

a long way toward helping our law enforcement fulfill that responsibility.

I yield the floor.

Mr. GORTON. Mr. President, I ask unanimous consent for 10 minutes in morning business.

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

#### U.S. FOREIGN POLICY

Mr. GORTON. Last week, Mr. President, Secretary of State Madeleine Albright traveled to Geneva to meet with the other permanent members of the U.N. Security Council. The purpose of her meeting was to convince the world's declared nuclear powers to join the United States in condemning India and Pakistan for their recent nuclear tests and somehow to prevent an arms race from escalating in South Asia. To no one's surprise but her own and President Clinton's, no agreement was reached.

The foreign policy of the United States in the Clinton Administration has now come down to this. In dealing with the People's Republic of China, a country with a developing internal free market, but repressive of any political dissent, with systematic restrictions against competitive American products, and a blind eye toward billions of dollars of intellectual property piracy, we not only don't defend the victims of these practices, we generously supply the PRC with missile technology that allows it to increase in its already immense threat to its neighbors.

The Clinton Administration gives "Most Favored Nation" treatment for China a whole new meaning. What it means now is, what China wants, China gets—even an American president to be greeted on Tiananmen Square, insulting the memory of its martyrs.

And then we are surprised when India tests nuclear weapons, joining a club we founded fifty years ago. We react by sanctioning—unilaterally—the world's most populous democracy. And we follow up by imposing the same sanctions on Pakistan, a long time ally, for a natural and justified reaction to India's tests.

As Charles Krauthammer so eloquently put it in his column in Friday's Washington Post, the President: . . . is guilty of more than mere fatuousness, however, in dealing with the India-Pakistan nuclear arms race. He is guilty of fueling it. While for years his administration has claimed deep concern about proliferation, [he] has shamelessly courted the world's worst proliferator of weapons of mass destruction: China.

Not only is the administration in large part to blame for the current crisis, but is now taking steps to ensure that our economy will suffer together with our national security. The President has decided to impose harsh economic sanctions on both India and Pakistan.

It has already been made alarmingly clear that unilateral sanctions do not work. For the law the President stands

behind in his decision to impose sanctions was designed not to punish other nations for flexing their nuclear muscle, but to deter them from entering the nuclear club. As David E. Sanger wrote in The New York Times on May 24, "passionate national causes—particularly the urge for self-sufficiency—almost always trump economic rationality." Mr. Sanger goes on to say, wisely, that "unilateral sanctions almost never work—precisely because they are unilateral. In a global economy, there are too many producers of almost everything."

The President has told the American people that he has no choice but to impose the sanctions, claiming that they are required under the Nuclear Proliferation Prevention Act of 1994. What he doesn't say is that Sections 102 (b)(4) and (5) of that law provide the President authority to waive the sanctions in whole or in part if he uses the 30 day delay allowed him before imposing the sanctions. The President did not use the 30 day delay. The reason for his rush to impose sanctions is clear. The President has no other solution.

But unilateral sanctions do little to produce results. Instead, they harm U.S. workers, farmers, and families. My home state of Washington has a lot at stake in this international dispute. In 1996, Washington exports to India totaled \$429.39 million and India was the state's fourteenth largest export market. Boeing airplane sales to India totaled \$372.8 million in 1996 and accounted for a large majority of overall Washington state exports to that country. Most of the planes India purchases from Boeing are financed by the Export-Import Bank. If the President cuts off Ex-Im Bank loans to India, Boeing, and Washington state's economy will feel a major strain.

Washington is the largest producer of soft white wheat, Pakistan's grain of choice. Pakistan is the largest market for Washington state wheat exports.

During Fiscal Year 1997, Pakistan purchased 2 million metric tons of soft white wheat from the Pacific Northwest—32 percent of total soft white wheat exports from the region. So far in FY 1998, Pakistan has purchased 2.14 million metric tons of soft white wheat—37 percent of total wheat exports from the region, with purchases from Washington totaling \$140 million.

