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REPORT
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UNITED STATES-COLOMBIA TRADE PROMOTION AGREEMENT IMPLEMENTATION ACT

OCTOBER 6, 2011.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CAMP, from the Committee on Ways and Means, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 3078]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 3078) to implement the United States-Colombia Trade Promotion Agreement, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

H.R. 3078 would implement the agreement establishing a free trade area between the United States and Colombia.

B. BACKGROUND

The United States-Colombia Trade Promotion Agreement

The United States-Colombia Trade Promotion Agreement was signed on November 22, 2006. In 2007, the agreement was modified to reflect provisions required by the deal reached on May 10, 2007, between Congressional leaders and the last Administration, regarding labor, environment, intellectual property, investment, government procurement, and port security ("May 10 deal"). The trade agreement, as modified by the May 10 deal, is hereinafter referred to as "the Agreement." The Agreement covers all agricultural and industrial sectors, provides for greatly expanded market access for U.S. services, contains robust protections for U.S. intellectual property rights holders, and includes strong labor and environment provisions. The Committee believes that the Agreement meets the objectives and priorities set forth in the Bipartisan Trade Promotion Authority Act of 2002.

U.S. exports to Colombia face an average tariff of 12.5 percent, whereas the average U.S. tariff on Colombian exports to the United States is just three percent, according to the U.S. International Trade Commission ("ITC"). Due in large part to preference programs, the vast majority of Colombia's exports to the United States—about 90 percent in 2010—have received duty-free treatment, although the Andean Trade Preference Act expired on February 12, 2011. The Agreement would transition the U.S.-Colombia trading relationship from one-way preferences to full partnership and reciprocal commitments, helping U.S. exporters gain greater access to the Colombian market, which is the third largest U.S. export market in Latin America, behind only Mexico and Brazil. The ITC estimates that annual U.S. exports to Colombia would increase by $1.1 billion under the Agreement.

The following are key sectoral benefits and aspects of the Agreement:

Agriculture: U.S. agriculture exports to Colombia currently face an average tariff of 20 percent, whereas only two Colombian agricultural exports to the United States face tariffs above three percent. The Agreement would remedy this by providing immediate duty-free treatment for 77.5 percent of Colombia's agricultural tar-

iff lines, including U.S. exports of soybeans, cotton, wheat, barley, peanuts, bacon, high-quality beef, the vast majority of processed products, and almost all fruit and vegetable products, with tariffs eliminated on almost 93 percent of agricultural tariff lines within 10 years. The Agreement would immediately eliminate Colombia's separate "price band" variable tariffs for U.S. exports, which the European Union's trade agreement with Colombia does not eliminate for EU exports.

As a result, the ITC estimates significant gains in U.S. agricultural exports. For example, the ITC estimates that U.S. exports of grains could increase by 55 to 77 percent and soybeans, soybean products, and animal feeds by 30 to 50 percent. The Agreement would also provide guarantees against key non-tariff barriers. For example, Colombia has committed to continuing to recognize the equivalence of the U.S. food safety system for meat and poultry and would provide access for all U.S. beef and beef products consistent with international norms.

Manufacturing: The Agreement would significantly lower both tariff and non-tariff barriers to U.S. exports of manufactured goods. Tariffs on U.S. manufactured goods exported to Colombia average over nine percent, with tariffs on auto and auto parts at 17.4 percent, consumer goods at 15 percent, and building products at 13.2 percent. Upon implementation, over 80 percent of U.S. exports of consumer and industrial products to Colombia would immediately become duty-free, with remaining tariffs phased out over ten years. Key U.S. export sectors that would receive immediate duty-free treatment include aircraft and auto parts; agricultural and construction equipment; agro-chemicals; and medical, scientific, and information technology equipment. The Agreement would also guarantee access to Colombia for U.S. exports of remanufactured products, such as industrial machinery and consumer electronics.

As a result, the ITC estimates significant gains in U.S. exports in key sectors and products. For example, the ITC estimates that exports of motor vehicles and parts would be likely to increase by 43.8 percent. Exports of miscellaneous machinery would be likely to increase by 14.9 percent and electronics by 8 percent. Colombia also agreed in the Agreement to become a full participant under the WTO Information Technology Agreement, which would further open Colombia's market to U.S. high-tech exports. The Agreement would provide U.S. firms with lower tariff barriers than major competitors from countries that do not have trade agreements with Colombia in effect.

Services: The services sector accounts for over half of Colombia's GDP, making improved market access for U.S. services critical. The Agreement would provide U.S. service firms with market access, national treatment, and regulatory transparency exceeding that afforded by the WTO General Agreement on Services. The Agreement would eliminate significant restrictions on the ability of U.S. firms to compete in the engineering, architecture, real estate, telecommunications, computer, and financial services markets. U.S. nationals would be allowed to serve in key executive and professional posts, which Colombia now prohibits. The ITC estimates, based on tariff equivalents, that the Agreement would reduce barriers in the banking sector by more than half. Significant restrictions on U.S. asset managers would be eliminated four years after

the Agreement's entry into force. U.S. service providers that establish a local presence in Colombia would benefit from strong investor protections included in the Agreement.

Government Procurement: The government procurement provisions of the Agreement are essential to guaranteeing non-discriminatory access for U.S. goods, services, and suppliers to 28 key Colombian central government agencies, all state-level governments, and certain significant government enterprises, including ECOPETROL (national oil company), ISS (public healthcare provider), and ADPOSTAL (postal service). These provisions are particularly important because Colombia is not a member of the WTO Government Procurement Agreement and is only an observer. The procurement provisions would grant U.S. entities greater access and protection than they currently have to Colombia's government procurement market, which, by one measure, is $28.3 billion to $42.4 billion annually. (Government procurement is generally 10 to 15 percent of a country's gross domestic product ("GDP"), and Colombia's 2010 GDP was over $283 billion.)

Intellectual Property Rights: Under the Agreement, Colombia would adopt higher and extended standards for the protection of intellectual property rights, such as copyrights, patents, trademarks, and trade secrets. The Agreement would also provide enhanced means for enforcing those rights. Under the Agreement, each partner country would be required to grant national treatment to nationals of the other, and all laws, regulations, procedures, and final judicial decisions would need to be in writing and published or made publicly available. The Agreement would lengthen terms for copyright protection, cover electronic and digital media, and increase enforcement to go beyond the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights. Both parties would be obliged to provide appropriate civil and criminal remedies for willful violators of intellectual property rights.

Textile and Apparel: All U.S. textiles and apparel products meeting the Agreement's rules of origin would immediately become duty-free and quota-free when exported to Colombia. The Agreement's rules of origin are generally based on the "yarn-forward" standard. A "de minimis" provision would allow limited amounts of specified third-country content to go into U.S. and Colombian apparel, giving producers in both countries needed flexibility. The Agreement would allow the use of "short supply" fabrics, yarns, and fibers (that is, fabrics, yarns, and fibers not made in Colombia or the United States that have been determined not to be commercially available in either country) as inputs. The Parties agreed to a list of short supply fabrics, and the Agreement includes a process for adding more.

Customs cooperation commitments between the United States and Colombia would allow for verification of claims of origin or preferential treatment, and denial of preferential treatment or entry if claims cannot be verified. A special textile safeguard would provide for temporary tariff relief if increased imports under the Agreement prove to cause serious damage to U.S. producers.

Investment: The Agreement would ensure a stable legal framework for U.S. investors operating in Colombia. All forms of investment would be protected under the Agreement, including enterprises, debt, concessions and similar contracts, and intellectual

property. With very few exceptions, U.S. investors would be treated as well as Colombian investors in the establishment, acquisition, and operation of investments in Colombia.

The Agreement draws from U.S. legal principles and practices to provide U.S. investors in Colombia with a basic set of substantive and procedural protections that Colombian investors currently enjoy under the U.S. legal system. These include due process protections and the right to receive fair market value for property in the event of an expropriation. The Agreement includes recourse to an investor-state dispute settlement mechanism for certain types of claims.

In the preamble, the Parties agree that "foreign investors are not hereby accorded greater substantive rights with respect to investment protections than domestic investors under domestic law where, as in the United States, protections of investor rights under domestic law equal or exceed those set forth in this Agreement." This provision reflects one of the negotiating objectives of TPA to ensure "that foreign investors in the United States are not accorded greater substantive rights with respect to investment protections than United States investors in the United States."

Labor: The labor chapter of the Agreement includes the obligation that the Parties adopt and effectively enforce the five core international labor rights as stated in the 1998 International Labor Organization Declaration on Fundamental Principles and Rights at Work. The Agreement would also require each country to enforce its own existing laws concerning acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health. The obligations under the labor chapter would be subject to the same dispute settlement mechanisms and enforcement mechanisms as obligations in other chapters of the Agreement. Neither Party would be permitted to waive or otherwise derogate from its laws that implement this obligation in a manner affecting trade or investment between the Parties. Procedural guarantees in the Agreement would ensure that workers and employers have fair, equitable, and transparent access to labor tribunals or courts.

Environment: The Agreement would commit the Parties to effectively enforce their own domestic environmental laws and adopt, maintain, and implement laws and all other measures to fulfill obligations under covered multilateral environmental agreements. The Agreement also includes a fully enforceable, binding commitment that would prohibit the Parties from lowering environmental standards in the future in a manner affecting trade or investment. The Agreement would promote a comprehensive approach to environmental protection by encouraging voluntary, market-based mechanisms to protect the environment and by providing procedural guarantees that ensure fair, equitable and transparent proceedings for the administration and enforcement of environmental laws. The Agreement would call for a public submissions process with an independent secretariat for environmental matters to ensure that views of civil society are appropriately considered. All obligations in the environment chapter would be subject to the same dispute settlement procedures and enforcement mechanisms as obligations in other chapters of the Agreement.

Colombia's importance as a faithful ally and strategic partner of the United States

Colombia has a long history of standing with the United States as an important strategic ally in a region that includes several increasingly anti-American governments. Colombia serves on the United Nations Security Council and chairs its Iran Sanctions Committee. Colombian troops served alongside U.S. troops in the Korean War and serve under the United Nations mandate in Haiti, Sierra Leone, and—since 1956—the Sinai. Colombia has also been training militaries and police forces in counter-narcotics and counterinsurgency measures in numerous countries.

The Committee notes that Colombia has shown dramatic improvement over the last decade in protection of labor rights for Colombian workers, in recognition of which the International Labor Organization (ILO) removed Colombia from its labor watch list in 2010. According to Vice President Garzon's Observatory for Human Rights, homicides against trade union members declined from 196 in 2002 to 37 in 2010—a decline of 81 percent. The decline has continued in 2011, with 22 homicides against trade union members through the end of September 2011. Prosecutions and convictions for crimes against trade union members have also increased substantially since 2006, when the Prosecutor General established a team of 114 specialists focused solely on labor violence cases. Convictions increased from 16 in 2006 to 84 in 2009 to over 100 in 2010, and the total since 2006 stood at 391 as of the end of August 2011. As a result of these and other improvements, the ILO removed Colombia from its labor watch list in 2010, recognizing "all the measures . . . adopt[ed] recently to combat . . . violence against the trade union movement."

