

they are a lot less than meets the eye and that our farmers will continue to suffer.

It was an opportunity to secure real reforms to China's rapacious trade and industrial policy. President Trump may have just squandered it indefinitely—a severe and potentially irreparable loss for the American people, American businesses, American workers.

Given how poorly trade deal one was executed with China, I have virtually no faith that trade deal two, if it ever comes about, will be any better. In fact, most Americans should fear it if it is anything like this one.

BORDER SECURITY

Mr. SCHUMER. Mr. President, on the wall, yesterday the Washington Post reported that the Trump administration is planning to divert \$7.2 billion in funding from the Defense Department to fund his border wall with Mexico.

Once again, the administration proposes stealing this funding from military families and counterdrug programs, bringing the total amount that the President has stolen—stolen—from our troops and our families to over \$13 billion.

The last time the President took money away from military construction, serious military projects suffered—schools in Kentucky, medical facilities in North Carolina, and hurricane recovery projects in Florida. Now the President wants to take even more money away from these projects for a border wall that he promised Mexico would pay for. This is another slap in the face to our Armed Forces, their families, and all of the places throughout America that have military bases that need new construction funding.

Some Senate Democrats strongly oppose this action. We will continue to oppose the transfer of counterdrug funding for the wall, and we will force yet another vote to terminate the President's bogus national emergency declaration and return these much needed military construction funds back to the military, to the men and women in our Armed Forces, and to their families. Our Republican friends, hopefully, will join us in that vote.

President Trump is once again subverting the will of Congress—once again thumbing his nose at the Constitution. The Founders gave Congress the power of the purse, not the President, and this Chamber has refused repeatedly to fund the President's wall. But whether it is to Federal appropriations, foreign policy, or our oversight authority, President Trump seems to have little regard for constraints placed on the Executive. He seems to view the Constitution as merely a nuisance, some inconvenient obstacle in the way of his personal and political interests. It is time for Democrats and Republicans to say: Enough.

I would say one final thing to my conservative friends. The true founda-

tion of conservatism is to minimize the powers of government, particularly the Executive, because they believe it provides more room for the individual. Where are our conservative voices when Donald Trump, in issue after issue—one of the most egregious being this border wall—takes the power away from Congress, away from the American people, and arrogates it onto his own personal wishes?

I yield the floor.

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

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

UNITED STATES-MEXICO-CANADA TRADE AGREEMENT

Mr. TOOMEY. Mr. President, it appears that we are likely to be considering some version of the USMCA, implementing legislation this week, so I want to address this agreement, but in order to do that, I think we have to start with the underlying NAFTA agreement, which has been in place for some years, and ask a question, which is, Why did we go down the path of renegotiating NAFTA in the first place? Let's start there.

As I can imagine, one reason that one might want to renegotiate a trade agreement is if the trade agreement in question were not a reciprocal agreement. If it treated one party differently than it treated the other parties, then you might question whether that is a fair arrangement and might decide that if it is not, it needs to be revisited. That certainly would not describe NAFTA. NAFTA is entirely reciprocal.

Another reason one might decide to renegotiate a trade agreement is if there were tariffs—meaning it wasn't really a free-trade agreement; it was an agreement that maybe changed the terms of trade. But if you still had tariffs, you might decide, as a free-trader like me, that it would be a good idea to renegotiate so that we can eliminate the remaining tariffs.

Well, that certainly isn't the motivation, either, because with NAFTA, there are zero tariffs on 100 percent of manufactured goods that cross the borders of any of the three countries that are parties and zero tariffs on 97.5 percent of agricultural goods. So really there is not much more to do on the tariff side.

By the way, that is true about any other kinds of restrictions on trade. There are no quotas, no obstacles. This is a free-trade agreement. That is what it is. It is fair, it is free, and it is reciprocal among the three countries. As a matter of fact, since NAFTA was adopted, U.S. exports to Mexico, for instance, have increased 500 percent.

That is true of Pennsylvania exports to Mexico, as it is on average for all 50 States.

