

Hagel	Lincoln	Schumer
Harkin	Lott	Sessions
Hatch	Lugar	Shelby
Hollings	McCain	Smith (NH)
Hutchison	Mikulski	Smith (OR)
Inhofe	Miller	Snowe
Inouye	Murkowski	Specter
Jeffords	Murray	Stabenow
Johnson	Nelson (FL)	Stevens
Kennedy	Nelson (NE)	Thomas
Kerry	Nickles	Thompson
Kohl	Reed	Thurmond
Kyl	Reid	Torricelli
Landrieu	Roberts	Voinovich
Leahy	Rockefeller	Warner
Levin	Santorum	Wellstone
Lieberman	Sarbanes	Wyden

## NOT VOTING—4

DeWine	Hutchinson
Helms	McConnell

The nomination was confirmed.

#### NOMINATION OF JOHN E. JONES III, OF PENNSYLVANIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate equally divided prior to the vote on Executive Calendar No. 828, which the clerk will report.

The assistant legislative clerk read as follows:

John E. Jones, III, of Pennsylvania to be United States District Judge for the Middle District of Pennsylvania.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Madam President, I will yield time on this side, if the distinguished Republican leader wants to yield the time on his side.

Madam President, I withhold that.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Madam President, John E. Jones III is a very distinguished lawyer. I have known him personally for 15 years. He comes from Pottsville, PA. He had an outstanding practice. He has an exemplary academic record. He served as chairman of a very important agency, the Liquor Control Board of Pennsylvania, which has quasi-judicial functions.

Joy Flowers Conti was just voted on.

I thank the chairman, Senator LEAHY, for moving these two judges. I urge him to follow the calendar, which has next in line D. Brooks Smith, who is the present judge of the Western District of Pennsylvania and who has been approved by the committee for the Court of Appeals for the Third Circuit.

We are taking up another judge tomorrow.

I trust that Judge Smith will be up for confirmation.

I yield the remainder of my time.

Mr. LEAHY. Madam President, in my earlier statement, I praised the distinguished senior Senator from Pennsylvania for working hard to get through the judges on the Western District of Pennsylvania.

For year, after year, after year, after year, after year, a Republican hold blocked any consideration of the nominations by President Clinton

for those same seats. But thanks to the distinguished senior Senator from Pennsylvania, we have been able to move forward quickly.

This, incidentally, will be the 63rd judge confirmed by the Senate since the change in majority about this time last year.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of John E. Jones III, of Pennsylvania, to be United States District Judge for the Middle District of Pennsylvania?

Mr. LEAHY. Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS), the Senator from Arizona (Mr. HUTCHINSON), the Senator from Ohio (Mr. DEWINE), and the Senator from Kentucky (Mr. MCCONNELL) are necessarily absent.

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

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

[Rollcall Vote No. 196 Ex.]

## YEAS—96

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

## NOT VOTING—4

DeWine	Hutchinson
Helms	McConnell

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the President will be notified of the Senate's action.

## LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

#### GREATER ACCESS TO AFFORDABLE PHARMACEUTICALS ACT OF 2001

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 812, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 812) to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals.

Pending:

Reid (for Dorgan) amendment No. 4299, to permit commercial importation of prescription drugs from Canada.

McConnell amendment No. 4326 (to amendment No. 4299), to provide for health care liability reform.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, I ask unanimous consent that the Senator from Arizona be recognized for up to 30 minutes to speak as in morning business.

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

## ARMS CONTROL

Mr. KYL. Madam President, I thank the distinguished assistant majority leader and would note that Senator SPECTER also wanted to address the Senate, but since he is not here, I will go ahead with my remarks.

Mr. KYL. Madam President, on June 13 the United States officially withdrew from the 1972 Anti-Ballistic Missile, ABM, Treaty, closing a chapter in U.S.-Soviet relations, and beginning another with Russia. The lapsing of the ABM Treaty, combined with the Senate's defeat of the Comprehensive Test Ban Treaty in 1999 and the signing of a new type of nuclear reduction treaty with Russia in May, represent a fundamental shift in the way the United States approaches strategic security. We have moved away from reliance on traditional arms control treaties toward a reliance on our own capabilities—namely missile defenses and a credible nuclear deterrent.

