The legislative clerk read as follows:

A bill (S. 2991) to suspend temporarily new shipper bonding privileges.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The bill (S. 2991) was read the third time and passed, as follows:

S. 2991

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 ''New Shipper Review Amendment Act of 2004''.

SEC. 2. TEMPORARY SUSPENSION OF NEW SHIPPER BONDING PRIVILEGES.

Clause (iii) of section 751(a)(2)(B) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(2)(B)(iii)) shall not be effective during the 3-year period beginning on the date of the enactment of this Act.

SEC. 3. REPORT TO CONGRESS.

Not later than 2 years after the date of the enactment of this Act, the Secretary of Commerce, in consultation with the Secretary of the Treasury, the United States Trade Representative, and the Commissioner of the Bureau of Customs and Border Protection, shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report containing—

(1) recommendations on whether the suspension of the effectiveness of section 751(a)(2)(B)(iii) of the Tariff Act of 1930 should be extended beyond the date provided in section 2 of this Act; and

(2) assessments of the effectiveness of any administrative measures that have been implemented to address the difficulties giving rise to section 2 of this Act, including—

(A) problems in assuring the collection of antidumping duties on imports from new shippers;

(B) administrative burdens imposed on the Department of Commerce by new shipper reviews; and

(C) the use of the bonding privilege by importers from new shippers to circumvent the effect of antidumping duty orders.

UNANIMOUS CONSENT AGREEMENT—FOREIGN OPERATIONS APPROPRIATIONS CONFEREES

Mr. FRIST. Mr. President, I ask unanimous consent that with respect to the Foreign Operations appropriations bill, Senator COCHRAN be inserted in lieu of Senator SPECTER as a conferee.

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

PROTOCOL AMENDING TAX CONVENTION WITH THE NETHERLANDS—TREATY DOCUMENT NO. 108–25

Mr. FRIST. As in executive session, I ask unanimous consent that the Foreign Relations Committee be discharged from further consideration of Treaty Document No. 108–25, the Protocol Amending the Tax Convention with the Netherlands.

I further ask unanimous consent that the Senate proceed to its consideration and to the accompanying resolution of ratification which is at the desk; that the treaty be considered as having passed through its various parliamentary stages, up to and including the presentation of the resolution of ratification; that any statements be printed in the CONGRESSIONAL RECORD as if read; and that the Senate immediately proceed to a vote on the resolution of ratification; further, that when the resolution of ratification is voted upon, the motion to reconsider be laid upon the table, and that the President be notified of the Senate's action.

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

Mr. FRIST. Mr. President, I ask for a division vote on the resolution of ratification.

The PRESIDING OFFICER. A division vote is requested. Senators in favor of the resolution of ratification will rise and stand until counted.

Those opposed will rise and stand until counted.

On a division, two-thirds of the Senators present and voting having voted in the affirmative, the resolution of ratification is agreed to.

The resolution of ratification is as follows:

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Protocol Amending the Convention Between the United States of America and the Kingdom of the Netherlands for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, signed at Washington on March 8, 2004 (T. Doc. 108–25).

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

• Mr. BIDEN. Mr. President, today the Senate considered a protocol to the current tax convention between the United States and the Kingdom of the Netherlands. There is substantial trade and cross-border investment between our two countries; the tax convention provides an important basis for facilitating this economic relationship. The original convention was concluded in the early 1990s, and there have been several developments in U.S. tax treaty policy in the intervening years that the protocol seeks to address. It contains several significant provisions, including a revised provision designed to ensure that the treaty cannot be used for inappropriate purposes—a so-called antitreaty-shopping provision. I commend Chairman LUGAR for his diligence in bringing the protocol before the Senate.

During the Foreign Relations Committee's review of the protocol, I raised a concern about a provision in the current treaty that is not addressed by the protocol. Article 24(1) of the current treaty permits the United States to tax former citizens for a period of 10 years after they lose their citizenship, if the loss of their citizenship has as one of its principal purposes the avoidance of income tax. With one exception, this provision in the treaty is consistent with U.S. law—specifically, section 877 of the Internal Revenue Code—as it existed at the time the treaty was concluded. The exception is this: the treaty does not allow the United States to tax former citizens who become nationals of the Netherlands. Such an exclusion for nationals of the treaty partner is unique in our tax treaty practice; it is not found in any other treaty, nor is it contained in our model treaty.

The protocol before the Senate does not close this gap. Consistent with statutory amendments made by Congress in 1996, it does extend the taxation authority of the United States to former long-term residents who leave the United States to avoid taxation. But the exclusion for nationals of the Netherlands remains.

Maintaining this exclusion for nationals of the Netherlands is unwarranted, and raises two concerns. First, I wanted to be sure that retaining the exclusion would not serve as a precedent in future tax treaty negotiations. The Treasury Department has noted that such an exclusion for nationals of the treaty partner has not been included in over two dozen tax treaties negotiated since the treaty with the Netherlands entered into force. More important, the Treasury has committed in writing that it does not intend the provision in the Netherlands treaty to serve as a precedent in the future.

Second, I was concerned that maintaining the exclusion might subvert the purpose of section 877 of the Internal Revenue Code. Based on the information we have received from the Treasury, and after consultation with the staff of the Joint Committee on Taxation, it seems unlikely that the provision in the treaty will, in practice, undermine the operation of section 877. The reasons for this are set forth in detail in the materials that I will seek to include in the RECORD.

Finally, it is worth noting that Congress amended section 877 in section 804 of The American Jobs Creation Act of 2004, also known as the FSC/ETI bill, which was enacted last month. The primary purpose of the provision remains: to continue to tax people who expatriate in order to avoid tax. But the test under the revised section 877 is a more objective test—one based on income levels—than had been applied under the prior law. A question therefore arises about the relationship between the revised language in section 877 and the provision in the U.S.-Netherlands treaty, which uses a more subjective test of whether a ''principal purpose'' of the expatriating act is to avoid taxation. In a letter that I will insert in the RECORD, the Treasury has set forth information about its intentions for applying the treaty provision in light of the revisions to section 877.