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House of Representatives

The House met at 9 a.m.

MORNING HOUR DEBATES

The SPEAKER. Pursuant to the order of the House of January 19, 1999, the Chair will now recognize Members from lists submitted by the majority and minority leaders for morning hour debates. The Chair will alternate recognition between the parties, with each party limited to not to exceed 25 minutes, and each Member except the majority leader, the minority leader or the minority whip limited to not to exceed 5 minutes, but in no event shall debate continue beyond 9:50 a.m.

RECESS

The SPEAKER. Pursuant to clause 12 of rule I, the Chair declares the House in recess until 10 a.m.

Accordingly (at 9 o'clock and 2 minutes a.m.), the House stood in recess until 10 a.m.

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. SIMPSON) at 10 a.m.

PRAYER

The Chaplain, the Reverend Daniel P. Coughlin, offered the following prayer:

O God of power and mercy deliver Your people from every evil; let nothing harm the destiny of this Nation.

Give us the freedom of spirit and the health of mind and body to accomplish the work You have set before us.

May nothing prevent us from making right judgments and placing our trust in You.

Founded on truth, built on justice and animated by love, may this government serve Your people and grow every day toward a more humane balance witnessed by the world.

You are the Lord God living now and forever. Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentlewoman from Ohio (Mrs. JONES) come forward and lead the House in the Pledge of Allegiance.

Mrs. JONES of Ohio led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair will entertain 1-minute requests at the conclusion of legislative business.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the Chair announces that he will postpone further proceedings today on each motion to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which a vote is objected to under clause 6 of rule XX.

Any record votes on postponed questions will be taken after debate has concluded on all motions to suspend the rules.

FSC REPEAL AND EXTRATERRITORIAL INCOME EXCLUSION ACT OF 2000

Mr. ARCHER. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the bill (H.R. 4986) to amend the Internal Revenue Code of 1986 to repeal the provisions relating to foreign sales corporations (FSCs) and to exclude extraterritorial income from gross income.

The Clerk read as follows:

Senate amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

(a) SHORT TITLE.—This Act may be cited as the ''FSC Repeal and Extraterritorial Income Exclusion Act of 2000''.

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

SEC. 2. REPEAL OF FOREIGN SALES CORPORATION RULES.

Subpart C of part III of subchapter N of chapter 1 (relating to taxation of foreign sales corporations) is hereby repealed.

SEC. 3. TREATMENT OF EXTRATERRITORIAL INCOME.

(a) IN GENERAL.—Part III of subchapter B of chapter 1 (relating to items specifically excluded from gross income) is amended by inserting before section 115 the following new section:

''SEC. 114. EXTRATERRITORIAL INCOME.

''(a) EXCLUSION.—Gross income does not include extraterritorial income.

''(b) EXCEPTION.—Subsection (a) shall not apply to extraterritorial income which is not qualifying foreign trade income as determined under subpart E of part III of subchapter N.

''(c) DISALLOWANCE OF DEDUCTIONS.—

''(1) IN GENERAL.—Any deduction of a taxpayer allocated under paragraph (2) to extraterritorial income of the taxpayer excluded from gross income under subsection (a) shall not be allowed.

''(2) ALLOCATION.—Any deduction of the taxpayer properly apportioned and allocated to the extraterritorial income derived by the taxpayer from any transaction shall be allocated on a proportionate basis between—

''(A) the extraterritorial income derived from such transaction which is excluded from gross income under subsection (a), and

''(B) the extraterritorial income derived from such transaction which is not so excluded.

''(d) DENIAL OF CREDITS FOR CERTAIN FOREIGN TAXES.—Notwithstanding any other provision of this chapter, no credit shall be allowed under this chapter for any income, war profits, and excess profits taxes paid or accrued to any foreign country or possession of the United States with respect to extraterritorial income which is excluded from gross income under subsection (a).

''(e) EXTRATERRITORIAL INCOME.—For purposes of this section, the term 'extraterritorial income' means the gross income of the taxpayer attributable to foreign trading gross receipts (as defined in section 942) of the taxpayer.''.

(b) QUALIFYING FOREIGN TRADE INCOME.—Part III of subchapter N of chapter 1 is amended by inserting after subpart D the following new subpart:

''Subpart E—Qualifying Foreign Trade Income

''SEC. 941. QUALIFYING FOREIGN TRADE INCOME.

''(a) QUALIFYING FOREIGN TRADE INCOME.—For purposes of this subpart and section 114—

''(1) IN GENERAL.—The term 'qualifying foreign trade income' means, with respect to any transaction, the amount of gross income which, if excluded, will result in a reduction of the taxable income of the taxpayer from such transaction equal to the greatest of—

''(A) 30 percent of the foreign sale and leasing income derived by the taxpayer from such transaction,

''(B) 1.2 percent of the foreign trading gross receipts derived by the taxpayer from the transaction, or

''(C) 15 percent of the foreign trade income derived by the taxpayer from the transaction.

In no event shall the amount determined under subparagraph (B) exceed 200 percent of the amount determined under subparagraph (C).

''(2) ALTERNATIVE COMPUTATION.—A taxpayer may compute its qualifying foreign trade income under a subparagraph of paragraph (1) other than the subparagraph which results in the greatest amount of such income.

''(3) LIMITATION ON USE OF FOREIGN TRADING GROSS RECEIPTS METHOD.—If any person computes its qualifying foreign trade income from any transaction with respect to any property under paragraph (1)(B), the qualifying foreign trade income of such person (or any related person) with respect to any other transaction involving such property shall be zero.

''(4) RULES FOR MARGINAL COSTING.—The Secretary shall prescribe regulations setting forth rules for the allocation of expenditures in computing foreign trade income under paragraph (1)(C) in those cases where a taxpayer is seeking to establish or maintain a market for qualifying foreign trade property.

''(5) PARTICIPATION IN INTERNATIONAL BOYCOTTS, ETC.—Under regulations prescribed by the Secretary, the qualifying foreign trade income of a taxpayer for any taxable year shall be reduced (but not below zero) by the sum of—

''(A) an amount equal to such income multiplied by the international boycott factor determined under section 999, and

''(B) any illegal bribe, kickback, or other payment (within the meaning of section 162(c)) paid by or on behalf of the taxpayer directly or indirectly to an official, employee, or agent in fact of a government.

''(b) FOREIGN TRADE INCOME.—For purposes of this subpart—

''(1) IN GENERAL.—The term 'foreign trade income' means the taxable income of the taxpayer attributable to foreign trading gross receipts of the taxpayer.

''(2) SPECIAL RULE FOR COOPERATIVES.—In any case in which an organization to which part I of subchapter T applies which is engaged in the marketing of agricultural or horticultural products sells qualifying foreign trade property, in computing the taxable income of such cooperative, there shall not be taken into account any deduction allowable under subsection (b) or (c) of section 1382 (relating to patronage dividends, per-unit retain allocations, and nonpatronage distributions).

''(c) FOREIGN SALE AND LEASING INCOME.—For purposes of this section—

''(1) IN GENERAL.—The term 'foreign sale and leasing income' means, with respect to any transaction—

''(A) foreign trade income properly allocable to activities which—

''(i) are described in paragraph (2)(A)(i) or (3) of section 942(b), and

''(ii) are performed by the taxpayer (or any person acting under a contract with such taxpayer) outside the United States, or

''(B) foreign trade income derived by the taxpayer in connection with the lease or rental of qualifying foreign trade property for use by the lessee outside the United States.

''(2) SPECIAL RULES FOR LEASED PROPERTY.—

''(A) SALES INCOME.—The term 'foreign sale and leasing income' includes any foreign trade income derived by the taxpayer from the sale of property described in paragraph (1)(B).

''(B) LIMITATION IN CERTAIN CASES.—Except as provided in regulations, in the case of property which—

''(i) was manufactured, produced, grown, or extracted by the taxpayer, or

''(ii) was acquired by the taxpayer from a related person for a price which was not determined in accordance with the rules of section 482,

the amount of foreign trade income which may be treated as foreign sale and leasing income under paragraph (1)(B) or subparagraph (A) of this paragraph with respect to any transaction involving such property shall not exceed the amount which would have been determined if the taxpayer had acquired such property for the price determined in accordance with the rules of section 482.

''(3) SPECIAL RULES.—

''(A) EXCLUDED PROPERTY.—Foreign sale and leasing income shall not include any income properly allocable to excluded property described in subparagraph (B) of section 943(a)(3) (relating to intangibles).

''(B) ONLY DIRECT EXPENSES TAKEN INTO ACCOUNT.—For purposes of this subsection, any expense other than a directly allocable expense shall not be taken into account in computing foreign trade income.

''SEC. 942. FOREIGN TRADING GROSS RECEIPTS.

''(a) FOREIGN TRADING GROSS RECEIPTS.—

''(1) IN GENERAL.—Except as otherwise provided in this section, for purposes of this subpart, the term 'foreign trading gross receipts' means the gross receipts of the taxpayer which are—

''(A) from the sale, exchange, or other disposition of qualifying foreign trade property,

''(B) from the lease or rental of qualifying foreign trade property for use by the lessee outside the United States,

''(C) for services which are related and subsidiary to—

''(i) any sale, exchange, or other disposition of qualifying foreign trade property by such taxpayer, or

''(ii) any lease or rental of qualifying foreign trade property described in subparagraph (B) by such taxpayer,

''(D) for engineering or architectural services for construction projects located (or proposed for location) outside the United States, or

''(E) for the performance of managerial services for a person other than a related person in furtherance of the production of foreign trading gross receipts described in subparagraph (A), (B), or (C).

Subparagraph (E) shall not apply to a taxpayer for any taxable year unless at least 50 percent of its foreign trading gross receipts (determined without regard to this sentence) for such taxable year is derived from activities described in subparagraph (A), (B), or (C).

''(2) CERTAIN RECEIPTS EXCLUDED ON BASIS OF USE; SUBSIDIZED RECEIPTS EXCLUDED.—The term 'foreign trading gross receipts' shall not include receipts of a taxpayer from a transaction if—

''(A) the qualifying foreign trade property or services—

''(i) are for ultimate use in the United States, or

''(ii) are for use by the United States or any instrumentality thereof and such use of qualifying foreign trade property or services is required by law or regulation, or

''(B) such transaction is accomplished by a subsidy granted by the government (or any instrumentality thereof) of the country or possession in which the property is manufactured, produced, grown, or extracted.

''(3) ELECTION TO EXCLUDE CERTAIN RECEIPTS.—The term 'foreign trading gross receipts' shall not include gross receipts of a taxpayer from a transaction if the taxpayer elects not to have such receipts taken into account for purposes of this subpart.

''(b) FOREIGN ECONOMIC PROCESS REQUIREMENTS.—

''(1) IN GENERAL.—Except as provided in subsection (c), a taxpayer shall be treated as having foreign trading gross receipts from any transaction only if economic processes with respect to such transaction take place outside the United States as required by paragraph (2).

''(2) REQUIREMENT.—

''(A) IN GENERAL.—The requirements of this paragraph are met with respect to the gross receipts of a taxpayer derived from any transaction if—

''(i) such taxpayer (or any person acting under a contract with such taxpayer) has participated outside the United States in the solicitation (other than advertising), the negotiation, or the making of the contract relating to such transaction, and

''(ii) the foreign direct costs incurred by the taxpayer attributable to the transaction equal or exceed 50 percent of the total direct costs attributable to the transaction.

''(B) ALTERNATIVE 85-PERCENT TEST.—A taxpayer shall be treated as satisfying the requirements of subparagraph (A)(ii) with respect to any transaction if, with respect to each of at least 2 subparagraphs of paragraph (3), the foreign direct costs incurred by such taxpayer attributable to activities described in such subparagraph equal or exceed 85 percent of the total direct costs attributable to activities described in such subparagraph.

''(C) DEFINITIONS.—For purposes of this paragraph—

''(i) TOTAL DIRECT COSTS.—The term 'total direct costs' means, with respect to any transaction, the total direct costs incurred by the taxpayer attributable to activities described in paragraph (3) performed at any location by the taxpayer or any person acting under a contract with such taxpayer.

''(ii) FOREIGN DIRECT COSTS.—The term 'foreign direct costs' means, with respect to any transaction, the portion of the total direct costs which are attributable to activities performed outside the United States.

''(3) ACTIVITIES RELATING TO QUALIFYING FOREIGN TRADE PROPERTY.—The activities described in this paragraph are any of the following with respect to qualifying foreign trade property—

''(A) advertising and sales promotion,

''(B) the processing of customer orders and the arranging for delivery,

''(C) transportation outside the United States in connection with delivery to the customer,

''(D) the determination and transmittal of a final invoice or statement of account or the receipt of payment, and

''(E) the assumption of credit risk.

''(4) ECONOMIC PROCESSES PERFORMED BY RELATED PERSONS.—A taxpayer shall be treated as meeting the requirements of this subsection with respect to any sales transaction involving any property if any related person has met such requirements in such transaction or any other sales transaction involving such property.

''(c) EXCEPTION FROM FOREIGN ECONOMIC PROCESS REQUIREMENT.—

''(1) IN GENERAL.—The requirements of subsection (b) shall be treated as met for any taxable year if the foreign trading gross receipts of the taxpayer for such year do not exceed $5,000,000.

''(2) RECEIPTS OF RELATED PERSONS AGGREGATED.—All related persons shall be treated as one person for purposes of paragraph (1), and the limitation under paragraph (1) shall be allocated among such persons in a manner provided in regulations prescribed by the Secretary.

''(3) SPECIAL RULE FOR PASS-THRU ENTITIES.—In the case of a partnership, S corporation, or other pass-thru entity, the limitation under paragraph (1) shall apply with respect to the partnership, S corporation, or entity and with respect to each partner, shareholder, or other owner.

''SEC. 943. OTHER DEFINITIONS AND SPECIAL RULES.

''(a) QUALIFYING FOREIGN TRADE PROPERTY.—For purposes of this subpart—

''(1) IN GENERAL.—The term 'qualifying foreign trade property' means property—

''(A) manufactured, produced, grown, or extracted within or outside the United States,

''(B) held primarily for sale, lease, or rental, in the ordinary course of trade or business for direct use, consumption, or disposition outside the United States, and

''(C) not more than 50 percent of the fair market value of which is attributable to—

''(i) articles manufactured, produced, grown, or extracted outside the United States, and

''(ii) direct costs for labor (determined under the principles of section 263A) performed outside the United States.

For purposes of subparagraph (C), the fair market value of any article imported into the United States shall be its appraised value, as determined by the Secretary under section 402 of the Tariff Act of 1930 (19 U.S.C. 1401a) in connection with its importation, and the direct costs for labor under clause (ii) do not include costs that would be treated under the principles of section 263A as direct labor costs attributable to articles described in clause (i).

''(2) U.S. TAXATION TO ENSURE CONSISTENT TREATMENT.—Property which (without regard to this paragraph) is qualifying foreign trade property and which is manufactured, produced, grown, or extracted outside the United States shall be treated as qualifying foreign trade property only if it is manufactured, produced, grown, or extracted by—

''(A) a domestic corporation,

''(B) an individual who is a citizen or resident of the United States,

''(C) a foreign corporation with respect to which an election under subsection (e) (relating to foreign corporations electing to be subject to United States taxation) is in effect, or

''(D) a partnership or other pass-thru entity all of the partners or owners of which are described in subparagraph (A), (B), or (C).

Except as otherwise provided by the Secretary, tiered partnerships or pass-thru entities shall be treated as described in subparagraph (D) if each of the partnerships or entities is directly or indirectly wholly owned by persons described in subparagraph (A), (B), or (C).

''(3) EXCLUDED PROPERTY.—The term 'qualifying foreign trade property' shall not include—

''(A) property leased or rented by the taxpayer for use by any related person,

''(B) patents, inventions, models, designs, formulas, or processes whether or not patented, copyrights (other than films, tapes, records, or similar reproductions, and other than computer software (whether or not patented), for commercial or home use), goodwill, trademarks, trade brands, franchises, or other like property,

''(C) oil or gas (or any primary product thereof),

''(D) products the transfer of which is prohibited or curtailed to effectuate the policy set forth in paragraph (2)(C) of section 3 of Public Law 96–72, or

''(E) any unprocessed timber which is a softwood.

For purposes of subparagraph (E), the term 'unprocessed timber' means any log, cant, or similar form of timber.

''(4) PROPERTY IN SHORT SUPPLY.—If the President determines that the supply of any property described in paragraph (1) is insufficient to meet the requirements of the domestic economy, the President may by Executive order designate the property as in short supply. Any property so designated shall not be treated as qualifying foreign trade property during the period beginning with the date specified in the Executive order and ending with the date specified in an Executive order setting forth the President's determination that the property is no longer in short supply.

''(b) OTHER DEFINITIONS AND RULES.—For purposes of this subpart—

''(1) TRANSACTION.—

''(A) IN GENERAL.—The term 'transaction' means—

''(i) any sale, exchange, or other disposition,

''(ii) any lease or rental, and

''(iii) any furnishing of services.

''(B) GROUPING OF TRANSACTIONS.—To the extent provided in regulations, any provision of this subpart which, but for this subparagraph, would be applied on a transaction-by-transaction basis may be applied by the taxpayer on the basis of groups of transactions based on product lines or recognized industry or trade usage. Such regulations may permit different groupings for different purposes.

''(2) UNITED STATES DEFINED.—The term 'United States' includes the Commonwealth of Puerto Rico. The preceding sentence shall not apply for purposes of determining whether a corporation is a domestic corporation.

''(3) RELATED PERSON.—A person shall be related to another person if such persons are treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (o) of section 414, except that determinations under subsections (a) and (b) of section 52 shall be made without regard to section 1563(b).

