

The question is, Is it the sense of the Senate that debate on the conference report to accompany H.R. 2415, a bill to enhance security of United States missions and personnel overseas, to authorize appropriations for the Department of State for fiscal year 2000, and for other purposes?

The yeas and nays are required under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. FITZGERALD (When his named was called). Present.

Mr. NICKLES. I announce that the Senator from Missouri (Mr. ASHCROFT), the Senator from Montana (Mr. BURNS), the Senator from Tennessee (Mr. FRIST), the Senator from Washington (Mr. GORTON), the Senator from Minnesota (Mr. GRAMS), the Senator from North Carolina (Mr. HELMS), the Senator from Oklahoma (Mr. INHOFE), the Senator from Vermont (Mr. JEFFORDS), the Senator from Arizona (Mr. MCCAIN), the Senator from Pennsylvania (Mr. SANTORUM), and the Senator from Pennsylvania (Mr. SPECTER) are necessarily absent.

I further announce that, if present and voting, the Senator from Montana (Mr. BURNS) and the Senator from North Carolina (Mr. HELMS) would each vote "yea."

Mr. REID. I announce that the Senator from New Mexico (Mr. BINGAMAN), the Senator from California (Mrs. FEINSTEIN), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Vermont (Mr. LEAHY), and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

The result was announced—yeas 53, nays 30, as follows:

[Rollcall Vote No. 294 Leg.]

YEAS—53

Abraham	DeWine	Murkowski
Allard	Domenici	Nickles
Bayh	Enzi	Robb
Bennett	Graham	Roberts
Biden	Gramm	Roth
Bond	Grassley	Sessions
Breaux	Gregg	Shelby
Brownback	Hagel	Smith (NH)
Bunning	Hatch	Smith (OR)
Byrd	Hutchinson	Snowe
Campbell	Hutchison	Stevens
Chafee, L.	Johnson	Thomas
Cleland	Kyl	Thompson
Cochran	Lincoln	Thurmond
Collins	Lugar	Torricelli
Craig	Mack	Voinovich
Crapo	McConnell	Warner
Daschle	Miller	

NAYS—30

Akaka	Harkin	Mikulski
Baucus	Hollings	Moynihan
Boxer	Inouye	Murray
Bryan	Kennedy	Reed
Conrad	Kerrey	Reid
Dodd	Kerry	Rockefeller
Dorgan	Kohl	Sarbanes
Durbin	Landrieu	Schumer
Edwards	Levin	Wellstone
Feingold	Lott	Wyden

ANSWERED "PRESENT"—1

Fitzgerald

NOT VOTING—16

Ashcroft	Grams	Lieberman
Bingaman	Helms	McCain
Burns	Inhofe	Santorum
Feinstein	Jeffords	Specter
Frist	Lautenberg	
Gorton	Leahy	

The PRESIDING OFFICER (Mr. L. CHAFEE). On this vote, the yeas are 53, the nays are 30, and 1 Senator responded present. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

Mr. LOTT addressed the Chair.

Mr. MOYNIHAN. May we have order.

The PRESIDING OFFICER. May we have order in the Chamber please.

The majority leader.

Mr. LOTT. Mr. President, I enter a motion to reconsider the vote by which cloture was not invoked on the bankruptcy bill.

The PRESIDING OFFICER. The motion is so entered.

Mr. LOTT. Mr. President, I note that I will renew this motion with a vote at a time when we have the largest possible number of Senators here. I note there are some absentees, and I believe that could have made a difference in this vote. But we will persist in our effort to pass this important legislation.

I thank Senator GRASSLEY and Senator TORRICELLI and all who worked very hard on it. We will have another vote before the year is out, whenever that may be.

