112TH CONGRESS 1st Session } HOUSE OF REPRESENTATIVES { REPORT 112–239

UNITED STATES-KOREA FREE TRADE 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

ADDITIONAL VIEWS

[To accompany H.R. 3080]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 3080) to implement the United States-Korea Free Trade 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. 3080 would implement the agreement establishing a free trade area between the United States and Korea.

B. BACKGROUND

The United States-Korea Free Trade Agreement

The United States-Korea Free Trade Agreement (hereinafter the "Agreement") was signed on June 30, 2007. 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 ("TPA"). Moreover, the agreement reflects the benefits of an exchange of letters between the United States and Korea on February 10, 2011 and the May 10, 2007 agreement between Congressional leaders and the last Administration regarding labor, environment, intellectual property, investment, government procurement, and port security ("May 10 agreement").

U.S. industrial goods currently face an average tariff of 6.2 percent in Korea, paying over $1.3 billion a year. Conversely, Korean exports enter the United States at an average tariff of only 2.8 percent—less than half the Korean rate. The Agreement will significantly open up the Korean market, helping U.S. exporters gain greater access. The International Trade Commission ("ITC") estimates that U.S. exports to Korea would increase by $9.7–10.9 billion as a result of tariff reductions alone.

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

Agriculture: U.S. agriculture exports to Korea currently face an average tariff of 54 percent, whereas Korean agricultural exports to the United States face average tariffs of just 9 percent. The Agreement would remedy this by making more than half of current U.S. farm exports to Korea by value duty-free immediately upon implementation, including U.S. exports of wheat, corn for feed, soybeans for crushing, whey for feed use, hides and skins, cotton, cherries, pistachios, almonds, grape juice, and wine. The Agreement would also address key non-tariff barriers. For example, Korea would recognize the equivalence of the U.S. food safety system for meat, poultry, and processed foods.

Manufacturing: The Agreement would significantly lower both tariff and non-tariff barriers to U.S. exports of manufactured goods. Upon implementation, over 80 percent of U.S. exports of consumer and industrial products to Korea would immediately become duty-free, with virtually all tariffs phased out over ten years. Key U.S. export sectors that would receive immediate duty-free treatment include aircraft, electrical equipment, and medical and scientific equipment. As a result, ITC estimates significant gains in U.S. exports in key sectors and products. For example, the ITC estimates that exports of passenger vehicles would increase by 54 percent as a result of tariff cuts alone. Exports of motor vehicles and parts would increase an additional 41–56 percent as a result of the removal of non-tariff barriers. Similarly, exports of machinery and equipment would increase by more than 30 percent. Per the Agreement, Korea has also reaffirmed its commitment to fulfill its obligations under the WTO Information Technology Agreement and made commitments to further open Korea's market to U.S. high-tech exports by immediately eliminating tariffs on information and communications technologies not covered by the ITA. The Agreement would provide U.S. firms with lower tariff barriers than major competitors from countries that do not have trade agreements with Korea in effect.

Services: Korea is the eighth largest importer of services, with a domestic market worth $580 billion, 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. Through the removal of existing barriers, the Agreement would facilitate entry for U.S. firms into Korea's financial, insurance, telecom, audiovisual, express delivery, and professional services markets, among others. For example, the agreement would end many current Korean restrictions that allow only Korean nationals to provide professional services. Similarly, the ITC estimates, based on tariff equivalents, that the Agreement would reduce barriers in the banking sector by 62%. U.S. service providers that establish a local presence in Korea would benefit from strong investor protections included in the Agreement. In addition, the Agreement would provide improved access for international delivery services and establish a set course for future reform of Korea's postal system with respect to delivery services.

Government Procurement: The protections found in the Agreement go above and beyond Korea's commitments as a member of the WTO Government Procurement Agreement and would expand market access for U.S. companies. The procurement provisions would grant U.S. entities greater access and protection than they currently have to Korea's $100 billion government procurement market. The Agreement would expand coverage to include nine additional key central government agencies. It would also reduce the threshold of coverage from $200,000 to $100,000 for procurement of goods and services.

Intellectual Property Rights: Under the Agreement, Korea would adopt higher and extended standards for the protection of intellectual property rights, such as copyrights, patents, trademarks, and trade secrets. The Agreement also provides 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.

Motor Vehicles and Parts: Under the Agreement, Korea will reduce its tariffs on U.S. motor vehicles and parts and eliminate non-tariff barriers. Korea will immediately cut its tariff on U.S. autos in half and fully eliminate those tariffs after five years. Korea will also immediately cut its tariffs on U.S. electric cars in half and phase out those tariffs over five years. The exchange of letters on February 10, 2011 specifically addresses safety and environmental standards and other non-tariff barriers to U.S. exports. Korea has committed to strengthen transparency commitments, which will help to prevent the emergence of new non-tariff barriers and discriminatory taxes. The exchange of letters also strengthens other enforcement mechanisms and creates a special motor vehicle safeguard. The ITC estimates that removal of non-tariff barriers will add an additional $48–66 million in new exports. This opportunity is in addition to the $194 million in expected new exports from lower Korean tariffs on U.S. autos.

Textile and Apparel: Many U.S. textiles and apparel products meeting the Agreement's rules of origin would immediately become duty-free and quota-free when exported to Korea. 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 Korean apparel, giving producers in both countries needed flexibility. The Agreement would allow the use of "short supply" fabrics (that is, fabrics not made in Korea 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 Korea 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 imports under the Agreement prove to cause or threaten serious damage to U.S. producers.

Investment: The Agreement would ensure a stable legal framework for U.S. investors operating in Korea. 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 Korean investors in the establishment, acquisition, and operation of investments in Korea.

