

*Bryan Dorgan*  
S.L.C.

PENDING

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To provide for the taxation of income of controlled foreign corporations attributable to imported property, and for other purposes.

IN THE SENATE OF THE UNITED STATES—108th Cong., 2d Sess.

**S. 1637**

To an	<b>AMENDMENT No. 3110</b>	ply
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**Page(s)**

GPO: 2002 83-247(Mac)

Referred to the Committee on \_\_\_\_\_  
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. DORGAN (for himself, Ms. MIKULSKI, Mr. HARKIN, Mr. FEINGOLD, Mr. KENNEDY, and Mr. EDWARDS)

Viz:

- 1 At the end of subtitle E of title IV, add the following:
- 2 **SEC. \_\_\_\_ . TAXATION OF INCOME OF CONTROLLED FOR-**
- 3 **EIGN CORPORATIONS ATTRIBUTABLE TO IM-**
- 4 **PORTED PROPERTY.**
- 5 (a) GENERAL RULE.—Subsection (a) of section 954
- 6 (defining foreign base company income) is amended by

1 striking “and” at the end of paragraph (4), by striking  
2 the period at the end of paragraph (5) and inserting “,  
3 and”, and by adding at the end the following new para-  
4 graph:

5           “(6) imported property income for the taxable  
6 year (determined under subsection (j) and reduced  
7 as provided in subsection (b)(5)).”

8           (b) DEFINITION OF IMPORTED PROPERTY IN-  
9 COME.—Section 954 is amended by adding at the end the  
10 following new subsection:

11           “(j) IMPORTED PROPERTY INCOME.—

12           “(1) IN GENERAL.—For purposes of subsection  
13 (a)(6), the term ‘imported property income’ means  
14 income (whether in the form of profits, commissions,  
15 fees, or otherwise) derived in connection with—

16                   “(A) manufacturing, producing, growing,  
17 or extracting imported property,

18                   “(B) the sale, exchange, or other disposi-  
19 tion of imported property, or

20                   “(C) the lease, rental, or licensing of im-  
21 ported property.

22           Such term shall not include any foreign oil and gas  
23 extraction income (within the meaning of section  
24 907(c)) or any foreign oil related income (within the  
25 meaning of section 907(e)).

1           “(2) IMPORTED PROPERTY.—For purposes of  
2 this subsection—

3           “(A) IN GENERAL.—Except as otherwise  
4 provided in this paragraph, the term ‘imported  
5 property’ means property which is imported  
6 into the United States by the controlled foreign  
7 corporation or a related person.

8           “(B) IMPORTED PROPERTY INCLUDES CER-  
9 TAIN PROPERTY IMPORTED BY UNRELATED  
10 PERSONS.—The term ‘imported property’ in-  
11 cludes any property imported into the United  
12 States by an unrelated person if, when such  
13 property was sold to the unrelated person by  
14 the controlled foreign corporation (or a related  
15 person), it was reasonable to expect that—

16           “(i) such property would be imported  
17 into the United States, or

18           “(ii) such property would be used as  
19 a component in other property which would  
20 be imported into the United States.

21           “(C) EXCEPTION FOR PROPERTY SUBSE-  
22 QUENTLY EXPORTED.—The term ‘imported  
23 property’ does not include any property which is  
24 imported into the United States and which—

1                   “(i) before substantial use in the  
2                   United States, is sold, leased, or rented by  
3                   the controlled foreign corporation or a re-  
4                   lated person for direct use, consumption,  
5                   or disposition outside the United States, or

6                   “(ii) is used by the controlled foreign  
7                   corporation or a related person as a com-  
8                   ponent in other property which is so sold,  
9                   leased, or rented.

10                   “(3) DEFINITIONS AND SPECIAL RULES.—

11                   “(A) IMPORT.—For purposes of this sub-  
12                   section, the term ‘import’ means entering, or  
13                   withdrawal from warehouse, for consumption or  
14                   use. Such term includes any grant of the right  
15                   to use intangible property (as defined in section  
16                   936(h)(3)(B)) in the United States.

17                   “(B) UNITED STATES.—For purposes of  
18                   this subsection, the term ‘United States’ in-  
19                   cludes the Commonwealth of Puerto Rico, the  
20                   Virgin Islands of the United States, Guam,  
21                   American Samoa, and the Commonwealth of  
22                   the Northern Mariana Islands.

