	−886	−1,194	−1,317	−803
Beef, Imports	1,904	2,205	2,514	2,513	2,364
Beef, Exports	2,655	2,909	2,548	2,489	3,036
Total, Beef	751	704	34	−24	672
Total, Cattle & Beef Trade	−82	−182	−1,160	−1,341	−130

Data Source: Department of Commerce, U.S. Census Bureau, Foreign Trade Statistics, HS 0102 (cattle), 0201 (fresh beef), and 0202 (frozen beef).

Limited U.S. exports, significant inflows of imports and massive global distortions have led to long-term unsustainable pricing and an unprecedented seven year decline in cattle inventory in the United States. For example, during the 1992–2001 decade USDA reports that financial returns for cow/calf producers were a negative $30.40 per bred cow per year, losses aggregating to the billions of dollars. With the massive losses, cattle herds have declined.

While the partial closure of the Canadian border in 2003 because of the BSE outbreak in that country has provided a temporary respite for US producers in terms of pricing levels, only correction of the global distortions can restore pricing equilibrium.

The unsustainable prices over the last fifteen years have resulted in ranching families going bankrupt by the thousands and being forced off of their land. In 1993, there were nearly 900,000 beef operations in the United States. By 2003, this number declined to 792,100 operations. In the late 1990s, auctions of equipment from ranches and farms were a weekly event across rural America as families lost everything they owned and saw the end of what was often generations-old family businesses.

The depressed pricing in the marketplace over most of the last fifteen years has meant a hollowing out of the ranching communities across American and with it the destruction of many of the rural communities dependent on ranch and farm economic health for survival.

VI. ACTION TO REFORM DISTORTIONS IS CRITICAL

Eliminating the global distortions in cattle and beef trade is important to every state in the United States, to thousands of rural communities and to some eight hundred thousand ranching and farming families that raise cattle in America. Some distortions can be addressed through the WTO Doha Negotiations but only if the level of ambition at least for cattle and beef is substantially higher than appears to be the direction of negotiations in mid-June 2004.

What is needed from the ongoing WTO Doha Development Round:

(a) elimination of all export subsidies (developed and developing countries);

(b) elimination of all domestic subsidies (developed and developing countries);

(c) harmonization of tariffs at a level comparable to that existing in the U.S. for all major consuming and all major producing nations; and

(d) maintenance of special safeguards on beef and/or the negotiation of special rules for perishable and cyclical agricultural products.

In addition, the U.S. must obtain through negotiation, dispute resolution or otherwise:

(a) a harmonization of SPS measures as applied to cattle and beef from all major consuming and producing nations;

(b) expansion of trading partners' FTAs to cover substantially all trade in fact, including cattle and beef where not presently covered; and

(c) elimination of state trading enterprises involved in grains, cattle or beef to ensure products are traded according to market principles without distortions.

Finally, it is critical that the United States include in any future FTAs special rules for perishable and cyclical agricultural products applicable to both cattle and beef that are automatic and both price and volume triggered.

Mr. BAUCUS. Mr. President, this position paper has been prepared by R–CALF USA, an industry association representing ranchers across the country including Montana.

Future trade agreements must seek to eliminate the distortions that undermine the prosperity of U.S. producers. That means the U.S. should negotiate agreements that offer real and substantial opportunities. That also means the U.S. must take a hard-nosed approach in the Doha Round of WTO negotiations.

This matter is crucial to the future of rural America. It is worth every ounce of effort we can pour into it, and I—for one—pledge to press this fight.●

Mr. ROBERTS. Mr. President, I rise to make several important points regarding the United States-Australia Free Trade Agreement.

As chairman of the Intelligence Committee and member of the Armed Services Committee, I am well aware of the valuable friendship that our two countries share. Australia's commitment to the fight in the Global War on Terror is unwavering. Australia's support in liberating and rebuilding Iraq has been crucial there.

This agreement provides better opportunities for Kansas manufacturers, especially those in the aviation and transportation sectors to increase exports to the Australians. I understand that there is strong, bipartisan, interregional support for this agreement across industries and across the country.

However, I feel compelled to share with my colleagues several things which trouble Kansas about the way this agreement was constructed.

I must tell our colleagues that in all the years I have had the privilege to serve Kansas and agriculture in the U.S. Senate and the House of Representatives, there have been few, if any, times when there was as much open hostility to trade as I sense in some areas today.

In Dodge City terms, ''The bloom is off the lily, and the lily was run over by a lawn mower.''

I have had more than one producer ask me just what we are doing being involved in all these trade agreements when it seems that agriculture is under attack.

We have dealt with and continue to deal with the BSE hurdles for our beef products, our farm and export programs are under attack through the Brazilian cotton case and our food aid programs are being attacked by others in the Doha round of WTO negotiations.

We have now completed, and this body is considering a free trade agreement with Australia that exempts a single commodity—sugar—at the expense of others, particularly wheat and beef.

Kansas producers, who do pay close attention to trade matters, are taking a look at this list of issues and saying: Hold on a minute, Pat. What is going on here?

I will share with you and the rest of our colleagues what I tell the folks at the coffee klatch in Dodge.

In addition to setting a dangerous precedent for future trade agreements, exempting sugar from the Australian FTA also sets a dangerous precedence for agriculture, especially for sugar itself. In the past, whether in trade agreements or trade disputes, whether it be in farm bills or budget reconciliations, the commodity and producer groups have sank or swam together.

Sugar's insistence on not participating in this free trade agreement makes it very likely that the rest of US agriculture will opt not to participate in sugar's defense the next time that program faces a WTO challenge, budget reconciliation measure, or amendment to end sugar's support program during the next farm bill.

Simply put, if sugar falls or jumps off the ag-boat in the future, it may very well find itself treading water while watching the rest of US agriculture drift away silently. Our producers will insist that we extract real concessions on state-traded enterprises, quotas, tariffs, etc. in future trade negotiations for their support for concessions on imports of agricultural goods here at home.

Simply put, you don't bring a knife to a gun-fight and expect our producers to stand with you.

I intend to support the United States-Australia Free Trade Agreement. I believe that it is in the best interest of our relationship with our friend and ally, Australia. However, singling out individual commodities in future trade agreements is not in the best interest of our Nation and threatens agriculture's support and, therefore, my support for future trade agreements.

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

● Mr. KERRY. Mr. President, I placed in the RECORD a statement addressing the United States-Australia Free Trade Agreement when the Finance Committee first passed it. Today, I want to offer some additional thoughts on two issues that have arisen since then.

As I have said, I believe the agreement will promote our economic interests and job creation here in America. In addition, Australia is an important ally, and we must do all we can to ensure a healthy and vibrant relationship between our two nations. Overall, the agreement deserves our support.

However, I am disappointed that the administration has included provisions relating to pharmaceuticals in this agreement. It has been suggested that these provisions might block proposals to reimport drugs or undermine our Medicare and Medicaid programs. These provisions do not belong in this agreement and should not be considered as precedent for future agreements. The record should reflect that the U.S. Trade Representative has confirmed to the Congress that these provisions will not harm our domestic health programs or efforts to reimport drugs. And if the Trade Representative's claims in this matter should turn out to be wrong, I believe that a future administration and the Congress should act immediately to correct the agreement through whatever process is needed.

Second, I am disappointed that the Bush administration did not do more to ensure a level playing field for our important beef and dairy farmers. Further, the administration ignored the will of the Senate Finance Committee on this important issue. I was happy to support an amendment in the Finance Committee that helps ensure a level playing field for our domestic beef farmers. Unfortunately, the administration ignored this action and failed to include those enhanced protections in its final proposal. It would seem the administration is content with listening only to itself and a few select industries as it negotiates trade pacts for all of America. This is not consistent with our expectations under fast-track procedures.

Finally, as I have stated before, I am disappointed that the Bush administration did not build on the model of the United States-Jordan agreement by including strong and enforceable labor standards in the core of the agreement. Although Australia already has very strong labor rights and an effective enforcement regime, the agreement represents a missed opportunity to set a higher benchmark for future trade agreements by cementing the principle that labor and environmental standards are in the core of all new agreements.●

Ms. COLLINS. Mr. President, I rise in support of the Australia Free Trade Agreement. On balance, this agreement is overwhelmingly beneficial to the State of Maine, and to the country as a whole. Critical to my decision to support this agreement is the fact that it will provide new and expanded opportunities to Maine businesses that want to expand into the Australian market. This agreement will create and support good jobs in my State.

It is clear that businesses across Maine are interested in initiating or expanding trade with Australia. The Maine International Trade Center held a seminar recently on export market opportunities in Australia. Representatives from more than fifty Maine companies, including many small businesses and manufacturers, attended.

It is no wonder: the United States has a trade surplus with Australia of $9.1 billion, the second largest trade surplus of any U.S. trading partner. Australia is a net consumer of United States exports and particularly United States manufactured goods. Ninety-three percent of United States exports to Australia are manufactured goods, and 99 percent of these goods will be duty-free if the agreement is implemented. The National Association of Manufacturers predicts that the agreement could result in nearly $2 billion per year in new United States exports of manufactured goods to Australia, a boost to our hard-pressed manufacturers.

In addition, Australia is the 15th largest economy in the world and has been growing over the past few years while the rest of the world is in recession. This means more Australian buying power—and many new opportunities for Maine and United States companies to export their products to Australia.

Australia has a strong and vibrant trading relationship with Maine. Australia is Maine's 12th largest export market, and in 2003, Maine exported nearly $29 million in high-value goods, such as electrical equipment, computers, and paper products, to the country. The agreement will make these goods 99.25 percent duty free, on average, in the Australian market.

Maine's forest and paper products industry will be stronger and will be able to grow as a result of this agreement. The agreement lifts all Australian tariffs on all U.S. forest products, which currently face tariffs up to 5 percent. This is important, because the United States is Australia's second largest supplier of paper and paperboard, with exports totaling $178 million in paper products in 2003.

Expanded access to the Australian market will directly benefit Maine mills. For example, International Paper's mill in Jay ME, exports about 1,200 tons of paper to Australia every year. These exports currently face a 5 percent tariff. If the free trade agreement is implemented, the tariff will be eliminated, and International Paper will be able to fulfill its plans to increase the amount of paper it exports to Australia from Maine, preserving and even increasing the number of jobs supported by the mill.

The agreement will benefit other Maine companies as well. The elimination of tariffs will enable FMC Coporation's Rockland plant to significantly expand its export of carrageenan products to Australia. In Southern Maine, National Semiconductor and Fairchild Semiconductor will benefit from the agreement's elimination of tariffs on all U.S. high-tech manufactured goods and from expanded opportunities for U.S. suppliers to compete for a broad range of Australian government contracts.

The Maine Potato Board has endorsed the agreement because it will open and expand Australian markets for Maine potato products. The MPB notes that the long-term success of the Maine potato industry is absolutely dependent on the growth of new markets.

Despite the overwhelming benefits of this pact, I do have some concerns with this agreement. While Maine does stand to reap substantial benefits, I am disappointed that the United States Trade Representative has included language that conflicts with the goal of drug reimportation.

One of the greatest challenges facing American consumers is the high cost of prescription drugs. That is why I have long supported legislation to allow Americans to benefit from international price competition on prescription drugs by permitting FDA-approved medicines made in FDA-approved facilities to be imported into this country.

Despite the ongoing debate in Congress and the strong support for drug reimportation on the part of the American public, I am disappointed that our trade representatives have insisted on including language in this trade agreement that is contrary to these critically important efforts.

The Australian government already bans the export of drugs subsidized under the Australian Pharmaceutical Benefits Scheme. Since 90 percent of the drugs prescribed in Australia are subsidized, Australia would not be a significant source of supply of imported drugs into the United States, with or without this agreement. Drugs imported into the United States are far more likely to come from Canada and Western Europe.

I am concerned, however, that these provisions set a bad precedent. While Australia itself is not necessarily a good source for imported drugs, this language could become a template for future agreements.

I am also disappointed that this agreement provided some additional market access for Australian dairy products in the U.S. market. However, I am pleased the final version of the agreement includes marked improvements over initial drafts. For example, the agreement gradually phases in limited increases in dairy imports over an 18-year period. In addition, the agreement maintains the current U.S. above-quota tariffs on dairy products indefinitely. These improvements were included in the agreement after I joined with my colleagues in sending a letter to U.S. Trade Representative Robert Zoellick asking that the interests of our dairy farmers be taken into account as the agreement was negotiated. The inclusion of these provisions, in addition to my consultations with Maine's agricultural leaders, has led me to conclude that this agreement will not have a significant impact on Maine's dairy industry. Moreover, Australia currently exports only a small amount of MPCs to the United States, and this agreement will not change this.

Australia is one of our oldest and most reliable partners. The country is a growing market for high-value U.S. exports from both Maine and the country. The free trade agreement we are considering today will strengthen the economic and diplomatic ties between our countries. On balance, it is good for Maine, and for both countries.

Mrs. CLINTON. Mr. President, today the Senate will vote on the Australia Free Trade Agreement. Because I believe this agreement offers greater access to Australian markets for U.S. manufacturers as well help solidify a long-term relationship with Australia, a leading ally of the United States on a whole host of international challenges, I will vote in support of this agreement.

The Australia Free Trade Agreement will offer new opportunities for U.S. manufacturers as well as granting substantial access to U.S. services suppliers, including telecoms, financial services, express delivery, and professional services providers. These sectors are a critical part of New York's economy. Furthermore, Australia has been a stalwart ally of the U.S. and this agreement is another step in cementing that relationship.

I share the concerns raised by some of my colleagues regarding the drug importation language in the agreement. Quite simply, the United States Trade Representative should not be negotiating agreements that could impact on the drug importation debate and I have grave concerns about the inclusion of this language in the agreement. Similarly, in the Chile and Singapore agreements, I raised concerns about the inclusion of immigration provisions in those agreements. The continuing practice of the United States Trade Representative of including provisions in trade agreements which are rightfully in the jurisdiction of Congress is deeply troubling.

During my tenure as a Senator, I have voted for every trade agreement that has come before the Senate. However, I will find it difficult to support future trade agreements which contain language that impedes the jurisdiction of Congress regarding drug importation or other issues

While I wish the agreement had included provisions that provided greater market access for New York agriculture, I believe that a genuine effort was made to address the legitimate concerns of New York and other States' farmers and that, on balance, New York's economy will benefit from this agreement.

Despite my concerns over the drug importation provisions, I believe that, in the aggregate, New York will benefit more from having this agreement pass than if it failed. I also believe it sends a positive signal to Australia about the importance of the United States-Australia relationship. The Trade Representative should not make the mistake of concluding that a vote for the Australia Free Trade Agreement is a vote in support of this troubling drug importation provision.

When deciding how to vote on trade agreements, I look at each agreement in its totality and measure the impact of each agreement on the New Yorkers that I am privileged to represent. Because I believe that passage of the Australia Free Trade agreement will lead to more jobs and greater economic growth in industries that are an important part of New York's economy as well as strengthening the U.S. relationship with Australia, I will vote in support of this agreement.

Mr. LEVIN. Mr. President, article 17.9.4 of the United States-Australia Free Trade Agreement implementing legislation allowing patent holders to prevent the import of their patented products is redundant and should not have been included in the agreement. Australian law already bans the export of pharmaceuticals if such drugs are purchased under its Pharmaceutical Benefits Scheme, PBS, and PBS drugs account for over 90 percent of all drugs sold in Australia.

This language does not establish a precedent for other free trade agreements. According to the Senate Finance Committee, it is appropriate to raise objections if this language is included in a free trade agreement negotiated with a country that does not forbid the export of low cost pharmaceuticals. Therefore, I will support this agreement.

Mr. JEFFORDS. Mr. President, I firmly believe that free and fair economic relations between nations will accrue to the benefit of all parties. Our country was founded on the principle that all States would benefit from the free flow of commerce between equal parties. And our national economy has proved this to be true.

These same dynamics now operate on a global scale. Commerce can now reach around the globe with ease. Communications are instantaneous, even in the most isolated places. Our trading laws must keep pace with the emerging patterns. We must move to shape the emerging global marketplace into a productive and fair system—not sit back and condemn its advances and decry the loss of old economic structures. We can either be in the lead of this evolution, or we will be sidelined by it. I believe that America can and must exert leadership. One way we must assert leadership is by the negotiation of trade agreements that will lower the barriers to trade and level the playing fields for all players.

Trade agreements come together more naturally with developed nations that share our commitment to rule of law, strong worker protections and strict environmental controls. Australia is such a country. Even so, it has been difficult to resolve the differences in our two economies and allow protections for particularly vulnerable elements of each economy. Negotiations have taken place over a considerable length of time, and no side has gotten everything they want.

The provisions in the agreement relating to dairy, for instance, are an example of not getting all that we would like. I joined a bipartisan group of 30 Senators in a letter to the chief US trade negotiator, Ambassador Robert Zoellick, expressing our concerns for our Nation's dairy farmers and requesting favorable treatment for this struggling national industry. Under this agreement, imports may amount to two-tenths of 1 percent of U.S. dairy production. While I would have preferred no market penetration by Australian dairy imports, I am confident that our industry is strong enough to meet this competition. Additionally, this agreement will open up new markets for Vermont's dairy products. I am confident Vermont farmers will be able to take strong advantage of this opportunity.

Some concerns have been raised about provisions relating to prescription drugs. Transparency provisions in this agreement related to Government procurement decisions are designed to provide equal rights of appeal. The US Trade Representative, USTR, has indicated that these provisions will not require any changes in U.S. pharmaceutical purchasing programs. There has also been discussion about a provision in this agreement related to drug reimportation. As a strong supporter of passing drug reimportation legislation, I would not want to endorse any curtailment of future drug reimportation opportunities. In this case, however, Australian law prohibits the export of any drugs purchased through its government-subsidized program, the majority of all drugs sold in Australia. As a central part of the Australian Government's drug program, there is no reason to think that this prohibition would change. But I also warn USTR that it would be unacceptable to include language similar to article 17.9.4 in future trade agreements where reimportation might be an option in the event of a change in U.S. law. I am sure that the intense discussions around these provisions over the last few days have made this point quite clearly.

As with all significant agreements, we will find flaws and challenges with this agreement as it unfolds. But as international dispute mechanisms are perfected, we become better at settling them equitably and expeditiously. The future of our economy and the health of the global economy are dependent upon us improving our ability to devise more equitable and open trading systems.

The disparities between the economies of the developed world and the less-developed world continue to grow. This agreement comes between economies of equal strength, even though not of equal size. The experience we gain here in how to remove barriers to trade while protecting vital interests will inform us of how to more successfully tackle the difficult trade relations between our economy and those less-stable economies. Some would argue that the easiest way to relate to weaker economies is to put up greater barriers to trade—to prevent the export of any U.S. capital and prevent the entrance of any lower-priced goods into our market. I am more of an optimist than that. I believe that we can do better than lock out whole sectors of the global economy. I believe we must make efforts, learn from our mistakes, and move ahead to strengthen the flow of commerce, the equity of business and the opportunity for all people to earn a living.

Mr. KYL. Mr. President, I am pleased to join many of my colleagues in supporting this landmark United States-Australia Free Trade Agreement, FTA. I say ''landmark'' because it is both historic in that it underscores the invaluable relationship between the United States and Australia—a relationship that is built on friendship, loyalty, and mutual support for economic and political freedoms—but also because it breaks new ground for an FTA.

For the first time, a free trade agreement negotiated by the United States has addressed the worldwide problem of prescription drug price controls. The United States is virtually the only developed nation that does not regulate pharmaceutical prices. American consumers, who finance the bulk of research and development for the entire world, should be very pleased that the U.S. Government has begun broaching the subject with other developed countries. Because some of my colleagues have raised concerns about the pharmaceutical section, I want to briefly review what the FTA does, and what it does not do, in the area of pharmaceuticals.

First, it is important to note that Americans will only benefit from the drug provisions and, in truth, so will Australians. The FTA makes suitable progress on addressing Australia's drug price controls; the U.S. did not have to make any concessions in exchange. I say suitable progress because, while the agreement makes important progress, Australia does not embrace a free market for drug pricing with the accord.

I joined a number of my colleagues on a Congressional delegation trip to Australia at the beginning of the year. During our meetings with Australian government officials we had the opportunity to debate the Australian drug pricing system. I believe the agreement we will approve today was possible, in part, because of those discussions.

In the FTA, the U.S. and Australia state that they ''recognize'' the importance of innovative pharmaceuticals in delivering high-quality health care. Incorporated in this, both countries agree to set pharmaceutical prices based on the ''objectively demonstrated therapeutic significance of the pharmaceutical.'' In practice, the U.S. Government is already in compliance with this provision because our Government does not ''mandate'' prices; certain Government agencies may negotiate prices with drug companies, but by and large, we allow the free market, including negotiations between drug companies, and insurance companies, to determine prices. While Australia could not take the next step and price drugs accordingly or adopt market-pricing, this is still an important first step. If the U.S. can convince our friends and trading partners to agree that innovative pharmaceuticals benefit everyone and that R&D is both costly and necessary to our health, then we can begin arguing for better burden sharing of R&D costs.

I want to talk for a moment about price controls and the effect they have on research and development. Some of my colleagues argue that the U.S. should adopt prescription drug price controls indirectly by importing price-controlled drugs from other countries as a means of reducing drug costs for American consumers. I believe this would be a terrible mistake for a number of reasons, one of which is the effect it would have on R&D. To date, the

U.S. has seen private pharmaceutical research move to the U.S. from Europe specifically because of price controls. Companies are able to recoup their R&D costs in the U.S. market and are consequently more likely to develop their new, breakthrough pharmaceuticals in the U.S. Americans like having the R&D performed in our country—we like the quality jobs it brings and we like having first access to new products—but we do not like the fact that Americans pay for almost all of the R&D for the world. Americans know this is simply not fair. If the U.S. adopts price controls, we will see the development of new, innovative pharmaceuticals drop off because there will be no one left to fund R&D. Rather, we must begin persuading other developed, market economies to begin shouldering their share of the burden. That is why the fact that the agreement recognizes the importance of R&D is so critical.

The FTA also commits Australia to make both transparency and timeliness improvements to their Pharmaceutical Benefits Scheme, PBS, that are intended to make the listing process for new pharmaceuticals more open and fair. The PBS is the system by which the Australian government sets price controls and provides subsidies for nearly all drugs sold in Australia. To improve transparency, Australia agrees to establish an independent review board to hear appeals of PBS listing decisions. This will enhance transparency and accountability in the operation of the PBS. Companies will gain a better idea of how and why decisions were made regarding their drug submissions. Prior to this agreement, U.S. drug companies would submit information on a new drug for listing by the PBS, the PBS would set the price, and the company would be left with a ''take it or leave it'' situation.

Some of my colleagues have asked whether the U.S. will have to establish a similar independent review board, but the general counsel of the USTR clarified for the Senate Finance Committee, during the July 14, 2004 consideration of the FTA, that because our processes are already open and transparent, no independent review board is required for any U.S. Government purchases of pharmaceuticals, by the Veterans' Administration, for example).

Finally, the FTA establishes a ''medicines working group'' that will provide a forum for continued dialogue between the United States and Australia on pharmaceutical issues. During our meetings in Australia we suggested such a working group as a way to guarantee that, if our pricing concerns could not be resolved in the FTA, we could continue to discuss the issue. The subject matters that the group might consider are not limited by the agreement, and therefore can be expected to include the importance of market-based pricing.

Now, to address the concerns of my colleagues. First, the FTA does not ban the importation of price-controlled drugs. As my colleagues know, it is already illegal for individuals to import prescription drugs into the United States. Now, Congress may vote to amend U.S. law to allow individuals to import prescription drugs from foreign countries. I would strongly oppose this, but we may do it. This agreement would in no way prohibit Congress from changing U.S. law to allow drug importation. The new U.S. law would supercede the agreement and would take effect despite any inconsistencies with the agreement. Also as some of my colleagues know, Australian law prohibits the export from Australia of drugs that are subsidized by the Australian government. This only makes sense, from the perspective of Australian taxpayers. Australian law does allow nonsubsidized drugs to be exported; but in reality, most of the drugs marketed and sold in Australia are under the subsidized system. As a consequence, Australia is not likely to be a significant exporter of low-priced drugs to U.S. consumers, should Congress allow drug importation, regardless of what this FTA says.

Another charge raised by some of my colleagues is that the patent protections in the FTA will in some way prohibit drug importation. The patent protections included in the FTA merely state that both nations agree to protect the patent owners' rights to determine how, by contract or other means, their patent is used by a licensed third party. It is not specific to pharmaceuticals, nor is it unique to this FTA; other U.S. trade agreements include similar language that merely reiterates and is consistent with existing U.S. patent laws. That is, under U.S. law patent holders already have the right through contracts and by other means to limit the use of their products. If an unscrupulous person wanted to steal a U.S. company's drug patent, illegally make the drug, and sell it into the United States, it would be a violation of U.S. law, regardless of whether the U.S. entered into this FTA or not.

I urge all of my colleagues to review the facts if they have concerns with the drug provisions of this FTA because this agreement will not increase drug prices in the U.S., it will not increase drug prices in Australia, and it will not prevent the U.S. from changing our laws in any way. It will, however, begin an important dialogue with our Australian friends about the importance of R&D and of paying for R&D; this is an important first step. I urge all of my colleagues to support the agreement.

Mr. GRAHAM of South Carolina. Mr. President, I do not consider myself a protectionist, nor a free trader, but a balanced trader.

Having said that, I have not been a supporter of so-called free trade agreements in the past. I have been very skeptical of the free trade agreements—FTAs—our country has signed due to the detrimental impact that I believe they've had on our economy, especially the manufacturing industry. Most of the trade agreements we have signed since I have been involved in politics under both Democrat and Republican leadership have put American workers at an unfair disadvantage because they have encouraged trade with countries that have no labor standards, lack environmental and intellectual property laws, and violate agreements under the WTO.

Free trade only works when both countries play fairly. That is why I can support the U.S.-Australian Free Trade Agreement—USAFTA. Australia is a country that holds true to their word and will live up to their commitments in the agreement. Australia lives by the same rules of law that we as Americans live by. By maintaining an equivalent cost of production and standard of living to that of the United States, the USAFTA will improve the competitive advantages of both countries without encouraging the displacement of hard-working Americans.

I am extremely concerned about the negative impacts that unfair trade agreements have had on the manufacturing industry. South Carolina, particularly the textile industry, has been decimated by unfair trade, first with NAFTA and now with the People's Republic of China. We have lost thousands of jobs at home. In the last six years, nearly 230,000 U.S. textile jobs have been lost. Since 1997, the U.S. textile industry has closed more than 250 textile plants in the country. These mass layoffs and plant closings are a direct result of unfairly traded imports, especially from China. China's access to the U.S. textile and apparel market more than doubled in 2002, growing 117 percent and grew an additional 114 percent in 2003, according to the American Textile Manufacturers Institute.

During the negotiations on the Australian Free Trade Agreement, the Bush Administration negotiated a good deal for the textile industry and I appreciate their efforts in this regard. The USAFTA contains a strict yarn-forward rule of origin with no loopholes, exceptions, or carveouts. Therefore, the benefits of the USAFTA are limited to the participating countries only, effectively denying China the loophole through which they annually transship billions of dollars of manufacturing goods into this country. This is the first FTA to contain such a strict yarn-forward rule of origin and I hope that it is the first of many.

While I recognize the need to examine the problems with our current trade agreements, I support the USAFTA because I feel it has the opportunity to serve as a model for future FTAs. Furthermore, the implementation of the USAFTA will further strengthen the U.S. relationship with Australia, one of our most important and reliable strategic partners.

Mr. BURNS. Mr. President, today we are considering the United States-Australia Free Trade Agreement. There is

a lot to commend in the agreement before us. This deal is expected to add over $490 million annually to the U.S. economy. The benefits of this agreement to the manufacturing sector of America are significant. Tariffs on nearly all U.S. exports of manufactured goods are immediately eliminated. Intellectual property rights protections will be expanded, as will progress towards enhanced trade through e-commerce. I commend Ambassador Zoellick for his hard work on this deal.

I have been to Australia many times, and I have met with Prime Minister John Howard. The U.S. and Australia share many interests. We share similar values, similar standards of living, and similar goals. Australia is a close friend and important ally in the war on terror, and I recognize the value of our relationship. Because of the overall benefit to our economy and the close friendship the U.S. shares with Australia, I will be supporting this agreement today.

However, I have some reservations about the impact of this deal on Montana farmers, and I want to take a moment to address those.

While the beef industry has achieved a generally balanced phase-in of changes, the Australian Wheat Board remains a trade-distorting monopoly that could harm our domestic grain producers. I recognize that Australia has offered to reconsider the role of its Wheat Board in the context of the Doha negotiations, and I applaud that decision. But the Australia Free Trade Agreement provides no immediate benefit for Montana farmers.

Provisions relating to cattle are somewhat better than those for grains, but I want to take a moment and address an issue of concern for some in the beef industry. The automatic safeguards provided for in this agreement are subject to waiver, and that is troubling for some of our producers. While the Office of the U.S. Trade Representative has been clear that the waiver would be used only in extraordinary circumstances, I want to stress my belief that those safeguards are there for a reason. Should the Senate approve this agreement before us today, I expect USTR to use caution when considering waiving the safeguards. I appreciate the provisions in the implementing language that require USTR to consult with the Senate Finance Committee, the House Ways and Means Committee, and private sector advisory groups prior to taking action. Consultation requirements like these ensure that the best interests of our cattle producers will be protected. The inclusion of price and quantity safeguards represent real progress in achieving a balanced phase-in of free trade agreements, and I want to make sure they are properly used.

Despite these issues, I do believe that the Australia agreement is, in general, beneficial to the United States, and to Montana. It could certainly be improved, but Australia comes closer to a balanced deal than most FTAs have.

Again, I will vote for this agreement, but I call on Ambassador Zoellick to aggressively defend the interests of our agricultural sector in the Doha talks so that the future of free trade looks brighter for America's farmers and ranchers. Multi-lateral agreements, like the Doha talks, provide real opportunities for farmers and ranchers—and in that context, the United States and Australia will work together to liberalize trade for the benefit of all.

Mrs. LINCOLN. Mr. President, throughout my public service, I have been a supporter of free but fair trade. Trade is important to the Arkansas economy because it creates jobs by opening new foreign markets to Arkansas' largest exports. In 2003 alone, Arkansas employers and farmers benefitted from over $2.9 billion in manufacturing and agricultural exports sold around the world. From 1999 to 2003, Arkansas exports to Australia totaled some $246 million, according to data compiled by the International Trade Administration within the Department of Commerce.

With numbers like these, it is easy to recognize the benefits of freer trade. It is also easy to see that as tariffs are reduced and trade barriers are removed, these numbers can grow.

The benefits of trade don't stop there. Through trade we can improve economies throughout the world, not only making the world an even better customer to all the good products Arkansas has to offer, but improving the lives, working conditions, and environmental standards for millions of people around the globe.

However, while there are certainly benefits, there are usually other important factors that must be considered. As a supporter of freer and fairer trade, I remain passionate that our trade policies must be crafted to ensure that all U.S. industries remain competitive in a world marketplace that is not always free and, all too often, not always fair.

I remain passionate that each step towards freer trade must also be a step towards fairer trade and a more level global playing field. As a member of the Senate Finance Committee, I am pleased to have the opportunity to influence our Nation's trade agreements. In fact, jurisdiction of international trade is a large reason why I sought a seat on the committee, because while I certainly recognize the benefits that free trade creates, I also know the concerns we must address.

All too often, we are faced with the news of the loss of more manufacturing jobs. For Arkansas, the pictures of plant closings and news articles of job loss are more than just stories in the media, they are a harsh reality.

Since July 2000, my State has encountered an enormous loss of manufacturing jobs—nearly 35,000 to be exact, according to data provided by the National Association of Manufacturers.

I am deeply troubled that so many Arkansans have lost their jobs, not because they can't compete on a level playing field but because the cards have been stacked against them. That's what the jobs bill is all about—keeping jobs where they belong here at home.

Does that mean that we should shy away from a pro-trade agenda completely? The answer is no. Without a progressive agenda we are left with the status quo, which simply doesn't work.

With the status quo international labor and environmental standards remain low while tariffs and barriers for goods produced here in the United States remain unacceptably high.

Agriculture is a great example of this. When U.S. farmers look out at the world around them, they see an average bound tariff of 62 percent against their products while foreign farmers see just 12 percent imposed against their products coming into the United States. And when U.S. farmers look around the world, they see Europeans with subsidies as high as $400 per acre while our help to our farmers sit at less than $40 per acre. That is why we need a strong domestic farm policy.

The bottom line is that under the status quo jobs don't stay here in the United States where they belong. They move overseas. Throughout the negotiation of the Australia Free Trade Agreement, it became clear that this was a very unique agreement that presented both opportunities and challenges. A snapshot of Australia shows a highly developed country with comparable environmental and labor standards. Additionally, Australia is one of the few countries with which the United States enjoys a trade surplus—some $6 to 7 billion annually.

With the reduction of tariffs and the elimination of other trade barriers we can look forward to sending more U.S. manufactured and agriculture products to Australia. And that is exactly what happens in portions of this agreement.

In the Australia FTA, 99 percent of the tariffs on manufactured goods go to zero on day one. I have heard this agreement called the best agreement for manufacturers. With immediate free trade for 99 percent of U.S. manufactured goods, I would have to agree, especially when 93 percent of what we sell to that country is manufactured goods.

In addition, U.S. agricultural exports to Australia, totaling $400 million annually, would also gain immediate duty free access, benefitting Arkansas soybean farmers, for example.

However, given that total U.S. agriculture sales to Australia account for less than 1 percent of our worldwide sales, my message to United States Trade Representative Robert Zoellick has been that the United States' No. 1 responsibility to Arkansas farm families is, first do no harm.

There is a significant upside for Arkansas manufacturers and the more than 200,000 Arkansas families who make a good living because of this industry. However, there was not as much to be gained under this agreement in the area of agriculture, and

there could have been some risk, particularly to my cattlemen who are very important to me and my State. Now, Arkansas cattlemen can take on any country around the world in a fair global market, but a bilateral agreement like this cannot create that kind of fairness. That is why the Doha Round of the WTO is so important.

In the meantime, as the Senior Senator from Arkansas, my priority throughout this bilateral agreement was simple—ensure protections to safeguard the interest of Arkansas cattlemen and, second, get assurances from Australian trade negotiators that they will assist the United States in our effort to reform government export programs around the world.

While I still have concerns that I intend to continue to work to address with Arkansas cattlemen, my colleagues in the Senate, and Ambassador Zoellick in addressing, the Australia FTA does work to minimize any adverse impact on U.S. agriculture, and beef in particular.

Specifically, Australian access to U.S. markets for beef is opened slowly over an 18-year transition period. Increased imports from Australia are estimated to be limited to about 0.17 percent of U.S. beef production and 1.6 percent of beef imports to the U.S.

In addition, several important safeguards are included to ensure that additional Australian beef imports will not disrupt the domestic beef industry or depress American beef prices. For example, while the proposed FTA would gradually phase up Australia's quota of duty-free beef imports over 18 years, this phase up cannot begin until American beef exports return to levels seen prior to the discovery of bovine spongiform encephalopathy, BSE in the U.S. last January.

Moreover, the first reduction in the tariff will not occur for 9 years and not reach zero for 19 years after enactment of the FTA. Our trade officials also worked to include two additional safeguards in this agreement that will further protect the domestic beef industry. The first safeguard is ''volume-based'' and would be in effect during the 18–year transition period. This means that Australian beef imports cannot exceed 110 percent of total imports coming in ''duty-free'' at any point during this time period. If this does occur, the tariff rate will automatically snap back to the higher tariff we currently impose on imports from other countries with which we do not have free trade agreements.

The second safeguard—and the most important in my view—is ''price-based'' and goes into effect at the end of the 18–year period. This means that a tariff is reimposed on Australian beef imports if domestic beef prices drop to a certain level after tariffs have been eliminated. Both of these safeguards are automatically enforced at our borders based on the established import volume or domestic price levels. No additional review by Congress or the Administration is required to enforce these protective safeguards.

In short, I feel that our trade officials did a fair job of accentuating the positives for Arkansas while minimizing any negatives.

I am supporting this agreement because on the whole I believe our trade team showed sensitivity to Arkansas farm families. I am supporting this agreement because I am willing to find common ground with our negotiators when I feel they have listened to my concerns and acted on them. And I am supporting this agreement with the understanding that our negotiators will now turn to the WTO and other agreements whose benefits to my cattlemen will be substantial and certain.

I have been proud to work with my Arkansas cattlemen on a wide range of issues over the years. Whether it has been on disaster assistance, animal identification, trade, conservation, food safety, taxes or regulations, we have stood shoulder to shoulder. With the passage of this agreement we must now turn our attention to these and other important issues, starting with the opening of market places around the world that will be truly beneficial to the Arkansas cattlemen.

With the passage of this agreement, I am committed to doing exactly that.

Finally, I would be remiss if I didn't briefly touch on the pharmaceutical provisions in this trade agreement and my concern for the precedent that they may set.

While I am told, and I trust, that this will have no implication on the reimportation legislation that I and many of my colleagues support; while I am told, and I trust, that this will have no implication on how our Medicare and Medicaid programs operate; while I am told, and I trust, that this agreement will have no implication on the way the Department of Veteran's Affairs purchases their prescription drugs, I must restate that I am concerned.

Nonetheless, I want to reiterate that I am fully committed to pursuing Federal policies that will make prescription medications in the United States sale and affordable through legislation and future trade agreements.

We have a crisis here in America when it comes to the price of prescription drugs and I'm looking for solutions. Furthermore, I'm putting the Administration on notice that efforts to block access to cheaper drugs for my constituents will be met with resistance by this Senator until we make some real progress of our own here in this country.

Mr. NELSON of Florida. Mr. President, I would like to speak briefly about the Australia FTA. On balance, this agreement will benefit the United States and benefit Florida, and I will vote in favor of it. This is consistent with my record of supporting fair trade, opening overseas markets to Florida exports, creating jobs and economic growth in this country.

This agreement eliminates Australia's manufacturing tariffs, giving companies access to Australian markets. Florida exports a significant amount of goods and services, such as fertilizers, high technology computer simulators and aircraft parts. Florida companies and businesses support this agreement, because exports to Australia will create jobs in across many sectors.

Now, this agreement has important provisions relating to Florida's citrus industry that merit attention and oversight. The citrus industry is Florida's second largest—90,000 jobs depend on it, and the industry has a $9 billion economic impact on the State.

First, I would like to take a moment to reiterate the importance of preserving the tariff on imported frozen concentrated orange juice in the FTAA and WTO negotiations. I have spoken often in the past about this issue and I am going to continue to fight to preserve the tariff. Senator KERRY has already acknowledged how important the tariff is to Florida. I would also like to again urge the President to state publicly, in clear language, that we will not negotiate any reduction of the tariff.

In fact, I am pleased to see that the administration worked with Australia in this agreement to address another sensitive commodity, sugar. Sugar was excluded from the agreement, because of the unique circumstance surrounding the trade of sugar. We must reform international sugar trade not on a regional, or bilateral basis, but with the WTO. I would hope that the unique circumstances surrounding Brazil's manipulation of the citrus trade will lend it similar treatment in an FTAA.

With respect to the Australia FTA, this agreement presents an opportunity to resolve an outstanding issue between the U.S. and Australia that could pave the way for increased exports of Florida citrus. For the past 13 years, Florida's Department of Agriculture has worked with Australia to develop a protocol for the export of citrus to that country. Unfortunately, we have achieved only limited progress because Australia has effectively stonewalled the process at every step. Florida's citrus industry has worked hard to meet the import protocol requirements set by Australia, only to have Australia change them.

This administration must work with Australia to resolve issues inhibiting exports of Florida grapefruit in a timely fashion. This is important to the implementation of this agreement.

Most recently, after Florida's industry addressed the concern raised by the Australians on canker, they raised the issue of ''post-bloom fruit drop,'' PFD. This is more a weather condition anomaly, not a major disease concern that exists in a great deal of citrus production around the world, and it very difficult to transmit. And although PFD transmission to Australia is not

100 percent impossible, it is as close to impossible as anything the industry has seen. Australia must not put excessive protocols on Florida's producers because it could be a disastrous precedent for Florida's grapefruit industry, as other foreign markets could adopt this same non-tariff trade barrier.

The Australia FTA calls for the development of protocols to address many standing trade issues that have existed over the last several years—including Florida citrus. The agreement calls for negotiators to complete this process within a six month timeframe. This administration should seize this opportunity to resolve this issue in order to pave the way for increased Florida citrus exports to Australia.

The U.S. Government should remain committed to producing a reasonable, scientifically-based protocol that will not jeopardize other export markets or opportunities. Moreover, it is important that this process be completed on a timely basis to enable Florida's industry to enter the Australian market next season, which opens this November.

While I am a supporting the Australia trade agreement, I would like to take this opportunity to express my concern over other provisions included in it that could hamper congressional efforts to allow the importation of cheaper drugs from other nations.

I am a strong supporter of importation simply because I can no longer defend the exorbitant drug prices paid for by our Nation's citizens. The language in the agreement does not expressly prohibit the importation of drugs from other nations. However, because it is based on current law, any changes allowing importation would be in conflict with the terms of the agreement.

I am confident that the overall benefits of this agreement warrant my support and that should similar provisions dealing with importation be attempted in future trade agreements, enough opposition would rise to ensure that Americans do not continue to subsidize the cost of drugs for the rest of the world.

Mr. KENNEDY. Mr. President, I support the United States-Australia Free Trade Agreement. It has significant benefits to American manufacturers in all our States who have suffered too much in our troubled economy. In the past 4 years this vital sector has shed 2.5 million good jobs that may well take years to replace.

The agreement will immediately remove all Australian tariffs on virtually all goods manufactured in the United States. In doing so, it will provide a modest competitive advantage in the Australian market for U.S. manufacturers over competing firms in Asia.

In the past 4 years, the administration has done very little to combat the unfair trade practices of other nations to open their markets to more U.S. goods, and this agreement will help at least in part to redress the balance.

Massachusetts companies exported $254 million in goods to Australia last year, much of which were products in modern high-tech fields. If this agreement had been in place then, 98 percent of those products would have been duty free.

In addition, the fact that Australia has strong labor and environmental laws mean that this agreement will not result in a ''race to the bottom'' that drives down wages and degrades the environment. Many of us are concerned that the administration, in negotiating the agreement, was so reluctant, because of its ideology, to try to resolve some of our differences with Australia on specific labor issues, but those differences are not sufficient to cause rejection of the agreement. Good-paying jobs in the United States will not be replaced by low-wage jobs abroad in harsh and exploitive conditions.

In other trade agreements, that problem can be extremely serious, and we must continue to be vigilant that trade agreements respect the need for strong protection for labor conditions and for the environment as well.

A more serious problem in this agreement however, is its treatment of prescription drugs. These provisions are a blatant attempt by the administration to bypass Congress and set an irresponsible precedent for blocking the reimportation of prescription drugs. They build on similar provisions in the Singapore trade agreement. They are a statement of the priorities of the Bush administration that put profits of drug companies first and affordable drugs for patients last.

The current rules on importation or reimportation of FDA-approved drugs manufactured in FDA-approved plants are indefensible. They prohibit anyone except a drug manufacturer from importing drugs into the United States. They create a shameful double standard under which Canadians, Europeans and other foreign patients can buy American drugs at affordable prices, while American drug companies charge exorbitant prices to American patients.

The central issue is fairness for millions of Americans struggling to afford the soaring cost of prescription drugs. Americans understand fairness. They know it's wrong that for the same prescription drugs, U.S. patients pay 60 percent more than the British or the Swiss, two-thirds more than Canadians, 75 percent more than Germans, and twice as much as Italians.

Prescription drugs often mean the difference between health and sickness—or even life and death—for millions of Americans. Drug companies are consistently the most profitable industry in the Nation, yet they overcharge countless families. It's wrong for patients to go without the drugs they need because the Bush administration won't stand up for patients against the price-gouging of the pharmaceutical industry.

Senator SNOWE, Senator DORGAN, Senator MCCAIN, Senator DASCHLE, and I and other colleagues have proposed legislation to give American patients a fair deal at long last. Our proposal will legalize imports of safe U.S.-approved drugs manufactured in U.S.-approved plants. U.S. consumers will be able to buy FDA-approved drugs at the same fair prices as they are sold abroad.

The drug industry and the Bush administration argue that imported drugs jeopardize the health of American consumers because of the possibility of counterfeiting or adulteration. Under our proposal, that argument can't pass the laugh test.

Our proposal sets up iron-clad safety procedures to guarantee that every drug imported legally into the United States is the same FDA-approved drug originally manufactured in an FDA-approved plant—whether the drug is manufactured abroad and shipped to the United States, or whether it is manufactured in the United States, shipped abroad and then imported back into the United States.

Compare our rigorous requirements with what happens today. Fraudulent dealers throughout the world can establish Web sites or advertise low-cost drugs in other ways and claim to be Canadian pharmacies. Individuals have no way of knowing whether they are purchasing safe or unsafe drugs or whether the seller is legitimate or not. All such sales are illegal. The only rule is let the buyer beware.

The FDA has eloquently testified about the Wild West situation that American consumers face every day under the current rules. As long as it is illegal to buy safe drugs at low prices, the trade in unsafe drugs will flourish. As long as we bury our heads in the sand and fail to guarantee the availability of safe and legal imported drugs, millions of American patients will continue to risk their health on potentially unsafe, unapproved, and counterfeit drugs. Our bipartisan proposal gives patients access to drugs at prices they can afford, and it protects them against the danger of the essentially uncontrolled and uncontrollable counterfeit drugs they face today.

It is because of the rigorous safeguards in our bill that Dr. David Kessler, who served under both Republican and Democratic Presidents as Commissioner of the FDA, has stated that our proposal ''provides a sound framework for assuring that imported drugs are safe and effective.''

Dr. Philip Lee, one of the Nation's leading authorities on prescription drugs, a physician who served as the Assistant Secretary of Health under two Presidents, and a former Chancellor of the University of California at San Francisco, has emphasized that our proposal ''will reduce rather than increase the likelihood of counterfeit drugs entering the U.S. supply chain from abroad and that drugs imported under the program will meet FDA standards for safety and effectiveness.''

On imported drugs, safety is the first responsibility—and it is a responsibility that our bipartisan proposal fulfills. But legalizing safe drug imports is

only half the battle to bring fair prices to consumers. Legalization is meaningless unless it is backed by strong measures to prevent drug manufacturers from manipulating the market to subvert the law.

Already, American drug companies are retaliating against imports from Canada by limiting the amount of drugs they sell to Canada and denying drugs to pharmacies that re-sell them to American patients. A few weeks ago, a group of senior citizens was forced to cancel a bus trip to Canada because the Canadian pharmacies they relied on for affordable drugs were effectively shut down by U.S. drug companies.

Our proposal includes strict rules to close the loopholes that drug companies use to evade the law. Violations will be considered unfair trade practices, and violators will be subject to treble damages. Any proposal that does not include comparable protections is a fig leaf, not a solution.

The provisions of the Australian Free Trade Agreement, however, opens a gaping hole in these protections. One way that a drug company can circumvent an importation law is by claiming that an American importer who purchases a drug from a European wholesaler has violated the patent held by the drug company.

It has long been a settled feature of patent law that the first sale of a product in the domestic market exhausts the patent. If you buy a car and then resell it to a friend, the car manufacturer can't sue you for violating its patent. A recent court decision, however, stated that the rule of exhaustion through first sale does not apply to international sales. Therefore, a drug company can make a condition of its contract that a foreign buyer won't resell a drug to a United States importer. If the foreign buyer does so, the importer could be sued for a violation of the patent.

Broad application of this rule to drug company sales would nullify any reimportation bill that Congress passes. That is why our legislation specifically states that reimportation of a prescription drug is not a patent infringement. The Australia Trade Agreement, however, states that it is an obligation of the United States to ''provide that the exclusive right of the patent owner to prevent importation of a patented product . . . without the consent of the patent owner shall not be limited by the sale or distribution of the product outside its territory.'' This obligation does not apply just to drugs imported from Australia, but to drugs imported from anywhere in the world. If this obligation could be enforced, it would nullify any drug importation bill passed by Congress, and guarantee that drug makers could continue gouging American consumers, no matter what the Congress does.

This prohibition was not added to the agreement because the Australians wanted it. Their domestic drug industry is small, and their own laws generally do not allow reimportation to the United States. The prohibition was added because the U.S. Trade Representative insisted on it.

It's there because the pharmaceutical industry wanted it as a model for future agreements. It's there because the Bush administration puts the interests of drug companies higher than the interests of American patients.

Fortunately, this provision has limited practical significance. The only party with standing to enforce the agreement is the Australian Government, and it is unlikely to bring any enforcement action. But it puts our country in the awkward position of endorsing a principle against the best interests of our people, and it is an ominous indication of what the Bush administration will try to do in future agreements.

I intend to vote for this agreement, because of the advantages it offers to American business and consumers. The attempts to bar drug reimportation included in the agreement are not enforceable in any meaningful way. But we must be vigilant against attempts to include any such provision in future trade agreements.

Year in and year out, drug industry profits are the highest of any industry in the United States. Yet year in and year out, patients are denied life-saving drugs because those astronomical profits are possible only with astronomical prices—prices that drug companies can't charge anywhere else in the world, because no other country in the world would let them.

A broad coalition of groups representing senior citizens and consumers have endorsed our bipartisan proposal. It's time to end the shameful price gouging. It's time for basic fairness in drug prices. It's time for this Congress to pass a genuine drug import bill. It's time for the U.S. Trade Representative to start standing up for the interests of the American people, not just the interests of the pharmaceutical industry.

Mr. BINGAMAN. Mr. President, I am of the view that a basic precondition to the U.S. trade agenda operating on the right track is having a consistent and coherent policy foundation. I have always argued that expanded trade can be a powerful tool to promote economic growth and improved standards of living in the United States and around the world. It can help countries develop, ease poverty, raise standards of living, and eliminate instability. It can encourage the high-wage job growth and technological innovation in the United States. In general, I consider myself to be someone that supports trade. In fact, my record shows that I have.

But I also believe that trade policy must shape the rules by which trade and international economic policy is conducted to maximize its benefits and minimize its liabilities, both domestically and internationally. Trade liberalization is not inevitably better for the United States. But it can be better for the United States, and frequently is better for the United States, and we should pursue it under the right conditions.

Based on the results of U.S. trade policy, I am not sure we are doing that right now. In fact, I have to wonder if we are on the wrong track completely. Here is the bottom line:

Over two million U.S. manufacturing jobs lost; record and rising U.S. trade and budget deficits, so large that the IMF has warned that they could destabilize the global economy; moving from a trade surplus to a trade deficit in one of the few areas we still have a competitive advantage—high-technology products; major cuts by the administration in the education, workforce, and science and technology programs that ensure we have a competitive edge in these products in the future; major increases in outsourcing in the services sector, with no clear indication of whether this provides net benefits for the U.S. economy; continued major barriers to American products in foreign markets—both as a result of tariff and nontariff barriers; a distinct lack of effort on the part of the administration to pursue dispute settlement at the WTO for countries in direct violation of trade laws; a one-size-fits-all approach to U.S. trade policy, where little consideration is given to the actual ability of individual countries to implement agreements or whether the agreements will actually provide long-term benefits; a knee-jerk subordination of U.S. economic security to U.S. foreign policy concerns; insufficient consultation with Congress by the administration during the fast-track process; insufficient explanation by the administration of the potential impacts of trade agreements on our own economic system, including the environment, taxation, healthcare, and so on; and insufficient attention to the impact of trade agreements on American workers, in particular the provision of trade adjustment assistance so workers can increase their skill-set and sustain U.S. competitiveness.

I would argue what we are doing in U.S. trade policy at this point in time is following a policy where trade agreements are assumed to be good, with little regard for the actual implications of the agreement for our country's overall economic security. I would not suggest that economic considerations can be the only rationale for trade agreements, but certainly it must be the primary rationale.

In my State of New Mexico, I have seen directly the unintended but very negative consequences of trade agreements in areas typically not considered to be an important part of them—things like housing, health care, the environment, immigration, and so on. These issues are what many people call the ''externalities'' of trade. We have not paid close enough attention to these issues in trade agreements, but from where I sit we cannot afford to do

this any longer. Small provisions in trade agreements have had substantial unanticipated consequences over time. Trade agreements must look at the overall implications of trade on countries, not just trade flows.

As an example, the United States-Australia Free Trade Agreement contains language that could have a potentially negative impact on the U.S. health care industry. Although the Finance Committee leadership received assurances from the Bush administration that this language is consistent with our normal obligations under the Government Procurement Agreement, I believe the language is ambiguous at best.

To this end, at yesterday's Finance Committee executive session I requested a letter from the Department of Health and Human Services stating specifically that this program would not negatively impact our current efforts to obtain lower cost prescription drugs for Americans. I received the letter this morning, and I will include it for the RECORD.. I have received assurances from the Secretary that the provisions under Annex 2–C of the agreement related to pharmaceuticals do not require changes in any U.S. Government health care programs.

However, I requested assurances from the Secretary that Chapter 15.11 related to Domestic Review of Supplier Challenges do not require changes in any U.S. Government health care programs, nor does the Secretary intend to use the agreement—Annex 2–C or Chapter 15—to change any U.S. Government health care programs. I did not receive this assurance, but I want to make it clear that I have an expectation to do so. If the administration does not intend to use this free trade agreement, there is no real reason that they shouldn't state so explicitly. I request again at this time that they do so, and I believe that request is compatible with the statements made by my colleagues on the floor this afternoon.

There is another problem with this agreement. I am extremely disappointed that the Conrad amendment related to beef safeguards that was adopted during the markup in the Finance Committee was not included in the final language. I feel very strongly that the vote was indicative of the will of the Finance Committee on the FTA and that the revised version would have offered additional protections for American ranchers and should have been included. The fact it was not included in the final language is a violation of the spirit of the Trade Promotion Authority, or fast-track, legislation passed in 2002. Combined with the lack of attention on the pharmaceutical issue, I think this is a mistake on the part of the administration in that it makes the formation of bipartisan consensus on trade policy problematic in the future.

These specific criticisms aside, after careful consideration, I felt the benefits of this agreement outweighed its liabilities. It is my view that the FTA gives a strong boost for trade and investment between United States and Australia that will ultimately benefit the economic security interests of our country. The FTA eliminates 99 percent of Australia's manufacturing tariffs immediately, grants incremental tariff-free access to Australia's market for U.S. farmers and ranchers, provides enhanced preferential access for U.S. telecommunications and service companies, and removes existing foreign investment screening procedures that have been a market barrier for U.S. firms. Significantly, labor and environment standards in Australia are compatible with the International Labor Organization and the laws we have in the United States. I believe there is an economic complementarity between the United States and Australia that is unique, and it should be encouraged.

So while I have some concerns, I will support the United States-Australia Free Trade Agreement. I look forward to working with my colleagues in the future to ensure that the Administration and the Congress work together to establish a broad bipartisan effort to ensure we work together more effectively in the future. The goal is to bring about expanded international trade so we have economic growth and jobs for the American people. That is the bottom line.

I ask unanimous consent to print the letter to which I referred in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE SECRETARY OF HEALTH AND HUMAN SERVICES,
Washington, DC, July 15, 2004.

Hon. CHARLES GRASSLEY,
Chairman, Finance Committee,
U.S. Senate, Washington, DC.

DEAR CHAIRMAN GRASSLEY: Thank you for your interest in federal and state health care programs, and particularly for your leadership in expanding access to affordable prescription drugs for seniors under the Medicare Modernization Act.

I understand that in yesterday's markup on the Australia free trade agreement Senator Bingaman asked whether the commitments in this agreement would affect US government health care programs. It is our belief that the provisions of Annex 2–C do not require any change in how US government health care programs are operated—either the Annex does not apply to them by its terms or the programs are operated consistently with the Annex's provisions.

I am providing a copy of this response to Senator Bingaman as well. Thank you again for your efforts.

Sincerely,

TOMMY G. THOMPSON.

Mr. DODD. Mr. President, I rise today to speak about the United States-Australia Free Trade Agreement, FTA, which is currently pending before this body. This agreement is the culmination of nearly two years of difficult negotiations and hard work by U.S. and Australian officials. Today we have the opportunity to pass the implementing legislation that would pave the way for formal adoption of this FTA, and when that vote occurs, I intend to support this agreement.

