mission. Our men and women are in harm's way and our mission is freedom and security in Iraq. The critics of this war, do they want us to cut and run? Do they want to create a place of instability, a haven for terrorism? I can't believe that.

Someone once said a critic is someone who thinks he knows the way but doesn't know how to drive the car. It is not a time for critics. Let us deal with this terrible incident. Let us show America has standards and America is there for a reason. The reason is one of hope. The reason is one of freedom. What occurred is something that will never occur again. I am confident our President will make sure of that.

At the same time, we have to stand with our President, stand with our troops. Teddy Roosevelt once said it is not the critic who counts, but it is the person in the arena. It is a tough arena right now. But the cause is just. We have lost life and it is a sacrifice, but the cause is just. We have seen that with Qadhafi giving up his nuclear weapons programs, Iran understanding the serious consequences of their action.

Let us be true to the cause. Let us ferret out those who committed these reprehensible acts. Let us support the President going forth to the world, to the Arab community, to say this is wrong. Let us continue to stay true to the course, to understand that the lives that have been sacrificed have not been sacrificed in vain, that the world is safer today. It is safer with Saddam gone. It will be safer with peace and stability and democracy in the Middle East.

I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there any further morning business? If not, morning business is closed.

JUMPSTART OUR BUSINESS STRENGTH (JOBS) ACT

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 1637, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1637) to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization findings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes.

Pending:

Dorgan amendment No. 3110, to provide for the taxation of income of controlled foreign corporations attributable to imported property.

Graham (FL) amendment No. 3112, to strike the deduction relating to income attributable to United States production activities and the international tax provisions and allow a credit for manufacturing wages.

Cantwell/Voinovich amendment No. 3114, to extend the Temporary Extended Unemployment Compensation Act of 2002.

The PRESIDING OFFICER. The Senator from Louisiana.

AMENDMENT NO. 3117

Mr. BREAUX. Mr. President, I call up an amendment that is at the desk, No. 3117, Breaux-Feinstein.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Louisiana [Mr. BREAUX] proposes an amendment numbered 3117.

Mr. BREAUX. I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To limit the amount of deferred foreign income that can be repatriated at a lower rate)

On page 88, between lines 17 and 18, insert:

''(4) DOLLAR LIMITATION.—

''(A) IN GENERAL.—Notwithstanding paragraph (1), the excess qualified foreign distribution amount shall not exceed the lesser of—

''(i) the amount shown on the applicable financial statement as earnings permanently reinvested outside the United States, or

''(ii) the excess (if any) of—

''(I) the estimated aggregate qualified expenditures of the corporation for taxable years ending in 2005, 2006, and 2007, over

''(II) the aggregate qualified expenditures of the corporation for taxable years ending in 2001, 2002, and 2003.

''(B) EARNINGS PERMANENTLY REINVESTED OUTSIDE THE UNITED STATES.—

''(i) IN GENERAL.—If an amount on an applicable financial statement is shown as Federal income taxes not required to be reserved by reason of the permanent reinvestment of earnings outside the United States, subparagraph (A)(i) shall be applied by reference to the earnings to which such taxes relate.

''(ii) NO STATEMENT OR STATED AMOUNT.—If there is no applicable financial statement or such a statement fails to show a specific amount described in subparagraph (A)(i) or clause (i), such amount shall be treated as being zero.

''(iii) APPLICABLE FINANCIAL STATEMENT.—For purposes of this paragraph, the term 'applicable financial statement' means the most recently audited financial statement (including notes and other documents which accompany such statement)—

''(I) which is certified on or before March 31, 2004, as being prepared in accordance with generally accepted accounting principles, and

''(II) which is used for the purposes of a statement or report to creditors, to shareholders, or for any other substantial nontax purpose.

In the case of a corporation required to file a financial statement with the Securities and Exchange Commission, such term means the most recent such statement filed on or before March 31, 2004.

''(C) QUALIFIED EXPENDITURES.—For purposes of this paragraph, the term 'qualified expenditures' means—

''(i) wages (as defined in section 3121(a)),

''(ii) additions to capital accounts for property located within the United States (including any amount which would be so added but for a provision of this title providing for the expensing of such amount),

''(iii) qualified research expenses (as defined in section 41(b)) and basic research payments (as defined in section 41(e)(2)), and

''(iv) irrevocable contributions to a qualified employer plan (as defined in section 72(p)(4)) but only if no deduction is allowed under this chapter with respect to such contributions.

''(D) RECAPTURE.—If the taxpayer's estimate of qualified expenditures under subparagraph (A)(ii)(I) is greater than the actual expenditures, then the tax imposed by this chapter for the taxpayer's last taxable year ending in 2007 shall be increased by the sum of—

''(i) the increase (if any) in tax which would have resulted in the taxable year for which the deduction under this section was allowed if the actual expenditures were used in lieu of the estimated expenditures, plus

''(ii) interest at the underpayment rate, determined as if the increase in tax described in clause (i) were an underpayment for the taxable year of the deduction.

''(5) LIMITATION ON CONTROLLED FOREIGN CORPORATIONS IN POSSESSIONS.—In computing the excess qualified foreign distribution amount under paragraph (1) and the base dividend amount under paragraph (2), there shall not be taken into account dividends received from any controlled foreign corporation created or organized under the laws of any possession of the United States.

Mr. BREAUX. Mr. President, this is a jobs bill. That is the title of the bill. Presumably a jobs bill is intended to create jobs and hopefully is created to create jobs in America. That is the legislation that is before us. It is absolutely essential that this legislation be adopted.

But one of the provisions in the legislation gives me great concern. I offered an amendment in the Finance Committee. It was unanimously supported by every single Democrat in the Finance Committee and it lost by a partisan vote because our Republican colleagues at that time did not feel they could support the amendment I offered. It was unanimously supported by every single Democrat member of the Finance Committee.

The question deals with how we treat companies that have earnings they have stashed away in foreign countries. These amounts of money, many of them, are in fact earned overseas. Companies know if they bring those earnings back to the United States, the United States, on a worldwide tax basis, will tax those earnings with a deduction for the amount of tax they have paid in the country in which they earned those revenues. They pay the regular corporate rate minus the tax credit they get for having paid taxes on those earnings in the foreign country. However, there is no tax consequence to those companies if the money in fact stays in the foreign country. That is called deferral. We defer any U.S. tax on foreign earnings as long as the earnings stay in the foreign country in which they are earned.

The legislation before this body now says we are going to give a very special break to U.S. companies that have money overseas, in many cases in tax havens. We are going to let you bring that money back, not as other companies in the past have brought it back,

paying U.S. tax minus what they paid overseas, but we are going to cut you a special sweetheart deal. We are going to give you a sweetheart deal of an 85-percent tax credit by reducing the amount of taxes you would pay if you bring it back to the United States—not to pay what every other corporation pays, 35 percent—we are going to ask you to pay 5 percent, 5.25 percent. That is an 85-percent tax reward to companies that have stashed money in tax havens, in many cases overseas, for the sole purpose of avoiding U.S. taxation.

The IRS has recently cited a number of companies that have these types of tax shelters and overseas tax havens, such as in The Netherlands, Barbados, the Cayman Islands and Bermuda—you name the tax havens. Companies that earn money in one country will bring it over to a tax haven and keep it there, avoiding U.S. taxes. But some now say that is such a great idea, we are going to give them a real tax break and ask them to please bring it back over to the United States. If you do so, we are only going to tax you at about a 5-percent rate.

That is what the legislation says. The legislation says bring it back, you get a huge tax reward for keeping money overseas and now bringing it back to the United States, unlike what other companies have had to do.

Every person we have talked to says we are going to bring it back to create jobs. I say, All right, if that is what you are going to do, bring it back to create jobs in the United States of America, we will let you do the 5-percent tax break. We will allow you to do it.

My amendment simply says two things are different from the bill before the Senate. No. 1, it says you can bring it back for job creation, for hiring more people. If you want to use it for that purpose, OK. If you want to use it for research and development—pharmaceutical industry or other electronic types of industry—OK, we will let you use it for that. If you want to use it for capital expending, you want to build another plant, OK, we will let you use it for that. If you want to use it for your underfunded pension funds, OK, we will let you use it for that.

But we will not let you use it for something as nebulous as financial stabilization of the company, which is in the bill but not defined. What does that mean? Buy another Gulfstream? Yes, that might financially stabilize the company. Stock buybacks? Yes, that might be a good idea for a few people, but it does not create a lot of jobs, if any.

Second, there has to be an enforcement mechanism, more than filing a plan; and there is no responsibility if you do not follow it.

My amendment says: All right, companies, if you bring it back for those purposes, we want proof you actually use it for those purposes. You can use the next 3 years to take these billions of dollars and use it for legitimate purposes, but we would like some proof. We know it by seeing you have actually spent more in the next 3 years in these areas than in the previous 3 years. That is very important.

Here is an interesting statistic from the Joint Committee on Tax. Where is the money like this coming from? From tax havens: Bermuda, Cayman Islands, Hong Kong, Ireland, Luxembourg, Switzerland. How much money are we going to let flow into the United States at a 5-percent rate when it should come in at the regular corporate rate minus what they pay in the foreign country?

Our legislation, the Breaux-Feinstein amendment, is about responsibility and accountability, about creating jobs in this country, not stock buybacks that enrich a few at the expense of jobs in this country.

There is a legitimate argument we ought to look at the whole tax system and see whether we should go to a territorial system or not, but that is not before the Senate at this time.

This legislation is absolutely essential if we are going to maintain any credibility on creating jobs instead of enforcing or creating tax havens. We have enough tax havens. We should not encourage more. This amendment helps stop that.

How much time remains?

The PRESIDING OFFICER. There are 23 minutes.

Mr. BREAUX. We have an hour equally divided?

The PRESIDING OFFICER. Exactly.

Mr. BREAUX. I yield 10 minutes to the distinguished Senator, the cosponsor of the amendment.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. FEINSTEIN. Mr. President, I will try and be brief. I thank the Senator from Louisiana for his leadership on this, particularly since this is the last year that he will be in the Senate. I have had the great privilege of working with him now for 12 years on the centrist coalition and in other endeavors. He has always strived to bring parties together and to work across the aisle. Frankly, it is something that I admire and I want him to know that.

The underlying bill, as I understand it, allows companies to bring foreign-earned profits back at a greatly reduced rate. The Senator from Louisiana spelled that out. That is a rate of 5.25 percent. Remember, the minimum income tax bracket for individuals in this country is 10 percent. So it is at a rate half of what the poorest Americans pay in Federal income taxes.

Under this amendment, companies could bring foreign-earned profits back to the U.S. at this reduced rate provided these repatriated profits promote job growth and benefit employees.

Our amendment is specific. It allows for spending on R&D, acquiring plants and equipment, deducting increases in wages or the cost of creating a new job—capped at the Social Security wage limit of $87,900—and fully funding employee retirement plans.

Why is it necessary to be so specific? It is necessary because J.P. Morgan, which has conducted a survey of companies that would repatriate money, determined that most corporations will reuse the repatriated profits for buying back debt, for increasing levels of liquid assets, or even retiring equity. This is what a study of the very companies that are involved have shown. None of these items necessarily produces new jobs.

One of the things the Senate, as well as Americans, should understand is that there are a large number of American companies that take advantage of loopholes in U.S. tax law and pay no taxes. I recently took a look at a GAO study entitled ''Comparison of the Reported Tax Liabilities of Foreign and United States Controlled Corporations.'' It covers the period from 1996 to 2000. Let me give you an idea of what they find: 61 percent of U.S.-controlled corporations pay no taxes; 71 percent of foreign-owned corporations operating in the United States reported no tax liability from 1996 to 2000.

This is stunning. I had no idea. So I began to look a little bit at the history. Let me tell you a little bit about what it was like in 1945. In 1945, income taxes from corporations accounted for 35 percent of Federal receipts. In 1970, these income taxes accounted for only 17 percent of Federal revenue. So between 1945 and 1970 there was a dramatic decline. Today, corporate income taxes account for only 7.8 percent of Federal revenues.

We are giving companies that have sequestered profits abroad the ability to bring those profits back at one-half the tax rate the poorest American pays, and we have a specific study that shows that for the most part, these corporations will not use these moneys for areas that produce jobs.

What Senator BREAUX and I have tried to do is to narrow the language that describes what companies may spend repatriated profits on. We have narrowed the language to specific spending categories—categories which produce jobs. I don't think that is too much to ask.

How much will be repatriated? There are various estimates. J.P. Morgan estimates $300 billion be repatriated. The U.S. Treasury estimates it will be between $200 and $300 billion. The Homeland Investment Act Coalition, a coalition of major corporations, estimates $500 billion will come back to the United States.

Without this amendment, it is likely that corporations will take advantage of the reduced corporation tax rate and use the repatriated profits to shore up their finances. The items I have read from the J.P. Morgan study indicate just that. I will summarize the section of this J.P. Morgan study.

These were 28 firms in the study. They indicated that 46 percent of them would pay down outstanding debt with

the money, 39 percent would finance capital spending, 39 percent would fund R&D venture capital or acquisition, 18 percent would buy back stock, 11 percent would use cash for working capital, 11 percent might pay dividends if double taxation ends, and 4 percent would fund underfunded pension funds.

I have been told many of these companies would like to use the money for mergers and acquisitions, which very clearly could result in a reduction in jobs. I would not like to see this Senate have egg on its face by giving some of the largest and most profitable corporations in America the ability to repatriate funds at one-half the tax rate the poorest Americans pay and have those funds used for mergers and acquisitions which would result in employees being fired for so-called efficiency reasons. I think without this language that narrows the use of this money, that is exactly what could happen.

So I thank the Senator from Louisiana for his leadership. I want to indicate my strong support for this amendment. I hope Members will vote for this amendment.

Mr. President, I yield back the remainder of my time to the Senator from Louisiana.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. SMITH. Mr. President, I believe on our side we have 30 minutes; is that correct?

The PRESIDING OFFICER. That is correct.

Mr. SMITH. Mr. President, I am going to speak for hopefully less than 5 minutes and then allow my colleague from California to speak. Senator ENSIGN and, I believe, Senator ALLEN may wish to speak to this as well.

Mr. President, this is ultimately about whether we want the dollars of these American multinational corporations to be brought back to America or left in places like this. We can either put these dollars to work here or we can leave them over there.

If you are interested in creating jobs, I think it is important to remind folks what we are talking about is a minimum of $400 billion coming back into this country within the 1-year window that is allowed by this legislation. It has been estimated, on a conservative basis, that it will create 660,000 jobs. It will reduce the Federal deficit, over the next 5 years, by $75 billion. If ever there were a win-win, this amendment on the JOBS bill is a win-win.

As I listen to my colleagues, both of whom I esteem as friends, I am astounded so much emphasis is put into the dislike of business and what they might do with this money. I, frankly, have to wonder what is wrong with companies bringing money back here and being allowed to shore up the strength of their business. What is wrong with that? That is exactly what we want them to do. I do not believe, as a former businessman myself, that it is in this country's interest to micromanage how they will reinvest it in this country.

Specifically excluded by this legislation is executive compensation. Executive compensation cannot be the target; but plant and equipment, shoring up pension plans, buying back stock, these kinds of things that improve the values of corporations and their competitiveness are exactly what we ought to be doing if we are actually interested in creating jobs.

I think it is also very important to point out that our American companies that compete overseas are competing against German and French and other companies in those countries that also have foreign earnings. In these countries—competitor countries—they allow their earnings abroad to have what they call a free walk back. We are not allowing them a free walk back. We are saying, for 1 year, the corporate tax rate will fall from 35 percent to 5.25 percent. The effect will be immediate. It will be beneficial. It will help our economy. It will create jobs. But, moreover, it will, for 1 year, create a level playing field for American corporations as against German or French or Japanese corporations whose countries have tax codes that allow them to take their foreign earnings back to their native lands to be put into their local economies, to strengthen them when they need the strength.

Right now, our economy could use $400 billion. If our deficit could be reduced by $75 billion, that would be wonderful. If we could create 660,000 jobs on a short-term basis—we hope that money then stays here—then we have done a tremendous thing for the American worker and the American economy, and we have done it in a way that does not try to micromanage every business decision made in the corporate boardrooms of America.

Mr. BREAUX. Will the Senator from Oregon yield for a question?

Mr. SMITH. I am happy to yield for a question.

Mr. BREAUX. Mr. President, would the Senator point out anything in the legislation before this body now that would take any action against any companies if they did not abide by what they said they were going to use it for? Do they lose their tax deduction? Is there anything in the legislation, without my amendment, that would say what would happen to companies if they use it for something totally different from what their plans say they are going to use it for?

Suppose they decided to use it for something totally unrelated to job creation. Is there anything, without my amendment, that says what would happen to those companies?

Mr. SMITH. The Senator, I guess, does not trust they will use it for what they say they will use it for.

Mr. BREAUX. Trust but verify.

Mr. SMITH. I believe when they establish a plan and get the approval for their plan they will follow through on that.

Mr. BREAUX. Suppose you have somebody who may not do that. Is there any provision in the bill that says what will happen to the company that does not abide by the plan? I believe in trust but verify. If you don't do what you say you are going to do, you should have consequences. Is there anything in the bill that says they would lose their deduction?

Mr. SMITH. I don't think there is a penalty, I say to the Senator. I am happy to admit that because, frankly, I believe what companies are trying to do is get their money back here on a basis that allows them to be competitive with other multinational companies from other countries. I think what they are interested in doing is a return on investment to their investors. When they give a return on investment to their investors, what they are also doing is creating jobs. They are investing in plant and equipment. And I, for one, do not think it is in the interest of this country to micromanage the Tax Code any more than we already do.

So, Mr. President, with that, I will turn the time to my colleague from California.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, I ask the Senator, may I have 10 minutes?

Mr. SMITH. Yes, you may.

Mrs. BOXER. I thank the Senator.

Mr. President, first of all, let's get matters straight from the get-go. Senator BREAUX never liked this in the first place. And I have tremendous respect for him. We just do not agree on this tax provision. As a matter of fact, he voted to strip it out completely when actually we tried—Senator ENSIGN and I—to get this in before. We won this 75–25. Only 25 colleagues voted against us. Senator BREAUX was leading the charge.

Now he says he is just making a correction. Well, I have read his correction. It is a poison pill for many reasons, which I will go into. But I think we ought to get it straight. We are being offered an amendment and told it is enhancing our bill, but it is offered by Senator BREAUX, who never liked it in the first place. I think he would be the first one to admit it because he was quite open on the point before.

Now, I am proud to stand with my colleagues today to stop this amendment. I think it is very important. I am going to call on the 75 Senators from both sides of the aisle who supported us the last time. I particularly thank Senator SMITH because he took the Ensign-Boxer bill into the committee and he got it into this bill, which was most important for us. Now we are here to protect that work.

I will say this from the get-go. You could say all you want that we are building trust into this. Well, there is a little more than trust. We are not saying in this bill anywhere that I have seen that the IRS cannot prosecute someone who is not telling the truth. This is not some plan that is done in the dead of night at the accountant's office. There is a committee that has

to put together the plan and they have to show how they plan to use the funds. If they lie in that, under an audit, as any of us might have, they have to show that in fact they deserve the deduction. If the IRS says, no, they did not follow the plan, then they will not get those deductions, just like all of us. There is nothing in our bill that absolves these corporations of the usual procedure when you pay your taxes. So I would like to get that out of the way.

I want to talk about jobs, because, God knows, in my State we have lost a lot. I want to put up what the various experts are saying, from liberal to conservative, about this Invest in the USA Act that I am so proud to coauthor with my friend, Senator ENSIGN.

What is the potential impact on the U.S. economy? J.P. Morgan says, as a result of enacting the Invest in the USA Act, U.S. companies will increase investment profits earned abroad in the United States by $300 billion. Bank of America forecasts the increase will be $400 billion. Dr. Allen Sinai of Decision Economics estimates that this additional investment in the U.S. economy will generate 660,000 jobs.

Finally, we are doing something. The highway bill is stalled. A lot of us are upset about that on both sides of the aisle. That will create 800,000 jobs.

Here we will create 660,000 jobs, and Allen Sinai says that is a conservative estimate of how many jobs would be created. And guess what. The Treasury is getting money because these profits are sitting abroad. They are not coming home. They are not being taxed. And we are going to tax them at a 5-percent rate, and that is going to bring funds into the Treasury. There are some estimates that we will receive as much as $4 billion into the Treasury because of this Invest in the USA Act.

So how could we take such a good idea and mess it up? That is what we would do if this amendment passes. We know those funds are not going to be brought back.

Under the Breaux amendment, let me read to you examples of spending that is not permitted, and you tell me if you agree with this.

You cannot use the money that you bring back for job training for workers. You cannot use it for many unemployment benefits. You cannot use it for worker health, dental and hospital expenses. You cannot use it for most employee childcare. You cannot use it to reimburse employees for injuries and accidents. You cannot use it for workers compensation and black lung benefits. You cannot use it for most employee meals and lodging. You cannot use it for worker relocation reimbursement. You cannot use it for employee tuition assistance. You cannot use it for an environmental cleanup and impact analysis. You cannot use it for employee travel reimbursement.

You can buy jets with it under the Breaux amendment, but you can't use it for employee travel reimbursements. You can buy limousines with it, but you can't reimburse for the rental of parking spaces for your employees.

Here we have an amendment that we have crafted that is actually a bill that is incorporated into the underlying bill, which gives the business community a chance for 1 year to bring these funds home that are parked outside our shores, funds that are sitting out there and not being brought back. We are going to see what happens. We are told by economists from the left to the right it is going to mean job creation. We want to make sure it is used for the things that these corporations need.

Instead, you have the Breaux amendment which is micromanaging this deal in such a way that it will affect things as important as job training for workers. Let's just say a business is changing its work product and they have a new way to deal with their workers. They have to teach them how to use new computers and new programming, machinery. They cannot use the money they bring back to job train.

Senator FEINSTEIN called this a perfecting amendment. It is not perfecting. It is a poison pill.

I am very proud to be part of this group in the Senate that has been pushing for this for all this time. Any statement that we are not going to go after cheaters is ridiculous because we have highlighted in our bill the fact that the company has to set up a committee. They have to print a plan. They have to say how they are spending their money. And if they undergo an audit, they are going to have to stand behind it.

The question is whether you want accumulated foreign earnings invested here or abroad. The answer that we get from our colleagues is going to be very important. We can send a wonderful message today if we stand with this underlying language that we are serious about job creation. We are serious about getting this capital back. I believe we are doing a very wise thing.

I yield the rest of my time to the Senator from Oregon, Mr. SMITH.

Mr. SMITH. Mr. President, I emphasize the point that Senator BOXER made in answering Senator BREAUX. We did not include special penalties in this bill, but the truth is, when you file your tax returns, you have to own up to what the plan is. You have to live up to that. If you don't, you lose the deduction.

Can the IRS impose other penalties? Of course it can. But it then has to make the case against the person. When people file their tax returns, they know they are shooting with real bullets on this stuff.

I have every confidence that people will be honest about this and utilize the revenues for the purposes intended in creating jobs.

Mr. President, how much time remains?

The PRESIDING OFFICER. Fourteen minutes 45 seconds.

Mr. SMITH. I would like to yield 9 minutes to Senator ENSIGN and 4 or 5 minutes to Senator ALLEN and, if I could, have 30 seconds to wrap up.

Mr. BREAUX. How much time do I have remaining?

The PRESIDING OFFICER. Fourteen minutes 44 seconds.

Mr. BREAUX. Are we going to rotate? Are we just going to hear one side?

Mr. SMITH. It would be fine with us to let the Senator speak.

Mr. BREAUX. Mr. President, I will take 2 minutes off the time.

I wonder if anybody in this body remembers Enron. Let's trust that they are going to do right. They are a U.S. corporation that created more tax shelters than the IRS could count. It took a group of Philadelphia lawyers 2 months to even add up the number of tax shelters they had around the world. They had so many the IRS couldn't even follow it.

If you are going to give people who have tax shelters and a stash in income in foreign tax havens a huge benefit to bring the money back into this country, we ought to make sure they are going to use it for job creation. Without my amendment, they have to file a plan that says this is what they are going to spend it on. Suppose they don't spend one nickel more than they did last year on job creation. Suppose they don't spend one nickel more on capital expenditures than they did last year. Suppose they don't spend one more nickel on pensions for the workers than they did last year, but they comply with what they said they were going to do in their little plan. They are fine. They don't have to spend one nickel more under the committee bill, with all this money they are going to bring back at a 5-percent tax rate, in terms of creating jobs than they did before.

The Breaux-Feinstein amendment says: If you want to bring it back for that purpose, you have to show us that is what you are using it for. That, in fact, you have spent more money in the next 3 years than you would have the previous year on job creation. That is not too much to ask.

When we are giving a multinational corporation an enormous tax gift of having to pay not 35 percent but only 5 percent, at least get a requirement that they are using it for something to do with job creation and that they spend at least something more than they did the year before. Without the Breaux-Feinstein amendment, there is no requirement that they spend one nickel more on job creation than they did previously after bringing this money back.

Guess what. You talk about an incentive to locate overseas. There will be a whole group of people saying: We did it for 1 year. Let's do it next year, a third year; let's continue this. How about making this 5 percent permanent so we can put all the jobs overseas, knowing Congress is going to take care of us every time there is a downturn in the economy and there is another amendment to extend the 5-percent tax break

1 more year. We will just move everything over to the Caymen Islands. We will move everything ever over to a Third World country. Because, guess what, Congress is going to let us bring it back at 5 percent because the pressure will be there, because the economy is not doing well, and all the jobs go overseas. The only thing the Breaux-Feinstein amendment says is, if you are going to bring it back for job creation, prove it, tell us you spent a little bit more than you would have ordinarily. Without Breaux-Feinstein, there is no requirement that they spend one nickel more than they did before. That is a big difference in what we are trying to accomplish.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. ALLEN. Mr. President, I rise today to join with Senators SMITH, ENSIGN, and BOXER in opposition to the Breaux-Feinstein amendment. In the midst of this JOBS bill, we are trying to make sure manufacturers in this country can compete internationally. I am one who is always arguing, whether it is tax policy, regulatory policy, our laws in the United States ought to make America more desirable and conducive toward investment and job creation.

The underlying provision—the idea of repatriation or reinvesting in the United States helps make the United States more conducive and more attractive for investment and jobs. Let's use some common sense. If you are a company that does business overseas, and you have profits overseas, whatever country you are in you are going to have to pay taxes. If you bring that money back into this country, you are going to be paying 35 percent in taxes. You are going to pay one way or another, whether to that country or to the United States.

However, if you take those profits and keep investing them in China, in South Korea, in Malaysia, or in the Philippines, or wherever else it may be, you are going to continue investing them over there if you are going to be subjected to this 35-percent tax.

The idea is, for 1 year, reduce that tax burden to 5.25 percent, bring those profits back into this country, invest them in the United States in a variety of ways that actually helps your business; thus, it creates more jobs. This is a law that I certainly think ought to be passed, not diminished or micromanaged or pestered with this amendment.

Studies, for example, by the Joint Committee on Taxation have determined that the provision we are supporting in the bill would inject approximately $135 billion into our economy for jobs, capital, investment, and economic growth. The Joint Committee on Taxation also said it would bring in an additional $4 billion in tax revenues to the U.S. Treasury. Of course, the profits are coming back; therefore, they are going to be taxed. Whereas, if you do not change this law, that money will stay overseas.

J.P. Morgan economists talked about job creation—660,000 new jobs created, $75 billion in debt reduction, and an increase in capital spending of up to $78 billion, by bringing approximately $300 billion in foreign earnings back into this country.

The Breaux amendment has several problems. One, it is a poison pill—as was said by other speakers—limiting benefits in such a way that it makes it impracticable. Two, it requires that money be spent for narrow purposes only; third, it requires companies to spend it in 3 years; fourth, it excludes amounts brought back from Puerto Rico and other possessions. That last one would treat Puerto Rico and our possessions worse than investments made in the rest of the world.

Senator BOXER brought up examples of what would not be permitted with the Breaux amendment. In addition to the job training, they could not spend it on job training to upgrade the skills and capabilities and productivity of their workers in the United States. They could not fund startup businesses. Why would we not want them to fund startup businesses? Why would we want to prohibit the injection of new capital into cash-starved projects?

Mr. President, the point is that the amendment would limit the job creation incentive and, unfortunately, not have the full potential to make this country more desirable for jobs and investment. I respectfully urge my colleagues to defeat the Breaux amendment, support Senator SMITH in his efforts, and those of Senator ENSIGN and others, who have fought gallantly and wisely for more jobs and investment in the United States of America.

I yield the floor.

Mr. BREAUX. Mr. President, how much time remains?

The PRESIDING OFFICER. There are 11 minutes 47 seconds.

Mr. BREAUX. I thank the Chair. I will take 2 additional minutes.

Again, I don't have any basic argument with those who say we ought to let the money come back that has been sitting in tax savings into this country. I will even go along with saying you can bring it back at 5 percent, if you are going to use it for job creation or research and development, for capital expenditures. And If you are going to use it to rebuild your pension fund for workers, OK, let's do it for 1 year at 5 percent. But, by gosh, can't we at least have some standards to be able to enforce it?

