AMENDMENT NO. 1400

(Purpose: Modifies definition of research in regards to the Next Generation Lighting Initiative)

On page 305, line 23, strike the word ''basic''.

AMENDMENT NO. 1401

(Purpose: Makes technical change to Sec. 111)

On page 37, line 23, strike ''year. Where'' and insert ''year, except that where''.

Mr. DOMENICI. The amendments have been cleared on both sides. These are clarifying and technical amendments, agreed to by Senator BINGAMAN and myself as the managers of the bill. I request these amendments not be counted against any reservations on the finite list of amendments.

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

Is there further debate on the amendments? Without objection, the amendments are agreed to en bloc.

The amendments were agreed to.

Mr. DOMENICI. Mr. President, I move to reconsider the vote.

Mr. BINGAMAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOMENICI. I thank the Chair and yield the floor.

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

SINGAPORE AND CHILE TRADE AGREEMENT

Mrs. FEINSTEIN. Mr. President, I come to the floor to make some comments on the Singapore and Chile trade agreements. Let me begin by saying I think it is really a shame that an otherwise good trade agreement with both Singapore and Chile, which I would otherwise support, I cannot support because immigration provisions were added to the bill, I believe contrary to the plenary powers of this Congress.

But before I discuss the trade agreement, I would like to say at the outset that, as I see it, the fast-track process is a real problem. Under fast-track rules, there is limited debate, expedited procedures, deadlines, and no amendments. Congress can only vote up or down.

While the fast-track procedures provide for consultations with Congress, there is really no guarantee that the President or the U.S. Trade Representative will ultimately respect the opinions and advice of Senators and House Members. In other words, we lose all ability to influence the content of a trade agreement negotiated under the fast-track procedures.

For me, from California, a place that has 36 million people and is either the fifth or sixth largest economic engine on Earth, trade agreements have major implications.

I have always had a relationship with the USTR that apparently I do not have with this USTR, because of the size of California economically, and the interests internationally, that at least I be consulted in a meaningful way. In this case, consultation, as I understand it, constituted staff briefings.

I wish to say, my staff does not cast a vote. I cast the vote. So if anyone is going to consult with the senior Senator from California, it ought to be with the senior Senator from California. None of those consultations took place.

Not only that, I have sat on the Immigration Subcommittee for 10 years now and you, Mr. President, are the new chair of that subcommittee. To the best of my knowledge, that subcommittee as a whole—maybe individual members have been able to have an impact, but as a whole, the subcommittee has not been able to have an impact. So any hearing we might have is de minimis in impact because the decision is already made. I am told by my staff that by the time any meaningful briefing took place, the agreement had been signed and sent over here. That is not the way to do business with somebody like me, who has 36 million people, a huge economy, and all kinds of issues in virtually any trade agreement.

Fast track really provides a disadvantage for the people of California. When I was lobbied to vote yes on fast track, I said to virtually every industry in California: Do you realize that if a President or a USTR negotiates an agreement, they can negotiate an agreement and let California suffer all kinds of repercussions and there is nothing your elected representative can do about it? That is fast track. When you have the fifth or sixth largest economy on Earth, it means a great deal.

But, having said that, let me go to the immigration provisions of this free-trade agreement. The administration again insists it has had a number of discussions on these. Perhaps, again, they have with certain Members. They certainly have not with me. But immigration policy has long been well within the purview of Congress, and I believe it should stay there. Indeed, the Constitution gives Congress this power, and I do not think it is wise to give up that power to another branch of Government in this trade agreement or in any other.

These agreements, as I read them, would create sweeping and permanent new categories of visas, regardless of whether Congress would deem these new entries valid or beneficial to our Nation's economy and welfare. Even more important, regardless of whether Congress might want to change these new categories at some later date, we cannot do it.

Specifically, I oppose these agreements because they would create entirely new categories of nonimmigrant visas for free-trade professionals, thus permitting the admission of up to 5,400 professionals from Singapore and up to 1,400 professionals from Chile each year.

They would permit an indefinite extension of these visas.

They would require the entry of spouses and children accompanying or following to join these professionals without limitation. So any number of family members can come in.

