

Chad always had a strong interest in the military. He spent more than 3 years as a member of the Cape Henlopen High School Junior ROTC program. His participation in that program enabled me to meet him last year and talk about his interest in serving the United States of America. His interest also came from his grandfather, a Korean War veteran, who earned the Purple Heart. That medal will be buried with Richard Chad Clifton.

After graduating from high school, Chad underwent basic training at Paris Island, SC before being stationed at Camp Pendleton, CA. Chad became a member of the 2nd Battalion, 5th Marine Regiment. He died in combat in the Al Anbar province in western Iraq.

Chad was a remarkable and well-respected young soldier. His friends and family remember him as an officer and gentleman with an acid wit and an appreciation for music and art. He enjoyed writing, listening to heavy metal, and watching television sitcom reruns. As his mother remembers, "He was pure potential with a good heart."

Today, we commemorate Chad, celebrate his life, and offer his family our support and our deepest sympathy on their tragic loss.

#### KYOTO PROTOCOL AND CLIMATE CHANGE

Mr. JEFFORDS. Mr. President, I rise today to acknowledge that the international global warming pact known as the Kyoto Protocol has entered into force. This happens only 7 years after it was negotiated.

The Protocol imposes limits on emissions of greenhouse gases that scientists blame for increasing world temperatures. As my colleagues know, President Bush decided to abandon the Protocol and any serious international negotiations on the matter in March 2001. That unilateral abandonment leaves the world to wonder why the Nation that contributes the most greenhouse gas emissions to the world atmosphere refuses to accept responsibility for these emissions and refuses to cooperate with the international community to curb the global warming threat.

I assume it was no coincidence that the Committee on Environment and Public Works, on which I serve as ranking member, was supposed to consider legislation today called the Clear Skies Act. If passed, this legislation will create anything but clear skies.

The bill rolls back steady progress under the Clean Air Act and actually would increase this country's greenhouse gas emissions more than no legislation. The chairman of the committee has decided to take more time to craft this measure, due in no small part to the fact that the bill lacks the support in committee to be approved and reported to the Senate today. I commend the chairman for making that decision today—the same day the Kyoto Protocol has taken effect—to

more carefully consider this important measure.

In the coming weeks as we discuss this legislation, I hope that we can reach agreement on a bill that truly does clear our skies. To me, that means a bill that not only improves upon the Clean Air Act, but that also addresses our Nation's greenhouse gas emissions.

Yesterday, on the eve of the Kyoto Protocol entering into force, a White House spokesman stated that the United States has made an unprecedented commitment to reduce the growth of greenhouse gas emissions in a way that continues to grow our economy. Mr. President, I have seen no evidence of this commitment.

For my part, I have already introduced the Clean Power Act of 2005. I also intend to introduce the Renewable Portfolio Standard Act of 2005 and the Electric Reliability Security Act of 2005, two bills designed to use our resources more efficiently.

If President Bush signed into law a measure that caps or truly required reductions in the emissions of greenhouse gases, evidence of a real commitment would be apparent, not just to me but to the entire world. I call upon my Senate and House colleagues to mark the occasion of the Kyoto Protocol's entering into force by embarking upon serious work to craft legislation that imposes credible deadlines to achieve caps and significant reductions to our Nation's sizeable and growing contribution of greenhouse gases to the atmosphere.

#### THE DOHA DECLARATION AND THE TRADE PROMOTION AUTHORITY ACT OF 2002

Mr. KENNEDY. Mr. President, the Trade Promotion Authority Act of 2002 gives the President and the U.S. Trade Representative the power to negotiate bilateral and multilateral trade agreements that must be given expedited consideration by Congress. The Doha Declaration was adopted by the World Trade Organization at the Fourth Ministerial Conference at Doha, Qatar, on November 14, 2001, and addresses the need for access to medicines for all and how to reconcile that need with intellectual property protections.

When the Trade Act came to the floor of the Senate, Senator FEINSTEIN and I offered an amendment to the section on the negotiating objectives of the United States in trade negotiations. Our amendment made it a principal objective of the United States to respect the Doha Declaration in all trade negotiations. Regrettably, in several trade agreements since then, administration has refused to fulfill this obligation.