FSC REPEAL AND EXTRATERRITORIAL INCOME EXCLUSION ACT OF 2000

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate turn to Calendar No. 817, H.R. 4986, regarding foreign sales corporations, and following the reporting by the clerk, the committee amendments be immediately withdrawn, the compromise text regarding FSCs, which is contained in the tax conference report, be added as an amendment, which I will send to the desk, the bill then be immediately read for a third time, and passage occur, all without any intervening action, motion, or debate.

The PRESIDING OFFICER. Is there objection?

Mr. WELLSTONE. Mr. President, reserving the right to object.

Mr. GRAMM. Could we have order, Mr. President.

The PRESIDING OFFICER. There will be order in the Senate, please.

Mr. WELLSTONE. Some of us had amendments we wanted to offer. That is part of the legislative process. I want to have 10 minutes to speak on an amendment I wanted to offer on this bill.

Mr. LOTT. Mr. President, I respond to the Senator that I had planned to ask for a period of morning business with Senators permitted to speak for up to 10 minutes each. I will be glad to

specify that the Senator would have the first 10 minutes to comment on this issue.

The PRESIDING OFFICER. Is there objection?

Mr. DURBIN. Mr. President, reserving the right to object, in the interest of allowing the Senate to vote, and following the majority leader's suggestion, I ask unanimous consent for 10 minutes in morning business to address this issue.

The PRESIDING OFFICER. Is there objection?

Mr. LOTT. Mr. President, is there objection to my request?

The PRESIDING OFFICER. Is there objection?

Mr. WELLSTONE. I will not object.

The PRESIDING OFFICER. Is there an objection?

Without objection, it is so ordered.

The clerk will report the bill by title.

The legislative clerk read as follows:

An act (H.R. 4986) to amend the Internal Revenue Code of 1986 to repeal the provisions relating to foreign sales corporations (FSCs) and to exclude extraterritorial income from gross income.

The Senate proceeded to consider the bill, which had been reported from the Committee on Finance, with amendments as follows:

(Omit the parts in boldface brackets and insert the parts printed in italic.)

H.R. 4986

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

SECTION 1. SHORT TITLE.

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

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

SEC. 2. REPEAL OF FOREIGN SALES CORPORATION RULES.

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

SEC. 3. TREATMENT OF EXTRATERRITORIAL INCOME.

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

"SEC. 114. EXTRATERRITORIAL INCOME.

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

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

"(c) DISALLOWANCE OF DEDUCTIONS.—

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

"(2) ALLOCATION.—Any deduction of the taxpayer properly apportioned and allocated

to the extraterritorial income derived by the taxpayer from any transaction shall be allocated on a proportionate basis between—

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

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

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

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

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

“Subpart E—Qualifying Foreign Trade Income

“Sec. 941. Qualifying foreign trade income.

“Sec. 942. Foreign trading gross receipts.

“Sec. 943. Other definitions and special rules.

“SEC. 941. QUALIFYING FOREIGN TRADE INCOME.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“(2) SPECIAL RULES FOR LEASED PROPERTY.—

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

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

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

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

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

“(3) SPECIAL RULES.—

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

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

“SEC. 942. FOREIGN TRADING GROSS RECEIPTS.

“(a) FOREIGN TRADING GROSS RECEIPTS.—

“(1) IN GENERAL.—Except as otherwise provided in this section, for purposes of this

subpart, the term ‘foreign trading gross receipts’ means the gross receipts of the taxpayer which are—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“(b) FOREIGN ECONOMIC PROCESS REQUIREMENTS.—

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

“(2) REQUIREMENT.—

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

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

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

“(B) ALTERNATIVE 85-PERCENT TEST.—A taxpayer shall be treated as satisfying the requirements of subparagraph (A)(ii) with respect to any transaction if, with respect to

each of at least 2 subparagraphs of paragraph (3), the foreign direct costs incurred by such taxpayer attributable to activities described in such subparagraph equal or exceed 85 percent of the total direct costs attributable to activities described in such subparagraph.

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

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

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

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

“(A) advertising and sales promotion,

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

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

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

“(E) the assumption of credit risk.