They would require, without numerical limit, the entry of business persons under categories that parallel three other current visa categories. In other words, require their entry under other categories, the B–1 business visitor visa, the E–1 treaty trader or investor visa, and the L–1 intracompany transfer visa.

These agreements would permit but not require the United States to deny the entry of a free-trade professional if his or her entry would adversely affect the settlement of a labor dispute.

They would require that the United States submit disputes about whether it should grant certain individuals entry to an international tribunal. So if there was a pattern in our entry practice, we would have to submit that to an international tribunal, and a international tribunal would decide a sovereign right of the United States of America. That, to me, is unacceptable.

These agreements are troubling in their permanence, their inflexibility, and their lack of congressional participation or oversight. The fact is, current law already permits foreign nationals to do all the things specified under the trade agreement. In fact, several thousand nationals from Chile and Singapore enter the United States each year. To the extent that changes need to be made, Congress can choose to make them.

So this raises the question, Why, then, do these provisions need to be in a trade agreement? Perhaps the answer can be found by taking a closer look at these trade agreements, and more specifically at how exactly the agreements differ from current law.

There are no numerical limits for any of the visa categories except the new H–1B(1) visa. There are no labor certifications under this bill. This is very significant. The United States can impose no prior approval procedures, petitions, labor certification tests, or other procedures of similar effect.

Under the visitor visa provisions:

> A party shall normally accept an oral declaration as to the principal place of business and the actual place of accrual of profits.

Where the party requires further proof, a letter from the employer attesting to these matters would serve as sufficient proof.

These are all contained in the trade agreements. Thus, the facts speak for themselves.

But behind the abstraction, the theories, and the statistics of the free-trade agreements we are considering today, there is one inescapable factor, and that is the working men and women of this country and what is going to happen to them.

As I said in the Judiciary Committee, I am not the Senator from Chile or Singapore. I am the Senator from California. The people of my State are working in produce-rich fields. They are building new technologies for tomorrow. They are fiber optic engineers, computer programers, and physical therapists tending to the needs of others, all of whom are going to be affected by the immigration provisions of this bill.

I know of engineers who have been out of work for more than a year who have sent out hundreds of resumes and are still looking for a job—machinists, carpenters, and engineers by the tens of thousands looking for work in my State. Let me give you a couple of cases.

Jenlih Hsieh is a 50-year-old U.S. citizen from Taiwan with a master's degree and more than 12 years of experience in Unix systems administration, filed a complaint with the Equal Employment Opportunity Commission, the U.S. Department of Justice and in Santa Clara County Superior Court. Hsieh alleges that SwitchOn Networks of Milpitas fired him after 6 months and replaced him with an H–1B worker. According to the complaint, the H–1B worker was earning $30,000 less a year, had only a bachelor's degree and much less experience.

Why is this important? It is important because this bill provides that the Labor Department cannot do an investigation to see if the complaint is correct. The Labor Department cannot make a certification that there is no replacement of an American worker. If the administration chose to add this, the message it should send to each and every one of us is the administration fully contemplates that American workers are going to be replaced by the immigration provisions of this treaty and does not want their Department of Labor to be able to check that out and keep records to see if these are, in fact, sustainable complaints.

Bob Simoni, 39, lost his consulting job at Toshiba American Electronics Components in Irvine in March 2002. Simoni, who has an MBA from the University of California-Los Angeles, had worked at Toshiba as a contract engineer for 2 years installing software. He came to work in February to find everyone packing their boxes. Toshiba was outsourcing the division to an India-based technology services company, Infosys, which employs H–1B workers in the United States. Simoni said Toshiba asked him to stay for 3 weeks to do ''knowledge transfer'' with Infosys employee Rakesh Gollapalli, who told him he had an H–1B visa. It hurt to be training someone who for all practical purposes was replacing him, and it felt wrong, Simoni said.

You and I, Mr. President, are allowing this to happen with the H–1B visa being so extensively used in the United States, and we need to change that.

