

109TH CONGRESS
1ST SESSION

S. 196

To amend the Internal Revenue Code of 1986 to provide for the taxation of income of controlled foreign corporations attributable to imported property.

IN THE SENATE OF THE UNITED STATES

JANUARY 26, 2005

Mr. DORGAN (for himself, Ms. MIKULSKI, Mr. FEINGOLD, Mr. KOHL, Mr. HARKIN, Mr. KENNEDY, Mr. LEAHY, Mr. LEVIN, and Mr. JOHNSON) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide for the taxation of income of controlled foreign corporations attributable to imported property.

1 *Be it enacted by the Senate and House of Representa-*

2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. TAXATION OF INCOME OF CONTROLLED FOR-**

4 **EIGN CORPORATIONS ATTRIBUTABLE TO IM-**

5 **PORTED PROPERTY.**

6 (a) GENERAL RULE.—Subsection (a) of section 954

7 of the Internal Revenue Code of 1986 (defining foreign

8 base company income) is amended by striking “and” at

9 the end of paragraph (4), by striking the period at the

1 end of paragraph (5) and inserting “, and”, and by adding

2 at the end the following new paragraph:

3 “(6) imported property income for the taxable
4 year (determined under subsection (j) and reduced
5 as provided in subsection (b)(5)).”.

6 (b) DEFINITION OF IMPORTED PROPERTY IN-

7 COME.—Section 954 of the Internal Revenue Code of 1986

8 is amended by adding at the end the following new sub-

9 section:

10 “(j) IMPORTED PROPERTY INCOME.—

11 “(1) IN GENERAL.—For purposes of subsection
12 (a)(6), the term ‘imported property income’ means
13 income (whether in the form of profits, commissions,
14 fees, or otherwise) derived in connection with—

15 “(A) manufacturing, producing, growing,
16 or extracting imported property;

17 “(B) the sale, exchange, or other disposi-
18 tion of imported property; or

19 “(C) the lease, rental, or licensing of im-
20 ported property.

21 Such term shall not include any foreign oil and gas
22 extraction income (within the meaning of section
23 907(c)) or any foreign oil related income (within the
24 meaning of section 907(c)).

1 “(2) IMPORTED PROPERTY.—For purposes of
2 this subsection—

3 “(A) IN GENERAL.—Except as otherwise
4 provided in this paragraph, the term ‘imported
5 property’ means property which is imported
6 into the United States by the controlled foreign
7 corporation or a related person.

8 “(B) IMPORTED PROPERTY INCLUDES CER-
9 TAIN PROPERTY IMPORTED BY UNRELATED
10 PERSONS.—The term ‘imported property’ in-
11 cludes any property imported into the United
12 States by an unrelated person if, when such
13 property was sold to the unrelated person by
14 the controlled foreign corporation (or a related
15 person), it was reasonable to expect that—

16 “(i) such property would be imported
17 into the United States; or

18 “(ii) such property would be used as
19 a component in other property which would
20 be imported into the United States.

21 “(C) EXCEPTION FOR PROPERTY SUBSE-
22 QUENTLY EXPORTED.—The term ‘imported
23 property’ does not include any property which is
24 imported into the United States and which—

1 “(i) before substantial use in the
2 United States, is sold, leased, or rented by
3 the controlled foreign corporation or a re-
4 lated person for direct use, consumption,
5 or disposition outside the United States; or
6 “(ii) is used by the controlled foreign
7 corporation or a related person as a com-
8 ponent in other property which is so sold,
9 leased, or rented.

10 “(3) DEFINITIONS AND SPECIAL RULES.—

11 “(A) IMPORT.—For purposes of this sub-
12 section, the term ‘import’ means entering, or
13 withdrawal from warehouse, for consumption or
14 use. Such term includes any grant of the right
15 to use intangible property (as defined in section
16 936(h)(3)(B)) in the United States.

17 “(B) UNITED STATES.—For purposes of
18 this subsection, the term ‘United States’ in-
19 cludes the Commonwealth of Puerto Rico, the
20 Virgin Islands of the United States, Guam,
21 American Samoa, and the Commonwealth of
22 the Northern Mariana Islands.

23 “(C) UNRELATED PERSON.—For purposes
24 of this subsection, the term ‘unrelated person’
25 means any person who is not a related person

1 with respect to the controlled foreign corpora-
2 tion.

3 “(D) COORDINATION WITH FOREIGN BASE
4 COMPANY SALES INCOME.—For purposes of this
5 section, the term ‘foreign base company sales
6 income’ shall not include any imported property
7 income.”.

8 (c) SEPARATE APPLICATION OF LIMITATIONS ON
9 FOREIGN TAX CREDIT FOR IMPORTED PROPERTY IN-
10 COME.—

11 (1) BEFORE 2007.—

12 (A) IN GENERAL.—Paragraph (1) of sec-
13 tion 904(d) of the Internal Revenue Code of
14 1986 (relating to separate application of section
15 with respect to certain categories of income), as
16 in effect for taxable years beginning before Jan-
17 uary 1, 2007, is amended by striking “and” at
18 the end of subparagraph (H), by redesignating
19 subparagraph (I) as subparagraph (J), and by
20 inserting after subparagraph (H) the following
21 new subparagraph:

22 “(I) imported property income, and”.

23 (B) IMPORTED PROPERTY INCOME DE-
24 FINED.—Paragraph (2) of section 904(d) of
25 such Code, as so in effect, is amended by redes-

ignating subparagraphs (H) and (I) as subparagraphs (I) and (J), respectively, and by inserting after subparagraph (G) the following new subparagraph:

10 (C) LOOK-THRU RULES TO APPLY.—Sub-
11 paragraph (F) of section 904(d)(3) of such
12 Code, as so in effect, is amended by striking
13 “or (D)” and inserting “(D), or (I)”.

14 (2) AFTER 2006.—

15 (A) IN GENERAL.—Paragraph (1) of sec-
16 tion 904(d) of such Code (relating to separate
17 application of section with respect to certain
18 categories of income), as in effect for taxable
19 years beginning after December 31, 2006, is
20 amended by striking “and” at the end of sub-
21 paragraph (A), by redesignating subparagraph
22 (B) as subparagraph (C), and by inserting after
23 subparagraph (A) the following new subpara-
24 graph:

25 “(B) imported property income, and”.

1 (B) IMPORTED PROPERTY INCOME DE-
2 FINED.—Paragraph (2) of section 904(d) of
3 such Code, as so in effect, is amended by redes-
4 ignating subparagraphs (I) and (J) as subpara-
5 graphs (J) and (K), respectively, and by insert-
6 ing after subparagraph (H) the following new
7 subparagraph:

13 (C) CONFORMING AMENDMENT.—Clause
14 (ii) of section 904(d)(2)(A) of such Code, as so
15 in effect, is amended by inserting “or imported
16 property income” after “passive category in-
17 come”.

18 (d) TECHNICAL AMENDMENTS.—

23 (A) by redesignating subclauses (II), (III),
24 (IV), and (V) as subclauses (III), (IV), (V), and
25 (VI), and

1 (B) by inserting after subclause (I) the fol-
2 lowing new subclause:

11 (e) EFFECTIVE DATES.—