The Agreement draws from U.S. legal principles and practices to provide U.S. investors in Korea with a basic set of substantive and procedural protections that Korean 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 are 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. The Committee notes that Korea has shown a strong commitment to the protection of labor rights for Korean workers.

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.

Procedures of the Trade Act of 2002

H.R. 3080 is being considered by Congress under the procedures of the Bipartisan Trade Promotion Authority Act of 2002, included in the Trade Act of 2002. Pursuant to these requirements, 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.

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.

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 February 2, 2006, the United States Trade Representative ("USTR") formally notified the Congress of its intention to initiate negotiation of a trade agreement with Korea. Negotiations on a trade agreement between the United States and Korea began in June 2006. On April 1, 2007, the President notified the Congress of his intention to enter into a trade agreement with Korea. The Agreement was signed on June 30, 2007.

On August 27, 2007, the USTR transmitted to Congress a description of the changes to existing U.S. laws required to comply with the Agreement.

On February 10, 2011, the United States and Korea exchanged letters regarding additional commitments, particularly related to motor vehicles and parts. The benefits of that exchange of letters are secured through the implementing bill.

Legislative hearings

On January 25, 2011, the Committee on Ways and Means held a hearing on the Korea trade agreement, as well as the U.S.-Colombia Trade Promotion Agreement and the U.S.-Panama Trade Promotion Agreement. The Trade Subcommittee of the Committee on Ways and Means then held a hearing on the Korea trade agreement on April 7, 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 22–15, 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-Korea Free Trade Agreement, a legislative proposal to implement the agreement, a Statement of Administrative Action and supporting documents to Congress. On the same day, H.R. 3080, a

bill to implement the United States-Korea Free Trade Agreement, was introduced by Majority Leader Eric Cantor (R–VA), by request, for himself and Rep. Sandy Levin (D–MI). H.R. 3080 was then referred to the Committee on Ways and Means.

On October 5, 2011, Committee on Ways and Means formally met to consider H.R. 3080. The Committee ordered H.R. 3080 favorably reported to the House of Representatives by a vote of 31–5, without amendment. Under the procedures of TPA, no amendments are permitted after introduction.

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 implementing act (“Act”), which include approving and implementing the Agreement and securing the benefits of the agreement entered into pursuant to an exchange of letters between the United States and the Government of Korea on February 10, 2011.

Reason for change

The provision makes clear that the bill implements and approves the Agreement, as well as secures the benefits of the agreement entered into pursuant to an exchange of letters on February 10, 2011, relating to trade in motor vehicles.

SECTION 101: APPROVAL AND ENTRY INTO FORCE

Present law

No provision.

Explanation of provision

Section 101 states that Congress approves the United States-Korea Free Trade Agreement (“Agreement”) and the Statement of Administrative Action. The Agreement enters into force when the President determines that Korea 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 Korea 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 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 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 later date, 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 $750,000 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, Section 207(g), and Titles I and V of the Act, which take effect on the date of enactment of the Act, the effective date of the Act is the date the Agreement enters into force with respect to the United States. Amendments made to U.S. law by Sections 203, 204, 206, and 401 of the Act take effect on the date of enactment of the Act but apply with respect to Korea on the date on which the Agreement enters into force. Other than Title V, 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.

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 Korea 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) provides the President with the authority to proclaim tariff modifications with respect to motor vehicles of Korea, consistent with the agreement entered into pursuant to an exchange of letters between the United States and the Government of Korea on February 10, 2011.

Reason for change

The provision is necessary to ensure United States compliance with the market access provisions of the Agreement and the exchange of letters. 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: RULES OF ORIGIN

Present law

No provision.

Explanation of provision

Section 202 codifies the rules of origin set out in Article 4.2 and Chapter 6 of the Agreement. Section 202(b) establishes three basic ways for a Korean 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 Korea, the United States, or both"; (2) it is produced entirely in the United States, Korea, 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 content and other requirements, as specified in Annex 4–A or Annex 6–A of the Agreement; or (3) it is produced entirely in the territory of Korea, the United States, or both exclusively from originating materials.

Under the rules in Chapter 4 and Annex 4–A 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 Korea, an apparel product must have been cut (or knit to shape) and sewn or otherwise assembled in Korea, the United States, or both from yarn, or fabric made from yarn that originates in Korea, the United States, or both.

Section 202(o)(3) provides authority for the President to add fibers, yarns, or fabrics 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 Korea, regardless of their actual origin, when used as inputs in the production of textile or apparel goods. The President may modify the list of fibers, yarns, or fabrics that are unavailable in commercial quantities at the request of interested entities, defined as Korea and potential and actual suppliers and purchasers of textile or apparel goods.

The remainder of Section 202 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 202 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 202(l) specifies that goods that undergo further production or other operations outside Korea 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 Korea. Rules of origin are needed to confine Agreement benefits, such as tariff cuts, to Korean goods and to prevent third-country goods from being transshipped through Korea and claiming benefits under the Agreement.

SECTION 203: 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 203 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 Korea. 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 204: DISCLOSURE OF INCORRECT INFORMATION; FALSE CERTIFICATIONS OF ORIGIN; DENIAL OF PREFERENTIAL TARIFF TREATMENT

Present law

No provision.

Explanation of provision

Section 204 implements Articles 6.19.3 and 6.18.6 of the Agreement. Section 204(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 204(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 205: RELIQUIDATION OF ENTRIES

Present law

No provision.

Explanation of provision

Section 205 implements Article 6.19.5 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 6.19.5 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 205 is necessary to ensure United States compliance with Article 6.19.5.

