

Calendar No. 190

112TH CONGRESS
1ST SESSION**S. 1642**

To implement the United States–Korea Free Trade Agreement.

IN THE SENATE OF THE UNITED STATES

OCTOBER 3, 2011

Mr. BAUCUS (for himself, Mr. HATCH, and Mr. MCCONNELL) (by request) introduced the following bill; which was read twice and referred to the Committee on Finance

OCTOBER 11, 2011

Reported by Mr. BAUCUS, without amendment

A BILL

To implement the United States–Korea Free Trade Agreement.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “United States–Korea Free Trade Agreement Implemen-
6 tation Act”.

1 (b) TABLE OF CONTENTS.—The table of contents for
 2 this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Purposes.
- Sec. 3. Definitions.

TITLE I—APPROVAL OF, AND GENERAL PROVISIONS RELATING
 TO, THE AGREEMENT

- Sec. 101. Approval and entry into force of the Agreement.
- Sec. 102. Relationship of the Agreement to United States and State law.
- Sec. 103. Implementing actions in anticipation of entry into force and initial regulations.
- Sec. 104. Consultation and layover provisions for, and effective date of, proclaimed actions.
- Sec. 105. Administration of dispute settlement proceedings.
- Sec. 106. Arbitration of claims.
- Sec. 107. Effective dates; effect of termination.

TITLE II—CUSTOMS PROVISIONS

- Sec. 201. Tariff modifications.
- Sec. 202. Rules of origin.
- Sec. 203. Customs user fees.
- Sec. 204. Disclosure of incorrect information; false certifications of origin; denial of preferential tariff treatment.
- Sec. 205. Reliquidation of entries.
- Sec. 206. Recordkeeping requirements.
- Sec. 207. Enforcement relating to trade in textile or apparel goods.
- Sec. 208. Regulations.

TITLE III—RELIEF FROM IMPORTS

- Sec. 301. Definitions.

Subtitle A—Relief From Imports Benefitting From the Agreement

- Sec. 311. Commencing of action for relief.
- Sec. 312. Commission action on petition.
- Sec. 313. Provision of relief.
- Sec. 314. Termination of relief authority.
- Sec. 315. Compensation authority.
- Sec. 316. Confidential business information.

Subtitle B—Motor Vehicle Safeguard Measures

- Sec. 321. Motor vehicle safeguard measures.

Subtitle C—Textile and Apparel Safeguard Measures

- Sec. 331. Commencement of action for relief.
- Sec. 332. Determination and provision of relief.
- Sec. 333. Period of relief.
- Sec. 334. Articles exempt from relief.
- Sec. 335. Rate after termination of import relief.
- Sec. 336. Termination of relief authority.

Sec. 337. Compensation authority.
 Sec. 338. Confidential business information.

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

Sec. 341. Findings and action on Korean articles.

TITLE IV—PROCUREMENT

Sec. 401. Eligible products.

TITLE V—OFFSETS

Sec. 501. Increase in penalty on paid preparers who fail to comply with earned income tax credit due diligence requirements.

Sec. 502. Requirement for prisons located in the United States to provide information for tax administration.

Sec. 503. Rate for merchandise processing fees.

Sec. 504. Extension of customs user fees.

Sec. 505. Time for payment of corporate estimated taxes.

1 **SEC. 2. PURPOSES.**

2 The purposes of this Act are—

3 (1) to approve and implement the free trade
 4 agreement between the United States and Korea en-
 5 tered into under the authority of section 2103(b) of
 6 the Bipartisan Trade Promotion Authority Act of
 7 2002 (19 U.S.C. 3803(b));

8 (2) to secure the benefits of the agreement en-
 9 tered into pursuant to an exchange of letters be-
 10 tween the United States and the Government of
 11 Korea on February 10, 2011;

12 (3) to strengthen and develop economic rela-
 13 tions between the United States and Korea for their
 14 mutual benefit;

15 (4) to establish free trade between the United
 16 States and Korea through the reduction and elimi-

1 nation of barriers to trade in goods and services and
2 to investment; and

3 (5) to lay the foundation for further coopera-
4 tion to expand and enhance the benefits of the
5 Agreement.

6 **SEC. 3. DEFINITIONS.**

7 In this Act:

8 (1) AGREEMENT.—The term “Agreement”
9 means the United States–Korea Free Trade Agree-
10 ment approved by Congress under section 101(a)(1).

11 (2) COMMISSION.—The term “Commission”
12 means the United States International Trade Com-
13 mission.

14 (3) HTS.—The term “HTS” means the Har-
15 monized Tariff Schedule of the United States.

16 (4) KOREA.—The term “Korea” means the Re-
17 public of Korea.

18 (5) TEXTILE OR APPAREL GOOD.—The term
19 “textile or apparel good” means a good listed in the
20 Annex to the Agreement on Textiles and Clothing
21 referred to in section 101(d)(4) of the Uruguay
22 Round Agreements Act (19 U.S.C. 3511(d)(4)).

1 **TITLE I—APPROVAL OF, AND**
2 **GENERAL PROVISIONS RE-**
3 **LATING TO, THE AGREEMENT**

4 **SEC. 101. APPROVAL AND ENTRY INTO FORCE OF THE**
5 **AGREEMENT.**

6 (a) APPROVAL OF AGREEMENT AND STATEMENT OF
7 ADMINISTRATIVE ACTION.—Pursuant to section 2105 of
8 the Bipartisan Trade Promotion Authority Act of 2002
9 (19 U.S.C. 3805) and section 151 of the Trade Act of
10 1974 (19 U.S.C. 2191), Congress approves—

11 (1) the United States–Korea Free Trade Agree-
12 ment entered into on June 30, 2007, with the Gov-
13 ernment of Korea, and submitted to Congress on
14 October 3, 2011; and

15 (2) the statement of administrative action pro-
16 posed to implement the Agreement that was sub-
17 mitted to Congress on October 3, 2011.

18 (b) CONDITIONS FOR ENTRY INTO FORCE OF THE
19 AGREEMENT.—At such time as the President determines
20 that Korea has taken measures necessary to comply with
21 those provisions of the Agreement that are to take effect
22 on the date on which the Agreement enters into force, the
23 President is authorized to exchange notes with the Gov-
24 ernment of Korea providing for the entry into force, on

1 or after January 1, 2012, of the Agreement with respect
2 to the United States.

3 **SEC. 102. RELATIONSHIP OF THE AGREEMENT TO UNITED**
4 **STATES AND STATE LAW.**

5 (a) RELATIONSHIP OF AGREEMENT TO UNITED
6 STATES LAW.—

7 (1) UNITED STATES LAW TO PREVAIL IN CON-
8 FFLICT.—No provision of the Agreement, nor the ap-
9 plication of any such provision to any person or cir-
10 cumstance, which is inconsistent with any law of the
11 United States shall have effect.

12 (2) CONSTRUCTION.—Nothing in this Act shall
13 be construed—

14 (A) to amend or modify any law of the
15 United States, or

16 (B) to limit any authority conferred under
17 any law of the United States,
18 unless specifically provided for in this Act.

19 (b) RELATIONSHIP OF AGREEMENT TO STATE
20 LAW.—

21 (1) LEGAL CHALLENGE.—No State law, or the
22 application thereof, may be declared invalid as to
23 any person or circumstance on the ground that the
24 provision or application is inconsistent with the
25 Agreement, except in an action brought by the

1 United States for the purpose of declaring such law
2 or application invalid.

3 (2) DEFINITION OF STATE LAW.—For purposes
4 of this subsection, the term “State law” includes—

5 (A) any law of a political subdivision of a
6 State; and

7 (B) any State law regulating or taxing the
8 business of insurance.

9 (c) EFFECT OF AGREEMENT WITH RESPECT TO PRI-
10 VATE REMEDIES.—No person other than the United
11 States—

12 (1) shall have any cause of action or defense
13 under the Agreement or by virtue of congressional
14 approval thereof; or

15 (2) may challenge, in any action brought under
16 any provision of law, any action or inaction by any
17 department, agency, or other instrumentality of the
18 United States, any State, or any political subdivision
19 of a State, on the ground that such action or inac-
20 tion is inconsistent with the Agreement.

21 **SEC. 103. IMPLEMENTING ACTIONS IN ANTICIPATION OF**
22 **ENTRY INTO FORCE AND INITIAL REGULA-**
23 **TIONS.**

24 (a) IMPLEMENTING ACTIONS.—

1 (1) PROCLAMATION AUTHORITY.—After the
2 date of the enactment of this Act—

3 (A) the President may proclaim such ac-
4 tions, and

5 (B) other appropriate officers of the
6 United States Government may issue such reg-
7 ulations,

8 as may be necessary to ensure that any provision of
9 this Act, or amendment made by this Act, that takes
10 effect on the date on which the Agreement enters
11 into force is appropriately implemented on such
12 date, but no such proclamation or regulation may
13 have an effective date earlier than the date on which
14 the Agreement enters into force.

15 (2) EFFECTIVE DATE OF CERTAIN PROCLAIMED
16 ACTIONS.—Any action proclaimed by the President
17 under the authority of this Act that is not subject
18 to the consultation and layover provisions under sec-
19 tion 104 may not take effect before the 15th day
20 after the date on which the text of the proclamation
21 is published in the Federal Register.

22 (3) WAIVER OF 15-DAY RESTRICTION.—The 15-
23 day restriction contained in paragraph (2) on the
24 taking effect of proclaimed actions is waived to the
25 extent that the application of such restriction would

1 prevent the taking effect on the date on which the
2 Agreement enters into force of any action pro-
3 claimed under this section.

4 (b) INITIAL REGULATIONS.—Initial regulations nec-
5 essary or appropriate to carry out the actions required by
6 or authorized under this Act or proposed in the statement
7 of administrative action submitted under section
8 101(a)(2) to implement the Agreement shall, to the max-
9 imum extent feasible, be issued within 1 year after the
10 date on which the Agreement enters into force. In the case
11 of any implementing action that takes effect on a date
12 after the date on which the Agreement enters into force,
13 initial regulations to carry out that action shall, to the
14 maximum extent feasible, be issued within 1 year after
15 such effective date.

16 **SEC. 104. CONSULTATION AND LAYOVER PROVISIONS FOR,**
17 **AND EFFECTIVE DATE OF, PROCLAIMED AC-**
18 **TIONS.**

19 If a provision of this Act provides that the implemen-
20 tation of an action by the President by proclamation is
21 subject to the consultation and layover requirements of
22 this section, such action may be proclaimed only if—

23 (1) the President has obtained advice regarding
24 the proposed action from—

1 (A) the appropriate advisory committees
2 established under section 135 of the Trade Act
3 of 1974 (19 U.S.C. 2155); and

4 (B) the Commission;

5 (2) the President has submitted to the Com-
6 mittee on Finance of the Senate and the Committee
7 on Ways and Means of the House of Representatives
8 a report that sets forth—

9 (A) the action proposed to be proclaimed
10 and the reasons therefor; and

11 (B) the advice obtained under paragraph
12 (1);

13 (3) a period of 60 calendar days, beginning on
14 the first day on which the requirements set forth in
15 paragraphs (1) and (2) have been met, has expired;
16 and

17 (4) the President has consulted with the com-
18 mittees referred to in paragraph (2) regarding the
19 proposed action during the period referred to in
20 paragraph (3).

