

108TH CONGRESS  
2D SESSION

# S. 2235

To rename the Department of Commerce as the Department of Trade and Commerce and transfer the Office of the United States Trade Representative into the Department, to consolidate and enhance statutory authority to protect American jobs from unfair international competition, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 25, 2004

Mr. HOLLINGS introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To rename the Department of Commerce as the Department of Trade and Commerce and transfer the Office of the United States Trade Representative into the Department, to consolidate and enhance statutory authority to protect American jobs from unfair international competition, and for other purposes.

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 “Domestic Workforce  
5       Protection Act”.

1 **SEC. 2. COMMERCE DEPARTMENT RENAMED AS DEPART-**  
2 **MENT OF TRADE AND COMMERCE.**

3 (a) IN GENERAL.—The Department of Commerce is  
4 hereby redesignated the Department of Trade and Com-  
5 merce, and the Secretary of Commerce or any other offi-  
6 cial of the Department of Commerce is hereby redesign-  
7 ated the Secretary or official, as appropriate, of Trade  
8 and Commerce.

9 (b) REFERENCE TO DEPARTMENT, SECRETARY, ETC.  
10 OF COMMERCE DEEMED REFERENCE TO DEPARTMENT,  
11 SECRETARY, ETC. OF TRADE AND COMMERCE.—Any ref-  
12 erence to the Department of Commerce, the Secretary of  
13 Commerce, or any other official of the Department of  
14 Commerce in any law, rule, regulation, certificate, direc-  
15 tive, instruction, or other official paper in force on the ef-  
16 fective date of this Act shall be deemed to refer and apply  
17 to the Department of Trade and Commerce or the Sec-  
18 retary of Trade and Commerce, respectively.

19 **SEC. 3. TRANSFER OF THE OFFICE OF THE UNITED STATES**  
20 **TRADE REPRESENTATIVE TO WITHIN THE DE-**  
21 **PARTMENT OF COMMERCE AND TRADE.**

22 Section 141(a) of the Trade Act of 1974 (19 U.S.C.  
23 2171(a)) is amended by striking “Executive Office of the  
24 President” and inserting “Department of Trade and Com-  
25 merce”.

1 **SEC. 4. TERMINATION OF DEFERRAL TO ELIMINATE TAX**  
 2 **BENEFITS FOR OFFSHORE PRODUCTION.**

3 (a) GENERAL RULE.—Paragraph (1) of section  
 4 951(a) of the Internal Revenue Code of 1986 (relating to  
 5 amounts included in gross income of United States share-  
 6 holders) is amended—

7 (1) by striking “and” after the semicolon in  
 8 subparagraph (A)(iii);

9 (2) by striking “959(a)(2).” in subparagraph  
 10 (B) and inserting “959(a)(2); and”; and

11 (3) by adding at the end thereof the following:

12 “(C) the amount determined under section  
 13 956A with respect to such shareholder for such year  
 14 (but only to the extent not excluded from gross in-  
 15 come under section 959(a)(3)).”.

16 (b) AMOUNT OF INCLUSION.—Subpart F of part III  
 17 of subchapter N of chapter 1 of the Internal Revenue Code  
 18 of 1986 is amended by inserting after section 956 the fol-  
 19 lowing new section:

20 **“SEC. 956A. EARNINGS OF CONTROLLED FOREIGN COR-**  
 21 **PORATIONS.**

22 “(a) GENERAL RULE.—In the case of any controlled  
 23 foreign corporation, the amount determined under this  
 24 section with respect to any United States shareholder for  
 25 any taxable year is the lesser of—

26 “(1) the excess (if any) of—

1           “(A) such shareholder’s pro rata share of  
2           the amount of the controlled foreign corpora-  
3           tion’s assets for such taxable year, over

4           “(B) the amount of earnings and profits  
5           described in section 959(c)(1)(B) with respect  
6           to such shareholder, or

7           “(2) such shareholder’s pro rata share of the  
8           applicable earnings of such controlled foreign cor-  
9           poration determined after the application of section  
10          951(a)(1)(B).

11          “(b) APPLICABLE EARNINGS.—For purposes of this  
12          section, the term ‘applicable earnings’ means, with respect  
13          to any controlled foreign corporation, the sum of—

14               “(1) the amount referred to in section  
15          316(a)(1) to the extent such amount was accumu-  
16          lated in taxable years beginning after February 29,  
17          2004, and

18               “(2) the amount referred to in section  
19          316(a)(2),

20          reduced by distributions made during the taxable year and  
21          reduced by the earnings and profits described in section  
22          959(c)(1) to the extent that the earnings and profits so  
23          described were accumulated in taxable years beginning  
24          after February 29, 2004.

