

108TH CONGRESS  
1ST SESSION

# S. 1922

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 manufacturing jobs and production activities in the United States, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

NOVEMBER 21, 2003

Mr. SMITH (for himself and Mr. BREUX) introduced the following bill; which was read twice and referred to the Committee on Finance

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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 manufacturing jobs and production activities in the United States, 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; AMENDMENT OF 1986 CODE.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “American Manufacturing Jobs Act of 2003”.

6       (b) AMENDMENT OF 1986 CODE.—Except as other-  
7       wise expressly provided, whenever in this Act an amend-

1 ment or repeal is expressed in terms of an amendment  
2 to, or repeal of, a section or other provision, the reference  
3 shall be considered to be made to a section or other provi-  
4 sion of the Internal Revenue Code of 1986.

5 **SEC. 2. REPEAL OF EXCLUSION FOR EXTRATERRITORIAL**  
6 **INCOME.**

7 (a) IN GENERAL.—Section 114 is hereby repealed.

8 (b) CONFORMING AMENDMENTS.—

9 (1)(A) Subpart E of part III of subchapter N  
10 of chapter 1 (relating to qualifying foreign trade in-  
11 come) is hereby repealed.

12 (B) The table of subparts for such part III is  
13 amended by striking the item relating to subpart E.

14 (2) The table of sections for part III of sub-  
15 chapter B of chapter 1 is amended by striking the  
16 item relating to section 114.

17 (3) The second sentence of section  
18 56(g)(4)(B)(i) is amended by striking “or under sec-  
19 tion 114”.

20 (4) Section 275(a) is amended—

21 (A) by inserting “or” at the end of para-  
22 graph (4)(A), by striking “or” at the end of  
23 paragraph (4)(B) and inserting a period, and  
24 by striking subparagraph (C), and

25 (B) by striking the last sentence.

1           (5) Paragraph (3) of section 864(e) is amend-  
2 ed—

3                   (A) by striking:

4                   “(3) TAX-EXEMPT ASSETS NOT TAKEN INTO  
5 ACCOUNT.—

6                   “(A) IN GENERAL.—For purposes of”; and  
7 inserting:

8                   “(3) TAX-EXEMPT ASSETS NOT TAKEN INTO  
9 ACCOUNT.—For purposes of”, and

10                   (B) by striking subparagraph (B).

11           (6) Section 903 is amended by striking “114,  
12 164(a),” and inserting “164(a)”.

13           (7) Section 999(e)(1) is amended by striking  
14 “941(a)(5),”.

15           (c) EFFECTIVE DATE.—

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

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

23                   (A) which is between the taxpayer and a  
24 person who is not a related person (as defined  
25 in section 943(b)(3) of such Code, as in effect

1 on the day before the date of the enactment of  
2 this Act), and

3 (B) which is in effect on September 17,  
4 2003, and at all times thereafter.

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

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

11 (A) the corporation may, during the 1-year  
12 period beginning on the date of the enactment  
13 of this Act, revoke such election, effective as of  
14 such date of enactment, and

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

17 (i) such corporation shall be treated  
18 as a domestic corporation transferring (as  
19 of such date of enactment) all of its prop-  
20 erty to a foreign corporation in connection  
21 with an exchange described in section 354  
22 of such Code, and

23 (ii) no gain or loss shall be recognized  
24 on such transfer.

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

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

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

14           (C) a principal purpose of the acquisition  
15 was the reduction or avoidance of tax (other  
16 than a reduction in tax under section 114 of  
17 such Code, as in effect on the day before the  
18 date of the enactment of this Act).

19 (e) GENERAL TRANSITION.—

20           (1) IN GENERAL.—In the case of a taxable year  
21 ending after the date of the enactment of this Act  
22 and beginning before January 1, 2007, for purposes  
23 of chapter 1 of such Code, a current FSC/ETI bene-  
24 ficiary shall be allowed a deduction equal to the

1 transition amount determined under this subsection  
 2 with respect to such beneficiary for such year.

3 (2) CURRENT FSC/ETI BENEFICIARY.—The  
 4 term “current FSC/ETI beneficiary” means any cor-  
 5 poration which entered into one or more transactions  
 6 during its taxable year beginning in calendar year  
 7 2002 with respect to which FSC/ETI benefits were  
 8 allowable.

