

that is not why it was designed, that is not what it will look at, no, that kind of prosecution will never be brought.

Then when I raise the question: But could it be brought under the language of the statute as it currently exists? They say, Well, yes, it could be. But you know the prosecutor would never go forward with such a case.

Again, at the risk of being immodest, I want to be Patrick Henry on this issue. I want to say we will not proceed—I will not proceed; again, I will not speak for my colleagues—I will not proceed to vote to ratify a treaty on the International Criminal Court until I am satisfied that the language is so absolute that I will not lose any rights I currently have under the U.S. Constitution.

I say to those who say: no, no, this is only going to deal with people like Milosevic. We are never going to see this sort of frivolous activity, and the United States should understand that you have no need to worry whatsoever about this international tribunal. Indeed, the United States helped create safeguards that are already in the International Criminal Court that say if the United States proceeds to prosecute someone who is accused of a war crime, the International Criminal Court will lose its jurisdiction. In other words, if an American serviceman is accused of a war crime, as happened in Vietnam in the village of Mi Lai, and the United States prosecuted that serviceman, as we did under the Uniform Code of Military Justice, then the ICC has no jurisdiction and backs away. So you, who have a great track record of prosecuting war crimes among your own servicemen, need have no worry whatsoever of this international tribunal.

We have two precedents that are now before us that have just come up in the last few months, and I find them disturbing in the face of all of these reassurances. The first one has been written about rather extensively in the Washington Post and the New York Times. It involves a Washington Post reporter who has been subpoenaed. He happens to live in Paris right now. He has been summoned by the tribunal dealing with Yugoslavia to come in and testify. And he said: I don't want to come in and testify. It would have a chilling effect on reporters covering the war if we thought the things we wrote about the war would be subject to the jurisdiction of a war crimes tribunal afterwards.

The Washington Post has taken the position that the reporter is exactly right. It has been written up in the New York Times also, sympathetically.

The reporter's name is Jonathan C. Randal. He is retired from the Post. As I say, he now lives in Paris. The Yugoslavia tribunal has said: You do not have the right to refuse. We are going to require you to come. And he can be arrested by the police in Paris, handed over to the tribunal by the police in France, and he loses his American con-

stitutional rights because the statute creating that tribunal is vague on the area of his rights.

There is another incident that has just come up. The same tribunal, which we are told is a precedent for the International Criminal Court, has been asked to indict William Jefferson Clinton and his National Security Adviser, Anthony Lake; and the then-Deputy National Security Adviser, Samuel Berger; and Ambassador Richard Holbrooke; and the U.S. Ambassador to Croatia, Peter Galbraith, all of whom are being accused of complicity in war crimes conducted by a Croatian general who was acting within the framework of American foreign policy at the time.

Here is a case where a President and his advisers make a decision in the best interests of the United States. The President and his advisers are now being investigated to see whether or not they should be called before the tribunal.

The specter of an American President called before an international tribunal for actions as straightforward as President Clinton's actions were in this circumstance is a specter I do not want to see repeated before the International Criminal Court. I do not want any future American President to believe that he or she is in danger of being named as an accomplice in some act of some other individual. We do not know whether or not the International Criminal Court could do that under its present statute. It is so vague that it cannot answer that question. In other words, under the present circumstance, it is not just an American citizen such as the reporter from the Washington Post who might be called in, it is not just a member of the Appropriations Committee who might be called in, there is a precedent being established that the President of the United States might be called in to answer in this international forum for actions he or she took in the best interests of the United States as those interests were defined at the time.

So I come back to my reasons for not wanting to ratify the treaty creating the International Criminal Court. I understand that as he signed it, President Clinton himself said this treaty is not ready for ratification. President Bush took our signature off it in order to make it clear to the world that it was not ready for ratification. I applaud that position—both President Clinton's position that it is not ready to be ratified and President Bush's decision to remove all doubt as to America's position on this point.

But I do want to make it clear, as I tried to do at the beginning, that I am not opposed to the idea of creating some kind of tribunal that can deal with these heinous crimes we see around us in this world that is still not rid of the horrific activities that are called war crimes and crimes against humanity. I am not opposed to America being subject to the rule of international law in an area where Amer-

ica's track record of behavior is so good that I am sure America could handle this without any difficulty. My problem is the vagueness. My problem is the possibility that the International Criminal Court will go far beyond what we think of as war crimes and will invent new ones, like the ones I have described here. My problem is that we do not have a clear outline of rights that will be protected in this Court.