''(4) GROSS AND TAXABLE INCOME.—Section 114 shall not be taken into account in determining the amount of gross income or foreign trade income from any transaction.

''(c) SOURCE RULE.—Under regulations, in the case of qualifying foreign trade property manufactured, produced, grown, or extracted within the United States, the amount of income of a taxpayer from any sales transaction with respect to such property which is treated as from sources without the United States shall not exceed—

''(1) in the case of a taxpayer computing its qualifying foreign trade income under section 941(a)(1)(B), the amount of the taxpayer's foreign trade income which would (but for this subsection) be treated as from sources without the United States if the foreign trade income were reduced by an amount equal to 4 percent of the foreign trading gross receipts with respect to the transaction, and

''(2) in the case of a taxpayer computing its qualifying foreign trade income under section 941(a)(1)(C), 50 percent of the amount of the taxpayer's foreign trade income which would (but for this subsection) be treated as from sources without the United States.

''(d) TREATMENT OF WITHHOLDING TAXES.—

''(1) IN GENERAL.—For purposes of section 114(d), any withholding tax shall not be treated as paid or accrued with respect to extraterritorial income which is excluded from gross income under section 114(a). For purposes of this paragraph, the term 'withholding tax' means any tax which is imposed on a basis other than residence and for which credit is allowable under section 901 or 903.

''(2) EXCEPTION.—Paragraph (1) shall not apply to any taxpayer with respect to extraterritorial income from any transaction if the taxpayer computes its qualifying foreign trade income with respect to the transaction under section 941(a)(1)(A).

''(e) ELECTION TO BE TREATED AS DOMESTIC CORPORATION.—

''(1) IN GENERAL.—An applicable foreign corporation may elect to be treated as a domestic corporation for all purposes of this title if such corporation waives all benefits to such corporation granted by the United States under any treaty. No election under section 1362(a) may be made with respect to such corporation.

''(2) APPLICABLE FOREIGN CORPORATION.—For purposes of paragraph (1), the term 'applicable foreign corporation' means any foreign corporation if—

''(A) such corporation manufactures, produces, grows, or extracts property in the ordinary course of such corporation's trade or business, or

''(B) substantially all of the gross receipts of such corporation are foreign trading gross receipts.

''(3) PERIOD OF ELECTION.—

''(A) IN GENERAL.—Except as otherwise provided in this paragraph, an election under paragraph (1) shall apply to the taxable year for which made and all subsequent taxable years unless revoked by the taxpayer. Any revocation of such election shall apply to taxable years beginning after such revocation.

''(B) TERMINATION.—If a corporation which made an election under paragraph (1) for any taxable year fails to meet the requirements of subparagraph (A) or (B) of paragraph (2) for any subsequent taxable year, such election shall not apply to any taxable year beginning after such subsequent taxable year.

''(C) EFFECT OF REVOCATION OR TERMINATION.—If a corporation which made an election under paragraph (1) revokes such election or such election is terminated under subparagraph (B), such corporation (and any successor corporation) may not make such election for any of the 5 taxable years beginning with the first taxable year for which such election is not in effect as a result of such revocation or termination.

''(4) SPECIAL RULES.—

''(A) REQUIREMENTS.—This subsection shall not apply to an applicable foreign corporation if such corporation fails to meet the requirements (if any) which the Secretary may prescribe to ensure that the taxes imposed by this chapter on such corporation are paid.

''(B) EFFECT OF ELECTION, REVOCATION, AND TERMINATION.—

''(i) ELECTION.—For purposes of section 367, a foreign corporation making an election under this subsection shall be treated as transferring (as of the first day of the first taxable year to which the election applies) all of its assets to a domestic corporation in connection with an exchange to which section 354 applies.

''(ii) REVOCATION AND TERMINATION.—For purposes of section 367, if—

''(I) an election is made by a corporation under paragraph (1) for any taxable year, and

''(II) such election ceases to apply for any subsequent taxable year,

such corporation shall be treated as a domestic corporation transferring (as of the 1st day of the first such subsequent taxable year to which such election ceases to apply) all of its property to a foreign corporation in connection with an exchange to which section 354 applies.

''(C) ELIGIBILITY FOR ELECTION.—The Secretary may by regulation designate one or more classes of corporations which may not make the election under this subsection.

''(f) RULES RELATING TO ALLOCATIONS OF QUALIFYING FOREIGN TRADE INCOME FROM SHARED PARTNERSHIPS.—

''(1) IN GENERAL.—If—

''(A) a partnership maintains a separate account for transactions (to which this subpart applies) with each partner,

''(B) distributions to each partner with respect to such transactions are based on the amounts in the separate account maintained with respect to such partner, and

''(C) such partnership meets such other requirements as the Secretary may by regulations prescribe,

then such partnership shall allocate to each partner items of income, gain, loss, and deduction (including qualifying foreign trade income) from any transaction to which this subpart applies on the basis of such separate account.

''(2) SPECIAL RULES.—For purposes of this subpart, in the case of a partnership to which paragraph (1) applies—

''(A) any partner's interest in the partnership shall not be taken into account in determining whether such partner is a related person with respect to any other partner, and

''(B) the election under section 942(a)(3) shall be made separately by each partner with respect to any transaction for which the partnership maintains separate accounts for each partner.

''(g) EXCLUSION FOR PATRONS OF AGRICULTURAL AND HORTICULTURAL COOPERATIVES.—Any amount described in paragraph (1) or (3) of section 1385(a)—

''(1) which is received by a person from an organization to which part I of subchapter T applies which is engaged in the marketing of agricultural or horticultural products, and

''(2) which is allocable to qualifying foreign trade income and designated as such by the organization in a written notice mailed to its patrons during the payment period described in section 1382(d),

shall be treated as qualifying foreign trade income of such person for purposes of section 114. The taxable income of the organization shall not be reduced under section 1382 by reason of any amount to which the preceding sentence applies.

''(h) SPECIAL RULE FOR DISCs.—Section 114 shall not apply to any taxpayer for any taxable year if, at any time during the taxable year, the taxpayer is a member of any controlled group of corporations (as defined in section 927(d)(4), as in effect before the date of the enactment of this subsection) of which a DISC is a member.''

SEC. 4. TECHNICAL AND CONFORMING AMENDMENTS.

(1) The second sentence of section 56(g)(4)(B)(i) is amended by inserting before the period ''or under section 114''.

(2) Section 275(a) is amended—

(A) by striking ''or'' at the end of paragraph (4)(A), by striking the period at the end of paragraph (4)(B) and inserting '', or'', and by adding at the end of paragraph (4) the following new subparagraph:

''(C) such taxes are paid or accrued with respect to qualifying foreign trade income (as defined in section 941).''; and

(B) by adding at the end the following new sentence: ''A rule similar to the rule of section 943(d) shall apply for purposes of paragraph (4)(C).''.

(3) Paragraph (3) of section 864(e) is amended—

(A) by striking ''For purposes of'' and inserting:

''(A) IN GENERAL.—For purposes of''; and

(B) by adding at the end the following new subparagraph:

''(B) ASSETS PRODUCING EXEMPT EXTRATERRITORIAL INCOME.—For purposes of allocating and apportioning any interest expense, there shall not be taken into account any qualifying foreign trade property (as defined in section 943(a)) which is held by the taxpayer for lease or rental in the ordinary course of trade or business for use by the lessee outside the United States (as defined in section 943(b)(2)).''.

(4) Section 903 is amended by striking ''164(a)'' and inserting ''114, 164(a),''.

(5) Section 999(c)(1) is amended by inserting ''941(a)(5),'' after ''908(a),''.

(6) The table of sections for part III of subchapter B of chapter 1 is amended by inserting before the item relating to section 115 the following new item:

''Sec. 114. Extraterritorial income.''.

(7) The table of subparts for part III of subchapter N of chapter 1 is amended by striking the item relating to subpart E and inserting the following new item:

''Subpart E. Qualifying foreign trade income.''.

(8) The table of subparts for part III of subchapter N of chapter 1 is amended by striking the item relating to subpart C.

SEC. 5. EFFECTIVE DATE.

(a) IN GENERAL.—The amendments made by this Act shall apply to transactions after September 30, 2000.

(b) NO NEW FSCs; TERMINATION OF INACTIVE FSCs.—

(1) NO NEW FSCs.—No corporation may elect after September 30, 2000, to be a FSC (as defined in section 922 of the Internal Revenue Code of 1986, as in effect before the amendments made by this Act).

(2) TERMINATION OF INACTIVE FSCs.—If a FSC has no foreign trade income (as defined in section 923(b) of such Code, as so in effect) for any period of 5 consecutive taxable years beginning after December 31, 2001, such FSC shall cease to be treated as a FSC for purposes of such Code for any taxable year beginning after such period.

(c) TRANSITION PERIOD FOR EXISTING FOREIGN SALES CORPORATIONS.—

(1) IN GENERAL.—In the case of a FSC (as so defined) in existence on September 30, 2000, and at all times thereafter, the amendments made by this Act shall not apply to any transaction in the ordinary course of trade or business involving a FSC which occurs—

(A) before January 1, 2002; or

(B) after December 31, 2001, pursuant to a binding contract—

(i) which is between the FSC (or any related person) and any person which is not a related person; and

(ii) which is in effect on September 30, 2000, and at all times thereafter.

For purposes of this paragraph, a binding contract shall include a purchase option, renewal option, or replacement option which is included in such contract and which is enforceable against the seller or lessor.

(2) ELECTION TO HAVE AMENDMENTS APPLY EARLIER.—A taxpayer may elect to have the amendments made by this Act apply to any transaction by a FSC or any related person to which such amendments would apply but for the application of paragraph (1). Such election shall be effective for the taxable year for which made and all subsequent taxable years, and, once made, may be revoked only with the consent of the Secretary of the Treasury.

(3) EXCEPTION FOR OLD EARNINGS AND PROFITS OF CERTAIN CORPORATIONS.—

(A) IN GENERAL.—In the case of a foreign corporation to which this paragraph applies—

(i) earnings and profits of such corporation accumulated in taxable years ending before October 1, 2000, shall not be included in the gross income of the persons holding stock in such corporation by reason of section 943(e)(4)(B)(i), and

(ii) rules similar to the rules of clauses (ii), (iii), and (iv) of section 953(d)(4)(B) shall apply with respect to such earnings and profits.

The preceding sentence shall not apply to earnings and profits acquired in a transaction after September 30, 2000, to which section 381 applies unless the distributor or transferor corporation was immediately before the transaction a foreign corporation to which this paragraph applies.

(B) EXISTING FSCs.—This paragraph shall apply to any controlled foreign corporation (as defined in section 957) if—

(i) such corporation is a FSC (as so defined) in existence on September 30, 2000,

(ii) such corporation is eligible to make the election under section 943(e) by reason of being described in paragraph (2)(B) of such section, and

(iii) such corporation makes such election not later than for its first taxable year beginning after December 31, 2001.

(C) OTHER CORPORATIONS.—This paragraph shall apply to any controlled foreign corporation (as defined in section 957), and such corporation shall (notwithstanding any provision of section 943(e)) be treated as an applicable foreign corporation for purposes of section 943(e), if—

(i) such corporation is in existence on September 30, 2000,

(ii) as of such date, such corporation is wholly owned (directly or indirectly) by a domestic corporation (determined without regard to any election under section 943(e)),

(iii) for each of the 3 taxable years preceding the first taxable year to which the election under section 943(e) by such controlled foreign corporation applies—

(I) all of the gross income of such corporation is subpart F income (as defined in section 952), including by reason of section 954(b)(3)(B), and

(II) in the ordinary course of such corporation's trade or business, such corporation regularly sold (or paid commissions) to a FSC which on September 30, 2000, was a related person to such corporation,

(iv) such corporation has never made an election under section 922(a)(2) (as in effect before the date of the enactment of this paragraph) to be treated as a FSC, and

(v) such corporation makes the election under section 943(e) not later than for its first taxable year beginning after December 31, 2001.

The preceding sentence shall cease to apply as of the date that the domestic corporation referred to in clause (ii) ceases to wholly own (directly or indirectly) such controlled foreign corporation.

(4) RELATED PERSON.—For purposes of this subsection, the term ''related person'' has the meaning given to such term by section 943(b)(3).

(5) SECTION REFERENCES.—Except as otherwise expressly provided, any reference in this subsection to a section or other provision shall be considered to be a reference to a section or other provision of the Internal Revenue Code of 1986, as amended by this Act.

(d) SPECIAL RULES RELATING TO LEASING TRANSACTIONS.—

(1) SALES INCOME.—If foreign trade income in connection with the lease or rental of property described in section 927(a)(1)(B) of such Code (as in effect before the amendments made by this Act) is treated as exempt foreign trade income for purposes of section 921(a) of such Code (as so in effect), such property shall be treated as property described in section 941(c)(1)(B) of such Code (as added by this Act) for purposes of applying section 941(c)(2) of such Code (as so added) to any subsequent transaction involving such property to which the amendments made by this Act apply.

(2) LIMITATION ON USE OF GROSS RECEIPTS METHOD.—If any person computed its foreign trade income from any transaction with respect to any property on the basis of a transfer price determined under the method described in section 925(a)(1) of such Code (as in effect before the amendments made by this Act), then the qualifying foreign trade income (as defined in section 941(a) of such Code, as in effect after such amendment) of such person (or any related person) with respect to any other transaction involving such property (and to which the amendments made by this Act apply) shall be zero.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from

Texas (Mr. ARCHER) and the gentleman from California (Mr. STARK) each will control 20 minutes.

The Chair recognizes the gentleman from Texas (Mr. ARCHER).

GENERAL LEAVE

Mr. ARCHER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and to include extraneous material on H.R. 4986.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. ARCHER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, today the House is, once again, considering one of the most important bills of this Congress. It is critical for the continued U.S. competitiveness in the global marketplace. It is critical for our Nation's economic security. Most important, it is critical to preserve as many as 5 million jobs for American workers and their families. That is right, almost 5 million jobs hang in the balance.

Why? Because the U.S. has an ill-advised, antiquated system that overtaxes our businesses when they operate overseas and when they export, placing them at a gigantic disadvantage against their foreign competitors. This bill only partially addresses that gigantic disadvantage, a disadvantage so great that it is causing major U.S. businesses one by one to move overseas instead of being headquartered in the United States of America. This was evidenced recently by Chrysler becoming a German-based corporation, no longer headquartered in the U.S.

Mr. Speaker, we must pass this bill and have it signed into law immediately if we are to avert what could be the mother of all trade wars with the European Union. Last summer, the World Trade Organization ruled that our foreign sales corporation provisions in the U.S. Tax Code violated global trading rules. The U.S. appealed the decision, but lost; and the WTO set an original deadline of October 1 for the U.S. to comply with the decision. Despite a heroic effort by a bipartisan majority of members on the Committee on Ways and Means, the Senate Finance Committee, the White House, the Treasury, and the work of the Joint Committee on Taxation, we were unable to meet the October 1 deadline.

Now, to avoid immediate retaliation by the EU, the U.S. entered into an agreement with the EU which moved the deadline to November 1. Now that has also passed by. If we do not have this legislation signed into law by November 17, the EU will begin the ugly and devastating process of trade retaliation against American products, our workers, and our businesses. The clock is ticking, and only by acting now can we avoid a transatlantic trade war which will be destructive to all parties, perhaps to the world. There will be no winners in such a war, only losers; and the biggest losers will be American workers whose products will no longer have access to the European market on a competitive basis.

Moreover, I believe that passage of this legislation today, which reflects a bipartisan compromise with the Senate, fully agreed to by the administration, will put us into compliance so that we can avoid retaliation, even if the EU should challenge the substance of the underlying proposal.

Mr. Speaker, we have had a remarkable economic surge in the past few years. Failing to act on this legislation could very well halt and even reverse that progress. We cannot risk that happening.

The substance of the Senate amendment to H.R. 4986 is identical to title I of H.R. 5542, the "Taxpayer Relief Act of 2000," incorporated by reference into the conference report on H.R. 2614. The Senate amendment, like the language in the conference report on H.R. 2614, is a compromise between the versions of H.R. 4986 passed by the House and reported by the Finance Committee. Since the statutory language has been modified slightly from the version of H.R. 4986 reported by the Committee on Ways and Means, I am introducing into the RECORD an explanation of the Senate amendment prepared by the staff of the Joint Committee on Taxation. This explanation is substantially identical to the relevant Statement of Managers language in H.R. 2614. Senator ROTH has similarly endorsed this explanation. Accordingly, taxpayers are welcome to rely on this explanation (or, for that matter, the Statement of Managers language in H.R. 2614) for guidance in interpreting the statute.

TECHNICAL EXPLANATION OF THE SENATE AMENDMENT TO H.R. 4986, THE "FSC REPEAL AND EXTRATERRITORIAL INCOME EXCLUSION ACT OF 2000"

I. INTRODUCTION

This document, prepared by the staff of the Joint Committee on Taxation, is a technical explanation of H.R. 4986 as passed by the Senate on November 1, 2000. H.R. 4986 was passed by the House of Representatives on September 13, 2000. The Senate Finance Committee favorably reported the bill with an amendment on September 19, 2000. The conference agreement to H.R. 2614 included legislation that resolved the differences between the House and Senate on this matter. The Senate amendment to H.R. 4986, as passed by the Senate on November 1, 2000, adopts the compromise language of the conference agreement to H.R. 2614.

II. OVERVIEW OF PRESENT-LAW FOREIGN SALES CORPORATION RULES

Summary of U.S. income taxation of foreign persons

Income earned by a foreign corporation from its foreign operations generally is subject to U.S. tax only when such income is distributed to a U.S. persons that hold stock in such corporation. Accordingly, a U.S. person that conducts foreign operations through a foreign corporation generally is subject to U.S. tax on the income from those operations when the income is repatriated to the United States through a dividend distribution to the U.S. person. The income is reported on the U.S. person's tax return for the year the distribution is received, and the United States imposes tax on such income at that time. An indirect foreign tax credit may reduce the U.S. tax imposed on such income.

