OISS FORM 51 (Rev. 11-82)

CONGRESSIONAL RECORD
PROCEEDINGS AND DEBATES OF THE 98TH CONGRESS

EXTENSIONS OF REMARKS

BILL	DATE	PAGE(S)
H.R.4814	FEB 9 '84 (14)	E449-51

REMARKS: INTRODUCED BY MR. ALBOSTA

INTRODUCTION OF LEGISLATION

HON. DONALD JOSEPH ALBOSTA

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, February 9, 1984

● Mr. ALBOSTA. Mr. Speaker, high unemployment caused by unfair foreign competition; our American companies moving overseas to take advantage of reduced taxes; reduced technology innovation. All the above are symptoms of a much larger trend in this country that must be changed. The time has come to stand up for Americans and stop the hemorhaging of jobs and capital overseas.

Today, I am introducing two bills that I feel will be significantly helpful in reversing this trend. If enacted, these legislative measures will be instrumental in turning this country around by discouraging American companies from transporting their manufacturing plants overseas; by protecting patents on American inventions and technology; and by creating jobs for American workers, essential to the economic recovery of this Nation.

It is amazing to me that every year the United States allows American corporations to develop technology here, then packup its manufacturing plant, layoff American workers, and move its production overseas, usually so that the corporation can take advantage of low taxes in a "tax holiday" country.

Enactment of taxation on the American "runaway" plant would eliminate the tax incentives which some foreign countries offer in order to attract American investment, therefore preserving U.S. jobs in U.S. factories. Likewise, I feel it is equally important to provide U.S. inventors with the protection they need on patents by insuring that an avenue of recourse is available if a patent or technology is stolen and reproduced in another country. The bills I am introducing today addresses both of these concerns. But above all, they reaffirm this Government's commitment of keeping American jobs and American technology where they belong—in America. It is time that the Federal Government say enough. No longer will this country be bled to death by companies moving abroad taking with them the jobs that are so needed in States like Michigan with high unemployment.

TAX PROPOSAL

Under the current existing law, the income of foreign corporations operating abroad is generally not subject to current U.S. taxation. This is regardless of whether the shareholders of the coporation are from the United States or foreign countries.

In 1962, the Congress adopted subpart F provisions of the Internal Revenue Code to change in part this rule in the case of certain tax haven activities. However, this change does not go far enough. This is no question some of the U.S. investment abroad in these facilities is located in countries which impose substantial corporate income taxes. Investment decisions in these cases are made on the basis of general business considerations.

However, we are seeing a new disturbing trend occurring. That is, developing countries are deviating from their normal corporate tax structure by offering tax-related incentives such as holidays from taxation to attract foreign investment. This is significant because the U.S. tax system does not tax income of a foreign subsidiary. Some U.S. companies have been enticed to move production from U.S. cities to foreign locations where they produce largely for the U.S. market. This trend must be reversed and quickly. My bill is designed to do just that by removing the income tax factor from influencing foreign investment. Let me provide an example of what I mean.

Recently, we have all read newspaper accounts of an American corporation with a manufacturing plant in the Midwest who, without proper notice, announces its plans to transfer all operating processes overseas to a tax haven country such as the Philippines or Jamaica. Even though American ingenuity and technology developed the product, the company decides to take advantage of the artificially low tax incentives in a foreign country and moves overseas. Once in the foreign country, the U.S. corporation, using the American-developed technology makes the product, ships it to the United States and sells it in our local stores at high prices. The American worker's losses are threefold. One, the American worker loses his job to foreign competition. Second, the American worker buys the foreign-made product and sends this profit overseas. And third, U.S. revenues are unobtainable. These American-owned companies escape without paying their fair share of taxes. It is no wonder that the American taxpayer is up-in-arms over increased taxes when this type of tax avoidance is encouraged right in our own backyard.

To summarize, my tax proposal will add a new classification of taxable income to require that current U.S. taxation of earnings and profits of controlled foreign manufacturing corporations which benefit from tax holidays. This is accomplished by incorporating the new classification into the existing subpart F of the Internal Revenue Code.

To assist my colleagues, I ask that a copy of this legislation be reprinted in the RECORD.

A bill to discourage domestic corporations from establishing manufacturing subsidiaries in foreign countries for the purpose of avoiding Federal taxes by including in the gross income of the United States shareholders in foreign corporations the retained earnings of any such subsidiary which are attributable to manufacturing operations in any country which imposes little or no taxes on such operations or provide any tax incentive for capital investments in such operations

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

SECTION 1. INCOME FROM RUNAWAY PLANTS OR FROM MANUFACTURING OPERATIONS LOCATED IN A COUNTRY WHICH PROVIDES A TAX HOLIDAY INCLUDED IN SUBPART F INCOME.