I will state that modernizing the agreement always made sense, right? We now have this huge digital economy that did not exist back in the early nineties when NAFTA was adopted, so it definitely makes sense—it always makes sense to modernize, to update. But I think it is very clear that modernizing and updating were not the driving motivations for renegotiating NAFTA and adopting USMCA. The fundamental reason was that we have a trade deficit with Mexico. It is pretty persistent every year. It is not a huge deficit, but we have a trade deficit with Mexico, and that was deemed to be unacceptable to the administration.

So the fundamental purpose of renegotiating NAFTA and the reason Mexico and Canada had to be coerced into this new agreement was so that we could diminish exports from Mexico. Despite the fact that economists universally understand that a trade deficit with a country like Mexico is a meaningless measure, nevertheless, that is the goal.

Since trade in cars and car parts is the source of the trade deficit with Mexico, it is the auto sector that bears the brunt of the restrictions.

Let me suggest that one useful way to think about USMCA is that it is NAFTA with two categories of changes. The first category is the modest constructive modernizations I alluded to. They are mostly taken from the Trans-Pacific Partnership Agreement that had been negotiated by a previous administration. Examples include requiring that there be free digital trade. So you can't impose a tax on a data transfer, for instance, or you can't impose a tariff on software, and you can't require that data be stored locally. These are good things.

It is important to note they are codifying existing practices. Canada, Mexico, and the United States do not currently impose obstacles and tariffs on this kind of economic activity. Under USMCA, they won't be able to; it will be codified. So we will make permanent that which is already the practice. There is a very, very tiny reduction in Canadian protectionism with respect to dairy products.

For the most part, these modernizing features are modest, they come from TPP, but most importantly, they could have been achieved without the second category of changes I am about to describe. They could have been achieved because they weren't really controversial.

The other important category of changes to NAFTA that USMCA contains is a full series of protectionist measures that are designed to diminish trade and/or investment. So for the first time in certainly modern times, we are going to consider a trade agreement that is designed to diminish trade, which should be very disturbing for those of us who understand how

much economic growth comes from trade.

What are some of the specifics? Well, the specific changes that are meant to diminish trade—as I said, the auto sector bears the brunt of it. It really is the end of free trade in automobiles and auto parts with respect to Mexico. The agreement imposes minimum wage requirements that are designed to be impossible for Mexican factories to meet, and when they don't meet them, Mexican autos and auto parts will be subject to a tax. So Americans who buy these cars will have to pay a tax on them. This is designed to make Mexico and Mexican factories less productive.

We have folks who think that is somehow a good thing for the United States. It is not. This minimum wage requirement and the tariffs that will follow from it will simply make the entire North American auto industry less competitive because we have integrated supply chains, and American domestic manufacturers use parts that originate in Mexico. Those parts will now be more expensive. It will mean higher prices for American consumers, who will have to pay more money for a car and therefore will have less money available for any of the other things they would like to consume. It will probably lead to an increase or acceleration in the shift to automation because when you artificially establish an arbitrary wage rate that is unaffordable, it creates an incentive to avoid labor costs entirely with automation. All of that means fewer jobs.

We are already seeing a reduction. We have a terrific economy generally, but the manufacturing sector is actually not participating in this tremendous expansion. We have been losing jobs in manufacturing as a result of tariffs we have been imposing.

With the full anticipation of this agreement coming, the auto sector in the United States of America has been shedding jobs. We have been losing jobs as employers in this sector see where we are heading on this policy. That is one item.

Another way we are restricting trade is by arbitrarily putting an expiration date on this trade agreement. It expires 16 years from the date of enactment. There is a mechanism by which, if all three parties unanimously and simultaneously agree, they can extend it, but the default setting is for this thing to go away, for this to expire.

We have never put a termination date on a trade agreement. On all of the trade agreements we have done—and there are dozens—we have never had an expiration, and there is a good reason. The reason is, as you get anywhere close toward that expiration date, an uncertainty emerges about what the trade regime would be like if the agreement is not extended. That has a chilling effect on trade and investment, so it is a very bad idea.