Just as Patrick Henry stood and said, do not ratify the Constitution of the United States until there is a clear bill of rights written into it, and held that position to the point that James Madison finally gave in and gave us the Bill of Rights, I think American legislators should stand and say: Do not ratify the International Criminal Court until there is a bill of rights, until we know exactly that the rights we have under the Constitution, that the Declaration of Independence declares as being ours by God-given sanction, are protected, that Americans will not be called before this Court in a way that would put us in jeopardy of those rights. That is my bottom line with respect to the International Criminal Court.

I believe the United States should stay engaged and involved in discussions about it. I don't think we should turn our backs and walk away and say we will never have anything to do with it or be involved in it. I think by virtue of its observer status, which it still has with respect to the International Criminal Court, the United States should continue to talk to the other countries in the world about this.

But the bottom line should be that when the United States finally does decide to ratify the International Criminal Court, it will be in a regime where no American citizen will lose any of the rights that are currently guaranteed to him or her under the American Constitution.

I believe it can be done. I encourage everyone around the world to focus on that and not say we don't need to talk about that, that this is just for the bad guys, but recognize that if you are building an institution that is going to last for 50, or 100, or 200 years, as our Constitution has, you must be as careful in creating it as the Founders were in creating our Constitution in the first place.

We are the freest nation in the world. We would like the rest of the world to have the same benefits as we do. Let us be very careful as we create an international judicial body to make sure that it maintains that high standard of freedom.

I yield the floor.

TRADE ACT OF 2002

Mr. CORZINE. Madam President, I rise today, sadly, to express my sincere disappointment with the passage of the Trade Act conference report.

It is deeply troubling to me. I will go through a number of the reasons I have

these feelings and why I think they need to be expressed in an explicit nature.

I come from a business background, as many know. While I was a very sympathetic and active promoter of the passage of NAFTA early in the nineties, I believe in the principle of comparative advantage and understand that it can work to maintain competition in prices for many goods and services broadly throughout our society, and in certain sectors of our economy it certainly can promote job growth.

But on balance, when we look at the nature of a lot of the elements that are a part of this so-called fast-track trade promotion authority given today, I think the costs and the benefits don't align themselves well at all. I feel particularly troubled by the dilution of many of the elements that were in the Senate bill that went to conference that really left us in an even weaker position with respect to where we stand in protecting workers' environmental rights and the ability of America to represent its own interests in negotiations.

There are also some fine-print issues that I am very concerned about—the potential for degradation of our anti-trust laws and the ability for American law to be represented on a coequal basis with what we see as potentially being dictated by trade laws as we go forward. I will try to itemize some of those.

Again, I understand there is a strong theoretical case for comparative advantage. But I think when you put it in the specific context with the fine print of the details we are talking about with regard to this trade law, this is a very troubling piece of legislation. And I hope it is one that I am wrong about and that we will not come to regret over a period of time.

Let me start with the reality that anytime something passes, there will be shifts in economic fortunes for sectors of the economy. One of the reasons we fought so hard for trade adjustment authority in the package in the Senate—and that many of us believed we made a little progress thereon—was health care benefits and employment insurance. Some of those stayed. But, in fact, I think we undermined very seriously the conference report benefits that we were applying in health insurance versus the simple elementary move from a 75-percent to a 5-percent tax credit. We undermined the definition of the pool in which workers would be available.

While we have the language that we are aiding those who lose their jobs as a result of trade activities and shifts in production offshore, when you look at the details, it will be very hard for those to be applicable, and in the practical context of people's lives it is really a false presentation.

By the way, there are no standards with regard to the health benefits people will get. There is no premium protection for individuals. The details just

do not match the rhetoric with regard to the hope that I think we promised.

There is also talk that coverage is going to be broad. But when you look at the fine print, the fact is that the element of production shifts doesn't include some of the biggest market-places—places where production is likely to shift because of the applicability of the law as it stands.

For instance, in fact, Brazil and China and Southeast Asia are generally left uncovered. If a factory moves out of the State of Washington or the State of New Jersey and moves to those countries, they are excluded from some of the definitions of how a shift in production would apply and whether there is a need for trade assistance.

While countries such as Jordan, Israel, and the Caribbean Basin, and the Indian region are included in those definitions, they make up about 5 percent of the American trade, and large blocks of that are in places left out of the shift in coverage for production. I think it is a real problem. It is a real problem with the reality of matching the language.

We talk, particularly in the Senate bill, about substantial resources for workers who lose their jobs. The conference committee report came back \$30 million below CBO's estimate and \$80 million below what the Senate bill authorized—already a skinny number and one that I think makes the hope of real job retraining something that is a false hope for a lot of folks when you translate it into the reality of how it will work.