21 **SEC. 105. ADMINISTRATION OF DISPUTE SETTLEMENT PRO-**
22 **CEEDINGS.**

23 (a) ESTABLISHMENT OR DESIGNATION OF OFFICE.—
24 The President is authorized to establish or designate with-
25 in the Department of Commerce an office that shall be

1 responsible for providing administrative assistance to pan-
2 els established under chapter 22 of the Agreement. The
3 office shall not be considered to be an agency for purposes
4 of section 552 of title 5, United States Code.

5 (b) AUTHORIZATION OF APPROPRIATIONS.—There
6 are authorized to be appropriated for each fiscal year after
7 fiscal year 2011 to the Department of Commerce up to
8 \$750,000 for the establishment and operations of the of-
9 fice established or designated under subsection (a) and for
10 the payment of the United States share of the expenses
11 of panels established under chapter 22 of the Agreement.

12 **SEC. 106. ARBITRATION OF CLAIMS.**

13 The United States is authorized to resolve any claim
14 against the United States covered by article
15 11.16.1(a)(i)(C) or article 11.16.1(b)(i)(C) of the Agree-
16 ment, pursuant to the Investor-State Dispute Settlement
17 procedures set forth in section B of chapter 11 of the
18 Agreement.

19 **SEC. 107. EFFECTIVE DATES; EFFECT OF TERMINATION.**

20 (a) EFFECTIVE DATES.—Except as provided in sub-
21 section (b), this Act and the amendments made by this
22 Act take effect on the date on which the Agreement enters
23 into force.

24 (b) EXCEPTIONS.—

1 (1) IN GENERAL.—Sections 1 through 3, sec-
 2 tion 207(g), this title, and title V take effect on the
 3 date of the enactment of this Act.

4 (2) CERTAIN AMENDATORY PROVISIONS.—The
 5 amendments made by sections 203, 204, 206, and
 6 401 of this Act take effect on the date of the enact-
 7 ment of this Act and apply with respect to Korea on
 8 the date on which the Agreement enters into force.

9 (c) TERMINATION OF THE AGREEMENT.—On the
 10 date on which the Agreement terminates, this Act (other
 11 than this subsection and title V) and the amendments
 12 made by this Act (other than the amendments made by
 13 title V) shall cease to have effect.

14 **TITLE II—CUSTOMS PROVISIONS**

15 **SEC. 201. TARIFF MODIFICATIONS.**

16 (a) TARIFF MODIFICATIONS PROVIDED FOR IN THE
 17 AGREEMENT.—The President may proclaim—

18 (1) such modifications or continuation of any
 19 duty,

20 (2) such continuation of duty-free or excise
 21 treatment, or

22 (3) such additional duties,

23 as the President determines to be necessary or appropriate
 24 to carry out or apply articles 2.3, 2.5, and 2.6, and Annex
 25 2-B, Annex 4-B, and Annex 22-A, of the Agreement.

1 (b) OTHER TARIFF MODIFICATIONS.—Subject to the
2 consultation and layover provisions of section 104, the
3 President may proclaim—

4 (1) such modifications or continuation of any
5 duty,

6 (2) such modifications as the United States
7 may agree to with Korea regarding the staging of
8 any duty treatment set forth in Annex 2-B of the
9 Agreement,

10 (3) such continuation of duty-free or excise
11 treatment, or

12 (4) such additional duties,

13 as the President determines to be necessary or appropriate
14 to maintain the general level of reciprocal and mutually
15 advantageous concessions with respect to Korea provided
16 for by the Agreement.

17 (c) CONVERSION TO AD VALOREM RATES.—For pur-
18 poses of subsections (a) and (b), with respect to any good
19 for which the base rate in the Schedule of the United
20 States to Annex 2-B of the Agreement is a specific or com-
21 pound rate of duty, the President may substitute for the
22 base rate an ad valorem rate that the President deter-
23 mines to be equivalent to the base rate.

1 (d) TARIFF TREATMENT OF MOTOR VEHICLES.—
2 The President may proclaim the following tariff treatment
3 with respect to the following motor vehicles of Korea:

4 (1) CERTAIN PASSENGER CARS.—In the case of
5 originating goods of Korea classifiable under sub-
6 heading 8703.10.10, 8703.10.50, 8703.21.00,
7 8703.22.00, 8703.23.00, 8703.24.00, 8703.31.00,
8 8703.32.00, or 8703.33.00 of the HTS that are en-
9 tered, or withdrawn from warehouse for consump-
10 tion—

11 (A) the rate of duty for such goods shall
12 be 2.5 percent for year 1 of the Agreement
13 through year 4 of the Agreement; and

14 (B) such goods shall be free of duty for
15 each year thereafter.

16 (2) ELECTRIC MOTOR VEHICLES.—In the case
17 of originating goods of Korea classifiable under sub-
18 heading 8703.90.00 of the HTS that are entered, or
19 withdrawn from warehouse for consumption—

20 (A) the rate of duty for such goods shall
21 be—

22 (i) 2.0 percent for year 1 of the
23 Agreement;

24 (ii) 1.5 percent for year 2 of the
25 Agreement;

1 (iii) 1.0 percent for year 3 of the
2 Agreement; and

3 (iv) 0.5 percent for year 4 of the
4 Agreement; and

5 (B) such goods shall be free of duty for
6 each year thereafter.

7 (3) CERTAIN TRUCKS.—In the case of origi-
8 nating goods of Korea classifiable under subheading
9 8704.21.00, 8704.22.50, 8704.23.00, 8704.31.00,
10 8704.32.00, or 8704.90.00 of the HTS that are en-
11 tered, or withdrawn from warehouse for consump-
12 tion—

13 (A) the rate of duty for such goods shall
14 be—

15 (i) 25 percent for year 1 of the Agree-
16 ment through year 7 of the Agreement;

17 (ii) 16.6 percent for year 8 of the
18 Agreement; and

19 (iii) 8.3 percent for year 9 of the
20 Agreement; and

21 (B) such goods shall be free of duty for
22 each year thereafter.

23 (4) DEFINITIONS.—In this subsection—

24 (A) the term “year 1 of the Agreement”
25 means the period beginning on the date, in a

1 calendar year, on which the Agreement enters
2 into force and ending on December 31 of that
3 calendar year; and

4 (B) the terms “year 2 of the Agreement”,
5 “year 3 of the Agreement”, “year 4 of the
6 Agreement”, “year 5 of the Agreement”, “year
7 6 of the Agreement”, “year 7 of the Agree-
8 ment”, “year 8 of the Agreement”, and “year
9 9 of the Agreement” mean the second, third,
10 fourth, fifth, sixth, seventh, eighth, and ninth
11 calendar years, respectively, in which the Agree-
12 ment is in force.

13 **SEC. 202. RULES OF ORIGIN.**

14 (a) APPLICATION AND INTERPRETATION.—In this
15 section:

16 (1) TARIFF CLASSIFICATION.—The basis for
17 any tariff classification is the HTS.

18 (2) REFERENCE TO HTS.—Whenever in this
19 section there is a reference to a chapter, heading, or
20 subheading, such reference shall be a reference to a
21 chapter, heading, or subheading of the HTS.

22 (3) COST OR VALUE.—Any cost or value re-
23 ferred to in this section shall be recorded and main-
24 tained in accordance with the generally accepted ac-
25 counting principles applicable in the territory of the

1 country in which the good is produced (whether
2 Korea or the United States).

3 (b) ORIGINATING GOODS.—For purposes of this Act
4 and for purposes of implementing the preferential tariff
5 treatment provided for under the Agreement, except as
6 otherwise provided in this section, a good is an originating
7 good if—

8 (1) the good is a good wholly obtained or pro-
9 duced entirely in the territory of Korea, the United
10 States, or both;

11 (2) the good—

12 (A) is produced entirely in the territory of
13 Korea, the United States, or both, and—

14 (i) each of the nonoriginating mate-
15 rials used in the production of the good
16 undergoes an applicable change in tariff
17 classification specified in Annex 4-A or
18 Annex 6-A of the Agreement; or

19 (ii) the good otherwise satisfies any
20 applicable regional value-content or other
21 requirements specified in Annex 4-A or
22 Annex 6-A of the Agreement; and

23 (B) satisfies all other applicable require-
24 ments of this section; or

1 (3) the good is produced entirely in the terri-
 2 tory of Korea, the United States, or both, exclusively
 3 from materials described in paragraph (1) or (2).

4 (c) REGIONAL VALUE-CONTENT.—

5 (1) IN GENERAL.—For purposes of subsection
 6 (b)(2), the regional value-content of a good referred
 7 to in Annex 6-A of the Agreement, except for goods
 8 to which paragraph (4) applies, shall be calculated
 9 by the importer, exporter, or producer of the good,
 10 on the basis of the build-down method described in
 11 paragraph (2) or the build-up method described in
 12 paragraph (3).

13 (2) BUILD-DOWN METHOD.—

14 (A) IN GENERAL.—The regional value-con-
 15 tent of a good may be calculated on the basis
 16 of the following build-down method:

$$\text{RVC} = \frac{\text{AV} - \text{VNM}}{\text{AV}} \times 100.$$

17 (B) DEFINITIONS.—In subparagraph (A):

18 (i) RVC.—The term “RVC” means
 19 the regional value-content of the good, ex-
 20 pressed as a percentage.

21 (ii) AV.—The term “AV” means the
 22 adjusted value of the good.

23 (iii) VNM.—The term “VNM” means
 24 the value of nonoriginating materials, other

1 than indirect materials, that are acquired
 2 and used by the producer in the production
 3 of the good, but does not include the value
 4 of a material that is self-produced.

5 (3) BUILD-UP METHOD.—

6 (A) IN GENERAL.—The regional value-con-
 7 tent of a good may be calculated on the basis
 8 of the following build-up method:

$$\text{RVC} = \frac{\text{VOM}}{\text{AV}} \times 100.$$

9 (B) DEFINITIONS.—In subparagraph (A):

10 (i) RVC.—The term “RVC” means
 11 the regional value-content of the good, ex-
 12 pressed as a percentage.

13 (ii) AV.—The term “AV” means the
 14 adjusted value of the good.

15 (iii) VOM.—The term “VOM” means
 16 the value of originating materials, other
 17 than indirect materials, that are acquired
 18 or self-produced, and used by the producer
 19 in the production of the good.

20 (4) SPECIAL RULE FOR CERTAIN AUTOMOTIVE
 21 GOODS.—

22 (A) IN GENERAL.—For purposes of sub-
 23 section (b)(2), the regional value-content of an
 24 automotive good referred to in Annex 6-A of

1 the Agreement may be calculated by the im-
2 porter, exporter, or producer of the good on the
3 basis of the build-down method described in
4 paragraph (2), the build-up method described in
5 paragraph (3), or the following net cost method:

$$\text{RVC} = \frac{\text{NC} - \text{VNM}}{\text{NC}} \times 100.$$

6 (B) DEFINITIONS.—In subparagraph (A):

7 (i) AUTOMOTIVE GOOD.—The term
8 “automotive good” means a good provided
9 for in any of subheadings 8407.31 through
10 8407.34, subheading 8408.20, heading
11 8409, or any of headings 8701 through
12 8708.

