

TEXT OF AMENDMENTS -- (Senate - May 10, 2004)

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SA 3134. Mr. HOLLINGS submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings 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; which was ordered to lie on the table; as follows:

On page 19, beginning with line 25, strike through line 3 on page 98 and insert the following:

“(a) ALLOWANCE OF DEDUCTION.--There shall be allowed as a deduction an amount equal to 9 percent of the qualified production activities income of the taxpayer for the taxable year.

“(b) DEDUCTION LIMITED TO WAGES PAID.--

“(1) IN GENERAL.--The amount of the deduction allowable under subsection (a) for any taxable year shall not exceed 50 percent of the W-2 wages of the employer for the taxable year.

“(2) W-2 wages.--For purposes of paragraph (1), the term `W-2 wages' means the sum of the aggregate amounts the taxpayer is required to include on statements under paragraphs (3) and (8) of section 6051(a) with respect to employment of employees of the taxpayer during the taxpayer's taxable year.

“(3) SPECIAL RULES.--

“(A) PASS-THRU ENTITIES.--In the case of an S corporation, partnership, estate or trust, or other pass-thru entity, the limitation under this subsection shall apply at the entity level.

“(B) ACQUISITIONS AND DISPOSITIONS.--The Secretary shall provide for the application of this subsection in cases where the taxpayer acquires, or disposes of, the major portion of a trade or business or the major portion of a separate unit of a trade or business during the taxable year.

“(c) QUALIFIED PRODUCTION ACTIVITIES INCOME.--For purposes of this section--

“(1) **IN GENERAL.**--The term ‘qualified production activities income’ means an amount equal to the portion of the modified taxable income of the taxpayer which is attributable to domestic production activities.

“(2) **REDUCTION FOR TAXABLE YEARS BEGINNING BEFORE 2013.**--The amount otherwise determined under paragraph (1) (the ‘unreduced amount’) shall not exceed--

“(A) in the case of taxable years beginning before 2010, the product of the unreduced amount and the domestic/worldwide fraction, and

“(B) in the case of taxable years beginning in 2010, 2011, or 2012, an amount equal to the sum of--

“(i) the product of the unreduced amount and the domestic/worldwide fraction, plus

“(ii) the applicable percentage of an amount equal to the unreduced amount minus the amount determined under clause (i).

For purposes of subparagraph (B)(ii), the applicable percentage is 25 percent for 2010, 50 percent for 2011, and 75 percent for 2012.

“(d) **DETERMINATION OF INCOME ATTRIBUTABLE TO DOMESTIC PRODUCTION ACTIVITIES.**--For purposes of this section--

“(1) **IN GENERAL.**--The portion of the modified taxable income which is attributable to domestic production activities is so much of the modified taxable income for the taxable year as does not exceed--

“(A) the taxpayer's domestic production gross receipts for such taxable year, reduced by

“(B) the sum of--

“(i) the costs of goods sold that are allocable to such receipts,

“(ii) other deductions, expenses, or losses directly allocable to such receipts, and

“(iii) a proper share of other deductions, expenses, and losses that are not directly allocable to such receipts or another class of income.

“(2) **ALLOCATION METHOD.**--The Secretary shall prescribe rules for the proper allocation of items of income, deduction, expense, and loss for purposes of determining income attributable to domestic production activities.

“(3) **SPECIAL RULES FOR DETERMINING COSTS.**--

“(A) **IN GENERAL.**--For purposes of determining costs under clause (i) of paragraph (1)(B), any item or service brought into the United States shall be treated as acquired by purchase, and its cost shall be treated as not less than its fair market value immediately after it entered the United States. A similar rule shall apply in determining the adjusted basis of leased or rented property where the lease or rental gives rise to domestic production gross receipts.

“(B) **EXPORTS FOR FURTHER MANUFACTURE.**--In the case of any property described in subparagraph (A) that had been exported by the taxpayer for further manufacture, the increase in cost or adjusted basis under subparagraph (A) shall not exceed the difference

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between the value of the property when exported and the value of the property when brought back into the United States after the further manufacture.

“(4) **MODIFIED TAXABLE INCOME.**--The term ‘modified taxable income’ means taxable income computed without regard to the deduction allowable under this section.

“(e) **DOMESTIC PRODUCTION GROSS RECEIPTS.**--For purposes of this section--

“(1) **IN GENERAL.**--The term ‘domestic production gross receipts’ means the gross receipts of the taxpayer which are derived from--

“(A) any sale, exchange, or other disposition of, or

“(B) any lease, rental, or license of,

qualifying production property which was manufactured, produced, grown, or extracted in whole or in significant part by the taxpayer within the United States.

“(2) **SPECIAL RULES FOR CERTAIN PROPERTY.**--In the case of any qualifying production property described in subsection (f)(1)(C)--

“(A) such property shall be treated for purposes of paragraph (1) as produced in significant part by the taxpayer within the United States if more than 50 percent of the aggregate development and production costs are incurred by the taxpayer within the United States, and

“(B) if a taxpayer acquires such property before such property begins to generate substantial gross receipts, any development or production costs incurred before the acquisition shall be treated as incurred by the taxpayer for purposes of subparagraph (A) and paragraph (1).

“(f) **QUALIFYING PRODUCTION PROPERTY.**--For purposes of this section--

“(1) **IN GENERAL.**--Except as otherwise provided in this paragraph, the term ‘qualifying production property’ means--

“(A) any tangible personal property,

“(B) any computer software, and

“(C) any property described in section 168(f) (3) or (4), including any underlying copyright or trademark.

“(2) **EXCLUSIONS FROM QUALIFYING PRODUCTION PROPERTY.**--The term ‘qualifying production property’ shall not include--

“(A) consumable property that is sold, leased, or licensed by the taxpayer as an integral part of the provision of services,

“(B) oil or gas,

“(C) electricity,

“(D) water supplied by pipeline to the consumer,

“(E) utility services, or

“(F) any film, tape, recording, book, magazine, newspaper, or similar property the market for which is primarily topical or otherwise essentially transitory in nature.