Under the committee bill, without the Breaux-Feinstein amendment, there is no obligation that they spend one nickel more on job creation than they did last year or the year before. The only thing they have to do is say, if last year we spent $10 billion on capital expenditures, guess what. We will spend $10 billion this year. They don't have to spend one nickel, one penny more on capital expenditures or job creation or research and development in order to get this huge break. They can spend exactly what they spent last year—no requirement, zip, zero. Yet we are going to give them one of the biggest tax breaks.

We already passed tax cuts of $3 trillion for job creation. Are we much better off today after all of that, some of which I supported? That is a debatable issue. Let's not make the same mistake and say we are going to give them an 85-percent tax cut if they are doing business overseas and if they bring some of that money back and spend it on job creation. And by the way, there is no requirement that you do anything more than you did last year. What kind of nonsense is that, as far as trying to create more jobs in this country, instead of providing a huge incentive to locate overseas, bring workers overseas, and we are going to have Congress let us bring it all back at 5 percent? How unfair is that to the people who play by the rules, to other companies who do business and hire people in this country.

There is no requirement, without the Breaux-Feinstein amendment, that companies that bring this money back at a 5-percent rate spend one dime more than they have in the past on the creation of jobs. They can spend what they spent last year. In fact, they can spend less than they spent last year. The only thing they have to show is they have a plan—no enforcement, nothing.

The Senator from Nevada has a sign up that says 660,000 jobs. Suppose they decide not to create one more job than they did last year. They will still get the 5-percent tax break. There is no requirement that they create six jobs. If they created six last year, they can do that this year. They only have to show that the money is used for job creation. They can take all the money they spent on capital expenditures last year and not spend any of it next year. They can just use this overseas money and not do one thing more than they did the year before. There is no enforcement that they do what the plan says. There is no penalty if they don't. They don't lose their tax deduction. They still get it and they do not have to spend one nickel more in any category without the Breaux-Feinstein amendment.

We say: Look what you did in the last 3 years, and what you are going to do in the future 3 years, and see if you did more than you did in the past. If you did, you get the 5-percent break. But, by golly, if you don't, you don't get it. I think that is fair. I withhold the remainder of my time.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. ENSIGN. Mr. President, I want to first talk about the underlying legislation and then talk about the Breaux-Feinstein amendment.

Allen Sinai is one of the most respected economists in the United

States—not a Republican or a Democratic economist—a bipartisan economist. These 660,000 jobs he said this underlying bill will create is based on our language. He is not saying what Senator BREAUX just said, that they are not guaranteed to bring the jobs back. He is doing an independent analysis based on the money coming back into the United States and based on that determining how many jobs it will create, and this is a very conservative number.

What else will this underlying bill do? It will reduce the deficit, according to his study, also by $75 billion over 5 years because of the economic stimulus that will occur in the United States. The money that will come back—there have been studies—the first J.P. Morgan study was around $300 billion. They have updated their numbers. It is expected to be around $500 billion. Allen Sinai's numbers, once again, an independent economist, was based on the $300 billion figure. We heard $300 billion all the way up to $600 billion will come back to the United States. That is more money than all of the IPOs, initial public offerings, on the stock market from 1996 to 2002. That is a lot of economic activity.

We hear a lot today about outsourcing. Lou Dobbs talks about it almost every night—outsourcing, outsourcing, outsourcing. This bill is insourcing. This insources jobs to the United States. Mr. President, $500 billion will create a lot of jobs in the United States.

Here is the language, by the way, Senator BREAUX is talking about in our bill when he says there really is not any kind of enforcement mechanism:

. . . described in domestic reinvestment plan approved by the taxpayers, president, CEO or comparable official before the payment of such dividends and subsequently approved by the taxpayers board of directors, management committee, executive committee, or similar body, which plan shall provide for the reinvestment of such dividends in the United States, including as a source of funding of worker hiring and training, infrastructure, research and development, capital investments or for the financial stabilization of the corporation for purposes of job retention or creation.

Why is that language important in our bill and how is that enforced today? We are in a post-Enron environment. The markets look at the governance of corporations. The IRS certainly looks at it. With Sarbanes-Oxley on the books, CEOs are very sensitive to complying with federal laws such as this. Companies are required to develop a plan, and they have to stick with the plan, otherwise the stock markets will punish their stocks if they are not doing this. That is one of the ways the markets actually enforce what is going on.

I want to point out some of the other items that other countries do on a comparative basis. These are just corporate tax rate comparisons. The United States has the highest of all of these countries, and these are countries with which we deal and compete. The United States has the highest corporate tax rate of any of the countries—Korea, Indonesia, Japan, EU, average, Ireland, 12.5 percent. That makes a little more sense in terms of why they are competing a little better than we are.

In fact, in Ireland, they call it the Celtic Tiger because their success has been so incredible as a result of lowering their tax rates to attract capital.

The money right stranded overseas now will not come back in the United States without our bill. That is the bottom line. People say it is not fair to allow the money to come back in at lower tax rates than American companies are paying today in the United States. The bottom line is, fine, if it is not fair, then do we just want to leave this money overseas? The money is not going to come back to the United States to create jobs without our bill.

How do other countries treat this money that comes back into their countries compared to what the United States does currently? The United States is up to a 35-percent tax. France, Germany, Canada, Australia, the United Kingdom—zero, and they have no restrictions on how the money can be spent. It just comes back and gets reinvested in their countries. That is why we are saying let's bring it back within that 1-year period of time, and we will charge you 5.25 percent, which is still higher than all of these countries. The companies want to bring that money back to invest in the United States.

By the way, paying down debt is not allowed under the Breaux-Feinstein amendment. If you are a company and you are burdened with debt and now you have to lay off people, doesn't it make sense to allow them to pay the debt down instead of laying off people? That just makes common sense to anybody who has ever been in business. If you are in tough financial times, having money from overseas come back and reducing your balance sheet debt for the companies located in the United States makes sense. It makes them more financially solvent.

Mr. SMITH. Mr. President, will the Senator yield for a question?

Mr. ENSIGN. Yes, I will yield.

Mr. SMITH. Mr. President, we talk about 660,000 jobs for the whole country. Isn't it also true that California stands to gain 75,000 new jobs, and Louisiana stands to gain nearly 10,000 new jobs; Nevada, over 5,000 new jobs; Oregon, nearly 30,000 jobs; and Virginia, nearly 14,000 new jobs that can be created in a very short period of time. Doesn't it really go to our individual States to show just how dramatic a benefit this brings to America and our States?

Mr. ENSIGN. Mr. President, I say to the Senator, I think those are very conservative estimates at a time when we are talking about jobs. The rest of the economy is doing well, and the job numbers are picking up. This can be the extra boost the U.S. job market needs.

These are the items not allowed under the Breaux amendment when it comes back: debt reduction I just talked about, job training, and tuition reimbursement, better health care benefits for workers, childcare for employees getting back to work, and materials for new manufacturing.

There are a lot of items the money would not be allowed to be used for under the Breaux amendment. This really is a poison pill. The companies are telling us if the Breaux-Feinstein amendment is adopted, it basically kills their incentive to bring the money back.

Let's have some common sense here. If money is overseas and it is being invested over there because tax rates are too high to bring it back to the U.S., let's lower the tax rates so the capital comes back to the United States to create jobs. That is the bottom line; it will create jobs in the United States. It will make American business more competitive in this global marketplace.

If my colleagues are worried about outsourcing, defeat the Breaux amendment and keep the provision in the bill. The Invest in the USA Act is a great piece of legislation. That is why on the floor of the Senate last year it received 75 votes to 25 votes against it. With 75 votes, in a bipartisan manner, we adopted our bill last year. We need to keep this provision intact in the underlying bill.

I encourage all Senators who voted last year with us to stay with us on this point and defeat the poison pill of the Breaux-Feinstein amendment.

I reserve the remainder of our time.

Mr. BREAUX. Mr. President, how much time do we have?

The PRESIDING OFFICER. Eight minutes four seconds.

Mr. BREAUX. I yield myself 3 minutes.

It is interesting that they said Louisiana would gain 10,000 jobs if this passed. We probably lost 50,000 jobs with people moving overseas. So with this legislation, we are still 40,000 jobs short.

What we are doing in this legislation is rewarding companies that operate overseas. We say, if you operate overseas and you hire foreign workers in foreign countries and put your money in a tax haven, somehow that is good policy, and we are going to let you take those earnings and only pay 5-percent tax on that. What kind of logic is that? That is a huge incentive to continue to hire workers overseas knowing Congress is going to let you bring earnings back, not at 35 percent, which every other company that hires U.S. workers in my State or any other State has to pay. No, if you do it overseas, you are only going to have to pay 5 percent if you give us a plan that tells us you will use the money for the financial stabilization of the corporation, whatever the heck that means.

If we are going to create so many jobs and if we are going to reduce the deficit, when you look at this and score it impartially, why does the Joint Committee on Taxation say this is going to cost the Treasury $3.7 billion? If we are going to create so many more jobs and so many more people are going to pay taxes, why does this provision in the current bill cost the U.S. taxpayers $3.7 billion? That is the score from the Joint Committee on Taxation when they looked at this provision. It is not going to reduce the deficit. It is going to cost the taxpayers almost $4 billion.

When someone makes the point that the IRS will audit these companies, audits are down on corporate America by over 60 percent. They are doing 60 percent fewer corporate audits. One wonders why Enron got away with everything? Because the Treasury does not have the wherewithal to do the audits they need.

The principal argument I have with the Breaux-Feinstein amendment is simply this: If people say they are going to bring it back at a 5-percent rate and they are going to use it to create more jobs, I say, OK, let them do it, but let's have some mechanism to ensure they really do create more jobs than they created in the past. That is all the Breaux-Feinstein amendment really says. It says: Show us, Mr. Corporate America, that, in fact, you are creating more jobs than you did before. And if you did, fine, you are off the hook; you get a 5-percent tax rate, but if you do not create any more than you did in previous years or you create less, then something is wrong with this proposition, and we are not going to let you pay only 5-percent taxes.

It is an enforcement mechanism. I agree, use it for pensions, use it for research and development, use it for capital expenditures, use it for job creation, but please show us that it was used for that purpose.

The PRESIDING OFFICER. The Senator has used 3 minutes.

Mr. BREAUX. I reserve the remainder of my time.

Mr. SMITH. The time remaining on our side is 1 minute 40 seconds?

The PRESIDING OFFICER. One minute forty-eight seconds.

Mr. SMITH. I yield 1 minute to the Senator from California, and I will use the remainder.

The PRESIDING OFFICER. The Senator from California is recognized for 1 minute.

Mrs. BOXER. As we wind down this debate, I thank Senators SMITH, ENSIGN, and ALLEN. I think we have had a good debate. I want to thank Senator BREAUX for his passion. My colleague, Senator FEINSTEIN, and I do not see this eye to eye.

Here is how I would sum it up: On May 15, 2003, the Senate voted 75 to 25 for the Ensign-Boxer-Smith Invest in the USA Act. It was a very clear statement that we want to see job creation. What we are proposing is a 1-year only chance for corporations that have parked their foreign earnings abroad, and that have no intention of bringing them back, to bring it back at a lower tax rate. It would infuse our Treasury with about $4 billion in revenue, and Allen Sinai, a respected economist, says it will create 660,000 jobs.

The PRESIDING OFFICER. The Senator's time has expired.

Mrs. BOXER. I hope we will vote against the Breaux-Feinstein amendment and once and for all make this important bill the law of the land.

Mr. BREAUX. Parliamentary inquiry: What is the status on remaining time?

The PRESIDING OFFICER. Thirty-nine seconds for Senator SMITH and four minutes fifty-four seconds for Senator BREAUX.

Mr. BREAUX. I will close on my amendment.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. BREAUX. Mr. President, I close on this amendment with the following comments: In this legislation, we are giving U.S. companies that hire foreign workers in foreign countries and putting their money that they earned in tax savings the opportunity, the gift, to bring back to this country those earnings and not pay what every other U.S. corporation pays in taxes but to give them an 85-percent tax cut because they operated overseas and hired foreign workers and made products in foreign countries. We are going to give them an 85-percent tax cut over current law if they bring the money back over here.

The argument is that somehow that is going to create more jobs over here. But there is no requirement that a single additional job be created. They do not have to create one more job or spend one more dollar on research and development than they did last year under the current bill without the Breaux-Feinstein amendment.

The Breaux-Feinstein amendment seeks to install responsibility that says: All right, if corporations want to bring it back for those purposes, even though it is going to cost the taxpayer $3.7 billion—some people outside of Washington may think that is a lot of money; I think it is a lot of money—$3.7 billion is the cost of this legislation without the Breaux-Feinstein amendment. The bottom line is there is no guarantee that they will spend one dollar more on creating a job, capital expenditures, or research and development than they did last year. The Breaux-Feinstein amendment says, yes, corporations can do this and we will give them this huge tax break if they spend more on job creation and create more jobs than they did in the past. That is our only requirement, and that is not too much of a requirement.

They already say that is what they are going to do. The only thing our amendment says is, yes, they have to do that, and if they do not they are not going to get the break.

Without the Breaux-Feinstein amendment, they do not have to create one single additional job more than they did in previous years. We have an enforcement mechanism that says: Look, if they do not spend it for what they say they are going to spend it, then they are not going to get the tax break. They are going to have to give it back. They are going to have to be treated as any other company that does business in this country.

They call this a poison pill. I think it is more a vitamin pill to a deficient bill to try and help improve it to give it some strength, to give it some credibility, to say, yes, we agree, let's do it for this purpose, but please have a requirement that it is actually used for that purpose.

The legislation does not have that. The only thing they have to do is come up with a description, a domestic reinvestment plan that does not require it be spent. It certainly does not require that they spend more in the future than they did in the past. But if the corporations put what they are thinking about doing in a domestic investment plan, then they are OK, but there is no requirement that they spend a nickel more than they did in the past. That is the real principle that we are trying to address with the Breaux-Feinstein amendment. I think it makes sense.

It still allows money to come back, but it only requires that they, in fact, use those dollars for what they said they were going to use them. If they do that, if they create more jobs, do research and development, make capital expenditures, do things that they say they are going to do with it, let's please have some mechanism in the legislation that really requires them to do what they say they are going to do.

The history of this country with regard to recent scandals in corporate America show that we have to be vigilant and diligent, and we have to have some pretty clear parameters about what people can and cannot do. This legislation, without the Breaux-Feinstein amendment, falls short in that particular provision.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. SMITH. Mr. President, if Senator BREAUX were offering a perfecting amendment, I would take it. But he is offering a poisonous amendment. What his amendment would effectively do is limit the ways that these dollars can be used in America to create American jobs.

The more it is limited, the more jobs will be limited. So if my colleagues vote for his amendment, they are voting against job creation in their State.

The Senator says he wants a guarantee. My mother used to say the only guarantees in life are death and taxes. What is in this bill are penalties to the Tax Code. If my colleagues want to make sure these things are spent the way they are described, then these

companies have to follow the plan they lay out before the IRS. If they do not, they lose the deduction and the penalties attached in the Tax Code will attach to them as well.

I urge my colleagues to vote against the Breaux-Feinstein amendment. This bill is important to create American jobs.

Mr. BREAUX. How much time remains?

The PRESIDING OFFICER. Fifty seconds.

Mr. BREAUX. Mr. President, we are saying if corporate America wants to get this huge tax gift, OK, let's do it. But let's make sure they use it for the right purpose. Let's make sure they actually use it for job creation. Breaux-Feinstein simply says they have to show that they spend more in future years, the next year, and the next year than they did in the previous years in terms of job creation and doing what they said they were going to do.

Without the Breaux-Feinstein amendment, the only thing a company has to do is file a plan. If they do not follow the plan, well, too bad; they do not get audited, too bad. There is no requirement that more money is spent to create jobs, and we are talking about a jobs bill that creates jobs in this country, I thought, not in a foreign country.

I do not think we can go back home to our constituents and say we are going to give corporate America an 85-percent break for money they earned overseas. If they want to bring it back for job creation, OK, but let's make sure that is what it is used for.

The PRESIDING OFFICER. The Senator's time has expired. All time has expired. The amendment is set aside.

The Senator from Nevada.

Mr. REID. I know the Senator from New Mexico wishes to speak as in morning business for 5 minutes, and certainly we would have no objection to that. I just want to lay out for Members what is going to transpire in the next few hours. The two managers are necessarily absent this morning but they have instructed us what should be done on this legislation. We have completed debate on the Breaux amendment. We are next going to move to the amendment that has been filed by the Senator from North Dakota, Mr. DORGAN.

Following that, unless the majority decides they want to offer an amendment, we are going to finish debate on the Graham amendment, which is also laid down.

We had an agreed-upon time on the Dorgan amendment, but as a result of the fact that we have been told a Senator may offer a second-degree amendment to his amendment, it would be difficult for us to agree to a limit on that. So debate will go forward on the Dorgan amendment, and those who are trying to determine whether they are going to offer an amendment can do so and at that time perhaps we can work out a time agreement. If they don't offer a second-degree amendment, that will be easier.

On the amendment of the Senator from Florida, Mr. GRAHAM, he needs a half hour himself on that amendment, which we understand. There may be a few others who wish to take some time. We could agree to 45 minutes, maybe, to an hour, on our side. I doubt if the full hour will be used.

So it is my understanding that the leadership, when debate is completed on those amendments, would set a time for voting on all three amendments or maybe even four would be pending.

That is where we are. I think it indicates we are moving on this bill fairly rapidly. As Senator DASCHLE and I indicated this morning, on our side we are winding down our amendments. We have a few others that will be offered, not many. We hope the majority will also make a decision in the near future as to whether they want to finish this bill. We want to finish this bill. We hope the majority does also.

Mr. SMITH. Point of clarification?

Mr. REID. Yes.

Mr. SMITH. It was my understanding that it was 70 minutes on the Dorgan amendment and my request is that that include the debate, equally divided, on the Republican substitute?

Mr. REID. It would include debate on the substitute?

Mr. SMITH. On what will be offered on this side.

Mr. REID. Mr. President, I, first, didn't ask unanimous consent that that would be the case. During the time Senator DOMENICI is speaking, we will take a look at that. I just wanted to notify Senators what we were trying to accomplish. Senator DORGAN is on the floor and we will make a decision.

Mr. SMITH. That is fine.

Mr. REID. I ask unanimous consent that Senator DOMENICI be recognized for 5 minutes as in morning business and sometime during the day the Democrats be allotted the same privilege, 5 minutes as in morning business.

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

The Senator from New Mexico is recognized.

ENERGY

Mr. DOMENICI. Mr. President, I wish I could have come to the floor earlier but sometimes you are surprised to hear arguments that you never expected. All Senators on that side of the aisle who have come down here to rail against President Bush about high gasoline prices need to take a look in the mirror and blame themselves. I have been down here for months trying to get a comprehensive energy bill passed that will promote a policy of greater energy security and independence. Some of these very Senators are blocking these efforts.

The Energy bill is not a silver bullet to lower prices for gasoline or for natural gas. No such thing exists. There is no silver bullet. It is disingenuous for Democrats to imply that one exists. They know better.

Our bill is long term, to deal with our supply and manage our demand. That is the only responsible strategy. We need more domestic oil and more natural gas production. The Energy bill provides the open door for that to occur. We need alternative fuel sources. The Energy bill promotes for sources such as wind and solar. It promotes clean coal technology, and, yes, eventually, nuclear power. We need this broader portfolio to reduce risks of overdependence on one source. The occupant of the chair knows that as well as anyone. One source of energy is disaster for this great country. Natural gas, as the sole energy to produce electricity, is a disaster.

Senator SCHUMER said: ''Don't think there is nothing we can do about high oil prices.''

He is right. He suggests remedies—stop filling the SPR. That is wrong. But I do agree we can do something about oil, natural gas, and gasoline prices. Changes to our Strategic Petroleum Reserve, the SPR, are short term, shortsighted, and bad policy.

The SPR is a national security asset. It is there to serve for an emergency, in an emergency situation, when there is a severe energy disruption. It is not a price control mechanism. If we alter the SPR practices, then we can assume that OPEC will alter their production output. This leads to more volatility in the market and a disastrous result.

President Clinton tried to use SPR to deal with high oil prices. He failed. Gasoline prices—believe this—dropped by one penny. That is all, a single penny. Risking our national security by depleting or playing around with the SPR got us a total impact of one penny.

I know we are all concerned about high gasoline prices. On average, gasoline demand in the United States is about 9 million barrels a day. That is roughly 378 million gallons of gasoline a day. Some parts of the country are experiencing $2-a-gallon price, and others have prices in the $1.70 range.

According to the Energy Information Administration, the national monthly average regular gasoline pump prices are expected to peak at about $1.87. One of the reported reasons that we hear for high gasoline prices is the high oil price demanded by OPEC. In 2003, we imported 42 percent of our total petroleum imports from OPEC countries. Supplies from OPEC provides about 26 percent of our domestic crude oil.

Senator WYDEN introduced a resolution about OPEC. I agree with some points of his resolution. The resolution says the President should communicate with members of OPEC and maintain strong relations. Of course, that is a given. We need to work together in a cohesive fashion in our relations with exporting countries and send a strong message that we want reliable supplies at fair prices.

Senator WYDEN's resolution also says that Congress should take short-term and long-term approaches to reducing

and stabilizing oil prices. If we pass the Energy bill now, in the short term, then in the long term we will see the benefits of lower oil prices.

The last part of Senator WYDEN's resolution lists some things that can be done to lower oil prices. I particularly agree that we consider lifting regulations that interfere with the ability of the U.S. domestic oil and coal, hydroelectric, biomass, and other alternative fuels to supply a greater percentage of the energy needs of the United States. That is an excellent description of the Energy bill pending before the Senate. Isn't it interesting, instead of passing the bill, we recommend resolutions that do the same thing but the resolution will not accomplish the same thing. We all know that.

If Senator WYDEN is serious that he wants these things, he should be voting to pass the Energy bill that includes the very list contained in his resolution.

I thank the Senate for listening. I am ready at any time to come down and debate the Energy bill and its content, because it is time we quit talking and start doing. It is time those on the other side look in the mirror. In the mirror, they will see they are responsible for what is happening because they will not help us pass an energy bill.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, after consideration during the speech of Senator DOMENICI, we believe the action of the Senate will be as follows: Senator DORGAN will speak on behalf of his amendment. Senator MIKULSKI will speak on behalf of that amendment. It will take probably a half hour for them to do it, but that is not in the form of a unanimous consent request.

Following that debate, we will move off that amendment because the majority is finding what vehicle they are going to use for a second-degree amendment. When they finish, when Senators DORGAN and MIKULSKI finish, we will move immediately to the Graham amendment. At that time, we will lock in a 2-hour time agreement. It is probably likely that each side will not use its full hour.

Following that, it will be the desire of the majority to have a vote on the Breaux amendment and then on the amendment of the Senator from Florida. We will have two amendments and then go back to the amendment by the Senator from North Dakota.

I ask that we go to the Dorgan amendment. The Senator is on the floor. Following debate on that, I ask unanimous consent that we go to the Graham amendment.

The PRESIDING OFFICER (Ms. MURKOWSKI). Without objection, it is so ordered.

Mr. REID. And that there be 2 hours equally divided on the Graham amendment, with no second-degree amendments in order.

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

The Senator from North Dakota.

Mr. DORGAN. Madam President, tempted as I am to respond to the last comments just offered by the Senator from New Mexico, I will refrain and do that at a later time. Suffice it to say it provides little benefit to come to the Senate and say, they are responsible for us not having an energy bill. We all understand why we do not have an energy bill. I was one who signed the conference report, worked on the bill, voted for the bill in the Senate. We do not have an energy bill because it failed by two votes. It failed by two votes because the majority leader of the other body insisted on a retroactive waiver for liability of MTBE. He was told it would kill the bill, and it killed the bill.

I don't have much patience with Members who point to one side or the other and say they killed the Energy bill. The Energy bill should be in the Senate right now and should have been in the Senate last week. We ought to do an energy bill. I said I would refrain from commenting. I just commented.

There is no Republican or Democrat way to pay inflated gas prices. The way you pay inflated gas prices is stick the hose in the tank and you have to fork over a bunch of bills when you are done filling the tank. We ought to get a bill through here. My colleagues on both sides of the aisle believe that. In my judgment, it ought to be a priority.

AMENDMENT NO. 3110

Having said that, I have come to the Senate floor to speak to an amendment I offered yesterday on behalf of myself and Senator MIKULSKI. The amendment is supported and cosponsored by other Members of the Senate.

Senator MIKULSKI and I offer an amendment that deals with the issue of the embedded tax incentive in our Tax Code that actually incentivizes companies to shut down their U.S. operation, move jobs overseas, and then send the product from those jobs back into the United States. Let me describe the amendment and let me describe why I believe it is important. The amendment offered by myself and Senator MIKULSKI is also cosponsored by Senator HARKIN, Senator FEINGOLD, Senator KENNEDY, and Senator EDWARDS.

This amendment partially repeals a tax subsidy called deferral. This subsidy is only partially repealed because it is repealed for those U.S. companies that move their operation to a foreign subsidiary, produce the same product, and ship the product back into this country. They lose deferral on that kind of economic activity.

The amendment has several other provisions that require notification of communities, agencies, and workers when jobs are going to be lost and jobs are going to be offshored. It requires the Department of Labor to supply statistics on jobs sent overseas.

The key part is to shut down the perverse provision in tax law that incentivizes the movement of jobs overseas. If you look at this Tax Code, which itself is a Byzantine set of complexities, there is not a section that says: In this part of the Tax Code, this chapter is entitled ''Incentive for Sending U.S. Jobs Overseas.'' There is no such part of the Tax Code. There is no chapter, title or provision that says this is the benefit you get from sending jobs overseas. But that benefit does exist in the Tax Code, and I intend to describe how and why it exists.

Mr. REID. Will the Senator yield?

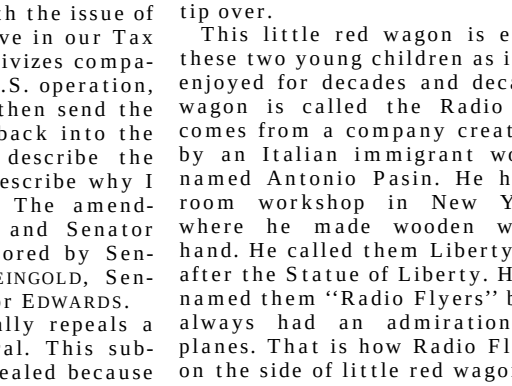
Mr. DORGAN. I am happy to yield.

Mr. REID. We now have agreement that we can have those two votes. I have already indicated that following the remarks of Senator DORGAN and Senator MIKULSKI, we would move to the Graham amendment No. 3112 and the time would be equally divided, 2 hours equally divided. Following the debate on that, I ask we move to vote in relation to the Graham amendment No. 3112. Prior to that, we vote on the Breaux amendment No. 3117. There will be 2 minutes equally divided prior to each of the votes.

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

The Senator from North Dakota.

Mr. DORGAN. Madam President, this is a picture of a little red wagon. On the side of this little red wagon it says ''Radio Flyer.'' Most of us understand what this little red wagon is because we have actually had one of these red wagons. I had one. My guess is the person now occupying the Chair has had a little red wagon. Even in Nevada they have little red wagons. Senator REID, no doubt, has ridden in one of these. I didn't know until recently much about the red wagons, but that they were wonderful and fun, and if you turn the front wheels too sharp, sometimes they tip over.



This little red wagon is enjoyed by these two young children as it has been enjoyed for decades and decades. This wagon is called the Radio Flyer. It comes from a company created in 1917 by an Italian immigrant woodworker named Antonio Pasin. He had a one-room workshop in New York City where he made wooden wagons by hand. He called them Liberty Coasters, after the Statue of Liberty. He later renamed them ''Radio Flyers'' because he always had an admiration for airplanes. That is how Radio Flyers came on the side of little red wagons sold all over the country.

The company was inherited by Antonio's children and then inherited by his grandchildren located in Chicago, IL. For almost a century, they turned out these marvelous little red metal wagons made here in this country by working men and women who are proud to make them—that is, until earlier last month. They announced these little red wagons would now be made in China. These American Flyers, these red wagons, will now be sent to our country to be enjoyed by our children, but they will no longer be made in America;

they will be made in the country of China. That is an American icon, moving to China.

Huffy bicycles. Huffy bicycles have 20 percent of the American marketplace. Everybody knows about Huffy bicycles. Buy them at Sears, Kmart, Wal-Mart. In fact, for many years, Huffy bicycles had a little decal between the handle bars and the front fender. That decal was of the American flag, made by proud men and women working in a manufacturing plant in Ohio. Those men and women made $11 an hour, but they don't work there anymore. They lost their jobs. They came to work one day to find out they were fired. Why? Because Huffy bicycles were moving to China. Why were they moving to China? Because $11 an hour was too much to pay an American worker when you could hire a worker in China for 33 cents an hour.

By the way, when you move the little red wagon to China and you move Huffy bicycles to China, you also get a tax break. By the way, if you just close your manufacturing plant in the United States and move it to China, you get a tax break.