As my colleagues are aware, U.S. exports to Australia totaled over $13 billion in 2003. According to the United States Trade Representative, USTR, Australia is quickly growing as a major destination for U.S. goods. For example, over the past 5 years, the rate of growth for U.S. exports to that nation has increased more than twofold over U.S. exports to the rest of the world. And during these years, aerospace products and parts—a sector vital to U.S. manufacturing and our national security—have been the leading growth category. In 2003, the aerospace sector exported an impressive $2.4 billion in merchandise to Australia.

Since 1999, my home State of Connecticut has witnessed a 72.8 percent increase in the value of its exports to Australia. Trade with that nation directly supports more than 1,800 jobs in Connecticut. Other States have benefited similarly. Indeed, during this same time period, U.S. exports as measured by dollar increases have grown faster in only seven other nations.

But these figures and the potential impact of this agreement are even more striking when one examines the types of items that we export to Australia. I point out to my colleagues that a full 92 percent of U.S. exports to that nation are manufactured goods. I know that I don't need to remind my colleagues that over the past several years, more than two million manufacturing jobs have been lost here in the U.S. More than 30,000 people in my home State of Connecticut have lost jobs in the manufacturing sector.

In a variety of ways, we here in Congress have sought to address the domestic loss of manufacturing jobs and infrastructure. I have worked hard to affect a turnaround in the conditions of this sector—long the lynchpin of the U.S. economy. It doesn't take an economist to realize that this agreement will likely help to strengthen U.S. manufacturing.

That is not to say that a United States-Australia FTA will be a panacea for our manufacturing woes here at home. It will not. But in my view, the steady growth and large manufacturing component of United States-Australia bilateral trade suggest that it will help. For this Senator, that fact is one of the most compelling reasons to support a United States-Australia FTA.

Moreover, it should not go without mention that in 2001, 86 percent of U.S. exports to Australia were from small and medium-sized businesses. That figure—86 percent—amounted to more than 16,000 U.S. firms. If this trend continues, with the passage of this agreement, tens of thousands of small and medium-sized businesses here in the U.S. also stand to benefit.

Nearly 2 years ago, I voted against final passage of fast track authority

for the President. I did so because I didn't believe that legislation included adequate language making it crystal clear that a primary negotiating objective of future trade agreements must be to ensure that our trading partners live up to internationally accepted labor and environmental standards.

In that context, I believe that Australia is a model of what we should expect from other governments with whom we craft trade agreements. Australia is more than just a staunch ally—it is also a nation that has substantial labor and environmental protections. These protections will help to safeguard the lives of workers globally and the natural resources on which we all depend. Equally as important, they will help to ensure that American workers are given a level playing field on which to compete.

Despite my overall support for this agreement, I feel that it is important to mention one item of concern. As my colleagues are aware, the United States-Australia FTA includes language that would allow prescription drug manufacturers to prevent the reimportation of their products.

We do not currently import drugs from Australia, and that is unlikely to change given that Australian law prohibits the exportation of prescription drugs. So as a practical matter, this provision of the FTA will not affect drug prices in this country. But I want to make it perfectly clear that this should not set a precedent, nor prevent us from adopting a law that would allow drug reimportation in the future. While I will live with this provision in the context of a bilateral agreement with Australia, I do not believe that it should have broader global implications.

This concern aside, I look forward to voting on the implementing legislation for the United States-Australia FTA. I intend to cast my vote in favor of this agreement, and I encourage my colleagues to do the same.

Mr. JOHNSON. Mr. President, in my home State of South Dakota and across America, hardworking producers tirelessly contribute to the production of our Nation's food supply. Our Nation's producers consistently preserve the safety and wholesomeness of the commodities they produce, ensuring America's food security and contributing to our overall well-being. It is because of our producers and ranchers that we enjoy the safest food supply in the world, and we owe them our thanks.

It is the well-being of the agricultural community which I am concerned for, and it is the well-being of our rural communities that is threatened with the possible implementation of the Australian-United States Free Trade Agreement.

It is evident that while Australia could stand to benefit substantially from a free trade agreement with the United States, limited opportunities exist for the U.S. livestock industry and agricultural sector. For example, in 2003, agricultural and food exports to Australia accounted for only $611 million. This figure accounts for only one percent of U.S. worldwide sales. The overall value of U.S. agricultural imports from Australia equaled an astounding $2.1 billion. These numbers speak loudly for the type of economic opportunity this agreement poses for Australia, at the detriment of our domestic producers.

Our South Dakotan beef producers are dedicated to producing a quality, wholesome, and nutritious product. They are successful even in the face of market concentration, packer ownership issues, and an ever-changing agricultural landscape. The FTA with Australia poses yet another burden for our agriculture producers. Phasing out U.S. above-quota duties on beef over an 18-year period and gradually increasing and lifting quota levels by the end of that period will not encourage growth in our own agriculture economy, and instead, provide a valuable market for the Australian agricultural sector.

The quota increases will take effect when U.S. beef exports return to their 2003 level, the level before the discovery of ''mad cow'' disease levels, or three years after the effective date of the agreement, whichever is earlier. After the transition period, a price-based safeguard should be available. Such action, even with supposed safeguards after the transition period for market disruptions, will be harmful to U.S. beef producers. I have several concerns about how these safeguards would be utilized, and the actual effect on our producers.

Along with my colleagues, I have written to President Bush, as well as United States Trade Representative Robert Zoellick, to convey my concern about this agreement. While sugar was excluded from the agreement, I, and a number of my Senate colleagues, had requested that beef and cattle be excluded from negotiations of the Australia FTA as well. This request was not heeded. Additionally, a letter was sent concerning Australian imports of dairy, yet another sensitive agriculture commodity that was included in the FTA, and the potentially significant impacts on our pricing system it will have and the inconsistencies it presents with respect to our Federal efforts to financially assist producers.

Our beef industry is a crucial component of the agricultural sector in South Dakota, and we should not enter into trade agreements with Australia, or any other country, that would further damage our agriculture industry. Given our weak economy, we cannot afford to lose more jobs, and we must guard against economic hardships in our rural communities.

Another disturbing component to the FTA with Australia is the prescription drug language. United States citizens continue to pay the highest prices in the world for prescription drugs. A study by Families USA found that for the 50 drugs most frequently used by seniors that year, prices rose 3.4 times the rate of inflation in 2002. Such statistics are staggering, and meaningful solutions are needed now.

That is why I am a cosponsor of S. 2328, the Pharmaceutical Market Access and Fair Trade Act, legislation that will provide American consumers access to affordable, life-saving medications through prescription drug reimportation.

This legislation would provide South Dakotans with access to reimported drugs through personal importation of up to a 90-day supply of a drug from Canada, and eventually, once the Food and Drug Administration puts safety protocols in place, individuals would be able to purchase drugs directly from Canadian and U.S. wholesalers and pharmacies would be able to import drugs from facilities in several countries that are registered, fully inspected and approved by FDA.

Unfortunately, the trade agreement before us today threatens to dismantle the efforts we are now taking to provide more affordable drugs in our country. The agreement includes provisions which require that the two governments ensure that brand-name drug companies have the right to prevent the importation of their products.

While supporters of the trade agreement claim that we should not be concerned about this provision because Australian law already bans the export of subsidized prescription drugs, this sets a dangerous precedent for future trade agreements, which we cannot ignore.

This seems to be yet another attempt by the Bush administration to prevent reimportation. Two-thirds of Americans support reimportation as an effective strategy to reduce the cost of prescription drugs. The President is clearly sending a signal that he cares more about the pharmaceutical industry's profits, than access to life-saving medicines for U.S. citizens.

Ms. MIKULSKI. Mr. President, I am proud to support the United States-Australia Free Trade Agreement. I have opposed some trade agreements in the past because I am not willing to put American jobs on a slow boat to China or a fast track to Mexico. However, I am ready to support free trade when it is fair trade, and that is what we are talking about today.

This agreement ensures fair trade with one of our closest allies. It will also bring an expansion of opportunities for American workers and American businesses.

America's relationship with Australia is about our shared history and shared values. Australia has been one of America's staunchest allies in times of war, sending troops to fight beside our own in both World War I and II, the Korean war, the Vietnam war, Afghanistan and now Iraq. In sending troops to fight alongside our own in Iraq, Australia was one of only three countries to fight along with America from the outset of war.

America and Australia share a common terrorist threat. Al-Qaida attacked America on September 11, and 10 Australian citizens died that day. A group linked to al-Qaida also killed almost 100 Australians in the Bali bombings. Our security relationship is strengthened by the ANZUS treaty, through which we work together for our mutual security. Now is the time to strengthen our economic partnership with a free-trade agreement.

I stand in support of this free-trade agreement because it is good for America and good for Maryland. It will protect and even create American jobs, and my first priority is fighting for jobs today and jobs tomorrow. This free-trade agreement will boost trade, increase efficiency and competitiveness, and result in additional foreign investment.

By eliminating Australian tariffs on our manufactured goods, American companies will be able to sell goods without penalty to our Australian allies. In my own State of Maryland, this means semiconductors, medical equipment, and fiber optic cable and switching equipment. This could mean as much as $2 billion for the U.S. economy in just the first year of agreement.

This free-trade agreement will also provide new opportunities for American farmers. The United States is now the second largest exporter of food to Australia, an exchange with a value of almost $400 million a year.

However, I do have concerns about the United States-Australia Free Trade Agreement. I am concerned about what this agreement might mean for America's families trying to buy prescription drugs. Instead of making America's families a priority, this agreement protects drug companies and prioritizes the rights of prescription drug patent holders.

We cannot use this as an excuse for Congress not to pass prescription drug reimportation legislation. We need a regulated framework for drug reimportation so drug reimportation can take place out in the sunshine, rather than underground. Congress must act this year to control the spiraling cost of prescription drugs for our families.

With regard to labor rights, I think free-trade agreements should always include enforceable and high labor and environmental standards. This will ensure that the workers don't miss out and the environment doesn't suffer when businesses boom.

The Australian and American systems have much in common. We share democratic processes and labor rights such as freedom of association, the right to collective bargain, and the right to strike. We could have set the bar higher for workers around the world. Instead the United States-Australia Free Trade Agreement is a missed opportunity. It contains no enforceable standards to protect labor rights or the environment.

The free-trade agreement with Jordan included a minimum standard of labor rights and environmental protection. People now talk about the ''Jordan standard.'' We finally had an opportunity to create an even higher standard, an ''Australia standard'' of labor rights. We could have used this standard if we renegotiated CAFTA and for future trade agreements. While we ensured our intellectual property rights are enforceable, we did nothing about our labor rights in this trade agreement.

I am willing to support the Australia Free Trade Agreement only because Australia's own laws are so strong. When I visited Australia, I saw that Australia stands up for its families, its workers and its environment. Almost 25 percent of Australian employees are union members. That's nearly double the level of union representation here. Australian workers are paid a livable minimum wage, receive 4 weeks of annual leave and are guaranteed high standards of workplace safety. Australia's world-class health-care system offers first-rate maternity care to its new mothers, with extra time in the hospital and a public health nurse to teach first time moms how to care for their newborns.

The United States-Australia Free Trade Agreement isn't perfect. Yet I support it because it will mean jobs for America.

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

• Mr. BAUCUS. Mr. President, before we conclude today's debate, I just take a minute to thank some of the staff who have worked very hard on this agreement.

I first thank Ambassador Zoellick's team, particularly Ralph Ives, Matt Niemeyer, Lisa Coen, and Ted Posner. We worked closely with them for nearly 2 years, and I have appreciated their dedication to getting a good agreement.

I also thank the staff of the Senate Finance Committee. On the Republican side, Everett Eissenstat, Stephen Schaefer, and David Johanson.

And finally I thank my own staff on the Finance Committee, Russ Sullivan and Bill Dauster, who head up our Committee staff. Our trade team: Tim Punke, Shara Aranoff, Brian Pomper, and Sara Andrews. Liz Fowler, who worked on the pharmaceutical provisions. And I especially thank John Gilliland, one of our International Trade Counsels who has done a tremendous job, particularly on the difficult and sensitive agriculture issues.•

Mr. DASCHLE. Mr. President, Australia is a very important ally and trading partner. As we all know, Australia joined the U.S. in our military efforts in both Iraq and Afghanistan. This support is vital, and it is appreciated.

While it is important to continue our cooperative relations, I am extremely concerned about the negative impact the free trade agreement could have on my State of South Dakota and the rest of rural America, particularly on the agricultural sector of our economy.

For many months, I urged our negotiators to exclude beef and cattle from the agreement. I am disappointed that they have not only rejected this suggestion, but have proposed that we allow the Australians additional access to our beef markets.

The FTA would establish an 18-year phase-in of increased Australian access to American markets. While 18 years may seem like a long time to some people, I know many ranchers in South Dakota to whom it will not seem so long when the phase-in starts and depresses our beef and cattle markets.

Both beef and cattle are very sensitive sectors, and they have become even more so with the recent mad cow disease scare. Beef and cattle are more sensitively traded items because they are both perishable and have cyclical market dynamics—leaving beef and cattle off the table seemed to make a lot of sense.

The administration refused and included beef provisions in the agreement. To add insult to injury to ranchers in South Dakota and across the country, the administration ignored an amendment on the beef safeguards in the agreement that Senator CONRAD offered in the Finance Committee.

The administration's actions were wrong on process and wrong on substance, in my view.

The Congress delegates substantial constitutional authority through the fast-track procedures. It retains, however, an informal ability to recommend changes to the implementing legislation of trade agreements.

Senator CONRAD had a very simple amendment. He said if the administration was going to waive critical safeguards for ranchers, then the Senate Finance and the Ways and Means Committee must concur. This was well in the bounds of the agreement and supported by a majority of the members of the Finance Committee.

The committee then went through the contorted exercise of voting the agreement down to make it easier for the administration to ignore the Conrad amendment, which they did.

This action makes it more clear that this agreement is not good for the ranchers in South Dakota, and that is the main reason why I oppose it.

Additionally, the U.S. dairy industry should not be faced with added unfair competition by allowing the Australians increased access to our dairy markets. Dairy producers from around the Nation have expressed this concern to me.

The increased access to our U.S. dairy markets is particularly troubling for South Dakota, as we have been working aggressively to expand our dairy operations.

I am also concerned about the current U.S. tariffs on wool that our negotiators have agreed should be gradually eliminated over 4 years. We have a small, but important, wool industry in

South Dakota, and anyone familiar with lamb and wool knows that it is a very import-sensitive industry. Most producers have struggled over the last decade to simply stay in business.

While it is only indirectly related to the FTA, I also want the record to reflect my continuing concern about the treatment of some contracts awarded to Australia under the Iraq Oil-for-Food Program. I know that several of my colleagues, including Senator GRAHAM of South Carolina, are reviewing contracts under the Oil-for-Food Program, and I hope that their inquiry will include a review of the wheat contracts awarded under that program.

To that end, my recent exchange of letters with Agriculture Secretary Veneman specifically reference contracts awarded to Australian producers since the liberation of Iraq, and press reports indicate that the specifics of these contracts—in particular the price of wheat—were the same as those negotiated under the Oil-for-Food Program during Saddam's regime.

According to her letter to me, Secretary Veneman has had USDA personnel review these contracts and has assured me that she is certain that no preferential treatment was granted to Australian producers at the risk of American producers. I hope that is the case, but to ensure that it is the case, I am urging Secretary Veneman to provide all the research and analysis her staff did to Senator GRAHAM for his Oil-for-Food investigation and to Paul Voelker who is undertaking an investigation on behalf of UN Secretary General Annan.

In addition, the patent provisions in this agreement raise troubling implications. Many of us in Congress—on both sides of the aisle—have been working to legalize the safe importation of lower-cost prescription drugs from Canada and other industrialized countries.

It is no secret that the administration has opposed our efforts. And what I see in this agreement relating to patents may be of concern in how it affects drug importation.

Simply put, the administration should not use trade agreements as a back-door way to impede the safe importation of FDA-approved drugs at lower prices. The administration needs to make clear that this agreement does not do just that.

I am also concerned about other provisions in this agreement relating to pharmaceuticals and how they may impact other program, such as Medicaid, and whether the agreement may impede our ability to alter or improve the deeply flawed Medicare drug benefit enacted last year.

Finally, let me reiterate that, in my judgment, the Australia FTA goes too far and treats our farmers and ranchers unfairly.

Not only am I dissatisfied with both the treatment of our agriculture sector in the agreement, but I also have concerns about the process executed to implement our negotiated terms.

It is extremely important that we have a level playing field on which American producers can compete. Given a fair chance, American producers are among the world's finest. But the deck must not be stacked against them.

I have concluded that this FTA is not in the interests of South Dakota. Regrettably, I must oppose it.

Mr. FRIST. Mr. President, I rise to speak in support of the H.R. 4759, legislation to implement the United States-Australian Free Trade Agreement.

I am excited by the new opportunities for both the United States and Australia that will be created under this important agreement. I strongly support its passage.

I thank all my colleagues in the Senate and the other body for their hard work. In particular, I thank Chairman GRASSLEY and Senator BAUCUS and their staff for working together in a bipartisan way to get us to this moment.

I also thank the U.S. Trade Representative and his team and the Australian Embassy for bringing us to this moment.

Our two economies are closely linked. Australia is one of our most important trade partners. The facts speak for themselves.

Two-way trade between our nations in goods and services totals $28 billion annually. We have a $9 billion trade surplus with Australia, our greatest with any nation. More than 99 percent of our exports to Australia will enter duty-free once the agreement goes into effect.

According to the National Association of Manufacturers, more than 19,000 U.S. firms are already selling into the Australian market. Ninety-three percent of U.S. exports to Australia are manufactured goods. As many have pointed out, this is indeed a ''Manufacturer's Free Trade Agreement.''

This agreement is expected to produce an increase in $2 billion annually in trade for both nations by 2010. That means the creation of as many as 40,000 new jobs directly related to this agreement.

In my home State of Tennessee, Australia is an important market for our goods. Tennesseans export more to Australia than to France. Last year, Tennessean companies exported $225 million to Australia, a 10-percent increase from 1999.

In turn, The United States is already Australia's largest source of imports and second-largest export destination. So this agreement will benefit both our countries.

U.S. farmers benefit from this agreement, too. The United States exports $400 million annually in agricultural goods to Australia. These exports will receive immediate duty-free access.

This agreement will offer substantial new markets for U.S. services as well. The agreement will provide new openings for telecommunications, express delivery, energy, construction, engineering, financial services, and many other sectors. And this agreement lifts restrictions on U.S. investment in Australia.

In addition to opening new markets, there are other benefits to U.S. and Australian businesses. Australia is the gateway for U.S. businesses to Asia. The Australians have close ties to their Asian neighbors.

This agreement will pave the way for new, dynamic partnerships between United States and Australian firms. And with the elimination of tariffs and lowering of trade barriers for most industrial products under the agreement, U.S. firms, partnering with Australian firms, will be able to better compete in the growing Asian markets.

But this agreement is about more than increasing business opportunities. Australia is one of our most steadfast allies and a key partner in the war on terror. Australians have fought beside Americans in every major conflict in the last 100 years. This agreement strengthens an already close bond forged between two old friends.

This agreement is strongly supported by the business community. The U.S. Chamber, the world's largest business federation, representing more than three million businesses, strongly supports this agreement. The National Association of Manufacturers, the leading voice on manufacturing in the United States, has called for its immediate passage. I am pleased that we are ready to do that today.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

The yeas and nays have been ordered. The clerk will call the roll.

Mr. MCCONNELL. I announce that the Senator from New Mexico (Mr. DOMENICI) is necessarily absent.

Mr. REID. I announce that the Senator from Montana (Mr. BAUCUS), the Senator from North Carolina (Mr. EDWARDS), and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

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

The result was announced—yeas 80, nays 16, as follows:

[Rollcall Vote No. 156 Leg.]

YEAS—80

Alexander	Corzine	Kennedy
Allard	Craig	Kyl
Allen	Crapo	Landrieu
Bayh	DeWine	Lautenberg
Bennett	Dodd	Levin
Biden	Dole	Lieberman
Bingaman	Durbin	Lincoln
Bond	Ensign	Lott
Boxer	Enzi	Lugar
Breaux	Feinstein	McCain
Brownback	Fitzgerald	McConnell
Bunning	Frist	Mikulski
Burns	Graham (FL)	Miller
Campbell	Graham (SC)	Murkowski
Cantwell	Grassley	Murray
Carper	Gregg	Nelson (FL)
Chafee	Hagel	Nelson (NE)
Chambliss	Harkin	Nickles
Clinton	Hatch	Pryor
Cochran	Hollings	Reed
Coleman	Hutchison	Roberts
Collins	Inhofe	Santorum
Cornyn	Jeffords	Sarbanes

Sessions	Stabenow	Thomas
Shelby	Stevens	Warner
Smith	Sununu	Wyden
Specter	Talent	

NAYS—16

Akaka	Feingold	Rockefeller
Byrd	Inouye	Schumer
Conrad	Johnson	Snowe
Daschle	Kohl	Voinovich
Dayton	Leahy	
Dorgan	Reid	

NOT VOTING—4

Baucus	Edwards
Domenici	Kerry

The bill (H.R. 4759) was passed.

Mr. GRASSLEY. 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.

AMERICAN JOBS CREATION ACT OF 2004—Continued

AMENDMENT NO. 3563

The PRESIDING OFFICER. Under the previous order, the question now occurs on the DeWine-Kennedy amendment. There is 4 minutes per side prior to the vote.

The Senator from Ohio.

Mr. DEWINE. Mr. President, I understand we have 4 minutes on each side.

The PRESIDING OFFICER. There is 4 minutes on each side.

The Senator from Ohio.

Mr. DEWINE. I yield to my colleague from Kentucky.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, very briefly, I want to make sure people understand the tobacco buyout portion of the amendment upon which we are about to vote. No. 1, to make sure there are no misunderstandings or misconceptions, this amendment will end a tobacco price support program. That will be over. Second, there were several hearings on this proposal, both in the House and a field hearing in North Carolina chaired by Senator DOLE.

I also want to make it clear how this amendment would pay for the buyout. It would be paid for by a manufacturer's fee, not by the taxpayers.

It was suggested that 85 percent of the recipients of the buyout are not farmers. In fact, every single quotaholder owns at least part of a farm. They may have leased it out, but they own at least part of a farm. So these do go to farmers.

I hope our colleagues will support the buyout. I think it is a reasonable proposal.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. I yield to my colleague from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, the heart of this amendment is the FDA provision which will lead to fewer children starting to smoke and fewer adults suffering tobacco-induced disease. If parents want their children to grow up and grow up smoke-free, if they want to shield them from a $9 billion campaign designed to entice children into smoking, if they want to help millions of smokers kick the habit before it kills them, they will support the DeWine-McConnell-Kennedy amendment.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I am going to urge my colleagues to vote against this amendment for two or three reasons. One, the bill we are voting on has never been marked up out of the Agriculture Committee. It has never been marked up in the HELP Committee. We are going to spend billions of dollars. We are rewriting the farm bill. We have a $12 billion buyout for tobacco farmers.

I heard my colleague from Kentucky say it ends the tobacco program. It does not end the tobacco program. This amendment was offered late last night, but under the bill of the Senator from Kentucky it did not eliminate the program. The House bill spends $9.6 billion and it does eliminate the program. It eliminates this quota. This bill eliminates quotas, but it does not eliminate the Secretary from having the authority to be able to restrict acreage on who grows tobacco. So we are going to spend $12 billion and not even eliminate the program, and not have any limitation on how much it is going to cost?

It is estimated the House bill would have almost 500 people make $1 million. This bill is much more generous than the House bill. There are going to be a few people who are going to become multimillionaires as a result of this bill, but yet we were not given the chance to offer any amendments. We could not say there should be a limit of $250,000 per person who is not a farmer. Incidentally, 85 percent of the people who receive money from the buyout are not farmers, are not living on a farm. So this is a buyout for a few people.

The FDA section is the biggest grant of power to the FDA, which not only gives them the power to regulate tobacco, but frankly I believe they can ban tobacco. It is a blank check to do almost anything they want—the most sweeping power they have ever been given. I think the House was wrong to add the $9.6 billion tobacco buyout in their tax bill, and two wrongs do not make a right. Now we are adding totally unrelated things, not considered by committee. It is going to cost billions of dollars, and we are going to add it to the Senate bill.

It is going to come back from conference in all likelihood with some provision. I think it jeopardizes the entire FSC bill. I do not think it should become law. Certainly, this is not the way it should become law. If it should become law, let us take it up freestanding and give Senators the right to amend and discuss it before spending billions of dollars.

The cost of this buyout is multiples of the so-called quota buyout we did for peanuts. It is going to cost billions of dollars. I urge our colleagues to vote no on the amendment.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. How much time remains?

The PRESIDING OFFICER. There is 2 minutes.

Mr. DEWINE. Mr. President, we regulate every product that is consumed in this country today. We put the contents of that product on the label—every product except tobacco. It makes absolutely no sense. This is a very modest bill, a very modest proposal, that gives the FDA the authority to regulate tobacco. I point out to my colleague, it does not give the FDA the authority to ban tobacco. It does not give the FDA the authority to do that at all. It is a modest compromise, but it will save lives. It makes sense.

One of the biggest health problems we have in this country today is underage smoking. We know if we can get a child at 19 or 20 and he or she does not start smoking by then, they probably will never start smoking. This bill allows us to get at advertising targeted at young people, which is a major problem today.

I yield the remainder of my time to my colleague from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. I am prepared to vote.

Mr. DEWINE. We yield back our time.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. Pursuant to rule XII, paragraph 3, I ask unanimous consent to be excused from voting on this question.

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

The Senator from Oklahoma.

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

The PRESIDING OFFICER. There is 1 minute 17 seconds.

Mr. NICKLES. Mr. President, on page 45 of the bill, it says:

> The Secretary may by regulation require restrictions on the sale and distribution of a tobacco product, including restrictions on the access to, and the advertising and promotion of, the tobacco product, if the Secretary determines that such regulation would be appropriate for the protection of the public health.

If the Secretary determines something is appropriate for the protection of the public health, they can do whatever they want, I believe, including banning tobacco. That is very broad discretion for the Secretary of Health, to do whatever they want.

Also, the program does not end the tobacco program. At least it didn't in Senator MCCONNELL's bill. We have not had a chance to really review it, but it didn't in his bill. It did in the House bill. I compliment the House. If you are going to spend $10 billion, you ought to

eliminate the program. We are going to spend $12 billion and not eliminate the tobacco program.

The PRESIDING OFFICER (Mr. BENNETT). All time has expired.

The question is on agreeing to the amendment. The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from New Mexico (Mr. DOMENICI) and the Senator from Oklahoma (Mr. INHOFE) are necessarily absent.

Mr. REID. I announce that the Senator from Montana (Mr. BAUCUS), the Senator from North Carolina (Mr. EDWARDS), the Senator from Massachusetts (Mr. KERRY), and the Senator from Florida (Mr. NELSON) are necessarily absent.

I further announce that the Senator from Delaware (Mr. CARPER) votes ''present.''

The result was announced—yeas 78, nays 15, as follows:

[Rollcall Vote No. 157 Leg.]

YEAS—78

Akaka	Daschle	Levin
Alexander	Dayton	Lieberman
Allen	DeWine	Lincoln
Bayh	Dodd	Lugar
Bennett	Dole	McCain
Biden	Dorgan	McConnell
Bingaman	Durbin	Mikulski
Bond	Ensign	Miller
Boxer	Feingold	Murkowski
Breaux	Feinstein	Murray
Brownback	Frist	Nelson (NE)
Bunning	Graham (FL)	Pryor
Byrd	Graham (SC)	Reed
Campbell	Grassley	Reid
Cantwell	Hagel	Rockefeller
Chafee	Harkin	Sarbanes
Chambliss	Hatch	Schumer
Clinton	Hollings	Smith
Cochran	Hutchison	Snowe
Coleman	Inouye	Specter
Collins	Johnson	Stabenow
Conrad	Kennedy	Stevens
Cornyn	Kohl	Talent
Corzine	Landrieu	Voinovich
Craig	Lautenberg	Warner
Crapo	Leahy	Wyden

NAYS—15

Allard	Jeffords	Santorum
Burns	Kyl	Sessions
Enzi	Lott	Shelby
Fitzgerald	Nickles	Sununu
Gregg	Roberts	Thomas

ANSWERED ''PRESENT''—1

Carper

NOT VOTING—6

Baucus	Edwards	Kerry
Domenici	Inhofe	Nelson (FL)

The amendment (No. 3563) was agreed to.

Mr. REID. 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.

The PRESIDING OFFICER. The substitute amendment, as amended, is agreed to.

The question is on the engrossment of the amendments and the third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

• Mr. BAUCUS. Mr. President, it has taken us too long to reach this point. Frankly, we are doing today what should have been done last fall. We are finally moving forward with the Jumpstart Our Business Strength—the JOBS bill.

I commend the Majority Leader and the Democratic Leader for reaching the agreement that allows this bill to move forward. I commend, as well, the Chairman of the Finance Committee, Senator GRASSLEY, who has been so instrumental in bringing us to this point.

There is a reason why we call this bill the JOBS bill. This bill will help create and keep good, high-paying manufacturing jobs right here in America. And this bill will help remove crippling European tariffs that rob American firms of business. Every month that goes by without enactment of the JOBS bill results in more tariffs on our American companies. We need to enact this bill.

So, as we go forward to conference, it is critical that we adhere to the following 5 principles.

First, we should preserve our bipartisan support for this bill. The Senate-passed JOBS Bill had strong bipartisan support. It passed by a vote of 92 to 5 on May 11. To preserve this bipartisan support we need to ensure that any significant change from the Senate-passed bill be limited, germane, and agreed to on a broadly supported bipartisan basis.

Second, any conference agreement should be budget neutral. The government is running record budget deficits. Gone are the surpluses of just a few years ago. We should show fiscal discipline and responsibility. The conference agreement should be budget neutral. And the conference agreement should not employ budget gimmicks.

Third, we should protect our Nation's manufacturing jobs. Since January 2001, America has lost more than 2.7 million manufacturing jobs. In my home state of Montana, we have lost 2,700 jobs in that time, over 12 percent of our manufacturing jobs. Therefore, savings from repeal of the Foreign Sales Corporation/Extraterritorial Income, FSC/ETI, regime should go to domestic manufacturing. The conference agreement should devote the preponderance of its total cost to the centerpiece of this bill: a domestic manufacturing tax benefit.

Fourth, the conference agreement should incorporate the important tax shelter reforms that the Senate has repeatedly passed. It has been nearly 3 years since Enron and other corporate scandals. Yet Congress still has not enacted any meaningful tax legislation to close the corporate abuses of the tax code. The Congress should retain the package of the Senate-passed tax shelter provisions, including the provisions ensuring that business transactions are undertaken for economic, and not tax avoidance purposes, and requiring CEO signatures.

Finally, an important part of the Senate bill is its coverage of all types of businesses. The conference agreement should provide a domestic manufacturing tax benefit to all domestic manufacturers, regardless of choice of business entity. It should cover not just C corporations, but also S corporations, partnerships, and sole proprietorships.

Mr. President, I will fight to ensure the conference agreement adheres to these principles. I will fight for the Senate's position across the board, including on overtime rules and on energy tax provisions.

Here is the bottom line: The Senate passed the JOBS bill with a wide, bipartisan majority. The conferees have to work together, across political differences, to move this important bill forward. We need to continue our fight for good jobs, here in America.•

Mr. MCCAIN. Mr. President, I have been very outspoken in my opposition to this bill, and was one of only five Senators to vote against its passage in May. I voted against it because it was loaded with wasteful spending and tax breaks for special interests and the super rich. With the Nation facing a half-trillion dollar deficit, now is not the time for Congress to be enacting wasteful tax credits.

The proponents of this bill are fond of pointing out that it is ''revenue neutral'' and that all of the tax cuts in the bill are paid for with offsets. I firmly believe that, due to our current fiscal crisis, any proposed offsets would better be used to reduce the deficit. It is incomprehensible to me, at this time of record deficits and debt, coupled with our war against terrorism and the need to secure our homeland, that we would consider risking the future of our manufacturing base and our standing in the international community by wasting time and jeopardizing corrective action while carving out sweet deals for special interests.

We missed a golden opportunity with this issue. We could have passed a good, clean bill months ago that would have brought us back into compliance with World Trade Organization, WTO, agreements and stop the burdensome tariffs now imposed on our manufactures. Unfortunately, the goal of achieving the legislation's underlying worthy purpose has been lost to a host of special interest add-ons.

In a June 19th editorial, The Washington Times, not known for liberal propaganda, stated: The ideal solution would have been a quick, simple repeal of FSC/ETI, which is bad economic policy in any case. Unfortunately, both the House and the Senate versions of the bill became magnets for the special interests. A steady train of lobbyists tacked on $167 billion in tax breaks over the next 10 years to the Senate bill, while the House bill expanded by $143 billion in similar additions. The Senate bill, for example, includes breaks for NASCAR racetracks and foreign dog-race gamblers, while the House version lavishes its attention upon tobacco

growers, timber owners and alcohol distillers. The imminent House-Senate conference, predictably, promises to be a de facto food fight between congressman, lobbyists and tax watchdogs. And so while the lobbyists duke it out, EU sanctions will continue to rise and American manufacturers and the U.S. economy will deal with the consequences.

Let me quote from some other newspapers who have editorialized about this terrible bill.

From The New York Times: What started out as Congress's urgent obligation to resolve a trade battle with the European Union has degenerated into an embarrassment as lawmakers and business lobbyists vie in a costly frenzy of corporate handouts.

From The Dallas Morning News: The United States' credibility also is at stake. As a WTO member, the United States has an obligation to follow the trade body's rulings or risk undermining the WTO's authority over global trade. . . . The simple solution would be to end the tax break. But election-year politics threaten common sense.

From The St. Petersburg Times: Tax cut fever has gripped lawmakers, and they're beginning to act delusional. . . . The bill is so irresponsible it deserves to fail.

From The Los Angeles Times: Further driving up the federal budget deficit with tax breaks will probably worsen U.S. sales abroad. The more money the Treasury has to borrow to cover the deficit, the more pressure there is on the Federal Reserve to raise interest rates to attract those funds, eventually driving inflation.

An article in the April 19th edition of The Washington Post exposed the Senate-passed bill for what it is and how it became such a monstrosity. The article stated the following:

Congress's task seemed simple enough: Repeal an illegal $5 billion-a-year export subsidy and replace it with some modest tax breaks to ease the pain on U.S. exporters. But out of that imperative has emerged one of the most complex, special-interest-riddled corporate tax bills in years . . . The 930-page epic is packed with $170 billion in tax cuts aimed at cruise-ship operators, foreign dog-race gamblers, NASCAR track owners, bow and arrow makers and Oldsmobile dealers, to name a few.

The article also quoted a tax lobbyist involved in drafting the bill as saying that it ''has risen to a new level of sleaze. I said a few months ago, any lobbyist worth his salt has something in this bill.''

This is not the way we should be doing the people's business. Incredible deals for the special interests, big tax breaks for oil and gas companies, and other big corporations have already stalled WTO compliance for too long. The manufacturing base of our country will suffer, the economy will suffer, and jobs will suffer. Is that what we want? Is that what the American people want? The answer is no. They deserve better than this, Mr. President. We work for them—not for the big money special interests and their fat cat lobbyists.

As I have said before, we need to start making some tough decisions around here Mr. President. With little legislative time remaining this election year, the Senate would serve the American public far better if it stayed focused on accomplishing the intended purpose of legislating. Unfortunately, this FSC/ETI bill, which is a much needed bill, is being dragged down with the unnecessary weight of billions of dollars in wasteful subsidies, tax breaks, and special exemptions for the special interests.

We have got to restore some sanity to the way we do things here in Washington. The facts are clear, we simply cannot continue to spend and spend and spend while continuing to cut taxes and fund the war against terrorism. It's high time we face up to the challenge and do what's right. Passing this bill, and the others like it of which this body has become so fond, is tantamount to placing a millstone of debt around the necks of our children, grandchildren, and who knows how many future generations of Americans. It has to stop, and I hope this body can find the courage to stop it.

Ms. MIKULSKI. Mr. President, I have a few words to say about the importance of protecting overtime pay for hard-working Americans. This bill that we're about to vote on is nicknamed the JOBS bill. But the most important thing we did for American workers in this bill was to pass Senator HARKIN's amendment to protect overtime pay. I was proud to stand with Senator HARKIN and stand up for American workers. I urge the conferees on this bill to make sure the Harkin amendment stays in the final version.

Millions of Americans depend on overtime pay to pay their bills and make ends meet. Yet the Bush administration wants to strip overtime protections for hard-working men and women. I thought in this country, the best social program was a job. Yet 6 million workers would lose overtime protection under the Bush proposal. Who are these workers? They are registered nurses, police sergeants, nursery school teachers, and others. These men and women work hard to serve our communities. They protect us and they help us when we are in need. They deserve extra pay for their extra efforts.

What does the Bush proposal mean for workers? It means workers will have to work long hours for less money because they will no longer be eligible for overtime pay. They might have to find a second job because they won't be able to count on overtime pay to make ends meet. They will spend less time with their families, but they won't get compensated. I think that's outrageous.

Let me give an example. America is facing a crisis in nursing. In Maryland hospitals, 12.6 percent of nursing jobs are vacant. They desperately need over 2,000 nurses. Nationwide, we will need about 2.8 million registered nurses by the year 2020, but only about 2 million will be available. Nurses work an average of 8.5 weeks of overtime each year. Eighty-seven percent of Maryland nurses work overtime just to make up for the shortage. If the Bush proposal becomes law, it will be easier for employers to deny overtime pay to registered nurses. RNs will have to work the same long hours for no extra pay, or hospitals will have to get by without enough nurses to take care of patients. Lack of overtime pay will discourage young nurses from entering the profession and experienced nurses from staying. I worked hard to pass legislation to help eliminate the nursing shortage. Changing the overtime rules would be a huge step backwards.

The Bush plan would also deny overtime pay for police sergeants. The Bush Labor Department got a lot of criticism when the American public realized that first responders would lose overtime pay. So they revised their proposal; and now they claim that first responders won't lose overtime protections. Yet the National Association of Police Organizations, the International Union of Police Associations, and the International Brotherhood of Police Organizations say that police sergeants and other managers could still lose their overtime pay.

What a thing to say to police officers and their families. These men and women put their lives on the line to keep us safe no matter what time it is or how many hours they've worked already. Every time a police officer leaves their home, they don't know when they'll be home. They don't even know if they'll be home. And now the Bush administration is asking them to donate their overtime. That's no way to show our appreciation. We need to protect the protectors so that they can protect us. That means protecting their overtime pay.

Nurses and police sergeants are just a few examples. The Bush proposal would deny overtime pay for workers in many industries, from nursery school teachers to insurance claims adjusters. It would take money out of the pockets of hard working Americans and their families. I think the Bush administration ought to be ashamed of itself.

Families in my State of Maryland are worried. They're worried about their jobs. They're terrified of losing their healthcare, when costs keep ballooning. They don't know how they can afford to send their kids to college. Tuition at University of Maryland increased by 30 percent over the last 2 years. Our middle class families are stressed and stretched. Many are holding down more than one job or working overtime to make ends meet. They're racing from carpools to work and back again. They want to know what we in the United States Senate are doing to help them. We need to protect their jobs and protect their overtime pay.

Mrs. FEINSTEIN. Mr. President, I rise in favor of the Jumpstart Our Business Strength, JOBS, Act.

I supported this bill when first passed out of the Senate on May 11 of this year and I will support it again today. In fact, the DeWine-Kennedy amendment on FDA oversight of tobacco improved the bill.

Without this legislation, U.S. companies will face increasing tariffs as a result of a World Trade Organization ruling that determined that significant portions of our Federal Tax Code ran counter to international trade laws.

The DeWine-Kennedy amendment that we adopted will strengthen the bill by restricting advertising and promotions that appeal to children; stopping illegal sales of tobacco products to children; requiring changes in tobacco products, such as the reduction or elimination of harmful chemicals, to make them less harmful or less addictive; prohibiting unsubstantiated health claims about so-called ''reduced risk'' tobacco products that would have the effect of discouraging current tobacco users from quitting or encouraging new users to start; and requiring the disclosure of the contents of tobacco products and tobacco industry research about the health effects of their products.

This amendment is absolutely essential to me should a tobacco buyout be included in the conference report.

But this legislation is still far from perfect and I have growing concerns about what we may see when this bill returns to the Senate following conference. This concern has been heightened by what I see contained in the House bill.

First, the House bill contains the $9.6 billion tobacco buyout proposal that contains no provision for FDA oversight of tobacco products.

Second, the House bill is not offset by revenue raisers and would cost $35 billion through 2014, according to the official Joint Committee on Taxation estimate. Alarmingly, this cost estimate does not provide a true sense of the bill's fiscal impact because the bill employs two budget gimmicks.

The first gimmick involves phasing in tax cuts slowly over the 10-year period covered by the legislation. This ''backloading'' of tax cuts shaves tens of billions of dollars off the 10-year cost of the House package.

The second gimmick involves having tax cuts expire before the end of the 10-year period, even though the intention is, in many cases, for the tax cuts to be extended and to remain in effect on an ongoing basis.

The Joint Tax Committee has estimated that making permanent most of the temporary tax cuts in the House bill would add $190 billion to the cost of the bill through 2014.

In contrast, the Senate bill is fully offset and will effectively provide a 3-percent tax cut for manufacturers; give manufacturers a 50-percent tax credit for the cost of adding jobs; extend the research tax credit through 2005; protect hundreds of thousands of workers from cuts in Federal overtime protections; prevent the Federal Government from spending taxpayer dollars on contracts with companies that use foreign labor when there are domestic alternatives; provide a tax credit for companies which produce energy by using underbrush and other potentially hazardous fuels found in our forests; provide a tax credit for consumers who buy hybrid vehicles; protect the California film industry and the jobs it creates; and provide for FDA oversight of tobacco products.

I will be looking for very specific items to be included in the conference report. The final bill should be fully offset and not increase the deficit; contain strong and effective FDA oversight of tobacco products if the bill contains a tobacco buyout provision; and require that any tobacco buyout provision be funded by tobacco manufacturers, not taxpayers; contain a tax credit for the open-loop biomass industry that works to reduce fire hazards in California; and protect companies, such as the film industry, that did nothing wrong under the old law and yet face the possibility of having their tax benefits cut.

And, to the conferees, I want to stress the importance of these provisions to me. These are not ordinary times and we must protect the integrity of our tax system from those who would twist it at the cost of fiscal responsibility.

The long-term budget outlook remains grim. Although the deficit may recede somewhat over the next few years from its current historically high level, it will swell as the baby boomers retire in large numbers in the coming years and eventually reach unsustainable levels. One of the most prudent steps that we as policymakers can take in preparation for this impending challenge is to reduce the deficit today.

Moreover, corporate tax revenues are at all time low levels as a share of the economy. The Congressional Budget Office projected in March that corporate tax revenues will equal 1.4 percent of GDP in 2004—lower than the average levels seen in each decade since the 1940s.

Furthermore, CBO projects that corporate tax receipts will remain at about 1.8 percent of GDP through the end of the decade. This is lower than the average level of corporate tax receipts in each of these decades except for the 1980s, when corporate receipts plummeted from the effects of tax cuts and economic conditions.

Given the historically low corporate revenues, it does not represent sound policy to use the revenues gained from closing corporate loopholes to fund new targeted corporate tax breaks. The goal should be to restore the corporate revenue base, at least in part, in order to help reduce the deficit, not to diminish the corporate revenue base further.

So while I support the Senate version of the JOBS bill because on balance it provides important protections for California workers and businesses, I do so warily and will reserve final judgment until I see the conference report.

Mr. KENNEDY. Mr. President, a new study by the Economic Policy Institute makes clear that 6 million Americans, including teachers, nurses, cooks, clerical workers, and pharmacists, will lose their overtime protections under the Bush overtime rule. President Bush is once again putting corporate profits ahead of workers and their families. Profits are already up more than 60 percent since President Bush took office, yet workers' wages have actually declined. The last thing America's struggling workers need today is a pay cut.

The Bush overtime rule puts special interests above worker interests. An independent analysis by three former high ranking Department of Labor employees concluded: '' we believe that (with the exception of the change in the salary level test) the interests of U.S. workers and their families will not be advanced—indeed will be harmed—by the implementation of these new regulations.''

It is clear that the Bush administration is putting business's bottom lines first. The National Association of Manufacturing, NAM, the Chamber of Commerce, the National Restaurant Association, the funeral industry and many other groups lobbied hard for more relaxed overtime requirements. The final rule includes a broad exemption for workers in the financial service industry that helps the insurance and banking industries and for the retail and restaurant industries.

With more than 8 million Americans out of work, and with so many other families struggling to make ends meet, cutbacks on overtime are an unfair burden that America's workers should not have to bear. Overtime pay accounts for about 25 percent of the income of workers who work overtime. Workers stripped of their overtime protection would end up working longer hours for less pay.

The Fair Labor Standards Act was enacted in the 1930s to create a 40-hour workweek and requires workers to be paid fairly for any extra hours. Especially in times like these, it is an incentive for job creation, because it encourages employers to hire more workers, instead of forcing current employees to work longer hours.

The overtime protection is vital to the 40-hour workweek. If employers no longer have to pay extra for overtime, they will have an incentive to demand longer hours, and workers will have less time to spend with their families.

In 70 percent of American families all parents are working, either both parents, or the single parent, as compared to 1960 when 70 percent of all families had at least one parent at home full time. Workers are already struggling to balance their families' needs with their work responsibilities. Requiring workers to work more hours for less pay will add a greater burden to this struggle.

In May, 99 Senators voted for the Gregg amendment that said it was wrong for the Bush administration to deny overtime to millions of workers, including police sergeants, nursery

school teachers, nurses, computer programmers and others in 55 different job categories. And a bipartisan majority of 52 Senators voted against taking away overtime from any worker currently entitled to it. It would be unconscionable if this bill comes out of conference without those protections.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

The bill (H.R. 4520), as amended, was passed.

(The bill will be printed in a future edition of the RECORD.)

Mr. REID. 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.

The PRESIDING OFFICER. Under the previous order, the Senate insists on its amendment and requests a conference with the House. The Chair is authorized to appoint conferees on the part of the Senate at the ratio of 12 to 11.

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. FRIST. 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 Presiding Officer (Mr. BENNETT) Appointed Senators GRASSLEY, HATCH, NICKLES, LOTT, SNOWE, KYL, THOMAS, SANTORUM, SMITH, BUNNING, MCCONNELL, GREGG, BAUCUS, ROCKEFELLER, DASCHLE, BREAUX, CONRAD, GRAHAM of Florida, JEFFORDS, BINGAMAN, LINCOLN, KENNEDY, and HARKIN conferees on the part of the Senate.

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that there now be a period of morning business for debate only with Senators speaking for up to 10 minutes each.

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

A TRUE FRIEND OF AMERICA: C.J. CHEN

Mr. DASCHLE. Mr. President, later this month, our country will bid farewell to a good friend. Chen Chien-jen—known to all of us as C.J. Chen—first came to Washington 33 years ago and has spent over 20 years here working to promote a better relationship between the United States and Taiwan. As he retires and returns home, C.J. will leave the people of Taiwan a legacy of a strong relationship with the United States and deep support from the American people.

C.J. has strived to represent the people of Taiwan in the foreign service for 37 years, 20 of which have been spent here in Washington. He began his exemplary service in the United States in 1971 as Third Secretary in the Embassy of the Republic of China, and remained in Washington after 1979, working with Congress to draft the critical Taiwan Relations Act of 1979. From 1983 to 1989, he served as deputy representative of the Coordination Council for North American Affairs, Taiwan's diplomatic mission to the United States. And for the last 4 years, he has admirably headed the current mission, the Taipei Economic and Cultural Representative Office.

C.J.'s leadership as Taiwan's chief diplomat to the United States has been remarkable. During his 4 years as representative, he has helped elevate the United States-Taiwan relationship to unprecedented strength. He has championed the passage of critical legislation by Congress, and he has worked with Congress and the White House to cement the United States commitment to strengthen Taiwan's self-defense. At the same time, he has educated his own leadership and people about the United States, our people, and our policies.

But for me, and for many of us in Washington, C.J. Chen will be missed not only as an outstanding diplomat, but as a close personal friend. During his time in Washington, I have had the opportunity to get to know C.J. and his wife, Yolanda Ho, very well, and I will miss them.

While C.J. will no longer serve his people in an official capacity, I know that he will continue to contribute to building United States-Taiwan relations. I wish C.J. and Yolanda a long and happy retirement, and hope they will often return to visit their friends here in the United States.

LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Mr. President, I speak about the need for hate crimes legislation. On May 1, 2003, Senator KENNEDY and I introduced the Local Law Enforcement Enhancement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

On August 18, 2000, a group of boys shot through the front window of a well-known lesbian bar on Capitol Hill, known as Phase I. Though witnesses identified a gang of young boys as the perpetrators, they escaped without being apprehended. Three years earlier, a canister of tear gas was tossed into a gay bar two blocks from Phase I, and police classified that crime as a hate crime.

Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. By passing this legislation and changing current law, we can change hearts and minds as well.

HUMAN RIGHTS IN LIBYA AND IRAQ

Mr. KENNEDY. Mr. President, I bring to my colleagues' attention a thoughtful op-ed article published in the July 13 Washington Post by Mona Eltahawy, a London-based Arab journalist.

The article raises an important question about a double standard on human rights between Libya and Iraq. The United States overthrew Saddam Hussein's regime because he was a brutal dictator, but we embrace Libya's Qadhafi despite the fact that he is a brutal dictator.

About the double standard Ms. Eltahawy wrote: ''In the absence of weapons of mass destruction, and with images of Hussein on trial for war crimes, they have been pushing the ''removal of a brutal dictator'' excuse for the invasion. How do they square this with their astonishing rush to embrace another ruthless dictator? Qadhafi's behavior of late has been uncomfortably close to brutal.''

Libya remains, according to the CIA World Factbook, ''in fact, a military dictatorship'' under Colonel Qadhafi. His government ''continued to commit numerous, serious abuses,'' including arbitrary arrest and detention, and restrictions of ''freedom of speech, press, assembly, association, and religion,'' according to the February 2004 State Department Human Rights Report. Violence and discrimination against women are serious problems as well.

A recent visit by Amnesty International to Libya found that ''a pattern of human rights violations continues, often justified under the new rhetoric of the 'war on terror.'" Amnesty International's findings include ''laws which criminalize the peaceful exercise of freedom of expression and association, leading to the imprisonment of prisoners of conscience; prolonged detention without access to the outside world, which facilitates torture; and unfair trials, in particular before the people's court which tries political cases. Torture and ill-treatment continues to be widely reported, its main use being to extract 'confessions.'"

The Qadhafi regime also continues to intrude in the affairs of other African nations, despite Secretary Powell's call in February 2004 that Libya ''cease to be destabilizing, cease to fund despotic regimes, and cease to cause trouble.'' According to Assistant Secretary of State for Near Eastern Affairs Bill Burns, Libya was involved as recently as February in sowing instability throughout Africa. ''There have been problems . . . in Zimbabwe. There have been problems . . . in Liberia and elsewhere,'' he said. ''We continue to have concerns'' in the Central African Republic, he also said.

In the Central African Republic, Libyan troops were reportedly directly involved in 2001 in halting an army revolt against the president. A year later, Libya and the Republic agreed on a 99-

year treaty giving Libya the right to exploit the oil, uranium and other resources of the republic.

In Zimbabwe, Libya has often assisted President Robert Mugabe, including supplies of urgently needed oil. In Liberia, Libya has been a major provider of arms and supplies to Charles Taylor.

The Libyan Government is responsible for the terrorist bombing of Pan Am flight 103 over Lockerbie, Scotland. Some 270 innocent people lost their lives in the bombing, including 189 Americans. Until September 11, the Pan Am bombing killed more American civilians than any other terrorist atrocity in our history. Officially, the Libyan government has accepted responsibility for the actions of its officials in the atrocity, but Qadhafi denied his nation's involvement in the bombing, according to a CNN report on December 23, 2004 summarizing an interview by its State Department correspondent Andrea Koppel with him.

In taking steps to resume relations, the administration presumably believes that Libya has made a firm decision to abandon terrorism and become a responsible member of the international community. However, Qadhafi persists in the type of rhetoric he has displayed in the past. In Brussels, he recently threatened to return to the ''days of explosive belts'' if provoked by Western ''evil.'' We've recently seen allegations of a purported assassination plot hatched by Qadhafi against the crown prince of Saudi Arabia following a dispute at the Arab League summit in March.

President Bush has spoken frequently about democracy and human rights. In November 2003, at the National Endowment for Democracy's 20th anniversary celebration, he said that ''sixty years of Western nations excusing and accommodating the lack of freedom in the Middle East did nothing to make us safe—because in the long run, stability cannot be purchased at the expense of liberty. As long as the Middle East remains a place where freedom does not flourish, it will remain a place of stagnation, resentment, and violence ready for export.''

It is surprising that the administration would so quickly strengthen relations with a dictator who is responsible for the mass murder of innocent Americans, opposes democracy, persecutes his own people, and continues to cause instability in Africa.

Mona Eltahawy's important op-ed article raises many of these questions, and I ask unanimous consent that it may be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

WARMING UP TO A DICTATOR

(By Mona Eltahawy)

When the United States ended a 24-year chill and restored diplomatic relations with Libya on June 28, the first person I thought of was Baha Omary Kikhia. I interviewed her in Cairo more than 10 years ago during one of her many trips to the region to find out what happened to her husband, former Libyan foreign minister turned dissident Mansour Kikhia.

His case has too easily been lost in the lexicon of bloodier and larger crimes committed by the Libyans, such as the 1988 Pan Am bombing, which killed 270 people. But Moammar Gaddafi has been brutal to Libyans, too, and his various eccentricities should not blind us to the police state he has presided over since he assumed power in a September 1969 coup.

He may travel with Kalashnikov-armed female bodyguards, he may pitch tents at home and abroad for talks with officials, and he may pen such ''classics'' as the short story collection ''The Village, the Village, the Earth, the Earth and the Suicide of the Astronaut,'' but none of these quirks should distract us from his abysmal human rights record. Arbitrary arrests, a muzzled press, a ban on political parties and the squandering of Libya's oil wealth have never been laughing matters for Libyans.

And we should not forget Mansour Kikhia, who disappeared in Cairo in December 1993 while attending a meeting of an Arab human rights organization he had helped found. Kikhia had defected to the United States in 1980 and was a U.S. resident who was four months away from receiving citizenship when he went to Egypt. A four-year CIA investigation found in 1997 that Egyptian agents turned over Kikhia—who had asked for Egyptian security protection while in Cairo—to agents of Gaddafi's regime, who spirited the dissident to Libya, where he was executed and buried in the Libyan desert.

My interview with his wife, a U.S. citizen, left me painfully saddened for her and her family and particularly distressed that someone could just disappear in the city that I called home. I could not forget her during an assignment in Tripoli in 1996, when a Libyan government minder shadowed me at every turn and an official with the ministry of information asked me why we were so critical of Libya in the copy we filed at the Reuters news agency. And I will not forget her now, or the many others who have suffered from Gaddafi's regime, just because he is able to say the things he knows the Americans and British want to hear.

Gaddafi, claiming he had seen the light, accepted responsibility last year for the Pan Am bombing, agreeing to pay compensation to the victims' families (I wonder whether he has paid compensation to Baha Omary Kikhia) and to dismantle his chemical, biological and nuclear weapons programs. If that last bit sounds familiar, it should. President Bush and British Prime Minister Tony Blair want us to think that Gaddafi's conversion on the road to Washington and London was due to the fear that he would end up in the same jail cell as Saddam Hussein. (Gaddafi's daughter Aicha, a law professor, has joined Hussein's defense team.)

With no weapons on mass destruction to justify a war against a country that never threatened them, Bush and Blair are determined to hold on to their theory that the ''war on terrorism'' and the invasion of Iraq would bring rogue states in line. But it's an old argument they're making. In the absence of weapons of mass destruction, and with images of Hussein on trial for war crimes, they have been pushing the ''removal of a brutal dictator'' excuse for the invasion of Iraq. How do they square this with their astonishing rush to embrace another ruthless dictator?