13 (ii) RVC.—The term “RVC” means
14 the regional value-content of the auto-
15 motive good, expressed as a percentage.

16 (iii) NC.—The term “NC” means the
17 net cost of the automotive good.

18 (iv) VNM.—The term “VNM” means
19 the value of nonoriginating materials, other
20 than indirect materials, that are acquired
21 and used by the producer in the production
22 of the automotive good, but does not in-
23 clude the value of a material that is self-
24 produced.

1 (C) MOTOR VEHICLES.—

2 (i) BASIS OF CALCULATION.—For
3 purposes of determining the regional value-
4 content under subparagraph (A) for an
5 automotive good that is a motor vehicle
6 provided for in any of headings 8701
7 through 8705, an importer, exporter, or
8 producer may average the amounts cal-
9 culated under the net cost formula con-
10 tained in subparagraph (A), over the pro-
11 ducer's fiscal year—

12 (I) with respect to all motor vehi-
13 cles in any one of the categories de-
14 scribed in clause (ii); or

15 (II) with respect to all motor ve-
16 hicles in any such category that are
17 exported to the territory of Korea or
18 the United States.

19 (ii) CATEGORIES.—A category is de-
20 scribed in this clause if it—

21 (I) is the same model line of
22 motor vehicles, is in the same class of
23 motor vehicles, and is produced in the
24 same plant in the territory of Korea
25 or the United States, as the good de-

1 scribed in clause (i) for which regional
2 value-content is being calculated;

3 (II) is the same class of motor
4 vehicles, and is produced in the same
5 plant in the territory of Korea or the
6 United States, as the good described
7 in clause (i) for which regional value-
8 content is being calculated; or

9 (III) is the same model line of
10 motor vehicles produced in the terri-
11 tory of Korea or the United States as
12 the good described in clause (i) for
13 which regional value-content is being
14 calculated.

15 (D) OTHER AUTOMOTIVE GOODS.—For
16 purposes of determining the regional value-con-
17 tent under subparagraph (A) for automotive
18 materials provided for in any of subheadings
19 8407.31 through 8407.34, in subheading
20 8408.20, or in heading 8409, 8706, 8707, or
21 8708, that are produced in the same plant, an
22 importer, exporter, or producer may—

23 (i) average the amounts calculated
24 under the net cost formula contained in
25 subparagraph (A) over—

1 (I) the fiscal year of the motor
2 vehicle producer to whom the auto-
3 motive goods are sold,

4 (II) any quarter or month, or

5 (III) the fiscal year of the pro-
6 ducer of such goods,

7 if the goods were produced during the fis-
8 cal year, quarter, or month that is the
9 basis for the calculation;

10 (ii) determine the average referred to
11 in clause (i) separately for such goods sold
12 to 1 or more motor vehicle producers; or

13 (iii) make a separate determination
14 under clause (i) or (ii) for such goods that
15 are exported to the territory of Korea or
16 the United States.

17 (E) CALCULATING NET COST.—The im-
18 porter, exporter, or producer of an automotive
19 good shall, consistent with the provisions re-
20 garding allocation of costs provided for in gen-
21 erally accepted accounting principles, determine
22 the net cost of the automotive good under sub-
23 paragraph (B) by—

24 (i) calculating the total cost incurred
25 with respect to all goods produced by the

1 producer of the automotive good, sub-
2 tracting any sales promotion, marketing,
3 and after-sales service costs, royalties,
4 shipping and packing costs, and nonallow-
5 able interest costs that are included in the
6 total cost of all such goods, and then rea-
7 sonably allocating the resulting net cost of
8 those goods to the automotive good;

9 (ii) calculating the total cost incurred
10 with respect to all goods produced by that
11 producer, reasonably allocating the total
12 cost to the automotive good, and then sub-
13 tracting any sales promotion, marketing,
14 and after-sales service costs, royalties,
15 shipping and packing costs, and nonallow-
16 able interest costs that are included in the
17 portion of the total cost allocated to the
18 automotive good; or

19 (iii) reasonably allocating each cost
20 that forms part of the total cost incurred
21 with respect to the automotive good so that
22 the aggregate of these costs does not in-
23 clude any sales promotion, marketing, and
24 after-sales service costs, royalties, shipping

1 and packing costs, or nonallowable interest
2 costs.

3 (d) VALUE OF MATERIALS.—

4 (1) IN GENERAL.—For the purpose of calcu-
5 lating the regional value-content of a good under
6 subsection (c), and for purposes of applying the de
7 minimis rules under subsection (f), the value of a
8 material is—

9 (A) in the case of a material that is im-
10 ported by the producer of the good, the ad-
11 justed value of the material;

12 (B) in the case of a material acquired in
13 the territory in which the good is produced, the
14 value, determined in accordance with Articles 1
15 through 8, Article 15, and the corresponding in-
16 terpretive notes, of the Agreement on Imple-
17 mentation of Article VII of the General Agree-
18 ment on Tariffs and Trade 1994 referred to in
19 section 101(d)(8) of the Uruguay Round Agree-
20 ments Act (19 U.S.C. 3511(d)(8)), as set forth
21 in regulations promulgated by the Secretary of
22 the Treasury providing for the application of
23 such Articles in the absence of an importation
24 by the producer; or

1 (C) in the case of a material that is self-
2 produced, the sum of—

3 (i) all expenses incurred in the pro-
4 duction of the material, including general
5 expenses; and

6 (ii) an amount for profit equivalent to
7 the profit added in the normal course of
8 trade.

9 (2) FURTHER ADJUSTMENTS TO THE VALUE OF
10 MATERIALS.—

11 (A) ORIGINATING MATERIAL.—The fol-
12 lowing expenses, if not included in the value of
13 an originating material calculated under para-
14 graph (1), may be added to the value of the
15 originating material:

16 (i) The costs of freight, insurance,
17 packing, and all other costs incurred in
18 transporting the material within or be-
19 tween the territory of Korea, the United
20 States, or both, to the location of the pro-
21 ducer.

22 (ii) Duties, taxes, and customs broker-
23 age fees on the material paid in the terri-
24 tory of Korea, the United States, or both,
25 other than duties or taxes that are waived,

1 refunded, refundable, or otherwise recover-
2 able, including credit against duty or tax
3 paid or payable.

4 (iii) The cost of waste and spoilage re-
5 sulting from the use of the material in the
6 production of the good, less the value of
7 renewable scrap or byproducts.

8 (B) NONORIGINATING MATERIAL.—The
9 following expenses, if included in the value of a
10 nonoriginating material calculated under para-
11 graph (1), may be deducted from the value of
12 the nonoriginating material:

13 (i) The costs of freight, insurance,
14 packing, and all other costs incurred in
15 transporting the material within or be-
16 tween the territory of Korea, the United
17 States, or both, to the location of the pro-
18 ducer.

19 (ii) Duties, taxes, and customs broker-
20 age fees on the material paid in the terri-
21 tory of Korea, the United States, or both,
22 other than duties or taxes that are waived,
23 refunded, refundable, or otherwise recover-
24 able, including credit against duty or tax
25 paid or payable.

1 (iii) The cost of waste and spoilage re-
2 sulting from the use of the material in the
3 production of the good, less the value of
4 renewable scrap or byproducts.

5 (iv) The cost of originating materials
6 used in the production of the nonorigi-
7 nating material in the territory of Korea,
8 the United States, or both.

9 (e) ACCUMULATION.—

10 (1) ORIGINATING MATERIALS USED IN PRODUC-
11 TION OF GOODS OF THE OTHER COUNTRY.—Orig-
12 inating materials from the territory of Korea or the
13 United States that are used in the production of a
14 good in the territory of the other country shall be
15 considered to originate in the territory of such other
16 country.

17 (2) MULTIPLE PRODUCERS.—A good that is
18 produced in the territory of Korea, the United
19 States, or both, by 1 or more producers, is an origi-
20 nating good if the good satisfies the requirements of
21 subsection (b) and all other applicable requirements
22 of this section.

23 (f) DE MINIMIS AMOUNTS OF NONORIGINATING MA-
24 TERIALS.—

1 (1) IN GENERAL.—Except as provided in para-
2 graphs (2) and (3), a good that does not undergo a
3 change in tariff classification pursuant to Annex 6-
4 A of the Agreement is an originating good if—

5 (A) the value of all nonoriginating mate-
6 rials used in the production of the good that do
7 not undergo the applicable change in tariff clas-
8 sification (set forth in Annex 6-A of the Agree-
9 ment) does not exceed 10 percent of the ad-
10 justed value of the good;

11 (B) the good meets all other applicable re-
12 quirements of this section; and

13 (C) the value of such nonoriginating mate-
14 rials is included in the value of nonoriginating
15 materials for any applicable regional value-con-
16 tent requirement for the good.

17 (2) EXCEPTIONS.—Paragraph (1) does not
18 apply to the following:

19 (A) A nonoriginating material provided for
20 in chapter 3 that is used in the production of
21 a good provided for in chapter 3.

22 (B) A nonoriginating material provided for
23 in chapter 4, or a nonoriginating dairy prepara-
24 tion containing over 10 percent by weight of
25 milk solids provided for in subheading 1901.90

1 or 2106.90, that is used in the production of a
2 good provided for in chapter 4.

3 (C) A nonoriginating material provided for
4 in chapter 4, or a nonoriginating dairy prepara-
5 tion containing over 10 percent by weight of
6 milk solids provided for in subheading 1901.90,
7 that is used in the production of any of the fol-
8 lowing goods:

9 (i) Infant preparations containing
10 over 10 percent by weight of milk solids
11 provided for in subheading 1901.10.

12 (ii) Mixes and doughs, containing over
13 25 percent by weight of butterfat, not put
14 up for retail sale, provided for in sub-
15 heading 1901.20.

16 (iii) Dairy preparations containing
17 over 10 percent by weight of milk solids
18 provided for in subheading 1901.90 or
19 2106.90.

20 (iv) Goods provided for in heading
21 2105.

22 (v) Beverages containing milk pro-
23 vided for in subheading 2202.90.

1 (vi) Animal feeds containing over 10
2 percent by weight of milk solids provided
3 for in subheading 2309.90.

4 (D) A nonoriginating material provided for
5 in chapter 7 that is used in the production of
6 a good provided for in subheading 0703.10,
7 0703.20, 0709.59, 0709.60, 0711.90, 0712.20,
8 0714.20, or any of subheadings 0710.21
9 through 0710.80 or 0712.39 through 0713.10.

10 (E) A nonoriginating material provided for
11 in heading 1006, or a nonoriginating rice prod-
12 uct provided for in chapter 11 that is used in
13 the production of a good provided for in head-
14 ing 1006, 1102, 1103, 1104, or subheading
15 1901.20 or 1901.90.

