

growing, it is significant, and it is dangerous.

By the way, most of this Congress and the White House will simply sleep through all of this. They are not awake for these issues; no one thinks this is a problem; no one cares much about it. So what if it is \$2 billion a day more than we import than export? Who cares? Another 30,000, million or 2 million jobs shipped overseas. Who cares? It is not anybody at the White House who loses their job, so we do not hear about this. But for a lot of the American families, it is a very serious problem.

We believe a significant part of the problem rests with China. Almost a third of that trade deficit is with China. China's markets are still too closed to our products. They say they are open, but they are not. China is awash in counterfeit goods and piracy. Two-thirds of the goods that come into our country that are counterfeit goods come from the country of China. And China does nothing about that.

China, as we know, is an attractive place for American companies to move their workers. I will not do it today, but I have given plenty of examples—Huffy bicycles, Radio Flyer, Little Red Wagons, Etch-a-Sketch—I could go on for a long period of time. Those jobs go to China because you can hire people for 30 cents an hour in China. You can work them for 7 days a week and you do not have to give them a day off for months. And the Chinese Government looks the other way. You can do that in China. You cannot do that here.

So that is why these companies are moving their jobs to China. American companies move their jobs to China. They produce the product, ship it to the United States to sell it in the U.S. marketplace, and then they run their income through the Cayman Islands, in a tax-haven country, so they do not have to pay taxes or at least avoid as much as they can of their tax burden. It is a very serious problem.

In discussing this issue of normal trade relations, we have to remember who we are dealing with. Yesterday, my colleague from South Carolina, LINDSEY GRAHAM—described the case of a man named Shi Tao. Not many Americans, perhaps, know Shi Tao. But Shi Tao was sentenced, in April of last year, to 10 years in prison. He happens to be a journalist. He was “divulging state secrets,” which is the reason he was sent to prison in China. He is a former staffer at the Contemporary Business News agency. He was convicted of sending to foreign Web sites the text of a message from authorities in China warning journalists of the dangers of “social destabilization” from the return of certain dissidents on the 15th anniversary of the Tiananmen Square massacre.

So he sent this to some foreign sites, and, as a result, he was charged with “divulging state secrets” and sent to prison. Much of the evidence against him came from a company called

Yahoo!, an American company. The Chinese Government traced the e-mails sent by Mr. Shi Tao—a journalist—they traced those e-mails with the cooperation of Yahoo! They asked Yahoo! to provide the information. Yahoo! did. And now this fellow is in jail for 10 years for passing on an e-mail by the Chinese Government that said they worried about the dangers of “social destabilization” from the return of dissidents on the 15th anniversary of the Tiananmen Square massacre.

Reporters Without Borders, an organization that we hear about these days, has complained that Yahoo! has disregarded ethical concerns in an effort to maintain a good business relationship with the Chinese Government.

There are other cases that are similar to this.

Last month, Google, an American company—a great American success story, I might add—agreed to censor its search engine results in China, agreeing to free-speech restrictions in exchange for better access to the fast-growing Internet market in China.

This shows you the power of money and profits over ethics and morality when it comes to doing these kinds of things.

Google, last month, rolled out a new version of its search engine that is easier, specifically for use in China. What has happened is, previously Government barriers that were set up to suppress information had prevented the Chinese users from using Google at all. So in order to obtain a Chinese license, Google has agreed to omit Web content that the country's Government officials find objectionable. That includes information about Taiwan's independence and the Tiananmen Square massacre, and so on.

It is particularly concerning, I think to me and to a lot of others, that we have American companies helping the Chinese authorities track down a journalist who did nothing wrong, was engaged in some free speech, and now sits in prison for 10 years.

But I digress. My main point is that we have a pretty serious trade problem.