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

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

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

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

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

“SEC. 943. OTHER DEFINITIONS AND SPECIAL RULES.

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

“(1) IN GENERAL.—The term ‘qualifying foreign trade property’ means property—

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

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

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

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

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

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

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

“(A) a domestic corporation,

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

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

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

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

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

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

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

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

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

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

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

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

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

“(1) TRANSACTION.—

“(A) IN GENERAL.—The term ‘transaction’ means—

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

“(ii) any lease or rental, and

“(iii) any furnishing of services.

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

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

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

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

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

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

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

“(d) TREATMENT OF WITHHOLDING TAXES.—

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

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

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

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

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

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

“(B) substantially all of the gross receipts of such corporation may reasonably be expected to be foreign trading gross receipts.

“(3) PERIOD OF ELECTION.—

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

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

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

“(4) SPECIAL RULES.—

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

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

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

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

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

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

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

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

“(1) IN GENERAL.—If—

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

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

“(C) such partnership meets such other requirements as the Secretary may by regulations prescribe, then such partnership shall allocate to each partner items of income, gain, loss, and deduction (including qualifying foreign trade income) from any transaction to which this subpart applies on the basis of such separate account.

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

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

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

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

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

“(2) which is designated by the organization as allocable to qualifying foreign trade income in a written notice mailed to its patrons during the payment period described in section 1382(d), shall be treated as qualifying foreign trade income of such person for purposes of section 114. The taxable income of the organization shall not be reduced under section 1382 by reason of any amount to which the preceding sentence applies.”

SEC. 4. TECHNICAL AND CONFORMING AMENDMENTS.

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

[(2) Section 245 is amended by adding at the end the following new subsection:

“(d) CERTAIN DIVIDENDS ALLOCABLE TO QUALIFYING FOREIGN TRADE INCOME.—In the case of a domestic corporation which is a United States shareholder (as defined in section 951(b)) of a controlled foreign corporation (as defined in section 957), there shall be allowed as a deduction an amount equal to 100 percent of any dividend received from such controlled foreign corporation which is distributed out of earnings and profits attributable to qualifying foreign trade income (as defined in section 941(a)).”]

[(3) (2) Section 275(a) is amended—

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

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

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

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

(A) by striking “For purposes of” and inserting:

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

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

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

[(5) (4) Section 903 is amended by striking “164(a)” and inserting “114, 164(a).”

[(6) (5) Section 999(c)(1) is amended by inserting “941(a)(5),” after “908(a).”

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

“Sec. 114. Extraterritorial income.”

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

“Subpart E. Qualifying foreign trade income.”

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

SEC. 5. EFFECTIVE DATE.

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

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

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

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

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

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

(A) before January 1, 2002; or

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

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

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

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

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

(3) RELATED PERSON.—For purposes of this subsection, the term “related person” has the meaning given to such term by section 943(b)(3) of such Code, as added by this Act.

(d) SPECIAL RULES RELATING TO LEASING TRANSACTIONS.—

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

added) to any subsequent transaction involving such property to which the amendments made by this Act apply.

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

• **Mr. MCCAIN.** Mr. President, I oppose H.R. 4986, the FSC Repeal and Extraterritorial Income Exclusion Act of 2000. Unfortunately, this legislation is an example of corporate welfare. Further, it does not adequately change the old Foreign Sales Corporation (FSC) program to prevent disputes with the European Union.

I am concerned that this legislation is an example of the costly corporate welfare that cripples our ability to respond to truly urgent social needs such as health care, education, and national security. The FSC benefits many major U.S. corporations, including General Electric, Boeing, Motorola, Caterpillar, Allied Signal, and Cisco Systems. In addition, the FSC also helps foreign firms, like Rolls Royce, that have plants located in America. However, few of these benefits actually trickle down to help the American worker. Instead, as the Congressional Budget Office points out, “many FSCs are largely paper corporations with very few employees.” On February 24, 2000, the Appellate Body of the World Trade Organization upheld a decision that this provision is an export subsidy and violates our WTO obligations.

