(The nominations ordered to lie on the Secretary's desk were printed in the RECORDS of September 3, 1998, September 16, 1998 and September 29, 1998, at the end of the Senate proceedings.)

In the Coast Guard nomination of Joseph E. Vorbach, which was received by the Senate and appeared in the Congressional Record of September 3, 1998

In the Coast Guard nominations beginning John H. Siemens, and ending David M. Illuminate, which nominations were received by the Senate and appeared in the Congressional Record of September 16, 1998

In the Coast Guard nomination of Richelle L. Johnson, which was received by the Senate and appeared in the Congressional Record of September 29, 1998

In the Coast Guard nominations beginning Robert J. Fuller, and ending John B. McDermott, which nominations were received by the Senate and appeared in the Congressional Record of September 29, 1998

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. BREAUX (for himself and Mr. MACK):

S. 2535. A bill to prohibit the Secretary of the Treasury from issuing regulations dealing with hybrid transactions; to the Committee on Finance.

By Mr. HATCH:

S. 2536. An original bill to protect the safety of United States nationals and the interests of the United States at home and abroad, to improve global cooperation and responsiveness to international crime and terrorism, and to more effectively deter international crime and acts of violence; from the Committee on the Judiciary; placed on the calendar.

By Mr. MURKOWSKI:

S. 2537. A bill to amend the Export-Import Bank Act of 1945 to assure that the United States is consistent with other G-7 countries in evaluating environmental concerns relating to projects to be financed, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. BREAUX:

S. 2538. A bill to amend the Internal Revenue Code of 1986 to modify the active business definition relating to distributions of stock and securities of controlled corporations; to the Committee on Finance.

By Ms. SNOWE (for herself, Mr. TORRICELLI, Mr. FORD, and Mr. GORTON):

S. 2539. A bill to authorize and facilitate a program to enhance training, research and development, energy conservation and efficiency, and consumer education in the oilheat industry for the benefit of oilheat consumers and the public, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. ABRAHAM (for himself, Mr. KENNEDY, Ms. COLLINS, Mr. LEAHY, Mr. D'AMATO, and Mr. MOYNIHAN):

S. 2540. A bill to extend the date by which an automated entry-exit control system must be developed; considered and passed.

By Mr. DASCHLE (for Mr. GLENN (for himself, Mr. THOMPSON, Ms. COLLINS, Mr. LEVIN, Mr. DURBIN, Mr. CLELAND, and Mr. LIEBERMAN)):

S.J. Res. 58. A joint resolution recognizing the accomplishments of Inspector Generals since their creation in 1978 in preventing and detecting waste, fraud, abuse, and mismanagement, and in promoting economy, efficiency, and effectiveness in the Federal Government; considered and passed.

By Mr. GRAMM:

S.J. Res. 59. A joint resolution to provide for a Balanced Budget Constitutional Amendment that prohibits the use of Social Security surpluses to achieve compliance; read the first time.

S.J. Res. 60. A joint resolution to provide for a Balanced Budget Constitutional Amendment that prohibits the use of Social Security surpluses to achieve compliance; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. LEVIN:

S. Con. Res. 122. A concurrent resolution expressing the sense of Congress that the 65th anniversary of the Ukrainian Famine of 1932–1933 should serve as a reminder of the brutality of the government of the former Soviet Union's repressive policies toward the Ukrainian people; to the Committee on Foreign Relations.

By Mr. MCCAIN (for himself, Mr. KYL, Mr. CRAIG, and Mr. LOTT):

S. Con. Res. 123. A concurrent resolution to express the sense of the Congress regarding the policy of the Forest Service toward recreational shooting and archery ranges on Federal land; to the Committee on Energy and Natural Resources.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BREAUX (for himself and Mr. MACK):

S. 2535. A bill to prohibit the Secretary of the Treasury from issuing regulations dealing with hybrid transactions; to the Committee on Finance.

SUBPART F OF INTERNAL REVENUE CODE

• Mr. BREAUX. Mr. President, today Mr. MACK and I are introducing legislation to place a permanent moratorium on the Department of the Treasury's authority to finalize any proposed regulations issued pursuant to Notice 98–35, dealing with the treatment of hybrid branch transactions under subpart F of the Internal Revenue Code. It also prohibits Treasury from issuing new regulations relating to the tax treatment of hybrid transactions under subpart F and requires the Secretary to conduct a study of the tax treatment of hybrid transactions and to provide a written report to the Senate Committee on Finance and the House Committee on Ways and Means.

By way of background, the United States generally subjects U.S. citizens and corporations to current taxation on their worldwide income. Two important devices mitigate or eliminate double taxation of income earned from foreign sources. First, bilateral income tax treaties with many countries exempt American taxpayers from paying foreign taxes on certain types of income (e.g. interest) and impose reduced rates of tax on other types (e.g. dividends and royalties). Second, U.S. taxpayers receive a credit against U.S. taxes for foreign taxes paid on foreign source income. To reiterate, these devices have been part of our international tax rules for decades and are aimed at preventing U.S. businesses from being taxed twice on the same income. The policy of currently taxing U.S. citizens on their worldwide income is in direct contrast with the regimes employed by most of our foreign trading competitors. Generally they tax their citizens and domestic corporations only on the income earned within their borders (the so-called ''water's edge'' approach).

