Mr. Speaker, I yield 4 minutes to the gentleman from American Samoa (Mr. FALEOMAVAEGA).

(Mr. FALEOMAVAEGA asked and was given permission to revise and extend his remarks.)

Mr. FALEOMAVAEGA. Mr. Speaker, I thank the gentleman from Guam (Mr. UNDERWOOD), the chief sponsor and author of this legislation for yielding me this time.

Mr. Speaker, as has been so eloquently stated by the gentleman from Guam (Mr. UNDERWOOD) and others before me, reparations to the people of Guam, who were subjected to death, personal injury, forced labor, forced march and internment during World War II is long, long overdue.

Mr. Speaker, before the military occupation of Guam, for some reason, it escapes me, at least this Member, the United States Territory of Guam was in existence. I have always asked the question why was it that these loyal Americans were not evacuated, properly evacuated before the occupation forces of Japan took over this island. Why was it that only U.S. citizens were evacuated? This bugs the heck out of me, Mr. Speaker.

As has been noted, Guam was the only land under the jurisdiction of the United States to be occupied by Japanese military forces during World War II. The people of Guam could have, I suppose, greeted this new force with open arms, and perhaps spared themselves some of the misery they suffered during 3 years of brutal occupation by military forces of the Japanese government. But these loyal Americans did not. They were proud Americans before the occupation, during the occupation, and after the occupation.

In response to their loyalty, Mr. Speaker, 55 years later, we are still debating whether we should establish a commission to study whether the people of Guam who suffered from such atrocities during this occupation period should receive proper reparations.

Mr. Speaker, it has been 55 years. Even the Navy supported reparations decades ago, and direct action on the part of this Congress is still long overdue.

Mr. Speaker, it is my understanding that legislation has been introduced for how many years now. I support this legislation but still feel compelled to speak out that we should be doing more. This bill was introduced 19 months ago. Today, with 19 legislative days left in the Congress, we are finally getting around to passing a bill which still has to go to the Senate.

Mr. Speaker, we can and we should do better than this. I urge my colleagues to support this bill.

Mr. UNDERWOOD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I thank the gentleman from American Samoa (Mr. FALEOMAVAEGA) for those very kind comments. Just on a personal note, I think this is a very emotional piece of legislation for the people of Guam in terms of my own family. My parents endured the occupation. I am the only member of my family that was born after World War II. I think the imprint of the war experience on our lives as a people and our lives as family members are very strong.

This will bring a justice and sense of fairness to a long struggle for the people of Guam and for all of the families of Guam.

Mr. GEORGE MILLER of California. Mr. Speaker, I rise in support of H.R. 755—the Guam War Claims Review Commission Act. I thank Mr. UNDERWOOD for his work on this substitute version of H.R. 755 which addresses concerns that have been raised in previous Congresses. This legislation has been, in one form or another, offered by every delegate from Guam to Congress since the people of Guam began electing delegates to Congress in the 1970's.

In my years of service on the Resources Committee, I have had the privilege of meeting many from Guam who traveled a great distance to share their wartime memories of Japanese occupation. Their stories are compelling and regrettable. Their experiences often sounded unbelievable but they were very real. I recall an elder woman who came to testify before our Committee—Mrs. Beatrice Elmsley. She bore a scar along her neck. A permanent reminder of her attempted beheading at the hands of Japanese soldiers.

To the American public, Guam's story is not widely well-known. The island's loyalty to the United States before, during, and after World War II has never been questioned. Our fellow citizens are proud and patriotic Americans and if they were not fully made whole from the atrocities they faced from Japanese occupation, then we should make a good faith effort to correct those errors.

That we have been able to overcome concerns raised in the past over this legislation, while still recognizing the validity of reexamining war claim awards made to the people of Guam in the wake of World War II, is truly a milestone. We would not have reached this point if it weren't for the patience, diligence, and tenacity of Mr. UNDERWOOD. I congratulate him for his persistence and ask my colleagues to give this measure their full support.

Mr. UNDERWOOD. Mr. Speaker, I yield back the balance of my time.

Mr. WALDEN of Oregon. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. STEARNS). The question is on the motion offered by the gentleman from Oregon (Mr. WALDEN) that the House suspend the rules and pass the bill, H.R. 755, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title of the bill was amended so as to read:

A bill to establish the Guam War Claims Review Commission.

A motion to reconsider was laid on the table.

FSC REPEAL AND EXTRA-TERRITORIAL INCOME EXCLUSION ACT OF 2000

Mr. ARCHER. Mr. Speaker, I move to suspend the rules and pass the bill (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, as amended.

The Clerk read as follows:

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) 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) 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) Section 903 is amended by striking ''164(a)'' and inserting ''114, 164(a),''.

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

(7) 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) 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) 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 amendments) 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.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Texas (Mr. ARCHER) and the gentleman from New York (Mr. RANGEL) each will control 20 minutes.

Mr. STARK. Mr. Speaker, I oppose the bill, and I would like to claim the time in opposition.

The SPEAKER pro tempore. Is the gentleman from New York (Mr. RANGEL) opposed to the motion?

Mr. RANGEL. No, I am not, Mr. Speaker. I support the bill.

The SPEAKER pro tempore. The gentleman from New York (Mr. RANGEL) is not opposed to the motion. Therefore, the gentleman from California (Mr. STARK) may claim the 20 minutes of debate reserved for opposition to the motion under clause 1(c) of Rule XV.

Mr. RANGEL. Mr. Speaker, I ask whether the gentleman from California (Mr. STARK) would yield 10 minutes of his time for those of us on the committee that support the motion.

Mr. STARK. I am not prepared at this point, Mr. Speaker, to yield any time.

The SPEAKER pro tempore. Under the rule, the gentleman from Texas (Mr. ARCHER) and the gentleman from California (Mr. STARK) each will control 20 minutes.

The Chair recognizes the gentleman from Texas (Mr. ARCHER).

GENERAL LEAVE

Mr. ARCHER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 4986.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. ARCHER. Mr. Speaker, I yield such time as he may consume to the gentleman from New York (Mr. RANGEL).

Mr. RANGEL. Mr. Speaker, I thank the gentleman from Texas (Chairman ARCHER) for yielding me this time and for this opportunity in working with him on this very important issue that has affected our Foreign Sale Corporation legislation.

As most everyone knows, the World Trade Organization has required the administration and, indeed, this Congress to work together to replace a tax treatment consistent with our trade agreements.

I would like to commend the Republicans and Democrats on this committee, the leadership, as well as the administration, to commend Treasury Undersecretary Stuart Eizenstat and Assistant Secretary John Talisman in the way they approached this very sensitive situation, which, of course, the World Trade Organization has made such an issue.

We in Congress could have ignored the WTO ruling down in April much as the European Union has ignored many of the issues and beef hormones and other disputes. But we have sought to work it out diplomatically. When that has failed, we have now come with a legislative resolution.

It is a very sensitive situation, and I thank the gentleman from Texas (Chairman ARCHER) so much for giving me the opportunity to support the overwhelming majority of the people on the committee as well as this leadership on this issue.

Mr. STARK. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, whether or not one agrees that tobacco, pharmaceutical, and military industries should be exempt from receiving this subsidy, which is referred to as the foreign sales credit, everyone should be opposed to the bill before us today.

Whether or not one agrees that the new tax scheme is, in fact, an export subsidy, which most of us feel it is, as does the World Trade Organization, in a form of egregious corporate welfare, one should be opposed to the bill.

This bill spends $5 billion of taxpayers' money every year in perpetuity, and our leadership is allowing a mere 40 minutes of debate and not allowing amendments.

I can understand why the administration and my colleagues want to rush this legislation through, and I understand they want as little debate as possible to avoid public disclosure that will aid the European Union in their case before the World Trade Organization.

However, our commitment first and foremost should be to our constituents. Our first commitment should be to the health and welfare of our seniors and children. Does not every taxpayer have a right to know how their hard-earned taxpayer dollars are being spent? Of course they do.

The new FSC has a new name and a new face, but it is the same old subsidy. If it quacks like a subsidy and walks like a subsidy, it still is a subsidy. The new scheme essentially leaves the export benefit in place, but now the Treasury will forego an additional $300 million a year to subsidy our exporters. The Treasury will give more than $5 billion a year to help Boeing, R.J. Reynolds and Monsato peddle their products overseas. The exporters will receive lower tax rate on income from export sales than they do from domestic sales. Clearly this is prohibited under the WTO Agreement on Subsidies and Countervailing Measures.

Proponents of the FSC claim that it is needed to compete with Europe's value-added tax. That is simply nonsense.

International trade allows rebates on consumption taxes such as the VAP and U.S. excise and State sales tax. That is a level playing field.

Europe's corporate income tax is comparable to ours and in fact investors often criticize Europe for imposing too high a corporate income tax.

The FSC replacement is an export subsidy that will help industry such as the pharmaceutical, tobacco, and military weapons industries capitalize on the generosity of the Congress and on taxpayers.

Let us start, for example, with the pharmaceutical industry. Is there anyone who says that we should encourage the U.S. pharmaceutical companies to sell cheaper drugs to foreigners while selling them at higher prices here at home to our uninsured and our seniors? That is exactly what we will be doing if we vote for H.R. 4986.

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The pharmaceutical company does not need another corporate subsidy at the expense of the American taxpayer. This offers incentives for the pharmaceutical companies to sell their products in other developed countries for less than they sell them here at home. Drug companies already reap huge tax benefits that lower their average effective rate 40 percent below other U.S. industries in America.

The richest drug company had greater profits than the entire airline industry and more than twice the profits of the entire engineering and construction industry. Yet, studies show that American seniors without drug coverage often pay twice as much as people in Canada and Mexico.

Last week, the Committee on Ways and Means rejected my amendment, which would have prohibited pharmaceutical companies from receiving this FSC subsidy if they charged American consumers 5 percent more than what they charge foreign consumers. That amendment made sense. Why should our seniors who go without their prescription drugs further have to subsidize the pharmaceutical companies who sell them abroad? It is an insult to American seniors and all taxpayers.

I urge my colleagues to vote to help the seniors obtain affordable prescription drugs and to do away with this egregious corporate welfare.

Without an option to offer or an amendment, no amendments are allowed under today's rules, the American public will be forced to help a pharmaceutical industry that cares nothing about the well-being of American citizens. The tobacco industry indeed will get subsidized exporting their poison to help kill and addict millions of children around the world.

The weapons industry, who does nothing to encourage the sale of their weapons of destruction because those sales are made for them by the Department of Defense and by the U.S. State Department, why should they get a subsidy to sell nuclear materials or tanks or weapons of destruction when that is arranged for them? Why should we subsidize this arms race?

The answer is we should not. We should not go through this, and when we want to promote world law, we should not be here with a second-rate subterfuge trying to call a subsidy something it is not. We should give up. We should recognize that the World Trade Organization is correct. We should allow our American industry to compete as they can on quality and on ingenuity and not have to subsidize these large manufacturers as a mere give-away just before election.

Mr. Speaker, as the only member of the Ways and Means to vote against H.R. 4986, the FSC Repeal and Extraterritorial Income Exclusion Act of 2000, I must explain the reasons for my vote.

I believe that this bill will not suffice under the scrutiny of the World Trade Organization. H.R. 4986 is as much of a subsidy as the current FSC. The entire process was undemocratic, constituting backroom consultations with private industry and select members of Congress. Finally, the bill is expanded and additional taxpayer dollars will be lost under the new scheme. It is not right that we ask U.S. taxpayers to pay for an export subsidy for large pharmaceutical corporations when the U.S. pharmaceutical industry is charging less in wealthy foreign markets for the same prescription drugs that our seniors are unable to afford here.

