

108TH CONGRESS  
1ST SESSION

# H. R. 1769

To amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 11, 2003

Mr. CRANE (for himself, Mr. RANGEL, Mr. MANZULLO, Mr. LEVIN, Mr. COLLINS, Mr. McDERMOTT, Mr. LAHOOD, Mr. NEAL of Massachusetts, Mr. SHIMKUS, and Mr. MATSUI) introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Job Protection Act  
5 of 2003”.

1 **SEC. 2. REPEAL OF EXCLUSION FOR EXTRATERRITORIAL**  
2 **INCOME.**

3 (a) IN GENERAL.—Section 114 of the Internal Rev-  
4 enue Code of 1986 is hereby repealed.

5 (b) CONFORMING AMENDMENTS.—

6 (1) Subpart E of part III of subchapter N of  
7 chapter 1 of such Code (relating to qualifying for-  
8 eign trade income) is hereby repealed.

9 (2) The table of subparts for such part III is  
10 amended by striking the item relating to subpart E.

11 (3) The table of sections for part III of sub-  
12 chapter B of chapter 1 of such Code is amended by  
13 striking the item relating to section 114.

14 (c) EFFECTIVE DATE.—

15 (1) IN GENERAL.—The amendments made by  
16 this section shall apply to transactions occurring  
17 after the date of the enactment of this Act.

18 (2) BINDING CONTRACTS.—The amendments  
19 made by this section shall not apply to any trans-  
20 action in the ordinary course of a trade or business  
21 which occurs pursuant to a binding contract—

22 (A) which is between the taxpayer and a  
23 person who is not a related person (as defined  
24 in section 943(b)(3) of such Code, as in effect  
25 on the day before the date of the enactment of  
26 this Act), and

1 (B) which is in effect on April 11, 2003,  
2 and at all times thereafter.

3 For purposes of this paragraph, a binding contract  
4 shall include a purchase option, renewal option, or  
5 replacement option which is included in such con-  
6 tract.

7 (d) REVOCATION OF SECTION 943(e) ELECTIONS.—

8 (1) IN GENERAL.—In the case of a corporation  
9 that elected to be treated as a domestic corporation  
10 under section 943(e) of the Internal Revenue Code  
11 of 1986 (as in effect on the day before the date of  
12 the enactment of this Act)—

13 (A) the corporation may revoke such elec-  
14 tion, effective as of the date of the enactment  
15 of this Act, and

16 (B) if the corporation does revoke such  
17 election—

18 (i) such corporation shall be treated  
19 as a domestic corporation transferring (as  
20 of the date of the enactment of this Act)  
21 all of its property to a foreign corporation  
22 in connection with an exchange described  
23 in section 354 of the Internal Revenue  
24 Code of 1986, and

1 (ii) no gain or loss shall be recognized  
2 on such transfer.

3 (2) EXCEPTION.—Subparagraph (B)(ii) of  
4 paragraph (1) shall not apply to gain on any asset  
5 held by the revoking corporation if—

6 (A) the basis of such asset is determined  
7 in whole or in part by reference to the basis of  
8 such asset in the hands of the person from  
9 whom the revoking corporation acquired such  
10 asset,

11 (B) the asset was acquired by transfer (not  
12 as a result of the election under section 943(e)  
13 of such Code) occurring on or after the 1st day  
14 on which its election under section 943(e) of  
15 such Code was effective, and

16 (C) a principal purpose of the acquisition  
17 was the reduction or avoidance of tax.

18 (e) GENERAL TRANSITION.—

19 (1) IN GENERAL.—In the case of a taxable year  
20 ending after the date of the enactment of this Act  
21 and beginning before January 1, 2009, for purposes  
22 of chapter 1 of such Code, each current FSC/ETI  
23 beneficiary shall be allowed a deduction equal to the  
24 transition amount determined under this subsection  
25 with respect to such beneficiary for such year.

1           (2) CURRENT FSC/ETI BENEFICIARY.—The  
 2 term “current FSC/ETI beneficiary” means any cor-  
 3 poration which entered into one or more transactions  
 4 during its taxable year beginning in calendar year  
 5 2001 with respect to which FSC/ETI benefits were  
 6 allowable.