9 (3) TRANSITION AMOUNT.—For purposes of  
 10 this subsection—

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

15 (B) PHASEOUT PERCENTAGE.—

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

| <b>Years:</b> | <b>The phaseout percentage is:</b> |
|---------------|------------------------------------|
| 2004 .....    | 80                                 |
| 2005 .....    | 80                                 |
| 2006 .....    | 60.                                |

20 (ii) SPECIAL RULE FOR 2003.—The  
 21 phaseout percentage for 2003 shall be the  
 22 amount that bears the same ratio to 100  
 23 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 (C) SHORT TAXABLE YEAR.—The Sec-  
16 retary shall prescribe guidance for the computa-  
17 tion of the transition amount in the case of a  
18 short taxable year.

19 (4) BASE PERIOD AMOUNT.—For purposes of  
20 this subsection, the base period amount is the FSC/  
21 ETI benefit for the taxpayer’s taxable year begin-  
22 ning in calendar year 2002.

23 (5) FSC/ETI BENEFIT.—For purposes of this  
24 subsection, the term “FSC/ETI benefit” means—

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

3 (B) the exempt foreign trade income of re-  
4 lated foreign sales corporations from property  
5 acquired from the taxpayer (determined without  
6 regard to section 923(a)(5) of such Code (relat-  
7 ing to special rule for military property), as in  
8 effect on the day before the date of the enact-  
9 ment of the FSC Repeal and Extraterritorial  
10 Income Exclusion Act of 2000).

11 In determining the FSC/ETI benefit there shall be  
12 excluded any amount attributable to a transaction  
13 with respect to which the taxpayer is the lessor un-  
14 less the leased property was manufactured or pro-  
15 duced in whole or in significant part by the tax-  
16 payer.

17 (6) SPECIAL RULE FOR AGRICULTURAL AND  
18 HORTICULTURAL COOPERATIVES.—Determinations  
19 under this subsection with respect to an organization  
20 described in section 943(g)(1) of such Code, as in  
21 effect on the day before the date of the enactment  
22 of this Act, shall be made at the cooperative level  
23 and the purposes of this subsection shall be carried  
24 out in a manner similar to section 199(h)(2) of such  
25 Code, as added by this Act. Such determinations

1 shall be in accordance with such requirements and  
2 procedures as the Secretary may prescribe.

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

6 (8) COORDINATION WITH BINDING CONTRACT  
7 RULE.—The deduction determined under paragraph  
8 (1) for any taxable year shall be reduced by the  
9 phaseout percentage of any FSC/ETI benefit real-  
10 ized for the taxable year by reason of subsection  
11 (c)(2) or section 5(c)(1)(B) of the FSC Repeal and  
12 Extraterritorial Income Exclusion Act of 2000, ex-  
13 cept that for purposes of this paragraph the phase-  
14 out percentage for 2003 shall be treated as being  
15 equal to 100 percent.

16 (9) SPECIAL RULE FOR TAXABLE YEAR WHICH  
17 INCLUDES DATE OF ENACTMENT.—In the case of a  
18 taxable year which includes the date of the enact-  
19 ment of this Act, the deduction allowed under this  
20 subsection to any current FSC/ETI beneficiary shall  
21 in no event exceed—

22 (A) 100 percent of such beneficiary's base  
23 period amount for calendar year 2003, reduced  
24 by

1 (B) the FSC/ETI benefit of such bene-  
2 ficiary with respect to transactions occurring  
3 during the portion of the taxable year ending on  
4 the date of the enactment of this Act.

5 **SEC. 3. DEDUCTION RELATING TO INCOME ATTRIBUTABLE**  
6 **TO UNITED STATES PRODUCTION ACTIVI-**  
7 **TIES.**

8 (a) IN GENERAL.—Part VI of subchapter B of chap-  
9 ter 1 (relating to itemized deductions for individuals and  
10 corporations) is amended by adding at the end the fol-  
11 lowing new section:

12 **“SEC. 199. INCOME ATTRIBUTABLE TO DOMESTIC PRODUC-**  
13 **TION ACTIVITIES.**

14 “(a) ALLOWANCE OF DEDUCTION.—

15 “(1) IN GENERAL.—There shall be allowed as a  
16 deduction an amount equal to 9 percent of the quali-  
17 fied production activities income of the taxpayer for  
18 the taxable year.