Continuing. Labor and environmental standards: We all fought for the Jordanian standard, the agreement that was negotiated on a specific trade agreement. It was to make sure that those standards were met in all future trade agreements.

When the conference agreement came back, we found that it allows for the preservation of status quo elements with regard to basic protections for children under 14. That means in Burma, if they are truly practicing slave labor, they can maintain the status quo in any kind of trade negotiations. It denies the basic rights of workers to operate with collective bargaining in countries where they don't already have it. There is no change for those countries to which we might want to apply those standards. That is really a quite serious backing away from the standards that were included in the Jordanian agreement which I think most people would embrace. And they would have made for a very serious, positive step forward in our trade negotiations. This is a very serious backing away that I think really does undermine the labor standards.

I will not go into details, but there are some provisions that we have backed away from on environmental standards. We have, basically, a status quo standard for anyone who enters into these negotiations. That is a difficult way to approach fair trade, as

well as free trade, if you are looking for those kinds of elements in a legitimate movement forward in our trade relationships.

With regard to the role of Congress, there was debate on the floor about Dayton-Craig, which we adopted, which had to do with having a real challenge to trade remedies in these packages. We pulled back, and we now have a sense of the Congress. I do not think anybody believes that is going to seriously impact how this process is going to go forward. It may sound good for press releases and sound bites, that we are really being involved in the process, but I do not think it deals with the facts as we see them. I think it is a serious problem.

There is another element that I also think is truly important with regard to fast track and an element with regard to the role of Congress. The conference agreement adds a completely new restriction that was not in the House bill or the Senate bill, and that would provide that there is only one privileged resolution per negotiation on any given trade treaty—one.

We had no restrictions on those in other situations. We could now see a real weakening of the ability of Congress to have a legitimate role in debate with regard to the elements of trade negotiating.

Finally, on this particular piece, one element that troubles me the most is that in many ways we have changed the language, where we are going to provide greater rights for foreign investors than are available to U.S. investors under U.S. law. And that is because we just changed a word in the language to say: Foreign investors should not be accorded greater substantive rights than U.S. investors. The only thing new is that we put in the word "substantive." And "substantive" leaves it open to trade negotiators to decide what rights are equal or unequal.

By the time we get done applying that, we could very well see substantially different treatment for foreign investors than we would see for U.S. investors. I think it is a definite weakening of what is appropriate as we go through the application of these trade laws and needs to be watched very carefully. I suspect it will lead to an enormous amount of litigation as time goes forward. But a lot of the decisions with regard to that will be taking place behind closed doors and by trade negotiators and trade adjustment bodies. So there are a number of issues that concern me.

There are a couple of other issues I want to cite before I yield the floor because I think they are also important.

It seems to me, in line with what I was talking about before, we have put ourselves into a position where foreign investors might very well have their international disputes resolved by trade negotiators as opposed to courts.

Let me just remind people that when we were debating this on the Senate

floor, we used the example of a Canadian company that sued the State of California with regard to the use of MTBE. The elected representatives of the people of California determined that MTBE was not such a good thing for their health and environmental quality of life. We have that same proposition in New Jersey.

But the judgment of one of these international trade bodies could overrule that decision made by the people, in legislation that was properly passed, if the language is used that we talked about, that substantive quality principle that was mentioned. I think this is dangerous as we go forward, and it truly concerns me.

Mostly, I am concerned that the principle of privatization may very well be subject to rulings from trade bodies making a decision about whether something is appropriate or not, whether privatization is a restraint of trade or not. We had a very close vote with regard to the subject in the Senate, but I think, very possibly, you could see many services that are provided by State and local governments, and even Social Security by the Federal Government, being argued that it is a restraint of or a break in our trade agreements, restricting the ability of the foreign company to come in and provide those services on a private basis. This has been certainly challenged in other countries, and I am very fearful that we have set up a regimen that allows those kinds of processes to happen.

Finally, there is an area that also is quite concerning to me, and that deals with some of what I am concerned about with regard to civil liberties. I am pleased that included in the conference report was the Senate provision I authored with regard to the Customs inspection of mail, to make sure you have to get search warrants to look at small letter carrier mail.

But I am very concerned that the conference report includes a potentially egregious violation of civil liberties, in my view, and an expansion which is based on the expansion immunity for Customs officials. Quite simply, there is a blank check for Customs officers to engage in illegal behavior, particularly and including racial profiling.

I think the Presiding Officer knows I have long been an outspoken opponent of racial profiling. I introduced legislation with Senators FEINGOLD and CLINTON and Representative CONYERS in the House, the End Racial Profiling Act, which really does work against the kind of action I think we have seen documented with the Customs Service in previous measures. I think that needs to be addressed.