PROCESS

Select members of the House Ways and Means Committee and Senate Finance Committee were consulted on revising the Foreign Sales Corporation (FSC) prior to the World Trade Organization's October 2000 deadline. In addition, those who will benefit from the new subsidy were also consulted—private industry. However, there were many members of the Ways and Means Committee who were not consulted on the details of the new proposal. This hardly reflects the democratic process under which this legislative body is supposed to operate.

I was one of the members who was not consulted on repealing and replacing the current FSC for a new plan, yet

I was one of the members who was here to vote in 1984 to repeal the Domestic International Sales Corporation and replace it with the Foreign Sales Corporation.

BENEFITS TO MILITARY WEAPONS EXPORTERS

In 1976, I led Congress in voting to decrease the benefit to weapons dealers. Therefore, I was dismayed to see that the new FSC benefit will actually be expanded to increase the benefit of the subsidy to military weapons exporters.

The U.S. already spends about $8 billion annually to subsidize U.S. weapons manufacturers. These subsidies include taxpayer-backed loans, grants, and government promotional activities that assist U.S. weapons makers to sell their products to foreign customers. Under the current Foreign Sales Corporation scheme, weapons exporters may qualify for up to 50 percent of the FSC benefit. Under the new scheme, arms dealers will be able to reap the full benefit of the subsidy. It is incomprehensible that we would allow an industry that already receives more than its fair share of pork barrel spending to receive increased subsidies through the new FSC plan.

BENEFITS TO PHARMACEUTICAL INDUSTRY

The pharmaceutical industry is another branch of corporate America that clearly does not need an export subsidy at the expense of the American taxpayer. H.R. 4986 offers export incentives to pharmaceutical companies who sell their products to other developed countries for less than the U.S. consumer can purchase the exact same drugs.

Drug companies already reap huge benefits that lowered their average effective tax rates nearly 40 percent relative to the other major U.S. industries from 1990 to 1996. Fortune magazine again rated the pharmaceutical industry the most profitable industry in 1999. Merck, the richest drug company, had greater profits than the entire airline industry and more than twice the profits of the engineering-construction industry. Drug spending increased more than 15 percent in 1998, 18 percent in 1999 and is expected to continue to increase at phenomenal rates in the future. Yet, studies have shown that American seniors without drug coverage often pay about twice as much as people in Canada and Mexico.

The Ways and Means Committee rejected my amendment which would have prohibited pharmaceutical companies from receiving the full FSC benefit if they discounted more than 5 percent to foreign consumers relative to U.S. consumers. This amendment simply makes sense. It is only fair to the millions of U.S. seniors who go without their much needed prescription drugs. Why subsidize an industry already receiving huge corporate tax credits? We should have exempted pharmaceutical companies. The members of the Ways and Means Committee chose otherwise. This is an insult not only to American seniors, but to all U.S. taxpayers.

EXPORT SUBSIDY

Finally, H.R. 4986 does not address the concerns of the WTO dispute panel. The new scheme attempts to allay the European Unions' concerns by allowing some foreign operations to also receive the subsidy. The new scheme eliminates the requirement on a firm to sell its exports through a separately chartered foreign corporation in order to receive the benefit. The only portion that is eliminated is the paper subsidiary. Instead of creating a tax haven, U.S. exporters will be able to receive the benefit outright. The new scheme doesn't prevent arms exporters or any other industry from receiving the entire benefit of the subsidy.

The new scheme essentially leaves the export benefit in place but now the U.S. Treasury will forego an additional $300 million per year to subsidize U.S. exporters. The U.S. Treasury will forego more than $3 billion per year to help companies like Boeing and R.J. Reynolds peddle their products. Exporters will continue to receive a lower tax rate on income from export sales than from domestic sales. This is clearly prohibited under the WTO Agreement on Subsidies and Countervailing Measures.

It is a sad commentary on the Ways and Means Committee that is willing to fight a WTO ruling all in the name of corporate profits but ignores environmental, human rights and labor interests.

Mr. Speaker, I reserve the balance of my time.

Mr. ARCHER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the one thing this bill is not is corporate welfare. The one thing this bill is not is a subsidy to corporations.

Almost every one of our foreign competitors singly taxes the earnings of their corporations overseas. We double tax in an ill-advised, antiquated system the earnings of our corporations overseas and place them at a gigantic disadvantage against their foreign competitors.

The FSC program simply mollifies to a small degree this giant disadvantage to our corporations, a disadvantage which is so great that it is causing one by one major corporations to move overseas instead of having their headquarters in the U.S., signified recently by Chrysler having to become a German corporation.

The gentleman from California (Mr. STARK) can speak his rhetoric, but he is ill-advised when he calls this a subsidy or corporate welfare.

This bill is critical for continued U.S. competitiveness in the global marketplace. It is critical for our economy. And most important, it is critical to preserve as many as five million jobs for American workers and their families. That is right, approximately 4.8 million American jobs are directly related to the manufacture of products benefiting from the Foreign Sales Corporation provisions in the Tax Code.

So while this is a complex issue, we must succeed for the most basic reasons.

This bill enables the U.S. to comply with a decision of the World Trade Organization, which last year held that our FSC provisions of the Internal Revenue Code violated certain provisions of the WTO rules which prohibit export subsidies. The Clinton administration and the Congress strongly disagreed with this decision and the case was appealed. Unfortunately, the appeal was not granted.

Unless Congress changes the law to comply with the decision, U.S. consumers and businesses face the possibility of retaliation by the European Union on or after October 1. This would negate the ability of our domestically produced goods to enter the European market in an amount of anywhere from 4 to $40 billion a year with devastation on the workers in those industries in this country.

I believe the approach in this legislation is the best way to comply with the decision, continue to honor our trade agreements consistent with the obligations they impart, and maintain our global competitiveness.

This legislation enjoys strong bipartisan support in both Houses of Congress and is strongly supported by the administration.

Deputy Treasury Secretary Eizenstat has been involved in the construction of this legislation from the very beginning, as well as Members and staff from both the majority and the minority.

I also mention the extraordinary work of the Joint Committee on Taxation to develop this product in a short period of time. This bill is the product of extensive deliberations of a bipartisan, bicameral, and administration working group which consulted with both tax and trade experts on how best to fashion a measure to allow the U.S. to comply with the WTO decision.

This bill is also supported by U.S. companies and their workers who would be most negatively impacted by the WTO ruling.

I also hope that this legislation ends the longstanding challenge by the EU to our tax system. It is an important step in making our tax system not only compliant with our obligations under the WTO rules but in also making our system relevant to the global marketplace in which our citizens and businesses must compete.

I look forward to continuing to work in a bipartisan fashion to see this bill signed into law to help preserve American jobs, businesses, and our economy in the next century.

Starting this week, America's Olympic athletes will compete against the world's best in Sydney, Australia, and all competitors will play by the rules.

In the far fiercer global economic competition of the 21st century, we must work hard to give U.S. workers and companies that same opportunity. That is exactly what this bill is designed to do.

I urge all Members to support this vital legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. STARK. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. WAXMAN).

Mr. WAXMAN. Mr. Speaker, I rise in opposition to H.R. 4986.

While I believe that we must promote U.S. competitiveness in global markets, I strongly object to forcing American taxpayers to support the export of tobacco and tobacco addiction.

The most recent IRS statistics reveal that tobacco companies have used the FSC for a tax break of more than $100 million a year. Under the new system unveiled in this bill, they will benefit even more. This is wrong.

The dangers of nicotine are well known, and these dangers do not stop at our borders. Smoking causes more than 3.5 million deaths each year throughout the world. That number is expected to rise to 10 million people within 20 years, with 70 percent of all smoking-related deaths projected to occur in developing countries that are the newest targets of the tobacco industry.

This Congress has done nothing to address the tobacco epidemic that rages both here and abroad. Tragically, this bill only helps big tobacco promote it. We could easily address this problem by allowing for consideration of the Doggett amendment to exempt manufacture of tobacco from the bill. Instead, the bill was added to the suspension calendar, which allows no amendments and very limited debate.

Mr. Speaker, we have FSC exemption for national security. We have exemptions to protect certain domestic industries. It is long overdue to have an exemption for public health.

The American taxpayers should not be a partner in the export of death and disease. We should not be enabling big tobacco to escape public health restrictions in our market by peddling cigarettes to children around the globe.

I urge my colleagues to oppose this bill because the procedure does not allow us to engage in a meaningful debate on this issue or to vote on the Doggett amendment.

Mr. ARCHER. Mr. Speaker, I yield 3 minutes to the gentleman from California (Mr. THOMAS), a respected member of the Committee on Ways and Means.

(Mr. THOMAS asked and was given permission to revise and extend his remarks.)

Mr. THOMAS. Mr. Speaker, I thank the chairman very much for yielding me the time.

Mr. Speaker, first of all, I want to compliment the chairman and the ranking member. There has been an unprecedented degree of cooperation not only between the Democrats and the Republicans in the House, but between the House and the Senate and the administration in responding to what is clearly a crisis in our international responsibilities.

Very often adults are prone in dealing with children to in essence say, Do as I say, not as I do. And today we are seeing an example of this country telling the rest of the world, Do as we do, not as we say.

In stark contrast, for example, to the Europeans and their abject failure to respond to adverse decisions in the World Trade Organization, continuing to drag their feet when the international community says they are wrong, what we have here is an example of the United States moving with clear rapidity to make fundamental changes to bring us into compliance. Do not just take my word for it.

Mr. Speaker, I include for the RECORD the following text of a letter from Deputy Secretary Eizenstat to the European Union Commissioner for Trade:

DEP SEC. EIZENSTAT FSC LETTER,
DATE: AUGUST 11, 2000-INSIDE US TRADE,
July 28, 2000.

Mr. PASCAL LAMY,
Commissioner for Trade, Rue du la Loi 200, B–1049, Brussels, Belgium.

DEAR PASCAL: Following passage yesterday by the House Ways and Means Committee of legislation to repeal the FSC, I am writing to you to enclose a copy of the proposal and briefly explain the details of this new proposal.

The new proposal embodied in the Chairman's mark represents a major departure from the FSC and, furthermore, a significant evolution from the proposal I discussed with you in May. This proposal directly addresses the issues raised by the WTO Appellate Body. Further, it addresses additional concerns raised by the EU, as expressed in our meeting on May 2, in your letter to me of May 26, and in our telephone call of July 14.

In compliance with the Appellate Body decision, the FSC provisions are to be repealed from the Internal Revenue Code. The new tax provisions embodied in the Chairman's mark have the following key elements.

The Chairman's work provides an exclusion of tax on certain extraterritorial income. Because this would be our general rule, there is no foregone revenue that is otherwise due and thus no subsidy.

Further, because it treats foreign sales alike, whether the goods were manufactured in the U.S. or abroad, it is not export-contingent. Thus, a company would receive the same tax treatment on foreign sales regardless of whether it exports.

The Chairman's mark excludes qualifying foreign trade income directly at the level of the entity that produces the relevant good or produces the qualifying service. It does not require foreign sales transactions to be routed through separate offshore companies. Thus it eliminates the Administrative Pricing Rules for transfer pricing between affiliated companies, which the EU alleged violated the arms length provision of the Subsidies Agreement, Further, it eliminates the dividends received deduction.

Likewise, this approach address EU concerns about alleged incentives to use low or no-tax jurisdictions since a separated affiliate would not be necessary for this exclusion.

The Chairman's mark is the product of an unprecedented bipartisan effort in which Congress and the Administration worked together both to develop a proposal that is WTO compliant and to act quickly in an effort to comply with the October 1 deadline set by the WTO.

