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firms bidding for United States Government contracts.

Sanctions are not preferable outcome—an open market is.

The United States should press for the abolition of Japan's so-called designed bidding system, the main vehicle for dango.

Let there be no mistake: Congress is watching to ensure that a strong outcome is negotiated or sanctions are imposed.

If a satisfactory resolution is not reached by November 1, Congress will consider for itself what response is appropriate.

I thank my friend on the minority side for allowing me this time.

I thank the Chair.

## EXECUTIVE SESSION

### EXECUTIVE CALENDAR

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nomination:

Calendar 248. Daniel K. Tarullo, to be an Assistant Secretary of State.

I further ask unanimous consent that the nominee be confirmed, that any statements appear in the RECORD as if read, that the motion to reconsider be laid upon the table, that the President be immediately notified of the Senate's action, and that the Senate return to legislative session.

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

The nomination considered and confirmed is as follows:

#### DEPARTMENT OF STATE

Daniel K. Tarullo, of Massachusetts, to be an Assistant Secretary of State.

## LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to the consideration of legislative business.

### PARAGRAPH 2 OF RULE XXV AMENDMENT

Mr. FORD. Mr. President, on behalf of the majority leader, I send a resolution to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the resolution.

The bill clerk read as follows:

A resolution (S. Res. 132) to amend paragraph 2 of Rule XXV.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 132) was agreed to, as follows:

#### S. RES. 132

*Resolved*, That paragraph 2 of Rule XXV of the Standing Rules of the Senate is amended for the One Hundred and Third Congress as follows, strike "13" after "Governmental Affairs" and insert in lieu thereof "14".

## COMMITTEE APPOINTMENTS

Mr. FORD. Mr. President, on behalf of the majority leader, I send a resolution to the desk.

The PRESIDING OFFICER. The Clerk will report the resolution.

The bill clerk read as follows:

A resolution (S. Res. 133) to make appointments to the Committee on Armed Services, the Committee on Commerce, Science, and Transportation, the Committee on Energy and Natural Resources, and the Special Committee on Aging.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 133) was agreed to, as follows:

#### S. RES. 133

*Resolved*, That the Senator from Nevada (Mr. Bryan) is hereby appointed to serve as a member on the Committee on Armed Services for the One Hundred Third Congress;

That the Senator from Tennessee (Mr. Mathews) is hereby appointed to serve as a member on the Commerce, Science, and Transportation Committee for the One Hundred and Third Congress;

That the Senator from North Dakota (Mr. Dorgan) is hereby appointed to serve as a member of the Energy and Natural Resources Committee for the One Hundred and Third Congress; and

That the Senator from Michigan (Mr. Riegle) is hereby appointed to serve as a member on the Special Committee on Aging, for the One Hundred and Third Congress.

## NATIONAL VETERANS GOLDEN AGE GAMES WEEK

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of the House Joint Resolution 190, a resolution to designate the week of July 17 to the 23d as National Veterans Golden Age Games Week, just received from the House, that the joint resolution be deemed read three times, passed; that the preamble be agreed to and the motion to reconsider laid upon the table; further that any statements relating to the passage of this measure be printed in the RECORD at the appropriate place.

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

So, the joint resolution (H.J. Res. 190) was deemed read three times and passed.

## RELATING TO CERTAIN PATENTS

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 128, S. 298, a bill relating to patents on certain biotechnological processes, that the bill be deemed read three times, passed and the motion to reconsider laid upon the table; that any statements relative to this measure appear in the RECORD at the appropriate place.

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

So, the bill (S. 298) was deemed read three times and passed, as follows:

S. 298

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

## TITLE I—BIOTECHNOLOGICAL PROCESS PATENTS

### SEC. 101. CONDITIONS FOR PATENTABILITY; NONOBVIOUS SUBJECT MATTER.

Section 103 of title 35, United States Code, is amended—

(1) in the first unnumbered paragraph by inserting "(a)" before "A patent";

(2) in the second unnumbered paragraph by inserting "(b)" before "Subject matter"; and

(3) by adding at the end thereof the following new subsections:

"(c) Notwithstanding any other provision of this section, a claimed process of making or using a machine, manufacture, or composition of matter is not obvious under this section if—

"(1) the machine, manufacture, or composition of matter is novel under section 102 of this title and nonobvious under this section;

"(2) the claimed process is a biotechnological process as defined in subsection (d); and

"(3)(A) the machine, manufacture, or composition of matter, and the claimed process invention at the time it was made, were owned by the same person or subject to an obligation of assignment to the same person; and

"(B) claims to the process and to the machine, manufacture, or composition of matter—

"(i) are entitled to the same effective filing date; and

"(ii) appear in the same patent application, different patent applications, or patent which is owned by the same person and which expires or is set to expire on the same date.

