

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

shouted anti-gay slurs at him and demanded to know if he was gay. The incident is being investigated as a hate crime.

I believe that the Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

ANIMAL FIGHTING PROHIBITION ENFORCEMENT ACT

Mr. ENSIGN. Mr. President, I rise to reintroduce the Animal Fighting Prohibition Enforcement Act, legislation that garnered the support of 51 Senate cosponsors and 201 House cosponsors in the 108th Congress but didn't quite make it over the finish line. I thank my colleagues for their support in this endeavor to protect the welfare of animals and express my hope that we will get the job done early in this session. This legislation targets the troubling, widespread, and often underground activities of dogfighting and cockfighting where dogs and birds are bred and trained to fight to the death. This is done for the sheer enjoyment and illegal wagering of the animals' handlers and spectators.

These activities are reprehensible and despicable. Our States' laws reflect this sentiment. All 50 States have prohibited dogfighting. It is considered a felony in 48 States. Cockfighting is illegal in 48 States, and it is a felony in 31 States. In my home State of Nevada, both dogfighting and cockfighting are considered felonies. In fact, it is a felony to even attend a dogfighting or cockfighting match.

Unfortunately, in spite of public opposition to extreme animal suffering, these animal fighting industries thrive. There are 11 underground dogfighting publications and several above-ground cockfighting magazines. These national magazines advertise and sell animals and the materials associated with animal fighting. They also seek to legitimize this shocking practice.

During the consideration of the farm bill in 2001, a provision was included that closed loopholes in the Federal animal fighting law. Both the House and the Senate also increased the maximum jail time for individuals who violate this law from 1 year to 2 years, making any violation a Federal felony. However, during the conference, the jail time increase was removed.

Then in 2003, I offered an amendment to the Healthy Forests bill that would have had the same effect as the bill I am introducing today. The Senate agreed to this amendment by unanimous consent, but it was again taken out in conference.

Now, I am hoping the third time is the charm. In the form that is being introduced today, this legislation passed the House Judiciary Committee in Sep-

tember 2004. It is ripe for enactment early in the 109th Congress. This legislation has been endorsed by the USDA, the American Veterinary Medical Association, more than 150 State and local police and sheriffs departments across the country, and a host of others. The only groups opposing it are the cockfighters and the dogfighters.

The bill seeks to do two things. First, it increases the penalty to the felony level—up to 2 years jail time for offenders. I am informed by U.S. attorneys that they are hesitant to pursue animal fighting cases with merely a misdemeanor penalty. The USDA has received innumerable tips from informants and requests to assist with State and local prosecutions but has only been able to help in a handful of cases since Congress first passed the Federal animal fighting law in 1976. For example, in my own State last year, law enforcement authorities raided an ongoing cockfight involving about 200 people from Nevada and other States. The USDA wanted to pursue Federal charges, to complement the local effort, but the U.S. Attorney's Office declined to prosecute because the Federal crime was only a misdemeanor. Increased penalties will provide a greater incentive for Federal authorities to pursue animal fighting cases.

Second, the bill prohibits the interstate shipment of cockfighting implements, such as razor-sharp knives and gaffs. The specific knives are commonly known as "slashers." The slashers and icepick-like gaffs are attached to the legs of birds to make the cockfights more violent and to induce bleeding of the animals. These weapons are used only in cockfights. Since Congress has restricted shipment of birds for fighting, it should also restrict implements designed specifically for fights.

This is commonsense, long-overdue legislation. It does not expand the Federal Government's reach into a new area but simply aims to make current law more effective. It is explicitly limited to interstate and foreign commerce, so it protects States rights in the two States, Louisiana and New Mexico, where cockfighting is still allowed. Further, it protects States rights in the other 48 States where weak Federal law is compromising their ability to keep animal fighting outside their borders.

Mr. President, this legislation is needed for humane reasons. But it is also urgently needed to protect poultry health and public health. In 2002 to 2003, we had an outbreak of exotic Newcastle disease among poultry in my home State of Nevada, as well as in California, Arizona, and Texas. According to the USDA, this deadly disease was spread in large part by illegal cockfighters. It cost taxpayers about \$200 million to contain and cost the poultry industry many millions more in lost export markets. In Asia, at least four children died last year due to exposure to bird flu from cockfighting

activity, according to news reports. One Malaysian news agency noted that surveys by the "Veterinary Department show that irresponsible cockfighting enthusiasts are the main 'culprits' for bringing the avian influenza virus into the state." Fortunately, bird flu has not yet jumped the species barrier in this country, but we ought to do all we can to minimize the risk. One of the ways to ensure greater protection against the spread of these dangerous avian diseases is to enforce the ban on interstate and foreign shipment of birds for the purpose of fighting. Our bill ensures that penalties are in place to encourage meaningful enforcement of this ban.

I appreciate the strong support of Senators SPECTER, CANTWELL, FEINSTEIN, DEWINE, KENNEDY, KYL, KOHL, LUGAR, VITTER, LEAHY, and SANTORUM in this effort and look forward to the overwhelming support of my other colleagues in the Senate. I also wish to recognize Representative MARK GREEN for his leadership in reintroducing an identical bill in the House today. Surely, this is an issue that must be addressed as soon as possible. We cannot allow this barbaric practice to continue in our civilized society.

REDUCING CRIME AT AMERICA'S SEAPORTS ACT OF 2005

Mrs. FEINSTEIN. Mr. President, yesterday I introduced legislation to improve our Nation's ability to use the criminal law to guard against and respond to terrorist attacks at our seaports—the Reducing Crime at America's Seaports Act of 2005.

I am pleased to join my colleagues Senators BIDEN, SPECTER, KYL, and ALLEN, who have co-sponsored this bill, in moving forward with this initiative.

The Nation's seaports are a tremendous asset to our economy. They also represent a significant vulnerability to a possible terrorist attack.

Much of our national commerce travels through these ports. Ninety percent of all cargo tonnage moves through the 50 biggest ports. Just 25 of those ports account for 98 percent of the Nation's container traffic—two of the largest such ports, Oakland and Los Angeles/Long Beach, are in my home State of California.

A modern port, which handles huge ships laden with thousands of containers, and vast amounts of critical bulk cargo, is complex and sprawling. It is also extremely vulnerable to a terrorist attack.

The very complexity and size of our ports make them an obvious and attractive target for a terrorist. With hundreds of miles of wharves and piers, a vast volume of boat, truck and car traffic, lengthy perimeters, ports can be the perfect target.

Not only are they vulnerable to attack, the consequences of even a small attack could be overwhelming. Commerce would be devastated, not only at