Foreign sales corporations

The income of an eligible foreign sales corporation ("FSC") is partially subject to U.S. income tax and partially exempt from U.S. income tax. In addition, a U.S. corporation generally is not subject to U.S. income tax on dividends distributed from the FSC out of certain earnings.

A FSC must be located and managed outside the United States, and must perform certain economic processes outside the United States. A FSC is often owned by a U.S. corporation that produces goods in the United States. The U.S. corporation either supplies goods to the FSC for resale abroad or pays the FSC a commission in connection with such sales. The income of the FSC, a portion of which is exempt from U.S. income tax under the FSC rules, equals the FSC's gross markup or gross commission income less the expenses incurred by the FSC. The gross markup or the gross commission is determined according to specified pricing rules.

A FSC generally is not subject to U.S. income tax on its exempt foreign trade income. The exempt foreign trade income of a FSC is treated as foreign-source income that is not effectively connected with the conduct of a trade or business within the United States.

Foreign trade income, other than exempt foreign trade income, generally is treated as U.S.-source income effectively connected with the conduct of a trade or business conducted through a permanent establishment within the United States. Thus, a FSC's income, other than exempt foreign trade income, generally is subject to U.S. tax currently and is treated as U.S.-source income for purposes of the foreign tax credit limitation.

Foreign trade income of a FSC is defined as the FSC's gross income attributable to foreign trading gross receipts. Foreign trading gross receipts generally are the gross receipts attributable to the following types of transactions: the sale of export property; the lease or rental of export property; services related and subsidiary to such a sale or lease of export property; engineering and architectural services for projects outside the United States; and export management services. Investment income and carrying charges are excluded from the definition of foreign trading gross receipts.

The term "export property" generally means property (1) which is manufactured, produced, grown or extracted in the United States by a person other than a FSC; (2) which is held primarily for sale, lease, or rental in the ordinary course of a trade or business for direct use or consumption outside the United States; and (3) not more than 50 percent of the fair market value of which is attributable to articles imported into the United States. The term "export property" does not include property leased or rented by a FSC for use by any member of a controlled group of which the FSC is a member; patents, copyrights (other than films, tapes, records, similar reproductions, and other than computer software, whether or not patented), and other intangibles; oil or gas (or any primary product thereof); unprocessed softwood timber; or products the export of which is prohibited or curtailed. Export property also excludes property designated by the President as being in short supply.

If export property is sold to a FSC by a related person (or a commission is paid by a related person to a FSC with respect to export property), the income with respect to the export transaction must be allocated between the FSC and the related person. The taxable income of the FSC and the taxable income of the related person are computed based upon

a transfer price determined under section 482 or under one of two formulas specified in the FSC provisions.

The portion of a FSC's foreign trade income that is treated as exempt foreign trade income depends on the pricing rule used to determine the income of the FSC. If the amount of income earned by the FSC is based on section 482 pricing, the exempt foreign trade income generally is 30 percent of the foreign trade income the FSC derives from a transaction. If the income earned by the FSC is determined under one of the two formulas specified in the FSC provisions, the exempt foreign trade income generally is 15/23 of the foreign trade income the FSC derives from the transaction.

A FSC is not required or deemed to make distributions to its shareholders. Actual distributions are treated as being made first out of earnings and profits attributable to foreign trade income, and then out of any other earnings and profits. A U.S. corporation generally is allowed a 100 percent dividends-received deduction for amounts distributed from a FSC out of earnings and profits attributable to foreign trade income. The 100 percent dividends-received deduction is not allowed for nonexempt foreign trade income determined under section 482 pricing. Any distributions made by a FSC out of earnings and profits attributable to foreign trade income to a foreign shareholder is treated as U.S.-source income that is effectively connected with a business conducted through a permanent establishment of the shareholder within the United States. Thus, the foreign shareholder is subject to U.S. tax on such a distribution.

III. TECHNICAL EXPLANATION OF THE SENATE AMENDMENT TO H.R. 4986

Overview

The Senate amendment repeals the present-law FSC rules and replaces them with an exclusion for extraterritorial income. The Senate amendment, like the Senate Finance Committee reported version of the bill, does not include the provision in the House bill that provides a dividends-received deduction for certain dividends allocable to qualifying foreign trade income. The Senate amendment adopts the compromise language of the conference agreement to H.R. 2614.

Repeal of the FSC rules

The Senate amendment repeals the present-law FSC rules found in sections 921 through 927 of the Code.

Exclusion of extraterritorial income

The Senate amendment provides that gross income for U.S. tax purposes does not include extraterritorial income. Because the exclusion of such extraterritorial income is a means of avoiding double taxation, no foreign tax credit is allowed for income taxes paid with respect to such excluded income. Extraterritorial income is eligible for the exclusion to the extent that it is ''qualifying foreign trade income.'' Because U.S. income tax principles generally deny deductions for expenses related to exempt income, otherwise deductible expenses that are allocated to qualifying foreign trade income generally are disallowed.

The Senate amendment applies in the same manner with respect to both individuals and corporations who are U.S. taxpayers. In addition, the exclusion from gross income applies for individual and corporate alternative minimum tax purposes.

Qualifying foreign trade income

Under the Senate amendment, qualifying foreign trade income is the amount of gross income that, if excluded, would result in a reduction of taxable income by the greatest of (1) 1.2 percent of the ''foreign trading gross receipts'' derived by the taxpayer from the transaction, (2) 15 percent of the ''foreign trade income'' derived by the taxpayer from the transaction, or (3) 30 percent of the ''foreign sale and leasing income'' derived by the taxpayer from the transaction. The amount of qualifying foreign trade income derived using 1.2 percent of the foreign trading gross receipts is limited to 200 percent of the qualifying foreign trade income that would result using 15 percent of the foreign trade income. Notwithstanding the general rule that qualifying foreign trade income is based on one of the three calculations that results in the greatest reduction in taxable income, a taxpayer may choose instead to use one of the other two calculations that does not result in the greatest reduction in taxable income. Although these calculations are determined by reference to a reduction of taxable income (a net income concept), qualifying foreign trade income is an exclusion from gross income. Hence, once a taxpayer determines the appropriate reduction of taxable income, that amount must be ''grossed up'' for related expenses in order to determine the amount of gross income excluded.

If a taxpayer uses 1.2 percent of foreign trading gross receipts to determine the amount of qualifying foreign trade income with respect to a transaction, the taxpayer or any other related persons will be treated as having no qualifying foreign trade income with respect to any other transaction involving the same property. For example, assume that a manufacturer and a distributor of the same product are related persons. The manufacturer sells the product to the distributor at an arm's-length price of $80 (generating $30 of profit) and the distributor sells the product to an unrelated customer outside of the United States for $100 (generating $20 of profit). If the distributor chooses to calculate its qualifying foreign trade income on the basis of 1.2 percent of foreign trading gross receipts, then the manufacturer will be considered to have no qualifying foreign trade income and, thus, would have no excluded income. The distributor's qualifying foreign trade income would be 1.2 percent of $100, and the manufacturer's qualifying foreign trade income would be zero. This limitation is intended to prevent a duplication of exclusions from gross income because the distributor's $100 of gross receipts includes the $80 of gross receipts of the manufacturer. Absent this limitation, $80 of gross receipts would have been double counted for purposes of the exclusion. If both persons were permitted to use 1.2 percent of their foreign trading gross receipts in this example, then the related-person group would have an exclusion based on $180 of foreign trading gross receipts notwithstanding that the related-person group really only generated $100 of gross receipts from the transaction. However, if the distributor chooses to calculate its qualifying foreign trade income on the basis of 15 percent of foreign trade income (15 percent of $20 of profit), then the manufacturer would also be eligible to calculate its qualifying foreign trade income in the same manner (15 percent of $30 of profit). Thus, in the second case, each related person may exclude an amount of income based on their respective profits. The total foreign trade income of the related-person group is $50. Accordingly, allowing each person to calculate the exclusion based on their respective foreign trade income does not result in duplication of exclusions.

Under the Senate amendment, a taxpayer may determine the amount of qualifying foreign trade income either on a transaction-by-transaction basis or on an aggregate basis for groups of transactions, so long as the groups are based on product lines or recognized industry or trade usage. Under the grouping method, ti is intended that taxpayers be given reasonable flexibility to identify product lines or groups on the basis of recognized industry or trade usage. In general, provided that the taxpayer's grouping is not unreasonable, it will not be rejected merely because the grouped products fall within more than one of the two-digit Standard Industrial Classification codes. The Secretary of the Treasury is granted authority to prescribe rules for grouping transactions in determining qualifying foreign trade income.

Qualifying foreign trade income must be reduced by illegal bribes, kickbacks and similar payments, and by a factor for operations in or related to a country associated in carrying out an international boycott, or participating or cooperating with an international boycott.

In addition, the Senate amendment directs the Secretary of the Treasury to prescribe rules for marginal costing in those cases in which a taxpayer is seeking to establish or maintain a market for qualifying foreign trade property.

Foreign trading gross receipts

Under the Senate amendment, ''foreign trading gross receipts'' are gross receipts derived from certain activities in connection with ''qualifying foreign trade property'' with respect to which certain ''economic processes'' take place outside of the United States. Specifically, the gross receipts must be (1) from the sale, exchange, or other disposition of qualifying foreign trade property; (2) from the lease or rental of qualifying foreign trade property for use by the lessee outside of the United States; (3) for services which are related and subsidiary to the sale, exchange, disposition, lease, or rental of qualifying foreign trade property (as described above); (4) for engineering or architectural services for construction projects located outside of the United States; or (5) for the performance of certain managerial services for unrelated persons. Gross receipts from the lease or rental of qualifying foreign trade property include gross receipts from the license of qualifying foreign trade property. Consistent with the policy adopted in the Taxpayer Relief Act of 1997, this includes the license of computer software for reproduction abroad.

Foreign trading gross receipts do not include gross receipts from a transaction if the qualifying foreign trade property or services are for ultimate use in the United States, or for use by the United States (or an instrumentality thereof) and such use is required by law or regulation. Foreign trading gross receipts also do not include gross receipts from a transaction that is accomplished by a subsidy granted by the government (or any instrumentality thereof) of the country or possession in which the property is manufactured.

A taxpayer may elect to treat gross receipts from a transaction as not foreign trading gross receipts. As a consequence of such an election, the taxpayer could utilize any related foreign tax credits in lieu of the exclusion as a means of avoiding double taxation. It is intended that this election be accomplished by the taxpayer's treatment of such items on its tax return for the taxable year. Provided that the taxpayer's taxable year is still open under the statute of limitations for making claims for refund under section 6511, a taxpayer can make redeterminations as to whether the gross receipts from a transaction constitute foreign trading gross receipts.

Foreign economic processes

Under the Senate amendment, gross receipts from a transaction are foreign trading gross receipts only if certain economic processes take place outside of the United States.

The foreign economic processes requirement is satisfied if the taxpayer (or any person acting under a contract with the taxpayer) participates outside of the United States in the solicitation (other than advertising), negotiation, or making of the contract relating to such transaction and incurs a specified amount of foreign direct costs attributable to the transaction. For this purpose, foreign direct costs include only those costs incurred in the following categories of activities: (1) advertising and sales promotion; (2) the processing of customer orders and the arranging for delivery; (3) transportation outside of the United States in connection with delivery to the customer; (4) the determination and transmittal of a final invoice or statement of account or the receipt of payment; and (5) the assumption of credit risk. An exception from the foreign economic processes requirement is provided for taxpayers with foreign trading gross receipts for the year of $5 million or less.

The foreign economic processes requirement must be satisfied with respect to each transaction and, if so, any gross receipts from such transaction could be considered as foreign trading gross receipts. For example, all of the lease payments received with respect to a multi-year lease contract, which contract met the foreign economic processes requirement at the time it was entered into, would be considered as foreign trading gross receipts. On the other hand, a sale of property that was formerly a leased asset, which was not sold pursuant to the original lease agreement, generally would be considered a new transaction that must independently satisfy the foreign economic processes requirement.

A taxpayer's foreign economic processes requirement is treated as satisfied with respect to a sales transaction (solely for the purpose of determining whether gross receipts are foreign trading gross receipts) if any related person has satisfied the foreign economic processes requirement in connection with another sales transaction involving the same qualifying foreign trade property.

Qualifying foreign trade property

Under the Senate amendment, the threshold for determining if gross receipts will be treated as foreign trading gross receipts is whether the gross receipts are derived from a transaction involving ''qualifying foreign trade property.'' Qualifying foreign trade property is property manufactured, produced, grown, or extracted (''manufactured'') within or outside of the United States that is held primarily for sale, lease, or rental, in the ordinary course of a trade or business, for direct use, consumption, or disposition outside of the United States. In addition, not more than 50 percent of the fair market value of such property can be attributable to the sum of (1) the fair market value of articles manufactured outside of the United States plus (2) the direct costs of labor performed outside of the United States.

It is understood that under current industry practice, the purchaser of an aircraft contracts separately for the aircraft engine and the airframe, albeit contracting with the airframe manufacturer to attach the separately purchased engine. It is intended that an aircraft engine be qualifying foreign trade property (assuming that all other requirements are satisfied) if (1) it is specifically designed to be separated from the airframe to which it is attached without significant damage to either the engine or the airframe, (2) it is reasonably expected to be separated from the airframe in the ordinary course of business (other than by reason of temporary separation for servicing, maintenance, or repair) before the end of the useful life of either the engine or the airframe, whichever is shorter, and (3) the terms under which the aircraft engine was sold were directly and separately negotiated between the manufacturer of the aircraft engine and the person to whom the aircraft will be ultimately delivered. By articulating this application of the foreign destination test in the case of certain separable aircraft engines, no inference is intended with respect to the application of any destination test under present law or with respect to any other rule of law outside the Senate amendment.

The Senate amendment excludes certain property from the definition of qualifying foreign trade property. The excluded property is (1) property leased or rented by the taxpayer for use by a related person, (2) certain intangibles, (3) oil and gas (or any primary product thereof), (4) unprocessed softwood timber, (5) certain products the transfer of which are prohibited or curtailed to effectuate the policy set forth in Public Law 96–72, and (6) property designated by Executive order as in short supply. In addition, it is intended that property that is leased or licensed to a related person who is the lessor, licensor, or seller of the same property in a sublease, sublicense, sale, or rental to an unrelated person for the ultimate and predominate use by the unrelated person outside of the United States is not excluded property by reason of such lease or license to a related person.

With respect to property that is manufactured outside of the United States, rules are provided to ensure consistent U.S. tax treatment with respect to manufacturers. The Senate amendment requires that property manufactured outside of the United States be manufactured by (1) a domestic corporation, (2) an individual who is a citizen or resident of the United States, (3) a foreign corporation that elects to be subject to U.S. taxation in the same manner as a U.S. corporation, or (4) a partnership or other pass-through entity all of the partners or owners of which are described in (1), (2), or (3) above.

Foreign trade income

Under the Senate amendment, ''foreign trade income'' is the taxable income of the taxpayer (determined without regard to the exclusion of qualifying foreign trade income) attributable to foreign trading gross receipts. Certain dividends-paid deductions of cooperatives are disregarded in determining foreign trade income for this purpose.

Foreign sale and leasing income

Under the Senate amendment, ''foreign sale and leasing income'' is the amount of the taxpayer's foreign trade income (with respect to a transaction) that is properly allocable to activities that constitute foreign economic processes (as described above). For example, a distribution company's profit from the sale of qualifying foreign trade property that is associated with sales activities, such as solicitation or negotiation of the sale, advertising, processing customer orders and arranging for delivery, transportation outside of the United States, and other enumerated activities, would constitute foreign sale and leasing income.

Foreign sale and leasing income also includes foreign trade income derived by the taxpayer in connection with the lease or rental of qualifying foreign trade property for use by the lessee outside of the United States. Income from the sale, exchange, or other disposition of qualifying foreign trade property that is or was subject to such a lease (i.e., the sale of the residual interest in the leased property) gives rise to foreign sale and leasing income. Except as provided in regulations, a special limitation applies to leased property that (1) is manufactured by the taxpayer or (2) is acquired by the taxpayer from a related person for a price that was other than arm's length. In such cases, foreign sale and leasing income may not exceed the amount of foreign sale and leasing income that would have resulted if the taxpayer had acquired the leased property in a hypothetical arm's-length purchase and then engaged in the actual sale or lease of such property. For example, if a manufacturer leases qualifying foreign trade property that it manufactured, the foreign sale and leasing income derived from that lease may not exceed the amount of foreign sale and leasing income that the manufacturer would have earned with respect to that lease had it purchased the property for an arm's-length price on the day that the manufacturer entered into the lease. For purposes of calculating the limit on foreign sale and leasing income, the manufacturer's basis and, thus, depreciation would be based on this hypothetical arm's-length price. This limitation is intended to prevent foreign sale and leasing income from including profit associated with manufacturing activities.

For purposes of determining foreign sale and leasing income, only directly allocable expenses are taken into account in calculating the amount of foreign trade income. In addition, income properly allocable to certain intangibles is excluded for this purpose.

General example

The following is an example of the calculation of qualifying foreign trade income.