Proponents of the ABM Treaty were convinced that it was the "cornerstone of strategic stability," and that U.S. withdrawal would damage the improving U.S.-Russia relationship, spark a new arms race, and even lead, as one of my colleagues remarked, to "Cold War II." Those predictions were wrong. Yet some still cling to the notion that arms control is the key elements in U.S. national security.

Over the past 6 months, I have addressed the Senate on the strategic justification for U.S. withdrawal from the ABM Treaty, the question of how much a missile defense system will cost, and the President's constitutional authority to exercise the right of withdrawal without legislative consent. And, today, in response to those who continue to believe in the utopian aims of traditional arms control agreements, I rise to address the President's decision to abrogate the ABM Treaty, this time

in the broader context of the utility of such measures as a means to protect U.S. security interests.

The past 10 years have completely changes the Cold War strategic environment that gave rise to the ABM Treaty and other traditional arms limitation and arms reduction agreements. First, the United States and Russia have moved beyond enmity toward a more cooperative relationship. Second, the threats we face today are far more numerous and complex than those we faced during the Cold War.

The proliferation of weapons of mass destruction has become one of our most pressing national security challenges. As many as three dozen countries now have or are developing ballistic missiles. Used by once between 1945 and 1980, such weapons have become an increasingly common component in regional conflicts. In fact, thousands of shorter range missiles have been used in at least six conflicts since 1980. And, as a recent National Intelligence Estimate NIE, on foreign ballistic missile developments warned, "The probability that a missile with a weapon of mass destruction will be used against U.S. forces or U.S. interests is higher today than during most of the Cold War, and it will continue to grow as the capabilities of potential adversaries mature."

Iran, for example, continues to place much emphasis on its missile activities. According to the recent NIE, that country's "longstanding commitment to its ballistic missile program . . . is unlikely to diminish." In early May, Tehran conducted a successful test of its 1,300 km-range Shahab-3 missile—capable of reaching Israel, as well as U.S. troops deployed in the Middle East and South Asia—and some press reports indicate that Iran is now set to begin domestic production of the missile. Additionally, on May 7, the Associated Press, citing an administration official, reported that Iran is continuing development of a longer-range missile, the Shahab-4. With an estimated range of 2,000 km, the Shahab-4 will be able to reach well into Europe.

North Korea's missile programs are also of great concern. That country has extended its moratorium of testing its intercontinental-range Taepo Dong missiles until 2003; however, its surprise August 1998 test flight over Japan of the Taepo Dong 1 missile should serve as a clear indication of its intent to develop missiles with intercontinental ranges. Indeed, Pyongyang is continuing its development of the longer-range Taepo Dong 2 missile, capable of reaching parts of the United States with a nuclear weapon-sized payload. According to the NIE:

The Taepo Dong 2 in a two-stage ballistic missile configuration could deliver a several-hundred kg payload up to 10,000 km—sufficient to strike Alaska, Hawaii, and parts of the continental United States. If the North uses a third stage similar to the one used on the Taepo Dong 1 in 1998 in a ballistic missile configuration, then the Taepo Dong 2 could deliver a several hundred kg payload up to

15,000 km—sufficient to strike all of North America.

In Iraq, Saddam Hussein continues to obstruct the international verification of commitments made to the United Nations, and still fails to comply with arms control agreements he accepted at the end of the gulf war. The recent NIE concluded that, "Despite U.N. resolutions limiting the range of Iraq's missiles to 150 km, Baghdad has been able to maintain the infrastructure and expertise to develop longer range missile systems." And Iraq's ability to surprise us in the past with the scale of its missile, nuclear, chemical, and biological programs should serve as a warning. Secretary of Defense Rumsfeld recently discussed Baghdad's weapons of mass destruction capabilities, stating:

They have them, and they continue to develop them, and they have weaponized chemical weapons. They've had an active program to develop nuclear weapons. It's also clear that they are actively developing biological weapons. I don't know what other kinds of weapons fall under the rubric of weapons of mass destruction, but if there are more, I suspect they're working on them, as well.

