

applicant (which other applicant has obtained tentative approval) with respect to the patent, a court enters a final decision from which no appeal (other than a petition to the Supreme Court for a writ of certiorari) has been or can be taken that the patent is invalid or not infringed (including any dismissal for lack of subject matter jurisdiction as a result of a representation of the patent owner, and any other person with the right to enforce the patent, that the patent will not be infringed by, or will not be enforced against, the product of the applicant).

“(BB) In an infringement action or a declaratory judgment action described in subitem (AA), a court signs a settlement order or consent decree that enters a final judgment and includes a finding that the patent is invalid or not infringed.

“(CC) The Secretary notifies the first applicant that a certification has been received by the Secretary from another applicant that had obtained tentative approval and was eligible as of the date of the certification to receive final approval, but for 180-day exclusivity period, stating that the 45-day period referred to in subparagraph (B)(iii) had ended without a civil action for patent infringement having been brought against such other applicant and, in addition, such other applicant had received from the patent owner (and from and any other person with the right to enforce the patent) a written representation that the patent will not be infringed by the commercial manufacture, use, offer for sale, or sale of the product at issue in the application submitted by such other applicant, or will not be enforced against the commercial manufacture, use, offer for sale, or sale of the product at issue in the application submitted by such other applicant.”

[Alternative language for (CC)—equivalent treatment to (AA) and (BB).]

“(CC) The Secretary notifies all applicants that, after the forty-five day period referred to in subparagraph (B)(iii) has expired without a civil action for patent infringement having been brought against the first applicant or against any other applicant that has obtained tentative approval, that applicant has certified to the Secretary that that applicant has received from the patent owner (and from and any other person with the right to enforce the patent) a written representation that the patent will not be infringed by the commercial manufacture, use, offer for sale, or sale of the product at issue in the application submitted by that applicant, or will not be enforced against the commercial manufacture, use, offer for sale, or sale of the product at issue in the application submitted by that applicant.”

#### THE TVPA REAUTHORIZATION

Mr. BROWNBACK. Mr. President, I am pleased to report the success of a bipartisan effort in which Senators, Members of the House, their key staff aides and a broad variety of religious and human rights groups have engaged.

This effort has produced a greatly strengthened Trafficking Victims Protection Reauthorization Act which has passed the House, and which it is my honor to bring to the Senate floor. I am pleased to note that my colleague, the distinguished Senator from New York, Mr. SCHUMER, has joined me in cosponsoring this important legislation. The act will greatly strengthen America's hand in combating the slavery issue and the women's issue of our time—the annual trafficking of as

many as 2 million women and children into sex and slave bondage. As such, this act will give needed tools to President Bush, and to all future Presidents, to take on the world's trafficking mafias and to protect the traffickers' victims. It will thus also greatly facilitate the pledge made by President Bush in his United Nations speech of September 23 to make the war against trafficking a major commitment of his administration.

But I am pleased and deeply honored to bring this bill before my colleagues for yet another reason—one that I know will resonate with every Member of this body. Both in spirit and substance, the measure now before the Senate captures the hopes and the ideals of Paul and Sheila Wellstone, without whose passion and commitment no U.S. anti-trafficking initiative against worldwide sex and slave trafficking would have been possible. It is one of my greatest sources of satisfaction and fulfillment as a member of this body to have worked with Paul and with Sheila to sponsor the Trafficking Victims Protection Act of 2000. In doing so, I and others were regularly inspired by these two friends to go the extra mile for the bill. After our first Foreign Relations Committee hearing on the bill, Paul remarked that the victims who testified on behalf of the bill had produced his most moving experience as a Senator. This says much about the man Paul was, and about the manner in which his and Sheila's priorities were always directed on behalf of abused, vulnerable, and powerless victims.

We honor Paul and Sheila today by taking up this bill. As pleased as they would be by that gesture, it would be a much more meaningful tribute if we are able to pass the Trafficking Victims Protection Reauthorization Act, for there are a number of vital, strengthening provisions in the act that will greatly improve the fight against trafficking.

First, the Director of the State Department Office to Combat and Monitor Trafficking in Persons has been raised to ambassadorial rank. This step will elevate the status of the office precisely as it will benefit its present incumbent. John Miller, a former House Member known to many of us, is an able, respected, committed, and moral man who is now the Federal Government's chief antislavery and antitrafficking official. He has served as head of the TIP Office with great effectiveness and skill, and I am confident that, as Ambassador Miller, he will continue to do so.