It is a trade problem that is significant in a lot of ways, and is by no means limited to China. We run very large trade deficits with everyone with whom we have had a trade agreement. We run big trade deficits with Mexico. We run big trade deficits with Canada, with Europe, with Japan, and yes, with China. A part of it, of course, is the basic incompetence of our trade negotiators. And the other part is a trade strategy that has been embraced by this and previous administrations and this Congress that chants about “free trade”—not caring, of course, whether trade is fair—and has allowed American corporations to decide to structure trade in its own image. And that image is to decide it wants to produce where it is cheap; that is, take Huffy bicycles away from Ohio and fire 900 workers. Move it to China, pay them 33 cents an hour, work them 7 days a

week, 12 to 14 hours a day, and then send the Huffy bicycles to America to be sold in Sears, Wal-Mart, and Kmart and believe that is good for our country. It is not.

It might be good in the short run for some consumers in this country, but, after all, America is not going to be measured in the long term by what it consumes. It will be measured by what it produces. Economic health is about what you produce, not what you consume.

I believe this morning's announcement will produce one more large yawn at the White House, one more large yawn in the Congress. I do not know exactly what it is that is going to provide a tipping point that will finally convince policymakers that we are headed toward very serious trouble. It is unsustainable to have a fiscal policy that increases the debt in this year from our budget policies of \$704 billion and a trade policy that increases the trade debt in this year of \$720 billion. That is \$1.4 trillion in combined debt. That will choke this country.

We know better than that. We know what to do. We know better than to sit around on our hands and gnash our teeth and wipe our brow. We need to get busy and solve these problems. But first they have to be recognized. There is this blissful ignorance these days about a fiscal policy that is wildly off-track and a trade policy that has not worked for some years, that is shipping America's jobs overseas and weakening this country.

This Congress and this President have a responsibility to address this head on. My colleague, LINDSEY GRAHAM from South Carolina, and I joined on the legislation I described yesterday, and I hope my colleagues will support it.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

THE FAIR ACT

Mr. SESSIONS. Mr. President, I want to share some thoughts on the asbestos litigation legislation that is before us. We have a point of order raised. I believe that point of order is a technical point of order. I believe it is not a point of order that has the potential to avoid a large amount of Federal expenditures. In fact, as we all know, the asbestos bill is funded by those companies and defendants who are being sued as an alternative to paying out money from aberrational, disjointed, inconsistent lawsuit verdicts, with 60 percent of that money going to lawyers both for the defendant companies and for the plaintiffs. They propose to pay

this money into a fund, allowing it to be distributed, with 5 percent or less attorney's fees cost, directly to those who are determined to be sick from asbestos.

Surely, we can make this happen. Surely, we cannot allow the spasm that now exists, that is an embarrassment to the legal system, embarrassment to the profession of law, and an embarrassment to Congress for failing to fix it, when the Supreme Court and other judges have, on numerous occasions, called on us to fix it. That is what I would point out.

I was hoping that this afternoon we would be able to discuss votes throughout the day, amendments. Senator CORNYN has offered an amendment, and we have had votes. There are others out there.

I will point out amendments that I have offered and plan to offer which deal with the subrogation issue, particularly involving longshore shipping companies, where they are self-insured, and those companies are entitled to subrogate to some of this money that would come out, under normal circumstances, to money that is paid to the victims. And for a lot of reasons, I think they are in a specific special place that needs some relief. The silica claims, we need to consider that more carefully. I have proposed legislation that if this bill were to fail, the 5-percent cap on attorney's fees would apply, or the court would apply standards of comparable attorney's fees instead of allowing such a large chunk of money to be taken from the victims and their recovery to pay attorneys, as is the case today.

We have some medical criteria in the bill; that is, if you are going to be sick, how do you know it was caused by asbestos; what do you have to show before you can make a claim so that we can pay those who are sick but not pay those who are not sick; or if those who are sick have a sickness unconnected to asbestos, they should not recover from the asbestos fund; otherwise, we would have a fund that can't survive. That needs to be tightened.

Those are some of the amendments I would like to offer. We will get on that presumably next week after we vote on this point of order.

