

Calendar No. 89

109TH CONGRESS
1ST SESSION

S. 872

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

IN THE SENATE OF THE UNITED STATES

APRIL 21, 2005

Mr. DORGAN (for himself, Ms. MIKULSKI, and Ms. STABENOW) introduced the following bill; which was read the first time

APRIL 22, 2005

Read the second time and placed on the calendar

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. TAXATION OF INCOME OF CONTROLLED FOR-**
4 **EIGN CORPORATIONS ATTRIBUTABLE TO IM-**
5 **PORTED PROPERTY.**

6 (a) GENERAL RULE.—Subsection (a) of section 954
7 of the Internal Revenue Code of 1986 (defining foreign

1 base company income) is amended by striking “and” at
2 the end of paragraph (4), by striking the period at the
3 end of paragraph (5) and inserting “, and”, and by adding
4 at the end the following new paragraph:

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

8 (b) DEFINITION OF IMPORTED PROPERTY IN-
9 COME.—Section 954 of the Internal Revenue Code of 1986
10 is amended by adding at the end the following new sub-
11 section:

12 “(j) IMPORTED PROPERTY INCOME.—

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

17 “(A) manufacturing, producing, growing,
18 or extracting imported property;

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

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

23 Such term shall not include any foreign oil and gas
24 extraction income (within the meaning of section

1 907(c)) or any foreign oil related income (within the
2 meaning of section 907(c)).

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

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

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

18 “(i) such property would be imported
19 into the United States; or

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

23 “(C) EXCEPTION FOR PROPERTY SUBSE-
24 QUENTLY EXPORTED.—The term ‘imported

1 property' does not include any property which is
2 imported into the United States and which—

3 “(i) before substantial use in the
4 United States, is sold, leased, or rented by
5 the controlled foreign corporation or a re-
6 lated person for direct use, consumption,
7 or disposition outside the United States; or

8 “(ii) is used by the controlled foreign
9 corporation or a related person as a com-
10 ponent in other property which is so sold,
11 leased, or rented.

12 “(3) DEFINITIONS AND SPECIAL RULES.—

13 “(A) IMPORT.—For purposes of this sub-
14 section, the term ‘import’ means entering, or
15 withdrawal from warehouse, for consumption or
16 use. Such term includes any grant of the right
17 to use intangible property (as defined in section
18 936(h)(3)(B)) in the United States.

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

1 “(C) UNRELATED PERSON.—For purposes
2 of this subsection, the term ‘unrelated person’
3 means any person who is not a related person
4 with respect to the controlled foreign corpora-
5 tion.

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

11 (c) SEPARATE APPLICATION OF LIMITATIONS ON
12 FOREIGN TAX CREDIT FOR IMPORTED PROPERTY IN-
13 COME.—

14 (1) BEFORE 2007.—

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

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

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

8 “(H) IMPORTED PROPERTY INCOME.—The
9 term ‘imported property income’ means any in-
10 come received or accrued by any person which
11 is of a kind which would be imported property
12 income (as defined in section 954(j)).”.

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

17 (2) AFTER 2006.—

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

1 subparagraph (A) the following new subpara-
2 graph:

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

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

11 “(I) IMPORTED PROPERTY INCOME.—The
12 term ‘imported property income’ means any in-
13 come received or accrued by any person which
14 is of a kind which would be imported property
15 income (as defined in section 954(j)).”.

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

21 (d) TECHNICAL AMENDMENTS.—

22 (1) Clause (iii) of section 952(c)(1)(B) of the
23 Internal Revenue Code of 1986 (relating to certain
24 prior year deficits may be taken into account) is
25 amended—

1 (A) by redesignating subclauses (II), (III),
2 (IV), and (V) as subclauses (III), (IV), (V), and
3 (VI), and

4 (B) by inserting after subclause (I) the fol-
5 lowing new subclause:

6 “(II) imported property in-
7 come.”.

8 (2) Paragraph (5) of section 954(b) of such
9 Code (relating to deductions to be taken into ac-
10 count) is amended by striking “and the foreign base
11 company oil related income” and inserting “the for-
12 eign base company oil related income, and the im-
13 ported property income”.

14 (e) EFFECTIVE DATES.—

15 (1) IN GENERAL.—Except as provided in para-
16 graph (2), the amendments made by this section
17 shall apply to taxable years of foreign corporations
18 beginning after the date of the enactment of this
19 Act, and to taxable years of United States share-
20 holders within which or with which such taxable
21 years of such foreign corporations end.

22 (2) SUBSECTION (c).—The amendments made
23 by subsection (c)(1) shall apply to taxable years be-
24 ginning after the date of the enactment of this Act
25 and before January 1, 2007, and the amendments

1 made by subsection (c)(2) shall apply to taxable
2 years beginning after December 31, 2006.

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