The basic issue was the interpretation of the so-called TRIPS agreement on intellectual property protections such as patents and copyright. The Doha Declaration specifically states that the TRIPS agreement "does not and should not prevent members from

taking measures to protect public health." It recognized the need to interpret and implement TRIPS in a way that supports a nation's "right to protect public health and, in particular, to promote access to medicines for all."

The Doha Declaration went on to specify that "[e]ach member country has the right to grant compulsory licenses and the freedom to determine the grounds upon which such licenses are granted." It stated that each member nation is "free to establish its own regime" on whether a sale of a patented product by the patent owner or licensee exhausts the patent, so that it cannot be asserted against subsequent purchasers or users of the product.

The Doha Declaration recognized a basic principle—poor people in the developing nations often cannot afford many patented drugs, even though the drugs are their only hope for surviving AIDS and other serious and life-threatening diseases.

The Doha Declaration is clearly intended to prevent patents from blocking access to life-saving drugs. Developing nations obviously do not have the capacity to manufacture drugs themselves, and they must be free to purchase these drugs from another country.

Our amendment to the Trade Promotion Authority Act reinforces the Doha Declaration. The Bush administration should be using it to negotiate trade agreements that allow urgently needed access to medicines. Instead, the administration has used trade agreements to promote the interests of the pharmaceutical industry at the expense of access to drugs in developing nations.

Again and again, the administration has defied the Doha Declaration and imposed unjustified restrictions on the availability of patented drugs. They've done it on trade agreements with Australia, with Jordan, with Morocco, with Singapore, and other nations. In these agreements, the Bush administration has undermined the very core of the Doha Declaration. They're trying to do it now in the Central American Free Trade Agreement.

They block the approval and use of generic version of drugs. They prevent new treatments for HIV/AIDS from getting to the people of the developing world.

It's an outrageous policy. The administration has made it U.S. policy to block affordable, life-saving drugs for AIDS for the people of Central America, because they feel it's more important to protect the profits of brand name drug companies..

The administration is defying the statutory requirement of the Doha Declaration, that our objective in these agreements must be to guarantee access to essential drugs for the sick and the poor in the developing nations of the world.

They use countless legal tactics to cause delays in the approval of generic drugs in developing countries, even

when patents are invalid or are not infringed at all by the generic drug. In essence, the administration has set up a bottleneck to prevent approval of generic drugs in many countries of the developing world. That's completely at odds with the Doha Declaration.

U.S. law allows a generic drug company to use a patented drug to develop a generic version of the drug before the patent has expired. It takes time to develop a drug, test it, and have it reviewed by the FDA.

The theory of the law is that a generic drug company should be able to complete this approval process before the patent expires, so that developing countries can get generic versions of drugs as quickly as possible.

That process is permitted by TRIPS, which means it is permitted by the trade agreements the administration has negotiated. It is not required by those agreements, however, and the administration has not tried to include it. In fact, they give brand name drug companies the opportunity to block that process in each of these developing countries. It's another example of the administration cynically protecting the interests of the brand name drug companies in violation of the law.

The administration claims that its tactics are consistent with another objective of the Trade Act, which is to seek standards for intellectual property protection and enforcement in other countries. That's true, but it's in the same provision in the act as the Doha Declaration.

The administration has a good track record in protecting the brand name drug industry, but it has never gotten even one provision that respects the Doha Declaration. Selectively interpreting laws to apply one provision and ignore another is unacceptable.

It's no secret that the brand name drug companies want better patents and longer exclusivities in the United States. But it's wrong for the administration to side with them in trade agreements that defy the Doha Declaration.

The administration has systematically blocked Congress from changing intellectual property protections except in ways that benefit brand name drug companies. It gets even worse. When brand name drug companies successfully lobby for protections under the laws of our trading partners that are greater than those under U.S. law, the industry then argues that the United States should "harmonize" its intellectual property protections with those of our trading partners. That's a slap in the face to Congress and the American people. They should not be forced by the Bush administration to endure even higher drug prices than they do today.

The question is: What should be done to put real teeth in Doha Declaration in trade negotiations?

First, the administration should follow U.S. law and respect the declaration in future negotiations, such as

those about to begin with the nations of the Andes. It should immediately stop seeking intellectual property protections that prevent access to medicines for all and should start to seek those that promote greater access to medicines for all.

Second, the negotiators for countries of the developed and developing world should stop every time the U.S. Trade Representative asks for an intellectual property provision, especially one directed specifically at drug patents or drug data exclusivity, and ask how that provision affects access to needed drugs.