"(d) For purposes of this section, the term "biotechnological process" means any method of making or using living organisms, or parts thereof, for the purpose of making or modifying products. Such term includes recombinant DNA, recombinant RNA, cell fusion including hybridoma techniques, and other processes involving site specific manipulation of genetic material."

### SEC. 102. NO PRESUMPTION OF INVALIDITY.

The first unnumbered paragraph of section 282 of title 35, United States Code, is amended by inserting after the second sentence "A claim issued under the provisions of section 103(c) of this title on a process of making or using a machine, manufacture, or composition of matter shall not be held invalid under section 103 of this title solely because the machine, manufacture, or composition of matter is determined to lack novelty under section 102 of this title or to be obvious under section 103 of this title."

### SEC. 103. EFFECTIVE DATE.

The amendments made by this title shall apply to all United States patents granted on or after the date of the enactment of this Act and to all applications for United States patents pending on or filed after such date of enactment, including any application for the reissuance of a patent.

## TITLE II—BIOTECHNOLOGICAL MATERIAL PATENTS

### SEC. 201. INFRINGEMENT BY IMPORTATION, SALE OR USE.

(a) INFRINGEMENT.—Section 271 of title 35, United States Code, is amended by adding at the end the following new subsection:

"(h) Whoever without authority imports into the United States or sells or uses within the United States a product which is made by using a biotechnological material (as defined under section 154(b)) which is patented

in the United States shall be liable as an infringer if the importation, sale, or use of the product occurs during the term of such patent."

(b) CONTENTS AND TERM PATENT.—Section 164 of title 35, United States Code, is amended—

- (1) by inserting "(a)" before "Every";
- (2) by striking out "in this title," and inserting in lieu thereof "in this title (1)";
- (3) by striking out "and, if the invention" and inserting "(2) if the invention";
- (4) by inserting after "products made by that process," the following: "and (3) if the invention is a biotechnological material used in making a product, of the right to exclude others from using or selling throughout the United States, or importing into the United States the product made or using such biotechnological material,"; and
- (5) by adding at the end thereof the following:

"(b) For purposes of this section, the term 'biotechnological material' is defined as any material (including a host cell, DNA sequence, or vector) that is used in a biotechnological process as defined under section 103(d)."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by this section shall take effect six months after the date of enactment of this Act and, subject to paragraph (2), shall apply only with respect to products made or imported after the effective date of the amendments made by this section.

(2) EXCEPTIONS.—The amendments made by this section shall not abridge or affect the right of any person, or any successor to the business of such person—

(A) to continue to use, sell, or import products in substantial and continuous sale or use by such person in the United States on the date of enactment of this Act; or

(B) to continue to use, sell, or import products for which substantial preparation by such person for such sale or use was made before such date, to the extent equitable for the protection of commercial investment made or business commenced in the United States before such date.

Mr. LAUTENBERG. Mr. President, I rise today to support the Biotechnology Patent Protection Act. I am proud to be an original cosponsor of this measure.

In New Jersey, biotechnology is an important source of innovation, growth, and jobs. My State has the second highest concentration of biotechnology companies in the Nation. New Jersey's publicly traded biotech firms employ more than 35,000 people and generate hundreds of millions of dollars in sales.

Biotech is precisely the type of industry that can lead New Jersey and the Nation to an economic revival. This industry relies on American brainpower and produces high-skill, high-wage jobs.

However, in order to ensure that this industry flourishes, we must also ensure that American innovation is protected. And that is what this bill sets out to accomplish.

The legislation takes two important steps to bolster patent protection of biotechnology inventions.

First, the bill overrules a widely criticized Federal circuit court decision that has been routinely misapplied by the U.S. Patent and Trademark Of-

fice. Under the legislation, an inventor will now be able to obtain a patent on the method of making or using a product if either the starting material or the end product itself can be patented.

Second, the bill closes a loophole that has allowed foreign entities to unfairly profit from American biotechnological innovations. Currently, the holder of a U.S. patent on biotechnological material cannot prevent another entity from using that material overseas, and then exporting the final product back to the United States, often to compete with the patent holder's final product.

This bill, however, would amend the patent law to ensure that patented biotechnological material used to make a product—for instance, a gene or host cell—can itself be enforced at the border against an infringer who uses the material overseas to make a product for export to the United States. This provision is modeled on an existing law, which I had a hand in crafting, that provides similar protection against products made overseas with a process patented here.

