(and continued in the proposed protocol) was important to the Netherlands. This position reflects the underlying view that the special tax rules applicable in the case of tax-avoidance motivated changes in citizenship or residence should not be applicable in cases where the move is to go home. As noted above, the rules of section 877 and the exceptions contained therein reflect a similar perspective.

In light of the limited potential impact of the exception for Netherlands nationals, it was determined that continuation of the exception in the proposed protocol was not inappropriate, particularly given the narrow scope of the proposed protocol. The focus of the proposed protocol is on the withholding tax treatment of dividends and the limitation on benefits provisions. Both countries were interested in the prompt conclusion of a protocol to address these important issues. For the United States in particular, it was a matter of priority to secure improvements to the limitation on benefits provisions in order to prevent the potential for inappropriate use of the treaty through treaty shopping. It is important that the ground-breaking changes to the limitation on benefits provision reflected in the proposed protocol enter into force as soon as possible. In addition, there also were significant benefits to the United States in having the new limitation on benefits rules contained in the proposed protocol become public as soon as possible in order to establish a precedent in terms of strengthened anti-treaty-shopping provisions for other ongoing treaty negotiations. In order to achieve these goals, at the start of negotiations both countries agreed that this protocol would not address other issues where there were differences between the two countries that could slow the process and jeopardize an important agreement.

While this protocol did not revisit the agreement reached in 1993 regarding the treatment of Netherlands nationals under the special rules applicable to former U.S. citizens, the proposed protocol does include a straightforward extension of these special rules regarding U.S. taxing jurisdiction of Netherlands residents contained in the current treaty to provide for coverage of former U.S. long-term residents to the same extent as former U.S. citizens. The current treaty does not contain special rules providing for U.S. taxing jurisdiction over former long-term residents. In addition, other significant 1996 changes strengthening section 877, such as the inclusion of new categories of income subject to the special tax rules, are applicable under the treaty.

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC, November 15, 2004.

Ms. BARBARA ANGUS,
International Tax Counsel, Department of the Treasury, Washington, DC.

DEAR MS. ANGUS: I write regarding the protocol to the U.S.-Netherlands tax treaty now pending before the Senate.

As you know, I have been concerned about the continuation of the exclusion from U.S. taxation authority for nationals of the Netherlands set forth in Article 24(1) of the current U.S.-Netherlands tax treaty. Such an exclusion is unique to the Netherlands treaty, and is not contained in the U.S. model treaty. I am therefore concerned that this provision not serve as a precedent in future tax convention negotiations, and would be grateful for any assurances you can provide in this regard.

Since the Committee's hearing on the protocol, the Congress has approved and the President has signed into law a measure that modifies section 877 of the Internal Revenue Code (Sec. 804 of The American Jobs Creation Act of 2004, Pub. Law 108-357); that provision of law, as you know, provides for special tax treatment of former U.S. citizens and long-term nationals who expatriate. The revised section 877 sets forth an objective test with regard to such individuals, replacing the prior version, which focused on whether the expatriating individual had as a principal purpose the avoidance of U.S. taxation.

In previous exchanges between the Department and the Committee, Department officials have asserted to the Committee that the exclusion in Article 24 for nationals of the Netherlands would not produce a significantly different result in practice than would be provided under section 877. I would appreciate the Department's views on whether that remains the case under the revised section 877.

Finally, a question arises about the interaction between Article 24 and revised section 877. As noted, the latter now contains an objective test; the former provides for continued taxation for 10 years of former U.S. nationals and long-term U.S. residents—provided they are not nationals of the Netherlands—in cases where the loss of such status ''has as one of its principal purposes the avoidance of income tax.'' I am interested in knowing the Department's views on how it will interpret and apply these provisions, not only under the U.S.-Netherlands treaty but also in the case of similar bilateral tax treaties currently in force.

I appreciate your attention to this matter. I expect that the Senate will consider the protocol to the U.S.-Netherlands treaty during this week's session, and I would therefore be grateful for a prompt response to the issues that I have raised.

Sincerely,

JOSEPH R. BIDEN, Jr.,
Ranking Minority Member.

DEPARTMENT OF THE TREASURY,
Washington, DC, November 15, 2004.

Hon. JOSEPH R. BIDEN, Jr.,
Ranking Member, Committee on Foreign Relations, U.S. Senate, Washington, DC.

DEAR SENATOR BIDEN: I am writing in response to your letter of November 15, 2004, regarding the pending protocol amending the existing tax treaty with the Netherlands. Your letter focuses on the particular provisions in the U.S.-Netherlands treaty and protocol relating to the tax treatment of certain former U.S. citizens and former U.S. long-term residents. You also asked about the interaction of the provisions in this treaty, and in other treaties, with the provisions of section 377 of the Internal Revenue Code as amended by the American Jobs Creation Act enacted last month.