The U.S. Trade Representative should not be surprised if negotiators from developing nations refuse to accept restrictive provisions that violate the Doha Declaration. They should challenge our Trade Representative to obey the rule of law.

And here in Congress, we have to do a better job of insisting that our trade agreements comply with the letter and the spirit of the Doha Declaration. It's the law of the land, and it's a matter of life and death for hundreds of millions of people in other lands. The tactics we are so shamefully using against them can only breed greater resentment and greater hatred of the United States. And we can't afford to let that happen at this critical time in our role in the world.

I ask unanimous consent that a brief description of provisions in trade agreements that violate the Doha Declaration be printed in the RECORD as a technical appendix.

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

TECHNICAL APPENDIX TO STATEMENT OF SENATOR EDWARD M. KENNEDY ON THE DOHA DECLARATION AND THE TRADE PROMOTION AUTHORITY ACT OF 2002

COMPULSORY LICENSING AND PARALLEL TRADE

The Administration has successfully imposed restrictions on the right to compulsory license medicines in the trade agreements with Australia, Jordan, and Singapore. The Administration has obtained provisions that can block parallel imports in trade agreements with both developed and developing nations, such as Australia, Morocco, and Singapore. For the Doha Declaration to work, both developed and developing countries must be able to issue compulsory licenses and then engage in parallel importation of the drug from the developed country that can manufacture the drug to the developing country whose people need the drug, yet these agreements undermine both compulsory licensing and parallel importation.

DATA EXCLUSIVITIES

The Administration has also pursued data exclusivities to protect brand name drugs in trade agreements with Australia, Bahrain, Chile, Jordan, Morocco, and Singapore, and now seeks them in the Central American Free Trade Agreement. To receive authorization to market a drug, many countries, like the United States, require the drug manufacturer to present data to show that the drug is safe and effective for its intended use. The clinical trials to produce these data can be quite expensive, and protecting these data for a period of years—meaning that the data may not be used to approve another, similar

product—can create an incentive for and protect the investment in producing them.

In the developing world, however, data exclusivities prohibit a country from approving even a compulsory licensed version of a patented drug. The trade agreements that require exclusivities provide no mechanism to allow for distribution of compulsory licensed products notwithstanding the exclusivities. The exclusivities therefore will block compulsory licensed versions of the new treatments for HIV/AIDS and other serious diseases from getting to the people of the developing world, at least until the data exclusivities have expired.

LINKAGE BETWEEN PATENTS AND DRUG APPROVAL

Most recently, the Administration has also negotiated for provisions in trade agreements with the countries of Central America that link approval of generic drug products to the status of patents on the pioneer drug product. In other words, approval of generic drugs is blocked if there are patents and the government approval agency has not ascertained whether the generic product infringes a brand name drug patent.

In the United States, approval of a generic drug is blocked because of a patent only if the brand name company sues to defend the patent. The obligation is not on the Food and Drug Administration, which has repeatedly stated that it has no capacity to assess or evaluate patents. The Administration's trade agreements place the responsibility to defend brand name drug patents on the FDA's of the developing nations, which we can only assume are more overburdened than our own FDA and similarly lack the expertise to assess and evaluate patents. The inevitable result will be delays in the approval of generic drugs in developing countries caused by patents that are invalid or that are not infringed by the generic drug.

THE BOLAR AMENDMENT

In the United States, the Bolar Amendment allows a generic drug company to use a patented invention to develop a generic version of a drug before the patent has expired because it takes time to develop and test a drug and have it reviewed by the FDA and a generic drug company should be able to complete this process before the patent has expired.

Without a Bolar provision, a drug patent is arbitrarily extended because of the time needed for drug formulation and approval. The Bolar Amendment in a developing country will improve timely access to medicines for the sick and poor. The Administration has not sought to mandate the Bolar provision in trade agreements, however.

LOCAL LAW ENFORCEMENT ENHANCEMENT ACT OF 2005

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. Each Congress, Senator KENNEDY and I introduce hate crimes legislation that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society. Likewise, each Congress I have come to the floor to highlight a separate hate crime that has occurred in our country.

Last summer, a gay man was attacked outside of a club in Seattle, WA. Micah Painter was leaving for the night when he was beaten and stabbed with a broken bottle. His attackers