XYZ Corporation, a U.S. corporation, manufactures property that is sold to unrelated customers for use outside of the United States. XYZ Corporation satisfies the foreign economic processes requirement through conducting activities such as solicitation, negotiation, transportation, and other sales-related activities outside of the United States with respect to its transactions. During the year, qualifying foreign trade property was sold for gross proceeds totaling $1,000. The cost of this qualifying foreign trade property was $600. XYZ Corporation incurred $275 of costs that are directly related to the sale and distribution of qualifying foreign trade property. XYZ Corporation paid $40 of income tax to a foreign jurisdiction related to the sale and distribution of the qualifying foreign trade property. XYZ Corporation also generated gross income of $7,600 (gross receipts of $24,000 and cost of goods sold of $16,400) and direct expenses of $4,225 that relate to the manufacture and sale of products other than qualifying foreign trade property. XYZ Corporation also incurred $500 of overhead expenses. XYZ Corporation's financial information for the year is summarized as follows:

	Total	Other property	QFTP
Gross receipts	$25,000	$24,000	$1,000
Cost of goods sold	17,000	16,400	600
Gross income	8,000	7,600	400
Direct expenses	4,500	4,225	275
Overhead expenses	500	.....	.....
Net income	3,000	.....	.....

Illustrated below is the computation of the amount of qualifying foreign trade income that is excluded from XYZ Corporation's gross income and the amount of related expenses that are disallowed. In order to calculate qualifying foreign trade income, the amount of foreign trade income first must be determined. Foreign trade income is the taxable income (determined without regard to the exclusion of qualifying foreign trade income) attributable to foreign trading gross receipts. In this example, XYZ Corporation's foreign trading gross receipts equal $1,000. This amount of gross receipts is reduced by

the related cost of goods sold, the related direct expenses, and a portion of the overhead expenses in order to arrive at the related taxable income. Thus, XYZ Corporation's foreign trade income equals $100, calculated as follows:

Foreign trading gross receipts	$1,000
Cost of goods sold	600
Gross income	400
Direct expenses	275
Apportioned overhead expenses	25
Foreign trade income	100

Foreign sale and leasing income is defined as an amount of foreign trade income (calculated taking into account only directly-related expenses) that is properly allocable to certain specified foreign activities. Assume for purposes of this example that of the $125 of foreign trade income ($400 of gross income from the sale of qualifying foreign trade property less only the direct expenses of $275), $35 is properly allocable to such foreign activities (e.g., solicitation, negotiation, advertising, foreign transportation, and other enumerated sales-like activities) and, therefore, is considered to be foreign sale and leasing income.

Qualifying foreign trade income is the amount of gross income that, if excluded, will result in a reduction of taxable income equal to the greatest of (1) 30 percent of foreign sale and leasing income, (2) 1.2 percent of foreign trading gross receipts, or (3) 15 percent of foreign trade income. Thus, in order to calculate the amount that is excluded from gross income, taxable income must be determined and then ''grossed up'' for allocable expenses in order to arrive at the appropriate gross income figure. First, for each method of calculating qualifying foreign trade income, the reduction in taxable income is determined. Then, the $275 of direct and $25 of overhead expenses, totaling $300, attributable to foreign trading gross receipts is apportioned to the reduction in taxable income based on the proportion of the reduction in taxable income to foreign trade income. This apportionment is done for each method of calculating qualifying foreign trade income. The sum of the taxable income reduction and the apportioned expenses equals the respective qualifying foreign trade income (i.e., the amount of gross income excluded) under each method, as follows:

	1.2% FTGR [1]	15% FTI [2]	30% FS&LI [3]
Reduction of taxable income:			
1.2% of FTGR (1.2% *$1,000)	12.00		
15% of FTI (15% *$100)		15.00	
30% of FS&LI (30% *$35)			10.50
Gross-up for disallowed expenses:			
$300 *($12/$100)	36.00		
$300 *($15/$100)		45.00	
$275 *($10.50/$100) [4]			28.88
Qualifying foreign trade income	48.00	60.00	39.38

[1] ''FTGR'' refers to foreign trading gross receipts.
[2] ''FTI'' refers to foreign trade income.
[3] ''FS&LI'' refers to foreign sale and leasing income.
[4] Because foreign sale and leasing income only takes into account direct expenses, it is appropriate to take into account only such expenses for purposes of this calculation.

In the example, the $60 of qualifying foreign trade income is excluded from XYZ Corporation's gross income (determined based on 15 percent of foreign trade income). In connection with excluding $60 of gross income, certain expenses that are allocable to this income are not deductible for U.S. Federal income tax purposes. Thus, $45 ($300 of related expenses multiplied by 15 percent, i.e., $60 of qualifying foreign trade income divided by $400 of gross income from the sale of qualifying foreign trade property) of expenses are disallowed.

	Other property	QFTP	Excluded/ disallowed	Total
Gross receipts	$24,000	$1,000		
Cost of goods sold	16,400	600		
Gross income	7,600	400	(60.00)	7,940.00
Direct expenses	4,225	275	(41.25)	4,458.75
Overhead expenses	475	25	(3.75)	496.25
Taxable income				2,985.00

XYZ Corporation paid $40 of income tax to a foreign jurisdiction related to the sale and distribution of the qualifying foreign trade property. A portion of this $40 of foreign income tax is treated as paid with respect to the qualifying foreign trade income and, therefore, is not creditable for U.S. foreign tax credit purposes. In this case, $6 of such taxes paid ($40 of foreign taxes multiplied by 15 percent, i.e., $60 of qualifying foreign trade income divided by $400 of gross income from the sale of qualifying foreign trade property) is treated as paid with respect to the qualifying foreign trade income and, thus, is not creditable.

The results in this example are the same regardless of whether XYZ Corporation manufacturers the property within the United States or outside of the United States through a foreign branch. If XYZ Corporation were an S corporation or limited liability company, the results also would be the same, and the exclusion would pass through to the S corporation owners or limited liability company owners as the case may be.

Other rules

Foreign-source income limitation

The Senate amendment provides a limitation with respect to the sourcing of taxable income applicable to certain sale transactions giving rise to foreign trading gross receipts. This limitation only applies with respect to sale transactions involving property that is manufactured within the United States. The special source limitation does not apply when qualifying foreign trade income is determined using 30 percent of the foreign sale and leasing income from the transaction.

This foreign-source income limitation is determined in one of two ways depending on whether the qualifying foreign trade income is calculated based on 1.2 percent of foreign trading gross receipts or on 15 percent of foreign trade income. If the qualifying foreign trade income is calculated based on 1.2 percent of foreign trading gross receipts, the related amount of foreign-source income may not exceed the amount of foreign trade income that (without taking into account this special foreign-source income limitation) would be treated as foreign-source income if such foreign trade income were reduced by 4 percent of the related foreign trading gross receipts.

For example, assume that foreign trading gross receipts are $2,000 and foreign trade income is $100. Assume also that the taxpayer chooses to determine qualifying foreign trade income based on 1.2 percent of foreign trading gross receipts. Taxable income after taking into account the exclusion of the qualifying foreign trade income and the disallowance of related deductions is $76. Assume that the taxpayer manufactured its qualifying foreign trade property in the United States and that title to such property passed outside of the United States. Absent a special sourcing rule, under section 863(b) (and the regulations thereunder) the $76 of taxable income would be sourced as $38 U.S. source and $38 foreign source. Under the special sourcing rule, the amount of foreign-source income may not exceed the amount of the foreign trade income that otherwise would be treated as foreign source if the foreign trade income were reduced by 4 percent of the related foreign trading gross receipts. Reducing foreign trade income by 4 percent of the foreign trading gross receipts (4 percent of $2,000, or $80) would result in $20 ($100 foreign trade income less $80). Applying section 863(b) to the $20 of reduced foreign trade income would result in $10 of foreign-source income and $10 of U.S.-source income. Accordingly, the limitation equals $10. Thus, although under the general sourcing rule $38 of the $76 taxable income would be treated as foreign source, the special sourcing rule limits foreign-source income in this example of $10 (with the remaining $66 being treated as U.S.-source income).

If the qualifying foreign trade income is calculated based on 15 percent of foreign trade income, the amount of related foreign-source income may not exceed 50 percent of the foreign trade income that (without taking into account this special foreign-source income limitation) would be treated as foreign-source income.

For example, assume that foreign trade income is $100 and the taxpayer chooses to determine its qualifying foreign trade income based on 15 percent of foreign trade income. Taxable income after taking into account the exclusion of the qualifying foreign trade income and the disallowance of related deductions is $85. Assume that the taxpayer manufactured its qualifying foreign trade property in the United States and that title to such property passed outside of the United States. Absent a special sourcing rule, under section 863(b) the $85 of taxable income would be sourced as $42.50 U.S. source and $42.50 foreign source. Under the special sourcing rule, the amount of foreign-source income may not exceed 50 percent of the foreign trade income that otherwise would be treated as foreign source. Applying section 863(b) to the $100 of foreign trade income would result in $50 of foreign-source income and $50 of U.S.-source income. Accordingly, the limitation equals $25, which is 50 percent of the $50 foreign-source income. Thus, although under the general sourcing rule $42.50 of the $85 taxable income would be treated as foreign source, the special sourcing rule limits foreign-source income in this example to $25 (with the remaining $60 being treated as U.S.-source income).

Treatment of withholding taxes

The Senate amendment generally provides that no foreign tax credit is allowed for foreign taxes paid or accrued with respect to qualifying foreign trade income (i.e., excluded extraterritorial income). In determining whether foreign taxes are paid or accrued with respect to qualifying foreign trade income, foreign withholding taxes generally are treated as not paid or accrued with respect to qualifying foreign trade income. Accordingly, the Senate amendment's denial of foreign tax credits would not apply to such taxes. For this purpose, the term ''withholding tax'' refers to any foreign tax that is imposed on a basis other than residence and that is otherwise a creditable foreign tax under sections 901 or 903. It is intended that such taxes would be similar in nature to the gross-basis taxes described in sections 871 and 881.

If, however, qualifying foreign trade income is determined based on 30 percent of foreign sale and leasing income, the special rule for withholding taxes is not applicable. Thus, in such cases foreign withholding taxes may be treated as paid or accrued with respect to qualifying foreign trade income and, accordingly, are not creditable under the Senate amendment.

Election to be treated as a U.S. corporation

The Senate amendment provides that certain foreign corporations may elect, on an

original return, to be treated as domestic corporations. The election applies to the taxable year when made and all subsequent taxable years unless revoked by the taxpayer or terminated for failure to qualify for the election. Such election is available for a foreign corporation (1) that manufactures property in the ordinary course of such corporation's trade or business, or (2) if substantially all of the gross receipts of such corporation are foreign trading gross receipts. For this purpose, ''substantially all'' is based on the relevant facts and circumstances.

In order to be eligible to make this election, the foreign corporation must waive all benefits granted to such corporation by the United States pursuant to a treaty. Absent such a waiver, it would be unclear, for example, whether the permanent establishment article of a relevant tax treaty would override the electing corporation's treatment as a domestic corporation under this provision. A foreign corporation that elects to be treated as a domestic corporation is not permitted to make an S corporation election. The Secretary is granted authority to prescribe rules to ensure that the electing foreign corporation pays its U.S. income tax liabilities and to designate one or more classes of corporations that may not make such an election. If such an election is made, for purposes of section 367 the foreign corporation is treated as transferring (as of the first day of the first taxable year to which the election applies) all of its assets to a domestic corporation in connection with an exchange to which section 354 applies.

If a corporation fails to meet the applicable requirements, described above, for making the election to be treated as a domestic corporation for any taxable year beginning after the year of the election, the election will terminate. In addition, a taxpayer, at its option and at any time, may revoke the election to be treated as a domestic corporation. In the case of either a termination or a revocation, the electing foreign corporation will not be considered as a domestic corporation effective beginning on the first day of the taxable year following the year of such termination or revocation. For purposes of section 367, if the election to be treated as a domestic corporation is terminated or revoked, such corporation is treated as a domestic corporation transferring (as of the first day of the first taxable year to which the election ceases to apply) all of its property to a foreign corporation in connection with an exchange to which section 354 applies. Moreover, once a termination occurs or a revocation is made, the former electing corporation may not again elect to be taxed as a domestic corporation under the provisions of the Senate amendment for a period of five tax years beginning with the first taxable year that begins after the termination or revocation.

For example, assume a U.S. corporation owns 100 percent of a foreign corporation. The foreign corporation manufactures outside of the United States and sells what would be qualifying foreign trade property were it manufactured by a person subject to U.S. taxation. Such foreign corporation could make the election under this provision to be treated as a domestic corporation. As a result, its earnings no longer would be deferred from U.S. taxation. However, by electing to be subject to U.S. taxation, a portion of its income would be qualifying foreign trade income. The requirement that the foreign corporation be treated as a domestic corporation (and, therefore, subject to U.S. taxation) is intended to provide parity between U.S. corporations that manufacture abroad in branch form and U.S. corporations that manufacture abroad through foreign subsidiaries. The election, however, is not limited to U.S.-owned foreign corporations. A foreign-owned foreign corporation that wishes to qualify for the treatment provided under the Senate amendment could avail itself of such election (unless otherwise precluded from doing so by Treasury regulations).

Shared partnerships

The Senate amendment provides rules relating to allocations of qualifying foreign trade income by certain shared partnerships. To the extent that such a partnership (1) maintains a separate account for transactions involving foreign trading gross receipts with each partner, (2) makes distributions to each partner based on the amounts in the separate account, and (3) meets such other requirements as the Treasury Secretary may prescribe by regulations, such partnership then would allocate to each partner items of income, gain, loss, and deduction (including qualifying foreign trade income) from such transactions on the basis of the separate accounts. It is intended that with respect to, and only with respect to, such allocations and distributions (i.e., allocations and distributions related to transactions between the partner and the shared partnership generating foreign trading gross receipts), these rules would apply in lieu of the otherwise applicable partnership allocation rules such as those in section 704(b). For this purpose, a partnership is a foreign or domestic entity that is considered to be a partnership for U.S. Federal income tax purposes.

Under the Senate amendment, any partner's interest in the shared partnership is not taken into account in determining whether such partner is a ''related person'' with respect to any other partner for purposes of the Senate amendment's provisions. Also, the election to exclude certain gross receipts from foreign trading gross receipts must be made separately by each partner with respect to any transaction for which the shared partnership maintains a separate account.

Certain assets not taken into account for purposes of interest expense allocation

The Senate amendment also provides that qualifying foreign trade property that is held for lease or rental, in the ordinary course of a trade or business, for use by the lessee outside of the United States is not taken into account for interest allocation purposes.

Distributions of qualifying foreign trade income by cooperatives

Agricultural and horticultural producers often market their products through cooperatives, which are member-owned corporations formed under Subchapter T of the Code. At the cooperative level, the Senate amendment provides the same treatment of foreign trading gross receipts derived from products marketed through cooperatives as it provides for foreign trading gross receipts of other taxpayers. That is, the qualifying foreign trade income attributable to those foreign trading gross receipts is excluded from the gross income of the cooperative. Absent a special rule, however, patronage dividends or per-unit retain allocations attributable to qualifying foreign trade income paid to members of cooperatives would be taxable in the hands of those members. It is believed that this would disadvantage agricultural and horticultural producers who choose to market their products through cooperatives relative to those and individuals who market their products directly or through pass-through entities such as partnerships, limited liability companies, or S corporations. Accordingly, the Senate amendment provides that the amount of any patronage dividends or per-unit retain allocations paid to a member of an agricultural or horticultural cooperative (to which Part I of Subchapter T applies), which is allocable to qualifying foreign trade income of the cooperative, is treated as qualifying foreign trade income of the member (and, thus, excludable from such member's gross income). In order to qualify, such amount must be designated by the organization as allocable to qualifying foreign trade income in a written notice mailed to its patrons not later than the payment period described in section 1382(d). The cooperative cannot reduce its income (e.g., cannot claim a ''dividends-paid deduction'') under section 1382 for such amounts.

Gap period before administrative guidance is issued

It is recognized that there may be a gap in time between the enactment of the Senate amendment and the issuance of detailed administrative guidance. It is intended that during this gap period before administrative guidance is issued, taxpayers and the Internal Revenue Service may apply the principles of present-law regulations and other administrative guidance under sections 921 through 927 to analogous concepts under the Senate amendment. Some examples of the application of the principles of present-law regulations to the Senate amendment are described below. These limited examples are intended to be merely illustrative and are not intended to imply any limitation regarding the application of the principles of other analogous rules or concepts under present law.

Marginal costing and grouping

Under the Senate amendment, the Secretary of the Treasury is provided authority to prescribe rules for using marginal costing and for grouping transactions in determining qualifying foreign trade income. It is intended that similar principles under present-law regulations apply for these purposes.

Excluded property

The Senate amendment provides that qualifying foreign trade property does not include property leased or rented by the taxpayer for use by a related person. It is intended that similar principles under present-law regulations apply for this purpose. Thus, excluded property does not apply, for example, to property leased by the taxpayer to a related person if the property is held for sublease, or is subleased, by the related person to an unrelated person and the property is ultimately used by such unrelated person predominantly outside of the United States. In addition, consistent with the policy adopted in the Taxpayer Relief Act of 1997, computer software that is licensed for reproduction outside of the United States is not excluded property. Accordingly, the license of computer software to a related person for reproduction outside of the United States for sale, sublicense, lease, or rental to an unrelated person for use outside of the United States is not treated as excluded property by reason of the license to the related person.

Foreign trading gross receipts

Under the Senate amendment, foreign trading gross receipts are gross receipts from among other things, the sale, exchange, or other disposition of qualifying foreign trade property, and from the lease of qualifying foreign trade property for use by the lessee outside of the United States. It is intended that the principles of present-law regulations that define foreign trading gross receipts apply for this purpose. For example, a sale includes an exchange or other disposition and a lease includes a rental or sublease and a license or a sublicense.