Particularly noteworthy is the Colombian Action Plan Related to Labor Rights, to which Presidents Obama and Santos agreed on April 7, 2011. The Office of the U.S. Trade Representative has certified that Colombia has completed all action items that were due by September 15, 2011, accounting for almost all of the actions required under the action plan. The few actions that remain to be completed are due in December 2011 and in 2012. For example, Colombia massively expanded labor union eligibility for its protection program, which has already provided security for over 10,000 people, none of whom were killed while in the program. Colombia also assigned 95 new investigators to labor violence cases and significantly increased funding for the special labor violence unit within the Prosecutor General's office. In endorsing the action plan, the president of one of Colombia's three main labor confederations called it the most significant social achievement of the last 50 years in Colombia.

Procedures of the Trade Act of 2002

H.R. 3078 is being considered by the Senate under the procedures of the Bipartisan Trade Promotion Authority Act of 2002, included in the Trade Act of 2002 ("TPA"). In the House, all provisions of TPA applied to negotiation, signature, submission, and consideration of the Agreement until passage of H. Res. 1092, on April 10, 2008, as described below.

Pursuant to the requirements of TPA, the President is required to provide written notice to Congress of the President's intention to

enter into the negotiations. Throughout the negotiating process, and prior to entering into an agreement, the President is required to consult with Congress regarding the ongoing negotiations. Under TPA, the President must notify Congress of his intent to enter into a trade agreement at least 90 calendar days before the agreement is signed. Within 60 days after entering in the Agreement, the President must submit to Congress a description of those changes to existing laws that the President considers would be required to bring the United States into compliance with the Agreement. After entering into the Agreement, the President must also submit to Congress the formal legal text of the agreement, draft implementing legislation, a statement of administrative action proposed to implement the Agreement, and other related supporting information as required under section 2105(a) of the Trade Act of 2002.

Under TPA, following submission of these documents, the implementing bill is introduced, by request, by the Majority Leader and the Minority Leader in each chamber. The House then has up to 60 legislative days to consider implementing legislation for the Agreement, and the Senate has up to an additional 30 legislative days. No amendments to the legislation are allowed under TPA requirements.

C. Legislative History

On November 18, 2003, the United States Trade Representative ("USTR") formally notified the Congress of its intention to initiate negotiation of a trade agreement with Colombia. Negotiations on a trade agreement between the United States and Colombia began on May 18, 2004. On August 24, 2006, the President notified the Congress of his intention to enter into a trade agreement with Colombia. On November 22, 2006, the Deputy U.S. Trade Representative and the Colombian Minister of Commerce, Industry and Tourism signed the United States-Colombia Trade Promotion Agreement. On January 17, 2007, the USTR transmitted to Congress a description of the changes to existing U.S. laws required to comply with the Agreement. On June 14, 2007, Colombia's National Assembly approved the trade agreement, as signed on November 22, 2006.

On June 28, 2007, the USTR and the Colombian Minister of Trade, Industry and Tourism entered into a Protocol amending the trade agreement to reflect the May 10 deal. Colombia's National Assembly approved the Agreement, as amended, on October 30, 2007. On April 8, 2008, President Bush sent a bill to Congress to implement the Agreement, and it was introduced by request that day by then-Majority Leader Hoyer and then-Minority Leader Boehner (H.R. 5724). On April 9, 2008, Rep. Slaughter (D–NY) introduced H. Res. 1092, to eliminate the procedures providing for expedited consideration of the implementing bill by the House under TPA. On April 10, 2008, the House adopted H. Res. 1092 by a vote of 224 to 195. Congress did not consider the implementing bill.

Legislative hearings

On January 25, 2011, the Committee on Ways and Means held a hearing on the Agreement, as well as the U.S.-Panama Trade Promotion Agreement and the U.S.-Korea Free Trade Agreement. The Trade Subcommittee of the Committee on Ways and Means

then held a hearing on the Colombia Agreement on March 17, 2011.

Committee action

On July 7, 2011, the Committee on Ways and Means considered, in an informal mark-up session, draft legislation to implement the Agreement and a statement of administrative action. The Committee approved the draft legislation by a vote of 22 to 14, after agreeing to an amendment in the nature of a substitute offered by Chairman Camp.

On October 3, 2011, President Obama transmitted the United States-Colombia Trade Promotion Agreement, a legislative proposal to implement the agreement, a Statement of Administrative Action, and supporting documents to Congress. On the same day, H.R. 3078, a bill to implement the United States-Colombia Trade Promotion Agreement, was introduced by Majority Leader Eric Cantor (R–VA), by request, for himself and Rep. Sam Farr (D–CA). H.R. 3078 was then referred to the Committee on Ways and Means.

On October 5, 2011, the Committee on Ways and Means formally met to consider H.R. 3078. The Committee ordered H.R. 3078 favorably reported to the House of Representatives by a vote of 24 to 12, without amendment.

II. SECTION-BY-SECTION SUMMARY

TITLE I: APPROVAL AND GENERAL PROVISIONS

SECTIONS 1–3: SHORT TITLE, TABLE OF CONTENTS, PURPOSES, AND DEFINITIONS

Present law

No provision.

Explanation of provision

Section 2 sets forth the purposes of the Act, which include approving and implementing the Agreement.

Reason for change

The provision makes clear that the bill implements the Agreement.

SECTION 101: APPROVAL AND ENTRY INTO FORCE

Present law

No provision.

Explanation of provision

Section 101 states that Congress approves the United States-Colombia Trade Promotion Agreement ("Agreement") and the Statement of Administrative Action. The Agreement enters into force when the President determines that Colombia is in compliance with all provisions that take effect on the date of entry into force of the Agreement and exchanges notes with the Government of Colombia providing for entry into force on or after January 1, 2012.

Reason for change

Approval of the Agreement and the Statement of Administrative Action is required under the procedures of section 2103(b)(3) of the Trade Act of 2002.

SECTION 102: RELATIONSHIP OF THE AGREEMENT TO UNITED STATES AND STATE LAW

Present law

No provision.

Explanation of provision

Section 102(a) provides that U.S. law prevails in the case of a conflict with the Agreement. Section 102(b) provides that only the United States is entitled to bring a court action challenging a state law as being invalid on grounds of inconsistency with the Agreement. Section 102(c) states that there is no private cause of action or defense under the Agreement and no person other than the United States may challenge a federal or state law in court as being inconsistent with the Agreement.

Reason for change

The provision addresses the operation of the Agreement relative to federal and state law, as well as private remedies. Section 102 is necessary to make clear that no provision of the Agreement will be given effect if it is inconsistent with federal law and that entry into force of the Agreement creates no new private remedy.

SECTION 103: IMPLEMENTING ACTIONS IN ANTICIPATION OF ENTRY INTO FORCE AND INITIAL REGULATIONS

Present law

No provision.

Explanation of provision

Section 103(a) provides that, after the date of enactment, the President may proclaim such actions, and other U.S. government officers may issue such regulations, as are necessary to ensure the appropriate implementation of any provision of the implementing act ("Act") that is to take effect on the date of entry into force of the Agreement. The effective date of such actions and regulations may not be earlier than the date of entry into force of the Agreement. Where proclaimed actions are not subject to consultation and layover requirements under the Act, proclamations generally may not take effect earlier than 15 days after their publication.

Section 103(b) establishes that regulations necessary or appropriate to carry out actions under the Act and Statement of Administrative Action must, to the maximum extent feasible, be issued within one year of entry into force of the Agreement or, where a provision takes effect on a date after which the Agreement enters into force, within one year of the effective date of the provision.

Reason for change

Section 103 provides for the issuance of regulations. The Committee strongly believes that regulations should be issued in a

timely manner to provide maximum clarity to parties claiming benefits under the Agreement. The Committee notes, further, that the Statement of Administrative Action commits each agency that will be issuing regulations to provide a report to Congress if it cannot issue regulations within one year of the Agreement's entry into force and that such report must be submitted at least 30 days prior to the end of the one-year period.

SECTION 104: CONSULTATION AND LAYOVER FOR PROCLAIMED ACTIONS

Present law

No provision.

Explanation of provision

Section 104 establishes requirements for proclamation of actions that are subject to consultation and layover provisions under the Act. The President may proclaim such action only after: (1) obtaining advice from the International Trade Commission and the appropriate private sector advisory committees; (2) submitting a report to the Ways and Means and Finance Committees concerning the reasons for the action; and (3) providing for a 60-day layover period (starting after the President has both obtained the required advice and provided the required report). The proposed action cannot take effect until after the expiration of the 60-day period and after the President has consulted with the Ways and Means and Finance Committees regarding the proposed action.

Reason for change

The bill gives the President certain proclamation authority but requires extensive consultation with Congress before such authority may be exercised. The Committee believes that such consultation is an essential component of the delegation of authority to the President and expects that such consultations will be conducted in a thorough and timely manner.

SECTION 105: ADMINISTRATION OF DISPUTE SETTLEMENT PROCEEDINGS

Present law

No provision.

Explanation of provision

Section 105 authorizes the President to establish an office within the Department of Commerce responsible for providing administrative assistance to dispute settlement panels that are established under the Agreement. The section also authorizes appropriations of up to $262,500 for the establishment and operation of the office and to pay the U.S. share of expenses of the panels.

Reason for change

Dispute settlement procedures and panels are necessary to ensure that disputes over compliance with Agreement provisions can be resolved effectively. The authorization is necessary for the Commerce Department to provide administrative assistance to panels.

SECTION 106: ARBITRATION OF CLAIMS

Present law

No provision.

Explanation of provision

Section 106 authorizes the United States to resolve certain claims covered by the Investor-State Dispute Settlement Procedures set forth in the Agreement.

Reason for change

This provision is necessary to meet U.S. obligations under Section B of Chapter 10 of the Agreement.

SECTION 107: EFFECTIVE DATES; EFFECT OF TERMINATION

Present law

No provision.

Explanation of provision

Section 107 provides that, with the exception of Sections 1 through 3 and Titles I and VI of the Act, which take effect on the date of enactment of the Act, and Title V of the Act, which contains effective date provisions applicable to that title, the effective date of the Act is the date that the Agreement enters into force with respect to the United States. Amendments made to U.S. law by Sections 204, 205, 207, and 401 of the Act take effect on the date of enactment of the Act but apply with respect to Colombia on the date on which the Agreement enters into force. Other than Titles V and VI, the provisions of the Act terminate on the date on which the Agreement terminates.

Reason for change

Section 107 implements provisions of the Agreement relating to the effective date and date of termination of the Act.

TITLE II: CUSTOMS PROVISIONS

SECTION 201: TARIFF MODIFICATIONS

Present law

No provision.

Explanation of provision

Section 201(a) provides the President with the authority to proclaim tariff modifications necessary or appropriate to carry out the Agreement and requires the President to terminate Colombia's designation as a beneficiary developing country for the purposes of the Generalized System of Preferences program ("GSP") and as a beneficiary country for the purposes of the Andean Trade Preference Act ("ATPA"), as of the date that the Agreement enters into force.

Section 201(b) gives the President the authority, subject to consultation and layover, to proclaim further tariff modifications necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Colombia provided for by the Agreement.