Gaddafi's behavior of late has been uncomfortably close to brutal. In May—a mere two months after a historical visit to Tripoli by Blair, who was accompanied by executives of British businesses eager to cash in—a Libyan court sentenced five Bulgarian nurses and a Palestinian doctor to death by firing squad for deliberately infecting some 400 children with HIV. The medics had always protested their innocence and said they had been tortured by the police, with daily beatings, sexual assault and electric shocks.

Expert witnesses called in for their defense included one of the team that discovered the AIDS virus, who said this was an epidemic caused by poor hygiene at the hospital, not by any international conspiracy. Isn't Bulgaria a member of the ''Coalition of the Willing''?

Here's the topper. As Libya was engaged in secret negotiations to resume relations with the United States and Britain, Gaddafi tore into Saudi Crown Prince Abdullah at an emergency Arab League summit in March 2003, assailing the kingdom's close relationship with the United States. When the Saudi de facto leader insulted Gaddafi back and walked out, the Libyan leader apparently hatched a plot to assassinate him. Isn't that dangerously close to state-sponsored terrorism?

Speaking at Whitehall Palace in London last year, President Bush acknowledged that the United States and Britain had not always been on the right side of democracy when it came to the Middle East. ''Your nation and mine in the past have been willing to make a bargain to tolerate oppression for the sake of stability,'' Bush said, addressing Blair.

It's not difficult to imagine that just such a bargain, along with some good old-fashioned military and oil contracts thrown in, is the driving force behind the resumption of ties with Libya.

PATIENT SAFETY

Mr. ENZI. Mr. President, I rise today to talk about patient safety.

There is bipartisan legislation pending in the Senate that is absolutely critical to reducing healthcare errors and increasing healthcare quality. It is S. 720, the Patient Safety and Quality Improvement Act.

The Health, Education, Labor and Pensions Committee reported this bill to the floor in November of last year. It was approved in the committee by a unanimous voice vote, and it is past time for the Senate to vote on and pass this important legislation.

This patient safety legislation is an important step toward building a culture of safety and quality in health care.

The Patient Safety and Quality Improvement Act would create a framework through which hospitals, doctors, and other health care providers can work to improve health care quality in a protected legal environment. The bill would grant privilege and confidentiality protections to health care providers to allow them to report health care errors and ''near misses'' to patient safety organizations. The bill also would allow these patient safety organizations to collect and analyze the data confidentially.

After analyzing the data, patient safety organizations would report on trends in healthcare errors and offer guidance to providers on how to eliminate or minimize these errors. Some of this takes place today, but much more

information could be collected and analyzed if providers felt confident that reporting these errors did not increase the likelihood that they or their colleagues would be sued for honest mistakes.

This legislation would not permit anyone to hide information about a medical mistake. Under the bill, lawyers could still access medical records and other information that would normally be discoverable in a legal proceeding. However, the bill would ensure that the analysis of that information by patient safety organizations would take place on a separate track in a protected legal environment.

Healthcare providers will be much more likely to share information about honest mistakes and how to prevent them if they have some assurance that the analysis of their information won't result in a tidy package of information that a personal injury lawyer could use against them in court.

Errors in medical treatment take place far too often today. Unfortunately, providers live in fear of our unpredictable and unfair medical litigation system, and this legal fear inhibits efforts to address the root causes of health care errors. Without appropriate protections for the collection and analysis of patient safety data, providers are unwilling to report mistakes and errors, which is one of the reasons that health care quality today is not what it could be.

Litigation does nothing to improve quality or safety. The constant threat of litigation instead stifles honest analysis of why health errors happen. This is just one more reason why we need wholesale reform of our medical litigation system. We need to foster alternatives that restore trust between patients and providers and result in fair and reliable outcomes for both parties. We need to scrap the current system, not just cap it.

But until we do so, we should take whatever steps we can to create an environment that protects the collection and analysis of patient safety data so that providers can learn from their mistakes and prevent them from happening in the future.

The Patient Safety and Quality Improvement Act is one of these steps. Yesterday, our committee chairman, Senator GREGG, asked for unanimous consent that we move to consideration of this legislation on the Senate floor. This is the third time he has done so. Each time, he has been blocked by our colleagues in the minority, even though the committee of jurisdiction was unanimous in its support for the bill.

My colleagues in the minority keep talking about problems with healthcare quality—just like they keep talking about the loss of American jobs. However, talk is cheap when their actions don't match up to their words. If they are really so concerned about improving healthcare in our Nation, why would they object to a bill that would reduce errors and improve patient safety, particularly a bipartisan bill with unanimous committee support? If they are really so concerned about American workers and jobs, why won't they let a bill improving the Nation's job-training system go to conference?

This is another example of what is happening—or not happening here in the Senate. We have a bill—a bipartisan bill—that will help workers get back to work or find better jobs. This bill will equip our workforce with the skills necessary for America to compete—and succeed—in the global economy. It reauthorizes and improves the Nation's job training and employment system created under the Workforce Investment Act.

The Workforce Investment Act provides job training and employment services to more than 900,000 unemployed workers each year. Just like the patient safety legislation, this bipartisan bill passed out of the Health, Education, Labor, and Pensions Committee unanimously. We passed it on the Senate floor by unanimous consent last November. That is as bipartisan as you can possibly get.

Where is the bill now? We can't get a conference committee appointed to resolve differences with the House. If we really want to take care of jobs and workers in this country, we should appoint conferees for the Workforce Investment Act legislation. I can only conclude that my Colleagues on the other side of the aisle are more concerned with election year politics than helping American workers, or improving patient safety.

There are differences between Republicans and Democrats on most of the big issues facing our Nation. If my colleagues in the minority want to bottle up legislation with which they disagree, that is their prerogative. But that is not what I am talking about.

What we have here are a few members of the minority party holding up bipartisan bills that receive unanimous approval in committee, and holding up conferences on bills that receive unanimous support on the Senate floor.

The only logical conclusion I can make is that these roadblocks are based on politics, not policy, and that is a shame.

Right now, the Senate floor reminds me of the airspace above a busy airport. We have got a number of bipartisan bills lined up for their final approach, but our colleagues in the minority are holding these bills up and won't allow them to land. The tactics of my colleagues in the minority give new meaning to the term ''holding pattern.''

It is time for our Democrat colleagues to break this holding pattern so that we can pass these bipartisan bills like the Patient Safety Act and the reauthorization of the Workforce Investment Act. These are not only bipartisan bills, but they received unanimous committee support.

Let us set election politics aside for a moment. These are bipartisan bills, so no one party can claim credit for their passage. The Patient Safety Act was introduced by the distinguished Senator from Vermont, Mr. JEFFORDS, who is the lone independent in the Senate. So this bill is more than bipartisan.

My distinguished colleague from Nevada, Senator REID, suggested yesterday that we should just approve the House-passed patient safety bill. He suggested that he should just take up the House bill, rather than pass the Senate bill, because the Members of the House are the true experts on complex legislation like this.

I wonder if my colleague's opinion would be the same on medical liability reform. After all, the expert legislators in the House have sent us some excellent legislation to reform our medical litigation system. Perhaps we should stop working on this in the Senate and just approve the House-passed bill.

Or perhaps we could take up the House-passed bill on the Workforce Investment Act. I know my Democrat colleagues with whom I have worked to craft a Senate version are confident that our version is the superior one, but if Senator REID believes that the Members of the House are superior legislators, perhaps he could convince my Democrat coauthors that we ought to just take up the House bill and pass it. Or, as I have suggested, why don't we just agree to go to conference with the House and come up with the best possible bill we can, one that reflects the expertise of Members of both the Senate and the House?

I hope our colleagues in the minority will agree to take 2 hours of their time to debate and vote on the bipartisan Patient Safety Act. Two hours is not a lot of time, and it is the least we can do on such an important piece of legislation. We have spent hours upon hours working on this bill in committee and crafting a bill that received unanimous bipartisan support. Let us spend 2 more hours on the Patient Safety Act so that we improve the quality and safety of healthcare in America.

ENERGY CRISIS

Mrs. FEINSTEIN. Mr. President, I rise today to set the record straight regarding the Western energy crisis. Ken Lay, the former CEO of Enron, appeared on CNN's Larry King Live on Monday, July 12. Larry King asked him:

> Did Enron's problems or fortunes or misfortunes have anything to do with hurting California and its energy problem? Because a lot of politicians in California blamed Enron.

Lay responded:

> Well, they do, and I still think to this day falsely, Larry. I mean, California, for the most part—I mean, California, California regulators, politicians, et cetera, caused the problem in California.

Let me set the record straight. During consideration of California's legislation that deregulated the energy

market, Enron was at the center of the lobbying effort that crafted the bill.

Once the legislation was passed, Enron took full advantage of the loopholes it helped to create to manipulate and game the Western energy market. I would not argue that the system was perfect, but I would assert that Enron had a huge hand in creating such a flawed system, which it used to its benefit.

Enron, and other energy companies, created a business environment in which the bottom line mattered more than the public good.

As I have stated on this floor before, energy traders were completely unconcerned with customers having electricity as long as it meant that they got an extra bonus that day.

And the fault does not lie solely with Enron. Other companies were also involved with gaming the Western energy markets, including, but not limited to: Dynegy, Reliant, Williams, El Paso, Duke, BP Energy, Portland General, AES, Mirant, CMS Energy, American Electric Power Company, and Sempra Energy Trading.

The recently-released Enron tapes demonstrate the callousness of these companies:

One trader complained: ''They're [expletive] taking all the money back from you guys? All the money you guys stole from those poor grandmothers in California?''

A second responded: ''Yeah, grandma Millie, man.''

The first responded: ''Yeah, now she wants her [expletive] money back for all the power you've charged right up, [expletive phrase], for [expletive] $250 a megawatt hour.''

The good news is that the figures responsible for running Enron are beginning to be brought to justice. For instance, Ken Lay, along with former Enron CEO Jeffrey K. Skilling and former Enron Chief Accounting Officer Richard Causey, were indicted by the U.S. Department of Justice on charges of conspiracy, securities fraud, wire fraud, bank fraud and making false statements.

The indictment alleges that at various times between at least 1999 and 2001, Lay, Skilling, Causey and other Enron executives engaged in a wide-ranging scheme to deceive the investing public, the U.S. Securities and Exchange Commission and others about the true performance of Enron's businesses.

The alleged scheme was designed to make it appear that: Enron was growing at a healthy and predictable rate, consistent with analysts' published expectations; Enron did not have significant write-offs or debt and was worthy of investment-grade credit rating; and, Enron was comprised of a number of successful business units, and that the company had an appropriate cash flow.

These actions had the effect of inflating artificially Enron's stock price, which increased from approximately $30 per share in early 1998 to over $80 per share in January 2001, and artificially stemming the decline of the stock during the first three quarters of 2001.

The indictment also alleges that Lay had a significant profit motive for participating in the scheme.

As stated in the indictment, Lay received approximately $300 million from the sale of Enron stock options and restricted stock between 1998 and 2001, netting over $217 million in profit, and was paid more than $19 million in salary and bonuses.

Lay received a salary of over $1 million, a bonus of $7 million and $3.6 million in long term incentive payments during 2001 alone.

Additionally, Lay sold 918,104 shares of Enron stock during the period of August 21 through Oct. 26, 2001, to repay advances totaling $26,025,000 he had received from a line of credit extended to Lay by Enron.

At that same time, California was overcharged by at least $9 billion. Now we at least know where some of that money went.

Yet even if Enron is forced to pay back the almost $2 billion it overcharged California, bankruptcy will protect the company from paying back much more than 20 cents on the dollar.

It is my hope that as the evidence mounts against Ken Lay that the truth about his, and Enron's, role in the Western energy crisis will leave no doubt in anyone's mind that the crisis was manufactured by unethical, greedy corporations.

California has suffered enough as a result of the crisis—it does not need to suffer further from Ken Lay's mistruths.

Mr. President, thank you for letting me set the record straight.

25TH ANNIVERSARY OF THE WHITE HOUSE CONFERENCE ON LIBRARY AND INFORMATION SERVICES

Mr. REED. Mr. President, I rise today to recognize the 25th anniversary of both the first White House Conference on Library and Information Services and the White House Conference on Library and Information Services Taskforce, WHCLIST, as well as to applaud a booklet, ''Libraries, Citizens & Advocacy: The Lasting Effects of Two White House Conferences on Library and Information Services,'' published by WHCLIST in honor of this occasion.

As a result of the WHCLIST conferences and efforts—which have brought together hundreds of thousands of citizen representatives and library professionals—many Americans have discovered their community libraries for the first time, hundreds of Friends of the Library groups have formed, and a cadre of committed library supporters has emerged. The conferences renewed our Nation's emphasis on libraries and have helped spur my efforts to improve libraries.

The ''Libraries, Citizens & Advocacy'' report, which assesses the outcomes of the 1979 and 1991 White House Conferences on Library and Information Services, concludes that the WHCLIST has effectively focused the attention of the profession, trustees and advocates, and elected local, State, and national officials on the conferences' resolutions and recommendations. In the past quarter of a century, many of these resolutions and recommendations have been realized.

For example, resolutions from the 1979 conference included urging libraries to play a greater role in literacy development; provide improved access for minority groups, individuals with disabilities, and other underserved populations; and serve as a community center that offers recreation, social interaction, and an independent learning center. Delegates to the 1991 conference voted the Omnibus Children and Youth Initiative as the recommendation of greatest priority, including recommendations for school libraries and children's services in public libraries, intergenerational programming, and family literacy partnerships between library and Head Start personnel.

We have made significant progress toward improving the quality of school libraries. Notably, the 1996 passage of the Library Services and Technology Act made school libraries eligible to receive Federal funds for training, networks, and statewide consortium activities, and the Improving Literacy through School Libraries program, which I authored and was included as part of the No Child Left Behind Act, restored categorical funding for school libraries.

I have been proud to lead the way on these pieces of legislation, which ensure access to library and information services for library patrons of all ages, support the training and recruitment of librarians, and help provide the resources libraries need to improve literacy skills and academic achievement. I am honored to continue in the spirit of Senator Claiborne Pell's strong leadership on library issues.

I also wish to acknowledge the immense contributions and passionate advocacy of two other leaders from my home State: Rose Ellen A. Reynolds, current WHCLIST chair, and Joan Ress Reeves, delegate to the 1979 and 1991 conferences and former WHCLIST chair.

Let us recognize the White House Conference on Library and Information Taskforce on this 25th anniversary and celebrate the role it has played in improving our communities' libraries and our Nation's literacy.

DO THE WRITE THING 2004

Mr. LEVIN. Mr. President, the Do the Write Thing Challenge, sponsored by the National Campaign to Stop Violence, is a national writing contest in which students express their concerns

about subjects such as domestic violence, easy access to guns, and gang activity.

Do the Write Thing currently operates in 14 cities, including Detroit, MI. Over the past 9 years, more than 285,000 students from middle schools from around the country have participated in this contest. During this past school year, over 85,000 middle school students participated in youth violence discussions and roundtables sponsored by the Do the Write Thing Challenge. Some 28,000 students chose to submit contributions to their local Do the Write Thing Challenge committee.

Over 2,500 school finalists were honored at local recognition ceremonies and had their writings published and distributed locally. Next week, two national finalists from each participating jurisdiction will be honored at a national recognition ceremony in Washington, DC. Also during next week's National Recognition Week, the finalists will present their views on youth violence to such national leaders as the Secretary of Education, the Attorney General, the Administrator of the Office of Juvenile Justice and Delinquency Prevention and Members of the House and Senate. In addition, their writings will be published and placed in the Library of Congress.

The works, ranging from poems to essays to stories, all describe the impact of violence in the lives of children. I am pleased that the National Campaign to Stop Violence will honor two students from Michigan, Michael Williams and Starlyn Robinson, for their poems on youth violence. I commend these two young people for their hard work and I know my colleagues join me in celebrating the efforts of middle school students from around the country.

I ask unanimous consent that Michael and Starlyn's poems be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STARLYN ROBINSON, BATES ACADEMY, GRADE 8

SHADINA'S PRICE

A, loving girl,
Shadina Moss
A traffic incident
And her life was lost.
A piece of paper,
An invitation,
For a seemingly fun
Celebration.

The party was Friday
Shadina had a week to prepare,
But she started that second
Choosing what to wear.
Invitations were infrequent,
The people carefully selected.
Lots were left out
Feeling painfully neglected.
Not one of her friends
Was cool enough to get invited.
That made Shadina feel special,
And even more delighted.
Her friend reminded her
She'd need permission to go.
Sick of her bragging,
She hoped Mrs. Moss said, No.

The party was late,
After midnight
So of course her mother refused
Causing a fight.
Shadina was defiant,
Decided to rebel
Unaware of the fact
The party wouldn't end well.
Not owning a car
Shadina was stuck,
A boy offered her a ride
She thought it was good luck.
She knew the boy
Jason, from school.
He was nice, and invited
So evidently he was cool.
They talked a lot,
For a good long while.
She knew everything about him.
Even the length of his smile.
She knew his favorite color,
And that he liked to use slang,
But what she didn't know
Was that he was in a gang.

They arrived at the party
And started to have fun.
They laughed and said hi
To almost everyone.
Except for that boy
With bad intentions.
An enemy of the gang, Jason
Supposedly forgot to mention.
He wasn't invited,
And shouldn't have been there,
But be had a gun and some bullets
And didn't seem to care.
He locked and loaded,
Aimed straight for Jason's head
But Shadina was the one
That wound up dead.
With a BANG and a gasp,
Shadina took her last breath
And all those surrounding
Witnessed her death.
This story has a few morals,
Be nice to everyone;
If the boy was invited
He might not have brought a gun.

Had Jason not been in a gang
Shadina would still be alive,
But the deed is done
And she can never be revived.
Why do we need guns?
Do we have to kill each other?
My grandfather was shot
By my step-grandmother.
I'll miss the grandfather
I never got to meet.
I wish my step-grandma
Wasn't packing heat.
But like Shadina
He's gone to a better place,
Leaving this world
Witbout a trace.
Why would we make gun,
Then wonder about the death rate?
These are things we made
We decided to create.
When you sense hostility
On a persons face
Leave them alone,
Let them have their space.
Prevent violence:
Always be nice,
Listen to your parents,
Don't pay Shadina's price.

STARLYN ROBINSON

MICHAEL WILLIAMS, BATES ACADEMY, GRADE 8

"PAYING WITH YOUR LIFE"

"Chorus"
Stop the violence young people or you will pay the price
The only outcome is paying with your life

"Verse #1"
At my young age I have witnessed many deaths
And trust me its not the best
It's like being striped naked or undressed
Feeling confused as why a child would wear a bulletproof vest
And he hasn't even made it out of his parent's nest
Lakes full of tears from blood shed
Asking my mother why my uncle is dead
And why I always have this feeling of dread
Lying to my mother that I'm okay
While wondering if this hurt and pain will ever go away
So I'm begging you young people of today
Stop the violence so we can live to see a better day

"Chorus"
Stop the violence young people or you will pay the price
The only outcome is paying with your life

"Verse #2"
Kids calling themselves gangsters and thugs
Hanging on street corners selling drugs
Perpetrating, wonna be grown
But only trying to hide the fact they ain't getting no loving at home
No father figure
So to hide the pant, they hold a gun with the safety off the trigger
To some life is a game and they have no shame
Emotions running wild because they feel no pain
At the age of thirteen you are still a kid
But the judge still tries you as an adult for what you did

"Chorus"
Stop the violence young people or you will pay the price
The only outcome is paying with your life

"Verse #3"
Maybe we should send the kids to a jail cell for only a day
Then they would have to listen to what a real prisoner has to say
Or maybe take them to an undertaker
So they can see what violence leads to today
Hopefully they will realize lying in a coffin ain't the way
Put some positive mentors in there face
And maybe they won't think that there lives are such a disgrace
With this in place they will gain a little more hope and faith
And realize they have some good to contribute to the human race
Now all that's okay but I alone can't stop violence today
So youth of today join me and keep the faith and pray

"Chorus"
Stop the violence young people or you will pay the price
The only outcome is paying with your life

MICHAEL WILLIAMS
MRS. GIBSON 8–4

ADDITIONAL STATEMENTS

TRIBUTE TO DR. J. DEOTHA MALONE

• Mr. ALEXANDER. Mr. President, I wish to pay tribute to an educator who has not only been an exemplary teacher, administrator, and community servant, but also has the distinguished honor of being the longest serving educator in the region we call Middle Tennessee. Dr. J. Deotha Malone will retire from the Sumner County Board of Education today. She has been dedicated to educating the students in Middle Tennessee for more than 55 years.

Dr. Malone's career in education has been filled with many achievements. She has taught students from preschool through the college levels. This Tennessean began her teaching career at Union High School in Gallatin, TN, in 1949 where she taught English and civics and was the class sponsor.

Dr. Malone did not limit her role as an educator to the classroom. She opened her home as well, holding remedial classes in reading and teaching beginners French, all free of charge. She held classes for young pregnant women in the basement of the local health department before they were enrolled in the homebound programs. She taught the fourth and sixth grades, directed the ESL programs for 12 years, was a Head Start teacher and later became the supervisor of that program.

In 1969, Dr. Malone was appointed supervisor of elementary education for Sumner County and in the same year became supervisor of adult education. In 1981, she was appointed supervisor of secondary education and she continues in that capacity today. She also remains the coordinator of district policy for Titles VI and IX.

Dr. Malone has dedicated her life to public service—and not only as an educator. In 1958, she became the first African-American female notary public in Sumner County. She was subsequently trained by H&R Block to prepare income taxes—a service she rendered free of charge to those not able to afford the fees. Dr. Malone was elected to the Gallatin City Council in 1969. Two years after her first election, she was elected as the vice mayor of Gallatin and has been serving the city in that capacity for the past 33 years. She is an active church member as a teacher of the Adult Ladies Sunday School Class, singer in the mass choir and president of the Willing Workers Club.

Dr. Malone has touched and enriched so many lives that it is impossible to measure the debt of gratitude owed her. So I take this moment to honor her and thank her for all that she has done in her life's work.●

HONORING THE CITY OF GREGORY

● Mr. JOHNSON. Mr. President, today I honor and acknowledge the town of Gregory, SD, which is celebrating its 100th anniversary this year.

Gregory was founded on August 8, 1904, and a year later had grown to over 500 residents, supported by banks, a meat market, lumber companies, hotels, and blacksmiths. The town was named for John Shaw Gregory, a councilman and representative in the Dakota Territory Legislature from 1862 until 1868. Gregory also served in the United States Navy for 12 years and was appointed ''Special Agent to the Poncas'' in 1859 and worked on the Ponca Indian Reservation.

Soon after the town's founding in 1908, the North Western Line Railroad brought 15 trains daily to Gregory. Today Gregory boasts more than 50 businesses and over 1,200 residents. The annual pheasant season in October attracts sportsmen from across the Nation.

To celebrate its 100th anniversary, the residents of Gregory will hold the Oscar Micheaux Film Festival, a celebration featuring the Lewis and Clark Journey and Discovery, and a Crazy Day Fire Department Film Festival and Appreciation Day. Celebrations have already begun and will continue throughout the year. It is with great honor that I advise my colleagues of the achievements made by this great community.●

HONORING THE CITY OF WATERTOWN

● Mr. JOHNSON. Mr. President, today I honor and publicly recognize the 125th anniversary of the founding of the town of Watertown, SD. The town of Watertown has a proud past and a promising future. In 1878, the Winona and St. Peter Railroad settled the area that became known as Watertown.

Previously, in 1873, the railroad company had established a settlement called Kampeska. Eventually, due to a lack of railroad construction beyond Kampeska, many of the town's residents moved to Watertown. By the end of 1878, Watertown had become the county seat of Codington County. In that same year, the town's first railroad station and post office were built. By February, the population of the town was 509.

In 1880, the U.S. Land Office opened in Watertown and subsequently opened ''surplus'' land on the Sisseton-Wahpeton Reservation to settlement. In that same year, the town's first bank opened.

From 1898 to 1915, Watertown grew rapidly and became the wholesale and retail trade center for much of Northeast South Dakota. By the end of World War I, four major railroad companies operated eight routes into and out of town, making the town a transportation center and facilitating its growth.

Watertown and Codington County veterans have served in all major wars and conflicts of the 20th century, with 18 dying in WWI, 57 in World War II, 2 in Korea, and 11 in Vietnam. A World War II U.S. Navy destroyer-escort was named USS *Gustafson* in honor of a young naval officer, Lt. Arthur Gustafson, a resident of Watertown who was killed when the Japanese attacked his ship in early 1942.

The loss of a large meatpacking plant and other agricultural-related concerns by the 1960s and 1970s alerted city and county officials to the necessity of diversifying the local economy. Watertown embarked on a program of industrial and economic diversification. What is today Lake Area Technical Institute began in the 1960s and has provided technical education to thousands of students since that time. Watertown became a regional medical center with the consolidation of hospital facilities into the Prairie Lakes Healthcare System in the 1980s.

In the 1990s, nationally and internationally known artist Terry Redlin, a Watertown native, came back to his home town to establish the Redlin Art Center, a gallery of more than 140 of his original oil paintings. The Center opened in 1997 and, by 2004, over 1.5 million visitors had been through its doors. A tremendous asset for Watertown, it has attracted visitors from all 50 States and over 30 foreign countries.

To celebrate the town's anniversary, Watertown hosted a Mayor's Breakfast, including recognition of the town's 125th anniversary in the 4th of July parade and hosted a ''crazy days'' celebration. Celebrations will continue throughout the year and include a dinner and dance on New Year's Eve. It is with great honor that I advise my colleagues of the achievements made by this great community.●

LEGISLATION AND SUPPORTING DOCUMENTS TO IMPLEMENT THE UNITED STATES-MOROCCO FREE TRADE AGREEMENT (FTA)—PM 91

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Finance:

To the Congress of the United States:

I am pleased to transmit legislation and supporting documents prepared by my Administration to implement the United States-Morocco Free Trade Agreement (the ''Agreement'' or the ''FTA''). This Agreement enhances our bilateral relationship with a longstanding partner in the North Africa and Middle East region. The Agreement will benefit the people of the United States and Morocco, illustrating to other developing countries the advantages of open markets.

This Agreement is a strong demonstration of my Administration's commitment to opening markets, leveling the playing field, and expanding opportunities for American workers, manufacturers, businesses, farmers, and consumers. In negotiating this Agreement, my Administration was guided by the negotiating objectives set out in the Trade Act of 2002. The Agreement will expand Morocco's market for U.S. manufactured goods, agricultural products, services, and investment. As soon as this Agreement enters into force, tariffs will be eliminated on virtually all manufactured goods traded between our countries.

The Agreement provides U.S. producers of beef, poultry, wheat, corn, soybeans, and other agriculture products with increased access to Morocco's market, while complementing Morocco's agriculture reform program. In addition, the Agreement provides the opportunity for U.S. producers to adjust to increased imports from Morocco, if necessary.

New opportunities for U.S. services firms will be opened, U.S. investment will be protected, and U.S. companies will be able to participate in government procurement opportunities on the same basis as Moroccan firms. This Agreement has some of the strongest intellectual property protections ever contained in a U.S. trade agreement with a developing country.

The United States and Morocco have agreed to cooperate on environment and labor issues and to establish mechanisms supporting those efforts. Negotiation of this Agreement has promoted adoption of a new labor law in Morocco. This Agreement has also helped lead to improved domestic environmental laws in Morocco, and a number of additional cooperative projects have been identified for future work.

The approval of this Agreement will be another important step in implementing our plan for a broader Middle East Free Trade Area. Indeed, this Agreement offers the United States an opportunity to encourage economic reform in a moderate Muslim nation, as we have done with the Jordan FTA and the recently concluded Bahrain FTA. Leaders in Morocco support a reformist and tolerant vision that includes free parliamentary elections, the sale of state-owned businesses, the encouragement of foreign investment that can be connected to broad-based development, and better protection of the rights of women and workers. It is strongly in the interests of the United States to embrace these reforms and do what we can to encourage them. Passing this Agreement is a critical step in that direction.

GEORGE W. BUSH.
THE WHITE HOUSE, *July 15, 2004*.

MESSAGES FROM THE HOUSE

At 1:15 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bill, without amendment:

S. 15. An act to amend the Public Health Service Act to provide protections and countermeasures against chemical, radiological, or nuclear agents that may be used in a terrorist attack against the United States by giving the National Institutes of Health contracting flexibility, infrastructure improvements, and expediting the scientific peer review process, and streamlining the Food and Drug Administration approval process of countermeasures.

The message also announced that the House passed the following bills in which it requests the concurrence of the Senate:

H.R. 3463. An act to amend titles III and IV of the Social Security Act to improve the administration of unemployment taxes and benefits.

H.R. 4418. An act to authorize appropriations for fiscal years 2005 and 2006 for the Bureau of Customs and Border Protection and the Bureau of Immigration and Customs Enforcement of the Department of Homeland Security, for the Office of the United States Trade Representative, for the United States International Trade Commission, and for other purposes.

The message further announced that the Speaker of the House of Representatives has signed the following enrolled bill:

S. 1167. An act to resolve the boundary conflicts in Barry and Stone Counties in the State of Missouri.

ENROLLED BILL SIGNED

At 2:50 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

S. 15. An act to amend the Public Health Service Act to provide protections and countermeasures against chemical, radiological, or nuclear agents that may be used in a terrorist attack against the United States by giving the National Institutes of Health contracting flexibility, infrastructure improvements, and expediting the scientific peer review process, and streamlining the Food and Drug Administration approval process of countermeasures.

The enrolled bill was signed subsequently by the Vice President.

MEASURES REFERRED

The following bill was read the first and the second times by unanimous consent, and referred as indicated:

H.R. 4418. An act to authorize appropriations for fiscal years 2005 and 2006 for the Bureau of Customs and Border Protection and the Bureau of Immigration and Customs Enforcement of the Department of Homeland Security, for the Office of the United States Trade Representative, for the United States International Trade Commission, and for other purposes; to the Committee on Finance.

MEASURES PLACED ON THE CALENDAR

The following bill was read the second time, and placed on the calendar:

S. 2652. A bill to amend title XVIII of the Social Security Act to deliver a meaningful benefit and lower prescription drug prices under the medicare program.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–8530. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Pesticide Environmental Stewardship Program (PESP) Regional Grants; Notice of Funds Availability'' (FRL#7361–8) received on July 15, 2004; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8531. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Siroxamine; Pesticide Tolerance'' (FRL#7367–1) received on July 15, 2004; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8532. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Acequinocyl; Pesticide Tolerance'' (FRL#7364–1) received on July 15, 2004; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8533. A communication from the Deputy Secretary of Defense, Department of Defense, transmitting, pursuant to law, a report relative to chemical agent destruction operations at the Umatilla Chemical Agent Disposal Facility (MCCDF) in Hermiston, Oregon; to the Committee on Armed Services.

EC–8534. A communication from the Under Secretary of Defense for Personnel and Readiness, Department of Defense, transmitting, the report of a retirement; to the Committee on Armed Services.

EC–8535. A communication from the Chairman and President, Export-Import Bank of the United States, transmitting, pursuant to law, the report of a transaction involving U.S. exports to Taiwan; to the Committee on Banking, Housing, and Urban Affairs.

EC–8536. A communication from the Chairman and President, Export-Import Bank of the United States, transmitting, pursuant to law, the report of a transaction involving U.S. exports to Hungary, The Netherlands, Mexico, China, The United Arab Emirates and various other countries; to the Committee on Banking, Housing, and Urban Affairs.

EC–8537. A communication from the Deputy Secretary, Division of Market Regulation, Securities and Exchange Commission, transmitting, pursuant to law, the report of a rule entitled ''Covered Securities Pursuant to Section 18 of the Securities Act of 1933'' (RIN3235–AJ03) received on July 15, 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC–8538. A communication from the Legal Counsel, Community Development Financial Institutions Fund, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Revised Interim Rule, Community Development Financial Institutions Program'' (RIN1505–AA92) received on July 15, 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC–8539. A communication from the Attorney, Office of Aviation Enforcement and Proceedings, Office of the Secretary of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Civil Penalties'' (RIN2105–AD40) received on July 15, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8540. A communication from the Attorney, National Highway Traffic Safety Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Dealer Notification of Defect or Noncompliance Determination'' (RIN2127–AG27) received on July 15, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8541. A communication from the Secretary of Transportation, transmitting, pursuant to law, a report relative to asphalts; to the Committee on Commerce, Science, and Transportation.

EC–8542. A communication from the Assistant Secretary for Fish, Wildlife, and Parks, Office of the Secretary of the Interior, transmitting, a draft of proposed legislation entitled the ''George Washington Memorial Parkway Boundary Revision Act''; to the Committee on Energy and Natural Resources.

EC–8543. A communication from the Assistant Secretary for Fish, Wildlife, and Parks, Office of the Secretary of the Interior, transmitting, a draft of proposed legislation entitled the ''Jean Lafitte National Historical Park and Preserve Boundary''; to the Committee on Energy and Natural Resources.

EC–8544. A communication from the Director, Office of Surface Mining, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Illinois Regulatory Program'' (IL–102–FOR) received on July 15, 2004; to the Committee on Energy and Natural Resources.

EC–8545. A communication from the Chairman, Nuclear Regulatory Commission, transmitting, pursuant to law, a report relative to the Commission's licensing and regulatory duties; to the Committee on Environment and Public Works.

EC–8546. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Adequacy of Indiana Solid Waste Landfill Permit Programs Under RCRA Subtitle D'' (FRL#7787–3) received on July 15, 2004; to the Committee on Environment and Public Works.

EC–8547. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans Georgia: Approval of Revisions to the State Implementation Plan'' (FRL#7788–3) received on July 15, 2004; to the Committee on Environment and Public Works.

EC–8548. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; Texas; Revisions to Regulations for Control of Air Pollution by Permits for New Sources and Modifications Including Incorporation of Marine Vessel Emissions in Applicability Determinations'' (FRL#7788–2) received on July 15, 2004; to the Committee on Environment and Public Works.

EC–8549. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Criteria for the Certification and Recertification of the Waste Isolation Pilot Plant's Compliance with the Disposal Regulations; Alternative Provisions'' (FRL#7787–6) received on July 15, 2004; to the Committee on Environment and Public Works.

EC–8550. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Emission Guidelines and Compliance Times for Large Municipal Waste Combustors That Are Constructed on or Before September 20, 1994 and Federal Plan Requirements for Large Municipal Waste Combustors Constructed on or Before September 19, 1994'' (FRL#7786–8) received on July 15, 2004; to the Committee on Environment and Public Works.

EC–8551. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks'' (FRL#7786–9) received on July 15, 2004; to the Committee on Environment and Public Works.

EC–8552. A communication from the United States Trade Representative, Executive Office of the President, transmitting, pursuant to law, a report relative to the United States-Morocco Free Trade Agreement; to the Committee on Finance.

EC–8553. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''Corporate Distributions of Property'' (Rev. Rul. 2004–79) received on July 15, 2004; to the Committee on Finance.

EC–8554. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''Exchange of a Debt Security for a Debt Instrument in a Reorganization'' (Rev. Rul. 2004–78) received on July 15, 2004; to the Committee on Finance.

EC–8555. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''Revocation of Revenue Ruling 73–354'' (Rev. Rul. 2004–76) received on July 15, 2004; to the Committee on Finance.

EC–8556. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''Offsets Under 6402 and the Community Property Laws of Arizona and Wisconsin'' (Rev. Rul. 2004–71) received on July 15, 2004; to the Committee on Finance.

EC–8557. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''Offsets Under 6402 and the Community Property Laws of California, Idaho, and Louisiana'' (Rev. Rul. 2004–72) received on July 15, 2004; to the Committee on Finance.

EC–8558. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''United States v. Roland Harry Macher (In re Macher), 91 AFTR2d 2003–2654, 2003–2 USTC 50,537'' (AOD 2004–32) received on July 15, 2004; to the Committee on Finance.

EC–8559. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''Offsets Under 6402 and the Community Property Laws of Nevada, New Mexico, and Washington'' (Rev. Rul. 2004–73) received on July 15, 2004; to the Committee on Finance.

EC–8560. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''Qualified Payment Card Agent Determination'' (Rev. Proc. 2004–42) received on July 15, 2004; to the Committee on Finance.

EC–8561. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''Use of Merchant Category Codes to Determine Reportable Payment for Payment Card Transactions'' (Rev. Proc. 2004–43) received on July 15, 2004; to the Committee on Finance.

EC–8562. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''Annual Report Concerning the Pre-Filing Agreement Program of the Large and Mid-Size Business Division for Calendar Year 2003'' (Ann. 2004–59) received on July 15, 2004; to the Committee on Finance.

EC–8563. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''Revenue Ruling: Income from Sources Within the United States'' (Rev. Rul. 109393–03) received on July 15, 2004; to the Committee on Finance.

EC–8564. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''Information Reporting and Backup Withholding for Payment Card Transactions'' (RIN1545–BA17) received on July 15, 2004; to the Committee on Finance.

EC–8565. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of a proposed manufacturing license agreement for the manufacture of significant military equipment in France, Belgium, Germany, and the United Kingdom; to the Committee on Foreign Relations.

EC–8566. A communication from the Administrator, General Services Administration, transmitting, pursuant to law, a report relative to D.C. Act 14–106, ''Closing of Portions of 2nd and N Streets, NE., and Alley System in Square 710, S.O. 00–97, Act of 2001''; to the Committee on Governmental Affairs.

EC–8567. A communication from the Assistant General Counsel for Regulatory Services, Offices of the Chief Financial Officer, Department of Education, transmitting, pursuant to law, the report of a rule entitled ''Direct Grant Programs'' (RIN1890–AA09) received on July 15, 2004; to the Committee on Health, Education, Labor, and Pensions.

EC–8568. A communication from the Staff Director, United States Sentencing Commission, transmitting, pursuant to law, the Annual Report and Sourcebook of Federal Sentencing Statistics of the Commission; to the Committee on the Judiciary.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. CAMPBELL, from the Committee on Indian Affairs, with amendments:

S. 2436. A bill to reauthorize the Native American Programs Act of 1974 (Rept. No. 108–306).

By Mr. CAMPBELL, from the Committee on Appropriations, without amendment:

S. 2666. An original bill making appropriations for the Legislative Branch for the fiscal year ending September 30, 2005, and for other purposes (Rept. No. 108–307).

By Ms. COLLINS, from the Committee on Governmental Affairs, without amendment:

S. 2249. A bill to amend the Stewart. B. McKinney Homeless Assistance Act to provide for emergency food and shelter (Rept. No. 108–308).

By Mrs. HUTCHISON, from the Committee on Appropriations, without amendment:

S. 2674. An original bill making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 2005, and for other purposes (Rept. No. 108–309).

By Mr. CAMPBELL, from the Committee on Indian Affairs, with an amendment in the nature of a substitute and with an amended preamble:

S.J. Res. 37. A bill to acknowledge a long history of official depredations and ill-conceived policies by the United States Government regarding Indian Tribes and offer an apology to all Native Peoples on behalf of the United States (Rept. No. 108–310).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Ms. COLLINS (for herself, Mrs. LINCOLN, Mr. BOND, Mr. FEINGOLD, Mr. THOMAS, Mr. CONRAD, and Mr. BURNS):

S. 2659. A bill to extend the temporary increase in payments under the medicare program for home health services furnished in a rural area; to the Committee on Finance.

By Mrs. BOXER:

S. 2660. A bill to provide for the monitoring of the long-term medical health of firefighters who responded to emergencies in certain disaster areas; to the Committee on Commerce, Science, and Transportation.

By Mr. GRASSLEY (for himself and Mr. CHAMBLISS):

S. 2661. A bill to clarify the effects of revocation of a visa, and for other purposes; to the Committee on the Judiciary.

By Mr. NICKLES (for himself, Mr. KENNEDY, Mr. GRASSLEY, Mr. BAUCUS, Mr. ENSIGN, Mr. LEVIN, Mrs. MURRAY, and Mr. GREGG):

S. 2662. A bill to amend titles III and IV of the Social Security Act to improve the administration of unemployment taxes and benefits; to the Committee on Finance.

By Mr. DODD (for himself and Mr. LIEBERMAN):

S. 2663. A bill to amend the Wild and Scenic Rivers Act to designate a segment to the Farmington River and Salmon Brook in the State of Connecticut for study for potential addition to the National Wild and Scenic Rivers System, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. CORNYN:

S. 2664. A bill to combat terrorism, and for other purposes; to the Committee on the Judiciary.

By Mr. CORNYN:

S. 2665. A bill to strengthen and enhance the prevention and prosecution of crimes using weapons of mass destruction, and for other purposes; to the Committee on the Judiciary.

By Mr. CAMPBELL:

S. 2666. An original bill making appropriations for the Legislative Branch for the fiscal year ending September 30, 2005, and for other purposes; from the Committee on Appropriations; placed on the calendar.

By Mr. DAYTON:

S. 2667. A bill to amend section 641 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 to improve the coverage of certain prescription drugs and biologicals under the medicare replacement drug demonstration project; to the Committee on Finance.

By Mr. GRAHAM of South Carolina:

S. 2668. A bill for the relief of Griselda Lopez Negrete; to the Committee on the Judiciary.

By Mr. SUNUNU (for himself, Mr. GREGG, Mr. JEFFORDS, and Mr. LEAHY):

S. 2669. A bill to amend the Communications Act of 1934 to enhance the ability of direct broadcast satellite providers to offer additional local broadcast services to consumers under limited circumstances, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. BAUCUS:

S. 2670. A bill to provide for the continued operation of the Yacht Basin Marina, Montana, to allocate recreation fees collected at the Canyon Ferry Unit of the Pick-Sloan Missouri River Basin Program, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. ROCKEFELLER (for himself and Mr. SMITH):

S. 2671. A bill to extend temporary State fiscal relief, and for other purposes; to the Committee on Finance.

By Mr. WYDEN (for himself, Mr. LOTT, Mr. GRAHAM of Florida, and Ms. SNOWE):

S. 2672. A bill to establish an Independent National Security Classification Board in the executive branch, and for other purposes; to the Select Committee on Intelligence.

By Mr. CAMPBELL:

S. 2673. A bill to designate the facility of the United States Postal Service located at 1001 Williams Street, Ignacio, Colorado, as the ''Leonard C. Burch Post Office Building''; to the Committee on Governmental Affairs.

By Mrs. HUTCHISON:

S. 2674. An original bill making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 2005, and for other purposes; from the Committee on Appropriations; placed on the calendar.

By Ms. SNOWE:

S. 2675. A bill to amend the Internal Revenue Code of 1986 to expand the availability of the cash method of accounting for small business, and for other purposes; to the Committee on Finance.

By Mrs. HUTCHISON (for herself and Ms. MIKULSKI):

S. 2676. A bill to amend chapter 4 of title 39, United States Code, to provide for the issuance of a semipostal stamp in order to provide funding for childhood drinking prevention and education, and for other purposes; to the Committee on Governmental Affairs.

By Mr. GRASSLEY (for himself, Mr. BAUCUS, and Mr. FRIST) (by request):

S. 2677. A bill to implement the United States-Morocco Free Trade Agreement; to the Committee on Finance pursuant to section 2103(b)(3) of Public Law 107–210.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mrs. MURRAY:

S. Res. 406. A resolution establishing a Select Committee on Aerospace in the United States; to the Committee on Rules and Administration.

By Mr. BIDEN (for himself, Mr. AKAKA, Mr. ALLEN, Mrs. BOXER, Mr. BREAUX, Mr. BUNNING, Mr. CAMPBELL, Ms. CANTWELL, Mr. CARPER, Mrs. CLINTON, Mr. COCHRAN, Ms. COLLINS, Mr. CRAIG, Mr. DEWINE, Mr. DOMENICI, Mr. DORGAN, Mr. DURBIN, Mr. EDWARDS, Mrs. FEINSTEIN, Mr. FITZGERALD, Mr. GRAHAM of Florida, Mr. GRAHAM of South Carolina, Mr. GRASSLEY, Mr. HATCH, Mr. HOLLINGS, Mrs. HUTCHISON, Mr. INHOFE, Mr. INOUYE, Mr. JOHNSON, Mr. KENNEDY, Mr. KERRY, Mr. KOHL, Ms. LANDRIEU, Mr. LAUTENBERG, Mr. LIEBERMAN, Mrs. LINCOLN, Mr. LUGAR, Ms. MIKULSKI, Mr. MILLER, Ms. MURKOWSKI, Mrs. MURRAY, Mr. NELSON of Nebraska, Mr. REID, Mr. SARBANES, Mr. SCHUMER, Mr. SMITH, Ms. SNOWE, Mr. SPECTER, Ms. STABENOW, Mr. TALENT, Mr. VOINOVICH, and Mr. WYDEN):

S. Res. 407. A resolution designating October 15, 2004, as ''National Mammography Day''; to the Committee on the Judiciary.

By Mr. SMITH (for himself and Ms. MIKULSKI):

S. Con. Res. 125. A concurrent resolution recognizing the 60th anniversary of the Warsaw Uprising during World War II; to the Committee on the Judiciary.

By Mr. COLEMAN (for himself, Mr. LEVIN, and Mr. DODD):

S. Con. Res. 126. A concurrent resolution condemning the attack on the AMIA Jewish Community Center in Buenos Aires, Argentina, in July 1994, and expressing the concern of the United States regarding the continuing, decade-long delay in the resolution of this case; to the Committee on Commerce, Science, and Transportation.

ADDITIONAL COSPONSORS

S. 1068

At the request of Mr. DODD, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 1068, a bill to amend the Public Health Service Act to establish grant programs to provide for education and outreach on newborn screening and coordinated followup care once newborn screening has been conducted, and for other purposes.

S. 1197

At the request of Mr. ENZI, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 1197, a bill to amend the Public Health Service Act to ensure the safety and accuracy of medical imaging examinations and radiation therapy treatments.

S. 1380

At the request of Mr. SMITH, the name of the Senator from Texas (Mrs. HUTCHISON) was added as a cosponsor of S. 1380, a bill to distribute universal service support equitably throughout rural America, and for other purposes.

S. 1414

At the request of Mr. HATCH, the name of the Senator from Montana (Mr. BAUCUS) was added as a cosponsor of S. 1414, a bill to restore second amendment rights in the District of Columbia.

S. 1925

At the request of Mr. KENNEDY, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 1925, a bill to amend the National Labor Relations Act to establish an efficient system to enable employees to form, join, or assist labor organizations, to provide for mandatory injunctions for unfair labor practices during organizing efforts, and for other purposes.

S. 2253

At the request of Mrs. FEINSTEIN, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 2253, a bill to permit young adults to perform projects to prevent fire and suppress fires, and provide disaster relief, on public land through a Healthy Forest Youth Conservation Corps.

S. 2352

At the request of Mr. ENSIGN, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 2352, a bill to prevent the slaughter of horses in and from the United States for human consumption by prohibiting the slaughter of horses for human consumption and by prohibiting the trade and transport of horseflesh and live horses intended for human consumption, and for other purposes.

S. 2461

At the request of Mr. DEWINE, the names of the Senator from Maine (Ms. SNOWE) and the Senator from Washington (Mrs. MURRAY) were added as cosponsors of S. 2461, a bill to protect the public health by providing the

Food and Drug Administration with certain authority to regulate tobacco products .

S. 2519

At the request of Ms. MIKULSKI, the names of the Senator from New Mexico (Mr. BINGAMAN) and the Senator from Georgia (Mr. CHAMBLISS) were added as cosponsors of S. 2519, a bill to authorize assistance for education and health care for women and children in Iraq during the reconstruction of Iraq and thereafter, to authorize assistance for the enhancement of political participation, economic empowerment, civil society, and personal security for women in Iraq, to state the sense of Congress on the preservation and protection of the human rights of women and children in Iraq, and for other purposes.

S. 2560

At the request of Mr. HATCH, the names of the Senator from Tennessee (Mr. ALEXANDER) and the Senator from Michigan (Ms. STABENOW) were added as cosponsors of S. 2560, a bill to amend chapter 5 of title 17, United States Code, relating to inducement of copyright infringement, and for other purposes.

S. 2595

At the request of Mr. GREGG, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. 2595, a bill to establish State grant programs related to assistive technology and protection and advocacy services, and for other purposes.

S. 2602

At the request of Mr. DODD, the name of the Senator from Kansas (Mr. BROWNBACK) was added as a cosponsor of S. 2602, a bill to provide for a circulating quarter dollar coin program to honor the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands, and for other purposes.

S. 2639

At the request of Mr. LIEBERMAN, the names of the Senator from Idaho (Mr. CRAIG) and the Senator from Montana (Mr. BAUCUS) were added as cosponsors of S. 2639, a bill to reauthorize the Congressional Award Act.

S. CON. RES. 119

At the request of Mr. CAMPBELL, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S . Con. Res. 119, a concurrent resolution recognizing that prevention of suicide is a compelling national priority.

S. CON. RES. 124

At the request of Mr. CORZINE, the names of the Senator from Massachusetts (Mr. KERRY), the Senator from Wisconsin (Mr. FEINGOLD), the Senator from New Mexico (Mr. BINGAMAN), the Senator from Connecticut (Mr. DODD) and the Senator from Wisconsin (Mr. KOHL) were added as cosponsors of S. Con. Res. 124, a concurrent resolution declaring genocide in Darfur, Sudan.

At the request of Mr. EDWARDS, his name was added as a cosponsor of S. Con. Res. 124, supra.

S. RES. 162

At the request of Mrs. CLINTON, the name of the Senator from Rhode Island (Mr. CHAFEE) was added as a cosponsor of S . Res. 162, a resolution honoring tradeswomen.

S. RES. 271

At the request of Mr. CORZINE, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. Res. 271, a resolution urging the President of the United States diplomatic corps to dissuade member states of the United Nations from supporting resolutions that unfairly castigate Israel and to promote within the United Nations General Assembly more balanced and constructive approaches to resolving conflict in the Middle East.

S. RES. 389

At the request of Mr. CAMPBELL, the name of the Senator from Iowa (Mr. GRASSLEY) was added as a cosponsor of S. Res. 389, a resolution expressing the sense of the Senate with respect to prostate cancer information.

S. RES. 401

At the request of Mr. BIDEN, the name of the Senator from Mississippi (Mr. LOTT) was added as a cosponsor of S. Res. 401, a resolution designating the week of November 7 through November 13, 2004, as ''National Veterans Awareness Week'' to emphasize the need to develop educational programs regarding the contributions of veterans to the country.

S. RES. 404

At the request of Mr. SMITH, the names of the Senator from New Mexico (Mr. BINGAMAN) and the Senator from Montana (Mr. BURNS) were added as cosponsors of S. Res. 404, a resolution designating August 9, 2004, as ''Smokey Bear's 60th Anniversary''.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Ms. COLLINS (for herself, Mrs. LINCOLN, Mr. BOND, Mr. FEINGOLD, Mr. THOMAS, Mr. CONRAD, and Mr. BURNS):

S. 2659. A bill to extend the temporary increase in payments under the medicare program for home health services furnished in a rural area; to the Committee on Finance.

Ms. COLLINS. Madam President, I rise today to introduce the Medicare Rural Home Health Payment Fairness Act. This legislation would extend the additional payment for home health services delivered in rural areas. This additional 5 percent reimbursement is currently scheduled to sunset on April 1, 2005. This legislation would make the additional reimbursement permanent.

I note the presence of one of the strongest advocates of home health care, and that is my colleague from Missouri, Senator BOND. He has worked tirelessly to make certain that our seniors and disabled citizens are able to receive the home health care they need. I am very pleased to have him as one of the key supporters of this legislation.

Home health care has become an increasingly important part of our health care system. The kinds of highly skilled and often technically complex services that our home health caregivers provide have enabled millions of our most frail and vulnerable older and disabled citizens to avoid hospitals and nursing homes and to receive health care just where they want to be—in the comfort, privacy, and security of their own homes.

I have had the great honor of accompanying several of Maine's caring home health nurses on their visits to serve their patients. I have seen firsthand the difference that they are making for Maine's elderly. I remember visiting one elderly couple who told me that it was home health care that allowed them to stay together in their very own home, rather than being separated with one of them being forced to go into a nursing home in the remaining years of their life. Another woman told me that her late husband received home health care in the months leading up to his death. That had allowed him to be treated at home and to be with his family, which is where he very much wanted to be.

Nevertheless, surveys have shown that the delivery of home health services in rural areas can be as much as 12 to 15 percent more costly because of the extra travel time required to cover long distances between patients, the higher transportation expenses, and other factors. Because of the longer travel times, rural caregivers are unable to make as many visits in a day as their urban counterparts. The executive director of Visiting Nurses of Aroostook in northern Maine where I am from tells me that her agency covers 6,600 square miles with a population of only 73,000 people. Her costs are understandably much higher than other agencies due to the long distances her staff must drive to see their clients. Moreover, her staff is obviously not able to see as many patients in a day.

Agencies in rural areas are also frequently smaller than their urban counterparts, which means that their relative costs are higher. Smaller agencies with fewer patients and fewer visits mean that fixed costs, particularly those associated with meeting regulatory requirements, are spread over a much smaller number of patients and visits, thus increasing overall the per-patient and per-visit costs. Moreover, in many rural areas, home health agencies are the primary caregivers for homebound beneficiaries with limited access to transportation. These rural patients often require more time and care than urban patients and are understandably more expensive for home health agencies to serve. If the rural extra payment is not extended, agencies may be forced to make decisions

not to accept patients living in remote areas who have greater care needs. That would translate into less access to health care for ill homebound seniors.

Failure to extend the rural add-on payment will only put more pressure on rural home health agencies that are already operating on very narrow margins. It could force some of these agencies to close their doors altogether. Many home health agencies operating in rural areas are the only home health providers in large geographic areas. If any of these agencies is forced to close, the Medicare patients in that region could lose all their access to home health care.

The bipartisan legislation I am introducing today, with Senators LINCOLN, BOND, FEINGOLD, THOMAS, CONRAD, and BURNS, will help to ensure that Medicare patients in rural areas continue to have access to the home health services they very much need. I urge all of our colleagues to join us as cosponsors. We must act to ensure that this extra payment does not expire next April 1.

I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Madam President, I compliment my colleague from Maine for being a true champion and leader for assuring good home health care access to our seniors, disabled, and others who need specialized care. As she has done in Maine, I have done in Missouri and found that access to home health care is critically important. It is, No. 1, convenient, easier, more friendly, and more compassionate for the patients. No. 2, all of the statistics we have seen show home health care is more effective to treat people. They get well better.

Finally, it makes sense economically. When cuts in Medicare shut down a home health care agency in one rural county in northwest Missouri, 40 patients who had been treated for an average of $400,000 a year were forced to go to institutionalized care. Only 30 of them showed up. I hate to guess what happened to the other 10. Their cost for 1 year—it was $400,000—became $1.4 million. It was a terrible tragedy in human. terms, in health terms, and in economic terms.

I am proud to join my colleague from Maine.

By Mrs. BOXER:

S. 2660. A bill to provide for the monitoring of the long-term medical health of firefighters who responded to emergencies in certain disaster areas; to the Committee on Commerce, Science, and Transportation.

Mrs. BOXER. Mr. President, as we are entering the fire season in California, I am today introducing the Healthy Firefighters Act.

Last year, I offered this bill as an amendment to the Healthy Forests Restoration Act, and it passed the Senate by a vote of 94–3. Unfortunately, House Republicans insisted on dropping this important proposal in conference.

Last year my State experienced devastating wildfires. Those fires killed 24 people, including one firefighter. Over 750,000 acres burned. More than 3,700 homes were destroyed in five Southern California counties. Thousands of firefighters from local, State and Federal agencies responded to these fires.

Those firefighters—and in fact most firefighters who respond to Federal disasters—are at higher risk of long-term health problems because of exposure to several toxins, including fine particulates, carbon monoxide, sulfur, formaldehyde, mercury, heavy metals, and benzene. As a result, their long-term health should be monitored so that any consequences can be identified, leading to early detection and better treatment.

The Healthy Firefighters Act does just that. It requires long-term health monitoring of firefighters who respond to a crisis in any federally-declared disaster area. This long-term monitoring will be carried out by the U.S. Fire Administration (USFA) in consultation with the National Institute for Occupational Safety and Health (NIOSH). The USFA will work with a locally based medical research university so that local experts are involved in this important effort.

This legislation is supported by the International Association of Firefighters, the National Volunteer Fire Council, and the California State Firefighters' Association. I ask unanimous consent that support letters from these organizations be placed in the RECORD.