The House Ways and Means Committee voted 34-to-1 yesterday to support this legislation that meets our WTO obligations. Our key Congressional tax and trade committees understand that we have left the door open to further consultation with the EU as this legislation moves forward. We remain prepared to negotiate a solution on the basis of this proposal.

I hope that we can work together to avoid an escalation of this conflict. It would not be in the interest of either the U.S. or Europe to engage in a major trade war over this issue. Both U.S. and European businesses would needlessly suffer the consequences.

The legislation I am attaching herewith represents a serious effort on the part of the U.S. to comply with the Appellate Body's decision before its October 1st deadline. As we move to pass this legislation before that deadline, I hope that we can have a dialogue to resolve this conflict on the basis of this new proposal.

For your review I'm attaching three documents: (1) A copy of the statement I delivered at the Committee mark up, (2) the joint Tax Committee's description of the bill, and (3) the text of the legislation as reported by the Ways and Means Committee; please note that the formal bill is not yet available.

I look forward to talking with you again about these matters.

Yours Very Truly,
STEVE E. EIZENSTAT.

Mr. Speaker, a portion of that letter states: ''The Chairman's mark is the product of an unprecedented bipartisan effort in which Congress and the administration worked together both to develop a proposal that is WTO compliant and to act quickly in an effort to comply with the October 1 deadline set by the WTO.''

He goes on to quote, ''The House Ways and Means Committee voted 34–1 to support this legislation.''

I believe what we are seeing worked out on the floor is the result of that 34–1 vote.

Let me say also to everyone in this country that when we are dealing on an international basis, one of the things we need to do is to show bipartisanship.

I want to compliment the ranking member from New York who has done that. I want to compliment the chairman.

For those friends of ours who are listening and not part of our system, I do want to refer to a section of the Constitution. It is in Article I, section VI. To a degree, what is occurring here today is going to be covered, thankfully, for some of the participants by that portion of section VI, which says: ''And for any speech or debate in either House, they shall not be questioned in any other place.''

That is, on the floor of the House, we are allowed to say certain things for which we can never be questioned anywhere else.

As we discuss this bill and statements are made, keep in mind the speech-and-debate clause, which allows some folks to say what they are saying.

Mr. STARK. Mr. Speaker, I yield 4 minutes to the gentleman from Oregon (Mr. DEFAZIO).

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Mr. DEFAZIO. Mr. Speaker, this is an extraordinary debate, a $5 billion per year perpetual tax break to the largest, most profitable corporations in the world; forty minutes of debate and that is it. No amendments are allowed.

This bill was secretly negotiated, this bipartisan group, very secret and small group, revealed to members of the committee on the same day that the secret negotiations were concluded; perfunctory markup was held and now it is being rushed through.

We cannot agree on marriage penalty relief. We cannot agree on small business relief. We cannot agree on inheritance tax relief but, by God, the administration, the Republican leadership, they can put this one together behind closed doors because it benefits the largest, most profitable corporations in this country.

Over the last decade, almost $2 billion of these proceeds went to two companies, Boeing and General Electric, mostly for arms manufacturers. Now, we need to help our arms manufacturers. They already dominate the world market, but we need to give them another leg up because not 100 percent of the arms being bought out there by our enemies and our allies are U.S. made yet. We have to give them a leg up.

The pharmaceutical manufacturers, well, they need an incentive to export because overseas they sell drugs cheaper than they sell them to the Americans who subsidize their manufacture here. So we have to give them a little tax break to export those cheap drugs to foreigners but not provide affordable drugs here at home.

The tobacco companies, of course we want to export tobacco. Maybe that will hurt the productivity of our competitors around the world as they become sick and die from this product that is being promoted through this tax break.

This is outrageous. We are taking $5 billion of hard-earned taxpayers' money and shifting it to some of the largest, most profitable corporations in this country under the dubious assumption that somehow this is countering unfair things the Europeans are doing. If they are doing unfair and illegal things, you people wanted this rules-based trade agreement, you wanted a WTO with a secret, deliberative body that would adjudicate these complaints. I did not. I voted against it.

Well then file a complaint against the Europeans. Do not extend an unfair subsidy that does not even meet the laugh test. This does not comply with the last ruling. The Europeans will still get to penalize U.S. industries if this goes into effect, and they may well not penalize with tariffs the industries that are getting the tax break. Other U.S. manufacturers might be hurt.

You are doing this country a double disservice today with this legislation. It is extraordinary that this would be rushed through in this manner while there is virtually nobody in this Chamber; virtually half the Members are probably not even in town yet. They are still enjoying the hospitality of some of our airlines.

If it is an Endangered Species Act provision, by God, we have to comply. If it is a Clean Air Act provision, by God, the U.S. has to comply. If we can make the Europeans eat beef that has been treated with bovine growth hormone, which they have protested against because of health concerns, by God, they have to comply. But when it comes to corporate tax breaks, we will not comply.

This is the highest and best use of trade policy. That is what it is all about. Trade policy was written for, by, and about the largest corporations in this country; and we will do anything behind closed doors or even here on the floor of the House under very restrictive conditions to defend those tax breaks in the name of free trade.

If you have a problem with the European tax system, file a complaint. Answer that one. Why not file a complaint against OPEC? They are violating the WTO. It is awfully strange that we will not use this rules-based organization. Well, we are told we had a gentleman's agreement on taxes, gentleman's agreement.

I voted against entering into the WTO. I never heard any discussion on the floor about gentleman's agreements that were binding as part of this that went to the Tax Code. Pretty strange way to have an enforceable rules-based trade agreement with gentlemen's agreements that no one knows about.

If you have a problem with the Europeans, file a complaint. Do not use the tax dollars of American taxpayers to continue this outrageous subsidy, double the subsidy to arms manufacturers, extend it to pharmaceuticals and tobacco. It is outrageous.

Mr. ARCHER. Mr. Speaker, I yield myself such time as I may consume to briefly respond to the gentleman from Oregon (Mr. DEFAZIO).

The gentleman speaks passionately but he does not speak the facts, and passion is no substitute for the facts. The facts are that the current law already gives incentives to overcome the double taxation that our corporations face competing overseas, and this replaces that in the code. It does not cost $5 billion. He knows that.

If there is such opposition to the existing incentives that are in the code or the reduction of the barriers that are in the code, why were they not out front a long time ago? Why are there not amendments offered over and over again in committee? And they were not.

Mr. DEFAZIO. Mr. Speaker, will the gentleman yield?

Mr. ARCHER. I do not have the time, as the gentleman knows.

Mr. DEFAZIO. I did introduce legislation to repeal these provisions of law.

The SPEAKER pro tempore (Mr. STEARNS). The gentleman is not recognized.

Mr. ARCHER. Mr. Speaker, they come forward now, claim secret clandestine negotiations, when we had a full, open markup in the Committee on Ways and Means, as a matter of public record. As my colleague from California said, the Constitution protects whatever one wants to say on the floor of the House.

Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. SAM JOHNSON), a respected colleague and member of the Committee on Ways and Means.

(Mr. SAM JOHNSON of Texas asked and was given permission to revise and extend his remarks.)

Mr. SAM JOHNSON of Texas. Mr. Speaker, listen, it is wrong, wrong, wrong to say secret or totally Republican. This was a measured response to an injustice by the WTO and it was a measured response from the President, from the Trade Commission, from the Democrats and from the Republicans.

This thing was not done in secret, and it is for all businesses in this country that are legal. We should not question that. It is for America.

Know what? This bill replaces the FSC in its entirety. It changes it. In its place, it adopts key features of the certain European tax systems moving the United States closer to a territorial system. It eliminates administrative pricing rules which the European Union objected to. Most importantly, this legislation is not export contingent.

I sincerely hope that this legislation will end our dispute with the European Union. They must understand they cannot use the WTO to impose a permanent tax advantage over United States companies. We are doing this for America, for the people of America, for the businesses in America. God bless America.

Mr. STARK. Mr. Speaker, I yield 5 minutes to the gentleman from Texas (Mr. DOGGETT) to discuss a bill which is not yet complete and which nobody in this room has read.

Mr. DOGGETT. Mr. Speaker, God bless America and God bless the democracy that involves public participation—a concept at the core of what our American government is all about. Such public participation was not very evident in the process that produced this bill.

This bill was conceived behind closed doors with no public participation, no public hearings, no public involvement. It was designed to continue what is, in essence, a legal scheme of tax avoidance for the world's largest corporations by channeling some of their profits through foreign tax havens.

This bill is basically a product of meetings between the Treasury Department and those who benefit from the tax subsidy. The lobbyists have met with the Treasury Department, but the Treasury Department official responsible for the bill was unwilling to answer questions in public from even the members of the Committee on Ways and Means.

I voted for this bill in committee. I am committed to promoting international trade, but it was a very contrived circumstance that produced this bill, and the arrogance and the deception associated with this bill as well as the additional information that I now have about this bill cause me today to reconsider my position and to oppose strongly H.R. 4986.

This bill is not actually the bill that our committee considered. Rather this is a bill that the lobby has massaged for another few weeks after the initial bill was approved in the Committee on Ways and Means. This particular version has never had a hearing or a vote. There are not three Members on this floor today that can say they have even read the particular bill that is before us today.

The cost of this bill, however, is $4 million to $6 million, according to the best estimates we can get: every year that has to be made up by other American taxpayers. With this bill, the Congress would be saying basically that local stores that sell groceries or clothes to people on any Main Street or at any mall in America, those businesses would have to pay higher taxes so that multinational corporations that sell tobacco and cigarettes and machine guns abroad can pay lower taxes.

Even then, an independent analysis of this bill by the Congressional Research Service says that it has ''a negligible effect on the trade balance.'' That its overall impact in creating trade is practically nil.

Now, it was suggested that only some ill-informed people here on the floor were condemning this bill as corporate welfare. Well, perhaps the gentleman is unfamiliar with the recommendation of his own Republican Congressional Budget Office, I think for about 3 years in a row, suggesting that the Foreign Sales Corporation Act be repealed just as the gentleman from Oregon (Mr. DEFAZIO) has proposed in his own separate legislation. Perhaps he did not listen to Senator JOHN MCCAIN on ABC's This Week when in February he said he was opposed to the Foreign Sales Corporation Act.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The gentleman from Texas (Mr. DOGGETT) will refrain from characterizing positions of individual Senators.

The gentleman may proceed.

Mr. DOGGETT. A distinguished Arizona citizen commenting on ABC's This Week program made very clear his opposition to foreign sales corporations, as did the Washington Times which referred to the bipartisan involvement, called it ''an almost unanimous blunder.'' Let us be very clear about what this bill does.

An eligible product need have little or no U.S. manufactured content in order to qualify for this special new tax treatment. If one has a pair of Levis and it is made entirely outside the United States but one slaps on a label that says ''Levis,'' under this bill's supporters are unable to say that this foreign manufactured product will not qualify for special tax relief.

If one has a Marlboro cigarette that does not have one percentage point of tobacco from American tobacco farmers in it but one slaps ''Marlboro'' on it, and that gives it more than 50 percent value, it qualifies for a tax break. If one has a zocor tablet that is manufactured outside the United States but one puts ''zocor'' on it and adds 50 percent of the value, it qualifies for a tax break.

Every one of those under this bill is going to receive a special tax subsidy, and that is not going to help American workers, and it certainly is unfair to American consumers who have to pay the highest pharmaceutical costs in the entire world; to pay a higher cost here and then to add insult to injury by being forced to provide a tax subsidy on top of that for the pharmaceutical company to sell it to someone else at a lesser price in another country.

