

Michael J. McIntyre, "How the United States Should Respond to the ETI Dilemma," 26 *Tax Notes Int'l* 865-872 (May 20, 2002), reprinted in 95 *Tax Notes* 1251-1255 (May 20, 2002).

Summary

Congress responded in 2000 to the World Trade Organization (WTO) decision that the Foreign Sales Corporation (FSC) legislation constituted an illegal export subsidy by repealing FSC and enacting a new export subsidy called the Extraterritorial Income Exclusion Act of 2000 (ETI). ETI borrowed many features of FSC, but it avoided those features of FSC that the WTO had specifically cited as objectionable. Not surprisingly, the WTO again rejected the U.S. attempt at subsidizing exports in a broad-gauged opinion that evaluated the legality of ETI by reference to its substance rather than its form.

In responding to the WTO decision, Congress has four options.

- (1) It can do nothing and simply allow the United States to remain in violation of its international trade agreements.
- (2) The most attractive option, from a public policy perspective, would be to support free trade by repealing the ETI provisions without any replacement.
- (3) A third option, which is not really a practical option at all, would be to develop some revised version of ETI that would subsidize exports without violating the WTO agreements. The game of disguising a trade subsidy as a normal part of the tax code, however, is no longer winnable.
- (4) The fourth option is to repeal ETI as part of a plan to repeal or radically modify the corporate income tax. These radical proposals are disproportionate and inappropriate responses to the ETI problem and would be bad tax policy as well.

The case for adopting option 2 depends on the strength of the case for free trade. I set forth that case below. The article contends that the United States policy over the past half-century of fostering free trade has enriched Americans and strengthened the U.S. economy. It also argues that export subsidies do not produce a net increase in jobs or economic activity in the exporting country even ignoring the likelihood that they would provoke retaliatory measures. In brief, free trade makes America richer, and export subsidies make it poorer.