Section 201(c) allows the President, for any goods for which the base rate under the Agreement is a specific or compound rate of duty, to substitute for the base rate an equivalent ad valorem rate to carry out the tariff modifications in subsections (a) and (b) of Section 201.

Section 201(d) directs the President, when implementing tariff rate quotas under the Agreement, to ensure that imports of agricultural goods do not disrupt the orderly marketing of commodities in the United States.

Reason for change

The provision is necessary to ensure United States compliance with the market access provisions of the Agreement. The Committee expects the President to comply with the letter and spirit of the consultation and layover provisions of this Act in carrying out Section 201(b).

SECTION 202: ADDITIONAL DUTIES ON CERTAIN AGRICULTURAL GOODS

Present law

No provision.

Explanation of provision

Section 202 implements the agricultural safeguard provisions of Article 2.18 and Annex 2.18 of the Agreement. Section 202(b) directs the Secretary of the Treasury ("Secretary") to assess an additional duty in any year when the volume of imports to the United States of a "safeguard good" exceeds 140 percent of the in-quota quantity allocated to Colombia for the good in that calendar year, as set forth in Appendix I of the General Notes to the Schedule of the United States to Annex 2.3 of the Agreement. The additional duty is calculated as a specified percentage of the difference between the Normal Trade Relations ("NTR" or "MFN") rate of duty and the duty set out in the Schedule of the United States to Annex 2.3 of the Agreement. The sum of the duties assessed under the agricultural safeguard and the applicable rate of duty in the U.S. Schedule may not exceed the NTR (MFN) rate of duty. No additional duty may be applied on a good if, at the time of entry, the good is subject to a safeguard measure under the procedures set out in Subtitle A of Title III of the Act or under the safeguard procedures set out in Chapter 1 of Title II of the Trade Act of 1974 (the "Section 201" global safeguard). The additional duties remain in effect only until the end of the calendar year in which they are imposed.

Reason for change

This provision implements commitments made in the Agreement relating to agricultural safeguards. Such safeguards provide temporary relief to farmers in the United States who face a surge in certain agricultural imports following entry into force of the Agreement.

SECTION 203: RULES OF ORIGIN

Present law

No provision.

Explanation of provision

Section 203 codifies the rules of origin set out in Article 3.3 and Chapter 4 of the Agreement. Section 203(b) establishes three basic ways for a Colombian good to qualify as an "originating good" and therefore to be eligible for preferential tariff treatment when it is imported into the United States. A good is an originating good if (1) it is "wholly obtained or produced entirely in the territory of Colombia, the United States, or both"; (2) it is produced entirely in the United States, Colombia, or both, and any materials used to produce the good that are not themselves originating goods are transformed in such a way as to cause their tariff classification to change or the good otherwise meets regional value-content and other requirements, as specified in Annex 3–A or Annex 4.1 of the Agreement; or (3) it is produced entirely in the territory of Colombia, the United States, or both, exclusively from originating materials.

Under the rules in Chapter 3, Annex 3–A, Chapter 4, and Annex 4.1 of the Agreement, an apparel product must generally meet a tariff shift rule that effectively imposes a "yarn forward" requirement. Thus, to qualify as an originating good imported into the United States from Colombia, an apparel product must have been cut (or knit to shape) and sewn or otherwise assembled in Colombia, the United States, or both, from yarn, or fabric made from yarn, that originates in Colombia, the United States, or both.

Section 203(o)(2) provides authority for the President to add fabrics, yarns, or fibers to a list of products that are unavailable in commercial quantities in a timely manner, and such products are treated as if they originate in Colombia, regardless of their actual origin, when used as inputs in the production of textile or apparel goods. Section 203(o)(4) provides a process by which the President may modify that list at the request of interested entities, defined as Colombia and potential and actual suppliers and purchasers of textile or apparel goods.

The remainder of Section 203 sets forth more detailed rules for determining whether a good meets the Agreement's requirements under the second method of qualifying as an originating good. These include rules pertaining to de minimis quantities of non-originating materials that do not undergo a tariff transformation, transformation by regional content, and alternative methods for calculating regional value-content. Other provisions in Section 203 address valuation of materials; determination of the originating or non-originating status of fungible goods and materials; and treatment of accessories, spare parts and tools, packaging materials, indirect materials, and goods put up in sets. Section 203(l) specifies that goods that undergo further production or other operations outside Colombia or the United States (with certain exceptions) or do not remain under the control of the customs authorities of such other countries do not qualify as originating goods.

Reason for change

This provision implements the commitments made in the Agreement with respect to rules of origin applying to imports from Colombia. Rules of origin are needed to confine Agreement benefits, such as tariff cuts, to Colombian goods and to prevent third-coun-

try goods from being transshipped through Colombia and claiming benefits under the Agreement.

SECTION 204: CUSTOMS USER FEES

Present law

Section 13031(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), at 19 U.S.C. 58c(a), authorizes the Secretary of the Treasury to collect a merchandise processing fee for formal and informal entries of merchandise into the United States ("Merchandise Processing Fee"). Section 13031(b) of COBRA exempts from the Merchandise Processing Fee all originating goods under each of the trade agreements currently in force between the United States and other countries.

Explanation of provision

Section 204 implements the U.S. commitments under Article 2.10.4 of the Agreement to eliminate the Merchandise Processing Fee on originating goods under the Agreement. In accordance with U.S. obligations under the General Agreement on Tariffs and Trade 1994, the provision also prohibits use of funds in the Customs User Fee Account to provide services related to entry of originating goods.

Reason for change

As with other trade agreements, the Agreement eliminates the Merchandise Processing Fee on qualifying goods from Colombia. Other customs user fees remain in place. Section 204 is necessary to ensure United States compliance with the user fee elimination provisions of the Agreement. The Committee expects that the President, in his yearly budget request, will take into account the need for funds to pay expenses for entries under the Agreement given that Merchandise Processing Fee funds will not be available.

SECTION 205: DISCLOSURE OF INCORRECT INFORMATION; FALSE CERTIFICATIONS OF ORIGIN; DENIAL OF PREFERENTIAL TARIFF TREATMENT

Present law

No provision.

Explanation of provision

Section 205 implements Articles 4.18.5 and 4.19.3 of the Agreement. Section 205(a) prohibits the imposition of a penalty upon importers who make an invalid claim for preferential tariff treatment under the Agreement if the importer acts promptly and voluntarily to correct the error and pays any duties owed on the good in question. The provision also makes it unlawful for a person to falsely certify, by fraud, gross negligence, or negligence, that a good exported from the United States is an originating good. However, the provision prohibits the imposition of a penalty if the exporter or producer promptly and voluntarily provides notice of the incorrect information to every person to whom a certification was issued.

Section 205(b) provides that if U.S. authorities find that an importer, exporter, or producer has engaged in a pattern of conduct of providing false or unsupported representations, the authorities

may suspend preferential treatment with respect to identical goods covered by subsequent representations made by that importer, exporter, or producer, until U.S. authorities have determined that its representations are accurate.

Reason for change

This provision is necessary to implement commitments in the Agreement relating to application of penalties for submission of false information or certifications by importers, exporters, and producers.

SECTION 206: RELIQUIDATION OF ENTRIES

Present law

No provision.

Explanation of provision

Section 206 implements Article 4.19.5 of the Agreement and provides authority for U.S. Customs and Border Protection ("CBP") to reliquidate an entry to refund any excess duties (including any merchandise processing fees) paid on a good qualifying under the rules of origin for which no claim for preferential tariff treatment was made at the time of importation if the importer so requests within one year after the date of importation.

Reason for change

Article 4.19.5 of the Agreement anticipates that private parties may err in claiming preferential benefits under the Agreement and provides a one-year period for parties to make such claims for preferential tariff treatment even if the entry of the goods at issue has already been liquidated, i.e., legally finalized by customs officials. Section 206 is necessary to ensure United States compliance with Article 4.19.5.

SECTION 207: RECORDKEEPING REQUIREMENTS

Present law

No provision.

Explanation of provision

Section 207 implements Article 4.17 of the Agreement. The provision requires any person who completes and issues a certificate of origin under Article 4.15 of the Agreement for a good exported from the United States to maintain, for a period of five years after the date of certification, specified documents demonstrating that the good qualifies as originating.

Reason for change

Section 207 is necessary to ensure United States compliance with the recordkeeping requirement provisions in Article 4.17 of the Agreement.

SECTION 208: ENFORCEMENT RELATING TO TRADE IN TEXTILE OR APPAREL GOODS

Present law

No provision.

Explanation of provision

Section 208 implements the customs cooperation and verification of origin provisions in Article 3.2 of the Agreement. Under Article 3.2, the United States may request the Government of Colombia to conduct a verification of whether a claim of origin for a textile or apparel good is accurate or a particular exporter or producer is complying with applicable customs laws, regulations, and procedures regarding trade in textile or apparel goods. Section 208(a) provides that the President may direct the Secretary to take "appropriate action" while such a verification is being conducted. "Appropriate action" may include (i) suspending preferential tariff treatment for textile or apparel goods that the person subject to the verification has produced or exported if the Secretary determines that there is insufficient information to sustain a claim for such treatment; (ii) denying preferential tariff treatment to such goods if the Secretary determines that a person has provided incorrect information to support a claim for such treatment; (iii) detaining such goods if the Secretary determines that there is not enough information to determine their country of origin; and (iv) denying entry to such goods if the Secretary determines that a person has provided erroneous information on their origin.

Under Section 208(c), the President may also direct the Secretary to take "appropriate action" after a verification has been completed. Such action may include (i) denying preferential tariff treatment to textile or apparel goods that the person subject to the verification has exported or produced if the Secretary determines that there is insufficient information to support a claim for such treatment or determines that a person has provided incorrect information to support a claim for such treatment; and (ii) denying entry to such goods if the Secretary determines that a person has provided incorrect information regarding their origin or that there is insufficient information to determine their origin. Unless the President sets an earlier date, any such action may remain in place until the Secretary obtains enough information to decide whether the exporter or producer that was subject to the verification is complying with applicable customs rules or whether a claim that the goods qualify for preferential tariff treatment or originate in an Agreement country is accurate.

Under Section 208(e), the Secretary may publish the name of a person that the Secretary has determined (i) is engaged in circumvention of applicable laws, regulations, or procedures affecting trade in textile or apparel goods; or (ii) has failed to demonstrate that it produces, or is capable of producing, textile or apparel goods.

Reason for change

To avoid textile transshipment, special textile enforcement provisions have been included in the Agreement. Section 208 is nec-

essary to authorize these enforcement mechanisms for use by U.S. authorities.

SECTION 209: REGULATIONS

Present law

No provision.

Explanation of provision

Section 209 directs the Secretary to prescribe regulations necessary to carry out the tariff-related provisions of the Act, including the rules of origin and customs user fee provisions.

Reason for change

Because the Act involves lengthy and complex implementation procedures by customs officials, this provision is necessary to authorize the Secretary of the Treasury to carry out provisions of the Act through regulations. No such regulations may take effect before the Agreement enters into force.

TITLE III: RELIEF FROM IMPORTS

SECTION 301: DEFINITIONS

Present law

No provision.