It is particularly outrageous that this bill would be taken up on the floor of the Congress on the very day that a new study is announced showing that tobacco is even more addictive for children than we ever knew previously. Only a couple of weeks of contact with cigarettes can addict children to a life of nicotine, posing the resulting threat of death and disease, very painful disease.

This bill allows Phillip Morris to continue marketing to children around the world and addicting them as a part of what is becoming a pandemic that will kill 10 million people every year in this world as a result of our promotion of tobacco. Today the American people are asked to be an unwilling accomplice, to give $100 million a year to Phillip Morris and the other big tobacco companies that are in the addiction business to go around the world promoting their tobacco to other people's kids. Well, those other children of the world have value, too, and we ought to be concerned about their health and their lives. We certainly ought not to encourage these tobacco companies with $100 million per year in tax subsidy to cause death and disease for children around this world.

Mr. ARCHER. Mr. Speaker, I yield 5 minutes to the gentleman from New York (Mr. RANGEL), the minority leader of the Committee on Ways and Means, and I ask unanimous consent that he be able to yield the time as he sees fit.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

☐ 1700

Mr. RANGEL. Mr. Speaker, I yield such time as she may consume to the gentlewoman from the Virgin Islands (Mrs. CHRISTENSEN).

(Mrs. CHRISTENSEN asked and was given permission to revise and extend her remarks.)

Mrs. CHRISTENSEN. Mr. Speaker, I rise to express my views on the adverse effect that the loss of FSC will have to my district, but I am in support of H.R. 4986.

Mr. RANGEL. Mr. Speaker, I yield 2½ minutes to the gentleman from Michigan (Mr. LEVIN), the ranking Democrat on the Subcommittee on Trade.

Mr. ARCHER. Mr. Speaker, I yield 30 seconds to the gentleman from Michigan.

(Mr. LEVIN asked and was given permission to revise and extend his remarks.)

Mr. LEVIN. Mr. Speaker, let me try quickly to put this in perspective. The U.S. has a worldwide taxation system; we tax income on earnings wherever earned. The Europeans have a territorial system, and I will not go into a lot of detail. In essence, what that does is to favor exports over other transactions, especially domestic transactions, so they have a system that nurtures exports.

We responded by creating a system, a DISC system that was an effort to put our producers of goods, manufacturing goods and agricultural goods, on a level playing field with Europe. It went into effect, and it lasted for a couple of decades; and then it was decided by the European community, I think, partly tactically to challenge it, and the WTO said it was an illegal subsidy. So what we are faced with is an October 1 deadline; and it is being faced by producers of goods, manufacturing goods and agricultural goods.

We have been striving to find a replacement, and now we have one here facing the October 1 deadline. I want to make it clear this bill does not provide an incentive for U.S. producers to move their operations overseas. No more, under this provision, than 50 percent of the fair market value of such property can consist of a non-U.S. component plus non-U.S. direct labor.

This provision has been carefully reviewed by Democrats, by Republicans, by the Treasury Department, and by outside groups. Let me be clear, if we fail to enact this bill by October 1, and that is the constraint we are under, there is a serious risk that the EU will go back to the WTO and seek authority to retaliate by raising tariffs on potentially billions of dollars of goods made in the U.S. and exported from the U.S., causing great harm to the U.S., both businesses, workers and farmers.

Look, there are other issues, tobacco issues, pharmaceutical issues. They cannot be considered within this context. If we need to amend U.S. laws, we can do so later on. We have a constraint, October 1; and if we fail to act by that date, we are going to hurt American businesses and the workers who work for them; and we are simply going to help European competitors, nothing to do with tobacco, nothing to do with pharmaceuticals, nothing at all.

If we want to help European producers, vote against this. If we want to help American workers, businesses, manufacturing goods, we are not talking about services, vote in favor of this bill; and then we will go on to these other issues at some other point.

Mr. RANGEL. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, I think it is great that we in the Congress can take issue with our domestic policy, our foreign policy, our trade policy. That is what makes America such a great country, and we should always be able to challenge the procedure in which legislation is brought to the House, but I know that sometimes when I have series problems with my country's foreign policy, one place I do not have a problem with it, and that is in foreign countries. This is not a question of liberals against conservatives, Republicans against Democrats, or the Congress against the administration. It is the European Union that has challenged us, and we can bet our life, they are not concerned with our economic health.

They are not concerned with pharmaceuticals. They are not concerned with arms. They are concerned in having a better-than-an-equal chance to compete against the United States of America.

We had plenty of opportunity to work out our differences. We had approaches that we have taken to them, and this is one time that we came behind the administration and said try to work this out and avoid an economic crisis. And it has been rejected.

What the administration has asked those of us on the Committee on Ways and Means to do is to come together with a piece of legislation, to say that we stand behind the United States of America in trying to resolve the differences we have with the European Union and the World Trade Organization.

If we do nothing, if we debate among ourselves, if we say let us see what is going to happen, then sanctions come against us; and there is no other body for us to take this to. I think it is a great country. We have internal differences, political differences, and they should be worked out; but it just seems to me that when other countries are challenging our country, whether they are challenging our foreign policy or whether they are challenging our trade policy, when that flag goes up with the United States of America, that the President should be supported by the administration, and this Congress should support the administration.

We are a long way from resolving this issue; but if we do nothing and find that our corporations are unable to effectively compete, we will not have the opportunity to say but we had concerns about the policy. I hope nobody in this Chamber ever is completely satisfied with any policy of any administration, but there has to come a time when we do come together to say America first, America first with exports for the jobs that are provided and America when that flag goes up.

Mr. STARK. Mr. Speaker, I yield 2 minutes to the gentleman from Massachusetts (Mr. TIERNEY).

Mr. TIERNEY. Mr. Speaker, I thank the gentleman from California (Mr. STARK) for yielding time to me, and I want to say that today this is supposedly an effort on the part of the United States to comply with the ruling by the WTO in an effort to expedite this action is actually an effort that purports to repeal the corporate tax subsidy called the Foreign Sales Corporation.

Unfortunately, what happens when we turn around we are going to actually increase this subsidy. There has been little dispute and far-ranging agreement that existing FSCs have long been a tax windfall to companies like Boeing, General Motors, Big Tobacco, many in the pharmaceutical industry and other corporate giants. As they export, those companies need only set up offshore paper companies and subsidiaries, and they receive the benefit. And that has been a pretty substantial benefit, the single loophole that cost taxpayers more than $10 billion, with $8 billion of that flowing to the very largest corporations all for simply funneling it through an offshore office.

Adding insult to injury, the publication Inside U.S. Trade recently reported that supporters of this bill have admitted that companies could qualify for the tax preference now even if little or no physical production actually occurs outside the United States. For example, a bluejean company could relocate its operations and American jobs abroad, produce an entirely foreign-manufactured product and still receive this subsidy financed by American taxes simply by slapping its American brand name on the tag.

Since this tax break was originally written with the expressed purpose of keeping jobs here in the United States, such an expansion of the provision would appear to be the product of corporation pandering at its very worst.

Congress is proposing to expand it by another $1.5 billion over the next 5 years, on top of the $15.6 billion the loophole has already cost taxpayers. As the gentleman from Texas (Mr. DOGGETT), my colleague, pointed out, this bill amounts to a $100 million subsidy to the tobacco industry to market their products to children around the world, a practice that they are rightfully forbidden from doing here in the United States.

And as the gentleman from California (Mr. STARK), my colleague, argues correctly, this bill actually subsidizes pharmaceutical companies to charge less for prescription drugs.

With all due respect, this is not an argument about us against them, it is an argument about the workers in this country and setting things straight and not pandering to corporate interests.

Mr. STARK. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I include for the RECORD my dissenting views on the bill.

Mr. Speaker, today, in an effort to comply—unsuccessfully, it appears—with a February ruling by the WTO, the majority is suspending its usual rules to expedite a vote on H.R. 4986, a bill that purports to repeal a corporate tax subsidy called the "Foreign Sales Corporation" (FSC).

Wide ranging agreement exists that FSCs have long been a tax windfall to companies like Boeing, GM, Big Tobacco, many in the pharmaceutical industry, and other corporate giants, as exporting companies need only set up an offshore paper subsidiary to receive the tax benefit. And what a benefit it is: in the 1990's alone, this single loophole cost taxpayers more than $10 billion, with $8 billion of that flowing to the very largest corporations, all for simply funneling sales through an offshore office.

In an effort to comply with the WTO ruling last February deeming FSCs to be an illegal export subsidy, H.R. 4986 would replace FSCs with an even worse tax boondoggle, this time without the paper subsidiary.

Adding insult to injury, the publication "Inside U.S. Trade" recently reported that supporters of the bill have admitted that companies could qualify for the tax preference even if little or no physical production actually occurs in the U.S. For example, a blue-jean company could relocate its operations—and American jobs—abroad, produce a entirely foreign-manufactured product, and still receive this subsidy financed by American taxpayers, simply by slapping its American brand-name on the tag. Since this tax break was originally written with the express purpose of keeping jobs here in the United States, such an expansion of the provision would appear to be the product of corporate pandering at its very worst.

Now Congress is proposing to expand it by another $1.5 billion over the next five years, on top of $15.6 billion the loophole already will cost taxpayers.

As my colleague from Texas, Mr. DOGGETT has argued, this bill also amounts to a $100 million subsidy to the Tobacco Industry to market their products to children around the world, a practice they are rightfully forbidden to do here in the U.S. And, as my colleague from California, Mr. STARK correctly argues, this bill actually subsidizes pharmaceutical companies to charge less for prescription drugs overseas than they do here in the U.S., where such drugs prices have skyrocketed out of the range of what many Americans seniors can afford.

As the EU rejected the terms of H.R. 4986 last month (with the WTO likely soon to follow), it sends the wrong message to WTO, implying that we do not wish to seriously negotiate terms of compliance. It subsidizes corporations that do not need subsidizing. It subsidizes corporations that should not be subsidized. And perhaps more importantly, were Congress to approve this bill, it would represent exactly the sort of behavior which so often leaves voters cynical with regard to political process, further giving evidence to the argument that it is corporations, not the people, whose interests Congress represents.

Second, while exports are, indeed, increased, such a subsidy actually triggers international exchange-rate adjustments, which has the effect of increasing U.S. imports as well, leaving the impact on the trade deficit negligible at best, as witnessed by the recent news that the trade deficit had hit an all-time high.

Lastly, the entire legislative process regarding H.R. 4986 has been the worst sort of backroom dealing with industry virtually writing the bill and many House Members of the committee of jurisdiction, Ways and Means, shut out of the process. Additionally, leadership in both parties, with the blessing of the Administration, hoped to expedite the process by shuttling the bill through Congress with limited debate and no amendments.

While the U.S. should conform to WTO guidelines by the October 2000 date the organization has set, this corporate welfare bill is certainly not the right approach, substantively or tactically.

Not only is the argument that FSCs are not a subsidy not credible, but the arguments that VATs are, verges on laughable. VATs are equivalent to an added sales tax that European countries rebate to companies when such goods are exported. Since the U.S. doesn't apply a sales tax to exports in the first place, the argument is effectively moot.

The rationale behind tax policy such as FSC is that it encourages other countries to buy our exports by bringing prices down (for foreigners) and thus reduces the trade deficit. But here, too, its defenders' argument is not supported by the facts. In the first place, to the extent that export prices actually fall, this is a transfer of benefits from U.S. taxpayers to foreign consumers.

Mr. Speaker, I yield such time as he may consume to the gentleman from Texas (Mr. DOGGETT).

