

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	Voivovich
Crapo	Lincoln	Lott
DeWine	Lott	Warner
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 bringing 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