Foreign corporations generally are also not subject to U.S. tax on income earned outside the United States, even if the foreign corporation is controlled by a U.S. parent. Thus, U.S. tax on income earned by foreign subsidiaries of U.S. companies—that is, from foreign operations conducted through a controlled foreign corporation (CFC)—is generally deferred until dividends paid by the CFC are received by its U.S. parent. This policy is referred to as ''tax deferral.''

In 1961, President John F. Kennedy proposed eliminating tax deferral with respect to the earnings of U.S.-controlled foreign subsidiaries. The proposal provided that U.S. corporations would be currently taxable on their share of the earnings of CFCs, except in the case of investments in certain ''less developed countries.'' The business community strongly opposed the proposal, arguing that in order for U.S. multinational companies to be able to compete effectively in global markets, their CFCs should be subject only to the same taxes to which their foreign competitors were subject.

In the Revenue Act of 1962, Congress rejected the President's proposal to completely eliminate tax deferral, recognizing that to do so would place U.S. companies operating in overseas markets at a significant disadvantage vis-a-vis their foreign competitors. Instead, Congress opted to adopt a policy regime designed to end deferral only with respect to income earned from so-called ''tax haven'' operations. This regime, known as ''subpart F,'' generally is aimed at currently taxing foreign source income that is easily moveable from one taxing jurisdiction to another and that is subject to low rates of foreign tax.

Thus, the subpart F provisions of the Internal Revenue Code (found in sections 951–964) have always reflected a balancing of two competing policy objectives: capital export neutrality (i.e. neutrality of taxation as between domestic and foreign operations) and capital import neutrality (i.e. neutrality of taxation as between CFCs and their foreign competitors). While these competing principles continue to form the foundation of subpart F today, recent actions by the Department of the Treasury threaten to upset this longstanding balance.

On January 16, 1998, the Department of the Treasury announced in Notice

98–1l its intention to issue regulations to prevent the use of hybrid branches ''to circumvent the purposes of subpart F.'' The hybrid branch arrangements identified in Notice 98–11 involved entities characterized for U.S. tax purposes as part of a controlled foreign corporation, but characterized for purposes of the tax law of the country in which the CFC was incorporated as a separate entity. The Notice indicated that the creation of such hybrid branches was facilitated by the entity classification rules contained in section 301.7701–I through –3 of the income Tax Regulations (the ''check the box'' regulations).

Notice 98–11 acknowledged that U.S. international tax policy seeks to balance the objectives of capital export neutrality with the objective of allowing U.S. businesses to compete on a level playing field with foreign competitors. In the view of the Treasury and IRS, however, the hybrid transactions attacked in the Notice ''upset that balance.'' Treasury indicated that the regulations to be issued generally would apply to hybrid branch arrangements entered into or substantially modified after January 16, 1998, and would provide that certain payments to and from foreign hybrid branches of CFCs would be treated as generating subpart F income to U.S. shareholders in situations in which subpart F would not otherwise apply to a hybrid branch as a separate entity. This represented a significant expansion of subpart F, by regulation rather than through legislation.

Shortly after Notice 98–11 was issued, the Administration released its Fiscal Year 1999 budget proposals which, among other things, included a provision requesting Congress to statutorily grant broad regulatory authority to the Treasury Secretary to prescribe regulations clarifying the tax consequences of hybrid transactions in cases in which the intended results are inconsistent with the purposes of U.S. tax law. . . .'' While the explanation accompanying the budget proposal argued that this grant of authority as applied to many cases ''merely makes the Secretary's current general regulatory authority more specific, and directs the Secretary to promulgate regulations pursuant to such authority,'' the explanation conceded that in other cases, ''the Secretary's authority may be questioned and should be clarified.''

Notice 98–11 and the accompanying budget proposal generated widespread concerns in the Congress and the business community that the Treasury was undertaking a major new initiative in the international tax arena that would undermine the ability of U.S. multinationals to compete in international markets. For example, House Ways and Means Committee Chairman BILL ARCHER wrote to Treasury Secretary Rubin on March 20, 1998 requesting that ''Notice 98–11 be withdrawn and that no regulations in this area be issued or allowed to take effect until Congress has an appropriate opportunity, to consider these matters in the normal legislative process.'' The Ranking Democrat on the Committee, CHARLES RANGEL, wrote to Secretary Rubin expressing strong concerns about the Treasury's increasing propensity to ''legislate through the regulatory process as evidenced by Notice 98–11.

Despite these concerns, on March 23, 1998, the Treasury department issued two sets of proposed and temporary regulations, the first relating to the treatment of hybrid branch arrangements under subpart F, and the second relating to the treatment of a CFC's distributive share of partnership income. As Notice 98–1l had promised, the regulations provided that certain payments between a controlled foreign corporation and a hybrid branch would be recharacterized as subpart F income if the payments reduce the payer's foreign taxes.