(Mr. DOGGETT asked and was given permission to revise and extend his remarks.)

Mr. DOGGETT. Mr. Speaker, I include for the RECORD additional views that I offered individually to the Committee on Ways and Means report on H.R. 4986 and the additional views that I offered on behalf of myself, the gentleman from Georgia (Mr. LEWIS), and the gentleman from California (Mr. STARK) to the same report.

Mr. Speaker, I also include for the RECORD a copy of the story in today's Washington Post entitled ''Tobacco Exports Get Aid in Bill Set for House Vote.''

ADDITIONAL VIEWS BY MR. DOGGETT

In what is hardly a model of the way the democratic process should operate, this legislation has involved no public participation, no hearings, and no involvement of any but a handful of Committee members. This bill is basically a product of meetings between the Treasury Department and groups that will benefit from preferential tax treatment. The Chairman even went so far as to attempt to preclude the Committee members from making comments or offering amendments. The members were even denied the right to question Secretary Eizenstat, the principal Administration official responsible for this bill.

The cost of this legislation to the Treasury, which must be paid for by American taxpayers, is between $4 billion and $6 billion per year, and growing. In response to the European community's criticism that tax advantages to American businesses are illegal, this legislation seeks to generously increase those advantages by $300 million a year.

With this legislation, the Committee has basically made a public policy statement that local stores, which sell groceries or clothing to customers within our country, should pay higher taxes than multinational corporations, which sell cigarettes or machine guns abroad. Contrary to proponents' arguments that small and medium sized businesses share significantly in this tax break, the Internal Revenue Service Statistics of Income Division reports that 78% of FSC tax benefits go to companies with assets exceeding $1 billion. Another study based on a sample of corporate financial statements published in Tax Notes, August 14, 2000, indicates that, ''the top 20% of FSC beneficiaries (ranked by size of reported FSC benefit in 1998) obtained 87% of the FSC benefits.''

Moreover, there is substantial question as to the benefits that Americans truly will receive from this legislation. The Congressional Research Service summarized the most recent Treasury analysis of the Foreign Sales Corporation tax benefit by concluding that ''[r]epealing this provision would have a negligible effect on the trade balance.'' Treasury determined that such a repeal would reduce U.S. exports by 3⁄10 of one percent and U.S. imports by 2⁄10 of one percent.

ENCOURAGING FOREIGN ARMAMENTS SALES

Because the benefits to ordinary Americans of this costly tax advantage are at best remote, every aspect of this law deserves the type of scrutiny that was wholly lacking during committee consideration. One glaring example of both what is wrong with this legislation and what is wrong with the process that produced it is the generosity shown to arms manufacturers. Their tax savings are doubled by this bill. The supposed justification for such largesse to those who promote arms sales abroad was previously rejected by the Treasury Department in August 1999:

We have seen no evidence that granting full FSC benefits would significantly affect the level of defense exports, and indeed, we are given to understand that other factors, such as the quality of the product and the quality and level of support services, tend to dominate a buyer's decision whether to buy a U.S. defense product.

Ironically, in 1997, the Congressional Budget Office, whose director was appointed by Republican leaders had reached a similar conclusion:

U.S. defense industries have significant advantages over their foreign competitors and thus should not need additional subsidies to attract sales. Because the U.S. defense procurement budget is nearly twice that of all Western European countries combined, U.S. industries can realize economics of scale not available to other competitors. The U.S. defense research and development budget is five times that of all Western European countries combined, which ensures that U.S. weapon systems are and will remain technologically superior to those of other suppliers.

Even the Department of Defense conceded the same in 1994:

The forecasts support a continuing strong defense trade performance for U.S. defense products through the end of the decade and beyond. In a large number of cases, the U.S. is clearly the preferred provider, and there is little meaningful competition with suppliers from other countries. An increase in the level of support the U.S. government currently supplies is unlikely to shift the U.S. export market share outside a range of 53 to 59 percent of worldwide arms trade.

In 1999, without the bonanza provided by this bill, US defense contractors sold almost $11.8 billion in weapons overseas—more than a third of the world's total and more than all European countries combined.

A paper prepared for the Cato Institute in August 1999 by William D. Hartung, President's Fellow at the World Policy Institute, highlights the bad judgment shown here: ''If the government wanted to level the playing field between the weapons industry and other sectors, it would have to reduce weapons subsidies, not increase them.'' (These subsidies include thousands of federal employees at the Pentagon and other agencies whose very purpose is to increase arms sales.) He continued, ''Considering those massive subsidies to weapon manufacturers, granting additional tax breaks to an industry that is being so pampered by the U.S. government makes no sense.''

With no evidence to warrant its action, the Committee rejected fiscal responsibility in favor of wholly unjustified preferential tax treatment that means millions in savings to defense contractors. This costly decision is also bad for our country's true security interests. Instead of subsidizing arms promotion, our nation should be encouraging arms control. American armaments too often contribute to one arms race after another around the globe.

Doubling this subsidy only encourages the sales of more arms overseas and creates more challenges to the maintenance of our own ''military superiority''—and, of course, more pressure for additional costly increases in the defense budget. As Lawrence Korb, President Reagan's Assistant Secretary for Defense for Manpower, Reserve Affairs, Installations and Logistics, has said:

It has become a money game: an absurd spiral in which we export arms only to have to develop more sophisticated ones to counter those spread out all over the world . . . It is very hard for us to tell other people—the Russians, the Chinese, the French—not to sell arms, when we are out there peddling and fighting to control the market.

Former Costa Rican President and 1987 Nobel Peace Prize winner, Oscar Arias offers another reason for rejecting the Committee's decision to increase the arms subsidy:

By selling advanced weaponry throughout the world, wealthy military contractors not only weaken national security and squeeze taxpayers at home but also strengthen dictators and human misery abroad.

ADDITIONAL VIEWS BY MESSRS. DOGGETT, LEWIS AND STARK

PROMOTING TOBACCO RELATED DISEASE AND DEATH

The way in which this legislation was rushed through the Committee avoided any explanation as to why American taxpayers should continue to subsidize the tobacco industry, whose product actually kills one-third of the people who use it. The Committee ignored the pleas of the American Medical Association, the American Cancer Society, the American Heart Association, Campaign for Tobacco-Free Kids, and other public health groups that tobacco should be denied a tax benefit. It also rejected the written request of 97 Members of Congress that tobacco be excluded.

Nicotine addiction represents a public health crisis. Within 20 years, almost 10 million people are expected to die annually from tobacco-related illnesses. Seventy percent of these deaths will occur in the developing countries that are being targeted by big tobacco's continued addiction to making money at the expense of human lives. In fact, tobacco will soon become the leading cause of disease and premature death worldwide—bypassing communicable diseases such as AIDS, malaria and tuberculosis.

Instead of being accountable for its deadly products, the tobacco industry has responded by conspiring to undermine the efforts of the World Health Organization to cope with this global pandemic. During recent litigation, Philip Morris was forced to produce documents, which can be found at the Minnesota Tobacco Document Depository, stating that the company sought to ''discredit key individuals'' and ''allocate the resources to stop [WHO] in their tracks.'' An August 2000 WHO report entitled, Tobacco Company Strategies to Undermine Tobacco Control Activities at the World Health Organization states:

The [industry] documents also show that tobacco company strategies to undermine

WHO relied heavily on international and scientific experts with hidden financial ties to the industry. Perhaps most disturbing, the documents show that tobacco companies quietly influenced other U.N. agencies and representatives of developing countries to resist WHO's tobacco control initiatives.

Geoffrey C. Bible, Chairman of Philip Morris, a company that has often hidden its malicious tobacco influence through its holdings in Kraft Foods, even wrote in 1988 of the ''need to think through how we can use our food companies [to help governments] with their food problems and give us a more balanced profile with the government than we now have against WHO's powerful influence.''

The tobacco industry certainly cannot justify the public subsidy offered through this proposed legislation. Philip Morris, R.J. Reynolds, and Brown and Williamson have acquired tremendous marketing expertise from decades of success in targeting American children. This offers them tremendous advantage over foreign competitors in addicting children around the world; they hardly need help from the American taxpayer in order to spread death and disease to children in developing countries.

Philip Morris spends millions in American television advertising to contend that it no longer markets to youth. It finally claims to have abandoned tobacco company billboards, transit ads, cartoon characters, cigarette-branded apparel and merchandise, paid placement of its products in movies and television shows, and most brand sponsorship of team sports and entertainment events. But, it has steadfastly declined to apply these modest safeguards in its international operations; indeed, it relies heavily on these and other tactics to target the world's children.

Both petroleum and unprocessed timber are excluded from this legislation. Yet tobacco, the single largest public health menace, will continue to be subsidized at a cost to American taxpayers of about $100 million per year. This legislation constitutes just another way of forcing American taxpayers to be partners in this export of death and disease. Little wonder that there was so much eagerness to silence discussion of this disgrace.

[From the Washington Post, Sept. 12, 2000]

TOBACCO EXPORTS GET AID IN BILL SET FOR HOUSE VOTE

(By Marc Kaufman)

The Clinton administration has never been shy about trying to cut smoking in the United States. But in a move that has confounded its usual allies, the administration is backing an export subsidy bill this year that would give American tobacco companies about $100 million in tax breaks yearly for tobacco products they sell abroad.

The bill, which is scheduled for a full House vote today, would continue subsidies for many American industries at a cost of between $4 and $6 billion annually. While these tax incentives have generally sparked little opposition in Congress, the willingness to continue export subsidies for tobacco has sparked criticism from public health advocates and other industry critics.

''I think it's a very difficult position for the administration to explain,'' said Rep. Lloyd Doggett (D-Tex.), who tried unsuccessfully to deny the subsidy to tobacco companies in the Ways and Means Committee. ''What we're doing here is promoting and subsidizing the sale of cigarettes to people abroad, and I find it unacceptable for that to be American policy.''

Doggett said that during the White House lobbying for the China trade bill earlier this year, President Clinton had told him that he generally supported the amendment to remove tobacco from the export subsidy list.

But a House Democratic aide familiar with the matter said White House officials did not attempt to dismantle the program's tobacco subsidy for fear of jeopardizing bipartisan accord on the legislation. ''The administration is caught a little bit between a rock and a hard place,'' the aide said.

A senior administration official said yesterday that Doggett's amendment was ''consistent with our tobacco policy'' but said the administration went along with House Ways and Means Committee Chairman Bill Archer (R-Tex.) in the position ''that no amendments be added to the legislation to ensure it be passed on a timely basis.''

Trent Duffy, spokesman for Archer, said Democrats and Republicans alike agreed to preserve the general subsidy program to compensate for European countries' favorable tax treatment of their companies' activities abroad. Duffy said the provisions in the bill ''are the only way we can stay competitive with our competitors overseas. . . . Once you start changing who receives the benefit of this regime, then you get into rewriting United States tax law, and that's not what this is about.''

The export bill deals with a long-standing trade dispute with the European Union. The Europeans have complained that the corporate tax breaks now offered to American exporters constitute an illegal export subsidy, and the World Trade Organization agreed with this position. The bill before the House today would address those concerns, though EU officials say little has changed.

When the bill came before the Ways and Means Committee in July, the American Medical Association, the Campaign for Tobacco-Free Kids and other public health organizations lobbied to remove tobacco from the subsidy list, but the bill passed unchanged with little public debate.

Democratic Ways and Means Committee members Doggett, John Lewis (Ga.) and Fortney ''Pete'' Stark (Calif.) published a sharp critique of the bill's handling as part of the committee report on the legislation. They pointed out that both petroleum and unprocessed timber do not qualify for the export tax incentives although tobacco does.

