

111TH CONGRESS  
1ST SESSION

# S. 260

To amend the Internal Revenue Code of 1986 to provide for the taxation of income of controlled foreign corporations attributable to imported property.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 15, 2009

Mr. DORGAN (for himself, Ms. MIKULSKI, Mr. FEINGOLD, Mr. DURBIN, Mr. JOHNSON, Mr. BROWN, Mr. LEAHY, Mr. HARKIN, Mr. KENNEDY, Mr. WHITEHOUSE, Mr. KOHL, Ms. STABENOW, and Mrs. FEINSTEIN) 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 provide for the taxation of income of controlled foreign corporations attributable to imported property.

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. TAXATION OF INCOME OF CONTROLLED FOR-**  
4 **EIGN CORPORATIONS ATTRIBUTABLE TO IM-**  
5 **PORTED PROPERTY.**

6 (a) GENERAL RULE.—Subsection (a) of section 954  
7 of the Internal Revenue Code of 1986 (defining foreign  
8 base company income) is amended by striking the period

1 at the end of paragraph (5) and inserting “, and”, by re-  
2 designating paragraph (5) as paragraph (4), and by add-  
3 ing at the end the following new paragraph:

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

7 (b) DEFINITION OF IMPORTED PROPERTY IN-  
8 COME.—Section 954 of the Internal Revenue Code of 1986  
9 is amended by adding at the end the following new sub-  
10 section:

11 “(j) IMPORTED PROPERTY INCOME.—

12 “(1) IN GENERAL.—For purposes of subsection  
13 (a)(5), 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(c)).

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           “(D) EXCEPTION FOR CERTAIN AGRICUL-  
11           TURAL COMMODITIES.—The term ‘imported  
12           property’ does not include any agricultural com-  
13           modity which is not grown in the United States  
14           in commercially marketable quantities.

15           “(3) DEFINITIONS AND SPECIAL RULES.—

16           “(A) IMPORT.—For purposes of this sub-  
17           section, the term ‘import’ means entering, or  
18           withdrawal from warehouse, for consumption or  
19           use. Such term includes any grant of the right  
20           to use intangible property (as defined in section  
21           936(h)(3)(B)) in the United States.

22           “(B) UNITED STATES.—For purposes of  
23           this subsection, the term ‘United States’ in-  
24           cludes the Commonwealth of Puerto Rico, the  
25           Virgin Islands of the United States, Guam,

1 American Samoa, and the Commonwealth of  
2 the Northern Mariana Islands.

3 “(C) UNRELATED PERSON.—For purposes  
4 of this subsection, the term ‘unrelated person’  
5 means any person who is not a related person  
6 with respect to the controlled foreign corpora-  
7 tion.

8 “(D) COORDINATION WITH FOREIGN BASE  
9 COMPANY SALES INCOME.—For purposes of this  
10 section, the term ‘foreign base company sales  
11 income’ shall not include any imported property  
12 income.”.

13 (c) SEPARATE APPLICATION OF LIMITATIONS ON  
14 FOREIGN TAX CREDIT FOR IMPORTED PROPERTY IN-  
15 COME.—

16 (1) IN GENERAL.—Paragraph (1) of section  
17 904(d) of the Internal Revenue Code of 1986 (relat-  
18 ing to separate application of section with respect to  
19 certain categories of income) is amended by striking  
20 “and” at the end of subparagraph (A), by redesign-  
21 ating subparagraph (B) as subparagraph (C), and  
22 by inserting after subparagraph (A) the following  
23 new subparagraph:

24 “(B) imported property income, and”.

1           (2) IMPORTED PROPERTY INCOME DEFINED.—  
 2 Paragraph (2) of section 904(d) of such Code is  
 3 amended by redesignating subparagraphs (I), (J),  
 4 and (K) as subparagraphs (J), (K), and (L), respec-  
 5 tively, and by inserting after subparagraph (H) the  
 6 following new subparagraph:

7           “(I) IMPORTED PROPERTY INCOME.—The  
 8 term ‘imported property income’ means any in-  
 9 come received or accrued by any person which  
 10 is of a kind which would be imported property  
 11 income (as defined in section 954(j)).”.

12           (3) CONFORMING AMENDMENT.—Clause (ii) of  
 13 section 904(d)(2)(A) of such Code is amended by in-  
 14 serting “or imported property income” after “pas-  
 15 sive category income”.

16 (d) TECHNICAL AMENDMENTS.—

17           (1) Clause (iii) of section 952(c)(1)(B) of the  
 18 Internal Revenue Code of 1986 (relating to certain  
 19 prior year deficits may be taken into account) is  
 20 amended—

21           (A) by redesignating subclauses (II), (III),  
 22 (IV), and (V) as subclauses (III), (IV), (V), and  
 23 (VI), and

24           (B) by inserting after subclause (I) the fol-  
 25 lowing new subclause:

1                                   “(II) imported property in-  
2                                   come,”.

3                   (2) The last sentence of paragraph (4) of sec-  
4                   tion 954(b) of such Code (relating to exception for  
5                   certain income subject to high foreign taxes) is  
6                   amended by striking “subsection (a)(5)” and insert-  
7                   ing “subsection (a)(4)”.

8                   (3) Paragraph (5) of section 954(b) of such  
9                   Code (relating to deductions to be taken into ac-  
10                  count) is amended by striking “and the foreign base  
11                  company oil related income” and inserting “the for-  
12                  eign base company oil related income, and the im-  
13                  ported property income”.

14           (e) EFFECTIVE DATE.—The amendments made by  
15           this section shall apply to taxable years of foreign corpora-  
16           tions beginning after the date of the enactment of this  
17           Act, and to taxable years of United States shareholders  
18           within which or with which such taxable years of such for-  
19           eign corporations end.

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