The week after the temporary and proposed regulations were issued, the Senate Finance Committee considered H.R. 2676, the Internal Revenue Service Restructuring and Reform Act of 1998. A provision was included in the bill prohibiting the Treasury and IRS from implementing temporary or final regulations with respect to Notice 98–11 prior to six months after the date of enactment of H.R. 2676. The Senate bill also included language expressing the ''sense of the Senate'' that ''the Department of the Treasury and the Internal Revenue Service should withdraw Notice 98–11 and the regulations issued thereunder, and that the Congress, and not the Department of the treasury or the Internal Revenue Service, should determine the international tax policy issues relating to the treatment of hybrid transactions under subpart F provisions of the Code.''

Opposition to Notice 98–11 and the temporary and proposed regulations continued to mount. On April 23, 1998, 33 Members of the House Ways and Means Committee wrote to Secretary Rubin expressing concern about the Treasury's decision to move forward and issue regulations pursuant to Notice 98–11 without an appropriate opportunity for Congress to consider this issue in the normal legislative process, urging Treasury to withdraw the regulations.

In the face of these and other pressures from the Congress and the business community, on June 19, 1998, the Treasury Department announced in Notice 98–35 that it was withdrawing Notice 98–1l and the related temporary, and proposed regulations. According to Notice 98–35, Treasury intends to issue a new set of proposed regulations to be effective in general for payments made under hybrid branch arrangements on or after June 19, 1998. These regulations, however, will not be finalized before January 1, 2000, in order to permit both the Congress and Treasury Department the opportunity to further study the issues that were raised following the publication of Notice 98–1l earlier this year.

While we applaud the Treasury's decision to withdraw Notice 98–1l and the temporary regulations, we believe that additional legislative action is needed to prevent the Treasury from finalizing the forthcoming regulations until Congress considers the issues involved. We believe that only the Congress has the authority to achieve a permanent resolution of this issue. Notice 98–35, like its predecessor, Notice 98–1l continues to suffer from a fatal flaw; it is the prerogative of Congress, and not the Executive Branch, to pass laws establishing the nation's fundamental tax policies. Simply put, Notice 98–35 adds restrictions to the subpart F regime that are not supported by the Code's clear statutory language, and there has been no express delegation of regulatory authority to the Treasury that relates specifically to the issues presented in the Notice.

More importantly, we question the policy objectives to be achieved by Notice 98–35 and the accompanying proposed regulations. We do not understand the rationale for penalizing U.S. multinational companies for employing normal tax planning strategies that reduce foreign (as opposed to U.S.) income taxes. Moreover, Notice 98–35 is contrary to recent Congressional efforts to simplify the international tax provisions of the Code. For example, the Congress reduced complexity and ridded the code of a perverse incentive for U.S. companies to invest overseas by repealing the Section 956A tax on excess passive earnings in 1996. Again in 1997, the Congress repealed the application of the Passive Foreign Investment Company regime to U.S. shareholders of controlled foreign corporations because of the complexity involved in applying both regimes, in addition to enacting a host of other foreign tax simplifications. Therefore, in order for Congress to gain a better understanding of the Treasury Department's position on this matter, our bill would require the Treasury to conduct a thorough study of the tax treatment of hybrid transactions under subpart F and to provide a report to the Senate Committee on Finance and House Committee on Ways and Means on this issue.

If the forthcoming regulations are permitted to be finalized by the Treasury, U S multinational businesses will be placed at a competitive disadvantage vis-a-vis foreign companies who remain free to employ strategies to reduce the foreign taxes they pay. Clearly, such a result should be permitted to take effect only if Congress, after having an opportunity to fully consider all of the tax and economic issues involved, agrees that the arguments advanced by the Treasury are compelling and determines that additional statutory changes to subpart F are necessary and appropriate.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2535

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

SECTION 1. HYBRID TRANSACTIONS UNDER SUBPART F.

(a) PROHIBITION ON REGULATIONS.—The Secretary of the Treasury (or his delegate)—

(1) shall not issue temporary or final regulations relating to the treatment of hybrid transactions under subpart F of part III of subchapter N of chapter 1 of the Internal Revenue Code of 1986 pursuant to Internal Revenue Service Notice 98–35 or any other regulations reaching the same or similar result as such notice,

(2) shall retroactively withdraw any regulations described in paragraph (1) which were issued after the date of such notice and before the date of the enactment of this Act, and

(3) shall not modify or withdraw sections 301.7701–1 through 301.7701–3 of the Treasury Regulations (relating to the classification of certain business entities) in a manner which alters the treatment of hybrid transactions under such subpart F.

(b) STUDY AND REPORT.—The Secretary of the Treasury (or his delegate) shall study the tax treatment of hybrid transactions under such subpart F and submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate. The Secretary shall hold at least one public hearing to receive comments from any interested party prior to submitting such report.●

● Mr. MACK. Mr. President, today Senator BREAUX and I introduce a bill reaffirming that the lawmaking power is the province of the Congress, not the executive branch. Our bill prohibits the Treasury Department from issuing regulations that would impose taxes on U.S. companies merely because one of their subsidiaries pays money to itself.