While American farmers and manufacturers stand today at risk of losing these important markets, their counterparts in Canada, Europe, and Australia are celebrating the shortsightedness of the U.S. Administration. For the U.S. sanctions are better for their businesses than the most ingenious of marketing campaigns. They are happy to step in and fill the place of American exporters in India and Pakistan.

Mr. President, if the U.S. is the only country imposing sanctions on India and Pakistan for actions strongly supported by a large majority of their people, then the Indian and Pakistani governments and the Indian and Pakistani

people will turn to nations that are not criticizing their actions for their imports. Airbus and Canadian or Australian grain farmers will benefit from U.S. actions, while Boeing and U.S. farmers will be left out in the cold.

The President must take action now to resolve the situation in South Asia and end the sanctions. If he does not, the American people will suffer the consequences of his mistakes for a long time.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. SMITH of Oregon). Without objection, it is so ordered.

Mr. BREAU. I ask unanimous consent to be recognized for 10 minutes in morning business.

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

#### TOBACCO LEGISLATION

Mr. BREAU. Mr. President, we are in the middle of the debate on the so-called tobacco legislation which has been ongoing for a number of days. I think that it is appropriate to pause for a moment and to consider where we are and where we have been and to try to come up with an idea of where this debate is likely to go. Because I think that with all the debate and discussion we have had, there is some confusion as to exactly what has been happening.

I think it is very important to recognize that in order to know where you are going, it is also important to actually know from where you started. I think if you look at where we started, Congress became involved in this tobacco legislation really as a result of attorneys general litigation on behalf of all the various States trying to recover money for the States' Medicaid programs, which had suffered a loss because of payments for people who had suffered disease and injury because of smoking-related activities.

When it comes to this issue, I want to make one point very, very clear. I do not think any of us need to be lectured to about the problem that is facing us. All of us have examples and instances in our own lives that make the problems associated with cigarette smoking and the tobacco industry very, very clear. In my own family, my mother died of lung cancer—lung cancer that was clearly and directly related to years of tobacco use. In addition, my father-in-law died of lung cancer and tumors related clearly to smoking and exposure, probably at the same time, to asbestos.

Probably each Member of this body and also the other body has similar stories they can relate that personally affect them in their approach to this

legislation. You simply cannot divorce it. People are affected for a lifetime by personal experiences, and mine are not any different from probably many of my colleagues'. So when I approach this issue, it is with the intent of wanting to do something to reduce underage smoking in this country.

In order to determine where we are going, it is important to look where we started. The June 20 agreement was the baseline. It was the agreement the attorneys general of this Nation, who deserve a great deal of credit, were able to reach as a result of litigation in the courts of America against the tobacco companies of America. That settlement that was immense in what it did. It was immense in the proportions of good that it did. I would like to outline it for a moment to show where we started.

That June 20 agreement would have settled the lawsuits brought by all 40 States. It would have settled them. The States would have been compensated in their State Medicaid programs for funds that they spent to treat smokers. That is what the States wanted. It affected literally millions of people.

In addition, it would have settled all of the individual lawsuits around this country, and people would have been compensated as a result of that settlement. In addition, it provided funds to cover the costs of implementing and enforcing several public health programs related to solving the problems of underage tobacco use and also to try to find ways to cure diseases caused by smoking.

The tobacco companies, under that agreement, would have paid \$368.5 billion, not including the attorneys' fees, over a 25-year period. Payments at the rate of \$15 billion per year would have continued forever.

It is important for us to note that for the previous 40 years there was not an individual in this country who ever put a nickel in their pocket as a result of litigation against tobacco companies. So to say that you get \$368 billion-plus to cover the costs of individual suits, and to use those moneys for health programs, is monumental in what it achieved because no one had ever walked off with a nickel in their pocket as a result of that litigation. This settlement did that.