This pending legislation is the third version of an export subsidy that was first introduced as the Domestic International Sales Corporation provision in the Revenue Act of 1971. However, this version of the bill does little to change the effects of the FSC, and actually makes it a bigger corporate giveaway. This legislation technically eliminates the FSC, but then replaces it with a new extraterritorial tax system that essentially maintains the current subsidy. In addition, this new scheme expands the subsidy to include full benefits for defense contractors and extends benefits to agricultural cooperatives. In order to meet WTO concerns, this legislation also allows foreign firms greater ability to utilize the FSC. The total cost of rewriting and expanding the FSC subsidy will cost the American taxpayers \$42 billion between 2001 and 2010—all of which will come out of the surplus.

There is also extensive evidence that this export subsidy does not work very well. In a recent report, the Congressional Research Service states that the FSC increased the quantity of U.S. ex-

ports by a range of two-tenths of one percent to four-tenths of one percent. This report also states that “traditional economic analysis indicates that FSC reduces overall U.S. economic welfare.” The CBO agrees that “export subsidies, such as FSCs, reduce global economic welfare and typically even reduce the welfare of the country granting the subsidy, even though domestic export-producing industries benefit.” CBO also points out that FSCs increase both imports and exports, due to the effects of export subsidies on foreign exchange rates. This “beggar-thy-neighbor” effect will actually cause U.S. domestic companies in import-competing industries to reduce domestic investment and employment.

Finally, there is no assurance that this system actually fixes the problem. The European Union has agreed to wait until November, before announcing a \$4 billion list of retaliatory tariffs against the FSC subsidy. However, they have not agreed to the actual changes in this legislation. The EU still has concerns about provisions in this legislation that grandfather the FSC, and they intend to have it reviewed by the WTO. It is fair to expect that we will end up debating this issue again within the next two years. It makes more sense for the Senate to eliminate the FSC completely in line with our obligations to the WTO.

Mr. President, our country is now in a position where we can begin paying down the national debt. Every American shoulders somewhere in the range of \$19,000 in federal debt, because of the fiscal irresponsibility of their elected officials. I would like to make it clear that I remain a staunch supporter of free trade and open markets. However, if we intend to support a free trade regime that helps American consumers and taxpayers, we must not continue our policy of giving large corporations and special interests giant export subsidies.

This FSC legislation is simply an unnecessary federal subsidy that does not provide a fair return to the taxpayers who bear the heavy burden of its cost. I urge my colleagues to oppose this legislation, and instead examine the prospect of completely eliminating the FSC subsidy. •

Mr. BAUCUS. Mr. President, I rise to support the legislation before us today on Foreign Sales Corporations, FSC. However, I really object to the fact that we even have to address the issue of the FSC during this session of Congress.

The European Union, despite rhetoric in support for the WTO, is taking action after action that raises real doubt about their commitment. Let's quickly review the history that brought us to this place today.

The United States created the DISC in the early 1970s. Given the different nature of the U.S. and the European

tax systems, the purpose was to put American exporters on an equal footing with their European competitors. In the 1980s, in response to a negative finding at the GATT, we replaced it with the FSC to make it GATT-compatible. The Europeans accepted this alteration.

Fast forward to the 1990s. The EU lost cases to the United States on beef hormones and on bananas. These were difficult issues for Europe. Yet, the EU did not seek a negotiated solution. Nor did they try to take corrective action. Instead, the EU used every legal and procedural trick in the GATT and WTO book to weasel out. They lost at every turn. This behavior of the EU, honoring the letter of the WTO while ignoring its spirit, is inappropriate and irresponsible. The EU should be a leader in ensuring that the credibility and integrity of the WTO process is maintained. They shouldn't be taking cheap legal dodges. Why should other WTO members comply promptly with WTO decisions if the EU thumbs its nose at the system?