As a general rule, U.S. corporations pay U.S. corporate income tax on the earnings of their foreign subsidiaries only when those earnings are actually distributed to the U.S. parent companies. An exception to this general rule is contained in subpart F of the Internal Revenue Code, which accelerates the income tax liability of U.S. parent companies under certain circumstances. The Treasury Department has announced, in Notice 98–35, an intention to issue regulations that will accelerate income tax liability for U.S. companies—not based on the specific circumstances enumerated in subpart F, but instead on a new ''interpretation'' of the ''policies'' that Treasury infers from that 36-year-old provision. This action crosses the line between administering the laws and making the laws, and cannot be allowed by Congress.

Notice 98–35 concerns so-called ''hybrid arrangements.'' These involve business entities that are considered separate corporations for foreign tax purposes, but are viewed as one company with a branch office for U.S. purposes. U.S. companies organize their subsidiaries in this manner to reduce the amount of foreign taxes they owe. Transactions between a subsidiary and its branch have no impact on U.S. taxable income of the parent, as its subsidiary is merely paying money to itself. But the Treasury Department intends to impose a tax on the U.S. parent to penalize it for reducing the foreign taxes it owes.

This effort is wrong for several reasons. First, the Treasury Department possesses only the power to issue regulations to administer the laws passed by Congress. New rules based on congressional purpose are known as laws, and under the Constitution laws are made by Congress.

Second, the Treasury Department is elevating one policy underlying subpart F—taxing domestic and foreign operations in the same manner—over the other policy of maintaining the competitiveness of U.S. companies in foreign markets. This proposed tax would put U.S.-owned subsidiaries at a competitive disadvantage.

Finally, the Treasury Department should not impose a tax on U.S. companies to force these companies to reorganize in a way that increases the taxes they owe to foreign countries. The Treasury Department is not the tax collector for other nations. And by raising the foreign tax bills of U.S. companies, the Treasury Department is also increasing the size of foreign tax credits and thereby reducing U.S. tax revenues.

The Treasury Department is not only making policy that it has no right to make, it is also making bad policy. Our bill places a moratorium on this lawmaking. It also directs the Treasury Secretary to study these issues and submit a report to the tax-writing committees of Congress. Many people and organizations, including the Treasury Department, desire changes in the tax laws. But only Congress has the power to make these changes, and this is a power we intend to keep.●

By Mr. HATCH:

S. 2536. An original bill to protect the safety of United States nationals and the interests of the United States at home and abroad, to improve global cooperation and responsiveness to international crime and terrorism, and to more effectively deter international crime and acts of violence; from the Committee on the Judiciary; placed on the calendar.

THE IMPROVEMENTS TO INTERNATIONAL CRIME AND ANTI-TERRORISM AMENDMENTS OF 1998

Mr. LEAHY. Mr. President, I am pleased with the Chairman in offering this important legislation, the Improvements to International Crime and Anti-Terrorism Amendments of 1998, to combat international crime.

Crime and terrorism increasingly have an international face. The bombings of U.S. embassies in Kenya and Tanzania are just the most recent reminders of how vulnerable we are to terrorist attacks. In a shockingly brutal attack, more than 250 men, women and children, were murdered in cold blood. Among those 250 victims were 12 of our fellow citizens. And none of us can forget that it was only a short time ago that there was another assault right here at home, in the Capitol itself.

With improvements in technology, criminals now can move about the world with ease. They can transfer funds with a push of a button, or use computers and credit card numbers to steal from American citizens from any spot on the globe. They can strike at Americans here and abroad. The playing field keeps changing, and we need to change with it.

This bill does exactly that, not with sweeping changes but with thoughtful provisions carefully targeted at specific problems faced by law enforcement. The bill offers tools and protection to investigators and prosecutors, while narrowing the room for maneuver that international criminals and terrorists now enjoy.

I initially introduced some of the provisions of this bill as early as April 30, 1998, in the Money Laundering Enforcement and Combating Drugs Act in Prisons of 1998 with Senators DASCHLE, KOHL, FEINSTEIN, and CLELAND. Again, on July 14, 1998, I introduced with Senator BIDEN many of these provisions set forth in the bill on behalf of the Administration in S. 2303, the International Crime Control Act of 1998. I again included almost all of the provisions in another major anti-crime bill, the Safe Schools, Safe Streets, and Secure Borders Act of 1998, on September 16, 1998, along with Senators DASCHLE, BIDEN, MOSELEY-BRAUN, KENNEDY, KERRY, LAUTENBERG, MIKULSKI, BINGAMAN, REID, MURRAY, DORGAN, and TORRICELLI.

It is a particular pleasure now to be able to draw from these more comprehensive bills a set of discrete, very important improvements that can enjoy bipartisan support, and which I hope and trust can be enacted into law, even in the short time remaining in this session. All of these provisions enjoy the full support of the Administration, and each of them is a law enforcement priority.

The bill would criminalize murder and other serious crimes committed by organized crime against U.S. nationals abroad, and against state and local officials who are working abroad with federal authorities on joint projects or operations.

The bill also protects our maritime borders by providing realistic sanctions for vessels that fail to ''heave to'' or otherwise obstruct the Coast Guard. No longer will drug-runners be able to stall or resist Coast Guard commands with impunity.