Our Trade Rep has argued that, well, these trade agreements ought to be renegotiated periodically anyway. First

of all, not necessarily—a free and fair and reciprocal trade agreement that has no barriers to trade doesn't necessarily need to be renegotiated with any specific frequency, and secondly, it can be renegotiated without an expiration. The question is, What is the default setting? Do we assume the arrangement continues, or do we assume the arrangement ends? Unfortunately, in USMCA, it all comes to an end.

There is another provision that is very disturbing, and that is the almost complete destruction of what is known as the investor-state dispute mechanism. This is the mechanism by which American investors in Canada and Mexico, in this case, can adjudicate a dispute because sometimes the local court in those countries does not treat the foreign investor—the American investor—in that country fairly. That happens sometimes.

So 50 or more of our bilateral investment treaties and trade agreements have this mechanism, the investor-state dispute settlement mechanism, so that if an American investor or an American employer with an investment overseas in one of these countries is being treated unfairly, they have a place to go to get a fair adjudication of their dispute.

In March of 2018, 22 currently serving Republican Senators sent a letter to the Trade Representative. It says: "ISDS provisions at least as strong as those contained in the existing NAFTA must be included in the modernized agreement to win congressional support."

There is actually a broad consensus about its importance, which is why it is in every other trade agreement we have ever had. But USMCA completely guts these investor protections. It limits it very narrowly to just several sectors in Mexico and eliminates it entirely in Canada. The irony of this is, in the 30 years that we have had these investor-state dispute settlement provisions, every time the United States was a litigant, the United States won.

This has been a jurisdiction that has been very, very helpful to the United States, and we have given it away. It is out the door. That is because there are some, I think, advocates for eliminating this who think, in a classic protectionist mindset, that an investment in another country necessarily comes at an expense to investment in America. That is completely wrong. Most investment overseas is meant to serve overseas markets, and it results in jobs in the United States in management and supervision and accounting and planning and all kinds of aspects of overseeing that investment overseas. But now we are going to have a chill imposed on this activity.

Well, those provisions I just described were the deal as it was reached back in May, and at that point, our Democratic colleagues said that the agreement was not acceptable. So our Trade Rep and a number of House Members, in particular, entered into a

whole new series of negotiations, and from there, the agreement got worse.

What happened there—let me talk about just a couple of categories. One is a whole set of labor provisions. Basically, the United States forced Mexico to pass labor laws designed to facilitate the unionization of their factories. It is none of our business what the labor laws are in Mexico, but we forced them to pass these laws.

Then it gets worse. The USMCA creates this elaborate mechanism by which American taxpayers are forced to pay to enforce Mexican labor laws. Richard Trumka, from the AFL-CIO, said: "For the first time there truly will be enforceable labor standards—including a process that allows for the inspections of factories and facilities that are not living up to their obligations."

So he is alluding to the mechanism that is established in USMCA to allow site inspections. I remind my colleagues that this agreement is fully reciprocal. I wonder how much American businesses are going to appreciate having Mexican inspectors come in to inspect their facilities to see if they are in compliance with American labor law. This is there because it is perceived to be in organized labor's economic interests.

First, it increases the expense and diminishes the productivity of Mexican plants, which some people think is a good thing. I think it is a bad thing for American consumers to have to pay more than necessary. But in any case, American taxpayers are going to pay hundreds of millions of dollars over years to enforce another country's labor laws.

Another provision that was insisted on in the latter parts of the negotiation is the removal of intellectual property protection for biologics. As you know, biologics are complex new medicines derived from living cells. It is one of the most exciting things in medicine because it has allowed scientists to use living organisms—or these cells from living organisms—to produce wonderful, wonderful curative medicines. It is very exciting.

Under U.S. law, when a business develops such a new medicine, which comes at enormous cost to get it to market, we provide 12 years' worth of what we call data exclusivity. It is the exclusive ability to market that medicine so that the company can recoup the billions of dollars that are spent developing it.

Well, 12 years is the period of protection we provide for that intellectual property. When the Trans-Pacific Partnership was being negotiated, the Obama administration insisted on at least 8 years. We are the only country that is, by far, the leading country in developing this new category of medicine. We are the ones who have the incentive to protect this intellectual property. Other countries—such as Mexico, Canada, and other countries around the world—don't really care

about protecting it because it is not theirs. They argue for less intellectual property protection; we argue for more. That is the general nature of the context.