If we are to build an American economy that creates jobs and raises incomes, we must rely on our most powerful economic resource: the creativity and ingenuity of our people. But as New Jersey's own Thomas Edison taught us, innovation does not come easily or quickly. It requires constant trial-and-error and countless late nights in the lab. So, when the breakthrough happens, it is crucial that the inventor's hard work and ingenuity are rewarded and protected.

Therefore, on behalf of the ingenious workers, scientists, and entrepreneurs who make New Jersey's biotech industry one of the world's leaders, I urge my colleagues to support this legislation.

Mr. DECONCINI. Mr. President, I rise in support of S. 298, the Biotechnology Patent Protection Act of 1993, which I introduced on February 3d of this year. It is cosponsored by Senators HATCH, HEFLIN, KENNEDY, KOHL, LAUTENBERG, SPECTER, GRASSLEY, BROWN, DOMENICI, and FEINSTEIN. Representatives BUCHER, MOORHEAD, and several other Representatives have introduced companion legislation in the House.

Mr. President, the United States is currently the world leader in biotechnology. This vibrant industry generates billions of dollars for our Nation's economy. Like many high-tech industries, however, biotechnology vitally depends on patents to protect the vast research and development costs necessary for technological breakthroughs and commercial development.

Patent protection assures venture capitalists that they can recover their investment, and motivates inventors to devote time and energy to the realization of technological innovation. Unfortunately, our current patent system has failed to adequately protect the intellectual property of our Nation's biotechnology industry.

The Biotechnology Patent Protection Act of 1993 will strengthen the patent position of our Nation's biotechnology industry in two ways. First, the bill would eliminate barriers to biotech process patenting. Second, the bill would close a loophole in current law which currently allows a competitor to exploit a patented host cell overseas and then import the resulting product back into the United States.

Title I of the Biotechnology Protection Act would overturn in re Durden, a troublesome Federal circuit case that is being used as a basis for rejecting biotechnology process patent claims. In Durden, the Federal circuit held that the use of a new starting material in an otherwise known process did not constitute a patentable process. The application of Durden in the biotechnology area has denied protection to innovations that can only be protected through process patents.

This bill would overturn Durden by amending the Patent Code to provide that a biotechnological process of making or using a product may be considered nonobvious if the starting material or resulting product is novel and nonobvious. The effect of this provision is to provide drastically needed certainty and incentives to the biotechnology industry.

Title II of the act would close a loophole in current law, to prevent blatant foreign exploitation of patented biotechnological material. Under current law, the holder of a patent to an organism can preclude another from using the organism in the United States. However, without patent protection for the process of using that organism, a competitor can take the patented organism to another country, use it to produce a protein-based product, and then import that product back into the United States.

Title II of the Biotechnology Protection Act will stop this exploitation by providing a remedy against infringing foreign competitors. This legislation will create a level playing field by allowing a patent owner to enforce a patent claiming a host cell against a foreign manufacturer who imports a product made using the host cell.

Mr. President, this bill passed the Senate last year but unfortunately was not acted on by the House. Therefore, I urge my colleagues to assist me in passing this legislation again to protect our Nation's dominance in biotechnology.

This bill will provide incentives to venture capitalists and inventors alike. It will stop intellectual property pirates from stealing the ideas and innovations of our scientists and engineers. It will reduce litigation costs by providing certainty in the law. Most importantly, this bill will allow the United States to continue to lead the world in biotechnology research and will provide essential protection to this multibillion-dollar industry.

Mr. KENNEDY. Mr. President, I am an original sponsor of S. 298, the Bio-

technology Patent Protection Act, and I urge all of my colleagues to join in passing this important bill.

The United States is the world's leader in the research, development and manufacture of biotechnology products. More than 100 million people are treated annually with medicines derived from biotechnology and more than 100 new products are being developed to treat Alzheimer's disease, AIDS, cancer, cystic fibrosis and many other illnesses. Our country is unsurpassed in translating cutting-edge science into economic growth and improved human health.

Common sense tells us to reward innovation and punish imitators, but the opposite is true in our current patent laws. In a research-intensive industry, the need to protect innovation is particularly urgent. Piracy is simple and easy when breakthroughs are published and disseminated in scientific journals. The threat that imitators will manufacture duplicate drugs is enough to dissuade some companies from developing new drugs.

This current piracy must be halted. It poses insurmountable economic drawbacks for innovative companies. Without adequate patent protection, they cannot attract the venture capital investment needed to pursue promising new therapies. Companies must have assurances that rival firms cannot pirate their original research.