Foreign use requirement

Under the Senate amendment, property constitutes qualifying foreign trade property

if, among other things, the property is held primarily for lease, sale, or rental, in the ordinary course of business, for direct use, consumption, or disposition outside of the United States. It is intended that the principles of the present-law regulations apply for purposes of this foreign use requirement. For example, for purposes of determining whether property is sold for use outside of the United States, property that is sold to an unrelated person as a component to be incorporated into a second product which is produced, manufactured, or assembled outside of the United States will not be considered to be used in the United States (even if the second product ultimately is used in the United States), provided that the fair market value of such seller's components at the time of delivery to the purchaser constitutes less than 20 percent of the fair market value of the second product into which the components are incorporated (determined at the time of completion of the production, manufacture, or assembly of the second product).

In addition, for purposes of the foreign use requirement, property is considered to be used by a purchaser or lesee outside of the United States during a taxable year if it is used predominantly outside of the United States. For this purpose, property is considered to be used predominantly outside of the United States for any period if, during that period, the property is located outside of the United States more than 50 percent of the time. An aircraft or other property used for transportation purposes (e.g., railroad rolling stock, a vessel, a motor vehicle, or a container) is considered to be used outside of the United States for any period if, for the period, either the property is located outside of the United States more than 50 percent of the time or more than 50 percent of the miles traveled in the use of the property are traveled outside of the United States. An orbiting satellite is considered to be located outside of the United States for these purposes.

Foreign economic processes

Under the Senate amendment, gross receipts from a transaction are foreign trading gross receipts eligible for exclusion from the tax base only if certain economic processes take place outside of the United States. The foreign economic processes requirement compares foreign direct costs to total direct costs. It is intended that the principles of the present-law regulations apply during the gap period for purposes of the foreign economic processes requirement including the measurement of direct costs. It is recognized that the measurement of foreign direct costs under the present-law regulations often depend on activities conducted by the FSC, which is a separate entity. It is recognized that some of these concepts will have to be modified when new guidance is promulgated as a result of the Senate amendment's elimination of the requirement for a separate entity.

Effective date

In general

The Senate amendment is effective for transactions entered into after September 30, 2000. In addition, no corporation may elect to be a FSC after September 30, 2000.

The Senate amendment also provides a rule requiring the termination of a dormant FSC when the FSC has been inactive for a specified period of time. Under this rule, a FSC that generates no foreign trade income for any five consecutive years beginning after December 31, 2001, will cease to be treated as a FSC.

Transition rules

Winding down existing FSCs and binding contract relief

The Senate amendment provides a transition period for existing FSCs and for binding contractual agreements. The new rules do not apply to transactions in the ordinary course of business involving a FSC before January 1, 2002. Furthermore, the new rules do not apply to transactions in the ordinary course of business after December 31, 2001, if such transactions are pursuant to a binding contract between a FSC (or a person related to the FSC on September 30, 2000) and any other person (that is not a related person) and such contract is in effect on September 30, 2000, and all times thereafter. For this purpose, binding contracts include purchase options, renewal options, and replacement options that are enforceable against a lessor or seller (provided that the options are a part of a contract that is binding and in effect on September 30, 2000).

Old earnings and profits of corporations electing to be treated as domestic corporations

A transition rule also provided for certain corporations electing to be treated as a domestic corporation under the Senate amendment. In the case of corporation to which this transition rule applies, the corporation's earnings and profits accumulated in taxable years ending before October 1, 2000 are not included in the gross income of the shareholder by reason of the deemed asset transfer for section 367 purposes that the Senate amendment provides. Thus, although the electing corporation may be treated as transferring all of its assets to a domestic corporation in a reorganization described in section 368(a)(1)(F), the earnings and profits amount that would otherwise be treated as a deemed dividend to the U.S. shareholder under the regulations under section 367(b) will not include the earnings and profits accumulated in taxable years ending before October 1, 2000. This treatment is similar to the treatment of earnings and profits of a foreign insurance company that makes the election to be treated as a domestic corporation under section 953(d), which election was a model for the election to be treated as a domestic corporation under the Senate amendment. Under section 953(d), earnings and profits accumulated in taxable years beginning before January 1, 1988 were not included in the earnings and profits amount that would be a deemed dividend for section 367(b) purposes.

Like the pre-1988 earnings and profits of a domesticating foreign insurance company under section 953(d), the earnings and profits to which this transition rule applies would continue to be treated as earnings and profits of a foreign corporation even after the corporation elects to be treated as a domestic corporation. Thus, a distribution out of earnings and profits of an electing corporation accumulated in taxable years ending before October 1, 2000 would be treated as a distribution made by a foreign corporation. Rules similar to those applicable to corporations making the section 953(d) election that prevent the repatriation of pre-election period earnings and profits without current U.S. taxation apply for this purpose. Thus, for example, the earnings and profits accumulated in taxable years beginning before October 1, 2000 would continue to be taken into account for section 1248 purposes.

The earnings and profits to which the transition rule applies are the earnings and profits accumulated by the electing corporation in taxable years ending before October 1, 2000. The transition rule will not apply to earnings and profits accumulated before that date that are succeeded to after that date by the electing corporation in a transaction to which section 381 applies unless, like the electing corporation, the distributor or transferor (from whom the electing corporation acquired the earnings and profits) could have itself made the election under the Senate amendment to be treated as a domestic corporation and would have been eligible for the transition relief.

The transition rule for old earnings and profits applies to two classes of taxpayers. The first class is FSCs in existence on September 30, 2000 that make an election to be treated as a domestic corporation because they satisfy the requirement that substantially all of their gross receipts are foreign trading gross receipts. To be eligible for the transition relief, the election must be made not later than for the FSC's first taxable year beginning after December 31, 2001.

The second class of corporations to which this transition relief applies is certain controlled foreign corporations (as defined in section 957). Notwithstanding other requirements for making the election to be treated as a domestic corporation provided under the Senate amendment's general provisions, such controlled foreign corporations are eligible under the transition rule to make the election to be treated as a domestic corporation and will not have the resulting deemed asset transfer cause a deemed inclusion of earnings and profits for earnings and profits accumulated in taxable years ending before October 1, 2000. To be eligible for the transition relief, such a controlled foreign corporation must be in existence on September 30, 2000. The controlled foreign corporation must be wholly owned, directly or indirectly, by a domestic corporation. The controlled foreign corporation must never have made an election to be treated as a FSC and must make the election to be treated as a domestic corporation not later than for its first taxable year beginning after December 31, 2001. In addition, the controlled foreign corporation must satisfy certain tests with respect to its income and activities. For administrative convenience, these tests are limited to the three taxable years preceding the first taxable year for which the election to be treated as a domestic corporation applies. First, during that three-year period, all of the controlled foreign corporation's gross income must be subpart F income. Thus, the income was subject to full inclusion to the U.S. shareholder and, accordingly, subject to current U.S. taxation. Second, during that three-year period, the controlled foreign corporation must have, in the ordinary course of its trade or business, entered into transactions in which it regularly sold or paid commissions to a related FSC (which also was in existence on September 30, 2000). If an electing corporation in this second class ceases to be (directly or indirectly) wholly owned by the domestic corporation that owns it on September 30, 2000, the election to be treated as a domestic corporation is terminated.

Limitation on use of the gross receipts method

Similar to the limitation on use of the gross receipts method under the Senate amendment's operative provisions, the Senate amendment provides a rule that limits the use of the gross receipts method for transactions after the effective date of the Senate amendment if that same property generated foreign trade income to a FSC using the gross receipts method. Under the rule, if any person used the gross receipts method under the FSC regime, neither that person nor any related person will have qualifying foreign trade income with respect to any other transaction involving the same item of property.

Coordination of new regime with prior law

Notwithstanding the transition period, FSCs (or related persons) may elect to have the rules of the Senate amendment apply in lieu of the rules applicable to FSCs. Thus, for transactions to which the transition rules apply (i.e., transactions after September 30, 2000 that occur (1) before January

1, 2002 or (2) after December 31, 2001 pursuant to a binding contract which is in effect on September 30, 2000), taxpayers may choose to apply either the FSC rules or the amendments made by this Senate amendment, but not both. In addition, a taxpayer would not be able to avail itself of the rules of the Senate amendment in addition to the rules applicable to domestic international sales corporations because the Senate amendment provides that the exclusion of extraterritorial income will not apply if a taxpayer is a member of any controlled group of which a domestic international sales corporation is a member.

Mr. Speaker, I urge all Members to support this vital, time-sensitive legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. STARK. Mr. Speaker, I yield myself such time as I may consume.

In the efforts of the new Congress to be gentler, although I am adamantly opposed to this bill, I would like to give the two best shots they have to the gentleman from Texas (Mr. ARCHER), the distinguished chairman of the Committee on Ways and Means, and the gentleman from Michigan (Mr. LEVIN), the distinguished ranking member of the Subcommittee on Trade. I want to give him 4 minutes, and we will proceed to destroy their arguments in subsequent time.

Mr. Speaker, I yield 5 minutes to the distinguished gentleman from Michigan (Mr. LEVIN).

Mr. LEVIN. Mr. Speaker, I deeply appreciate the gentleman yielding me this time, under any terms.

Mr. Speaker, I rise in support of this bill. It passed the House earlier this session, 315 to 109, and we are considering it again today because the Senate, as the gentleman from Texas (Mr. ARCHER) mentioned, made a modification with the agreement of the House and the administration.

Let me take a few minutes to review the history as to why this bill is on the floor today. Our country has what is known as a worldwide taxation system. In general, U.S. residents are taxed on income, regardless of where it is earned. Rules such as the foreign tax credit ensure against double taxation. By contrast, most European countries have a form of territorial taxation. Under those systems, income is taxed only if it is earned within the territory of the taxing jurisdiction. This system tends to favor exports over comparable domestic transactions.

To put our exports on a level playing field with Europe and others, we enacted in 1971 the Domestic International Sales Corporation Law, DISC. The European community successfully challenged that law in the GATT, and we successfully challenged the territorial tax regimes of Belgium, France, and the Netherlands. These disputes ultimately were resolved in 1981 by an understanding adopted by the GATT Council.

Based on the 1981 understanding, we replaced the DISC with FSC, the Foreign Sales Corporation statute. The goal of that statute was to ensure that when U.S. producers of goods, both industrial and agricultural, export, our tax system does not put them at a disadvantage.

This system worked well for almost 20 years; but in 1988, the European Union decided to walk away from it and challenge the FSC. In its decision adopted by the WTO earlier this year, the FSC statute was held to violate WTO's subsidy rules and the U.S. was directed to withdraw the subsidy by October 1.

Whatever one may think of the reasoning of the WTO dispute panel, our commitment to a rules-based trading system requires that we bring our law into compliance with its decision, and this bill does that precisely. It does so in a way that makes our tax regime a bit more like a territorial tax regime.

What this bill does is to define a category of foreign source income that is excluded from gross income and, therefore, not subject to U.S. tax. It makes clear that to come within this category, income need not arise from an export transaction. Qualifying transactions will include certain sales of property produced outside the United States. Thus, this bill definitively eliminates the export contingency that the EU argued was a WTO inconsistency.

At the same time, and I emphasize this, as is clear from the bill itself in the committee report, this bill does not provide an incentive for U.S. producers to move their operations overseas. It carefully defines the property that can be involved in transactions subject to the new tax regime. No more than 50 percent of the fair market value of such property can consist of, a, non-U.S. components, plus, b, non-U.S. direct labor. This provision has been carefully reviewed by those of us on the Committee on Ways and Means, as well as the Department of Treasury, and, I might add, the minority leader.

Enactment of this bill is critical to U.S. businesses, workers, and farmers. The cloud of the WTO decision affects everyone from airplane manufacturers and manufacturers of other industrial products to software developers, to wheat growers, and so on. If we fail to enact this bill, there is a serious risk that the EU will go back to the WTO. It would cause great harm to U.S. businesses, to workers, and to farmers.

As I said in September, there are other issues, tobacco issues, pharmaceutical issues. They cannot be considered, though, within this bill. If we need to amend, to modify U.S. laws, we should do so later on. But we have a constraint. The deadline was October 1, now it is November 17; and if we fail to act by that date, as I said earlier in September, we are going to hurt American businesses and the workers who work for them, and we are simply going to help European competitors. As I said a month ago, if we want to help European producers, vote against this bill. But if we want to help American workers, businesses and manufacturing goods, let us vote for this bill.

Mr. ARCHER. Mr. Speaker, I yield 3 minutes to the gentleman from Illinois (Mr. CRANE), a respected member of the Committee on Ways and Means, who has worked so very hard on this legislation and the chairman of the Subcommittee on Trade.

Mr. CRANE. Mr. Speaker, I rise in strong support of this legislation, which fulfills the United States' obligation to bring the foreign sales corporation tax regime into compliance with WTO trade agreements. H.R. 4986 moves the U.S. closer to a territorial tax system, more like the one governing the international activities of so many European businesses.

Many issues divide the Congress in these days before and after the close national election. But with respect to the difficult choices facing us on FSC, both parties worked in concert with the administration to address a looming threat to innocent United States exporters. Make no mistake: this bill averts a trade war that is poised to hit unsuspecting U.S. exporters with millions of dollars of retaliatory tariffs.

Another issue we need to be very clear about, the FSC regime and its replacement reduced the anti-growth biases of our international tax system that would otherwise hamstring our companies and our workers. Some Members, even proponents of this legislation, sometimes have called the FSC replacement a subsidy. We need to be more careful with our language.

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This is not a subsidy. It is a partial, repeat, partial, reduction in an excessive tax burden our companies, and by extension, our workers, face when competing in the world economy.

By way of analogy, our current tax law is a felony. The fiscal replacement reduces the charge to a misdemeanor, but the net result still violates the economic law of neutrality that should govern all of our tax policies.

The European Union is challenging us, not as Republicans or Democrats, not as Congress or the administration, but as a country. By completing the difficult work necessary to send this bill to the President, we have put the United States in the best possible position to defend our interests in the WTO.

H.R. 4986 represents an achievement of bipartisan cooperation in the best interests of American businesses and workers. I urge a yes vote.

Mr. STARK. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, there is an old rule of tax law which started with actually then Secretary of the Treasury Baker when we reformed the Tax Code under President Reagan. It was, if it quacks like a subsidy and walks like a subsidy and looks like a subsidy, it is a subsidy.

The distinguished chairman of the Subcommittee on Trade would discuss

the overburden of taxation. When the pharmaceutical companies charge our people, our seniors, our young people, two to four times more for the same drug that they charge people in Europe, and yet they have the lowest tax rate of any industry group in this country, why should we give them hundreds of millions of dollars of subsidy, gift, reduction? Members may call it what they want, but we are rewarding the pharmaceutical industry for charging less in Europe and more in this country.

Tell me what it is, Mr. Speaker. I call it disgraceful, I call it obscene, $750 million a year to General Electric and Boeing to sell weapons, which they do not even sell, the State Department and the Defense Department arrange the sale of weapons. Yet, we give them a reduction of $750 million a year? That is a subsidy, pure and simple.

Now, software was mentioned. Those poor folks in Seattle. Software? Do Members know how much Microsoft paid in taxes last year? Zero, Mr. Speaker, a goose egg. This big or this big, zero is still zero. Yet, they get a subsidy which gets them down to zero for all the software they sell overseas. Is that a gift? And this poor overtaxed Bill Gates is walking around, so we subsidize his sales overseas.

Mr. Speaker, we have been doing this for generations. For 25 years, we have been giving $5 billion a year away in subsidies to corporations who would do the same thing whether or not they got this subsidy. And they do not set their prices based on their taxes. As any distinguished economist, like my friend, the gentleman from Illinois (Mr. CRANE), the distinguished chair of the Subcommittee on Trade, knows, corporations do not price their products based on taxes, they price their products based on competitive and manufacturing costs, all the other things, as he so well knows.

So all we are doing is giving a break, a tax break, a subsidy, to the richest corporations in this country, rewarding those corporations who gyp our senior citizens by overcharging in this country, by rewarding them.

And my distinguished friend, the gentleman from Texas, will tell us about tobacco, subsidizing the sale of tobacco to hook little kids in other parts of the world while we are trying to spend money here at home. Just think, if we had some of this $5 billion a year to spend to train our children not to smoke, how much healthier and safer they would be. Think if we had some of this $5 billion a year to spend on education to hire teachers, which the gentleman could not find the money to do on the Republican side. Think if we had this $5 billion a year to provide a drug benefit to the senior citizens.

No, we are going to continue this charade and give this money away in unconscionable subsidies to the corporations who least need it for doing what they would do anyway. It is the silliest kind of gift to the people who need it least, when we have people in this country who need help. We are turning our backs on the people in this country and helping the richest corporations in this country.

End this charade now and vote against this bill.

Mr. CRANE. Mr. Speaker, will the gentleman yield?

Mr. STARK. I yield to the gentleman from Illinois.

Mr. CRANE. Mr. Speaker, first of all, with regard to tobacco subsidies, that would keep people from getting to the polls, I guess, if we eliminated subsidies.

But let me ask a second question. That is, do businesses pay taxes?

Mr. STARK. Most of these do not, no.

Mr. CRANE. No, do businesses pay taxes?

Mr. STARK. Some businesses do. The ones getting the subsidy for the most part do not. They have so many loopholes and subsidies, as in this, that they end up paying no taxes.

Mr. CRANE. Will the gentleman go back to Econ 101? Businesses do not pay taxes and never have. That is a cost, like plant and equipment and labor are costs.

Mr. STARK. Mr. Speaker, this is my time and I reclaim it. That is as silly as supply side economics. The gentleman ought to know better.

Mr. Speaker, I reserve the balance of my time.