It also did something that the FDA was never able to do. It said in the agreement that the FDA would regulate tobacco products under the Food, Drug and Cosmetic Act, and the FDA would have the authority to reduce nicotine levels in those products.

It also said we are going to set some goals, and the goals are going to be that you would have to show a 30-percent decline in cigarette and smokeless tobacco use by minors within 5 years—a 30-percent reduction—a 50-percent reduction within 7 years; and a 60-percent reduction within 10 years. If not successful, penalties would be assessed against the companies of up to \$2 billion a year.

That had never been done before in the history of this country, where you set absolute targets that companies agreed to and suffered penalties if they did not meet those targets, which were substantial.

It also said, on advertising and marketing, that tobacco advertising would be banned on billboards, in store promotions, and displays over the Internet. No more Marlboro Man, no more cartoon characters like Joe Camel. Tobacco would also be banned from sponsoring all sporting events. No more race car events, no more race track events, no more anything from a sporting standpoint at which they would be able to sell or advertise. No more clothing, no more baseball caps, no more jackets, none of that would have been allowed under this agreement. Tobacco companies agreed to that. Companies agreed to the targets; companies agreed to the FDA regulation; companies agreed to pay \$368.5 billion.

Also, the warning labels were stronger than ever. Like, "Smoking can kill you." Can you get it any stronger than that? You read that and still want to do it? Is there something loose somewhere in your head? That was going to be part of it.

It includes substantial restrictions on youth access to cigarettes; a ban on cigarettes being sold from vending machines unless they are adult-only facilities; minimum standards for retailers. All of that was in there.

If you had said this was possible to have 5 years ago, they would have looked at you and said, "No way. You can't get that done." But that is all part of the agreement. That is where we started.

I would just like to talk about some things that I think are part of this agreement that are not going to be able to be accomplished if we do not have an agreement that includes the companies.

Marketing and advertising restrictions under this agreement took everything that the FDA wanted to have done and said, it is part of the agreement. It bans nontobacco brand names or logos on tobacco products. It bans tobacco brand names, logos and selling messages on nontobacco merchandise, i.e., the T-shirts, baseball caps, jackets; no more of that.

It bans the sponsorship, as I said, of all sporting and cultural events in the name, logo or selling message of a tobacco product brand. It restricts tobacco advertising to black text on white background only, like this chart. It requires tobacco advertising to have a statement, "Nicotine delivery device." It bans offers of nontobacco items or gifts based on the proof of purchasing a cigarette product. All gone. That is all what the FDA would like to have done, which, incidentally, is being litigated. Companies accepted that as part of that settlement agreement.

It also said, we are going to do a lot more than that beyond what FDA wanted to do on marketing and adver-

tising. This agreement spelled out some other things. We talked about it; that is, banning all outdoor tobacco product advertising, as in stadiums; and for indoor facilities directed outdoors. It bans the human images, again, like the cartoon characters of Joe Camel and the Marlboro Man. No more advertising on the Internet. It limits point-of-sale advertising to black-on-white. All of these things that no one has ever been able to accomplish was agreed to by the lawyers, agreed to by the defendants, agreed to by the tobacco companies as part of the settlement agreement.

In addition to that, we also have youth-access restrictions. Retailers are prohibited from selling cigarettes or smokeless tobacco to children under 18, and all of the things they have to do under a youth-access restriction program.

The point that I make is that all of this is part of their agreement. I am concerned that what we have done is to take this agreement, which no one would have thought possible 5 years ago, 4 years ago, and have turned it into an attempt to make a Christmas tree, to take care of all kinds of additional items, increase the amount everywhere you possibly can. I understand that.

It is a race to see who can be the toughest on tobacco companies, and I understand that, too. My concern is, in our race to be the toughest, that we will lose all of the things that I have just outlined. Because I am absolutely convinced, from testimony in the Commerce Committee, that those restrictions on marketing and advertising that are in the current legislation, without the companies agreeing to it, is not going to be constitutionally upheld by the courts of this country—will not be. We cannot restrict advertising to adults. We cannot restrict advertising of legal products to adults that only incidentally affect children.

