

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1374

To discourage domestic corporations from establishing foreign manufacturing subsidiaries in order to avoid Federal taxes by including in gross income of United States shareholders in foreign corporations the retained earnings of any such subsidiary which are attributable to manufacturing operations in runaway plants or tax havens.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 16, 1993

Mr. TRAFICANT introduced the following bill; which was referred to the  
Committee on Ways and Means

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## A BILL

To discourage domestic corporations from establishing foreign manufacturing subsidiaries in order to avoid Federal taxes by including in gross income of United States shareholders in foreign corporations the retained earnings of any such subsidiary which are attributable to manufacturing operations in runaway plants or tax havens.

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 “Foreign Subsidiary  
5 Tax Equity Act”.

1 **SEC. 2. INCOME FROM RUNAWAY PLANTS OR FROM MANU-**  
2 **FACTURING OPERATIONS LOCATED IN A**  
3 **COUNTRY WHICH PROVIDES A TAX HOLIDAY**  
4 **INCLUDED IN SUBPART F INCOME.**

5 (a) FOREIGN BASE COMPANY MANUFACTURING RE-  
6 LATED INCOME ADDED TO CURRENTLY TAXED  
7 AMOUNTS.—Subsection (a) of section 954 of the Internal  
8 Revenue Code of 1986 (defining foreign base company in-  
9 come) is amended by striking “and” at the end of para-  
10 graph (4), by striking the period at the end of paragraph  
11 (5) and inserting “, and”, and by adding at the end there-  
12 of the following new paragraph:

13 “(6) the foreign base company manufacturing  
14 related income for the taxable year (determined  
15 under subsection (h) and reduced as provided in  
16 subsection (b)(5)).”

17 (b) DEFINITION OF FOREIGN BASE COMPANY MANU-  
18 FACTURING RELATED INCOME.—Section 954 of such  
19 Code is amended by adding at the end thereof the follow-  
20 ing new subsection:

21 “(h) FOREIGN BASE COMPANY MANUFACTURING  
22 RELATED INCOME.—

23 “(1) IN GENERAL.—For purposes of this sec-  
24 tion, the term ‘foreign base company manufacturing  
25 related income’ means income (whether in the form  
26 of profits, commissions, fees, or otherwise) derived in

1 connection with the manufacture for or sale to any  
2 person of personal property by the controlled foreign  
3 corporation where the property sold was manufac-  
4 tured by the controlled foreign corporation in any  
5 country other than the United States if such prop-  
6 erty or any component of such property was manu-  
7 factured—

8 “(A) in a tax holiday plant, or

9 “(B) in a runaway plant.

10 “(2) OTHER DEFINITIONS; SPECIAL RULES.—

11 For purposes of this subsection—

12 “(A) TAX HOLIDAY PLANT DEFINED.—The  
13 term ‘tax holiday plant’ means any facility—

14 “(i) operated by the controlled foreign  
15 corporation in connection with the manu-  
16 facture of personal property, and

17 “(ii) with respect to which any eco-  
18 nomic benefit under any tax law of the  
19 country in which such facility is located ac-  
20 crued—

21 “(I) to such corporation,

22 “(II) for the purpose of providing  
23 an incentive to such corporation to es-  
24 tablish, maintain, or expand such fa-  
25 cility, and

1                   “(III) for the taxable year of  
2                   such corporation during which the  
3                   personal property referred to in para-  
4                   graph (1) was manufactured.

5                   “(B) RUNAWAY PLANT DEFINED.—The  
6                   term ‘runaway plant’ means any facility—

7                   “(i) for the manufacture of personal  
8                   property of which not less than 10 percent  
9                   is used, consumed, or otherwise disposed of  
10                  in the United States, and

11                  “(ii) which is established or main-  
12                  tained by the controlled foreign corporation  
13                  in a country in which the effective tax rate  
14                  imposed by such country on the corpora-  
15                  tion is less than 90 percent of the effective  
16                  tax rate which would be imposed on such  
17                  corporation under this title.

18                  “(C) ECONOMIC BENEFIT UNDER ANY TAX  
19                  LAW DEFINED.—The term ‘economic benefit  
20                  under any tax law’ includes—

21                  “(i) any exclusion or deduction of any  
22                  amount from gross income derived in con-  
23                  nection with—

24                  “(I) the operation of any manu-  
25                  facturing facility, or

1                   “(II) the manufacture or sale of  
2                   any personal property,  
3                   which would otherwise be subject to tax  
4                   under the law of such country;

5                   “(ii) any reduction in the rate of any  
6                   tax which would otherwise be imposed  
7                   under the laws of such country with re-  
8                   spect to any facility or property referred to  
9                   in clause (i) (including any ad valorem tax  
10                  or excise tax with respect to such prop-  
11                  erty);

12                  “(iii) any credit against any tax which  
13                  would otherwise be assessed against any  
14                  such facility or property or any income de-  
15                  rived in connection with the operation of  
16                  any such facility or the manufacture or  
17                  sale of any such property; and

18                  “(iv) any abatement of any amount of  
19                  tax otherwise due and any other reduction  
20                  in the actual amount of tax paid to such  
21                  country.

22                  “(D) MANUFACTURE DEFINED.—The term  
23                  ‘manufacture’ or ‘manufacturing’ includes any  
24                  production, processing, assembling, or finishing  
25                  of any personal property or any component of

1 property not yet assembled and any packaging,  
2 handling, or other activity incidental to the  
3 shipment or delivery of such property to any  
4 buyer.