Huffy bicycles are not here anymore. They are in China. They are made by people who make 33 cents an hour. They work 7 days a week, 12 to 14 hours a day. Both of these companies get a tax cut for going to China. How does that work? How do they get a tax cut for doing that? We have something in our Tax Code called deferral. It is a foreign language to most people unless you are an accountant who works in all these areas. Deferral. It says: Tell you what, if you have two bicycle manufacturers side by side in the same town competing for the same marketplace, they pay the same wage; they hire the same number of workers; they produce the same number of bicycles, one of them decides to move to China or just move overseas, the bicycle manufacturer that stays in your hometown in this country will pay higher taxes than the bicycle manufacturer that leaves because the bicycle manufacturer that leaves to go produce in China is not going to have to pay U.S. income taxes on its income until and unless it is repatriated into this country. That is called deferral. So it will earn income that is untaxed under something called deferral.

We are told from the latest estimates we received recently that this deferral benefit for companies that move overseas to produce the same product and ship it back into our marketplace in the U.S. is over $6 billion in 10 years.

Now I am not talking about an American company, for example, that is in the suburbs of Toledo, OH, and it decides: I am going to move a manufacturing operation to Sri Lanka or Indonesia so I can, less expensively, produce a product to market in Japan or South Korea. That is not what I am talking about. That is not what this amendment Senator MIKULSKI and I are offering is talking about. We are talking about an American company that decides it should be benefited with rewards from our tax system for producing a product overseas that is going to come back into our marketplace to be sold in this country.

It is unfair to U.S. domestic companies to compete against another company that decides to send its production overseas, get rid of its American workers, and then end up competing against its former competitors that stayed in this country, but compete in a way that provides this company that left this tremendous advantage because they now pay lower taxes. They got a tax incentive for leaving.

We are going to hear, I think, a lot of obfuscation about this issue and huffing and puffing and blue smoke in the air over all this. But I think there is a simple proposition to understand. If two companies that make bicycles exist in the same city, and one goes to China to make bicycles to ship back to the United States, the one that left gets a tax break. That is in current law. You can either vote to support current law and say, ''I support continuing to give this insidious tax break to those who want to move offshore to ship back into this marketplace,'' or you can decide this is wrong.

Those companies that stay here, those companies that produce here, ought not to have to compete against others that now have a lower tax rate because they left. That is a simple proposition. There is a lot more we should do, but we don't do it in this bill. I will give you some examples.

Companies that want to run subsidiaries through tax havens, what we ought to do is decide if you don't have a business operation, you just want to run your business accounting through a tax-haven country, we are going to treat you as if you never left this country. That is what we ought to do.

And this last goofy provision that is in the underlying bill says to companies, Oh, by the way, you left, and you now have deferred income, for which you have never paid a tax; why don't you bring it back here and pay a 5-percent tax on it. What an incredibly goofy idea. You think there would be some embarrassment about putting that in the bill, but there is not. There is no embarrassment, apparently. But Tom Paxon, many years ago, wrote this song ''I'm Changing My Name to Poland.'' That is when Poland got some sort of bailout loan from the United States. ''I'm Changing My Name to Poland.'' Maybe the American people ought to get the same benefit that is being proposed in this bill of a 5-percent income tax rate. If it is good enough for people who have $10 billion in deferred income overseas, to repatriate it and pay a 5-percent rate, why shouldn't every single American working family pay the same 5-percent rate? Are they unworthy? Are they less worthy? Why not give them the same opportunity?

There are a dozen things we ought to do to this Tax Code to make it fair. With respect to this issue of international provisions in the Tax Code, we do one, narrow thing. It is very simple. In my judgment, no one here will be able to say I did not understand it. It is very simple. If you are an American corporation and you decide to produce overseas for the purpose of selling into our country, we are not going to give you a tax break any longer for continuing to do it. We are not going to give you a tax break.

Now let me just go through a couple of things that describe the circumstances that exist in this country. Imports from foreign affiliates of U.S. corporations have doubled since 1993. Is a lot of this happening? You bet. Is it happening in a much more accelerated way? Of course. And the perverse thing is, we have a Tax Code that incentivizes this to happen.

Here is employment in U.S. manufacturing. It has fallen by 2.7 million jobs since the year 2000. You see what is happening to the manufacturing sector in this country. No country is going to long remain a world economic power without a robust, healthy manufacturing sector.

I used Radio Flyer wagons—and Huffy bicycles. I could have used any number of products to describe what is happening to the manufacturing base of the country. And our Tax Code subsidizes it. It says: If you have a plant, shut it down and move. We will give you a tax cut.

Employment in foreign affiliates as a percent of U.S. manufacturing has gone from 23 percent to 34 percent. I do not need to make the case any more than this, except to say when we do this—and I often come to the floor to talk about trade issues—it relates to a whole myriad of issues. I mentioned Radio Flyers and Huffy bicycles going to China. I have not visited the plants where they are made.

I regret, and am enormously disappointed, after a century of making little red wagons in our country, the company that makes them has decided to make them elsewhere. I regret bicycles that were made here are made in China. But let me describe the circumstance of all of these issues. And I have talked about this before. This is a Washington Post article. It is about labor provisions in China. This gets to the issue of fair trade. But this is not just fair trade. It is also the perverse tax incentive that says: Oh, by the way, ship your jobs overseas.

It says:

> On the night she died, Li Chunmei must have been exhausted.
>
> Co-workers said she had been on her feet for nearly 16 hours, running back and forth inside the Banain Toy Factory, carrying toy parts from machine to machine.

This was the busy season, before Christmas. They worked 7 days a week. The exact cause of her death remains unknown. They found her after the lights went out:

> Her roommates had already fallen asleep when she started coughing up blood. They

found her in the bathroom a few hours later, curled up on the floor, moaning softly in the dark, bleeding from her nose and mouth. Someone called an ambulance, but she died before it arrived.

The exact cause of [her] death remains unknown. But what happened in this industrial town in southeastern Guangdong province is described by family, friends and co-workers as an example of what [Chinese] newspapers call ''guolaosi.'' The phrase means ''overwork death''. . . .

They actually have a term for it in China.

So these people, who used to make Radio Flyers, the people who used to make Huffy bicycles are supposed to compete with that? We are supposed to believe this is the way competition works in the world? I do not think so.

But aside from that, aside from the perversity of setting up a competition in circumstances where kids are worked to death, and paid pennies, and live 12 to a room, work 7 days a week, 12 hours a day, aside from that, we, in this Tax Code, have an incentive that says: If you do this, you pay less in taxes. If you do this, move your jobs elsewhere, you actually get a tax break. My colleague Senator MIKULSKI and I think that is perverse, as I have said.

This proposal is very carefully targeted. It ends tax deferral only where U.S. multinationals produce goods abroad and ship those goods back into the U.S. marketplace. For others who might be surprised by this amendment, let me say to them, it is not new. President John F. Kennedy tried to shut down deferral—a much larger proposition than ours in this amendment. Richard Nixon supported shutting down deferral. The House of Representatives actually voted in the 1980s to shut this down. This is not new.

I might also say, the Senate has previously voted on an amendment very similar to this about 8 years ago. But if we are dealing with international taxation—and we certainly are with respect to the underlying bill brought to the floor by the Finance Committee; and we are doing it in some ways that are quite disappointing, some ways that are fine—if we are dealing with that subject, we cannot fail to deal with the subject of incentives that now exist for companies to eliminate U.S. jobs and shipping those U.S. jobs overseas.

I am not someone who believes our country ought to put up walls. We have a global economy; I understand that. I don't think the rules for globalization have nearly kept pace with globalization. That is why you can't hold discussions on trade anywhere where there is a population center these days, so they take them to Qatar, someplace where there are no hotel rooms.

The fact is, we are now increasingly a global economy. But as we globalize, the rules must keep pace. As we globalize this country, this world economic power needs to be concerned about its future, its job base, and its manufacturing base. Precious little attention is paid to it. We will have Members come to the floor this afternoon aggressively supporting the proposition that deferral is good for our country, good for our taxpayers, good for our job base. Nonsense. Sheer nonsense. It is not good under any set of circumstances for us to say if you have two companies, one that stays in America, and one that leaves our country, both to produce products to sell in our marketplace, that we will advantage the company that left. We will give an advantage to the company that fired its workers and left to take its jobs to Sri Lanka or to Indonesia or Taiwan or China or Bangladesh. It makes no sense. It never has. And it makes no sense today to decide that we will provide significant financial incentives to those who make the decision to shut down American jobs, shut down manufacturing plants, move them overseas, and reward them for doing so.

This country ought to stand up for its economic interests, not to the detriment of others but for its economic interests. That is what this amendment does. It is about jobs. It is about economic strength. It is about a manufacturing base that needs to be strong and vibrant and growing. And it is about fairness. Finally and most importantly, it is about common sense.

I come to this Chamber from a very small town, 300 people in southwestern North Dakota, a sparsely populated State. One heavy dose of common sense here would be that we would pass this amendment and say that this defies logic. Go to the cafe in my hometown and ask folks: Do you think it makes sense for us to have an embedded provision in the American Tax Code that rewards a company that leaves and puts the company that stays at a competitive disadvantage? Try defending that. If you will defend that in any cafe, any city in this country, let me be there while you do it so I can tell the other side of this story.

There will come a point when this Congress—perhaps it is today when we start down this road—has to decide to stand up for the economic interests at home, take care of matters at home. This is a first step.

Let me end where I began, with bicycles and wagons, just as a symbol. Both have now decided that they will not produce in the United States. They will produce instead in China. Those jobs, these wheels, these pedals, those handlebars, and this red paint used to be applied by American workers. They are not any longer. I am not saying we ought to keep every job here. I am not saying it is not a global economy. But I am saying we can take the first commonsense step to say we will no longer have an embedded perverse incentive to reward companies to move their jobs overseas. If we can't take that step, this is going to be a mighty short journey for this country's economy.

At a time when we worry about jobs, people worry about security; they sit around the supper table at night and talk about their lives ''What kind of job do I have? Do I have job security? Does it pay well?'' At a time when we discuss these things and know we have lost 2.7 million manufacturing jobs in a few recent years, the question for this Congress is: Will you decide to end the perverse incentive in the Tax Code that actually ships jobs elsewhere? Yes or no. There is not ''maybe'' as a potential answer. It is yes or no. That is what we will vote on this afternoon.

My colleague, Senator MIKULSKI, comes from a wonderful State, a different State than mine. She comes from more of an industrial State, the State of Maryland. But she has worked with me tirelessly in creating this amendment. I know she has a lot to say as well on behalf of American workers. Let me yield the floor to my colleague from Maryland.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Madam President, I ask unanimous consent to print in the RECORD letters in support of the Dorgan-Mikulski amendment from the boilermakers and the shipbuilders, from the electrical workers, from the U.A.W., and from the AFL–CIO.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS & HELPERS,

Fairfax, VA, May 4, 2004.

DEAR SENATOR: Today, the Senate is expected to vote on the Dorgan-Mikulski amendments to S. 1637, which would end tax deferral for U.S. companies that outsource manufacturing facilities and jobs to foreign countries, only to ship foreign made goods back to the United States. On behalf of the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, I strongly urge you to support the Dorgan-Mikulski amendment and end the ''Runaway Plant/U.S. Job Export'' subsidy.

The Dorgan-Mikulski amendment will help stop the flow of good-paying manufacturing jobs out of the United States. In the last 3 years, 2.7 million jobs that could support the typical American family have disappeared. Part of this decline is due to tax incentives that encourage companies to shift their operations abroad. Under current law, a U.S. company that shifts a manufacturing operation to a foreign based subsidiary can indefinitely defer paying U.S. taxes on its profits until it sends those profits back to the U.S. as dividends.

U.S. taxpayers should not subsidize manufacturing expatriates. This unfair and arcane tax provision rewards U.S. companies that move American jobs offshore and puts tax-paying domestic companies at a severe disadvantage, while costing American taxpayers $6.5 billion over 10 years. Multinational companies should not be encouraged to move jobs abroad and avoid paying their fair share of taxes on income gained from the U.S. market.

Repealing the jobs exports tax subsidy will allow American manufacturers to compete fairly. This amendment not only repeals this ill-advised job export subsidy, but it uses those savings to accelerate the tax cuts provided in S. 1637 for domestic manufacturing.

Corporations will be held accountable to the communities they leave behind. Workers

and their families deserve to know when their jobs are being sent abroad. This amendment will shed new light on corporate practices by requiring companies to disclose to workers and the public whenever they lay off more than 15 workers to send jobs overseas.

Once again, I urge you to remedy the unfair tax incentive that sends American jobs overseas by supporting the Dorgan-Mikulski amendment to S. 1637. Thank you for your attention to this important matter.

Sincerely,

BRIDGET P. MARTIN,
Assistant to the International President, Director of Government Affairs.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS
Washington, DC, May 4, 2004.

Hon. DANIEL K. AKAKA,
U.S. Senate, Hart Office Building, Washington, DC.

DEAR SENATOR AKAKA: Today, the Senate is expected to vote on the Dorgan-Mikulski amendment to S. 1637, which would end tax deferral for U.S. companies that outsource manufacturing facilities and jobs to foreign countries, only to ship foreign made goods back to the United States. On behalf of the 780,000 members of the International Brotherhood of Electrical Workers (IBEW), I strongly urge you to support the Dorgan-Mikulski amendment and end the ''Runaway Plant/U.S. Job Export'' subsidy.

The Dorgan-Mikulski amendment will help stop the flow of good-paying manufacturing jobs out of the United States. In the last 3 years, 2.7 million jobs that could support the typical American family have disappeared. Part of this decline is due to tax incentives that encourage companies to shift their operations abroad. Under currnet law, a U.S. company that shifts a manufacturing operation to a foreign based subsidiary can indefinitely defer paying U.S. taxes on its profits until it sends those profits back to the U.S. as dividends.

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Corporations will be held accountable to the communities they leave behind. Workers and their families deserve to know when their jobs are being sent abroad. This amendment will shed new light on corporate practices by requiring companies to disclose to workers and the public whenever they lay off more than 15 workers to send jobs overseas.

Once again, I urge you to remedy the unfair tax incentives that sends American jobs overseas by supporting the Dorgan-Mikulski amendment to S. 1637. Thank you for your attention to this important matter.

Sincerely,

EDWIN D. HILL,
International President.

Washington, DC, May 4, 2004.

DEAR SENATOR. The AFL–CIO urges to support the Dorgan-Mikulski amendment to S. 1637. The amendment would eliminate foreign tax deferral for companies that export jobs.

Under current tax law, companies that manufacture in the United States must pay corporate taxes, but American companies that manufacture abroad can indefinitely defer their taxes on that income. The Dorgan-Mikulski amendment would eliminate deferral so companies are taxed the same whether they produce and invest in the United States, or invest abroad and export back to the United States. This change would save taxpayers nearly $7 billion and eliminate a major incentive in the tax code to ship jobs overseas.

The amendment comes at a critical time for American workers. More than 2.8 million manufacturing jobs have been destroyed since President Bush took office. According to a recent survey of American CEOs, 47 percent of them plan to ship more manufacturing jobs overseas this year. The US tax code should not encourage companies to export jobs, which is why the Senate should adopt the Dorgan-Mikulski amendment.

Thank you for considering our views on this important issue.

Sincerely,

WILLIAM SAMUEL,
Director, Department of Legislation.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA-UAW
Washington, DC, May 4, 2004.

DEAR SENATOR: This week the Senate will be considering amendments to the FSC/ETI tax replacement legislation. The UAW wishes to share with you our views on this important measure.

The UAW strongly supports the Specter-Bayh manufacturer's tax equity amendment. As currently structured, the FSC/ETI bill provides a deduction that only certain U.S. manufacturers are able to utilize. Unfortunately, this deduction does not provide any benefit to many capital-intensive industries—including major auto and steel companies—because they do not have sufficient ''manufacturing'' income due to their extremely high ''legacy'' health care and pension costs. The net result is that domestic portion of the FSC/ETI bill fails to provide any assistance to a major portion of our manufacturing base that is crucial to maintaining thousands of good paying jobs.

To correct this deficiency, the Specter-Bayh amendment would allow manufacturers to elect either to take the deduction currently in the bill, or in lieu of that to receive a tax credit equal to 10 percent of their health care expenditures for active and retired workers aged 55–64. This election would effectively allow auto and steel companies to receive a tax benefit equivalent to that received by other domestic manufacturers. In addition, it would provide significant relief for their ''legacy'' costs, and enable them to increase investments and create additional jobs for American workers. The UAW urges you vote for the Specter-Bayh amendment and to insist that it be incorporated into the FSC/ETI bill.

The UAW also urges you to support amendments to reduce or eliminate tax breaks for the overseas operations of multinational corporations. This includes the Dorgan-Mikulski amendment on runaway shops, the Harkin amendment disallowing deductions for outsourcing, and the Hollings amendment striking the international provisions in the bill. These amendments would eliminate tax breaks that are exacerbating the loss of manufacturing jobs in this country. Instead of subsidizing companies that ship jobs overseas, the UAW believes Congress should target assistance to domestic manufacturers who create jobs for American workers.

Thank you for considering our views on these important issues.

Sincerely,

ALAN REUTHER,
Legislative Director.

Ms. MIKULSKI. Madam President, I want to thank the Senator from North Dakota for his passion and vigor in presenting this amendment. I also thank him for his story about the Red Ryder, a good old wagon. I had a Red Ryder wagon. Growing up in a blue-collar neighborhood in Baltimore during World War II, my father had a little neighborhood grocery store. And one of the ways the groceries got delivered was in this good old red wagon we had. I could use the wagon for a couple things.

Dad would sometimes say: Barb, take the wagon down to Mrs. Smith or Yankowski or Coalino. It was a very ethnic neighborhood. They called in and ordered late. Run down those oranges and take the wagon.

I loved that red wagon. I was also a Girl Scout during World War II. Dad would let me use the wagon to go around the neighborhood to collect newspapers because we were recycling a variety of things for the war effort. I felt like a little soldier on the move with my red wagon and my little Girl Scout uniform, along with other kids from the troop. I was the kid with the wagon. I loved that wagon. I loved that neighborhood so much because in that neighborhood there were men sent off to World War II, saving Western civilization, saving the world.

We were the neighborhood of factories. We made liberty ships. We turned out a liberty ship, one ship every 3 weeks. We put out turbo steel to make the tanks. Glenn L. Martin made the seaplanes that helped win the battle of the Pacific. We were in the manufacturing business. We were in the war effort business. And this little girl in her Girl Scout uniform with the little red wagon made in the USA felt she was doing her bit.

Guess what. Those jobs now are leaving. Our shipyard jobs have left. Our steel mills have shrunk to miniscule levels. We don't make ships. We don't make steel. We don't make clothing. We are really down. The blue-collar Baltimore of World War II and Korea and Vietnam just isn't what it used to be.

Where did those jobs go? Those jobs are on a slow boat to China. They are on a fast track to Mexico. And other jobs are in a dial 1–800 anywhere. And why did they go? They went because there were tax breaks that rewarded those corporations to move not only the red wagons but so much of this manufacturing overseas.

Today, as we know, if you are in business and in the good old United States of America, you get a tax break if you move those jobs overseas. I think it is wrong to give companies incentives to send millions of jobs to other countries when millions of Americans are losing their jobs. It is wrong to put companies

who stay in America at a competitive disadvantage because they have their business and hire their workers at home, pay their share of taxes, and provide health care to their employees.

We should be rewarding these companies with good guy tax breaks for hiring and building their businesses right here in the United States. We should be giving good guy bonuses to American corporations who are providing health care to their workers and to their retirees. But, no, we give tax breaks to those people who want to take their jobs and evacuate to another country.

It is time we look at our Tax Code and call for a patriotic Tax Code. I want a patriotic Tax Code. We walk around the floor of the Senate, we go to rallies. We love to be in parades. We wear our flags because we want to stand up for our troops—and stand up for our troops we should—but we have to stand up for America.

We have to stand up for America by having a strong economy. That is why I want a patriotic Tax Code. This amendment we are proposing is about patriotism. It is about economic patriotism. We have to start putting our might and our muscle and our votes behind this in the Senate.

What does a patriotic Tax Code do? I think it would focus on bringing our jobs back home and bringing our money back home. That is what a patriotic Tax Code would do. The Dorgan-Mikulski amendment is step one. It ends these huge tax breaks for manufacturing companies that send jobs overseas, only to sell the products they make right here in the United States of America. The current Tax Code lets these companies move the jobs and not pay taxes on the profits, even though they earn the profits by their sales of those products in the United States.

Our amendment tells these companies if you want to export jobs out of America, you need to pay the taxes on your profits. Our amendment says the Tax Code can no longer be used to boost corporate rewards at the expense of American workers. I have watched those jobs I have talked about leave. A couple months ago, we were hard hit on the eastern shore. There is a company headquartered in Maryland called Black and Decker. It makes many of the wonderful tools you use in your home. It was started by a Maryland family. The jobs were in America. Now the headquarters is in America, but the jobs are not here. The eastern shore jobs at that major manufacturing facility have left. Over a thousand people were laid off; 1,000 people in a little community like Talbot County. That is a tremendous impact. The impact has been felt by the whole community. People lost their jobs, and people had to cut back in terms of their homes, the way they shop at their grocery store; and there is great shrinkage in the United Fund. I could go on about that. Those jobs left this country.

At the same time, there are other examples. Take Maytag. Oh, gosh, every woman in America loves Maytag and that friendly guy who comes to service them. Well, I hope he speaks a foreign language to try to read the manual, because those Maytags are made somewhere else. By the way, they used to be made in Illinois. So those 1,500 jobs left. They were washed out, if you will, in this country.

Then there is Levi Strauss, which closed six U.S. plants, cutting over 5,000 jobs. So the jeans that made America famous are now being made in other countries.

We could go on to furniture that used to be made in our Southern States, like Virginia and North Carolina. Many of you might have read in the paper over the weekend what is happening in Roanoke, VA, where many people have lost their jobs in manufacturing, in metal working, in furniture, and in other materials. Their divorce rate is so high that almost 50 percent of the people in Roanoke, VA, are now divorced. It is becoming the divorce capital, with the highest divorce rate in the Nation. Why did that happen? You can look at the divorce rate and chart it along with the decline in those manufacturing jobs. We have seen it in manufacturing. There is the exit of the service jobs now. A lot of people in manufacturing who lost their jobs busted their backs and their butts to send their kids to higher education, community college, or college. They said go to college, kids, learn technology; it is the new field. You are not going to be laid off like me. You are going to have a future. America will be the tech country of the world. Well, guess what happened. Now the tech jobs are going. In the next few years, the IT sector will move over 500,000 jobs overseas. People are saying train—you have to be kidding. Even our State governments are outsourcing jobs by hiring companies to do call centers overseas. I joined with Senator DODD to stop the outsourcing of Federal jobs overseas to call centers.

That is why I stand here today with my colleague from North Dakota to call on us to think about economic patriotism, think about a patriotic Tax Code that, first of all, gives rewards to American companies that keep jobs here, and also a tax code that gives good bonuses to those companies that provide health insurance to their workers and also look out for their retirees.

Then the other thing is to end the despicable process and breaks and rewarding those companies who move not only the little red wagons, but very big manufacturing items overseas. That is why I want to stand up today for what I believe is the right thing to do. I call upon my colleagues to think about where America is going in the 21st century. Where are we going to be? Are we going to create more opportunity? Are we going to create more jobs that pay living wages, that have a benefit structure you can reward? Or are we going to resemble the economy of a third world country?

I really want to have a tax code that brings our jobs back home, brings our money back home, stands up for America. So pass the Dorgan-Mikulski amendment and take your first step toward economic patriotism.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. DORGAN. Madam President, thanks to the Senator from Maryland for her comments and her hard work on this amendment. I hope we will be able to pass this amendment. I expect we will vote on it later today. I wanted to make a couple of additional points.

First of all, on this broader issue of deferring tax, Presidents Kennedy, Nixon, and Carter all tried in vain to actually end deferral. In 1975, the Senate voted to end it. In 1987, the House voted to end it. But in each case, of course, it never got to the President's desk for signature. So we have this thing called deferral. That sounds less ominous than it really is.

With respect to the products manufactured abroad to be sold in our marketplace by U.S. corporations, this deferral is a title that says there is a tax break for U.S. companies to move jobs overseas in order to sell back into our marketplace. There is now $640 billion in foreign earnings that have not been repatriated. Many of them, of course, are parked in tax havens indefinitely—$640 billion.

My colleague also talked about some products. What is more American than Levis? Well, Levis are gone. Before, when you put on a pair of pants, you were putting on an American pair of pants. Not anymore. You are putting on Mexican or Chinese pants.

Then there is Fruit of the Loom. It is one thing to lose your shirt, but Fruit of the Loom is gone. They used to be manufactured here. They are manufacturing them in Mexico and, I believe, some in China. By the way, if you want to order up Mexican food, order Fig Newtons. We all grew up with them. Fig Newton cookies used to be American. Now this cookie is made in Mexico. Next time you order Mexican food, ask whether they will bring you some Fig Newtons.

The point is, we are not only shifting these jobs out of our country for the purpose of manufacturing to sell back into our country, our Tax Code says please do this and we will give you a $6.5 billion benefit over the coming 10 years.

If the Congress cannot take this baby step in addressing this perversion, then the Congress cannot find its way through public policy in a way that reflects any modicum of common sense.

I wanted to mention that while I think there is much to criticize in the underlying bill, there is a provision in the underlying bill that addresses so-called ''inversion.'' I commend the committee, Senator GRASSLEY, and Senator BAUCUS for that position. The inversion is a circumstance where a U.S. corporation says I want to renounce my American citizenship for

the purpose of saving tax money. Well, we have seen some of that. My colleague from Maryland asks, where is the economic patriotism? The committee, in my judgment, did the right thing with respect to this issue of inversions in the underlying bill. I congratulate them for that.

My hope is we will this afternoon have some additional debate on this amendment. I don't know what is going to be offered as a substitute, but, hopefully, we will have votes on both, and we will be able to continue and complete this debate this afternoon. I hope when the dust settles Congress will have done something that meets some basic commonsense test.

My understanding is Senator GRAHAM of Florida is going to be involved in the coming 2 hours. He is in the Chamber. Let me at this point yield the floor with the understanding I will continue this discussion this afternoon when we return to this amendment.

I yield the floor.

AMENDMENT NO. 3112

The PRESIDING OFFICER (Mr. HAGEL). Under the previous order, there will now be 2 hours of debate equally divided on the Graham amendment No. 3112.

The Senator from Florida.

Mr. GRAHAM of Florida. Mr. President, I first thank my colleagues, Senator DORGAN and Senator MIKULSKI, who have raised the issue of will it be American jobs the JOBS bill will create. That is a core question which is raised by the amendment I have brought to the Senate. We are about to spend $170 billion over the next 10 years with the stated objective being to create jobs for American men and women. The question is: How effective will this legislation be in achieving that goal? Is it worth $170 billion under these conditions to be spent or is there not a better way to allocate that same amount of money that will have a greater likelihood of actually creating jobs in the United States?

I would like to put this into some context. The context is where have we been in the recent past and where are we today in terms of jobs for American men and women.

The manufacturing sector of the American economy has lost 2.8 million jobs since January of 2001. It may well be this administration will end up as the first administration in 70 years, since the administration of President Herbert Hoover, to preside over a net decline in private sector employment in the United States.

The unemployment rate has increased 36 percent since January of 2001. The number of long-term unemployed has increased 175 percent. There have been policies and expectations advanced to reverse that situation. The President said, for instance, in his 2003 Economic Report that based on the steps Congress had taken since his administration commenced, in the year 2003 there would be 1.9 million new jobs created in America. The actual increase in jobs in America was 100,000.

The administration has stated the weak employment situation is the result of a dramatic increase in productivity. They argue this increased productivity has raised our standard of living. There are a lot of Americans out there who have not seen this rising tide of standard of living.

Since this administration took office, real earnings growth has slowed dramatically, particularly for those at the lower income scale. Real earnings at the middle of the income distribution rose only two-tenths of 1 percent per year in 2000, 2001, 2002, and 2003.

To put this in comparison, this is a marked deterioration from the successes of the 1990s. Between 1996 and 2000, real earnings growth for those in the middle income was 1.7 percent per year.

We also find ourselves with another growing deficit, and that is a growing trade deficit. The U.S. trade deficit, the excess of goods and services we buy from others over the amount of goods and services we sell to others, has varied over the years, generally in tandem with the economy. For example, in 1981, we had a slight trade surplus. In 1986, the trade deficit had risen to a then record of 2.8 percent of gross domestic product. Remember that number, in 1986, a record historic trade deficit in the United States of 2.8 percent of gross domestic product.

In 1991, our trade deficit had fallen back to a mere two-tenths of 1 percent of our gross domestic product. We see in the last several years, as there has been deterioration in jobs within America, there has also been a deterioration in our international trade balance. For 2003, our trade deficit reached a new record of 5.5 percent of GDP. Compare that with the record of 1986 of 2.8 percent of gross domestic product.