The court cases are very, very clear with regard to what we can do and cannot do. The first amendment applies, yes, even to tobacco products, as long as they are legal, and no one is yet saying we will outlaw tobacco products like we tried to outlaw alcohol.

I am concerned that as we increase everything that we are increasing, we lose the company's participation in this effort, and we are going to end up with something that may make us feel good temporarily but will not get the job done. An analogy is of the little boy who puts his hand in the cookie jar and tries to take all the cookies out of the jar; he has so many in his hand, he can't get anything out.

We went from the base of \$368.5 billion from the settlement; we increased that with a tax of \$1.10, so now it is \$574.5 billion. Then after we added to the base payments, we also added the look-back provisions. The look-back was the penalty for companies that didn't meet the targets I talked about. The June 20 agreement had penalties.

The Commerce bill raised the penalty potential to \$706 billion. Floor amendments raised it to \$810 billion on the look-back.

I think that is questionable constitutionally. I think it is questionable whether you can say to a company, you have to do all kind of things, but if you do all those things and still don't meet the targets we will penalize you. I think it is questionable constitutionally for the ability to do that unless the companies agree to it. I think what we are doing is penalizing companies without any fault on their part. We are saying, do all of these things, but if you don't reach these targets we are going to hit you with \$810 billion worth of penalties. They can agree to that; but if they don't agree to it, I doubt whether it will pass constitutional muster.

I think the marketing and advertising restrictions happen to be the most important thing we can do in order to get teens to stop smoking. The \$1.10 is not going to do it. Kids pay \$100 for a pair of sneakers. Do you think \$1.10 will get that many to quit smoking when they are paying \$100 for a pair of tennis shoes? I doubt it. Marketing and advertising restrictions are very important—probably not constitutional.

The look-back provisions: Sounds good. Let's make it as high as we can. If the companies don't agree, I question whether that is constitutional.

Look what we did when you add it up. The base payments were increased, the look-back provisions, and now the judgments. We used to have a \$5 billion annual cap for liability payments. This is for future suits. People say we are giving them all kinds of limitations on liability. Individuals can still sue in the future, can still have criminal actions against companies in the future, under the agreement. You can still have punitive damages in the future for companies who do wrong, and intentionally do it, but what we have done—we have gone from adding an increase in base payments, increased the look-back penalties, and took the cap off any annual limitations on future payments. We have gone from \$435 billion to \$906.4 billion, and now we add it up and there is no limit. Why would a company agree to all of those marketing and advertising restrictions, agree to all these look-back penalties and targets that they have to meet, and get nothing in return?

I am not arguing their case. I made it very clear where I come from in the beginning. An agreement, unless it is comprehensive, an agreement, unless everybody is involved in it, is an agreement on paper that may make us feel good temporarily but is not an agreement that is going to get the job done.

It is incredibly important that we look at reality and come up with something that works. I suggest that we take the June 20 agreement as the basis, pass it, go to conference in the House, and we can work out something that will work. Senator HATCH, I un-

derstand, and Senator FEINSTEIN and others on our side are working together to take what people thought was impossible and pass it.

Let's get out of the cookie jar. Let's get back to reality. Let's do something that will pass, that will work, and that will make good sense.

I yield the floor.

#### PATIENTS' BILL OF RIGHTS

Mr. KENNEDY. Mr. President, I am deeply concerned about the continuing lack of commitment by the Republican Leadership to schedule floor debate on legislation to end abuses by health insurance managed care plans. Today, more than 100 groups have sent a letter to Senator LOTT and Speaker GINGRICH asking for quick, full and fair floor consideration of this legislation, which is called the Patients' Bill of Rights. These groups represent millions of patients, doctors, nurses, therapists, and working families.