''This legislation constitutes just another way of forcing American taxpayers to be partners in this export of death and disease,'' they wrote. Critics of the subsidies said they would try to remove them when the bill comes up for consideration in the Senate.

Sales of cigarettes have been stable or declining in the U.S. market for some time, but rose dramatically abroad until last year. Tobacco is now a $6 billion export industry.

Today's administration support of the export bill with tobacco subsidies contrasts sharply with earlier efforts to reduce government support for tobacco sales abroad. The administration sent cables to all American embassies last year directing them not to promote cigarette sales because of public health concerns.

Doggett plans to denounce the tobacco subsidy in today's House debate, and said he may vote against the entire export subsidy bill because of its inclusion. His earlier amendment eliminating the tobacco subsidy had won the support of 96 other representatives, mostly Democrats.

But Democrats are unlikely to have a chance to change the bill once it reaches the House floor. It is slated to be brought up under suspension of the rules, which requires a two-thirds vote for approval with no amendments allowed.

Mr. STARK. Mr. Speaker, I yield 1 minute to the gentleman from Texas (Mr. DOGGETT), noting that it is now the 1-hour anniversary since this bill was printed, at 4:09 this afternoon, to celebrate that momentous occasion to close debate on this in opposition.

Mr. DOGGETT. Mr. Speaker, to those who say it is not significant, nor should it be debated today that the American taxpayers will be asked to be unwilling accomplices to the tobacco industry at a cost of $100 million per year; that the pharmaceutical industry will get about $123 million per year as a reward for selling pharmaceuticals at lower prices abroad than they do here at home; that military contractors will get a doubling of their tax subsidy under this bill as they sell machine guns and land mines and other armaments around the world to fuel the world's arms races; that all of these things should be ignored, because in order to protect American jobs, we have to beat the clock before October 1, one wonders why it is that we do not even have this bill presented until 4:09 in the afternoon on September 12, if we, indeed, face such a crisis. In fact, we do not face such a crisis.

The United States has never asked the Europeans for an extension of this deadline in order to explore other alternatives, and our country has every right to make that request. An opinion article in an authority no more extreme than Business Week on September 4 correctly said ''it's time to call a halt to such waste by both sides . . . the administration should drop its plan to expand FSC, get back to the negotiating table, and start proposing some real solutions such as eliminating export subsidies.''

Mr. ARCHER. Mr. Speaker, I yield such time as he may consume to the gentleman from Pennsylvania (Mr. ENGLISH).

Mr. ENGLISH. Mr. Speaker, I rise in strong support of this legislation.

Mr. Speaker, the international playing field is titled against our employers and their workers.

Without the Foreign Sales Corporation rule in our tax code, the situation will only be made worse—to the point of being intolerable.

With the World Trade Organization's ruling disallowing FSC, we face a double edge sword.

By refusing to repeal the FSC, the United States will be inviting massive retaliation against U.S. export trade but if we repeal FSC without adopting alternative legislation, our exporters and their employees will be left high and dry.

I urge my colleagues to support the Foreign Sales Corporations Extraterritorial Income Exclusion Act of 2000, which corrects the problems that the WTO had with FSC while protecting American workers.

This legislation grandfathers transactions begun prior to Oct. 1 and allows for manufacturing and/or a binding contract to continue under current FSC law until the end of next year.

FSC was made necessary only because the U.S. maintains an archaic worldwide tax system which taxes foreign-source income and because the U.S. taxes export income.

Allowing FSC to stand or abolishing it will make an already tough global market next to impossible to compete in for U.S. employers. We must act now to avoid putting American workers onto a playing field for which they are not equipped.

Mr. ARCHER. Mr. Speaker, I yield myself the balance of the time.

Mr. Speaker, there has been a great deal of rhetoric today on the floor, but let us try to cut through all of it. If this bill does not pass, the FSC provisions that have been railed against by the opponents will continue to be in the law. None of that will change.

What they call a subsidy, which is actually a reduction of the impediment of double taxation on our companies, will still be in the law. Nothing will change. They act like suddenly everything will change, but what will happen is this: American products will have sanctions put against them between $4 billion and $40 billion a year by the Europeans, all justified by the WTO. And who will then be hit?

Will it be the big corporations? The first sanction will be on agriculture. Our farmers will be hit. Then they will put sanctions on man-made staple fibers. Our textile industry will be hit. Then they will put sanctions on cotton and yarns and woven fabrics. Then they will put sanctions on fruits and vegetables and likely our wine, which competes with the French wine.

They will pick the sensitive spots to apply these sanctions, but the FSC provisions that have been railed against will still be in the code. This is our only opportunity to protect American workers so that we can continue to export, even in those areas which do not currently get FSC treatment, the injury to the U.S. and the potential beginning of the mother of all trade wars is something to be avoided and avoided by this bill. It is the only option before us, vote yes.

Mrs. CHRISTENSEN, Mr. Speaker, I rise to speak on H.R. 4986, the Foreign Sales Corporation Repeal and Extraterritorial Income Act of 2000 because of the effect it will have on my district, the U.S. Virgin Islands.

Mr. Speaker, almost from the inception of the Foreign Sales Corporation Act of 1984, the U.S. Virgin Islands positioned itself to act as the premiere location where U.S. companies that were exporting U.S.-made goods could locate to reduce their tax liability. Approximately 3,900 of a total 7,000 FSC's are located in the U.S. Virgin Islands where they provide approximately 40 direct jobs to Virgin Islands residents and indirect employment in the thousands, through 12 law and management firms that serve them. They provide similar benefits on our sister territory of Guam—both of us being a part of this country.

FSC companies in the Virgin Islands generate about $7 to $10 million dollars annually and they have contributed almost $70 million to the cash-strapped treasury of the Government of the Virgin Islands since 1983. Through no fault of our own, and despite our working with the relevant agencies to mitigate the adverse effects, with passage of this bill, we will lose an important tool of our economy at a time when we can least afford it—when the government of the Virgin Islands is facing a severe financial crisis. Our accumulated budget deficit, as of January of last year was estimated to be in excess of $250 million and the Government's debt obligations has reached an unimaginable $1.12 billion.

While Virgin Islands Governor Turnbull has made strides in addressing this problem, the loss of revenues generated by FSC's to our Territory will be a major blow.

I am therefore looking forward to working with Chairman ARCHER and Ranking Member RANGEL to find a way to assist us in replacing the loss of revenue that this bill will mean to the Virgin Islands. I hope for the support of all my colleagues in this effort.

Mr. PAUL. Mr. Speaker, H.R. 4986, brought up under suspension, deserves serious consideration by all Members.

There are three reasons to consider voting against this bill. First, it perpetuates an international trade war. Second, this bill is brought to the floor as a consequence of a WTO ruling against the United States. Number three, this bill gives more authority to the President to issue Executive Orders.

Although this legislation deals with taxes and technically actually lower taxes, the reason the bill has been brought up has little to do with taxes per se. To the best of my knowledge there has been no American citizen making any request that this legislation be brought to the floor. It was requested by the President to keep us in good standing with the WTO.

We are now witnessing trade war protectionism being administered by the World (Government) Trade Organization—the WTO. For two years now we have been involved in an ongoing trade war with Europe and this is just one more step in that fight. With this legislation the U.S. Congress capitulates to the demands of the WTO. The actual reason for this legislation is to answer back to the retaliation of the Europeans for having had a ruling against them in favor of the United States on meat and banana products. The WTO obviously spends more time managing trade wars than it does promoting free trade. This type of legislation demonstrates clearly the WTO is in charge of our trade policy.

The Wall Street Journal reported on 9/5/00, ''After a breakdown of talks last week, a multi billion-dollar trade war is now about certain to erupt between the European union and the U.S. over export tax breaks for U.S. companies, and the first shot will likely be fired just weeks before the U.S. election.''

Already, the European Trade Commissioner, Pascal Lamy, has rejected what we're attempting to do here today. What is expected is that the Europeans will quickly file a new suit with the WTO as soon as this legislation is passed. They will seek to retaliate against United States companies and they have already started to draw up a list of those products on which they plan to place punitive tariffs.

The Europeans are expected to file suit against the United States in the WTO within 30 days of this legislation going in to effect.

This legislation will perpetuate the trade war and certainly support the policies that have created the chaos of the international trade negotiations as was witnessed in Seattle, Washington.

The trade war started two years ago when the United States obtained a favorable WTO ruling and complained that the Europeans refused to import American beef and bananas from American owned companies.

The WTO then, in its administration of the trade war, permitted the United States to put on punitive tariffs on over $300 million worth of products coming in to the United States from Europe. This only generated more European anger who then objected by filing against the United States claiming the Foreign Sales Corporation tax benefit of four billion dollars to our corporations was ''a subsidy''.

On this issue the WTO ruled against the United States both initially and on appeal. We have been given till October 1st to accommodate our laws to the demands of the WTO.

That's the sole reason by this legislation is on the floor today.

H.R. 4986 will only anger the European Union and accelerate the trade war. Most likely within two months the WTO will give permission for the Europeans to place punitive tariffs on hundreds of millions of dollars of U.S. exports. These trade problems will only worsen if the world slips into a recession when protectionist sentiments are strongest. Also, since currency fluctuations by their very nature stimulate trade wars, this problem will continue with the very significant weakness of the EURO.

The United States is now rotating the goods that are to receive the 100 to 200 percent tariff in order to spread the pain throughout the various corporations in Europe in an effort to get them to put pressure on their governments to capitulate to allow American beef and bananas to enter their markets. So far the products that we have placed high tariffs on have not caused Europeans to cave in. The threat of putting high tariffs on cashmere wool is something that the British now are certainly unhappy with.

The Europeans are already well on their way to getting their own list ready to ''scare'' the American exporters once they get their permission in November.

In addition to the danger of a recession and a continual problem with currency fluctuation, there are also other problems that will surely aggravate this growing trade war. The Europeans have already complained and have threatened to file suit in the WTO against the Americans for selling software products over the Internet. Europeans tax their Internet sales and are able to get their products much cheaper when bought from the United States thus penalizing European countries. Since the goal is to manage things in a so-called equitable manner the WTO very likely could rule against the United States and force a tax on our international Internet sales.

Congress has also been anxious to block the Voice Stream Communications planned purchase by Deutch Telekom, a German government-owned phone monopoly. We have not yet heard the last of this international trade fight.

The British also have refused to allow any additional American flights into London. In the old days the British decided these problems, under the WTO the United States will surely file suit and try to get a favorable ruling in this area thus ratchening up the trade war.

Americans are especially unhappy with the French who have refused to eliminate their farm subsidies—like we don't have any in this country.

The one group of Americans that seem to get little attention are those importers whose businesses depend on imports and thus get hit by huge tariffs. When 100 to 200 percent tariffs are placed on an imported product, this virtually puts these corporations out of business.

The one thing for certain is this process is not free trade; this is international managed trade by an international governmental body. The odds of coming up with fair trade or free trade under WTO are zero. Unfortunately, even in the language most commonly used in the Congress in promoting ''free trade'' it usually involves not only international government managed trade but subsidies as well, such as those obtained through the Import/Export Bank and the Overseas Private Investment Corporation and various other methods such as the Foreign Aid and our military budget.

Free trade should be our goal. We should trade with as many nations as possible. We should keep our tariffs as low as possible since tariffs are taxes and it is true that the people we trade with we are less likely to fight with. There are many good sound, economic and moral reasons why we should be engaged in free trade. But managed trade by the WTO does not qualify for that definition.