China presents an even more complex case. While not a member of the axis of evil, that country's exceedingly belligerent attitude toward the United States and our longstanding, democratic ally Taiwan requires a clear-eyed approach to our relationship with the communist government in Beijing. China currently has about 20 intercontinental ballistic missiles capable of reaching the United States, and is in the midst of a long-running modernization program to expand the size of its strategic nuclear arsenal and to develop road-mobile and submarine-launched ICBMs. According to the NIE, by 2015, "Chinese ballistic missile forces will increase several-fold." Additionally, by that time, "Most of China's strategic missile force will be mobile." As Secretary Rumsfeld stated on September 6 in reference to China's strategic missile modernization and buildup, "It is a long pattern that reflects a seriousness of purpose about the People's Republic of China with respect to their defense establishment."

President Bush's fresh approach to strategic security with Russia—called the "New Strategic Framework"—takes into account these changed circumstances. The President's framework entails unilateral reductions in offensive nuclear weapons and the development and deployment of defensive systems to deter and protect against missile attacks. President Bush outlined this approach before his election, and upon taking office, immediately began to develop a plan for action.

The central component of that framework is the development of missile defenses, critical to which is U.S. withdrawal from the ABM Treaty which totally prohibits deployment of a national missile defense. Indeed, our withdrawal represents a fundamental shift away from reliance on consensual vulnerability, perpetuated by arms control treaties, and a move toward prudent defensive measures.

The ABM Treaty was a classic example of arms control—promising much more than it was ever able to deliver. The theory was that by ensuring mutual vulnerability to nuclear missile attack, the incentive to build increasing numbers of offensive forces would be removed. History proved that theory wrong. Between the treaty's signing in 1972 and 1987, the Soviet Union's inventory of strategic nuclear warheads grew from around 2,000 to about 10,000; and the U.S. arsenal grew from around 3,700 to 8,000. In fact, strategic nuclear forces expanded not just quantitatively, but also qualitatively. The decade following the ABM Treaty's signing witnessed the introduction into the Soviet arsenal of entire generations of new long-range missiles, not just in contradiction of the intent of the ABM Treaty, but in contravention of the accompanying SALT I accord as well. Clearly, deliberate vulnerability did not promote arms control; rather, it fueled the arms race.

It is important to reiterate the history of the ABM Treaty because those who purport that it was the "cornerstone of strategic stability" seem to misunderstand the original impetus for it. The truth is that the United States gave up the right to field defensive systems because the Nixon administration was faced, in 1971, with a Congress that refused to fund more than two of the original 12 sites that the Administration had proposed in 1969. This, in addition to a rapid Soviet offensive buildup, caused the Nixon administration to acquiesce in the negotiation of the ABM Treaty, to be coupled with the SALT agreement. And I should note that, two years after the ABM Treaty was negotiated, it was amended to limit to one the number of sites allowed because Congress did not even continue to fund the second site.

Thus, making necessity a virtue, political theorists embraced the notion that, in order to deter a nuclear attack, the threatened response had to be the murder of millions of innocent civilians. President Reagan once referred to this philosophy, named Mutual Assured Destruction, as "a sad commentary on the human condition." And, in my view, its acronym "M-A-D" describes it well.

It is debatable whether that theory explains the absence of a nuclear exchange in the second half of the 20th century. Whatever the case, this idea certainly seems mad today, when we have friendly relations with Russia, and are confronted with an entirely different set of threats. It simply does not make sense to remain deliberately vulnerable to the increasing threat of a ballistic missile attack, especially when alternatives, such as missile defenses, now exist.

Surely a sign of the changed times, President Bush returned from Russia in May having signed a new treaty under which both sides intend to reduce strategic warheads to 1,700–2,200. Just three pages long, this treaty

merely states what both sides intend to do. There are no interim limits, no sub-limits, or verification schemes. More importantly, the treaty simply affirms what the United States had already decided were its strategic requirements—President Bush announced that we were unilaterally going to this level of warheads last November. This is important enough to repeat: this treaty memorialized what President Bush determined were our strategic requirements. Thus, this treaty is a complete break with the arms control orthodoxy of the past, which made each side's limitations or reductions dependent on the other, required difficult verification and enforcement provisions, and artificially pre-determined our strategic levels.