The bill also increases our authority to exclude from entry into our country international criminals and terrorists, including those engaged in flight to avoid prosecution, alien smuggling, or arms or drug trafficking under specific circumstances. At the same time, we ensure that the Attorney General has full authority to make exceptions for humanitarian and similar reasons.

The bill includes important money laundering provisions. At a recent Judiciary Committee hearing on anti-terrorism, FBI Director Louis Freeh noted the importance of money laundering laws as a tool in stopping not only international drug kingpins, but also international terrorists, such as Usama bin Laden, the multi-millionaire terrorist who has been linked to the recent embassy bombings.

The bill has two important provisions aimed at computer crimes: it provides expanded wiretap authority, subject to court order, to cover computer crimes, and also gives us extraterritorial jurisdiction over access device fraud, such as stealing telephone credit card numbers, where the victim of the fraud is within the U.S.

We cannot do it all alone, however. This bill facilitates international cooperation by allowing our country to share the proceeds of joint forfeiture operations, to encourage participation by those countries. It streamlines procedures for executing MLAT requests that apply to multiple judicial districts. Furthermore, the bill addresses the essential but often overlooked role of state and local law enforcement in combating international crime, and authorizes reimbursement of state and local authorities for their cooperation in international crime cases. The bill helps our prosecutors in international crime cases by facilitating the admission of foreign records in U.S. courts. Finally, the bill would speed the wheels of justice by prohibiting international criminals from being credited with any time they serve abroad while they fight extradition to face charges in our country.

These are important provisions that I have advocated for some time. They are helpful, solid law enforcement provisions. I must close with a special thanks to my friend and colleague from Utah, Senator HATCH, for his help in making this bill a reality. It has been pleasure to work closely with him to craft a bipartisan bill that will accomplish what all of us want, to make America a safer and more secure place.

By Mr. MURKOWSKI:

S. 2537. A bill to amend the Export-Import Bank Act of 1945 to assure that the United States is consistent with other G–7 countries in evaluating environmental concerns relating to projects to be financed, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

EXPORT-IMPORT BANK ACT AMENDMENTS

Mr. MURKOWSKI. Mr. President, I rise to introduce legislation regarding the Export-Import Bank. This legislation is both pro-trade and pro-environment.

Let me start by saying that I support U.S. international finance institutions like Ex-Im Bank, OPIC and TDA because they are necessary to level the playing field for American companies seeking to compete abroad. In a perfect world, such government assistance would be unnecessary, but we know that the other industrialized countries are using government financing to sweeten the pot for their companies' participation in international projects.

My legislation addresses the well-meaning environmental policies of the Bank that are actually harming the environment while undermining American competitiveness. Specifically, my legislation does two things: First, it directs the Ex-Im Bank to negotiate a mulitlateral agreement with the export financing agencies of all G–7 countries to address environmentally sensitive development overseas. Second, until such agreement is reached, my legislation would allow U.S. companies to compete on equal footing with other international companies bidding on international projects. In other words, my legislation would ensure that American companies have access to Ex-Im Bank financing for overseas projects where other G–7 countries are providing or have indicated an intent to provide financing to the project in question without conditioning such assistance on environmental policies or procedures.

Mr. President, under current law, the Ex-Im Bank can deny financing to U.S. companies seeking to participate in international projects when the Bank's environmental concerns have not been adequately addressed by foreign countries. But there is no mechanism in place to ensure that all G–7 countries abide by the same set of rules or environmental standards in competing for such projects. The net effect of this law is to impose unilateral sanctions on U.S. companies in the name of the environment.

The lack of American participation in the largest hydroelectric project in the World, the $24.5 billion Three Gorges Dam Project in China, illustrates why this change in law is necessary. The mission of the Ex-Im Bank is to promote U.S. exports and U.S. jobs. Yet, the Bank refused to provide financial guarantees for this project because the Bank's environmental concerns had not been satisfactorily addressed by the Chinese government.

There were two perverse outcomes from the Bank's decision. First, the project is going ahead anyway without the environmental technologies and practices our companies' participation would bring. And second, the only American participation is by companies that are large enough to use their foreign subsidiaries with another government's financing, and consequently the jobs are going to the Japanese, the Canadians and the Europeans.

A letter that I received from the President of Rotec Industries, located in Elmhurst, Illinois, explains the detrimental effects of the Ex-Im Banks decision. Rotec submitted a bid to the Chinese government for $130 million of U.S.-made concrete placing and transporting equipment. Following the Ex-Im Bank's negative decision they received an order for only a fraction of their proposal. A Japanese-French consortium received an order for ''Rotec-equivalent'' equipment. But it gets worse. As Rotec's president explained:

> No Ex-Im financing meant no made-in-the-USA requirements and no made-in-the-USA price premium . . . For the first time in our 32-year history, Rotec subcontracted manufacturing to companies in South Korea. The effect on U.S. jobs is easy to quantify . . . Rotec will have spent over $13,000,000 in South Korea. With Ex-Im's support, this work—and probably more—would have stayed in the United States.