19 “(2) PHASEIN.—In the case of taxable years  
20 beginning in 2003, 2004, 2005, 2006, 2007, or  
21 2008, paragraph (1) shall be applied by substituting  
22 for the percentage contained therein the transition  
23 percentage determined under the following table:

| <b>“Taxable years beginning in:</b> | <b>The transition percentage is:</b> |
|-------------------------------------|--------------------------------------|
| 2003 or 2004 .....                  | 1                                    |
| 2005 .....                          | 2                                    |
| 2006 .....                          | 3                                    |
| 2007 or 2008 .....                  | 6.                                   |

1 “(b) DEDUCTION LIMITED TO WAGES PAID.—

2 “(1) IN GENERAL.—The amount of the deduc-  
3 tion allowable under subsection (a) for any taxable  
4 year shall not exceed 50 percent of the W-2 wages  
5 of the employer for the taxable year.

6 “(2) W-2 WAGES.—For purposes of paragraph  
7 (1), the term ‘W-2 wages’ means the sum of the ag-  
8 gregate amounts the taxpayer is required to include  
9 on statements under paragraphs (3) and (8) of sec-  
10 tion 6051(a) with respect to employment of employ-  
11 ees of the taxpayer during the taxpayer’s taxable  
12 year.

13 “(3) SPECIAL RULES.—

14 “(A) PASS-THRU ENTITIES.—In the case  
15 of an S corporation, partnership, estate or  
16 trust, or other pass-thru entity, the limitation  
17 under this subsection shall apply at the entity  
18 level.

19 “(B) ACQUISITIONS AND DISPOSITIONS.—  
20 The Secretary shall provide for the application  
21 of this subsection in cases where the taxpayer  
22 acquires, or disposes of, the major portion of a  
23 trade or business or the major portion of a sep-  
24 arate unit of a trade or business during the tax-  
25 able year.

1       “(c) QUALIFIED PRODUCTION ACTIVITIES IN-  
2 COME.—For purposes of this section, the term ‘qualified  
3 production activities income’ means an amount equal to  
4 the portion of the modified taxable income of the taxpayer  
5 which is attributable to domestic production activities.

6       “(d) DETERMINATION OF INCOME ATTRIBUTABLE  
7 TO DOMESTIC PRODUCTION ACTIVITIES.—For purposes  
8 of this section—

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

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

15                       “(B) the sum of—

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

18                               “(ii) other deductions, expenses, or  
19 losses directly allocable to such receipts,  
20 and

21                               “(iii) a proper share of other deduc-  
22 tions, expenses, and losses that are not di-  
23 rectly allocable to such receipts or another  
24 class of income.

1           “(2) ALLOCATION METHOD.—The Secretary  
2 shall prescribe rules for the proper allocation of  
3 items of income, deduction, expense, and loss for  
4 purposes of determining income attributable to do-  
5 mestic production activities.

6           “(3) SPECIAL RULES FOR DETERMINING  
7 COSTS.—

8           “(A) IN GENERAL.—For purposes of deter-  
9 mining costs under clause (i) of paragraph  
10 (1)(B), any item or service brought into the  
11 United States shall be treated as acquired by  
12 purchase, and its cost shall be treated as not  
13 less than its fair market value immediately  
14 after it entered the United States. A similar  
15 rule shall apply in determining the adjusted  
16 basis of leased or rented property where the  
17 lease or rental gives rise to domestic production  
18 gross receipts.

19           “(B) EXPORTS FOR FURTHER MANUFAC-  
20 TURE.—In the case of any property described  
21 in subparagraph (A) that had been exported by  
22 the taxpayer for further manufacture, the in-  
23 crease in cost or adjusted basis under subpara-  
24 graph (A) shall not exceed the difference be-  
25 tween the value of the property when exported

1 and the value of the property when brought  
2 back into the United States after the further  
3 manufacture.