“(g) **DOMESTIC/WORLDWIDE FRACTION.**--For purposes of this section--

“(1) **IN GENERAL.**--The term ‘domestic/worldwide fraction’ means a fraction (not greater than 1)--

“(A) the numerator of which is the value of the domestic production of the taxpayer, and

“(B) the denominator of which is the value of the worldwide production of the taxpayer.

“(2) **VALUE OF DOMESTIC PRODUCTION.**--The value of domestic production is the excess (if any) of--

“(A) the domestic production gross receipts, over

“(B) the cost of purchased inputs allocable to such receipts that are deductible under this chapter for the taxable year.

“(3) PURCHASED INPUTS.--

“(A) IN GENERAL.--Purchased inputs are any of the following items acquired by purchase:

“(i) Services (other than services of employees) used in manufacture, production, growth, or extraction activities.

“(ii) Items consumed in connection with such activities.

“(iii) Items incorporated as part of the property being manufactured, produced, grown, or extracted.

“(B) SPECIAL RULE.--Rules similar to the rules of subsection (d)(3) shall apply for purposes of this subsection.

“(4) VALUE OF WORLDWIDE PRODUCTION.--

“(A) IN GENERAL.--The value of worldwide production shall be determined under the principles of paragraph (2), except that--

“(i) worldwide production gross receipts shall be taken into account, and

“(ii) paragraph (3)(B) shall not apply.

“(B) WORLDWIDE PRODUCTION GROSS RECEIPTS.--The worldwide production gross receipts is the amount that would be determined under subsection (e) if such subsection were applied without any reference to the United States.

“(h) DEFINITIONS AND SPECIAL RULES.--

“(1) APPLICATION OF SECTION TO PASS-THRU ENTITIES.--In the case of an S corporation, partnership, estate or trust, or other pass-thru entity--

“(A) subject to the provisions of paragraph (2) and subsection (b)(3)(A), this section shall be applied at the shareholder, partner, or similar level, and

“(B) the Secretary shall prescribe rules for the application of this section, including rules relating to--

“(i) restrictions on the allocation of the deduction to taxpayers at the partner or similar level, and

“(ii) additional reporting requirements.

“(2) EXCLUSION FOR PATRONS OF AGRICULTURAL AND HORTICULTURAL COOPERATIVES.--

“(A) IN GENERAL.--If any amount described in paragraph (1) or (3) of section 1385 (a)--

“(i) is received by a person from an organization to which part I of subchapter T applies which is engaged in the marketing of agricultural or horticultural products, and

“(ii) is allocable to the portion of the qualified production activities income of the organization which is deductible under subsection (a) and designated as such by the organization in a written notice mailed to its patrons during the payment period described in section 1382(d),

then such person shall be allowed an exclusion from gross income with respect to such amount. The taxable income of the organization shall not be reduced under section 1382 by the portion of any such amount with respect to which an exclusion is allowable to a person by reason of this paragraph.

“(B) SPECIAL RULES.--For purposes of applying subparagraph (A), in determining the qualified production activities income of the organization under this section--

“(i) there shall not be taken into account in computing the organization's modified taxable income any deduction allowable under subsection (b) or (c) of section 1382 (relating to patronage dividends, per-unit retain allocations, and nonpatronage distributions), and

“(ii) the organization shall be treated as having manufactured, produced, grown, or extracted in whole or significant part any qualifying production property marketed by the organization which its patrons have so manufactured, produced, grown, or extracted.

“(3) SPECIAL RULE FOR AFFILIATED GROUPS.--

“(A) IN GENERAL.--All members of an expanded affiliated group shall be treated as a single corporation for purposes of this section.

“(B) EXPANDED AFFILIATED GROUP.--The term ‘expanded affiliated group’ means an affiliated group as defined in section 1504(a), determined--

“(i) by substituting ‘50 percent’ for ‘80 percent’ each place it appears, and

“(ii) without regard to paragraphs (2) and (4) of section 1504(b).

For purposes of determining the domestic/worldwide fraction under subsection (g), clause (ii) shall be applied by also disregarding paragraphs (3) and (8) of section 1504(b).

“(4) COORDINATION WITH MINIMUM TAX.--The deduction under this section shall be allowed for purposes of the tax imposed by section 55; except that for purposes of section 55, alternative minimum taxable income shall be taken into account in determining the deduction under this section.

“(5) ORDERING RULE.--The amount of any other deduction allowable under this chapter shall be determined as if this section had not been enacted.

“(6) TRADE OR BUSINESS REQUIREMENT.--This section shall be applied by only taking into account items which are attributable to the actual conduct of a trade or business.

“(7) POSSESSIONS, ETC.--

“(A) IN GENERAL.--For purposes of subsections (d) and (e), the term `United States' includes the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands of the United States.

“(B) SPECIAL RULES FOR APPLYING WAGE LIMITATION.--For purposes of applying the limitation under subsection (b) for any taxable year--

“(i) the determination of W-2 wages of a taxpayer shall be made without regard to any exclusion under section 3401(a)(8) for remuneration paid for services performed in a jurisdiction described in subparagraph (A), and

“(ii) in determining the amount of any credit allowable under section 30A or 936 for the taxable year, there shall not be taken into account any wages which are taken into account in applying such limitation.

“(8) COORDINATION WITH TRANSITION RULES.--For purposes of this section--

“(A) domestic production gross receipts shall not include gross receipts from any transaction if the binding contract transition relief of section 101(c)(2) of the Jumpstart Our Business Strength (JOBS) Act applies to such transaction, and

“(B) any deduction allowed under section 101(e) of such Act shall be disregarded in determining the portion of the taxable income which is attributable to domestic production gross receipts.”.