I present this information as the context within which to consider the legislation which is before us and the amendment I have offered—the need for strategic, energetic, and efficient stimulation to our economy, particularly our manufacturing economy and particularly to that part of the manufacturing economy which has been so damaged by the deterioration of our international trade.

The current impasse on this JOBS bill which has caused several weeks delay may turn out to be a blessing in disguise. The delay has provided the Senate with an opportunity to reassess the fundamental merits of this legislation and then to consider what might be better alternatives for working men and women in this country.

I see this bill, the JOBS Act, as having five goals.

The first goal is to meet our obligation under the World Trade Organization by repealing the existing laws, rules, and regulations and, therefore, reverse the retaliatory sanctions which are being imposed by European countries on products of the United States, many of which have nothing to do with the underlying current international tax incentives for American manufacturers. That is goal No. 1.

Goal No. 2 is to avoid enacting a provision that makes it more advantageous than it is today for U.S. companies to move jobs abroad.

Goal No. 3 is to enact provisions that encourage job creation in the United States of America.

Goal No. 4 is to simplify the Tax Code.

Goal No. 5 is to minimize extraneous tax matters that detract from the purpose of this legislation—jobs in America.

Let me review the degree to which this legislation achieves these five very important goals.

Goal No. 1, comply with the adverse WTO ruling. The World Trade Organization, of which the United States is a charter member, has ruled the extraterritorial income tax incentive enacted in 2000 violates the WTO prohibition against export subsidies. The extraterritorial income tax incentive, acronymed ETI, was enacted to replace a similar export-related tax benefit, the foreign sales corporation regime, which also came under fire by the WTO.

Under the ETI regime, a taxpayer can exclude a portion of its income related to goods sold, leased, or rented for direct use or consumption or disposition outside the United States. The amount excluded under the ETI law is 15 percent of the net income derived from the transaction.

The WTO's ruling is unfortunate because it perpetuates an unfair advantage which the European businesses have in relation to the United States firms selling into that market.

Nevertheless, because we rely on the WTO to make sure other countries adhere to international trade rules, we must abide by its decision. It is the rule of trade law.

In addition to meeting our trade obligations, we need to enact this bill to rescue those companies and their employees from the punitive tariffs which are currently being imposed on U.S. exports into the European Union. Currently, those tariffs equal 7 percent of the price of a product being exported to Europe. That tariff will increase 1 percent per month for each month we delay in repealing these offending provisions.

What is most unfortunate is the companies that had benefited from the ETI provisions which have now been ruled illegal often do not make the products which are now the subject of European sanction and retaliation. Innocent businesses and their employees are caught in this crossfire. The JOBS Act meets this first goal by repealing the ETI provisions in our Tax Code. Repealing these provisions will increase Federal income tax receipts by $45 billion over the next 10 years.

Goal No. 2: Avoid exacerbating the current tax incentives for further outsourcing of jobs by U.S. corporations. The JOBS Act does a poor job in

meeting this objective. The provisions in title II of the bill, by definition, are designed to lower the tax burden on U.S. companies' foreign operations. The effect of that: To make it even more attractive to move operations and jobs outside the United States to a foreign base of operation.

The total cost of the changes we are making in this underlying law, which will have the effect of increasing the incentives to leave the United States, is $37 billion over the next 10 years. As stunning as it is, we are about to spend $37 billion to give additional incentives for firms to move jobs out of the United States.

I will provide a couple of examples of how specific provisions will affect U.S. multinational investment decisions. First I will say to anyone who is listening that if they would like to take a nap, this would be a good time to do it because it gets real tough going at this point.

Example one, there is a provision in this bill that changes the tax treatment of payments between affiliated foreign companies. The law today is that the U.S. tax on income earned by a foreign subsidiary of a U.S. multinational is deferred until that income is paid to the U.S. parent in the form of a dividend. Dividends paid by one foreign subsidiary to another foreign subsidiary are treated as though they were paid to the U.S. parent and are therefore subject to U.S. tax.

The JOBS Act changes this treatment by continuing the deferral of U.S. tax on dividends paid by one foreign subsidiary to another located in a different country. The effect of this legislation will be to make it more attractive for a U.S. multinational to invest excess cash in a foreign subsidiary in any country except the United States of America. Payment to the U.S. parent would trigger the tax, but payment to an affiliated foreign subsidiary would remain tax deferred.

An example: If an American firm operating businesses in several foreign countries—let's say one of those was India and another was China—if the Indian subsidiary earned substantial profits and the company was making the decision will I use those profits to reinvest in India, will I use those profits by bringing them back to the United States in the form of a dividend to invest in the United States, or will I move those profits to China, today the last two choices have the same tax implications. U.S. tax will be paid if the money was brought back home or if the money was sent to China. Under this legislation, the only time the tax will be paid is when it comes back to the United States. If the exact same dollars go in the form of a dividend from India to China, there is no tax.

We are creating a very substantial new incentive for American companies to use their income earned outside the United States frequently, as Senators DORGAN and MIKULSKI have just said, to create a platform to export back into the United States. We are increasing the incentive to do so.

This bill includes a ''temporary period'' during which dividend payments from foreign affiliates to a U.S. parent receive a substantial reduction in their tax rate. The regular corporate tax rate is 35 percent. It would be reduced for an American corporation which has set up a subsidiary in a foreign country, has earned a profit in that foreign country, is going to send that profit back to the United States. Instead of being subject to the normal tax of 35 percent, they would only be subject to a tax of 5.75 percent.

This provision reduces Federal revenues by $3.8 billion over the next 10 years. What are American working men and women going to get for their $3.8 billion? The rationale for this proposal is that reducing the tax rate will encourage U.S. multinational companies to expatriate income held offshore in order to make investments in the United States that will create jobs.

Let me just point out one little practical fact. In order to take advantage of this; that is, for a U.S. firm operating outside the United States to be able to repatriate a substantial amount of funds during a narrow window of opportunity, it has to be a firm that has a substantial amount of cash on hand in order to be able to take advantage of that. If they have been investing the profits they have earned offshore to expand their offshore operations, they will have limited means by which to avail themselves of this opportunity.

My concern is that what we are really creating is a tax incentive for tax shelters because it is those tax shelters, as opposed to companies that are actively engaged in the production of goods and services, that are the most likely firms to take advantage of this window. They are the least likely firms to create jobs in the United States.

Another concern about this temporary window proposal is it will not be very temporary. How many times have we heard in the Senate, when a tax cut has been passed but might not go into effect for several years in the future, and then today someone says, let's reconsider: was that really a wise thing to do, to cut the tax rates beginning in the year 2009? Should we not reevaluate that in the context of our current deficit situation and the war and the other challenges America faces?

What is the response to that reasonable question? The response is, of course we should not consider it because if a tax is precluded that is already on the books from staying on the books or going into effect at a future date, do my colleagues know what has just happened? They have raised taxes, and that is the ultimate charge that can be made against an American politician.

Imagine what it is going to be like when this temporary window is ready to expire and the same argument is made; if one does not vote for extending this window, preferably if they do not vote for making this window permanent, as the President is urging that we do, taxes have been raised.

Now, this is not a fanciful suggestion. In fact, this very bill includes 21 tax provisions which when they were enacted were for a specific time period, which has long since passed. Every year, as we get close to these tax provisions that are about to expire, we pass legislation to extend them for yet a few more years.

For instance, in this bill we have a number of items that were intended to be for a specific duration that we are now going to extend substantially into the future. These include items such as the deduction for electric vehicles, deduction for teachers' school expenses—other items which may in and of themselves be worthy. But they are illustrative of the difficulty of ever saying that something which was supposed to be temporary is, in fact, temporary.

If extended, the effect of this repatriation proposal will be to create a permanent reduced tax rate for U.S. multinationals' foreign investment, a tax rate which is 85-percent less than the tax rate that same corporation would pay on income earned inside the United States. So we have a dismal failure on goal No. 2, which is to avoid giving any further incentives to U.S. multinationals outsourcing jobs.

Goal No. 3 is to encourage the creation of jobs in the United States. The primary provision for this encouragement is the creation of a U.S. job provision in the form of a manufacturers' deduction. As currently constituted, this manufacturers' deduction, which is in this legislation, will reduce Federal revenues by $65 billion over the next 10 years. What are we getting for our $65 billion? The deduction is computed as a percentage of the employer's income from production activities located within the United States.

The fact the deduction is based on income, however, creates the perverse effect of rewarding manufacturers that locate at least a portion of their operations in a low-cost jurisdiction outside the United States. When fully phased in, the deduction equals 9 percent of the profit earned from production activities conducted in the United States. To qualify for the deduction, the item must be produced, in whole or a significant part, within the United States. The deduction has some limitations. It is limited to an amount that equals 50 percent of the wages paid by the employer. To the extent that the taxpayer has manufacturing operations outside the United States, the deduction is further reduced by the fraction representing the ratio of the firm's U.S. activity to its worldwide activities. These limitations, which are frequently referred to as haircuts, are supposed to assure that the incentive is targeted at U.S. production.

However, they do not always work in that manner. Let me show a couple of charts as to how this provision, the 9-percent manufacturers' deduction, is likely to work in real life.

The first chart is a simple explanation of how the deduction is computed. In this example, the firm has all of its production operations located inside the United States. It earns $100 in sales for its products. It incurs costs totaling $70 to produce them. The costs, $70, are distributed as follows: materials cost $40, wages inside the United States cost $27, other wages, $3. That is a total of $70.

The company's profit is $30. Its manufacturers' deduction is computed as a percentage of that income. At the fully phased-in rate of 9 percent, the deduction would equal $2.70 to that firm.

Let's look at how the manufacturers' deduction is computed if the taxpayer outsources a share of its manufacturing in order to reduce labor costs. Chart No. 2 illustrates the effect of this change.

In this example, 80 percent of the firm's manufacturing occurs offshore, which results in a 90-percent reduction in its manufacturing wages. The firm still earns the $100 that it did in the first example; that is $100 on the sale of its product, but its costs are substantially lower than the $70 in the first example. In this case, the materials continue to cost $40, manufacturing wages in the United States have dropped to $5 since a substantial amount of the cost of production, not including materials, has now moved outside the United States to a low-wage area. Foreign manufacturing wages are $7. So what this firm used to pay $27 to get—the manufacturing labor to assemble its products—is now getting it for $12. The other wages in the United States continue at $3.

The firm's profit, therefore, is dramatically improved by moving its operation or a substantial portion of its operation outside the United States. It now earns a profit, instead of $30, of $45.

Under the general rule, the manufacturers' deduction would be 9 percent of $45, which would be $4.05. However, there is this separate limitation that you cannot have a deduction that is more than half your U.S. wages. In this instance, U.S. wages for manufacturing are $5, other wages paid in the United States are $3, for a total of $8; 50 percent of $8 is $4. So the firm would get a $4 tax deduction as a result of this procedure.

The result is this: As a result of moving significant parts of its operation outside the United States, this firm was able to qualify for a greater tax incentive under this bill than they would if they had kept their operation in the United States. They get a $2.70 deduction by keeping the operation in the United States; they get a $4 deduction by moving it offshore.

Some of the sponsors of this legislation may argue there is another haircut in these limitations and that is because a firm cannot qualify for the deduction unless the goods are produced ''in whole or in significant part by the taxpayer within the United States.'' They will argue that a firm that utilizes foreign sources to provide 80 percent of the production activity will not meet that standard.

We cannot be assured of that because nowhere in this legislation is the term ''in significant part'' defined for most products. In fact, a firm doesn't have to move anything near 80 percent of its production offshore to get the benefit of this deduction. In my example, using the same numbers but modified to reflect one-quarter of production being moved offshore, this would still yield a greater tax incentive than keeping 100 percent of the production in the United States.

Let me repeat that. If a firm keeps 75 percent of its production in the United States, moves 25 percent abroad, under this calculation it will get a $3.15 deduction against its U.S. income tax versus if it keeps 100 percent in the United States it will get a $2.70 deduction.

Does that make common sense? It was certainly contemplated that some portion of the final product's production could occur outside the United States. Otherwise, the statute would have been drafted without the reference to ''significant part.'' It would have required that all the production be in the United States in order to qualify. It would have been drafted so it applies only to goods solely produced in the United States.

My concern is the new deduction created by this legislation will provide U.S. employers with a positive incentive to move a larger amount of their production offshore. The sponsors will also argue the extent of offshore production activity is conducted by a subsidiary of the U.S. taxpayer. The deduction will be reduced proportionately as a result of the haircut. My example, however, does not assume an affiliate of the taxpayer is conducting the offshore activity. In fact, it assumes what is the predominant reality, that manufacturing businesses inside the United States contract with manufacturers outside the United States to provide component parts. So there is no affiliated relationship other than a contract between the U.S. manufacturer and the foreign producer of the products. The haircut—although it is widely cited as a means by which these kinds of abuses will be restrained—does nothing to protect the job of unaffiliated U.S. suppliers.

As I mentioned earlier, this new incentive will reduce the revenues of the Federal Government by $65 billion over the next 10 years and will have the perverse effect of actually creating yet another incentive to move jobs out of the United States.

As my examples indicate, I don't think this is a piece of legislation that can be defended as spending American taxpayers' dollars in the most efficient manner possible to create jobs in America. There is a better approach. To provide the most effective tax incentive for job creation, we should link the benefits more specifically to the title of this bill, JOBS. Our proposal is to exchange the bill's incentive based on profits with an incentive based on jobs. Our proposal would redirect the $60 billion raised by repealing the ETI and the $37 billion currently directed to the international tax changes and use those funds to create an income tax credit. That credit would be used to partially offset the payroll taxes paid by U.S. manufacturing employers.

One of the true disincentives imposed by the Federal Government on job maintenance and creation in the United States is the fact we impose a 7.6 percent tax on the employer for his employees which then becomes the payroll tax that then supports Social Security and Medicare. I am not proposing we do anything to the payments that are made into the Social Security and Medicare trust fund. Rather, what I am suggesting is we take the now almost $100 billion we will have over 10 years, and use it in the form of a credit whereby it incorporates for all of its employees the first $35,000 of earnings, and will be able to deduct a credit which would amount to approximately 20 percent of the payroll taxes paid by the employer, or a 1.66 percentage point against their corporate income tax.

The employers who qualify for this new incentive are the same ones who would have benefited under the manufacturers' deduction. The difference is our proposal bases the incentive on American jobs, not on profits. The difference is our proposal does not create the incentive. As this chart indicates, we are creating additional outsourcing of American jobs if we use the almost $100 billion in the manner the underlying legislation directs.

It seems to me to be a much better approach to link the benefit to jobs rather than to link the benefit to profits, and one which has a much greater likelihood of achieving the goal of creating jobs in the United States.

A fourth goal of this legislation, and one I have been very interested in, is the simplification of the Tax Code. Several years ago I suggested to the Finance Committee attempting to simplify the United States Tax Code, all 17,000 pages of it, at one time is a task no one has the life expectancy, nor do their children nor probably their grandchildren, to see through to accomplishment. Therefore, we ought to break down the Tax Code into its constituent parts and try to simplify each part at a time, in a rational, sequenced basis. I further suggested these international tax rules would be a good place to start.

I am pleased to say under the leadership of Chairman GRASSLEY and Ranking Member BAUCUS, we started on that path. The Finance Committee has established a working group to study our international tax rules with the goal of simplifying. This product is one of the results of that effort at simplification. However, I suggest this legislation

misses the mark by a wide range in terms of simplifying the income tax law. In fact, it would add another 378 pages to the income tax law. We are starting with the goal of simplification and we are substantially increasing the quantity and the complexity of the income tax code.

Goal No. 5 is to minimize extraneous tax matters that detract from the purpose of this legislation. We are going to spend $170 billion over 10 years to create jobs in America. We ought to be concerned we are spending that $170 billion for that purpose and spending it as effectively as possible.

In an effort to conclude action on this legislation and secure the maximum number of votes, there has been an open encouragement to Senators to file amendments to this bill on smaller tax changes they would like to see adopted. I am confident many of these are worthy and could be supported on their merits. But we are never going to have a discussion of their merits because now they are buried in two so-called managers' amendments inside this legislation. Many of them have relatively little or zero relationship to creating jobs in the United States.

Let me mention a few of those. There is a tax break for Oldsmobile dealers. I am certain they are facing some distress as General Motors canceled that line of Oldsmobiles. Does it deserve to be in a JOBS bill and carry a cost of $189 million over 10 years?

There is capital gains relief for owners of horses. I assume that is good for the owners, and may be good for the horses. It costs $64 million over 10 years.

There is a tax break for the makers of distilled spirits. That might make some of our people happier, but whether it will get them a job is less certain. That costs us $484 million over 10 years.

There is a tax-exempt bond proposal for purchase of forest land. I happen to think purchase of forest land is probably a good idea, but is it the place to spend $252 million over 10 years to create jobs in America?

There are tax credits for costs incurred for railroad track maintenance. Again, it may be a good idea, but it is questionable as to whether $492 million we will spend over the next 10 years will create a requisite number of American jobs.

Then there are tax breaks for amounts received under the Student Loan Repayment Program for the National Health Service Corps. That is $54 million over 10 years.

In the spirit of full disclosure, the bill includes proposals which myself and my staff have worked with the Finance Committee to include in this legislation. One such proposal delays the implementation of regulations governing the exclusion of income from the international operation of ships and aircraft. That has an $8 million cost over 10 years.

Another provision is the extension of the credit for producing electricity from biomass. That lowers Federal tax revenues by $4.2 billion over 10 years.

These additional provisions have obviously expanded the cost of the bill and the purpose of the bill. So the amendment I have offered would do essentially the following:

One, it would repeal ETI. That is the issue that brought us here in the first place. Second, it would repeal the changes in international tax law, many of which will give further incentives to moving jobs offshore. Third, it will repeal most of the targeted tax cuts. It will then take the money that has been saved from the ETI, from not adopting the 9-percent corporate tax deduction, and from the individual items, and use it to finance a serious effort at reducing the payroll tax cost to the employer and, thereby, reducing a significant disincentive to maintaining and hiring people in jobs in America.

I close by describing the choices we are making in this legislation. We are going to spend $170 billion over 10 years, or rounded to $17 billion per year. What could we do with $17 billion if we did not use it in a targeted and effective means to create jobs for U.S. men and women?

Well, $17 billion would reduce this year's projected Federal deficit by about 4 percent, not an insignificant amount. The $17 billion would fully fund No Child Left Behind, plus it would fund veterans health care and the FIRE and SAFER grant programs that provide critical assistance to our Nation's first responders. All of those could be purchased for $17 billion.

Mr. President, $17 billion would be more than we spend annually on Pell grants, to assure access to higher education for our young people.

Now more than ever, we need to make sure the money we spend will achieve the results we seek. I have set forth the reasons why I do not believe the incentives in the underlying bill will protect or will promote U.S. jobs. The proposals in the underlying bill target profits in the hopes that profits will trickle down and create jobs.

The amendment Senator DAYTON and I have offered is a better approach because it specifically targets U.S. jobs. Firms will get a bigger tax break to the extent they employ more U.S. workers. Since U.S. jobs are the goal of this legislation—U.S. JOBS is the title of this legislation—our approach should be adopted. The working men and women of America will appreciate this action by the Senate.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, how much time is left under Senator GRAHAM's amendment on this side?

The PRESIDING OFFICER. On your side, 16 minutes 40 seconds.

Mr. REID. Mr. President, I will claim the 5 minutes we have under morning business. It is all part of the order of the Senate already. Then I will yield to my friend from Minnesota.

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

The Senator from Nevada.

CHAIN OF COMMAND

Mr. REID. Mr. President, the Presiding Officer stands for many things, but, in my mind, one of the things you stand for is what is good about the United States military: A person who put himself in harm's way, with his brother, and has created a story that is intriguing and interesting and shows the bravery of the Presiding Officer in a time of crisis.

Mr. President, you are the role model for the troops we have in Iraq today. Our men and women there are fighting valiantly, and each day find themselves in harm's way, in many different avenues.

I came to the Senate floor this morning and talked about how I felt—this Senator—on last Thursday I had been misled and not treated fairly. We had a briefing up in 407, and we had the Secretary of Defense there. As I indicated this morning, we had enough brass to fill a brass band. We had four-star generals. We had the Chairman of the Joint Chiefs of Staff. I do not want all the blame focused on Secretary Rumsfeld. I feel those military officers should have told Democratic and Republican Senators last Thursday what was going to break on ''60 Minutes'' that night. I feel terribly misled and disappointed in their not doing that.

I say that because by their not telling us what was going to come out—certainly all or most of them knew something was going to come out; and if they did not know, they should have known—each Senator was blindsided.

Now, Mr. President, the reason I mentioned you as a role model for the troops in Iraq, Afghanistan, and around the rest of the world is virtually every man and woman serving in the military does the right thing. Obviously, from the photographs and information we have, some of them did not. But I do not want just the enlisted men, so to speak, to be the scapegoats for what has obviously transpired. There is a chain of command, and there is responsibility in that chain of command.

I am terribly disappointed what went on in 407 with the chain of command, and so I do not want my remarks at all to reflect adversely on the fighting men and women of this country—the Pat Tillmans of our country. There are lots of Pat Tillmans. We admire and respect him so much because he gave up a multimillion-dollar contract to go fight in the war. But lots of other people gave up lots of things to go fight in these wars, and there are lots of Pat Tillmans. I admire him and his family and his brother, who went in with him, as your brother went in with you.

So, Mr. President, I hope the chain of command understands their responsibility and does not try to pass the buck off on these people who needed, obviously, supervision and control.

I think also we have to take a look at what is going on in Iraq today with the so-called security guards who are being hired, because it is obvious some wrong

took place there as a result of what they did.

I appreciate my friend from Minnesota allowing me to speak prior to him. The Senator now has 16 minutes under the order.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DAYTON. Mr. President, I certainly support the statement of the distinguished Senator from Nevada.

AMENDMENT NO. 3112

Mr. President, we are referring to the JOBS Act, and to Senator GRAHAM's excellent amendment. I am very proud to be a cosponsor and to have this opportunity to speak on behalf of the Graham-Dayton amendment. As Senator GRAHAM pointed out to our colleagues, this bill is called the JOBS Act. In fact, in the House, they call it the American JOBS Act because, as we all know, we are missing a lot of jobs in America today. Over 8 million Americans are out of work. Many have exhausted their unemployment benefits because they cannot find work anywhere.

This amendment offered by Senator GRAHAM would make the bill live up to its name. You could call it the ''Put the Jobs Into the JOBS Act'' amendment. It also would put the truth into that title. Because the truth now is most of this bill has nothing to do with providing jobs—at least not American jobs. It provides additional tax cuts to already profitable corporations, whether they provide jobs or not.

According to a recent Washington Post article on the bill, it is:

> One of the most complex, special-interest riddled corporate tax bills in years, lawmakers, Senate aides, and tax lobbyists say. The 930 page epic is packed with $170 billion in tax cuts aimed at cruise ship operators, foreign dog-race gamblers, NASCAR track owners, bow-and-arrow makers, and Oldsmobile dealers, to name a few.

Continuing on to quote the article:

> Even one of the tax lobbyists involved in drafting it conceded that the bill ''has risen to a new level of sleaze.''

I think that is quite instructive in its statement: ''even one of the tax lobbyists involved in drafting it.'' I am not on the Senate Finance Committee. I am told that committee, as the Appropriations Committee, requires many years of seniority before someone can gain access to it, so I don't know what goes on in the drafting of legislation. But when the article says tax lobbyists were involved in drafting the bill that is before us or, as my colleague Senator GRAHAM said, drafting the additions to this bill that are not before us, that are in the so-called managers' amendments which are not disclosed to those of us voting, which are not disclosed to the American people, then there is something pretty putrid in that process.

In fact, the provisions the article mentions, questionable as they are, are not even the worst provisions in the legislation. This bill contains over $39 billion worth of tax advantages to American businesses and investors for their foreign operations. At a time when we say we are concerned about losing American jobs to foreign businesses,—and we should be concerned; we should be alarmed—this bill would make it more profitable and thus more appealing to expand foreign businesses instead of ones in the United States. Why in the world would we want to do that? Most of these provisions are rich man's tax avoidance games and gimmicks.

For example, U.S. businesses or individuals can claim a tax credit under U.S. taxes equal to any foreign taxes they have paid. A tax credit is a dollar-for-dollar reduction in the amount of the tax that is owed. So this arrangement means the U.S. Treasury gets paid last. If some company here owes the French Government $100 in taxes and the U.S. Government $150 in taxes, the company pays the French Government the $100 it owes and it only pays the U.S. Government $50. If foreign taxes were treated as a business expense, like any other cost of doing business, the loss to the U.S. Treasury would be far less severe. But this bill goes even further in the other direction. This would allow the company or business or the individual to be able to use those foreign tax credits for 20 years into the future in order to reduce their future U.S. taxes owed.

Most U.S. citizens can't do that. A farmer with additional revenues, profits in a good year, a salesman with high sales and, therefore, high commissions has to pay higher taxes on his or her income for that year. They can't finagle their incomes and expenses over the next 20 years to lower their tax liabilities. As I said, these are rich man's games and gimmicks.

The other foreign tax breaks are pretty much the same. They are just more ways to avoid paying U.S. taxes owed on U.S. profits or income, more special treatment for businesses in other countries, employing workers in those other countries, jobs, many of which used to be here in this country for American workers. We are going to reward those actions even more than we have already, at a cost of $39 billion to the U.S. Treasury over the next 10 years, at a time when the Federal Government is running annual deficits of over $500 billion.

This bill purports to be revenue neutral. In other words, the tax increases equal or offset the tax reductions. Well, yes and no. As usual around here, with all the smart Members and staffs, and I guess the tax lobbyists who write their special interest tax cuts into the bill, some curious revenue increases are cited. Some are actually good public policy—the elimination of tax shelters, offshore and domestic—some are questionable. Some of the so-called revenue gains are simply downright curious.

For example, over $17 billion of revenue gains is cited from extending customs user fees over the next 10 years. That is something we obviously should do and will do. There are existing fees now, and we will extend them over the life of the 10 years that this is scored for budget purposes. We haven't done it yet. But that is a continuation of the status quo; yet that is being counted as if it were new tax revenue for the purposes of this bill to offset some of these new tax breaks for foreign subsidiaries and operations.

We are adding vaccines for hepatitis A to the list of taxable vaccines, $87 million over 10 years. I don't myself understand the reason for that.

We are limiting charitable contributions of ''patents or similar property'' to their cost basis to the donor. ''Similar property'' is open to interpretation, but it requires some kind of fairly broad interpretation because the revenue gains expected over the decade are $4 billion. These are charitable contributions. So if an artist, for example, paints a painting, a well-known artist, the cost basis of that actual picture—the materials, the canvas and the paints and the like—the actual cost of it is quite low. The value of it might be worth tens of thousands, hundreds of thousands, even millions of dollars. The cost basis, if it is just the materials, is going to be a huge disincentive for people who are in that situation to donate their creations, patents to nonprofit charitable organizations. We are going to gain $4 billion from doing that.

Another of the revenue gains repeals the 10 percent rehabilitation credit for nonhistoric buildings. That is going to generate $1 billion in revenues. In Minnesota, there aren't many buildings old enough to be ''historic,'' but rehabilitation of other buildings that are dilapidated is certainly a worthwhile public purpose. Yet we are incorporating these kinds of tax increases to offset tax breaks we are providing for foreign business operations. That doesn't make any sense to me at all.

Senator GRAHAM has discussed very well—and I won't repeat his comments—the advantages of this amendment over the existing bill for creating American jobs, jobs in the United States for American workers. That is what we need. That is what the bill purports to be. That is what we ought to be doing.

This bill, as it relates to domestic manufacturers, is a general tax reduction. It requires them to do nothing in return. That is a lot better than providing tax breaks to foreign operations and subsidiaries and the investors in them, but it is not good enough. American businesses reported record profits in the fourth quarter of last year, $76 billion in the quarter, above the previous record profits of $70 billion in the third quarter of last year. Overall corporate profits were up 20 percent last year from the year before. Now we are coming out of a recession.

That is great news for America. That is not uniform across the board, but that shows a very healthy profit picture for most American businesses and

one that, unfortunately, has not translated into the job increases we would expect to see, given that kind of profitability and coming out of a recession and employment contraction. That is what this bill should be focused on.

That is what the Graham amendment does, which is why I am glad to be a cosponsor. It provides incentive and a reward for providing American jobs. If do you that, you get the benefit. If you don't do that, you don't get the benefit because you don't need it right now.

Between 1996 and 2000, 71 percent of the foreign companies doing business in the United States reported no U.S. tax liability at all. Sixty-one percent of U.S.-controlled corporations during that time, those 5 years from 1996 to 2000, also reported no U.S. tax liability.

In the year 2000, 82 percent of large U.S. corporations reported a U.S. tax liability of less than 5 percent of their income; 76 percent of large foreign-controlled companies reported U.S. tax liability of less than 5 percent of their income. These large corporations are not overtaxed. Some of them are not taxed at all. Now, with these foreign credits that extend forward for 20 years, not only will they not pay taxes, they will be owed rebates.