7           (3) TRANSITION AMOUNT.—For purposes of  
 8 this subsection—

9           (A) IN GENERAL.—The transition amount  
 10 applicable to any current FSC/ETI beneficiary  
 11 for any taxable year is the phaseout percentage  
 12 of the adjusted base period amount.

13           (B) PHASEOUT PERCENTAGE.—

14           (i) IN GENERAL.—In the case of a  
 15 taxpayer using the calendar year as its  
 16 taxable year, the phaseout percentage shall  
 17 be determined under the following table:

<b>“Years:</b>	<b>The phaseout percentage is:</b>
2004 and 2005 .....	100
2006 .....	75
2007 .....	75
2008 .....	50
2009 and thereafter	0

18           (ii) SPECIAL RULE FOR 2003.—The  
 19 phaseout percentage for 2003 shall be the  
 20 amount that bears the same ratio to 100  
 21 percent as the number of days after the

1 date of the enactment of this Act bears to  
2 365.

3 (iii) SPECIAL RULE FOR FISCAL YEAR  
4 TAXPAYERS.—In the case of a taxpayer  
5 not using the calendar year as its taxable  
6 year, the phaseout percentage is the  
7 weighted average of the phaseout percent-  
8 ages determined under the preceding provi-  
9 sions of this paragraph with respect to cal-  
10 endar years any portion of which is in-  
11 cluded in the taxpayer’s taxable year. The  
12 weighted average shall be determined on  
13 the basis of the respective portions of the  
14 taxable year in each calendar year.

15 (4) ADJUSTED BASE PERIOD AMOUNT.—  
16 For purposes of this subsection—

17 (A) IN GENERAL.—In the case of a  
18 taxpayer using the calendar year as its  
19 taxable year, the adjusted base period  
20 amount for any taxable year is the base  
21 period amount multiplied by the applicable  
22 percentage, as determined in the following  
23 table:

<b>“Years:</b>	<b>The applicable percentage is:</b>
2003 .....	100
2004 .....	100
2005 .....	105

<b>“Years:</b>	<b>The applicable percentage is:</b>
2006 .....	110
2007 .....	115
2008 .....	120
2009 and thereafter	0

1                   (B) BASE PERIOD AMOUNT.—The  
2                   base period amount is the aggregate FSC/  
3                   ETI benefits for the taxpayer’s taxable  
4                   year beginning in calendar year 2001.

5                   (C) SPECIAL RULES FOR FISCAL YEAR  
6                   TAXPAYERS, ETC.—Rules similar to rules  
7                   of clauses (ii) and (iii) of paragraph (3)(B)  
8                   shall apply for purposes of this paragraph.

9                   (5) FSC/ETI BENEFIT.—For purposes of this  
10                  subsection, the term ‘FSC/ETI benefit’ means—

11                  (A) amounts excludable from gross income  
12                  under section 114 of such Code, and

13                  (B) the exempt foreign trade income of re-  
14                  lated foreign sales corporations from property  
15                  acquired from the taxpayer (determined without  
16                  regard to section 923(a)(5) of such Code (relat-  
17                  ing to special rule for military property), as in  
18                  effect on the day before the date of the enact-  
19                  ment of the FSC Repeal and Extraterritorial  
20                  Income Exclusion Act of 2000).

21                  In determining the FSC/ETI benefit there shall be  
22                  excluded any amount attributable to a transaction

1 with respect to which the taxpayer is the lessor un-  
2 less the leased property was manufactured or pro-  
3 duced in whole or in part by the taxpayer.

4 (6) SPECIAL RULE FOR FARM COOPERATIVES.—  
5 Under regulations prescribed by the Secretary, de-  
6 terminations under this subsection with respect to  
7 an organization described in section 943(g)(1) of  
8 such Code, as in effect on the day before the date  
9 of the enactment of this Act, shall be made at the  
10 cooperative level and the purposes of this subsection  
11 shall be carried out by excluding amounts from the  
12 gross income of its patrons.

13 (7) CERTAIN RULES TO APPLY.—Rules similar  
14 to the rules of section 41(f) of such Code shall apply  
15 for purposes of this subsection.