16 (F) A nonoriginating material provided for
17 in heading 0805, or any of subheadings
18 2009.11 through 2009.39, that is used in the
19 production of a good provided for in any of sub-
20 headings 2009.11 through 2009.39, or in fruit
21 or vegetable juice of any single fruit or vege-
22 table, fortified with minerals or vitamins, con-
23 centrated or unconcentrated, provided for in
24 subheading 2106.90 or 2202.90.

1 (G) Nonoriginating peaches, pears, or apri-
2 cots provided for in chapter 8 or 20 that are
3 used in the production of a good provided for
4 in heading 2008.

5 (H) A nonoriginating material provided for
6 in chapter 15 that is used in the production of
7 a good provided for in any of headings 1501
8 through 1508, or heading 1512, 1514, or 1515.

9 (I) A nonoriginating material provided for
10 in heading 1701 that is used in the production
11 of a good provided for in any of headings 1701
12 through 1703.

13 (J) A nonoriginating material provided for
14 in chapter 17 that is used in the production of
15 a good provided for in subheading 1806.10.

16 (K) Except as provided in subparagraphs
17 (A) through (J) and Annex 6-A of the Agree-
18 ment, a nonoriginating material used in the
19 production of a good provided for in any of
20 chapters 1 through 24, unless the nonorigi-
21 nating material is provided for in a different
22 subheading than the good for which origin is
23 being determined under this section.

24 (3) TEXTILE OR APPAREL GOODS.—

1 (A) IN GENERAL.—Except as provided in
2 subparagraph (B), a textile or apparel good
3 that is not an originating good because certain
4 fibers or yarns used in the production of the
5 component of the good that determines the tar-
6 iff classification of the good do not undergo an
7 applicable change in tariff classification, set
8 forth in Annex 4-A of the Agreement, shall be
9 considered to be an originating good if the total
10 weight of all such fibers or yarns in that com-
11 ponent is not more than 7 percent of the total
12 weight of that component.

13 (B) CERTAIN TEXTILE OR APPAREL
14 GOODS.—A textile or apparel good containing
15 elastomeric yarns in the component of the good
16 that determines the tariff classification of the
17 good shall be considered to be an originating
18 good only if such yarns are wholly formed and
19 finished in the territory of Korea, the United
20 States, or both.

21 (C) YARN, FABRIC, OR FIBER.—For pur-
22 poses of this paragraph, in the case of a good
23 that is a yarn, fabric, or fiber, the term “com-
24 ponent of the good that determines the tariff

1 classification of the good” means all of the fi-
2 bers in the good.

3 (g) FUNGIBLE GOODS AND MATERIALS.—

4 (1) IN GENERAL.—

5 (A) CLAIM FOR PREFERENTIAL TARIFF
6 TREATMENT.—A person claiming that a fun-
7 gible good or fungible material is an originating
8 good may base the claim either on the physical
9 segregation of the fungible good or fungible ma-
10 terial or by using an inventory management
11 method with respect to the fungible good or
12 fungible material.

13 (B) INVENTORY MANAGEMENT METHOD.—

14 In this subsection, the term “inventory manage-
15 ment method” means—

- 16 (i) averaging;
17 (ii) “last-in, first-out”;
18 (iii) “first-in, first-out”; or
19 (iv) any other method—

20 (I) recognized in the generally
21 accepted accounting principles of the
22 country in which the production is
23 performed (whether Korea or the
24 United States); or

1 (II) otherwise accepted by that
2 country.

3 (2) ELECTION OF INVENTORY METHOD.—A
4 person selecting an inventory management method
5 under paragraph (1) for a particular fungible good
6 or fungible material shall continue to use that meth-
7 od for that fungible good or fungible material
8 throughout the fiscal year of such person.

9 (h) ACCESSORIES, SPARE PARTS, OR TOOLS.—

10 (1) IN GENERAL.—Subject to paragraphs (2)
11 and (3), accessories, spare parts, or tools delivered
12 with a good that form part of the good's standard
13 accessories, spare parts, or tools shall—

14 (A) be treated as originating goods if the
15 good is an originating good; and

16 (B) be disregarded in determining whether
17 all the nonoriginating materials used in the pro-
18 duction of the good undergo the applicable
19 change in tariff classification set forth in Annex
20 6-A of the Agreement.

21 (2) CONDITIONS.—Paragraph (1) shall apply
22 only if—

23 (A) the accessories, spare parts, or tools
24 are classified with and not invoiced separately
25 from the good; and

1 (B) the quantities and value of the acces-
2 sories, spare parts, or tools are customary for
3 the good.

4 (3) REGIONAL VALUE CONTENT.—If the good is
5 subject to a regional value-content requirement, the
6 value of the accessories, spare parts, or tools shall
7 be taken into account as originating or nonorigi-
8 nating materials, as the case may be, in calculating
9 the regional value-content of the good.

10 (i) PACKAGING MATERIALS AND CONTAINERS FOR
11 RETAIL SALE.—Packaging materials and containers in
12 which a good is packaged for retail sale, if classified with
13 the good, shall be disregarded in determining whether all
14 the nonoriginating materials used in the production of the
15 good undergo the applicable change in tariff classification
16 set forth in Annex 4-A or Annex 6-A of the Agreement,
17 and, if the good is subject to a regional value-content re-
18 quirement, the value of such packaging materials and con-
19 tainers shall be taken into account as originating or non-
20 originating materials, as the case may be, in calculating
21 the regional value-content of the good.

22 (j) PACKING MATERIALS AND CONTAINERS FOR
23 SHIPMENT.—Packing materials and containers for ship-
24 ment shall be disregarded in determining whether a good
25 is an originating good.

1 (k) INDIRECT MATERIALS.—An indirect material
2 shall be disregarded in determining whether a good is an
3 originating good.

4 (l) TRANSIT AND TRANSHIPMENT.—A good that has
5 undergone production necessary to qualify as an origi-
6 nating good under subsection (b) shall not be considered
7 to be an originating good if, subsequent to that produc-
8 tion, the good—

9 (1) undergoes further production or any other
10 operation outside the territory of Korea or the
11 United States, other than unloading, reloading, or
12 any other operation necessary to preserve the good
13 in good condition or to transport the good to the ter-
14 ritory of Korea or the United States; or

15 (2) does not remain under the control of cus-
16 toms authorities in the territory of a country other
17 than Korea or the United States.

18 (m) GOODS CLASSIFIABLE AS GOODS PUT UP IN
19 SETS.—Notwithstanding the rules set forth in Annex 4-
20 A and Annex 6-A of the Agreement, goods classifiable as
21 goods put up in sets for retail sale as provided for in Gen-
22 eral Rule of Interpretation 3 of the HTS shall not be con-
23 sidered to be originating goods unless—

24 (1) each of the goods in the set is an origi-
25 nating good; or

1 (2) the total value of the nonoriginating goods
2 in the set does not exceed—

3 (A) in the case of textile or apparel goods,
4 10 percent of the adjusted value of the set; or

5 (B) in the case of goods, other than textile
6 or apparel goods, 15 percent of the adjusted
7 value of the set.

8 (n) DEFINITIONS.—In this section:

9 (1) ADJUSTED VALUE.—The term “adjusted
10 value” means the value determined in accordance
11 with Articles 1 through 8, Article 15, and the cor-
12 responding interpretive notes, of the Agreement on
13 Implementation of Article VII of the General Agree-
14 ment on Tariffs and Trade 1994 referred to in sec-
15 tion 101(d)(8) of the Uruguay Round Agreements
16 Act (19 U.S.C. 3511(d)(8)), adjusted, if necessary,
17 to exclude any costs, charges, or expenses incurred
18 for transportation, insurance, and related services
19 incident to the international shipment of the mer-
20 chandise from the country of exportation to the
21 place of importation.

22 (2) CLASS OF MOTOR VEHICLES.—The term
23 “class of motor vehicles” means any one of the fol-
24 lowing categories of motor vehicles:

1 (A) Motor vehicles provided for in sub-
2 heading 8701.20, 8704.10, 8704.22, 8704.23,
3 8704.32, or 8704.90, or heading 8705 or 8706,
4 or motor vehicles for the transport of 16 or
5 more persons provided for in subheading
6 8702.10 or 8702.90.

7 (B) Motor vehicles provided for in sub-
8 heading 8701.10 or any of subheadings
9 8701.30 through 8701.90.

10 (C) Motor vehicles for the transport of 15
11 or fewer persons provided for in subheading
12 8702.10 or 8702.90, or motor vehicles provided
13 for in subheading 8704.21 or 8704.31.

14 (D) Motor vehicles provided for in any of
15 subheadings 8703.21 through 8703.90.

16 (3) FUNGIBLE GOOD OR FUNGIBLE MATE-
17 RIAL.—The term “fungible good” or “fungible mate-
18 rial” means a good or material, as the case may be,
19 that is interchangeable with another good or mate-
20 rial for commercial purposes and the properties of
21 which are essentially identical to such other good or
22 material.

23 (4) GENERALLY ACCEPTED ACCOUNTING PRIN-
24 CIPLES.—The term “generally accepted accounting
25 principles”—

1 (A) means the recognized consensus or
2 substantial authoritative support given in the
3 territory of Korea or the United States, as the
4 case may be, with respect to the recording of
5 revenues, expenses, costs, assets, and liabilities,
6 the disclosure of information, and the prepara-
7 tion of financial statements; and

8 (B) may encompass broad guidelines for
9 general application as well as detailed stand-
10 ards, practices, and procedures.

11 (5) GOOD WHOLLY OBTAINED OR PRODUCED
12 ENTIRELY IN THE TERRITORY OF KOREA, THE
13 UNITED STATES, OR BOTH.—The term “good wholly
14 obtained or produced entirely in the territory of
15 Korea, the United States, or both” means any of the
16 following:

17 (A) Plants and plant products grown, and
18 harvested or gathered, in the territory of Korea,
19 the United States, or both.

20 (B) Live animals born and raised in the
21 territory of Korea, the United States, or both.

22 (C) Goods obtained in the territory of
23 Korea, the United States, or both from live ani-
24 mals.

1 (D) Goods obtained from hunting, trap-
2 ping, fishing, or aquaculture conducted in the
3 territory of Korea, the United States, or both.

4 (E) Minerals and other natural resources
5 not included in subparagraphs (A) through (D)
6 that are extracted or taken from the territory
7 of Korea, the United States, or both.

8 (F) Fish, shellfish, and other marine life
9 taken from the sea, seabed, or subsoil outside
10 the territory of Korea or the United States
11 by—

12 (i) a vessel that is registered or re-
13 corded with Korea and flying the flag of
14 Korea; or

15 (ii) a vessel that is documented under
16 the laws of the United States.

17 (G) Goods produced on board a factory
18 ship from goods referred to in subparagraph
19 (F), if such factory ship—

20 (i) is registered or recorded with
21 Korea and flies the flag of Korea; or

22 (ii) is a vessel that is documented
23 under the laws of the United States.

24 (H)(i) Goods taken by Korea or a person
25 of Korea from the seabed or subsoil outside the

1 territory of Korea, the United States, or both,
2 if Korea has rights to exploit such seabed or
3 subsoil; or

4 (ii) Goods taken by the United States or a
5 person of the United States from the seabed or
6 subsoil outside the territory of the United
7 States, Korea, or both, if the United States has
8 rights to exploit such seabed or subsoil.