SECTION 206: RECORDKEEPING REQUIREMENTS

Present law

No provision.

Explanation of provision

Section 206 implements Article 6.17 of the Agreement. The provision requires any person who completes and issues a certificate of origin under Article 6.15 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 6.17 of the Agreement.

SECTION 207: ENFORCEMENT RELATING TO TRADE IN TEXTILE OR APPAREL GOODS

Present law

No provision.

Explanation of provision

Section 207 implements the customs cooperation and verification of origin provisions in Article 4.3 of the Agreement. Under Article 4.3, the United States may request the Government of Korea 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 207(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 verification was based on a reasonable suspicion of unlawful activity related to such goods; and (ii) suspension of liquidation of the entry of a textile or apparel good that is the subject of a verification.

Under Section 207(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; and (ii) denying entry to such goods.

Under Section 207(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.

Under Section 207(f), the Commissioner of Customs may require an importer to submit a certificate of eligibility, which must be signed by an authorized official of the Government of Korea, to receive preferential tariff treatment under Article 4–B of the Agreement.

Under Section 207(g), the Secretary may request a verification of the production of any textile or apparel good if requested by a party to a free trade agreement. This provision applies to all trade agreement partners.

Reason for change

To avoid textile transshipment, special textile enforcement provisions have been included in the Agreement. Section 207 is necessary to authorize these enforcement mechanisms for use by U.S. authorities.

SECTION 208: REGULATIONS

Present law

No provision.

Explanation of provision

Section 208 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 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 "Korean article," "Korean textile or apparel article," and "Korean motor vehicle 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 Korean 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)(1) 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 workers 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 Korean articles, except for Korean motor vehicle articles (per Section 321), 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 (180 days if critical circumstances have been alleged) 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. In the case of a duty applied on a seasonal basis, the President may increase the rate of duty on the articles in question to a level that does not exceed the lesser of the NTR (MFN) rate for the corresponding season immediately preceding the date the import relief is provided or the NTR (MFN) rate of duty that was imposed for the corresponding season immediately preceding the date on which the Agreement enters into force. Under Section 313(c)(3), 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, except with respect to a Korean motor vehicle article (per Section 321).

Section 313(d) provides that the President may initially provide import relief for up to two years. This period may be extended by up to one year for a Korean article and by up to two years for a Korean motor vehicle article (per Section 321) 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 evi-

dence 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 shall be the rate that would have been in effect but for the provision of relief.

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); or (ii) subject to import relief under Subtitle C to Title III of the Act.

Section 314 provides that no relief may be provided under Subtitle A of Title III of this Act after ten years from the date the Agreement enters into force, unless (i) 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; or (ii) the President determines that Korea has consented to such relief. In addition, per Section 321, relief for a Korean motor vehicle article may be provided during any period before the date that is ten years after the date on which duties on the article are eliminated.

Section 315 authorizes the President to provide compensation to Korea consistent with Article 10.4 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 Korea 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: Motor Vehicle Safeguard Measures

SECTION 321

Present law

No provision.

Explanation of provision

Subtitle B of the Act (Section 321) implements the motor vehicle safeguard established by the exchange of letters between the United States and the Government of Korea on February 10, 2011 related to trade in motor vehicles. Section 321(1) provides that the same product can be the basis for according relief more than once and that progressive liberalization is not required while relief is

being provided. Section 321(2) provides that relief may be extended for up to two years. Section 321(3) provides that relief may be provided for a total of up to four years. Section 321(4) provides that Subtitle B exceptions shall not apply to any relief action brought under Subtitle A. Section 321(5) provides that import relief may be provided with respect to a Korean motor vehicle article up to ten years after the date on which duties on the article are eliminated.

Reason for change

This provision implements U.S. rights and Korean commitments under the exchange of letters on February 10, 2011 relating to treatment of Korean motor vehicle imports in safeguard procedures.

Subtitle C: Textile and Apparel Safeguard Measures

(SECTIONS 331–338)

Present law

No provision.

Explanation of provisions

Subtitle C of Title III of the Act (Sections 331 to 338) 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 Korean 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 331 provides that an interested party may file a request with the President for safeguard relief under Subtitle C to Title III of the Act (Sections 331–338) . The President must review the request and determine whether to commence consideration of the request. Under Section 331(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 332(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 Korean 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 332(b) sets forth the relief that the President may provide, which is a suspension of any further reduction provided for under Annex 2–B of the Agreement, or 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 333 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 two years 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. The aggregate period of relief, including any extension, may not exceed four years.

Section 334 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 335, 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 336 provides that the authority to provide safeguard relief under Subtitle C to Title III of the Act expires ten years after the date on which duties on the articles are eliminated pursuant to the Agreement.

Section 337 authorizes the President to provide compensation to Korea if relief is ordered.

Section 338 provides for the treatment of confidential business information received by the President in connection with an investigation or determination under Subtitle C 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 C 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 332(a), and for providing relief under Section 332(b).

Subtitle D: Cases Under Title II of the Trade Act of 1974

SECTION 341: FINDINGS AND ACTION ON GOODS FROM KOREA

Present law

No provision.

Explanation of provision

Section 341(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 Korean imports of the article

that qualify as originating goods under the Agreement are a substantial cause of serious injury or threat thereof. Under Section 341(b), if the ITC makes a negative finding under Section 341(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 Korean 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 17 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 Korea that is covered under the Agreement for procurement by the United States.

Reason for change

This provision implements U.S. commitments under Chapter 17 of the Agreement (Government Procurement).