We owe it to our Nation's firefighters. Our Nation's firefighters put their lives on the line to protect us. The least we can do is to help them remain healthy by providing long-term health monitoring. I urge my colleagues to join me in this effort.

I ask unanimous consent that several letters of support be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS,
Washington, DC, February 2, 2004.

Hon. BARBARA BOXER,
U.S. Senate,
Washington, DC.

DEAR SENATOR BOXER: On behalf of the Nation's more than 260,000 professional fire fighters and emergency medical personnel, I wish to express our enthusiastic support for your proposal to provide medical monitoring for fire fighters who respond to nationally declared disasters.

In recent years, we have become increasingly aware that the greatest dangers fire fighters face are often not the ones that take lives on the fireground, but those that kill and disable years later. Fire fighters who respond to disasters often face prolonged exposure to unknown toxins. Medical monitoring of these fire fighters will enable early detection and treatment for the job-related illnesses that result.

Equally important, the information, gleaned from this project will enable us to develop better protective clothing and equipment in the future. Thus, this program has the potential to both save the lives of fire fighters who have been exposed to dangerous substances and prevent harmful exposures in the future.

The Nation's fire fighters thank you for your extraordinary efforts championing this legislation, and we stand ready to assist you in moving this important initiative forward

Sincerely,

HAROLD A. SCHAITBERGER,
General President.

NATIONAL VOLUNTEER FIRE COUNCIL,
Washington, DC, January 30, 2004.

Hon. BARBARA BOXER,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR BOXER: The National Volunteer Fire Council (NVFC) is a nonprofit membership association representing the more than 800,000 members of America's volunteer fire, EMS, and rescue services. Organized in 1976, the NVFC serves as the voice of America's volunteer fire personnel in over 28,000 departments across the country. On behalf of our membership, I would like to express our support for your proposed legislation, the Healthy Firefighters Act, which would provide for the monitoring of the long-term medical health of firefighters who respond to emergencies in any area which is declared a disaster area by the Federal Government.

As you know, firefighters, 75 percent of which are volunteers, respond to a wide array of emergencies—including structure and wildland fires, medical calls, motor vehicle accidents, natural disasters and acts of terrorism. Very often, the severe toll that is taken on their health is traceable to these events; though not always quickly recognizable.

More specifically, your legislation would direct the U.S. Fire Administration, in conjunction with the National Institute for Occupational Safety and Health, to contract with appropriate medical research universities to conduct long-term medical health monitoring of those firefighters who responded to Federally-declared emergencies. This monitoring includes pulmonary illness, neurological damage, and cardiovascular damage.

Once again, the NVFC commends your efforts to ensure that firefighters are properly monitored to guarantee that they don't encounter long-term health problems due to responding to national emergencies. If you or your staff have any questions or comments feel free to contact Craig Sharman, NVFC Director of Government Relations at (202) 887–5700 ext. 12.

Sincerely,

PHILIP C. STITTLEBURG
Chairman.

CALIFORNIA STATE FIREFIGHTERS' ASSOCIATION, INC.
Sacramento, CA, February 20, 2004.

Re Support Healthy Firefighters Act.

Senator BARBARA BOXER,
Hart Senate Office Building, Washington, DC.

DEAR SENATOR BOXER, the California State Firefighters' Association (CSFA), the oldest and largest firefighter association in the state of California, representing over 29,000 firefighters and EMS personnel strongly supports your legislation to provide for the monitoring of the long-term medical health of firefighters who responded to emergencies recently in certain disaster areas.

This important legislation will require that the United States Fire Administration, in conjunction with the National Institute for Occupational Safety and Health, shall contract with an appropriate, locally based medical research university to conduct long-term medical health monitoring of those

firefighters who responded to emergencies in any areas referred to in subsection (b).

(b) Affected Firefighters.—An area referred to in this subsection is any area which is declared a disaster area by the Federal Government.

(c) Health Monitoring.—The long-term health monitoring referred to in subsection (a) shall include pulmonary illness, neurological damage, and cardiovascular damage.

(d) Authorization of Appropriations.—There are authorized to be appropriated to carry out this section, an as-yet-to-be announced sum of money for each of fiscal years 2005 through 2009.

Thank you for authoring this important piece of legislation. Please feel free to forward and use our endorsement of your bill in any way. We look forward to working with you to ensure passage of this measure.

Respectfully,

AFRACK VARGAS,
Legislative Advocate.

By Mr. GRASSLEY (for himself and Mr. CHAMBLISS):

S. 2661. A bill to clarify the effects of revocation of a visa, and for other purposes; to the Committee on the Judiciary.

Mr. GRASSLEY. Mr. President, I rise today to introduce legislation to fix a loophole in our visa policies that has and could continue to have detrimental consequences on our national security. I have been pressing the Departments of State and Homeland Security for the last year to make changes to visa revocation certificates so that we can question, detain, or deport foreigners who were not supposed to be granted a visa. It was one year ago today that the Senate Judiciary Committee held a hearing on this problem.

For example, it is extremely difficult to detain and deport suspected terrorists whose visas have been revoked on terrorism grounds after those persons have set foot on U.S. soil. The difficulty stems from the wording on the revocation certificates, which are issued by the State Department. However, by law, the Department of Homeland Security has policy authority over visa issuance.

On June 17, 2003, a GAO report revealed that suspected terrorists can stay in the country after their visas have been revoked on terrorism grounds because of a legal loophole in the wording of revocation papers. This loophole came to light after the GAO found that more than 100 persons were granted visas that were later revoked because there was evidence the persons had terrorism links and associations. I wrote a letter to the Department of State on June 23, 2003, and both the House and Senate Judiciary Committees held hearings on the matter last year.

Some of us in Congress expected the government to fix this problem immediately, especially after GAO brought it to the attention of your department and other agencies. Perhaps this expectation was naive. More than a month after the GAO report and the hearings on the matter, I pressed the issue further with Under Secretary Hutchinson during a July 23, 2003 Senate Judiciary Committee hearing.

We all recognized that a simple administrative fix, such as re-writing the revocation certificate, would solve the problem. In fact, Assistant Secretary Hutchinson personally pledged to me in July of last year that the Department of Homeland Security would issue regulations to fix it as soon as the Memo of Understanding with the Department of State was finalized. The Memo was signed on September 29, 2003.

On May 20 of this year, a member of the Department of Homeland Security confirmed that a regulation was written and being circulated internally.

But, here we are—more than a year after the GAO first revealed the loophole—and it appears that the problem still has not been solved.

This week, the GAO issued a report that said ''additional actions are needed to eliminate weaknesses in the visa revocation process.'' The GAO recommends that the Secretaries of Homeland Security and State jointly develop a written governmentwide policy that clearly defines roles and responsibilities and sets performance standards for the agencies involved in the visa revocation process.

Frankly, I think these Departments have had enough time to consult with each other. Today, I offer a legislative fix.

It is amazing to me that such a simple and straightforward solution to such a dangerous and well-known problem continues to languish in the slow-moving bureaucracy. Promises were made, but the promises have not been kept. The visa revocation loophole needs to be fixed.

Mr. CHAMBLISS. Mr. President, I rise in support of legislation that Senator GRASSLEY and I are introducing that will finally close a loophole in our Nation's homeland security. Exactly one year ago today, I held a hearing in the Immigration and Border Security Subcommittee to question why visa revocation is not effective to remove a suspected terrorist from the United States. This issue was highlighted in a June 2003 General Accounting Office report titled, ''New Policies and Procedures Needed to Fill Gaps in the Visa Revocation Process.'' Subsequently, I held another hearing in the Subcommittee last fall in which the Departments of State and Homeland Security assured me and my colleagues that the problem would be sufficiently addressed through a cooperative agreement.

Now a year later, we still don't have this problem fully fixed, and earlier this month the GAO issued a second report titled, ''Additional Actions Needed to Eliminate Weaknesses in the Visa Revocation Process.'' The legislation we introduce today will make the needed, common sense change to empower the visa revocation process as an anti-terrorism tool.

One problem we have realized after September 11 was the lack of information sharing across Federal agencies. It is not just keeping bad guys out of the United States that is important, but if someone comes into this country who has a suspicious background, everyone needs to be on the same wavelength with respect to sharing of information on individuals in an effective manner. Information sharing and coordination between the State Department and the Department of Homeland Security is crucial today more than ever. We must continue to reshape the government culture, away from old bureaucratic habits, toward strong interagency cooperation in order to safeguard our Nation.

The GAO report exposes how suspected terrorists may remain at large even after their visas have been revoked. Last summer, the GAO found 30 persons whose visas were revoked on terrorism grounds; however, revocation gives no legal authority for law enforcement officials to remove them. In hearings before Congress, the State Department and Homeland Security Department maintained that they were implementing methods to resolve the problem by tracking visa revocations more precisely, sharing information more efficiently, and hopefully removing such suspected terrorists.

In a report released this month, the GAO found that, although the two Departments made some changes, the visa revocation process still lacks a timely transmission of information between agencies—not to mention the absence of legal authority to remove these suspected terrorists. After two GAO reports and two Senate hearings, the Departments still don't have their act together.

Our bill empowers visa revocation as an anti-terrorism tool. First, it makes revocation a ground of inadmissibility for a person's immigration status. This will give the Department of Homeland Security the authority to remove a suspected terrorist from the U.S. Second, the legislation forecloses the judicial review process on inadmissibility based on a revoked visa, which is consistent with how the U.S. handles other visa-related matters.

With visa revocation, it is difficult to understand why, after a year now, State Department action to nullify the visa of a suspected terrorist does not translate into the authority for the Homeland Security to remove that person. The point is that in a post- 9–11 world, visa issuance—and revocation—is a homeland security job and we must get it right. I encourage the Departments to move forward on this issue as we've addressed it in the bill we introduce today.

By Mr. DODD (for himself and Mr. LIEBERMAN):

S. 2663. A bill to amend the Wild and Scenic Rivers Act to designate a segment to the Farmington River and Salmon Brook in the State of Connecticut for study for potential addition to the National Wild and Scenic Rivers System, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. DODD. Mr. President, today I join with my colleague Senator LIEBERMAN in introducing the Lower Farmington River and Salmon Brook Wild and Scenic River Study Act of 2004. I am pleased that Representative JOHNSON of Connecticut introduced companion legislation in the House of Representatives.

The Lower Farmington River is a 40–mile stretch between the Collinsville Dam in Burlington and the Rainbow Dam in Windsor. The flood plains on either side of the river support large amphibian, bird, insect, and reptile populations, with many species that are on the State of Connecticut's list of endangered, threatened and special concern species. Biologists have stated that sections of this stretch of river have regionally and possibly globally significant plant communities, making the river one of the most thriving and diverse ecosystems in Connecticut.

The river is also significant for its cultural heritage. Numerous Tunxis and River Indian tribe archaeological sites are located throughout the flood plain. During the 18th and 19th centuries the river was used extensively as a conduit for commerce and many towns along the river flourished due to complex mill and canal systems associated with the river.

Besides environmental and historical benefits, the Lower Farmington River provides excellent opportunities for recreation including canoeing, kayaking, and rowing. The river also passes through the Tariffville Gorge, which is unique in Southern New England, in that it supports Class II–IV whitewater kayaking twelve months a year and has hosted the Olympic trials.

However, the Farmington River is beginning to show evidence of declining water quality. Designation as a Wild and Scenic River would ensure that the river and surrounding watershed are protected under a locally controlled river management plan, which works to preserve a river's natural and significant resources.

I am confident of the Lower Farmington River and Salmon Brook's significance and community support. The Connecticut towns of Farmington, Simsbury, Bloomfield, Burlington, Canton, Avon, East Granby, and Windsor have joined with the Farmington River Watershed Association in requesting designation as a Wild and Scenic River. Property owners along the river support designation in order to preserve this natural resource that flows by and near their property. Connecticut is a small state, at just over 5,500 square miles, and is densely populated. Our citizens are committed to balancing conservation and growth. That is why this designation is so important. While the state and local groups have done exceptional work so far, this designation would bring in Federal technical assistance and foster coordination among the many concerned groups.

In 1994, a 14-mile stretch of the Upper Farmington River was designated as a Wild and Scenic River and it has been a remarkable success story. Representatives of the five affected towns meet regularly with Federal, State and local organizations to implement a river management plan that all parties adopted. Our legislation proposes to study the feasibility of designating the lower section of the Farmington River and the Salmon Brook as part of the Act. The Wild and Scenic River Program has been a successful public and private partnership to preserve certain select rivers in a free flowing state and the Lower Farmington River and the Salmon Brook are significant natural resources.

I urge my colleagues to support this worthy legislation and I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2663

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Lower Farmington River and Salmon Brook Wild and Scenic River Study Act of 2004''.

SEC. 2. DESIGNATION OF ADDITIONAL SEGMENT OF FARMINGTON RIVER AND SALMON BROOK IN CONNECTICUT FOR STUDY FOR POTENTIAL ADDITION TO NATIONAL WILD AND SCENIC RIVERS SYSTEM.

(a) DESIGNATION.—Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)) is amended by adding at the end the following:

''(____) LOWER FARMINGTON RIVER AND SALMON BROOK, CONNECTICUT.—The segment of the Farmington River downstream from the segment designated as a recreational river by section 3(a)(156) to its confluence with the Connecticut River, and the segment of the Salmon Brook including its mainstream and east and west branches.''.

(b) TIME FOR SUBMISSION.—Not later than 3 years after the date of enactment of this Act, the Secretary of the Interior shall submit to Congress a report containing the results of the study required by the amendment made by subsection (a).

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this Act.

By Mr. ROCKEFELLER (for himself and Mr. SMITH):

S. 2671. A bill to extend temporary State fiscal relief, and for other purposes; to the Committee on Finance.

Mr. ROCKEFELLER. Mr. President, I rise today with my friend and colleague from Oregon, Mr. SMITH, to introduce the State Fiscal Relief Act of 2004. This legislation will extend the Federal fiscal relief enacted last year in order to give states a much needed boost as they continue to struggle to recover from the persisting economic downturn.

Over the last three years, states have experienced the worst fiscal crisis since World War II. The loss of state tax revenue has caused substantial state budget deficits, which totaled over $250 billion in fiscal years 2002, 2003 and 2004. These shortfalls forced states to consider raising taxes or making substantial cuts to critical programs such as public education, health care, and public safety. As my colleagues know, Federal efforts to stimulate economic growth can be futile if states are forced to cut spending and increase taxes. We recognized this last year, and we did something about it. We enacted legislation that provided $20 billion in federal assistance to the states—$10 billion for Medicaid and $10 billion for general revenue grants.

Some of my colleagues have since questioned the benefit of this type of federal assistance to the States. They have charged that the relief was not stimulative and that states did not use the additional resources appropriately. Well, I encourage my colleagues to take a very careful look at the facts. When you analyze all the available data on the $20 billion fiscal relief package enacted last year, only one logical conclusion can be reached—during the worst stages of the economic downturn, when many Americans lost their jobs, states were able to step up and fill major gaps in programs and services because they had the benefit of federal fiscal relief. My home state of West Virginia used the $125 million it received in federal assistance to resolve budget shortfalls and prevent cuts in Medicaid. That was the goal of our efforts all along—to reduce state budget deficits and prevent cuts to critical programs and services—and states used this temporary assistance as it was intended.

In West Virginia and States across the country, fiscal relief strengthened state economies and protected our most vulnerable citizens by helping to reduce the massive spending cuts and tax increases states would otherwise have had to make. The Medicaid portion of fiscal relief was particularly important in helping to stabilize State budgets. As many of my colleagues are aware, Medicaid spending provides a critical form of economic stimulus in addition to delivering essential health services to our most vulnerable citizens. The Medicaid program supports jobs in every state. It helps keep hospitals and nursing homes operating in our communities. Every dollar invested in Medicaid results in an almost threefold return in state economic benefit.

In January, the Kaiser Commission on Medicaid and the Uninsured released a study which confirms that, because of the timeliness of the Medicaid assistance, all fifty states were able to maintain their Medicaid eligibility levels. This means that access to critical health services and programs for pregnant women, children, the elderly, and workers who lost their jobs and employer-sponsored health coverage was preserved. Without these increased Medicaid payments to States, the number of uninsured Americans would have been far greater over the past several years.

Unfortunately, when we passed fiscal relief last year, we did not include appropriate safeguards to make sure this

Federal assistance would remain available to States if the economic downturn lasted longer than anticipated. Many who supported the $20 billion fiscal relief package hoped the economy would rebound quickly and that federal assistance to the States would not be necessary beyond fiscal year 2004. Well, the fact of the matter is that the economy remains weak, and fiscal relief is still necessary.

While states are beginning to report stronger revenue growth, it is clear they are not out of the woods yet. State revenues are still far below prerecession levels and are growing at a sluggish pace. In April, the National Conference of State Legislatures reported that states are struggling with an aggregate budget deficit of $36 billion going into fiscal year 2005. Eliminating fiscal relief now will deal a serious blow to the states as they struggle to climb out of the economic downturn.

To remedy this problem, the bill we are introducing today provides $4.8 billion over 15 months to help states maintain the coverage they are currently providing through Medicaid. This additional funding, which is still temporary, will finish the job we started last year. It will help states weather the entirety of the economic downturn without having to cut vital programs and services for low-income women, children, and seniors. While I would have liked to have incorporated even more money for enhanced Medicaid payments to states, I recognize the federal budget realities currently before us. The $4.8 billion included in our bill represents a workable phase-down transition from the $10 billion states received last year, and I know it will go a long way to preserve health care coverage for Medicaid beneficiaries during this ongoing recession.

In addition to providing $4.8 billion for Medicaid, our bill also reimburses states for the $1.2 billion in net costs they will incur in fiscal years 2004, 2005, and 2006 as a result of the Medicare Prescription Drug, Improvement, and Modernization Act. As I stated when I voted against this bill, the Medicare Modernization Act has several major flaws that must be addressed. One such flaw is the fact that the new law undermines state revenues in the midst of their efforts to rebuild their economies. The State Fiscal Relief Act will correct that mistake.

I urge my colleagues to support this important legislation and to stand up for the millions of Americans who are working at low-wage jobs, who benefit from the numerous public programs and services that fiscal relief has helped to maintain, and who are in the process of reinvigorating our economy.

Mr. SMITH. Mr. President, I am pleased to join my colleague from West Virginia, Senator ROCKEFELLER, in offering such an essential piece of legislative. This bill will extend a portion of the short-term assistance package that Congress provided to States and territories last May, because as most of our constituents realize, our economy may have rebounded, but prosperity has not reached all Americans. This proposal will continue to help States fund Medicaid, one of their most critical and also most expensive programs. The bill also provides funding necessary to ensure that Congress meets its commitment to help states transition seniors into the new Medicare prescription drug benefit program.

I am quite certain this proposal will be controversial. On the one hand, many people who represent seniors and other vulnerable populations that receive their health care through the Medicaid and Medicare programs will argue that this bill does not provide enough help to states to prevent programs and benefit cuts. On the other hand, many of my colleagues will complain that the federal government already provided $20 billion in fiscal assistance last year through the economic stimulus package. In developing this bill, I tried to take an approach that balanced the concerns expressed by both sides.

I agree that state economies are recovering and that they do not need an additional $20 billion in federal assistance. In my home State of Oregon, unemployment is dropping and State income tax receipts are higher than projected a few short months ago. However, that doesn't mean Oregon's economy is out of the woods yet. Oregon's 6.8 percent unemployment rate continues to be significantly higher than that of the national average of 5.6 percent. And that gets to the heart of why I have introduced this bill providing a second, though significantly reduced, round of State fiscal relief.

It is clear to me that States still need help. They need help meeting the increased obligations that come during economic downturns and recoveries. And while our nation's economy is improving, which is due in large part to the President's leadership last year when he challenged Congress to pass an economic stimulus package, it has not yet fully recovered. So more must be done to protect the programs that people turn to when they are in need, programs like Medicaid.

Now I know some will argue that last year's money was wasted, that it didn't do anything to boost the nation's economy. They might even cite a recent report released by the General Accounting Office that said as much. Well, I have to question how $10 billion in funding that went to the nation's largest health care program didn't result in a positive outcome. Health care is approximately a $1.6 trillion industry in the United States and in 2003 it was the second largest employment sector in the country—the fourth largest in Oregon. When you consider the significance of this industry on our nation's economy it seems unlikely that the government's effort to forestall program cuts in Medicaid, the largest health care program, would not have a positive effect on our economy.

Certainly, if you think about large corporations that have millions, even billions, of dollars in revenue each year this money may not mean much. But I can tell you, to the beneficiaries and small providers in Oregon, like the Community Health Centers, this infusion of federal funding prevented significant cuts to their Medicaid benefits and reimbursement rates.

Now States, just as they are starting to see their economies recover and are realizing increased income tax revenue, are faced with the prospect of losing all of this Federal assistance. That is why I have introduced this bill, because I understand the benefit to state economies that results from an extension of this temporary financial assistance. We are almost there, but I believe more assistance is needed and I look forward to working with my colleagues to pass this bill and help our states weather this economic storm.

By Mr. WYDEN (for himself, Mr. LOTT, Mr. GRAHAM of Florida, and Ms. SNOWE):

S. 2672. A bill to establish an Independent National Security Classification Board in the executive branch, and for other purposes; to the Select Committee on Intelligence.

Mr. WYDEN. Mr. President, I am pleased to be joined today by Senators LOTT, GRAHAM of Florida, and SNOWE in introducing legislation to create an independent National Security Classification Board. We believe it is time to clear the fog of secrecy by creating an independent board to review current and make recommendations for new standards and procedures for the classification of information for national security purposes.

Our Founding Fathers believed in the idea that democracy works best with the full disclosure of accurate information. Today, some might find that notion quaint. But it is one that bears consideration—because the principle of open government so dear to America's founders is being tested today as never before. The culture of secrecy that grew out of the Cold War has now become woven into the very fabric of our daily lives.

Information that the American people have a right to know—indeed, information that the American people need to know to make informed decisions about the kind of government they want and the kind of country this should be—is being withheld by the Federal government. It is being buried in a virtual bunker marked ''do not enter,'' sealed off from public view with a big red stamp—marked ''Classified.'' And too often that big red stamp is used not to hide state secrets, but to protect political backsides at great cost to our open and democratic society.

A very revealing speech was delivered three weeks ago by the head of the Information Security Office, which oversees classification and declassification policies, Mr. William Leonard. Known

sometimes as the ''secrecy czar,'' he complained that the classification system for national security has lost touch with the basics; that some agencies don't know how much information they classify, or whether they are classifying more or less than they once did; whether they are classifying too much or too little. He called today's classification system ''a patchwork quilt'' that is the result of a hodgepodge of laws, regulations and directives. ''In reality,'' he said ''the Federal Government has so many varieties of classification that it can make Heinz look modest . . .''

Two important reports confirm Mr. Leonard's argument that the classification system is out of control. The reports, the forthcoming 9–11 Commission report and last week's Senate Intelligence Committee on Iraq, show the Administration's determination to blanket the Federal government in secrecy. Even more important than the information that is published in these reports is the information withheld from the public and redacted from the reports.

These reports demonstrate a serious imbalance of power between the public and the officials who wield the ''top secret'' stamp. They raise troubling questions about whether those who control the classification of information for national security purposes have misused this authority to shield officials from the glare of public accountability and to stifle public debate about politically sensitive parts of the war on terrorism.

This is not the first time our country has grappled with the trade-offs between the need to protect the public and the public's need to know. But the automatic default to secrecy rather than public accountability is not part of our history. Scholarly studies about which material should be classified and at what level fill libraries. According to the late Senator Daniel Patrick Moynihan, an expert on secrecy in government, the first real Congressional debate about protecting national secrets occurred during consideration of the Alien and Sedition Acts of 1798, passed to silence opposition to war with France. ''It was,'' as Senator Moynihan wrote in Secrecy, ''our nation's first experience with how war or the threat of war changed the balance between private liberty versus public order, an instability that was eerily reenacted 119 years later.'' ''Indeed, much of the structure of secrecy now in place in the U.S. government took shape in just under eleven weeks in the spring of 1917, while the Espionage Act was debated and signed into law.'' Eighty years later, Senator Moynihan would note that 6,610,154 million secrets were created in one year alone. In fact, only a small portion, or 1.4 percent, were created pursuant to statutory authority, the Atomic Energy Act; Senator Moynihan labeled the other 98.6 percent ''pure creatures of bureaucracy,'' created via Executive Orders.

One of the ''creatures'' in the classification menagerie was set free to roam through the work of the 9–11 Commission and the Senate Intelligence Committee's report. The American people should not be fooled—pure bureaucracy refused to allow full public disclosure of the decisions and materials used by the 9–11 Commission to prepare its report. Pure bureaucracy also redacted nearly half of the Senate Intelligence Committee's review of Intelligence on Iraq. The ''creature'' has overreached.

Since President Roosevelt issued the first national security classification directive in 1940, the American people have often demonstrated a high tolerance for secrecy in military and foreign affairs, even in some cases where it has been abused. However, the rising tide of secrecy has reached the point where it threatens to drown our system of checks and balances, and calls out for a complete rethinking of the system used to classify information for national security purposes.

Today the Executive Branch exerts almost total control over what should or should not be classified. Congress has no ability to declassify material. There is no self-correcting mechanism in the system. Even if Members of Congress wanted to share information with their constituents, it's so complicated for Congress to release information to the public that nobody's ever tried to use the convoluted processes. The Executive Branch has a little known group that can review classification issues, but it is seldom used and open only to Executive Branch employees, not to Members of Congress or the public.

What does all of this mean in practice? It means that with the thump of a stamp marked ''secret,'' some bureaucrat in the belly of a federal building has prevented the families of the victims of 9–11 from knowing exactly what happened to their loved ones. It means the American people may never know who gave the orders dictating how prisoners at Abu Ghraib could be treated. It means these decisions cannot be appealed, even by Congress. It means there is no independent review of the classification decisions by the Executive Branch.

With no chance of unbiased review, classification decisions are ready and ripe for abuse. Agencies wishing to hide their flaws and politicians of both parties wishing to make political points can abuse the existing classification guidelines to their advantage. I want to change that.

President Kennedy said the time to repair the roof is when the sun is shining. In the realm of secrecy, storm clouds are approaching. The bureaucracies in our government that deal with secrets are by nature cautious when it comes to protecting information pertinent to our nation's security. They err on the side of caution and they are very territorial about it, treating secrets as if they are assets to be traded. This is an understandable impulse. But erring too far and too often on the side of caution keeps a lot of information hidden that could safely enlighten public debate. Even worse, overclassification of information is dangerous. If agencies and bureaucracies aren't sharing information among themselves, important clues can be missed. Their mission to keep citizens safe can be jeopardized by classification itself.

The tragedy of 9–11, the war on terrorism and the United States' invasion of Iraq have offered ample opportunity to argue for classification of just about any document on the grounds of national security. Additionally, there are those who feel that the current Administration took office with an unhealthy penchant for secrecy already firmly in place. In its first two years, Bush Administration officials made 44.5 million decisions to classify records and related documents, according to the Information Security Oversight office, part of the National Archives and Records Administration. This is about the same number of classification decisions made during the last four years of the Clinton Administration.

The Atlanta Journal reported recently that ''federal, state and local governments are shutting down access to public records in what some experts say is the most expansive assault on open government in the nation's history.'' The Bush Administration has even expanded the number of officials with the power to classify documents for purposes of national security beyond the 13 agencies that operated under the national security classification system to include the secretaries of agriculture, health and human services and the EPA Administrator.

I for one do not subscribe to the view that there is an inherent conflict between the Executive Branch's accountability to Congress and the American people on the one hand, and the Constitutional role of the President as Commander in Chief on the other.

I believe a balance can and must be struck between the public's need for sound, cleareyed analysis and the Executive's desire to protect the nation's legitimate security interests. I believe we can fight terrorism ferociously without sacrificing personal privacy. There is no room in this equation for the use of classification to insulate officials and agencies from political pressure. As a member of the Senate Intelligence Committee I have had lengthy discussions with my colleagues about how to achieve such a balance.

In my view this balance can be achieved only through a broad overhaul of the national security classification system. Legislation that I will be introducing shortly will accomplish this through the establishment of an Independent National Security Classification Board. The Board would be made up of three individuals, knowledgeable in national security classification, appointed by the President

with the advice and consent of the Senate.

The task of the Independent Board would be to review and make recommendations on overhauling the standards and process used in the classification system for national security information. The Board would submit proposed new standards and processes to both Congress and the Executive Branch for comment and revision, and then implement the new standards and process once they have had the opportunity to comment. The Board would then begin to implement the new system, reviewing and making recommendations on current and new national security classifications, subject to Executive Branch veto that must be accompanied by a public, written explanation.

The balance in this proposal assures that the public and Congress have access to an independent Board for national security classification matters while leaving undisturbed the Commander in Chief's constitutional prerogative in military and foreign policy matters through the power to appoint the Board and to veto the Board's classification decisions.

The Founding Fathers conceived of the Federal government to serve the American people. Sometimes that is done by keeping secrets, by securing information that could put Americans in harm's way if it became public. Information should be classified to protect the homeland. But when information is withheld to protect political careers and entrenched bureaucracies, that's not a service to the American people. It's a perversion of a policy intended to save lives, a perversion that weakens our democracy and could even endanger our people. It's time to throw open the curtains and let the sun shine in on American democracy and on the governmental process much brighter than it does today. That's what I intend to do with my legislation. The American people deserve no less.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2672

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Independent National Security Classification Board Act of 2004''.

SEC. 2. PURPOSE.

The purpose of this Act is to establish in the executive branch an Independent National Security Classification Board—

(1) to review the standards and procedures used in the classification system for national security information;

(2) to propose and submit to Congress and the President for comment new standards and procedures to be used in the classification system for such information;

(3) to establish the new standards and procedures after Congress and the President have had the opportunity to comment; and

(4) to review, and make recommendations with respect to, classifications of current and new information made under the applicable classification system.

SEC. 3. INDEPENDENT NATIONAL SECURITY CLASSIFICATION BOARD.

(a) ESTABLISHMENT.—The Independent National Security Classification Board (in this Act referred to as the ''Board'') is established as an independent agency in the executive branch.

(b) COMPOSITION.—The Board shall be composed of one member appointed by the President, one member jointly recommended by the Majority Leader and the Minority Leader of the Senate and appointed by the President, and one member jointly recommended by the Speaker of the House of Representatives and the Minority Leader of the House of Representatives and appointed by the President, each by and with the advice and consent of the Senate. Each member shall be knowledgeable on classification matters.

(c) TERM OF MEMBERS.—Each member of the Board shall be appointed for a term of 5 years. A member may be reappointed for one additional 5-year term. A member whose term has expired shall continue to serve on the Board until a replacement has been appointed.

(d) VACANCIES.—Any vacancy in the Board shall not affect its powers, but shall be filled in the same manner as the original appointment.

(e) SEPARATE OFFICE.—The Board shall have its own office for carrying out its activities, and shall not share office space with any element of the intelligence community or with any other department or agency of the Federal Government.

(f) CHAIRMAN.—The Board shall select a Chairman from among its members.

(g) MEETINGS.—The Board shall meet at the call of the Chairman.

(h) QUORUM.—A majority of the members of the Board shall constitute a quorum, but a lesser number of members may hold hearings.

(i) AVAILABILITY OF INFORMATION.—The decision-making process of the Board may be classified, but the final decisions of the Board and the reports submitted under this Act shall be made available to the public.

(j) INITIAL APPOINTMENTS AND MEETING.—

(1) INITIAL APPOINTMENTS.—Initial appointments of members of the Board shall be made not later than 90 days after the date of the enactment of this Act.

(2) INITIAL MEETING.—The Board shall hold its first meeting not later than 30 days after the date on which all members of the Board have been appointed.

(k) WEBSITE.—The Board shall establish a website not later than 90 days after the date on which all members of the Board have been appointed.

SEC. 4. DUTIES OF BOARD.

(a) REVIEW OF CLASSIFICATION SYSTEM.—

(1) IN GENERAL.—The Board shall conduct a thorough review of the classification system for national security information, including the policy, procedures, and practices of the system. The Board shall recommend reforms of such system to ensure—

(A) the protection of the national security of the United States;

(B) the sharing of information among Government agencies; and

(C) an open and informed public discussion of national security issues.

(2) SCOPE OF REVIEW.—

(A) CONSULTATION.—The Board shall consult with the Select Committee on Intelligence, the Committee on Armed Services, and the Committee on Foreign Relations of the Senate and the Permanent Select Committee on Intelligence, the Committee on Armed Services, and the Committee on International Relations of the House of Representatives in determining the scope of its review of the classification system.

(B) REVIEW.—The Board shall submit a report describing the proposed scope of review to the President and the committees of Congress referred to in subparagraph (A) for comment.

(C) REVISIONS.—Not later than 30 days after receiving the report under subparagraph (B)—

(i) the President shall notify the Board in writing of any revisions to such scope of review; and

(ii) each committee of Congress referred to in subparagraph (A) may submit to the Board, in writing, any comments of the committee on the proposed scope of review.

(b) ADOPTION OF NATIONAL SECURITY INFORMATION CLASSIFICATION SYSTEM.—

(1) AUTHORITY.—The Board shall prescribe the classification system for national security information, which shall apply to all departments and agencies of the United States.

(2) FINDINGS AND RECOMMENDATIONS.—The Board shall, in accordance with the scope of review developed under subsection (a)(2), review the classification system for national security information and submit to the President and Congress its findings and recommendations for new procedures and standards to be used in such classification system.

(3) CLASSIFICATION SYSTEM.—Not later than 180 days after the date on which all members of the Board have been confirmed by the Senate, the Board shall adopt a classification system for national security information, incorporating any comments received from the President and considering any comments received from Congress. Upon the adoption of the classification system, the system shall be used for the classification of all national security information.

(c) REVIEW OF CLASSIFICATION DECISIONS.—

(1) IN GENERAL.—The Board shall, upon its own initiative or pursuant to a request under paragraph (3), review any classification decision made by an Executive agency with respect to national security information.

(2) ACCESS.—The Board shall have access to all documents or other materials that are classified on the basis of containing national security information.

(3) REQUESTS FOR REVIEW.—The Board shall review in a timely manner the existing or proposed classification of any document or other material the review of which is requested by—

(A) the head or Inspector General of an Executive agency who is an authorized holder of such document or material; or

(B) the chairman or ranking member of—

(i) the Committee on Armed Services, the Committee on Foreign Relations, or the Select Committee on Intelligence of the Senate; or

(ii) the Committee on Armed Services, the Committee on International Relations, or the Permanent Select Committee on Intelligence of the House of Representatives.

(4) RECOMMENDATIONS.—

(A) IN GENERAL.—The Board may make recommendations to the President regarding decisions to classify all or portions of documents or other material for national security purposes or to declassify all or portions of documents or other material classified for such purposes.

(B) IMPLEMENTATION.—Upon receiving a recommendation from the Board under subparagraph (A), the President shall either—

(i) accept and implement such recommendation; or

(ii) not later than 60 days after receiving the recommendation if the President does not accept and implement such recommendation, transmit in writing to Congress and

have posted on the Board's website a notification in unclassified form of the justification for the President's decision not to implement such recommendation.

(5) EXEMPTION FROM FREEDOM OF INFORMATION ACT.—The Board shall not be required to make documents or materials reviewed under this subsection available to the public under section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act).

(6) REGULATIONS.—The Board shall prescribe regulations to carry out this subsection.

(7) EXECUTIVE AGENCY DEFINED.—In this section, the term ''Executive agency'' has the meaning given that term in section 105 of title 5, United States Code.

SEC. 5. POWERS OF BOARD.

(a) HEARINGS.—The Board may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Board considers advisable to carry out this Act.

(b) INFORMATION FROM FEDERAL AGENCIES.—The Board may secure directly from any Federal department or agency such information as the Board considers necessary to carry out this Act. Upon request of the Chairman of the Board, the head of such department or agency shall furnish such information to the Board.

(c) ADMINISTRATIVE SUPPORT SERVICES.—Upon request of the Board, the Administrator of General Services shall provide to the Board, on a reimbursable basis, the administrative support necessary for the Board to carry out its duties under this Act.

(d) POSTAL SERVICES.—The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(e) GIFTS.—The Board may accept, use, and dispose of gifts or donations of services or property.

SEC. 6. BOARD PERSONNEL MATTERS.

(a) EXECUTIVE SCHEDULE LEVEL IV.—Section 5315 of title 5, United States Code, is amended by adding at the end the following:

''Members, Independent National Security Classification Board.''.

(b) STAFF.—

(1) IN GENERAL.—The Chairman of the Board may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Board to perform its duties under this Act. The employment of an executive director shall be subject to confirmation by the Board.

(2) COMPENSATION.—The Chairman of the Board may fix the compensation of the executive director and other personnel without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(c) DETAIL OF GOVERNMENT EMPLOYEES.—Any employee of the Federal Government may be detailed to the Board without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Board $2,000,000 for fiscal year 2005, and such sums as may be necessary thereafter.

By Mr. CAMPBELL:

S. 2673. A bill to designate the facility of the United States Postal Service located at 1001 Williams Street, Ignacio, Colorado, as the ''Leonard C. Burch Post Office Building''; to the Committee on Governmental Affairs.

Mr. CAMPBELL. Mr. President, I send to the desk legislation to designate the U.S. Post Office located at 1001 Williams Street in Ignacio, CO, as the Leonard C. Burch Post Office Building.

Anyone who ever met the man knew they were in the presence of someone special. Leonard Burch had a vision. He had the imagination to look beyond a destitute tribe with little hope, and see a people with resources, and determination, and a real opportunity to build a better future if they would only grasp it. Many people have dreams, but Leonard had that rare ability to make other people catch his vision, believe in it, and work just as hard for it as he did.

Leonard C. Burch died August 1, 2003. He was 69 years old. Leonard was chairman of the Tribal Council for more than 32 years. Under his leadership, the Southern Utes became an economic force in and beyond the Four Corners and the largest employer in La Plata County. Those thirty-seven years have seen the transformation of a people, the transformation of a region, and all of it largely due to his extraordinary leadership.

Burch was credited with bringing his tribe out of poverty. Through his efforts, the tribe became a major player in the energy development market with assets of $1.5 billion. As part of the Council for Energy Resource Tribes, Burch was instrumental in improving energy development throughout Indian Country. He advocated for greater tribal control over tribal resources.

Burch's leadership went beyond the tribe. He set an example for young people. Burch was invited by five separate U.S. Presidents to conferences on American Indian policies at the White House and received numerous awards for his commitment to regional water resource development.

We will all miss Leonard's wisdom and inspiration. It is a fitting tribute that the postal facility in Ignacio be named after a true warrior. I invite anyone who believes that one man can't make a difference, to take a drive southeast of Durango, and witness what one Leonard Burch can do.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 2673

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. LEONARD C. BURCH POST OFFICE BUILDING.

(a) DESIGNATION.—The facility of the United States Postal Service located at 1001 Williams Street, Ignacio, Colorado, shall be known and designated as the ''Leonard C. Burch Post Office Building''.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the ''Leonard C. Burch Post Office Building''.

By Ms. SNOWE:

S. 2675. A bill to amend the Internal Revenue Code of 1986 to expand the availability of the cash method of accounting for small business, and for other purposes; to the Committee on Finance.

Ms. SNOWE. Mr. President, I rise today to introduce a bill I hope will be the first in a series of proposals to simplify the tax code for small business owners. Once enacted, these provisions will reduce not only the amount of taxes that small businesses pay, but that they also will reduce the administrative burden that saddles small companies in trying to meet this obligation.

The proposal that I am introducing today, will simplify the tax code by permitting small business owners to use the cash method of accounting for reporting their income if they generally earn less than $10 million during the tax year. Currently, only those taxpayers that earn less than $5 million per year are able to use the cash method. By increasing this threshold to $10 million, more small businesses will be relieved of the burdensome record keeping requirements that currently require them to use a different accounting method to report their income.

Before I talk about the specifics of this particular provision, let me first explain why it is so critical to begin considering ways to simplify the tax code. As you know, small businesses are the backbone of our Nation's economy. According to the Small Business Administration, small businesses represent 99 percent of all employers, employ 51 percent of the private-sector workforce, and contribute 51 percent of the private-sector output.

Yet, the despite the fact that small businesses are the real job-creators for our Nation's economy, the current tax system imposes an unreasonable burden on small businesses attempting to comply with the current tax code. This code imposes a large, and expensive, burden on all taxpayers in terms of satisfying reporting and record-keeping obligations, but small businesses are disadvantaged most, even more than large companies, in terms of money and time spent satisfying their tax obligations.

For example, according to the Small Business Administration's Office of Advocacy, small businesses spend more than 8 billion hours each year filing-out government reports, and they spend more than 80 percent of this time on completing tax forms. What's even more troubling is that companies that employ fewer than 20 employees spend nearly $6,975 per employee in tax compliance costs—nearly 60 percent more than companies with more than 500 employees spend.

These statistics are disconcerting for several reasons. First, the fact that small businesses are required to spend so much money on compliance costs means they have less earnings to reinvest into their business. This, in turn, means that they have less money to spend on new equipment or on worker training, which, unfortunately, has an adverse effect on their overall production and the economy as a whole.

Second, the inordinate amount of time small business owners are forced to devote to the completion of paperwork means they have less time to spend doing what they do best-namely running their business and creating jobs.

I do not mean to suggest that the challenges small business confront in regard to tax reporting and compliance are unique to this group, or that these companies should receive a free pass. In order to benefit from the freedoms and protections that our great country provides, individuals and businesses alike are required to pay taxes, and this duty carries with it certain administrative and opportunity costs. What I am asking for is a fairer, simpler tax code that allows small companies to satisfy their obligation without having to expend the amount of resources that they do currently, resources that might be invested in more productive ways.

For that reason, the package of proposals that I will be introducing will provide not only targeted, affordable tax relief to small business owners, it will also seek to simplify existing rules under the tax code. By simplifying the tax code, small business owners will be able to satisfy their tax obligation in a less costly, more efficient manner, allowing them to devote more time and resources to their primary business goals.

As I mentioned earlier, the provision that I am introducing today will permit more taxpayers to use the cash method of accounting, as opposed to depending on accrual or other hybrid method. The same law I referenced earlier which currently permits only those taxpayers earning less than $5 million in gross receipts during the tax year to use the cash method in reporting their income also precludes taxpayers in possession of inventory from using the simpler cash method. As a result, thousands of small businesses which possess inventories, but which might otherwise be entitled to report their income and expenses under the cash method of accounting are also required to follow the accrual or some sort of hybrid accounting method. The result, once more, is the imposition of undue financial hardship and unreasonable administrative burdens.

My bill changes these existing rules, increasing the gross receipts test under current law to $10 million for small businesses and indexing this higher threshold to account for inflation. Given that the current $5 million threshold, it makes little sense to preserve an outdated benchmark in this most important provision when the sensible adjustment that I propose will allow thousands of small businesses presently hobbled by unnecessary paperwork to use the cash method of accounting.

My bill also changes current law to permit even those taxpayers with inventory to qualify for the cash method of accounting. It is important to note, however, that my bill will not simply give these taxpayers an opportunity to recover costs associated with these otherwise inventoriable assets in the year of purchase, but that the bill will require these taxpayers to account for such costs as if they were a material or supply that is not incidental. This standard already exists under current law, and it is one with which most small businesses are already familiar. As such, this less-burdensome standard should ease the existing compliance burden for eligible taxpayers and allow them to devote more time and resources to their business.

Very importantly, these changes will not reduce the amount of taxes a small business pays by even one dollar. Indeed, the overall amount of taxes a qualifying small business pays will remain the same. Rather, this bill simply permits more taxpayers to report income and account for costs in the year of the receipt or expenditure. Clearly, this method makes compliance easier and simpler for small taxpayers, and it will reduce both the time and monetary expenditures spent today to comply with the current tax code.

Finally, this proposal is revenue neutral. In addition to the provision that modifies the income tax rules, my bill would enact Federal legislation to stop an abusive tax shelter that exists currently whereby taxpayers avoid State unemployment taxes. Specifically, States would be required to enact laws that prevent the avoidance of State unemployment tax and that also impose penalties on taxpayers and their advisors who engage in these scams. Consequently, my bill provides a revenue-neutral proposal that simplifies the tax code for small business owners by cracking down on taxpayers who otherwise try to avoid their State unemployment tax obligations.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2675

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CLARIFICATION OF CASH ACCOUNTING RULES FOR SMALL BUSINESS.

(a) CASH ACCOUNTING PERMITTED.—

(1) IN GENERAL.—Section 446 of the Internal Revenue Code of 1986 (relating to general rule for methods of accounting) is amended by adding at the end the following new subsection:

''(g) CERTAIN SMALL BUSINESS TAXPAYERS PERMITTED TO USE CASH ACCOUNTING METHOD WITHOUT LIMITATION.—

''(1) IN GENERAL.—An eligible taxpayer shall not be required to use an accrual method of accounting for any taxable year.

''(2) ELIGIBLE TAXPAYER.—For purposes of this subsection, a taxpayer is an eligible taxpayer with respect to any taxable year if—

''(A) for all prior taxable years beginning after December 31, 2003, the taxpayer (or any predecessor) met the gross receipts test of section 448(c), and

''(B) the taxpayer is not subject to section 447 or 448.''.

(2) EXPANSION OF GROSS RECEIPTS TEST.—

(A) IN GENERAL.—Paragraph (3) of section 448(b) of such Code (relating to entities with gross receipts of not more than $5,000,000) is amended by striking ''$5,000,000'' in the text and in the heading and inserting ''$10,000,000''.

(B) CONFORMING AMENDMENTS.—Section 448(c) of such Code is amended—

(i) by striking ''$5,000,000'' each place it appears in the text and in the heading of paragraph (1) and inserting ''$10,000,000'', and

(ii) by adding at the end the following new paragraph:

''(4) INFLATION ADJUSTMENT.—In the case of any taxable year beginning in a calendar year after 2005, the dollar amount contained in subsection (b)(3) and paragraph (1) of this subsection shall be increased by an amount equal to—

''(A) such dollar amount, multiplied by

''(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting 'calendar year 2004' for 'calendar year 1992' in subparagraph (B) thereof.

If any amount as adjusted under this subparagraph is not a multiple of $100,000, such amount shall be rounded to the nearest multiple of $100,000.''.

(b) CLARIFICATION OF INVENTORY RULES FOR SMALL BUSINESS.—

(1) IN GENERAL.—Section 471 of the Internal Revenue Code of 1986 (relating to general rule for inventories) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

''(c) SMALL BUSINESS TAXPAYERS NOT REQUIRED TO USE INVENTORIES.—

''(1) IN GENERAL.—A qualified taxpayer shall not be required to use inventories under this section for a taxable year.

''(2) TREATMENT OF TAXPAYERS NOT USING INVENTORIES.—If a qualified taxpayer does not use inventories with respect to any property for any taxable year beginning after December 31, 2003, such property shall be treated as a material or supply which is not incidental.

''(3) QUALIFIED TAXPAYER.—For purposes of this subsection, the term 'qualified taxpayer' means—

''(A) any eligible taxpayer (as defined in section 446(g)(2)), and

''(B) any taxpayer described in section 448(b)(3).''.

(2) CONFORMING AMENDMENTS.—

(A) Subpart D of part II of subchapter E of chapter 1 of such Code is amended by striking section 474.

(B) The table of sections for subpart D of part II of subchapter E of chapter 1 of such Code is amended by striking the item relating to section 474.

(c) EFFECTIVE DATE AND SPECIAL RULES.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer changing the taxpayer's method of accounting for any taxable year under the amendments made by this section—

(A) such change shall be treated as initiated by the taxpayer;

(B) such change shall be treated as made with the consent of the Secretary of the Treasury; and

(C) the net amount of the adjustments required to be taken into account by the taxpayer under section 481 of the Internal Revenue Code of 1986 shall be taken into account over a period (not greater than 4 taxable years) beginning with such taxable year.

SEC. 2. TRANSFER OF UNEMPLOYMENT EXPERIENCE UPON TRANSFER OR ACQUISITION OF A BUSINESS.

(a) IN GENERAL.—Section 303 of the Social Security Act (42 U.S.C. 503) is amended by adding at the end the following:

''(k)(1) For purposes of subsection (a), the unemployment compensation law of a State must provide—

''(A) that if an employer transfers its business to another employer, and both employers are (at the time of transfer) under substantially common ownership, management, or control, then the unemployment experience attributable to the transferred business shall also be transferred to (and combined with the unemployment experience attributable to) the employer to whom such business is so transferred,

''(B) that unemployment experience shall not, by virtue of the transfer of a business, be transferred to the person acquiring such business if—

''(i) such person is not otherwise an employer at the time of such acquisition, and

''(ii) the State agency finds that such person acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions,

''(C) that unemployment experience shall (or shall not) be transferred in accordance with such regulations as the Secretary of Labor may prescribe to ensure that higher rates of contributions are not avoided through the transfer or acquisition of a business,

''(D) that meaningful civil and criminal penalties are imposed with respect to—

''(i) persons that knowingly violate or attempt to violate those provisions of the State law which implement subparagraph (A) or (B) or regulations under subparagraph (C), and

''(ii) persons that knowingly advise another person to violate those provisions of the State law which implement subparagraph (A) or (B) or regulations under subparagraph (C), and

''(E) for the establishment of procedures to identify the transfer or acquisition of a business for purposes of this subsection.

''(2) For purposes of this subsection—

''(A) the term 'unemployment experience', with respect to any person, refers to such person's experience with respect to unemployment or other factors bearing a direct relation to such person's unemployment risk;

''(B) the term 'employer' means an employer as defined under the State law;

''(C) the term 'business' means a trade or business (or an identifiable and segregable part thereof);

''(D) the term 'contributions' has the meaning given such term by section 3306(g) of the Internal Revenue Code of 1986;

''(E) the term 'knowingly' means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibition involved; and

''(F) the term 'person' has the meaning given such term by section 7701(a)(1) of the Internal Revenue Code of 1986.''.

(b) STUDY AND REPORTING REQUIREMENTS.—

(1) STUDY.—The Secretary of Labor shall conduct a study of the implementation of the provisions of section 303(k) of the Social Security Act (as added by subsection (a)) to assess the status and appropriateness of State actions to meet the requirements of such provisions.

(2) REPORT.—Not later than July 15, 2006, the Secretary of Labor shall submit to the Congress a report that contains the findings of the study required by paragraph (1) and recommendations for any Congressional action that the Secretary considers necessary to improve the effectiveness of section 303(k) of the Social Security Act.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall, with respect to a State, apply to certifications for payments (under section 302(a) of the Social Security Act) in rate years beginning after the end of the 26-week period beginning on the first day of the first regularly scheduled session of the State legislature beginning on or after the date of the enactment of this Act.

(d) DEFINITIONS.—For purposes of this section—

(1) the term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands;

(2) the term ''rate year'' means the rate year as defined in the applicable State law; and

(3) the term ''State law'' means the unemployment compensation law of the State, approved by the Secretary of Labor under section 3304 of the Internal Revenue Code of 1986.

SEC. 3. USE OF NEW HIRE INFORMATION TO ASSIST IN ADMINISTRATION OF UNEMPLOYMENT COMPENSATION PROGRAMS.

Section 453(j) of the Social Security Act (42 U.S.C. 653(j)) is amended by adding at the end the following:

''(7) INFORMATION COMPARISONS AND DISCLOSURE TO ASSIST IN ADMINISTRATION OF UNEMPLOYMENT COMPENSATION PROGRAMS.—

''(A) IN GENERAL.—If, for purposes of administering an unemployment compensation program under Federal or State law, a State agency responsible for the administration of such program transmits to the Secretary the names and social security account numbers of individuals, the Secretary shall disclose to such State agency information on such individuals and their employers maintained in the National Directory of New Hires, subject to this paragraph.

''(B) CONDITION ON DISCLOSURE BY THE SECRETARY.—The Secretary shall make a disclosure under subparagraph (A) only to the extent that the Secretary determines that the disclosure would not interfere with the effective operation of the program under this part.

''(C) USE AND DISCLOSURE OF INFORMATION BY STATE AGENCIES.—

''(i) IN GENERAL.—A State agency may not use or disclose information provided under this paragraph except for purposes of administering a program referred to in subparagraph (A).

''(ii) INFORMATION SECURITY.—The State agency shall have in effect data security and control policies that the Secretary finds adequate to ensure the security of information obtained under this paragraph and to ensure that access to such information is restricted to authorized persons for purposes of authorized uses and disclosures.

''(iii) PENALTY FOR MISUSE OF INFORMATION.—An officer or employee of the State agency who fails to comply with this subparagraph shall be subject to the sanctions under subsection (l)(2) to the same extent as if such officer or employee was an officer or employee of the United States.

''(D) PROCEDURAL REQUIREMENTS.—State agencies requesting information under this paragraph shall adhere to uniform procedures established by the Secretary governing information requests and data matching under this paragraph.

''(E) REIMBURSEMENT OF COSTS.—The State agency shall reimburse the Secretary, in accordance with subsection (k)(3), for the costs incurred by the Secretary in furnishing the information requested under this paragraph.''.

By Mrs. HUTCHISON (for herself and Ms. MIKULSKI):

S. 2676. A bill to amend chapter 4 of title 39, United States Code, to provide for the issuance of a semipostal stamp in order to provide funding for childhood drinking prevention and education, and for other purposes; to the Committee on Governmental Affairs.

Mrs. HUTCHISON. Mr. President, today I am pleased to introduce legislation creating the childhood drinking prevention semi-postal stamp.

Alcohol is the number one substance used and abused by America's children. Nearly a third of children begin drinking before the age of 13, and forty percent of children who begin drinking by age 15 will develop alcohol abuse or dependence later in life.

I do not believe most parents or adults intentionally ignore this issue, however many Americans do not realize the prevalence and seriousness of childhood drinking. Several national surveys, including those conducted by the Center for Disease Control and Prevention and the Substance Abuse and Mental Health Services Administration, demonstrate the serious consequences associated with early alcohol use.

For example, in 2002, 1.5 million youths between the ages of 12 to 17 needed treatment for alcohol abuse. Early alcohol use is more likely to kill or injure young people than all illegal drugs combined.

If the onset of drinking is delayed, a child's risk of serious alcohol problems could be decreased or even prevented. That is why I am pleased to propose the passage of a semi-postal stamp on childhood drinking prevention. A semi-postal stamp will publicize this important children's health issue in every home, school, and community across the nation.

Profits from the childhood drinking prevention stamp would be dedicated to support education and prevention efforts. I would also provide a further platform for millions of Americans to raise awareness about the importance of keeping children alcohol free.

I urge my colleagues to join me in enacting this important legislation. Mr. President, I ask unanimous consent that the text of this bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2676

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SEMIPOSTAL STAMP TO BENEFIT CHILDHOOD DRINKING PREVENTION AND EDUCATION.

(a) IN GENERAL.—Chapter 4 of title 39, United States Code, is amended by inserting after section 414 the following:

"§ 414a. Special postage stamps to benefit childhood drinking prevention and education

''(a) In this section the term 'childhood drinking' means the consumption of alcoholic beverages by children who are between 9 and 15 years of age.

''(b) In order to afford the public a convenient way to contribute to funding for childhood drinking prevention and education, the Postal Service shall establish a special rate of postage for first-class mail under this section.

''(c)(1) The rate of postage established under this section—

''(A) shall be equal to the regular first-class rate of postage, plus a differential of not to exceed 25 percent;

''(B) shall be set by the Governors in accordance with such procedures as the Governors shall by regulation prescribe (in lieu of the procedures under chapter 36); and

''(C) shall be offered as an alternative to the regular first-class rate of postage.

''(2) The use of the special rate of postage established under this section shall be voluntary on the part of postal patrons.

''(d)(1) Amounts becoming available for childhood drinking prevention and education under this section shall be paid to the Department of Health and Human Services. Payments under this section shall be made under such arrangements as the Postal Service shall by mutual agreement with the Department of Health and Human Services establish in order to carry out the purposes of this section, except that, under those arrangements, payments to the Department of Health and Human Services shall be made at least twice a year.

''(2) In this subsection, the term 'amounts becoming available for childhood drinking prevention and education under this section' means—

''(A) the total amounts received by the Postal Service that it would not have received but for the enactment of this section, reduced by

''(B) an amount sufficient to cover full costs incurred by the Postal Service in carrying out this section, including those attributable to the printing, sale, and distribution of stamps under this section,

as determined by the Postal Service under regulations that it shall prescribe.