(b) MINIMUM TAX.--Section 56(g)(4)(C) (relating to disallowance of items not deductible in computing earnings and profits) is amended by adding at the end the following new clause:

“(v) DEDUCTION FOR DOMESTIC PRODUCTION.--Clause (i) shall not apply to any amount allowable as a deduction under section 199.”.

(c) CLERICAL AMENDMENT.--The table of sections for part VI of subchapter B of chapter 1 is amended by adding at the end the following new item:

“Sec..199..Income attributable to domestic production activities.”.

(d) EFFECTIVE DATE.--

(1) IN GENERAL.--The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

(2) APPLICATION OF SECTION 15.--Section 15 of the Internal Revenue Code of 1986 shall apply to the amendments made by this section as if they were changes in a rate of tax.

**JUMPSTART OUR BUSINESS STRENGTH (JOBS) ACT--Continued -- (Senate -
May 11, 2004)**

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AMENDMENT NO. 3134

(Purpose: To strike the international tax provisions that are unrelated to the FSC/ETI repeal and eliminate the phase-in of the deduction for qualified production activities income)

Mr. HOLLINGS. Mr. President, I call up my amendment No. 3134 and ask the clerk to report.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from South Carolina [Mr. **HOLLINGS**] proposes an amendment numbered 3134.

Mr. HOLLINGS. Mr. President, 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 Amendments.")

The PRESIDING OFFICER. There are 40 minutes to each side.

Mr. HOLLINGS. I thank the distinguished Chair.

Mr. President, the underlying bill gives a 5-percent domestic manufacturing deduction to the manufacturing industry. Of course, that is woefully insufficient. My amendment would provide a full 9-percent domestic manufacturing deduction.

The underlying bill slowly phases in the domestic manufacturing provision over a 5-year period, but instantly it gets the full effect of the overseas industry, the outsourcing. They immediately get some tax breaks over the period of the bill covering some 39, almost 40 billion bucks.

Can you imagine that? Here is a bill entitled--this is the committee report--the Jump-Start Our Business Strength, JOBS, Act. It jump-starts the jobs in Shanghai and Guadalajara and not in Philadelphia, PA, I can tell you that right now.

What my amendment does is provide the right incentives. It eliminates the tax breaks for corporations that have moved American jobs offshore and gives those tax breaks to the employers of jobs in America today.

I wish to thank, first, the distinguished ranking member, Senator *Baucus*, of our Finance Committee and his outstanding staff. They have been very helpful in trying to make this amendment not only relevant but budget neutral. I am not sure about its budget neutrality, but I am told now we do have a relevant amendment. If we have to get into the arcane discussion with respect to budget neutrality, I will be glad to join it.

I want to get to the point. We are still in a post-World War II culture, what they call up here an environment or pedigree. What happened was, after World War II, we had our finest hour with the Marshall plan. We sent money overseas. We sent expertise overseas. We sent equipment overseas. In the cold war, capitalism defeated communism. It worked. All during that almost 50-year period since World War II, we all enjoyed it because we fudged when it came to trade. We treated fair trade more or less as foreign aid, but we knew what we were doing. We had to sacrifice a certain amount of our industry, our jobs, our economic strength to prevail in this cold war.

Now what has occurred is the competition has regearred, they have rebuilt, they have industrialized, and they have become outlandishly competitive. And here amidst a trade war, we hear those in the national Congress running around and saying: Woo, we might start a trade war; free trade, free trade, I am for free trade, when they know free trade is like dry water. There is no such thing. If you trade, you are trading something, you are

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swapping an article with various countries, free trade, but we know that is not going to come to pass.

The example we set of a capitalistic free market and our endeavor in the last 50 years, the Japanese did not follow suit. They have the financing, they have the subsidies, they have the nontariff barriers, and we have yet to get into downtown Tokyo with American sales. Come on, quit kidding each other. It worked that way for Japan. Korea followed. And now China is following the same Japanese pattern of restricted and competitive trade, not free trade.

Today we are in real trouble. We are losing jobs like gangbusters overseas. We have lost 68,000 jobs in the little State of South Carolina in the last 3 years, over 3 million jobs nationally. I can tell you, 58,000 of those jobs are our textile jobs, and they are not going to be replaced. You can put all this statistical information from the Federal Reserve and Greenspan about how we are creating jobs, but they are not coming to South Carolina.

As Abraham Lincoln said some years ago: The dogmas of the quiet path are inadequate to the stormy present. As our case is new, we must think anew, we must act anew, we must disenthral ourselves, and then working together we can save our Nation. That is the reason for this amendment.

One does not put up an amendment to this finance bill with hope. The chairman of the Finance Committee knows there are not going to be any amendments. But we might be able to disenthral our colleagues because the country has to develop a competitive trade policy in order to subsist and survive.

I can point out survival in the very beginning of this Nation started with Alexander Hamilton. Of course, I will not read the book--Ron Chernow's ``Alexander Hamilton." They will not give me that much time, but I recommend to everyone this particular edition. You will find the mother country, England, prevented manufacture in the Colonies, later the United States of America. In fact, they arrested and jailed anyone with any manufacturing talent who would move from England to the Colonies.

We had a veritable struggle in the earliest days, and we had just barely 1 hour of freedom when the mother country said: Under this David Ricardo doctrine of comparative advantage, we will trade with you what you produce best and you trade back with us what we produce best.

As a result, Alexander Hamilton wrote his famous treatise, ``Report on Manufacturers." I will not read that and put it in the **RECORD**, but I will say in a phrase exactly what Hamilton told the Brits: Bug off. He told the Brits, we are not going to remain your colony, shipping you our timber, iron ore, rice, cotton, indigo, and natural resources, and importing the manufactured articles and remaining a banana republic; we are going to build up our own manufacturing.

It caused me to listen to our friend Akio Morita, the former head of Sony. Some 20 years ago in Chicago, while lecturing third world countries, he said you have to develop a strong manufacturing sector in order to become a nation state. Then he pointed to me and said: Senator, that world power that loses its manufacturing capacity will cease to be a world power.