Explanation of provision

Section 301 defines "Colombian article" and "Colombian textile or apparel article," which are key terms for Title III of the Act.

Reason for change

This provision clarifies the scope of the provisions in Title III.

SUBTITLE A: RELIEF FROM IMPORTS BENEFITING FROM THE AGREEMENT

SECTIONS 311–316

Present law

No provision.

Explanation of provisions

Subtitle A to Title III of the Act (Sections 311 to 316) authorizes the President, after an investigation and affirmative determination by the ITC, to impose certain import relief measures when, as a result of the reduction or elimination of a duty under the Agreement, a Colombian product is being imported into the United States in such increased quantities and under such conditions as to be a substantial cause of serious injury or threat of serious injury to the domestic industry.

Section 311 provides for the filing of petitions with the ITC and for the ITC to conduct safeguard investigations under Subtitle A. Section 311(a) provides that a petition requesting a safeguard action may be filed by an entity that is "representative of an industry." As under Section 202(a)(1) of the Trade Act of 1974, a trade association, firm, certified or recognized union, or a group of work-

ers can be considered such an entity. Section 311(b) sets out the standard to be used by the ITC in undertaking an investigation and making a determination in safeguard proceedings under Subtitle A of Title III of the Act.

Section 311(c) provides that certain provisions of Section 202 of the Trade Act of 1974 also apply with respect to investigations initiated under Section 311(b), including provisions defining "substantial cause" and listing factors to be taken into account in making safeguard determinations.

Section 311(d) exempts from investigation under this section Colombian articles with respect to which relief has previously been provided under Subtitle A of Title III of the Act.

Section 312 requires the ITC to make a determination not later than 120 days after the date on which the Section 311 investigation is initiated. Under Sections 312(b) and (c), if the ITC makes an affirmative determination, it must find and recommend to the President the amount of import relief that is necessary to remedy or prevent serious injury and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. Section 312(d) directs the ITC to submit a report to the President regarding the determination no later than 30 days after the determination is made. Section 312(e) requires the ITC to make this report public and to publish a summary of it in the Federal Register.

Section 313(a) provides that the President, within 30 days of receiving a report from the ITC under Section 312, must provide import relief to the extent that the President determines is necessary to remedy or prevent the injury found by the ITC and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. Under Section 313(b), the President is not required to provide import relief if the relief will not provide greater economic and social benefits than costs.

Section 313(c) sets forth the nature of the relief that the President may provide. The President may take action in the form of a suspension of further reductions in the rate of duty to be applied to the articles in question, or in the form of an increase in the rate of duty on the articles in question to a level that does not exceed the lesser of the existing NTR (MFN) rate or the NTR (MFN) rate of duty that was imposed on the day before the Agreement entered into force. Under Section 313(c)(2), if the relief the President provides has duration greater than one year, the relief must be subject to progressive liberalization at regular intervals over the course of its application.

Section 313(d) provides that the President may initially provide import relief for up to two years. This period may be extended for an additional two years (to a maximum aggregate period of four years) if, after an investigation by the ITC and receipt of an ITC report, the President determines that import relief continues to be necessary and there is evidence that the industry is making a positive adjustment to import competition. The ITC must conduct an investigation on these issues if, within a specified period before the relief terminates, a concerned industry files a petition requesting an investigation. The ITC must issue a report on its investigation to the President no later than 60 days before the termination of the import relief.

Section 313(e) specifies that upon the termination of import relief, the rate of duty for the remainder of the calendar year is the rate that was scheduled to have been in effect one year after the initial provision of import relief. In the calendar year that follows the year of termination of import relief, the President may either apply the rate of duty set out in the relevant U.S. Schedule to the Agreement or eliminate the duty in equal annual stages until the end of the scheduled phase-out period.

Section 313(f) exempts from relief any article that is (i) subject to import relief under the global safeguard provisions in U.S. law (Chapter 1 of Title II of the Trade Act of 1974); (ii) subject to import relief under Subtitle B of Title III of the Act (Sections 321 to 328); or (iii) subject to additional duties as an agricultural good under Section 202(b).

Section 314 provides that no relief may be provided under Subtitle A to Title III of the Act after ten years from the date the Agreement enters into force, unless the scheduled tariff phase-out period for the article under the Agreement is greater than ten years, in which case relief may not be provided for that article after the scheduled phase-out period ends.

Section 315 authorizes the President to provide compensation to Colombia consistent with Article 8.5 of the Agreement if relief is ordered.

Section 316 provides for the treatment of confidential business information submitted to the ITC in the course of investigations conducted under Title III of the Act.

Reason for change

Sections 311 to 316 establish a mechanism for providing temporary import relief where a U.S. industry experiences serious injury or threat of serious injury by reason of increased import competition from Colombia resulting from reduction or elimination of a duty under the Agreement. The Committee notes that the President is not required to provide relief if the relief will not provide greater economic and social benefits than costs. The Committee intends that administration of this safeguard be consistent with U.S. obligations under Section A of Chapter Eight (Trade Remedies) of the Agreement.

SUBTITLE B: TEXTILE AND APPAREL SAFEGUARD MEASURES

SECTIONS 321–328

Present law

No provision.

Explanation of provisions

Subtitle B of Title III of the Act (Sections 321 to 328) authorizes the President to impose certain import relief measures when he determines that, as a result of the elimination or reduction of a duty provided under the Agreement, a Colombian textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions, as to cause serious damage, or actual threat thereof, to the domestic industry.

Section 321 provides that an interested party may file a request with the President for safeguard relief under Subtitle B of Title III of the Act. The President must review the request and determine whether to commence consideration of the request. Under Section 321(b), if the President determines that the request contains information necessary to warrant consideration on the merits, the President must publish notice in the Federal Register stating that the request will be considered and seeking public comments on the request.

Section 322(a) provides that the President shall determine, pursuant to a request by an interested party, whether, as a result of the elimination or reduction of a duty provided under the Agreement, a Colombian textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article.

Section 322(b) sets forth the relief that the President may provide, which is an increase in the rate of duty on the articles in question to a level that does not exceed the lesser of the existing NTR (MFN) rate or the NTR (MFN) rate of duty that was imposed on the day before the Agreement entered into force.

Section 323 of the Act provides that the period of relief shall be no longer than two years. The period may be extended for an additional period of not more than one year if the President determines that continuation is necessary to remedy or prevent serious damage and to facilitate adjustment by the domestic industry to import competition and there is evidence the industry is making a positive adjustment to import competition. The aggregate period of relief, including any extension, may not exceed three years.

Section 324 provides that relief may not be granted to an article under this subtitle if relief has previously been granted under this subtitle for that article, or the article is subject to import relief under Subtitle A of Title III of the Act or under Chapter 1 of Title II of the Trade Act of 1974.

Under Section 325, after a safeguard expires, the rate of duty on the article that had been subject to the safeguard shall be the rate that would have been in effect at that time, but for the safeguard action.

Section 326 provides that the authority to provide safeguard relief under Subtitle B to Title III of the Act expires five years after the date on which the Agreement enters into force.

Section 327 authorizes the President to provide compensation to Colombia if relief is ordered.

Section 328 provides for the treatment of confidential business information received by the President in connection with an investigation or determination under Subtitle B to Title III of the Act.

Reason for change

Sections 321 to 328 implement the commitments under the Agreement relating to textile and apparel safeguard measures. The Committee intends that the provisions of Subtitle B of Title III of the Act be administered in a manner that is transparent and that will serve as an example to our trading partners. For example, in

addition to publishing a summary of the request for safeguard relief, the Committee notes that the President plans to make available the full text of the request, subject to the protection of business confidential data, on the website of the Department of Commerce, International Trade Administration. In addition, the Committee encourages the President promptly to issue regulations on procedures for requesting such safeguard measures, for making determinations under Section 322(a), and for providing relief under Section 322(b).

SUBTITLE C: CASES UNDER TITLE II OF THE TRADE ACT OF 1974

SECTION 331: FINDINGS AND ACTION ON GOODS FROM COLOMBIA

Present law

No provision.

Explanation of provision

Section 331(a) provides that, if the ITC makes an affirmative determination or a determination that the President may consider to be an affirmative determination in a global safeguard investigation under Section 202(b) of the Trade Act of 1974, the ITC must find and report to the President whether Colombian imports of the article that qualify as originating goods under the Agreement are a substantial cause of serious injury or threat thereof. Under Section 331(b), if the ITC makes a negative finding under Section 331(a), the President may exclude any imports that are covered by the ITC's finding from the global safeguard action.

Reason for change

This provision implements commitments under the Agreement relating to treatment of Colombian imports in global safeguard investigations under Section 202(b) of the Trade Act of 1974.

TITLE IV: PROCUREMENT

SECTION 401: ELIGIBLE PRODUCTS

Present law

U.S. procurement law (such as the Buy American Act of 1933 and the Buy American Act of 1988) limits procurement from certain foreign suppliers of goods and services in favor of U.S. providers of goods and services. Most discriminatory purchasing provisions are waived if the United States is a party to a bilateral or multilateral procurement agreement, such as the WTO Agreement on Government Procurement, or a bilateral or multilateral trade agreement that includes provisions on procurement.

Explanation of provision

Section 401 implements Chapter 9 of the Agreement and amends the definition of "eligible product" in Section 308(4)(A) of the Trade Agreements Act of 1979. As amended, Section 308(4)(A) provides that an "eligible product" means a product or service of Colombia that is covered under the Agreement for procurement by the United States.

Reason for change

This provision implements U.S. commitments under Chapter 9 of the Agreement (Government Procurement).

TITLE V: EXTENSION OF ANDEAN TRADE PREFERENCE ACT

SECTION 501: EXTENSION OF ANDEAN TRADE PREFERENCE ACT

Present law

ATPA, as amended in 2002 by the Andean Trade Promotion and Drug Eradication Act, provides duty-free treatment to most products originating in Bolivia, Colombia, Ecuador, and Peru, for the purpose of assisting these Andean countries in their fight against drug production and trafficking by expanding their economic alternatives.

Explanation of provision

Section 501 extends ATPA through July 31, 2013, with duty-free treatment under ATPA applying to articles that enter fifteen days or more after enactment of the Act. ATPA expired on February 12, 2011. Section 501 lays out procedures for retroactive application of ATPA treatment (and reimbursement of duties paid) for articles that entered the United States after February 12, 2011, but before articles begin qualifying for duty-free treatment under the ATPA extension provided for in Section 501.

Reason for change

This provision is "necessary or appropriate" to implement the Agreement. Benefits under ATPA (including for Colombia) expired on February 12, 2011. This extension will allow imports from Colombia to continue to benefit under the program until the earlier of the date on which the Agreement enters into force or July 31, 2013.

TITLE VI: OFFSETS

SECTION 601: ELIMINATION OF CERTAIN NAFTA CUSTOMS FEES EXEMPTION

Present law

Section 13031 of COBRA authorizes the Secretary of the Treasury to collect certain customs user fees. Section 412 of the Homeland Security Act of 2002 authorized the Secretary of the Treasury to delegate such authority to the Secretary of Homeland Security. One of these fees, provided for under 19 U.S.C. 58c(a)(5), is a fee for air and sea passenger processing. The arrival of any passenger whose journey originated in Canada, Mexico, a territory or possession of the United States, or adjacent islands is currently exempted from that fee.