16 (8) COORDINATION WITH BINDING CONTRACT  
17 RULE.—The deduction determined under paragraph  
18 (1) for any taxable year shall be reduced by the  
19 phaseout percentage of any FSC/ETI benefit real-  
20 ized for the taxable year by reason of subsection  
21 (c)(2). The preceding sentence shall not apply to any  
22 FSC/ETI benefit attributable to a transaction de-  
23 scribed in the last sentence of paragraph (5).

24 (9) SPECIAL RULE FOR TAXABLE YEAR WHICH  
25 INCLUDES DATE OF ENACTMENT.—In the case of a

1 taxable year which includes the date of the enact-  
2 ment of this Act, the deduction allowed under this  
3 subsection to any current FSC/ETI beneficiary shall  
4 in no event exceed—

5 (A) 100 percent of such beneficiary's ad-  
6 justed base period amount for calendar year  
7 2003, reduced by

8 (B) the aggregate FSC/ETI benefits of  
9 such beneficiary with respect to transactions oc-  
10 ccurring during the portion of the taxable year  
11 ending on the date of the enactment of this Act.

12 **SEC. 3. DEDUCTION RELATING TO INCOME ATTRIBUTABLE**  
13 **TO UNITED STATES PRODUCTION ACTIVI-**  
14 **TIES.**

15 (a) IN GENERAL.—Part VIII of subchapter B of  
16 chapter 1 of the Internal Revenue Code of 1986 (relating  
17 to special deductions for corporations) is amended by add-  
18 ing at the end the following new section:

19 **“SEC. 250. INCOME ATTRIBUTABLE TO DOMESTIC PRODUC-**  
20 **TION ACTIVITIES.**

21 “(a) IN GENERAL.—In the case of a corporation,  
22 there shall be allowed as a deduction an amount equal to  
23 10 percent of the qualified production activities income of  
24 the corporation for the taxable year.

1       “(b) PHASEIN.—In the case of taxable years begin-  
 2       ning in 2006, 2007, 2008 or 2009, subsection (a) shall  
 3       be applied by substituting for the percentage contained  
 4       therein the transition percentage determined under the  
 5       following table:

<b>“Taxable years beginning in:</b>	<b>The transition percentage is:</b>
2006 .....	1
2007 .....	2
2008 .....	4
2009 .....	9

6       “(c) QUALIFIED PRODUCTION ACTIVITIES IN-  
 7       COME.—For purposes of this section, the term ‘qualified  
 8       production activities income’ means the product of—

9               “(1) the portion of the modified taxable income  
 10              of the taxpayer which is attributable to domestic  
 11              production activities, and

12              “(2) the domestic/foreign fraction.

13       “(d) DETERMINATION OF INCOME ATTRIBUTABLE  
 14       TO DOMESTIC PRODUCTION ACTIVITIES.—For purposes  
 15       of this section—

16              “(1) IN GENERAL.—The portion of the modified  
 17              taxable income which is attributable to domestic pro-  
 18              duction activities is so much of the modified taxable  
 19              income for the taxable year as does not exceed—

20                      “(A) the taxpayer’s domestic production  
 21                      gross receipts for such taxable year, reduced by

22                      “(B) the sum of—

1                   “(i) the costs of goods sold that are  
2                   allocable to such receipts,

3                   “(ii) other deductions, expenses, or  
4                   losses directly allocable to such receipts,  
5                   and

6                   “(iii) a ratable portion of other deduc-  
7                   tions, expenses, and losses that are not di-  
8                   rectly allocable to such receipts or another  
9                   class of income.

10                   “(2) ALLOCATION METHOD.—Except as pro-  
11                   vided in regulations, allocations under clauses (ii)  
12                   and (iii) of paragraph (1)(B) shall be made under  
13                   the principles used in determining the portion of tax-  
14                   able income from sources within and without the  
15                   United States.