''(e) It is the sense of the Congress that nothing in this section should—

''(1) directly or indirectly cause a net decrease in total Federal funding for childhood drinking prevention and education below the level that would otherwise have been received but for the enactment of this section; or

''(2) affect regular first-class rates of postage or any other regular rates of postage.

''(f) Special postage stamps under this section shall be made available to the public beginning on such date as the Postal Service shall by regulation prescribe, but in no event later than 1 year after the date of the enactment of this section.

''(g) The Postmaster General shall include in each report rendered under section 2402 with respect to any period during any portion of which this section is in effect information concerning the operation of this section, except that, at a minimum, each shall include—

''(1) the total amount described in subsection (d)(2)(A) which was received by the Postal Service during the period covered by such report; and

''(2) of the amount under paragraph (1), how much (in the aggregate and by category) was required for the purposes described in subsection (d)(2)(B).

''(h) Section 416 shall not apply to this section. For purposes of section 416 (including any regulation prescribed under subsection (e)(1)(C) of that section), the special postage stamp issued under this section shall not apply to any limitation relating to whether more than 1 semipostal may be offered for sale at the same time.

''(i) This section shall cease to be effective 2 years after the date of enactment of this section.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) TABLE OF SECTIONS.—The table of sections for chapter 4 of title 39, United States Code, is amended by striking the item relating to section 414 and inserting the following:

''414. Special postage stamps to benefit breast cancer research.

''414a. Special postage stamps to benefit childhood drinking prevention and education.''.

(2) AMENDMENT TO HEADING.—The heading for section 414 of title 39, United States Code, is amended to read as follows:

"§ 414. Special postage stamps to benefit breast cancer research".

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 406—ESTABLISHING A SELECT COMMITTEE ON AEROSPACE IN THE UNITED STATES

Mrs. MURRAY submitted the following resolution; which was referred to the Committee on Rules and Administration:

S. RES. 406

Whereas the aerospace sector of the United States economy generates economic activity equal to 15 percent of the Nation's Gross Domestic Product and supports approximately 11,000,000 American jobs;

Whereas the United States aerospace industry directly employs 574,600 people of the United States, the lowest employment level of United States workers since World War II;

Whereas employment in the United States aerospace industry is down 57 percent, as more than 750,000 jobs have been lost since 1989;

Whereas the United States share of the global aerospace market fell from 72 percent in 1985 to less than 52 percent today;

Whereas according to the Commission on the Future of the United States Aerospace Industry, ''Foreign government subsidies directly affect the competitiveness of our companies. Subsidized prime manufacturers as well as suppliers are able to undercut prices offered by their U.S. competitors, and are better able to weather market downturns. Subsidized companies are able to secure cheaper commercial financing since their governments share the risk associated with bringing new products to market. Subsidized production skews the market itself by flooding it with products that are not commercially viable. Governments providing the subsidies also apply political pressure on customers in an effort to facilitate a positive return on the governments' investments. In many cases, these government subsidies stifle competition and often slow the introduction of new technology into the market. European funding has had the most dramatic impact on U.S. competitiveness because European products directly compete with United States products in most sectors....if we maintain the status quo, U.S. industry will be left to compete against companies that don't play by the same rules.'';

Whereas the aerospace industry is globally competitive with established nations like the United States and the members of the European Union and faces growing competition from numerous nations, including China, Russia, Brazil, Canada, Japan, and others; and

Whereas numerous public policy issues important to the future of aerospace are now before Congress, including the United States air traffic control system, export controls, the aerospace workforce, homeland security, national security, foreign competition, research and development, mathematics and science education, corporate tax and export promotion, and others: Now, therefore, be it

Resolved,

SECTION 1. ESTABLISHMENT OF COMMITTEE.

(a) ESTABLISHMENT.—There is established a temporary Select Committee on Aerospace in the United States (hereinafter referred to as the ''Committee'').

(b) COMPOSITION OF THE COMMITTEE.—

(1) VOTING MEMBERS.—The Committee shall be composed of 11 Senators, 6 to be appointed by the majority leader of the Senate and 5 to be appointed by the minority leader of the Senate.

(2) EX OFFICIO MEMBERS.—Ex officio members of the Committee shall include—

(A) the majority leader of the Senate;

(B) the minority leader of the Senate; and

(C) the chairman and ranking member of each of the following committees:

(i) The Committee on Commerce, Science, and Transportation of the Senate.

(ii) The Committee on Finance of the Senate.

(iii) The Committee on Armed Services of the Senate.

(iv) The Committee on Appropriations of the Senate.

(3) LIMITATIONS ON EX OFFICIO MEMBERS.—An ex officio member—

(A) shall not be counted for the purpose of ascertaining the presence of a quorum of the Committee; and

(B) shall be a nonvoting member of the Committee.

(c) ORGANIZATION OF COMMITTEE.—

(1) CHAIRPERSON.—The majority leader of the Senate shall select the chairperson of the Committee from the members of the Committee.

(2) RANKING MEMBER.—The minority leader of the Senate shall designate a ranking member from the members of the Committee.

(3) VACANCIES.—A vacancy on the Committee shall not affect the power of the remaining members to execute the functions of the Committee, and shall be filled in the same manner as the original appointment.

(d) COMMENCEMENT OF STUDY.—The Committee shall commence its study of the aerospace industry under section 2 on January 3, 2005, or upon the date of appointment of the members of the Committee under subsection (b)(1).

(e) TERMINATION.—The Committee shall cease to exist on December 31, 2006.

SEC. 2. OPERATION OF THE COMMITTEE.

(a) IN GENERAL.—The Committee shall—

(1) make a full and complete study of the United States aerospace industry, including its present and future competitiveness and its importance to the United States and to the global economy; and

(2) recommend legislative, administrative, and regulatory remedies, as approved by a majority of the committee members.

(b) FOCUS OF STUDY.—The study shall include an examination of—

(1) the role of the Federal Government in the aerospace industry;

(2) the importance of the aerospace industry to the United States economy;

(3) global competition and its impact on the aerospace industry of the United States;

(4) technological challenges before the aerospace industry in commercial aircraft and aviation, national security, and space exploration; and

(5) workforce development issues in the aerospace industry.

SEC. 3. AUTHORITY AND EMPLOYMENT AND COMPENSATION OF STAFF.

(a) AUTHORITY OF COMMITTEE.—The Committee is authorized to—

(1) sit and act, at any time, during the sessions, recesses, and adjourned periods of Congress;

(2) require as the Committee considers necessary, by subpoena or otherwise, the attendance of witnesses and the production of books, papers, and documents;

(3) administer oaths and take testimony; and

(4) procure necessary printing and binding.

(b) APPOINTMENT AND COMPENSATION OF STAFF.—The Committee—

(1) shall utilize existing staff to the extent possible;

(2) may appoint and fix the compensation of such staff as it considers necessary;

(3) may utilize such voluntary and uncompensated services as it considers necessary; and

(4) may utilize the services, information, facilities, and personnel of the General Accounting Office, the Congressional Budget Office, the Congressional Research Service of the Library of Congress, and other agencies of the legislative branch.

(c) ADDITIONAL STAFF.—Upon the request of the chairman or ranking member of the Committee, the head of any Federal agency, or of any office in the legislative branch, is authorized to detail, without reimbursement, any of the personnel of such agency or office to the Committee to assist in carrying out its duties.

(d) TRAVEL EXPENSES.—The members and staff of the Committee shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the Committee, other than expenses in connection with meetings of the Committee held in the District of Columbia.

SEC. 4. COMMITTEE REPORT.

The Committee—

(1) may make such interim reports as it considers necessary; and

(2) prior to ceasing operations in accordance with section 1(e), shall submit a final report, to the Senate and to the appropriate Committees of the Senate, which shall contain the results of its study and its recommendations.

SENATE RESOLUTION 407—DESIGNATING OCTOBER 15, 2004, AS ''NATIONAL MAMMOGRAPHY DAY''

Mr. BIDEN (for himself, Mr. AKAKA, Mr. ALLEN, Mrs. BOXER, Mr. BREAUX, Mr. BUNNING, Mr. CAMPBELL, Ms. CANTWELL, Mr. CARPER, Mrs. CLINTON, Mr. COCHRAN, Ms. COLLINS, Mr. CRAIG, Mr. DEWINE, Mr. DOMENICI, Mr. DORGAN, Mr. DURBIN, Mr. EDWARDS, Mrs. FEINSTEIN, Mr. FITZGERALD, Mr. GRAHAM of Florida, Mr. GRAHAM of South Carolina, Mr. GRASSLEY, Mr. HATCH, Mr. HOLLINGS, Mrs. HUTCHISON, Mr. INHOFE, Mr. INOUYE, Mr. JOHNSON, Mr. KENNEDY, Mr. KERRY, Mr. KOHL, Ms. LANDRIEU, Mr. LAUTENBERG, Mr. LIEBERMAN, Mrs. LINCOLN, Mr. LUGAR, Ms. MIKULSKI, Mr. MILLER, Ms. MURKOWSKI, Mrs. MURRAY, Mr. NELSON of Nebraska, Mr. REID, Mr. SARBANES, Mr. SCHUMER, Mr. SMITH, Ms. SNOWE, Mr. SPECTER, Ms. STABENOW, Mr. TALENT, Mr. VOINOVICH, and Mr. WYDEN) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 407

Whereas according to the American Cancer Society, in 2004, 215,990 women will be diagnosed with breast cancer and 40,110 women will die from this disease;

Whereas it is estimated that about 2,000,000 women were diagnosed with breast cancer in the 1990s, and that in nearly 500,000 of those cases, the cancer resulted in death;

Whereas African-American women suffer a 30 percent greater mortality from breast cancer than White women and more than a 100 percent greater mortality from breast cancer than women from Hispanic, Asian, and American Indian populations;

Whereas the risk of breast cancer increases with age, with a woman at age 70 having twice as much of a chance of developing the disease as a woman at age 50;

Whereas at least 80 percent of the women who get breast cancer have no family history of the disease;

Whereas mammograms, when operated professionally at a certified facility, can provide safe screening and early detection of breast cancer in many women;

Whereas mammography is an excellent method for early detection of localized breast cancer, which has a 5-year survival rate of more than 97 percent;

Whereas the National Cancer Institute and the American Cancer Society continue to recommend periodic mammograms; and

Whereas the National Breast Cancer Coalition recommends that each woman and her health care provider make an individual decision about mammography: Now, therefore, be it

Resolved, That the Senate—

(1) designates October 15, 2004, as ''National Mammography Day''; and

(2) requests that the President issue a proclamation calling upon the people of the United States to observe the day with appropriate programs and activities.

Mr. BIDEN. Mr. President, today I am submitting a resolution designating October 15, 2004, as ''National Mammography Day.'' I am pleased that 51 of my colleagues have endorsed this proposal by agreeing to be original cosponsors. I might note that I have submitted a similar resolution each year since 1993, and on each occasion the Senate has shown its support for the fight against breast cancer by approving the resolution.

Each year, as I prepare to submit this resolution, I review the latest information from the American Cancer Society about breast cancer. For the year 2004, it is estimated that nearly 216,000 women will be diagnosed with breast cancer and slightly more than 40,000 women will die of this disease.

In past years, I have often commented on how gloomy these statistics were. But as I review how these numbers are changing over time, I have come to the realization that it is really more appropriate to be optimistic. The number of deaths from breast cancer is actually stable or falling from year to year. Early detection of breast cancer continues to result in extremely favorable outcomes: 97 percent of women with localized breast cancer will survive 5 years or longer. New digital techniques make the process of mammography much more rapid and precise than before. Government programs will provide free mammograms to those who can't afford them, as well as Medicaid eligibility for treatment if breast cancer is diagnosed. Information about treatment of breast cancer with surgery, chemotherapy, and radiation therapy has exploded, reflecting enormous research advances in this disease. So I am feeling quite positive about our battle against breast cancer. A diagnosis of breast cancer is not a death sentence, and I encounter long-term survivors of breast cancer nearly daily.

In recent times, the newspapers have been filled with discussion over whether the scientific evidence actually supports the conclusion that periodic screening mammography saves lives. It seems that much of this controversy relates to new interpretations of old studies, and the relatively few recent studies of this matter have not clarified this issue. Most sources seem to agree that all of the existing scientific studies have some weaknesses, but it is far from clear whether the very large and truly unambiguous study needed to settle this matter definitively can ever be done.

So what is a woman to do? I do not claim any expertise in this highly technical area, so I rely on the experts. The American Cancer Society, the National Cancer Institute, and the U.S. Preventive Services Task Force all continue to recommend periodic screening mammography, and I endorse the statements of these distinguished bodies.

On the other hand, I recognize that some women who examine these research studies are unconvinced of the need for periodic screening mammography. However, even those scientists who do not support periodic mammography for all women believe that it is appropriate for some groups of women with particular risk factors. In agreement with these experts, I encourage all women who have doubts about the usefulness of screening mammography in general to discuss with their individual physicians whether this test is appropriate in their specific situations.

So my message to women is: have a periodic mammogram, or at the very least discuss this option with your own physician.

I know that some women don't have annual mammograms because of either fear or forgetfulness. It is only human nature for some women to avoid mammograms because they are afraid of what they will find. To those who are fearful, I would say that if you have periodic routine mammograms, and the latest one comes out positive, even before you have any symptoms or have found a lump on self-examination, you have reason to be optimistic, not pessimistic. Such early-detected breast cancers are highly treatable.

Then there is forgetfulness. I certainly understand how difficult it is to remember to do something that only

comes around once each year. I would suggest that this is where ''National Mammography Day'' comes in. On that day, let's make sure that each woman we know picks a specific date on which to get a mammogram each year, a date that she won't forget: a child's birthday, an anniversary, perhaps even the day her taxes are due. On National Mammography Day, let's ask our loved ones: pick one of these dates, fix it in your mind along with a picture of your child, your wedding, or another symbol of that date, and promise yourself to get a mammogram on that date every year. Do it for yourself and for the others that love you and want you to be part of their lives for as long as possible.

And to those women who are reluctant to have a mammogram, I say let National Mammography Day serve as a reminder to discuss this question each year with your physician. New scientific studies that are published and new mammography techniques that are developed may affect your decision on this matter from one year to the next. I encourage you to keep an open mind and not to feel that a decision at one point in time commits you irrevocably to a particular course of action for the indefinite future.

I urge my colleagues to join me in the ongoing fight against breast cancer by cosponsoring and voting for this resolution to designate October 15, 2004, as ''National Mammography Day.''

SENATE CONCURRENT RESOLUTION 125—RECOGNIZING THE 60TH ANNIVERSARY OF THE WARSAW UPRISING DURING WORLD WAR II

Mr. SMITH (for himself and Ms. MIKULSKI) submitted the following concurrent resolution; which was referred to the Committee on the Judiciary:

S. CON. RES. 125

Whereas August 1, 2004, marks the 60th anniversary of the Warsaw Uprising, when against seemingly insurmountable odds and extreme hardships, Polish citizens revolted against the Nazi occupiers in Warsaw, Poland, in one of the most heroic battles during World War II;

Whereas the Warsaw Uprising was a part of a nationwide resistance against the Nazi occupation, was started by the underground Home Army, and lasted 63 days;

Whereas the Polish resistance, many of them teenagers, while heavily outnumbered and armed with mostly homemade weapons, fought bravely against the German soldiers and lost approximately 250,000 civilians and troops;

Whereas, to punish Poland for the uprising, the Nazis systematically razed 70 percent of Warsaw, including monuments, cultural treasures, and historical buildings;

Whereas the heroism and spirit of the Polish resistance are an inspiration to all peoples in their pursuit of liberty and democracy and are evident today in Polish contributions to the global war against terrorism and the more than 2,300 Polish troops currently deployed in Operation Iraqi Freedom; and

Whereas the heroic undertaking of the Polish underground represents one of the most important contributions to the Allied war effort during World War II and remains venerated in the Polish consciousness, even for the generations born after it ended: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress recognizes the 60th anniversary of the Warsaw Uprising during World War II which will forever serve as a symbol of heroism in the face of great adversity and the pursuit of freedom.

Mr. SMITH. Mr. President, today I am submitting a resolution to commemorate the 60th anniversary of the Warsaw Uprising. For those who are not familiar with the details of this remarkable event, this anniversary provides an opportunity to recognize the bravery and heroism of those Polish citizens who revolted against their brutal Nazi occupiers.

The Warsaw uprising began on August 1, 1944, when the Polish Home Army launched an attack on the German forces occupying Poland. At the time, the German army was retreating from the Soviets after its defeat on the eastern front, and the Poles recognized that the presence of the Soviet army on the outskirts of Warsaw represented a grave threat to the country's future. If they could liberate the city from the Germans and establish an independent government before the Red Army's entry, they felt their freedom might be preserved.

Although the Home Army took control of most of the city within a few days, the Germans were determined to defend Warsaw and sent in massive reinforcements to crush the uprising. The fighting raged for 63 days, despite the fact that the Polish contingent had limited weapons and were facing German tanks, planes, and artillery.

Additionally, the Soviet Union refused to allow American or British planes access to the airfields it controlled. Thus, ammunition and relief supplies could not be flown to the Polish resistance. In Stalin's view, allowing the Germans to suppress the uprising would result in the destruction of the anti-Soviet leadership of Poland, therefore paving the way for eventual Soviet control.

Germany's superior firepower eventually prevailed, as we all know. The Germans crushed the Polish forces and leveled the city as an example to the rest of Europe. Eighty-five percent of the city was razed, the Polish Home Army was annihilated and approximately 250,000 people, including tens of thousands of civilians, were summarily executed.

Had events turned the other way, Warsaw would have been the first European capital liberated from the Nazi regime. Instead, Poland suffered under nearly fifty years of communist domination.

Senator MIKULSKI joins me in submitting this resolution today in an effort to honor those brave Polish citizens who fought so valiantly for their freedom. Considering the conflict between the United States and the Soviets over assisting the Polish resistance, the Warsaw Uprising can fairly be considered as one of the first battles of the Cold War.

Ms. MIKULSKI. Mr. President, I am proud to join with Senator SMITH in submitting this resolution to commemorate the 1944 Warsaw Uprising against the Nazi German occupation.

The Polish and American people have stood up against oppression and fought for liberty through the centuries. During our Revolutionary War, Polish patriots fought alongside American patriots to help secure our independence. During the Second World War, Polish mathematicians helped us break the enigma codes and American troops and the Polish Army in exile fought side by side to liberate Europe.

Within Poland, the Polish people fought for their own freedom against the occupying armies of Nazi Germany. Two of the most dramatic battles took place in Poland's capital: the Warsaw Ghetto Uprising by Jews in 1943, and the Warsaw Uprising in 1944.

In the summer of 1944, the German army was in retreat and the Red Army of the Soviet Union was approaching Warsaw. The Poles knew from the Katyn Forest Massacre what brutal treatment they could expect under Soviet occupation. So they took charge of their own liberation, hoping to allow the Polish government in exile to return to Warsaw.

On August 1, 1944, the Polish home army rose up against the Nazi Germany occupation. They took control of most of Warsaw within days. But the Germany army was determined to crush the resistance, and the Soviet Union hampered U.S. and British efforts to support the Warsaw Uprising from the air. The Poles fought bravely to liberate and protect their capitol and their nation. But after 63 days of bitter fighting, Germany tanks, planes and artillery overcame the valiant but poorly-armed Polish resistance.

Nazi Germany was not satisfied with mere victory. Heinrich Himmler ordered the people of Warsaw killed and the city razed to the ground as an example for all of Europe. Eighty-five percent of Warsaw was leveled by German forces and hundreds of thousands of Poles were killed.

The Poles were right to fight for their freedom in 1944, because Soviet domination lasted for nearly half a Century. The Solidarity Movement later took up the banner of Polish freedom, and we are now proud to have Poland as a friend and NATO ally.

This year, as we mark the 60th anniversary of the Warsaw Uprising, we should remember and honor the Poles who fought so bravely, against such heavy odds, for freedom. This is what the resolution Senator SMITH and I are offering today, and a companion resolution introduced in the House by Representatives EMANUEL and HYDE, will do. I urge my colleagues to join us in commemorating the Warsaw Uprising.

SENATE CONCURRENT RESOLUTION 126—CONDEMNING THE ATTACK ON THE AMIA JEWISH COMMUNITY CENTER IN BUENOS AIRES, ARGENTINA, IN JULY 1994, AND EXPRESSING THE CONCERN OF THE UNITED STATES REGARDING THE CONTINUING, DECADE-LONG DELAY IN THE RESOLUTION OF THIS CASE

Mr. COLEMAN (for himself, Mr. LEVIN, and Mr. DODD) submitted the following concurrent resolution; which was referred to the Committee on Commerce, Science, and Transportation:

S. CON. RES. 126

Whereas on July 18, 1994, 85 innocent people were killed and 300 were wounded when the Argentine Jewish Mutual Association (referred to in this resolution as the ''AMIA'') was bombed in Buenos Aires, Argentina;

Whereas that attack showed the same cowardice and utter disregard for human life as the attacks on the United States on September 11, 2001;

Whereas the United States welcomes Argentine President Nestor Kirchner's political will to pursue the investigation of the AMIA bombing, as demonstrated by his Executive order opening the archives of Argentina's Secretariat for State Intelligence (referred to in this resolution as ''SIDE'') and by his decisions to raise the AMIA cause to national status, and to emphasize that there is no statute of limitations for those responsible for this attack;

Whereas it is reported that considerable evidence links the attack to the terrorist group Hizballah, which is based in Lebanon, supported by the Government of the Syrian Arab Republic, and sponsored by the Government of the Islamic Republic of Iran;

Whereas the decade since the bombing has been marked by efforts to minimize the international connection to this terrorist attack;

Whereas in March 2003, an Argentine judge issued arrest warrants for 4 officials of the Government of the Islamic Republic of Iran who are believed to have been involved in planning or carrying out the attack against AMIA and requested that the International Criminal Police Organization apprehend them;

Whereas the 4 indicted Iranians are Ali Fallahian, a former minister of security and intelligence; Mohsen Rabbani, a former cultural attache at the Iranian Embassy in Buenos Aires; Ali Balesh-Abadi, an Iranian diplomat; and Ali Akbar Parvaresh, a former minister of education;

Whereas Hadi Soleimanpour, Iran's Ambassador to Argentina in the 1990s, also has an international arrest warrant pending against him by Argentine authorities for his suspected primary role in the AMIA bombing;

Whereas it is reported that suicide bomber Ibrahim Hussein Berro, a Lebanese citizen, carried out the attack on AMIA;

Whereas it has been reported that contact was made by the Iranian embassy in Buenos Aires to Ibrahim Hussein Berro, who lived in a mosque in Canuelas, Argentina, in the days before the AMIA bombing;

Whereas Argentine officials have acknowledged that there was negligence in the initial phases of the investigation into the 1994 bombing, including the destruction or disappearance of material evidence;

Whereas the first major criminal trial regarding the bombing did not begin until September 2001, and those who are currently on trial are former policemen and civilians who are accused of playing roles only in the procurement and delivery of the vehicle that was used in the bombing;

Whereas the judge who had presided since 2001 over the investigation and trial related to the AMIA bombing was removed in December 2003 due to charges that he bribed a key witness in the AMIA case;

Whereas the new trial judge, Rodolfo Canicoba Corral, deals with many other important cases and has few supporting staff;

Whereas on March 17, 1992, terrorists bombed the Embassy of Israel in Buenos Aires, Argentina, killing 29 people and injuring more than 200, and the perpetrators of the attack also remain at large;

Whereas an inability to extradite suspected Islamic militants and Iranian officials has debilitated the efforts of the Government of Argentina to prosecute masterminds and planners of the 1994 AMIA bombing;

Whereas evidence indicates that the tri-border area where the borders of Argentina, Paraguay, and Brazil meet is suspected of harboring organizations that support terrorism and engage in drug and arms smuggling and an assorted array of other illicit, revenue-raising activities;

Whereas the Government of Argentina supports the 1996 Declaration of Lima to Prevent, Combat and Eliminate Terrorism, which refers to terrorism as a ''serious form of organized and systematic violence that is intended to generate chaos and fear among the population, results in death and destruction, and is a reprehensible criminal activity'';

Whereas the Government of Argentina supports the 1998 Commitment of Mar del Plata, which calls terrorist acts ''serious common crimes that erode peaceful and civilized coexistence, affect the rule of law and the exercise of democracy, and endanger the stability of democratically elected constitutional governments and their socioeconomic development of our countries'';

Whereas the Government of Argentina actively supports the development of the Three Plus One Counterterrorism Dialogue with Brazil, Paraguay, and the United States;

Whereas the Government of Argentina was successful in enacting a law on cooperation from defendants in terrorist matters, a law that will be helpful in pursuing full prosecution in the 1994 AMIA bombing and other terrorist cases; and

Whereas the Second Specialized Conference on Terrorism held in Mar del Plata, Argentina on November 23 and November 24, 1998, concluded with the adoption of the Commitment of Mar del Plata, calling for the establishment within the Organization of American States (referred to in this resolution as ''OAS'') of an Inter-American Committee Against Terrorism (referred to in this resolution as ''CICTE''): Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress—

(1) reiterates its strongest condemnation of the 1994 attack on the AMIA Jewish Community Center in Buenos Aires, Argentina, and honors the victims of this heinous act;

(2) expresses its sympathy to the relatives of the victims, who have waited 10 years without justice for the loss of their loved ones, and may have to wait even longer for justice to be served;

(3) underscores the concern of the United States regarding the continuing, decade-long delay in the proper resolution of this case;

(4) strongly urges the Government of Argentina to continue to dedicate and provide the resources necessary for its judicial system and intelligence agencies to investigate all areas of the AMIA case, including by implementing Argentine President Nestor Kirchner's Executive order mandating the opening of the archives of the SIDE of Argentina, and to prosecute with due haste those who are responsible for the bombing;

(5) calls upon the international community to cooperate fully with the investigation, including by making information, witnesses, and suspects available for review and questioning by the appropriate Argentine authorities;

(6) encourages the President to direct United States law enforcement agencies to provide support and cooperation, if requested, to the Government of Argentina, for the purposes of deepening and expanding the investigation into this bombing and suspected activities in support of terrorism in the tri-border area where the borders of Argentina, Paraguay, and Brazil meet;

(7) encourages the President to direct the United States Representative to the OAS to—

(A) seek support from OAS member countries for the creation of a special task force of the CICTE to assist, as requested by the Government of Argentina, in the investigation of all aspects of the 1994 AMIA terrorist attack; and

(B) urge OAS member countries to designate Hizballah as a terrorist organization if they have not already done so;

(8) stresses the need for international pressure on the Government of the Islamic Republic of Iran and the Government of the Syrian Arab Republic to extradite for trial individuals and government officials who are accused of planning or perpetrating the AMIA attack, and to immediately, unconditionally, and permanently cease any and all assistance to terrorists; and

(9) desires a lasting, warm relationship between the United States and Argentina that is built, in part, on mutual abhorrence of terrorism and commitments to peace, stability, and democracy in the Western Hemisphere.

AMENDMENTS SUBMITTED AND PROPOSED

SA 3562. Mr. MCCONNELL (for Mr. GRASSLEY (for himself and Mr. BAUCUS)) proposed an amendment to the bill H.R. 4520, to amend the Internal Revenue Code of 1986 to remove impediments in such Code and make our manufacturing, service, and high-technology businesses and workers more competitive and productive both at home and abroad.

SA 3563. Mr. DEWINE (for himself, Mr. KENNEDY, Mr. MCCONNELL, Mr. HOLLINGS, Ms. COLLINS, Mrs. MURRAY, Mr. DURBIN, Mrs. FEINSTEIN, Mr. GRAHAM of Florida, Mr. JEFFORDS, Mr. REED, Mr. LAUTENBERG, and Mr. SCHUMER) proposed an amendment to amendment SA 3562 proposed by Mr. MCCONNELL (for Mr. GRASSLEY (for himself and Mr. BAUCUS)) to the bill H.R. 4520, supra.

SA 3564. Mr. ROBERTS (for himself and Mr. ROCKEFELLER) submitted an amendment intended to be proposed by him to the bill S. 2386, to authorize appropriations for fiscal year 2005 for intelligence and intelligence-related activities of the United States Government, the Intelligence Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 3562. Mr. MCCONNELL (for Mr. GRASSLEY (for himself and Mr. BAUCUS)) proposed an amendment to the bill H.R. 4520, to amend the Internal

Revenue Code of 1986 to remove impediments in such Code and make our manufacturing, service, and high-technology businesses and workers more competitive and productive both at home and abroad; as follows:

(a) SHORT TITLE.—This Act may be cited as the ''Jumpstart Our Business Strength (JOBS) Act''.

The text of Amendment S.A. 3562 was printed in the CONGRESSIONAL RECORD on May 18, 2004, as the text of S. 1637 which was passed by the Senate on May 11, 2004.

SA 3563. Mr. DEWINE (for himself, Mr. KENNEDY, Mr. MCCONNELL, Mr. HOLLINGS, Ms. COLLINS, Mrs. MURRAY, Mr. DURBIN, Mrs. FEINSTEIN, Mr. GRAHAM of Florida, Mr. JEFFORDS, Mr. REED, Mr. LAUTENBERG, and Mr. SCHUMER) proposed an amendment to amendment SA 3562 proposed by Mr. MCCONNELL (for Mr. GRASSLEY (for himself and Mr. BAUCUS)) to the bill H.R. 4520, to amend the Internal Revenue Code of 1986 to remove impediments in such Code and make our manufacturing, service, and high-technology businesses and workers more competitive and productive both at home and abroad; as follows:

At the appropriate place, insert the following:

TITLE ____—PROVISIONS RELATING TO TOBACCO

Subtitle A—Family Smoking Prevention and Tobacco Control

SEC. ____01. SHORT TITLE.

This subtitle may be cited as the ''Family Smoking Prevention and Tobacco Control Act''.

SEC. ____02. FINDINGS.

The Congress finds the following:

(1) The use of tobacco products by the Nation's children is a pediatric disease of considerable proportions that results in new generations of tobacco-dependent children and adults.

(2) A consensus exists within the scientific and medical communities that tobacco products are inherently dangerous and cause cancer, heart disease, and other serious adverse health effects.

(3) Nicotine is an addictive drug.

(4) Virtually all new users of tobacco products are under the minimum legal age to purchase such products.

(5) Tobacco advertising and marketing contribute significantly to the use of nicotine-containing tobacco products by adolescents.

(6) Because past efforts to restrict advertising and marketing of tobacco products have failed adequately to curb tobacco use by adolescents, comprehensive restrictions on the sale, promotion, and distribution of such products are needed.

(7) Federal and State governments have lacked the legal and regulatory authority and resources they need to address comprehensively the public health and societal problems caused by the use of tobacco products.

(8) Federal and State public health officials, the public health community, and the public at large recognize that the tobacco industry should be subject to ongoing oversight.

(9) Under article I, section 8 of the Constitution, the Congress is vested with the responsibility for regulating interstate commerce and commerce with Indian tribes.

(10) The sale, distribution, marketing, advertising, and use of tobacco products are activities in and substantially affecting interstate commerce because they are sold, marketed, advertised, and distributed in interstate commerce on a nationwide basis, and have a substantial effect on the Nation's economy.

(11) The sale, distribution, marketing, advertising, and use of such products substantially affect interstate commerce through the health care and other costs attributable to the use of tobacco products.

(12) It is in the public interest for Congress to enact legislation that provides the Food and Drug Administration with the authority to regulate tobacco products and the advertising and promotion of such products. The benefits to the American people from enacting such legislation would be significant in human and economic terms.

(13) Tobacco use is the foremost preventable cause of premature death in America. It causes over 400,000 deaths in the United States each year and approximately 8,600,000 Americans have chronic illnesses related to smoking.

(14) Reducing the use of tobacco by minors by 50 percent would prevent well over 6,500,000 of today's children from becoming regular, daily smokers, saving over 2,000,000 of them from premature death due to tobacco induced disease. Such a reduction in youth smoking would also result in approximately $75,000,000,000 in savings attributable to reduced health care costs.

(15) Advertising, marketing, and promotion of tobacco products have been especially directed to attract young persons to use tobacco products and these efforts have resulted in increased use of such products by youth. Past efforts to oversee these activities have not been successful in adequately preventing such increased use.

(16) In 2001, the tobacco industry spent more than $11,000,000,000 to attract new users, retain current users, increase current consumption, and generate favorable long-term attitudes toward smoking and tobacco use.

(17) Tobacco product advertising often misleadingly portrays the use of tobacco as socially acceptable and healthful to minors.

(18) Tobacco product advertising is regularly seen by persons under the age of 18, and persons under the age of 18 are regularly exposed to tobacco product promotional efforts.

(19) Through advertisements during and sponsorship of sporting events, tobacco has become strongly associated with sports and has become portrayed as an integral part of sports and the healthy lifestyle associated with rigorous sporting activity.

(20) Children are exposed to substantial and unavoidable tobacco advertising that leads to favorable beliefs about tobacco use, plays a role in leading young people to overestimate the prevalence of tobacco use, and increases the number of young people who begin to use tobacco.

(21) The use of tobacco products in motion pictures and other mass media glamorizes its use for young people and encourages them to use tobacco products.

(22) Tobacco advertising expands the size of the tobacco market by increasing consumption of tobacco products including tobacco use by young people.

(23) Children are more influenced by tobacco advertising than adults, they smoke the most advertised brands.

(24) Tobacco company documents indicate that young people are an important and often crucial segment of the tobacco market. Children, who tend to be more price-sensitive than adults, are influenced by advertising and promotion practices that result in drastically reduced cigarette prices.

(25) Comprehensive advertising restrictions will have a positive effect on the smoking rates of young people.

(26) Restrictions on advertising are necessary to prevent unrestricted tobacco advertising from undermining legislation prohibiting access to young people and providing for education about tobacco use.

(27) International experience shows that advertising regulations that are stringent and comprehensive have a greater impact on overall tobacco use and young people's use than weaker or less comprehensive ones.

(28) Text only requirements, although not as stringent as a ban, will help reduce underage use of tobacco products while preserving the informational function of advertising.

(29) It is in the public interest for Congress to adopt legislation to address the public health crisis created by actions of the tobacco industry.

(30) The final regulations promulgated by the Secretary of Health and Human Services in the August 28, 1996, issue of the Federal Register (61 Fed. Reg. 44615–44618) for inclusion as part 897 of title 21, Code of Federal Regulations, are consistent with the First Amendment to the United States Constitution and with the standards set forth in the amendments made by this subtitle for the regulation of tobacco products by the Food and Drug Administration and the restriction on the sale and distribution, including access to and the advertising and promotion of, tobacco products contained in such regulations are substantially related to accomplishing the public health goals of this subtitle.

(31) The regulations described in paragraph (30) will directly and materially advance the Federal Government's substantial interest in reducing the number of children and adolescents who use cigarettes and smokeless tobacco and in preventing the life-threatening health consequences associated with tobacco use. An overwhelming majority of Americans who use tobacco products begin using such products while they are minors and become addicted to the nicotine in those products before reaching the age of 18. Tobacco advertising and promotion plays a crucial role in the decision of these minors to begin using tobacco products. Less restrictive and less comprehensive approaches have not and will not be effective in reducing the problems addressed by such regulations. The reasonable restrictions on the advertising and promotion of tobacco products contained in such regulations will lead to a significant decrease in the number of minors using and becoming addicted to those products.

(32) The regulations described in paragraph (30) impose no more extensive restrictions on communication by tobacco manufacturers and sellers than are necessary to reduce the number of children and adolescents who use cigarettes and smokeless tobacco and to prevent the life-threatening health consequences associated with tobacco use. Such regulations are narrowly tailored to restrict those advertising and promotional practices which are most likely to be seen or heard by youth and most likely to entice them into tobacco use, while affording tobacco manufacturers and sellers ample opportunity to convey information about their products to adult consumers.

(33) Tobacco dependence is a chronic disease, one that typically requires repeated interventions to achieve long-term or permanent abstinence.

(34) Because the only known safe alternative to smoking is cessation, interventions should target all smokers to help them quit completely.

(35) Tobacco products have been used to facilitate and finance criminal activities both

domestically and internationally. Illicit trade of tobacco products has been linked to organized crime and terrorist groups.

(36) It is essential that the Food and Drug Administration review products sold or distributed for use to reduce risks or exposures associated with tobacco products and that it be empowered to review any advertising and labeling for such products. It is also essential that manufacturers, prior to marketing such products, be required to demonstrate that such products will meet a series of rigorous criteria, and will benefit the health of the population as a whole, taking into account both users of tobacco products and persons who do not currently use tobacco products.

(37) Unless tobacco products that purport to reduce the risks to the public of tobacco use actually reduce such risks, those products can cause substantial harm to the public health to the extent that the individuals, who would otherwise not consume tobacco products or would consume such products less, use tobacco products purporting to reduce risk. Those who use products sold or distributed as modified risk products that do not in fact reduce risk, rather than quitting or reducing their use of tobacco products, have a substantially increased likelihood of suffering disability and premature death. The costs to society of the widespread use of products sold or distributed as modified risk products that do not in fact reduce risk or that increase risk include thousands of unnecessary deaths and injuries and huge costs to our health care system.

(38) As the National Cancer Institute has found, many smokers mistakenly believe that ''low tar'' and ''light'' cigarettes cause fewer health problems than other cigarettes. As the National Cancer Institute has also found, mistaken beliefs about the health consequences of smoking ''low tar'' and ''light'' cigarettes can reduce the motivation to quit smoking entirely and thereby lead to disease and death.

(39) Recent studies have demonstrated that there has been no reduction in risk on a population-wide basis from ''low tar'' and ''light'' cigarettes and such products may actually increase the risk of tobacco use.

(40) The dangers of products sold or distributed as modified risk tobacco products that do not in fact reduce risk are so high that there is a compelling governmental interest in insuring that statements about modified risk tobacco products are complete, accurate, and relate to the overall disease risk of the product.

(41) As the Federal Trade Commission has found, consumers have misinterpreted advertisements in which one product is claimed to be less harmful than a comparable product, even in the presence of disclosures and advisories intended to provide clarification.

(42) Permitting manufacturers to make unsubstantiated statements concerning modified risk tobacco products, whether express or implied, even if accompanied by disclaimers would be detrimental to the public health.

(43) The only way to effectively protect the public health from the dangers of unsubstantiated modified risk tobacco products is to empower the Food and Drug Administration to require that products that tobacco manufacturers sold or distributed for risk reduction be approved in advance of marketing, and to require that the evidence relied on to support approval of these products is rigorous.

SEC. ___03. PURPOSE.

The purposes of this subtitle are—

(1) to provide authority to the Food and Drug Administration to regulate tobacco products under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), by recognizing it as the primary Federal regulatory authority with respect to the manufacture, marketing, and distribution of tobacco products;

(2) to ensure that the Food and Drug Administration has the authority to address issues of particular concern to public health officials, especially the use of tobacco by young people and dependence on tobacco;

(3) to authorize the Food and Drug Administration to set national standards controlling the manufacture of tobacco products and the identity, public disclosure, and amount of ingredients used in such products;

(4) to provide new and flexible enforcement authority to ensure that there is effective oversight of the tobacco industry's efforts to develop, introduce, and promote less harmful tobacco products;

(5) to vest the Food and Drug Administration with the authority to regulate the levels of tar, nicotine, and other harmful components of tobacco products;

(6) in order to ensure that consumers are better informed, to require tobacco product manufacturers to disclose research which has not previously been made available, as well as research generated in the future, relating to the health and dependency effects or safety of tobacco products;

(7) to continue to permit the sale of tobacco products to adults in conjunction with measures to ensure that they are not sold or accessible to underage purchasers;

(8) to impose appropriate regulatory controls on the tobacco industry;

(9) to promote cessation to reduce disease risk and the social costs associated with tobacco related diseases; and

(10) to strengthen legislation against illicit trade in tobacco products.

SEC. ___04. SCOPE AND EFFECT.

(a) INTENDED EFFECT.—Nothing in this subtitle (or an amendment made by this subtitle) shall be construed to—

(1) establish a precedent with regard to any other industry, situation, circumstance, or legal action; or

(2) affect any action pending in Federal, State, or Tribal court, or any agreement, consent decree, or contract of any kind.

(b) AGRICULTURAL ACTIVITIES.—The provisions of this subtitle (or an amendment made by this subtitle) which authorize the Secretary to take certain actions with regard to tobacco and tobacco products shall not be construed to affect any authority of the Secretary of Agriculture under existing law regarding the growing, cultivation, or curing of raw tobacco.

SEC. ___05. SEVERABILITY.

If any provision of this subtitle, the amendments made by this subtitle, or the application of any provision of this subtitle to any person or circumstance is held to be invalid, the remainder of this subtitle, the amendments made by this subtitle, and the application of the provisions of this subtitle to any other person or circumstance shall not be affected and shall continue to be enforced to the fullest extent possible.

CHAPTER 1—AUTHORITY OF THE FOOD AND DRUG ADMINISTRATION

SEC. ___11. AMENDMENT OF FEDERAL FOOD, DRUG, AND COSMETIC ACT.

(a) DEFINITION OF TOBACCO PRODUCTS.—Section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) is amended by adding at the end the following:

''(nn)(1) The term 'tobacco product' means any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product (except for raw materials other than tobacco used in manufacturing a component, part, or accessory of a tobacco product).

''(2) The term 'tobacco product' does not mean—

''(A) a product in the form of conventional food (including water and chewing gum), a product represented for use as or for use in a conventional food, or a product that is intended for ingestion in capsule, tablet, softgel, or liquid form; or

''(B) an article that is approved or is regulated as a drug by the Food and Drug Administration.

''(3) The products described in paragraph (2)(A) shall be subject to chapter IV or chapter V of this Act and the articles described in paragraph (2)(B) shall be subject to chapter V of this Act.

''(4) A tobacco product may not be marketed in combination with any other article or product regulated under this Act (including a drug, biologic, food, cosmetics, medical device, or a dietary supplement).''.

(b) FDA AUTHORITY OVER TOBACCO PRODUCTS.—The Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) is amended—

(1) by redesignating chapter IX as chapter X;

(2) by redesignating sections 901 through 907 as sections 1001 through 1007; and

(3) by inserting after section 803 the following:

"CHAPTER IX—TOBACCO PRODUCTS

"SEC. 900. DEFINITIONS.

''In this chapter:

''(1) ADDITIVE.—The term 'additive' means any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristic of any tobacco product (including any substances intended for use as a flavoring, coloring or in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding), except that such term does not include tobacco or a pesticide chemical residue in or on raw tobacco or a pesticide chemical.

''(2) BRAND.—The term 'brand' means a variety of tobacco product distinguished by the tobacco used, tar content, nicotine content, flavoring used, size, filtration, or packaging, logo, registered trademark or brand name, identifiable pattern of colors, or any combination of such attributes.

''(3) CIGARETTE.—The term 'cigarette' has the meaning given that term by section 3(1) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332(1)), but also includes tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette or as roll-your-own tobacco.

''(4) CIGARETTE TOBACCO.—The term 'cigarette tobacco' means any product that consists of loose tobacco that is intended for use by consumers in a cigarette. Unless otherwise stated, the requirements for cigarettes shall also apply to cigarette tobacco.

''(5) COMMERCE.—The term 'commerce' has the meaning given that term by section 3(2) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332(2)).

''(6) COUNTERFEIT TOBACCO PRODUCT.—The term 'counterfeit tobacco product' means a tobacco product (or the container or labeling of such a product) that, without authorization, bears the trademark, trade name, or other identifying mark, imprint or device, or any likeness thereof, of a tobacco product listed in a registration under section 905(i)(1).

''(7) DISTRIBUTOR.—The term 'distributor' as regards a tobacco product means any person who furthers the distribution of a tobacco product, whether domestic or imported, at any point from the original place

of manufacture to the person who sells or distributes the product to individuals for personal consumption. Common carriers are not considered distributors for purposes of this chapter.

''(8) ILLICIT TRADE.—The term 'illicit trade' means any practice or conduct prohibited by law which relates to production, shipment, receipt, possession, distribution, sale, or purchase of tobacco products including any practice or conduct intended to facilitate such activity.

''(9) INDIAN TRIBE.—The term 'Indian tribe' has the meaning given such term in section 4(e) of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450b(e)).

''(10) LITTLE CIGAR.—The term 'little cigar' has the meaning given that term by section 3(7) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332(7)).

''(11) NICOTINE.—The term 'nicotine' means the chemical substance named 3-(1-Methyl-2-pyrrolidinyl) pyridine or C[10]H[14]N[2], including any salt or complex of nicotine.

''(12) PACKAGE.—The term 'package' means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane), in which a tobacco product is offered for sale, sold, or otherwise distributed to consumers.

''(13) RETAILER.—The term 'retailer' means any person who sells tobacco products to individuals for personal consumption, or who operates a facility where self-service displays of tobacco products are permitted.

''(14) ROLL-YOUR-OWN TOBACCO.—The term 'roll-your-own tobacco' means any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

''(15) SMOKE CONSTITUENT.—The term 'smoke constituent' means any chemical or chemical compound in mainstream or sidestream tobacco smoke that either transfers from any component of the cigarette to the smoke or that is formed by the combustion or heating of tobacco, additives, or other component of the tobacco product.

''(16) SMOKELESS TOBACCO.—The term 'smokeless tobacco' means any tobacco product that consists of cut, ground, powdered, or leaf tobacco and that is intended to be placed in the oral or nasal cavity.

''(17) STATE.—The term 'State' means any State of the United States and, for purposes of this chapter, includes the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Atoll, the Northern Mariana Islands, and any other trust territory or possession of the United States.

''(18) TOBACCO PRODUCT MANUFACTURER.—Term 'tobacco product manufacturer' means any person, including any repacker or relabeler, who—

''(A) manufactures, fabricates, assembles, processes, or labels a tobacco product; or

''(B) imports a finished cigarette or smokeless tobacco product for sale or distribution in the United States.

''(19) UNITED STATES.—The term 'United States' means the 50 States of the United States of America and the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Atoll, the Northern Mariana Islands, and any other trust territory or possession of the United States.

"SEC. 901. FDA AUTHORITY OVER TOBACCO PRODUCTS.

''(a) IN GENERAL.—Tobacco products shall be regulated by the Secretary under this chapter and shall not be subject to the provisions of chapter V, unless—

''(1) such products are intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease (within the meaning of section 201(g)(1)(B) or section 201(h)(2)); or

''(2) a claim is made for such products under section 201(g)(1)(C) or 201(h)(3);

other than modified risk tobacco products approved in accordance with section 911.

''(b) APPLICABILITY.—This chapter shall apply to all tobacco products subject to the regulations referred to in section ___12 of the Family Smoking Prevention and Tobacco Control Act, and to any other tobacco products that the Secretary by regulation deems to be subject to this chapter.

''(c) SCOPE.—

''(1) IN GENERAL.—Nothing in this chapter, or any policy issued or regulation promulgated thereunder, or the Family Smoking Prevention and Tobacco Control Act, shall be construed to affect the Secretary's authority over, or the regulation of, products under this Act that are not tobacco products under chapter V or any other chapter.

''(2) LIMITATION OF AUTHORITY.—

''(A) IN GENERAL.—The provisions of this chapter shall not apply to tobacco leaf that is not in the possession of a manufacturer of tobacco products, or to the producers of tobacco leaf, including tobacco growers, tobacco warehouses, and tobacco grower cooperatives, nor shall any employee of the Food and Drug Administration have any authority to enter onto a farm owned by a producer of tobacco leaf without the written consent of such producer.

''(B) EXCEPTION.—Notwithstanding any other provision of this subparagraph, if a producer of tobacco leaf is also a tobacco product manufacturer or controlled by a tobacco product manufacturer, the producer shall be subject to this chapter in the producer's capacity as a manufacturer.

''(C) RULE OF CONSTRUCTION.—Nothing in this chapter shall be construed to grant the Secretary authority to promulgate regulations on any matter that involves the production of tobacco leaf or a producer thereof, other than activities by a manufacturer affecting production.

"SEC. 902. ADULTERATED TOBACCO PRODUCTS.

''A tobacco product shall be deemed to be adulterated if—

''(1) it consists in whole or in part of any filthy, putrid, or decomposed substance, or is otherwise contaminated by any added poisonous or added deleterious substance that may render the product injurious to health;

''(2) it has been prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health;

''(3) its package is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

''(4) it is, or purports to be or is represented as, a tobacco product which is subject to a tobacco product standard established under section 907 unless such tobacco product is in all respects in conformity with such standard;

''(5)(A) it is required by section 910(a) to have premarket approval and does not have an approved application in effect;

''(B) it is in violation of the order approving such an application; or

''(6) the methods used in, or the facilities or controls used for, its manufacture, packing or storage are not in conformity with applicable requirements under section 906(e)(1) or an applicable condition prescribed by an order under section 906(e)(2); or

''(7) it is in violation of section 911.

"SEC. 903. MISBRANDED TOBACCO PRODUCTS.

''(a) IN GENERAL.—A tobacco product shall be deemed to be misbranded—

''(1) if its labeling is false or misleading in any particular;

''(2) if in package form unless it bears a label containing—

''(A) the name and place of business of the tobacco product manufacturer, packer, or distributor;

''(B) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count;

''(C) an accurate statement of the percentage of the tobacco used in the product that is domestically grown tobacco and the percentage that is foreign grown tobacco; and

''(D) the statement required under section 921(a),

except that under subparagraph (B) reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Secretary;

''(3) if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements or designs in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

''(4) if it has an established name, unless its label bears, to the exclusion of any other nonproprietary name, its established name prominently printed in type as required by the Secretary by regulation;

''(5) if the Secretary has issued regulations requiring that its labeling bear adequate directions for use, or adequate warnings against use by children, that are necessary for the protection of users unless its labeling conforms in all respects to such regulations;

''(6) if it was manufactured, prepared, propagated, compounded, or processed in any State in an establishment not duly registered under section 905(b), 905(c), 905(d), or 905(h), if it was not included in a list required by section 905(i), if a notice or other information respecting it was not provided as required by such section or section 905(j), or if it does not bear such symbols from the uniform system for identification of tobacco products prescribed under section 905(e) as the Secretary by regulation requires;

''(7) if, in the case of any tobacco product distributed or offered for sale in any State—

''(A) its advertising is false or misleading in any particular; or

''(B) it is sold or distributed in violation of regulations prescribed under section 906(d);

''(8) unless, in the case of any tobacco product distributed or offered for sale in any State, the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that tobacco product—

''(A) a true statement of the tobacco product's established name as described in paragraph (4), printed prominently; and

''(B) a brief statement of—

''(i) the uses of the tobacco product and relevant warnings, precautions, side effects, and contraindications; and

''(ii) in the case of specific tobacco products made subject to a finding by the Secretary after notice and opportunity for comment that such action is appropriate to protect the public health, a full description of the components of such tobacco product or the formula showing quantitatively each ingredient of such tobacco product to the extent required in regulations which shall be issued by the Secretary after an opportunity for a hearing;

''(9) if it is a tobacco product subject to a tobacco product standard established under

section 907, unless it bears such labeling as may be prescribed in such tobacco product standard; or

''(10) if there was a failure or refusal—

''(A) to comply with any requirement prescribed under section 904 or 908; or

''(B) to furnish any material or information required under section 909.

''(b) PRIOR APPROVAL OF LABEL STATEMENTS.—The Secretary may, by regulation, require prior approval of statements made on the label of a tobacco product. No regulation issued under this subsection may require prior approval by the Secretary of the content of any advertisement, except for modified risk tobacco products as provided in section 911. No advertisement of a tobacco product published after the date of enactment of the Family Smoking Prevention and Tobacco Control Act shall, with respect to the language of label statements as prescribed under section 4 of the Cigarette Labeling and Advertising Act and section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 or the regulations issued under such sections, be subject to the provisions of sections 12 through 15 of the Federal Trade Commission Act (15 U.S.C. 52 through 55).

''SEC. 904. SUBMISSION OF HEALTH INFORMATION TO THE SECRETARY.

''(a) REQUIREMENT.—Not later than 6 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, each tobacco product manufacturer or importer, or agents thereof, shall submit to the Secretary the following information:

''(1) A listing of all ingredients, including tobacco, substances, compounds, and additives that are, as of such date, added by the manufacturer to the tobacco, paper, filter, or other part of each tobacco product by brand and by quantity in each brand and subbrand.

''(2) A description of the content, delivery, and form of nicotine in each tobacco product measured in milligrams of nicotine in accordance with regulations promulgated by the Secretary in accordance with section 4(a)(4) of the Federal Cigarette Labeling and Advertising Act.

''(3) A listing of all constituents, including smoke constituents as applicable, identified by the Secretary as harmful or potentially harmful to health in each tobacco product, and as applicable in the smoke of each tobacco product, by brand and by quantity in each brand and subbrand. Effective beginning 2 years after the date of enactment of this chapter, the manufacturer, importer, or agent shall comply with regulations promulgated under section 915 in reporting information under this paragraph, where applicable.

''(4) All documents developed after the date of enactment of the Family Smoking Prevention and Tobacco Control Act that relate to health, toxicological, behavioral, or physiologic effects of current or future tobacco products, their constituents (including smoke constituents), ingredients, components, and additives.

''(b) DATA SUBMISSION.—At the request of the Secretary, each tobacco product manufacturer or importer of tobacco products, or agents thereof, shall submit the following:

''(1) Any or all documents (including underlying scientific information) relating to research activities, and research findings, conducted, supported, or possessed by the manufacturer (or agents thereof) on the health, toxicological, behavioral, or physiologic effects of tobacco products and their constituents (including smoke constituents), ingredients, components, and additives.

''(2) Any or all documents (including underlying scientific information) relating to research activities, and research findings, conducted, supported, or possessed by the manufacturer (or agents thereof) that relate to the issue of whether a reduction in risk to health from tobacco products can occur upon the employment of technology available or known to the manufacturer.

''(3) Any or all documents (including underlying scientific or financial information) relating to marketing research involving the use of tobacco products or marketing practices and the effectiveness of such practices used by tobacco manufacturers and distributors.

An importer of a tobacco product not manufactured in the United States shall supply the information required of a tobacco product manufacturer under this subsection.

''(c) TIME FOR SUBMISSION.—

''(1) IN GENERAL.—At least 90 days prior to the delivery for introduction into interstate commerce of a tobacco product not on the market on the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the manufacturer of such product shall provide the information required under subsection (a).

''(2) DISCLOSURE OF ADDITIVE.—If at any time a tobacco product manufacturer adds to its tobacco products a new tobacco additive or increases the quantity of an existing tobacco additive, the manufacturer shall, except as provided in paragraph (3), at least 90 days prior to such action so advise the Secretary in writing.

''(3) DISCLOSURE OF OTHER ACTIONS.—If at any time a tobacco product manufacturer eliminates or decreases an existing additive, or adds or increases an additive that has by regulation been designated by the Secretary as an additive that is not a human or animal carcinogen, or otherwise harmful to health under intended conditions of use, the manufacturer shall within 60 days of such action so advise the Secretary in writing.

''(d) DATA LIST.—

''(1) IN GENERAL.—Not later than 3 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, and annually thereafter, the Secretary shall publish in a format that is understandable and not misleading to a lay person, and place on public display (in a manner determined by the Secretary) the list established under subsection (e).

''(2) CONSUMER RESEARCH.—The Secretary shall conduct periodic consumer research to ensure that the list published under paragraph (1) is not misleading to lay persons. Not later than 5 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall submit to the appropriate committees of Congress a report on the results of such research, together with recommendations on whether such publication should be continued or modified.

''(e) DATA COLLECTION.—Not later than 12 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall establish a list of harmful and potentially harmful constituents, including smoke constituents, to health in each tobacco product by brand and by quantity in each brand and subbrand. The Secretary shall publish a public notice requesting the submission by interested persons of scientific and other information concerning the harmful and potentially harmful constituents in tobacco products and tobacco smoke.

''SEC. 905. ANNUAL REGISTRATION.

''(a) DEFINITIONS.—In this section:

''(1) MANUFACTURE, PREPARATION, COMPOUNDING, OR PROCESSING.—The term 'manufacture, preparation, compounding, or processing' shall include repackaging or otherwise changing the container, wrapper, or labeling of any tobacco product package in furtherance of the distribution of the tobacco product from the original place of manufacture to the person who makes final delivery or sale to the ultimate consumer or user.

''(2) NAME.—The term 'name' shall include in the case of a partnership the name of each partner and, in the case of a corporation, the name of each corporate officer and director, and the State of incorporation.