Mr. ARCHER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise simply to say that the gentleman from California says that it is a corporate subsidy if we do not double tax all of the earnings overseas. We are one of the very few developed countries in the world that double taxes earnings overseas. So if we eliminate partially, only partially, the double taxation of those earnings to be only partially competitive with our foreign competitors, he calls it a subsidy. I do not believe the American people would agree with that.

Mr. Speaker, I include for the RECORD a letter from Secretary Summers on behalf of the administration strongly supporting this legislation.

The document referred to is as follows:

DEPARTMENT OF THE TREASURY,
Washington, DC, November 2, 2000.

Hon. J. DENNIS HASTERT,
Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: Enactment of legislation (H.R. 4986) repealing and replacing the Foreign Sales Corporation (''FSC'') regime has been and remains a top priority for the President. As you know, H.R. 4986 is the product of a unique bipartisan effort involving the Administration, Chairmen Archer and Roth, Ranking Members Rangel and Moynihan, and their staffs.

It was carefully drafted to address issues raised by the WTO regarding the FSC regime. The Administration strongly supports passage of this legislation that has such important consequences for jobs, the national economy, and international relations with some of our most important trading partners.

Passage of H.R. 4986, is absolutely essential to avoiding the potential imposition by the European Union of significant sanctions on American industries and to satisfying the United States' obligations in the WTO. Failure to pass this legislation immediately will compromise the United States' ability to avoid a confrontation with the European Union. Moreover, it would jeopardize an important procedural agreement reached with the European Union to this end. The procedural agreement delays the possibility of retaliation by ensuring that the WTO will review the new replacement legislation before any decision may be made authorizing retaliation. The benefits of the agreement, however, are contingent upon the immediate enactment of the FSC replacement legislation.

Therefore, I urge you in the strongest possible terms to allow the House to act on H.R. 4986 as soon as possible.

Sincerely,

LAWRENCE H. SUMMERS,
Secretary.

Mr. Speaker, I include for the RECORD a statement of administration policy from OMB strongly supporting this legislation.

The document referred to is as follows:

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC, September 12, 2000.

STATEMENT OF ADMINISTRATION POLICY

(This statement has been coordinated by OMB with the concerned agencies)

H.R. 4986—FSC REPEAL AND EXTRATERRITORIAL INCOME EXCLUSION ACT OF 2000 (ARCHER (R) TEXAS)

The Administration strongly supports H.R. 4986, which would repeal provisions of the Internal Revenue Code relating to foreign sales corporations and provide an exclusion from U.S. tax for certain income earned overseas.

H.R. 4986 addresses the issues with respect to foreign sales corporations (FSCs) that were raised by the World Trade Organization (WTO) Appellate Body decision in February 2000. Because the legislation provides an exclusion for certain income earned overseas (referred to as ''qualifying foreign trade income''), there is no forgone revenue that would otherwise be due and thus there is no subsidy. Further, by treating all qualifying foreign sales alike, regardless of whether the goods were manufactured in the United States or abroad, the proposed legislation is not export-contingent.

H.R. 4986 has been developed through an extraordinary bipartisan, bicameral process. The Administration believes that enactment of this law, prior to October 1, 2000, is necessary to avoid an immediate confrontation with the European Union (EU), to ensure that the United States is in compliance with the WTO Appellate Body decision, and to avoid possible sanctions that would otherwise be imposed by the EU. This legislation would assure that no U.S. companies are disadvantaged. Passage of this legislation is the only way to avoid potential EU sanctions against U.S. exports.

PAY-AS-YOU-GO SCORING

H.R. 4986 would affect direct spending and receipts; therefore, it is subject to the pay-as-you-go (PAYGO) requirement of the Omnibus Budget Reconciliation Act of 1990. The Joint Committee on Taxation estimates that the bill would produce revenue losses of $1.5 billion in fiscal years 2001 through 2005. The Administration's scoring of the bill is under development. The Administration will work with Congress to avoid an unintended sequester.

Mr. ARCHER. Mr. Speaker, I yield 3 minutes to the gentleman from New York (Mr. RANGEL), the ranking Democrat on the Committee on Ways and Means, who has worked very closely with us from beginning to end on a bipartisan basis to get to where we are today, and who has contributed a great deal to this legislation.

(Mr. RANGEL asked and was given permission to revise and extend his remarks.)

Mr. RANGEL. Mr. Speaker, let me thank the chairman of the Committee on Ways and Means, the gentleman from Texas (Mr. ARCHER), my fellow Democrats, and join my colleagues on the floor in asking support for this piece of legislation, which is supported by the President and which our official Secretary Stuart Eizenstat, assistant Secretary Jon Talisman, have worked on, as well as the Senate, which has made some changes here.

It is interesting to note the concerns that some of my colleagues have about the policies of some of our domestic corporations, especially those dealing with pharmaceutical products, as well as tobacco.

It would seem to me within this body and the other body that we should be able to determine from a domestic point of view exactly to what extent we expect to control the conduct of these businesses in the United States.

But much like foreign policy, with all of the problems I have with my government, somehow when I leave the United States, those problems disappear when I am dealing with foreign bodies. I have concerns about the production and sale of tobacco, but not to the extent that I am prepared to accept a criticism of a foreign body as to how we conduct international business. This is especially so since I have more criticism about how foreign countries conduct their business, and I am not allowed to participate in terms of what I think is right and what I think is wrong and what I think is totally unfair.

For that reason, I have to support those people who diplomatically and legally have to work with the World Trade Organization, knowing that if we do not support our diplomatic efforts in this area, then it allows foreigners to arbitrarily select how they are going to penalize American businesses, American exports, American workers.

I just do not like that one bit. I do not like the idea that they can arbitrarily select those exports that we have that have nothing to do with pharmaceuticals, nothing to do with tobacco, and decide they have to punish us because they do not like the way we treat our exports.

We do not mind them looking over as to whether or not we have been fair in creating an even playing field for all of our businesses. We do not mind if they say they want to come to the table and renegotiate how we do this thing so we can say we do not like the way they treat their companies that are doing exports.

But it does appear to me that when we are dealing with the European Union, when we are dealing with the World Trade Organization, we should be able to stand by those people who negotiate on behalf of the United States of America, United States businesses, and those Americans.

We should be able to distinguish between our concern about how we treat American businesses here, how we penalize them for conduct that we think is unhealthy to the environment or to our people, distinguish that as it appears to be when foreigners are attempting to critique us, and indeed, provide sanctions against American businesses, the American community, American workers, and indeed, I would say, America in general.

So while I do not challenge the good-faith interests people have in challenging this legislation, I ask my colleagues to support it. For those that have reservations, I ask them to continue to study and find ways that we can reach objectives they want.

But on the international playing field, that flag should be flying for us. I support the flag, I support those people that negotiated with the WTO. I hope in the final analysis we get better than a fair advantage as it relates to American businesses, because as far as I am concerned, the more jobs for America, the better country we have.

Mr. STARK. Mr. Speaker, I yield 7 minutes to the distinguished gentleman from Texas (Mr. DOGGETT).

□ 1030

Mr. Speaker, this bill has a whopping cost to Americans of $42 billion in this decade. To be bipartisan about it, in the words of Senator JOHN MCCAIN, ''this legislation is an example of the costly corporate welfare that cripples our ability to respond to truly urgent social needs.'' Indeed it is.

To make matters worse, despite all the proclamations about how urgent this bill is and how we will avoid a trade war and save all of these jobs, to make matters worse, this bill does not work. And even its supporters concede in private that it will not work and that we will be back here as soon as the World Trade Organization considers and rejects this bill, doing this all over again, because of the well justified criticism that has been levied against this very obvious straight subsidy.

With good reason, the Europeans have already rejected this ill-conceived proposal. Not only does it not work in the world forum, it does not work, according to even Republican sources, like the Republican Congressional Budget Office. It announced in March of this year that ''export subsidies'' such as this bill ''reduce economic welfare and typically even reduce the welfare of the country granting the subsidy.''

The assistant director of the General Accounting Office in August of this year said ''most of the benefits are received by a small number of large corporations.'' He noted: ''Policymakers have available a number of tax and other government incentives that meet WTO standards, and that could be expanded to replace the prohibited direct tax subsidy provided by the FSC tax regime.''

And to those who say they want more free trade, this bill does not provide free trade. It provides distorted trade and chooses winners and losers. This legislation asks local stores that sell groceries and clothing to customers at a mall or along Main Street across this country to pay higher taxes than the multinationals that sell cigarettes and machine guns abroad.

Mr. Speaker, $4 of every $5 in this bill go to companies that have assets exceeding $1 billion. It offers no significant benefit to smaller companies in this country.

Indeed, I think the Congress ought to heed the words of commentator Paul Magnusson in ''Business Week'' on September 4 of this year who wrote that ''the larger problem with subsidies is that they invite countersubsidies and so accomplish little besides transferring money from consumers and taxpayers to politically powerful producers''; and that is exactly what is happening today. I agree with that commentary that ''it's time to call a halt to such waste by both sides; getting rid of subsidies for exports would be a good place to start. The Clinton administration should drop its plans to expand FSC and get back to the negotiating table and start proposing some real solutions such as eliminating all export subsidies.''

Indeed, the administration should have done just that. Now who is driving the corporate welfare Cadillacs that are lining up outside the Capitol to get more welfare under this proposal? Well, driver number one is Mr. Phillip Morris and the tobacco lobby. They get $100 million a year under this proposal to export death and disease to the rest of the world, to use the slick tactics that they developed here in America addicting our children to nicotine in order to encourage a global pandemic addicting the children of the world.

And to my colleagues from the tobacco-producing States, the industry does not even have to use American tobacco. All they have to do is slip a little Marlboro label on the package and they can use exclusively foreign tobacco, and still be tax subsidized by American taxpayers to the tune of over $100 million a year to promote death and disease.

The Clinton administration agreed to oppose this wrong. The administration were true to the last minute; and then they abandoned, in the face of the lobbying power of the tobacco industry, their stated willingness to end this promotion of death and disease.

Who is the second big corporate welfare Cadillac driver? There has been the suggestion that we could not have any amendments to this bill. Well,

there was an amendment that was done behind closed doors, and the effect was to double, absolutely double with an increase by $300 million every year the amount of money that those who make weapons in this country will get by selling them abroad.

We already dominate the world scene in terms of the manufacture of weapons being sent to every arms race in every corner of the world. But under this bill, American tax payers will have to subsidize and offer more corporate welfare to those weapon manufacturers to keep up the good business they have that results in death and destruction all over this world.

Instead of being a leader and trying to reduce the amount of those arms races around the world, we are subsidizing it to the tune of $300 million more, even though last year, the Treasury said it was not a good idea, and the Defense Department, in 1994, indicated it was not necessary. Even though Republican groups in this Congress said it was unwise, they could not, in an election year, resist the dominance and power of the arms manufacturers.

And then another driver of this corporate welfare Cadillac is the pharmaceutical industry. It is an industry that today gets a reward for making prescriptions here in America and selling them for less abroad. They will get a tax subsidy, a bit of corporate welfare, for doing that at the same time they gouge consumers at home. This bill is wrong, that is why it was done behind closed doors, that is why they are fearful of amendments and discussion and it ought to be rejected.

Mr. DOGGETT. Mr. Speaker, this bill has a long title, but it is quite simply a welfare bill. It has a huge price tag that will cost Americans billions of dollars. It has been prepared entirely behind closed doors by those who will receive the welfare benefits. With the blessing of both the Clinton administration and the Republican leadership here in Congress, a very interesting process was followed: If one was going to get something out of this bill, they were invited to the behind-closed-doors negotiations. If they were left out, they were excluded from the negotiations to prepare this legislation.

Once this product of all of the clandestine wheeling and dealing sessions was presented to this Congress, every effort was made, both here in the House and across the Capitol in the Senate, to ensure that no questions were asked and no amendments were offered. There was as little talk possible about all of this behind-the-scenes wheeling and dealing to get as much welfare for themselves, by some who wrote the bill, as they possibly could: ''Do not look at the details of the largesse, just give it to us as fast as you can.''

This bill represents everything that is wrong with the special interest domination of the legislative process in America today. It provides ample justification for the cynicism that more and more Americans have that their government is not serving them, but serving only those who can afford to have a lobbyist and a political action committee located in Washington.

The SPEAKER pro tempore (Mr. SIMPSON). Without objection, the gentleman from Illinois (Mr. CRANE) will control the time for the majority.

There was no objection.

Mr. CRANE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I have recognition of my opponents' opposition here to our bill. We had Smoot-Hawley in our party, and they shared many of the same convictions we heard here tonight. But I am happy that the gentleman from Missouri (Mr. GEPHARDT) and the gentleman from New York (Mr. RANGEL), our ranking minority member, are supportive of this bipartisan legislation.

Mr. Speaker, I yield 2½ minutes to the gentleman from Pennsylvania (Mr. ENGLISH), our distinguished colleague.

Mr. ENGLISH. Mr. Speaker, I am delighted to be here to urge strong bipartisan support for this very important legislation. Legislation that may be the most important action we take at the close of this Congress, and perhaps for years to come.

This is critical legislation to protect the jobs of working families who have members who work in some of our best-paying export oriented jobs in America. I am surprised to hear the strange rhetoric on the floor of this House that is essentially rhetoric directed against their jobs.

We have heard the opponents of this legislation adopt the same rhetoric of our European trade competitors in criticizing our tax system. The thing to understand and what FSC is intended to address, this legislation is not a welfare bill, corporate or otherwise. It is not a subsidy. It is an adjustment of our tax system to establish a level playing field, and that is what our European trade competitors have not wanted.

FSC was originally created and made necessary, only because the U.S. maintains an archaic worldwide tax system which taxes foreign-source income and because the U.S. taxes export income. By refusing to reform FSC today, this Congress would be inviting massive retaliation against U.S. export trade leaving our exporters and their employees high and dry. Failing to reform FSC today would make an already tough global market next to impossible for U.S. employers to compete in.

If we do not act today, we would impose a huge cost on the economy of this country, particularly on some of the industries in manufacturing that have the best paying jobs. If we do not act today, we would put our workers at a competitive disadvantage and effectively balance our budget on their backs.

Mr. Speaker, if we do not act today, we will explode our already large trade deficit and put our economy in a downward spiral because, if we do not act today, we will set up the dynamics for a trade war between Europe and the United States. We cannot afford that. They cannot afford that. We should not move down this slippery slope.

Pass this legislation. It is the one responsible thing we can do today.

Mr. STARK. Mr. Speaker, I am happy to yield 30 seconds to the gentleman from Guam (Mr. UNDERWOOD).

(Mr. UNDERWOOD asked and was given permission to revise and extend his remarks.)

Mr. UNDERWOOD. Mr. Speaker, I rise to express my concerns regarding H.R. 4986, the FSC Repeal and Extraterritorial Income Exclusion Act of 2000. I urge congressional leaders and the Clinton administration to help the U.S. territories who will be adversely impacted by this legislation, particularly the U.S. Virgin Islands and Guam when the House reconvenes in December.

In Guam, there are over 200 FSC licenses generating around $170,000 to the government of Guam. However, license fees are only some of the direct benefits from FSC. Other direct benefits include compensation for the professional community. But be that as it may, I am appealing to the Clinton administration, particularly the Treasury Department, to offset the economic impact of today's legislation by allowing territories to promote economic self-sufficiency, including establishing empowerment zones for the territories and tax equity treatment for Guam.

Mr. Speaker, I rise to express my concerns regarding H.R. 4986, the FSC Repeal and Extraterritorial Income Exclusion Act of 2000. I urge congressional leaders and the Clinton administration to help the U.S. territories who will be adversely impacted by this legislation, particularly the U.S. Virgin Islands and Guam, when the House reconvenes in December.

Since the WTO decision last fall on Foreign Sales Corporations (FSCs), I know that the administration worked closely with House Ways and Means Committee Chairman ARCHER and Representative RANGEL, the ranking member, to ensure that the United States passes legislation to meet the October 1, 2000, deadline set by the WTO to comply with its ruling. Although the deadline has passed, today's passage of H.R. 4986 is necessary to fulfill a commitment by U.S. officials to address the concerns raised by the European Union.

As many of you know, the WTO panel issued a ruling last fall that subsidies for Foreign Sales Corporations under U.S. tax laws violated the WTO Subsidies Agreement. U.S. negotiators have since worked in good faith on a proposal to retain many of the tax benefits of the FSC structure, while establishing a new structure which would be responsive to the European Union's challenge.

However, I simply want to express my concern over the impact that H.R. 4986 would have on the U.S. territories. Under the current FSC system, U.S. territories have been able to benefit through tax exemptions for U.S. exporting industries. With the repeal of the FSC system, we will no longer to be able to offer this incentive although I understand that current contracts will be honored.

In Guam, there are around 211 FSC licensees, generating around $170,000 to the Government of Guam. However, license fees are only some of the direct benefits from FSCs. Other direct benefits include compensation for Guam attorneys and other professionals, bank deposits, and funds generated through the hotel and restaurant industries that host FSC corporate meetings. Indirect benefits would be the cumulative effect that FSCs and other tax incentives have on attracting U.S. businesses to Guam.

Be it as it may, the writing is on the wall for FSCs as we now know it. Therefore, I am appealing to the Clinton administration, particularly the Treasury Department, to offset the economic impact of today's legislation with the means necessary to allow the U.S. territories to promote economic self-sufficiency during any negotiations with the Congress on any final omnibus budget or tax package.

Apart from H.R. 3247, which would provide empowerment zones for the U.S. territories, I have worked closely with my colleagues to enact legislation that I authorized which would level the playing field for foreign investors in Guam through the passage of the Guam Foreign Direct Investment Equity Act.

My legislation would provide Guam with the same tax rates as the fifty states under international tax treaties. Since the U.S. cannot unilaterally amend treaties to include Guam in its definition of United States, my bill amends Guam's Organic Act, which has an entire tax section that ''mirrors'' the U.S. Internal Revenue Code.