Recognizing that we no longer live in a bipolar world, we must shift our attention to the threat to our security from a number of rogue states that already have, or are seeking to obtain, weapons of mass destruction capabilities. Despite the existence of a plethora of multilateral arms control agreements, the threat to the United States and its allies from chemical, biological, and nuclear weapons has not been limited. The fundamental flaw of such measures lies in the fact that they focus on weapons, rather than on the real problem: the dangerous regimes that possess them. And whether they've signed these treaties or not, the rogue regimes cannot be trusted to comply.

Historians have traced that flawed approach back to the Catholic Church's attempt to ban the crossbow—the terrible new weapon of the 1100s—in 1139. That endeavor proved as ineffective as the arms control efforts that followed in later centuries. Perhaps there is no better example of this futility than the attempts after World War I to outlaw war altogether. The 1928 Kellogg-Briand Pact, to which the Senate provided its advice and consent on January 25, 1929 by a vote of 85 to 1, was signed by all of the major countries. It renounced war as “an instrument of national policy.” It also paved the way for other arms control treaties and negotiations that left the Western democracies unprepared to fight and unable to deter World War II, a mere decade later.

Indeed, in looking back at the arms control efforts of the 1920s and 1930s, Walter Lippman, the celebrated historian who championed the agreements when they were signed, wrote that, “The disarmament movement was, as the event has shown, tragically successful in disarming the nations that believed in disarmament. The net effect was to dissolve the alliance among the victors of the first World War, and to reduce them to almost disastrous impotence on the eve of the second World War.”

Mr. Lippman's assessment offers an important lesson. Arms control works best where it is needed least—among honorable, morally upstanding nations. It does not work where it is needed

most—against rogue nations. Countries that act clandestinely and in bad faith will simply ignore the legal requirements of arms control agreements when it suits their interests. Moreover, morally-upstanding nations depending upon these agreements for security and stability have often lacked the will to respond forcefully to violations. Even when evidence is clear, there are almost always overriding diplomatic reasons for overlooking or treading lightly on the violating parties.

The international community's response to Iraq's use of chemical weapons is a prime example. When that country used chemical weapons against Iran in the 1980's in violation of the 1925 Geneva Protocol banning the use of such weapons, the U.N. Security Council passed a resolution calling for both sides in the conflict to exercise restraint. After Saddam Hussein again used chemical weapons—this time against his own Kurdish population—the Security Council again passed a resolution of condemnation that failed even to mention the use of chemical weapons. International resolve was so weak that when the United States proposed a resolution at the U.N. Human Rights Commission in 1989 condemning Iraq's use of those weapons against the Kurds, the initiative was defeated by a vote of 17 to 13.

Unwilling to enforce the existing Geneva Protocol when Iraq had, without dispute, violated its terms, the international community, in an effort to demonstrate its commitment to arms control, agreed upon a new ban on the possession of chemical weapons. Yet possession is inherently harder to verify than already-banned use. This new ban—the Chemical Weapons Convention, CWC—unrealistically aims to control states that are confident that they can violate its terms without detection and without punishment. And while the United States is destroying its chemical deterrent under the requirements of the CWC, chemical weapons programs in other states that have signed the treaty—like Iran—have not been curbed. Still others, like Iraq, North Korea, Libya, and Syria have not even joined the convention.

There is no moral equivalence between Western democracies and rogue regimes like those in place in Iran, Iraq, and North Korea. Yet arms control treaties like the Biological Weapons Convention BWC and the CWC assume that all participants operate with the same objectives in mind. They place under one umbrella—under a unitary set of constraints—states that are certain to comply and those that are certain to cheat. And therein lies their failure to serve any meaningful purpose. As Richard Perle, former Assistant Secretary of Defense, stated in a 1999 speech, “The failure to distinguish guns in the hands of cops and guns in the hands of robbers is not just a practical absurdity, it is a profound moral failure.”

Other arms control efforts like the Nuclear Nonproliferation Treaty NPT,

while more realistic in terms of their objectives, have also had questionable success. Under the terms of the NPT, the five declared nuclear weapons states—the United States, the United Kingdom, Russia, France, and China—agreed “not in any way to assist” any nonweapons state to acquire nuclear weapons. Other parties to the treaty agree not to develop nuclear weapons and to allow the International Atomic Energy Agency, IAEA to inspect their nuclear facilities.

