HELMS) and the Senator from Alabama (Mr. SESSIONS) are necessarily absent.

I further announce that if present and voting the Senator from North Carolina (Mr. HELMS) would vote ''yea.''

The PRESIDING OFFICER (Mr. DAYTON). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 67, nays 20, as follows:

[Rollcall Vote No. 108 Ex.]

YEAS—67

| | | |
|---|---|---|
| Allard | Domenici | McCain |
| Allen | Dorgan | McConnell |
| Baucus | Edwards | Murkowski |
| Bayh | Ensign | Murray |
| Bennett | Enzi | Nelson (FL) |
| Bond | Feinstein | Nickles |
| Breaux | Fitzgerald | Reid |
| Brownback | Frist | Roberts |
| Bunning | Graham | Rockefeller |
| Burns | Gramm | Santorum |
| Byrd | Grassley | Shelby |
| Campbell | Gregg | Smith (NH) |
| Cantwell | Hagel | Smith (OR) |
| Carnahan | Hatch | Snowe |
| Carper | Hollings | Specter |
| Chafee | Hutchinson | Stevens |
| Cleland | Hutchison | Thomas |
| Cochran | Inhofe | Thompson |
| Collins | Kohl | Thurmond |
| Craig | Kyl | Voinovich |
| Crapo | Lincoln | Warner |
| DeWine | Lott | |
| Dodd | Lugar | |

NAYS—20

| | | |
|---|---|---|
| Akaka | Dayton | Reed |
| Bingaman | Durbin | Sarbanes |
| Boxer | Feingold | Schumer |
| Clinton | Johnson | Stabenow |
| Conrad | Kennedy | Wellstone |
| Corzine | Leahy | Wyden |
| Daschle | Levin | |

NOT VOTING—13

| | | |
|---|---|---|
| Biden | Kerry | Nelson (NE) |
| Harkin | Landrieu | Sessions |
| Helms | Lieberman | Torricelli |
| Inouye | Mikulski | |
| Jeffords | Miller | |

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is laid on the table. The President will be notified.

## LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will return to legislative session.

## ANDEAN TRADE PREFERENCE EXPANSION ACT—Resumed

The PRESIDING OFFICER. The clerk will report the pending business.

The legislative clerk read as follows:

A bill (H.R. 3009) to extend the Andean Trade Preference Act, to grant additional trade benefits under that Act, and for other purposes.

Pending:

Baucus/Grassley amendment No. 3401, in the nature of a substitute.

The PRESIDING OFFICER. The Senator from Montana.

AMENDMENT NO. 3405 TO AMENDMENT NO. 3401

Mr. BAUCUS. Mr. President, I ask an amendment at the desk be called up relating to investor—State relationships with respect to chapter 11.

The legislative clerk read as follows:

The Senator from Montana [Mr. BAUCUS], for himself, Mr. GRASSLEY, and Mr. WYDEN, proposes an amendment numbered 3405 to amendment No. 3401.

Mr. BAUCUS. I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To clarify the principal negotiating objectives of the United States with respect to foreign investment)

On page 229, line 23, strike all through ''United States,'' on line 25, and insert the following: ''foreign investors in the United States are not accorded greater rights than United States investors in the United States,''.

Mr. BAUCUS. This is an amendment I am offering on behalf of myself, Senator GRASSLEY, and Senator WYDEN. Our amendment concerns an investor-State dispute settlement. That is the ''chapter 11 question'' as it has come to be called. It is based on the placement of investor-State provisions in NAFTA.

This is not bankruptcy chapter 11. It has nothing to do with bankruptcy. When I say ''chapter 11,'' it sometimes causes confusion, but this is chapter 11 in NAFTA.

Our amendment modifies the objective on investment in the trade bill to make clear that foreign investors in the United States should not be accorded a higher level of protection of their rights than U.S. citizens in the United States.

There has been a lot of discussion of NAFTA chapter 11 in recent days. In particular, a number of Senators have expressed legitimate concerns about the impact that chapter 11, and other similar provisions in other agreements, may have on the ability of State and local governments to regulate—that is, to adopt and enforce laws that protect the public health, safety, and welfare.

There is a growing consensus that we need to make sure that new trade and investment agreements don't give foreign investors in the United States greater rights than we give our own citizens. International agreements must not become a back door for expanded protection of foreign investors at the expense of protection of our environment, health, and safety.