It is economic strength that counts in this terrorism war. It is diplomacy. It is negotiation. It is not military strength. We have to disenthral ourselves and realize when we are going around talking about we might start a trade war, it was Hamilton himself and the United States of America some 228 years ago that started the trade war.

The very first bill--well, Pat Moynihan used to correct me on that. He said the first was a resolution for the United States Seal. So let's say the second bill that passed this Congress in its history on July 4, 1789, was a tariff bill, protectionism, a 50-percent tariff on 60 different articles. We started a trade war.

When Abraham Lincoln was President, they were going to build a transcontinental railroad. They said, we are going to get the steel from England. President Lincoln said, we are going to build our own steel plants, and he put import restrictions on that British steel and we built the steel plants.

When Franklin Roosevelt was President in the darkest days of the Depression, we did not practice any comparative advantage. He put on the most successful initiative ever with import quotas and subsidies for America's agriculture. That farm crowd that is now heading up our Finance Committee gets \$180 billion worth of all kinds of subsidies. Then they run around here and tell this poor little textile Senator, protectionism, protectionism, you are going to start a trade war.

We do not get a subsidy. We do not have those things the farmers have. I favor what the farmers have, I say in the same breath. I vote for it because I think it is a very successful program.

President Eisenhower, in the mid-1950s, put on oil import quotas. Yes, John F. Kennedy--I sat there with Andy Hatcher and we would grind out the mimeograph machine--and we got the seven-point Kennedy textile program of restrictions on textile imports in 1961.

Who else other than Ronald Reagan, the best of the best, he put import quotas on steel, machine tools, semiconductors, motorcycles. Last night, I was near Myrtle Beach and they told me there were 100,000 motorcyclists--I think I ran into 99,000 of them out on the highway--but do my colleagues remember what old Ronnie Reagan did? He started a trade war of motorcycles. He put a 50-percent import tariff on motorcycles. Harley Davidson now has recovered its health and we have them all running up and down the beach at Myrtle Beach, SC. So do not come now and tell me about starting a trade war.

We have had that trade war and we know simply and clearly what happens. I want to read starting on page 20 of "Theodore Rex" by Edmund Morris, because this is so interesting. I will read what protectionism did at the turn of the century, this is under Teddy Roosevelt, when we did not have an income tax. For the first 100 and some years, we financed this great United States of America with protectionism. I am trying to get that through so this crowd will wake up and quit pulling off this

charade of the multinationals, because that is who we are facing. We are facing the U.S. Chamber of Commerce, the Business Roundtable, the National Association of Manufacturers, the Conference Board, the United Federation of Independent Businesses. The newspapers make a majority of their money on retail advertising and grind out this free trade, free trade, do not let us start a trade war.

Well, here is what the trade war gave us:

This first year of the new century found her worth twenty-five billion dollars more than her nearest rival, Great Britain, with a gross national product more than twice that of Germany and Russia. The United States was already so rich in goods and services that she was more self-sustaining than any industrial power in history.

More than half of the world's cotton, corn, copper, and oil flowed from the American cornucopia, and at least one-third of all steel, iron, silver, and gold.

Here we are having trouble manufacturing steel. We were exporting one-third of the world's steel.

Even if the United States were not so blessed with raw materials, the excellence of her manufactured products guaranteed her dominance of world markets. Current advertisements in British magazines gave the impression that the typical Englishman woke to the ring of an Ingersoll alarm, shaved with a Gillette razor, combed his hair with Vaseline tonic, buttoned his Arrow shirt, hurried downstairs for Quaker Oats, California Figs and Maxwell House coffee, commuted in a Westinghouse tram (body by Fisher), rose to his office in an Otis elevator, and worked all day with his Waterman pen under the efficient glare of Edison light bulbs. "It only remains," one Fleet Street wag suggested, "for [us] to take American coal to Newcastle." Behind the joke lay real concern: the United States was already supplying beer to Germany, pottery to Bohemia, and oranges to Valencia.

As a result of this billowing surge in productivity, Wall Street was awash with foreign capital. Carnegie calculated that America could afford to buy the entire United Kingdom, and settle Britain's national debt in the bargain. For the first time in history, transatlantic money currents were thrusting more powerfully westward than east. Even the Bank of England had begun to borrow money on Wall Street. New York City seemed destined to replace London as the world's financial center.

Well, in the year 2004, we are broke. We have come from the greatest creditor nation to the greatest debtor nation. The Japanese are financing over \$460 billion of my deficit. The Chinese are financing my debt--not me financing any other country like we started

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with protectionism. The Chinese have over \$200 billion of my deficit. We will end up this year in September, in a few short months, with a deficit that will approximate \$700 billion.

We are spending around \$2 billion a day more than we are taking in. Can you imagine that? In the early 1980s when I talked about budget matters, I spoke about how it took us 200 years of our history to get to \$1 trillion in debt. The cost of the Revolution, the Civil War, Spanish-American War, World War I, World War II, Korea War, Vietnam War--it took us 200 years and the cost of all the wars to reach a \$1 trillion debt.

In the last 3 1/2 years--because we don't want to pay for our war and want to give tax breaks instead--we have already piled up \$2 trillion in debt; \$2 trillion in the last 3 1/2 years.

This crowd has to sober up. We have to get hold of ourselves. We have to disenthral ourselves and we have to start competing. Remember, it is our standard of living. That is the most frustrating thing around here. Here we add on these requirements: the minimum wage, Social Security, Medicare, Medicaid, plant closing notice, parental leave, safe working place, safe machinery, the old age act, the discrimination act, and this act and that act--all of that goes into the cost of production. It is not just the minimum wage; it is

our high standard of living. Every Republican and every Democrat favors clean air and clean water. So we are not going back on our standard of living. So fundamentally we have to protect, and that is the fundamental role of Government.