Yet, in a memo sent to all Senators and in recent floor statements, it appears that our patient protection legislation—the Patients' Bill of Rights—is not even on the Republican Leader's radar screen. It is not on the list of priorities designated by the Republican Leadership to be taken up this month, or even this session. I have here a list of more than 20 bills, ranging from regular appropriations bills and reauthorization bills to the nuclear waste disposal legislation and a constitutional amendment on flag burning.

But, I have yet to see any interest from the Republican Leadership in taking action to ensure that medical decisions are made by treating physicians, and not by insurance company accountants. And I have yet to see any interest from the Republican Leadership in curbing abusive activities by the worst plans and insurance companies that are dedicated to their profits, not their patients. Instead, it appears that, by this inaction, the Republican Leadership is interested only in defending the indefensible, the status quo.

In addition, the House Republican Leader, DICK ARMEY, recently lashed out at doctors, nurses and other health care professionals by grossly misinterpreting and distorting a provision in the Patients' Bill of Rights that allows health care professionals to support their patients in appeals procedures, and to report concerns about the quality of care without fear of retaliation. These are reasonable patient-oriented protections. Congressman ARMEY'S misguided effort offends and impugns the character and professionalism of hundreds of thousands of nurses, doctors and patients.

In fact, his harsh attack has helped mobilize even more organizations to support the bill. Representatives LOIS CAPPS, CAROLYN MCCARTHY and EDDIE BERNICE JOHNSON, who are former nurses, and nurses from communities around the country have rallied around the Patients' Bill of Rights. Today,

they have sent a letter to Congressman ARMEY asking for a meeting on these critically important issues. They are supported, in a separate letter, by a number of groups who represent persons with disabilities, mental illness and HIV/AIDS, and other organizations that rely regularly on trained and devoted health care professionals.

These issues matter a great deal to families across the country. Too often today, managed care is mismanaged care. In state after state across the country, patients are paying for these industry abuses with their lives.

Just ask Frances Jennings of Andover, Massachusetts. In November, 1992, at the age of 57, her husband Jack was diagnosed with mild emphysema by his pulmonologist. A few years later, in March, 1997, Mr. Jennings was hospitalized for a pneumothorax, which can lead to a collapsed lung. His physician, Dr. Newsome, determined that a lung reduction procedure would improve Jack's health and overall quality of life.

Two months later, in May, 1997, Jack's condition was stable enough for the operation, and he was referred to Dr. Sugerbaker, a top surgeon who specialized in the procedure.

But in late May, Jack's insurance plan—U.S. HealthCare—denied his referral to the specialist. Frances and Jack were disappointed that the plan refused to authorize the referral, and they requested a referral for consultation with a plan-approved physician. This appointment was finally scheduled for June 12. But, on June 11, the new doctor's office called Jack to cancel his appointment, stating that the physician no longer accepted patients from the health plan.

Immediately following this cancellation, Jack's primary care physician—Dr. Newsome—contacted the health plan to obtain yet another referral. On June 18, a new appointment was confirmed for mid-July, four months after his initial hospitalization.

Tragically, Jack Jennings never had the opportunity to benefit from the procedure recommended by his doctor. Jack had been having trouble breathing, despite his continuous use of oxygen, and had been hospitalized at the end of June. During this hospitalization, they discovered a fast growing cancer in his chest. Lung surgery was out of the question, and it was too late for chemotherapy to be effective.

Mr. Jennings died on July 10—four days before his long-awaited appointment with the specialist. In fact, this appointment would have been with Dr. Sugarbaker's group, the same physician that U.S. Health Care had prevented Jack from seeing in May.

This is a clear case where needed health care was unnecessarily delayed, with tragic implications. Timely care could have saved Jack's life. The health plan's inability or unwillingness to provide it cost him his life.

Unfortunately, such abuses are far too common in managed care plans