This has to be the theater of the absurd. We are giving away tax revenues for outyears—especially from 2008 to 2013, which is where this bill is backloaded—that we don't have, that we are going to be short of to do the things we have committed to do, that will add up and extend beyond that to a point in time that it will add to the crisis we are going to face in the following decade fiscally. We are doing all that for no reason whatsoever, except that someone said the tax lobbyists have had their field day and they got this riddled into the bill.

We are trying to get it out so it can be put to use for the American workers, and especially those who want to be American workers, who don't have jobs and have paid taxes on what they have earned, whatever amount that may be, and are looking for a job and will pay taxes on that. We should not be getting into more tax avoidance schemes to send jobs overseas. That is what the Graham amendment would prevent.

I yield the floor.

Mr. GRAHAM of Florida. How much time do I have remaining?

The PRESIDING OFFICER (Mr. COLEMAN). The Senator has 3 minutes 20 seconds.

Mr. GRAHAM of Florida. First, I want to clarify a statement I made at the conclusion of my remarks. The individual tax items I referred to are included in a managers' amendment. They are not part of the amendment that I have offered as a replacement essentially for the legislation. They are not dealt with.

Mr. President, we have a very serious issue. I see that we have been joined by the chairman of the Finance Committee, Senator GRASSLEY. I got to know a lot about highways last year. I visited on two or three occasions Ottumwa, IA, which is in the southeast corner of the State. Senator GRASSLEY knows the statistics a lot better than I do. If I misstate them, he can correct me.

By the end of World War II, Ottumwa had a population of more than 30,000 people, which was a combination of a strong agricultural economy and a growing number of industrial plants, many of which provided parts for other industries, such as a company that provides parts for Deere Tractor, another Iowa firm. In 2003, the population had slipped to below 25,000, and much of that job loss was due to the fact those plants of 150 to 500 people had picked up and left. Maybe they left for Mexico or for China, but they were not in Ottumwa, IA, anymore.

When you talked to people in that town, whether it was the clerk registering you into the motel or the person who was bringing you your dinner, you heard a lot about the pain that was coming from that loss of a job base, the loss of the future, and the loss of the children of Ottumwa, as they began to question whether they had a future there.

I don't believe it is the role of the Government to stand up and hold back the tide of normal economic flows. The fact is, capitalism is a very aggressive form of economy. Companies go out of business; companies come into business; companies make decisions as to where they can be the most successful. I don't believe we should socialize our economy in an attempt to avoid that. We are not talking about affirmative socialization. We are talking about, through the Tax Code, what I would call incentivized socialization. We are trying to affect the decision that company in Ottumwa makes by saying it will be more profitable for them to take these 250 jobs and move them out of the United States.

This legislation, I am sad to say, adds to those incentives. I don't think that is what we should do in a bill that has as its title ''JOBS.''

The PRESIDING OFFICER. Who yields time?

Mr. GRASSLEY. Mr. President, before I respond in a specific way to the amendment before us, everything Senator GRAHAM said about Ottumwa, IA, is accurate, I believe. Obviously, when anyone in America loses a job, it is a very personal hurt to that individual, particularly if they liked their job and if they had been in that job for a long period of time, and particularly if they were older people and not looking to retrain or even spend the time and investment in retraining.

So considering those personal hurts, and not without proper regard for the economic consequences of people hurt by being laid off, it is a simple matter, not only in the United States but all over the world, that there are less jobs in manufacturing than previously. It is mostly because of the enhanced productivity in manufacturing. When people can get machines to do work that individuals do, obviously, that enhances productivity and it is done for the sole purpose of being more accurate and cutting down on the number of jobs—also, not to denigrate productivity, because productivity being enhanced is the only way in America or anyplace else in the world you are going to increase the standard of living of Americans.

When you increase productivity, people become more productive, they earn more money, and their standard of living goes up. We want that for everybody. So enhancing productivity is very basic to the increasing of the standard of living.

Now, there are fewer jobs in manufacturing today than there have ever been. But manufacturing is still a very major component of our economy. It is still around 15, 16 percent of our economy, I believe. If you go back 40 or 50 years, it was probably 20 or 21 percent of the economy. But there was a period of time when we lost 2 million jobs in manufacturing during the 1980s, and we still had manufacturing as 20 percent of the economy. So manufacturing is very important, but it is maintaining its importance with less jobs doing the work that needs to be done to manufacture whatever we want in America.

Now, several times on this issue I have quoted former Secretary of Labor Reich from the Clinton administration. He is now a professor at Harvard, I believe. He wrote on December 26 of last year in the Wall Street Journal about the problems of manufacturing and declining employment in manufacturing. Secretary Reich pointed out that, yes, America has 10-percent fewer jobs in manufacturing now than they did in the previous benchmark. But he also pointed out during that same period of time, whereas the United States lost 10 percent of their manufacturing jobs, China had lost 15 percent of their jobs in manufacturing. So you see, even though we are legitimately concerned about outsourcing of manufacturing going to China, we are also seeing China finding ways to be more efficient in their manufacturing.

It is quite obvious, if you look at this historically, that this is progress: enhancing productivity to raise wages to raise the standard of living.

This is not the era of Luddites, when people are going to go into factories and smash machinery because they think it is taking jobs away from people. If the Luddite philosophy were legitimate, we would still be making the common pin by hand.

We are producing by machine so we can enhance productivity to enhance wages to enhance the standard of living. The American people would not be satisfied today with 96 percent of the American population being on farms, as it was in 1790 when this country was a brand new country. Today about 2 percent of the people in the United States are producing the food for the

other 98 percent, and each farmer produces for 145 people. The United States exports about 40 percent of its food and farm products, because we cannot consume it domestically.

Whether it is in manufacturing or whether it is in farming, if 5 percent of the market is the American people, then we are not going to have a very high standard of living. The other 95 percent of the market are the people outside the United States of America. If we still had 96 percent of the people in America involved in farming, we would have a subsistence level of livelihood.

We have to accept the fact that every month in America, 7 million jobs go out of existence and 7 million new jobs come into existence. In that process, people are more productive, make higher wages, and have a higher standard of living, and not just for some of our people but for all of our people.

The only people in America who might not have a higher standard of living are those we have kept down, and this Congress is responsible for keeping welfare recipients down, keeping them out of mind, out of sight to the edge of society. But we established a principle of welfare reform in 1996 to move people from the edge of society in welfare to the world of work, to the mainstream of American society, because it is in the world of work where they have opportunities for enhanced productivity, for enhanced wages that will raise their standard of living. Except for welfare recipients, people in the world of work are producing more now than before to enhance their standard of living.

It seems to me that when we have 7 million jobs going out of existence 1 month and 7 million new jobs coming into existence in the same month, it says better than anything I can say about how rapidly our economy is changing, much more rapidly today than ever in the history of our country. It might even change more rapidly in the future.

For people who abhor the fact that we are losing manufacturing jobs, then you have to ask, what do we do to maintain those manufacturing jobs? The basic bill we are dealing with, the jobs and manufacturing bill, tries to do it two ways: one, to staunch the bleeding in jobs leaving manufacturing. It is enhanced now because we have a European tax on our exports to Europe so that our manufacturers cannot be competitive in Europe and, hence, people are being laid off.

That European tax on our exports is legal and started in March. We started debating this bill in March. We could have had this bill passed in March. We could have had the European tax behind us because once we pass this legislation, there is no legal basis for their putting the tax on our exports to their country.

In the same vein, the jobs a manufacturing bill will reduce the level of taxation on corporations from 35 percent down to 32 percent. One of the reasons we lose jobs in manufacturing to the global competition is that our cost to capital is very high in relationship to our global competition. So in reducing the corporate tax by 3 percent and doing it in a revenue-neutral way so it does not worsen the deficit, we have an opportunity to create jobs in manufacturing, make what jobs we have more secure, and continue to enhance the productivity of workers in America.

I hope we remember that we do have a rapidly changing society. Our people welcome an enhanced standard of living that comes from increased wages, which comes from increased productivity. And they want that to continue. That is why I am concerned about the amendment of the Senator from Florida that is before us. That is why I am going to ask my colleagues to consider my views on this amendment and, hopefully, disagree with Senator GRAHAM and defeat the amendment and move on and get this bill passed. That 5-percent tax put on in March, increased to 6 percent in April, and it is 7 percent now in May. It is going to be 12 percent by election time. Are we going to continue to have an environment where people can be laid off?

Senator GRAHAM may have an idea that is legitimate to discuss, but right now in the environment we are in, in which there is an increasing burden put on our exports to Europe, it seems to me we ought to forgo this discussion, which ought to come at another time when Senator GRAHAM's amendment could fit in. We need to get this legislation passed. This legislation is a bipartisan bill. Not often do we get this bipartisan cooperation in the Senate. We ought to take it and run with it.

His amendment proposes to enact a new wage tax credit and pay for it by striking the manufacturing rate cut—that cut from 35 percent down to 32 percent about which I just spoke—and he would also strike all of the international provisions that are in this bill, international provisions to which we try to bring a more rational approach to the taxation of American business in international trade.

Evidently, the Senator from Florida believes a payroll tax credit that reduces employer contributions to the Social Security trust fund will create more jobs than a manufacturing rate cut. Payroll tax credits have long been controversial. I always thought market demand and the ability to compete in that market is what created jobs. If an employer sees an opportunity and goes after that opportunity, then they will add employees to meet demand, but I do not see how a tax credit creates market opportunity.

I thought that tax relief, tax reductions, and the lower burden imposed by having the Government as a silent business partner is what enhances a company's competitiveness, which then in turn would lead to more opportunity.

This JOBS bill before us now contains a 3-point reduction in corporate tax for manufacturing, not across the board. The chart behind me shows the corporate tax rates on manufacturing income for the European Union and for the United States. I thought this chart would be interesting for comparison since the United States and the European Union are both highly developed wage and skilled countries.

This chart shows that on average the European Union tax rate on manufacturing is 21 percent, while that in the United States is 24 percent. That is averages. So do not get that confused with the 35 down to the 32 I am talking about.

It is necessary to pass this 3-point reduction in corporate tax rates which is in this JOBS bill to keep the United States even with these European countries. So being a believer that competitiveness breeds job growth, I fail to see how a wage credit in lieu of a tax cut can produce more jobs if U.S. manufacturers remain burdened with a significantly higher rate of tax than their main competitors.

After arriving on the Senate floor, I received a copy of a ''dear colleague'' letter from Senator GRAHAM of Florida and Senator DAYTON of Minnesota. That letter says production outsourced to a foreign country qualifies for manufacturing deduction.

That is not right. Our bill does not do that. The 3-point rate cut only applies to income from U.S.-based manufacturing. It does not apply to foreign manufacturing of any type. So the fundamental premise of the Graham amendment is in error.

Senator GRAHAM also implies contract manufacturing qualifies for the manufacturing deduction. This is not correct. We specifically rejected allowing a company to take a deduction for manufacturing that someone else does for them, regardless of whether the contract manufacturer is located in the United States or offshore.

If we allowed contract manufacturing to qualify, it would be a double dip. We were lobbied on this and we rejected that. So, again, a fundamental assumption of the amendment is in error.

The Senator from Florida also criticizes the wage limitation. This limit is there to ensure manufacturing jobs are created. If they do not grow jobs, then their manufacturing deduction is diminished. If their assembly lines are filled with robots instead of people, then the deduction is limited. So if one wants more hiring, this is the way to get it done. That is what the wage limit accomplishes.

All of the fundamentals underlying his amendment are in error. I think they are a mischaracterization of the underlying bill.

There is, however, an even more disturbing aspect of the amendment before us. Senators have heard me come to the floor many times to talk about the bipartisan development of the JOBS bill. Its construction began when Senator BAUCUS was chairman of the Senate Finance Committee. Senator

BAUCUS held hearings in July 2002 to address the FSC/ETI controversy within the World Trade Organization.

During this hearing, Senator GRAHAM of Florida, now on the Senate floor with us, and Senator HATCH as well, expressed concern about how our international tax laws were impairing the competitiveness of U.S. companies. After some discussion on forming a blue ribbon commission to study this problem, we all decided decisive action was more important than setting up a commission.

During that hearing, Chairman BAUCUS formed an international tax working group that was joined by Senator GRAHAM, Senator HATCH, and this Senator. This bipartisan Finance Committee working group formed the basis for the bill that is now before us.

There is not one provision in this JOBS bill that was not agreed to by both Republicans and Democrats, not one. But today a member of that bipartisan working group offers an amendment that would destroy this bipartisan consensus on the provisions of the JOBS bill.

Why? The JOBS bill includes the international tax simplification measures that were recommended in the Joint Committee on Taxation April 2001 report on tax simplification. There was no constituency for these simplifications. No governmental affairs representative came to our office to advocate for them.

No, the person who asked for them was the Senator from Florida. Senator GRAHAM emphasized the desire to include these simplification measures in the bill, and we did that. The Senator from Florida preferred simplification over restructuring and wanted the emphasis of our bill to be on foreign tax credit reforms. We honored his views because that is what our bill does in the bipartisan spirit of this legislation.

That Senator expressed concern about the 90-percent foreign tax credit limit on AMT, the alternative minimum tax, and he wanted the 10–50 basket problems solved. We did both of these things in this bill.

The Senator from Florida even sought reductions on a number of foreign tax credit baskets, but the working group decided that was too significant of an international change to be accepted by the full Senate. I hope when we vote on this amendment the Senator will back up our decision on that because this bill was reported out of committee on a bipartisan 19-to-2 vote. The Senator from Florida voted for this bill in the Finance Committee.

Today, these priorities are no longer important. To me, this is very confusing and it is quite a difficult development for me to understand.

As I have said before, we acted in the best of faith to produce a bill that protects American manufacturing jobs and ensures our companies remain the global competitors we want them to be. We did this in a fully bipartisan manner. That is what the American people expect us to do on such an important issue as manufacturing jobs and our national economic health.

As a practical matter, the only way to get a bill through this Senate is to do it in a bipartisan way. But these efforts are apparently not enough or we would not have this amendment before us.

I hope we can defeat this amendment and move on because Senator BAUCUS and I have a real sense of optimism that this week there is very definitely an optimistic point of view, particularly from the other side, that this legislation needs to be passed and that considering the fact we spent considerable time on it in March, and some time on it in April, and we have had these European taxes going on our exports, growing 1 percent a month. It is a bad situation.

We hope the optimism we sensed yesterday will be repeated today, and one way to help us along is to help us defeat this amendment.

I yield the floor.

The PRESIDING OFFICER (Mr. SUNUNU). Who yields time? Does the Senator from Iowa yield time to the Senator from Montana?

Mr. GRASSLEY. I yield to the Senator from Montana whatever time he might consume. I have not asked other people on my side if they want time.

Mr. BAUCUS. I will not consume it all.

Mr. GRASSLEY. I yield whatever time the Senator may consume.

Mr. BAUCUS. I appreciate that.

Mr. President, I have a couple of points. I very much appreciate the efforts of the Senator from Florida in the amendment he has offered. He clearly is trying to address a problem that is very acute in this country, which is job loss. He is also attempting to address it in a way a good number of Senators and a good number of people think is a way to do it, and that is by making the cost of employment to an employer less expensive.

In our country, it is regrettable, but we have come to the point where very often payroll taxes are the greatest expense an employee has. They pay more in payroll taxes, because the employer's half is imputed to the employee, than income taxes.

We have to work hard to try to find ways so the cost of employment to employers is a little less expensive than at present. The Senator from Florida is trying to address that.

I might say, though, his amendment strikes over 60 percent of the bill. This is a large bill. We don't have many tax bills that come around.

I remember years ago we used to have a tax bill at the end of the year. Senator Long was then chairman of the Finance Committee. He would wait until the end of the year. There would be a lot of provisions and there would be a good tax bill. I don't think that is going to happen this year. This is becoming the major bill, and the reason for that is very clear.

There was no World Trade Organization back 20 years ago. Times have changed so much. But the World Trade Organization has ruled that our tax regime, which gives our American companies that export a bit of a break, is illegal. Other countries have their tax regimes which give their companies breaks for their exports, and they are legal. But we set up ours in a way that, regrettably, does not pass muster with the WTO.

There are a lot of reasons that is the case. Frankly, I think we Americans were a little naive. A number of years ago we agreed to a tax regime where companies in other countries could rebate their value-added tax for exports; whereas because we have a different tax system, because we did not have a value-added tax system and we tried to set up a different way to help our companies export, it turned out our way became illegal under the general rules of WTO. That happened a long time ago. We cannot recreate history. But basically that is why we are here today. Our tax regime which gives our companies a bit of a tax break has been declared illegal under WTO.

We have an obligation now. We can't wait until the end of the year. We have an obligation now to replace that illegal regime with something that is legal. We have an obligation now because, as has been stated, the European Union, pursuant to rules under the WTO, has begun to tax American exports to Europe. With each passing month that tax becomes greater and greater. It gets up to 17 percent and that gets pretty severe after a while. So that is why we are here.

The Finance Committee spent a lot of time trying to figure out what the basic replacement legislation should be—what is the best way to do this; what is the best way to help American companies produce jobs, make products, and also produce jobs in a way that is legal under the WTO regime.

We worked hard at it, as I said. We talked to lots of different people around the country. We had several meetings in the Finance Committee about this issue. We had a big, long, open markup. We came up with a way which we think, by and large, helps American companies quite well. What is it? It is very simple. It is a 9-percent deduction for production by U.S. companies—in the United States, that is. If they produce the product in the United States, they get a 9-percent cost of production benefit for that production. It not only applies to big corporations, standard C corporations, it applies to smaller corporations generally known as S corporations, partnerships, sole proprietorships, as well as to any organization that produces some product in the United States.

That is far better than the old regime we are going to displace because the old regime, which gave benefits for exports, was not available to a lot of farmers and ranchers and small businesspeople.

So it is a good idea. Effectively, it lowers the top corporate rate—if you are paying 35 percent—by 3 percentage points, down to about 32 percent as your income taxes, corporate income taxes. But if you are a partnership or if you are some other organization, your taxes are also lowered because of the 9-percent deduction for domestic manufacturing. So it does help provide jobs.

What else does it do? It gives the employer who gets the benefit of this a choice. What is the best way for that company to meet competition? What is the best way for that company to do well? Whether it is a big company or small company, what is the best way? Generally, most believe the management of that company should have the choice of what works best for them. That is why we said you don't have to use the money this way or have to use the money that way. But in order to comply with the World Trade Organization rules, the only restriction, basically, is it has to be produced in the United States, whether the product is sold in the United States or whether it is sold overseas. That was the one restriction we had to apply to stay within the WTO rules.

We also took the opportunity to address a growing concern that many American companies face, particularly the larger American companies, and that is international competition. Other countries do a pretty good job of taking care of their companies in the sense that they want to make sure their companies are competitive in the world. They do a pretty good job. So we have to ask ourselves: Americans, OK, what do we do so as not to handicap our American companies in international operations and also in a way that is fair to small business, is fair to the budget, is fair to lots of other interests in our country; that is, other considerations in addition to making sure our companies are as competitive as possible in the international arena.

I don't need to tell you how globalized our economy has become. It is incredible how, each passing year, we are so much more interconnected than we were in previous years.

Let me give one small example, the entrance of a good number of eastern countries into the European Union. Half of the world's population now is in a buying consumer market. That is a major change. That is a profound change. Companies worldwide, certainly American companies, are going to have to compete in that market, as well as the American market.

In addition, Mr. President, as you well know, various other countries—whether it is the European Union or even China—are entering into trade agreements with other countries which give a benefit to their companies and, by definition, to the detriment of American companies. It is an extremely competitive world and becoming even more so. It is more so because of the additional markets, as I mentioned, more so because of increased advances in technology, particularly communications technology. With so much information now digitized, so much information now able to be sent over a broadband communications system, that is bringing us so much closer together.

We in the committee believed that in addition to helping domestic manufacturers, as described, we should also simplify a lot of the international provisions, especially those where American companies are double taxed. The theory of our system, our worldwide system as opposed to—well, it is the same theory as other countries' territorial systems. But the theory of our system is basically avoid double taxation of American companies. If an American company does business overseas, clearly that other country—take Germany, for example—wants to tax the American company's production in Germany. But then that is an American company, so the American taxpayers have a right to think that company should pay income taxes to Uncle Sam, too. But we also want to avoid double taxation.

Basically, the idea in America is to give companies a tax credit on American taxes for the amount of the taxes they paid in the other country. That is basically what we do. It is a complicated system, but it is one that by and large works pretty well.

Then there are some other provisions in this bill. There are energy tax provisions; also, a minority tax credit. What is my main point? My main point is we have spent a lot of time in committee on this bill. It passed the committee 19 to 2. Frankly, the two dissenters were on the other side of the aisle. They had a different approach they thought made much more sense to them.

I suggest upfront, even though the amendment has some frailties, this was never debated in the committee. It was never brought up in committee. It was for very good reason, as the Senator from Florida was engaged in another endeavor. He probably still is engaged to some degree. I very much appreciate that. He was not available and it was not his fault this amendment was not brought up. He was unable to be present. It was not brought up in the Finance Committee. It was undebated in the Finance Committee.

His amendment is a huge change to the bill. It dramatically changes the bill. It changes the velocity of the bill. We have already addressed the issue generally but not all of the content of this amendment, which is drastically changing the bill. That is not an exaggeration. It is drastic.

For that reason, respectfully I say to my good friend from Florida, this is not the time for the Senate to proceed with this amendment. There is a time and place, in the committee, that we should address his approach. That is, helping reduce the company payroll tax or helping employers so they do not pay quite so much in wages. We want to help people get wages but we do not want to burden the employers. Now is not the time, nor the forum. He should bring that up at a later time.

The PRESIDING OFFICER. The Senator from Iowa controls time. Only the Senator from Iowa controls time.

Mr. GRASSLEY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. BAUCUS. Mr. President, I ask consent all pending amendments be set aside so the Senator from Colorado can be recognized for the purpose of offering an amendment, and I also ask consent that the amendment of the Senator from South Carolina, Mr. HOLLINGS, also be the next amendment to be in order.

Mr. REID. Mr. President, it is my understanding Senator HOLLINGS would propose that amendment immediately following the votes on the two pending amendments; is that right?

Mr. BAUCUS. I have no problem with that. That is my understanding.

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

The Senator from Colorado.

AMENDMENT NO. 3118

(Purpose: To provide for a brownfields demonstration program for qualified green building and sustainable design projects, and for other purposes)

Mr. ALLARD. I ask consent to send an amendment to the desk, which will take the slot reserved for the Miller-Schumer-Bond amendment.

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

Mr. ALLARD. I ask consent that the pending amendment be temporarily laid aside, that I offer an amendment; following the reporting of my amendment, it be laid aside, and the Senate resume debate under the previous order.

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

Mr. ALLARD. I ask that the clerk report amendment No. 3118.

The legislative clerk read as follows:

The Senator from Colorado [Mr. ALLARD], for himself, Mr. SCHUMER, Mr. MILLER, Mrs. CLINTON, and Mr. CHAMBLISS, proposes an amendment numbered 3118.

Mr. ALLARD. I ask unanimous consent that the reading of the amendment be dispensed with.

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

(The amendment is printed in today's RECORD under ''Text of Amendment.'')

Mr. ALLARD. I yield the floor.

AMENDMENT NO. 3112

The PRESIDING OFFICER. Who yields time on the preceding amendment?

Mr. BAUCUS. Will the Senator yield me an additional 5 minutes?

Mr. GRASSLEY. I yield the Senator from Montana whatever time he might consume.

Mr. BAUCUS. Mr. President, I have a couple more points about the Graham amendment.

It is advisable the Senate not adopt the amendment. His amendment would do two things. Basically, it strikes the deduction for domestic manufacturing and also strikes most of the international tax reform provisions. These are very important changes that will help Americans compete internationally.

As I mentioned, the international provisions in the bill that would be stricken by the Senator's amendment are designed to reduce double taxation of American companies. We want to do as much as we can to reduce double taxation of American companies.

Let me give an example. Under current law, an American corporation would have to pay more to borrow money to build a factory than foreign corporations would have to pay, even if the factory is in the United States. This is because of the way we treat interest expenses and so-called interest allocation. Essentially, we are changing the interest allocation provision so that a U.S. company with assets overseas is not penalized, so long as the borrowing is proportionate to the assets in each of the countries, which is now not the case. That is, right now, American companies are penalized even if all their borrowing in the United States is proportionate to worldwide borrowing. That is just not fair. It is something other country's companies do not have to put up with. That is one example of how our Tax Code currently puts American companies at a disadvantage compared to other countries.

The JOBS bill fixes a lot of these problems so Americans can compete on a level playing field, and it brings the Tax Code in compliance for the intent to avoid double taxation.

I say to my good friend from Florida and to my colleagues in the Senate, this is not the time, in my judgment, for that amendment. It has not been explored, debated, or brought up in committee. It is a huge change to a very thought through bill. It should not be approved at this time.

I take a couple of minutes while we have the time to talk about some of the international provisions generally in the JOBS bill. Let me state again why I think these provisions are good policy and they help American companies.

I will mention again the interest allocation provision. It is perhaps the most significant provision in the international tax title, both in terms of cost and the number of companies it would help. The interest allocation provision is one of the many in the JOBS bill that deals with foreign tax credits. Our foreign tax credit system is designed to prevent taxpayers from paying tax twice on the same income. When an American company earns money in France, the French tax that income and the United States also taxes that income. That is two levels of tax on the same income. The total tax could be, say, 75 percent or more. Without adjustments such as the foreign tax credit which is in current U.S. law, these two levels of taxation would make U.S. companies completely uncompetitive abroad. There is no question about that.

Foreign tax credits, however, get the company back to a single level tax and make competition possible. Our foreign tax credit rules are not perfect and double taxation still sometimes occurs.

A prime example is the interest allocation provisions in the foreign tax credit rules.

Let me give you an example. Take an American company that pays $100 in foreign taxes and $100 in U.S. taxes on that same income. That American company would generally claim a $100 foreign tax credit to get back down to a single layer of tax. But if that American company happened to take out a loan in the United States to finance a project here in the United States, it might be limited to an $80 or $90 foreign tax credit—not because it paid any less in foreign taxes, but because we treat it as if it were able to deduct some of the interest on that U.S. loan to reduce its taxable foreign income, even though it could not do so. That is not right.

The rules are complicated, but the effect is plain. If an American company wants to borrow money and build a plant in the United States, it faces an uphill battle. It will pay higher interest expenses than a comparable foreign company. Our interest allocation rules in current law are making it easier for its foreign competitors to build that plant. But our bill fixes that, and it fixes other problems with our foreign tax credit rules.

For example, companies that pay the alternative minimum tax—the so-called AMT—currently face limits on the use of the AMT with respect to foreign tax credits. Unlike non-alternative minimum tax taxpayers, they are subjected to an artificial, completely arbitrary cap on the use of their foreign tax credits. It is 90. Arbitrarily limiting their foreign tax credits just makes these AMT taxpayers pay double. The current AMT provisions essentially, in many cases, result in double taxation. The JOBS bill fixes that, too.

The JOBS bill also makes it less likely that a company's foreign tax credits will expire unused. It is another problem: The foreign tax credits expire unused, and then the U.S. company could often be placed, in effect, in a position where it is subjected to double taxation.

Currently, unused foreign tax credits can be carried over for 5 years. The original purpose of this carry-forward rule was to prevent taxpayers from suffering double taxation because of timing differences between U.S. and foreign tax laws. That purpose is not being served by our current law. Any new tax laws in foreign countries have made the problem worse for American companies. The JOBS bill extends the carryforward to limit the double taxation that occurs upon the expiration of foreign tax credits; that is, we are making it less likely that a U.S. company will be subjected to double taxation.

Each of these provisions simply corrects features of our international tax laws that frustrate the original purpose of those laws. Again, the original purpose was to avoid double taxation. The JOBS bill puts us back on track with the original intent of our international tax system.

So, as we all know, the international provisions are a lot more complicated than I have even begun to allude to, but, very briefly, those are some of the provisions in the bill. They are corrections in the bill. They reduce double taxation, or eliminate it in many instances. It helps American companies compete with foreign companies. That means it is much more likely they will be able to keep jobs in the United States if they are able to compete more effectively.

Mr. President, for that reason, I urge we do not adopt this amendment.

I suggest the absence of a quorum, on behalf of the Senator from Iowa.

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

The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

AMENDMENT NO. 3117

Mr. GRASSLEY. Mr. President, I yield 3 minutes of my time to the Senator from Nevada and 2 minutes to the Senator from California, Mrs. BOXER.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. ENSIGN. Mr. President, in a few minutes we are going to be voting on the Breaux-Feinstein amendment. In the underlying bill is an amendment that Senator BOXER and I worked on last year. It was voted on in the Senate and had 75 affirmative votes, 25 negative votes. Seventy-five Senators said, last year, it is a good idea for money that is sitting outside the country in bank accounts—in businesses' bank accounts outside the United States—to come back to the United States to create jobs and help the American economy.

Right now, if companies bring that money back, they will have to pay the difference between whatever that country charged and our 35-percent corporate tax rate. At the top rate, it is 35 percent they are paying. Therefore, those companies are leaving that money overseas.