9 (I) Goods taken from outer space, if the
10 goods are obtained by Korea or the United
11 States or a person of Korea or the United
12 States and not processed in the territory of a
13 country other than Korea or the United States.

14 (J) Waste and scrap derived from—

15 (i) manufacturing or processing oper-
16 ations in the territory of Korea, the United
17 States, or both; or

18 (ii) used goods collected in the terri-
19 tory of Korea, the United States, or both,
20 if such goods are fit only for the recovery
21 of raw materials.

22 (K) Recovered goods derived in the terri-
23 tory of Korea, the United States, or both, from
24 used goods, and used in the territory of Korea,

1 the United States, or both, in the production of
2 remanufactured goods.

3 (L) Goods, at any stage of production, pro-
4 duced in the territory of Korea, the United
5 States, or both, exclusively from—

6 (i) goods referred to in any of sub-
7 paragraphs (A) through (J); or

8 (ii) the derivatives of goods referred
9 to in clause (i).

10 (6) IDENTICAL GOODS.—The term “identical
11 goods” means goods that are the same in all re-
12 spects relevant to the rule of origin that qualifies the
13 goods as originating goods.

14 (7) INDIRECT MATERIAL.—The term “indirect
15 material” means a good used in the production, test-
16 ing, or inspection of another good but not physically
17 incorporated into that other good, or a good used in
18 the maintenance of buildings or the operation of
19 equipment associated with the production of another
20 good, including—

21 (A) fuel and energy;

22 (B) tools, dies, and molds;

23 (C) spare parts and materials used in the
24 maintenance of equipment or buildings;

1 (D) lubricants, greases, compounding ma-
2 terials, and other materials used in production
3 or used to operate equipment or buildings;

4 (E) gloves, glasses, footwear, clothing,
5 safety equipment, and supplies;

6 (F) equipment, devices, and supplies used
7 for testing or inspecting the good;

8 (G) catalysts and solvents; and

9 (H) any other good that is not incor-
10 porated into the other good but the use of
11 which in the production of the other good can
12 reasonably be demonstrated to be a part of that
13 production.

14 (8) MATERIAL.—The term “material” means a
15 good that is used in the production of another good,
16 including a part or an ingredient.

17 (9) MATERIAL THAT IS SELF-PRODUCED.—The
18 term “material that is self-produced” means an orig-
19 inating material that is produced by a producer of
20 a good and used in the production of that good.

21 (10) MODEL LINE OF MOTOR VEHICLES.—The
22 term “model line of motor vehicles” means a group
23 of motor vehicles having the same platform or model
24 name.

1 (11) NET COST.—The term “net cost” means
2 total cost minus sales promotion, marketing, and
3 after-sales service costs, royalties, shipping and
4 packing costs, and non-allowable interest costs that
5 are included in the total cost.

6 (12) NONALLOWABLE INTEREST COSTS.—The
7 term “nonallowable interest costs” means interest
8 costs incurred by a producer that exceed 700 basis
9 points above the applicable official interest rate for
10 comparable maturities of the country in which the
11 producer is located.

12 (13) NONORIGINATING GOOD OR NONORIGI-
13 NATING MATERIAL.—The term “nonoriginating
14 good” or “nonoriginating material” means a good or
15 material, as the case may be, that does not qualify
16 as originating under this section.

17 (14) PACKING MATERIALS AND CONTAINERS
18 FOR SHIPMENT.—The term “packing materials and
19 containers for shipment” means goods used to pro-
20 tect another good during its transportation and does
21 not include the packaging materials and containers
22 in which the other good is packaged for retail sale.

23 (15) PREFERENTIAL TARIFF TREATMENT.—
24 The term “preferential tariff treatment” means the
25 customs duty rate, and the treatment under article

1 2.10.4 of the Agreement, that are applicable to an
2 originating good pursuant to the Agreement.

3 (16) PRODUCER.—The term “producer” means
4 a person who engages in the production of a good
5 in the territory of Korea or the United States.

6 (17) PRODUCTION.—The term “production”
7 means growing, mining, harvesting, fishing, breed-
8 ing, raising, trapping, hunting, manufacturing, proc-
9 essing, assembling, or disassembling a good.

10 (18) REASONABLY ALLOCATE.—The term “rea-
11 sonably allocate” means to apportion in a manner
12 that would be appropriate under generally accepted
13 accounting principles.

14 (19) RECOVERED GOODS.—The term “recov-
15 ered goods” means materials in the form of indi-
16 vidual parts that are the result of—

17 (A) the disassembly of used goods into in-
18 dividual parts; and

19 (B) the cleaning, inspecting, testing, or
20 other processing that is necessary for improve-
21 ment to sound working condition of such indi-
22 vidual parts.

23 (20) REMANUFACTURED GOOD.—The term “re-
24 manufactured good” means a good that is classified

1 under chapter 84, 85, 87, or 90 or heading 9402,
2 and that—

3 (A) is entirely or partially comprised of re-
4 covered goods; and

5 (B) has a similar life expectancy and en-
6 joys a factory warranty similar to such a good
7 that is new.

8 (21) TOTAL COST.—

9 (A) IN GENERAL.—The term “total
10 cost”—

11 (i) means all product costs, period
12 costs, and other costs for a good incurred
13 in the territory of Korea, the United
14 States, or both; and

15 (ii) does not include profits that are
16 earned by the producer, regardless of
17 whether they are retained by the producer
18 or paid out to other persons as dividends,
19 or taxes paid on those profits, including
20 capital gains taxes.

21 (B) OTHER DEFINITIONS.—In this para-
22 graph:

23 (i) PRODUCT COSTS.—The term
24 “product costs” means costs that are asso-
25 ciated with the production of a good and

1 include the value of materials, direct labor
2 costs, and direct overhead.

3 (ii) PERIOD COSTS.—The term “pe-
4 riod costs” means costs, other than prod-
5 uct costs, that are expensed in the period
6 in which they are incurred, such as selling
7 expenses and general and administrative
8 expenses.

9 (iii) OTHER COSTS.—The term “other
10 costs” means all costs recorded on the
11 books of the producer that are not product
12 costs or period costs, such as interest.

13 (22) USED.—The term “used” means utilized
14 or consumed in the production of goods.

15 (o) PRESIDENTIAL PROCLAMATION AUTHORITY.—

16 (1) IN GENERAL.—The President is authorized
17 to proclaim, as part of the HTS—

18 (A) the provisions set forth in Annex 4-A
19 and Annex 6-A of the Agreement; and

20 (B) any additional subordinate category
21 that is necessary to carry out this title con-
22 sistent with the Agreement.

23 (2) MODIFICATIONS.—

24 (A) IN GENERAL.—Subject to the consulta-
25 tion and layover provisions of section 104, the

1 President may proclaim modifications to the
2 provisions proclaimed under the authority of
3 paragraph (1)(A), other than provisions of
4 chapters 50 through 63 (as included in Annex
5 4-A of the Agreement).

6 (B) ADDITIONAL PROCLAMATIONS.—Not-
7 withstanding subparagraph (A), and subject to
8 the consultation and layover provisions of sec-
9 tion 104, the President may proclaim—

10 (i) such modifications to the provi-
11 sions proclaimed under the authority of
12 paragraph (1)(A) as are necessary to im-
13 plement an agreement with Korea pursu-
14 ant to article 4.2.5 of the Agreement; and

15 (ii) before the end of the 1-year period
16 beginning on the date on which the Agree-
17 ment enters into force, modifications to
18 correct any typographical, clerical, or other
19 nonsubstantive technical error regarding
20 the provisions of chapters 50 through 63
21 (as included in Annex 4-A of the Agree-
22 ment).

23 (3) FIBERS, YARNS, OR FABRICS NOT AVAIL-
24 ABLE IN COMMERCIAL QUANTITIES IN THE UNITED
25 STATES.—

1 (A) IN GENERAL.—Notwithstanding para-
2 graph (2)(A), the list of fibers, yarns, and fab-
3 rics set forth in the list of the United States in
4 Appendix 4-B-1 of the Agreement may be modi-
5 fied as provided for in this paragraph.

6 (B) DEFINITIONS.—In this paragraph:

7 (i) INTERESTED ENTITY.—The term
8 “interested entity” means the Government
9 of Korea, a potential or actual purchaser
10 of a textile or apparel good, or a potential
11 or actual supplier of a textile or apparel
12 good.

13 (ii) DAY; DAYS.—All references to
14 “day” and “days” exclude Saturdays, Sun-
15 days, and legal holidays observed by the
16 Government of the United States.

17 (C) REQUESTS TO ADD FIBERS, YARNS, OR
18 FABRICS.—

19 (i) IN GENERAL.—An interested entity
20 may request the President to determine
21 that a fiber, yarn, or fabric is not available
22 in commercial quantities in a timely man-
23 ner in the United States and to add that
24 fiber, yarn, or fabric to the list of the

1 United States in Appendix 4-B-1 of the
2 Agreement.

3 (ii) DETERMINATION.—After receiving
4 a request under clause (i), the President
5 may determine whether—

6 (I) the fiber, yarn, or fabric is
7 available in commercial quantities in a
8 timely manner in the United States;
9 or

10 (II) any interested entity objects
11 to the request.

12 (iii) PROCLAMATION AUTHORITY.—
13 The President may, within the time peri-
14 ods specified in clause (iv), proclaim that
15 the fiber, yarn, or fabric that is the subject
16 of the request is added to the list of the
17 United States in Appendix 4-B-1 of the
18 Agreement, if the President has deter-
19 mined under clause (ii) that—

20 (I) the fiber, yarn, or fabric is
21 not available in commercial quantities
22 in a timely manner in the United
23 States; or

24 (II) no interested entity has ob-
25 jected to the request.

1 (iv) TIME PERIODS.—The time peri-
2 ods within which the President may issue
3 a proclamation under clause (iii) are—

4 (I) not later than 30 days after
5 the date on which a request is sub-
6 mitted under clause (i); or

7 (II) not later than 60 days after
8 the request is submitted, if the Presi-
9 dent determines, within 30 days after
10 the date on which the request is sub-
11 mitted, that the President does not
12 have sufficient information to make a
13 determination under clause (ii).

14 (v) EFFECTIVE DATE.—Notwith-
15 standing section 103(a)(2), a proclamation
16 made under clause (iii) shall take effect on
17 the date on which the text of the proclama-
18 tion is published in the Federal Register.

19 (D) DEEMED DENIAL OF REQUEST.—If,
20 after an interested entity submits a request
21 under subparagraph (C)(i), the President does
22 not, within 30 days of the expiration of the ap-
23 plicable time period specified in subparagraph
24 (C)(iv), make a determination under subpara-

1 graph (C)(ii) regarding the request, the request
2 shall be considered to be denied.

3 (E) REQUESTS TO REMOVE FIBERS,
4 YARNS, OR FABRICS.—

5 (i) IN GENERAL.—An interested entity
6 may request the President to remove from
7 the list of the United States in Appendix
8 4-B-1 of the Agreement, any fiber, yarn, or
9 fabric that has been added to that list pur-
10 suant to subparagraph (C)(iii).

