Congress of the United States
House of Representatives
Washington, DC 20515

July 23, 2003

Dear Colleague:

Last April, we introduced the Job Protection Act of 2003, H.R. 1769, to repeal the FSC/ETI tax program and replace it with a new tax program for U.S. manufacturers. The Crane-Rangel-Manzullo-Levin bill is designed to promote the beleaguered U.S. manufacturing sector and U.S.-based production activities that support good jobs in the United States — in a way that is consistent with the rules of the World Trade Organization (WTO). The bill does this by providing a lower effective rate of corporate tax for income from U.S.-based production and manufacturing activities.

The bill, which has received strong bipartisan support, was drafted after a rigorous trade law analysis to ensure its WTO-consistency. Notwithstanding this fact, supporters of alternative legislation have attempted to raise questions about the bill's consistency with the WTO. The alternative approach would use the revenue from repeal of the FSC/ETI benefits to reduce taxes on the offshore operations of U.S. firms, rather than for U.S.-based manufacturing.

To make clear that the bill's provisions, including its transitional provisions, are fully consistent with WTO rules and past practices, we are attaching a short white paper. We hope this paper will be helpful to you in your support of our bill, or as you consider joining as a co-sponsor.

This bipartisan bill stands up for American manufacturing. It currently has the support of over 130 cosponsors, with 68 Republicans and 64 Democrats. If you have any questions about the legislation or the attached paper, or would like to join as a cosponsor, please contact any of us or our respective staffs – Manny Rossman (Crane, 5-3711), John Buckley or Tim Reif (Rangel, 5-4021), Jim Clark (Manzullo, 5-5821), or Mike Castellano (Levin, 5-4961).

Sincerely,

Phil Crane

Charles B. Rangel

Donald A. Manzullo

Sander M. Levin

The Crane-Rangel-Manzullo-Levin Bill: A WTO-Consistent Bill to Promote U.S. Jobs

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In response to a WTO decision holding that the FSC/ETI tax program is a WTO-inconsistent export subsidy, Reps. Crane, Rangel, Manzullo and Levin introduced a bill, H.R. 1769, to repeal the FSC/ETI tax program and replace it with a new tax program for U.S. manufacturers. The bill, which has received strong bipartisan support, was drafted after a rigorous trade law analysis to ensure its WTO-consistency.

The Crane-Rangel-Manzullo-Levin bill is designed to promote the beleaguered U.S. manufacturing sector and U.S.-based production activities that support good jobs in the United States — in a WTO-consistent way. The bill does this by providing a lower effective rate of corporate tax for income from U.S.-based production and manufacturing activities.

Lower effective tax rate not an export subsidy.

The lower effective rate in the Crane-Rangel bill is not an export subsidy. The primary flaw of the FSC/ETI program from the standpoint of the WTO is that it was "export contingent." That is, in order to receive the benefits, U.S. producers and manufacturers had to export. WTO rules prohibit subsidies "contingent .... upon export performance."

The lower effective rate provided for domestic production and manufacturing income in the Crane-Rangel bill is in no way export-contingent. Taxpayers are eligible to receive the lower effective rate regardless of whether they export a single product. A measure that applies regardless of export performance is not in any way "contingent," "dependent" or "conditional" upon export performance.

General transition rule not an export subsidy.

The Crane-Rangel bill eliminates the FSC/ETI program immediately. The bill also contains a general transition rule that provides declining — and non-export contingent — benefits over five years. Sound tax policy requires a transition period so that FSC/ETI beneficiary companies — and their workers — will not face a sudden sharp decrease in competitiveness due to the elimination of the FSC/ETI benefit.

Some U.S. opponents of the Crane-Rangel-Manzullo-Levin bill have asserted that the general transition relief is WTO-inconsistent and have asserted that this is the position of the EU. In fact, the EU has not taken a formal position on the issue. The comments of opponents are not surprising because they support an alternative approach that would use the revenue from repeal of the FSC/ETI benefits to reduce taxes on the offshore operations of U.S. firms, rather than for U.S.-based manufacturing.

In any event, the general transition relief is fully in line with WTO rules and prior practice. For example, the United States agreed to allow the EU a five-year transition period in a

WTO dispute that the EU lost (the *Bananas* case). It would be difficult to justify an argument that the United States should not be permitted a similar transition period.

More importantly, the claim that the general transition relief is not WTO-consistent is wrong on the merits. Although opponents of the Crane-Rangel bill have claimed that the bill continues FSC/ETI export-contingent benefits during the general transition period, this claim is based on a misunderstanding of the bill. H.R. 1769 immediately repeals the FSC/ETI program. The general transition relief, although based upon FSC benefits from a prior period, does not continue the FSC/ETI program.

The general transition relief, like the effective rate reduction, is not export-contingent. WTO rules prohibit export-contingent subsidies, not subsidies to companies that have exported in the past. As footnote 4 to the WTO Subsidies Agreement states: "The mere fact that a subsidy is granted to enterprises which export shall not for that reason alone be considered to be an export subsidy within the meaning of this provision."

The standard legal meaning of "contingent" is "possible, but not assured, doubtful or uncertain, conditioned upon the occurrence of some future event which is itself uncertain." The general transition relief is not export-contingent; if the taxpayers receiving general transition relief have zero exports, they will nonetheless receive the full general transition relief. Under the transition provision, no manufacturer is required in any way to export anything to receive the transition benefits. There simply is no incentive whatever to export. In fact, the general transition relief is not contingent upon anything. It is guaranteed to recipients; receipt of these benefits is assured and is not conditioned upon any future uncertain event. A measure that applies regardless of export performance is not in any way "contingent," "dependent," or "conditional" upon export performance.

Lower effective rate not an import-substitution subsidy.

The lower effective rate in the Crane-Rangel bill is also consistent with other WTO requirements. In addition to the export-contingent subsidy claim, the EU argued that the FSC/ETI program was "contingent ... upon the use of domestic over imported goods" (an "import substitution subsidy" in WTO-parlance) and was thus prohibited by WTO rules.

The lower effective rate in the Crane-Rangel bill is not an import substitution subsidy. The lower effective rate applies to income from domestic production and manufacturing activities. The use of domestic goods over imported goods is not a necessary precondition to receive the benefits. In fact, under the Crane-Rangel bill, when purchasing inputs from third parties, a taxpayer would be indifferent between domestic goods and imported goods.

The Crane-Rangel bill creates a lower effective rate on a certain type of income. No WTO or other international obligation limits the ability of governments to determine income tax rates or to tax different types of income at different rates (so long as the distinctions are not trade-related). The bill favors income from investment and production activities in the United States. Any argument that the Crane-Rangel bill is WTO-inconsistent would suggest that numerous other provisions in the U.S. tax code that promote domestic investment and production are also WTO-inconsistent.