U.S., EU RISK TRADE WAR OVER EXPORT TAX SHELTERS—EUROPE IS LIKELY TO SEEK THE WTO'S PERMISSION TO LEVY PUNITIVE TARIFFS

(By Geoff Winestock of the Wall Street Journal)

BRUSSELS.—After a breakdown of talks last week, a multibillion-dollar trade war is now almost certain to erupt between the European Union and the U.S. over export tax breaks for U.S. companies, and the first shot will likely be fired just weeks before the U.S. elections.

European Trade Commissioner Pascal Lamy rejected on Thursday the latest U.S. proposal for resolving a dispute over a $4 billion-a-year tax shelter for U.S. exporters that the World Trade Organization ruled illegal in February.

With chances now slim for an agreement on how to bring the U.S. tax code into line with WTO rules, the EU will likely file a new suit with the WTO in October. And this time, the EU will seek permission to retaliate against U.S. companies with trade sanctions. At a minimum, EU officials say, they will ask for punitive tariffs on $4 billion of U.S. goods.

The U.S. Congress is considering a bill designed to bring U.S. tax law into line with WTO rules. But hopes that this would yield a quick solution disappeared last week when Mr. Lamy sent a letter criticizing the bill to Deputy Treasury Secretary Stuart Eizenstat. Mr. Lamy said the proposal for amending the U.S. tax code ''failed to render it compatible with international trade rules,'' according to an EU briefing note. Indeed, EU officials say, the bill was marginally worse than a White House proposal that the EU rejected in May.

Describing the EU letter as ''disappointing'' and ''unconstructive,'' a senior U.S. official says the EU's attitude could sour trans-Atlantic trade ties. ''What we're trying to do is avert a trade war,'' the official says. ''We're doing everything we can to avoid it. If there's to be one, it will be in their hands, not in ours.''

The official says that the White House would continue to support the bill, which he says would be fully WTO-compliant. Unless the U.S. makes some change to the tax program by the WTO's Oct. 1 deadline, the official says, the U.S. will have no chance of avoiding a confrontation with the EU or winning its case in the WTO. The EU will have 30 days after Oct. 1 to lodge a complaint with the WTO, which will then take a few months to rule on what, if any, retaliation can be taken.

At the core of the dispute is a tax-law provision that allows U.S. companies to channel overseas sales of domestically produced goods through so-called foreign sales corporations—offshore subsidiaries, usually in tax havens, whose profits on those exports are subject to lower federal income taxes than are other profits. The FSC shelter saved U.S. companies about $4 billion last year. Boeing Corp., which used the shelter to save $230 million last year, included a warning about the trade dispute in its annual financial reports.

The U.S. says the congressional bill would replace the WTO-illegal tax breaks with a much broader exemption for all foreign-source income, both from exports and from goods manufactured abroad. The U.S. official says this is comparable with tax exemptions offered by EU countries, including the Netherlands and France.

But EU officials and some U.S. analysts say the analogy is inaccurate and that the proposed revision simply repackages the FSC program, retaining its preference for exports over domestic sales. ''U.S. industries which are benefiting from FSCs are being very stubborn,'' says Peter Morici, a senior fellow at the Economic Strategy Institute, a Washington, D.C. think tank. ''They do not want to make a real fundamental change in the law.''

Mr. DEFAZIO. Mr. Speaker, let's briefly review why we find ourselves here today to debate replacing a rather arcane section of the tax code that allows corporations to avoid a portion of their tax bill by establishing largely paper entities in a filing cabinet in a tax haven like Barbados with the equally arcane tax provisions of H.R. 4986, the FSC Repeal and Extraterritorial Income Exclusion Act of 2000.

Creating this new, expanded loophole to assist corporations in escaping their fair share of the tax burden in the U.S. makes a mockery of pleas by my colleagues to simplify the tax code and improve fairness.

For nearly two decades, beginning with the Revenue Act of 1971 (P.L. 92–178), the U.S. provided tax incentives for exports. However, our trading partners complained that these incentives violated our commitments under the General Agreement on Tariffs and Trade (GATT). While not conceding the violation, in 1984, Congress scrapped the Domestic International Sales Corporation (DISC) provisions and created the Foreign Sales Corporation (FSC) provisions. The differences are highly technical and probably only understood by international tax bureaucrats.

Under the FSC provision, corporations can exempt between 15 and 30 percent of their export income from taxation by routing a portion of their exports through a FSC. Our trading partners, specifically the European Union (EU), were not satisfied with the somewhat cosmetic changes made to the U.S. tax code.

Going back on a verbal gentleman's agreement not to challenge our respective tax codes under global trading rules, the EU filed a complaint with the World Trade Organization (WTO), successor to GATT, essentially arguing the same thing that was argued about DISCs. Namely that export subsidies were illegal under global trading rules by conferring an unfair advantage on recipient companies.

A secretive WTO tribunal ruled against the U.S. Dutifully, the U.S. appealed the decision. Earlier this year, the WTO appeals panel upheld the earlier decision and ordered the U.S. to repeal the FSC provision or risk substantial retaliatory measures.

Specifically, the WTO appeals panel wrote, ''By entering into the WTO Agreement, each Member of the WTO has imposed on itself an obligation to comply with all terms of that Agreement. This is a ruling that the FSC measure does not comply with all those terms. The FSC measure creates a 'subsidy' because it creates a 'benefit' by means of a 'financial contribution', in that government revenue is foregone that is 'otherwise due.' This 'subsidy' is a 'prohibited export subsidy' under the SCM Agreement [Agreement on Subsidies and Countervailing Measures] because it is contingent on export performance. It is also an export subsidy that is inconsistent with the Agreement on Agriculture. Therefore, the FSC measure is not consistent with the WTO obligations of the United States.''

In other words, it is unfair and illegal under global trade rules for the U.S. tax code to provide welfare for corporations by allowing them to escape taxes that would otherwise be due.

At this point, one would expect that my colleagues who, on most occasions eloquently defend the need for ''rules based trade'' and ''free markets'', to adhere to the WTO directive and repeal FSC. Because I assumed my colleagues would want to be intellectually consistent, I introduced legislation shortly after the WTO ruling to repeal FSC.

After all, precedent proved the U.S. was more than willing to bend to the will of the WTO. When the WTO ruled against a provision of the 1990 Clean Air Act, the Environmental Protection Agency gutted its clean air regulations in order to allow dirtier gasoline from Venezuela to be sold in the U.S.

Similarly, when Mexico threatened a WTO enforcement action on a 1991 GATT case it had won that eviscerated the Dolphin Protection Act, the U.S. went along to get along. In fact, the Clinton Administration sent a letter to Mexican President Ernesto Zedillo declaring that weakening the standard by which tuna must be caught in ''dolphin-safe'' nets ''is a top priority for my administration and me personally.''

The WTO also ruled against the Endangered Species Act provisions that required U.S. and foreign shrimpers to equip their nets with inexpensive turtle excluder devices if they wanted to sell shrimp in the U.S. market. The goal was to protect endangered sea turtles. The Clinton Administration agreed to comply with the ruling.

Given this record of acquiescing to the WTO, one could be forgiven for assuming the Clinton Administration and Congress would behave in a similar manner when losing a case on tax breaks for corporations.

Of course, sea turtles and dolphins don't make massive campaign contributions, or any campaign contributions for that matter. But, the large corporations who would be impacted by the WTO decision against FSCs do.

Apparently not bothered by the hypocrisy, immediately after the ruling by the WTO appeals panel, the Clinton Administration, a few Members of Congress, and the business community openly declared the need to maintain the subsidy in some form and began meeting in secret to work out the details on how to circumvent the WTO ruling and maintain these valuable, multi-billion dollar tax incentives.

Now, it is well-known that I am not a big fan of the WTO. It is an unaccountable, secretive, undemocratic bureaucracy that looks out solely for the interests of multinational corporations and investors at the expense of human rights, labor standards, national sovereignty, and the environment.

But, by pointing out that export subsidies like FSCs are corporate welfare, however, the WTO has done U.S. taxpayers a favor. Unfortunately, this legislation before us today only does wealthy corporations a favor.

I have several problems with H.R. 4986 besides the intellectual inconsistency. I will touch on each of these now.

First, and perhaps most importantly, there is little or no economic rationale for export subsidies like FSCs or the provisions of H.R. 4986. In its April 1999 Maintaining Budgetary Discipline report, the Congressional Budget Office (CBO) noted ''Export subsidies, such as FSCs, reduce global economic welfare and may even reduce the welfare of the country granting the subsidy, even though domestic export-producing industries may benefit.''

Similarly, in August 1996, CBO wrote ''Export subsidies do not increase the overall level of domestic investment and domestic employment . . . In the long run, export subsidies increase imports as much as exports. As a result, investment and employment in import-competing industries in the United States would decline about as much as they increased in the export industries.''

Need further evidence? The Congressional Research Service (CRS) has written ''Economic analysis suggests that FSC does increase exports, but likely triggers exchange rate adjustments that also result in an increase in U.S. imports; the long run impact on the trade balance is probably nil. Economic theory also suggests that FSC probably reduces aggregate U.S. economic welfare.''

Of course, protests will be heard from supporters of H.R. 4986 that it gets rid of the export requirement. In testimony before the Ways and Means Committee, Deputy Secretary Eizenstat said the Chairman's mark is ''not export-contingent.'' Of course, that claim is absurd. If a company sells products solely in the U.S., they don't qualify for the tax subsidy. That is, by definition, an export subsidy. Therefore, the criticisms of export subsidies previously mentioned would apply to this new legislation as well.

President Nixon originally prosed export subsidies, which became the DISC and then FSC, because he was alarmed at the size of the U.S. trade deficit, which was $1.4 billion in 1971, a number that seems almost quaint by today's standards. As Paul Magnusson noted in the September 4, 2000, Business Week FSC ''produced some hefty tax savings for big U.S. exporters, but it never did actually do much to narrow the trade deficit, which hit a record $339 billion last year.'' And which, I should add, has continued to set new records virtually every month this year.

I can't understand why it makes sense to subsidize U.S. exporters to the tune of $5 billion or more when the economic impact is ''probably nil'' or worse.

The economic rationale further deteriorates when one realizes, as the previous quotes suggest, that export subsidies discriminate against mom-and-pop stores who don't have the resources to export and against U.S. industries that must compete with imports. This means that export subsidies distort markets by pre-ordaining winners and losers. The winners? Large exporters and foreign consumers who get to enjoy lower priced U.S. products subsidized by U.S. taxpayers. The losers? Small businesses, U.S. taxpayers, and import-competing industries.

I find it interesting while Treasury has spent a great deal of time figuring out how to combat corporate tax shelters that have no economic rationale, as discussed in a July 1999 report, that they would push this corporate welfare, which also has no economic rationale.

So, who specifically benefits? The journal Tax Notes conducted a revealing study of FSCs in its August 14, 2000, edition. The article profiled the 250 companies that reported $1.2 billion in FSC tax savings in 1998. The top 20 percent of the companies in the sample claimed 87 percent of the benefits. The two largest FSC beneficiaries were the General Electric Company and Boeing, which saw their tax bills reduced by $750 million and $686 million, respectively from 1991–1998.

What are some of the other top FSC corporate welfare queens? Motorola, Caterpillar, Allied-Signal, Cisco Systems, Monsanto, Archer Daniels Midland, Oracle, Raytheon, RJR Nabisco, International Paper, and ConAgra. The list reads like a who's who of extraordinarily profitable multinational corporations. Hardly companies that should need to feed from the taxpayer trough.