16                   “(3) SPECIAL RULE.—

17                   “(A) For purposes of determining costs  
18                   under clause (i) of paragraph (1)(B), any item  
19                   or service brought into the United States with-  
20                   out a transfer price meeting the requirements  
21                   of section 482 shall be treated as acquired by  
22                   purchase, and its cost shall be treated as not  
23                   less than its value when it entered the United  
24                   States. A similar rule shall apply in determining  
25                   the adjusted basis of leased or rented property

1           where the lease or rental gives rise to domestic  
2           production gross receipts.

3           “(B) In the case of any property described  
4           in subparagraph (A) that had been exported by  
5           the taxpayer for further manufacture, the in-  
6           crease in cost (or adjusted basis) under sub-  
7           paragraph (A) shall not exceed the difference  
8           between the value of the property when ex-  
9           ported and the value of the property when  
10          brought back into the United States after the  
11          further manufacture.

12          “(4) MODIFIED TAXABLE INCOME.—The term  
13          ‘modified taxable income’ means taxable income  
14          computed without regard to the deduction allowable  
15          under this section.

16          “(e) DOMESTIC PRODUCTION GROSS RECEIPTS.—  
17          For purposes of this section—

18                  “(1) IN GENERAL.—The term ‘domestic produc-  
19                  tion gross receipts’ means the gross receipts of the  
20                  taxpayer which are derived from—

21                          “(A) any sale, exchange, or other disposi-  
22                          tion of, or

23                          “(B) any lease, rental or license of,  
24                  qualifying production property which was manufac-  
25                  tured, produced, grown, or extracted in whole or in

1 significant part by the taxpayer within the United  
2 States.

3 “(2) SPECIAL RULE.—The term ‘domestic pro-  
4 duction gross receipts’ includes gross receipts of the  
5 taxpayer from the sale, exchange, or other disposi-  
6 tion of replacement parts if—

7 “(A) such parts are sold by the taxpayer  
8 as replacement parts for qualified production  
9 property produced or manufactured in whole or  
10 significant part by the taxpayer in the United  
11 States, and

12 “(B) the taxpayer (or a related party)  
13 owns the designs for such parts.

14 “(3) RELATED PARTY.—The term ‘related  
15 party’ means any corporation which is a member of  
16 the taxpayer’s expanded affiliated group.

17 “(f) QUALIFYING PRODUCTION PROPERTY.—For  
18 purposes of this section—

19 “(1) IN GENERAL.—Except as otherwise pro-  
20 vided in this paragraph, the term ‘qualifying produc-  
21 tion property’ means—

22 “(A) any tangible personal property,

23 “(B) any computer software, and

24 “(C) any films, tapes, records, or similar  
25 reproductions.

1           “(2) EXCLUSIONS FROM QUALIFYING PRODUC-  
2           TION PROPERTY.—The term ‘qualifying production  
3           property’ shall not include—

4                   “(A) consumable property that is sold,  
5                   leased, or licensed by the taxpayer as an inte-  
6                   gral part of the provision of services,

7                   “(B) oil or gas (or any primary product  
8                   thereof),

9                   “(C) electricity,

10                   “(D) water supplied by pipeline to the con-  
11                   sumer,

12                   “(E) any unprocessed timber which is  
13                   softwood,

14                   “(F) utility services, or

15                   “(G) any property (not described in para-  
16                   graph (1)(B)) which is a film, tape, recording,  
17                   book, magazine, newspaper, or similar property  
18                   the market for which is primarily topical or oth-  
19                   erwise essentially transitory in nature.

20           For purposes of subparagraph (E), the term ‘un-  
21           processed timber’ means any log, cant, or similar  
22           form of timber.

23           “(g) DOMESTIC/FOREIGN FRACTION.—For purposes  
24           of this section—

1           “(1) IN GENERAL.—The term ‘domestic/foreign  
2 fraction’ means a fraction—

3           “(A) the numerator of which is the value  
4 of the domestic production of the taxpayer, and

5           “(B) the denominator of which is the value  
6 of the worldwide production of the taxpayer.

7           “(2) VALUE OF DOMESTIC PRODUCTION.—The  
8 value of domestic production is the excess of—

9           “(A) the domestic production gross re-  
10 cepts, over

11           “(B) the cost of purchased inputs allocable  
12 to such receipts that are deductible under this  
13 chapter for the taxable year.