(a) FOREIGN BASE COMPANY MANUFACTURING RELATED INCOME ADDED TO CURRENTLY TAXED AMOUNTS.—Subsection (a) of section 954 of the Internal Revenue Code of 1954 Code (defining foreign base company income) is amended by adding at the end thereof the following new paragraph:

"(6) the foreign base company manufacturing related income for the taxable year (determined under subsection (i) and reduced as provided in subsection (b)(5))."

(b) DEFINITION OF FOREIGN BASE COMPANY MANUFACTURING RELATED INCOME.—Section 954 of such Code is amended by adding at the end thereof the following new subsection:

"(i) FOREIGN BASE COMPANY MANUFACTURING RELATED INCOME.—

"(1) IN GENERAL.—For purposes of this section, the term 'foreign base company manufacturing related income' means income (whether in the form of profits, commissions, fees, or otherwise) derived in connection with the manufacture for or sale to any person of personal property by the controlled foreign corporation where the property sold was manufactured by the controlled foreign corporation in any country other than the United States if such property or any component of such property was manufactured—

"(A) in a tax holiday plant, or

"(B) in runaway plant.

"(2) OTHER DEFINITIONS; SPECIAL RULES.—For puposes of this subsection—

"(A) TAX HOLIDAY PLANT DEFINED.—The term 'tax holiday plant' means any facility—

"(i) operated by the controlled foreign corporation in connection with the manufacture of personal property, and

"(ii) with respect to which any economic benefit under any tax law of the country in which such facility is located accrued—

"(I) to such corporation,

"(II) for the purpose of providing an incentive to such corporation to establish, maintain, or expand such facility, and

"(III) for the taxable year of such corporation during which the personal property referred to in paragraph (1) was manufactured.

"(B) RUNAWAY PLANT DEFINED.—The term 'runaway plant' means any facility—

"(i) for the manufacture of personal property of which not less than 25 percent is used, consumed, or otherwise disposed of in the United States, and

"(ii) which is established or maintained by the controlled foreign corporation in a country in which the effective tax rate imposed by such country on the corporation is less than 80 percent of the effective tax rate which would be imposed on such corporation under this title.

"(C) ECONOMIC BENEFIT UNDER ANY TAX LAW DEFINED.—The term 'economic benefit under any tax law' includes—

"(i) any exclusion or deduction of any amount from gross income derived in connection with—

"(I) the operation of any manufacturing facility, or

"(II) the manufacture or sale of any personal property,

which would otherwise be subject to tax under the law of such country;

"(ii) any reduction in the rate of any tax which would otherwise be imposed under the laws of such country with respect to any facility or property referred to in clause (i) (including any ad valorem tax or excise tax with respect to such property);

"(iii) any credit against any tax which would otherwise be assessed against any such facility or property or any income derived in connection with the operation of any such facility or the manufacture or sale of any such facility or the manufacture or sale of any such property; and

"(iv) any abatement of any amount of tax otherwise due and any other reduction in the actual amount of tax paid to such country.

"(D) MANUFACTURE DEFINED.—The term 'manufacture' or 'manufacturing' includes any production, processing, assembling, or finishing of any personal property or any component of property not yet assembled and any packaging, handling, or other activity incidental to the shipment or delivery of such property to any buyer.

"(E) CORPORATION INCLUDES ANY RELATED PERSON.—The term 'controlled foreign corporation' includes any related person with respect to such corporation.

"(F) SPECIAL RULE FOR DETERMINING WHICH TAXABLE YEAR AN ECONOMIC BENEFIT WAS OBTAINED.—An economic benefit under any tax law shall be treated as having accrued in the taxable year of the controlled foreign corporation in which such corporation actually obtained the benefit, notwithstanding the fact that such benefit may have been allowable for any preceding or succeeding taxable year and was carried forward or back, for any reason, to the taxable year.

"(3) LIMITATION ON APPLICATION OF PARAGRAPH (1) IN CERTAIN CASES.—For purposes of this section—

"(A) IN GENERAL.—The term 'foreign base company manufacturing related income'

shall not include any income of a controlled foreign corporation from the manufacture or sale of personal property if—

"(i) such corporation is not a corporation significantly engaged in manufacturing,

"(ii) the investment in the expansion of an existing facility which gave rise to a tax holiday for such facility was not a substantial investment, or

"(iii) the personal property was used, consumed, or otherwise disposed of in the country in which such property was manufactured.