Furthermore, American subsidiaries of European firms take advantage of U.S. taxpayers through export subsidies. British Petroleum, Unilever, BASF, Daimler Benz, Hoescht, and Rhone-Poulenc are all FSC beneficiaries. The fact that foreign companies can also claim export benefits pokes a large hole in the argument that these tax benefits are needed to ensure the competitiveness of U.S. businesses.

Simiarly, isn't it a bit odd that economist and U.S. policymakers like to lecture European nation's about their high tax burdens, but now, suddenly their tax burden is too low and, therefore, U.S. companies need subsidies in order to compete?

Let's be clear, this legislation is not about the competitiveness of large, wealthy, multinational corporations based in the United States. It is about wealthy campaign contributors wanting to keep and expand their $5 billion-plus tax subsidies and elected officials willing to do their bidding.

Not only does H.R. 4986 allow these companies to continue receiving billions in tax breaks, but it actually expands them. This legislation will cost U.S. taxpayers another $300 million a year or more.

It is also unfortunate that this legislation subsidizes a number of industries—such as defense contractors, tobacco companies, and pharmaceutical firms—that have no business receiving any more taxpayer hand-outs.

Take the defense industry, for example. Under the current FSC regime, defense contractors can only claim 50 percent of the tax available to other industries. The legislation before us today allows the defense industry to claim the full benefit available to others.

Leaving aside the fact that U.S. taxpayers are already overly generous to defense contractors, which no doubt they are, expanding this corporate welfare will have no discernible impact on overseas sales. The Treasury Department noted in August 1999, ''We have seen no evidence that granting full FSC benefits would significantly affect the level of defense exports.''

In 1997, the CBO made a similar point, ''U.S. defense industries have significant advantages over their foreign competitors and thus should not need additional subsidies to attract sales.''

Even the Pentagon has acknowledged this fact by concluding in 1994, ''In a large number of cases, the U.S. is clearly the preferred provider, and there is little meaningful competition with suppliers from other countries. An increase in the level of support the U.S. government currently supplies is unlikely to shift the U.S. export market share outside a range of 53 to 59 percent of worldwide arms trade.''

As Ways and Means Committee Member, Representative DOGGETT, noted in his dissenting views on H.R. 4986, ''In 1999, without the bonanza provided by this bill, U.S. defense contractors sold almost $11.8 billion in weapons overseas—more than a third of the world's total and more than all European countries combined.''

The U.S. should stop the proliferation of weapons and war, not expand it as this bill intends.

The pharmaceutical industry is another industry that does not need or deserve additional subsidies from U.S. taxpayers. The industry already receives substantial research and development tax credits as well as the benefits flowing from discoveries by government scientists. As Representative STARK noted in his dissenting views, drug companies lowered their effective tax rate by nearly 40 percent relative to other industries from 1990 to 1996 and were named the most profitable industry in 1999 by Fortune Magazine.

The industry sells prescription drugs at far cheaper prices abroad than here in the U.S. For example, seniors in the U.S. pay twice as much for prescriptions as those in Canada or Mexico. It is an affront to U.S. taxpayers to force them to further subsidize an industry that is already gouging them at the pharmacy as this bill would do.

In direct contradiction of various federal policies to combat tobacco related disease and death in the U.S., this legislation would force U.S. taxpayers to subsidize the spread of big tobacco's coffin nails to foreign countries. This violates the American taxpayers' sense of decency and respect. Their money should not be used to push a product onto foreign countries that kills one-third of the people who use it as intended.

By placing H.R. 4986 on the suspension calendar, debate is prematurely cut off and amendments to reduce support for drug companies, the defense industry or tobacco companies can not be considered. But, I guess that's just par for the course for a process that has taken place in relative secrecy between a few Members of Congress, the Administration, and the industries that stand to benefit from this legislation.

You may not hear this in the debate much, but it is important to point out that the EU has already put the U.S. on notice that H.R. 4986 does not satisfy its demands. According to the EU, H.R. 4986 still provides an export subsidy, maintains a requirement that a portion of a product contain U.S.-made components, and does not repeal FSCs by the October 1st deadline. Therefore, it is likely the EU will ask the WTO to rule on the legality of the U.S. reforms. Most independent analysts agree with the EU critique of H.R. 4986.

So, it is reasonable to assume the WTO will again rule against the U.S. and allow the EU to impose retaliatory sanctions against U.S.

products. According to some press accounts, the EU would be able to impose 100 percent tariffs on around $4 billion worth of U.S. goods. These would be the largest sanctions ever imposed in a trade dispute. In other words, this inadequate reform of export subsidies will open up the U.S. to retaliatory action by the EU, which will harm exports as much or more than any perceived benefit that would be provided by H.R. 4986. Of course, the exporters that will be hurt by retaliatory sanctions probably won't be the same businesses that will enjoy the tax windfall provided by this legislation.

Mr. Speaker, ADM is not suffering. Cisco Systems is not suffering. Raytheon is not suffering. Microsoft is not struggling mightily to keep its head above water. But, the American people are. Schools are crumbling, 45 million Americans have no health insurance, individuals are working longer hours for less money with the predictable stress on families, millions of seniors do not have access to affordable prescription drugs, and poverty remains stubbornly high, particularly among children.

Rather than debating how to preserve billions in tax subsidies for some of our largest corporations, we should be figuring out how to address some of these issues. How many times over are we going to spend projected, and I stress projected, surpluses, if we want to pay down the national debt, provide prescription drugs, shore up Social Security and Medicare, and increase funding for education, Congress cannot keep showering wealthy corporations with unjustifiable tax subsidies.

I will end with a quote from a newspaper I'm not normally inclined to agree with editorially, the Washington Times. In an editorial on September 5, 2000, the Washington Times wrote, ''The Ways and Means Committee boasts that support for its revised FSC bill was bipartisan and near unanimous. It remains a bipartisan and near unanimous blunder.''

I urge my colleagues to vote against H.R. 4986.

Mr. UNDERWOOD. Mr. Speaker, I rise to express my concern about the impact of H.R. 4986, The FSC Repeal and Extraterritorial Income Exclusion Act of 2000, on the U.S. territories, particularly the U.S. Virgin Islands and Guam.

Since the WTO decision last fall on Foreign Sales Corporations (FSCs), I know that the Administration has worked closely with House Ways and Means Committee Chairman ARCHER and Representative RANGEL, the ranking member, to ensure that the United States passes legislation to meet the October 1, 2000, deadline set by the WTO to comply with its ruling.

As many of you know, the WTO panel issued a ruling last fall that subsidies for Foreign Sales Corporations under U.S. tax laws violated the WTO Subsidies Agreement. U.S. negotiators have since worked in good faith on a proposal to retain many of the tax benefits of the FSC structure, while establishing a new structure which would be responsive to the European Union's challenge.

However, I simply want to express my concern over the impact that H.R. 4986 would have on the U.S. territories. Under the current FSC system, U.S. territories have been able to benefit through tax exemptions for U.S. exporting industries. With the repeal of the FSC system, we will no longer be able to offer this incentive although I understand that current contracts will be honored.

In Guam, there are around 211 FSC licensees, generating around $170,000 to the Government of Guam. However, license fees are only some of the direct benefits from FSCs. Other direct benefits include compensation for Guam attorneys and other professionals, bank deposits, and funds generated through the hotel and restaurant industries that host FSC corporate meetings. Indirect benefits would be the cumulative effect that FSCs and other tax incentives have on attracting U.S. businesses to Guam.

Be it as it may, the writing is on the wall for FSCs as we now know it. Therefore, I am appealing to the Clinton Administration, particularly the Treasury Department, to offset the economic impact of today's legislation with the means necessary to allow the U.S. territories to promote economic self-sufficiency during any negotiations with the Congress on any final omnibus budget or tax package.

Apart from H.R. 3247, which would provide empowerment zones for the U.S. territories, I have worked closely with my colleagues to enact legislation that I authored which would level the playing field for foreign investors in Guam through the passage of the Guam Foreign Direct Investment Equity Act (H.R. 2462/S. 2983).

My legislation would provide Guam with the same tax rates as the fifty states under international tax treaties. Since the U.S. cannot unilaterally amend treaties to include Guam in its definition of united States, my bill amends Guam's Organic Act, which has an entire tax section that ''mirrors'' the U.S. Internal Revenue Code.

As background, under the U.S. Code, there is a 30% withholding tax rate for foreign investors in the United States. Since Guam's tax law ''mirrors'' the rate established under the U.S. Code, the standard rate for foreign investors in Guam is 30%.

The Guam Foreign Direct Investment Equity Act provides the Government of Guam with the authority to tax foreign investors at the same rates as states under U.S. tax treaties with foreign countries since Guam cannot change the withholding tax rate on its own under current law. Under U.S. tax treaties, it is a common feature for countries to negotiate lower withholding rates on investment returns. Unfortunately, while there are different definitions for the term ''United States'' under these treaties, Guam is not included. Such an omission has adversely impacted Guam since 75% of Guam's commercial development is funded by foreign investors. As an example, with Japan, the U.S. rate for foreign investors is 10%. That means while Japanese investors are taxed at a 10% withholding tax rate on their investments in the fifty states, those same investors are taxed at a 30% withholding rate on Guam.

While the long term solution is for U.S. negotiators to include Guam in the definition of the term ''United States'' for all future tax treaties, the immediate solution is to amend the Organic Act of Guam and authorize the Government of Guam to tax foreign investors at the same rates as the fifty states. Other territories under U.S. jurisdiction have already remedied this problem through delinkage, their unique covenant agreements with the federal government, or through federal statute. Guam, therefore, is the only state or territory in the United States which is unable to take advantage of this tax benefit.

Section 3 of H.R. 2462, which I introduced last year, and has bi-partisan support, passed the House on July 25, 2000. Senators AKAKA and INOUYE introduced a companion measure, S. 2983, on July 27, 2000.

As we consider today's measure on the repeal of FSCs, I simply ask that my colleagues support my legislation on equal tax treaty rates for Guam and I implore the Clinton Administration to also support such economic relief for the people of Guam. Please include equitable tax treatment for foreign investors in Guam during any final omnibus budget or tax package.

☐ 1715

The SPEAKER pro tempore (Mr. STEARNS). All time has expired.

The question is on the motion offered by the gentleman from Texas (Mr. ARCHER) that the House suspend the rules and pass the bill, H.R. 4986, as amended.

The question was taken.

Mr. STARK. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed until tomorrow.

EXPRESSING SORROW OF THE HOUSE AT THE DEATH OF THE HONORABLE HERBERT H. BATEMAN, MEMBER OF CONGRESS FROM THE COMMONWEALTH OF VIRGINIA

Mr. BLILEY. Mr. Speaker, I offer a privileged resolution (H. Res. 573) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 573

Resolved, That the House has heard with profound sorrow of the death of the Honorable Herbert H. Bateman, a Representative from the Commonwealth of Virginia.

Resolved, That a committee of such Members of the House as the Speaker may designate, together with such Members of the Senate as may be joined, be appointed to attend the funeral.

Resolved, That the Sergeant at Arms of the House be authorized and directed to take such steps as may be necessary for carrying out the provisions of these resolutions and that the necessary expenses in connection therewith be paid out of applicable accounts of the House.

Resolved, That the Clerk communicate these resolutions to the Senate and transmit a copy thereof to the family of the deceased.

Resolved, That when the House adjourns today, it adjourn as a further mark of respect to the memory of the deceased.

The SPEAKER pro tempore. The gentleman from Virginia (Mr. BLILEY) is recognized for 1 hour.

Mr. BLILEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, it is with great sadness we are here today to honor our late colleague, Representative Herb Bateman of Newport News, Virginia. Herb represented the First District of Virginia, better known, as he used to say, as ''America's First District,'' because