5 “(E) CORPORATION INCLUDES ANY RELAT-  
6 ED PERSON.—The term ‘controlled foreign cor-  
7 poration’ includes any related person with re-  
8 spect to such corporation.

9 “(F) SPECIAL RULE FOR DETERMINING  
10 WHICH TAXABLE YEAR AN ECONOMIC BENEFIT  
11 WAS OBTAINED.—An economic benefit under  
12 any tax law shall be treated as having accrued  
13 in the taxable year of the controlled foreign cor-  
14 poration in which such corporation actually ob-  
15 tained the benefit, notwithstanding the fact that  
16 such benefit may have been allowable for any  
17 preceding or succeeding taxable year and was  
18 carried forward or back, for any reason, to the  
19 taxable year.

20 “(3) LIMITATION ON APPLICATION OF PARA-  
21 GRAPH (1) IN CERTAIN CASES.—For purposes of this  
22 section—

23 “(A) IN GENERAL.—The term ‘foreign  
24 base company manufacturing related income’  
25 shall not include any income of a controlled for-

1           eign corporation from the manufacture or sale  
2           of personal property if—

3                   “(i) such corporation is not a corpora-  
4                   tion significantly engaged in manufactur-  
5                   ing,

6                   “(ii) the investment in the expansion  
7                   of an existing facility which gave rise to a  
8                   tax holiday for such facility was not a sub-  
9                   stantial investment, or

10                   “(iii) the personal property was used,  
11                   consumed, or otherwise disposed of in the  
12                   country in which such property was manu-  
13                   factured.

14                   “(B) CORPORATION SIGNIFICANTLY EN-  
15                   GAGED IN MANUFACTURING DEFINED.—

16                   “(i) GENERAL RULE.—A corporation  
17                   shall be deemed to be significantly engaged  
18                   in manufacturing if the value of real prop-  
19                   erty and other capital assets owned or con-  
20                   trolled by the corporation and dedicated to  
21                   manufacturing operations is more than 10  
22                   percent of the total value of all real prop-  
23                   erty and other capital assets owned or con-  
24                   trolled by such corporation.

1           “(ii) SPECIAL RULE FOR ASSESSING  
2           PROPERTY VALUE.—The value of any  
3           property owned by the corporation is the  
4           basis of such corporation in such property.  
5           The basis of the corporation in any prop-  
6           erty which was acquired other than by pur-  
7           chase shall be the fair market value of  
8           such property at the time of such acquisi-  
9           tion. Any property controlled but not  
10          owned by such corporation under any lease  
11          (or any other instrument which gives such  
12          corporation any right of use or occupancy  
13          with respect to such property) shall be  
14          treated as property acquired other than by  
15          purchase in the manner provided in the  
16          preceding sentence.

17          “(C) SUBSTANTIAL INVESTMENT DE-  
18          FINED.—The term ‘substantial investment’  
19          means any amount which—

20                 “(i) was added to the capital account  
21                 for an existing facility during the 3-year  
22                 period ending on the last day of any tax-  
23                 able year with respect to which such facil-  
24                 ity is a tax holiday plant, and

1           “(ii) caused the sum of all amounts  
2           added to such account during such period  
3           to exceed 20 percent of the total value of  
4           such facility (determined in the manner  
5           provided in subparagraph (B)(ii)) on the  
6           first day of such period.”

7           (c) TECHNICAL AND CONFORMING AMENDMENTS.—

8           (1) The last sentence of subsection (b)(4) of  
9           such section 954 is amended by striking out “sub-  
10          section (a)(5).” and by inserting in lieu thereof  
11          “subsection (a)(5) or foreign base company manu-  
12          facturing related income described in subsection  
13          (a)(6).”

14          (2) Subsection (b)(5) of such section 954 is  
15          amended by striking out “and the foreign base com-  
16          pany oil related income” and by inserting in lieu  
17          thereof “the foreign base company oil related in-  
18          come, and the foreign base company manufacturing  
19          related income”.

20          (3) Subsection (b) of such section 954 is  
21          amended by inserting at the end thereof the follow-  
22          ing new paragraph:

23                 “(9) FOREIGN BASE COMPANY MANUFACTURING  
24                 RELATED INCOME NOT TREATED AS ANOTHER KIND  
25                 OF BASE COMPANY INCOME.—Income of a corpora-

1       tion which is foreign base company manufacturing  
2       related income shall not be treated as foreign base  
3       company income of such corporation under any  
4       paragraph of subsection (a) other than paragraph  
5       (6).”

6       (d) EFFECTIVE DATES.—

7           (1) IN GENERAL.—The amendments made by  
8       this section shall apply to taxable years of foreign  
9       corporations beginning after December 31, 1988,  
10      and to taxable years of United States shareholders  
11      in which, or with which, such taxable years of for-  
12      eign corporations end.

13          (2) INVESTMENTS BEFORE THE DATE OF EN-  
14      ACTMENT NOT TAKEN INTO ACCOUNT.—No facility  
15      of a foreign controlled corporation shall be treated  
16      as a tax holiday plant (within the meaning of section  
17      954(h)(2)(A) of such Code, as amended by this sec-  
18      tion) or as a runaway plant (within the meaning of  
19      section 954(h)(2)(B) of such Code, as amended by  
20      this section) on the basis of any amount paid or in-  
21      curred with respect to such facility and added to the  
22      capital account for such facility before the date of  
23      the enactment of this Act.

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