The Boston Globe published an article June 3, 2003 that also reveals the fear many American workers have of losing their positions to H–1B and L–1 temporary workers. The story of John Malloy illustrates the experience of many Americans in the fields of technology, information, and engineering:

> Unix system administrator John Malloy used to work for NASA, but hasn't had a steady job in over 2 years. ''I'm 40 years old, and my life is ruined,'' he said. Malloy said his last job was at a local healthcare company, where he helped train two workers from India. He said the Indian workers are still on the job, but he was laid off. Mallory told the reporter: ''I'm an open, fair-minded world citizen who loves everybody . . . but I'm really starting to get frustrated.''

This trend prompted The San Francisco Chronicle to publish articles on the topic on both May 25 and June 2, 2003. The articles describe the confusion surrounding the use of L–1 visas, citing confusion among companies, labor lawyers, and government agencies as to what type of use of the visas is legal. They also show increasing hostility from American high-tech workers surrounding L–1 visas.

> One example is the case of the dozen computer programmers who were laid off from Siemens Information and Communication Networks in Lake Mary FL, and replaced with foreign workers using the L–1 program. Michael Emmons left Siemens last fall just before his job there was to end. Emmons had worked as a contract computer programmer for the company for 6 years, first in San Jose, CA, and then in Florida. He said, ''This is what they call outsourcing. I call it insourcing. Import foreign workers, mandate your American workers to train them, they lay off your Americans.''

This is what we are allowing to happen. My view is that it is not a problem during boom time because there are enough jobs for all. But what happens when we have these rich programs is that when tough times come, employers succumb to the lure of being able to save $30,000 or $40,000 a worker. We are passing this treaty in the middle of huge unemployment in our country. We are creating a sinecure for these workers from other countries. I think that is a mistaken priority.

Last week, I joined with my colleagues on the Judiciary Committee, Senators SESSIONS of Alabama and GRAHAM of South Carolina, urging the President and the U.S. Trade Representative to withdraw the legislation implementing the Free Trade Agreements with Chile and Singapore.

We also asked that the administration renegotiate or reconfigure the trade agreements without the immigration provisions and re-transmit a new version of the implementing legislation to Congress.

I am extremely trouble that despite these concerns, which were expressed by several members of both chambers of Congress, the President sent Congress implementing legislation that would effectively expand the temporary admissions program without the express consent to do so.

Let me say this: I very much doubt that the USTR is any kind of an expert on immigration. I must tell you that I have heard rumors that this was to be the precedent for some 50 other treaties to come after it. I think if this Senate and the House were to allow this to happen, we don't deserve to hold these jobs.

I don't believe that this Senate should relinquish its plenary power over immigration to any administration nor to any country that is party to a trade agreement. Trade agreements are simply not the appropriate vehicle for enacting immigration law. Such agreements are meant to have a permanent impact. They cannot be amended or modified by subsequent legislation should Congress need to alter these provisions. I am not saying we should capriciously alter these provisions. I am saying that if the economic conditions change, the United States needs to respond to those economic changes rather than to be frozen into a pattern of dozens of agreements which freeze for all time certain things that may be proved to be inimical to our national interests.

A recent commentary by Paul Magnusson in BusinessWeek asked the question I think we should all ask ourselves: ''Is a stealth immigration policy smart?'' Magnusson wrote:

> Complex trade agreements, which increasingly affect the entire U.S. economy and require changes in U.S. laws and social policies, should not be considered in secret, or in isolation from all other legislation.

That is exactly what happened with this agreement. The result of this kind of process is going to be an unwieldy patchwork of conflicting permanent law that will encumber an already overburdened immigration system, while exacerbating the growing backlogs of people already seeking to enter the United States.

Such legislation will ultimately tie our hands when the national interest demands an alteration in the immigration provisions on which we are about to vote. Establishing separate policies and laws for different countries makes the day-to-day implementation more complicated and susceptible to error and abuse. And that is exactly what this does. Every country will have its own set of immigration laws, which can last forever under the terms of the treaty. How can any INS ever administer that?

I have other concerns with the Trade Representative's decision to include so prescriptively the immigration provisions at hand. The Office of the U.S. Trade Representative has not demonstrated the need for negotiating these temporary entry provisions, nor does the office provide any evidence that current immigration law would be a barrier to meeting the United States obligation in furthering trade and goods and services. In fact, current law is sufficient to accommodate these obligations, as evidenced by the millions of temporary workers who enter the United States each year.