TITLE V: OFFSETS

SECTION 501: INCREASE IN PENALTY ON PAID PREPARERS WHO FAIL TO COMPLY WITH EARNED INCOME TAX CREDIT DUE DILIGENCE REQUIREMENTS

Present law

Under Section 6695(g) of the Internal Revenue Code of 1986, paid preparers who fail to comply with earned income tax credit due diligence requirements are fined $100 per return.

Explanation of provision

Section 501 increases the penalty for paid preparers who fail to comply with earned income tax credit due diligence requirements from $100 to $500 per return. The increased penalty applies to returns required to be filed after December 31, 2011.

Reason for change

The Committee believes it is appropriate to increase the penalty for paid preparers who fail to comply with earned income tax credit due diligence requirements to deter non-compliance and for budgetary offset purposes.

SECTION 502: REQUIREMENT FOR PRISONS LOCATED IN THE UNITED STATES TO PROVIDE INFORMATION FOR TAX ADMINISTRATION

Present law

No provision.

Explanation of provision

Section 502 requires the head of the Federal Bureau of Prisons and the head of any State agency that administers prisons to provide certain information regarding inmates incarcerated, in electronic format, to the Secretary of the Treasury. The information must be filed no later than September 15, 2012, and annually thereafter.

Reason for change

The information provided will assist in detecting and deterring fraudulent tax return filings from inmates. The Committee believes it is appropriate to identify inmates who are filing fraudulent tax returns and for budgetary offset purposes.

SECTION 503: MERCHANDISE PROCESSING FEE

Present law

Section 8101 of the Omnibus Budget Reconciliation Act of 1986 ("OBRA") authorizes the Secretary of the Treasury to collect a merchandise processing fee for formal and informal entries in order to offset the salaries and expenses that will likely be incurred by the Customs Service in the processing of entries and releases. This authority has been consistently extended. Provided for under 19 U.S.C. 58c(a)(9)–(10), the merchandise processing fee is assessed on all goods entered or released from non-trade agreement partner countries. Presently, an ad valorem fee of 0.21 percent is mandated for merchandise that is entered formally. The fee is assessed on the value of the merchandise being imported, not including duty, freight, and insurance charges. The current minimum fee is $21, and the maximum fee is $485. Goods that are entered informally are charged a fee pursuant to a three-tiered flat rate fee table, depending on whether the fee is filed manually or electronically. The fee for informal entries ranges from $2.00 to $9.00 per shipment. The present fee level has been in place since 1995.

Explanation of provision

Section 503 increases the ad valorem fee collected by Customs and Border Protection that offsets the costs incurred in processing and inspecting imports from 0.21 percent to 0.3464 percent. This is the first increase in this fee since 1995.

Reason for change

The Committee believes it is appropriate to increase the merchandise processing fees to address increased costs Customs and Border Protection has incurred as a result of the increased volume of trade and additional operational initiatives since the last legislative change to the merchandise processing fee in 1995.

SECTION 504: CUSTOMS USER FEES

Present law

Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA") authorizes the Secretary of the Treasury to collect passenger and conveyance processing fees and the merchandise processing 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. 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 504 extends the passenger and conveyance processing fees and the merchandise processing fees authorized under Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA") through December 8, 2020 and August 2, 2021, respectively.

Reason for change

The Committee believes it is appropriate to extend the passenger and conveyance processing fees authorized under COBRA for budgetary offset purposes.

SECTION 505: 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, Section 505(a) increases the amount of the required installment of estimated tax otherwise due in July, August, or September of 2012 by 0.25 percent of such amount and Section 505(b) increases the amount of the required installment of estimated tax otherwise due in July, August, or September of 2016 by 2.75 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 to reflect the prior increase.

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. 3080.

MOTION TO REPORT THE BILL

The bill, H.R. 3080, was ordered favorably reported by a rollcall vote of 30 yeas to 5 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. X, 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. 3080 would reduce customs duty receipts due to lower tariffs imposed on goods from Korea.

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 the 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. 3080, the United States-Korea Free Trade 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. 3080—United States-Korea Free Trade Agreement Implementation Act

Summary: H.R. 3080 would approve the free trade agreement between the government of the United States and the government of the Republic of Korea (Korea) that was signed on June 30, 2007, and modified by a later agreement on December 3, 2010. It would provide for tariff reductions and other changes in law related to implementation of the agreement. The bill would extend user fees collected by Customs and Border Protection (CBP) that expire under current law and would increase those fees. In addition, it would establish a reporting requirement for federal and state prisons for tax administration purposes and increase the penalties on tax preparers who did not comply with due-diligence requirements for the earned income tax credit. 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. 3080 would reduce revenues by $31 million in 2012 and by about $7.0 billion over the 2012–2021 period. CBO estimates that enacting H.R. 3080 would increase direct spending by $53 million in 2012 but would decrease direct spending by about $7.0 billion over the 2012–2021 period. The net impact of those effects is an estimated reduction in deficits of $16 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 cost $7 million over the 2012–2016 period, assuming the availability of appropriated funds.

CBO has determined that the nontax provisions of H.R. 3080 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 provisions of H.R. 3080 contain no intergovernmental or private-sector mandates as defined in UMRA.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 3080 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).