Well, with our piece of legislation, it is estimated that somewhere between $400 billion and $600 billion will come back to the United States in the next

12 months. That is a huge amount of money and will be a huge boost to the American economy. Our economy is really starting to click on along, and we are really excited about that, but we can do more, and that is what we want to do. We can put more people to work with our bill.

Independent estimates by Allen Sinai, a well-respected economist, well respected by Democrats and Republicans, said this bill will create 660,000 jobs in the United States. Frankly, the amendment by Senator BREAUX and Senator FEINSTEIN will gut this amendment. It is a poison pill. So we are encouraging all of our Senators to vote against it.

There are some important uses of funds for job creation that Senator BREAUX's amendment would stop the money from being used for.

Those legitimate uses of funds include improving health insurance for employees and preventing investing in new small businesses. They could buy a new jet under the Breaux amendment, but they couldn't pay for employees' travel expenses. This amendment makes no sense, and that is why we should vote it down.

The Senator from Louisiana is against the underlying bill. He is against the approach we took last year. He voted against it. This is his effort to try to gut underlying legislation. That is why we are encouraging all Senators, the 75 who voted for our legislation last year, to vote against this amendment to make sure that $400 to $600 billion does come back to the United States and helps American workers get jobs.

Every night we hear on television about outsourcing. This underlying bill is about insourcing. We are bringing jobs back to the United States, and we should do that.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, I thank my colleague from Nevada. He worked so hard and long on this underlying part of the JOBS bill, called the Invest in USA Act, because it is going to create, as my colleague said, according to independent analysts, 660,000 new jobs. Why would we want to ruin a provision people from all parts of the economic spectrum have told us is going to work? We want to try this for 1 year. We want to bring back monies that are parked overseas and tax them at 5.25 percent, because right now we are not getting any revenues. It is going to mean $4 billion into the Treasury right away, something we desperately need. It is going to mean, as my colleague says, insourcing, creating jobs here.

Last year the Senate voted 75 to 25 for the Ensign-Boxer bill. At that time Senator BREAUX was very honest about it. He didn't like it then. He doesn't like it now. But instead of objecting to it flat out, he is offering an amendment that in essence kills the whole idea.

I urge my colleagues, if you care about job creation—and I know you all do—please support us and defeat the Breaux amendment. In my State alone we are looking at 75,000 jobs.

Senator BREAUX is a very effective debater. He says: You are creating another Enron scandal. What is going to happen to this money? They are going to say they are using it for jobs, but there is no penalty in place.

The same penalty is in place as in the IRS Code. The CEO is going to sign the plan. And if they don't do the plan, they are in for trouble. That is clear. This is not some plan that is going to be hatched in some accountant's office. It is right out there above the CEO's signature.

I hope we defeat this and move on. It is a good underlying bill. Let's keep it as it is.

The PRESIDING OFFICER. Who yields time?

The Senator from Louisiana.

Mr. BREAUX. I understand there is 1 minute for the proponents of the Breaux-Feinstein amendment.

The PRESIDING OFFICER. There is 1½ minutes of debate time on the Graham amendment. Under the previous order, at the conclusion of debate on the Graham amendment, a vote will occur on the Breaux amendment, preceded by 2 minutes of debate equally divided.

Mr. BREAUX. Regular order, Mr. President.

The PRESIDING OFFICER. Is there objection to yielding back the remaining balance of 1 minute on the Graham amendment?

Without objection, time is yielded back.

Under the previous order, a vote will now occur on the Breaux amendment, preceded by 2 minutes of debate equally divided. The Senator from Louisiana.

Mr. BREAUX. Mr. President, it is interesting that the authors, the Senators who oppose the amendment, say the bill is going to create 660,000 jobs. If it is going to create 660,000 jobs, there is no problem. The people would be able to bring the money back and pay 5 percent. The Breaux-Feinstein amendment simply says if companies are going to get a huge, enormous tax break by bringing money out of tax shelters in foreign countries and saying they want to use it for job creation, fine. Let's make sure that is what it is used for. Let's have a standard by which if more jobs are created, they get 5 percent. But if they don't create more jobs, if they don't spend it for that purpose, they are not going to get the 5-percent tax break. That is all it says.

It says, if you spend the money to create more jobs, you can bring it back at a 5-percent tax rate, and we will allow that to happen. But if you use it for something else, you will not get a 5-percent tax rate. You will pay the regular corporate rate like any other American corporation. Without my amendment, this costs $3.7 billion to the American taxpayer.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. SMITH. Mr. President, this is a simple choice for our colleagues. It is either vote for jobs or vote to limit the number of jobs we have the potential to create. By independent studies, this inclusion, repatriation in the JOBS bill, will create 660,000 jobs. It will reduce the deficit by $75 billion over 5 years, and it will bring to each of our local economies new energy. The choice is to leave it offshore, doing little good for the American people, or to bring it here, to give companies for 1 year the chance that a walk-back with their capital will reemploy the American people and allow them to compete with other multinational companies from other nations, which nations allow them that kind of privilege. We are saying, let them do it for 1 year and we will create 660,000 jobs.

The PRESIDING OFFICER. Under the previous order, the question is on agreeing to amendment No. 3117.

Mr. BREAUX. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second. The clerk will call the roll.

The bill clerk called the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 31, nays 68, as follows:

[Rollcall Vote No. 81 Leg.]

YEAS—31

Akaka	Durbin	Leahy
Bingaman	Edwards	Levin
Breaux	Feingold	Lieberman
Byrd	Feinstein	Mikulski
Carper	Graham (FL)	Nelson (FL)
Clinton	Harkin	Nickles
Conrad	Inouye	Reed
Daschle	Johnson	Rockefeller
Dayton	Kennedy	Sarbanes
Dodd	Kohl	
Dorgan	Landrieu	

NAYS—68

Alexander	DeWine	Miller
Allard	Dole	Murkowski
Allen	Domenici	Murray
Baucus	Ensign	Nelson (NE)
Bayh	Enzi	Pryor
Bennett	Fitzgerald	Reid
Biden	Frist	Roberts
Bond	Graham (SC)	Santorum
Boxer	Grassley	Schumer
Brownback	Gregg	Sessions
Bunning	Hagel	Shelby
Burns	Hatch	Smith
Campbell	Hollings	Snowe
Cantwell	Hutchison	Specter
Chafee	Inhofe	Stabenow
Chambliss	Jeffords	Stevens
Cochran	Kyl	Sununu
Coleman	Lautenberg	Talent
Collins	Lincoln	Thomas
Cornyn	Lott	Voinovich
Corzine	Lugar	Warner
Craig	McCain	Wyden
Crapo	McConnell	

NOT VOTING—1

Kerry

The amendment (No. 3117) was rejected.

Mrs. BOXER. Mr. President, I move to reconsider the vote.

Mr. BAUCUS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3112

The PRESIDING OFFICER. Under the previous order, there will now be a vote on the Graham amendment preceded by 2 minutes equally divided.

Mr. GRAHAM of Florida. I ask for a recorded vote.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM of Florida. Mr. President, there are two basic issues addressed in this amendment.

First, there are substantial changes in the international tax provisions in this legislation. They are going to cost American taxpayers $37 billion, and the reason is because we are adding to the already significant incentive for American firms to take their jobs overseas.

Second, we are going to spend $65 billion to give a blank check to American manufacturing firms in the form of a tax deduction. The amendment would substitute and add $35 billion so we would have $100 billion to be given in the form of a credit against the payroll tax to reduce the form of tax, which is the greatest disincentive to the creation and maintenance of jobs in the United States.

This is an amendment which truly justifies the title of this bill, JOBS, and would add the phrase ''in America.''

The PRESIDING OFFICER. The Senator's time has expired.

Who yields time in opposition? Is there objection to time being yielded back?

Without objection, it is so ordered. All time is yielded back. The yeas and nays have been ordered.

The question is on agreeing to amendment No. 3112.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 22, nays 77, as follows:

[Rollcall Vote No. 82 Leg.]

YEAS—22

Akaka	Graham (FL)	Mikulski
Byrd	Harkin	Nelson (FL)
Clinton	Hollings	Reed
Dayton	Inouye	Reid
Dodd	Kennedy	Rockefeller
Durbin	Landrieu	Sarbanes
Edwards	Lautenberg	
Feingold	Levin	

NAYS—77

Alexander	Baucus	Biden
Allard	Bayh	Bingaman
Allen	Bennett	Bond
Boxer	Ensign	Miller
Breaux	Enzi	Murkowski
Brownback	Feinstein	Murray
Bunning	Fitzgerald	Nelson (NE)
Burns	Frist	Nickles
Campbell	Graham (SC)	Pryor
Cantwell	Grassley	Roberts
Carper	Gregg	Santorum
Chafee	Hagel	Schumer
Chambliss	Hatch	Sessions
Cochran	Hutchison	Shelby
Coleman	Inhofe	Smith
Collins	Jeffords	Snowe
Conrad	Johnson	Specter
Cornyn	Kohl	Stabenow
Corzine	Kyl	Stevens
Craig	Leahy	Sununu
Crapo	Lieberman	Talent
Daschle	Lincoln	Thomas
DeWine	Lott	Voinovich
Dole	Lugar	Warner
Domenici	McCain	Wyden
Dorgan	McConnell	

NOT VOTING—1

Kerry

The amendment (No. 3112) was rejected.

Mr. REID. I move to reconsider the vote.

Mr. DORGAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that there now be an hour equally divided between the two managers or their designees; provided further that following the use or yielding back of time, the Senate proceed to vote in relation to the Dorgan amendment No. 3110, to be followed by a vote in relation to the Allard amendment No. 3118, with no amendments in order to either amendment prior to the votes.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Mr. President, reserving the right to object, and I will not object, I have spoken to the managers—well, not actually the managers of the bill—but I have spoken to the majority side. Prior to this kicking in, this unanimous consent agreement, I ask unanimous consent that the Senator from Vermont be recognized for 5 minutes as in morning business, and, of course, the same time accorded to the majority.

The PRESIDING OFFICER. Is there objection to that modification?

Without objection, the modified request is agreed to.

The Senator from Nevada.

Mr. REID. Mr. President, on the time we have, 20 minutes of that would go to Senator DORGAN.

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

The Senator from North Dakota is recognized.

Mr. DORGAN. Mr. President, parliamentary inquiry: How much time was required on the last recorded vote?

The PRESIDING OFFICER. Approximately 30 minutes.

Under the previous order, the Senator from Vermont is recognized for 5 minutes.

Mr. LEAHY. Mr. President, I thank my friends, the Senator from Kentucky and the Senator from Nevada, for their courtesy.

ABUSE OF PRISONERS IN U.S. MILITARY CUSTODY

Mr. President, as an American, as a former prosecutor, as a U.S. Senator who has spoken out in defense of human rights wherever they are violated, and as the ranking member of the Foreign Operations Subcommittee that has appropriated hundreds of millions of dollars to promote respect for the rule of law in countries around the world, I was outraged and disgusted by the reports of abuse of Iraqi prisoners by United State military personnel and the civilian contractors working with them.

Not only has this caused serious harm, both physical and psychological, to the individuals who were subjected to this mistreatment, it has tarnished the reputation of all Americans and our Nation as a whole.

I have listened as top officials at the Department of Defense, the National Security Advisor, the Secretary of State, and other administration officials, have said they were ''shocked'' and ''stunned'' by these reports. And I have heard them, in a coordinated attempt at damage control, say that these were isolated incidents involving only a handful of individuals whose conduct, while reprehensible, should not be seen as indicative of a larger failure.

I have no doubt that the vast majority of American men and women who are risking their lives in Iraq, Afghanistan, and elsewhere are as disgusted by these abhorrent acts as the rest of us. But I could not disagree more with those who would characterize these incidents as aberrations.

While President Bush, Secretary Rumsfeld, General Myers, Secretary Powell and Condoleezza Rice, may have been shocked by the photographs that have been on the front page of every newspaper in the world, they should not have been surprised by the revelations themselves. These types of abuses have been going on at U.S. military detention facilities for a long time, and the administration has known about the incidents in Iraq for 5 months. This fact signals a failure of leadership at several levels.

The mistreatment of prisoners by the U.S. military in Iraq was not limited to the crimes that have come to light at the Abu Ghraib prison. Rather, there was, in the words of the U.S. Army's own inquiry, a ''systemic and illegal abuse of detainees.''

It is revealing, and particularly disturbing, that the U.S. personnel involved conducted themselves so openly, even posing with the victims of their sadistic acts.

They obviously felt they had no reason to believe that their superiors would be upset with their conduct.

The brazenness of these acts, the reported role of U.S. intelligence officers in encouraging such treatment to ''soften up'' detainees for interrogations, combined with earlier reports of

similar abuses in Iraq and Afghanistan, suggests a much larger failure.

And let us be clear. We are not talking only about the individuals who engaged in these abusive acts.

We are talking about a failure of leadership by an administration that, well before this latest scandal, had already severely damaged this Nation's reputation and effectiveness in a war against terrorism that is increasingly perceived by Muslims around the world as a war against Islam itself.

The growing anger and hostility toward our troops has been exploited by Saddam loyalists and extremists who want to take the country backward. They have committed despicable acts of violence against Americans, including the desecration of corpses.

The acts described in the investigative report by MG Antonio Taguba, including beatings, repeated sexual abuse and humiliation, and threats and simulation of rape and of torture by electric shock, violate the Geneva Conventions.

They clearly contradict President Bush's pledge on June 26, 2003, that the United States will neither ''torture'' terrorist suspects, nor use ''cruel and unusual'' treatment to interrogate them. They also contradict the more detailed policy on interrogations outlined in a June 25, 2003, letter to me by Defense Department General Counsel William Haynes.

Frankly, I regret to say that I was not among those who were shocked by these revelations. Revolted, yes. Shocked, I was not. I have been concerned, as have others, about ongoing reports of physical and psychological abuse and the denial of rights of detainees in U.S. military custody since September 11, 2001, not only in Iraq but in Afghanistan and Guantanamo.

These abuses have been well documented by reputable human rights organizations, as well as by members of the press. Some of the cases involve allegations of torture or cruel, inhuman and degrading treatment by U.S. military and intelligence personnel.

Other cases involve allegations of the denial of due process, incommunicado detention without charge, and the refusal of access to attorneys.

So when I hear the National Security Advisor, or the Secretary of Defense, say they are determined to get to the bottom of this, I, frankly, have to wonder, especially as they have known about this for a long time.

I first wrote to National Security Advisor Rice a year ago about reports of cruel and degrading treatment of Afghan detainees.

I have written several times to the general counsel of the Department of Defense and to the Director of the CIA. I have sought answers to questions about policy, training, and accountability. Some of my questions have been answered; many have been ignored despite repeated requests.

Were Secretary Rumsfeld or Condoleezza Rice not aware of the press reports, the inquiries by Members of Congress, or the reports of human rights organizations?

Or was the abuse of nameless, non-White Muslims suspected of being terrorists, regardless of whether they were guilty or innocent, simply a low priority until it became a public relations and foreign policy disaster?

Let me cite just a few, of many, examples:

On December 25, 2002, the Washington Post reported:

> ''If you don't violate someone's human rights some of the time, you probably aren't doing your job,'' said one official who has supervised the capture and transfer of accused terrorists. ''I don't think we want to be promoting a view of zero tolerance on this.''

Quote:

> Bush Administration officials said the CIA, in practice, is using a narrow definition of what counts as ''knowing'' that a suspect has been tortured. ''If we're not there in the room, who is to say?'' said one official conversant with recent reports . . . .

One can only wonder if anyone would have been punished, or if we would have even heard about it, if the photographs of the abuses at Abu Ghraib had not been published.

On March 4, 2003, the New York Times described the treatment of Afghan prisoners at the Bagram Air Base after two young prisoners died in U.S. military custody.

Their deaths were ruled homicides, but the investigations of those deaths have never been released. Other prisoners described being forced to stand naked in a cold room for 10 days without interruption, with their arms raised and chained to the ceiling and their swollen ankles shackled.

They also said they were denied sleep for days and forced to wear hoods that cut off the supply of oxygen.

That same day, the Wall Street Journal reported that a U.S. law enforcement official said:

> because the [Convention Against Torture] has no enforcement mechanism, as a practical matter, ''you're only limited by your imagination.''

On March 9, 2003, the New York Times reported:

> Intelligence officials . . . acknowledged that some suspects had been turned over to security services in countries known to employ torture.

On June 2, 2003, when allegations of possible breaches of the Convention Against Torture surfaced, I wrote to National Security Advisor Rice, asking for assurance that the United States is complying with its obligations under the convention. I received a response from General Counsel Haynes. His letter contained a welcome commitment by the administration that it is the policy of the United States to comply with all of its legal obligations under the convention.

Similarly, Senator SPECTER wrote to Dr. Rice asking for ''clarification about numerous stories concerning alleged mistreatment of enemy combatants in U.S. custody,'' and to explain how the administration ensures that torture does not occur when it sends detainees to countries that are known to practice torture.

On September 9, 2003, I wrote to Mr. Haynes again for clarification on a number of points, such as how the administration reconciled his statement of policy with reports that detainees were sent to countries where torture is practiced, and the reported use of interrogation techniques rising to or near the level of torture.

After 2 months with no response, another letter, this one not from Mr. Haynes himself but from a subordinate, was delivered late at night on the eve of Mr. Haynes' November 19, 2003, confirmation hearing for a seat on the Fourth Circuit Court of Appeals. That letter was totally unresponsive to my questions.

I also raised concerns when the case surfaced of a Canadian-Syrian citizen, Maher Arar, who was sent by U.S. authorities to Syria, where Arar says he was physically tortured. Syria has a well-documented history of torture. In fact, President Bush stated, on November 7, 2003, that Syria has left ''a legacy of torture, oppression, misery, and ruin'' to its people.

I wrote to FBI Director Mueller on November 17, 2003, for more information on the case. Later that week, I wrote to Attorney General Ashcroft with additional questions. Neither of these letters from last year has been answered.

On January 6, 2004, Human Rights Watch wrote to Secretary Rumsfeld to express concern about the detention by U.S. forces in Iraq of innocent, close relatives of a wanted person in order to compel the person to surrender, which amounts to hostage-taking, classified as a war crime under the Geneva Conventions.

On January 13, 2004, the Asian Wall Street Journal reported that a suspect detained by U.S. forces in Iraq said that ''he was ordered to stand upright until he collapsed after 13 hours,'' and that interrogators, ''burned his arm with a cigarette.''

On January 18, 2004, the Sunday Times of London reported that a detainee held by coalition forces in Iraq said that during his 3 months in detention he was, ''beaten frequently, given shocks with an electric cattle prod and had one of his toenails [torn] off.''

Throughout this period there were not only continuous press reports of abuses of Afghan, Iraqi, and other detainees in U.S. military custody. There were also repeated requests by human rights organizations, myself, and others, for clarification of the policies and procedures used in interrogations. What we got, it seems, were, at best, reassuring statements by officials in Washington that were repeatedly ignored in the field.

Several things bother me beyond the reports themselves. Not only is there a long pattern of abuse that has been documented. But with respect to the

allegations at Abu Ghraib, Secretary Rumsfeld and General Myers knew of these incidents and for over a week they not only did not disclose them to the Congress or the American people, they urged CBS News not to broadcast the photographs.

Major General Taguba's report was written 3 months ago, and as of yesterday Secretary Rumsfeld said he still had not read it through.

There has been an appalling lack of appreciation or concern for the seriousness and frequency of these incidents.

None of us believes that prisoners of war, some of whom are suspected of having killed or attempted to kill Americans, should be rewarded with comforts. Harsh treatment may, at times, be justified. But we also know that many of the people who have been detained, who have been depicted as terrorists and whose rights have been violated, have turned out to be innocent of any crime.

The use of torture or the inhuman or degrading treatment of prisoners, whoever they are, is beneath this Nation. It is also illegal. That is the law whether U.S. military officers engage in such conduct themselves, or they turn over prisoners to the government agents of another country where torture is commonly used, in order to let others do the dirty work. It is also the law when contractors or subcontractors of the U.S. military are involved.

It undermines our reputation as a nation of laws, it hurts our credibility with other nations, and it invites others to use similar tactics against our troops and other Americans.

Torture is routinely used today in dozens of countries. In fact, some of those who have complained the loudest about the abuses at Abu Ghraib are among the world's worst violators of human rights. Their mistreatment of prisoners is flagrant, it is pervasive, and it is a matter of state policy.

So I am cognizant of the hypocrisy of some of those who have equated the U.S. military with Saddam Hussein's regime, which tortured and murdered hundreds of thousands of people. Nothing could be further from the truth. But that does not detract from the fact that the Bush administration's response to the pattern of reports of abuse of detainees has been woefully inadequate.

It has been negligent, and innocent people have suffered and some quite possibly have died as a result. This negligence is anything but benign in the damage it threatens to our national security and foreign policy interests, at a particularly dangerous time.

What should be done? Human rights groups have suggested a number of important actions which I believe are long overdue. The administration should undertake an investigation of the interrogation practices wherever detainees are held around the world, whether the facilities are run by the U.S. military or the Central Intelligence Agency, and make the results public.

The administration should prosecute any military or intelligence personnel found to have engaged in or encouraged any acts amounting to torture or inhuman treatment. Administrative penalties are inadequate. There needs to be a clear signal that these abuses will not be tolerated.

The administration should ensure that all interrogators working for the United States, whether employees of the military, intelligence agencies, or private contractors, understand and abide by specific guidelines consistent with the policy outlined by General Counsel Haynes last year, which prohibited interrogation methods abroad that would be barred in the United States by the U.S. Constitution as well as by the Geneva Conventions. These guidelines should be publicly available.

The administration should grant the International Committee of the Red Cross access to all detainees held by the United States in the campaign against terrorism throughout the world, whether held in facilities run by the U.S. military or intelligence services, or held by other governments at the behest of the United States. The United States should not be operating undisclosed detention facilities to which no independent monitors have access.

The administration should make public information about who is detained by occupation forces in Iraq and Afghanistan, and why, and enable families of detainees to visit their relatives. Even with internal safeguards, incommunicado detention is an invitation to abuse.

The administration should videotape all interrogations and other interaction with detainees so responsible personnel know there will be a record of any abuses. These videotapes should be regularly reviewed by supervisory personnel to ensure full compliance with interrogation and detention standards in U.S. and international law.

The administration should release the results of the investigation the Defense Department conducted into deaths in custody of two detainees held at Bagram Air Base in Afghanistan.

The administration should ensure that private contractors working for the United States in military or intelligence roles operate under clear, legal procedures so they can be held criminally responsible for complicity in illegal acts. Under the Military Extraterritorial Jurisdiction Act, which I worked with Senators SESSIONS and DEWINE to enact in the 106th Congress, a contractor or subcontractor of the military can be prosecuted in Federal court if the crime of which he is accused is a felony when committed in the United States.

The administration should take responsibility and be accountable for the breakdown of civilian control and loss of lawful authority.

Mr. President, 2½ years ago, shortly after 2,986 people of some 60 nationalities died in the attacks on the World Trade Center, on the Pentagon, and in a lonely field in Pennsylvania, there were expressions of sympathy and good will toward our country unlike any we had experienced since the end of the Second World War.

I remember how the cover of the French newspaper, Le Monde, proclaimed ''Today, We Are All Americans.'' The National Anthem was played at Buckingham Palace.

Today, that sympathy and good will, which offered such promise, has long since dissipated. In fact, it has been squandered. Squandered by an administration blinded by arrogance, steeped in condescension, prone to distortions of the truth, motivated by simplistic notions of ''good versus evil,'' and having only the most rudimentary understanding of the Iraqi people, their culture, their faith and traditions.

While we are continually treated with rosy assertions that things are getting better, the number of U.S. casualties soars.

What was conceived as a campaign against terrorism, focused on al-Qaida, is increasingly perceived by many of the world's 1.2 billion Muslims as a war of aggression against Islam by the United States and our predominantly Christian allies.

I have no doubt that most Iraqis are relieved to be rid of Saddam Hussein and the horrors of his regime. Most Iraqis abhor violence and want to rebuild their country.

Nor should there be any doubt about our concern for the safety of the overwhelming majority of American soldiers and civilians whose motives are honorable and who are bravely risking their lives.

But the individuals at Abu Ghraib prison, at Bagram Air Base, and elsewhere who have violated the rights of prisoners, were not acting in a vacuum. There was a culture that encouraged or allowed it. Discipline was lacking. Accountability was lacking. And just as those who committed these crimes should be prosecuted, the civilian and military officials who failed in their responsibility to ensure that the law was respected should also be held accountable.

Mr. President, I ask unanimous consent that a May 4, 2004, op-ed in the Washington Post by Leonard S. Rubenstein, executive director of Physicians for Human Rights, entitled, ''Stopping the Abuse of Detainees,'' be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, May 4, 2004]

STOPPING THE ABUSE OF DETAINEES

(By Leonard S. Rubenstein)

Photographs of American soldiers laughing over naked Iraqi prisoners of war piled atop one another are a revolting disgrace, all the more so because evidence of torture and ill treatment of individuals detained by U.S.

forces in Afghanistan, Iraq and Guantanamo Bay, Cuba, is not new. The humiliating acts seen in photos may not have been predictable, but the abuse of detainees was, a product of the circumstances of detention and the administration's resistance to independent monitoring and accountability. Stopping it requires a great deal more than the prosecution of a handful of offenders.

The problem is that the main purpose of these military detentions is interrogation, a practice that always has potential for abuse. Preventing abuse requires compliance with rules for treatment of prisoners, as well as access for independent monitors and accountability for violators. But many detainees in Afghanistan and Iraq have been held virtually incommunicado, sometimes in undisclosed locations, under rules that have never been made public. As early as 2002, news reports of abuse or prisoners began to surface, and new allegations have continued to emerge.

The administration's response has been to stonewall. A year ago, in response to the first set of allegations of abuse of detainees, President Bush affirmed that the United States does not practice or condone torture or cruel, inhuman and degrading treatment, and that it investigates allegations of violations. But the actions needed to convert this from a statement to a commitment have been absent. For the past two years, human rights organizations have requested the guidelines used to govern interrogation, the results of investigations of alleged instances of torture or mistreatment, information on individuals transferred to third countries for interrogation, and—most important—access to the detainees and their medical records to ascertain whether they have been abused. The administration either denied or failed even to acknowledge many of these requests, including those concerning findings of the investigation of the case of two detainees who died in custody more than a year ago. As for combatants sent to third countries, among them countries with a record of torture, the administration claimed to have obtained assurances that the countries do not torture detained combatants.

An even deeper problem with the administration's approach has been its efforts to evade compliance with the Geneva Conventions, which protect detainees from torture, ill treatment and humiliation, as well as inhuman conditions of confinement. It has said that captured al Qaeda suspects in captivity at Guantanamo and Afghanistan are not subject to the conventions at all. And U.S. officials took a shockingly casual approach to the treatment of POWs by U.S. surrogates in Afghanistan, assuming no responsibility for the horrific conditions of imprisonment for thousands of Taliban fighters and washing U.S. hands of reports that allies killed possibly hundreds or thousands of detainees. Some of the holding centers are even off-limits to the International Committee of the Red Cross, which is internationally authorized to visit all security detainees.

The president, the director of the CIA and the secretary of defense must now do what should have been done 18 months ago. The message has to be clear that interrogators must be subject to rules, and if the rules are to be obeyed, the door to the interrogation room must never be shut. They should publicly pledge that the United States is bound by the Geneva Conventions and will be bound by them with respect to every single military detainee, whether or not it considers them official prisoners of war. They should immediately account for the whereabouts and condition of all in detention and offer the International Committee of the Red Cross, as well as independent human rights monitors and medical experts, full access to all prisoners and all medical records that can reveal abuse. The president should provide to the American public a full accounting of interrogation practices, including all records and documents relating to the most recent violations and past allegations of abuse in Afghanistan, Iraq, Guantanamo, the United States and other countries where individuals have been sent.

When some Americans insulted and humiliated their Iraqi captives, they shamed every American as well. Moreover, they jeopardized the lives and well-being of U.S. soldiers and people in custody throughout the world. President Bush recoiled at the horror of it, but unless revulsion leads to more concerted action, the abuses will continue.

AMENDMENT NO. 3110

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. My understanding is that we are now turning to the amendment I have offered along with my colleague, Senator MIKULSKI; is that correct?

The PRESIDING OFFICER. Under the previous order, there is a period of 1 hour of debate, 30 minutes allocated to the majority, 30 minutes allocated to the minority, of which 20 minutes is controlled by the Senator from North Dakota.

Mr. DORGAN. Mr. President, that 20 minutes begins at this point. Let me yield myself 2 minutes. Then I will yield 5 minutes to the Senator from Maryland.

Let me just say, this is the easiest amendment to consider of all of the issues that we have dealt with on this legislation. It deals with the question of whether we should shut down the loophole that exists in current tax law that says to a company, shut your American manufacturing plant down, fire your workers, move your manufacturing plant overseas, manufacture the product, ship it back into the U.S. marketplace and, by the way, we will give you a big tax break. If we can't begin a baby step in the right direction of saying, we will no longer subsidize in the Tax Code the movement of U.S. jobs overseas, then we don't have a ghost of a chance of fixing what is wrong with this Tax Code.