4 “(4) MODIFIED TAXABLE INCOME.—The term  
5 ‘modified taxable income’ means taxable income  
6 computed without regard to the deduction allowable  
7 under this section.

8 “(e) DOMESTIC PRODUCTION GROSS RECEIPTS.—  
9 For purposes of this section—

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

13 “(A) any sale, exchange, or other disposi-  
14 tion of, or

15 “(B) any lease, rental, or license of,  
16 qualifying production property which was manufac-  
17 tured, produced, grown, or extracted in whole or in  
18 significant part by the taxpayer within the United  
19 States.

20 “(2) SPECIAL RULES FOR CERTAIN PROP-  
21 erty.—In the case of any qualifying production  
22 property described in subsection (f)(1)(C)—

23 “(A) such property shall be treated for  
24 purposes of paragraph (1) as produced in sig-  
25 nificant part by the taxpayer within the United

1 States if more than 50 percent of the aggregate  
2 development and production costs are incurred  
3 by the taxpayer within the United States, and

4 “(B) if a taxpayer acquires such property  
5 before such property begins to generate sub-  
6 stantial gross receipts, any development or pro-  
7 duction costs incurred before the acquisition  
8 shall be treated as incurred by the taxpayer for  
9 purposes of subparagraph (A) and paragraph  
10 (1).

11 “(f) QUALIFYING PRODUCTION PROPERTY.—For  
12 purposes of this section—

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

16 “(A) any tangible personal property,

17 “(B) any computer software, and

18 “(C) any property described in section  
19 168(f) (3) or (4), including any underlying  
20 copyright or trademark.

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

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

4           “(B) oil or gas,

5           “(C) electricity,

6           “(D) water supplied by pipeline to the con-  
7 sumer,

8           “(E) utility services, or

9           “(F) any film, tape, recording, book, mag-  
10 azine, newspaper, or similar property the mar-  
11 ket for which is primarily topical or otherwise  
12 essentially transitory in nature.

13       “(g) DEFINITIONS AND SPECIAL RULES.—

14           “(1) APPLICATION OF SECTION TO PASS-THRU  
15 ENTITIES.—In the case of an S corporation, partner-  
16 ship, estate or trust, or other pass-thru entity—

17           “(A) subject to the provisions of paragraph  
18 (2) and subsection (b)(3)(A), this section shall  
19 be applied at the shareholder, partner, or simi-  
20 lar level, and

21           “(B) the Secretary shall prescribe rules for  
22 the application of this section, including rules  
23 relating to—

1           “(i) restrictions on the allocation of  
2           the deduction to taxpayers at the partner  
3           or similar level, and

4           “(ii) additional reporting require-  
5           ments.

6           “(2) EXCLUSION FOR PATRONS OF AGRICUL-  
7           TURAL AND HORTICULTURAL COOPERATIVES.—

8           “(A) IN GENERAL.—If any amount de-  
9           scribed in paragraph (1) or (3) of section  
10          1385(a)—

11          “(i) is received by a person from an  
12          organization to which part I of subchapter  
13          T applies which is engaged in the mar-  
14          keting of agricultural or horticultural prod-  
15          ucts, and

16          “(ii) is allocable to the portion of the  
17          qualified production activities income of  
18          the organization which is deductible under  
19          subsection (a) and designated as such by  
20          the organization in a written notice mailed  
21          to its patrons during the payment period  
22          described in section 1382(d),

23          then such person shall be allowed an exclusion  
24          from gross income with respect to such amount.

25          The taxable income of the organization shall

1 not be reduced under section 1382 by the por-  
2 tion of any such amount with respect to which  
3 an exclusion is allowable to a person by reason  
4 of this paragraph.

5 “(B) SPECIAL RULES.—For purposes of  
6 applying subparagraph (A), in determining the  
7 qualified production activities income of the or-  
8 ganization under this section—

9 “(i) there shall not be taken into ac-  
10 count in computing the organization’s  
11 modified taxable income any deduction al-  
12 lowable under subsection (b) or (c) of sec-  
13 tion 1382 (relating to patronage dividends,  
14 per-unit retain allocations, and nonpatron-  
15 age distributions), and

16 “(ii) the organization shall be treated  
17 as having manufactured, produced, grown,  
18 or extracted in whole or significant part  
19 any qualifying production property mar-  
20 keted by the organization which its patrons  
21 have so manufactured, produced, grown, or  
22 extracted.

