That is why a group of us will, once again, offer an amendment that deals with the reimportation of prescription drugs—this time, only from Canada, where there can be no safety issue.

FAST-TRACK TRADE AUTHORITY

Mr. DORGAN. Mr. President, Senator DASCHLE, the majority leader, has now promised that before the Memorial Day recess, the Senate will be considering the administration's request for trade promotion authority; that is a euphemism for fast track. Fast-track authority allows an administration to negotiate a trade agreement somewhere and bring it back to the Congress, and Congress is told: ''You are not able to change a decimal point, a period, or a punctuation mark. You must vote up or down on an expedited basis on that agreement. No changes, no amendments. No opportunity to make any alterations at all.'' That is called fast track.

Well, let me talk just a bit about this fast track. First of all, it is a fundamentally undemocratic proposition. We have negotiated most agreements that we have had without fast-track authority. We negotiate and have negotiated nuclear arms control agreements. There has been no fast-track authority for that. Most trade agreements that have been negotiated have not had fast-track authority.

Let me make a couple of comments about trade. First of all, the Constitution says—article I, section 8—the Congress shall have the power to regulate commerce with foreign nations. That is the Congress that said that. The Constitution says that the Congress has that power, not the President.

Fast track itself, in three decades, has been used five times: GATT, U.S.-Israel, U.S.-Canada, NAFTA, and WTO. Look at what happened with respect to the trade agreements. Pre-NAFTA, using that as a good agreement, it has been one of the worst trade agreements we have ever negotiated. Pre-NAFTA, we had a slight surplus with Mexico and a small deficit with Canada. After NAFTA was fully phased in, we have a big deficit with Mexico, and getting bigger, and a big deficit with Canada. We have people who think this is successful. I have no idea where they studied if they think this is a successful trade relationship.

Let's take a look at what is happening in some of these areas of trade. Let me talk, as I have previously, about automobiles and Korea. Why do I do this? Only to point out that the appetite for going off to negotiate a new trade agreement ought to be replaced by an appetite to solve some of the problems that currently exist. But nobody wants to solve problems. All they want to do is negotiate a new agreement.

Now, we have automobile trade with Korea. Let me use that as an example. In the last year that was just reported, the Koreans shipped us 618,000 automobiles. We were able to ship to Korea 2,800. So for every 217 cars coming in from Korea, we were able to send them 1.

Try sending a Ford Mustang to Korea. The Koreans will put up so many non-tariff trade barriers that you would be lucky to sell a single one. What we have is one-way trade. Korea ships Hyundais and Daewoos to this country by the boatload, and we cannot get American cars into Korea. Yet our negotiators seem to move along blissfully happy to talk about how we are going to negotiate the next agreement.

How about saying to Korea on cars: Look, you either open your market to American automobiles or you ship your cars to Kinshasa, Zaire. Our market is open to you only if your market is open to us. That ought to be our message.

We have a number of problems in our trade with Europe. Here is a colorful example. We cannot get American eggs into Europe for the retail market. You cannot buy eggs in Europe if they come from the United States. Do you want to know why? Because we wash eggs in this country, and you cannot sell washed eggs in Europe. The Europeans put up a rule that says that eggs can only be sold at the retail level if they are not washed, because apparently their producers cannot be trusted to wash their eggs properly.

This is a picture of washed versus unwashed eggs, in case anybody wants to see the difference. Maybe our Trade Ambassador can take a look at this absurd trade barrier.

How about selling breakfast cereal in Chile? The Chileans restrict the importation of U.S. breakfast cereals that are vitamin-enriched, as many of our cereals are. They contend consumers already receive enough vitamins in their daily diet and there is a health risk from the consumption of too many vitamins. So you cannot sell Total in Chile. Just absurd.

How about this one? Our cattle operations sometimes give growth hormones to their cattle. There is no scientific evidence that the hormones do any harm, but the Europeans put up a rule that says that beef from cattle that got hormones cannot get into the EU. I have been to Europe and have read the press over there. They depict American cattle as having two heads, suggesting that these growth hormones produce grotesque animals like the one pictured here. Our negotiators actually tried to do something about this, and took the EU to the WTO. The WTO agreed with the United States, and authorized our country to retaliate against the WTO.

So what form of retaliation did our negotiators settle on? We took action against the Europeans by restricting the movement of Roquefort cheese, goose liver, and truffles to the United States. Now that will scare the dickens out of another country, won't it? We are going to slap you around on goose liver issues.