Explanation of provision

Section 601 eliminates the current exemption from the customs user fee for air and sea passengers arriving from Canada, Mexico, and the Caribbean.

Reason for change

The Committee believes it is appropriate, for budgetary offset purposes, to eliminate the exemption from the Passenger and Conveyance Processing fee for air and sea passengers arriving from Canada, Mexico, and the Caribbean.

SECTION 602: EXTENSION OF CUSTOMS USER FEES

Present law

Section 13031 of COBRA, at 19 U.S.C. 58c, authorizes the Secretary of the Treasury to collect certain service fees. Section 412 of the Homeland Security Act of 2002 authorized the Secretary of the Treasury to delegate such authority to the Secretary of Homeland Security. The fees include the Merchandise Processing Fee and, under 19 U.S.C. 58c(a)(1) through (8), processing fees for air and sea passengers, commercial trucks, rail cars, private aircraft and vessels, commercial vessels, dutiable mail packages, barges and bulk carriers, and Customs broker permits ("Passenger and Conveyance Processing Fees"). COBRA has been amended on several occasions. The current authorization for the collection of the Passenger and Conveyance Processing Fees is through January 14, 2020. The current authorization for the collection of the Merchandise Processing Fee is through January 7, 2020.

Explanation of provision

Section 602 extends the Passenger and Conveyance Processing Fees authorized under Section 13031 of COBRA from December 9, 2020 to August 31, 2021 and extends the Merchandise Processing Fee authorized under Section 13031 of COBRA from August 3, 2021 to September 30, 2021.

Reason for change

The Committee believes it is appropriate, for budgetary offset purposes, to extend the Passenger and Conveyance Processing Fees and the Merchandise Processing Fee authorized under COBRA.

SECTION 603: TIME FOR PAYMENT OF CORPORATE ESTIMATED TAXES

Present law

In general, corporations are required to make quarterly estimated tax payments of their income tax liability. For a corporation whose taxable year is a calendar year, these estimated tax payments must be made by April 15, June 15, September 15, and December 15.

Explanation of provision

For corporations with assets of at least $1 billion, the provision increases the amount of the required installment of estimated tax otherwise due in July, August, or September 2016 by 0.50 percent of such amount (determined without regard to any increase in such amount not contained in the Internal Revenue Code). The next required installment is reduced accordingly.

Reason for change

The Committee believes it is appropriate to adjust the corporate estimated tax payments, for budgetary offset purposes.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statements are made concerning the vote of the Committee on Ways and Means in its consideration of the bill, H.R. 3078.

MOTION TO REPORT THE BILL

The bill, H.R. 3078, was ordered favorably reported by a rollcall vote of 24 yeas to 12 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Camp	X	....	....	Mr. Levin	....	X	....
Mr. Herger	X	....	....	Mr. Rangel	....	X	....
Mr. Johnson	X	....	....	Mr. Stark	....	X	....
Mr. Brady	X	....	....	Mr. McDermott	....	X	....
Mr. Ryan	X	....	....	Mr. Lewis	....	X	....
Mr. Nunes	X	....	....	Mr. Neal	....	X	....
Mr. Tiberi	X	....	....	Mr. Becerra	....	X	....
Mr. Davis	X	....	....	Mr. Doggett	....	X	....
Mr. Reichert	X	....	....	Mr. Thompson	....	X	....
Mr. Boustany	X	....	....	Mr. Larson	....	....	....
Mr. Roskam	X	....	....	Mr. Blumenauer	....	X	....
Mr. Gerlach	X	....	....	Mr. Kind	X	....	....
Mr. Price	X	....	....	Mr. Pascrell	....	X	....
Mr. Buchanan	X	....	....	Ms. Berkley	....	X	....
Mr. Smith	X	....	....	Mr. Crowley	X	....	....
Mr. Schock	X	....	....				
Ms. Jenkins	X	....	....				
Mr. Paulsen	X	....	....				
Mr. Berg	X	....	....				
Ms. Black	X	....	....				
Mr. Reed	X	....	....				

IV. BUDGET EFFECTS OF THE BILL

A. Committee Estimate of Budgetary Effects

In compliance with clause 3(d) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of this bill, H.R. 3078, as reported: The Committee agrees with the estimate prepared by the Congressional Budget Office (CBO) which is included below.

B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority

In compliance with subdivision 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the provisions of H.R. 3078 would reduce customs duty receipts, due to lower tariffs imposed on goods from Colombia.

C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET OFFICE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by CBO, the following report prepared by CBO is provided:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 5, 2011.

Hon. DAVE CAMP,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3078, the United States-Colombia Trade Promotion Agreement Implementation Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Kalyani Parthasarathy.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 3078—United States-Colombia Trade Promotion Agreement Implementation Act

Summary: H.R. 3078 would approve the trade promotion agreement between the government of the United States and the government of Colombia that was signed on November 22, 2006. It would provide for tariff reductions and other changes in law related to implementation of the agreement. It also would retroactively extend the Andean Trade Preference Act (ATPA) from February 12, 2011, through July 31, 2013, while removing Colombia from eligibility for trade preferences under that program. The bill would extend user fees collected by Customs and Border Protection (CBP) that expire under current law, and remove an exemption from those fees for travelers to the United States from Mexico, Canada, and certain Caribbean countries. It also would shift some corporate income tax payments between fiscal years.

The Congressional Budget Office (CBO) and the staff of the Joint Committee on Taxation (JCT) estimate that enacting H.R. 3078 would reduce revenues by $139 million in 2012 and by about $1.5 billion over the 2012–2021 period. CBO estimates that enacting H.R. 3078 would decrease direct spending by $68 million in 2012 and by about $1.5 billion over the 2012–2021 period. The net impact of those effects is an estimated reduction in deficits of $22 million over the 2012–2021 period. Pay-as-you-go procedures apply because enacting the legislation would affect direct spending and revenues.

Further, CBO estimates that implementing the legislation would result in discretionary costs of $4 million over the 2012–2016 period, assuming the availability of appropriated funds.

CBO has determined that the nontax provisions of H.R. 3078 contain no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA), and would impose no costs on state, local, or tribal governments.

CBO has determined that the nontax provisions of the bill contain private-sector mandates with costs that would exceed the annual threshold established in UMRA for private-sector mandates ($142 million in 2011, adjusted annually for inflation).

JCT has determined that the tax provision of H.R. 3078 contains no private-sector or intergovernmental mandates as defined in UMRA.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 3078 is shown in the following table. The costs of this legislation fall within budget functions 150 (international affairs), 370 (commerce and housing credit), 750 (administration of justice), and 800 (general government).

Basis of estimate: For the purposes of this estimate, CBO assumes that H.R. 3078 will be enacted early in fiscal year 2012.

REVENUES

Under the United States-Colombia trade promotion agreement, tariffs on U.S. imports from Colombia would be phased out over time. The tariffs would be phased out for individual products at varying rates, ranging from immediate elimination on the date the agreement enters into force to gradual elimination over 10 or more years. According to the U.S. International Trade Commission, the United States collected about $9 million in customs duties in 2010 on $16 billion of imports from Colombia. However, since 1991, imports to the United States from Colombia have been subject to reduced tariff rates in accordance with the ATPA, which was expanded in legislation enacted in 2002, and expired on February 12, 2011. The ATPA overlaps to a large extent with the trade promotion agreement that would be implemented by this bill. As a result, enacting the bill would effectively extend the ATPA for Colombia, while also lowering tariff rates not covered by the ATPA.

Based on expected imports from Colombia, CBO estimates that implementing the tariff schedule outlined in the U.S.-Colombia trade promotion agreement would reduce revenues by $55 million in 2012, and by about $1.4 billion over the 2012–2021 period, net of income and payroll tax offsets.

	By fiscal year, in millions of dollars—											
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2012–2016	2012–2021
CHANGES IN REVENUES												
Preferential Trade Agreement	−55	−100	−110	−122	−135	−148	−159	−171	−185	−199	−522	−1,384
Extend ATPA	−84	−19	0	0	0	0	0	0	0	0	−103	−103
Corporate Payment Shift	0	0	0	0	344	−344	0	0	0	0	344	0
Estimated Revenues	−139	−119	−110	−122	209	−492	−159	−171	−185	−199	−282	−1,488
CHANGES IN DIRECT SPENDING [a]												
Extend Customs User Fees.												
Estimated Budget Authority	0	0	0	0	0	0	0	0	0	−754	0	−754
Estimated Outlays	0	0	0	0	0	0	0	0	0	−754	0	−754
Eliminate COBRA Fee Exemption.												
Estimated Budget Authority	−83	−111	−112	−113	−114	−116	−117	−118	−35	−80	−533	−999
Estimated Outlays	−83	−111	−112	−113	−114	−116	−117	−118	−35	−80	−533	−999
Exemption from Merchandise Processing Fee.												
Estimated Budget Authority	15	26	28	29	30	32	34	35	10	5	128	243
Estimated Outlays	15	26	28	29	30	32	34	35	10	5	128	243
Total, Direct Spending [a].												
Estimated Budget Authority	−68	−85	−84	−84	−84	−84	−83	−83	−25	−829	−405	−1,510
Estimated Outlays	−68	−85	−84	−84	−84	−84	−83	−83	−25	−829	−405	−1,510
NET INCREASE OR DECREASE (−) IN THE DEFICIT FROM CHANGES IN DIRECT SPENDING AND RECEIPTS												
Impact on Deficit	71	34	26	38	−293	408	76	88	160	−630	−123	−22

Sources: Congressional Budget Office and the staff of the Joint Committee on Taxation.
Note: Components may not sum to totals because of rounding. ATPA = Andean Trade Preference Act; COBRA = Consolidated Omnibus Budget Reconciliation Act.
[a] In addition, CBO estimates that implementing the provisions of H.R. 3078 would have a discretionary cost of $4 million over the 2012–2016 period, assuming appropriation of the necessary amounts.

This estimate includes the effects of increased imports from Colombia that would result from the reduced prices of imported products in the United States, reflecting the lower tariff rates. It is likely that some of the increase in U.S. imports from Colombia would displace imports from other countries. In the absence of specific data on the extent of this substitution effect, CBO assumes that an amount equal to one-half of the increase in U.S. imports from Colombia would displace imports from other countries.

The Generalized System of Preferences, which allows duty-free importation of a wide range of products from 129 countries, including Colombia, expired on December 31, 2010. If those preferences were extended through July 13, 2013, in other legislation enacted prior to H.R. 3078 (such as in H.R. 2832 as passed by the Senate on September 22, 2011), then the revenue loss from implementing the tariff reductions in H.R. 3078 would be reduced by $6 million over the 2012–2021 period, to $1.378 billion instead of $1.384 billion.