This view has been strongly and consistently expressed by various State and local government organizations, as well as environmental organizations, in recent weeks.

For example, a resolution adopted by the National Association of Attorneys General at their March meeting encourages Congress:

. . . to ensure that in any new legislation providing for international trade agreements foreign investors shall receive no greater rights to financial compensation than those afforded to our citizens.

A letter last week from a large coalition of environmental groups, including Defenders of Wildlife, Friends of the Earth, the Sierra Club, and the National Wildlife Federation, urged the Senate to:

. . . require that trade and investment agreements do not provide foreign corporations with greater rights than U.S. citizens have under the Constitution.

Similarly, a recent letter from the president of the National Wildlife Federation to Ambassador Zoellick states:

An important step to restore consensus would be to make clear in fast track legislation and in investment agreements that those brining expropriation challenges under investment rules will not be granted rights greater than those provided under the takings jurisprudence of the U.S. Constitution.

The United States Conference of Mayors has expressed its concern that the bill as now drafted:

. . . would allow trade officials to include investor protection standards in future trade agreements that go beyond U.S. law and that effectively grant foreign investors greater rights than U.S. citizens enjoy.

In another letter, the National Association of Counties expresses its concern that under the trade bill:

. . . foreign investors operating in the U.S. would have greater legal rights against our government than our own citizens possess.

Each of these organizations makes an excellent point. We have heard their message, and that is why we have offered the present amendment. We want to make sure that in protecting the rights of U.S. citizens abroad, our negotiators do not inadvertently encroach on the prerogatives of Government here at home. This amendment seeks to strike the right balance between these different sets of interests.

The bill's objective on investment opens with a statement recognizing that—on the whole—U.S. law provides a level of protection of investment that is:

. . . consistent with or greater than the level required by international law.

It goes on to state that our negotiators should ensure that:

United States investors in the United States are not accorded lesser rights than foreign investors in the United States.

Some have read this language to imply that negotiators might seek to give foreign investors more rights than U.S. citizens now enjoy, and then seek to amend U.S. law to enhance the rights of U.S. citizens. In other words, they read this language as a mandate to expand individual property rights in the U.S. through the back door of international negotiations.

Let me be very clear in stating that that was not what the language at issue was intended to accomplish. The committee report on the bill emphasizes that obligations the U.S. undertakes in investment agreements:

. . . should not result in foreign investors being entitled to compensation for government measures where a similarly situated U.S. investor would not be entitled to relief.

In other words, the rights of U.S. investors under U.S. law define the ceiling. Negotiators must not enter into agreements that grant foreign investors rights that breach that ceiling.

The amendment we have laid down is intended to foreclose any doubt on this question. It is our objective to negotiate agreements that protect the

rights of U.S. persons abroad. But we are not willing to sacrifice the regulatory functions of our own Government in order to obtain that objective.

As the letters I quoted attest, getting clarity on this point is the number one priority for many of the organizations that have written about chapter 11. They make a fair point. Given the interests at stake, we must be crystal clear about the ground rules. U.S. negotiators must not conclude agreements that give foreign investors greater protection of their property rights than our own citizens already enjoy. Our well-developed law should define the ceiling. The amendment that we offer today makes that unmistakable.

The chapter 11 issues are some of the most challenging to confront us in the fast track debate. Important questions about the needs of Government and the rights of individuals are at stake. I believe that the Finance Committee bill struck a very good balance. I believe that the amendment we have laid down makes that balance even better, and I urge my colleagues to support it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I thank my distinguished colleague from Montana for offering this amendment. I think it helps improve what is already an excellent bill.

First, I want to make it clear that the bipartisan trade promotion authority bill currently pending in the Senate goes further than any prior bill to address concerns about potential abuse of the investor-State dispute process. At the same time, the bill recognizes that protecting U.S. investors abroad is also an extremely important objective. In short, the bill is balanced. Some people are attempting to undermine that balance. I think that is a mistake.

Foreign investment is closely interrelated to trade. Companies invest abroad to get closer to markets, acquire new technologies, form strategic alliances, and enhance competitiveness by integrating production and distribution. When they invest abroad, U.S. companies often become consumers of U.S. exports—either from affiliated entities or other U.S. companies.

The importance of international investment to the U.S. economy is large and growing. The United States receives more than 30 percent of worldwide investment. According to the U.S. Bureau of Economic Analysis, foreign investment in the United States grew sevenfold between 1994 and 2000, reaching almost $317 billion last year. As of 1998, foreign companies had invested over $3.5 trillion in the United States. They employed 5.6 million people and paid average annual salaries of over $46,000, well above the average salary for U.S. workers as a whole.