Finally, the EU could no longer delay and circumvent implementation of these WTO decisions. The U.S. retaliates. Then, all of a sudden, we find ourselves challenged at the WTO on FSC. As far as I know, European companies did not beat a path to EU headquarters in Brussels insisting that they take us on over the FSC. Trade ministers in European capitals did not rush to Brussels with demands to file this case against us. Rather, the EU bureaucrats, angry at having lost two important cases to the United States, were going to fight back. So, we end up with the FSC case, and another example of the EU undermining the global trade system.

Deputy Secretary of the Treasury Stu Eizenstadt has done yeoman's work in trying to resolve this problem. The legislation before us is the fruit of his labor. And we should all thank him for working so hard, with so many diverse interests, to craft a solution. Yet, from Europe, all we have heard is a series of denunciations. An insistence that this legislation violates the WTO. An apparent eagerness to move ahead with a massive multi-billion dollar retaliation list against the United States. What a travesty!

I support this change in our law. And I express my appreciation to the other Senators who have allowed this legislation to move forward under unanimous consent, despite their interest in offering amendments to the bill. But I also call on the political leadership in Europe to step back and look at what their representatives in Brussels are doing. Please reflect on the danger to the integrity of the WTO of the actions that your EU bureaucrats have taken.

The committee amendments were withdrawn.

The amendment (No. 4356) was agreed to.

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

The bill (H.R. 4986), as amended, was read the third time and passed.

Mr. ROTH. Mr. President, this bill passed by the Senate satisfies the United States' WTO obligations and ensures that U.S. companies will compete on a level playing field in the global marketplace.

By enacting this legislation, we will avoid a needless trade dispute, protect the American economy, and satisfy our international obligations to our trading partners. This bill also represents a continuation of this Senate's outstanding record of accomplishment in promoting free trade. This legislation is the third significant piece of trade legislation passed by the Senate this year. I believe you would have to search long and hard to find a better record of trade legislation.

I don't believe it is necessary to go through the extended history of the dispute between the United States and the European Union that gave rise to the need for the bill before us. The bill represents a good faith attempt to comply with the WTO's ruling that the current FSC provisions constitute an illegal export subsidy. This bill withdraws the current FSC provisions and, in their place, makes fundamental adjustments to the Internal Revenue Code that incorporate territorial features akin to those of several European tax systems. The bill not only addresses the specific concerns raised by the WTO, it also takes into account the comments received from the EU in the course of consultations over the last eight months.

I want to stress the need to pass this bill. Failure to do so could result in the imposition of retaliatory duties against American exports to the European Union. Under the WTO rules, the EU will have the right to retaliate against U.S. exports as of today unless this legislation is passed. A failure to enact this legislation would prove costly for the American worker, the American farmer, and for American business.

So it is with a great sense of satisfaction that we pass this bill today. I compliment the Senate on its farsighted vote for passage of this legislation.

The staff of the Joint Committee on Taxation has prepared a technical explanation of H.R. 4986, as amended by the Senate. This explanation, entitled the "Technical Explanation of the Senate Amendment to H.R. 4986, the 'FSC Repeal and Extraterritorial Income Exclusion Act of 2000', November 1, 2000 (JCX-111-00)," provides a detailed description of this bill and embodies the Finance Committee's legislative intent regarding H.R. 4986. Taxpayers may rely on this technical explanation (JCX-111-00) in interpreting the provisions of H.R. 4986. In addition, regula-

tions issued by the Department of Treasury should be consistent with the language and intent of this technical explanation.