Just listen to the numbers: In just 2002, 4,376,935 foreign nationals entered

under the B–1 temporary business visitor visa; 171,368 entered under the E treaty-trader visa; and another 313,699 entered under the L intracompany transfer visa; and an additional 370,490 entered the United States under the H–1B professional visa.

If you add all of these up, we have over 5 million people just last year coming in under these temporary visas, of which probably half become permanent. And that is in addition to the regular immigration program.

In all, the United States admitted a total of 5,232,492 foreign nationals under the current temporary visa categories. Of these numbers, 40,461 temporary business professionals entered from Chile and 29,458 entered from Singapore.

What is my point? My point is, there already is enough room to absorb under present visa categories. Over 40,000 from Chile and 30,000 from Singapore came in last year alone under these visa categories. Yet the USTR saw fit to say: It isn't enough, Senate and House. We are going to impose another permanent program.

Free-trade visas should not be indefinitely renewable, and I am not going to vote for one that is. Under the trade agreements, the visas for temporary businesspersons entering under all the categories in the agreement are indefinitely renewable. So this is what transforms what, on paper, is a temporary visa-entry program into a permanent visa-entry program.

While the trade agreements require temporary professionals to come in under the overall cap imposed on the H–1B visa, each visa holder would be permitted to remain in the United States for an indefinite period of time. That means permanent. Thus, employers could renew their employees' visas each and every year under the agreement with no limits, while also bringing in new entrants to fill up the annual numerical limits for new visas. So the thing spirals and expands exponentially. This effectively would obliterate Congress' ability to limit the duration of such visas even when it is in the national interest to do so.

Thirdly, the agreement provides insufficient protection for workers, both domestic and foreign. Today, in our country, 15.3 million people are unemployed or underemployed in part-time jobs out of economic necessity or they have given up looking for work. Of that number, 9.4 million are considered officially unemployed.

These unemployment figures are the highest in a decade, and yet we are doing this program now. In California, 1.17 million people are out of work. In the San Francisco Bay area, the technology boom and subsequent bust has created a huge pool of unemployed skilled labor. In San Jose alone, 47,160 people—or nearly 10 percent of the population—are looking for jobs.

More and more out-of-work technology workers are filing complaints with the Government or going to court to protest perceived abuses of temporary visa programs. And yet the administration has seen fit to push through a free-trade agreement with immigration provisions of which very few of us could predict the consequences.

Although employers are, by and large, good actors, the provisions in the implementing legislation would expose many more workers—and don't forget this—to displacement, to wage exploitation, and to other forms of abuse. These provisions, as drafted in the trade agreement, would increase the number of temporary foreign workers exposed to exploitation and leave more to face an uncertain future. By making the visas indefinitely extendable, albeit 1 year at a time, these workers will remain in limbo with year-to-year extensions of their stay.

Despite these concerns, the USTR has seen fit to push through a free-trade agreement with immigration provisions that significantly weaken the U.S. and temporary foreign worker protections under current immigration law in several ways.

First, the provisions would expand the types of occupations currently covered under H–1B to include: management consultants, disaster relief claims adjusters, physical therapists, and agricultural managers—professions that do not require a bachelor's degree. Nor would employers be required to demonstrate a shortage of workers in these professions before hiring foreign nationals under the agreement. This opens the door to the inclusion of new occupations in the trade agreement that are not currently included in the H–1B program.

In a sense, what this means is, it is a special program through which you can replace an American worker, pay less for that worker, and keep that worker so that worker isn't going to complain because if he or she does, the visa is not going to get renewed the next year. And if that worker succumbs to any kind of exploitation, his family comes over, her family comes over, and they have a lifetime sinecure, not only with the company but within the United States. No American worker has that.

The current H–1B program defines a specialty occupation as one that requires the application—and this is important—of a body of highly specialized knowledge. That is there for one reason, to ensure employers don't abuse the program to undercut American workers in occupations where there is no skill shortage. What this agreement does is delete the word ''highly.'' So that would lower the standard for admission by broadening the definition of specialty occupation to include any job that requires the application ''of a body of specialized knowledge.''