I urge my colleagues not to allow this budget point of order to derail the opportunity we have today—it may be the last, best opportunity—to fix an asbestos system that is out of control. It is just not working right. Under the present system, we are going to have—and we have today—thousands of people who have been injured by asbestos. Many of them are veterans—thousands of people who are injured, some severely, some dying as a result of their exposure, who will not be able to recover any money because the company against which they have a lawsuit, the company which was responsible for exposing them to asbestos, no longer exists. They are bankrupt, and there is no one to sue.

Secondly, we have a large number of companies—77—that have gone into bankruptcy, and many are in bankruptcy now. If we allow this uncontrolled rush to take every dime out of those companies as quickly as possible, as the lawyers for the individuals who are sick are trying to do, those companies, too, will go out of existence.

There are other reasons certain people are not going to be able to recover who are sick from asbestos. This bill would give everybody a chance to have a fair recovery, so I believe it has a big humanitarian benefit.

Also, if we leave these cases in the litigation system, a jury might become inflamed or become sympathetic for a victim and may render a \$100 million verdict. Another jury may render a \$100,000 verdict. Another jury may render nothing. So we have really aberrational allocations of scarce resources to people who are sick. We need to have a comprehensive system by which those who are sick are compensated fairly, promptly, and without attorney's fees.

There is no doubt, as we know, that the attorney's fees, according to the Rand Corporation, total 58 percent of the amount of money paid out by the defendants. So defendant companies hire their own lawyers, and they are being sued for huge amounts of money, and they hire the best lawyers they can get. They defend those cases. One study shows they get a little more than plaintiffs' attorneys. Then the plaintiffs' attorneys sue, and they take their fee out of the recovery. If you look at it in an economic sense, all of the money paid out by the defendant companies should go to the victims, as much as possible. They should not have to pay a chunk to their own lawyers or a chunk of it to the plaintiffs' lawyers.

We have 60 percent at stake. This bill caps the attorney's fees at 5 percent. So we are talking about 53, 55 percent of the money being paid out by the defendant companies, and it is not getting to the victims. So we have a lot of ability here to do the right thing. We can get more money promptly to victims. We can get victims compensation who otherwise would not get it because the companies they might sue are no longer in existence or there are other legal impediments to it, and we can treat people fairly, and people similarly situated would get similar amounts.

For example, mesothelioma, the deadly cancer that has been connected to asbestos exposure, would result in a prompt payment of \$1.1 million to anybody who has contracted that disease due to asbestos exposure. If the doctor diagnoses that and it is not a diagnosis of any real dispute, you simply go in to the claim administration, make your claim, and 50 percent of that \$1.1 million is to be paid within 30 days and the additional 50 percent paid in 6 months.

That kind of process is quite different from what is happening today. There are 300,000 lawsuits pending in

America. Some dockets have tens of thousands of lawsuits and only a handful of judges. These cases are not going to trial immediately. People are not getting paid promptly. It is an embarrassment to all of us. Some people are getting paid aberrationally and without consistency or fairness. Some are getting a lot, some are getting nothing. Some people are getting paid little checks over a period of 10 years, and there from different companies that settle up. That is not a way to handle a mass tort, where a lot of people are ill, in which the defendant companies are prepared to pay.

All of that is not working right. We ought to take those companies' money—\$140 billion of it—and set it aside in a fund and create a fund from which we can pay people whenever they are sick. That can be done, and that can make the system better.

It was interesting to note that we don't often see a lot of agreement between the Washington Post and the Washington Times. But the Washington Post had an editorial today in which they say:

Some amendments may be reasonable at the margin, but the bill's central idea to replace litigation with a \$140 billion compensation fund, to be financed by defendant companies and their insurers, must be preserved.

They go on to say:

The fact that the bill is being attacked from both directions suggests that its authors, Senator Arlen Specter, Republican of Pennsylvania, and Senator Patrick Leahy, Democrat of Vermont, have balanced competing interests in a reasonable manner.