As I said, under the Trans-Pacific Partnership, everybody had agreed on 8 years. Not in USMCA. In USMCA, we agreed to zero—zero—no period of data exclusivity to protect the intellectual property of this very exciting, new kind of medicine. This is so ironic because right now—as an aside—we are in this ongoing, protracted, tough battle with China over a number of their economic practices. Chief among them is their theft of intellectual property. We are rightly insisting that we are going to defend and protect our intellectual property because it is the crown jewel of the American economy. The most precious thing we have is the creativity of the American people. So we are insisting that we have robust protection for intellectual property. Here, in USMCA, we give it away. We just give it away.

There is another aspect of this that is important to consider, and that is that there is not going to be any boost to economic growth as a result of swapping out NAFTA for USMCA. The U.S. International Trade Commission, which is an independent agency, part of the U.S. Federal Government, did a big, extensive study, and they did a report.

Their report said that USMCA will create a net of 176,000 jobs. Well, if that were true, it would be trivial in the context of our economy. Our economy has been creating more than that number of jobs every month for years now. It is a tiny number for 72 months when we have been producing more jobs than that each and every month—not over 72 months. But worse than being a very small number, it is just not true. The study says that, on balance, the trade restrictive provisions, some of which I alluded to, will diminish trade and cause U.S. growth to decline, and any offsetting growth just comes from reducing the uncertainty about whether the free trade and digital trade that I alluded to continues.

However, the ITC cost-benefit analysis explicitly chose not to attempt to quantify the sunset clause. There is no question that is a negative. They didn't even attempt to quantify it. They did their analysis before these new labor provisions and before the abandonment of protection for intellectual property of biologics—before that even emerged on the scene. We know those have a negative effect on growth. The bottom line is, there is going to be no additional economic growth from this agreement.

But there is a tax increase. The Congressional Budget Office did their analysis, and they concluded—rightly—that there will be tariffs added to the sales of cars. American consumers will be paying a tax increase in the form of this tariff on autos and auto parts. That is definitely part of this agreement.

To conclude on the substantive matters, we took a true free trade agreement, and we added some constructive features. We did some modernizing from the Trans-Pacific Partnership, which was constructive, but then we slapped on an expiration date. We imposed costly new restrictions on one of our trading partners. We eliminated the dispute settlement mechanism for U.S. investors. We dropped the intellectual property protection for the most innovative medicines we have. We saddled American taxpayers with \$84 million over 4 years to enforce Mexican labor and environmental laws. For all of this, we get basically no additional economic growth—probably a little bit.

It is worth noting that the Members of this body who have proudly and openly opposed every trade agreement they have ever been asked to cast a vote on—they voted no. On this, they are going to vote yes. For the first time in two decades, the AFL-CIO is supporting a trade deal when they have opposed all free trade agreements. There is a reason. It is because we are going backward on trade. It is because this agreement is designed to limit trade.

A quick word on process here—this is important. The implementing legislation that is going to get to the floor one way or another sometime soon is not compliant with trade promotion authority. What that means is, it should not get the expedited treatment and the protection from all amendments that trade promotion authority confers on a narrow category of legislation that conforms completely—completely—with the trade promotion authority law.

Let's remember a few fundamental things here. Trade policy is the responsibility of Congress. The Constitution assigns it to the U.S. Congress to establish trade policy, including the establishment of tariffs, the management of tariffs, and everything to do with trade.

With TPA, we delegate the responsibility that is ours to the executive branch with a lot of conditions attached, and if they don't comply with those conditions, then this legislation shouldn't be whisked through Congress on a simple majority vote with no amendments, which is meant, under TPA, to be limited only to those pieces of legislation that comply entirely with the trade promotion act legislation.

Here are a couple of specific ways in which this agreement violates the trade promotion authority. First of all, Congress did not receive the final agreement according to the timeframe contemplated by TPA. We are supposed to get the final agreement 30 days before there is a vote in committee or on the floor on the implementing language. The reason that is important is so that Congress can give some feedback to the administration. This is a draft that is meant to be a draft of the implementing legislation submitted to

Congress so that Congress can then consider how it might want to make changes since this is, after all, our responsibility. The administration chose not to do that at all. They finalized this agreement in early to mid-December, and there was a vote on the House floor on the final version of the implementing language within a week or so—nothing close to the 30-day period that is meant to enable Congress to influence its own product.