''(b) REGISTRATION BY OWNERS AND OPERATORS.—On or before December 31 of each year every person who owns or operates any establishment in any State engaged in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products shall register with the Secretary the name, places of business, and all such establishments of that person.

''(c) REGISTRATION OF NEW OWNERS AND OPERATORS.—Every person upon first engaging in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products in any establishment owned or operated in any State by that person shall immediately register with the Secretary that person's name, place of business, and such establishment.

''(d) REGISTRATION OF ADDED ESTABLISHMENTS.—Every person required to register under subsection (b) or (c) shall immediately register with the Secretary any additional establishment which that person owns or operates in any State and in which that person begins the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products.

''(e) UNIFORM PRODUCT IDENTIFICATION SYSTEM.—The Secretary may by regulation prescribe a uniform system for the identification of tobacco products and may require that persons who are required to list such tobacco products under subsection (i) shall list such tobacco products in accordance with such system.

''(f) PUBLIC ACCESS TO REGISTRATION INFORMATION.—The Secretary shall make available for inspection, to any person so requesting, any registration filed under this section.

''(g) BIENNIAL INSPECTION OF REGISTERED ESTABLISHMENTS.—Every establishment in any State registered with the Secretary under this section shall be subject to inspection under section 704, and every such establishment engaged in the manufacture, compounding, or processing of a tobacco product or tobacco products shall be so inspected by 1 or more officers or employees duly designated by the Secretary at least once in the 2-year period beginning with the date of registration of such establishment under this section and at least once in every successive 2-year period thereafter.

''(h) FOREIGN ESTABLISHMENTS SHALL REGISTER.—Any establishment within any foreign country engaged in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products, shall register under this section under regulations promulgated by the Secretary. Such regulations shall require such establishment to provide the information required by subsection (i) of this section and shall include provisions for registration of any such establishment upon condition that adequate and effective means are available, by arrangement with the government of such foreign country or otherwise, to enable the Secretary to determine from time to time whether tobacco products manufactured, prepared, compounded, or processed in such establishment, if imported or offered for import into the United States, shall be refused admission on any of the grounds set forth in section 801(a).

''(i) REGISTRATION INFORMATION.—

''(1) PRODUCT LIST.—Every person who registers with the Secretary under subsection

(b), (c), (d), or (h) shall, at the time of registration under any such subsection, file with the Secretary a list of all tobacco products which are being manufactured, prepared, compounded, or processed by that person for commercial distribution and which has not been included in any list of tobacco products filed by that person with the Secretary under this paragraph or paragraph (2) before such time of registration. Such list shall be prepared in such form and manner as the Secretary may prescribe and shall be accompanied by—

''(A) in the case of a tobacco product contained in the applicable list with respect to which a tobacco product standard has been established under section 907 or which is subject to section 910, a reference to the authority for the marketing of such tobacco product and a copy of all labeling for such tobacco product;

''(B) in the case of any other tobacco product contained in an applicable list, a copy of all consumer information and other labeling for such tobacco product, a representative sampling of advertisements for such tobacco product, and, upon request made by the Secretary for good cause, a copy of all advertisements for a particular tobacco product; and

''(C) if the registrant filing a list has determined that a tobacco product contained in such list is not subject to a tobacco product standard established under section 907, a brief statement of the basis upon which the registrant made such determination if the Secretary requests such a statement with respect to that particular tobacco product.

''(2) BIANNUAL REPORT OF ANY CHANGE IN PRODUCT LIST.—Each person who registers with the Secretary under this section shall report to the Secretary once during the month of June of each year and once during the month of December of each year the following:

''(A) A list of each tobacco product introduced by the registrant for commercial distribution which has not been included in any list previously filed by that person with the Secretary under this subparagraph or paragraph (1). A list under this subparagraph shall list a tobacco product by its established name and shall be accompanied by the other information required by paragraph (1).

''(B) If since the date the registrant last made a report under this paragraph that person has discontinued the manufacture, preparation, compounding, or processing for commercial distribution of a tobacco product included in a list filed under subparagraph (A) or paragraph (1), notice of such discontinuance, the date of such discontinuance, and the identity of its established name.

''(C) If since the date the registrant reported under subparagraph (B) a notice of discontinuance that person has resumed the manufacture, preparation, compounding, or processing for commercial distribution of the tobacco product with respect to which such notice of discontinuance was reported, notice of such resumption, the date of such resumption, the identity of such tobacco product by established name, and other information required by paragraph (1), unless the registrant has previously reported such resumption to the Secretary under this subparagraph.

''(D) Any material change in any information previously submitted under this paragraph or paragraph (1).

''(j) REPORT PRECEDING INTRODUCTION OF CERTAIN SUBSTANTIALLY-EQUIVALENT PRODUCTS INTO INTERSTATE COMMERCE.—

''(1) IN GENERAL.—Each person who is required to register under this section and who proposes to begin the introduction or delivery for introduction into interstate commerce for commercial distribution of a tobacco product intended for human use that was not commercially marketed (other than for test marketing) in the United States as of June 1, 2003, shall, at least 90 days prior to making such introduction or delivery, report to the Secretary (in such form and manner as the Secretary shall prescribe)—

''(A) the basis for such person's determination that the tobacco product is substantially equivalent, within the meaning of section 910, to a tobacco product commercially marketed (other than for test marketing) in the United States as of June 1, 2003, that is in compliance with the requirements of this Act; and

''(B) action taken by such person to comply with the requirements under section 907 that are applicable to the tobacco product.

''(2) APPLICATION TO CERTAIN POST JUNE 1, 2003 PRODUCTS.—A report under this subsection for a tobacco product that was first introduced or delivered for introduction into interstate commerce for commercial distribution in the United States after June 1, 2003, and prior to the date that is 15 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act shall be submitted to the Secretary not later than 15 months after such date of enactment.

''(3) EXEMPTIONS.—

''(A) IN GENERAL.—The Secretary may by regulation, exempt from the requirements of this subsection tobacco products that are modified by adding or deleting a tobacco additive, or increasing or decreasing the quantity of an existing tobacco additive, if the Secretary determines that—

''(i) such modification would be a minor modification of a tobacco product authorized for sale under this Act;

''(ii) a report under this subsection is not necessary to ensure that permitting the tobacco product to be marketed would be appropriate for protection of the public health; and

''(iii) an exemption is otherwise appropriate.

''(B) REGULATIONS.—Not later than 9 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall issue regulations to implement this paragraph.

"SEC. 906. GENERAL PROVISIONS RESPECTING CONTROL OF TOBACCO PRODUCTS.

''(a) IN GENERAL.—Any requirement established by or under section 902, 903, 905, or 909 applicable to a tobacco product shall apply to such tobacco product until the applicability of the requirement to the tobacco product has been changed by action taken under section 907, section 910, section 911, or subsection (d) of this section, and any requirement established by or under section 902, 903, 905, or 909 which is inconsistent with a requirement imposed on such tobacco product under section 907, section 910, section 911, or subsection (d) of this section shall not apply to such tobacco product.

''(b) INFORMATION ON PUBLIC ACCESS AND COMMENT.—Each notice of proposed rulemaking under section 907, 908, 909, 910, or 911 or under this section, any other notice which is published in the Federal Register with respect to any other action taken under any such section and which states the reasons for such action, and each publication of findings required to be made in connection with rulemaking under any such section shall set forth—

''(1) the manner in which interested persons may examine data and other information on which the notice or findings is based; and

''(2) the period within which interested persons may present their comments on the notice or findings (including the need therefore) orally or in writing, which period shall be at least 60 days but may not exceed 90 days unless the time is extended by the Secretary by a notice published in the Federal Register stating good cause therefore.

''(c) LIMITED CONFIDENTIALITY OF INFORMATION.—Any information reported to or otherwise obtained by the Secretary or the Secretary's representative under section 903, 904, 907, 908, 909, 910, 911, or 704, or under subsection (e) or (f) of this section, which is exempt from disclosure under subsection (a) of section 552 of title 5, United States Code, by reason of subsection (b)(4) of that section shall be considered confidential and shall not be disclosed, except that the information may be disclosed to other officers or employees concerned with carrying out this chapter, or when relevant in any proceeding under this chapter.

''(d) RESTRICTIONS.—

''(1) IN GENERAL.—The Secretary may by regulation require restrictions on the sale and distribution of a tobacco product, including restrictions on the access to, and the advertising and promotion of, the tobacco product, if the Secretary determines that such regulation would be appropriate for the protection of the public health. The Secretary may by regulation impose restrictions on the advertising and promotion of a tobacco product consistent with and to full extent permitted by the first amendment to the Constitution. The finding as to whether such regulation would be appropriate for the protection of the public health shall be determined with respect to the risks and benefits to the population as a whole, including users and non-users of the tobacco product, and taking into account—

''(A) the increased or decreased likelihood that existing users of tobacco products will stop using such products; and

''(B) the increased or decreased likelihood that those who do not use tobacco products will start using such products.

No such regulation may require that the sale or distribution of a tobacco product be limited to the written or oral authorization of a practitioner licensed by law to prescribe medical products.

''(2) LABEL STATEMENTS.—The label of a tobacco product shall bear such appropriate statements of the restrictions required by a regulation under subsection (a) as the Secretary may in such regulation prescribe.

''(3) LIMITATIONS.—

''(A) IN GENERAL.—No restrictions under paragraph (1) may—

''(i) prohibit the sale of any tobacco product in face-to-face transactions by a specific category of retail outlets; or

''(ii) establish a minimum age of sale of tobacco products to any person older than 18 years of age.

''(B) MATCHBOOKS.—For purposes of any regulations issued by the Secretary, matchbooks of conventional size containing not more than 20 paper matches, and which are customarily given away for free with the purchase of tobacco products shall be considered as adult written publications which shall be permitted to contain advertising. Notwithstanding the preceding sentence, if the Secretary finds that such treatment of matchbooks is not appropriate for the protection of the public health, the Secretary may determine by regulation that matchbooks shall not be considered adult written publications.

''(e) GOOD MANUFACTURING PRACTICE REQUIREMENTS.—

''(1) METHODS, FACILITIES, AND CONTROLS TO CONFORM.—

''(A) IN GENERAL.—The Secretary may, in accordance with subparagraph (B), prescribe regulations (which may differ based on the type of tobacco product involved) requiring that the methods used in, and the facilities

and controls used for, the manufacture, preproduction design validation (including a process to assess the performance of a tobacco product), packing and storage of a tobacco product, conform to current good manufacturing practice, as prescribed in such regulations, to assure that the public health is protected and that the tobacco product is in compliance with this chapter. Good manufacturing practices may include the testing of raw tobacco for pesticide chemical residues regardless of whether a tolerance for such chemical residues has been established.

''(B) REQUIREMENTS.—The Secretary shall—

''(i) before promulgating any regulation under subparagraph (A), afford the Tobacco Products Scientific Advisory Committee an opportunity to submit recommendations with respect to the regulation proposed to be promulgated;

''(ii) before promulgating any regulation under subparagraph (A), afford opportunity for an oral hearing;

''(iii) provide the advisory committee a reasonable time to make its recommendation with respect to proposed regulations under subparagraph (A); and

''(iv) in establishing the effective date of a regulation promulgated under this subsection, take into account the differences in the manner in which the different types of tobacco products have historically been produced, the financial resources of the different tobacco product manufacturers, and the state of their existing manufacturing facilities, and shall provide for a reasonable period of time for such manufacturers to conform to good manufacturing practices.

''(2) EXEMPTIONS; VARIANCES.—

''(A) PETITION.—Any person subject to any requirement prescribed under paragraph (1) may petition the Secretary for a permanent or temporary exemption or variance from such requirement. Such a petition shall be submitted to the Secretary in such form and manner as the Secretary shall prescribe and shall—

''(i) in the case of a petition for an exemption from a requirement, set forth the basis for the petitioner's determination that compliance with the requirement is not required to assure that the tobacco product will be in compliance with this chapter;

''(ii) in the case of a petition for a variance from a requirement, set forth the methods proposed to be used in, and the facilities and controls proposed to be used for, the manufacture, packing, and storage of the tobacco product in lieu of the methods, facilities, and controls prescribed by the requirement; and

''(iii) contain such other information as the Secretary shall prescribe.

''(B) REFERRAL TO THE TOBACCO PRODUCTS SCIENTIFIC ADVISORY COMMITTEE.—The Secretary may refer to the Tobacco Products Scientific Advisory Committee any petition submitted under subparagraph (A). The Tobacco Products Scientific Advisory Committee shall report its recommendations to the Secretary with respect to a petition referred to it within 60 days after the date of the petition's referral. Within 60 days after—

''(i) the date the petition was submitted to the Secretary under subparagraph (A); or

''(ii) the day after the petition was referred to the Tobacco Products Scientific Advisory Committee,

whichever occurs later, the Secretary shall by order either deny the petition or approve it.

''(C) APPROVAL.—The Secretary may approve—

''(i) a petition for an exemption for a tobacco product from a requirement if the Secretary determines that compliance with such requirement is not required to assure that the tobacco product will be in compliance with this chapter; and

''(ii) a petition for a variance for a tobacco product from a requirement if the Secretary determines that the methods to be used in, and the facilities and controls to be used for, the manufacture, packing, and storage of the tobacco product in lieu of the methods, controls, and facilities prescribed by the requirement are sufficient to assure that the tobacco product will be in compliance with this chapter.

''(D) CONDITIONS.—An order of the Secretary approving a petition for a variance shall prescribe such conditions respecting the methods used in, and the facilities and controls used for, the manufacture, packing, and storage of the tobacco product to be granted the variance under the petition as may be necessary to assure that the tobacco product will be in compliance with this chapter.

''(E) HEARING.—After the issuance of an order under subparagraph (B) respecting a petition, the petitioner shall have an opportunity for an informal hearing on such order.

''(3) COMPLIANCE.—Compliance with requirements under this subsection shall not be required before the period ending 3 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act.

''(f) RESEARCH AND DEVELOPMENT.—The Secretary may enter into contracts for research, testing, and demonstrations respecting tobacco products and may obtain tobacco products for research, testing, and demonstration purposes without regard to section 3324(a) and (b) of title 31, United States Code, and section 5 of title 41, United States Code.

"SEC. 907. TOBACCO PRODUCT STANDARDS.

''(a) IN GENERAL.—

''(1) SPECIAL RULE FOR CIGARETTES.—A cigarette or any of its component parts (including the tobacco, filter, or paper) shall not contain, as a constituent (including a smoke constituent) or additive, an artificial or natural flavor (other than tobacco or menthol) or an herb or spice, including strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, or coffee, that is a characterizing flavor of the tobacco product or tobacco smoke. Nothing in this subparagraph shall be construed to limit the Secretary's authority to take action under this section or other sections of this Act applicable to menthol or any artificial or natural flavor, herb, or spice not specified in this paragraph.

''(2) REVISION OF TOBACCO PRODUCT STANDARDS.—The Secretary may revise the tobacco product standards in paragraph (1) in accordance with subsection (b).

''(3) TOBACCO PRODUCT STANDARDS.—The Secretary may adopt tobacco product standards in addition to those in paragraph (1) if the Secretary finds that a tobacco product standard is appropriate for the protection of the public health. This finding shall be determined with respect to the risks and benefits to the population as a whole, including users and non-users of the tobacco product, and taking into account—

''(A) the increased or decreased likelihood that existing users of tobacco products will stop using such products; and

''(B) the increased or decreased likelihood that those who do not use tobacco products will start using such products.

''(4) CONTENT OF TOBACCO PRODUCT STANDARDS.—A tobacco product standard established under this section for a tobacco product—

''(A) shall include provisions that are appropriate for the protection of the public health, including provisions, where appropriate—

''(i) for the reduction of nicotine yields of the product;

''(ii) for the reduction or elimination of other constituents, including smoke constituents, or harmful components of the product; or

''(iii) relating to any other requirement under (B);

''(B) shall, where appropriate for the protection of the public health, include—

''(i) provisions respecting the construction, components, ingredients, additives, constituents, including smoke constituents, and properties of the tobacco product;

''(ii) provisions for the testing (on a sample basis or, if necessary, on an individual basis) of the tobacco product;

''(iii) provisions for the measurement of the tobacco product characteristics of the tobacco product;

''(iv) provisions requiring that the results of each or of certain of the tests of the tobacco product required to be made under clause (ii) show that the tobacco product is in conformity with the portions of the standard for which the test or tests were required; and

''(v) a provision requiring that the sale and distribution of the tobacco product be restricted but only to the extent that the sale and distribution of a tobacco product may be restricted under a regulation under section 906(d); and

''(C) shall, where appropriate, require the use and prescribe the form and content of labeling for the proper use of the tobacco product.

''(5) PERIODIC RE-EVALUATION OF TOBACCO PRODUCT STANDARDS.—The Secretary shall provide for periodic evaluation of tobacco product standards established under this section to determine whether such standards should be changed to reflect new medical, scientific, or other technological data. The Secretary may provide for testing under paragraph (4)(B) by any person.

''(6) INVOLVEMENT OF OTHER AGENCIES; INFORMED PERSONS.—In carrying out duties under this section, the Secretary shall endeavor to—

''(A) use personnel, facilities, and other technical support available in other Federal agencies;

''(B) consult with other Federal agencies concerned with standard-setting and other nationally or internationally recognized standard-setting entities; and

''(C) invite appropriate participation, through joint or other conferences, workshops, or other means, by informed persons representative of scientific, professional, industry, agricultural, or consumer organizations who in the Secretary's judgment can make a significant contribution.

''(b) ESTABLISHMENT OF STANDARDS.—

''(1) NOTICE.—

''(A) IN GENERAL.—The Secretary shall publish in the Federal Register a notice of proposed rulemaking for the establishment, amendment, or revocation of any tobacco product standard.

''(B) REQUIREMENTS OF NOTICE.—A notice of proposed rulemaking for the establishment or amendment of a tobacco product standard for a tobacco product shall—

''(i) set forth a finding with supporting justification that the tobacco product standard is appropriate for the protection of the public health;

''(ii) set forth proposed findings with respect to the risk of illness or injury that the tobacco product standard is intended to reduce or eliminate; and

''(iii) invite interested persons to submit an existing tobacco product standard for the tobacco product, including a draft or proposed tobacco product standard, for consideration by the Secretary.

''(C) STANDARD.—Upon a determination by the Secretary that an additive, constituent (including smoke constituent), or other component of the product that is the subject of the proposed tobacco product standard is harmful, it shall be the burden of any party challenging the proposed standard to prove that the proposed standard will not reduce or eliminate the risk of illness or injury.

''(D) FINDING.—A notice of proposed rulemaking for the revocation of a tobacco product standard shall set forth a finding with supporting justification that the tobacco product standard is no longer appropriate for the protection of the public health.

''(E) CONSIDERATION BY SECRETARY.—The Secretary shall consider all information submitted in connection with a proposed standard, including information concerning the countervailing effects of the tobacco product standard on the health of adolescent tobacco users, adult tobacco users, or non-tobacco users, such as the creation of a significant demand for contraband or other tobacco products that do not meet the requirements of this chapter and the significance of such demand, and shall issue the standard if the Secretary determines that the standard would be appropriate for the protection of the public health.

''(F) COMMENT.—The Secretary shall provide for a comment period of not less than 60 days.

''(2) PROMULGATION.—

''(A) IN GENERAL.—After the expiration of the period for comment on a notice of proposed rulemaking published under paragraph (1) respecting a tobacco product standard and after consideration of such comments and any report from the Tobacco Products Scientific Advisory Committee, the Secretary shall—

''(i) promulgate a regulation establishing a tobacco product standard and publish in the Federal Register findings on the matters referred to in paragraph (1); or

''(ii) publish a notice terminating the proceeding for the development of the standard together with the reasons for such termination.

''(B) EFFECTIVE DATE.—A regulation establishing a tobacco product standard shall set forth the date or dates upon which the standard shall take effect, but no such regulation may take effect before 1 year after the date of its publication unless the Secretary determines that an earlier effective date is necessary for the protection of the public health. Such date or dates shall be established so as to minimize, consistent with the public health, economic loss to, and disruption or dislocation of, domestic and international trade.

''(3) POWER RESERVED TO CONGRESS.—Because of the importance of a decision of the Secretary to issue a regulation establishing a tobacco product standard—

''(A) banning all cigarettes, all smokeless tobacco products, all little cigars, all cigars other than little cigars, all pipe tobacco, or all roll your own tobacco products; or

''(B) requiring the reduction of nicotine yields of a tobacco product to zero,

Congress expressly reserves to itself such power.

''(4) AMENDMENT; REVOCATION.—

''(A) AUTHORITY.—The Secretary, upon the Secretary's own initiative or upon petition of an interested person may by a regulation, promulgated in accordance with the requirements of paragraphs (1) and (2)(B), amend or revoke a tobacco product standard.

''(B) EFFECTIVE DATE.—The Secretary may declare a proposed amendment of a tobacco product standard to be effective on and after its publication in the Federal Register and until the effective date of any final action taken on such amendment if the Secretary determines that making it so effective is in the public interest.

''(5) REFERENCE TO ADVISORY COMMITTEE.—The Secretary may—

''(A) on the Secretary's own initiative, refer a proposed regulation for the establishment, amendment, or revocation of a tobacco product standard; or

''(B) upon the request of an interested person which demonstrates good cause for referral and which is made before the expiration of the period for submission of comments on such proposed regulation,

refer such proposed regulation to the Tobacco Products Scientific Advisory Committee, for a report and recommendation with respect to any matter involved in the proposed regulation which requires the exercise of scientific judgment. If a proposed regulation is referred under this paragraph to the Tobacco Products Scientific Advisory Committee, the Secretary shall provide the advisory committee with the data and information on which such proposed regulation is based. The Tobacco Products Scientific Advisory Committee shall, within 60 days after the referral of a proposed regulation and after independent study of the data and information furnished to it by the Secretary and other data and information before it, submit to the Secretary a report and recommendation respecting such regulation, together with all underlying data and information and a statement of the reason or basis for the recommendation. A copy of such report and recommendation shall be made public by the Secretary.

''SEC. 908. NOTIFICATION AND OTHER REMEDIES.

''(a) NOTIFICATION.—If the Secretary determines that—

''(1) a tobacco product which is introduced or delivered for introduction into interstate commerce for commercial distribution presents an unreasonable risk of substantial harm to the public health; and

''(2) notification under this subsection is necessary to eliminate the unreasonable risk of such harm and no more practicable means is available under the provisions of this chapter (other than this section) to eliminate such risk,

the Secretary may issue such order as may be necessary to assure that adequate notification is provided in an appropriate form, by the persons and means best suited under the circumstances involved, to all persons who should properly receive such notification in order to eliminate such risk. The Secretary may order notification by any appropriate means, including public service announcements. Before issuing an order under this subsection, the Secretary shall consult with the persons who are to give notice under the order.

''(b) NO EXEMPTION FROM OTHER LIABILITY.—Compliance with an order issued under this section shall not relieve any person from liability under Federal or State law. In awarding damages for economic loss in an action brought for the enforcement of any such liability, the value to the plaintiff in such action of any remedy provided under such order shall be taken into account.

''(c) RECALL AUTHORITY.—

''(1) IN GENERAL.—If the Secretary finds that there is a reasonable probability that a tobacco product contains a manufacturing or other defect not ordinarily contained in tobacco products on the market that would cause serious, adverse health consequences or death, the Secretary shall issue an order requiring the appropriate person (including the manufacturers, importers, distributors, or retailers of the tobacco product) to immediately cease distribution of such tobacco product. The order shall provide the person subject to the order with an opportunity for an informal hearing, to be held not later than 10 days after the date of the issuance of the order, on the actions required by the order and on whether the order should be amended to require a recall of such tobacco product. If, after providing an opportunity for such a hearing, the Secretary determines that inadequate grounds exist to support the actions required by the order, the Secretary shall vacate the order.

''(2) AMENDMENT OF ORDER TO REQUIRE RECALL.—

''(A) IN GENERAL.—If, after providing an opportunity for an informal hearing under paragraph (1), the Secretary determines that the order should be amended to include a recall of the tobacco product with respect to which the order was issued, the Secretary shall, except as provided in subparagraph (B), amend the order to require a recall. The Secretary shall specify a timetable in which the tobacco product recall will occur and shall require periodic reports to the Secretary describing the progress of the recall.

''(B) NOTICE.—An amended order under subparagraph (A)—

''(i) shall not include recall of a tobacco product from individuals; and

''(ii) shall provide for notice to persons subject to the risks associated with the use of such tobacco product.

In providing the notice required by clause (ii), the Secretary may use the assistance of retailers and other persons who distributed such tobacco product. If a significant number of such persons cannot be identified, the Secretary shall notify such persons under section 705(b).

''(3) REMEDY NOT EXCLUSIVE.—The remedy provided by this subsection shall be in addition to remedies provided by subsection (a) of this section.

''SEC. 909. RECORDS AND REPORTS ON TOBACCO PRODUCTS.

''(a) IN GENERAL.—Every person who is a tobacco product manufacturer or importer of a tobacco product shall establish and maintain such records, make such reports, and provide such information, as the Secretary may by regulation reasonably require to assure that such tobacco product is not adulterated or misbranded and to otherwise protect public health. Regulations prescribed under the preceding sentence—

''(1) may require a tobacco product manufacturer or importer to report to the Secretary whenever the manufacturer or importer receives or otherwise becomes aware of information that reasonably suggests that one of its marketed tobacco products may have caused or contributed to a serious unexpected adverse experience associated with the use of the product or any significant increase in the frequency of a serious, expected adverse product experience;

''(2) shall require reporting of other significant adverse tobacco product experiences as determined by the Secretary to be necessary to be reported;

''(3) shall not impose requirements unduly burdensome to a tobacco product manufacturer or importer, taking into account the cost of complying with such requirements and the need for the protection of the public health and the implementation of this chapter;

''(4) when prescribing the procedure for making requests for reports or information, shall require that each request made under such regulations for submission of a report or information to the Secretary state the reason or purpose for such request and identify to the fullest extent practicable such report or information;

''(5) when requiring submission of a report or information to the Secretary, shall state the reason or purpose for the submission of

such report or information and identify to the fullest extent practicable such report or information; and

''(6) may not require that the identity of any patient or user be disclosed in records, reports, or information required under this subsection unless required for the medical welfare of an individual, to determine risks to public health of a tobacco product, or to verify a record, report, or information submitted under this chapter.

In prescribing regulations under this subsection, the Secretary shall have due regard for the professional ethics of the medical profession and the interests of patients. The prohibitions of paragraph (6) continue to apply to records, reports, and information concerning any individual who has been a patient, irrespective of whether or when he ceases to be a patient.

''(b) REPORTS OF REMOVALS AND CORRECTIONS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary shall by regulation require a tobacco product manufacturer or importer of a tobacco product to report promptly to the Secretary any corrective action taken or removal from the market of a tobacco product undertaken by such manufacturer or importer if the removal or correction was undertaken—

''(A) to reduce a risk to health posed by the tobacco product; or

''(B) to remedy a violation of this chapter caused by the tobacco product which may present a risk to health.

A tobacco product manufacturer or importer of a tobacco product who undertakes a corrective action or removal from the market of a tobacco product which is not required to be reported under this subsection shall keep a record of such correction or removal.

''(2) EXCEPTION.—No report of the corrective action or removal of a tobacco product may be required under paragraph (1) if a report of the corrective action or removal is required and has been submitted under subsection (a).

''SEC. 910. APPLICATION FOR REVIEW OF CERTAIN TOBACCO PRODUCTS.

''(a) IN GENERAL.—

''(1) NEW TOBACCO PRODUCT DEFINED.—For purposes of this section the term 'new tobacco product' means—

''(A) any tobacco product (including those products in test markets) that was not commercially marketed in the United States as of June 1, 2003; or

''(B) any modification (including a change in design, any component, any part, or any constituent, including a smoke constituent, or in the content, delivery or form of nicotine, or any other additive or ingredient) of a tobacco product where the modified product was commercially marketed in the United States after June 1, 2003.

''(2) PREMARKET APPROVAL REQUIRED.—

''(A) NEW PRODUCTS.—Approval under this section of an application for premarket approval for any new tobacco product is required unless—

''(i) the manufacturer has submitted a report under section 905(j); and

''(ii) the Secretary has issued an order that the tobacco product—

''(I) is substantially equivalent to a tobacco product commercially marketed (other than for test marketing) in the United States as of June 1, 2003; and

''(II)(aa) is in compliance with the requirements of this Act; or

''(bb) is exempt from the requirements of section 905(j) pursuant to a regulation issued under section 905(j)(3).

''(B) APPLICATION TO CERTAIN POST JUNE 1, 2003 PRODUCTS.—Subparagraph (A) shall not apply to a tobacco product—

''(i) that was first introduced or delivered for introduction into interstate commerce for commercial distribution in the United States after June 1, 2003, and prior to the date that is 15 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act; and

''(ii) for which a report was submitted under section 905(j) within such 15-month period, until the Secretary issues an order that the tobacco product is not substantially equivalent.

''(3) SUBSTANTIALLY EQUIVALENT DEFINED.—

''(A) IN GENERAL.—In this section and section 905(j), the terms 'substantially equivalent' or 'substantial equivalence' mean, with respect to the tobacco product being compared to the predicate tobacco product, that the Secretary by order has found that the tobacco product—

''(i) has the same characteristics as the predicate tobacco product; or

''(ii) has different characteristics and the information submitted contains information, including clinical data if deemed necessary by the Secretary, that demonstrates that it is not appropriate to regulate the product under this section because the product does not raise different questions of public health.

''(B) CHARACTERISTICS.—In subparagraph (A), the term 'characteristics' means the materials, ingredients, design, composition, heating source, or other features of a tobacco product.

''(C) LIMITATION.—A tobacco product may not be found to be substantially equivalent to a predicate tobacco product that has been removed from the market at the initiative of the Secretary or that has been determined by a judicial order to be misbranded or adulterated.

''(4) HEALTH INFORMATION.—

''(A) SUMMARY.—As part of a submission under section 905(j) respecting a tobacco product, the person required to file a premarket notification under such section shall provide an adequate summary of any health information related to the tobacco product or state that such information will be made available upon request by any person.

''(B) REQUIRED INFORMATION.—Any summary under subparagraph (A) respecting a tobacco product shall contain detailed information regarding data concerning adverse health effects and shall be made available to the public by the Secretary within 30 days of the issuance of a determination that such tobacco product is substantially equivalent to another tobacco product.

''(b) APPLICATION.—

''(1) CONTENTS.—An application for premarket approval shall contain—

''(A) full reports of all information, published or known to, or which should reasonably be known to, the applicant, concerning investigations which have been made to show the health risks of such tobacco product and whether such tobacco product presents less risk than other tobacco products;

''(B) a full statement of the components, ingredients, additives, and properties, and of the principle or principles of operation, of such tobacco product;

''(C) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and, when relevant, packing and installation of, such tobacco product;

''(D) an identifying reference to any tobacco product standard under section 907 which would be applicable to any aspect of such tobacco product, and either adequate information to show that such aspect of such tobacco product fully meets such tobacco product standard or adequate information to justify any deviation from such standard;

''(E) such samples of such tobacco product and of components thereof as the Secretary may reasonably require;

''(F) specimens of the labeling proposed to be used for such tobacco product; and

''(G) such other information relevant to the subject matter of the application as the Secretary may require.

''(2) REFERENCE TO TOBACCO PRODUCTS SCIENTIFIC ADVISORY COMMITTEE.—Upon receipt of an application meeting the requirements set forth in paragraph (1), the Secretary—

''(A) may, on the Secretary's own initiative; or

''(B) may, upon the request of an applicant,

refer such application to the Tobacco Products Scientific Advisory Committee for reference and for submission (within such period as the Secretary may establish) of a report and recommendation respecting approval of the application, together with all underlying data and the reasons or basis for the recommendation.

''(c) ACTION ON APPLICATION.—

''(1) DEADLINE.—

''(A) IN GENERAL.—As promptly as possible, but in no event later than 180 days after the receipt of an application under subsection (b), the Secretary, after considering the report and recommendation submitted under paragraph (2) of such subsection, shall—

''(i) issue an order approving the application if the Secretary finds that none of the grounds for denying approval specified in paragraph (2) of this subsection applies; or

''(ii) deny approval of the application if the Secretary finds (and sets forth the basis for such finding as part of or accompanying such denial) that 1 or more grounds for denial specified in paragraph (2) of this subsection apply.

''(B) RESTRICTIONS ON SALE AND DISTRIBUTION.—An order approving an application for a tobacco product may require as a condition to such approval that the sale and distribution of the tobacco product be restricted but only to the extent that the sale and distribution of a tobacco product may be restricted under a regulation under section 906(d).

''(2) DENIAL OF APPROVAL.—The Secretary shall deny approval of an application for a tobacco product if, upon the basis of the information submitted to the Secretary as part of the application and any other information before the Secretary with respect to such tobacco product, the Secretary finds that—

''(A) there is a lack of a showing that permitting such tobacco product to be marketed would be appropriate for the protection of the public health;

''(B) the methods used in, or the facilities or controls used for, the manufacture, processing, or packing of such tobacco product do not conform to the requirements of section 906(e);

''(C) based on a fair evaluation of all material facts, the proposed labeling is false or misleading in any particular; or

''(D) such tobacco product is not shown to conform in all respects to a tobacco product standard in effect under section 907, compliance with which is a condition to approval of the application, and there is a lack of adequate information to justify the deviation from such standard.

''(3) DENIAL INFORMATION.—Any denial of an application shall, insofar as the Secretary determines to be practicable, be accompanied by a statement informing the applicant of the measures required to place such application in approvable form (which measures may include further research by the applicant in accordance with 1 or more protocols prescribed by the Secretary).

''(4) BASIS FOR FINDING.—For purposes of this section, the finding as to whether approval of a tobacco product is appropriate for

the protection of the public health shall be determined with respect to the risks and benefits to the population as a whole, including users and nonusers of the tobacco product, and taking into account—

''(A) the increased or decreased likelihood that existing users of tobacco products will stop using such products; and

''(B) the increased or decreased likelihood that those who do not use tobacco products will start using such products.

''(5) BASIS FOR ACTION.—

''(A) INVESTIGATIONS.—For purposes of paragraph (2)(A), whether permitting a tobacco product to be marketed would be appropriate for the protection of the public health shall, when appropriate, be determined on the basis of well-controlled investigations, which may include 1 or more clinical investigations by experts qualified by training and experience to evaluate the tobacco product.

''(B) OTHER EVIDENCE.—If the Secretary determines that there exists valid scientific evidence (other than evidence derived from investigations described in subparagraph (A)) which is sufficient to evaluate the tobacco product the Secretary may authorize that the determination for purposes of paragraph (2)(A) be made on the basis of such evidence.

''(d) WITHDRAWAL AND TEMPORARY SUSPENSION.—

''(1) IN GENERAL.—The Secretary shall, upon obtaining, where appropriate, advice on scientific matters from an advisory committee, and after due notice and opportunity for informal hearing to the holder of an approved application for a tobacco product, issue an order withdrawing approval of the application if the Secretary finds—

''(A) that the continued marketing of such tobacco product no longer is appropriate for the protection of the public health;

''(B) that the application contained or was accompanied by an untrue statement of a material fact;

''(C) that the applicant—

''(i) has failed to establish a system for maintaining records, or has repeatedly or deliberately failed to maintain records or to make reports, required by an applicable regulation under section 909;

''(ii) has refused to permit access to, or copying or verification of, such records as required by section 704; or

''(iii) has not complied with the requirements of section 905;

''(D) on the basis of new information before the Secretary with respect to such tobacco product, evaluated together with the evidence before the Secretary when the application was approved, that the methods used in, or the facilities and controls used for, the manufacture, processing, packing, or installation of such tobacco product do not conform with the requirements of section 906(e) and were not brought into conformity with such requirements within a reasonable time after receipt of written notice from the Secretary of nonconformity;

''(E) on the basis of new information before the Secretary, evaluated together with the evidence before the Secretary when the application was approved, that the labeling of such tobacco product, based on a fair evaluation of all material facts, is false or misleading in any particular and was not corrected within a reasonable time after receipt of written notice from the Secretary of such fact; or

''(F) on the basis of new information before the Secretary, evaluated together with the evidence before the Secretary when the application was approved, that such tobacco product is not shown to conform in all respects to a tobacco product standard which is in effect under section 907, compliance with which was a condition to approval of the application, and that there is a lack of adequate information to justify the deviation from such standard.

''(2) APPEAL.—The holder of an application subject to an order issued under paragraph (1) withdrawing approval of the application may, by petition filed on or before the 30th day after the date upon which such holder receives notice of such withdrawal, obtain review thereof in accordance with subsection (e).

''(3) TEMPORARY SUSPENSION.—If, after providing an opportunity for an informal hearing, the Secretary determines there is reasonable probability that the continuation of distribution of a tobacco product under an approved application would cause serious, adverse health consequences or death, that is greater than ordinarily caused by tobacco products on the market, the Secretary shall by order temporarily suspend the approval of the application approved under this section. If the Secretary issues such an order, the Secretary shall proceed expeditiously under paragraph (1) to withdraw such application.

''(e) SERVICE OF ORDER.—An order issued by the Secretary under this section shall be served—

''(1) in person by any officer or employee of the department designated by the Secretary; or

''(2) by mailing the order by registered mail or certified mail addressed to the applicant at the applicant's last known address in the records of the Secretary.

''(f) RECORDS.—

''(1) ADDITIONAL INFORMATION.—In the case of any tobacco product for which an approval of an application filed under subsection (b) is in effect, the applicant shall establish and maintain such records, and make such reports to the Secretary, as the Secretary may by regulation, or by order with respect to such application, prescribe on the basis of a finding that such records and reports are necessary in order to enable the Secretary to determine, or facilitate a determination of, whether there is or may be grounds for withdrawing or temporarily suspending such approval.

''(2) ACCESS TO RECORDS.—Each person required under this section to maintain records, and each person in charge or custody thereof, shall, upon request of an officer or employee designated by the Secretary, permit such officer or employee at all reasonable times to have access to and copy and verify such records.

''(g) INVESTIGATIONAL TOBACCO PRODUCT EXEMPTION FOR INVESTIGATIONAL USE.—The Secretary may exempt tobacco products intended for investigational use from the provisions of this chapter under such conditions as the Secretary may by regulation prescribe.

''SEC. 911. MODIFIED RISK TOBACCO PRODUCTS.

''(a) IN GENERAL.—No person may introduce or deliver for introduction into interstate commerce any modified risk tobacco product unless approval of an application filed pursuant to subsection (d) is effective with respect to such product.

''(b) DEFINITIONS.—In this section:

''(1) MODIFIED RISK TOBACCO PRODUCT.—The term 'modified risk tobacco product' means any tobacco product that is sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products.

''(2) SOLD OR DISTRIBUTED.—

''(A) IN GENERAL.—With respect to a tobacco product, the term 'sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products' means a tobacco product—

''(A) the label, labeling, or advertising of which represents explicitly or implicitly that—

''(I) the tobacco product presents a lower risk of tobacco-related disease or is less harmful than one or more other commercially marketed tobacco products;

''(II) the tobacco product or its smoke contains a reduced level of a substance or presents a reduced exposure to a substance; or

''(III) the tobacco product or its smoke does not contain or is free of a substance;

''(ii) the label, labeling, or advertising of which uses the descriptors 'light', 'mild', or 'low' or similar descriptors; or

''(iii) the tobacco product manufacturer of which has taken any action directed to consumers through the media or otherwise, other than by means of the tobacco product's label, labeling or advertising, after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, respecting the product that would be reasonably expected to result in consumers believing that the tobacco product or its smoke may present a lower risk of disease or is less harmful than one or more commercially marketed tobacco products, or presents a reduced exposure to, or does not contain or is free of, a substance or substances.

''(B) LIMITATION.—No tobacco product shall be considered to be 'sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products', except as described in subparagraph (A).

''(c) TOBACCO DEPENDENCE PRODUCTS.—A product that is intended to be used for the treatment of tobacco dependence, including smoking cessation, is not a modified risk tobacco product under this section and is subject to the requirements of chapter V.

''(d) FILING.—Any person may file with the Secretary an application for a modified risk tobacco product. Such application shall include—

''(1) a description of the proposed product and any proposed advertising and labeling;

''(2) the conditions for using the product;

''(3) the formulation of the product;

''(4) sample product labels and labeling;

''(5) all documents (including underlying scientific information) relating to research findings conducted, supported, or possessed by the tobacco product manufacturer relating to the effect of the product on tobacco related diseases and health-related conditions, including information both favorable and unfavorable to the ability of the product to reduce risk or exposure and relating to human health;

''(6) data and information on how consumers actually use the tobacco product; and

''(7) such other information as the Secretary may require.

''(e) PUBLIC AVAILABILITY.—The Secretary shall make the application described in subsection (d) publicly available (except matters in the application which are trade secrets or otherwise confidential, commercial information) and shall request comments by interested persons on the information contained in the application and on the label, labeling, and advertising accompanying such application.

''(f) ADVISORY COMMITTEE.—

''(1) IN GENERAL.—The Secretary shall refer to an advisory committee any application submitted under this subsection.

''(2) RECOMMENDATIONS.—Not later than 60 days after the date an application is referred to an advisory committee under paragraph (1), the advisory committee shall report its recommendations on the application to the Secretary.

''(g) APPROVAL.—

''(1) MODIFIED RISK PRODUCTS.—Except as provided in paragraph (2), the Secretary

shall approve an application for a modified risk tobacco product filed under this section only if the Secretary determines that the applicant has demonstrated that such product, as it is actually used by consumers, will—

''(A) significantly reduce harm and the risk of tobacco-related disease to individual tobacco users; and

''(B) benefit the health of the population as a whole taking into account both users of tobacco products and persons who do not currently use tobacco products.

''(2) SPECIAL RULE FOR CERTAIN PRODUCTS.—

''(A) IN GENERAL.—The Secretary may approve an application for a tobacco product that has not been approved as a modified risk tobacco product pursuant to paragraph (1) if the Secretary makes the findings required under this paragraph and determines that the applicant has demonstrated that—

''(i) the approval of the application would be appropriate to promote the public health;

''(ii) any aspect of the label, labeling, and advertising for such product that would cause the tobacco product to be a modified risk tobacco product under subsection (b)(2) is limited to an explicit or implicit representation that such tobacco product or its smoke contains or is free of a substance or contains a reduced level of a substance, or presents a reduced exposure to a substance in tobacco smoke.

''(iii) scientific evidence is not available and, using the best available scientific methods, cannot be made available without conducting long-term epidemiological studies for an application to meet the standards set forth in paragraph (1); and

''(iv) the scientific evidence that is available without conducting long-term epidemiological studies demonstrates that a measurable and substantial reduction in morbidity or mortality among individual tobacco users is anticipated in subsequent studies.

''(B) ADDITIONAL FINDINGS REQUIRED.—In order to approve an application under subparagraph (A) the Secretary must also find that the applicant has demonstrated that—

''(i) the magnitude of the overall reductions in exposure to the substance or substances which are the subject of the application is substantial, such substance or substances are harmful, and the product as actually used exposes consumers to the specified reduced level of the substance or substances;

''(ii) the product as actually used by consumers will not expose them to higher levels of other harmful substances compared to the similar types of tobacco products then on the market unless such increases are minimal and the anticipated overall impact of use of the product remains a substantial and measurable reduction in overall morbidity and mortality among individual tobacco users;

''(iii) testing of actual consumer perception shows that, as the applicant proposes to label and market the product, consumers will not be misled into believing that the product—

''(I) is or has been demonstrated to be less harmful; or

''(II) presents or has been demonstrated to present less of a risk of disease than 1 or more other commercially marketed tobacco products; and

''(iv) approval of the application is expected to benefit the health of the population as a whole taking into account both users of tobacco products and persons who do not currently use tobacco products.

''(C) CONDITIONS OF APPROVAL.—

''(i) IN GENERAL.—Applications approved under this paragraph shall be limited to a term of not more than 5 years, but may be renewed upon a finding by the Secretary that the requirements of this paragraph continue to be satisfied based on the filing of a new application.

''(ii) AGREEMENTS BY APPLICANT.—Applications approved under this paragraph shall be conditioned on the applicant's agreement to conduct post-market surveillance and studies and to submit to the Secretary the results of such surveillance and studies to determine the impact of the application approval on consumer perception, behavior, and health and to enable the Secretary to review the accuracy of the determinations upon which the approval was based in accordance with a protocol approved by the Secretary.

''(iii) ANNUAL SUBMISSION.—The results of such post-market surveillance and studies described in clause (ii) shall be submitted annually.

''(3) BASIS.—The determinations under paragraphs (1) and (2) shall be based on—

''(A) the scientific evidence submitted by the applicant; and

''(B) scientific evidence and other information that is available to the Secretary.

''(4) BENEFIT TO HEALTH OF INDIVIDUALS AND OF POPULATION AS A WHOLE.—In making the determinations under paragraphs (1) and (2), the Secretary shall take into account—

''(A) the relative health risks to individuals of the tobacco product that is the subject of the application;

''(B) the increased or decreased likelihood that existing users of tobacco products who would otherwise stop using such products will switch to the tobacco product that is the subject of the application;

''(C) the increased or decreased likelihood that persons who do not use tobacco products will start using the tobacco product that is the subject of the application;

''(D) the risks and benefits to persons from the use of the tobacco product that is the subject of the application as compared to the use of products for smoking cessation approved under chapter V to treat nicotine dependence; and

''(E) comments, data, and information submitted by interested persons.

''(h) ADDITIONAL CONDITIONS FOR APPROVAL.—

''(1) MODIFIED RISK PRODUCTS.—The Secretary shall require for the approval of an application under this section that any advertising or labeling concerning modified risk products enable the public to comprehend the information concerning modified risk and to understand the relative significance of such information in the context of total health and in relation to all of the diseases and health-related conditions associated with the use of tobacco products.

''(2) COMPARATIVE CLAIMS.—

''(A) IN GENERAL.—The Secretary may require for the approval of an application under this subsection that a claim comparing a tobacco product to 1 or more other commercially marketed tobacco products shall compare the tobacco product to a commercially marketed tobacco product that is representative of that type of tobacco product on the market (for example the average value of the top 3 brands of an established regular tobacco product).

''(B) QUANTITATIVE COMPARISONS.—The Secretary may also require, for purposes of subparagraph (A), that the percent (or fraction) of change and identity of the reference tobacco product and a quantitative comparison of the amount of the substance claimed to be reduced shall be stated in immediate proximity to the most prominent claim.

''(3) LABEL DISCLOSURE.—

''(A) IN GENERAL.—The Secretary may require the disclosure on the label of other substances in the tobacco product, or substances that may be produced by the consumption of that tobacco product, that may affect a disease or health-related condition or may increase the risk of other diseases or health-related conditions associated with the use of tobacco products.

''(B) CONDITIONS OF USE.—If the conditions of use of the tobacco product may affect the risk of the product to human health, the Secretary may require the labeling of conditions of use.

''(4) TIME.—The Secretary shall limit an approval under subsection (g)(1) for a specified period of time.

''(5) ADVERTISING.—The Secretary may require that an applicant, whose application has been approved under this subsection, comply with requirements relating to advertising and promotion of the tobacco product.

''(i) POSTMARKET SURVEILLANCE AND STUDIES.—

''(1) IN GENERAL.—The Secretary shall require that an applicant under subsection (g)(1) conduct post market surveillance and studies for a tobacco product for which an application has been approved to determine the impact of the application approval on consumer perception, behavior, and health, to enable the Secretary to review the accuracy of the determinations upon which the approval was based, and to provide information that the Secretary determines is otherwise necessary regarding the use or health risks involving the tobacco product. The results of post-market surveillance and studies shall be submitted to the Secretary on an annual basis.

''(2) SURVEILLANCE PROTOCOL.—Each applicant required to conduct a surveillance of a tobacco product under paragraph (1) shall, within 30 days after receiving notice that the applicant is required to conduct such surveillance, submit, for the approval of the Secretary, a protocol for the required surveillance. The Secretary, within 60 days of the receipt of such protocol, shall determine if the principal investigator proposed to be used in the surveillance has sufficient qualifications and experience to conduct such surveillance and if such protocol will result in collection of the data or other information designated by the Secretary as necessary to protect the public health.

''(j) WITHDRAWAL OF APPROVAL.—The Secretary, after an opportunity for an informal hearing, shall withdraw the approval of an application under this section if the Secretary determines that—

''(1) the applicant, based on new information, can no longer make the demonstrations required under subsection (g), or the Secretary can no longer make the determinations required under subsection (g);

''(2) the application failed to include material information or included any untrue statement of material fact;

''(3) any explicit or implicit representation that the product reduces risk or exposure is no longer valid, including if—

''(A) a tobacco product standard is established pursuant to section 907;

''(B) an action is taken that affects the risks presented by other commercially marketed tobacco products that were compared to the product that is the subject of the application; or

''(C) any postmarket surveillance or studies reveal that the approval of the application is no longer consistent with the protection of the public health;

''(4) the applicant failed to conduct or submit the postmarket surveillance and studies required under subsection (g)(2)(C)(ii) or (i); or

''(5) the applicant failed to meet a condition imposed under subsection (h).

''(k) CHAPTER IV OR V.—A product approved in accordance with this section shall not be subject to chapter IV or V.

''(1) IMPLEMENTING REGULATIONS OR GUIDANCE.—

''(1) SCIENTIFIC EVIDENCE.—Not later than 2 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall issue regulations or guidance (or any combination thereof) on the scientific evidence required for assessment and ongoing review of modified risk tobacco products. Such regulations or guidance shall—

''(A) establish minimum standards for scientific studies needed prior to approval to show that a substantial reduction in morbidity or mortality among individual tobacco users is likely;

''(B) include validated biomarkers, intermediate clinical endpoints, and other feasible outcome measures, as appropriate;

''(C) establish minimum standards for post market studies, that shall include regular and long-term assessments of health outcomes and mortality, intermediate clinical endpoints, consumer perception of harm reduction, and the impact on quitting behavior and new use of tobacco products, as appropriate;

''(D) establish minimum standards for required postmarket surveillance, including ongoing assessments of consumer perception; and

''(E) require that data from the required studies and surveillance be made available to the Secretary prior to the decision on renewal of a modified risk tobacco product.

''(2) CONSULTATION.—The regulations or guidance issued under paragraph (1) shall be developed in consultation with the Institute of Medicine, and with the input of other appropriate scientific and medical experts, on the design and conduct of such studies and surveillance.

''(3) REVISION.—The regulations or guidance under paragraph (1) shall be revised on a regular basis as new scientific information becomes available.

''(4) NEW TOBACCO PRODUCTS.—Not later than 2 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall issue a regulation or guidance that permits the filing of a single application for any tobacco product that is a new tobacco product under section 910 and for which the applicant seeks approval as a modified risk tobacco product under this section.

''(m) DISTRIBUTORS.—No distributor may take any action, after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, with respect to a tobacco product that would reasonably be expected to result in consumers believing that the tobacco product or its smoke may present a lower risk of disease or is less harmful than one or more commercially marketed tobacco products, or presents a reduced exposure to, or does not contain or is free of, a substance or substances.

''SEC. 912. JUDICIAL REVIEW.

''(a) RIGHT TO REVIEW.—

''(1) IN GENERAL.—Not later than 30 days after—

''(A) the promulgation of a regulation under section 907 establishing, amending, or revoking a tobacco product standard; or

''(B) a denial of an application for approval under section 910(c),

any person adversely affected by such regulation or denial may file a petition for judicial review of such regulation or denial with the United States Court of Appeals for the District of Columbia or for the circuit in which such person resides or has their principal place of business.

''(2) REQUIREMENTS.—

''(A) COPY OF PETITION.—A copy of the petition filed under paragraph (1) shall be transmitted by the clerk of the court involved to the Secretary.

''(B) RECORD OF PROCEEDINGS.—On receipt of a petition under subparagraph (A), the Secretary shall file in the court in which such petition was filed—

''(i) the record of the proceedings on which the regulation or order was based; and

''(ii) a statement of the reasons for the issuance of such a regulation or order.

''(C) DEFINITION OF RECORD.—In this section, the term 'record' means—

''(i) all notices and other matter published in the Federal Register with respect to the regulation or order reviewed;

''(ii) all information submitted to the Secretary with respect to such regulation or order;

''(iii) proceedings of any panel or advisory committee with respect to such regulation or order;

''(iv) any hearing held with respect to such regulation or order; and

''(v) any other information identified by the Secretary, in the administrative proceeding held with respect to such regulation or order, as being relevant to such regulation or order.

''(b) STANDARD OF REVIEW.—Upon the filing of the petition under subsection (a) for judicial review of a regulation or order, the court shall have jurisdiction to review the regulation or order in accordance with chapter 7 of title 5, United States Code, and to grant appropriate relief, including interim relief, as provided for in such chapter. A regulation or denial described in subsection (a) shall be reviewed in accordance with section 706(2)(A) of title 5, United States Code.

''(c) FINALITY OF JUDGMENT.—The judgment of the court affirming or setting aside, in whole or in part, any regulation or order shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28, United States Code.

''(d) OTHER REMEDIES.—The remedies provided for in this section shall be in addition to, and not in lieu of, any other remedies provided by law.

''(e) REGULATIONS AND ORDERS MUST RECITE BASIS IN RECORD.—To facilitate judicial review, a regulation or order issued under section 906, 907, 908, 909, 910, or 916 shall contain a statement of the reasons for the issuance of such regulation or order in the record of the proceedings held in connection with its issuance.

''SEC. 913. EQUAL TREATMENT OF RETAIL OUTLETS.

''The Secretary shall issue regulations to require that retail establishments for which the predominant business is the sale of tobacco products comply with any advertising restrictions applicable to retail establishments accessible to individuals under the age of 18.

''SEC. 914. JURISDICTION OF AND COORDINATION WITH THE FEDERAL TRADE COMMISSION.

''(a) JURISDICTION.—

''(1) IN GENERAL.—Except where expressly provided in this chapter, nothing in this chapter shall be construed as limiting or diminishing the authority of the Federal Trade Commission to enforce the laws under its jurisdiction with respect to the advertising, sale, or distribution of tobacco products.

''(2) ENFORCEMENT.—Any advertising that violates this chapter or a provision of the regulations referred to in section ___12 of the Family Smoking Prevention and Tobacco Control Act, is an unfair or deceptive act or practice under section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)) and shall be considered a violation of a rule promulgated under section 18 of that Act (15 U.S.C. 57a).

''(b) COORDINATION.—With respect to the requirements of section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333) and section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402)—

''(1) the Chairman of the Federal Trade Commission shall coordinate with the Secretary concerning the enforcement of such Act as such enforcement relates to unfair or deceptive acts or practices in the advertising of cigarettes or smokeless tobacco; and

''(2) the Secretary shall consult with the Chairman of such Commission in revising the label statements and requirements under such sections.

''SEC. 915. CONGRESSIONAL REVIEW PROVISIONS.

''In accordance with section 801 of title 5, United States Code, Congress shall review, and may disapprove, any rule under this chapter that is subject to section 801. This section and section 801 do not apply to the regulations referred to in section ___12 of the Family Smoking Prevention and Tobacco Control Act.

''SEC. 916. REGULATION REQUIREMENT.

''(a) TESTING, REPORTING, AND DISCLOSURE.—Not later than 24 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary, acting through the Commissioner of the Food and Drug Administration, shall promulgate regulations under this Act that meet the requirements of subsection (b).

''(b) CONTENTS OF RULES.—The regulations promulgated under subsection (a) shall require testing and reporting of tobacco product constituents, ingredients, and additives, including smoke constituents, by brand and sub-brand that the Secretary determines should be tested to protect the public health. The regulations may require that tobacco product manufacturers, packagers, or importers make disclosures relating to the results of the testing of tar and nicotine through labels or advertising or other appropriate means, and make disclosures regarding the results of the testing of other constituents, including smoke constituents, ingredients, or additives, that the Secretary determines should be disclosed to the public to protect the public health and will not mislead consumers about the risk of tobacco related disease.

''(c) AUTHORITY.—The Food and Drug Administration shall have the authority under this chapter to conduct or to require the testing, reporting, or disclosure of tobacco product constituents, including smoke constituents.

''SEC. 917. PRESERVATION OF STATE AND LOCAL AUTHORITY.