11 (ii) PROCLAMATION AUTHORITY.—Not
12 later than 30 days after the date on which
13 a request under clause (i) is submitted, the
14 President may proclaim that the fiber,
15 yarn, or fabric that is the subject of the re-
16 quest is removed from the list of the
17 United States in Appendix 4-B-1 of the
18 Agreement if the President determines
19 that the fiber, yarn, or fabric is available
20 in commercial quantities in a timely man-
21 ner in the United States.

22 (iii) EFFECTIVE DATE.—A proclama-
23 tion issued under clause (ii) may not take
24 effect earlier than the date that is 6
25 months after the date on which the text of

1 the proclamation is published in the Fed-
2 eral Register.

3 (F) PROCEDURES.—The President shall
4 establish procedures—

5 (i) governing the submission of a re-
6 quest under subparagraphs (C) and (E);
7 and

8 (ii) providing an opportunity for inter-
9 ested entities to submit comments and sup-
10 porting evidence before the President
11 makes a determination under subpara-
12 graph (C)(ii) or (E)(ii).

13 **SEC. 203. CUSTOMS USER FEES.**

14 Section 13031(b) of the Consolidated Omnibus Budg-
15 et Reconciliation Act of 1985 (19 U.S.C. 58c(b)) is
16 amended by adding after paragraph (18) the following:

17 “(19) No fee may be charged under subsection (a)
18 (9) or (10) with respect to goods that qualify as origi-
19 nating goods under section 202 of the United States–
20 Korea Free Trade Agreement Implementation Act. Any
21 service for which an exemption from such fee is provided
22 by reason of this paragraph may not be funded with
23 money contained in the Customs User Fee Account.”.

1 **SEC. 204. DISCLOSURE OF INCORRECT INFORMATION;**
2 **FALSE CERTIFICATIONS OF ORIGIN; DENIAL**
3 **OF PREFERENTIAL TARIFF TREATMENT.**

4 (a) DISCLOSURE OF INCORRECT INFORMATION.—

5 Section 592 of the Tariff Act of 1930 (19 U.S.C. 1592)
6 is amended—

7 (1) in subsection (c)—

8 (A) by redesignating paragraph (11) as
9 paragraph (12); and

10 (B) by inserting after paragraph (10) the
11 following new paragraph:

12 “(11) PRIOR DISCLOSURE REGARDING CLAIMS
13 UNDER THE UNITED STATES–KOREA FREE TRADE
14 AGREEMENT.—An importer shall not be subject to
15 penalties under subsection (a) for making an incor-
16 rect claim that a good qualifies as an originating
17 good under section 202 of the United States–Korea
18 Free Trade Agreement Implementation Act if the
19 importer, in accordance with regulations issued by
20 the Secretary of the Treasury, promptly and volun-
21 tarily makes a corrected declaration and pays any
22 duties owing with respect to that good.”; and

23 (2) by adding at the end the following new sub-
24 section:

25 “(j) FALSE CERTIFICATIONS OF ORIGIN UNDER THE
26 UNITED STATES–KOREA FREE TRADE AGREEMENT.—

1 “(1) IN GENERAL.—Subject to paragraph (2),
2 it is unlawful for any person to certify falsely, by
3 fraud, gross negligence, or negligence, in a KFTA
4 certification of origin (as defined in section 508 of
5 this Act) that a good exported from the United
6 States qualifies as an originating good under the
7 rules of origin provided for in section 202 of the
8 United States–Korea Free Trade Agreement Imple-
9 mentation Act. The procedures and penalties of this
10 section that apply to a violation of subsection (a)
11 also apply to a violation of this subsection.

12 “(2) PROMPT AND VOLUNTARY DISCLOSURE OF
13 INCORRECT INFORMATION.—No penalty shall be im-
14 posed under this subsection if, promptly after an ex-
15 porter or producer that issued a KFTA certification
16 of origin has reason to believe that such certification
17 contains or is based on incorrect information, the ex-
18 porter or producer voluntarily provides written no-
19 tice of such incorrect information to every person to
20 whom the certification was issued.

21 “(3) EXCEPTION.—A person shall not be con-
22 sidered to have violated paragraph (1) if—

23 “(A) the information was correct at the
24 time it was provided in a KFTA certification of

1 origin but was later rendered incorrect due to
2 a change in circumstances; and

3 “(B) the person promptly and voluntarily
4 provides written notice of the change in cir-
5 cumstances to all persons to whom the person
6 provided the certification.”.

7 (b) DENIAL OF PREFERENTIAL TARIFF TREAT-
8 MENT.—Section 514 of the Tariff Act of 1930 (19 U.S.C.
9 1514) is amended by adding at the end the following new
10 subsection:

11 “(j) DENIAL OF PREFERENTIAL TARIFF TREAT-
12 MENT UNDER THE UNITED STATES–KOREA FREE TRADE
13 AGREEMENT.—If U.S. Customs and Border Protection or
14 U.S. Immigration and Customs Enforcement of the De-
15 partment of Homeland Security finds indications of a pat-
16 tern of conduct by an importer, exporter, or producer of
17 false or unsupported representations that goods qualify
18 under the rules of origin provided for in section 202 of
19 the United States–Korea Free Trade Agreement Imple-
20 mentation Act, U.S. Customs and Border Protection, in
21 accordance with regulations issued by the Secretary of the
22 Treasury, may suspend preferential tariff treatment under
23 the United States–Korea Free Trade Agreement Imple-
24 mentation Act to entries of identical goods covered by sub-
25 sequent representations by that importer, exporter, or pro-

1 ducer until U.S. Customs and Border Protection deter-
 2 mines that representations of that person are in con-
 3 formity with such section 202.”.

4 **SEC. 205. RELIQUIDATION OF ENTRIES.**

5 Section 520(d) of the Tariff Act of 1930 (19 U.S.C.
 6 1520(d)) is amended in the matter preceding paragraph
 7 (1)—

8 (1) by striking “or”; and

9 (2) by striking “for which” and inserting “, or
 10 section 202 of the United States–Korea Free Trade
 11 Agreement Implementation Act for which”.

12 **SEC. 206. RECORDKEEPING REQUIREMENTS.**

13 Section 508 of the Tariff Act of 1930 (19 U.S.C.
 14 1508) is amended—

15 (1) by redesignating subsection (i) as subsection
 16 (j);

17 (2) by inserting after subsection (h) the fol-
 18 lowing new subsection:

19 “(i) CERTIFICATIONS OF ORIGIN FOR GOODS EX-
 20 PORTED UNDER THE UNITED STATES–KOREA FREE
 21 TRADE AGREEMENT.—

22 “(1) DEFINITIONS.—In this subsection:

23 “(A) RECORDS AND SUPPORTING DOCU-
 24 MENTS.—The term ‘records and supporting
 25 documents’ means, with respect to an exported

1 good under paragraph (2), records and docu-
2 ments related to the origin of the good, includ-
3 ing—

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

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

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

12 “(B) KFTA CERTIFICATION OF ORIGIN.—

13 The term ‘KFTA certification of origin’ means
14 the certification established under article 6.15
15 of the United States–Korea Free Trade Agree-
16 ment that a good qualifies as an originating
17 good under such Agreement.

18 “(2) EXPORTS TO KOREA.—Any person who
19 completes and issues a KFTA certification of origin
20 for a good exported from the United States shall
21 make, keep, and, pursuant to rules and regulations
22 promulgated by the Secretary of the Treasury,
23 render for examination and inspection all records
24 and supporting documents related to the origin of

1 the good (including the certification or copies there-
2 of).

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

9 (3) in subsection (j), as so redesignated, by
10 striking “(g), or (h)” and inserting “(g), (h), or (i)”.

11 **SEC. 207. ENFORCEMENT RELATING TO TRADE IN TEXTILE**
12 **OR APPAREL GOODS.**

13 (a) ACTION DURING VERIFICATION.—

14 (1) IN GENERAL.—If the Secretary of the
15 Treasury requests the Government of Korea to con-
16 duct a verification pursuant to article 4.3 of the
17 Agreement for purposes of making a determination
18 under paragraph (2), the President may direct the
19 Secretary to take appropriate action described in
20 subsection (b) while the verification is being con-
21 ducted.

22 (2) DETERMINATION.—A determination under
23 this paragraph is a determination of the Secretary
24 that—

1 (A) an exporter or producer in Korea is
2 complying with applicable customs laws, regula-
3 tions, procedures, requirements, and practices
4 affecting trade in textile or apparel goods; or

5 (B) a claim that a textile or apparel good
6 exported or produced by such exporter or pro-
7 ducer—

8 (i) qualifies as an originating good
9 under section 202, or

10 (ii) is a good of Korea,

11 is accurate.

12 (b) APPROPRIATE ACTION DESCRIBED.—Appropriate
13 action under subsection (a)(1) includes—

14 (1) suspension of liquidation of the entry of any
15 textile or apparel good exported or produced by the
16 person that is the subject of a verification under
17 subsection (a)(1) regarding compliance described in
18 subsection (a)(2)(A), in a case in which the request
19 for verification was based on a reasonable suspicion
20 of unlawful activity related to such goods; and

21 (2) suspension of liquidation of the entry of a
22 textile or apparel good for which a claim has been
23 made that is the subject of a verification under sub-
24 section (a)(1) regarding a claim described in sub-
25 section (a)(2)(B).

1 (c) ACTION WHEN INFORMATION IS INSUFFI-
2 CIENT.—If the Secretary of the Treasury determines that
3 the information obtained within 12 months after making
4 a request for a verification under subsection (a)(1) is in-
5 sufficient to make a determination under subsection
6 (a)(2), the President may direct the Secretary to take ap-
7 propriate action described in subsection (d) until such
8 time as the Secretary receives information sufficient to
9 make the determination under subsection (a)(2) or until
10 such earlier date as the President may direct.

11 (d) APPROPRIATE ACTION DESCRIBED.—Appro-
12 priate action under subsection (c) includes—

13 (1) denial of preferential tariff treatment under
14 the Agreement with respect to—

15 (A) any textile or apparel good exported or
16 produced by the person that is the subject of a
17 verification under subsection (a)(1) regarding
18 compliance described in subsection (a)(2)(A); or

19 (B) the textile or apparel good for which a
20 claim has been made that is the subject of a
21 verification under subsection (a)(1) regarding a
22 claim described in subsection (a)(2)(B); and

23 (2) denial of entry into the United States of—

24 (A) any textile or apparel good exported or
25 produced by the person that is the subject of a

1 verification under subsection (a)(1) regarding
2 compliance described in subsection (a)(2)(A); or
3 (B) a textile or apparel good for which a
4 claim has been made that is the subject of a
5 verification under subsection (a)(1) regarding a
6 claim described in subsection (a)(2)(B).