There is another provision in the trade promotion authority legislation that requires that the implementing legislation must contain only provisions “strictly necessary or appropriate to implement such trade agreement.” Why is that important? It is because we passed this legislation with a 51-vote threshold—simple majority threshold. Almost everything else in the Senate requires 60 votes. So we are saying that if you want to use the expedited process and if you want to be able to pass this legislation with a simple majority, you have to limit it only to that which is absolutely strictly necessary and appropriate for implementing this trade agreement; otherwise, obviously, people could stick in any old thing they want that they think there is a majority vote for if there are not 60 votes for it. In other words, abusing this narrow construct really dramatically underlines the 60-vote threshold for legislation in the Senate.

Well, let me give you a few examples of cases where it is clearly being abused in this agreement. One is that there are appropriations in the implementing legislation. This is a complete first. In all of our trade agreements in the past, there has been a necessity for some spending. The appropriations bill to spend that money has always been a separate legislative vehicle precisely so that it would be open to scrutiny, subject to amendment, and subject to a 60-vote threshold. Not this time. The hundreds of millions of dollars of spending in this bill include, for instance, \$50 million in salaries and expenses for the office of the U.S. Trade Rep. Well, maybe the folks at the U.S. Trade Rep all deserve a big raise; maybe that is true. But that should be done in a separate piece of legislation because it is not necessary and appropriate for the implementation of USMCA. Not only that, but they have taken all of this spending and imposed an emergency designation on it. There is an emergency designation on it. So, apparently, it is an emergency that the folks over at the U.S. Trade Rep's office get a pay raise. Apparently it is an emergency that all this money be spent. That is ridiculous; of course it is not. The reason they put the emergency designation on it is that spending in this body—spending in Congress that gets an emergency designation doesn't have to be offset. So if it exceeds the permissible maximum spending we have all agreed to and if you slap on an emergency designation, then that is

OK. If you don't have the emergency designation, then new spending has to be offset with reduction in spending somewhere else.

The reason we have the emergency designation is that emergencies actually can occur. There are earthquakes; there are fires; there are floods; and those happen. But I am sorry, a pay raise for staffers at the U.S. Trade Rep does not qualify.

So, for a variety of reasons, this legislation we are going to be considering is not compliant with trade promotion authority. That doesn't mean it can't move. It simply means it needs to move under the regular order. It should be an ordinary bill on the floor as any ordinary legislation, and, sadly, from my point of view, I am pretty sure the votes are there to pass it. There are probably going to be the votes to pass what I think is a badly flawed agreement—an agreement that restricts trade rather than expanding trade. I certainly hope we will do it under the regular order because it does abuse trade promotion authority.

The last point I would make is that I certainly hope this does not become a template for future trade agreements. We have an opportunity to do wonders for our constituents, our consumers, and our workers by reaching new and additional trade agreements with the UK, Japan, Vietnam, and all kinds of countries that have tremendous growth potential, and our economy will grow if we can work out mutual free trade agreements with these countries. I am very much in favor of that. I wouldn't want these protectionist, restrictionist policies that found their way into this agreement to be part of future agreements.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. BRAUN). Without objection, it is so ordered.

IMPEACHMENT

Mr. CORNYN. Mr. President, about 4 weeks after the House voted on the Articles of Impeachment, the House will name impeachment managers, and we will see those Impeachment Articles delivered here to the Senate, but for the impeachment managers' role in the Senate, that will conclude the House's participation in the impeachment process, and ours—the Senate's responsibilities—will begin.

As I said, this vote occurs 4 weeks after the House concluded its whirlwind impeachment investigation. As I look more and more closely at this, it strikes me as a potential case of impeachment malpractice, and I will explain.

Four weeks after they passed these two Articles of Impeachment, 4 weeks

after they concluded the President has acted in a way to invoke our most extreme constitutional sanction that he should be removed from office, they finally will send these Impeachment Articles to us.