''(a) IN GENERAL.—

''(1) PRESERVATION.—Nothing in this chapter, or rules promulgated under this chapter, shall be construed to limit the authority of a Federal agency (including the Armed Forces), a State or political subdivision of a State, or the government of an Indian tribe to enact, adopt, promulgate, and enforce any law, rule, regulation, or other measure with respect to tobacco products that is in addition to, or more stringent than, requirements established under this chapter, including a law, rule, regulation, or other measure relating to or prohibiting the sale, distribution, possession, exposure to, access to, advertising and promotion of, or use of tobacco products by individuals of any age, information reporting to the State, or measures relating to fire safety standards for tobacco products. No provision of this chapter shall limit or otherwise affect any State, Tribal, or local taxation of tobacco products.

''(2) PREEMPTION OF CERTAIN STATE AND LOCAL REQUIREMENTS.—

''(A) IN GENERAL.—Except as provided in paragraph (1) and subparagraph (B), no State

or political subdivision of a State may establish or continue in effect with respect to a tobacco product any requirement which is different from, or in addition to, any requirement under the provisions of this chapter relating to tobacco product standards, premarket approval, adulteration, misbranding, labeling, registration, good manufacturing standards, or reduced risk products.

''(B) EXCEPTION.—Subparagraph (A) does not apply to requirements relating to the sale, distribution, possession, information reporting to the State, exposure to, access to, the advertising and promotion of, or use of, tobacco products by individuals of any age, or relating to fire safety standards for tobacco products. Information disclosed to a State under subparagraph (A) that is exempt from disclosure under section 554(b)(4) of title 5, United States Code, shall be treated as trade secret and confidential information by the State.

''(b) RULE OF CONSTRUCTION REGARDING PRODUCT LIABILITY.—No provision of this chapter relating to a tobacco product shall be construed to modify or otherwise affect any action or the liability of any person under the product liability law of any State.

''SEC. 918. TOBACCO PRODUCTS SCIENTIFIC ADVISORY COMMITTEE.

''(a) ESTABLISHMENT.—Not later than 1 year after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall establish a 11-member advisory committee, to be known as the 'Tobacco Products Scientific Advisory Committee'.

''(b) MEMBERSHIP.—

''(1) IN GENERAL.—

''(A) MEMBERS.—The Secretary shall appoint as members of the Tobacco Products Scientific Advisory Committee individuals who are technically qualified by training and experience in the medicine, medical ethics, science, or technology involving the manufacture, evaluation, or use of tobacco products, who are of appropriately diversified professional backgrounds. The committee shall be composed of—

''(i) 7 individuals who are physicians, dentists, scientists, or health care professionals practicing in the area of oncology, pulmonology, cardiology, toxicology, pharmacology, addiction, or any other relevant specialty;

''(ii) 1 individual who is an officer or employee of a State or local government or of the Federal Government;

''(iii) 1 individual as a representative of the general public;

''(iv) 1 individual as a representative of the interests in the tobacco manufacturing industry; and

''(v) 1 individual as a representative of the interests of the tobacco growers.

''(B) NONVOTING MEMBERS.—The members of the committee appointed under clauses (iv) and (v) of subparagraph (A) shall serve as consultants to those described in clauses (i) through (iii) of subparagraph (A) and shall be nonvoting representatives.

''(2) LIMITATION.—The Secretary may not appoint to the Advisory Committee any individual who is in the regular full-time employ of the Food and Drug Administration or any agency responsible for the enforcement of this Act. The Secretary may appoint Federal officials as ex officio members.

''(3) CHAIRPERSON.—The Secretary shall designate 1 of the members of the Advisory Committee to serve as chairperson.

''(c) DUTIES.—The Tobacco Products Scientific Advisory Committee shall provide advice, information, and recommendations to the Secretary—

''(1) as provided in this chapter;

''(2) on the effects of the alteration of the nicotine yields from tobacco products;

''(3) on whether there is a threshold level below which nicotine yields do not produce dependence on the tobacco product involved; and

''(4) on its review of other safety, dependence, or health issues relating to tobacco products as requested by the Secretary.

''(d) COMPENSATION; SUPPORT; FACA.—

''(1) COMPENSATION AND TRAVEL.—Members of the Advisory Committee who are not officers or employees of the United States, while attending conferences or meetings of the committee or otherwise engaged in its business, shall be entitled to receive compensation at rates to be fixed by the Secretary, which may not exceed the daily equivalent of the rate in effect for level 4 of the Senior Executive Schedule under section 5382 of title 5, United States Code, for each day (including travel time) they are so engaged; and while so serving away from their homes or regular places of business each member may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

''(2) ADMINISTRATIVE SUPPORT.—The Secretary shall furnish the Advisory Committee clerical and other assistance.

''(3) NONAPPLICATION OF FACA.—Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) does not apply to the Advisory Committee.

''(e) PROCEEDINGS OF ADVISORY PANELS AND COMMITTEES.—The Advisory Committee shall make and maintain a transcript of any proceeding of the panel or committee. Each such panel and committee shall delete from any transcript made under this subsection information which is exempt from disclosure under section 552(b) of title 5, United States Code.

''SEC. 919. DRUG PRODUCTS USED TO TREAT TOBACCO DEPENDENCE.

The Secretary shall consider—

''(1) at the request of the applicant, designating nicotine replacement products as fast track research and approval products within the meaning of section 506;

''(2) direct the Commissioner to consider approving the extended use of nicotine replacement products (such as nicotine patches, nicotine gum, and nicotine lozenges) for the treatment of tobacco dependence;

''(3) review and consider the evidence for additional indications for nicotine replacement products, such as for craving relief or relapse prevention; and

''(4) consider—

''(A) relieving companies of premarket burdens under section 505 if the requirement is redundant considering other nicotine replacement therapies already on the market; and

''(B) time and extent applications for nicotine replacement therapies that have been approved by a regulatory body in a foreign country and have marketing experience in such country.

''SEC. 920. USER FEE.

''(a) ESTABLISHMENT OF QUARTERLY USER FEE.—The Secretary shall assess a quarterly user fee with respect to every quarter of each fiscal year commencing fiscal year 2004, calculated in accordance with this section, upon each manufacturer and importer of tobacco products subject to this chapter.

''(b) FUNDING OF FDA REGULATION OF TOBACCO PRODUCTS.—The Secretary shall make user fees collected pursuant to this section available to pay, in each fiscal year, for the costs of the activities of the Food and Drug Administration related to the regulation of tobacco products under this chapter.

''(c) ASSESSMENT OF USER FEE.—

''(1) AMOUNT OF ASSESSMENT.—Except as provided in paragraph (4), the total user fees assessed each year pursuant to this section shall be sufficient, and shall not exceed what is necessary, to pay for the costs of the activities described in subsection (b) for each fiscal year.

''(2) ALLOCATION OF ASSESSMENT BY CLASS OF TOBACCO PRODUCTS.—

''(A) IN GENERAL.—Subject to paragraph (3), the total user fees assessed each fiscal year with respect to each class of importers and manufacturers shall be equal to an amount that is the applicable percentage of the total costs of activities of the Food and Drug Administration described in subsection (b).

''(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A) the applicable percentage for a fiscal year shall be the following:

''(i) 92.07 percent shall be assessed on manufacturers and importers of cigarettes;

''(ii) 0.05 percent shall be assessed on manufacturers and importers of little cigars;

''(iii) 7.15 percent shall be assessed on manufacturers and importers of cigars other than little cigars;

''(iv) 0.43 percent shall be assessed on manufacturers and importers of snuff;

''(v) 0.10 percent shall be assessed on manufacturers and importers of chewing tobacco;

''(vi) 0.06 percent shall be assessed on manufacturers and importers of pipe tobacco; and

''(vii) 0.14 percent shall be assessed on manufacturers and importers of roll-your-own tobacco.

''(3) DISTRIBUTION OF FEE SHARES OF MANUFACTURERS AND IMPORTERS EXEMPT FROM USER FEE.—Where a class of tobacco products is not subject to a user fee under this section, the portion of the user fee assigned to such class under subsection (d)(2) shall be allocated by the Secretary on a pro rata basis among the classes of tobacco products that are subject to a user fee under this section. Such pro rata allocation for each class of tobacco products that are subject to a user fee under this section shall be the quotient of—

''(A) the sum of the percentages assigned to all classes of tobacco products subject to this section; divided by

''(B) the percentage assigned to such class under paragraph (2).

''(4) ANNUAL LIMIT ON ASSESSMENT.—The total assessment under this section—

''(A) for fiscal year 2004 shall be $85,000,000;

''(B) for fiscal year 2005 shall be $175,000,000;

''(C) for fiscal year 2006 shall be $300,000,000; and

''(D) for each subsequent fiscal year, shall not exceed the limit on the assessment imposed during the previous fiscal year, as adjusted by the Secretary (after notice, published in the Federal Register) to reflect the greater of—

''(i) the total percentage change that occurred in the Consumer Price Index for all urban consumers (all items; United States city average) for the 12-month period ending on June 30 of the preceding fiscal year for which fees are being established; or

''(ii) the total percentage change for the previous fiscal year in basic pay under the General Schedule in accordance with section 5332 of title 5, United States Code, as adjusted by any locality-based comparability payment pursuant to section 5304 of such title for Federal employees stationed in the District of Columbia.

''(5) TIMING OF USER FEE ASSESSMENT.—The Secretary shall notify each manufacturer and importer of tobacco products subject to this section of the amount of the quarterly assessment imposed on such manufacturer or importer under subsection (f) during each quarter of each fiscal year. Such notifications shall occur not earlier than 3 months prior to the end of the quarter for which such

assessment is made, and payments of all assessments shall be made not later than 60 days after each such notification.

''(d) DETERMINATION OF USER FEE BY COMPANY MARKET SHARE.—

''(1) IN GENERAL.—The user fee to be paid by each manufacturer or importer of a given class of tobacco products shall be determined in each quarter by multiplying—

''(A) such manufacturer's or importer's market share of such class of tobacco products; by

''(B) the portion of the user fee amount for the current quarter to be assessed on manufacturers and importers of such class of tobacco products as determined under subsection (e).

''(2) NO FEE IN EXCESS OF MARKET SHARE.—No manufacturer or importer of tobacco products shall be required to pay a user fee in excess of the market share of such manufacturer or importer.

''(e) DETERMINATION OF VOLUME OF DOMESTIC SALES.—

''(1) IN GENERAL.—The calculation of gross domestic volume of a class of tobacco product by a manufacturer or importer, and by all manufacturers and importers as a group, shall be made by the Secretary using information provided by manufacturers and importers pursuant to subsection (f), as well as any other relevant information provided to or obtained by the Secretary.

''(2) MEASUREMENT.—For purposes of the calculations under this subsection and the information provided under subsection (f) by the Secretary, gross domestic volume shall be measured by—

''(A) in the case of cigarettes, the number of cigarettes sold;

''(B) in the case of little cigars, the number of little cigars sold;

''(C) in the case of large cigars, the number of cigars weighing more than 3 pounds per thousand sold; and

''(D) in the case of other classes of tobacco products, in terms of number of pounds, or fraction thereof, of these products sold.

''(f) MEASUREMENT OF GROSS DOMESTIC VOLUME.—

''(1) IN GENERAL.—Each manufacturer and importer of tobacco products shall submit to the Secretary a certified copy of each of the returns or forms described by this paragraph that are required to be filed with a Government agency on the same date that those returns or forms are filed, or required to be filed, with such agency. The returns and forms described by this paragraph are those returns and forms related to the release of tobacco products into domestic commerce, as defined by section 5702(k) of the Internal Revenue Code of 1986, and the repayment of the taxes imposed under chapter 52 of such Code (ATF Form 500.24 and United States Customs Form 7501 under currently applicable regulations).

''(2) PENALTIES.—Any person that knowingly fails to provide information required under this subsection or that provides false information under this subsection shall be subject to the penalties described in section 1003 of title 18, United States Code. In addition, such person may be subject to a civil penalty in an amount not to exceed 2 percent of the value of the kind of tobacco products manufactured or imported by such person during the applicable quarter, as determined by the Secretary.

''(h) EFFECTIVE DATE.—The user fees prescribed by this section shall be assessed in fiscal year 2004, based on domestic sales of tobacco products during fiscal year 2003 and shall be assessed in each fiscal year thereafter.''.

SEC. ___12. INTERIM FINAL RULE.

(a) CIGARETTES AND SMOKELESS TOBACCO.—

(1) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the Secretary of Health and Human Services shall publish in the Federal Register an interim final rule regarding cigarettes and smokeless tobacco, which is hereby deemed to be in compliance with the Administrative Procedures Act and other applicable law.

(2) CONTENTS OF RULE.—Except as provided in this subsection, the interim final rule published under paragraph (1), shall be identical in its provisions to part 897 of the regulations promulgated by the Secretary of Health and Human Services in the August 28, 1996, issue of the Federal Register (61 Fed. Reg., 44615–44618). Such rule shall—

(A) provide for the designation of jurisdictional authority that is in accordance with this subsection;

(B) strike Subpart C—Labeling and section 897.32(c); and

(C) become effective not later than 1 year after the date of enactment of this Act.

(3) AMENDMENTS TO RULE.—Prior to making amendments to the rule published under paragraph (1), the Secretary shall promulgate a proposed rule in accordance with the Administrative Procedures Act.

(4) RULE OF CONSTRUCTION.—Except as provided in paragraph (3), nothing in this section shall be construed to limit the authority of the Secretary to amend, in accordance with the Administrative Procedures Act, the regulation promulgated pursuant to this section.

(b) LIMITATION ON ADVISORY OPINIONS.—As of the date of enactment of this Act, the following documents issued by the Food and Drug Administration shall not constitute advisory opinions under section 10.85(d)(1) of title 21, Code of Federal Regulations, except as they apply to tobacco products, and shall not be cited by the Secretary of Health and Human Services or the Food and Drug Administration as binding precedent:

(1) The preamble to the proposed rule in the document entitled ''Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco Products to Protect Children and Adolescents'' (60 Fed. Reg. 41314–41372 (August 11, 1995)).

(2) The document entitled ''Nicotine in Cigarettes and Smokeless Tobacco Products is a Drug and These Products Are Nicotine Delivery Devices Under the Federal Food, Drug, and Cosmetic Act'' (60 Fed. Reg. 41453–41787 (August 11, 1995)).

(3) The preamble to the final rule in the document entitled ''Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents'' (61 Fed. Reg. 44396–44615 (August 28, 1996)).

(4) The document entitled ''Nicotine in Cigarettes and Smokeless Tobacco is a Drug and These Products are Nicotine Delivery Devices Under the Federal Food, Drug, and Cosmetic Act; Jurisdictional Determination'' (61 Fed. Reg. 44619–45318 (August 28, 1996)).

SEC. ___13. CONFORMING AND OTHER AMENDMENTS TO GENERAL PROVISIONS.

(a) AMENDMENT OF FEDERAL FOOD, DRUG, AND COSMETIC ACT.—Except as otherwise expressly provided, whenever in this section an amendment is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference is to a section or other provision of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

(b) SECTION 301.—Section 301 (21 U.S.C. 331) is amended—

(1) in subsection (a), by inserting ''tobacco product,'' after ''device,'';

(2) in subsection (b), by inserting ''tobacco product,'' after ''device,'';

(3) in subsection (c), by inserting ''tobacco product,'' after ''device,'';

(4) in subsection (e), by striking ''515(f), or 519'' and inserting ''515(f), 519, or 909'';

(5) in subsection (g), by inserting ''tobacco product,'' after ''device,'';

(6) in subsection (h), by inserting ''tobacco product,'' after ''device,'';

(7) in subsection (j), by striking ''708, or 721'' and inserting ''708, 721, 904, 905, 906, 907, 908, 909, or section 921(b)'';

(8) in subsection (k), by inserting ''tobacco product,'' after ''device,'';

(9) by striking subsection (p) and inserting the following:

''(p) The failure to register in accordance with section 510 or 905, the failure to provide any information required by section 510(j), 510(k), 905(i), or 905(j), or the failure to provide a notice required by section 510(j)(2) or 905(i)(2).'';

(10) by striking subsection (q)(1) and inserting the following:

''(q)(1) The failure or refusal—

''(A) to comply with any requirement prescribed under section 518, 520(g), 903(b)(8), or 908, or condition prescribed under section 903(b)(6)(B)(ii)(II);

''(B) to furnish any notification or other material or information required by or under section 519, 520(g), 904, 909, or section 921; or

''(C) to comply with a requirement under section 522 or 913.'';

(11) in subsection (q)(2), by striking ''device,'' and inserting ''device or tobacco product,'';

(12) in subsection (r), by inserting ''or tobacco product'' after ''device'' each time that it appears; and

(13) by adding at the end the following:

''(aa) The sale of tobacco products in violation of a no-tobacco-sale order issued under section 303(f).

''(bb) The introduction or delivery for introduction into interstate commerce of a tobacco product in violation of section 911.

''(cc)(1) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp (including tax stamp), tag, label, or other identification device upon any tobacco product or container or labeling thereof so as to render such tobacco product a counterfeit tobacco product.

''(2) Making, selling, disposing of, or keeping in possession, control, or custody, or concealing any punch, die, plate, stone, or other item that is designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any tobacco product or container or labeling thereof so as to render such tobacco product a counterfeit tobacco product.

''(3) The doing of any act that causes a tobacco product to be a counterfeit tobacco product, or the sale or dispensing, or the holding for sale or dispensing, of a counterfeit tobacco product.

''(dd) The charitable distribution of tobacco products.

''(ee) The failure of a manufacturer or distributor to notify the Attorney General of their knowledge of tobacco products used in illicit trade.''.

(c) SECTION 303.—Section 303 (21 U.S.C. 333(f)) is amended in subsection (f)—

(1) by striking the subsection heading and inserting the following:

''(f) CIVIL PENALTIES; NO-TOBACCO-SALE ORDERS.—'';

(2) in paragraph (1)(A), by inserting ''or tobacco products'' after ''devices'';

(3) by redesignating paragraphs (3), (4), and (5) as paragraphs (4), (5), and (6), and inserting after paragraph (2) the following:

''(3) If the Secretary finds that a person has committed repeated violations of restrictions promulgated under section 906(d) at a particular retail outlet then the Secretary

may impose a no-tobacco-sale order on that person prohibiting the sale of tobacco products in that outlet. A no-tobacco-sale order may be imposed with a civil penalty under paragraph (1).'';

(4) in paragraph (4) as so redesignated—

(A) in subparagraph (A)—

(i) by striking ''assessed'' the first time it appears and inserting ''assessed, or a no-tobacco-sale order may be imposed,''; and

(ii) by striking ''penalty'' and inserting ''penalty, or upon whom a no-tobacco-order is to be imposed,'';

(B) in subparagraph (B)—

(i) by inserting after ''penalty,'' the following: ''or the period to be covered by a no-tobacco-sale order,''; and

(ii) by adding at the end the following: ''A no-tobacco-sale order permanently prohibiting an individual retail outlet from selling tobacco products shall include provisions that allow the outlet, after a specified period of time, to request that the Secretary compromise, modify, or terminate the order.''; and

(C) by adding at the end, the following:

''(D) The Secretary may compromise, modify, or terminate, with or without conditions, any no-tobacco-sale order.'';

(5) in paragraph (5) as so redesignated—

(A) by striking ''(3)(A)'' as redesignated, and inserting ''(4)(A)'';

(B) by inserting ''or the imposition of a no-tobacco-sale order'' after ''penalty'' the first 2 places it appears; and

(C) by striking ''issued.'' and inserting ''issued, or on which the no-tobacco-sale order was imposed, as the case may be.''; and

(6) in paragraph (6), as so redesignated, by striking ''paragraph (4)'' each place it appears and inserting ''paragraph (5)''.

(d) SECTION 304.—Section 304 (21 U.S.C. 334) is amended—

(1) in subsection (a)(2)—

(A) by striking ''and'' before ''(D)''; and

(B) by striking ''device.'' and inserting the following: '', (E) Any adulterated or misbranded tobacco product.'';

(2) in subsection (d)(1), by inserting ''tobacco product,'' after ''device,'';

(3) in subsection (g)(1), by inserting ''or tobacco product'' after ''device'' each place it appears; and

(4) in subsection (g)(2)(A), by inserting ''or tobacco product'' after ''device'' each place it appears.

(e) SECTION 702.—Section 702(a) (21 U.S.C. 372(a)) is amended—

(1) by inserting ''(1)'' after ''(a)''; and

(2) by adding at the end thereof the following:

''(2) For a tobacco product, to the extent feasible, the Secretary shall contract with the States in accordance with paragraph (1) to carry out inspections of retailers in connection with the enforcement of this Act.''.

(f) SECTION 703.—Section 703 (21 U.S.C. 373) is amended—

(1) by inserting ''tobacco product,'' after ''device,'' each place it appears; and

(2) by inserting ''tobacco products,'' after ''devices,'' each place it appears.

(g) SECTION 704.—Section 704 (21 U.S.C. 374) is amended—

(1) in subsection (a)(1)(A), by inserting ''tobacco products,'' after ''devices,'' each place it appears;

(2) in subsection (a)(1)(B), by inserting ''or tobacco product'' after ''restricted devices'' each place it appears; and

(3) in subsection (b), by inserting ''tobacco product,'' after ''device,''.

(h) SECTION 705.—Section 705(b) (21 U.S.C. 375(b)) is amended by inserting ''tobacco products,'' after ''devices,''.

(i) SECTION 709.—Section 709 (21 U.S.C. 379) is amended by inserting ''or tobacco product'' after ''device''.

(j) SECTION 801.—Section 801 (21 U.S.C. 381) is amended—

(1) in subsection (a)—

(A) by inserting ''tobacco products,'' after ''devices,'' the first time it appears;

(B) by inserting ''or section 905(j)'' after ''section 510''; and

(C) by striking ''drugs or devices'' each time it appears and inserting ''drugs, devices, or tobacco products'';

(2) in subsection (e)(1), by inserting ''tobacco product,'' after ''device,''; and

(3) by adding at the end the following:

''(p)(1) Not later than 2 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, and annually thereafter, the Secretary shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives, a report regarding—

''(A) the nature, extent, and destination of United States tobacco product exports that do not conform to tobacco product standards established pursuant to this Act;

''(B) the public health implications of such exports, including any evidence of a negative public health impact; and

''(C) recommendations or assessments of policy alternatives available to Congress and the Executive Branch to reduce any negative public health impact caused by such exports.

''(2) The Secretary is authorized to establish appropriate information disclosure requirements to carry out this subsection.''.

(k) SECTION 1003.—Section 1003(d)(2)(C) (as redesignated by section 101(a)) is amended—

(1) by striking ''and'' after ''cosmetics,''; and

(2) inserting a comma and ''and tobacco products'' after ''devices''.

(l) EFFECTIVE DATE FOR NO-TOBACCO-SALE ORDER AMENDMENTS.—The amendments made by subsection (c), other than the amendment made by paragraph (2) of such subsection, shall take effect upon the issuance of guidance by the Secretary of Health and Human Services—

(1) defining the term ''repeated violation'', as used in section 303(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 333(f)) as amended by subsection (c), by identifying the number of violations of particular requirements over a specified period of time at a particular retail outlet that constitute a repeated violation;

(2) providing for timely and effective notice to the retailer of each alleged violation at a particular retail outlet and an expedited procedure for the administrative appeal of an alleged violation;

(3) providing that a person may not be charged with a violation at a particular retail outlet unless the Secretary has provided notice to the retailer of all previous violations at that outlet;

(4) establishing a period of time during which, if there are no violations by a particular retail outlet, that outlet will not be considered to have been the site of repeated violations when the next violation occurs; and

(5) providing that good faith reliance on the presentation of a false government issued photographic identification that contains the bearer's date of birth does not constitute a violation of any minimum age requirement for the sale of tobacco products if the retailer has taken effective steps to prevent such violations, including—

(A) adopting and enforcing a written policy against sales to minors;

(B) informing its employees of all applicable laws;

(C) establishing disciplinary sanctions for employee noncompliance; and

(D) requiring its employees to verify age by way of photographic identification or electronic scanning device.

CHAPTER 2—TOBACCO PRODUCT WARNINGS; CONSTITUENT AND SMOKE CONSTITUENT DISCLOSURE

SEC. ___21. CIGARETTE LABEL AND ADVERTISING WARNINGS.

Section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333) is amended to read as follows:

''SEC. 4. LABELING.

''(a) LABEL REQUIREMENTS.—

''(1) IN GENERAL.—It shall be unlawful for any person to manufacture, package, sell, offer to sell, distribute, or import for sale or distribution within the United States any cigarettes the package of which fails to bear, in accordance with the requirements of this section, one of the following labels:

'WARNING: Cigarettes are addictive'.

'WARNING: Tobacco smoke can harm your children'.

'WARNING: Cigarettes cause fatal lung disease'.

'WARNING: Cigarettes cause cancer'.

'WARNING: Cigarettes cause strokes and heart disease'.

'WARNING: Smoking during pregnancy can harm your baby'.

'WARNING: Smoking can kill you'.

'WARNING: Tobacco smoke causes fatal lung disease in non-smokers'.

'WARNING: Quitting smoking now greatly reduces serious risks to your health'.

''(2) PLACEMENT; TYPOGRAPHY; ETC.—

''(A) IN GENERAL.—Each label statement required by paragraph (1) shall be located in the upper portion of the front and rear panels of the package, directly on the package underneath the cellophane or other clear wrapping. Except as provided in subparagraph (B), each label statement shall comprise at least the top 30 percent of the front and rear panels of the package. The word 'WARNING' shall appear in capital letters and all text shall be in conspicuous and legible 17-point type, unless the text of the label statement would occupy more than 70 percent of such area, in which case the text may be in a smaller conspicuous and legible type size, provided that at least 60 percent of such area is occupied by required text. The text shall be black on a white background, or white on a black background, in a manner that contrasts, by typography, layout, or color, with all other printed material on the package, in an alternating fashion under the plan submitted under subsection (b)(4).

''(B) FLIP-TOP BOXES.—For any cigarette brand package manufactured or distributed before January 1, 2000, which employs a flip-top style (if such packaging was used for that brand in commerce prior to June 21, 1997), the label statement required by paragraph (1) shall be located on the flip-top area of the package, even if such area is less than 25 percent of the area of the front panel. Except as provided in this paragraph, the provisions of this subsection shall apply to such packages.

''(3) DOES NOT APPLY TO FOREIGN DISTRIBUTION.—The provisions of this subsection do not apply to a tobacco product manufacturer or distributor of cigarettes which does not manufacture, package, or import cigarettes for sale or distribution within the United States.

''(4) APPLICABILITY TO RETAILERS.—A retailer of cigarettes shall not be in violation of this subsection for packaging that is supplied to the retailer by a tobacco product manufacturer, importer, or distributor and is not altered by the retailer in a way that is material to the requirements of this subsection except that this paragraph shall not relieve a retailer of liability if the retailer

sells or distributes tobacco products that are not labeled in accordance with this subsection.

''(b) ADVERTISING REQUIREMENTS.—

''(1) IN GENERAL.—It shall be unlawful for any tobacco product manufacturer, importer, distributor, or retailer of cigarettes to advertise or cause to be advertised within the United States any cigarette unless its advertising bears, in accordance with the requirements of this section, one of the labels specified in subsection (a) of this section.

''(2) TYPOGRAPHY, ETC.—Each label statement required by subsection (a) of this section in cigarette advertising shall comply with the standards set forth in this paragraph. For press and poster advertisements, each such statement and (where applicable) any required statement relating to tar, nicotine, or other constituent (including a smoke constituent) yield shall comprise at least 20 percent of the area of the advertisement and shall appear in a conspicuous and prominent format and location at the top of each advertisement within the trim area. The Secretary may revise the required type sizes in such area in such manner as the Secretary determines appropriate. The word 'WARNING' shall appear in capital letters, and each label statement shall appear in conspicuous and legible type. The text of the label statement shall be black if the background is white and white if the background is black, under the plan submitted under paragraph (4) of this subsection. The label statements shall be enclosed by a rectangular border that is the same color as the letters of the statements and that is the width of the first downstroke of the capital 'W' of the word 'WARNING' in the label statements. The text of such label statements shall be in a typeface pro rata to the following requirements: 45-point type for a whole-page broadsheet newspaper advertisement; 39-point type for a half-page broadsheet newspaper advertisement; 39-point type for a whole-page tabloid newspaper advertisement; 27-point type for a half-page tabloid newspaper advertisement; 31.5-point type for a double page spread magazine or whole-page magazine advertisement; 22.5-point type for a 28 centimeter by 3 column advertisement; and 15-point type for a 20 centimeter by 2 column advertisement. The label statements shall be in English, except that in the case of—

''(A) an advertisement that appears in a newspaper, magazine, periodical, or other publication that is not in English, the statements shall appear in the predominant language of the publication; and

''(B) in the case of any other advertisement that is not in English, the statements shall appear in the same language as that principally used in the advertisement.

''(3) MATCHBOOKS.—Notwithstanding paragraph (2), for matchbooks (defined as containing not more than 20 matches) customarily given away with the purchase of tobacco products, each label statement required by subsection (a) may be printed on the inside cover of the matchbook.

''(4) ADJUSTMENT BY SECRETARY.—The Secretary may, through a rulemaking under section 553 of title 5, United States Code, adjust the format and type sizes for the label statements required by this section or the text, format, and type sizes of any required tar, nicotine yield, or other constituent (including smoke constituent) disclosures, or to establish the text, format, and type sizes for any other disclosures required under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et. seq.). The text of any such label statements or disclosures shall be required to appear only within the 20 percent area of cigarette advertisements provided by paragraph (2) of this subsection. The Secretary shall promulgate regulations which provide for adjustments in the format and type sizes of any text required to appear in such area to ensure that the total text required to appear by law will fit within such area.

''(5) MARKETING REQUIREMENTS.—

''(A) The label statements specified in subsection (a)(1) shall be randomly displayed in each 12-month period, in as equal a number of times as is possible on each brand of the product and be randomly distributed in all areas of the United States in which the product is marketed in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer and approved by the Secretary.

''(B) The label statements specified in subsection (a)(1) shall be rotated quarterly in alternating sequence in advertisements for each brand of cigarettes in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer to, and approved by, the Secretary.

''(C) The Secretary shall review each plan submitted under subparagraph (B) and approve it if the plan—

''(i) will provide for the equal distribution and display on packaging and the rotation required in advertising under this subsection; and

''(ii) assures that all of the labels required under this section will be displayed by the tobacco product manufacturer, importer, distributor, or retailer at the same time.

''(6) APPLICABILITY TO RETAILERS.—This subsection applies to a retailer only if that retailer is responsible for or directs the label statements required under this section except that this paragraph shall not relieve a retailer of liability if the retailer displays, in a location open to the public, an advertisement that is not labeled in accordance with the requirements of this subsection.''.

SEC. ___22. AUTHORITY TO REVISE CIGARETTE WARNING LABEL STATEMENTS.

Section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333), as amended by section ___21, is further amended by adding at the end the following:

''(c) CHANGE IN REQUIRED STATEMENTS.—The Secretary may, by a rulemaking conducted under section 553 of title 5, United States Code, adjust the format, type size, and text of any of the label requirements, require color graphics to accompany the text, increase the required label area from 30 percent up to 50 percent of the front and rear panels of the package, or establish the format, type size, and text of any other disclosures required under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), if the Secretary finds that such a change would promote greater public understanding of the risks associated with the use of tobacco products.''.

SEC. ___23. STATE REGULATION OF CIGARETTE ADVERTISING AND PROMOTION.

Section 5 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1334) is amended by adding at the end the following:

''(c) EXCEPTION.—Notwithstanding subsection (b), a State or locality may enact statutes and promulgate regulations, based on smoking and health, that take effect after the effective date of the Family Smoking Prevention and Tobacco Control Act, imposing specific bans or restrictions on the time, place, and manner, but not content, of the advertising or promotion of any cigarettes.''.

SEC. ___24. SMOKELESS TOBACCO LABELS AND ADVERTISING WARNINGS.

Section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402) is amended to read as follows:

''SEC. 3. SMOKELESS TOBACCO WARNING.

''(a) GENERAL RULE.—

''(1) It shall be unlawful for any person to manufacture, package, sell, offer to sell, distribute, or import for sale or distribution within the United States any smokeless tobacco product unless the product package bears, in accordance with the requirements of this Act, one of the following labels:

'WARNING: This product can cause mouth cancer'.

'WARNING: This product can cause gum disease and tooth loss'.

'WARNING: This product is not a safe alternative to cigarettes'.

'WARNING: Smokeless tobacco is addictive'.

''(2) Each label statement required by paragraph (1) shall be—

''(A) located on the 2 principal display panels of the package, and each label statement shall comprise at least 30 percent of each such display panel; and

''(B) in 17-point conspicuous and legible type and in black text on a white background, or white text on a black background, in a manner that contrasts by typography, layout, or color, with all other printed material on the package, in an alternating fashion under the plan submitted under subsection (b)(3), except that if the text of a label statement would occupy more than 70 percent of the area specified by subparagraph (A), such text may appear in a smaller type size, so long as at least 60 percent of such warning area is occupied by the label statement.

''(3) The label statements required by paragraph (1) shall be introduced by each tobacco product manufacturer, packager, importer, distributor, or retailer of smokeless tobacco products concurrently into the distribution chain of such products.

''(4) The provisions of this subsection do not apply to a tobacco product manufacturer or distributor of any smokeless tobacco product that does not manufacture, package, or import smokeless tobacco products for sale or distribution within the United States.

''(5) A retailer of smokeless tobacco products shall not be in violation of this subsection for packaging that is supplied to the retailer by a tobacco products manufacturer, importer, or distributor and that is not altered by the retailer unless the retailer offers for sale, sells, or distributes a smokeless tobacco product that is not labeled in accordance with this subsection.

''(b) REQUIRED LABELS.—

''(1) It shall be unlawful for any tobacco product manufacturer, packager, importer, distributor, or retailer of smokeless tobacco products to advertise or cause to be advertised within the United States any smokeless tobacco product unless its advertising bears, in accordance with the requirements of this section, one of the labels specified in subsection (a).

''(2) Each label statement required by subsection (a) in smokeless tobacco advertising shall comply with the standards set forth in this paragraph. For press and poster advertisements, each such statement and (where applicable) any required statement relating to tar, nicotine, or other constituent yield shall—

''(A) comprise at least 20 percent of the area of the advertisement, and the warning area shall be delineated by a dividing line of contrasting color from the advertisement; and

''(B) the word 'WARNING' shall appear in capital letters and each label statement shall appear in conspicuous and legible type. The text of the label statement shall be black on a white background, or white on a black background, in an alternating fashion under the plan submitted under paragraph (3).

''(3)(A) The label statements specified in subsection (a)(1) shall be randomly displayed

in each 12-month period, in as equal a number of times as is possible on each brand of the product and be randomly distributed in all areas of the United States in which the product is marketed in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer and approved by the Secretary.

''(B) The label statements specified in subsection (a)(1) shall be rotated quarterly in alternating sequence in advertisements for each brand of smokeless tobacco product in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer to, and approved by, the Secretary.

''(C) The Secretary shall review each plan submitted under subparagraph (B) and approve it if the plan—

''(i) will provide for the equal distribution and display on packaging and the rotation required in advertising under this subsection; and

''(ii) assures that all of the labels required under this section will be displayed by the tobacco product manufacturer, importer, distributor, or retailer at the same time.

''(D) This paragraph applies to a retailer only if that retailer is responsible for or directs the label statements under this section, unless the retailer displays in a location open to the public, an advertisement that is not labeled in accordance with the requirements of this subsection.

''(c) TELEVISION AND RADIO ADVERTISING.—It is unlawful to advertise smokeless tobacco on any medium of electronic communications subject to the jurisdiction of the Federal Communications Commission.''.

SEC. ___25. AUTHORITY TO REVISE SMOKELESS TOBACCO PRODUCT WARNING LABEL STATEMENTS.

Section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402), as amended by section ___23, is further amended by adding at the end the following:

''(d) AUTHORITY TO REVISE WARNING LABEL STATEMENTS.—The Secretary may, by a rulemaking conducted under section 553 of title 5, United States Code, adjust the format, type size, and text of any of the label requirements, require color graphics to accompany the text, increase the required label area from 30 percent up to 50 percent of the front and rear panels of the package, or establish the format, type size, and text of any other disclosures required under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), if the Secretary finds that such a change would promote greater public understanding of the risks associated with the use of smokeless tobacco products.''.

SEC. ___26. TAR, NICOTINE, AND OTHER SMOKE CONSTITUENT DISCLOSURE TO THE PUBLIC.

Section 4(a) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333 (a)), as amended by section ___21, is further amended by adding at the end the following:

''(4)(A) The Secretary shall, by a rulemaking conducted under section 553 of title 5, United States Code, determine (in the Secretary's sole discretion) whether cigarette and other tobacco product manufacturers shall be required to include in the area of each cigarette advertisement specified by subsection (b) of this section, or on the package label, or both, the tar and nicotine yields of the advertised or packaged brand. Any such disclosure shall be in accordance with the methodology established under such regulations, shall conform to the type size requirements of subsection (b) of this section, and shall appear within the area specified in subsection (b) of this section.

''(B) Any differences between the requirements established by the Secretary under subparagraph (A) and tar and nicotine yield reporting requirements established by the Federal Trade Commission shall be resolved by a memorandum of understanding between the Secretary and the Federal Trade Commission.

''(C) In addition to the disclosures required by subparagraph (A) of this paragraph, the Secretary may, under a rulemaking conducted under section 553 of title 5, United States Code, prescribe disclosure requirements regarding the level of any cigarette or other tobacco product constituent including any smoke constituent. Any such disclosure may be required if the Secretary determines that disclosure would be of benefit to the public health, or otherwise would increase consumer awareness of the health consequences of the use of tobacco products, except that no such prescribed disclosure shall be required on the face of any cigarette package or advertisement. Nothing in this section shall prohibit the Secretary from requiring such prescribed disclosure through a cigarette or other tobacco product package or advertisement insert, or by any other means under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

''(D) This paragraph applies to a retailer only if that retailer is responsible for or directs the label statements required under this section, except that this paragraph shall not relieve a retailer of liability if the retailer sells or distributes tobacco products that are not labeled in accordance with the requirements of this subsection.''.

CHAPTER 3—PREVENTION OF ILLICIT TRADE IN TOBACCO PRODUCTS

SEC. ___31. LABELING, RECORDKEEPING, RECORDS INSPECTION.

Chapter IX of the Federal Food, Drug, and Cosmetic Act, as added by section ___11, is further amended by adding at the end the following:

''SEC. 921. LABELING, RECORDKEEPING, RECORDS INSPECTION.

''(a) ORIGIN LABELING.—The label, packaging, and shipping containers of tobacco products for introduction or delivery for introduction into interstate commerce shall bear the statement 'sale only allowed in the United States.'

''(b) REGULATIONS CONCERNING RECORDKEEPING FOR TRACKING AND TRACING.—

''(1) IN GENERAL.—Not later than 9 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall promulgate regulations regarding the establishment and maintenance of records by any person who manufactures, processes, transports, distributes, receives, packages, holds, exports, or imports tobacco products.

''(2) INSPECTION.—In promulgating the regulations described in paragraph (1), the Secretary shall consider which records are needed for inspection to monitor the movement of tobacco products from the point of manufacture through distribution to retail outlets to assist in investigating potential illicit trade, smuggling or counterfeiting of tobacco products.

''(3) CODES.—The Secretary may require codes on the labels of tobacco products or other designs or devices for the purpose of tracking or tracing the tobacco product through the distribution system.

''(4) SIZE OF BUSINESS.—The Secretary shall take into account the size of a business in promulgating regulations under this section.

''(5) RECORDKEEPING BY RETAILERS.—The Secretary shall not require any retailer to maintain records relating to individual purchasers of tobacco products for personal consumption.

''(c) RECORDS INSPECTION.—If the Secretary has a reasonable belief that a tobacco product is part of an illicit trade or smuggling or is a counterfeit product, each person who manufactures, processes, transports, distributes, receives, holds, packages, exports, or imports tobacco products shall, at the request of an officer or employee duly designated by the Secretary, permit such officer or employee, at reasonable times and within reasonable limits and in a reasonable manner, upon the presentation of appropriate credentials and a written notice to such person, to have access to and copy all records (including financial records) relating to such article that are needed to assist the Secretary in investigating potential illicit trade, smuggling or counterfeiting of tobacco products.

''(d) KNOWLEDGE OF ILLEGAL TRANSACTION.—If the manufacturer or distributor of a tobacco product has knowledge which reasonably supports the conclusion that a tobacco product manufactured or distributed by such manufacturer or distributor that has left the control of such person may be or has been—

''(A) imported, exported, distributed or offered for sale in interstate commerce by a person without paying duties or taxes required by law; or

''(B) imported, exported, distributed or diverted for possible illicit marketing,

the manufacturer or distributor shall promptly notify the Attorney General of such knowledge.

''(2) KNOWLEDGE DEFINED.—For purposes of this subsection, the term 'knowledge' as applied to a manufacturer or distributor means—

''(A) the actual knowledge that the manufacturer or distributor had; or

''(B) the knowledge which a reasonable person would have had under like circumstances or which would have been obtained upon the exercise of due care.

SEC. ___32. STUDY AND REPORT.

(a) STUDY.—The Comptroller General of the United States shall conduct a study of cross-border trade in tobacco products to—

(1) collect data on cross-border trade in tobacco products, including illicit trade and trade of counterfeit tobacco products and make recommendations on the monitoring of such trade;

(2) collect data on cross-border advertising (any advertising intended to be broadcast, transmitted, or distributed from the United States to another country) of tobacco products and make recommendations on how to prevent or eliminate, and what technologies could help facilitate the elimination of, cross-border advertising.

(b) REPORT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on the study described in subsection (a).

Subtitle B—Tobacco Market Transition

SEC. ___40. SHORT TITLE OF SUBTITLE.

This subtitle may be cited as the ''Tobacco Market Transition Act of 2004''.

CHAPTER 1—TERMINATION OF CURRENT TOBACCO PROGRAMS

SEC. ___41. TERMINATION OF TOBACCO PRODUCTION ADJUSTMENT PROGRAMS.

(a) TOBACCO STATISTICS.—The Act of January 14, 1929 (45 Stat. 1079; 7 U.S.C. 501 et seq.) is repealed.

(b) TOBACCO STANDARDS.—The Tobacco Inspection Act (7 U.S.C. 511 et seq.) is repealed.

(c) TOBACCO INSPECTIONS.—Section 213 of the Tobacco Adjustment Act of 1983 (7 U.S.C. 511r) is repealed.

(d) TOBACCO CONTROL.—The Act of April 25, 1936 (commonly known as the Tobacco Control Act; 7 U.S.C. 515 et seq.), is repealed.

(e) COMMODITY HANDLING ORDERS.—Section 8c(2)(A) of the Agricultural Adjustment Act (7 U.S.C. 608c(2)(A)), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, is amended by striking ''tobacco,''.

(f) PROCESSING TAX.—Section 9(b) of the Agricultural Adjustment Act (7 U.S.C. 609(b)), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, is amended—

(1) in paragraph (2), by striking ''tobacco,''; and

(2) in paragraph (6)B)(i), by striking '', or, in the case of tobacco, is less than the fair exchange value by not more than 10 per centum,''.

(g) BURLEY TOBACCO IMPORT REVIEW.—Section 3 of Public Law 98–59 (7 U.S.C. 625) is repealed.

(h) DECLARATION OF POLICY.—Section 2 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1282) is amended by striking ''tobacco,''.

(i) DEFINITIONS.—Section 301(b) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1301(b)) is amended—

(1) in paragraph (3)—

(A) by striking subparagraph (C); and

(B) by redesignating subparagraph (D) as subparagraph (C);

(2) in paragraph (6)(A), by striking ''tobacco,'';

(3) in paragraph (10)—

(A) by striking subparagraph (B); and

(B) by redesignating subparagraph (C) as subparagraph (B);

(4) in paragraph (11)(B), by striking ''and tobacco'';

(5) in paragraph (12), by striking ''tobacco,'';

(6) in paragraph (14)—

(A) in subparagraph (A), by striking ''(A)''; and

(B) by striking subparagraphs (B), (C), and (D);

(7) by striking paragraph (15);

(8) in paragraph (16)—

(A) by striking subparagraph (B); and

(B) by redesignating subparagraph (C) as subparagraph (B);

(9) by striking paragraph (17); and

(10) by redesignating paragraph (16) as paragraph (15).

(j) PARITY PAYMENTS.—Section 303 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1303) is amended in the first sentence by striking ''rice, or tobacco,'' and inserting ''or rice,''.

(k) MARKETING QUOTAS.—Part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1311 et seq.) is repealed.

(l) ADMINISTRATIVE PROVISIONS.—Section 361 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1361) is amended by striking ''tobacco,''.

(m) ADJUSTMENT OF QUOTAS.—Section 371 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1371) is amended—

(1) in the first sentence of subsection (a), by striking ''rice, or tobacco'' and inserting ''or rice''; and

(2) in the first sentence of subsection (b), by striking ''rice, or tobacco'' and inserting ''or rice''.

(n) REPORTS AND RECORDS.—Section 373 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1373) is amended—

(1) by striking ''rice, or tobacco'' each place it appears in subsections (a) and (b) and inserting ''or rice''; and

(2) in subsection (a)—

(A) in the first sentence, by striking ''all persons engaged in the business of redrying, prizing, or stemming tobacco for producers,''; and

(B) in the last sentence, by striking ''$500;'' and all that follows through the period at the end of the sentence and inserting ''$500.''.

(o) REGULATIONS.—Section 375 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1375) is amended—

(1) in subsection (a), by striking ''peanuts, or tobacco'' and inserting ''or peanuts''; and

(2) by striking subsection (c).

(p) EMINENT DOMAIN.—Section 378 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1378) is amended—

(1) in the first sentence of subsection (c), by striking ''cotton, and tobacco'' and inserting ''and cotton''; and

(2) by striking subsections (d), (e), and (f).

(q) BURLEY TOBACCO FARM RECONSTITUTION.—Section 379 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1379) is amended—

(1) in subsection (a)—

(A) by striking ''(a)''; and

(B) in paragraph (6), by striking '', but this clause (6) shall not be applicable in the case of burley tobacco''; and

(2) by striking subsections (b) and (c).

(r) ACREAGE-POUNDAGE QUOTAS.—Section 4 of the Act of April 16, 1955 (Public Law 89–12; 7 U.S.C. 1314c note), is repealed.

(s) BURLEY TOBACCO ACREAGE ALLOTMENTS.—The Act of July 12, 1952 (7 U.S.C. 1315), is repealed.

(t) TRANSFER OF ALLOTMENTS.—Section 703 of the Food and Agriculture Act of 1965 (7 U.S.C. 1316) is repealed.

(u) ADVANCE RECOURSE LOANS.—Section 13(a)(2)(B) of the Food Security Improvements Act of 1986 (7 U.S.C. 1433c–1(a)(2)(B)) is amended by striking ''tobacco and''.

(v) TOBACCO FIELD MEASUREMENT.—Section 1112 of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100–203) is amended by striking subsection (c).

SEC. ___42. TERMINATION OF TOBACCO PRICE SUPPORT PROGRAM.

(a) PARITY PRICE SUPPORT.—Section 101 of the Agricultural Act of 1949 (7 U.S.C. 1441) is amended—

(1) in the first sentence of subsection (a), by striking ''tobacco (except as otherwise provided herein), corn,'' and inserting ''corn'';

(2) by striking subsections (c), (g), (h), and (i);

(3) in subsection (d)(3)—

(A) by striking '', except tobacco,''; and

(B) by striking ''and no price support shall be made available for any crop of tobacco for which marketing quotas have been disapproved by producers;''; and

(4) by redesignating subsections (d) and (e) as subsections (c) and (d), respectively.

(b) TERMINATION OF TOBACCO PRICE SUPPORT AND NO NET COST PROVISIONS.—Sections 106, 106A, and 106B of the Agricultural Act of 1949 (7 U.S.C. 1445, 1445–1, 1445–2) are repealed.

(c) DEFINITION OF BASIC AGRICULTURAL COMMODITY.—Section 408(c) of the Agricultural Act of 1949 (7 U.S.C. 1428(c)) is amended by striking ''tobacco,''.

(d) REVIEW OF BURLEY TOBACCO IMPORTS.—Section 3 of Public Law 98–59 (7 U.S.C. 625) is repealed.

(e) POWERS OF COMMODITY CREDIT CORPORATION.—Section 5 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714c) is amended by inserting ''(other than tobacco)'' after ''agricultural commodities'' each place it appears.

SEC. ___43. LIABILITY.

This title and the amendments made by this title shall not affect the liability of any person under any provision of law with respect to any crop of tobacco planted before the effective date prescribed in section ___62.

CHAPTER 2—TOBACCO ASSISTANCE

SEC. ___51. TOBACCO ASSISTANCE.

Title III of the Agricultural Adjustment Act of 1938 is amended by inserting after subtitle D (7 U.S.C. 1379a et seq.) the following:

''Subtitle E—Tobacco Assistance

''SEC. 380A. DEFINITIONS.

''In this subtitle:

''(1) ACTIVE PRODUCER OF TOBACCO.—The term 'active producer of tobacco' means a person that—

''(A) is actively engaged in the production of tobacco marketed or considered planted; and

''(B) shares in the risk of producing the tobacco.

''(2) APPLICABLE FISCAL YEAR.—The term 'applicable fiscal year' means each of fiscal years 2004 through 2013.

''(3) BASE PERIOD.—The term 'base period' means the 1-year period ending the June 30 preceding each applicable fiscal year.

''(4) CONSIDERED PLANTED.—The term 'considered planted' means tobacco planted but failed to be produced as a result of a natural disaster, as determined by the Secretary.

''(5) DEPARTMENT.—The term 'Department' means the Department of Agriculture.

''(6) ELIGIBLE STATE.—The term 'eligible State' means—

''(A) in the case of section 380O, each of the States of Maryland, Pennsylvania, South Carolina, and North Carolina; and

''(B) in the case of section 380Q, each of the States of Alabama, Arkansas, Florida, Georgia, Indiana, Kansas, Kentucky, Minnesota, Missouri, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin.

''(7) IMPACTED COMMUNITY.—The term 'impacted community' means a community in an eligible State that is adversely affected by a reduction in gross receipts from the sale of tobacco.

''(8) MARKET SHARE.—The term 'market share' means the share of each manufacturer or importer of a class of tobacco product (expressed as a decimal to the fourth place) of the total volume of domestic sales of the class of tobacco product during the base period for the applicable fiscal year for an assessment under section 380T.

''(9) PRODUCTION BOARD.—The term 'Production Board' means a Production Board established for a kind of tobacco under section 380H.

''(10) QUOTA TOBACCO.—The term 'quota tobacco' means a kind of tobacco that is subject to a farm marketing quota or farm acreage allotment for the 2002 tobacco marketing years under a marketing quota or allotment program established under part I of subtitle B (as in effect before the effective date of this subtitle).

''(11) TOBACCO.—The term 'tobacco' means each of the following kinds of tobacco:

''(A) Flue-cured tobacco, comprising types 11, 12, 13, and 14.

''(B) Fire-cured tobacco, comprising types 22 and 23.

''(C) Dark air-cured tobacco, comprising types 35 and 36.

''(D) Virginia sun-cured tobacco, comprising type 37.

''(E) Virginia fire-cured tobacco, comprising type 21.

''(F) Burley tobacco, comprising type 31.

''(G) Cigar-filler and cigar-binder tobacco, comprising types 42, 43, 44, 53, 54, and 55.

''(12) TOBACCO QUALITY BOARD.—The term 'Tobacco Quality Board' means the Tobacco Quality Board established under section 380G.

''(13) TOBACCO QUOTA HOLDER.—The term 'tobacco quota holder' means a person that is considered an tobacco quota holder under section 380B(b).

''(14) TOBACCO TRUST FUND.—The term 'Tobacco Trust Fund' means the Tobacco Trust Fund established under section 380S.

''(15) TRADITIONAL PRODUCER OF TOBACCO.—The term 'traditional producer of tobacco'

means a person that, for at least 1 of the 2000, 2001, or 2002 tobacco marketing years—

''(A) was actively engaged in the production of tobacco marketed, or considered planted, under a marketing quota established under part I of subtitle B (as in effect before the effective date of this subtitle); and

''(B) shared in the risk of producing the tobacco.

''(16) TRADITIONAL TOBACCO COUNTY.—

''(A) IN GENERAL.—The term 'traditional tobacco county' means a county in the United States that had 1 or more farms operated by traditional producers of tobacco under a marketing quota for at least 1 of the marketing years described in paragraph (15).

''(B) INCLUSION.—For the purpose of determining the crop acreage base of an active producer of tobacco for a kind of tobacco produced in the State of Georgia under section 380I(c)(3), the term 'traditional tobacco county' includes a county that is contiguous to a county described in subparagraph (A).

"CHAPTER 1—PAYMENTS TO TOBACCO QUOTA HOLDERS AND TRADITIONAL PRODUCERS

"SEC. 380B. TRANSITION PAYMENTS TO TOBACCO QUOTA HOLDERS.

''(a) IN GENERAL.—The Secretary shall make transition payments to each tobacco quota holder.

''(b) TOBACCO QUOTA HOLDER.—

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the Secretary shall consider a person to be a tobacco quota holder under this section if the person held, as of July 1, 2002, a basic quota or farm acreage allotment (as applicable) for quota tobacco established for the 2002 tobacco marketing year under a marketing quota program established under part I of subtitle B (as in effect before the effective date of this subtitle).

''(2) EFFECT OF PURCHASE CONTRACT.—If there was an agreement for the purchase of all or part of a farm described in paragraph (1) as of July 1, 2002, and the parties to the sale are unable to agree to the disposition of eligibility for payments under this section, the Secretary, taking into account any transfer of quota that has been agreed to, shall provide for the equitable division of the payments among the parties by adjusting the determination of who is the tobacco quota holder with respect to particular pounds of the quota.

''(3) EFFECT OF AGREEMENT FOR PERMANENT QUOTA TRANSFER.—If the Secretary determines that there was in existence, as of July 1, 2002, an agreement for the permanent transfer of quota, but that the transfer was not completed by that date, the Secretary shall consider the tobacco quota holder to be the party to the agreement that, as of that date, was the owner of the farm to which the quota was to be transferred.

''(4) PROTECTED BASES.—A person that owns a farm with a tobacco poundage quota that is protected under a conservation reserve program contract entered into under section 1231 of the Food Security Act of 1985 (16 U.S.C. 3831) shall be considered to be a tobacco quota holder with respect to the protected poundage.

''(5) QUANTITY OF QUOTA HELD.—

''(A) IN GENERAL.—A person shall be considered a tobacco quota holder for purposes of this section only with respect to that quantity of quota that qualifies the person as a tobacco quota holder.

''(B) INCLUDED QUOTA.—The determination of the tobacco poundage amount for which the person qualifies shall—

''(i) be based on the quantity of quota held by person on January 1, 2004;

''(ii) subject to clause (iii), not be greater than the quantity of quota held by the person for the 2002 crop; and

''(iii) take into account—

''(I) sales of quota that occurred during the period beginning July 1, 2002, and ending December 31, 2004; and

''(II) any transfers of quota that took place after July 1, 2002.

''(c) APPLICATION.—

''(1) IN GENERAL.—To be eligible to receive a payment under this section, a person shall submit to the Secretary an application containing such information as the Secretary may require to demonstrate to the satisfaction of the Secretary that the person is a tobacco quota holder.

''(2) ADMINISTRATION.—The application shall be submitted within such time, in such form, and in such manner as the Secretary may require.

''(d) BASE QUOTA LEVEL.—

''(1) IN GENERAL.—The Secretary shall establish a base quota level applicable to each tobacco quota holder, as determined under this subsection.

''(2) LEVEL.—The base quota level for each tobacco quota holder shall be equal to the quantity of quota that qualifies a person as the tobacco quota holder under subsection (b)(5).

''(e) PAYMENT.—The Secretary shall make payments to each tobacco quota holder under subsection (b) in an amount obtained by multiplying—

''(1) 80 cents per pound for each of fiscal years 2004 through 2013; by

''(2) the base quota level established for the quota holder under subsection (d).

''(f) TIME FOR PAYMENT.—Subject to section 380D(c), the payments to tobacco quota holders required under this section shall be made by, to the maximum extent practicable, the date that is 180 days after the date of enactment of this subtitle and each November 1 thereafter.