I will never forget when we swore in President Ronald Reagan for his second term. It was inclement weather and we did it in the Rotunda. He raised his hand to preserve, protect, and defend. We came back and we were debating trade, and we said: Oh, we don't want to protect, we don't want to protect. The fundamental oath that we take as public servants is to protect. We have the Army to protect us from enemies without, the FBI to protect us from enemies within. We have Social Security to protect us from old age, Medicare to protect us from ill-health; clean air, clean water--antitrust laws to protect the freedom of the market. We can go right on down the list. Are we going to pass a wonderful high standard of living and then run around like ninnies hollering: Wait a minute, wait a minute, free trade, free trade. We don't want to start protectionism--they get that garbage from the Business Roundtable and the U.S. Chamber of Commerce.

I talk as one having received all of their awards. In 1992, I was man of the year of the National Chamber of Commerce. By 1998 they were sending out leaflets against me. So I speak advisedly. That crowd is not any longer interested in Main Street America. They are interested in Main Street Beijing. That is where you make the money, and the country can go to hell as far as they are concerned. So it is our duty to protect the economy and open up the markets and everything else like that.

Don't tell us more about retrain, retrain, retrain. I continually hear that. Oh, we have to retrain. I went through another little town yesterday, Andrews, SC. It brings to mind Oneida. I brought that plant in. They make little T-shirts. They closed to go to Mexico. At the time of closure they had 487 employees. The average age was 47 years.

We have done it, Senator, your way. We have retrained them and we have 487 highly skilled computer operators. Are you going to hire the 47-year-old highly skilled computer operator or the 21-year-old highly skilled computer operator? You are not going to take on the retirement, the pension cost of the 47-year-old. You are not going to take on the health cost of the 47-year-old. You are going to get the 21-year-old. So don't tell me about retraining.

We have the most productive economy--that is what Alan Greenspan says. He is sobering up himself. He came down here with this administration saying we were paying down too much debt. ``We are paying down too much debt." He sanctioned all these tax cuts. Now he says debt and deficits matter, and he is worried about interest rates now and everything else of that kind, and paying bills.

It is time we speak out as much as we can, early on, so we will know exactly where we stand. Where we stand is that we have to reorganize--begin to organize, I should say--our trade effort, not just the Department of Commerce, but a Department of Trade and Commerce. I have been serving for almost 38 years on what was originally the Committee of Foreign and Interstate Commerce because article I section 8 says that

Congress--not the President, not the Supreme Court--but the Congress of the United States shall regulate foreign commerce.

But, instead, it is over in the hands of a deep six group known as the Finance Committee. What they do is they work out their little deals. You might get a stadium, you might get a courthouse, you might get any kind of visions of sugarplums dancing in their head.

Forget about trade. They put on fast track. After they make their deal, the vote is fixed. Then it comes to the floor of the most deliberative body that cannot, under fast track, deliberate. And we enjoy it. We have tied our hands with fast track because we don't want to take the responsibility. That is what the polls will tell you: Don't say you are for or against, just say you are concerned.

So we say we are concerned and we keep getting reelected and the country goes to hell in an economic hand pot. I can tell you right now we are in real trouble, and we have to disenthral.

What happens is that we need to organize a Department of Trade and Commerce, take that special Trade Representative, put it under that Secretary, do away with the International Trade Commission, which is a fix. You can find the damage done by the International Trade Administration over in Commerce. Then you go over to the Commission and they find out--oh, there is never any injury because you have growth. The GNP now is 3 or 4 percent, so there is no injury. So we keep sending the jobs out of the country like gangbusters, and we ought to do away with that particular fix of the Finance Committee. Then come in and get an Attorney General--an assistant, let's say, to enforce the trade laws.

Many a trade lawyer in this city has gone all the way to the Supreme Court and found out that, well, politically it is set aside. It was that way in the Zenith case, when they were gathered around the Cabinet table and President Reagan walked in and he said: I have to take care of Nakasone. We are going to have to reverse that decision, after 3 years and millions of dollars of legal costs.

So we ought to put in, like we have for antitrust, like we have for equal employment--we have to put in an Assistant Attorney General to enforce those laws, get the Customs agents, and finally when we get right down to it, do like the others do, play their game. If you are going to sell it here, you have to make it here. Isn't that wonderful? That is exactly what China really controls.

They said, if you want to sell it here you have to make it here. I haven't gotten them that far along, I am just trying to flex their minds so we will get away from this trade war and protectionism nonsense, so we can put in a competitive trade policy and save our industrial backbone.

Mr. President, how much time do I have remaining? My distinguished colleague from Florida, Mr. *Bob Graham*, wants to be heard.

The PRESIDING OFFICER (Mr. **CHAFEE**). There is 12 minutes.

Mr. HOLLINGS. Let me yield at this time to the proponents and the distinguished leadership of our Finance Committee. I retain the remainder of our time.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I yield myself such time as I might consume.

Senator *Hollings* asks us to take \$39 billion of international reforms and put it towards more domestic manufacturing relief.

I have told my colleagues so many times I shouldn't have to repeat it. But this bill is all about encouraging domestic manufacturing.

The level of spending in this bill is already over three to one in favor of domestic issues. We dedicate over \$75 billion to domestic manufacturing relief.

FSC/ETI currently benefits manufacturing by \$50 billion. Obviously, you can see this bill is a much stronger

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commitment to manufacturing than the old FSC/ETI bill we are replacing. We have already accelerated the phase-in of the manufacturing tax rate. That is thanks to a bipartisan amendment by Senator *Bunning* and Senator *Stabenow*. We have modified the transition rules to provide stronger relief in transition for manufacturing companies which presently get the old FSC/ETI benefits this bill replaces.

I hope it is easy for my colleagues to conclude that there is very little to be gained by the amendment proposed by the Senator from South Carolina.