Next, the reauthorization act resolves one of the original act's greatest operational failings by ensuring that “Tier II” designations—given to countries that neither satisfy the act's high standards for anti-trafficking performance nor clearly merit the act's automatic sanctions—will not become an overbroad catchall category. Under the act, countries on the cusp of Tier III

designations will be placed in a Tier II Special Watch List category and their performance in eliminating trafficking will be subject to special scrutiny, and the issuance of a special February 1 progress report and designation evaluation. Thus, the Special Watch List category will maintain strong pressure on countries that may “almost but not quite” merit a sanctions-bearing Tier III designation, and will permit clear differentiation between those countries and others placed on Tier II because they have not met the very high standards required for Tier I designations.

Three points should be made in connection with the act's Special Watch List category. First, countries otherwise meriting Tier III designation but placed on the Tier II Special Watch List because they have made section (e)(3)(A)(iii)(III) “commitments . . . to take additional future steps over the next year” should only avoid Tier III designation under extraordinary circumstances, and only where they are engaged in implementing important and curative steps likely to be rapidly completed. Next, the provisions of section (e)(3)(A)(iii)(II) that authorize Special Watch List treatment of countries that have failed to engage in increased efforts to limit trafficking, prosecute traffickers and protect trafficking victims should not be construed to automatically bar Tier II designations when such efforts have not been made. Finally, to address a matter of legitimate concern to the State Department, the act's mandate that special February 1 reports are to be issued for all Special Watch List countries needs to be understood in terms of our intention that only countries on the Tier II-Tier III cusp are to be the subjects of full and complete reports. Finally, as an overall matter, it should be made clear that failure to be placed on the Tier II Special Watch List will not bar a country from being placed on Tier II in the following year.

A third major category of change established by the act involves the establishment of additional “minimum standards” criteria for determining appropriate tier designations. First, the reauthorization makes clear that countries may not escape more severe tier designations if they fail to keep meaningful records of what they have done to investigate, prosecute, convict and otherwise monitor their performance in the war against trafficking. Next, the reauthorization establishes an “appreciable progress” standard evaluating a country's performance—a standard not intended to exculpate countries still significantly complicit in trafficking activities, but to ensure that countries failing to make measurable progress on a year-to-year basis will be negatively affected. In other words, the reauthorization establishes a bottom-line “performance standard” to supplement the original act's “effort standards.” Next, and critically, the reauthorization adds a standard based

on the percentage of noncitizen trafficking victims. This provision was added to permit the Trafficking Office to employ critical and needed standards to evaluate the antitrafficking performance of countries that have legitimized prostitution. Simply put, this provision both allows and mandates the Trafficking Office to cut through dubious claims by legalizing countries that they are providing meaningful protections to their so-called "sex workers."

A final point with regard to the act's minimum standards criteria for determining countries' tier status: It is the clear intent of the Congress, and there should be no mistake about this, that compliance with one or a few of the criteria does not, must not, lead to automatic designation as a Tier I country. Likewise, compliance with one or a few of the criteria shall not, must not, in and of itself shield countries from Tier III designation. The designation process is intended to be one of judgment and balance; and is not formulaic except to the intent of creating a presumption that Tier I status should only be granted to countries that comply with all of the minimum standards criteria. Countries that deliberately and grossly violate "only some" of the act's minimum standards criteria may be designated as Tier III countries if this be the judgment of the Trafficking Office—a judgment that should be exercised where there are gross and flagrant failures to comply with other minimum standards criteria. And, as noted, compliance with most of the statute's minimum standards criteria, combined with even modes noncompliance with a remaining few, is not intended to produce automatic Tier I designations.

Finally, a few words are in order regarding the Senior Policy Operating Group created by this spring's Omnibus Appropriations Act, which today's reauthorization bill both incorporates and strengthens. While what I am about to say should be clear from the act's language, and will be made explicit in the omnibus appropriations bill which the Senate was unfortunately not able to enact today. While the omnibus bill will take care of some of the issues related to the Senior Policy Operating Group with explicit statutory language, I nonetheless believe it important to make Congress's unmistakable intention clear in today's floor statement.