Just a brief examination of the records of parties to the treaty illustrates that its objectives are not supported equally by all.

The United States intelligence community suspects that Russia and China, despite their NPT obligations, may be providing assistance to the nuclear weapons programs of certain states.

North Korea—despite the optimism of some that the 1994 Agreed Framework would curb that country's nuclear weapons program—continues to evade certain IAEA inspections needed to ensure that country is in full compliance with the NPT and the Framework. And yet, the United States continues to support the Agreed Framework with U.S. taxpayer dollars.

The U.S. intelligence community suspects that Russian nuclear-related assistance to Iran—ostensibly for Tehran's civilian nuclear program may, indeed, be contributing to Iran's nuclear ambitions.

And the full extent of Iraq's covert nuclear programs, after years without inspections, is not fully known. In fact, even when inspectors were in the country, Saddam made use of information provided by Iraqi IAEA inspectors to evade detection.

It is clear that multilateral arms control agreements have not delivered on their promise to make the world a safer place. As such, prudence demands that we take steps to ensure the safety of the American people—this will involve a combination of defense and deterrence.

Though the ABM Treaty was bilateral agreement between the United States and the Soviet Union, President Bush's decision to withdraw the United States was, in fact, necessitated by our need to deal with other states that are developing ballistic missiles. Deterrence is simply inadequate in dealing with rogue dictators. To depend on nuclear deterrence alone with a dictator like Saddam Hussein, for instance—a man who used chemical weapons against his own people—would be to place American lives in the hands of a madman. As Winston Churchill warned in his 1955 “Balance of Terror” speech, “The deterrent does not cover the case of lunatics or dictators in the mood of Hitler when he found himself in his final dugout.”

The alternative—which will be permitted now that we have withdrawn from the ABM Treaty—is to develop and deploy missile defenses. A missile

defense system will give us more flexible options in a crisis. First, defenses against missiles will help the United States to avoid nuclear blackmail, intended to freeze us into inaction by the very threat of a missile attack. Imagine the impact on our decision to go to war against Saddam Hussein in 1991 had he been able to threaten the United States or our allies with nuclear missiles. Additionally, missile defense will reduce the incentive for ballistic missile proliferation by devaluing offensive missiles. Finally, missile defenses, in a worst-case scenario, will save American lives.

The development of missile defenses and the end of the superpower rivalry does not obviate the need for traditional deterrence, however. As the world's remaining superpower, we need to maintain maximum flexibility and the ability to play the ultimate trump card if need be. Deterrence and defenses—with neither, of course, being 100 percent fail-safe—will be mutually reinforcing. The prudence of maintaining a nuclear deterrent was shown during the Gulf War when we hinted that we might draw on that capability if Iraq attacked allied troops with chemical or biological agents. As then-Secretary of Defense Dick Cheney warned during a visit to the Middle East on December 23, 1991: “Were Saddam Hussein foolish enough to use weapons of mass destruction, the U.S. response would be absolutely overwhelming, and it would be devastating.” Iraqi Foreign Minister Tariq Aziz acknowledged several years later that Iraq did not attack the forces of the U.S.-led coalition with chemical weapons because such warnings were interpreted as meaning nuclear retaliation.

Of course, with the end of the U.S.-Soviet standoff, we can maintain our deterrent at lower levels—thus President Bush's decision to unilaterally reduce our arsenal. But lower levels require greater attention to the safety and reliability of our remaining arsenal. This will, I believe, require renewed testing of that arsenal at some point.

Thankfully, this body defeated the Comprehensive Test Ban Treaty, CTBT—which would have obligated the United States to give up for all time the option of testing our nuclear weapons—in October 1999. The Bush administration has made it clear that it strongly opposes the treaty. While it has no plans to do so, the administration has retained the option of nuclear testing to assure the safety and reliability of our nuclear arsenal. It is also moving to improve the test readiness posture. As Assistant Secretary of Defense J.D. Crouch stated during a briefing on the Nuclear Posture Review, NPR, the “NPR does state . . . that we need to improve our readiness posture to test from its current two to three year period to something substantially better.” I am pleased that the House version of the Defense authorization bill contains a provision that requires

the Department of Energy to reduce to one year the time between the Presidential decision to conduct a nuclear test and the test itself, and I hope that the Senate will ultimately choose to include such a provision, as well.