As background, under the U.S. Code, there is a 30 percent withholding tax rate for foreign investors in the United States. Since Guam's tax law ''mirrors'' the rate established under the U.S. Code, the standard rate for foreign investors in Guam is 30 percent.

The Guam Foreign Direct Investment Equity Act provides the Government of Guam with the authority to tax foreign investors at the same rates as states under U.S. tax treaties with foreign countries since Guam cannot change the withholding tax rate on its own under current law. Under U.S. Tax treaties, it is a common feature for countries to negotiate lower withholding rates on investment returns. Unfortunately, while there are different definitions for the term ''United States'' under these treaties, Guam is not included. Such an omission has adversely impacted Guam since 75 percent of Guam's commercial development is funded by foreign investors. As an example, with Japan, the U.S. rate for foreign investors is 10 percent. That means while Japanese investors are taxed at a 10 percent withholding tax rate on their investments in the fifty states, those same investors are taxed at a 30 percent withholding rate on Guam.

While the long term solution is for U.S. negotiators to include Guam in the definition of the term ''United States'' for all future tax treaties, the immediate solution is to amend the Organic Act of Guam and authorize the Government of Guam to tax foreign investors at the same rates as the fifty states. Other territories under U.S. jurisdiction have already remedied this problem through Delinkage, their unique covenant agreements with the federal government, or through federal statute. Guam, therefore, is the only state or territory in the United States which is unable to take advantage of this tax benefit.

As the House considers H.R. 4986, as amended by the Senate, I implore my colleagues and the Clinton Administration to support the Guam Foreign Direct Investment Equity Act to offset the adverse impact of H.R. 4986 on Guam. Please include equitable tax treatment for foreign investors in Guam during any final omnibus budget or tax package.

Mr. CRANE. Mr. Speaker, I yield 2 minutes to the gentlewoman from the Virgin Islands (Mrs. CHRISTENSEN), our distinguished colleague.

Mrs. CHRISTENSEN. Mr. Speaker, I want to thank the distinguished gentleman from Illinois (Mr. CRANE), the chairman of the Subcommittee on Trade, for yielding me this time to speak on an issue that is very important to all of the territories, and my constituents included.

Mr. Speaker, while H.R. 4986 is clearly necessary for our country to avoid having sanctions imposed on us by the European Union, for me and the people of the Virgin Islands, who I represent, its enactment into law will mean the loss of nearly $11 million to our already depressed local treasury.

Through no fault of our own and despite the efforts of my colleagues on the Committee on Ways and Means and the administration to mitigate the adverse effects on us, the Virgin Islands stands to lose hundreds of direct and indirect jobs in the FSC industry, in addition to the millions in FSC franchise fees that the local government collects.

This action by the European Union to challenge our FSC program in the WTO could not have come at a worse time for the Virgin Islands as our local economy continues to suffer from the effects of 10 years of devastation from several killer hurricanes.

What I want my colleagues to understand that while this bill is necessary because of what it means for the country, it is a blow for the people of the Virgin Islands and the other territories. It is my intention to continue to work with my colleagues in the Congress and the administration to assist the Virgin Islands and the other territories in replacing the loss of this program and the loss of revenues that this bill will mean for us.

Mr. Speaker, I thank the gentleman from Illinois once again for yielding me this time.

Mr. STARK. Mr. Speaker, I yield such time as he may consume to the gentleman from Oregon (Mr. DEFAZIO).

(Mr. DEFAZIO asked and was given permission to revise and extend his remarks.)

Mr. DEFAZIO. Mr. Speaker, I rise in strong opposition to the legislation.

We again find ourselves debating replacing a rather arcane section of the tax code that allows corporations to avoid a portion of their tax bill by establishing largely paper entities in a filing cabinet in a tax haven like Barbados with the equally arcane tax provisions of H.R. 4986, the FSC Repeal and Extraterritorial Income Exclusion Act of 2000.

And, once again, the legislation has been brought to the floor under suspension of the rules, which cuts off any ability to improve what is a truly dismal bill.

Creating this new, expanded loophole to assist corporations in escaping their fair share of the tax burden in the U.S. makes a mockery of pleas by my colleagues to simplify the tax code and improve fairness.

For nearly two decades, beginning with the Revenue Act of 1971 (P.L. 92–178), the U.S. provided tax incentives for exports. However, our trading partners complained that these incentives violated our commitments under the General Agreement on Tariffs and Trade (GATT). While not conceding the violation, in 1984, Congress scrapped the Domestic International Sales Corporation (DISC) provisions and created the Foreign Sales Corporation (FSC) provisions. The differences are highly technical and probably only understood by international tax bureaucrats.

Under the FSC provision, corporations can exempt between 15 and 30 percent of their export income from taxation by routing a portion of their exports through a FSC. Our trading partners, specifically the European Union (EU), were not satisfied with the somewhat cosmetic changes made to the U.S. tax code.

Going back on a verbal gentleman's agreement not to challenge our respective tax codes under global trading rules, the EU filed a complaint with the World Trade Organization (WTO), successor to GATT, essentially arguing the same thing that was argued about DISCs. Namely that export subsidies were illegal under global trading rules by conferring an unfair advantage on recipient companies.

A secretive WTO tribunal ruled against the U.S. Dutifully, the U.S. appealed the decision. Earlier this year, the WTO appeals panel upheld the earlier decision and ordered the U.S. to repeal the FSC provision or risk substantial retaliatory measures.

Specifically, the WTO appeals panel wrote, ''By entering into the WTO Agreement, each Member of the WTO has imposed on itself an obligation to comply with all terms of that Agreement. This is a ruling that the FSC measure does not comply with all those terms. The FSC measure creates a 'subsidy' because it creates a 'benefit' by means of a 'financial contribution', in that government revenue is foregone that is 'otherwise due.' This 'subsidy' is a 'prohibited export subsidy' under the SCM Agreement [Agreement on Subsidies and Countervailing Measures] because it is contingent on export performance. It is also an export subsidy that is inconsistent with the Agreement on Agriculture. Therefore, the FSC Measure is no consistent with the WTO obligations of the United States.''

In other words, it is unfair and illegal under global trade rules for the U.S. tax code to provide welfare for corporations by allowing them to escape taxes that would otherwise be due.

At this point, one would expect that my colleagues who, on most occasions eloquently defend the need for ''rules based trade'' and ''free markets'', to adhere to the WTO directive and repeal FSC. Because I assumed my colleagues would want to be intellectually consistent, I introduced legislation shortly after the WTO ruling to repeal FSC.

After all, precedent proved the U.S. was more than willing to bend to the will of the WTO. When the WTO ruled against a provision of the 1990 Clean Air Act, the Environmental Protection Agency gutted its clean air regulations in order to allow dirtier gasoline from Venezuela to be sold in the U.S.

Similarly, when Mexico threatened a WTO enforcement action on a 1991 GATT case it

had won that eviscerated the Dolphin Protection Act, the U.S. went along to get along. In fact, the Clinton Administration sent a letter to Mexican President Ernesto Zedillo declaring that weakening the standard by which tuna must be caught in ''dolphin-safe'' nets ''is a top priority for my administration and me personally.''

The WTO also ruled against the Endangered Species Act provisions that required U.S. and foreign shrimpers to equip their nets with inexpensive turtle excluder devices if they wanted to sell shrimp in the U.S. market. The goal was to protect endangered sea turtles. The Clinton Administration agreed to comply with the ruling.

Given this record of acquiescing to the WTO, one could be forgiven for assuming the Clinton Administration and Congress would behave in a similar manner when losing a case on tax breaks for corporations.

Of course, sea turtles and dolphins don't make massive campaign contributions, or any campaign contributions for that matter. But, the large corporations who would be impacted by the WTO decisions against FSCs do.

Apparently not bothered by the hypocrisy, immediately after the ruling by the WTO appeals panel, the Clinton Administration, a few Members of Congress, and the business community openly declared the need to maintain the subsidy in some form and began meeting in secret to work out the details on how to circumvent the WTO ruling and maintain these valuable, multi-billion dollar tax incentives.

Now, it is will-known that I am not a big fan of the WTO. It is an unaccountable, secretive, undemocratic bureaucracy that looks out solely for the interests of multinational corporations and investors at the expense of human rights, labor standards, national sovereignty, and the environment.

But, by pointing out that export subsidies like FSCs are corporate welfare, however, the WTO has done U.S. taxpayers a favor. Unfortunately, this legislation before us today only does wealthy corporations a favor.

I have several problems with H.R. 4986 besides the intellectual inconsistency. I will touch on each of these now.

First, and perhaps most importantly, there is little or no economic rationale for export subsidies like FSCs or the provisions of H.R. 4986. In its April 1999 Maintaining Budgetary Discipline report, the Congressional Budget Office (CBO) noted ''Export subsidies, such as FSCs, reduce global economic welfare and may even reduce the welfare of the country granting the subsidy, even though domestic export-producing industries may benefit.''

Similarly, in August 1996, CBO wrote, ''Export subsidies do not increase the overall level of domestic investment and domestic employment . . . In the long run, export subsidies increase imports as much as exports. As a result, investment and employment in import-competing industries in the United States would decline about as much as they increased in the export industries.''

Need further evidence? The Congressional Research Service (CRS) has written ''Economic analysis suggests that FSC does increase exports, but likely triggers exchange rate adjustments that also result in an increase in U.S. imports; the long run impact on the trade balance is probably nil. Economic theory also suggests that FSC probably reduces aggregate U.S. economic welfare.

Of course, protests will be heard from supporters of H.R. 4986 that it gets rid of the export requirement. In testimony before the Ways and Means Committee, Deputy Secretary Eizenstat said the Chairman's mark is ''not export-contingent.'' Of course, that claim is absurd. If a company sells products solely in the U.S., they don't qualify for the tax subsidy. That is, by definition, an export subsidy. Therefore, the criticisms of export subsidies previously mentioned would apply to this new legislation as well.

President Nixon originally proposed export subsidies, which became the DISC and then FSC, because he was alarmed at the size of the U.S. trade deficit, which was $1.4 billion in 1971, a number that seems almost quaint by today's standards. As Paul Magnusson noted in the September 4, 2000, Business Week, FSC ''produced some hefty tax savings for big U.S. exporters, but it never did actually do much to narrow the trade deficit, which hit a record $339 billion last year.'' And which, I should add, has continued to set new records virtually every month this year.

I can't understand why it makes sense to subsidize U.S. exporters to the tune of $5 billion or more when the economic impact is ''probably nil'' or worse.

The economic rationale further deteriorates when one realizes, as the previous quotes suggest, that export subsidies discriminate against mom-and-pop stores who don't have the resources to export and against U.S. industries that must compete with imports. This means that export subsidies distort markets by pre-ordaining winners and losers. The winners? Large exporters and foreign consumers who get to enjoy lower priced U.S. products subsidized by U.S. taxpayers. The losers? Small businesses, U.S. taxpayers, and import-competing industries.

I find it interesting while Treasury has spent a great deal of time figuring out how to combat corporate tax shelters that have no economic rationale, as discussed in a July 1999 report, that they would push this corporate welfare, which also has no economic rationale.

So, who specifically benefits? The journal Tax Notes conducted a revealing study of FSCs in its August 14, 2000, edition. The article profiled the 250 companies that reported $1.2 billion in FSC tax savings in 1998. The top 20 percent of the companies in the sample claimed 87 percent of the benefits. The two largest FSC beneficiaries were the General Electric Company and Boeing, which saw their tax bills reduced by $750 million and $686 million, respectively from 1991–1998.

What are some of the other top FSC corporate welfare queens? Motorola, Caterpillar, Allied-Signal, Cisco Systems, Monsanto, Archer Daniels Midland, Oracle, Raytheon, RJR Nabisco, International Paper, and ConAgra. The list reads like a who's who of extraordinarily profitable multinational corporations. Hardly companies that should need to feed from the taxpayer trough.

Furthermore, American subsidiaries of European firms take advantage of U.S. taxpayers through export subsidies. British Petroleum, Unilever, BASF, Daimler Benz, Hoescht, and Rhone-Poulenc are all FSC beneficiaries. The fact that foreign companies can also claim export benefits pokes a large hole in the argument that these tax benefits are needed to ensure the competitiveness of U.S. businesses.

Similarly, isn't it a bit odd that economists and U.S. policymakers like to lecture European nations about their high tax burdens, but now, suddenly their tax burden is too low and, therefore, U.S. companies need subsidies in order to compete?

Let's be clear, this legislation is not about the competitiveness of large, wealthy, multinational corporations based in the United States. It is about wealthy campaign contributors wanting to keep and expand their $5 billion-plus tax subsidies and elected officials willing to do their bidding.

Not only does H.R. 4986 allow these companies to continue receiving billions in tax breaks, but it actually expands them. This legislation will cost U.S. taxpayers another $300 million a year or more.

It is also unfortunate that this legislation subsidizes a number of industries—such as defense contractors, tobacco companies, and pharmaceutical firms—that have no business receiving any more taxpayer hand-outs.

Take the defense industry, for example. Under the current FSC regime, defense contractors can only claim 50 percent of the tax benefit available to other industries. The legislation before us today allows the defense industry to claim the full benefit available to others.

Leaving aside the fact that U.S. taxpayers are already overly generous to defense contractors, which no doubt they are, expanding this corporate welfare will have no discernable impact on overseas sales. The Treasury Department noted in August 1999, ''We have seen no evidence that granting full FSC benefits would significantly affect the level of defense exports.''

In 1997, the CBO made a similar point, ''U.S. defense industries have significant advantages over their foreign competitors and thus should not need additional subsidies to attract sales.''

Even the Pentagon has acknowledged this fact by concluding in 1994, ''In a large number of cases, the U.S. is clearly the preferred provider, and there is little meaningful competition with suppliers from other countries. An increase in the level of support the U.S. government currently supplies is unlikely to shift the U.S. export market share outside a range of 53 to 59 percent of worldwide arms trade.''

As Ways and Means Committee Member, Representative DOGGETT, noted in his dissenting views on H.R. 4986, ''In 1999, without the bonanza provided by this bill, U.S. defense contractors sold almost $11.8 billion in weapons overseas—more than a third of the world's total and more than all European countries combined.''

The U.S. should stop the proliferation of weapons and war, not expand it as this bill intends.

The pharmaceutical industry is another industry that does not need or deserve additional subsidies from U.S. taxpayers. The industry already receives substantial research and development tax credits as well as the benefits flowing from discoveries by government scientists. As Representative STARK noted in his dissenting views, drug companies lowered their effective tax rate by nearly 40 percent relative to other industries from 1990 to 1996 and were named the most profitable industry in 1999 by Fortune Magazine.

The industry sells prescription drugs at far cheaper prices abroad than here in the U.S. For example, seniors in the U.S. pay twice as much for prescriptions as those in Canada or

Mexico. It is an affront to U.S. taxpayers to force them to further subsidize an industry that is already gouging them at the pharmacy as this bill would do.

In direct contradiction of various federal policies to combat tobacco related disease and death in the U.S., this legislation would force U.S. taxpayers to subsidize the spread of big tobacco's coffin nails to foreign countries. This violates the American taxpayers' sense of decency and respect. Their money should not be used to push a product onto foreign countries that kills one-third of the people who use it as intended.

By placing H.R. 4986 on the suspension calendar, debate is prematurely cut off and amendments to reduce support for drug companies, the defense industry or tobacco companies can not be considered. But, I guess that is just par for the course for a process that has taken place in relative secrecy between a few Members of Congress, the Administration, and the industries that stand to benefit from this legislation.

You may not hear this in the debate much, but it is important to point out that the EU has already put the U.S. on notice that H.R. 4986 does not satisfy its demands. According to the EU, H.R. 4986 still provides an export subsidy, maintains a requirement that a portion of a product contain U.S.-made components, and does not repeal FSCs by the October 1st deadline. Therefore, it is likely the EU will ask the WTO to rule on the legality of the U.S. reforms. Most independent analysts agree with the EU critique of H.R. 4986.

So, it is reasonable to assume the WTO will again rule against the U.S. and allow the EU to impose retaliatory sanctions against U.S. products. According to some press accounts, the EU would be able to impose 100 percent tariffs on around $4 billion worth of U.S. goods. These would be the largest sanctions ever imposed in a trade dispute. In other words, this inadequate reform of export subsidies will open up the U.S. to retaliatory action by the EU, which will harm exports as much or more than any perceived benefit that would be provided by H.R. 4986. Of course, the exporters that will be hurt by retaliatory sanctions probably won't be the same businesses that will enjoy the tax windfall provided by this legislation.

Mr. Speaker, ADM is not suffering. Cisco Systems is not suffering. Raytheon is not suffering. Miscroft is not struggling mightily to keep its head above water. But, the American people are. Schools are crumbling, 45 million Americans have no health insurance, individuals are working longer hours for less money with the predictable stress on families, million of seniors do not have access to affordable prescription drugs, and poverty remains stubbornly high, particularly among children.

Rather than debating how to preserve billions in tax subsidies for some of our largest corporations, we should be figuring out how to address some of these issues. How many times over are we going to spend projected, and I stress projected, surpluses. If we want to pay down the national debt, provide prescription drugs, shore up Social Security and Medicare, and increase funding for education, Congress cannot keep showering wealthy corporations with unjustifiable tax subsidies.

I will end with a quote from a newspaper I'm not normally inclined to agree with editorially, the Washington Times. In an editorial on September 5, 2000, the Washington Times wrote, ''The Ways and Means Committee boasts that support for its revised FSC bill was bipartisan and near unanimous. It remains a bipartisan and near unanimous blunder.''