	By fiscal year, in millions of dollars—											
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2012–2016	2012–2021
CHANGES IN REVENUES												
Free Trade Agreement	−158	−312	−381	−462	−726	−873	−954	−1,043	−1,146	−1,254	−2,040	−7,310
Prison Reporting Requirement	0	6	13	13	14	14	15	15	16	16	46	122
EITC Preparer Penalty	9	19	19	20	20	21	21	22	23	23	87	197
Corporate Payment Shift	118	−118	0	0	1,894	−1,894	0	0	0	0	1,894	0
Estimated Revenues	−31	−405	−349	−429	1,202	−2,732	−918	−1,006	−1,107	−1,215	−13	−6,991
CHANGES IN DIRECT SPENDING [a]												
Extend Customs User Fees:												
Estimated Budget Authority	0	0	0	0	0	0	0	0	−1,957	−2,186	0	−4,143
Estimated Outlays	0	0	0	0	0	0	0	0	−1,957	−2,186	0	−4,143
Exemption from Merchandise Processing Fee:												
Estimated Budget Authority	53	95	99	104	161	180	189	198	208	184	511	1,470
Estimated Outlays	53	95	99	104	161	180	189	198	208	184	511	1,470
Increase the Merchandise Processing Fee Rates:												
Estimated Budget Authority	0	0	0	0	−572	−720	−756	−794	−835	−657	−572	−4,334
Estimated Outlays	0	0	0	0	−572	−720	−756	−794	−835	−657	−572	−4,334
Total Direct Spending [a]												
Estimated Budget Authority	53	95	99	104	−411	−540	−567	−596	−2,584	−2,659	−61	−7,007
Estimated Outlays	53	95	99	104	−411	−540	−567	−596	−2,584	−2,659	−61	−7,007
NET INCREASE OR DECREASE (−) IN THE DEFICIT FROM CHANGES IN DIRECT SPENDING AND REVENUES												
Impact on the Deficit	84	500	448	533	−1,613	2,192	351	410	−1,477	−1,444	−48	−16

[a] In addition, CBO estimates that implementing the provisions of H.R. 3080 would have a discretionary cost of $7 million over the 2012–2016 period, assuming appropriation of the necessary amounts.
Sources: Congressional Budget Office and the staff of the Joint Committee on Taxation.
Note: Components may not sum to totals because of rounding; EITC = Earned Income Tax Credit.

Basis of estimate: For the purposes of this estimate, CBO assumes that H.R. 3079 will be enacted early in fiscal year 2012.

Revenues

Under the United States-Korea free trade agreement, tariffs on U.S. imports from Korea 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 $660 million in customs duties in 2010 on $48 billion of imports from Korea. Based on expected imports from Korea, CBO estimates that implementing the tariff schedule outlined in the U.S.-Korea free trade agreement would reduce revenues by $158 million in 2012, and by about $7 billion over the 2012–2021 period, net of income and payroll tax offsets.

This estimate includes the effects of increased imports from Korea 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 Korea 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 Korea would displace imports from other countries.

H.R. 3080 would increase the penalties imposed on paid tax return preparers who do not comply with due-diligence requirements for determining their clients' allowable earned income tax credits (EITC), from $100 under current law to $500 for each failure. JCT estimates that this change would increase revenues by $197 million over the 2012–2021 period.

H.R. 3080 also would require prisons located in the United States to provide the names and Social Security Numbers of all inmates serving sentences longer than one year to the Internal Revenue Service for tax administration purposes. JCT estimates that this change would increase revenues by $122 million over the 2012–2021 period.

H.R. 3080 also would shift payments of corporate estimated taxes between fiscal years 2012 and 2013 and 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 in both 2012 and 2016. JCT estimates that those changes would increase revenues by $118 million in 2012 and decrease them by $118 million in 2013, and would increase revenues by about $1.9 billion in 2016 and decrease them by about $1.9 billion in 2017.

Direct spending

Under current law, certain fees collected by CBP will expire in January of 2020. The bill would extend COBRA fees (which were established in the Consolidated Omnibus Budget Reconciliation Act of 1985) from January 14, 2020, through December 8, 2020, and would extend merchandise processing fees from January 7, 2020, through August 2, 2021. CBO estimates that those changes would increase offsetting receipts (a credit against direct spending) by about $4.1 billion over the 2020–2021 period. For merchandise en-

tered from December 1, 2015, through June 30, 2021, the bill would raise the merchandise processing fee from 0.21 percent to 0.3464 percent of the value of goods entered. CBO estimates that this would increase offsetting receipts by about $4.3 billion over the 2012–2021 period.

In addition, the bill would exempt imports from Korea from merchandise processing fees. CBO estimates that this would reduce offsetting receipts by about $1.5 billion over the 2012–2021 period.

Spending subject to appropriation

Implementing provisions of H.R. 3080 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 Korean imports might threaten or cause serious injury to domestic competitors; and
- The Department of the 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 those activities would cost $7 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. 3080 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	84	500	448	533	1,613	2,192	351	410	−1,477	−1,444	−48	−16
Memorandum:												
Changes in Revenues	−31	−405	−349	−429	1,202	−2,732	−918	−1,006	−1,107	−1,215	−13	−6,991
Changes in Outlays	53	95	99	104	−411	−540	−567	−596	−2,584	−2,659	−61	−7,007

Estimated impact on state, local, and tribal governments: CBO has determined that the nontax provisions of H.R. 3080 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 provisions of H.R. 3080 contain no intergovernmental mandates as defined in UMRA.

Estimated impact on the private sector: CBO has determined that the nontax provisions of H.R. 3080 would impose private-sector mandates, as defined in UMRA, by extending the customs user fees, by increasing merchandise processing fees and by enforcing new recordkeeping 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 provisions of H.R. 3080 contain 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: J'nell L. Blanco; Impact on the Private Sector: Marin Randall.

Estimate approved by: Peter H. Fontaine, Assistant Director for Budget Analysis; 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. 3080, as reported. In addition, the legislation is governed by procedures of the Bipartisan Trade Promotion Authority Act of 2002.

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 20 of the U.S.-Korea Free Trade 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, that "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.