But this was not the only bad news for Rotec. Before Ex-Im's decision, Rotec was the world's only manufacturer of this specialized equipment. But the Japanese-French consortium selected by the Chinese have now copied Rotec's product. As Rotec's president described it, Ex-Im's decision helped open the door and they [the consortium] walked right in. Rotec will likely face foreign competition wherever this product is needed.''

Other U.S. companies who sought to participate in the Three Gorges Dam project tell a similar story. Caterpillar estimates that it lost $200 million in sales. GE routed its bid through its Canadian subsidiary. Voight Hydro of Pennsylvania had to withdraw its bid in favor of its German parent, which won $85 million of contracts.

Although my legislation cannot retroactively change the effect of the Ex-Im Bank's decision on U.S. participation in the Three Gorges Dam project, we will face this issue again. A recent New York Times story quoted Chinese officials who pledge to spend $1.2 trillion on a vast program of new infrastructure projects over the next three years. Included in those projects are plans to build five large hydroelectric power stations over the next 12 years, at a cost exceeding $7 billion. Although this is small compared to Three Gorges, it presents excellent opportunities for U.S. companies. In addition, the Chinese have plans to order a new nuclear plant each year for the next 20 years. This emerging Chinese market is estimated to be worth $1.65 billion per year in U.S. nuclear exports, supporting an equivalent of 25,400 full time American jobs.

I am told that the environmental lobbyists are out in full force against this legislation. Environmental groups have circulated a letter stating that my legislation would mean that ''[t]he United States Government will likely support dangerous nuclear power plants, unsustainable logging of primary forests, and huge hydroelectric dams resettling millions of people in developing countries with no environmental safeguards allowed.''

Mr. President, let me just respond to their claim that nuclear power plants and hydroelectric dams should not be funded on environmental grounds. China is a case in point. By 2015 China will surpass the United States as the largest emitter of greenhouse gases.

According to the World Health Organization, 6 of the 10 most polluted cities in the world are in China. Coal supplies three-quarters of China's energy and is choking its cities. Already, hundreds of thousands of Chinese die premature deaths each year from chronic respiratory illness. Thousands more died this year from flooding of the Yangtze River and millions more were displaced.

Mr. President, how can the environmentalists ignore the benefits to China's environment, indeed to the World's environment, of helping China turn to cleaner forms of energy such as hydro and nuclear? The 18,200 megawatt Three Gorges Dam will replace the equivalent of thirty-six 500 megawatt coal fossil plants. In a country suffocating on dirty air, how can any rational environmental policy promote coal and penalize clean burning hydro and nuclear power? Of course, hydro and nuclear plants have environmental consequences. Every form of energy production does. Even windmills become cuisinarts for birds. But countries such as China have the right to determine which consequences she can accept.

Let's make sure that Ex-Im does not unilaterally rule out American participation in future projects. Support my legislation and vote to help American companies compete.

Mr. President, I ask unanimous consent that a copy of the Rotec letter be printed in the RECORD.

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

ROTEC INDUSTRIES,
Elmhurst, IL, September 23, 1998.

Hon. FRANK MURKOWSKI,
U.S. Senate,
Washington, DC.

DEAR SENATOR MURKOWSKI: As president of a company which has been involved in the construction of China's Three Gorges Dam, I read your September 16th Washington Post op-ed article, ''Too Green'', with great interest.

Rotec Industries, along with Caterpillar and Voith Hydro, aggressively pursued Ex-Im Bank financing for Three Gorges Dam. Of course, we were disappointed when Ex-Im denied financing. It seemed like the wrong decision for economic, environmental and common-sense reasons.

Your legislation, which would prohibit Ex-Im from withholding financing on environmental grounds where any other G–7 country is providing financing, offers some hope that U.S. businesses and workers will have the support of Ex-Im Bank in future, similar situations.

During the two years since Ex-Im's decision, Rotec has continued to pursue its business at Three Gorges with some successes and with some disappointments. A brief history our Three Gorges events:

January 1996—Rotec submitted a proposal (before Ex-Im's decision) to supply more than $130,000,000 of U.S.-made equipment.

November 1996—Following Ex-Im's negative decision, we received an order for only $31,000,000 of equipment.

December 1996—Japanese-French consortium received an order for ''Rotec-equivalent'' equipment.

May 1998—Rotec received an additional $22,000,000 order.

We do not expect any additional major orders from Three Gorges. Our total is approximately $53,000,000; about 40% of what we had hoped to receive.

It gets worse: Losses for American workers were even greater. During negotiations following Ex-Im's decision, our Chinese customer demanded a price discount because ''Rotec can subcontract manufacturing in China or a third country.'' No Ex-Im financing meant no made-in-the-USA requirements and no made-in-the-USA price premiums. Rotec was literally fighting for its existence; we were facing serious competition from foreign suppliers and Ex-Im would not help. For the first time in our 32-year history, Rotec subcontracted manufacturing to companies in South Korea. The effect on U.S. jobs is easy to quantify: when the last shipment is made at the end of this year, Rotec will have spent over $13,000,000 in South Korea. With Ex-Im's support, this work—and probably more—would have stayed in the United States.

