NATIONAL FOREIGN TRADE COUNCIL, INC.

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April 21, 2004

The Honorable Charles Grassley
Chairman, Senate Finance Committee
United States Senate
Washington, DC 20510

Re: JOBS Bill, Sec. 662, Nonattribution of Certain Manufacturing by Persons Other Than Controlled Foreign Corporation

Dear Senator Grassley:

We are writing to express our opposition to the inclusion of Section 662, "Nonattribution of Certain Manufacturing by Persons Other Than Controlled Foreign Corporation," in the Jumpstart Our Business Strength ("JOBS") Act, S. 1637. We recognize the difficulty of balancing competing interests while trying to find a revenue neutral solution to the FSC/ETI issue. That said, we believe that proposed Section 662, undermines America's ability to compete in the global marketplace since it seriously jeopardizes the international competitiveness of U.S. multinational corporations.

As you correctly point out in your opening statement in the mark up of the JOBS Act in October of 2003, "Flaws in our international tax rules seriously undermine America's ability to compete in the global marketplace." That statement also includes a pledge to ". . . reform Subpart F to ensure that active business operations are taxed when the money is brought home, and not when the companies are locked in battle with foreign competitors who don't pay taxes." Section 662 is in direct conflict with your stated policy objectives. If Section 662 is enacted, some corporations will likely restructure but incur a greater foreign tax burden, a burden that ultimately will shift to the U.S. Treasury when such foreign taxes are credited against U.S. income taxes.

In your opening statement at the July 15, 2003 Senate Finance Committee Hearing on International Competitiveness, you said: "International tax reform is long overdue." You noted that the U.S. international tax system is based on rules that date back to President Kennedy's administration and that they have not kept pace with our "open market trade policies." Further, that those policies

undermine “American companies’ ability to compete in the global market place.” We could not agree more.

The concept of “export neutrality” which propelled the enactment of the Subpart F is a relic of the economic environment that existed forty years ago. In stark contrast, the United States is currently the world’s largest importer, not exporter, of capital.[1] Additionally, as you have noted, “In an era of expanding global markets, falling trade barriers, and technological innovations that melt away traditional notions of national borders, it is critical that our international tax laws keep pace with new business realities.” The use of contract manufacturing creates tangible business benefits in that it allows a corporation to focus its core business and to consolidate overseas manufacturing activities. Proposed Section 662 does not take into account those new business realities.

It is critical to eliminate the barriers to competitiveness faced by U.S. companies; Subpart F is one of those barriers. Subjecting more income to that outdated regime will only further harm our multinationals. The inclusion of Section 662 in the JOBS Act is a step backward in the quest for international tax reform and in the fight to make U.S. companies more competitive. We respectfully request that it be removed.

Sincerely,

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[1] *See* National Foreign Trade Council, Inc., *The NFTC Foreign Income Project: Tax Policy for the 21st Century Report and Analysis*, 95-100 (2001).