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) * * *

* * * * * * *

(19) No fee may be charged under subsection (a) (9) or (10) with respect to goods that qualify as originating goods under section 202 of the United States–Korea Free Trade 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) Fees may not be charged under paragraphs (9) and (10) of subsection (a) after [January 7, 2020] *August 2, 2021*.

(B)(i) Subject to clause (ii), Fees may not be charged under paragraphs (1) through (8) of subsection (a) after [January 14, 2020] *December 8, 2020*.

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TARIFF ACT OF 1930

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TITLE IV—ADMINISTRATIVE PROVISIONS

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Part III—Ascertainment, Collection, and Recovery of Duties

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SEC. 508. RECORDKEEPING.

(a) * * *

* * * * * * *

(i) CERTIFICATIONS OF ORIGIN FOR GOODS EXPORTED UNDER THE UNITED STATES–KOREA FREE TRADE 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) KFTA CERTIFICATION OF ORIGIN.—The term "KFTA certification of origin" means the certification established under article 6.15 of the United States–Korea Free Trade Agreement that a good qualifies as an originating good under such Agreement.

(2) EXPORTS TO KOREA.—Any person who completes and issues a KFTA 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 KFTA 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.

【(i)】 *(j)* PENALTIES.—Any person who fails to retain records and supporting documents required by subsection (f), 【(g), or (h)】 *(g), (h), or (i)* or the regulations issued to implement any such subsection shall be liable for the greater of—

(1) * * *

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

(a) * * *

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(j) DENIAL OF PREFERENTIAL TARIFF TREATMENT UNDER THE UNITED STATES–KOREA FREE TRADE 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 202 of the United States–Korea Free Trade 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–Korea Free Trade Agreement Implementation Act 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 202.

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SEC. 520. REFUNDS AND ERRORS.

(a) * * *

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(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 202 of the United States–Korea Free Trade 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) * * *

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Part V—Enforcement Provisions

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

(a) * * *

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(c) MAXIMUM PENALTIES.—

(1) * * *

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(11) PRIOR DISCLOSURE REGARDING CLAIMS UNDER THE UNITED STATES–KOREA FREE TRADE 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 202 of the United States–Korea Free Trade 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.

[(11)**]** *(12)* SEIZURE.—If the Secretary has reasonable cause to believe that a person has violated the provisions of subsection (a) and that such person is insolvent or beyond the jurisdiction of the United States or that seizure is otherwise essential to protect the revenue of the United States or to prevent the introduction of prohibited or restricted merchandise into the customs territory of the United States, then such merchandise may be seized and, upon assessment of a monetary penalty, forfeited unless the monetary penalty is paid within the time specified by law. Within a reasonable time after any such seizure is made, the Secretary shall issue to the person concerned a written statement containing the reasons for the seizure. After seizure of merchandise under this subsection, the Secretary may, in the case of restricted merchandise, and shall, in the case of any other merchandise (other than prohibited merchandise), return such merchandise upon the deposit of security not to exceed the maximum monetary penalty which may be assessed under subsection (c).

* * * * * * *

(j) FALSE CERTIFICATIONS OF ORIGIN UNDER THE UNITED STATES–KOREA FREE TRADE 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 KFTA 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 202 of the United States–Korea Free Trade 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 KFTA certification of origin has reason to believe that such certification contains or is based on incorrect information, the ex-

porter 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 KFTA 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.

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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–Korea Free Trade 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

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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) * * *

* * * * * * *

(vi) a party to the United States-Oman Free Trade Agreement, a product or service of that country or instrumentality which is covered under that Agreement for procurement by the United States; **[**or**]**

(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**[**.**]***; or*

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

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INTERNAL REVENUE CODE OF 1986

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Subtitle F—Procedure and Administration

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CHAPTER 61—INFORMATION AND RETURNS

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Subchapter B—Miscellaneous Provisions

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[Sec. 6116. Cross reference.]
Sec. 6116. Requirement for prisons located in United States to provide information for tax administration.
Sec. 6117. Cross reference.

* * * * * * *

SEC. 6116. REQUIREMENT FOR PRISONS LOCATED IN UNITED STATES TO PROVIDE INFORMATION FOR TAX ADMINISTRATION.

(a) IN GENERAL.—Not later than September 15, 2012, and annually thereafter, the head of the Federal Bureau of Prisons and the head of any State agency charged with the responsibility for administration of prisons shall provide to the Secretary in electronic format a list with the information described in subsection (b) of all the inmates incarcerated within the prison system for any part of the prior 2 calendar years or the current calendar year through August 31.

(b) INFORMATION.—The information with respect to each inmate is—

(1) first, middle, and last name,

(2) date of birth,

(3) institution of current incarceration or, for released inmates, most recent incarceration,

(4) prison assigned inmate number,

(5) the date of incarceration,

(6) the date of release or anticipated date of release,

(7) the date of work release,

(8) taxpayer identification number and whether the prison has verified such number,

(9) last known address, and

(10) any additional information as the Secretary may request.

(c) FORMAT.—The Secretary shall determine the electronic format of the information described in subsection (b).

SEC. [6116.] *6117.* CROSS REFERENCE.

For inspection of records, returns, etc., concerning gasoline or lubricating oils, see section 4102.

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CHAPTER 68—ADDITIONS TO THE TAX, ADDITIONAL AMOUNTS, AND ASSESSABLE PENALTIES

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Subchapter B—Assessable Penalties

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PART I—GENERAL PROVISIONS

* * * * * * *

SEC. 6695. OTHER ASSESSABLE PENALTIES WITH RESPECT TO THE PREPARATION OF TAX RETURNS FOR OTHER PERSONS.