It is time we had our rational discussion of the international reforms in this JOBS bill because we have been spending so much time on nongermane amendments. The amendment before us is not one of those nongermane amendments but it has kept us from discussing so much which is very basic with this legislation. Maybe people think there is no reason to discuss it because this bill was built from the ground up in a bipartisan way, coming out of our committee on a very overwhelming vote of 9 to 2.

I think Members will be surprised to learn that some of our international tax rules actually harm the domestic operations of U.S. companies. When foreign income is brought home, the United States allows an offset against U.S. tax for any foreign taxes paid on that income. That is why it is called the foreign tax credit. Foreign tax credits

ensure that we do not double tax foreign earnings. Accordingly, the foreign tax credit plays a vital role in preserving the international competitiveness of our companies.

In the Tax Reform Act of 1986, Congress enacted a provision that causes foreign tax credits to expire every 5 years. That was done for a reason that is not very well justified because it is often used around here--to make that 1986 tax bill revenue neutral.

Some claim this is a good rule because it forces foreign earnings to be repatriated within 5 years. But that conclusion does not comport with reality. The reason companies don't bring back foreign earnings is because of double taxation. That is what occurs with foreign tax credits expiring.

I will give you an example. A U.S. company sets up new operations in Poland to serve Eastern Europe at this time when Eastern Europe is being integrated with the European Union. That happened last week. For the next 8 years in this hypothetical--quite reasonably--it takes all of the capital generated by the Polish subsidiary to expand the company's presence in Eastern Europe. At the end of 8 years, it finally has some extra cash which it can send

home.

What happens? It discovers the taxes it paid to Poland from years 1 through 3 are no longer eligible for the foreign tax credit because they are more than 5 years old. The Polish tax rate is 28 percent. This means if a company repatriates those early earnings, it will pay combined Polish and U.S. taxes of 63 percent. It is really almost confiscatory. That means, of course, the money is not coming home for reinvestment in the United States. We lose the benefit.

If those early tax credits had not expired, the United States would actually pick up some tax revenues. The subsidiary would owe the difference between the 28-percent Polish rate and the 35-percent U.S. rate. That happens to be a gain of 7 percentage points of taxation into our U.S. Treasury from that company.

To ensure that double taxation no longer occurs, our JOBS bill extends the carry-forward period for foreign tax credits from 5 years to 20 years. Twenty years is the amount of time companies have to utilize net operating losses. It is only appropriate, then, that the key mechanism for avoiding double taxation should have the same shelf life.

Our JOBS bill mostly fixes problems in the foreign tax credit area. The only time a company benefits from a foreign tax credit is when it brings that money home.

To repeat a very elementary point, foreign tax credits are a benefit to that company only when that company brings foreign earnings home for reinvestment. When the credit expires, this impedes capital mobility because of double taxation, and it blocks reinvestment of foreign earnings in the United States.

Another example of guaranteed double taxation is our rule that only allows 90 percent of a company's AMT to be offset with foreign tax credits. This rule guarantees that the company will be double taxed on 10 percent of the alternative minimum tax. The JOBS bill allows what is common sense--a 100-percent offset.

To give you a real-life example of how these two changes will help U.S. operations make investments in America and create jobs in America, the largest American manufacturer in this example of a particular automobile part is bringing dividends back from its profitable foreign operations to cover losses in its U.S. operations. Their U.S. losses, when combined with the foreign dividends to fund the U.S. operations, has created huge unused foreign tax credits with a 5-year expiration period. Because of their ongoing U.S. losses, it is unlikely these credits will be used within those 5 years.

This company also has a growing alternative minimum tax because their foreign tax credits can only be offset by 95 percent of their AMT liability.

The limit is creating an annual alternative minimum tax liability because the additional 10 percent of the AMT cannot be offset with the foreign taxes that have already been paid on that income.

The company is guaranteed to incur double tax on foreign earnings brought back to support the U.S. operation. This may be unbelievable to anyone listening, but this is actually happening under U.S. tax laws.

The company's foreign competitors in the United States are not equally hindered in the same way by the 90-percent alternative minimum tax, foreign tax credit limit. If a foreign competitor loses money, they get a 20-year U.S. net operating loss compared to the 5-year foreign tax credit carryforward. Our Tax Code, then, is harming a company that has operations in all 50 States and employs 38,000 people in 16 different manufacturing facilities.

This example shows why the 20-year foreign tax credit carryforward and the repeal of the 90-percent AMT foreign tax credit limits are in this very important jobs in manufacturing bill. The current rules harm U.S. operations and we need to fix it.

I also have some comments on another provision, the interest allocation provisions, to give another example of how our international rules harm U.S. operations. As I said earlier, foreign tax credits can only offset foreign income; they cannot offset income from U.S. activities. In determining the amount of foreign income, certain U.S. expenses, such as interest expense, are partially allocated to foreign income. This is used in calculating the amount of foreign tax credit a U.S. company is allowed to claim on its return. The United States arbitrarily allocates U.S. interest expense to foreign earnings, but the foreign government does not recognize that interest expense for its tax purposes. It is as if the interest expense somehow disappears into the clear air.

The interest allocation rules artificially reduce the foreign tax credits that can be used, and when the credits cannot be used the credits expire. It may surprise many Senators to hear that our interest allocation rules create a competitive disadvantage for U.S. multinationals that try to expand their operations into the United States and maybe do not get expanded here.

A portion of the interest expense on debt incurred to invest in the United States is allocated to foreign source income. A foreign corporation making the same U.S. investment is not impacted by these interest allocation rules. It gets to fully deduct the interest costs within the United States and thereby has a lower cost of capital than a U.S. company making that same investment. Therefore, the interest allocation rules actually work against U.S. multinational companies that invest in the United States. It has put some at a competitive disadvantage with foreign companies operating in the United States. I hope this is very clear, that this is not the right thing for the U.S. Tax Code to do to foreign manufacturers. Why should we encourage international competition in the United States against our own domestic manufacturer?