"SEC. 380C. DIRECT PAYMENTS TO TRADITIONAL PRODUCERS OF TOBACCO.

''(a) IN GENERAL.—The Secretary shall make direct payments under this section to traditional producers of tobacco.

''(b) ELIGIBILITY.—

''(1) IN GENERAL.—To be eligible to receive a payment under this section, a person shall submit to the Secretary an application containing such information as the Secretary may require to demonstrate to the satisfaction of the Secretary that the person is a traditional producer of tobacco.

''(2) ADMINISTRATION.—The application shall be submitted within such time, in such form, and in such manner as the Secretary may require.

''(c) BASE QUOTA LEVEL.—

''(1) IN GENERAL.—The Secretary shall establish a base quota level applicable to each traditional producer of tobacco, as determined under this subsection.

''(2) FLUE-CURED AND BURLEY TOBACCO.—In the case of Flue-cured tobacco (types 11, 12, 13, and 14) and Burley tobacco (type 31), the base quota level for each tobacco quota holder shall be equal to the effective tobacco marketing quota (irrespective of disaster lease and transfers) under part I of subtitle B (as in effect before the effective date of this subtitle) for the 2002 marketing year for quota tobacco produced on the farm.

''(3) OTHER KINDS OF TOBACCO.—In the case of each kind of tobacco other than Flue-cured tobacco (types 11, 12, 13, and 14) and Burley tobacco (type 31), for the purpose of calculating a payment to a traditional producer of tobacco, the base quota level for the traditional producer of tobacco shall be the quantity obtained by multiplying—

''(A) the basic tobacco farm acreage allotment for the 2002 marketing year established by the Secretary for quota tobacco produced on the farm; by

''(B) the actual yield of the crop of quota tobacco produced on the farm.

''(d) PAYMENT.—

''(1) IN GENERAL.—Subject to paragraph (2), the Secretary shall make payments to each traditional producer of tobacco, as determined under subsection (b), in an amount obtained by multiplying—

''(A) 40 cents per pound for each of fiscal years 2004 through 2013; by

''(B) the base quota level established for the traditional producer of tobacco under subsection (c).

''(2) PAYMENT RATE.—The rate for payments to a traditional producer of quota tobacco under paragraph (1)(A) shall be equal to—

''(A) in the case of a person that produced quota tobacco marketed, or considered planted, under a marketing quota for all 3 of the 2000, 2001, and 2002 tobacco marketing years, the rate prescribed under paragraph (1)(A) for the applicable fiscal year;

''(B) in the case of a person that produced quota tobacco marketed, or considered planted, under a marketing quota for not more than 2 of the 2000, 2001, and 2002 tobacco marketing years, ⅔ of the rate prescribed under paragraph (1)(A) for the applicable fiscal year; and

''(C) in the case of a person that produced quota tobacco marketed, or considered planted, under a marketing quota for not more than 1 of the 2000, 2001, and 2002 tobacco marketing years, ⅓ of the rate prescribed under paragraph (1)(A) for the applicable fiscal year.

''(e) TIME FOR PAYMENT.—Subject to section 380D(c), the payments to traditional producers of tobacco required under this section shall be made by, to the maximum extent practicable, the date that is 180 days after the date of enactment of this subtitle and each November 1 thereafter.

"SEC. 380D. ADMINISTRATION.

''(a) RESOLUTION OF DISPUTES.—

''(1) IN GENERAL.—Any dispute regarding the eligibility of a person to receive a payment under this subtitle, or the amount of the payment, may be appealed to the county committee established under section 8 of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h) for the county or other area in which the farming operation of the person is located.

''(2) NATIONAL APPEALS DIVISION.—Any adverse determination of a county committee under subsection (a) may be appealed to the National Appeals Division established under subtitle H of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6991 et seq.).

''(b) USE OF QUALIFIED FINANCIAL INSTITUTIONS.—The Secretary may use qualified financial institutions to manage assets, make payments, and otherwise carry out this subtitle.

''(c) ADVANCED PAYMENTS.—

''(1) IN GENERAL.—The Secretary shall permit a tobacco quota holder and a traditional producer of tobacco to elect to receive advanced payments for 2 or more fiscal years under this chapter by selecting 1 of 4 advance payment options established by the Secretary, including a lump sum payment option.

''(2) RISK.—A tobacco quota holder or traditional producer of tobacco that elects to receive accelerated payments shall bear the expense of the discount in value for acceleration of the payments.

''(3) QUALIFIED FINANCIAL INSTITUTIONS.—

''(A) IN GENERAL.—The Secretary shall provide advanced payments under this subsection through 1 or more qualified financial institutions designated by the Secretary.

''(B) ADMINISTRATION.—In providing advanced payments under this subsection, a

qualified financial institution shall (in accordance with guidance issued by the Secretary)—

''(i) offer the advanced payments regardless of the location or size of the payments;

''(ii) apply updated discount rates that vary only by payment term; and

''(iii) distribute the advanced payments in accordance with the option elected by the tobacco quota holder or traditional producer of tobacco.

''(4) COUNTY OFFICES.—A county office of the Department may receive applications and other documentation necessary to receive advanced payments under this subsection, on behalf of the Secretary and qualified financial institutions.

''(d) TREATMENT OF PAYMENTS.—Payments received by a tobacco quota holder or traditional producer of tobacco under this chapter shall be considered received not earlier than the date the tobacco quota holder or traditional producer of tobacco first receives the payments.

''CHAPTER 2—TOBACCO QUALITY AND QUANTITY

''SEC. 380G. TOBACCO QUALITY BOARD.

''(a) IN GENERAL.—The Secretary shall establish a permanent advisory board within the Department, to be known as the 'Tobacco Quality Board'.

''(b) MEMBERSHIP.—

''(1) IN GENERAL.—The Tobacco Quality Board shall consist of 13 members, of which—

''(A) 5 members shall be appointed by the Secretary from nominations submitted by representatives of tobacco producers in the United States, including at least—

''(i) 1 representative of Flue-cured tobacco producers;

''(ii) 1 representative of Burley tobacco producers; and

''(iii) 1 representative of dark fire-cured tobacco producers;

''(B) 5 members shall be appointed by the Secretary from nominations submitted by representatives of tobacco product manufacturers in the United States, including at least—

''(i) 1 representative of smokeless tobacco product manufacturers; and

''(ii) 1 representative of export dealers of tobacco; and

''(C) 3 at-large members shall be appointed by the Secretary, including at least 1 officer or employee of the Department.

''(2) CHAIRPERSON.—The Secretary shall appoint the chairperson of the Tobacco Quality Board, with a different member serving as chairperson of the Tobacco Quality Board each term.

''(3) TERMS.—Each member of the Tobacco Quality Board shall serve for 2-year terms, except that the terms of the members first appointed to the Tobacco Quality Board shall be staggered so as to establish a rotating membership of the Tobacco Quality Board, as determined by the Secretary.

''(c) DUTIES.—The Tobacco Quality Board shall—

''(1) determine and describe the physical characteristics of tobacco produced in the United States and unmanufactured tobacco imported into the United States;

''(2) assemble and evaluate, in a systematic manner, concerns and problems with the quality of tobacco produced in the United States, expressed by domestic and foreign buyers and manufacturers of tobacco products;

''(3) review data collected by Federal agencies on the physical and chemical integrity of tobacco produced in the United States and unmanufactured tobacco imported into the United States, to ensure that tobacco being used in domestically-manufactured tobacco products is of the highest quality and is free from prohibited physical and chemical agents;

''(4) investigate and communicate to the Secretary—

''(A) conditions with respect to the production of tobacco that discourage improvements in the quality of tobacco produced in the United States; and

''(B) recommendations for regulatory changes that would address tobacco quality issues;

''(5) conduct oversight regarding tobacco marketing issues (such as opening sales dates and marketing regulations) applicable to auction markets;

''(6) provide assistance to Federal agencies on actions taken by the Federal agencies that affect the quality or quantity of tobacco produced in the United States;

''(7) not later than a date determined by the Secretary, make recommendations to the Secretary, and the applicable Production Board established for the kind of tobacco, on the range of base years for the maximum crop acreage base under section 380I(c)(3)(B), and for the maximum crop poundage base under section 380I(d)(3)(B), for each crop of each kind of tobacco, except that the range of base years shall be the crop years for the 1998 through 2002 crops unless otherwise determined by the Tobacco Quality Board; and

''(8) carry out such other related activities as are assigned to the Tobacco Quality Board by the Secretary.

''(d) ADMINISTRATION.—The Secretary shall provide the Tobacco Quality Board with (as determined by the Secretary)—

''(1) a staff that is—

''(A) experienced in the sampling and analysis of unmanufactured tobacco; and

''(B) capable of collecting data and monitoring tobacco production information; and

''(2) other resources and information necessary for the Tobacco Quality Board to perform the duties of the Tobacco Quality Board under this subtitle, including—

''(A) information concerning acreage devoted to the production of each kind of tobacco; and

''(B) international information from the Foreign Agricultural Service.

''(e) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Tobacco Quality Board.

''SEC. 380H. PRODUCTION BOARDS.

''(a) IN GENERAL.—The Secretary shall establish a permanent advisory board for each kind of tobacco, to be known as a 'Production Board'.

''(b) MEMBERSHIP.—

''(1) IN GENERAL.—Subject to paragraph (2), a Production Board for a kind of tobacco shall consist of—

''(A) not more than 10 members appointed by the Secretary from nominations submitted by representatives of producers of that kind of tobacco in the United States; and

''(B) 1 officer or employee of the Department appointed by the Secretary.

''(2) ALLOCATION OF MEMBERSHIP.—In appointing members to a Production Board established for a kind of tobacco, the number of members appointed by the Secretary to represent each State shall, to the maximum extent practicable, bear the same ratio to the total number of members of the Production Board as—

''(A) the total volume of domestic sales of the kind of tobacco produced in the State during the most recent period for which data is available; bears to

''(B) the total volume of domestic sales of the kind of tobacco produced in all States during the most recent period for which data is available.

''(3) CHAIRPERSON.—The Secretary shall appoint the chairperson of a Production Board, with a different member serving as chairperson of the Production Board each term.

''(4) TERMS.—Each member of a Production Board shall serve for 2-year terms, except that the terms of the members first appointed to the Production Board shall be staggered so as to establish a rotating membership of the Production Board, as determined by the Secretary.

''(c) DUTIES.—A Production Board established for a kind of tobacco shall—

''(1) not later than a date determined by the Secretary, make recommendations to the Secretary on the base year, within the range of base years recommended by the Tobacco Quality Board under section 380G(c)(7), for the maximum crop acreage base under section 380I(c)(3)(B) for each crop of each kind of tobacco; and

''(2) carry out such other related activities as are assigned to the Production Board by the Secretary.

''(d) ADMINISTRATION.—The Secretary shall provide each Production Board established for a kind of tobacco with (as determined by the Secretary)—

''(1) a staff that is knowledgeable about production and marketing of that kind of tobacco; and

''(2) other resources and information necessary for the Production Board to perform the duties of the Production Board under this subtitle, including information concerning acreage devoted to the production of each kind of tobacco.

''(e) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to a Production Board.

''SEC. 380I. TOBACCO PRODUCTION LIMITATION PROGRAMS.

''(a) DEFINITIONS.—In this section:

''(1) CROP ACREAGE BASE.—The term 'crop acreage base' means the crop acreage base for a kind of tobacco for a crop for an active producer of tobacco, as determined by the Secretary.

''(2) CROP POUNDAGE BASE.—The term 'crop poundage base' means the crop poundage base for a kind of tobacco for a crop for an active producer of tobacco, as determined by the Secretary.

''(3) PERMITTED ACREAGE.—The term 'permitted acreage' means the number of acres that may be devoted to the production of a kind of tobacco by an active producer of tobacco, consistent with the annual acreage limitation program, as determined by the Secretary.

''(4) PERMITTED POUNDAGE.—The term 'permitted poundage' means the number of pounds of a kind of tobacco for a crop may be produced by an active tobacco producer, consistent with the annual poundage limitation program, as determined by the Secretary.

''(b) ESTABLISHMENT.—

''(1) IN GENERAL.—The Secretary shall establish for each crop of each kind of tobacco—

''(A) an acreage limitation program in accordance with subsection (c); or

''(B) a poundage limitation in accordance with subsection (d).

''(2) CONSULTATION.—The Secretary shall carry out the acreage limitation program and the poundage limitation program for a kind of tobacco in consultation with the Tobacco Advisory Board and the applicable Production Board established for that kind of tobacco.

''(3) SUPPLY.—In carrying out an acreage limitation program or a poundage limitation program for a crop of a kind of tobacco, the Secretary shall determine whether the total supply of that kind of tobacco, in the absence of the respective production limitation

program, will be excessive, taking into account the need for an adequate carryover to maintain reasonable and stable supplies and prices.

''(4) ANNOUNCEMENT.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary shall announce an acreage limitation program or poundage limitation program for each kind of tobacco not later than December 15 of the calendar year preceding the year in which the crop is harvested.

''(B) SPECIAL RULE FOR 2004 CROP.—In the case of the 2004 crop for a kind of tobacco, the Secretary shall announce an acreage limitation program or poundage limitation for each kind of tobacco as soon as practicable after the date of the enactment of the Tobacco Market Transition Act of 2004.

''(c) ACREAGE LIMITATION PROGRAM.—

''(1) IN GENERAL.—Under an acreage limitation program for a crop of a kind of tobacco announced under subsection (b), the limitation shall be achieved by applying a uniform percentage reduction to the crop acreage base for the kind of tobacco for the crop for active producers of that kind of tobacco in each traditional tobacco county, as determined by the Secretary.

''(2) CROP ACREAGE BASES.—

''(A) IN GENERAL.—The crop acreage base for an active producer of tobacco for a crop of each kind of tobacco shall equal the number of acres that is equal to—

''(i) in the case of the 2004 crop year, the average of the acreage planted and considered planted by the active producer of tobacco to the kind of tobacco for harvest in a traditional tobacco county in each of the 5 crop years preceding the crop year, as determined and adjusted by the Secretary (in consultation with the Tobacco Quality Board and the applicable Production Board); and

''(ii) in the case of each subsequent crop year, the number of acres planted and considered planted by the active producer of tobacco to the kind of tobacco for harvest in a traditional tobacco county in the preceding crop year, as determined and adjusted by the Secretary (in consultation with the Tobacco Quality Board and the applicable Production Board).

''(B) MAXIMUM CROP ACREAGE BASES.—

''(i) IN GENERAL.—The total quantity of acreage devoted to a kind of tobacco by active producers of tobacco during a crop year shall not exceed the total quantity of acreage devoted to the kind of tobacco by active producers during a crop year determined by the Secretary.

''(ii) ADJUSTMENT.—If the active producers of a kind of tobacco demonstrate to the Secretary that the application of clause (i) to a crop of a kind of tobacco will result in unbalanced supply and demand conditions, the Secretary may adjust the total quantity of acreage that may be devoted to the kind of tobacco by active producers during the crop year.

''(C) SALE, LEASE, OR TRANSFER OF CROP ACREAGE BASES.—An active producer of tobacco shall not sell, lease, or transfer to another person a crop acreage base established for the active producer of tobacco under this paragraph.

''(D) REALLOCATION OF UNUSED CROP ACREAGE BASES.—

''(i) COUNTY POOL.—If an active producer of tobacco with a crop acreage base for a kind of tobacco elects not to use all or part of the crop acreage base to continue to produce that kind of tobacco, the unused crop acreage base shall be placed in a pool established for the traditional tobacco county for reallocation by the Secretary to other producers of that kind of tobacco in the traditional tobacco county that request the crop acreage base.

''(ii) STATE POOL.—If any crop acreage base for a kind of tobacco remains after the crop acreage base is made available to producers of that kind of tobacco in the traditional tobacco county in a State, the unused crop acreage base shall be placed in a pool established for the State for reallocation by the Secretary to other producers of that kind of tobacco in a traditional tobacco county.

''(iii) NEW PRODUCERS.—In reallocating unused crop acreage bases for a kind of tobacco in a traditional tobacco county made available under each of clauses (i) and (ii), the Secretary shall make available to any new producers of that kind of tobacco in the traditional tobacco county up to 10 percent of the crop acreage bases available for reallocation for the kind of tobacco in the traditional tobacco county.

''(d) POUNDAGE LIMITATION PROGRAM.—

''(1) IN GENERAL.—Under a poundage limitation program for a crop of a kind of tobacco, the Secretary shall achieve the limitation by applying a uniform percentage adjustment to the crop poundage base of an active producer of tobacco for the kind of tobacco in each traditional tobacco county, as determined by the Secretary.

''(2) DETERMINATION OF CROP POUNDAGE BASES.—

''(A) 2004 CROP YEAR.—The crop poundage base for an active tobacco producer for the 2004 crop of a kind of tobacco shall equal the average of the number of pounds of that kind of tobacco harvested by the active tobacco producer in a traditional tobacco county and marketed in each of the 5 crop years preceding the crop year, as determined by the Secretary.

''(B) SUBSEQUENT CROP YEARS.—In the case of the 2005 and subsequent crops of each kind of tobacco, the crop poundage base for an active tobacco producer of a kind of tobacco shall equal the number of pounds of that kind of tobacco harvested by the active tobacco producer in a traditional tobacco county and marketed in the preceding crop year, as determined and adjusted by the Secretary.

''(3) MAXIMUM CROP POUNDAGE BASES.—

''(A) IN GENERAL.—The total number of pounds devoted to a kind of tobacco by active tobacco producers during a crop year shall not exceed the total number of pounds devoted to the kind of tobacco by active tobacco producers during a crop year determined by the Secretary.

''(B) ADJUSTMENT.—If the active tobacco producers of a kind of tobacco demonstrate to the Secretary that the application of paragraph (1) to a crop of a kind of tobacco will result in unbalanced supply and demand conditions, the Secretary may adjust the total number of pounds that may be devoted to the kind of tobacco by active tobacco producers during the crop year.

''(4) SALE, LEASE, OR TRANSFER OF CROP POUNDAGE BASES.—

''(A) PROHIBITION.—An active producer of tobacco shall not directly or indirectly sell, lease, or transfer to another person or other legal entity a crop poundage base established for an active tobacco producer under this subsection.

''(B) EXCEPTION.—If the crop poundage base of an active producer of tobacco for a type of tobacco covers tobacco that was produced by the producer in more than 1 traditional tobacco county, the producer may elect to consolidate the base in a single traditional tobacco county in which the producer bore or shared in the risk of producing a crop of that kind of tobacco for the 2002 crop year.

''(5) REALLOCATION OF UNUSED CROP POUNDAGE BASES.—

''(A) COUNTY POOL.—If an active producer of tobacco with a crop poundage base for a kind of tobacco elects not to use all or part of the crop poundage base, the unused crop poundage base shall be placed in a pool established for the traditional tobacco county where the unused crop poundage base was originally located for reallocation by the Secretary to other active producers of tobacco of that kind of tobacco in the traditional tobacco county, in a manner determined by the Secretary.

''(B) STATE POOL.—If any crop poundage base for a kind of tobacco remains after the crop poundage base is made available to producers of that kind of tobacco in the traditional tobacco county in a State under subparagraph (A), the unused crop poundage base shall be placed in a pool established for the State for reallocation by the Secretary to other producers of that kind of tobacco in traditional tobacco counties, in a manner determined by the Secretary.

''(C) TRADITIONAL GROWING AREA POOL.—If any crop poundage base for a kind of tobacco remains after the crop poundage base is made available to producers of that kind of tobacco under subparagraphs (A) and (B), the unused crop poundage base shall be placed in a pool established for reallocation by the Secretary to other producers of that kind of tobacco in a traditional tobacco county for that kind of tobacco.

''(D) NEW PRODUCERS.—In reallocating unused crop poundage bases for a kind of tobacco in a traditional tobacco county made available under any of subparagraphs (A) through (C), the Secretary shall make available to any new producers of that kind of tobacco in the traditional tobacco county up to 10 percent of the crop poundage bases available for reallocation for the kind of tobacco in the traditional tobacco county.

''(e) COMPLIANCE.—

''(1) LOANS, PURCHASES, OR PAYMENTS.—An active producer of tobacco that knowingly produces a kind of tobacco in excess of the permitted acreage or permitted poundage, as applicable, for the kind of tobacco, or violates any lease or transfer requirements of this section, shall be ineligible for any loans, purchases, or payments for that crop of the kind of tobacco.

''(2) NO CARRYOVER.—An active producer of tobacco may not carry over permitted poundage or permitted acreage, as applicable, for a crop of a kind of tobacco, that is not produced by the producer, for production in a subsequent crop year.

''(3) PENALTIES.—

''(A) CRIMINAL PENALTY.—An active producer of tobacco that violates paragraph (1) shall be fined not more than $100,000 or imprisoned not more than 2 years, or both.

''(B) CIVIL PENALTY.—An active producer of tobacco that violates paragraph (2) shall be subject to a civil penalty in an amount not to exceed 2 percent of the value of the kind of tobacco produced by the producer during the applicable crop year, as determined by the Secretary.

''(C) ADDITIONAL PENALTIES.—A civil penalty under subparagraph (B) for a violation shall be in addition to any criminal penalty under subparagraph (A) for the violation.

''(D) JURISDICTION TO PREVENT AND RESTRAIN VIOLATIONS.—A United States district court shall have jurisdiction to prevent and restrain an active producer of tobacco from producing a kind of tobacco in excess of the permitted acreage for the kind of tobacco.

''(4) COMPLIANCE WITH CONSERVATION AND AGRICULTURAL REQUIREMENTS.—As a condition of the establishment of a crop acreage base or crop poundage base, as applicable, for active producers of tobacco for a crop of a kind of tobacco, the active producers of tobacco shall agree, during the crop year for which the crop acreage base or crop poundage base is established—

''(A) to comply with applicable conservation requirements under subtitle B of title XII of the Food Security Act of 1985 (16 U.S.C. 3811 et seq.);

''(B) to comply with applicable wetland protection requirements under subtitle C of title XII of the Act (16 U.S.C. 3821 et seq.);

''(C) to use the land of the active producer of tobacco, in a quantity equal to the crop acreage base for an agricultural or conserving use, and not for a nonagricultural commercial or industrial use, as determined by the Secretary; and

''(D) to effectively control noxious weeds and otherwise maintain the land in accordance with sound agricultural practices, as determined by the Secretary, if the agricultural or conserving use involves the noncultivation of any portion of the land referred to in subparagraph (C).

''CHAPTER 3—TOBACCO COMMUNITY ECONOMIC DEVELOPMENT GRANTS

''SEC. 380O. TOBACCO COMMUNITY ECONOMIC DEVELOPMENT GRANTS.

''(a) IN GENERAL.—The Secretary shall make grants to eligible States in accordance with this section to pay the cost of carrying out economic development initiatives in impacted communities.

''(b) APPLICATION.—To be eligible to receive payments under this section, an eligible State shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including—

''(1) a description of the activities that the eligible State will carry out using amounts received under the grant; and

''(2) a description of the State department of agriculture that will administer amounts received under the grant.

''(c) AMOUNT OF GRANT.—From the amounts available to carry out this section, the Secretary shall allot—

''(1) $20,000,000 to the State of Maryland;

''(2) $14,000,000 to the State of Pennsylvania; and

''(3) $50,000,000 to the State of South Carolina; and

''(4) 50,000,000 to the State of North Carolina.

''(d) PAYMENTS.—An eligible State that has an application approved by the Secretary under subsection (b) shall be entitled to a payment under this section, in 5 equal installments, in an amount that is equal to its allotment under subsection (c).

''(e) USE OF FUNDS.—Amounts received by an eligible State under this section shall be used to carry out economic development activities in impacted communities of the eligible State, as determined by the eligible State.

''(f) TERMINATION DATE.—The authority provided by this section terminates on September 30, 2008.

''CHAPTER 4—COMPETITIVE GRANTS FOR TOBACCO RESEARCH

''SEC. 380Q. COMPETITIVE GRANTS FOR TOBACCO RESEARCH.

''(a) IN GENERAL.—Notwithstanding any other provision of law, the Secretary shall make competitive grants under section 406 of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7626) to colleges and universities located in eligible States to conduct research—

''(1) to assist tobacco producers to diversify crops or implement other means to reduce or eliminate the reliance of the producers on the production of tobacco or to promote alternative uses of tobacco or enhance the quality of tobacco produced in the United States; and

''(2) to foster and facilitate development, evaluation, and implementation of economically viable new agricultural technologies and enterprises for rural communities.

''(b) GRANT DISTRIBUTION.—In making grants under this section, the Secretary shall provide for an equitable distribution of the grants based on the volume of each kind of tobacco that is produced in each eligible State, as determined by the Secretary

''(c) TERMINATION DATE.—The authority provided by this section terminates on September 30, 2008.

''CHAPTER 5—FUNDING

''SEC. 380S. TOBACCO TRUST FUND.

''(a) ESTABLISHMENT.—There is established in the Commodity Credit Corporation a revolving trust fund to be used in carrying out this subtitle (referred to in this section as the 'Fund'), consisting of—

''(1) such amounts as are deposited in the Fund under subsection (b);

''(2) such amounts as are necessary from the Commodity Credit Corporation; and

''(3) any interest earned on investment of amounts in the Fund under subsection (d).

''(b) DEPOSITS.—Revenues from assessments collected under section 380T shall be deposited in the Fund.

''(c) EXPENDITURES.—

''(1) IN GENERAL.—Subject to paragraphs (2) and (3) and notwithstanding any other provision of law, in addition to any other funds that may be available, the Secretary may use from the Fund such amounts as the Secretary determines are necessary—

''(A) to make payments to tobacco quota holders and traditional producers under chapter 1;

''(B) to pay necessary expenses of the Tobacco Quality Board and Production Boards and to carry out the acreage limitation program under chapter 2;

''(C) to make tobacco community economic development grants under chapter 3, in an amount equal to $16,800,000 for each of fiscal years 2004 through 2008;

''(D) to make competitive grants for tobacco research under chapter 4, in an amount equal to $12,000,000 for each of fiscal years 2004 through 2008;

''(E) to make grants to each association that has entered into a loan agreement with the Commodity Credit Corporation under section 106A or 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–1, 1445–2) (as in effect before the effective date of this subtitle) to assist the association to transition to alternative methods of marketing tobacco in accordance with a plan approved by the Secretary, with the grants allocated on the basis of the proportion of tobacco marketed by each association, in an amount not to exceed $1,000,000 for each association for each kind of tobacco for each of fiscal years 2004 through 2008;

''(F) to make payments to appropriate tobacco warehouse associations, as determined by the Secretary, in an amount not to exceed $500,000 for each of fiscal years 2004 through 2008;

''(G) to pay administrative costs incurred by the Secretary in carrying out this subtitle; and

''(H) to reimburse the Commodity Credit Corporation for costs incurred by the Commodity Credit Corporation under paragraph (2).

''(2) EXPENDITURES BY COMMODITY CREDIT CORPORATION.—

''(A) IN GENERAL.—Subject to subparagraph (B) and notwithstanding any other provision of law, the Secretary shall use funds of the Commodity Credit Corporation to make payments under paragraph (1).

''(B) REIMBURSEMENT TO COMMODITY CREDIT CORPORATION.—Not later than January 1, 2013, the Commodity Credit Corporation shall be reimbursed in full, with interest, for all funds of the Commodity Credit Corporation expended under subparagraph (A).

''(3) ADMINISTRATIVE EXPENSES.—

''(A) IN GENERAL.—An amount not to exceed $20,000,000 for each fiscal year of the amounts in the Fund shall be available to pay the administrative expenses necessary to carry out this subtitle.

''(B) TERMINATION DATE.—The authority provided by this paragraph terminates on September 30, 2013.

''(d) INVESTMENT OF AMOUNTS.—

''(1) IN GENERAL.—The Commodity Credit Corporation shall invest such portion of the Fund as is not, in the judgment of the Commodity Credit Corporation, required to meet current withdrawals.

''(2) INTEREST-BEARING OBLIGATIONS.—Investments may be made only in interest-bearing obligations of the United States.

''(3) ACQUISITION OF OBLIGATIONS.—For the purpose of investments under paragraph (1), obligations may be acquired—

''(A) on original issue at the issue price; or

''(B) by purchase of outstanding obligations at the market price.

''(4) SALE OF OBLIGATIONS.—Any obligation acquired by the Fund may be sold by the Commodity Credit Corporation at the market price.

''(5) CREDITS TO FUND.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

''(e) ADMINISTRATION.—In administering the Fund, the Secretary shall make payments, reimburse agencies of the Department, and accept deposits without regard to limitations on total amounts of allotments and fund transfers under section 11 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714i).

''SEC. 380T. ASSESSMENTS.

''(a) DEFINITION OF GROSS DOMESTIC VOLUME.—In this section, the term 'gross domestic volume' means the volume of tobacco products—

''(1) removed (as defined by section 5702 of the Internal Revenue Code of 1986); and

''(2) not exempt from tax under chapter 52 of the Internal Revenue Code of 1986 at the time of their removal under that chapter or the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

''(b) ASSESSMENTS.—The Secretary, acting through the Commodity Credit Corporation, shall impose quarterly assessments, calculated in accordance with this section, on each tobacco product manufacturer and tobacco product importer that sells tobacco products in domestic commerce in the United States.

''(c) TOBACCO TRUST FUND.—Assessments collected under this section shall be deposited in the Tobacco Trust Fund.

''(d) ASSESSMENT FOR EACH CLASS OF TOBACCO PRODUCT.—

''(1) ALLOCATION BY CLASS OF TOBACCO PRODUCTS.—The percentage of the total amount to be assessed against, and paid by, the manufacturers and importers of each class of tobacco product in each applicable fiscal year shall be—

''(A) for cigarette manufacturers and importers, 99.409 percent;

''(B) for snuff manufacturers and importers, 0.428 percent;

''(C) for chewing tobacco manufacturers and importers, 0.098 percent;

''(D) for pipe tobacco manufacturers and importers, 0.021 percent; and

''(E) for roll-your-own tobacco manufacturers and importers, 0.044 percent.

''(2) ADJUSTMENT.—The Secretary shall adjust the percentage of the total amount to be assessed against, as determined under paragraph (1), and paid by, the manufacturers

and importers of each class of tobacco product in each applicable fiscal year by multiplying the percentage of the total amount to be assessed, as determined under paragraph (1), by a fraction—

''(A) the numerator of which is the total volume of domestic sales of that class of tobacco product during the preceding applicable fiscal year; and

''(B) the denominator of which is the total volume of domestic sales of that class of tobacco product during fiscal year 2003.

''(3) TOTAL ASSESSMENT.—

''(A) IN GENERAL.—The total amount to be assessed against all manufacturers and importers of all classes of tobacco product in each applicable fiscal year shall be equal to the amount required to carry out this subtitle during the applicable fiscal year, as determined by the Secretary.

''(B) ADDITIONAL AMOUNT.—

''(i) IN GENERAL.—If the amount to be assessed after the application of paragraphs (1) and (2) is insufficient to carry out this subtitle during the applicable fiscal year, the Secretary may assess such additional amount as the Secretary determines to be necessary to carry out this subtitle during the applicable fiscal year.

''(ii) ALLOCATION.—The additional amount shall be allocated to the manufacturers and importers of each class of tobacco product in the same manner and based on the same percentages applied in determining the total amount to be assessed under paragraph (1), as adjusted under paragraph (2) during the applicable fiscal year.

''(4) NOTIFICATION OF ASSESSMENTS.—

''(A) IN GENERAL.—The Secretary shall notify all manufacturers and importers of tobacco products of the amount of the assessment for each quarterly payment period.

''(B) CONTENTS.—The notice for a quarterly payment period shall describe gross domestic sales and market shares for the quarterly payment period and conform with the requirements of subsection (i).

''(5) TIMING OF ASSESSMENT PAYMENTS.—

''(A) IN GENERAL.—Assessments shall be collected at the end of each calendar year quarter.

''(B) BASE PERIOD QUARTER.—The assessment for a calendar year quarter shall correspond to the base period quarter that ended at the end of the preceding calendar year quarter.

''(C) AMOUNTS.—Subject to subparagraph (D), beginning with the calendar quarter ending on December 31 of each applicable fiscal year, the payments over 4 calendar quarters shall be sufficient to cover—

''(i) the payments required under chapter 1 on November 1 of that same applicable fiscal year; and

''(ii) other expenditures from the Tobacco Trust Fund required under section 380S during the base quarter periods corresponding to those 4 calendar quarters.

''(D) SPECIAL RULE.—In the case of payments required under chapter 1 that are due on September 30, 2004, the assessments shall be paid on that same date and correspond to the first base period of 6 months.

''(e) ALLOCATION OF ASSESSMENT WITHIN EACH CLASS OF TOBACCO PRODUCT.—

''(1) IN GENERAL.—The assessment for each class of tobacco product shall be allocated on a pro rata basis among manufacturers and importers based on each manufacturer's or importer's share of gross domestic volume.

''(2) LIMITATION.—No manufacturer or importer shall be required to pay an assessment that is based on a share that is in excess of the manufacturer's or importer's share of domestic volume.

''(f) ALLOCATION OF TOTAL ASSESSMENTS BY MARKET SHARE.—The amount of the assessment for each class of tobacco product to be paid by each manufacturer or importer of the class of tobacco product under subsection (b) shall be determined for each quarterly payment period by multiplying—

''(1) the market share of the manufacturer or importer, as calculated with respect to that payment period, of the class of tobacco product; by

''(2) the total amount of the assessment for that quarterly payment period under subsection (d), for the class of tobacco product.

''(g) DETERMINATION OF VOLUME OF DOMESTIC SALES.—

''(1) IN GENERAL.—The calculation of the volume of domestic sales of a class of tobacco product by a manufacturer or importer, and by all manufacturers and importers as a group, shall be made by the Secretary based on information provided by the manufacturers and importers pursuant to subsection (h), as well as any other relevant information provided to or obtained by the Secretary.

''(2) GROSS DOMESTIC VOLUME.—The volume of domestic sales shall be calculated based on gross domestic volume.

''(3) MEASUREMENT.—For purposes of the calculations under this subsection and the certifications under subsection (h) by the Secretary, the volumes of domestic sales shall be measured by—

''(A) in the case of cigarettes, the numbers of cigarettes; and

''(B) in the case of other classes of tobacco products, in terms of number of pounds, or fraction thereof, of those products.

''(h) MEASUREMENT OF VOLUME OF DOMESTIC SALES.—

''(1) IN GENERAL.—Each manufacturer and importer of tobacco products shall submit to the Secretary a certified copy of each of the returns or forms described by paragraph (2) that are required to be filed with a Federal Government agency on the same date that those returns or forms are filed, or required to be filed, with the agency.

''(2) RETURNS AND FORMS.—The returns and forms described by this paragraph are those returns and forms that relate to—

''(A) the removal of tobacco products into domestic commerce (as defined by section 5702 of the Internal Revenue Code of 1986); and

''(B) the payment of the taxes imposed under charter 52 of the Internal Revenue Code of 1986, including AFT Form 5000.24 and United States Customs Form 7501 under currently applicable regulations.

''(3) PENALTIES.—

''(A) IN GENERAL.—Any person that knowingly fails to provide information required under this subsection or that provides false information under this subsection shall be subject to the penalties described in section 1003 of title 18, United States Code.

''(B) ADDITIONAL CIVIL PENALTY.—In addition, the Secretary may assess against the person a civil penalty in an amount not to exceed 2 percent of the value of the kind of tobacco products manufactured or imported by the person during the applicable fiscal year, as determined by the Secretary.

''(i) ASSESSMENT NOTIFICATION; CONTENT.—

''(1) IN GENERAL.—The Secretary shall provide each manufacturer or importer subject to an assessment under subsection (b) with written notice setting forth the amount to be assessed against the manufacturer or importer for the applicable quarterly period.

''(2) DEADLINE.—The notice for a quarterly period shall be provided not later than 30 days before the date payment is due under subsection (d)(5).

''(3) CONTENTS.—The notice shall include the following information with respect to the quarterly period used by the Secretary in calculating the amount:

''(A) The total combined assessment for all manufacturers and importers of tobacco products.

''(B) The total assessment with respect to the class of tobacco products manufactured or imported by the manufacturer or importer.

''(C) Any adjustments to the percentage allocations among the classes of tobacco products made pursuant to subsection (d)(2).

''(D) The volume of gross sales of the applicable class of tobacco product treated as made by the manufacturer or importer for purposes of calculating the manufacturer's or importer's market share under subsection (f).

''(E) The total volume of gross sales of the applicable class of tobacco product that the Secretary treated as made by all manufacturers and importers for purposes of calculating the manufacturer's or importer's market share under subsection (f).

''(F) The manufacturer's or importer's market share of the applicable class of tobacco product as determined by the Secretary under subsection (f).

''(G) The market share, as determined by the Secretary under subsection (f), of each other manufacturer and importer, for each applicable class of tobacco product.

''(j) CHALLENGE TO ASSESSMENT.—

''(1) APPEAL TO SECRETARY.—A manufacturer or importer subject to this section may contest an assessment imposed on the person under this section by notifying the Secretary not later than 10 business days after receiving the assessment notification required by subsection (i).

''(2) ESCROW.—The manufacturer and importer may place into escrow, in accordance with rules promulgated by the Secretary, only the portion of the assessment being challenged in good faith pending final determination of the assessment under this subsection.

''(3) INFORMATION.—The Secretary shall by regulation establish a procedure under which a person contesting an assessment under this subsection may present information to the Secretary to demonstrate that the assessment is incorrect, including information to demonstrate the following:

''(A) The total combined assessment imposed by the Secretary on all manufacturers and importers is excessive.

''(B) The Secretary's allocation of the total assessment among the classes of tobacco products is incorrect.

''(C) The total volume of gross domestic sales of all manufacturers and importers of the relevant class of tobacco product calculated by the Secretary under subsection (f) is incorrect.

''(D) The level of gross domestic sales attributed to the person by the Secretary for purposes of calculating the person's market share under subsection (f) exceeds the person's actual domestic sales of that class of tobacco product.

''(E) The amount of the assessment attributed to the person by the Secretary exceeds the person's pro rata share based on the person's share of gross domestic sales.

''(4) CHALLENGE.—

''(A) IN GENERAL.—In challenging an assessment under this subsection, the manufacturer or importer may use any information that is available, including third party data on industry or individual company sales volumes.

''(B) INCORRECT DETERMINATION.—The information may constitute evidence sufficient to establish that the Secretary's initial determination was incorrect, in which event the assessment shall be revised so that the manufacturer or importer is required only to pay the amount correctly determined.

''(5) TIME FOR REVIEW.—Not later than 30 days after receiving notice from a manufacturer or importer under paragraph (2), the Secretary shall—

''(A) decide whether the information provided to the Secretary pursuant to that paragraph, and any other information that the Secretary determines, is appropriate is sufficient to establish that the original assessment was incorrect; and

''(B) make any revisions necessary to ensure that each manufacturer and importer pays only its correct pro rata share of total gross domestic volume from all sources.

''(6) IMMEDIATE PAYMENT OF UNDISPUTED AMOUNTS.—The regulations promulgated by the Secretary under paragraph (2) shall provide for the immediate payment by a manufacturer or importer challenging an assessment of that portion of the assessment that is not in dispute.

''(7) JUDICIAL REVIEW.—

''(A) IN GENERAL.—Any manufacturer or importer aggrieved by a determination of the Secretary with respect to the amount of any assessment may seek review of the determination in the United States District Court for the District of Columbia or for the district in which the manufacturer or importer resides or has its principal place of business at any time following exhaustion of the administrative remedies under this subsection.

''(B) TIME LIMITS.—Administrative remedies shall be deemed exhausted if no decision by the Secretary is made within the time limits established under paragraph (5).

''(C) EXCESSIVE ASSESSMENTS.—The court shall restrain collection of the excessive portion of any assessment or order a refund of excessive assessments already paid, along with interest calculated at the rate prescribed in section 3717 of title 31, United States Code, if it finds that the Secretary's determination is not supported by a preponderance of the information available to the Secretary.

''(8) REGULATIONS.—Not later than 180 days after the date of enactment of this subtitle, the Secretary shall promulgate regulations to implement this subsection (in accordance with section 301 of the Tobacco Market Transition Act of 2004).

''(k) USE OF QUALIFIED FINANCIAL INSTITUTIONS.—The Secretary may use qualified financial institutions to manage assets, make payments, and otherwise carry out this subtitle.

''(l) TERMINATION DATE.—The authority provided by this section terminates on September 30, 2013.

''SEC. 380U. COMMODITY CREDIT CORPORATION.

The Secretary shall use the funds, facilities, and authorities of the Commodity Credit Corporation to carry out this subtitle, to remain available until expended.

''SEC. 380V. TRANSITION PROVISIONS.

''(a) TOBACCO STOCKS.—

''(1) IN GENERAL.—To provide for the orderly disposition of quota tobacco held by an association that has entered into a loan agreement with the Commodity Credit Corporation under section 106A or 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–1, 1445–2) (referred to in this section as an 'association'), loan pool stocks for each kind of tobacco held by the association shall be disposed of in accordance with this subsection.

''(2) ASSOCIATIONS.—For each kind of tobacco held by an association, the proportion of loan pool stocks for each kind of tobacco held by the association that shall be transferred to the association shall be equal to—

''(A) the amount of funds held by the association in the No Net Cost Tobacco Fund and the No Net Cost Tobacco Account established under sections 106A and 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–1, 1445–2), respectively, for the kind of tobacco; divided by

''(B) the average list price per pound for the kind of tobacco, as determined by the Secretary.

''(3) COMMODITY CREDIT CORPORATION.—Any loan pool stocks of a kind of tobacco of an association that are not disposed of in accordance with paragraph (2) shall be—

''(A) transferred by the association to the Commodity Credit Corporation; and

''(B) disposed of in a manner determined by the Secretary.

''(b) NO NET COST FUNDS.—

''(1) IN GENERAL.—Any funds in the No Net Cost Tobacco Fund or the No Net Cost Tobacco Account of an association established under sections 106A and 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–1, 1445–2), respectively, that remain after the application of subsection (a) and sections 106A and 106B of the Agricultural Act of 1949 (7 U.S.C. 1445, 1445–1) (as in effect before the effective date of this subtitle) shall be transferred to the association for distribution to traditional producers of tobacco in accordance with a plan approved by the Secretary.

''(2) ASSOCIATIONS WITH NO LOAN POOL STOCKS.—In the case of an association that does not hold any loan pool stocks that are covered by subsection (a)(2), any funds in the No Net Cost Tobacco Fund or the No Net Cost Tobacco Account of the association established under sections 106A and 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–1, 1445–2), respectively, shall be transferred to the association for distribution to traditional producers of tobacco in accordance with a plan approved by the Secretary.

''(c) REIMBURSEMENT TO COMMODITY CREDIT CORPORATION.—There shall be transferred from the Tobacco Trust Fund to each No Net Cost Tobacco Fund or the No Net Cost Tobacco Account of an association established under sections 106A and 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–1, 1445–2), respectively, such amounts as the Secretary determines will be adequate to reimburse the Commodity Credit Corporation for any net losses that the Corporation may sustain under its loan agreements with the association.''.

SEC. ___52. TOBACCO INSURANCE RESEARCH AND DEVELOPMENT.

(a) IN GENERAL.—Section 522(b)(1) of the Federal Crop Insurance Act (7 U.S.C. 1522(b)(1)) is amended—

(1) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively, and indenting appropriately;

(2) by striking ''The Corporation'' and inserting the following—

''(A) IN GENERAL.—The''; and

(3) by adding at the end the following:

''(B) TOBACCO RESEARCH AND DEVELOPMENT.—Subject to the availability of funds under subsection (e)(5), the Corporation shall provide a payment to reimburse an applicant for research and development costs directly related to a policy that is—

''(i) submitted to the Board and approved by the Board under section 508(h) for reinsurance;

''(ii) if applicable, offered for sale to producers; and

''(iii) addresses risk in the production of tobacco.''.

(b) ASSESSMENTS.—Section 522(e) of the Federal Crop Insurance Act (7 U.S.C. 1522(e)) is amended by adding at the end the following:

''(5) TOBACCO ASSESSMENT.—

''(A) IN GENERAL.—Effective for each marketing year for a kind of tobacco for which a commodity-specific plan of insurance is offered under this Act, subject to subparagraphs (B) through (D), each producer and purchaser of that kind of tobacco shall remit to the Insurance Fund established under section 516(c) a nonrefundable marketing assessment in an amount determined by the Secretary pursuant to subparagraphs (B) and (C).

''(B) TOTAL AMOUNT.—The total amount of producer and purchaser assessments for a kind of tobacco collected under this paragraph shall be equal to the amount that is necessary to carry out subsection (b)(1)(B).

''(C) ADMINISTRATION.—Producer and purchaser assessments for a kind of tobacco under this paragraph—

''(ii) shall be determined in such a manner that producers and purchasers share equally, to the maximum extent practicable, in paying assessments required under this paragraph; and

''(ii) shall not exceed 5 cents per pound.

''(D) TERMINATION.—Effective beginning with the 2010 crop of each kind of tobacco, the Secretary may terminate the collection of assessments for that kind of tobacco if the Secretary determines that further research and development under subsection (b)(1)(B) would not be productive.''.

(c) INSURANCE FUND.—Section 516(c)(1) of the Federal Crop Insurance Act (7 U.S.C. 1516(c)(1)) is amended by inserting ''assessments for tobacco research made available under section 522(e)(5),'' after ''under subsection (a)(2),''.

SEC. ___53. CONFORMING AMENDMENTS.

Section 320B(c)(1) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314h(c)(1)) is amended—

(1) by inserting ''(A)'' after ''(1)'';

(2) by striking ''by'' at the end and inserting ''or''; and

(3) by adding at the end the following:

''(B) in the case of the 2003 marketing year, the price support rate for the kind of tobacco involved in effect under section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445) at the time of the violation; by''.

CHAPTER 3—IMPLEMENTATION

SEC. ___61. REGULATIONS.

(a) IN GENERAL.—The Secretary of Agriculture may promulgate such regulations as are necessary to implement this subtitle and the amendments made by this subtitle.

(b) PROCEDURE.—The promulgation of the regulations and administration of this subtitle and the amendments made by this subtitle shall be made without regard to—

(1) the notice and comment provisions of section 553 of title 5, United States Code;

(2) the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 Fed. Reg. 13804), relating to notices of proposed rulemaking and public participation in rulemaking; and

(3) chapter 35 of title 44, United States Code (commonly known as the ''Paperwork Reduction Act'').

(c) CONGRESSIONAL REVIEW OF AGENCY RULEMAKING.—In carrying out this section, the Secretary shall use the authority provided under section 808 of title 5, United States Code.

SEC. ___62. EFFECTIVE DATE.

This subtitle and the amendments made by this subtitle shall apply to the 2004 and subsequent crops of each kind of tobacco.

SA 3564. Mr. ROBERTS (for himself and Mr. ROCKEFELLER) submitted an amendment intended to be proposed by him to the bill S. 2386, to authorize appropriations for fiscal year 2005 for intelligence and intelligence-related activities of the United States Government, the Intelligence Community Management Account, and the Central Intelligence Agency Retirement and

Disability System, and for other purposes; which was ordered to lie on the table; as follows:

On page 9, line 16, add at the end the following: ''Such funds shall remain available until September 30, 2005.''.

On page 19, strike lines 7 through 15 and insert the following:

''(1) IN GENERAL.—The Director may establish and administer a nonofficial cover employee retirement system for designated employees (and the spouse, former spouses, and survivors of such designated employees). A des-

On page 21, strike line 18 and all that follows through page 22, line 1, and insert the following:

''(iii) in the case of a designated employee who participated in an employee investment retirement system established under paragraph (1) and is converted to coverage under subchapter III of chapter 84 of title 5, United States Code, the Director may transmit any or all amounts of that designated employee in that employee investment retirement system (or similar

On page 22, strike line 24 and all that follows through page 23, line 5, and insert the following:

''(1) IN GENERAL.—The Director may establish and administer a nonofficial cover employee health insurance program for designated employees (and the family of such designated employees). A designated employee

On page 25, strike lines 6 through 12 and insert the following:

''(1) IN GENERAL.—The Director may establish and administer a nonofficial cover employee life insurance program for designated employees (and the family of such designated employees). A designated employee may not

On page 27, line 8, strike ''(B)(iii)'' and insert ''(B)(iv)''.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. DEWINE. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on July 15, 2004, at 9:30 a.m., in closed session to receive a briefing regarding ICRC reports on U.S. military detainee operations in Iraq.

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

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. DEWINE. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Thursday, July 15, 2004, at 10 a.m., to conduct a hearing on ''Regulation of the Hedge Fund Industry.''

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

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. DEWINE. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Thursday, July 15, 2004, at 2:30 p.m., to conduct a hearing on the nominations of Mr. Stuart Levey, of Maryland, to be Under Secretary of the Treasury for Enforcement; Mr. Juan Carlos Zarate, of California, to be Assistant Secretary of the Treasury for Terrorist Financing and Financial Crimes; and Ms. Carin M. Barth, of Texas, to be the Chief Financial Officer, Department of Housing and Urban Development.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. DEWINE. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, July 15, 2004, at 9:30 a.m., to hold a hearing on North Korea.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. DEWINE. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, July 15, 2004, at 1 p.m., to hold a hearing on the Gulf of Guinea and U.S. Strategic Energy Policy.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. DEWINE. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, July 15, 2004, at 3 p.m., to hold a Members Briefing on Iraq.

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

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. DEWINE. Mr. President, I ask unanimous consent that the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs be authorized to meet on Thursday, July 15, 2004, at 9 a.m., for a hearing entitled ''Money Laundering and Foreign Corruption: Enforcement and Effectiveness of the Patriot Act.''

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. DEWINE. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on July 15, 2004, at 2:30 p.m., to hold a closed hearing on intelligence matters.

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

SPECIAL COMMITTEE ON AGING

Mr. DEWINE. Mr. President, I ask unanimous consent that the Special Committee on Aging be authorized to meet Thursday, July 15, 2004, from 2 p.m.–5 p.m. in Dirksen 628 for the purpose of conducting a hearing.

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

SUBCOMMITTEE ON CHILDREN AND FAMILIES

Mr. DEWINE. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions, Subcommittee on Children and Families, be authorized to meet for a hearing on Pell Grants for Kids: It Worked for Colleges, Why Not K–12? during the session of the Senate on Thursday, July 15, 2004, at 10 a.m.

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

SUBCOMMITTEE ON COMMUNICATIONS

Mr. DEWINE. Mr. President, I ask unanimous consent that the Subcommittee on Communications be authorized to meet on Thursday, July 15, 2004, at 9:30 a.m. on Implementation of Nielsen Local People Meter TV Rating System.

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

SUBCOMMITTEE ON NATIONAL PARKS

Mr. DEWINE. Mr. President, I ask unanimous consent that the Subcommittee on National Parks of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Thursday, July 15, at 2:30 p.m.

The purpose of the hearings is to receive testimony on S. 1852, to provide financial assistance for the rehabilitation of the Benjamin Franklin National Memorial in Philadelphia, PA, and the development of an exhibit to commemorate the 300th anniversary of the birth of Benjamin Franklin; S. 2142, to authorize appropriations for the New Jersey Coastal Heritage Trail Route, and for other purposes; S. 2181, to adjust the boundary of Rocky Mountain National Park in the State of Colorado; S. 2374, to provide for the conveyance of certain land to the United States and to revise the boundary of Chickasaw National Recreation Area, OK, and for other purposes; S. 2397 and H.R. 3706, to adjust the boundary of the John Muir National Historic Site, and for other purposes; S. 2432, to expand the boundaries of Wilson's Creek Battlefield National Park, and for other purposes; S. 2567, to adjust the boundary of Redwood National Park in the State of California; and H.R. 1113, to authorize an exchange of land at Fort Frederica National Monument, and for other purposes.

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

PRIVILEGES OF THE FLOOR

Mr. DEWINE. Mr. President, I ask unanimous consent that privilege of the floor be granted to my assistant Dara Pittard for the duration of the debate of the Family Smoking Prevention and Tobacco Control Act.

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

Mr. HARKIN. Mr. President, I ask unanimous consent that Julie Huen of my staff be granted floor privileges during the remainder of the day.

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

Mr. KENNEDY. Mr. President, I ask unanimous consent that Stephen

Kosack, a fellow in my office, be granted the privilege of the floor for the remainder of the debate on the FSC/ETI JOBS bill.

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

Mr. REID. Mr. President, on behalf of Senator LIEBERMAN, I ask unanimous consent that the privilege of the floor be granted to Sara Hagigh during the consideration of the Australia Free Trade Agreement.

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

Mr. REID. Mr. President, on behalf of Senator BAUCUS, I ask unanimous consent that the privilege of the floor be granted to the following fellows and interns during consideration of the Australia Free Trade Agreement:

Molly Bell, Tony Cerise, Jessica Cronnelly, and Ashley Griffith.

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

Mr. GRASSLEY. Mr. President, I ask unanimous consent that Dan Shepherdson, Nic Prenger, Julia Ehrgood, Casey August, and Peter Jordan be granted the privilege of the floor for the duration of the debate on S. 2610, the United States-Australia Free Trade Agreement Implementation Act.

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

Mr. REID. Mr. President, I ask unanimous consent that the privilege of the floor be granted to the following fellows and interns, Ade Ifelayo, Kellen Moriarty, Scott Richardson, Alex Robles, and Ben Gather, during consideration of the Australia Free Trade Agreement.

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

Mr. FEINGOLD. Mr. President, I ask unanimous consent that my staff member, Nancy Mitchell, be granted floor privileges during the consideration of this legislation.

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

APPOINTMENT

The PRESIDING OFFICER. The Chair, on behalf of the Vice President, pursuant to Public Law 70–770, appoints the Senator from Arkansas, Mrs. LINCOLN, to the Migratory Bird Conservation Commission, vice the Senator from Louisiana, Mr. BREAUX.

AMENDING THE E-GOVERNMENT ACT

Mr. FRIST. Mr. President, I ask unanimous consent that the Governmental Affairs Committee be discharged from further consideration of H.R. 1303, and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 1303) to amend the E-Government Act of 2002 with respect to rulemaking authority of the Judicial Conference.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider be laid upon the table, and any statements relating to the bill be printed in the RECORD.

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

The bill (H.R. 1303) was read the third time and passed.

REQUESTING RETURN OF PAPERS

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate request the House to return the papers with respect to S. 2589.

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

MEASURE PLACED ON THE CALENDAR—S. 2652

Mr. FRIST. Mr. President, I understand there is a bill at the desk that is due for its second reading.

The PRESIDING OFFICER. The clerk will read the bill for the second time.

The assistant legislative clerk read as follows:

A bill (S. 2652) to amend title XVIII of the Social Security Act to deliver a meaningful benefit and lower prescription drug prices under the Medicare program.

Mr. FRIST. I object to further proceedings on the measure at this time in order to place the bill on the calendar under the provisions of rule XIV.

The PRESIDING OFFICER. Objection is heard. The bill will be placed on the calendar.

ORDERS FOR FRIDAY, JULY 16, 2004

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 10 a.m. on Friday, July 16. I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate then begin a period of morning business for statements only with Senators permitted to speak for up to 10 minutes each.

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

PROGRAM

Mr. FRIST. Mr. President, tomorrow the Senate will be in a period of morning business throughout the day. There will be no rollcall votes during tomorrow's session. During tomorrow's session, I will have more to say about next week's schedule. However, there will be no votes during Monday's session as well. Senators can expect the next vote at approximately 2:15 on Tuesday.

We had a productive day today. We will be closing in just a few moments. I just had the opportunity a few moments ago to talk to the Prime Minister of Australia, who expressed his gratitude to the American people and to this body for the vote we took about an hour ago with regard to the Australia trade bill. We expedited consideration of that bill, brought it to the floor in a very quick fashion, but had a very good debate over the course of the day. There was broad support for that bill as reflected in the vote, with 80 people voting for that piece of legislation.

In addition, we made real progress considering an amendment with regard to tobacco and the FDA. Unusual in the fact that those two bills were put together in one bill, but by considering that bill with an overwhelming vote, we are able to go to conference on the FSC/ETI bill, an important bill to jobs and manufacturing in this country.

ADJOURNMENT UNTIL 10:00 A.M. TOMORROW

Mr. FRIST. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:49 p.m., adjourned until Friday, July 16, 2004, at 10 a.m.