More bad news: Before Ex-Im's decision, Rotec was the world's *only* manufacturer of this specialized equipment. The Japanese-French consortium had copied our concepts on paper, but had never designed, manufactured or sold any similar product. Now they have and Rotec has a new competitor. Ex-Im's decision has helped open the door and they walked right in. Rotec will likely face foreign competition wherever this product is needed.

My environmental ''feelings'': (I have made twelve trips to China during the past three years so this comes mostly from personal observation.) China is a huge country with a very low standard of living—especially in the rural areas. Many people live on mountainsides in hand-dug ''caves''. China's people need energy, improved transportation and the ability to control flooding in order to improve their standard of living.

It seems unfair for the United States or anyone else to tell China they can not develop their rivers, especially when so much can be gained. Building Three Gorges Dam means producing clean electricity with hydro-power, mitigating the effects of flooding and adding navigable stretches to a river in an area with very poor roads. Not building the dam means burning more fossil fuel, further polluting the already-terrible air; continuing floods which kill thousands, violently displacing hundreds-of-thousands or even millions and cause untold property damage for people who have so little; and slowing economic development for people who desperately need it. In this case, building a dam is ''the green decision.''

Your initiation of this measure is supported and appreciated by Rotec. We wish you success.

Sincerely,

STEVE LEDGER,
President, Rotec Industries, Inc.

By Mr. BREAUX:

S. 2538. A bill to amend the Internal Revenue Code of 1986 to modify the active business definition relating to distributions of stock and securities of controlled corporations; to the Committee on Finance.

AMENDMENT TO INTERNAL REVENUE CODE SECTION 355(B)(2)

• Mr. BREAUX. Mr. President, today I introduce a bill that would make a technical change in the Internal Revenue Code. We often talk about the need to simplify the Tax Code. The change I propose today would do that.

This change is small but very important. It would not alter the substance of current law in any way. It would, however, greatly simplify a common corporate transaction. This small technical change will alone save corporations millions of dollars in unnecessary expenses and economic costs that are incurred when they divide their businesses.

The Treasury Department agrees that there is a technical problem with the drafting of the Tax Code. It also agrees that a legislative change like the bill I introduce today is the best way to correct it.

Corporations, and affiliated groups of corporations, often find it advantageous, or even necessary, to separate two or more businesses. The division of AT&T from its local telephone companies is an example of such a transaction. The reasons for these corporate divisions are many, but probably chief among them is the ability of management to focus on one core business.

At the end of the day, when a corporation divides, the stockholders simply have the stock of two corporations, instead of one. The Tax Code recognizes this is not an event that should trigger tax, as it includes corporate divisions among the tax-free reorganization provisions.

One requirement the Tax Code imposes on corporate divisions is very awkwardly drafted, however. As a result, an affiliated group of corporations that wishes to divide must often engage in complex and burdensome preliminary reorganizations in order to accomplish what, for a single corporate entity, would be a rather simple and straightforward spinoff of a business to its shareholders. The small technical change I propose today would eliminate the need for these unnecessary transactions, while keeping the statute true to Congress' original purpose.

More specifically, section 355 (and related provisions of the Code) permits a corporation or an affiliated group of corporations to divide on a tax-free basis into two or more separate entities with separate businesses. There are numerous requirements for tax-free treatment of a corporate division, or ''spinoff,'' including continuity of historical shareholder interest, continuity of the business enterprises, business purpose, and absence of any device to distribute earnings and profits. In addition, section 355 requires that each of the divided corporate entities be engaged in the active conduct of a trade or business. The proposed change would alter none of these substantive requirements of the Code.

Section 355(b)(2)(A) currently provides an attribution or ''lookthrough'' rule for groups of corporations that operate active businesses under a holding company, which is necessary because a holding company, by definition, is not itself engaged in an active business. This lookthrough rule inexplicably requires, however, that ''substantially all'' of the assets of the holding company consist of stock of active controlled subsidiaries. The practical effect of this language is to prevent holding companies from engaging in spinoffs if they own almost any other assets. This is in sharp contrast to corporations that operate businesses directly, which can own substantial assets unrelated to the business and still engage in tax-free spinoff transactions.

In the real world, of course, holding companies may, for many sound business reasons, hold other assets, such as noncontrolling (less than 80 percent) interests in subsidiaries, controlled subsidiaries that have been owned for less than five years (which are not considered ''active businesses'' under section 355), or a host of nonbusiness assets. Such holding companies routinely undertake spinoff transactions, but because of the awkward language used in section 355(b)(2)A), they must first undertake one or more (often a series of) preliminary reorganizations solely for the purpose of complying with this inexplicable language of the Code.

Such preliminary reorganizations are at best costly, burdensome, and without any business purpose, and at worst, they seriously interfere with business operations. In a few cases, they may be so costly as to be prohibitive, and cause the company to abandon an otherwise sound business transaction that is clearly in the best interest of the corporation and the businesses it operates.

There is no tax policy reason, tax advisors agree, to require the reorganization of a consolidated group that is clearly engaged in the active conduct of a trade or business, as a condition to a spinoff. Nor is there any reason to treat affiliated groups differently than single operating companies. Indeed, no one has ever suggested one. The legislative history indicates Congress was concerned about noncontrolled subsidiaries, which is elsewhere adequately addressed, not consolidated groups.