Under H.R. 3078, the ATPA trade preferences, which expired on February 12, 2011, would be extended, retroactively, for each of the beneficiary countries: Colombia and Ecuador. (The free trade agreement with Peru supersedes that country's ATPA preferences. Bolivia, which had been a member country in previous years, had its eligibility revoked in June 2009.) The preferences would be extended from February 12, 2011, through July 31, 2013, with Colombia losing its eligibility for ATPA preferences upon enactment of the trade promotion agreement. CBO estimates that the retroactive extension of the ATPA preferences, including removing Colombia for eligibility, would reduce revenues from customs duties by $84 million in 2012, including refunds of duties paid by importers in 2011, and $19 million in 2013, net of income and payroll tax offsets.

H.R. 3078 also would shift payments of corporate estimated taxes between fiscal years 2016 and 2017. For corporations with at least $1 billion in assets, the bill would increase the portion of corporate estimated payments due from July through September of 2016. JCT estimates that this change would increase revenues by $344 million in 2016 and decrease revenues by $344 million in 2017.

DIRECT SPENDING

Under current law, user fees collected by CBP will expire in January of 2020.The bill would permit CBP to collect COBRA fees (which were established in the Consolidated Omnibus Budget reconciliation Act of 1985) from December 9, 2020, through August 31, 2021, and to collect merchandise processing fees from August 3, 2021, through September 30, 2021. CBO estimates that those changes would increase offsetting receipts (a credit against direct spending) by about $750 million in 2021.

Under current law, certain travelers arriving in the United States from Mexico, Canada, and some Caribbean countries are exempt from paying COBRA fees; the bill would remove this exemption. CBO estimates that this would increase offsetting receipts by about $1 billion over the 2012–2021 period.

In addition, the bill would exempt imports from Colombia from merchandise processing fees. CBO estimates that this would reduce

offsetting receipts by about $130 million over the five-year period and by $245 million over the 10-year period.

SPENDING SUBJECT TO APPROPRIATION

Implementing provisions of H.R. 3078 would increase the costs of several agencies affected by the bill including:

- The Department of Commerce to provide administrative support for dispute-settlement panels established in the agreement,
- The International Trade Commission to conduct investigations, if petitioned, into whether Colombian imports might threaten or cause serious injury to domestic competitors, and
- The Department of Treasury and the United States Trade Representative to establish regulations to carry out provisions of the agreement.

Based on information from the agencies, CBO estimates that these activities would cost $4 million over the 2012–2016 period, assuming appropriation of the necessary amounts.

Pay-as-you-go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 3078 AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON WAYS AND MEANS ON OCTOBER 5, 2011

	By fiscal year, in millions of dollars—											
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2012–2016	2012–2021
	NET INCREASE OR DECREASE (−) IN THE DEFICIT											
Statutory Pay-As-You-Go Impact	71	34	26	38	−293	408	76	88	160	−630	−123	−22
Memorandum:												
Changes in Revenues	−139	−119	−110	−122	209	−492	−159	−171	−185	−199	−282	−1,488
Changes in Outlays	−68	−85	−84	−84	−84	−84	−83	−83	−25	−829	−405	−1,510

Estimated impact on State, Local, and Tribal Governments: CBO has determined that the nontax provisions of H.R. 3078 contain no intergovernmental mandates as defined in UMRA, and would impose no costs on state, local, or tribal governments. JCT has determined that the tax provision of the bill contains no intergovernmental mandates as defined in UMRA.

Estimated impact on the private sector: CBO has determined that the nontax provisions of H.R. 3078 would impose private-sector mandates, as defined in UMRA, by extending the customs user fees, increasing merchandise processing fees, and by enforcing new record-keeping requirements. CBO estimates that the aggregate costs of those mandates would exceed the annual threshold established in UMRA for private-sector mandates ($142 million in 2011, adjusted annually for inflation). JCT has determined that the tax provision of H.R. 3078 contains no private-sector mandates as defined in UMRA.

Estimate prepared by: Federal Revenues: Kalyani Parthasarathy; Federal Spending: Sunita D'Monte, Mark Grabowicz, Matthew Pickford, and Susan Willie; Impact on State, Local, and Tribal Governments: Lisa Ramirez-Branum; Impact on the Private Sector: Marin Randall.

Estimate approved by: Peter H. Fontaine, Assistant Director for Budget Analysis; and Frank Sammartino, Assistant Director for Tax Analysis.

D. Macroeconomic Impact Analysis

In compliance with clause 3(h)(2) of rule XIII of the Rules of the House of Representatives, the following statement is made by the Joint Committee on Taxation with respect to the provisions of the bill amending the Internal Revenue Code of 1986: the effects of the tax provisions of the bill on economic activity are so small as to be incalculable within the context of a model of the aggregate economy.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE OF REPRESENTATIVES

A. Committee Oversight Findings and Recommendations

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee concluded that it is appropriate and timely to consider H.R. 3078, as reported.

B. Statement of General Performance Goals and Objectives

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objectives of the part of this legislation that authorizes funding are for (a) the payment of the U.S. share of the expenses incurred in dispute settlement proceedings established under Chapter 21 of the U.S.-Colombia Trade Promotion Agreement and (b) the establishment and operation of an office within the Department of Commerce responsible for providing assistance to the panels in such proceedings.

C. Information Relating to Unfunded Mandates

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (P.L. 104–4). The Committee has determined that the revenue provisions of the bill do not impose a Federal mandate on the private sector. The Committee has determined that the revenue provisions of the bill do not impose a Federal intergovernmental mandate on State, local, or tribal governments.

D. Applicability of House Rule XXI 5(b)

Clause 5(b) of rule XXI of the Rules of the House of Representatives provides, in part, "A bill or joint resolution, amendment, or conference report carrying a Federal income tax increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present." The Committee has carefully reviewed the sections of the bill and states that the bill does not involve any Federal income tax rate increases within the meaning of the rule.

E. Tax Complexity Analysis

The Joint Committee on Taxation, in consultation with the Internal Revenue Service and the Department of the Treasury, will provide a tax complexity analysis to Members of the Committee as soon as practicable after the report is filed.

F. Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 13031 OF THE CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985

SEC. 13031. FEES FOR CERTAIN CUSTOMS SERVICES.

(a) * * *

(b) Limitations on Fees.—(1)(A) Except as provided in subsection (a)(5)(B) of this section, no fee may be charged under subsection (a) of this section for customs services provided in connection with—

[(i) the arrival of any passenger whose journey—

[(I) originated in—

[(aa) Canada,

[(bb) Mexico,

[(cc) a territory or possession of the United States, or

[(dd) any adjacent island (within the meaning of section 101(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(5))), or

[(II) originated in the United States and was limited to—

[(aa) Canada,

[(bb) Mexico,

[(cc) territories and possessions of the United States, and

[(dd) such adjacent islands;]

(i) the arrival of any passenger whose journey—

(I) originated in a territory or possession of the United States; or

(II) originated in the United States and was limited to territories and possessions of the United States;

* * * * * * *

(20) No fee may be charged under subsection (a) (9) or (10) with respect to goods that qualify as originating goods under section 203 of the United States–Colombia Trade Promotion Agreement Implementation Act. Any service for which an exemption from such fee is provided by reason of this paragraph may not be funded with money contained in the Customs User Fee Account.

* * * * * * *

(j) EFFECTIVE DATES.—(1) * * *

* * * * * * *

(3)(A) * * *

* * * * * * *

(C)(i) Notwithstanding subparagraph (A), fees may be charged under paragraphs (9) and (10) of subsection (a) during the period beginning on August 3, 2021, and ending on September 30, 2021.

(ii) Notwithstanding subparagraph (B)(i), fees may be charged under paragraphs (1) through (8) of subsection (a) during the period beginning on December 9, 2020, and ending on August 31, 2021.

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TARIFF ACT OF 1930

* * * * * * *

TITLE IV—ADMINISTRATIVE PROVISIONS

* * * * * * *

Part III—Ascertainment, Collection, and Recovery of Duties

* * * * * * *

SEC. 508. RECORDKEEPING.

(a) * * *

* * * * * * *

(j) CERTIFICATIONS OF ORIGIN FOR GOODS EXPORTED UNDER THE UNITED STATES–COLOMBIA TRADE PROMOTION AGREEMENT.—

(1) DEFINITIONS.—In this subsection:

(A) RECORDS AND SUPPORTING DOCUMENTS.—The term "records and supporting documents" means, with respect to an exported good under paragraph (2), records and documents related to the origin of the good, including—

(i) the purchase, cost, and value of, and payment for, the good;

(ii) the purchase, cost, and value of, and payment for, all materials, including indirect materials, used in the production of the good; and

(iii) the production of the good in the form in which it was exported.

(B) CTPA CERTIFICATION OF ORIGIN.—The term "CTPA certification of origin" means the certification established under article 4.15 of the United States–Colombia Trade Promotion Agreement that a good qualifies as an originating good under such Agreement.

(2) EXPORTS TO COLOMBIA.—Any person who completes and issues a CTPA certification of origin for a good exported from the United States shall make, keep, and, pursuant to rules and regulations promulgated by the Secretary of the Treasury, render for examination and inspection all records and supporting documents related to the origin of the good (including the certification or copies thereof).

(3) RETENTION PERIOD.—The person who issues a CTPA certification of origin shall keep the records and supporting documents relating to that certification of origin for a period of at least 5 years after the date on which the certification is issued.

* * * * * * *

SEC. 514. PROTEST AGAINST DECISIONS OF THE CUSTOMS SERVICE.

(a) * * *

* * * * * * *

(k) DENIAL OF PREFERENTIAL TARIFF TREATMENT UNDER THE UNITED STATES–COLOMBIA TRADE PROMOTION AGREEMENT.—If U.S. Customs and Border Protection or U.S. Immigration and Customs Enforcement of the Department of Homeland Security finds indications of a pattern of conduct by an importer, exporter, or producer of false or unsupported representations that goods qualify under the rules of origin provided for in section 203 of the United States–Colombia Trade Promotion Agreement Implementation Act, U.S. Customs and Border Protection, in accordance with regulations issued by the Secretary of the Treasury, may suspend preferential tariff treatment under the United States–Colombia Trade Promotion Agreement to entries of identical goods covered by subsequent representations by that importer, exporter, or producer until U.S. Customs and Border Protection determines that representations of that person are in conformity with such section 203.

* * * * * * *

SEC. 520. REFUNDS AND ERRORS.

(a) * * *

* * * * * * *

(d) GOODS QUALIFYING UNDER FREE TRADE AGREEMENT RULES OF ORIGIN.—Notwithstanding the fact that a valid protest was not filed, the Customs Service may, in accordance with regulations prescribed by the Secretary, reliquidate an entry to refund any excess duties (including any merchandise processing fees) paid on a good qualifying under the rules of origin set out in section 202 of the North American Free Trade Agreement Implementation Act, section 202 of the United States-Chile Free Trade Agreement Implementation Act, section 203 of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act, section 202 of the United States-Oman Free Trade Agreement Implementation Act, [or] section 203 of the United States-Peru Trade Promotion Agreement Implementation Act [for which]*, or section 203 of the United States–Colombia Trade Promotion Agreement Implementation Act for which* no claim for preferential tariff treatment was made at the time of importation if the importer, within 1 year after the date of importation, files, in accordance with those regulations, a claim that includes—

(1) * * *

* * * * * * *

Part V—Enforcement Provisions

* * * * * * *

SEC. 592. PENALTIES FOR FRAUD, GROSS NEGLIGENCE, AND NEGLIGENCE.