23 “(3) SPECIAL RULE FOR AFFILIATED  
24 GROUPS.—

1           “(A) IN GENERAL.—All members of an ex-  
2           panded affiliated group shall be treated as a  
3           single corporation for purposes of this section.

4           “(B) EXPANDED AFFILIATED GROUP.—  
5           The term ‘expanded affiliated group’ means an  
6           affiliated group as defined in section 1504(a),  
7           determined—

8                   “(i) by substituting ‘50 percent’ for  
9                   ‘80 percent’ each place it appears, and

10                   “(ii) without regard to paragraphs (2)  
11                   and (4) of section 1504(b).

12           “(4) COORDINATION WITH MINIMUM TAX.—The  
13           deduction under this section shall be allowed for  
14           purposes of the tax imposed by section 55; except  
15           that for purposes of section 55, alternative minimum  
16           taxable income shall be taken into account in deter-  
17           mining the deduction under this section.

18           “(5) ORDERING RULE.—The amount of any  
19           other deduction allowable under this chapter shall be  
20           determined as if this section had not been enacted.

21           “(6) TRADE OR BUSINESS REQUIREMENT.—  
22           This section shall be applied by only taking into ac-  
23           count items which are attributable to the actual con-  
24           duct of a trade or business.

25           “(7) POSSESSIONS, ETC.—

1           “(A) IN GENERAL.—For purposes of sub-  
2 sections (d) and (e), the term ‘United States’  
3 includes the Commonwealth of Puerto Rico,  
4 Guam, American Samoa, the Commonwealth of  
5 the Northern Mariana Islands, and the Virgin  
6 Islands of the United States.

7           “(B) SPECIAL RULES FOR APPLYING WAGE  
8 LIMITATION.—For purposes of applying the  
9 limitation under subsection (b) for any taxable  
10 year—

11                   “(i) the determination of W–2 wages  
12 of a taxpayer shall be made without regard  
13 to any exclusion under section 3401(a)(8)  
14 for remuneration paid for services per-  
15 formed in a jurisdiction described in sub-  
16 paragraph (A), and

17                   “(ii) in determining the amount of  
18 any credit allowable under section 30A or  
19 936 for the taxable year, there shall not be  
20 taken into account any wages which are  
21 taken into account in applying such limita-  
22 tion.

23           “(8) COORDINATION WITH TRANSITION  
24 RULES.—For purposes of this section—

1           “(A) domestic production gross receipts  
2 shall not include gross receipts from any trans-  
3 action if the binding contract transition relief of  
4 section 2(c)(2) of the American Manufacturing  
5 Jobs Act of 2003 applies to such transaction,  
6 and

7           “(B) any deduction allowed under section  
8 2(e) of such Act shall be disregarded in deter-  
9 mining the portion of the taxable income which  
10 is attributable to domestic production gross re-  
11 ceipts.”.

12       (b) MINIMUM TAX.—Section 56(g)(4)(C) (relating to  
13 disallowance of items not deductible in computing earnings  
14 and profits) is amended by adding at the end the following  
15 new clause:

16                   “(v) DEDUCTION FOR DOMESTIC PRO-  
17                   DUCTION.—Clause (i) shall not apply to  
18                   any amount allowable as a deduction under  
19                   section 199.”.

20       (c) CLERICAL AMENDMENT.—The table of sections  
21 for part VI of subchapter B of chapter 1 is amended by  
22 adding at the end the following new item:

                  “Sec. 199. Income attributable to domestic production activi-  
                  ties.”.

23       (d) EFFECTIVE DATE.—

1           (1) IN GENERAL.—The amendments made by  
2 this section shall apply to taxable years ending after  
3 the date of the enactment of this Act.

4           (2) APPLICATION OF SECTION 15.—Section 15  
5 of the Internal Revenue Code of 1986 shall apply to  
6 the amendments made by this section as if they were  
7 changes in a rate of tax.

○