1       “(c) SPECIAL RULE WHERE CORPORATION CEASES  
2 TO BE CONTROLLED FOREIGN CORPORATION DURING  
3 TAXABLE YEAR.—If any foreign corporation ceases to be  
4 a controlled foreign corporation during any taxable year—

5               “(1) the determination of any United States  
6 shareholder’s pro rata share shall be made on the  
7 basis of stock owned (within the meaning of section  
8 958(a)) by such shareholder on the last day during  
9 the taxable year on which the foreign corporation is  
10 a controlled foreign corporation,

11              “(2) the amount of such corporation’s assets  
12 for such taxable year shall be determined by only  
13 taking into account quarters ending on or before  
14 such last day, and

15              “(3) in determining applicable earnings, the  
16 amount taken into account by reason of being de-  
17 scribed in paragraph (2) of section 316(a) shall be  
18 the portion of the amount so described which is allo-  
19 cable (on a pro rata basis) to the part of such year  
20 during which the corporation is a controlled foreign  
21 corporation.

22       “(d) REGULATIONS.—The Secretary shall prescribe  
23 such regulations as may be necessary to carry out the pur-  
24 poses of this section, including regulations to prevent the

1 avoidance of the provisions of this section through reorga-  
 2 nizations or otherwise.”.

3 (c) PREVIOUSLY TAXED INCOME RULES.—

4 (1) IN GENERAL.—Subsection (a) of section  
 5 959 of the Internal Revenue Code of 1986 (relating  
 6 to exclusion from gross income of previously taxed  
 7 earnings and profits) is amended by striking “or” at  
 8 the end of paragraph (1), by adding “or” at the end  
 9 of paragraph (2), and by inserting after paragraph  
 10 (2) the following:

11 “(3) such amounts would, but for this sub-  
 12 section, be included under section 951(a)(1)(C) in  
 13 the gross income of,”.

14 (2) ALLOCATION RULES.—

15 (A) Subsection (a) of section 959 of the  
 16 Internal Revenue Code of 1986 is amended by  
 17 striking “paragraph (2)” in the last sentence  
 18 and inserting “paragraphs (2) and (3)”.

19 (B) Section 959(f) of the Internal Revenue  
 20 Code of 1986 is amended—

21 (i) by striking paragraph (1) and in-  
 22 serting the following:

23 “(1) IN GENERAL.—For purposes of this sec-  
 24 tion—

1 “(A) amounts that would be included  
 2 under subparagraph (B) of section 951(a)(1)  
 3 (determined without regard to this section)  
 4 shall be treated as attributable first to earnings  
 5 described in subsection (c)(2), and then to earn-  
 6 ings described in subsection (c)(3), and

7 “(B) amounts that would be included  
 8 under subparagraph (C) of section 951(a)(1)  
 9 (determined without regard to this section)  
 10 shall be treated as attributable first to earnings  
 11 described in subsection (c)(2) to the extent the  
 12 earnings so described were accumulated in tax-  
 13 able years beginning after February 29, 2004,  
 14 and then to earnings described in subsection  
 15 (c)(3).”; and

16 (ii) by striking “section 951(a)(1)(B)”  
 17 in paragraph (2) and inserting “subpara-  
 18 graphs (B) and (C) of section 951(a)(1)”.

19 (3) CONFORMING AMENDMENT.—Subsection (b)  
 20 of section 989 of the Internal Revenue Code of 1986  
 21 is amended by striking “section 951(a)(1)(B)” and  
 22 inserting “subparagraph (B) or (C) of section  
 23 951(a)(1)”.

24 (d) EFFECTIVE DATE.—The amendments made by  
 25 this section shall apply to taxable years of foreign corpora-

1 tions beginning after February 29, 2004, and to taxable  
 2 years of United States shareholders in which or with which  
 3 such taxable years of foreign corporations end.

4 (e) TECHNICAL AND CONFORMING CHANGES.—The  
 5 Secretary of the Treasury shall, within 90 days after the  
 6 date of enactment of this Act, submit to the Committee  
 7 on Ways and Means of the House of Representatives and  
 8 to the Committee on Finance of the Senate, a draft of  
 9 any technical and conforming changes in the Internal Rev-  
 10 enue Code of 1986 that are necessary to reflect through-  
 11 out such Code the changes in the substantive provisions  
 12 of law made by this section.