7 (e) PUBLICATION OF NAME OF PERSON.—In accord-
8 ance with article 4.3.11 of the Agreement, the Secretary
9 of the Treasury may publish the name of any person that
10 the Secretary has determined—

11 (1) is engaged in circumvention of applicable
12 laws, regulations, or procedures affecting trade in
13 textile or apparel goods; or

14 (2) has failed to demonstrate that it produces,
15 or is capable of producing, textile or apparel goods.

16 (f) CERTIFICATE OF ELIGIBILITY.—The Commis-
17 sioner responsible for U.S. Customs and Border Protec-
18 tion of the Department of Homeland Security may require
19 an importer to submit at the time the importer files a
20 claim for preferential tariff treatment under Annex 4-B
21 of the Agreement a certificate of eligibility, properly com-
22 pleted and signed by an authorized official of the Govern-
23 ment of Korea.

24 (g) VERIFICATIONS IN THE UNITED STATES.—If the
25 government of a country that is a party to a free trade

1 agreement with the United States makes a request for a
2 verification pursuant to that agreement, the Secretary of
3 the Treasury may request a verification of the production
4 of any textile or apparel good in order to assist that gov-
5 ernment in determining whether—

6 (1) a claim of origin under the agreement for
7 a textile or apparel good is accurate; or

8 (2) an exporter, producer, or other enterprise
9 located in the United States involved in the move-
10 ment of textile or apparel goods from the United
11 States to the territory of the requesting government
12 is complying with applicable customs laws, regula-
13 tions, and procedures regarding trade in textile or
14 apparel goods.

15 **SEC. 208. REGULATIONS.**

16 The Secretary of the Treasury shall prescribe such
17 regulations as may be necessary to carry out—

18 (1) subsections (a) through (n) of section 202;

19 (2) the amendment made by section 203; and

20 (3) any proclamation issued under section
21 202(o).

22 **TITLE III—RELIEF FROM**
23 **IMPORTS**

24 **SEC. 301. DEFINITIONS.**

25 In this title:

1 (1) KOREAN ARTICLE.—The term “Korean arti-
2 cle” means an article that qualifies as an originating
3 good under section 202(b).

4 (2) KOREAN MOTOR VEHICLE ARTICLE.—The
5 term “Korean motor vehicle article” means a good
6 provided for in heading 8703 or 8704 of the HTS
7 that qualifies as an originating good under section
8 202(b).

9 (3) KOREAN TEXTILE OR APPAREL ARTICLE.—
10 The term “Korean textile or apparel article” means
11 a textile or apparel good (as defined in section 3(5))
12 that is a Korean article.

13 **Subtitle A—Relief From Imports** 14 **Benefitting From the Agreement**

15 **SEC. 311. COMMENCING OF ACTION FOR RELIEF.**

16 (a) FILING OF PETITION.—

17 (1) IN GENERAL.—A petition requesting action
18 under this subtitle for the purpose of adjusting to
19 the obligations of the United States under the
20 Agreement may be filed with the Commission by an
21 entity, including a trade association, firm, certified
22 or recognized union, or group of workers, that is
23 representative of an industry. The Commission shall
24 transmit a copy of any petition filed under this sub-
25 section to the United States Trade Representative.

1 (2) PROVISIONAL RELIEF.—An entity filing a
2 petition under this subsection may request that pro-
3 visional relief be provided as if the petition had been
4 filed under section 202(a) of the Trade Act of 1974
5 (19 U.S.C. 2252(a)).

6 (3) CRITICAL CIRCUMSTANCES.—Any allegation
7 that critical circumstances exist shall be included in
8 the petition.

9 (b) INVESTIGATION AND DETERMINATION.—Upon
10 the filing of a petition under subsection (a), the Commis-
11 sion, unless subsection (d) applies, shall promptly initiate
12 an investigation to determine whether, as a result of the
13 reduction or elimination of a duty provided for under the
14 Agreement, a Korean article is being imported into the
15 United States in such increased quantities, in absolute
16 terms or relative to domestic production, and under such
17 conditions that imports of the Korean article constitute
18 a substantial cause of serious injury or threat thereof to
19 the domestic industry producing an article that is like, or
20 directly competitive with, the imported article.

21 (c) APPLICABLE PROVISIONS.—The following provi-
22 sions of section 202 of the Trade Act of 1974 (19 U.S.C.
23 2252) apply with respect to any investigation initiated
24 under subsection (b):

1 (1) Paragraphs (1)(B) and (3) of subsection
2 (b).

3 (2) Subsection (c).

4 (3) Subsection (d).

5 (4) Subsection (i).

6 (d) ARTICLES EXEMPT FROM INVESTIGATION.—No
7 investigation may be initiated under this section with re-
8 spect to any Korean article if, after the date on which
9 the Agreement enters into force, import relief has been
10 provided with respect to that Korean article under this
11 subtitle.

12 **SEC. 312. COMMISSION ACTION ON PETITION.**

13 (a) DETERMINATION.—Not later than 120 days (180
14 days if critical circumstances have been alleged) after the
15 date on which an investigation is initiated under section
16 311(b) with respect to a petition, the Commission shall
17 make the determination required under that section.

18 (b) APPLICABLE PROVISIONS.—For purposes of this
19 subtitle, the provisions of paragraphs (1), (2), and (3) of
20 section 330(d) of the Tariff Act of 1930 (19 U.S.C.
21 1330(d) (1), (2), and (3)) shall be applied with respect
22 to determinations and findings made under this section
23 as if such determinations and findings were made under
24 section 202 of the Trade Act of 1974 (19 U.S.C. 2252).

1 (c) ADDITIONAL FINDING AND RECOMMENDATION IF
2 DETERMINATION AFFIRMATIVE.—

3 (1) IN GENERAL.—If the determination made
4 by the Commission under subsection (a) with respect
5 to imports of an article is affirmative, or if the
6 President may consider a determination of the Com-
7 mission to be an affirmative determination as pro-
8 vided for under paragraph (1) of section 330(d) of
9 the Tariff Act of 1930 (19 U.S.C. 1330(d)(1)), the
10 Commission shall find, and recommend to the Presi-
11 dent in the report required under subsection (d), the
12 amount of import relief that is necessary to remedy
13 or prevent the injury found by the Commission in
14 the determination and to facilitate the efforts of the
15 domestic industry to make a positive adjustment to
16 import competition.

17 (2) LIMITATION ON RELIEF.—The import relief
18 recommended by the Commission under this sub-
19 section shall be limited to the relief described in sec-
20 tion 313(c).

21 (3) VOTING; SEPARATE VIEWS.—Only those
22 members of the Commission who voted in the af-
23 firmative under subsection (a) are eligible to vote on
24 the proposed action to remedy or prevent the injury
25 found by the Commission. Members of the Commis-

1 sion who did not vote in the affirmative may submit,
2 in the report required under subsection (d), separate
3 views regarding what action, if any, should be taken
4 to remedy or prevent the injury.

5 (d) REPORT TO PRESIDENT.—Not later than the
6 date that is 30 days after the date on which a determina-
7 tion is made under subsection (a) with respect to an inves-
8 tigation, the Commission shall submit to the President a
9 report that includes—

10 (1) the determination made under subsection
11 (a) and an explanation of the basis for the deter-
12 mination;

13 (2) if the determination under subsection (a) is
14 affirmative, any findings and recommendations for
15 import relief made under subsection (c) and an ex-
16 planation of the basis for each recommendation; and

17 (3) any dissenting or separate views by mem-
18 bers of the Commission regarding the determination
19 referred to in paragraph (1) and any finding or rec-
20 ommendation referred to in paragraph (2).

21 (e) PUBLIC NOTICE.—Upon submitting a report to
22 the President under subsection (d), the Commission shall
23 promptly make public the report (with the exception of
24 information which the Commission determines to be con-

1 fidential) and shall publish a summary of the report in
2 the Federal Register.

3 **SEC. 313. PROVISION OF RELIEF.**

4 (a) IN GENERAL.—Not later than the date that is
5 30 days after the date on which the President receives a
6 report of the Commission in which the Commission’s de-
7 termination under section 312(a) is affirmative, or which
8 contains a determination under section 312(a) that the
9 President considers to be affirmative under paragraph (1)
10 of section 330(d) of the Tariff Act of 1930 (19 U.S.C.
11 1330(d)(1)), the President, subject to subsection (b), shall
12 provide relief from imports of the article that is the subject
13 of such determination to the extent that the President de-
14 termines necessary to remedy or prevent the injury found
15 by the Commission and to facilitate the efforts of the do-
16 mestic industry to make a positive adjustment to import
17 competition.

18 (b) EXCEPTION.—The President is not required to
19 provide import relief under this section if the President
20 determines that the provision of the import relief will not
21 provide greater economic and social benefits than costs.

22 (c) NATURE OF RELIEF.—

23 (1) IN GENERAL.—Except as provided in para-
24 graph (2), the import relief that the President is au-

1 thorized to provide under this section with respect to
2 imports of an article is as follows:

3 (A) The suspension of any further reduc-
4 tion provided for under Annex 2-B of the
5 Agreement in the duty imposed on the article.

6 (B) An increase in the rate of duty im-
7 posed on the article to a level that does not ex-
8 ceed the lesser of—

9 (i) the column 1 general rate of duty
10 imposed under the HTS on like articles at
11 the time the import relief is provided; or

12 (ii) the column 1 general rate of duty
13 imposed under the HTS on like articles on
14 the day before the date on which the
15 Agreement enters into force.

16 (2) DUTIES APPLIED ON A SEASONAL BASIS.—

17 In the case of imports of an article to which a duty
18 is applied on a seasonal basis, the import relief that
19 the President is authorized to provide under this
20 section is as follows:

21 (A) The suspension of any further reduc-
22 tion provided for under Annex 2-B of the
23 Agreement in the duty imposed on the article.

1 (B) An increase in the rate of duty im-
2 posed on the article to a level that does not ex-
3 ceed the lesser of—

4 (i) the column 1 general rate of duty
5 imposed under the HTS on like articles for
6 the corresponding season immediately pre-
7 ceding the date the import relief is pro-
8 vided; or

9 (ii) the column 1 general rate of duty
10 imposed under the HTS for the cor-
11 responding season immediately preceding
12 the date on which the Agreement enters
13 into force.

14 (3) PROGRESSIVE LIBERALIZATION.—If the pe-
15 riod for which import relief is provided under this
16 section is greater than 1 year, the President shall
17 provide for the progressive liberalization (described
18 in article 10.2.7 of the Agreement) of such relief at
19 regular intervals during the period of its application.

20 (d) PERIOD OF RELIEF.—

21 (1) IN GENERAL.—Subject to paragraph (2),
22 any import relief that the President provides under
23 this section may not be in effect for more than 2
24 years.

25 (2) EXTENSION.—

1 (A) IN GENERAL.—Subject to subpara-
2 graph (C), the President, after receiving a de-
3 termination from the Commission under sub-
4 paragraph (B) that is affirmative, or which the
5 President considers to be affirmative under
6 paragraph (1) of section 330(d) of the Tariff
7 Act of 1930 (19 U.S.C. 1330(d)(1)), may ex-
8 tend the effective period of any import relief
9 provided under this section by up to 1 year, if
10 the President determines that—

11 (i) the import relief continues to be
12 necessary to remedy or prevent serious in-
13 jury and to facilitate adjustment by the do-
14 mestic industry to import competition; and

15 (ii) there is evidence that the industry
16 is making a positive adjustment to import
17 competition.