The President and the Attorney General have recognized that racial profiling is wrong and must be ended. The President acknowledged that in his very first State of the Union speech. I think we are taking a step backwards by providing these immu-

nity provisions on profiling for Customs officials that are included in this legislation.

Current law provides qualified immunity to Customs agents which is based on the assessment of what a reasonable officer should have done in any given situation. This means that the Customs agent is entitled to immunity from suits if they conduct an unconstitutional search based on a reasonable but mistaken conclusion that reasonable suspicion exists. This legislation expands that protection and establishes a new kind of immunity called good faith immunity.

Essentially, a victim of an unconstitutional search would not be entitled to relief unless the officer acted in bad faith, a nearly impossible standard to meet. So I think it is a significant weakening of the protections in our current law, and I find it dangerous.

In March 2000, the GAO had a report that found that African-American women were nearly nine times more likely to be subjected to x rays and customs searches than White women, and they were less than half as likely to be found carrying any kind of contraband. The whole point of why racial profiling is not only morally wrong, it is bad law enforcement, and doesn't lead to better results.

In fact, under the stewardship of Commissioner Ray Kelly of the Customs Service, they implemented significant changes in policies to stop the racial profiling that was occurring. I think we are taking a step backward here. It is just another one of the fine details that one sees in this conference report that make this not even ideal but, I believe, bad legislation.

For a whole host of reasons—the dilution of our trade adjustment authority; the issues with respect to the role of Congress, the role we rightfully should be playing in this process; the role of foreign investors in America and their ability to use trade agreements to supersede U.S. law; some of the civil liberties issues I pointed out and my concern about the use of the new trade laws to undermine public responsibility roles; the challenge to privatization that is a legitimate question that our elected officials should decide, not trade negotiators—I am led to the conclusion that we have the potential for what could be a very seriously flawed piece of legislation.

I voted against it in the Senate, and I am even more strongly opposed to the conference report. I hope I am wrong and the majority in the Senate are correct. But there are grave dangers embedded in this. We will need to monitor very carefully the application of this trade law as we go forward.

I yield the floor.

The PRESIDING OFFICER (Ms. CANTWELL). The Senator from Florida.

GRAHAM-SMITH PRESCRIPTION DRUG COMPROMISE

Mr. GRAHAM. Madam President, yesterday, July 31, the Senate voted

not to waive the Budget Act to allow consideration of the Graham-Smith prescription drug compromise. This legislation was estimated by the Congressional Budget Office to cost \$390 billion over the 10-year period, a cost which turned out to be within a few percentage points of the legislation offered by the Republicans. Although unscored by the Congressional Budget Office, the sponsors of the Republican legislation estimated that their cost was in the range of \$370 billion.

However, in spite of the fact that both the Democratic and the Republican plans were above \$300 billion, which had been provided in the 2001 Budget Act, almost 18 months out of date, in spite of that fact, we could not get the 60 votes to waive the Budget Act and allow consideration of the substance of the proposal to provide a critical additional health care benefit for America's older citizens.

Had we gotten to the proposal, what would the Graham-Smith compromise have provided? It would have provided full coverage to the 47 percent of America's seniors whose incomes were below 200 percent of poverty, approximately \$17,700 for a single person. It would have provided a mechanism for significant discounts, in the range of 15 to 25 percent, as well as a Federal subsidy on top of those discounts for all Americans. For all Americans, it would have also provided insurance against catastrophic costs, costs beyond \$3,300 of payments made by the beneficiary.

Think of this: Had we been able to get to the substance of our amendment, Americans could have had the opportunity of purchasing an insurance policy for \$25 a year that would have given them the peace of mind they would not be crippled, potentially financially devastated, by the consequences of a major health emergency, such as a heart attack or being determined to have a chronic disease such as diabetes. All seniors who fell into that category would have had all of their prescription drug costs above \$3,300 per year paid with only a modest \$10-per-prescription copayment.

This compromise would have afforded very real protection and assistance to all Medicare beneficiaries at a cost which both Republicans and Democrats had deemed to be reasonable.

One of the fundamental reasons this failed yesterday and I appear today is because at the last minute—I correct that to say, within the last hour before the vote was taken, the information on this chart was dragged from some source and reproduced on a floor chart used by one of my colleagues and in handouts which were circulated in the Chamber, which purported to show that the effect of adopting our amendment would be to impose massive new costs on the States.

It was stated that the first-year cost would be over \$5 billion, and the 10-year cost would be \$70 billion.

Madam President, I accept the fact that we have rules in the Senate and