First, it should be clear that Congress established the Senior Policy Operating Group as the body it intended to coordinate all of the Government's antitrafficking grants, policies and grant policies. The Senior Policy Operating Group is comprised of senior political appointees of each of the agencies with trafficking policy responsibilities, and is thus perfectly structured to perform a vital function of monitoring government-wide policy consistency. As presently constituted, the Senior Policy Operating Group is made

up of such members as TIP Office Director John Miller, Deputy HHS Secretary Claude Allen, Assistant Attorney General for Legal Policy Dan Bryant, Assistant AID Administrator for Eastern Europe and Russia Kent Hill. The committee meets on a regular basis and has produced an extraordinary consensus, government-wide grant policy directive. Thus, the Senior Policy Operating Group, including its chairman, John Miller, can and must perform the function intended for it by Congress: to be the sole and accountable body responsible for coordinating Federal anti-trafficking policies, grants and grant policies. Having said this, it should be noted that the coordinating responsibilities of the Senior Policy Operating Group are not intended to supercede the decision-making authority of the constituent members of the Task Force to Monitor and Combat Trafficking in Persons, to whom operating group members continue to report.

Finally, as should be clear from the language of the act, but as is also worth unmistakably establishing, Congress did not intend that the designation of grants and/or policies as being for "public health" or like purposes should in any way remove such policies or grants from Senior Policy Operating Group coordinating jurisdiction when those policies or grants deal with the activities of traffickers, brothel owners, pimps or the women and children from whose activities they profit. It is vital for the Federal Government to make consistent and otherwise harmonize its activities to stop the spread of communicable disease and AIDS and its activities designed to prosecute traffickers and eliminate trafficking. Both are vital objectives, and as recent letters from the Moscow Duma have clearly shown, such harmonization is imperatively pressing. Some persons may believe that forming partnerships with traffickers, pimps, and brothel owners in order to ensure use of clean needles and condoms, and doing so in a manner which legitimizes the abusers and enslavers of women and children and shields them from prosecution, is the way to go. They are wrong. Others may believe that public health measures to protect prostitutes from AIDS always stand in the way of prosecuting the traffickers, pimps and brothel owners who exploit them. They too are wrong. What Congress intends is that a Senior Policy Operating Group comprised of political appointees of all involved agencies is the body responsible for harmonizing the above objectives into a single set of government-wide policies.

All this said, I reiterate my belief that the memory and spirit of Paul and Sheila Wellstone are alive in the bill before us, as are the spirits of such activists as the great English Parliamentarian and evangelist William Wilberforce, and the abolitionist leaders of my home State of Kansas who led the 19th century war against the chattel

enslavement of African men and women. If we do it right, the Trafficking Victims Protection Act will be seen by generations to come to have met the high standards of William Wilberforce and the Free Kansas activists. If we do it right, we will have created a true monument to the memory of Paul and Sheila Wellstone. This act makes this possible. I urge my colleagues to pass it.

#### CONSOLIDATED APPROPRIATIONS ACT, 2004

Mr. NICKLES. Mr. President, I take this opportunity to provide an initial report on the budgetary effect of the conference report to accompany H.R. 2673, the Consolidated Appropriations Act for 2004, otherwise referred to as the omnibus appropriation bill.

While I will share scoring on these individual bills compared to each subcommittee's 302(b) allocation during later debate, allow me to summarize where this bill stands relative to the 2004 budget resolution as it applies in the Senate.

Combined with the other six appropriation bills already enacted for 2004 as well as the 2004 Iraq supplemental, this conference report would set total non-emergency discretionary funding for 2004 at \$791.023 billion in budget authority and \$862.889 billion in outlays. Because it does not include sufficient offsets to pay for the additional spending included within, this conference report exceeds the discretionary allocations and caps provided by the budget resolution (\$784.675 billion in budget authority and \$861.084 billion in outlays) by \$6.348 in budget authority and \$1.805 billion in outlays. Therefore, Budget Act points of order (under sections 302(f) and 311) and a budget resolution (section 405(b)) point of order apply against the bill. Other budget resolution points of order apply as well, but they are of a more incidental nature.

Mr. President, I ask unanimous consent that a table displaying the budget Committee scoring of the bill be printed in the RECORD.

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

#### 2004 APPROPRIATIONS INCLUDING H.R. 2673, THE CONSOLIDATED APPROPRIATIONS ACT, 2004—SPENDING COMPARISONS—CONFERENCE REPORT

[Fiscal year 2004, \$ millions]

	Budget authority	Outlays
Discretionary .....	791,023	862,889
Budget Resolution allocation/cap .....	784,675	861,084
Difference .....	6,348	1,805

Note: Totals adjusted for consistency with scorekeeping conventions. Prepared by SBC Majority Staff, 12/9/2003.

#### AMENDMENT TO S. 671, THE MISCELLANEOUS TRADE & TECHNICAL CORRECTIONS ACT OF 2003

Mr. SPECTER. Mr. President, today I seek recognition to discuss an amendment to S. 671, the Miscellaneous Trade