The threats to the United States today are more complex and difficult to predict than those we faced during the cold war. Recognizing their inherent limitations, it is therefore time to move beyond traditional arms control treaties as a means to protect American lives from these threats. President Bush has committed to do just that. He has set the United States on a course that unequivocally places faith not in traditional arms control, but in the time-honored philosophy that led to the West's victory without war over the Soviet Empire: Peace through strength. As a result, we will be able to pursue the development of missile defenses and maintain a credible nuclear deterrent. These demonstrations of strength, coupled, of course, with the maintenance of robust conventional capabilities—not more pieces of paper—are what will keep this nation secure.

President Bush's overall security strategy rightly focuses on the root of the problem—the dangerous regimes that possess the weapons. As Margaret Thatcher once stated, “. . . the fundamental risk to peace is not the existence of weapons of particular types. It is the disposition on the part of some states to impose change on others by resorting to force.” The heart of the matter is that our strategy should seek to change the regimes themselves, whether through military, diplomatic, or economic means. The United States has made clear its intention to pursue that objective, and I have no doubt that our efforts will lead to success.

The PRESIDING OFFICER (Mr. MILLER). The Senator from Utah.

#### FTC REPORT

Mr. HATCH. Mr. President, my staff just attended a non-embargoed briefing conducted by the Federal Trade Commission. It is our understanding that tomorrow the FTC will transmit to the Congress and the American people a copy of its comprehensive study of the pharmaceutical industry with respect to litigation involving the two major components of the pending legislation: first, the report examined the use and abuses of the statutory 30-month stay. Second, the report examines how the 180-day marketing exclusivity rule has been the source of collusive arrangements between pioneer and generic firms.

I will be very interested to study the full report when it released tomorrow morning.

Let me say this tonight. First, I want to commend Chairman Muris and the other FTC Commissioners for undertaking this important study. I would also like to acknowledge the efforts of the FTC staff including, Maryann

Kane, Mike Wroblenski and Sarah Browers for their work on this report.

It is my understanding that the key recommendations contained in the report are somewhat at odds with the legislation on the floor.

It is my understanding the first FTC recommendation, consistent with the position that I took at the Health Committee hearing May 8 and my floor statements the past two weeks, will basically say that there should only be one automatic 30-month stay per drug product per ANDA to resolve challenges to patents listed in the FDA Orange Book prior to the filing date of the generic drug application.

Senator GREGG took this position in the HELP Committee and I commend him for his work to strengthen the bill.

Clearly, as I have laid out in some detail in earlier speeches, the Edwards-Collins substitute delves into areas way beyond this recommendation.

I also understand the second FTC recommendation, which touches upon the so-called reverse payment agreements whereby generic firms are paid not to market generic drugs, will suggest that the Congress pass legislation to require brand-name companies and first generic applicants to provide copies of certain agreements to the FTC.

This is exactly what Senator LEAHY's bill, S. 754, the Drug Competition Act, requires. As I discussed in my previous statements, I voted for Senator LEAHY's bill in the Judiciary Committee and worked with him to refine the final language. In my view, S. 754 contains a much more measured—and certainly more comprehensible—approach than does the Edwards-Collins substitute.

Because the staff briefing just occurred and the full report will be issued tomorrow, I am not prepared tonight to give you my full evaluation of the FTC report. But I can say that the major recommendations of the FTC appear to be somewhat at odds with key provisions of the legislation that is pending on the floor, the Edwards-Collins substitute to S. 812.

I look forward to examining the data collected by the FTC and analyzing the report's two major recommendations and its several subsidiary recommendations.

Frankly, I think that it would be appropriate for the relevant committees, the Judiciary Committee, the Commerce Committee, and HELP Committee, to have the opportunity to examine this comprehensive study before we adopt legislation in this area.

I will be interested to learn if the sponsors of the bill on the floor would be open to a process that will allow a careful evaluation of what the FTC study reveals and will not just act to ram this legislation through in the last week before August recess.

I have lodged my concerns about the way this bill so hastily was adopted by the committee and appeared on the floor, and urged that we take the time necessary to get this legislation right.