13 **SEC. 5. DISALLOWANCE OF DEDUCTIONS FOR CERTAIN**  
 14 **OFFSHORE ROYALTY PAYMENTS.**

15 (a) IN GENERAL.—Part IX of subchapter B of chap-  
 16 ter 1 of the Internal Revenue Code of 1986 is amended  
 17 by adding at the end the following:

18 **“SEC. 280I. CERTAIN OFFSHORE ROYALTY PAYMENTS.**

19 “(a) IN GENERAL.—In the case of a corporation, no  
 20 deduction shall be allowed for the payment of a royalty  
 21 to an affiliated entity organized and operated outside the  
 22 United States in exchange for the use of rights to a copy-  
 23 righted or trademarked product if those rights were trans-  
 24 ferred by the corporation or a related party to that entity.



1 “(b) EXCEPTION.—Subsection (a) does not apply to  
 2 the payment of a royalty if the taxpayer establishes, to  
 3 the satisfaction of the Secretary, that—

4 “(1) the transfer of the rights to the entity was  
 5 for a sound business reason (other than the reduc-  
 6 tion of liability for tax under this chapter); and

7 “(2) the amounts paid or incurred for such roy-  
 8 alty payments are reasonable under the cir-  
 9 cumstances.”.

10 (b) CLERICAL AMENDMENT.—The part analysis for  
 11 such part is amended by adding at the end the following:

“280I. Certain offshore royalty payments.”.

12 (c) EFFECTIVE DATE.—The amendments made by  
 13 this section apply to taxable years beginning after Decem-  
 14 ber 31, 2003.

15 **SEC. 6. INCREASE IN AUTHORITY OF THE INTERNAL REV-**  
 16 **ENUE SERVICE TO THWART USE OF TAX HA-**  
 17 **VENS BY CORPORATIONS.**

18 (a) IN GENERAL.—Subchapter B of chapter 78 of the  
 19 Internal Revenue Code of 1986 is amended by adding at  
 20 the end the following:

21 **“SEC. 7625. AUTHORITY TO FRUSTRATE USE OF COR-**  
 22 **PORATE TAX HAVENS.**

23 “(a) IN GENERAL.—The Secretary is authorized—

24 “(1) to deny any otherwise allowable deduction  
 25 or credit under chapter 1,

1           “(2) to recharacterize, reallocate, and resource  
2       income,

3           “(3) to recharacterize transactions, and

4           “(4) to disregard any transaction, trust, or  
5       other legal entity,

6       determined by the Secretary to be necessary to prevent  
7       the use by a corporation of a tax haven to avoid liability  
8       for tax under this chapter.

9       “(b) TAX HAVEN DEFINED.—In this section, the  
10      term ‘tax haven’ means any country that meets the tax  
11      haven criteria established by the Organization for Eco-  
12      nomic Co-operation and Development.”.

13      (b) CONFORMING AMENDMENT.—The subchapter  
14      analysis for subchapter B of chapter 78 of the Internal  
15      Revenue Code of 1986 is amended by adding at the end  
16      the following:

“6725. Authority to frustrate use of corporate tax havens.”.

17      **SEC. 7. ASSISTANT ATTORNEY GENERAL FOR TRADE.**

18      (a) POSITION ESTABLISHED.—The Attorney General  
19      shall appoint an Assistant Attorney General for Trade.

20      (b) DUTIES.—The Assistant Attorney General for  
21      Trade shall—

22           (1) investigate anticompetitive conduct by for-  
23      eign companies that has an adverse impact on the  
24      economy of the United States (including manufac-

1 turing, agriculture, and employment) or the global  
2 competitiveness of United States companies;

3 (2) investigate violations of international trade  
4 agreements to which the United States is a party  
5 that have an adverse impact on the economy of the  
6 United States (including manufacturing, agriculture,  
7 and employment) or the global competitiveness of  
8 United States companies and take appropriate ac-  
9 tion to seek redress or punishment for those viola-  
10 tions; and

11 (3) investigate and initiate appropriate action  
12 against other activities throughout the world that  
13 have an adverse impact on the economy of the  
14 United States (including manufacturing, agriculture,  
15 and employment) or the global competitiveness of  
16 United States companies.

17 (c) AUTHORITY IS IN ADDITION TO OTHER AU-  
18 THORITIES.—The authority granted to the Assistant At-  
19 torney General for Trade by this section is in addition to,  
20 and not in derogation or in lieu of, any authority provided  
21 by law to any other officer or agency of the United States  
22 charged with enforcement of the trade laws of the United  
23 States or of international agreements to which the United  
24 States is a party.

1 (d) COMPENSATION.—Section 5315 of title 5, United  
2 States Code, is amended by striking “(10)” in the item  
3 relating to Assistant Attorney General and inserting  
4 “(11)”.