We have Senators demonizing the JOBS bill international provisions. This gives me an opportunity to emphasize once again how anything gets done in the Senate--only in a bipartisan way. This is a bipartisan bill.

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Democrats and Republicans agree to everything in this bill, and the international provisions we agreed to were provisions that actually help U.S. job creation and help our own economic growth.

I ask the Senate to support Senator *Baucus* and this

Senator in this bipartisan bill. I hope Members will not buy the distortion. None of the international changes caused jobs to go offshore. Just the opposite. These were selected to bring the foreign money back for real investment in the United States, creating jobs in the United States, creating manufacturing jobs in the United States because this is a manufacturing bill. These changes level the playing field between the United States and foreign companies operating inside the United States. They were specifically selected because they tend to help U.S.-based manufacturers more than other sectors of our economy.

The entire JOBS bill is geared towards creating jobs in manufacturing--jobs in the United States, not overseas--because American manufacturing overseas does not benefit from this bill.

It is quite simple. These are the only kinds of international provisions we could ever get bipartisan agreement on because it is so obvious. It is so obvious, it came 19-2 out of our committee. We should not allow international rules to remain in place if they harm U.S. operation. Once again, we are talking about commonsense international tax reform. In fact, if anyone wants to condemn this bill, it is that maybe we do not do anything radical

in this bill. We just fix problems. We fix problems with current law. We fix problems with current law that happens to be harming U.S. domestic interests.

So I ask Members to vote against the amendment of the distinguished Senator from South Carolina.

I yield the floor.

Mr. HOLLINGS. Mr. President, I yield 8 minutes to the distinguished Senator from Florida.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM of Florida. Mr. President, we are here for two fundamental reasons. One, we are here to remove from our Tax Code a provision that has been declared illegal by the World Trade Organization, and certain industries in America are now being sanctioned for that illegal provision.

We would not be here debating an international tax law change but for the fact that the WTO declared illegal our system of encouraging U.S. manufacturers to export. I don't think any Member would challenge that statement. These international tax changes are totally being carried by the need to eliminate this WTO-offending sanctions-creating provision.

There is a second step we ought to be taking. We ought to remove the incentive for U.S. firms to take jobs from the United States overseas. There are a lot of incentives that are already out there. There are incentives of lower labor costs, lower environmental standards, lower standards in terms of human rights. All of those are already in place. However, we do not need to be giving a further economic incentive to move jobs out of the United States.

Let me state briefly what I believe we ought to be thinking about as we consider this matter. Just a couple of hours ago, as I was walking to the Capitol, I ran into a large group of folks. I stopped and asked them who they were. They were machinists from Wichita, KS. Do you know what they told me? In Wichita, KS, machinists used to be 27,000 strong. Do you know how many they have in Wichita today? Only 16,000. Eleven thousand jobs have left Wichita from that one union. I asked, where did the jobs go? Did they disappear? No longer producing airplanes? No, the 11,000 jobs are still in place, but they just happen to be in places such as China, India, Brazil, and other countries which are now building the airplanes that used to be built in Wichita.

When I told that group of Wichita machinists why, in part, those jobs had left Wichita to go offshore, they were stunned. So let me tell the Senate what I told the Wichita machinists. We have a fancy provision in the international tax law called ``deferral."

In fact, this Senate voted about 20 years ago to repeal this deferral. But that effort failed.

``Deferral" basically means the income earned by the foreign subsidiary of a U.S. multinational is not subject to tax. They do have to pay whatever their local taxes are to China or India, but they do not pay any tax to the U.S. Government.

Do you know what that costs us every year in lost revenue for our Government? According to the Treasury Department, it costs us \$11 billion a year. That is the incentive we are giving. That \$11 billion, incidentally, is about what it would take to do two things we debate a lot around here: fully fund the No Child Left Behind law and fully fund our veterans program.

Over the years, this benefit has produced substantial savings to American corporations. Let me give you a few examples. Citigroup has saved, on an accumulated basis, \$6 billion as a result of this provision; ExxonMobil, \$22 billion; Hewlett-Packard, \$14 billion; IBM, \$18 billion.

Aside from taking advantage of this extremely generous tax break, which creates a positive incentive to move jobs from the United States overseas, every one of those firms appears on Lou Dobbs' ``Exporting America" list. Every one of the firms that is getting this tremendous benefit is doing what the benefit is designed to do, which is to encourage the relocation of jobs outside the United States of America.

So in light of that, what are we doing in this bill to reduce or eliminate the incentive for jobs to leave America? Do you know what we are doing? We are increasing it by \$3.7 billion per year.

I respect greatly and consider Senator *Grassley* to be one of my friends who I most respect and admire in the Senate, but I wish he were here to answer this question. If this bill does not give greater incentives to American firms to leave America and move jobs offshore, why does it cost us \$3.7 billion? Why are we going to have an additional revenue loss of that magnitude other than the fact that we are encouraging jobs that would not otherwise have left America to do so and, therefore, create more of this deferral tax benefit?

But it does not end there, as with my friends from Wichita. There is a second provision. It has the fancy name ``repatriation." What does that mean? That means after a company has deferred paying U.S. taxes on the \$18 or \$14 or \$22 billion they have accumulated, and they finally decide, ``Well, I want to move some of it back to the United States," for whatever purpose, we are now going to say for 1 year they can do that, not at the same tax rate they would have paid had they kept those jobs in the United States--which is approximately 35 percent--they are going to be able to move that money back to the United States at 5.25 percent, which is approximately an 85-percent benefit, tax gift over what they would have paid had they kept those same jobs at home.

What is this going to cost us? What is the difference between a 35-percent and a 5.25-percent tax rate? Well, the cost to the Federal Treasury is going to be approximately \$16 billion in the year this window is opened.