I do not understand this at all. Our country seems totally unwilling to stand up for our trade interests.

Try to sell wheat flour to Europe. We produce a lot of wheat in Nebraska and North Dakota. Try to sell wheat flour in Europe. There is a 78-percent duty to sell wheat flour in Europe.

Will Rogers said—I have quoted him many times—that the United States of America has never lost a war and never won a conference. He surely must have been talking about our trade negotiators. It doesn't matter whether it is United States-Canada, United States-Mexico, GATT, or NAFTA, this country gets the short end of the stick.

The reason I am going to oppose fast track is not that I am opposed to expanded trade. I believe expanded trade is good for our country and good for the world. But I believe trade ought to be fair trade, and I believe our country ought to stand up for its economic interests. When other countries are engaging in unfair trade, our trade officials have a responsibility to stand up and use all available trade remedies on behalf of American workers and American businesses, and say that we will not put up with unfair trade practices.

I must say that Mr. Zoellick, our current Trade Representative, has recently taken some heat for action against imported steel. The Administration also took some heat for its action against unfair imports of lumber. In both cases, I thought the actions were appropriate. But the Administration has been widely criticized. This weekend, George Will had an op-ed that was very critical.

But I hope that nobody is getting the impression that U.S. producers are being adequately defended from unfair imports. Nothing could be further from the truth. Take the example of Canadian wheat. The Canadians use a monopoly agency called the Canadian Wheat Board to subsidize their grain and undersell us all over the world. In February, the U.S. Trade Representative ruled that the Canadians had been using their monopoly power to undermine the international trading system. But to date, the USTR has done nothing about it. Our wheat growers had asked for tariff rate quotas to be imposed. USTR found the Canadians guilty, but has yet to impose tariff rate quotas. Instead, USTR proposes to take the matter to the WTO. By the time the WTO issues a ruling, our great grandchildren will still be dealing with the problem.

I expect a number of my colleagues who will join me in saying to those who want to bring fast track to the floor: Fix some of the problems that exist in the current trade agreements before you decide you want new trade agreements. Fix some of the problems—just a few. Fix the problem of grain with Canada. Fix the problem of wheat flour with Europe. Fix the problem of automobiles from Korea.

How about fixing a couple of the problems dealing with Japan? Almost

fourteen years after our beef agreement with Japan, there is a 38.5-percent tariff on every pound of beef that still goes into Japan. Japan has a $60 billion to $70 billion trade surplus with us, and they are still hanging huge tariffs on every pound of American beef we ship to Japan. How about more T-bones in Tokyo?

I am describing a few of a litany of problems in international trade that our country refuses to address. Why? Because we have trade negotiators all suited up. They have their Armani shoes and their wonderfully cut suits, and they are ready to negotiate. They will lose in the first half hour at the table if history is any guidance.

I am saying we ought not grant fast-track authority until our negotiators demonstrate they can fix a few trade problems. I did not believe Bill Clinton should have fast-track authority when he was President, and I do not believe George Bush should have fast-track authority. Not until the Administration is willing to demonstrate that it is willing to solve a few of the trade problems I have described.

Fast track is going to be on the slow track in the Senate. There will be many amendments proposed. I, for one, will offer a good number of amendments dealing with the issues described. I will also offer an amendment that says that NAFTA tribunals should not operate in secret. We should not be a party to any deal that determines international trade outcomes behind closed doors. The public should be able to see what NAFTA tribunals are up to.

This country will have done a service to its citizens if we say no to fast track.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

Mr. DORGAN. I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Arizona.

PRESIDENTIAL WITHDRAWAL FROM ABM TREATY

Mr. KYL. Mr. President, Secretary Powell at this very moment in the Middle East is striving mightily to effect a cease fire and develop more support for our war on terror, especially to the extent we may have to take military action against the country of Iraq.

It is in that context that I discuss today another way the administration has prepared to deal specifically with the threat from Iraq and other countries similarly situated in the Middle East.

On December 13, following a period of high-level negotiations, President Bush notified Russia of his intent to withdraw the United States from the 1972 Anti-Ballistic Missile Treaty. Since then, I have addressed the Senate on the military justification for the President's decision and the question of how much a national ballistic missile defense system will cost. Today, I would like to discuss the President's constitutional authority to unilaterally exercise the right of withdrawal without the consent of the Senate or Congress as a whole.