It is a significant weakening to allow less specialized workers to come in and, I believe, to replace American workers at less money.

Neither the free-trade agreement nor the implementing legislation require the employer to attest and the Department of Labor to certify that the employer has not laid off a U.S. worker either 90 days before or after hiring the foreign worker before the foreign national is permitted to enter the United States.

Why do you suppose that is in there? That is in there so any American employer that wants to can keep an American worker until they can replace them with a foreign worker at less money and then do so. Because those simple precautions that made this more difficult to do are gone. Nobody should believe, when they vote for this legislation, that it is not a foreign-worker replacement program. I have just given the documentation that indicates exactly how it is going to be done.

Once you eliminate the labor certification, you eliminate the requirement that the Department of Labor makes an investigation to verify the employer's attestation is accurate and truthful before permitting the entry of a foreign national. Labor certifications are expressly prohibited under this trade agreement. Again, it is the foreign worker employment program in the United States displacing American workers, and this is how to do it.

Moreover, the implementing provisions limit the authority of the Labor Department by providing that it may review attestations only for completeness and only for inaccuracies. So the screw is being tightened on the Labor Department. You can't investigate, you can't certify, and you can only review the application to see whether it is complete and accurate. To add insult to injury, you have to provide the certification mandatorily within 7 days. So neither the trade agreement nor the implementing language provides the Department of Labor authority to initiate investigations or conduct spot checks at worksites to uncover instances of U.S. worker displacement and other labor violations pertaining to the entry of foreign workers. It is really bad.

This is troublesome, given that in the last 2 fiscal years the Department of Labor investigated 166 businesses with H–1B violations. As a result of those investigations, H–1B employers were required to pay more than $5 million in back pay awards to 678 H–1B workers. That is proof of what is going on. There is proof that companies do this. This is not new thought. I am not reaching to find a reason. This is happening. And in a tough economy, it is going to happen more. Those of us who are elected by workers to protect them fail in our obligation to do so.

While the administration has included a cap on the number of professionals entering under the H–1B(1) category, there are no such limitations on the number of temporary workers entering on other visa categories, including the B–1 visitor visa, the E-treaty/investor visa, and the L–1 intracompany visa.

None of these categories are numerically limited under the agreement. Once enacted, Congress may not subsequently impose caps on these categories for nationals entering pursuant to this agreement.

The trade agreement expressly prohibits the imposition of labor certification tests or other similar conditions on temporary workers entering from Chile and Singapore. I am amazed the Governments of Chile and Singapore want this. I am amazed they want their people to come in and face exploitation in the United States.

While Congress could certainly correct some aspects of the law implementing the trade agreements, it would be limited in what it could do by the underlying trade agreement itself. For example, if Congress decided to better protect U.S. businesses and workers by amending the laws governing the L–1 visa category to require a labor certification or a numerical limit before a foreign worker from Chile or Singapore could enter the United States, it would not be able to do so. Both are plausible options for dealing with perceived abuses in the visa category. However, both trade agreements provide ''neither party may, A, as a condition for temporary entry under paragraph 1, require labor certifications or other procedures of similar effect; or, B, impose or maintain any numerical restriction relating to temporary entry under paragraph 1.''

Again, there is something a little insidious in this, in the formulation of a new program with these specific specifications in view of the fact of the more than 50,000 Chilean and Singaporean workers coming in in our other business visitor visa categories. So the significance of this is creating a new program and making it permanent and taking out any meaningful labor certification. I figure every one of these people can replace an American worker for less money. Otherwise, why do this?

These provisions significantly limit congressional authority, A, to establish labor protections when warranted and, B, to limit the number of visas that could be issued to nationals in Chile and Singapore, should we deem it is in the national interest.

I don't think we should relinquish this constitutional authority. It is really for this reason, on behalf of the millions of Americans who are unemployed and underemployed and particularly in these exact categories, I cannot tell you the workers trained with graduate degrees being replaced, with families. And they can't find jobs. And we fall right into the trap and produce an agreement that is going to say: Labor Department, the only thing you can check is the accuracy of an application for name, address, and phone number, and whether it is all filled in, and then you must certify it within 7 days. And John Smith, who has worked in the company for 10 years, has a graduate degree, gets to train this worker, who is paid $30,000 less—and I gave you actual cases where this is happening—and the worker goes home to a mortgage on a home and a car and three kids in school.