You have two companies side by side. Both make bicycles. One decides it will move its plant to China. The other continues to live in Baltimore and make its bicycles in Baltimore. The difference? The company that moved overseas gets a tax break. The company that stays in Baltimore doesn't. It is an insidious, perverse tax incentive that makes no sense. We ought to end it.

That is what my colleague and I do with our amendment. I will explain it further at some later moment. I want to offer 5 minutes to the Senator from Maryland who has to go to the Intelligence Committee.

The PRESIDING OFFICER. The Senator from Maryland is recognized for 5 minutes.

Ms. MIKULSKI. Mr. President, I thank the Senator from North Dakota, the lead sponsor of this amendment, for yielding me such time. I also acknowledge his outstanding leadership on trade. Trade is such an abstract word, but it is another word for jobs. The big question is, how are we going to keep jobs in the United States?

This, then, takes us to tax policy. Tax policy is more than just simply collecting revenue; tax policy is a statement of our principles. The Tax Code in the United States has, since the New Deal, stood for certain principles: That it should be fair, No. 1, and that the more wealthy you are, you would bear a little heavier responsibility. Part of the principle of fairness and of paying taxes is what is called citizenship. It is called shared responsibility. It is called, how do you make sure the U.S. Government functions to provide national security and domestic opportunity and a safety net for seniors. That is really what it is all about.

The Tax Code is the fundamental principle of how you collect revenue, and it is tied with citizenship, both individual citizenship and corporate citizenship. The way we see it is: If you are a good corporate citizen, you ought to stay in this country and keep your jobs here. Right now we have a tax code that rewards just the opposite. We have a tax code that rewards corporations for shipping jobs overseas.

I believe what the Dorgan-Mikulski amendment does is say that, No. 1, our Tax Code should be patriotic. Our Tax Code should stand up for America. It should stand up for keeping jobs here. It should stand up for rewarding good-guy companies that keep jobs here and provide health benefits to their employees. It should also close the loophole where people not only take jobs overseas but hide their income in the Bermuda Triangle or the Cayman Islands.

This deals with one aspect. The amendment Senator DORGAN and I offer, the economic patriotism amendment, says that right now what we would do is close the loophole for sending jobs overseas. The Dorgan-Mikulski amendment ends those huge tax breaks to manufacturing companies that send jobs overseas, that only sell the products they make back here in the United States. Right now this Tax Code lets these companies move the jobs and not pay the taxes on the profits they earn by sales back home.

Our amendment tells these companies: If you want to export jobs out of America, you can go, but you can't import these products back in the United States and be able to shelter your profits. Our amendment says: The Tax Code can no longer be used to boost corporate earnings at the expense of American workers. It is actually an amendment that makes good sense. Why should we reward people who move their jobs overseas and penalize in the Tax Code the people who keep their jobs here in the United States and who also tend to provide their employees with health insurance?

People in my State really cannot believe what is happening. We have lost

21,000 manufacturing jobs since 2001. What a bloodless statistic. Behind every one of those numbers are 21,000 families, 21,000 families that built ships, made steel, made garments and apparel, even made the kind of technology we use in high tech. Where did those jobs go? They went on a slow boat to China. They went on a fast track to Mexico and a dial 1–800 anywhere. Why are they going? Because the Federal Tax Code says it is OK.

The Federal Tax Code says, in fact, it is not only OK, we are going to give you a huge subsidy. I think we need to subsidize the good-guy corporations. That is what I want to do. I believe that the Dorgan-Mikulski amendment is a patriotic amendment. It is part of an economic patriotism that we have to start focusing on in this country. I don't want my country, in a few years, to have the economic profile of a Third World country.

Vote for America, vote for patriotic economics, and vote for Dorgan-Mikulski.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. DORGAN. Mr. President, I yield myself such time as may be necessary.

Again, this is not complicated. Levis used to be American. When you would slip on a pair of Levis in the morning, you were wearing a pair of American pants. Not any longer. The manufacturer of Levis has gone to Mexico and China.

Fig Newtons. If you want some Mexican food, you can get Fig Newtons from Mexico. That old all-American Fig Newton cookie has gone to Mexico.

Fruit of the Loom underwear has gone to Mexico.

I have mentioned previously Huffy bicycles. They have gone to China.

Do you know that little red wagon, the Radio Flyer? This one has gone to China.

The perversity of all of this is, whether it is Fig Newtons, Levis, Radio Flyers, Huffy bicycles, or Fruit of the Loom underwear, they were all rewarded for moving their jobs overseas because our Tax Code has embedded in it a special little deal: Move your jobs overseas and we will give you a special deal.

We want to change that. According to the Joint Tax Committee, U.S. taxpayers will pay $6.5 billion between 2004 and 2013 as tax incentives to U.S. companies that set up offshore subsidiaries to manufacture merchandise and ship it back into this country. We have lost about 2.7 million manufacturing jobs in this country, and we have a perverse provision in the Tax Code that says let's even enhance that by incentivizing those who would close their American factories and move the jobs overseas.

This is not a new idea. This is a rather narrow amendment, by the way. We don't end deferral; we just end deferral with respect to U.S. companies that are manufacturing abroad and selling back into this country. President Kennedy tried to end the entire deferral system. President Nixon tried to end it. President Carter tried to end it. The Senate voted to end it in 1975. The House of Representatives voted to end it in 1987. In each case, the big economic interests that get rewarded for shipping American jobs overseas have won. The question is, will they win today? We are losing jobs. We need to keep jobs in this country.

This amendment doesn't prevent a company that chooses to move Huffy bicycles or the little red wagons to China. It doesn't prevent a company from moving Fig Newton cookies, Fruit of the Loom, or Levis to Mexico. But it does say if you are going to move those jobs, at least we are not going to help pay for it with incentives in the Tax Code. That is a simple enough proposition. This Senate should adopt this amendment.

I reserve my time.

The PRESIDING OFFICER (Mr. CORNYN). The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, I want to speak against the Dorgan amendment. I yield myself such time as I might consume. Before I speak specifically to the amendment, since I heard the Senator from North Dakota express his concerns—and legitimate concerns—about jobs going overseas, I think there might be some suggestion in this amendment that this bill doesn't deal with moving jobs overseas.

This amendment is all about preserving manufacturing jobs in America and creating more manufacturing jobs in America, because the basis for this legislation is that there is no benefit in this bill from the reduction of the corporate tax from 35 percent down to 32 percent for any organization that doesn't manufacture in the United States. So it applies to domestic manufacturers that are manufacturing in the United States, not domestic manufacturers that manufacture overseas. It also applies to companies overseas—foreign companies—that would come to the United States and invest here, create jobs here, and hire people in America to manufacture here.

There is a lot of concern expressed about moving jobs overseas. I don't denigrate any of those concerns. But that is what the debate on this legislation has been all about for 1 whole week during the month of March, a few days during April, and now again this week. During that period of time of stalling, we have had a 5-percent European tax put on our exports to Europe—a percent again in April, and now a third movement of 1 more percent. That is going to go on every month. Even if we pass this bill this very minute, this bill probably won't be signed by the President for another month or so. We are going to continue to have this terrible European tax put on our exports there.

I emphasize for listeners who ask, how can they do that? Well, it is legal under international trade agreements. The reason it is legal is because we are trying to change our tax laws to conform with our international agreements—international agreements that this body has already adopted.

So we are dealing with these amendments—probably very legitimate ones—but we have had amendments put before this bill that have kept this bill long enough on the agenda so that we are already 77 percent less competitive than we used to be with our global competition doing business in Europe.

So why are we here? We are here with this underlying piece of legislation to preserve and create more jobs in America.

We have heard the Senator from North Dakota make a very impassioned case for American workers whose jobs have been lost when U.S. plants move overseas. We have all witnessed this heart-wrenching event. I know that my home State of Iowa has had plant closings or some parts of production move overseas. Unfortunately, this amendment will not do one doggone thing to bring those jobs back. In fact, it could very well cost even more U.S. jobs.

I will explain my concerns by first examining his amendment. This amendment repeals deferral for property imported into the U.S. by foreign subsidiaries of U.S. companies, even without regard to whether that property was ever previously produced, manufactured, or grown in the United States. This means the amendment doesn't focus on their primary complaint that U.S. companies are shutting their plants, moving production offshore, and selling back into the United States.

The bill does not focus on this scenario. Instead, it overshoots the mark by hitting all goods sold into the United States by U.S. companies, even if it is impossible for those goods to first be produced in the United States.

I will give an example. If a produce company sets up a banana farm in Costa Rica to import bananas into the United States and around the world, the income from sales to the United States are not eligible for deferral. I may be mistaken, but I am not aware of too many banana farmers in Texas or Florida. So I do not see how deferring taxes on a banana farm in Costa Rica is going to cost the United States jobs.

Similarly, if a U.S. company wanted to start a mining operation in some far away land to extract a new and exotic mineral that is not found here at home, they can sell that anywhere in the world, but they could not and cannot import that back into the United States without triggering this amendment.

How about coffee? The only place I know we grow coffee in the United States is in Hawaii, and that was 25 years ago. Maybe they do not even grow it there now. We have lots of coffee shops on our streets these days. If they set up their own coffee plantation

in Brazil, they would get hit under this amendment that is before us. I do not know whether we raise coffee anywhere else in the United States, but we sure do not raise it in Iowa.

It appears the amendment of Senator DORGAN and Senator MIKULSKI would allow a U.S. company to sell foreign goods to anyone in the world except to America. That does not make sense to me.

I have described how the bill would operate, but I do not think that is the intent of this legislation. What I believe is intended is that deferrals should be denied if a company closes a U.S. plant, produces the goods offshore, and then imports the goods back into the United States. This does not actually happen very often. The latest Department of Commerce data on U.S. multinationals shows that only 7 percent of foreign subsidiary sales were into the United States.

Nevertheless, this amendment insists that the rule of deferral in our tax law is somehow a tax benefit that moves jobs offshore and allows a company to not pay taxes on foreign income.

Of course, this is not true. Deferral has nothing to do with moving jobs, and it never forgives taxes that are owed on foreign products of U.S. companies. The rule of deferral exists to keep U.S. companies competitive in the global marketplace. Let me repeat. The rule of deferral exists to keep U.S. companies competitive in the global marketplace, and it has been that way in our tax laws since 1918. For 85 years it has been the law.

We are going to hear a great deal about deferrals this week. We will hear wild accusations about how this rule, which has been in place since 1918, spells doom for American workers. None of this is true. In fact, just the opposite is true. By enhancing the international competitiveness of U.S. companies, deferral ensures an ever-growing base of opportunity for U.S. companies and their employees at home and abroad.

U.S. multinationals are a critical component of our economy. These companies operate in virtually every industry and have investments of more than $13 trillion in facilities located across our great country.

As employers, they provided 23 million jobs for Americans in 2001, nearly 18 percent of the payrolls in the country. With a payroll in excess of $1.1 trillion, U.S. multinationals create more than 53 percent of the manufacturing jobs in America and employ more than two U.S. employees for every foreign worker.

During the 10 years between 1991 and 2001, U.S. multinationals increased domestic employment at a faster rate than the overall economy. We have a recent study confirming that U.S. multinationals are significant job creators, and those jobs are not created through exporting jobs to foreign nations with low labor and low tax costs, as the amendment infers.

The Department of Commerce data shows that the bulk of U.S. investment abroad occurred in high-income, high-wage countries. In the year 2001, 79 percent of the foreign assets and 67 percent of foreign employment of U.S. multinationals were located in high-income, developed nations, such as Australia, Canada, Hong Kong, Japan, New Zealand, Singapore, South Africa, and the countries of the European Union.

We have to remind ourselves that corporations are comprised of people. People like good roads, safe water, reliable power grids, and stable societies. That is the only kind of environment where business can flourish. So it is only rational that if a U.S. corporation is going to make a foreign investment, it is going to make the safest investment possible. That means going to fully developed countries with thriving markets and highly paid workers.

We also have to remember a simple maxim for why companies go into foreign markets: You have to be there to sell there.

Today, fully 95 percent of the world's population and 80 percent of the purchasing power is located outside the United States. In other words, the United States is 5 percent of the world's population. But if we want to sell, we go where the people are. Ninety-five percent of the people are outside the United States. If you want to make sales, you go where the people are.

We have an instance in which foreign sales growth has outstriped domestic sales growth. So this increased growth requires increased foreign involvement. The good news is foreign growth also results in U.S. job growth.

A recent study confirmed that during the 10 years, 1991 through 2001, for every job U.S. multinationals created abroad, they created nearly two jobs in the United States in their parent corporation. That is why it is critical to our company that U.S. companies remain competitive in this international marketplace.

Let's review for a moment a more rational explanation for deferral and how it works to keep our U.S. companies competitive.

The United States taxes all of the worldwide income of its citizens and corporations. The U.S. income tax applies to all domestic and foreign earnings of U.S. companies. The United States fully taxes income earned overseas by foreign subsidiaries of U.S. companies. However, many foreign countries tax their companies on a territorial basis, meaning they only tax income earned within their country's borders and do not impose tax on the earnings of foreign subsidiaries.

Countries that use a territorial system, such as Australia, Belgium, Canada, Denmark, Finland, France, Germany, Luxembourgian, the Netherlands, Sweden, and Switzerland, among other countries, have a great advantage over a U.S. company.

We have to take that into consideration. The tax system is the cost of operation, and if we do not have a more level playing field for our companies, how do we expect to compete in this world marketplace?

I will give an example. A U.S. company with a Singapore subsidiary will pay U.S. tax and a Singapore tax on the subsidiary's income. A French company with a Singapore subsidiary will pay Singapore tax but not any tax in Paris. That means the U.S. company in Singapore has a higher tax burden than the French company in Singapore. Two basic tax rules answer this problem and seek to put U.S. companies on a level playing field with foreign competitors from territorial countries.

The first rule says when foreign income is brought home, the U.S. allows a reduction against U.S. tax for any foreign tax paid on that income. This foreign tax credit prevents the U.S. from double-taxing foreign earnings. Does anybody believe in double taxing?

In effect, that would make our companies noncompetitive in this international marketplace. Like deferral, this too has been on the tax laws of the United States since 1918. The foreign tax credit is limited. It may only offset up to 35 percent of the U.S. corporate tax. If the foreign tax rate is higher, the credit stops where we stop taxing corporations at 25 percent. If the credit is lower, say 10 percent, then an additional U.S. tax will be owed up to the full 35 percent. In this example, the additional 25 percent of taxes would be owed to the U.S., which is the difference between the 10 percent and our 35-percent top rate.

The second basic tax rule is U.S. companies are allowed to defer U.S. tax on income from the active business operation of a foreign subsidiary until that income is brought back to the United States, and that is usually brought back in the form of a dividend paid to the U.S. parent. This is referred to as the rule of deferral, meaning the U.S. tax is deferred until the earnings are brought back. This is the rule this amendment attacks.

It is important to note deferral is not a forgiveness of a tax. It simply means we impose full U.S. tax tomorrow instead of today. We do not forgive tax under deferral because we do not want to create incentives to move operations offshore. The reason we defer tax on active business operations is so U.S. companies can remain competitive with foreign companies, from those countries that have a territorial tax system.

We do not defer tax on passive activities such as setting up an offshore bank account. We tax passive activities yearly, and active operations are subject to competitive disadvantage. For example, if we impose U.S. tax today on the profits of a Singapore subsidiary, then a U.S. company will pay 35-percent U.S. taxes plus any Singapore taxes, but the French competitor located next door will only pay the Singapore tax and not the Paris tax.

If a Singapore tax rate is less than the 35-percent U.S. tax rate, then the

French competitor will have a tax advantage. This is because the U.S. allows the foreign tax credit offset against U.S. income tax imposed on those foreign earnings but only up to a 35-percent top corporate rate.

If the foreign rate is less than the U.S. 35-percent rate, then residual U.S. taxes are owed on the difference between the U.S. and foreign rates.

In another example, if the Singapore tax is 15 percent and the U.S. tax 35 percent, then the U.S. will impose an additional 20-percent tax on those Singapore earnings. The French company, however, will only pay 15 percent Singapore tax, no tax in Paris.

If we did not allow deferral of that additional 20-percent tax, then the U.S. company today would have to pay 20-percent tax compared to the French company. The question on repealing deferral is whether we want to hand over the world markets to companies from France and Germany.

This amendment is being offered presumably to save jobs in America, but when we have a tax system like they want, there is going to be an incentive for moving those jobs. Repealing deferral means we export our high U.S. tax rates to U.S. operations around the globe.

The U.S. has one of the highest corporate tax rates in the world. There are very few countries with higher marginal corporate rates. This means without deferral, U.S. companies will be at a continual worldwide disadvantage compared to their foreign competitors. That is why we defer U.S. tax on active business operations, to allow U.S. companies to be competitive in the global marketplace.

Some Senators today propose repealing deferral or cutting back. These proposals would export the high U.S. tax rate to U.S. operations around the world. That would be fine if all companies around the world were paying the high U.S. tax rate, but they are not. Companies of foreign countries are not subject to our tax laws and are usually taxed at a lower rate.

That brings us back then to the implications of the amendment before the Senate. Our focus in considering this amendment must be on the ability of American companies to compete within the United States. The issue is not whether we tax foreign earnings currently but whether we cede the U.S. market to foreign competition: You compete or you die.

The Dorgan-Mikulski amendment will increase taxes on U.S. companies, but their foreign competitors in the United States will not face a similar tax increase. This can lead to a loss of domestic market share, or even if market share is maintained losses may be incurred on domestic sales because of pricing pressures and uncompetitive margins created by the additional tax burden.

The best measure of an economic impact of their tax increase is the very concerns Senators DORGAN and MIKULSKI cite in debating their amendment, whether U.S. employment levels of the U.S. companies will drop after this additional tax is imposed. This goes to the issue of whether salespeople, purchasing agents, line workers, or others could lose their jobs if the Dorgan-Mikulski tax increase is imposed on companies' imports.

Keep in mind their amendment would attack imports of bananas from Costa Rica and coffee from Brazil. That is going to cost U.S. jobs. The amendment will kill U.S. jobs and the amendment is defeating its own purpose and should not be supported in the Senate.

If the objective of Senators DORGAN and MIKULSKI is to ensure companies do not reduce U.S. employment by round-tripping production, then it is equally important to ensure their tax increase does not reduce U.S. employment.

Increasing taxes on U.S. companies will not bring those jobs back to America. A company will only pay taxes if the company is profitable, and they will only stay profitable if they remain competitive in their markets. But in the United States, taxes are a 35-percent cost to profit, and that is where a competitiveness disadvantage can occur when the U.S. company is competing against foreign companies that will not incur this tax increase.

Senator BAUCUS and I, in trying to develop this bipartisan bill that is before us, held hearings last July regarding the effects of international competition within the United States. So I think we have a right to believe we are very familiar with the domestic effects of these kinds of rate differentials.

I would like to close with a quote from Joseph Guttentag, International Tax Counsel for the Clinton administration. He gave this testimony before the Senate Finance Committee 9 years ago, July 21, 1995. He said this:

> Current U.S. tax policy generally strikes a reasonable balance between deferral and current taxation in order to ensure that our tax laws do not interfere with the ability of our companies to be competitive with their foreign-based counterparts.

I hope a statement from another administration, particularly from a recent Democratic administration, the Clinton administration, will carry a lot of weight with both Republicans and Democrats in helping to defeat this amendment on which we will soon be voting.

I hope Senators will join me in voting against the job losses that will result from this amendment and this tax increase that comes on American business with this amendment.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I was sitting here wondering how someone would actually support a tax provision that incentivizes the moving of U.S. jobs overseas. I thought: That is hard to support. I am going to call this defense the banana defense because my colleague talked a couple of times now about bananas from, I believe, Costa Rica. So we will call that the banana defense.

I have great respect for my colleague from Iowa. I enjoy his work and I think he is a good legislator. But in my judgment, some of the statements that have just been made are not accurate, and I would like to at least give a response to them so people understand.

First of all, this is not a tax increase. What a bunch of nonsense. This eliminates a tax break for those companies who want to move jobs overseas. This is very simple. If we are going to shut down loopholes that incentivize the moving of jobs overseas and have people call it a tax increase, I am sorry; it is not. That is not the purpose of it, that is not the intention of it, and not the effect of it.

My colleague talks about the 35-percent corporate tax rate. I am sorry, he knows that is a statutory rate. He also knows very few corporations pay a 35-percent tax rate.

Mr. President, 61 percent of the U.S. domestic corporations in this country pay zero—not 5 percent, 20 percent, 30 percent, or 35 percent; they pay zero. That is according to a recent GAO report. The rest that do pay do not pay the 35-percent statutory rate. They pay substantially less than that.

About 40 to 50 years ago, corporations paid 40 percent of the total taxes paid in this country. They now pay less than 9 percent, and the American people, individuals, pick up the rest.

My colleague says this defers taxes; it doesn't mean we forgive taxes. Of course, it does. This very bill brings to the floor of the Senate the most generous provision I have ever heard of. It says repatriate all your earnings from overseas that have never been taxed, and we will let you be taxed at 5.25 percent. You repatriate it and we will reduce your taxes to 5.25 percent. I say how about my constituents in North Dakota? Why don't we give all those constituents—regular people, family farmers—an opportunity to pay a 5-percent tax rate? Why just the folks who decided to invest overseas? Why not everybody? If 5 percent is good enough for those who have over $600 billion in unrepatriated income, and you say bring it back and we will cut your tax rate to 5 percent, let's do it for the folks from Iowa and North Dakota. Let me get their names and let's give them a 5-percent tax rate.

This notion we are not forgiving taxes is wrong. Of course we are forgiving taxes. This bill forgives taxes of those that are big enough to earn billions overseas, and says to them: If you want to repatriate it, we will give you a huge, big tax break.

Let me say with respect to the issue of a company that has never been located here with a manufacturing plant, deciding to manufacture in China versus here—my proposal, and the amendment we have introduced, deals only with sales back into this country. So the question that will be asked by

someone who is building a manufacturing plant for the purpose of producing the little red wagon called the Radio Flyer, for a company to decide where to manufacture this, what the underlying provision in law does is to say: Make a decision. Either build it here or build it there. By the way, if you decide to build it there—in this case China—we will give you a tax break.

My colleague says this bill closes all these things—not true. In fact, it produces a very generous, juicy, big tax break at 5.25 percent, and in addition it leaves untouched this tax break.

I can quote a good number of economists who say there is embedded in this tax law a provision that says build it here or build it there. Make a decision to build it there. Take it offshore. Take it outside this country.

In my judgment, it ought not be a significant choice for this Congress to change this. This is a loophole that ought to be closed.

With respect to competition, my colleague talked about competitiveness. Let me ask this question. Let's assume that you are the corporation that stays in this country to build a bicycle. Your manufacturing plant is here. Now you are competing with the Huffy bicycle company that moved to China. The difference? They pay less in taxes than you do because you stayed here and they left. What about that competitiveness? What about the competitive issue of the company that stayed and now pays higher taxes than the company that left? Incidentally, this company did leave. They fired the workers. Why? Because it cost too much at $11 an hour to have them keep making bicycles in our country.

This cannot be obfuscated so much that we can't see what this question is before the Senate. Do you want to continue to have a Tax Code that incentivizes the movement of jobs overseas, or do you want to close the loophole? This is not an attack on all ''deferral.'' This is a much narrower amendment. The Senate is going to vote on this, and it is not going to be able to waltz around and tap dance. This is not about having an American corporation with a foreign subsidiary in Bangladesh that is producing a product to ship to South Korea, and therefore it must be competitive with a company from France. That has nothing to do with this amendment. So in addition to the banana defense, we now have the French defense, I guess, or the U.S. corporation against French competition. I don't understand that. That is not what this amendment is about. We could debate that at some later point, but it is not what this amendment is about.

Mr. President, how much time is remaining?

The PRESIDING OFFICER. The Senator has 3 minutes remaining.

Mr. DORGAN. I respect those who disagree with me. They have a right to disagree. My colleague ended with a quote from someone from the Clinton administration. Let me quote Will Rogers. He said:

> It's not what they know that bothers me. It's what they say they know for sure that just ain't so.

In this case, this narrow question with respect to deferral simply asks whether we want to continue to make it beneficial for someone to close a plant here and move it elsewhere, or to answer the question, if requested: Should I build it here or build it there, to answer the question by saying let's build it there because our Tax Code provides a benefit for me if I build it there. Move a job to China and our tax bill rewards you. Keep a job here and you actually face unfair competition because of the provision that is now in law, the one I want to get rid of. This is very simple. I reserve the remainder of my time.

Mr. KOHL. Mr. President, I rise in support of the amendment of the Senators from North Dakota and Maryland. I supported this amendment because it repeals an unfair provision that pulls jobs away from the American manufacturing sector. I supported this amendment because it gives a tax break to companies who ship jobs overseas and then compete with domestic manufacturers. And I supported this amendment because Wisconsin has seen a steady decline in manufacturing jobs, with many of these jobs being sent offshore because the U.S. Government would not tax their profits.

Under current law, a U.S. company that moves its manufacturing operations overseas may defer paying U.S. taxes on the profits it makes abroad until those profits are sent back to the U.S. This process, known as deferral, clearly serves as a reward for foreign investment and for shifting jobs off American soil. This reward comes at the cost of American taxpayers; as much as $2.2 billion over 7 years is lost for this misguided incentive. A tax policy that moves American jobs abroad at the expense of American taxpayers—clearly this is not something that Congress should continue to endorse.

In addition to providing an incentive to move overseas, current law puts domestic manufacturers who keep jobs in the U.S. at a competitive disadvantage. While foreign companies can reinvest profits abroad without paying any U.S. taxes, U.S.-based manufacturers investing in American jobs have their profits subject to U.S. taxes. Multinational companies should pay the same taxes that domestic companies pay, and companies keeping jobs in America should not be penalized for doing so.

This is especially true given the continuing job loss in the manufacturing sector. Wisconsin has been especially hard hit by the loss of manufacturing jobs to overseas competitors. My State is one where manufacturing jobs have historically made up the core of our economy. Due in part to tax incentives such as deferral, Wisconsin has lost one out of every seven manufacturing jobs since 2000. The State's economy has not been able to absorb this increase in unemployed workers, resulting in a stagnant unemployment rate.

The Dorgan-Mikulski amendment would repeal the tax incentive for American companies to move overseas. Our Tax Code should not endorse the continued loss of American jobs to companies investing overseas. The Dorgan-Mikulski amendment is the first part of a prolonged solution to the continuing loss of American manufacturing jobs. The amendment would partially repeal deferral, and targets the repeal to apply only to firms that move production overseas but continue to sell those products in the U.S. Thus, the amendment would repeal the competitive advantage that companies moving their production facilities offshore currently receive.

At a time when the country's manufacturers are struggling, we cannot continue to give a benefit for those companies who send American jobs abroad. We must bring equity to the tax code, and bring jobs back to America.

The PRESIDING OFFICER. Who yields time?

Mr. GRASSLEY. Mr. President, I think I have about 3½ minutes. I am going to take 1½ minutes for myself, and then I hope Senator KYL will get over here. He asked me for 2 minutes. Then that would use up our time.

The first reaction to the response to my remarks that I have that I want to clear up is that the author of the amendment speaks to the point that it only hits imports coming into the United States if a company moved overseas. The fact is—it may be a flaw in the way it is written—this amendment hits all imports coming into the United States.

The second point is, it was stated that this was not a tax increase. This amendment raises $6.5 billion. In my judgment, when you change tax law and you bring revenue in, that is a tax increase.

The second issue regarding Huffy moving overseas, the response to that is, their competition is in China and Taiwan. Companies have to do what they can to meet the competition. Would they rather have a Huffy company that existed as a U.S. corporation competing with China and Taiwan manufacturers or would they rather have the whole company go out of business? If you do not meet your competition, you do not compete you die.

Then there was reference to the fact the GAO report says 61 percent of companies did not pay taxes. That could be true. But that also includes new companies and it includes companies that maybe are dormant; in fact, it does include all of those.

Here is the significant thing about this GAO report: It says 96 percent of all large corporations in America pay tax.

We are back to the issue of what this amendment does or does not do. It does not do enough.

I have to ask the Presiding Officer if Senator KYL does not arrive and I have 1 or 2 minutes remaining, what do I do? I want to save the time for him, if I can, under the rules of the Senate.

I yield the floor and save my time for Senator KYL.

Mr. DORGAN. Senator KYL is here.

Mr. GRASSLEY. Mr. President, I don't have much time remaining, 2 minutes.

The PRESIDING OFFICER. The Senator has 30 seconds remaining.

Mr. GRASSLEY. Could the Senator be kind enough to give him an additional minute and a half for our side? That is infinitesimal. We will argue for a minute and a half over it.

Mr. DORGAN. I ask unanimous consent that a minute and a half be added to the Republican side and a minute and a half be added to our side.

Mr. GRASSLEY. I yield Senator KYL my remaining time.

Mr. KYL. I thank the Senator from Iowa and I thank the Senator from North Dakota.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, it seems to me the amendment of the Senator from North Dakota does both too little and too much. A lot of thought went into crafting the bill before the Senate by staff and members on the Finance Committee. It is hard to get this exactly right. We have done that. This is very complicated.