I am not sure that is totally correct, but there is some truth to that. It says:

But the truth is that the bill's main opponents are the trial lawyers who profit mightily from asbestos lawsuits and who constitute a powerful lobby in their own right. Mr. Specter and Mr. Leahy are, in fact, model resisters of special interests who have spent more than two years crafting legislation that serves the public interest. For Mr. Reid to demean this effort in order to fire off campaign sound bites is reprehensible.

That is the Washington Post. I certainly agree with that. The special interests here are those who have lost sight of the victims, who have lost sight of trying to create a justice system that works; the special interest of those people engaged in the system who are enriching themselves in it every single day and do not desire to see it end.

But I will note that Dicky Scruggs, one of America's most prominent, perhaps the most accomplished trial plaintiff lawyer in America, who lives in the Mississippi gulf coast area, where asbestos was such a bad problem at the shipyards, commenced this litigation many years ago—maybe 30 years ago. He just appeared with Chairman SPECTER and said that enough is enough. We don't need this in the courts anymore. Not enough money is getting to the victims. The system is not working. We need change. He supports this bill. He believes there is sufficient money in it to take care of

those who are sick, and he supports this bill that has my amendment in it that limits lawyer's fees to 5 percent, unless it goes on appeal.

If the lawyer comes in with a client with mesothelioma, gets a doctor's report, spends a few hours on that, talks with the client, files a claim with the board and they give him a date, and they walk down there and have the doctor's report and the physician says this person has mesothelioma, he is entitled to \$1.1 million, and a 5-percent fee is \$55,000. That ought to be enough. Yet we have people saying that we cannot have these fees. We cannot cut these fees. This is too much.

We are creating a trust fund. If you file a claim for a person under the Social Security Act, the Federal law limits your attorney's fees. If you make claims in workman's compensation cases in most States, attorney's fees are limited. It is perfectly proper to do so. I believe 5 percent is adequate.

The Washington Times said this. It is a conservative newspaper here:

This bill should pass; Senator Arlen Specter, Pennsylvania Republican, and Patrick Leahy, Vermont Democrat, are due accolades for getting this far on a longstanding problem that has befuddled everyone for decades. Many asbestos victims have suffered or died of mesothelioma or other illnesses while the courts and Washington struggle with a resolution. The victims and their families deserve to be made whole.

I believe those were strong and appropriate words.

Then they comment on Senator REID, the Democratic leader. They say:

Mr. Reid said the bill benefited "a few large companies" while supposedly leaving the little guy in the lurch. Really? Why, then, do insurance giants AllState and AIG oppose the bill? Why are many plaintiffs anxious to see it pass? In reality, the big guys speak through Mr. Reid—in this case, unscrupulous lawyers who stand to profit greatly from keeping asbestos cases in the courts.

That is who the big guys are who are making the big money. They say:

... the FAIR Act offers what nothing else previously has: A light at the end of the tunnel for claimants.

I think one estimate I have seen has been that \$70 billion has been paid out to date to victims of asbestos. Somebody said the figure is more than that. Think about this: think about the fees. Let's say 25 percent of that is a legal fee. Some make more than that. Some of the numbers show 25 percent as an average total when all is said and done. But most fees are normally one-third. What is 25 percent of \$70 billion? What, \$18 billion? That is going to lawyers. These are not thousands and thousands of lawyers. Really, I would say there are probably no more than a few hundred plaintiff lawyers who are handling well over 50 percent of the cases. So it is an incredible amount of money. We could create a system where you can walk in with a medical report, basically, and have your compensation delivered to you promptly, without all these fees being taken from it.

Why can we not do this? That is why independent groups such as the liberal Washington Post and the conservative Washington Times have both endorsed the bill. I am hopeful that we will, over the weekend, take a good look at the budget point of order that has been raised here. When my colleagues look at it, I hope they will conclude that this is not the kind of budget point of order which was contemplated when this rule was passed. This budget point of order arose from Chairman GREGG's brilliant understanding that many of our entitlement programs are drafted in such a way that when they score that bill, they score it over a maximum of 10 years. People write the bill so it will cost more the next 10 years than it does the first 10 years.