Is this what we are elected to do? I am not going to do it. If I could filibuster, I would filibuster it. I am really angry about it because it is sleight of hand. There was no meaningful consultation. Mr. Zoellick never picked up the phone and called me—or his No. 2, 3, 4, or 5—and said: This is what we are thinking of doing. I know you in California have the highest unemployment in 10 years and there has been a high-tech bubble burst. I know a lot of your professionals are out on the street. What do you think of this? I would say: No way, Jose.

So I am mad and I hope every working man and woman in this country is mad, too. I am mad because—Mr. President, you know, as you were in committee—we asked to send it back. We were refused. And there is no delay. Bingo, it is out on the floor. It is going to be ramrodded through this body.

Well, one thing I have learned is that the working men and women of this country are not stupid. Of all these visitor visas, we have 5 million granted in just a year. People are going to catch on. The word is going to get around. I very much regret that the administration won't eliminate the immigration section. This would be a perfectly good treaty without them. Five million people came in last year under the H–1B visas—5 million. Plenty of room. We don't need to create a new permanent program, tighten the housing supply, tighten the school supply, bring in all these families, and not be able to take care of our own.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

A CRISIS IN EDUCATION

Mr. JEFFORDS. First, I commend my good friend from California for her excellent statement and revealing to the Nation the seriousness we have in the ability to provide jobs with qualified workers. Just this past decade, we brought 4 million workers into this country to take the high-skilled jobs of our Nation because we could not provide them from our own school systems. Yet we have thousands and thousands of unemployed and unskilled workers who have managed to get through our school systems without the necessary skills.

We have a crisis in this Nation, and we have had it for years, and that is in education. This administration is totally ignoring the fact that where we should be putting the funds is in preventing this necessity of having to bring in workers from foreign nations, whether it be from Europe or elsewhere. Most of them come from Asia now. Millions and millions are coming in. Yet our own young people in this country do not have the skills because their school systems are failing. And we are cutting back and back on the funding for education in this Nation.

This administration recognizes we have a problem and realizes our children need help; we have the Leave No Child Behind Program. But we have no funding to prevent the terrible situation that was just outlined by the Senator from California. I praise her for that. But let's wake up and do something about it rather than bringing in millions and millions of workers from Asia to take the jobs that our young people ought to have the skills to take.

MERCURY POLLUTION

Mr. JEFFORDS. Mr. President, I will spend a few minutes expressing my concerns about a serious public health crisis that this country faces due to mercury pollution.

Perhaps some of you have heard of the small fishing community of Minamata Bay in Japan. If you know this village, you know also that it was nearly devastated by mercury pollution.

Over 70 years ago, a chemical plant began dumping mercury waste into that bay. For the next 30 years, local citizens who depended heavily on the bay for commerce and daily sustenance saw strange and debilitating health problems emerge.

At first, those eating fish out of the bay began experiencing headaches, numbness, tremors, blurred vision, hearing loss, speech problems, spasms, and loss of consciousness. As fish consumption continued, more people became sick.

Plus, pets started becoming violent and birds fell from the sky. Naturally, the public's panic grew.

Then, a generation of children was born with shriveled limbs and severe physical deformities. The woman in this photograph is one of the survivors of what was called Minamata Disease.

In all, over nine hundred people died and thousands more were crippled by the poisoning. The Japanese government, which discovered the cause of these illnesses as early as 1956, hid the truth from the ailing public and refused to halt the industrial pollution. The dumping eventually stopped in 1968.

In other words, knowing this mercury pollution was deadly, the Japanese government allowed it to continue for another 12 years.

Surely such abandonment of the public's well-being would not happen today in our great country.

Surely our government would never delay protections from mercury pollution for a decade, while allowing industry to neglect its responsibilities.

Sadly, I am afraid this is exactly what is happening in our country today—over half a century after the lessons of Minamata Bay.

Fortunately, we are not faced with the same concentration of mercury pollution as that Japanese fishing village