(a) * * *

* * * * * * *

(g) FAILURE TO BE DILIGENT IN DETERMINING ELIGIBILITY FOR EARNED INCOME CREDIT.—Any person who is a tax return preparer with respect to any return or claim for refund who fails to comply with due diligence requirements imposed by the Secretary by regulations with respect to determining eligibility for, or the amount of, the credit allowable by section 32 shall pay a penalty of [$100] *$500* for each such failure.

* * * * * * *

ADDITIONAL VIEWS

We support the United States-Korea Free Trade Agreement (FTA). The Agreement is the product of our work over many years to better ensure that U.S. trade policy reflects American values and shapes globalization to spread its benefits more broadly. We write these additional views to describe how this Agreement achieves those objectives and to put this Agreement in its broader context.

THE U.S.-KOREA FREE TRADE AGREEMENT

On May 10, 2007, we won a major breakthrough to change U.S. trade policy. We insisted that this FTA, and others like it, be renegotiated to: (1) require Korea to comply with international labor standards, fully enforceable through the agreement's normal dispute settlement mechanism; (2) require Korea to comply with key, mutually accepted international environmental agreements, again fully enforceable through dispute settlement; (3) clarify that the chapter on intellectual property rights does not and should not prevent either country from taking steps to protect public health by promoting access to medicines for all;[1] (4) allow U.S. government agencies to base government procurement decisions on compliance with core labor standards; (5) make clear that nothing in the agreement should be interpreted to provide foreign investors greater rights than U.S. investors have under U.S. law; and (6) affirm that the United States has non-challengeable authority to prevent foreign companies from operating in U.S. ports, based on national security concerns.

At that time, we also made clear to the previous Administration that another major issue had to be addressed—ensuring that the FTA meaningfully opened Korea's historically closed auto market. For decades, Korea has employed a unique and ever changing regulatory regime to discriminate against auto imports, while the U.S. market has been open to their goods. As a result, U.S. automakers exported less than 14,000 cars to Korea in 2010. In contrast, Korean automakers have been able to use their historically closed market to finance an aggressive push into the U.S. market, through both exports (515,000 cars in 2010) and transplant production. In 2010, automotive trade accounted for more than 75 percent of the U.S. trade deficit with Korea.

Unfortunately, the Bush Administration ignored these concerns and negotiated an agreement which would have locked in one-way trade in autos in Korea's favor. As a result, the 2007 FTA failed to garner significant support in Congress.

[1] Pending FTAs with developing countries (*i.e.,* Peru, Panama and Colombia) were also modified to ensure that poor patients in those countries have access to affordable medicines. Those changes were not included in the Korea FTA, reflecting our views that more flexible patent rules (e.g., related to test data protection) appropriate for a developing country are not appropriate for a country at Korea's level of development.

On December 3, 2010, with the support of key Members, the Obama Administration negotiated an accompanying agreement to the FTA that will end one-way trade in autos and provide U.S. automakers with a real opportunity to compete and succeed in the Korean market. An exchange of letters between the United States and Korea on February 10, 2011 ("February 10, 2011 Exchange of Letters") reflects the agreement that was reached. With the changes achieved through the accompanying agreement, all of the U.S. auto industry (Ford, Chrysler, GM and the UAW) are supporting the U.S.-Korea FTA.

Key elements of the February 10, 2011 Exchange of Letters include:

• *Rescheduling of the Phase out of Car and Truck Tariffs.* Critical changes made to the car and truck tariff phase out schedule will give U.S. automakers the opportunity to reverse decades of Korean protectionism, important time to establish a brand and distribution presence and leverage to evaluate Korea's compliance with the FTA and the February 10, 2011 Exchange of Letters.

Car Tariffs: Under the FTA as negotiated by the Bush Administration ("the 2007 agreement"), U.S. tariffs on 90 percent of South Korean auto imports would have been eliminated immediately, with tariffs on the remaining 10 percent phased out by the third year of implementation. Under the February 10, 2011 Exchange of Letters, the 2.5 percent U.S. tariff will remain in place until the fifth year. At the same time, South Korea will immediately cut its tariff on U.S. auto imports in half (from 8 percent to 4 percent), and fully eliminate the Korean tariff in year five.

Truck Tariff Elimination: Under the 2007 agreement, phase out of the 25 percent U.S. tariff on South Korean trucks would have begun immediately, with the phase out completed in the agreement's tenth year. Under the February 10, 2011 Exchange of Letters, the United States will maintain its 25 percent truck tariff until the eighth year and then phase it out in the tenth year. However, South Korea must eliminate its 10 percent tariff on U.S. trucks immediately (its original commitment).

Tariffs on Electric Cars: Under the 2007 agreement, the United States and South Korea would have eliminated tariffs on electric car and plug-in hybrid imports in year 10. Under the February 10, 2011 Exchange of Letters, South Korea will immediately reduce these tariffs from 8 percent to 4 percent, and both countries will then phase out their tariffs in year five.

• *Creation of a Special Autos Safeguard.* The February 10, 2011 Exchange of Letters includes a first-ever auto-specific safeguard designed to protect against potential surges of Korean cars and trucks. This special safeguard contains several unique provisions not available under the FTA's general safeguard, such as being available for 10 years after the applicable U.S. tariff fully phases out, and it can be applied more than once.

• *Safety and Environmental Standards.* The February 10, 2011 Exchange of Letters levels the playing field and prevents Korea from relying on discriminatory, rotating safety and environmental regulations—as it has in the past—to shut out U.S. auto imports.

Automotive Safety Standards: The February 10, 2011 Exchange of Letters allows U.S. automakers to import up to 25,000 cars and trucks into South Korea that meet U.S. federal safety standards, as opposed to complying with unique Korean standards.