23                   “(C) UNRELATED PERSON.—For purposes  
24                   of this subsection, the term ‘unrelated person’  
25                   means any person who is not a related person

1 with respect to the controlled foreign corpora-  
2 tion.

3 “(D) COORDINATION WITH FOREIGN BASE  
4 COMPANY SALES INCOME.—For purposes of this  
5 section, the term ‘foreign base company sales  
6 income’ shall not include any imported property  
7 income.”

8 (c) SEPARATE APPLICATION OF LIMITATIONS ON  
9 FOREIGN TAX CREDIT FOR IMPORTED PROPERTY IN-  
10 COME. —

11 (1) IN GENERAL.—Paragraph (1) of section  
12 904(d) (relating to separate application of section  
13 with respect to certain categories of income) is  
14 amended by striking “and” at the end of subpara-  
15 graph (H), by redesignating subparagraph (I) as  
16 subparagraph (J), and by inserting after subpara-  
17 graph (H) the following new subparagraph:

18 “(I) imported property income, and”.

19 (2) IMPORTED PROPERTY INCOME DEFINED.—  
20 Paragraph (2) of section 904(d) is amended by re-  
21 designating subparagraphs (H) and (I) as subpara-  
22 graphs (I) and (J), respectively, and by inserting  
23 after subparagraph (G) the following new subpara-  
24 graph:

1           “(H) IMPORTED PROPERTY INCOME.—The  
2           term ‘imported property income’ means any in-  
3           come received or accrued by any person which  
4           is of a kind which would be imported property  
5           income (as defined in section 954(j)).”

6           (3) LOOK-THRU RULES TO APPLY.—Subpara-  
7           graph (F) of section 904(d)(3) is amended by strik-  
8           ing “or (E)” and inserting “(E), or (I)”.

9           (d) TECHNICAL AMENDMENTS.—

10           (1) Clause (iii) of section 952(e)(1)(B) (relating  
11           to certain prior year deficits may be taken into ac-  
12           count) is amended—

13                   (A) by redesignating subclauses (III), (IV),  
14                   (V), and (VI) as subclauses (IV), (V), (VI), and  
15                   (VII), and

16                   (B) by inserting after subclause (II) the  
17                   following new subclause:

18                           “(III) imported property income.”.

19           (2) Paragraph (5) of section 954(b) (relating to  
20           deductions to be taken into account) is amended by  
21           striking “and the foreign base company oil related  
22           income” and inserting “the foreign base company oil  
23           related income, and the imported property income”.

24           (e) EFFECTIVE DATE.—

1           (1) IN GENERAL.—Except as provided in para-  
2 graph (2), the amendments made by this section  
3 shall apply to taxable years of foreign corporations  
4 beginning after the date of the enactment of this  
5 Act, and to taxable years of United States share-  
6 holders within which or with which such taxable  
7 years of such foreign corporations end.

8           (2) SUBSECTION (c).—The amendments made  
9 by subsection (c) shall apply to taxable years begin-  
10 ning after such date of enactment.

11          (f) SENSE OF THE SENATE.—It is the sense of the  
12 Senate that any increase in revenues in the Treasury re-  
13 sulting from the amendments made by this section should  
14 be applied to reduce the phasein of the deduction relating  
15 to income attributable to domestic production activities  
16 under section 199 of the Internal Revenue Code of 1986  
17 (as added by section 102 of this Act).

18 **SEC. \_\_\_\_ . AMENDMENTS TO THE WORKER ADJUSTMENT**  
19 **AND RETRAINING NOTIFICATION ACT.**

20          (a) DEFINITION.—Section 2(a) of the Worker Ad-  
21 justment and Retraining Notification Act (29 U.S.C.  
22 2101(a)) is amended—

23           (1) in paragraph (3)(B), by striking “for—”  
24 and all that follows through “500 employees” in

1 clause (ii), and inserting “for at least 50 employ-  
2 ees”;

3 (2) in paragraph (7), by striking “and” at the  
4 end;

5 (3) in paragraph (8), by striking the period and  
6 inserting “; and”; and

7 (4) by adding at the end the following:

8 “(9) the term ‘offshoring of jobs’ means any ac-  
9 tion taken by an employer the effect of which is to  
10 create, shift, or transfer employment positions or fa-  
11 cilities outside the United States and which results  
12 in an employment loss during any 30 day period for  
13 15 or more employees.”.