For many purposes, the Tax Code treats affiliated groups as a single corporation. Therefore, the simple remedy I am proposing today for the problem created by the awkward language of section 355(b)(2)(A) is to apply the active business test to an affiliated group as if it were a single entity.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2538

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

SECTION 1. MODIFICATION OF ACTIVE BUSINESS DEFINITION.

(a) IN GENERAL.—Section 355(b)(2) of the Internal Revenue Code of 1986 (defining active conduct of a trade or business) is amended by adding at the end the following: ''For purposes of subparagraph (A), all corporations that are members of the same affiliated group (as defined in section 1504(a)) shall be treated as a single corporation.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions or transfers after the date of the enactment of this Act.●

By Mr. GRAMM:

S.J. Res. 59. A joint resolution to provide for a Balanced Budget Constitutional Amendment that prohibits the use of Social Security surpluses to achieve compliance; read the first time.

BALANCED BUDGET CONSTITUTIONAL AMENDMENT

Mr. GRAMM. Mr. President, I rise today to introduce a Balanced Budget Constitutional Amendment which is designed to protect Social Security. Since we last considered a balanced budget amendment in the Senate, we have achieved balance in the unified federal budget for the first time in 30 years, and have made substantial progress toward achieving balance without relying on the surpluses currently accumulating in Social Security. For 1998, the most recent projections by the Congressional Budget Office show a unified budget surplus of $63 billion, and an on-budget deficit of just $41 billion when the $104 billion surplus in Social Security is not counted. This on-budget deficit is projected to disappear by 2002 under current budget policies.

The Balanced Budget Constitutional Amendment I am introducing today is identical to S.J. Res. 1, which received 66 votes in the Senate on March 4, 1997, except that surplus revenues in Social Security are not counted in determining compliance. It is also identical to the Dorgan substitute and Reid perfecting amendments to S.J. Res. 1, which received 41 and 44 votes respectively, except that while Social Security surpluses are not counted, any deficit in Social Security must be offset by an equivalent on-budget surplus. This distinction is important because Social Security is projected to begin running cash-flow deficits in the year 2013.

The President and a majority of Congress have expressed support for balancing the budget without counting Social Security surpluses, and now that goal is within our reach. We should take this opportunity to approve this Constitutional amendment and send it to the States for ratification. This Constitutional amendment would provide the structure and enforcement mechanism to allow us to achieve this bipartisan goal.

ADDITIONAL COSPONSORS

S. 375

At the request of Mr. MCCAIN, the names of the Senator from Missouri (Mr. ASHCROFT) and the Senator from Georgia (Mr. CLELAND) were added as cosponsors of S. 375, a bill to amend title II of the Social Security Act to restore the link between the maximum amount of earnings by blind individuals permitted without demonstrating ability to engage in substantial gainful activity and the exempt amount permitted in determining excess earnings under the earnings test.

S. 852

At the request of Mr. LOTT, the name of the Senator from Arizona (Mr. KYL) was added as a cosponsor of S. 852, a bill to establish nationally uniform requirements regarding the titling and registration of salvage, nonrepairable, and rebuilt vehicles.

S. 1427

At the request of Mr. FORD, the name of the Senator from Montana (Mr. BURNS) was added as a cosponsor of S. 1427, a bill to amend the Communications Act of 1934 to require the Federal Communications Commission to preserve lowpower television stations that provide community broadcasting, and for other purposes.

S. 1529

At the request of Mr. REID, his name was added as a cosponsor of S. 1529, a bill to enhance Federal enforcement of hate crimes, and for other purposes.

At the request of Mr. CHAFEE, his name was added as a cosponsor of S. 1529, supra.

S. 1822

At the request of Mr. ROCKEFELLER, the name of the Senator from Virginia (Mr. ROBB) was added as a cosponsor of S. 1822, a bill to amend title 38, United States Code, to authorize provision of care to veterans treated with nasopharyngeal radium irradiation.

S. 2039

At the request of Mr. BINGAMAN, the name of the Senator from New Mexico (Mr. DOMENICI) was added as a cosponsor of S. 2039, a bill to amend the National Trails System Act to designate El Camino Real de Tierra Adentro as a National Historic Trail.

S. 2110

At the request of Mr. BIDEN, the names of the Senator from Virginia (Mr. ROBB) and the Senator from South Dakota (Mr. DASCHLE) were added as cosponsors of S. 2110, a bill to authorize the Federal programs to prevent violence against women, and for other purposes.

S. 2145

At the request of Mr. SHELBY, the names of the Senator from Kansas (Mr. BROWNBACK) and the Senator from Montana (Mr. BURNS) were added as cosponsors of S. 2145, a bill to modernize the requirements under the National Manufactured Housing Construction and Safety Standards Act of 1974 and to establish a balanced consensus process for the development, revision, and interpretation of Federal construction and safety standards for manufactured homes.

S. 2180

At the request of Mr. LOTT, the names of the Senator from Alabama (Mr. SHELBY) and the Senator from Vermont (Mr. JEFFORDS) were added as cosponsors of S. 2180, a bill to amend the Comprehensive Environmental Response, Compensation, and Liability