5 **SEC. 8. EMPLOYMENT OF ADDITIONAL CUSTOMS INSPEC-**  
6 **TORS FOR ILLEGAL TRANSSHIPMENTS OF**  
7 **TEXTILES.**

8 The Secretary of Homeland Security shall hire, train,  
9 and deploy 1,000 customs agents in addition to the num-  
10 ber of customs agents otherwise authorized by law or oth-  
11 erwise employed by the Department of Homeland Security  
12 for the purpose of detecting and preventing illegal trans-  
13 shipments of textiles to avoid textile import quotas and  
14 in violation of trade agreements to which the United  
15 States is a party.

16 **SEC. 9. INCREASED DOMESTIC PRODUCTION OF NATIONAL**  
17 **DEFENSE CRITICAL GOODS.**

18 (a) IN GENERAL.—The Secretary of Commerce, in  
19 consultation with the Secretary of Defense, the Director  
20 of the Central Intelligence Agency, the Secretary of State,  
21 the Secretary of Homeland Security, and the Adminis-  
22 trator of the Small Business Administration shall develop  
23 a program to encourage and support increased domestic  
24 production of goods and products that are essential or  
25 critical to national security in order to decrease the United

1 States' dependence upon imports of such goods and prod-  
 2 ucts.

3 (b) SUPPORT PROGRAM.—The Secretary of Com-  
 4 merce shall implement the program developed under sub-  
 5 section (a) to the maximum extent feasible through exist-  
 6 ing programs, including programs administered by the  
 7 Small Business Administration. The Secretary shall trans-  
 8 mit to the Congress a report, within 18 months after the  
 9 date of enactment of this Act, describing the program and  
 10 making such recommendations, including legislative rec-  
 11 ommendations, as the Secretary deems necessary for ex-  
 12 panding the scope or improving the efficacy of the pro-  
 13 gram. The Secretary may submit the report in both classi-  
 14 fied and redacted form.

15 (c) AUTHORIZATION OF APPROPRIATIONS.—There  
 16 are authorized to be appropriated to the Secretary of Com-  
 17 merce such sums as may be necessary to carry out the  
 18 program.

19 **SEC. 10. SENSE OF THE SENATE CONCERNING APPROPRIA-**  
 20 **TIONS FOR CERTAIN PROGRAMS.**

21 It is the sense of the Senate that the Congress should  
 22 appropriate the full amount authorized by law to carry out  
 23 the Regional Centers for the Transfer of Manufacturing  
 24 Technology program under section 25 of the National In-  
 25 stitute of Standards and Technology Act (15 U.S.C. 278k)

1 and the Advanced Technology Program authorized by sec-  
2 tion 28 of that Act (15 U.S.C. 278n).

3 **SEC. 11. TRANSFER OF INTERNATIONAL TRADE COMMIS-**  
4 **SION FUNCTIONS.**

5 (a) ABOLISHMENT OF ITC.—Effective on the first  
6 day of the seventh month beginning after the date of en-  
7 actment of this Act, the United States International Trade  
8 Commission established by section 330 of the Tariff Act  
9 of 1930 (19 U.S.C. 1330) as in effect on the last day of  
10 the sixth month beginning after the date of enactment of  
11 this Act is abolished.

12 (b) TRANSFER OF FUNCTIONS.—Except as otherwise  
13 provided in this Act, all functions that on the last day  
14 of the sixth month beginning after the date of enactment  
15 of this Act are authorized to be performed by the United  
16 States International Trade Commission are transferred to  
17 the Department of Commerce effective on the first day  
18 of the seventh month beginning after the date of enact-  
19 ment of this Act and shall be performed by the Assistant  
20 Secretary of Commerce for Import Administration.

21 (c) DETERMINATION OF CERTAIN FUNCTIONS.—If  
22 necessary, the Office of Management and Budget shall  
23 make any determination of the functions that are trans-  
24 ferred under this section.

1 **SEC. 12. INCIDENTAL TRANSFERS.**

2       The Director of the Office of Management and Budg-  
3 et, in consultation with the Secretary of Commerce, shall  
4 make such determinations as may be necessary with re-  
5 gard to the functions, offices, or portions thereof trans-  
6 ferred by this Act, and make such additional incidental  
7 dispositions of personnel, assets, liabilities, grants, con-  
8 tracts, property, records, and unexpended balances of ap-  
9 propriations, authorizations, allocations, and other funds  
10 held, used, arising from, available to, or to be made avail-  
11 able in connection with such functions, offices, or portions  
12 thereof, as may be necessary to carry out this Act. The  
13 Director shall provide for the termination of the affairs  
14 of all entities terminated by this Act and, in consultation  
15 with the Administrator, for such further measures and  
16 dispositions as may be necessary to effectuate the pur-  
17 poses of this Act.

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