The President withdrew the United States from the treaty pursuant to Article XV, which allows either party to withdraw upon 6 months' notice if it determines that ''extraordinary events . . . have jeopardized its supreme interests.'' I believe his action is a proper exercise of the authority of the chief executive to terminate a formal treaty to which the Senate had given its consent pursuant to Article II, Section 2, of the Constitution.

The question of Presidential authority is illustrated by the following assertion in a New York Times editorial by Bruce Ackerman, a professor of constitutional law at Yale:

> Presidents don't have the power to enter into treaties unilaterally . . . and once a treaty enters into force, the Constitution makes it part of the ''supreme law of the land'' just like a statute. Presidents can't terminate statutes they don't like. They must persuade both houses of Congress to join in a repeal.

While the Constitution is silent with respect to treaty withdrawal, the preponderance of writings and opinions on this subject strongly suggests that the Framers intended for the authority to be vested in the President. Article II, Section 1 of the Constitution declares that the ''executive power shall be vested in the President.'' And Article II, Section 2 makes clear that the President ''shall be Commander-in-Chief,'' that he shall appoint, with the advice and consent of the Senate, and receive ambassadors, and that he ''shall have power, by and with the advice and consent of the Senate, to make treaties.''

The Constitution approaches differently the duties of Congress, giving the legislative branch—in Article I's Vesting Clause—only the powers ''herein granted.'' The difference in language indicates that Congress' legislative powers are limited to the list enumerated in Article I, Section 8, while the President's powers include inherent executive authorities that are unenumerated in the Constitution. Thus, any ambiguities in the allocation of a power that is executive in nature—particularly in foreign affairs—should be resolved in favor of the executive branch. As James Madison once wrote in a letter to a friend, ''the Executive power being in general terms vested in the President, all power of an Executive nature not particularly taken away must belong to that department . . .''

The treaty clause's location in Article II clearly implies that treaty power is an executive one. The Senate's role in making treaties is merely a check on the President's otherwise plenary power—hence the absence of any mention of treaty-making power in Article I, Section 8. Treaty withdrawal remains an unenumerated power—one that must logically fall within the President's general executive power.

A careful reading of the writings of the Framers strongly also confirms that they viewed treaties differently than domestic law, and that, while they desired to put more authority over domestic affairs in the hands of the elected legislative representatives, they believed that the conduct of foreign affairs lay primarily with the President. As Secretary of State Thomas Jefferson observed during the first Washington Administration, ''The constitution has divided the powers of government into three branches [and] has declared that 'the executive powers shall be vested in the president,' submitting only special articles of it to a negative by the Senate.'' Due to this structure, Jefferson continued, ''The transaction of business with foreign nations is executive altogether; it belongs, then, to the head of that department, except as to such portions of it as are specially submitted to the Senate. Exceptions are to be construed strictly.''

In the same vein is the history of Supreme Court rulings on the subject of presidential powers. The Court has concluded that the President has the leading constitutional role in managing the nation's foreign relations. As one commentator, David Scheffer, noted in the Harvard International Law Journal, ''Constitutional history confirms time and again that in testing [the limits of presidential plenary powers], the courts have deferred to the President's foreign relations powers when the constitution fails to enumerate specific powers to Congress.''

In Harlow v. Fitzgerald, the Supreme Court observed that responsibility for the conduct of foreign affairs and for protecting the national security are '''central' Presidential domains.'' Similarly, in the Department of Navy v. Egan, the Supreme Court '''recognized the generally accepted view that foreign policy [is] the province and responsibility of the Executive.'''

The case most frequently cited as confirming that the President is the supreme authority in the Nation's conduct of foreign affairs is the Supreme Court's 1936 decision in the United States v. Curtiss-Wright Corp. In that case, the Court reversed the decision of the district court, and affirmed the constitutionality of President Franklin Roosevelt's declaration of an arms embargo against both sides in the conflict between Peru and Bolivia over the Chaco region. As stated in the opinion issued by Justice Sutherland, the power to conduct foreign affairs is ''the very delicate, plenary and exclusive power of the President as the sole organ of the federal government in the field of international relations—a power which does not require for its exercise an act of Congress.''

Treaties represent a central tool for the successful conduct of foreign policy. Such international agreements typically reflect the circumstances of particular security or economic conditions which may, of course, change