14           “(3) PURCHASED INPUTS.—

15           “(A) IN GENERAL.—Purchased inputs are  
16 any of the following items acquired by pur-  
17 chase:

18           “(i) Services (other than services of  
19 employees) used in manufacture, produc-  
20 tion, growth, or extraction activities.

21           “(ii) Items consumed in connection  
22 with such activities.

23           “(iii) Items incorporated as part of  
24 the property being manufactured, pro-  
25 duced, grown, or extracted.

1           “(B) SPECIAL RULE.—Rules similar to the  
2 rules of subsection (d)(3) shall apply for pur-  
3 poses of this subsection.

4           “(4) VALUE OF WORLDWIDE PRODUCTION.—

5           “(A) IN GENERAL.—The value of world-  
6 wide production shall be determined under the  
7 principles of paragraph (2), except that—

8                   “(i) worldwide production gross re-  
9 ceipts shall be taken into account, and

10                   “(ii) paragraph (3)(B) shall not apply.

11           “(B) WORLDWIDE PRODUCTION GROSS RE-  
12 CEIPTS.—The worldwide production gross re-  
13 ceipts is the amount that would be determined  
14 under subsection (e) if such subsection were ap-  
15 plied without any reference to the United  
16 States.

17           “(5) SPECIAL RULE FOR AFFILIATED  
18 GROUPS.—

19           “(A) IN GENERAL.—In the case of a tax-  
20 payer that is a member of an expanded affili-  
21 ated group, the domestic/foreign fraction shall  
22 be the amount determined under the preceding  
23 provisions of this subsection by treating all  
24 members of such group as a single corporation.

1           “(B) EXPANDED AFFILIATED GROUP.—

2           The term ‘expanded affiliated group’ means an  
3           affiliated group as defined in section 1504(a),  
4           determined—

5                   “(i) by substituting ‘50 percent’ for  
6                   ‘80 percent’ each place it appears, and

7                   “(ii) without regard to paragraphs  
8                   (2), (3), and (4) of section 1504(b).

9           “(h) DEFINITIONS AND SPECIAL RULES.—

10                   “(1) UNITED STATES.—For purposes of this  
11                   section, the term ‘United States’ includes the Com-  
12                   monwealth of Puerto Rico and any other possession  
13                   of the United States.

14                   “(2) SPECIAL RULE FOR PARTNERSHIPS.—For  
15                   purposes of this section, a corporation’s distributive  
16                   share of any partnership item shall be taken into ac-  
17                   count as if directly realized by the corporation.

18                   “(3) COORDINATION WITH MINIMUM TAX.—The  
19                   deduction under this section shall be allowed for  
20                   purposes of the tax imposed by section 55; except  
21                   that for purposes of section 55, alternative minimum  
22                   taxable income shall be taken into account in deter-  
23                   mining the deduction under this section.

1           “(4) ORDERING RULE.—The amount of any  
2 other deduction allowable under this chapter shall be  
3 determined as if this section had not been enacted.

4           “(5) COORDINATION WITH TRANSITION  
5 RULES.—For purposes of this section—

6           “(A) domestic production gross receipts  
7 shall not include gross receipts from any trans-  
8 action if the binding contract transition relief of  
9 section 2(c)(2) of the Job Protection Act of  
10 2003 applies to such transaction, and

11           “(B) any deduction allowed under section  
12 2(e) of such Act shall be disregarded in deter-  
13 mining the portion of the taxable income which  
14 is attributable to domestic production gross re-  
15 ceipts.”.

16           (b) CLERICAL AMENDMENT.—The table of sections  
17 for part VIII of subchapter B of chapter 1 of such Code  
18 is amended by adding at the end the following new item:

“Sec. 250. Income attributable to domestic production activi-  
ties.”.

19           (c) EFFECTIVE DATE.—

20           “(1) IN GENERAL.—The amendments made by  
21 this section shall apply to taxable years beginning  
22 after 2005.

23           “(2) APPLICATION OF SECTION 15.—Section 15  
24 of the Internal Revenue Code of 1986 shall apply to

- 1 the amendments made by this section as if they were
- 2 changes in a rate of tax.

○