(a) * * *

* * * * * * *

(c) MAXIMUM PENALTIES.—

(1) * * *

* * * * * * *

(12) PRIOR DISCLOSURE REGARDING CLAIMS UNDER THE UNITED STATES–COLOMBIA TRADE PROMOTION AGREEMENT.—An importer shall not be subject to penalties under subsection (a) for making an incorrect claim that a good qualifies as an originating good under section 203 of the United States–Colombia Trade Promotion Agreement Implementation Act if the importer, in accordance with regulations issued by the Secretary of the Treasury, promptly and voluntarily makes a corrected declaration and pays any duties owing with respect to that good.

* * * * * * *

(k) FALSE CERTIFICATIONS OF ORIGIN UNDER THE UNITED STATES–COLOMBIA TRADE PROMOTION AGREEMENT.—

(1) IN GENERAL.—Subject to paragraph (2), it is unlawful for any person to certify falsely, by fraud, gross negligence, or negligence, in a CTPA certification of origin (as defined in section 508 of this Act) that a good exported from the United States qualifies as an originating good under the rules of origin provided for in section 203 of the United States–Colombia Trade

Promotion Agreement Implementation Act. The procedures and penalties of this section that apply to a violation of subsection (a) also apply to a violation of this subsection.

(2) PROMPT AND VOLUNTARY DISCLOSURE OF INCORRECT INFORMATION.—No penalty shall be imposed under this subsection if, promptly after an exporter or producer that issued a CTPA certification of origin has reason to believe that such certification contains or is based on incorrect information, the exporter or producer voluntarily provides written notice of such incorrect information to every person to whom the certification was issued.

(3) EXCEPTION.—A person shall not be considered to have violated paragraph (1) if—

(A) the information was correct at the time it was provided in a CTPA certification of origin but was later rendered incorrect due to a change in circumstances; and

(B) the person promptly and voluntarily provides written notice of the change in circumstances to all persons to whom the person provided the certification.

* * * * * * *

TRADE ACT OF 1974

* * * * * * *

TITLE II—RELIEF FROM INJURY CAUSED BY IMPORT COMPETITION

CHAPTER 1—POSITIVE ADJUSTMENT BY INDUSTRIES INJURED BY IMPORTS

* * * * * * *

SEC. 202. INVESTIGATIONS, DETERMINATIONS, AND RECOMMENDATIONS BY COMMISSION.

(a) PETITIONS AND ADJUSTMENT PLANS.—

(1) * * *

* * * * * * *

(8) The procedures concerning the release of confidential business information set forth in section 332(g) of the Tariff Act of 1930 shall apply with respect to information received by the Commission in the course of investigations conducted under this chapter, part 1 of title III of the North American Free Trade Agreement Implementation Act, title II of the United States-Jordan Free Trade Area Implementation Act, title III of the United States-Chile Free Trade Agreement Implementation Act, title III of the United States-Singapore Free Trade Agreement Implementation Act, title III of the United States-Australia Free Trade Agreement Implementation Act, title III of the United States-Morocco Free Trade Agreement Implementation Act, title III of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act, title III of the United States-Bahrain Free Trade Agreement Implementation Act, title III of the United States-

Oman Free Trade Agreement Implementation Act, [and] title III of the United States-Peru Trade Promotion Agreement Implementation Act*, and title III of the United States–Colombia Trade Promotion Agreement Implementation Act*. The Commission may request that parties providing confidential business information furnish nonconfidential summaries thereof or, if such parties indicate that the information in the submission cannot be summarized, the reasons why a summary cannot be provided. If the Commission finds that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorize its disclosure in generalized or summarized form, the Commission may disregard the submission.

* * * * * * *

TRADE AGREEMENTS ACT OF 1979

* * * * * * *

TITLE III—GOVERNMENT PROCUREMENT

* * * * * * *

SEC. 308. DEFINITIONS.

As used in this title—

(1) * * *

* * * * * * *

(4) ELIGIBLE PRODUCTS.—

(A) IN GENERAL.—The term "eligible product" means, with respect to any foreign country or instrumentality that is—

(i) * * *

* * * * * * *

(vii) a party to the United States-Peru Trade Promotion Agreement, a product or service of that country or instrumentality which is covered under that agreement for procurement by the United States.

* * * * * * *

(ix) a party to the United States–Colombia Trade Promotion Agreement, a product or service of that country or instrumentality which is covered under that agreement for procurement by the United States.

* * * * * * *

ANDEAN TRADE PREFERENCE ACT

TITLE II—TRADE PREFERENCE FOR THE ANDEAN REGION

* * * * * * *

SEC. 204. ELIGIBLE ARTICLES.

(a) * * *

(b) EXCEPTIONS AND SPECIAL RULES.—

(1) * * *

* * * * * * *

(3) APPAREL ARTICLES AND CERTAIN TEXTILE ARTICLES.—

(A) * * *

(B) COVERED ARTICLES.—The apparel articles referred to in subparagraph (A) are the following:

(i) * * *

* * * * * * *

(iii) APPAREL ARTICLES ASSEMBLED IN 1 OR MORE ATPDEA BENEFICIARY COUNTRIES FROM REGIONAL FABRICS OR REGIONAL COMPONENTS.—(I) * * *

(II) The preferential treatment referred to in subclause (I) shall be extended in the 1-year period beginning October 1, 2002, and in each of the ⟦8 succeeding 1-year periods⟧ *10 succeeding 1-year periods*, to imports of apparel articles in an amount not to exceed the applicable percentage of the aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available.

(III) For purposes of subclause (II), the term "applicable percentage" means—

(aa) * * *

(bb) for the 1-year period beginning October 1, 2007, ⟦and for the succeeding 3-year period⟧ *and for the succeeding 5-year period*, the percentage determined under item (aa) for the 1-year period beginning October 1, 2006.

* * * * * * *

(v) CERTAIN OTHER APPAREL ARTICLES.—

(I) * * *

(II) LIMITATION.—During the 1-year period beginning on October 1, 2003, and during each of the ⟦7 succeeding 1-year periods⟧ *9 succeeding 1-year periods*, apparel articles described in subclause (I) of a producer or an entity controlling production shall be eligible for preferential treatment under this paragraph only if the aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that are used in the production of all such articles of that producer or entity that are entered and eligible under this clause during the preceding 1-year period is at least 75 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all such articles of that producer or entity that are entered and eligible under this clause during the preceding 1-year period.

* * * * * * *

(E) BILATERAL EMERGENCY ACTIONS.—

(i) * * *

(ii) RULES RELATING TO BILATERAL EMERGENCY ACTION.—For purposes of applying bilateral emergency action under this subparagraph—

(I) * * *

(II) the term "transition period" in section 4 of the Annex shall mean the period ending [February 12, 2011] *July 31, 2013*; and

* * * * * * *

SEC. 208. TERMINATION OF PREFERENTIAL TREATMENT.

(a) IN GENERAL.—No duty-free treatment or other preferential treatment extended to beneficiary countries under this title shall—

(1) remain in effect—

(A) with respect to Colombia after [February 12, 2011] *July 31, 2013*; and

* * * * * * *

(2) remain in effect with respect to Ecuador after June 30, 2009, except that duty-free treatment and other preferential treatment under this title shall remain in effect with respect to Ecuador during the period beginning on July 1, 2009, and ending on [February 12, 2011] *July 31, 2013*, unless the President reviews the criteria set forth in section 203, and on or before June 30, 2009, reports to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives pursuant to subsection (b) that—

(A) * * *

* * * * * * *

VII. DISSENTING VIEWS

Summary

Colombia is an important ally in a vital region of the world. Congressional Democrats have worked to change the Colombia free trade agree (FTA) because we believed there was a course that could strengthen our economic ties and address persistent and pervasive violence against labor and other activists in Colombia, impunity for such acts, and extensive deficiencies in Colombia's labor laws.

Congressional Democrats believe workers in Colombia need basic labor rights to improve their financial standing and climb the economic ladder. This is critical to increasing U.S. exports and jobs. The development of a middle class creates consumers and robust markets for our products and services. It is also vitally important to U.S. workers who are correct in asserting they should not unfairly compete with workers whose rights are suppressed.

There are longstanding Democratic concerns regarding anti-union violence, impunity, and deficient labor laws in Colombia:

- *Pervasive Violence*: The International Trade Union Confederation reported that in 2010, Colombia had more union worker assassinations—49—than the rest of the world combined.
- *Impunity*: In February 2011, the International Labor Organization (ILO) reported that "the majority of the cases [of violence against workers] have not yet been investigated nor have the perpetrators, including the intellectual authors of these crimes, been brought to justice".
- *Serious Labor Law Deficiencies*: The ILO has had long-standing concerns about the failure of Colombian laws to provide basic internationally-recognized worker rights. These include laws that: (1) let employers force workers into "cooperatives" and other sham entities to avoid unions, (2) let employers by-pass unions and negotiate "collective pacts" directly with workers, and (3) impose broad restrictions on the right to strike.

These serious concerns about worker rights have prevented consideration of the Colombia FTA.

The Obama Administration negotiated a Labor "Action Plan" with the Colombian Government, but Republicans have refused to even reference this Action Plan in the implementing legislation. Given the lack of full implementation of the Action Plan to date, and without a provision explicitly linking implementation of the FTA to Colombia addressing anti-union violence, impunity and fundamentally deficient labor laws under the Action Plan, the legislation is fundamentally flawed.

BACKGROUND

A. CONCERNS ABOUT ANTI-UNION VIOLENCE, IMPUNITY, AND DEFICIENT LABOR LAWS

Concerns about violence against workers and their leaders, impunity for such violence, and labor law deficiencies have been at the heart of the debate regarding the Colombia FTA from the start. These concerns remain today.

In terms of violence, the data show that, although union worker violence has trended downward since 2002, the number of murders remains extraordinarily high. See chart below. Indeed, according to the recently-released International Trade Union Confederation's Annual Survey of Violations of Trade Union Rights, in 2010 Colombia had *more union worker assassinations than the rest of the world combined*.

Year	ENS (Colombian Think Tank) Murder Count	Government of Colombia Murder Count
2000	134	105
2001	194	205
2002	183	196
2003	92	94
2004	96	89
2005	70	40
2006	72	60
2007	39	31
2008	49	42
2009	40	25
2010	51	36

Moreover, the perpetrators of such violence in Colombia enjoy near-universal impunity. As noted by Human Rights Watch, the Colombian Attorney General's office charged with prosecuting these crimes has obtained just six convictions from 195 union murders that occurred between January 2007 and May 2011. Roughly nine in 10 of the subunit's cases from that period of time are still in the preliminary stage with no suspect formally identified.