The current patent law also leads to inconsistent decisions. Patent litigation is expensive and time consuming, and drains companies' research resources.

The Biotechnology Patent Protection Act solves each of these problems. The act closes a loophole that allows unfair imports of biotechnology-derived products to be sold in the United States. Patent protection will be extended to cover an inventor's process of making a product. This kind of protection is routinely granted in Western Europe and Japan, and is already available for inventions in other industries.

Our current patent law grants foreign competitors unnecessary and unfair advantages and leaves U.S. researchers legally powerless to protect their ingenuity. These reforms will benefit the public interest by stimulating biomedical innovation, and promote competition through a stricter patent standard that ensures parity with foreign competitors.

The act is supported by the academic research community as well as the pharmaceutical and biotechnology industries. It enjoys wide bipartisan support. The Bush administration supported the bill, and President Clinton has indicated his support as well.

This bill provides an important legislative remedy for current inadequacies in our patent laws. By granting adequate protection to biotechnology products, it ensures that the Nation will benefit from cutting-edge therapies and the biotechnology industry

will remain innovative and competitive.

#### MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, one of his secretaries.

#### EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

#### REPORT ON THE COMMUNITY DEVELOPMENT BANKING AND FINANCIAL INSTITUTIONS ACT OF 1993—MESSAGE FROM THE PRESIDENT—PM-31

The Presiding Officer laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs.

*To the Congress of the United States:*

I am pleased to submit to the Congress the "Community Development Banking and Financial Institutions Act of 1993". This legislative initiative will promote the creation of community development financial institutions that will empower individuals and communities and provide for greater economic opportunity. Also transmitted are a statement of the Administration's principles embodied in this proposal and a section-by-section analysis.

In too many urban and rural communities, there is a lack of capital and credit. Lending in distressed communities, particularly to small businesses, can be complicated. It may require special expertise and knowledge of the borrower and the community, credit products, subsidies, and secondary markets. Community development financial institutions—including community development banks like South Shore Bank in Chicago, community credit unions such as Self-Help in North Carolina, community development corporations, micro-enterprise loan funds, and revolving loan funds—have demonstrated that they can provide capital, credit, and development services in distressed areas and to targeted populations.

The bill proposes establishment of a Community Development Banking and Financial Institutions Fund that would support a program of investment in community development financial institutions. The Fund would provide financial and technical assistance to, and serve as a national information

clearinghouse for, community development financial institutions.

This initiative reaffirms my commitment to helping communities help themselves. By ensuring greater access to capital and credit, we will tap the entrepreneurial energy of America's poorest communities and enable individuals and communities to become self-sufficient.

My Administration is also committed to enhancing the role of traditional financial institutions with respect to community reinvestment. As a complement to the community development financial institutions initiative, we will adopt regulatory changes to more effectively implement the Community Reinvestment Act of 1977. These changes will replace paperwork with performance-oriented standards and will include tougher enforcement measures for noncompliance.

In order to secure early enactment of legislation in this crucial area, I urge the Congress to consider the Community Development Banking and Financial Institutions Act of 1993 as a discrete bill, separate from general issues of financial services reform and any other nongermane amendments.

WILLIAM J. CLINTON.

THE WHITE HOUSE, July 15, 1993.

#### MESSAGES FROM THE HOUSE

At 12:58 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House disagrees to the amendment of the Senate to the bill (H.R. 2264) to provide for reconciliation pursuant to section 7 of the concurrent resolution on the budget for fiscal year 1994, it agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon; and appoints the following as managers of the conference on the part of the House:

From the Committee on the Budget, for consideration of the House bill, and the Senate amendment, and modifications committed to conference: Mr. SABO, Mr. GEPHARDT, and Mr. KASICH.

As additional conferees from the Committee on the Budget, for consideration of title I of the House bill, and title I of the Senate amendment, and modifications committed to conference: Mr. STENHOLM, Mr. POMEROY, Mr. KILDEE, Mr. SMITH of Texas, and Mr. ALLARD.

As additional conferees from the Committee on the Budget, for consideration of title II and section 12009 of the House bill, and title II and section 13003 of the Senate amendment, and modifications committed to conference: Ms. SLAUGHTER, Mr. MOLLOHAN, Mr. GORDON, Mr. SHAYS, and Ms. SNOWE.

As additional conferees from the Committee on the Budget, for consideration of title III of the House bill, and title III (except section 3003(b)) of the Senate amendment, and modifications committed to conference: Mr. FRANK of

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