14 (b) NOTICE.—Section 3 of the Worker Adjustment  
15 and Retraining Notification Act (29 U.S.C. 2102) is  
16 amended—

17 (1) in subsection (a)—

18 (A) in the matter preceding paragraph (1),  
19 by striking “60-day” and inserting “90-day”;  
20 and

21 (B) in paragraph (1), by striking “and” at  
22 the end;

23 (C) in paragraph (2), by striking the pe-  
24 riod and inserting “; and”; and

1 (D) by inserting after paragraph (2), the  
2 following:

3 “(3) to the Secretary of Labor.”;

4 (2) in subsection (b), by striking “60-day” each  
5 place that such appears and inserting “90-day”; and

6 (3) by adding at the end the following:

7 “(e) NOTICE FOR OFFSHORING OF JOBS.—In the  
8 case of a notice under subsection (a) regarding the  
9 offshoring of jobs, the notice shall include, in addition to  
10 the information otherwise required by the Secretary with  
11 respect to other notices under such subsection, informa-  
12 tion concerning—

13 “(1) the number of jobs affected;

14 “(2) the location that the jobs are being shifted  
15 or transferred to; and

16 “(3) the reasons that such shifting or transfer-  
17 ring of jobs is occurring.”.

18 (e) TECHNICAL AMENDMENTS.—The Worker Adjust-  
19 ment and Retraining Notification Act (29 U.S.C. 2101 et  
20 seq.) is amended—

21 (1) by striking “plant closing or mass layoff”  
22 each place that such appears and inserting “plant  
23 closing, mass layoff, or offshoring of jobs”;

1           (2) by striking “closing or layoff” each place  
2 that such appears and inserting “closing, layoff, or  
3 offshoring”;

4           (3) in section 3—

5           (A) in the section heading by striking  
6 **“PLANT CLOSINGS AND MASS LAYOFFS”**  
7 and inserting **“PLANT CLOSINGS, MASS LAY-**  
8 **OFFS, AND OFFSHORING OF JOBS”**;

9           (B) in subsection (b)(2)(A), by striking  
10 “closing or mass layoff” and inserting “closing,  
11 layoff, or offshoring”; and

12           (C) in subsection (d), by striking “section  
13 2(a)(2) or (3)” and inserting “paragraph (2),  
14 (3), or (9) of section 2(a)”; and

15           (4) in section 5(a)(1), in the matter following  
16 subparagraph (B), by striking “60 days” and insert-  
17 ing “90 days”.

18           (d) **POSTING OF EMPLOYEE RIGHTS.**—The Worker  
19 Adjustment and Retraining Notification Act (29 U.S.C.  
20 2101 et seq.) is amended by adding at the end the fol-  
21 lowing:

22 **“SEC. 11. POSTING OF NOTICE OF RIGHTS.**

23           ‘ (a) **DEVELOPMENT.**—Not later than 60 days after  
24 the date of enactment of this section, the Secretary of

1 Labor shall develop a notice of employee rights under this  
2 Act for posting by employers.

3 “(b) POSTING.—Each employer shall post in a con-  
4 spicuous place in places of employment the notice of the  
5 rights of employees as developed by the Secretary under  
6 subsection (a).”.

7 (c) ANNUAL REPORT.—The Worker Adjustment and  
8 Retraining Notification Act (29 U.S.C. 2101 et seq.), as  
9 amended by subsection (d), is further amended by adding  
10 at the end the following:

11 **“SEC. 12. CONTENTS OF ANNUAL REPORTS BY THE SEC-**  
12 **RETARY OF LABOR.**

13 “(a) IN GENERAL.—The Secretary of Labor shall col-  
14 lect and compile statistics based on the information sub-  
15 mitted to the Secretary under subsections (a)(3) and (e)  
16 of section 3.

17 “(b) REPORT.—Not later than 120 days after the  
18 date on which each regular session of Congress com-  
19 mences, the Secretary of Labor shall prepare and submit  
20 to the President and the appropriate committees of Con-  
21 gress a report on the offshoring of jobs (as defined in sec-  
22 tion 2(a)(9)). Each such report shall include information  
23 concerning—

24 “(1) the number of jobs affected by offshoring;

1           “(2) the locations to which jobs are being shift-  
2           ed or transferred;

3           “(3) the reasons why such shifts and transfers  
4           are occurring; and

5           “(4) any other relevant data compiled under  
6           subsection (a).”.