What I mean by doing too little and too much is this: The amendment only affects about 7 percent of the products according to the Commerce Department; 7 percent of the goods and services these multinational corporations produce are imported back into the United States. That is the only part of the new deferral rule that would be affected.

In that sense, it probably does not do much to accomplish the purposes of the authors of the amendment. But it does too much in the sense that anything that impedes the competitive advantage of the U.S. corporations and the quality of their products is going to hurt their ability to do business.

What we have tried to do with the deferral rules is to even the balance between the European corporations, for example, and the American corporations, so our companies are not taxed more than their competitors. This would, to the extent it changes these deferral rules, impose a higher tax on American businesses than their European counterparts are required to pay. In that sense, it changes this competitive balance. It is exactly what we are trying to get away from.

I urge my colleagues to reject the amendment of the Senator from North Dakota, acknowledge the work of the Finance Committee which, as I said, very carefully tried to get this balance right and ensure American companies would not be at a competitive disadvantage vis-a-vis their European competitors.

I urge my colleagues to defeat the amendment of the Senator from North Dakota and support the Finance Committee.

Mr. DORGAN. How much time remains?

The PRESIDING OFFICER. Fifteen minutes total on the minority side remains. The Senator from North Dakota has 2½ minutes.

Mr. DORGAN. Mr. President, let me consume the 2½ minutes. Does that include the 1½ minutes?

The PRESIDING OFFICER. It does not.

Mr. DORGAN. Mr. President, Senator BAUCUS has left the room. Let me consume 5 minutes, with Senator BAUCUS's consent, of the minority time after which I will yield back the time and I believe all time will have been yielded back on this issue. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

Without objection, it is so ordered.

Mr. DORGAN. Let me make a couple of comments about the facts. First of all, the number of manufacturing jobs we have lost in this country. This chart shows the number of manufacturing jobs we have lost since the year 2000, a little over 2.7 million manufacturing jobs.

One cannot make the case this is not a problem. Of course, we are losing manufacturing jobs. The number of jobs in foreign manufacturing affiliates of U.S. firms has grown by a million in an 8-year period. So, of course, they are gaining jobs. We are losing manufacturing jobs and they are gaining jobs. It is hard to make the case there is not an issue here.

Now with respect to the issue of the corporations, 61 percent of whom pay no taxes according to the GAO, my colleague says, well, probably some of them are dormant. The U.S. corporations made $2.7 trillion in gross income on which they paid zero in taxes. If that is dormancy, it is an interesting state of affairs, in my judgment.

Second, the issue of Huffy bicycles. I have used the issue of Huffy bicycles and the Radio Flyer wagon to make the point. The point is jobs are migrating overseas. This Radio Flyer red wagon was made here for a century and now it is being made in China. This Huffy bicycle was made here for a long time. Now it is gone. It is made in China. We saw the little red wagons and Huffy bicycles leave America and move to China.

With respect to Huffy, the workers here made $11 a hour. The company said that is way too much; I will hire a Chinese worker at 33 cents an hour, 7 days a week, 12 hours a day.

As we did that, we said, We will give you a tax break. Move this plant to China and we will give you a tax break. That is what our amendment would shut down.

I was trying to think how would we construct a defense, or how will I hear a defense about this, and it started out with trade. The Europeans are hitting us with these trade sanctions. Yes, well, we are really weak-kneed on trade. This country has a beef problem with Europe, so we slap them around. Do you know what we do with the Europeans? We slap them around with sanctions on truffles, goose liver, and Roquefort cheese. My God, that will send fear into an adversary.

If Members want to talk trade, spend time talking about trade and wonder why we do not have a spine and backbone and strong knees to stand up for this country for a change.

But this is not about trade. This is about an insidious, perverse little provision in the Tax Code that says, Move your jobs, decide to build overseas rather than here, and we will give you a little tax break.

If we cannot take a baby step in doing this, if we cannot close this loophole, what on Earth can we do?

With respect to the fact it is alleged this is a tax increase, my guess is almost everything will be alleged to be a tax increase in the future. It does not matter what you talk about, they will say it is a tax increase. Is closing a loophole that is fundamentally unfair, that incentivizes the moving of American jobs overseas, is that really a tax increase, or is it closing a loophole? Do you want to keep doing this?

Should we take taxpayers' money, incentivize it to say, let's pay these guys to move bicycles and red wagons overseas? Or, let's pay them to move Fig Newton cookies to Mexico, or pay them to move tennis shoes to Indonesia. Is that what we want to do, pay them to do that? That is what exists in our Tax Code.

This is the simplest possible amendment. If Members want to support American jobs and want to at least have a neutral Tax Code and want to stop the perversity of saying let's actually help finance and keep jobs from moving overseas, then vote for this. If you want to talk about competition between Bangladesh and France and Costa Rica, and construct all kinds of interesting theories that have nothing to do with this amendment, then vote against it. There is nothing wrong with that. I have lost before. I hope I will not lose today.

This amendment will come up again and again because this country should not be subsidizing the loss of jobs to other countries. Those jobs are going in part because they can buy 33 cent an hour labor and put 12 people in a room and work them 7 days a week and say, if you try to organize as a group of workers, you are fired. If you complain about an unsafe work plant, you are fired. So that is the incentive to move jobs overseas.

On top of that, we actually, in public policy, say we will buy you a little cherry on top of the sundae. The cherry on top of the sundae is you actually get a tax break here. The company you are competing against, that you left back

in the United States—tough luck for them. They are paying higher taxes than you are.

It seems to me if we cannot think our way through this short little maze, this Congress cannot think its way through anything. This is not organizing a two-car caravan. This is simple. This is easy. And the choice, when we cast this vote, is not going to be complicated at all. Either you believe this incentive should not be in the Tax Code or you believe we ought to continue to subsidize jobs that are moved overseas.

We have more to do. We have a debate on trade that has to come. I don't expect we will get to the debate on trade because of the Central American Free Trade Agreement. It should be brought to the floor and debated, but will not be before the election because, I am guessing, the President does not want to have that debate—I would love it. Let's get it here tomorrow, as far as I am concerned.

There is much more to discuss on this issue. With respect to this alone, the Senator from Maryland and I have offered an amendment that is painfully simple and I hope will be painless to vote for.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, will the Chair advise the Senate with regard to the time agreements at this point?

The PRESIDING OFFICER. Time has expired on the majority side.

Mr. WARNER. Mr. President, can the Senator from Virginia ask for a period of 5 minutes to discuss a matter of importance to all Senators?

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

The Senator from Virginia.

NOTICE OF HEARING AND BRIEFING ON IRAQ

Mr. WARNER. Mr. President, this morning I had the privilege of engaging in a colloquy with the distinguished minority leader with regard to the desire of the Senate to have Secretary Rumsfeld come in open session and respond to questions from Senators with regard to the very serious situation of allegations about the mistreatment of prisoners in Iraq.

Senator DASCHLE, Senator FRIST, and I—Senator FRIST and I worked on it yesterday together; we worked on it again today—Senator MCCAIN, Senator LEVIN—I just left him—so there has been a group of us who have worked on this.

I just finished a conversation with Secretary Rumsfeld, and he has always been quite willing to come up. It is a question of the time and the ability to get together a team of witnesses to join him. That has now been concluded. So the distinguished majority leader and I have set the time for this to be 11:45 on Friday morning for a session of approximately 2 hours with the Senate Armed Services Committee. Following that, the respective leaders of the Senate will have the usual type of briefing in S–407, at which time other Senators not members of the Armed Services Committee will have the opportunity to engage the Secretary in questions with regard to their individual concerns on this and such other topics as they may have.

I thank my colleagues. Many of you have come to me and spoken about that, and spoken to Senator LEVIN, and to our leaders. There is always a willingness on behalf of the Secretary to come forward. He will be joined by the Chairman of the Joint Chiefs, the Chief of Staff of the Army, the Acting Secretary of the Army, and perhaps others, because I was very insistent and he was quite willing to provide a full array of witnesses such that the entire spectrum of facts now known and available can be shared openly with the Senate and the general public.

I thank the Chair. I hope all colleagues can arrange their schedules to attend these very important meetings.

I yield the floor.

The PRESIDING OFFICER. The minority manager has 8½ minutes remaining.

The Senator from Montana.

Mr. BAUCUS. Mr. President, I yield back whatever time I can yield back. I also suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

All time has expired.

Mr. GRASSLEY. Mr. President, before we move on this amendment, I ask unanimous consent that there be 4 minutes of debate equally divided prior to the vote in relation to the Allard amendment.

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

VOTE ON AMENDMENT NO. 3110

The PRESIDING OFFICER. The question is on agreeing to the Dorgan amendment.

Mr. GRASSLEY. Mr. President, I move to table the Dorgan amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) is necessarily absent.

The PRESIDING OFFICER (Ms. MURKOWSKI). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 60, nays 39, as follows:

[Rollcall Vote No. 83 Leg.]

YEAS—60

Alexander	Allen	Bennett
Allard	Baucus	Bond
Breaux	Enzi	Murkowski
Brownback	Fitzgerald	Murray
Bunning	Frist	Nelson (NE)
Burns	Graham (SC)	Nickles
Campbell	Grassley	Pryor
Cantwell	Gregg	Roberts
Chafee	Hagel	Santorum
Chambliss	Hatch	Sessions
Cochran	Hutchison	Shelby
Coleman	Inhofe	Smith
Collins	Jeffords	Snowe
Cornyn	Kyl	Specter
Craig	Lieberman	Stevens
Crapo	Lott	Sununu
DeWine	Lugar	Talent
Dole	McCain	Thomas
Domenici	McConnell	Voinovich
Ensign	Miller	Warner

NAYS—39

Akaka	Dorgan	Lautenberg
Bayh	Durbin	Leahy
Biden	Edwards	Levin
Bingaman	Feingold	Lincoln
Boxer	Feinstein	Mikulski
Byrd	Graham (FL)	Nelson (FL)
Carper	Harkin	Reed
Clinton	Hollings	Reid
Conrad	Inouye	Rockefeller
Corzine	Johnson	Sarbanes
Daschle	Kennedy	Schumer
Dayton	Kohl	Stabenow
Dodd	Landrieu	Wyden

NOT VOTING—1

Kerry

The motion was agreed to.

AMENDMENT NO. 3118

The PRESIDING OFFICER. There are now 4 minutes of debate equally divided on the Allen amendment No. 3118.

The Senator from Colorado.

Mr. ALLARD. Mr. President, I rise to speak in behalf of amendment No. 3118. This amendment is important to nearly all States in this time of energy shortages. It provides for and encourages the use of renewable energy.

I am pleased to have cosponsorship from Senators MILLER, CLINTON, SCHUMER, and CHAMBLISS.

Passage of the green bonds provision is relevant to the JOBS bill. It is anticipated to create over 100,000 construction and permanent jobs.

It also promotes the large-scale development and deployment of renewable energy generation. This will stimulate the market for renewable technologies, such as solar, helping to bring down the cost of technology.

I also believe it is important to note that our amendment contains a provision which pays for its costs.

In closing, I urge all of my colleagues to vote for this amendment. It is limited only by the amount of total bonding authority and the fact that each State is allowed only one project. I think every State can work to take advantage of the benefits that this amendment will provide.

Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. I ask unanimous consent that this be a 10-minute vote.

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

Mr. ALLARD. I ask that we yield back time from both sides.

The PRESIDING OFFICER. All time is yielded back. The question is on agreeing to amendment 3118. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 76, nays 23, as follows:

[Rollcall Vote No. 84 Leg.]

YEAS—76

Akaka	Crapo	Lincoln
Alexander	Daschle	Lugar
Allard	Dayton	McConnell
Allen	DeWine	Mikulski
Baucus	Dodd	Miller
Bennett	Dole	Murkowski
Biden	Durbin	Murray
Bingaman	Edwards	Nelson (FL)
Bond	Enzi	Nelson (NE)
Boxer	Feingold	Pryor
Breaux	Feinstein	Reid
Brownback	Frist	Roberts
Bunning	Graham (FL)	Rockefeller
Burns	Graham (SC)	Santorum
Byrd	Hatch	Sarbanes
Campbell	Hollings	Schumer
Carper	Hutchison	Smith
Chafee	Inouye	Specter
Chambliss	Johnson	Stabenow
Clinton	Kennedy	Stevens
Cochran	Kohl	Talent
Coleman	Landrieu	Voinovich
Conrad	Lautenberg	Warner
Cornyn	Leahy	Wyden
Corzine	Levin	
Craig	Lieberman	

NAYS—23

Bayh	Gregg	Nickles
Cantwell	Hagel	Reed
Collins	Harkin	Sessions
Domenici	Inhofe	Shelby
Dorgan	Jeffords	Snowe
Ensign	Kyl	Sununu
Fitzgerald	Lott	Thomas
Grassley	McCain	

NOT VOTING—1

Kerry

The amendment (No. 3118) was agreed to.

Mr. GRASSLEY. I move to lay that motion on the table.

Mr. REID. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. REID. Madam President, I have spoken to the Democratic leader, I have spoken to our manager. On our side we have six amendments remaining. I mention them by name: Feingold, 5 minutes on his side; Lautenberg, 30 minutes; Corzine, 30 minutes; Cantwell, 30 minutes; Hollings, 40 minutes; Landrieu, 30 minutes. This bill can be completed in a relatively short time. I understand the Members would rather not vote on some of these amendments, but I want the record to reflect we would agree to these very short time limits. There are no surprises in any of the amendments. Everyone knows what they are. Certainly on Hollings and Landrieu, we have agreed with the majority these could be next in order.

The problem we have, everyone should understand, is Senator CANTWELL will not let us do the unanimous consent agreement unless we have some way of disposing of her amendment. I have also been contacted by Senator CORZINE, Senator LAUTENBERG, and Senator FEINGOLD. They will agree to no more unanimous consent agreements unless they are included in the order in some way.

I repeat: Each of these Senators wants this bill passed. None of them is trying to stall. They understand the importance of this legislation. But add up all the time on our side, and it is about 2 hours 45 minutes. That is all that is remaining on debate time on our side. I hope we recognize and can figure out some way to get through these amendments and get this bill passed. I see no reason we could not do it tomorrow easily.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Madam President, first of all, there has been a very good working relationship between the two sides on this bill. That is very encouraging. I recognize that upfront.

In regard to the list of amendments, the fact that it is very short, with time agreements, is very good news. However, in that list of amendments, there are some that are nongermane, some that are very controversial, some on our side of the aisle we do not think are appropriate to be brought up on this legislation; and also a reminder that we have only dealt with two Republican amendments at this point and we have dealt with a lot of amendments on the other side. Now, there is nothing wrong with dealing with more amendments on one side than on the other, and we have been very fair in how we have approached this.

I don't have a response to the Senator from Nevada, the distinguished Democratic assistant leader. We intend to work very closely with him to see if we can get this bill to finality. In the same way we have gotten this far this week—we have made a great deal of progress—it is because we have had a good working relationship with the Senator from Nevada and the Senator from Montana.

I cannot state an agreement at this point. I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, parliamentary inquiry. Is the Cantwell amendment now the pending amendment?

The PRESIDING OFFICER. The Cantwell amendment is the pending amendment.

Mr. KENNEDY. I see the Senator from Washington on her feet and ready to address the Senate. As I understand, she would be willing to set a time for a vote on her amendment sometime in the morning. So we can give the Senate some idea what the program will be, I am just wondering now whether the floor managers would be willing to agree to a time limit on the amendment of the Senator from Washington, for a vote on it in the late morning tomorrow, with the time to be divided.

Mr. GRASSLEY. Madam President, to respond to the Senator from Massachusetts, first of all, not involving me but other people that are interested—I am interested—I have asked other members to see what could be negotiated. There are talks ongoing now that range from, hopefully, we can establish a couple other amendments for votes before that. Part of that discussion is seeing if we can reach an agreement on bringing up the amendment. However, I don't have anything to report to Senator KENNEDY at this point.

Mr. KENNEDY. Again, I don't want to interfere with the Senator from Washington, but I know the Senator has attempted to get this amendment up, at my last count, some 14 times over the period of the last 7 or 8 months. Now it is before the Senate. She is entitled to have it considered.

It is an amendment of enormous importance to working families in this country. We have 85,000 workers who, each week, lose their unemployment insurance. This represents an extremely important issue to hard-pressed middle-income families that are trying to make ends meet and facing serious issues in terms of the increase in health care costs, increases in tuition, increases in terms of their utilities, their mortgage payments. This is a lifeline to hundreds of thousands of American families. This is a matter of enormous importance. It is not just a minor amendment. For many of us, it is the most important or perhaps the second most important outside of the overtime amendment on this bill.

I thank the Senator for Washington for her perseverance on behalf of the working families of this country, commend her for her diligence in protecting their interests, and look forward to following her leadership, hopefully getting the opportunity to have a reasonable period of time and then have the Senate express its will. I certainly hope we would not have the blind opposition to this amendment we have faced in the past when Members have tried to basically handcuff the Senate from being able to give consideration to this amendment.

I commend the Senator from Washington for her diligence and perseverance. This is a matter of enormous importance and enormous consequence to the people of my State, I know to the people in her State, and for people all over this country. I commend her for developing the bipartisanship she has with the Senator from Ohio and other Senators. This has been a bipartisan effort she has led. That is the way it should be because, obviously, the workers who need this help are from all parts of the country and represent all kinds of different viewpoints.

I thank her for her leadership and look forward to following this issue.

Ms. SNOWE. Mr. President, I would like to speak to one provision in the FSC/ETI tax legislation we are considering on the Senate floor which is very imporant—the broadband expensing provision. This provision would allow investments in broadband infrastructure, or high-speed Internet access, to be deducted for tax purposes in the year the investment was made rather than over several years. The simple point of this provision is to stimulate new technology investment.

We have worked on the bill since mid-2000, and it is time to see it enacted. I am particularly pleased to have worked with Senator ROCKEFELLER on this issue and to join him in sponsoring legislation to provide a broadband tax incentive. He and I go back quite a few years on technology matters. We worked side by side to ensure that all of our Nation's schools are wired for basic Internet service, and that has been a tremendous success. I also appreciate the effective work Senator BURNS has done to fight for broadband investment.

It is time to move beyond basic dial-up service. Dial-up is adequate for sending e-mail, and sharing short documents, and browsing the web slowly. But if you need to receive information quickly, or if you need something that is data-intensive like photographs or graphics or lengthy documents, then you need broadband.

Unfortunately, in rural States like mine, broadband deployment is not proceeding quickly enough. And that is what this provision is designated to address—the rural and low-income areas where broadband generally is not already or readily available. It is designed to help us move to the next generation of broadband that some countries are already rolling out. There are times when it makes sense to help the market deploy technology more quickly, and this is one of those times. Why? Because here we are taking about infrasturcture, and the Government can help ensure that all our citizens have access to basic infrastructure so all Americans regardless of their zip code will have the chance to participate in—and succeed under—the tremendous benefits of new technologies.

It is critical we act quickly in this area. A report by the Organization for Economic Cooperation and Development finds that the United States has dropped to sixth in the world in percentage of broadband penetration. We must not sit idly by and allow the United States to fall further behind in this crucial area.

In addition to accelerating the deployment of broadband, the provision will also infuse immediate stimulus for the economy by encouraging firms to invest in high-speed telecom equipment. Furthermore, these new capital expenditures will create jobs—equipment manufcturers will expand their production capabilities to meet increased demand, and broadband providers with hire additional employees to install this new infrastructure.

We must engage on this issue and we must do it now. I thank Senator ROCKEFELLER for his leadership and partnership on this issue, and the Chairman and Ranking Member of the Finance Committee for their support, and I look forward to passing this provision and seeing it enacted this year.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Madam President, I ask unanimous consent that the Senate now proceed to a period of morning business with Senators permitted to speak for up to 10 minutes each.

Mr. BAUCUS. Madam President, will the Senator hold back for a second before making that request?

Mr. GRASSLEY. Yes, I will. Madam President, I withdraw my unanimous consent request.

Mr. BAUCUS. I thank the Senator.

The PRESIDING OFFICER. Does the Senator from Iowa yield the floor?

Mr. GRASSLEY. Madam President, I withdraw my unanimous consent request and yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Madam President, this is a good bill on which we have made a lot of progress. There are a lot of good amendments yet outstanding. It is amazing how much is in this bill that is so positive.

I say to my colleagues on both sides of the aisle, it is important for us to go the extra mile, to see if there is a way to compromise. I will say that again: both sides of the aisle.

Here we have the amendment offered by the Senator from Washington, and we are kind of at a little bump in the road. But this can be resolved. This is resolvable. I hope very much we are not in a situation where backs stiffen up and people dig their heels in the ground and pride becomes the overriding emotion. Rather, we are very close to resolving a very important issue. So I ask that cooler heads prevail over the evening, to sleep on it, and tomorrow morning—and/or tonight—find a way to resolve this issue; otherwise, people could see the Senate not at its best. There is an opportunity, a real opportunity, for Senators to show they can work together on both sides of the aisle on very important matters.

We know none of us can have everything. We also know for things that are important and worthwhile, generally it takes some give-and-take and compromise. We are almost there.

I thank the Senators for how far we have come thus far, and I urge us to work together to find a solution to these remaining amendments so we can get the bill passed very quickly.

I yield the floor.

The PRESIDING OFFICER (Mr. ENSIGN). The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Senate now proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Mr. President, reserving the right to object, will the distinguished chairman of the committee allow a modification to his request, that the Senator from Washington be allowed to speak for 10 minutes prior to us going into morning business?

Mr. GRASSLEY. Limited to speaking, and no requests or anything like that?

The PRESIDING OFFICER. Does the Senator so modify his request?

Mr. GRASSLEY. My request would be so modified.

The PRESIDING OFFICER. Is there objection?

Mr. NICKLES. Reserving the right to object, I want to make sure the Senator from Washington be allowed to speak and there be no unanimous consent requests made pertaining to her amendment.

Mr. REID. Mr. President, if I could respond, the Senator from Washington is protected. Her amendment is the next amendment. I mean, it is an amendment that is now before the Senate, and she understands nothing is going to happen on this bill until there is an agreement in some regard to her vote. She is not going to ask at this period of time for a unanimous consent. She does not need to be protected.

Mr. NICKLES. If the Senator will yield further, the unanimous consent request only limits time; is that correct?

I have no objection.

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

The Senator from Washington is recognized for 10 minutes.

Ms. CANTWELL. Mr. President, I remind my colleagues we are here talking about a JOBS bill. That is what we are talking about, how we keep jobs in America. So I think it is more than appropriate to be talking about one of the biggest problems in our country right now, the fact we have not created jobs. We have lost 2 million jobs since this administration began. It is more than appropriate to be discussing the unemployment benefits American workers need because they have lost jobs, through no fault of their own, since 9/11 and have been struggling to get recognition by this body and the other body on unemployment benefits.

We still have 1.5 million Americans who have exhausted State benefits and have not gotten assistance from this body, the Senate, which now wants to talk about a JOBS bill. Well, the most important jobs issue we are facing in America right now is that people who are trying to go back to work would love to be getting a paycheck instead of an unemployment check, and yet we are not giving them the option to have support in a program they have already paid into through their employer for unemployment benefits.

So what are people across the country saying? As the Senator from Massachusetts pointed out, we have had

something like 15 different attempts to get unemployment benefits for workers who are trying to find jobs but are not finding jobs available. They are certainly people who would rather work.

The Dayton Daily News recently said:

> What's troubling . . . is how some Republican leaders are hoisting another ''Mission Accomplished'' banner, this one to hide the struggle for more than a million unemployed workers who have exhausted state benefits without finding another job.

That is not what this Senator is saying. That is what a newspaper in one of the hardest hit States is saying about this particular problem, the fact we cannot simply say on a certain day the economy is better and Americans are back to work, when, for the first part of this year, with last month's numbers, we only created somewhere between 300,000 and 400,000 new jobs. We have lost 2 million jobs since this administration has been in power.

We had an economic report by the administration that they were going to create all sorts of jobs in 2002. That did not come about. In 2003 there was another projection. That did not happen. Now we are in 2004. And even though the administration said they thought they were going to create, I think the number was 2.6 million jobs this year, the President's own economic advisers backed off of those numbers and said: We don't know how many jobs are going to be created.

Well, I can tell them, having been in the private sector, trying to determine whether a company is growing at a rate in which you can resume hiring is a tough question. So I get that this is a complicated issue, and we do not know how fast our economy is going to grow. But we know this: We are not going to find 2 million jobs in the next 6 months. We are not going to hire 2 million Americans who basically have lost their jobs, and in many cases through no fault of their own, and put them back to work in that short a period of time.

The question is whether we want to give the American worker who is unemployed an opportunity to receive the Federal benefit this program was created for, what they paid into through their employer so there could be assistance in tough economic times.

Well, if the last year and a half does not qualify for tough economic times, I don't know what would. Newspapers across the country are saying it is time we deal with this.

The Dayton Daily News again said early last month:

> Maybe there are brighter days ahead. But that's no comfort now to the unprecedented number of laid-off workers, who have scrambled without success to find a job and . . . lost the little bit of help given under state unemployment benefits programs.

It cannot be any more plain than that. The President is on a bus driving through a State that is basically saying, as crisply and clearly as they possibly can: We need additional help and support. The State program has expired. People are still unemployed, and they cannot find a job. These people would gladly go back to work, gladly go back to getting health benefits, gladly go back to getting the other benefits of being employed, but the jobs are not there. So the question is whether we are going to do the job we have said we were going to do.

In fact, you can take the economists who are also looking at this, because I think part of the other side of the aisle would like to say: Don't worry, it is all going to get better. But even if we double last month's numbers, even if in the next 2 months we created 500,000 or 600,000 jobs, it still isn't going to be enough jobs for the 2 million Americans who have lost their way. So why not put some stimulus into the economy.

That is why the Miami Herald said last month: Mixed messages, the White House gets a boost from strong job growth, but economists say unemployment will remain a problem.

That is because economists are looking at the numbers and they are saying: You are still going to have unemployment.

It is no surprise that Alan Greenspan came before a House committee and, when asked about whether we should expand Federal unemployment benefits, basically said: I think it is a good idea, largely due to the number of exhaustees that are out there in America. By that he means the number of people who have fallen off the State program and could qualify for Federal assistance.

I know some of my colleagues have said they want to cut this program off at some point in time: Why should we keep doing it; the economy is starting to pick up.

You do it because these exhaustees don't have a job. They can't pay mortgage payments, take care of health care. Their employer paid into this program for this very benefit. This is the best economic stimulus this country could get right now. Giving employees access to the assistance of the Federal program for the next 6 months would generate $11 billion in economic stimulus. That is for every dollar spent on unemployment benefits, it generates $2 of economic stimulus.

I think about the States that have been hard hit, such as Ohio, Pennsylvania, Missouri, Washington, Oregon, Alaska. Those are States that certainly could use the economic stimulus in their States to keep companies from not defaulting on mortgage payments, keep families in their home, and provide additional stimulus to those sagging economies.

People on the other side of the aisle say: At some point in time, the President's economic plan is going to kick in and work. But I don't think anybody can say it is going to kick in and work in the next 2 months to the degree necessary to take care of the number of unemployed. It is not going to take care of 1.5 million. It is not going to take care of 2 million people who have lost their jobs and 1.5 million who have already exhausted State benefits.

The question is whether this body is going to stand up and do the right thing and come up with a program to expand unemployment benefits for the next several months so unemployed workers in America can have some certainty they are going to have a future where they can stay in their home.

I am having a tough time convincing the other side of the aisle. Maybe they haven't heard from their constituents on this issue. I think there are one or two States that may not have lost any manufacturing jobs. Maybe their constituents don't feel the same pain that we do in the Northwest. In 2002 alone, we lost 72,000 jobs in our State, mostly as a result of the downturn after 9/11 and its impact on the aviation industry, but certainly other industries as well. So we have had a lot of people who have continued to look for jobs. We have heard from a lot of these individuals. We have a Web site anybody can access at cantwell.senate.gov that tells you the stories of these individuals in their own words.

What each person tells over and over is how much they would like to have a job, how many job interviews they have gone on, only to find people five and six times more qualified than they taking the minimal number of jobs that are actually being created. That is why one of the chief economists in the country, Alan Greenspan, has said the size of the exhaustees alone should drive us to expand unemployment benefits. It would, in and of itself, give us the stimulus that would help us return the economy.

We had a vote not that long ago. Fifty-eight Members in this body voted in support of unemployment benefits. There was a similar vote, not the exact same language, in the House of Representatives. They voted to basically give an extension of unemployment benefits through the Federal program. So basically majorities in both the House and the Senate have voted for unemployment benefits. Yet still we do not have a benefit package.

The administration was asked whether they thought we should do this. Secretary of the Treasury Snow basically said it was something the White House wasn't objecting to. We asked the White House in their communications shop. They said they thought it should get done.

Now the question remains, who wants to hold up this benefit package? The American workers have paid into this. They want the money they paid into the Federal program to give them economic support so we can give people an opportunity to go back to work when jobs are created and not penalize them for the economic situation they are in today.