If the Government is starting an entitlement program, you can object if you can show it goes up too much in the outyears, which I think is a good reform. But this bill is not Federal taxpayers' money. This bill represents money that will be paid into the fund by the people who are paying out money now to victims in a willy-nilly, random fashion that is unprincipled and unjustified. They will put the money in voluntarily in exchange for not having to hire a bunch of lawyers to defend themselves in courts in every jurisdiction, virtually, in this country. That is what they are trying to do.

The legislation does not impose any cost on the American taxpayers, and if the fund was to collapse and not have enough money in it, then the taxpayers do not pick up the tab. They do not pick up the tab. The cases go back in the courts, and any companies that still exist would have to pay, just like they would before this reform passed.

I think this budget point of order, for reasons I am not clear about, lies apparently in a technicality. It does not lie in the classical understanding of its purpose to protect the Federal taxpayers because this is not taxpayers' money; it is the defendant companies' money.

When we vote on this budget point of order early next week—I am a member of the Budget Committee. I know Senator CORNYN is and others are who care about the budget. We meet every day and we take heat every day for trying to constrain the growth of spending and entitlements in this country in a rational way to meet the needs of our people. But to stop the abusive growth in these programs, we support a balanced budget. We support containing spending.

Many of the people who are supporting this objection, however, have not demonstrated, in my view, any important interest over the years in containing spending. A lot of them are big spenders.

That objection, while technically is legitimate, does not in any substantive way have an impact on the debt of the United States in the next 30 years as this act would be enforced.

I urge my colleagues to look into this point. Do not allow this supermajority

vote. To keep the bill on track, 60 Senators will have to vote to waive this point of order. It would be a tragedy, indeed. When we see Senator LEAHY, Senator SPECTER, and Senator SESSIONS supporting a piece of legislation, when we see the Washington Times and the Washington Post supporting a piece of legislation, when we see the veterans groups incredibly anxious to see this legislation passed, and when we see overwhelmingly the businesses that are involved in this process and are paying out this money that want to see it passed, why can't we get it passed?

Let's not allow it to fall on a supermajority vote of 60 instead of the normal 50 required to pass legislation. I hope everyone will study it, and when they do, I think they will feel comfortable in voting to waive the budget point of order.

NSA WIRETAPPING

Mr. SESSIONS. Mr. President, I wish to share some thoughts about NSA, the National Security Agency, and the wiretaps that have taken place, the brouhaha that has occurred in the press and in Congress, and why I believe this program is necessary, why I believe it is legal.

I know the Presiding Officer has been, perhaps, the most eloquent spokesman in the Senate on this subject. He believes this is legal and proper and has articulated those views very ably.

I shared some thoughts the other day about why it is so important, why there is much political goings-on here instead of substance, and why we need to continue with the program. I would like to share a few more thoughts today about the care the administration took to be respectful of Congress, to not overreach their legal authority, and how they worked to keep Congress briefed on what the program was about.

The administration officials briefed congressional leaders more than a dozen times on the terrorist surveillance program. More than a dozen times they went before the proper senior officials of the U.S. Congress—in the House and Senate, both Republican and Democrat—to advise them about what this program was about and what they were doing. That includes the majority leader of the Senate, who is Republican, the Democratic leader, Mr. REID, and before him, Mr. Daschle. In the House, it includes the Speaker of the House and the Democratic leader. It includes the chairman of the House Intelligence Committee and the ranking Democrat on the House Intelligence Committee; the Senate Intelligence Committee chairman and the ranking Democrat on the Senate Intelligence Committee. Those are what they call the big 8—or The 8. The Intelligence Committees deal with these highly classified programs involving national security.