"(B) CORPORATION SIGNIFICANTLY ENGAGED IN MANUFACTURING DEFINED.—

"(i) General rule.—A corporation shall be deemed to be significantly engaged in manufacturing if the value of real property and other capital assets owned or controlled by the corporation and dedicated to manufacturing operations is more than 10 percent of the total value of all real property and other capital assets owned or controlled by such corporation.

"(ii) SPECIAL RULE FOR ASSESSING PROPERTY VALUE.—The value of any property owned by the corporation is the basis of such corporation in such property. The basis of the corporation in any property which was acquired other than by purchase shall be the fair market value of such property at the time of such acquisition. Any property controlled but not owned by such corporation under any lease (or any other instrument which gives such corporation any right of use or occupancy with respect to such property) shall be treated as property acquired other than by purchase in the manner provided in the preceding sentence.

"(C) SUBSTANTIAL INVESTMENT DEFINED.—The term 'substantial investment' means any amount which—

"(i) was added to the capital account for an existing facility during the 3-year period ending on the last day of any taxable year with respect to which such facility is a tax holiday plant, and

"(ii) caused the sum of all amounts added to such account during such period to exceed 20 percent of the total value of such facility (determined in the manner provided in subparagraph (B)(ii)) on the first day of such period."

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1)(A) Paragraph (4) of subsection (a) of such section 954 is amended by striking out "and" at the end thereof.

(B) Paragraph (5) of such subsection (a) is amended by inserting "and" after the comma at the end thereof.

(2) The last sentence of subsection (b)(4) of such section 954 is amended by striking out "subsection (a)(5)." and by inserting in lieu thereof "subsection (a)(5) or foreign base company manufacturing related income described in subsection (a)(6)."

(3) Subsection (b)(5) of such section 954 is amended by striking out "and the foreign base company oil related income" and by inserting in lieu thereof "the foreign base company oil related income, and the foreign base company manufacturing related income".

(4) Subsection (b) of such section 954 is amended by inserting at the end thereof the following new paragraph:

"(9) FOREIGN BASE COMPANY MANUFACTURING RELATED INCOME NOT TREATED AS ANOTHER KIND OF BASE COMPANY INCOME.—Income of a corporation which is foreign base company manufacturing related income shall not be treated as foreign base company income of such corporation under any paragraph of subsection (a) other than paragraph (6)."

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 1983, and to taxable years of United States shareholders in which, or with which, such taxable years of foreign corporations end.

(2) INVESTMENTS BEFORE THE DATE OF ENACTMENT NOT TAKEN INTO ACCOUNT.—No facility of a foreign controlled corporation shall be treated as a tax holiday plant (within the meaning of section 954(i)(2)(A) of such Code, as amended by this section) or as a runaway plant (within the meaning of section 954(i)(2)(B) of such Code, as amended by this section) on the basis of any amount paid or incurred with respect to such facility and added to the capital account for such facility before the date of the enactment of this Act.

PATENTED INVENTION PROTECTION ACT

America's patent system is essential to this Nation's security as it contributes to strengthening our technological base, stimulates investment in the private sector and most importantly, preserves and creates jobs. We have noticed in this country a slowing of the growth in the area of developed technology. According to the Ad Hoc Committee to Improve the Patent laws, there is a lack of patent protection. To increase the effectiveness of our patent system and provide for the protection of technology developed in this country, I am introducing the Patent Invention Protection Act.

The Patent Invention Protection Act is designed to stimulate and strengthen the incentive role for investment in the United States by providing protection of a process patented in the United States, and making those who import, sell or use a product or process liable as an infringer. Undoubtedly, this act will help to encourage research, inventions and commerical development of new technology and reduce the occurrence of unfair foreign competition.

Presently, many foreign countries have laws to protect their manufacturers against the selling of products processed with essentially stolen technology. Unbelievably, this is not available to U.S. investors and manufacturers. My bill broadens the procedural and substantive remedies available to the patentee and encourages the production of products intended for the U.S. market to be made within the United States. I ask that a copy of this bill be reprinted for the RECORD.

THE PATENT INVENTION PROTECTION ACT

A bill to amend title 35 of the United States Code to increase the effectiveness of the patent laws by providing protection to holders of United States patents from unfair foreign competition

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 271 of title 35, United States Code, is amended by adding at the end thereof the following new subsections:

"(e) Whoever without authority imports into or sells or uses within the United States a product made in another country by a process patented in the United States shall be liable as an infringer.

"(f) Whoever without authority supplies or causes to be supplied in the United States the material components of a patented invention, where such components are uncombined in whole or in part, intending that such components will be combined outside of the United States, and knowing that if such components were combined within the United States the combination would be an infringement of the patent, shall be liable as an infringer.".

SEC. 2. The amendment made by the first section of this Act shall apply to all unexpired United States patents granted before or after the date of enactment of this Act.●