

CLARK EQUIPMENT Co.,
 Buchanan, Mich., August 5, 1966.

Subject: H.R. 13103 ("Foreign Investors Tax Act of 1966").

Hon. RUSSELL B. LONG,
 Chairman, Senate Committee on Finance,
 Senate Office Building, Washington, D.C.

SIR: I am taking this opportunity to protest to you certain provisions currently incorporated in H.R. 13103 ("Foreign Investors Tax Act of 1966") which is now before your Committee for consideration and recommendation.

I would first call to your attention the language found in Sec. 2, subsection (d) paragraph (4), subparagraph (D) of such Bill (beginning on page 16, line 16 of the June 16, 1966 printing of H.R. 13103) as follows:

"(D) No income, gain, or loss from sources without the United States shall be treated as effectively connected with the conduct of a trade or business within the United States if it * * *

(ii) is subpart F income within the meaning of section 952(a)."

In analyzing such exclusion from the "effectively connected" income category, House Report No. 1450 states, at page 68 thereof:

"Clause (ii) of subparagraph (D) provides for the exclusion of any income from sources without the United States which is subpart F income within the meaning of section 952(a) of the code. Under that section a foreign corporation can have subpart F income only if it is a controlled foreign corporation within the meaning of section 957. In general, the subpart F income of a controlled foreign corporation is includible in the income of its shareholders who are U.S. shareholders within the meaning of section 951(b). However, exceptions to this general rule are provided by sections 951 (c) and (d) and 963 of the code * * *. However, income of a controlled foreign corporation *will not be considered subpart F income* for purposes of clause (ii) of subparagraph (D) *if it is excluded from subpart F income by any provision of subpart F of part III of subchapter N of chapter 1 of the code.*" (My emphasis.)

Insofar as the above-quoted language might be construed to exclude from the relief of clause (ii) of said subparagraph (D) sums excluded from gross income "with respect to the subpart F income of a controlled foreign corporation" by reason of its making an appropriate minimum distribution pursuant to the provisions of Section 963 of the code (found in subpart F of part III of subchapter N of chapter 1 of the Code), it is respectfully requested that your Committee clarify the intent of the Congress as to the applicability of clause (ii) of said subparagraph (D) to a Section 963 situation.

I would, at this time, respectfully submit that income which is otherwise subpart F income should not lose its character as such merely because of a minimum distribution under section 963, and the Congress should not allow the well reasoned and appropriately based relief extended to U.S. shareholders by section 963 of the Code to be effectively extinguished by permitting a harsh and unduly restrictive interpretation of clause (ii) of said subparagraph (D) to be adopted.

Were such an interpretation to be permitted, a situation might well develop wherein a controlled foreign corporation made a minimum distribution of say 100% of its earnings and profits only to find that it has a tax liability due and owing to the Federal Government.

Moreover, with respect to the same above-quoted language it is submitted that the following language of section 954(b) (4) of the code should not be deemed to exclude from the relief provision of clause (ii), of said subparagraph (D), income which would otherwise be characterized as subpart F income:

"For purposes of subsection (a), foreign base company income does not include any item of income received by a controlled foreign corporation if it is established to the satisfaction of the Secretary or his delegate with respect to such item that the creation or organization of the controlled foreign corporation receiving such item under the laws of the foreign country in which it is incorporated does not have the effect of substantial reduction of income, war profits, or excess profits taxes or similar taxes."

Were such a limitation not placed upon the use of section 954(b) (4), a controlled foreign corporation would be placed in the dilemma of possibly making a minimum distribution of, say, 100% of its earnings and profits only to find that