As I look at the Impeachment Articles, I am astonished that even though we heard discussions of quid pro quo, bribery, and other crimes, the House of Representatives chose not to charge President Trump with a crime. How you then go on to prove a violation of the constitutional standard of high crimes and misdemeanors when you don't even charge the President with a crime, I am looking forward to having the impeachment managers and the President's lawyers address that. At least at first blush, it does not appear to meet the constitutional standard of bribery, treason, high crimes, and misdemeanors.

President Clinton was charged with a crime—the crime of perjury—but, here, President Trump has not been accused of a crime. The vague allegation is that he abused his office. That can mean anything to anybody. Just think, if we dumb down the standard for impeachment below the constitutional standard, what that does is it opens up the next President, who may have a House majority composed of the other party, vulnerable to charges of impeachment based on the allegation that he abused his office, even if they did not commit a high crime or misdemeanor. So impeachment becomes a political weapon, which is what this appears to be, rather than a constitutional obligation for the House and the Senate.

Last month, the chairman of the House Judiciary Committee, JERRY NADLER, said on national television it was a “rock-solid case” against the President—“rock-solid,” but in the moments after the House voted to impeach the President, there seemed to be a lot of doubt about whether there was sufficient evidence to convict the President of high crimes and misdemeanors; so much doubt, in fact, that it led the Speaker of the House to withhold the articles until the Senate promised to fill in the gaps left by the House's inadequate record.

She sought promises from Senator MCCONNELL, the majority leader, that the Senate would continue the House's investigation—continue the House's investigation—the one which only a few weeks prior one of her top Members said was a rock-solid case. Well, it either is or isn't.

I would say that the Speaker's actions and her cold feet and her reluctance to send the Impeachment Articles here for the last month indicate to me that she is less than confident that the House has done their job.

As a matter of fact, in the second Article of Impeachment, they charged the President with obstruction of Congress. Here is the factual underpinning of that allegation: Chairman SCHIFF would issue a subpoena to somebody who works at the White House. They

would say: Well, I have to go to court to get the judge to direct me because I have conflicting obligations—a subpoena from Congress and perhaps a claim of some privilege based on confidential communications with the President. Rather than pursue that in court, which is what happened in the Clinton impeachment and what should happen in any dispute over executive privilege, Chairman ADAM SCHIFF of the House Intelligence Committee dropped them like a hot potato, and they simply moved on in their rush to impeach without that testimony and without that evidence. So now they want the Senate to make up for their failure here by calling additional witnesses.

I sometimes joke that I am a recovering lawyer and a recovering judge. I spent 20 years or more of my life either in courtrooms trying cases or presiding over those cases or reviewing the cases that had been tried based on an appellate record in the Texas Supreme Court.

Our system of justice is based on an adversary system. You have the prosecutor who charges a crime—that is basically what the Articles of Impeachment are analogous to—and then you have a jury and a judge who try the case presented by the prosecution. We have a strange, even bizarre, suggestion by the Democratic leader in the Senate that somehow the jury ought to call additional witnesses before we even listen to the arguments of the President, his lawyers, and the impeachment managers who spent 12 weeks getting 100 hours or more worth of testimony from 17 different witnesses.

So this discussion about whether there will be witnesses or no witnesses is kind of maddening to me. Of course, there will be witnesses—witnesses whom the impeachment managers choose to present, maybe through their sworn testimony and not live in the well of the Senate, but it is no different in terms of its legal effect, or witnesses and evidence, documentary evidence, that the President's lawyers choose to present.

I think the majority leader has wisely proposed—and now it looks like 53 Senators have agreed—that we defer this whole issue of additional witnesses until after both sides have had the chance to present their case and Senators have a chance to ask questions in writing.

This is going to be a very difficult process for people who make their living talking all the time, which is what Senators do. Sitting here and being forced to listen and let other people do the talking is going to be a challenge, but we will have a chance to ask questions in writing, and the Chief Justice will direct those questions to the appropriate party—either the impeachment managers or the President's lawyers—and they will attempt to answer those questions.

As I look at this record more, I am beginning to wonder whether the basic