The ability of U.S. companies to invest abroad is also vital to U.S. economic growth and U.S. exports. Between 1994 and 2000, U.S. investment abroad doubled from $73 billion to $148 billion. U.S. investment abroad is critical to support a more dynamic and flexible U.S. economy, greater export flows and higher paying jobs for American workers.

For the last 25 years, each successive administration has recognized that it is critical to negotiate strong, objective and fair investment protections in our international agreements to continue to promote such investment. These traditional investment protections are largely based on U.S. law and policy and established international law rules of which the U.S. has been the chief architect and advocate.

The Senate Finance Committee gave very careful consideration to investment issues and some concerns expressed about NAFTA chapter 11 when we discussed H.R. 3005, the bipartisan Trade Promotion Authority Act.

Both Republican and Democratic members of the committee agreed to several improvements to the U.S. negotiating position on investment, which include: providing a mechanism for the early dismissal of frivolous claims, injecting greater transparency into arbitration proceedings, and establishing a review mechanism.

The bill and accompanying report also provide the committee's views on ensuring that U.S. investors abroad enjoy protections comparable to those available to foreign investors in the United States under existing U.S. law, while at the same time not making our own regulations unduly subject to treaty challenge on grounds that have no foundation in U.S. law and practice.

The degree of support for the final product is demonstrated by a strong bipartisan committee vote of 18 to 3 in favor of the bill.

These provisions represent a very careful balance between the political concerns raised by particular cases under the NAFTA chapter 11 process and the need to continue to provide U.S. citizens with strong investment protections overseas.

Yet, some Members still have concerns that foreign investors in the United States will receive greater rights under these provisions than U.S. investors in the United States receive. The amendment we are offering today makes it clear that this is not the case. It is a good improvement to an already excellent bill. I urge my colleagues to support it.

● Mr. KERRY. Mr. President, I want to speak just briefly about the chairman's amendment. I understand what the Senator is trying to do with this amendment, and I appreciate his efforts to seek common ground. He has not had an easy job trying to steer this omnibus trade package through very stormy seas.

I am grateful for the chairman's willingness to be responsive to some of the concerns that I—and others—have raised. However, on the issue of investor-State dispute settlement, I am afraid that substantial disagreement remains. The Baucus-Grassley amendment makes a minor change to the bill. It is certainly better than the current language, but it just does not do a good enough job of protecting the ability of Federal, State and local governments to enact legitimate public health and safety legislation.

As my colleagues know by now, it is clear that NAFTA's investor-State dispute resolution process popularly known as ''Chapter 11''—will be the model upon which future such agreements are predicated. Chapter 11 is a flawed model, not a failed model. I believe that having an investor-State dispute settlement process in a trade agreement is vital to ensuring that U.S. investors are able to invest abroad with confidence—but it needs to be improved.

Regrettably, the Baucus-Grassley amendment does not despite what its proponents claim—effectively address the shortcomings in the chapter 11 model. Adopting the Baucus-Grassley language without other needed changes will still allow future chapter 11-like tribunals to rule against legitimate U.S. public health and safety laws using a standard of expropriation that goes well beyond the clear standard that the Supreme Court has established in all its expropriation cases.

The amendment before us does not give any assurances that the due process clause of the Constitution will be respected, nor does it provide safe harbor for legitimate U.S. public health and safety laws.

Without all of these safeguards, future investor-State dispute settlement bodies can run roughshod over the ability of State and local governments—or even the Federal Government—to make laws to protect the public. I have an amendment that I believe will make those improvements to the underlying bill, and I intend to offer that amendment soon.

I will not oppose the pending amendment because it does not make the underlying bill any worse. But let us be clear: the chapter 11 model is flawed. Any suggestions that the Baucus-Grassley amendment takes care of these problems are simply incorrect.

So I think we should adopt this amendment by unanimous consent, but I do believe that the Senate should have a thorough debate on this issue.●

## MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent the Senate now proceed to a period of morning business with Senators allowed to speak therein for a period not to exceed 5 minutes each.

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

## TRIBUTE TO JOHN MORAN

Mr. LOTT. Mr. President, I rise today to take a moment to recognize the public service of John A. Moran, who resigned from the Federal Maritime