MORNING BUSINESS

Mr. LOTT. Mr. President, I ask unanimous consent there be a period of morning business with Senators permitted to speak for up to 10 minutes each between now and 12:30 p.m., with the time equally divided between the two leaders. And I ask consent, in order to get some fair debate, that the distinguished ranking member of the Finance Committee be recognized for the first 10 minutes, Senator WELLSTONE for the second 10 minutes, Senator GRAMM for the third 10 minutes, and Senator DURBIN for the fourth 10 minutes.

Mr. DASCHLE. Mr. President, reserving the right to object, I just do so to inquire of the majority leader about the schedule for the remainder of the day. It appears that the only remaining legislative item to be taken up today may be the continuing resolution.

Mr. LOTT. Correct.

Mr. DASCHLE. As I understand it, we do not have an objection to taking up the continuing resolution under a voice vote.

Mr. BUNNING. Yes, we do.

Mr. DASCHLE. We do have an objection?

Mr. BUNNING. Yes, we do.

Mr. LOTT. Mr. President, if the Senator would yield, as we had discussed, we hope when the House does act within the next, hopefully, 20 or 30 minutes, we would talk further and make some decisions about whether or not we would want to modify that continuing resolution in any way.

If we couldn't, of course, then we would see if we could clear it by a voice vote. We don't have it done yet, but we haven't gotten to that point yet. Within 30 minutes, we hope to get a clarification of when a vote would occur or if any modification might be forthcoming.

I don't want to go too far beyond just saying that right now. Senator DASCHLE and I are exchanging ideas. I do think we have reached a point where we need to make some decisions. Senators as well as House Members and the administration need to know what to expect. I think, to be perfectly honest, nobody wants to step up and say we have to look at an alternative. I am prepared to do that. I believe Senator DASCHLE is prepared to join me in that. We ask your indulgence for at least 30 minutes, and then we will see what we can do at that point.

The PRESIDING OFFICER. Is there objection?

Mr. LOTT. Mr. President, I amend my request that after Senator DURBIN, Senator HUTCHISON be included in the queue.

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

Mr. LOTT. I thank my colleagues and yield the floor.

The PRESIDING OFFICER. The Senator from New York is recognized.

TRADE ISSUES

Mr. MOYNIHAN. Mr. President, the majority leader has, on several occasions, noted that this Congress, particularly this session of this Congress, has been singular in the number of major trade measures that have been enacted.

With the cooperation of the minority leader, with the full support of the chairman of the Finance Committee, Senator ROTH—who was here just a moment ago but whose schedule required that he leave as soon as the unanimous consent measure was adopted—we have agreed to major trade legislation with sub-Saharan Africa—that entire part of the continent; to expand the Caribbean Basin Initiative, which is hugely important in the aftermath of the North American Free Trade Agreement—which suddenly put island nations and nations on the isthmus below Mexico at a disadvantage, which no one intended and which we have now been able to redress in some considerable measure. The permanent normal trade relations with China was one of the most important pieces of legislation we have dealt with in a half century in the Congress. And we passed the Tariff Suspension and Trade Act of 2000, granting, among other things, permanent normal trade relations to Georgia, just last week.

Now as the closing days are at hand, or may be at hand—in any event, it is the first of November—we have taken this action by unanimous consent to adopt an amended version of the FSC Repeal and Extraterritorial Income Exclusion Act of 2000. That is a long title for a simple proposition. The World Trade Organization ruled that a measure in our Tax Code which has been in place for many years now, the Foreign Sales Corporation, which gave a tax benefit for income earned overseas—it was to encourage overseas sales—was contrary to the World Trade Organization rules.

I think we do not disagree; when we look at the rules, look at the law, the ruling was correct. But we had to then change our laws in order to give equivalent treatment to American corporations working overseas so that they would remain competitive in those markets, but would not be in violation of the WTO rules. If we were not to do that, sir, and do it today, we would be subject to \$4 billion a year in tariff retaliation from the European Union. It had the potential of a ruinous trade war. We have seen the animosity that arises over bananas. How the United States ever got into the business of exporting bananas, I do not know. I think