The U.S.-Netherlands treaty includes a provision under which the United States may apply its domestic tax rules to former U.S. citizens who are resident in the Netherlands and who are not Netherlands nationals. The pending protocol would add to the treaty a rule that extends this same treatment to former U.S. long-term residents. The provision in the U.S.-Netherlands treaty that limits the imposition of the special U.S. tax rules under section 877 when applied to individuals who are Netherlands nationals is unique among U.S. tax treaties. This special rule with respect to nationals was incorporated in the U.S.-Netherlands tax treaty in 1993 and has not been included in any other treaties since that time. None of the twenty-seven agreements that have entered into force since the Netherlands treaty entered into force includes such a rule for nationals. This special rule in the U.S.-Netherlands treaty has not served as a precedent for other treaties and we do not intend for it to serve as a precedent going forward.

In my response to your questions for the record, I explained why we believed that the continuation of the special rule for Netherlands nationals in the U.S.-Netherlands treaty would not produce significantly different results than would be produced under U.S. domestic law in practice. We continue to believe that will be the case following the recent amendments to section 877. Although the test in section 377 has been modified to make it more objective, key considerations underlying our view regarding the practical result were the fact that the Netherlands imposes substantial taxes on individuals and the fact that section 877 provides for a credit that reduces the U.S. tax otherwise due by the tax paid in the country of residence. There has been no change with respect to this factual background.

More generally, you asked about our intentions regarding the interpretation of the treaty language which preserves U.S. taxing jurisdiction over former U.S. citizens and former U.S. long-term residents where the individual's relinquishment of citizenship or resident status has ''as one of its principal purposes the avoidance of tax''. The quoted language regarding principal purpose has long been included in the U.S. Model Income Tax Convention and thus appears in many U.S. tax treaties. This treaty language was intended to be read consistently with section 877. Following the modification of section 877 in 1996 to add objective tests, we have taken the position that those objective tests represent the administrative means by which the United States determines whether a taxpayer has a tax avoidance purpose. The recently-enacted changes represent a further step in this direction and are intended to facilitate the administration of the special tax rules of section 877 by making the rules more objective; however, the underlying purpose of section 877 has not changed. Accordingly, we intend to continue to take the position, in interpreting the ''principal purpose'' language in the U.S.-Netherlands treaty and other existing treaties, that the objective tests in section 877 as recently amended represent the means by which the United States detemines tax avoidance purpose.

We appreciate your interest in this issue. The pending protocol to the U.S.-Netherlands tax treaty will substantially improve a long-standing U.S. treaty relationship and we believe it is in the interest of the United States to bring this agreement into force as soon as possible.

Sincerely yours,

BARBARA M. ANGUS,
International Tax Counsel.●

ORDERS FOR THURSDAY, NOVEMBER 18, 2004

Mr. FRIST. I ask unanimous consent that when the Senate completes its business today, it adjourn until 10 a.m. on Thursday, November 18. I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and the Senate then begin a period of morning business with Senators permitted to speak for up to 10 minutes each.

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

PROGRAM

Mr. FRIST. Mr. President, tomorrow the Senate will be in a period of morning business. Senators are encouraged

to use this time, as I mentioned early this morning, to deliver their tribute speeches to departing Members. While rollcall votes are unlikely during tomorrow's session, Senators should note we will have a lot of work to do prior to adjourning. Moments ago I filed a cloture motion on the Miscellaneous Tariffs conference report. That vote will occur Friday morning. In addition, we must complete action on the remaining appropriation bills which we hope to receive from the House on Friday. We will also consider any additional nominations and conference reports as they become available.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. FRIST. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 6:44 p.m., adjourned until Thursday, November 18, 2004, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate November 17, 2004:

NATIONAL MUSEUM AND LIBRARY SERVICES BOARD

A. WILSON GREENE, OF VIRGINIA, TO BE A MEMBER OF THE NATIONAL MUSEUM AND LIBRARY SERVICES BOARD FOR A TERM EXPIRING DECEMBER 6, 2009. (REAPPOINTMENT)

KATINA P. STRAUCH, OF SOUTH CAROLINA, TO BE A MEMBER OF THE NATIONAL MUSEUM AND LIBRARY SERVICES BOARD FOR A TERM EXPIRING DECEMBER 6, 2009, VICE ELIZABETH J. PRUET, TERM EXPIRING.

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. STANLEY E. GREEN, 0000