Automotive Environmental Standards: Korea's trade policies have precluded U.S. automakers (and other foreign manufacturers) from selling a mixed fleet into that market, thereby making it impossible for U.S. producers to meet Korea's proposed fuel economy and greenhouse gas emissions regulations. To address the "overhang" effect of past discriminatory trade policies, under the February 10, 2011 Exchange of Letters, U.S. autos will be considered compliant with the new South Korean environmental emissions rules if they achieve targets within 19 percent of those in the new regulations.

- *Taxes:* Historically, Korea's tax system has imposed higher fees on larger vehicles with larger engines (the tax structure does not have an environmental justification). As a result, U.S. producers, who primarily export larger cars with larger engines (because Korean non-tariff barriers make it uneconomical to import smaller cars), have borne the brunt of these taxes. In the 2007 agreement, South Korea committed to make changes to its engine size-based tax regime to limit its discriminatory nature. Under the February 10, 2011 Exchange of Letters, South Korea has additionally committed that, in the event it proposes taxes based on fuel economy or greenhouse gas emissions, the taxes will be governed by the FTA's transparency provisions, helping to ensure that they are not implemented in a way that discriminates against U.S. automakers.
- *Transparency:* The February 10, 2011 Exchange of Letters builds on the provisions designed to promote regulatory transparency and the avoidance of non-tariff barriers included in the 2007 FTA, e.g., the Automotive Working Group. First, under the February 10, 2011 Exchange of Letters, Korea must provide a twelve month period between the time a final regulation is issued concerning significant regulations (e.g., regulations requiring a substantial change in motor vehicle design or technology) and the time that automakers must comply with it. Second, within 24 months of entry into force, Korea must develop a new review system to evaluate whether its auto regulations achieve their aim in the least burdensome manner possible.

We in the U.S. House have been working to change U.S. trade policy for over a decade. In the era of increasing globalization, trade policy must be a tool to shape the rules of competition and spread the benefits of globalization. The question raised by the U.S.—Korea FTA was: Would we stand up for U.S. businesses and workers and insist on two-way trade? With the changes achieved last fall eliminating non-tariff barriers and adjusting the tariff provisions, the answer is "yes" and thus, this is an FTA worth supporting.

This process has taken too long. The Bush administration should not have ignored Congressional and stakeholder demands concerning the auto market access issue and taken action to address them. And this FTA should have been submitted for consideration as soon as the February 10, 2011 Exchange of Letters occurred,

along with the reauthorization of the historically bipartisan Trade Adjustment Assistance (TAA) program, which the Majority allowed to lapse.

THE AGREEMENT IN ITS BROADER CONTEXT

The May 10 components that are included in the Korea FTA are, without question, some of the most forward-looking provisions in U.S. trade agreements. While more work can be done to ensure that our trade agreements reflect our values and interests, those components are a critical basis to the successful conclusion of any future bilateral or regional trade agreement. New agreements also should address new challenges, such as unfair competition from, and distortions caused by, state-owned and state-supported enterprises.

Moreover, it is important to recognize that the May 10 Changes were just one part of our vision for a "new trade policy for America." In March 2007, House Democrats coalesced around a number of initiatives to improve U.S. trade policy, including in areas that eventually were reflected in the May 10 Changes. Beyond those changes, initiatives included the need to: (1) strengthen the enforcement of trade agreements and U.S. trade laws (in particular, by addressing massive Chinese subsidies and violations of intellectual property rights; eliminating currency manipulation; and by addressing non-tariff barriers that limit U.S. exports); (2) strengthen American competitiveness, including through worker retraining, education and health care improvements, and community revitalization programs; and (3) foster development in the poorest countries of the world.

Some progress has been made on these initiatives. For example, the 2009 reforms to Trade Adjustment Assistance (TAA) dramatically improved the program, including by covering service workers and many more manufacturing workers, increasing training funding and mandating counseling to ensure appropriate training, promoting on-the-job, part-time and longer-term training, and by increasing the TAA health coverage tax credit. We now have agreement to extend the program, which the Majority allowed to expire in February. And while modifications have been made, both the integrity of the program and the major 2009 improvements are preserved. And the Affordable Care Act of 2010 will make the United States more competitive by reining in health care costs.

But much more needs to be done, particularly with respect to enforcement and global trade imbalances. For example, Fred Bergsten, the Director of the Peterson Institute for International Economics recently described China's currency manipulation as "by far the largest protectionist measure adopted by any country since the Second World War—and probably in all of history." Eliminating currency misalignments (caused in large part by China's currency manipulation) is expected to improve the U.S. current account position by $200 billion to $250 billion annually and produce at least a million good jobs, mainly in manufacturing. Years of "quiet diplomacy" to address this issue have produced only meager results. And more tools and resources are needed to address the many trade-distorting policies of our trading partners, including China's massive subsidies and other industrial policies in key sectors such

as clean energy. Those policies have been allowed to persist even as important incentives for our companies like the Section 48C Advanced Manufacturing Credit have lapsed due to Republican opposition.

In addition to leveling the playing field, more must be done to invest in American competitiveness and to create American jobs. For example, last month, the President submitted the American Jobs Act to Congress. Among other things, the bill would help to rebuild and modernize American schools and put teachers laid off by State budget cuts back to work. It would make needed investments in our nation's infrastructure to create jobs today and lay the foundation for future growth. Enactment of the President's American Jobs Act will help to promote American competitiveness in the global economy.

SANDER M. LEVIN.
JIM MCDERMOTT.
XAVIER BECERRA.
JOHN B. LARSON.
RICHARD E. NEAL.
MIKE THOMPSON.
EARL BLUMENAUER.
CHARLES B. RANGEL.