Now the proponents of this window are going to say: Oh, this is a temporary window. We are going to shut that thing tight after 1 year. Friends, I would be willing to make a substantial wager of Florida oranges that once this window gets in the tax law, it is going to be like all those other tax practices that were supposed to be temporary.

I say to the Senator, do you remember when the President came down here in 2001 and said: "I want you to pass all these tax benefits, but they are only going to be temporary so we can stimulate the economy"? Now what is the President's tax plan? To make all those temporary taxes permanent.

What do you think is going to be his tax plan when it gets to be 2005, if he is still the occupant of 1600 Pennsylvania Avenue? He will be down here wanting to make this window a permanently open window.

I could not imagine, at a time when we are so concerned with the loss of jobs, we would pass legislation that would create even additional incentives for American jobs to pick up--maybe on aircraft made by Americans in Wichita, KS--and fly away to other lands.

We should support Senator *Hollings'* amendment. And then we should vote no on final passage of this bill.

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

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The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, how much time is remaining on this side?

The PRESIDING OFFICER. There is 3 1/2 minutes.

Mr. HOLLINGS. Mr. President, I yield whatever time I have to the distinguished Senator from North Dakota.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I am going to support the amendment to strike this section. I do that because the Senator from South Carolina is absolutely right. So is the Senator from Florida. The fact is, there are several provisions that incentivize the movement of U.S. jobs overseas. At a time when we are trying to create new jobs in this country, to say to companies--which, by the way, have moved their jobs overseas

already--`Repatriate your income to this country now, and we will give you a 5.25-percent tax rate," how about a 5.25-percent tax rate for every American? How about a 5.25-percent tax rate for those who live in North Dakota or South Carolina or Florida?

Why should we provide incentives for companies that want to move their jobs overseas? I have talked at length about Huffy bicycles. They are gone. They are now made in China. They used to be made in the United States. Radio Flyer, the little red wagons, they are gone. They used to be made in the United States. Those little red wagons are now made in China. The U.S. taxpayers provide an incentive for those companies to close their U.S. plants, fire their workers, and move their jobs overseas.

Now this bill comes to the floor of the Senate and says to those companies that moved their jobs overseas: We will give you a good deal. Repatriate some of that money, and we will lower your tax rate to 5.25 percent. Well, that sends a signal to everybody that when you decide next to move your jobs overseas to access lower labor costs, at some point in the future somebody will get behind a closed door and come up with this goofy idea that they will reduce your tax rate again--maybe to 5.25 percent, maybe to 1.25 percent. How about zero?

My question is this: If it is good enough for these companies, why is a 5.25-percent tax rate not good enough for every American? Why is it not good enough for working families?

But the Senator from South Carolina has it right. We ought not, in any circumstance, provide any additional incentive to move more American jobs overseas. They are moving overseas to access lower labor costs and less restrictions with respect to safe plants and environmental restrictions. Why on Earth would we want to give them a tax benefit as they leave this country? This makes no sense to me.

There are some provisions in the international tax section which I think are all right. But there are some that are, in my judgment, a colossal waste of money and fundamentally the wrong incentive with respect to American jobs. Because of that, because of this pernicious provision that reduces the tax rate to 5.25 percent for the repatriation of earnings for those that have already moved their jobs overseas, I am going to support the amendment that is offered by the Senator from South Carolina. He is right on track.

As you know, we had a vote a few days ago on my amendment that would have done more than this amendment, essentially. My amendment was taking out of existing law the provision that encourages companies to move overseas. The Senator from South Carolina supported that. The Senator from South Carolina now says they are creating a new piece of legislation that, in the long run, will have even more incentive to move American jobs overseas. He says: Let's stop that. Let's not do that. I agree with him completely. I think the Senator from South Carolina does a service to this Chamber by offering this amendment. I intend to support his amendment.

I yield the floor.

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The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I say to the Senator, if you do not have any more time, then I will yield back my time and we can then vote.

Mr. HOLLINGS. Good.

Mr. GRASSLEY. Is that OK?

Mr. HOLLINGS. Yes.

Mr. GRASSLEY. Mr. President, I yield back all time on this side.

The PRESIDING OFFICER. All time has expired.

The question is on agreeing to amendment No. 3134. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. *McCONNELL*. I announce that the Senator from Arizona (Mr. *McCain*) is necessarily absent.

Mr. REID. I announce that the Senator from North Carolina (Mr. *Edwards*) and the Senator from Massachusetts (Mr. *Kerry*) are necessarily absent.

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

The result was announced--yeas 23, nays 74, as follows:

[Rollcall Vote No. 90 Leg.]
YEAS--23

Akaka

Byrd

Clinton

Conrad

Dayton

Dodd

Dorgan

Durbin

Feingold

Graham (FL)

Harkin

Hollings

Inouye

Jeffords

Kennedy

Kohl

Leahy

Levin

Mikulski

Reed

Reid

Rockefeller

Sarbanes

NAYS--74

Alexander

Allard

Allen

Baucus

Bayh

Bennett

Biden

Bingaman

Bond

Boxer

Breaux

Brownback

Bunning

Burns

Campbell

Cantwell

Carper

Chafee

Chambliss

Cochran

Coleman

Collins

Cornyn

Corzine

Craig

Crapo

Daschle

DeWine

Dole

Domenici

Ensign

Enzi

Feinstein

Fitzgerald

Frist

Graham (SC)

Grassley

Gregg

Hagel

Hatch

Hutchison

Inhofe

Johnson

Kyl

Landrieu

Lautenberg

Lieberman

Lincoln

Lott

Lugar

McConnell

Miller

Murkowski

Murray

Nelson (FL)

Nelson (NE)

Nickles

Pryor

Roberts

Santorum

Schumer

Sessions

Shelby

Smith

Snowe

Specter

Stabenow

Stevens

Sununu

Talent

Thomas

Voinovich

Warner

Wyden

NOT VOTING--3

Edwards

Kerry

McCain

The amendment (No. 3134) was rejected.