We recognize that Colombia has undergone a significant period of overall violence. However, systemic unaddressed violence against workers and individuals associated with unions has fundamental implications for worker rights in Colombia. The ILO has long recognized that "a climate of violence in which the murder . . . of trade union leaders go unpunished constitutes a serious obstacle to the exercise of trade union rights . . ."[1]

Serious deficiencies in Colombia's labor laws—and in their enforcement—further contribute to the suppression of worker rights. For example, both the ILO and the U.S. State Department detail extensive concerns about laws that: (1) let employers force workers into "cooperatives" and other sham entities to avoid unions, (2) let employers by-pass unions and negotiate "collective pacts" directly with workers, and (3) impose broad restrictions on the right to strike. Moreover, a high-level ILO mission to Colombia in February 2011 noted, with "deep concern," the "repeated and detailed infor-

[1] ILO General Survey on Freedom of Association and Collective Bargaining, 1994, paras. 26–29. See also Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO, Fifth (revised) edition, 2006, paras. 42–6.

mation it received concerning acts of anti-union discrimination at the enterprise level and in the public sector as well as the failure to take effective action to stop it."

B. Renegotiation to Include Fundamental Labor Standards and the Agreement on the "Action Plan" Were Critical Steps Forward

From the start of FTA negotiations with Colombia, Democrats have insisted that the problems of violence, impunity, and labor law deficiencies would have to be effectively addressed and that the flawed "enforce-your-own-laws" approach of earlier trade agreements could not simply be imported. In 2007, with new majorities in Congress, Democrats were able to move in this direction. Pursuant to the "May 10" agreement, House Democrats pushed President Bush to re-open the Colombia FTA (as well as the Peru, Panama, and Korea FTAs) to include critical new text. This new text included a fully enforceable commitment that FTA countries adopt, maintain, and enforce in their laws and practice the five basic international labor standards, including freedom of association and the right to collective bargaining.

The incorporation of these fundamental labor standards was a significant step forward. At the same time, reflecting the unique challenges presented in Colombia's case, the May 10 agreement referred to, and included, a letter from Ways and Means Democratic leaders stating that:

> Colombia has special problems and considerations . . . including the systemic, persistent violence against trade unionists and other human rights defenders, the related problem of impunity . . . Congress and the Administration must work with the Government of Colombia on these serious problems to determine what additional steps can be taken to allow for consideration of the FTA.

Under the new Administration led by President Obama, U.S. Trade Representative Ronald Kirk echoed the same concerns. In February 9, 2011 testimony before the Ways and Means Committee, Ambassador Kirk stated that:

> There remain serious issues to be resolved before the Colombia [FTA] . . . can be submitted for Congressional consideration. . . . [I]t will be imperative to resolve issues regarding laws and practices impacting the protection of internationally-recognized labor rights, as well as issues concerning violence against labor leaders and the prosecution of the perpetrators.

Picking up on years of detailed discussions between Ways and Means Democrats and the Colombian Administration led by then-President Alvaro Uribe—which unfortunately yielded few results—the Obama Administration began intensive discussions with the new Colombian Administration of President Santos. President Santos had signaled a serious intent to address the issues of labor rights and violence and impunity. And, on April 7, 2011, the discussions between the U.S. and Colombian Administrations resulted in the negotiation of an additional agreement—the labor "Action

Plan"—prescribing specific steps to address the problems of violence, impunity, and labor law deficiencies in Colombia and establishing deadlines for completion of the steps.

The Obama Administration made clear that the Action Plan was an agreement between Colombia and the United States entered into to clear the way for movement on the FTA. For example, in comments dated April 28, 2011, U.S. Trade Representative Kirk stated that "[l]ast month, *President Obama and President Santos agreed to an Action Plan Related to Labor Rights that will allow us to move forward with the U.S. Colombia trade agreement*." (emphasis added). Similarly, in a June 13, 2011 press release, USTR explained that "The Obama Administration negotiated the Action Plan to address concerns related to the U.S.-Colombia trade agreement."

The May 10 agreement, together with effective implementation of the specific commitments under the Action Plan held the promise of addressing the issues of violence, impunity, and labor law deficiencies that had held up Congressional consideration of the Colombia FTA. The critical question, however, was whether Colombia could effectively implement the Action Plan, or whether the vested interests that had successfully thwarted reform in Colombia in the past would do so again.

C. FAILURE TO ESTABLISH A LINK BETWEEN THE FTA AND THE ACTION PLAN IS A FUNDAMENTAL MISTAKE AND A STEP BACKWARDS FROM PAST PRECEDENT

Given the central relevance of the Action Plan commitments to moving forward with the Colombia FTA, and the importance of Colombia effectively meeting those commitments, Democrats proposed at the informal markup of the Colombia FTA implementing bill that a link be established between the FTA and the Action Plan. The amendment offered by Ranking Member Levin would have including a provision in the FTA implementing bill conditioning the FTA's entry into force on Colombia's meaningful implementation of Action Plan commitments (as of the time Colombia was otherwise ready for entry into force).

The proposed amendment received the unanimous support of Ways and Means Democrats (and an identical amendment was proposed in the Senate Finance Committee). Unfortunately, due apparently to rigid ideological opposition, our Republican colleagues blocked the amendment. Indeed, they have rejected including even any mention of the Action Plan in the Colombia FTA implementing legislation.

This is a fundamental mistake. The proposed amendment served a number of important objectives. First, it would provide additional leverage—including to reformers in Colombia—to ensure meaningful compliance with the Action Plan commitments. Second, it would create additional time for monitoring Colombia's implementation, addressing the concerns of many Members that the vote on the FTA was happening prematurely. Third, it would have helped flesh out the worker rights commitments in the Labor Chapter of the FTA, providing valuable context in the event of future labor disputes under the FTA. At the same time, the proposed amendment would have done nothing to slow down passage of the FTA or its

implementation—meeting the interests of those in Congress primarily concerned with quick action.

Moreover, the proposed amendment is fully consistent with past precedent. For example, in the NAFTA implementing bill, President Clinton included a provision explicitly linking "entry into force" of NAFTA to implementation of separate labor and environmental side agreements, to help ensure that Mexico and Canada followed through in adopting the (deficient) side agreements. This situation is analogous—indeed, the case is substantially stronger here because the Colombia FTA actually includes meaningful labor obligations whereas NAFTA did not.[2] Failure to include the proposed amendment in the Colombia FTA implementing bill, therefore, is not only a mistake, it is a significant step backwards from past precedent.

D. LACK OF MEANINGFUL IMPLEMENTATION TO DATE CONFIRMS THE NEED FOR A LINK BETWEEN THE ACTION PLAN COMMITMENTS AND FTA IMPLEMENTATION

The need for including a mechanism to link implementation of the FTA to Colombia meaningfully meeting its commitments under the Action Plan is becoming all the more apparent given the increasing evidence of weak implementation over the last five months. The following examples demonstrate precisely the need to link the Action Plan to implementation of the FTA:

- Abuse of Cooperatives and Other Contractual Employment Relationships. The ILO has long identified, as one of the most serious problems facing Colombian workers, the use of sham "cooperatives" and other such contract forms to camouflage true employment relationships and thwart workers' efforts to organize. (In Colombia, only workers who are directly employed can form a union and collectively bargain.) Colombia initially committed to stop such abuses, passing far-reaching legislation and proposing effective regulations. In recent months, however, Colombia has backed away, reading the new law and regulations as applying solely to one of these contract forms (cooperatives), and thus creating massive loopholes. Immediately, Colombian employers, including a major beverage company and palm oil producers, began converting cooperatives to other contract forms to continue denying workers their basic rights. Although there was private pressure for months by the U.S. government on Colombia to clarify the law, to try to stem this problematic shift, it was not until midnight on October 4—hours before a Ways and Means Committee markup and once a significant public spotlight was shone on the matter—that Colombia issued a "clarification." And this clarification fails to restore the scope of the laws and regulations, leaving major loopholes.
- Union-Related Violence and Impunity. President Santos' commitment to ending impunity has not translated into results. According to Human Rights Watch, Colombian authorities have obtained just six convictions for 195 union murders

[2] There is also another analogous precedent with more recent trade agreements. For example, the Bush Administration, in the CAFTA implementing bill, included extensive labor reporting requirements related to the CAFTA and a separate "White Paper" on labor.

that occurred between January 2007 and May 2011. Roughly 9 in 10 of the cases from that period are still in the preliminary stage with no suspect formally identified. Notwithstanding clear commitments under the Action Plan to improve this situation through reforms in investigative policies and methods, Colombia did not take the first step to do this—publication of an analysis of closed union murder cases—until October 3, the eve of the Ways and Means markup, even though the Action Plan called for its completion on July 15. And even with this, it is clear that additional leverage is necessary. Interviews by Human Rights Watch with Colombian prosecutors reveal that there has been no clear direction to implement new policies and methods, as committed to under the Action Plan.

- Threats Against Teachers. Teachers are an especially vulnerable population in Colombia. To address violence and threats against this population, Colombia committed to strengthen the teacher protection program to "ensure that meritorious requests [for protection] are granted", which entails relocating the teachers. But, five months after the announcement of the Action Plan, Colombia is far from meeting the commitment. Indeed, a recent report shows that 224 of 648 teachers found by the government to be "threatened"—more than one-third of the most vulnerable members of this population—have yet to be relocated.
- Bypassing Restrictions on Collective Pacts. Colombian employers can bypass unions whenever unions are small (one-third of workers or less), and can negotiate wages and benefits—"collective pacts"—directly with non-union workers. The ILO has found that this severely undermines unions and called on Colombia to bar collective pacts in unionized workplaces. While the Action Plan did not adopt this recommendation, it did require Colombia to criminalize the offering of better terms under a collective pact than under a union agreement. But even that minimal requirement is not being meaningfully implemented. Colombian employers are being allowed to circumvent the law simply by renaming the pacts (e.g., as "voluntary benefit agreements").
- Overbroad Restrictions on Strike. Colombia prohibits strikes in an over-broad range of sectors designated "essential" by law, including its oil sector. While the ILO has called on Colombia to narrow its list, the Action Plan did not require it to do so. Instead, it simply required Colombia to publish a summary of the relevant court decisions. Unfortunately, that summary reveals that Colombian courts have broad latitude to add sectors to the list, and that they have done exactly that, rendering Colombian law even more inconsistent with international norms.
- Lack of Enforcement of Penal Sanctions for Anti-Union Conduct. In June 2011, pursuant to the Action Plan, Colombia passed legislation attaching prison sentences to acts to impede or disrupt the exercise of labor rights. Earlier Colombian laws criminalized the same acts but applied only fines, and these fines were rarely imposed. Whether the new law will deter

anti-union conduct hinges on whether Colombia's Prosecutor General is active in prosecuting cases and seeking jail time for employer offenders. To date, no such cases have been reported.

• Lack of Meaningful Consultation with Stakeholders. Colombia has engaged in only cursory efforts to engage stakeholders in implementation and enforcement, even when the Action Plan contemplates meaningful engagement. For example, notwithstanding a commitment to meet "periodically" with ENS—the leading Colombian labor think tank—to reconcile differing union homicide lists, the Colombian government has only held one such meeting, in which it demanded that ENS accept the government list. Similarly, Colombia has not consulted unions in developing a request for expanded ILO presence, making it more likely that the mission will be unsuccessful in bringing Colombian labor law and practice into compliance with ILO norms.

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