I urge my colleagues to vote against H.R. 4986.

Mr. STARK. Mr. Speaker, I yield 2 minutes to the gentleman from Massachusetts (Mr. TIERNEY).

Mr. TIERNEY. Mr. Speaker, I rise today in opposition to this.

Mr. Speaker, basically, I want to point out in response to some of the comments made by our colleagues on the other side, this attempt to replace current legislation for the Foreign Sales Corporation tax provision really in some instances doubles the benefit that existing companies are now getting, in particular those of the arms manufacturers and exporters.

At the very least, we would hope we would have an opportunity to go through committee and deal with this on a matter where we could have some amendments and if not eliminate this Foreign Sales Corporation tax provision, at least put amendments in there that would bring it back to what is now, as there is no basis in fact or any argument for why we are doubling in some instances the benefit the corporations would get.

In fact, passage of their particular replacement legislation is going to result in a rejection by the WTO. Everybody knows that in advance. We are going to be in a position where the United States companies are going to be penalized, and it is not going to be the companies necessarily that would be the ones benefitting from this proposed replacement legislation. There is going to be other small businesses, people that depend on financing their business operations and paying their help and their workers, who are going to be penalized when the WTO allows retribution for this.

We are going to be exposed to penalties that we ought not to be exposed to. This situation is not even a close call. Mr. Speaker, no one questions whether this is even good tax policy. The General Accounting Office, the Congressional Budget Office, the Congressional Research Service have all argued the foreign sales corporations have a negligible effect on trade.

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In fact, the Congressional Research Service argues that one of the greatest beneficiaries of this tax preference is foreign consumers who will pay a lower price for products subsidized at our taxpayers' expense. As there exists no evidence that the foreign sales corporations actually improve United States trade or create jobs, this hardly seems to be a judicious use of some $5 billion.

Given that this bill was written almost completely behind closed doors, one would hope that it would at least be given a full public debate. Instead, proponents cynically assume that the public will not understand the matter of tax policy; indeed, they count on the public not understanding it, and they permit a measly 40 minutes of debate time.

Instead of actually debating the issue and letting the chips fall where they may, Mr. Speaker, they rush to submit something, anything to the WTO as soon as possible, even something they will most certainly reject, and have expedited the legislative process to a point of incoherence. We should vote against this legislation.

Mr. CRANE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, let me just commend our colleagues on the other side of the aisle who have joined in a collegial and bipartisan way in support of advancing a piece of legislation that is of profound significance and importance to the welfare of our economy and the advancement of our continuing role as the biggest export country on the face of this Earth.

We have an opportunity here to continue to move down that positive path. We have always had that good bipartisan support for these kinds of initiatives in the post-World War II era.

I thank Members on both sides, and I urge my colleagues to get behind this bill and vote aye.

Mr. PAUL. Mr. Speaker, today we are faced with a decision to do the right thing for the wrong reasons or the wrong thing for the wrong reasons. We have heard proponents of this FSC bill argue for tax breaks for U.S. exporters, which, of course, should be done. Those proponents, however, argue that this must be done to move the United States into compliance with a decision by the WTO tribunal. Alternatively, opponents of the bill, argue that allowing firms domiciled in the United States to keep their own earnings results in some form of subsidy to the ''evil'' corporations. If we were to evaluate this legislation based upon the floor debated, we would be left with the choice of abandoning U.S. sovereignty in the name of WTO compliance or denying private entities freedom from excess taxation.

Setting aside the aforementioned false choice of globalism or oppression by taxation, there are three reasons to consider voting against this bill. First, it perpetuates an international trade war. Second, this bill is brought to the floor as a consequence of a WTO ruling against the United States. Number three, this bill gives more authority to the President to issue Executive Orders.

Although this legislation deals with taxes and technically actually lowers taxes, the reason the bill has been brought up has little to do with taxes per se. To the best of my knowledge there has been no American citizen making any request that this legislation be brought to the floor. It was requested by the President to keep us in good standing with the WTO.

We are now witnessing trade war protectionism being administered by the World (Government) Trade Organization—the WTO. For two years now we have been involved in an ongoing trade war with Europe and this is just one more step in that fight. With this legislation the U.S. Congress capitulates to the demands of the WTO. The actual reason for this

legislation is to answer back to the retaliation of the Europeans for having had a ruling against them in favor of the United States on meat and banana products. The WTO obviously spends more time managing trade wars than it does promoting free trade. This type of legislation demonstrates clearly the WTO is in charge of our trade policy.

The Wall Street Journal reported on 9/5/00, ''After a breakdown of talks last week, a multibillion-dollar trade war is now about certain to erupt between the European Union and the U.S. over export tax breaks for U.S. companies, and the first shot will likely be fired just weeks before the U.S. election.''

Already, the European Trade Commissioner, Pascal Lamy, has rejected what we're attempting to do here today. What is expected is that the Europeans will quickly file a new suit with the WTO as soon as this legislation is passed. They will seek to retaliate against United States companies and they have already started to draw up a list of those products on which they plan to place punitive tariffs.

The Europeans are expected to file suit against the United States in the WTO within 30 days of this legislation going into effect.

This legislation will perpetuate the trade war and certainly support the policies that have created the chaos of the international trade negotiations as was witnessed in Seattle, Washington.

The trade war started two years ago when the United States obtained a favorable WTO ruling and complained that the Europeans refused to import American beef and bananas from American owned companies.

The WTO then, in its administration of the trade war, permitted the United States to put on punitive tariffs on over $300 million worth of products coming into the United States from Europe. This only generated more European anger who then objected by filing against the United States claiming the Foreign Sales Corporation tax benefit of four billion dollars to our corporations was ''a subsidy.''

On this issue the WTO ruled against the United States both initially and on appeal. We had been given till November 1st to accommodate our laws to the demands of the WTO.

H.R. 4986 will only anger the European Union and accelerate the trade war. Most likely within two months, the WTO will give permission for the Europeans to place punitive tariffs on hundreds of millions of dollars of U.S. exports. These trade problems will only worsen if the world slips into a recession when protectionist sentiments are strongest. Also, since currency fluctuations by their very nature stimulate trade wars, this problem will continue with the very significant weakness of the EURO.

The United States is now rotating the goods that are to receive the 100 to 200 percent tariff in order to spread the pain throughout the various corporations in Europe in an effort to get them to put pressure on their governments to capitulate to allow American beef and bananas to enter their markets. So far the products that we have placed high tariffs on have not caused Europeans to cave in. The threat of putting high tariffs on cashmere wool is something that the British now are certainly unhappy with.

The Europeans are already well on their way to getting their own list ready to ''scare'' the American exporters once they get their permission in November.

In addition to the danger of a recession and a continual problem with currency fluctuation, there are also other problems that will surely aggravate this growing trade war. The Europeans have already complained and have threatened to file suit in the WTO against the Americans for selling software products over the Internet. Europeans tax their Internet sales and are able to get their products much cheaper when bought from the United States thus penalizing European countries. Since the goal is to manage things in a so-called equitable manner the WTO very likely could rule against the United States and force a tax on our international Internet sales.

Congress has also been anxious to block the Voice Stream Communications planned purchase by Deutsche Telekom, a German government-owned phone monopoly. We have not yet heard the last of this international trade fight.

The British also have refused to allow any additional American flights into London. In the old days the British decided these problems, under the WTO the United States will surely file suit and try to get a favorable ruling in this area thus ratcheting up the trade war.

Americans are especially unhappy with the French who have refused to eliminate their farm subsidies—like we don't have any in this country.

The one group of Americans that seem to get little attention are those importers whose businesses depend on imports and thus get hit by huge tariffs. When 100 to 200 percent tariffs are placed on an imported product, this virtually puts these corporations out of business.

The one thing for certain is this process is not free trade; this is international managed trade by an international governmental body. The odds of coming up with fair trade or free trade under WTO are zero. Unfortunately, even in the language most commonly used in the Congress in promoting ''free trade'' it usually involves not only international government managed trade but subsidies as well, such as those obtained through the Import/Export Bank and the Overseas Private Investment Corporation and various other methods such as the Foreign Aid and our military budget.

Lastly, despite a Constitution which vests in the House authority for regulating foreign commerce (and raising revenue, i.e. taxation), this bill unconstitutionally delegates to the President the ''authority'' to, by Executive order, suspend the tax break by designating certain property ''in short supply.'' Any property so designated shall not be treated as qualifying foreign trade property during the period beginning with the date specified in the Executive order.

Free trade should be our goal. We should trade with as many nations as possible. We should keep our tariffs as low as possible since tariffs are taxes and it is true that the people we trade with we are less likely to fight with. There are many good sound, economic and moral reasons why we should be engaged in free trade. But managed trade by the WTO does not qualify for that definition.

Mr. STARK. Mr. Speaker, I rise today in adamant opposition to H.R. 4986, the Foreign Sales Corporation replacement bill. This bill is a blatant form of corporate welfare, ruled illegal under international trade laws by the World Trade Organization (WTO). The U.S. has already missed two deadlines imposed by the WTO and the European Union for repealing the FSC. I don't know which is worse—that the current leadership is so incapable of governing that they can't meet an extended deadline, or that they have failed to comply with the WTO ruling by attempting to replace one export subsidy with something remarkably similar.

Then the Senate Finance Committee made some minor changes to the bill that appears to bring the U.S. closer to WTO compliance than the House version without sacrificing the current tax benefit received by Caterpillar Inc. This version came back to the House and was voted on in H.R. 2614, the $240 billion GOP tax package. The House leadership thought they were doing their corporate constituents a favor by attaching the FSC to a bloated tax package. Now we're here once again because the majority leadership thought they could bait Clinton into signing a bad tax bill if they attached the FSC to it. No such luck! Clinton has threatened to veto the tax bill and the Senate has no intentions of acting on it.

The bill before us today is nothing more than corporate welfare for some of the nation's most profitable industries. The European Union has filed a complaint with the World Trade Organization (WTO) that the FSC is an export tax subsidy and therefore illegal under international trade laws. I completely agree. Yet instead of repealing the tax subsidy and complying with our international trade obligations, this bill seeks to remedy the FSC with a near exact replacement.

The Institute on Taxation and Economic Policy recently released a report that shows a rise in pretax corporate profits by a total of 23.5 percent from 1996 through 1998. At the same time, U.S. Treasury corporate income tax revenues only rose by a mere 7.7 percent. In addition to the myriad of corporate tax deductions this Congress insists on expanding, programs such as the FSC can help explain the disparity in corporate profits and corporate income tax rates.

The FSC helps subsidize some of the most profitable industries such as the pharmaceutical, tobacco and weapons export industries. Why should Congress help out the pharmaceutical industry if the industry insists on charging U.S. consumers more for prescription drugs than they charge in Europe? We shouldn't! The pharmaceutical industry sells prescription drugs in the U.S. at prices that are 190–400 percent higher than what they charge in Europe. The U.S. subsidizes the pharmaceutical industry by approximately $123 million per year through the FSC. This is unfair to the American taxpayer and must not be allowed to happen.

The top 20 percent of FSC beneficiaries obtained 87 percent of the FSC benefit in 1998. The two largest FSC beneficiaries, General Electric and Boeing, received almost $750 million and $686 million in FSC benefits over 8 years, respectively. RJ Reynolds' FSC benefit represents nearly six percent of its net income while Boeing's FSC benefit represents twelve percent of its earnings!

It is high time we stop allowing corporate interests to dictate U.S. spending. We didn't pass a prescription drug benefit for seniors in the 106th Congress so we shouldn't be rushing through a piece of legislation that gives corporations a $5 billion per year tax break. I urge my colleagues to put working families, children and our seniors first, and oppose H.R. 4986.

Ms. KILPATRICK. Mr. Speaker, I rise today in opposition to the passage of H.R. 4986, the Senate Amendments to the Foreign Sales Corporation (FSC) Repeal and Extraterritorial Income Exclusion Act. While it is important that our nation's businesses have the benefit of a level playing field when competing against foreign businesses, we should not do so on the back of the American Public or to the detriment of the health and welfare of those outside of our borders. Let it not be said that we are a nation willing to sacrifice all principles for the welfare of our nation's businesses.

The measure before us, effective for transactions entered after September 30, 2000, will allow both individuals and companies an exemption from federal taxes of all income earned abroad (whether or not the product is manufactured in the United States or abroad). The measure does require that 50% of the components of the final product be manufactured in the United States. The measure also eliminates current law allowing for the creation of Foreign Sales Corporations. Although I supported the measure when it was originally considered in the House facts have come to light that have given me pause to support the measure.

I believe that there are questions concerning the process used to move this measure. The FSC is a complicated matter that warrants the full and deliberate consideration of the entire House. Considering this measure under suspension of the rules clearly inhibits this body's ability to make the most informed decision about this important matter which will affect the people we represent.

Policy questions concerning this matter also abound. For example, during consideration of the bill an amendment was pursued that would have exempted tobacco companies from the tax exemption provided under the measure. It is argued that this measure will give tobacco companies an estimated $100 million in taxpayer subsidies to export cigarettes. It is further argued that this subsidy provides incentives to tobacco companies to maximize and promote sales in other countries. It gives me pause to think that the policy Congress endorses in this measure will give the impression that while we care about the health risks imposed by tobacco use on American lives, we are not concerned about the health risks imposed by tobacco use on foreign lives.

Questions have also been raised on the effect this measure will have on the U.S. economy. Proponents of the measure argue that the bill will spur domestic investment and employment through an increase in exports, while opponents point to studies that indicate that "export subsidies, such as FSC's, reduce global economic welfare and typically even reduce the welfare of the country granting the subsidy . . . [C]ompanies in import-competing industries reduce domestic investment and employment." I am hesitant to support a measure that may in fact be detrimental to the well being of our nation's economy.

Mr. Speaker, for these reasons I rise in opposition to H.R. 4986, and I recommend a nay vote on its passage.

Mr. CRANE. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. SIMPSON). The question is on the motion offered by the gentleman from Texas (Mr. ARCHER) that the House suspend the rules and concur in the Senate amendment to the bill, H.R. 4986.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. STARK. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

PROHIBITION OF GAMING ON CERTAIN INDIAN LANDS IN CALIFORNIA

Mr. GILCHREST. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5477) to provide that gaming shall not be allowed on certain Indian trust lands in California that were purchased with certain Federal grant funds, as amended.

The Clerk read as follows:

H.R. 5477

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

SECTION 1. RESTRICTION ON RELINQUISHMENT OF LEASE.

Prior to January 1, 2003, the Secretary of the Interior shall not approve the relinquishment of any lease entered into for the establishment of a health care facility for the members of seven Indian Tribes or Bands in San Diego County, California, unless the Secretary has determined that the relinquishment of such lease has been approved, by tribal resolution, by each of the seven Indian Tribes or Bands.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Maryland (Mr. GILCHREST) and the gentleman from Colorado (Mr. UDALL) each will control 20 minutes.

The Chair recognizes the gentleman from Maryland (Mr. GILCHREST).

Mr. GILCHREST. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this legislation, authored by the gentleman from California (Mr. HUNTER), will establish a moratorium on the approval by the Secretary of Interior of the relinquishment of a release of a health clinic until that relinquishment has been approved by tribal resolution by each of the seven tribes which would comprise the Southern Indian Health Council in Alpine, California.

The clinic was acquired and constructed with Indian Community Development Block Grant funds and was constructed by the Southern Indian Health Council.

I ask for Members to support this legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. UDALL of Colorado. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 5477, as amended, is legislation which addresses the concerns of seven Indian tribes in Southern California to provide that lands purchased in part with Community Development Block Grant funding are used for health care facilities unless alternatives are approved by all of the tribes.

There have been a number of complicated issues with regard to the original version of this legislation; and through the work of the gentleman from California (Mr. HUNTER) and the gentleman from California (Mr. FILNER), those issues have been addressed.

We appreciate the work of our colleagues on this legislation and support its passage.

Mr. Speaker, I reserve the balance of my time.

Mr. GILCHREST. Mr. Speaker, I yield such time as he may consume to the gentleman from California (Mr. HUNTER).

Mr. HUNTER. Mr. Speaker, I want to thank the gentleman from Maryland (Mr. GILCHREST) for yielding me this time and taking the leadership, along with the Democrat side of the aisle. I note that this is bipartisan legislation supported by the gentleman from California (Mr. FILNER) and the gentleman from California (Mr. CUNNINGHAM) and the gentleman from California (Mr. BILBRAY) in the San Diego delegation.

Mr. Speaker, this is a fairly straightforward bill. This involves some 8-plus acres of land in the community in Alpine, California, in my congressional district in San Diego County. It is land that was purchased with Community Development Block Grant funds.

This land was purchased with these funds for the purpose of constructing a health clinic for the seven tribes that presently live or are located in that particular vicinity; and, indeed, the clinic today supports some 10,000 visits per year. Not only are tribal members admitted to the clinic but also nontribal members, so it is a valuable asset.

Part of the land was put in the name of one of the tribes, the Cuyapaipe tribe, which is a wonderful tribe, some 17 members whose traditional homelands are about 50 miles away. They propose at this time, Mr. Speaker, to build a casino on this health clinic land that was purchased with CDBGs.

We think, Mr. Speaker, having looked at this, that this is a fairly substantial departure from the tradition of allowing the autonomy and all of the activities that take place once the reservation status is attached to a piece of land to allow that to be expanded to change a health clinic, which has been purchased with Federal taxpayer dollars and which resides on land that was purchased with Federal taxpayer dollars, to allow that to be converted into a totally different use; that is, one of a casino.

So this bill puts a 2-year moratorium on this transfer for this purpose. We hope that that is going to allow the tribes to try to work out some type of an adjustment, maybe some type of an arrangement. We think it is appropriate to pass it at this time to keep