18 (B) ACTION BY COMMISSION.—

19 (i) INVESTIGATION.—Upon a petition
20 on behalf of the industry concerned that is
21 filed with the Commission not earlier than
22 the date that is 9 months, and not later
23 than the date that is 6 months, before the
24 date on which any action taken under sub-
25 section (a) is to terminate, the Commission

1 shall conduct an investigation to determine
2 whether action under this section continues
3 to be necessary to remedy or prevent seri-
4 ous injury and whether there is evidence
5 that the industry is making a positive ad-
6 justment to import competition.

7 (ii) NOTICE AND HEARING.—The
8 Commission shall publish notice of the
9 commencement of any proceeding under
10 this subparagraph in the Federal Register
11 and shall, within a reasonable time there-
12 after, hold a public hearing at which the
13 Commission shall afford interested parties
14 and consumers an opportunity to be
15 present, to present evidence, and to re-
16 spond to the presentations of other parties
17 and consumers, and otherwise to be heard.

18 (iii) REPORT.—The Commission shall
19 submit to the President a report on its in-
20 vestigation and determination under this
21 subparagraph not later than 60 days be-
22 fore the action under subsection (a) is to
23 terminate, unless the President specifies a
24 different date.

1 (C) PERIOD OF IMPORT RELIEF.—Any im-
2 port relief provided under this section, including
3 any extensions thereof, may not, in the aggre-
4 gate, be in effect for more than 3 years.

5 (e) RATE AFTER TERMINATION OF IMPORT RE-
6 LIEF.—Beginning on the date on which import relief
7 under this section is terminated with respect to an article,
8 the rate of duty on that article shall be the rate that would
9 have been in effect but for the provision of such relief.

10 (f) ARTICLES EXEMPT FROM RELIEF.—No import
11 relief may be provided under this section on any article
12 that is subject to import relief under—

13 (1) subtitle B or C; or

14 (2) chapter 1 of title II of the Trade Act of
15 1974 (19 U.S.C. 2251 et seq.).

16 **SEC. 314. TERMINATION OF RELIEF AUTHORITY.**

17 (a) GENERAL RULE.—Subject to subsection (b), no
18 import relief may be provided under this subtitle after the
19 date that is 10 years after the date on which the Agree-
20 ment enters into force.

21 (b) EXCEPTION.—If an article for which relief is pro-
22 vided under this subtitle is an article for which the period
23 for tariff elimination, set forth in the Schedule of the
24 United States to Annex 2-B of the Agreement, is greater
25 than 10 years, no relief under this subtitle may be pro-

1 vided for that article after the date on which that period
2 ends.

3 (c) **PRESIDENTIAL DETERMINATION.**—Import relief
4 may be provided under this subtitle in the case of a Ko-
5 rean article after the date on which such relief would, but
6 for this subsection, terminate under subsection (a) and
7 (b), if the President determines that Korea has consented
8 to such relief.

9 **SEC. 315. COMPENSATION AUTHORITY.**

10 For purposes of section 123 of the Trade Act of 1974
11 (19 U.S.C. 2133), any import relief provided by the Presi-
12 dent under section 313 shall be treated as action taken
13 under chapter 1 of title II of such Act (19 U.S.C. 2251
14 et seq.).

15 **SEC. 316. CONFIDENTIAL BUSINESS INFORMATION.**

16 Section 202(a)(8) of the Trade Act of 1974 (19
17 U.S.C. 2252(a)(8)) is amended in the first sentence—

18 (1) by striking “and”; and

19 (2) by inserting before the period at the end “,
20 and title III of the United States–Korea Free Trade
21 Agreement Implementation Act”.

1 **Subtitle B—Motor Vehicle**
2 **Safeguard Measures**

3 **SEC. 321. MOTOR VEHICLE SAFEGUARD MEASURES.**

4 The provisions of subtitle A shall apply with respect
5 to a Korean motor vehicle article to the same extent that
6 such provisions apply to Korean articles, except as follows:

7 (1) Section 311(d) and paragraphs (2) and (3)
8 of 313(c) shall not apply.

9 (2) Section 313(d)(2)(A) shall be applied and
10 administered by substituting “2 years” for “1 year”.

11 (3) Section 313(d)(2)(C) shall be applied and
12 administered by substituting “4 years” for “3
13 years”.

14 (4) Section 313(f)(1) shall be applied and ad-
15 ministered by substituting “subtitle A” for “subtitle
16 B or C”.

17 (5) Section 314(b) shall be applied and admin-
18 istered as if such section read as follows:

19 “(b) EXCEPTION.—Import relief may be provided
20 under this subtitle with respect to a Korean motor vehicle
21 article during any period before the date that is 10 years
22 after the date on which duties on the article are elimi-
23 nated, as set forth in section 201(d), or, if the article is
24 not referred to in section 201(d), the Schedule of the
25 United States to Annex 2-B of the Agreement.”.

1 **Subtitle C—Textile and Apparel**
2 **Safeguard Measures**

3 **SEC. 331. COMMENCEMENT OF ACTION FOR RELIEF.**

4 (a) IN GENERAL.—A request for action under this
5 subtitle for the purpose of adjusting to the obligations of
6 the United States under the Agreement may be filed with
7 the President by an interested party. Upon the filing of
8 a request, the President shall review the request to deter-
9 mine, from information presented in the request, whether
10 to commence consideration of the request.

11 (b) PUBLICATION OF REQUEST.—If the President de-
12 termines that the request under subsection (a) provides
13 the information necessary for the request to be considered,
14 the President shall publish in the Federal Register a no-
15 tice of commencement of consideration of the request, and
16 notice seeking public comments regarding the request. The
17 notice shall include a summary of the request and the
18 dates by which comments and rebuttals must be received.

19 **SEC. 332. DETERMINATION AND PROVISION OF RELIEF.**

20 (a) DETERMINATION.—

21 (1) IN GENERAL.—If a positive determination is
22 made under section 331(b), the President shall de-
23 termine whether, as a result of the reduction or
24 elimination of a duty under the Agreement, a Ko-
25 rean textile or apparel article is being imported into

1 the United States in such increased quantities, in
2 absolute terms or relative to the domestic market for
3 that article, and under such conditions as to cause
4 serious damage, or actual threat thereof, to a domes-
5 tic industry producing an article that is like, or di-
6 rectly competitive with, the imported article.

7 (2) SERIOUS DAMAGE.—In making a deter-
8 mination under paragraph (1), the President—

9 (A) shall examine the effect of increased
10 imports on the domestic industry, as reflected
11 in changes in such relevant economic factors as
12 output, productivity, utilization of capacity, in-
13 ventories, market share, exports, wages, em-
14 ployment, domestic prices, profits, and invest-
15 ment, no one of which is necessarily decisive;
16 and

17 (B) shall not consider changes in tech-
18 nology or consumer preference as factors sup-
19 porting a determination of serious damage or
20 actual threat thereof.

21 (b) PROVISION OF RELIEF.—

22 (1) IN GENERAL.—If a determination under
23 subsection (a) is affirmative, the President may pro-
24 vide relief from imports of the article that is the
25 subject of such determination, as provided in para-

1 graph (2), to the extent that the President deter-
2 mines necessary to remedy or prevent the serious
3 damage and to facilitate adjustment by the domestic
4 industry.

5 (2) NATURE OF RELIEF.—The relief that the
6 President is authorized to provide under this sub-
7 section with respect to imports of an article is—

8 (A) the suspension of any further reduc-
9 tion provided for under Annex 2-B of the
10 Agreement in the duty imposed on the article;

11 or

12 (B) an increase in the rate of duty im-
13 posed on the article to a level that does not ex-
14 ceed the lesser of—

15 (i) the column 1 general rate of duty
16 imposed under the HTS on like articles at
17 the time the import relief is provided; or

18 (ii) the column 1 general rate of duty
19 imposed under the HTS on like articles on
20 the day before the date on which the
21 Agreement enters into force.

22 **SEC. 333. PERIOD OF RELIEF.**

23 (a) IN GENERAL.—Subject to subsection (b), the im-
24 port relief that the President provides under section
25 332(b) may not be in effect for more than 2 years.

1 (b) EXTENSION.—

2 (1) IN GENERAL.—Subject to paragraph (2),
3 the President may extend the effective period of any
4 import relief provided under this subtitle for a pe-
5 riod of not more than 2 years, if the President de-
6 termines that—

7 (A) the import relief continues to be nec-
8 essary to remedy or prevent serious damage
9 and to facilitate adjustment by the domestic in-
10 dustry to import competition; and

11 (B) there is evidence that the industry is
12 making a positive adjustment to import com-
13 petition.

14 (2) LIMITATION.—Any relief provided under
15 this subtitle, including any extensions thereof, may
16 not, in the aggregate, be in effect for more than 4
17 years.

18 **SEC. 334. ARTICLES EXEMPT FROM RELIEF.**

19 The President may not provide import relief under
20 this subtitle with respect to an article if—

21 (1) import relief previously has been provided
22 under this subtitle with respect to that article; or

23 (2) the article is subject to import relief
24 under—

25 (A) subtitle A; or

1 (B) chapter 1 of title II of the Trade Act
2 of 1974 (19 U.S.C. 2251 et seq.).

3 **SEC. 335. RATE AFTER TERMINATION OF IMPORT RELIEF.**

4 On the date on which import relief under this subtitle
5 is terminated with respect to an article, the rate of duty
6 on that article shall be the rate that would have been in
7 effect but for the provision of such relief.

8 **SEC. 336. TERMINATION OF RELIEF AUTHORITY.**

9 No import relief may be provided under this subtitle
10 with respect to any article after the date that is 10 years
11 after the date on which duties on the article are eliminated
12 pursuant to the Agreement.

13 **SEC. 337. COMPENSATION AUTHORITY.**

14 For purposes of section 123 of the Trade Act of 1974
15 (19 U.S.C. 2133), any import relief provided by the Presi-
16 dent under this subtitle shall be treated as action taken
17 under chapter 1 of title II of such Act (19 U.S.C. 2251
18 et seq.).

19 **SEC. 338. CONFIDENTIAL BUSINESS INFORMATION.**

20 The President may not release information received
21 in connection with an investigation or determination under
22 this subtitle which the President considers to be confiden-
23 tial business information unless the party submitting the
24 confidential business information had notice, at the time
25 of submission, that such information would be released by

1 the President, or such party subsequently consents to the
 2 release of the information. To the extent a party submits
 3 confidential business information, the party shall also pro-
 4 vide a nonconfidential version of the information in which
 5 the confidential business information is summarized or, if
 6 necessary, deleted.

7 **Subtitle D—Cases Under Title II of**
 8 **the Trade Act of 1974**

9 **SEC. 341. FINDINGS AND ACTION ON KOREAN ARTICLES.**

10 (a) EFFECT OF IMPORTS.—If, in any investigation
 11 initiated under chapter 1 of title II of the Trade Act of
 12 1974 (19 U.S.C. 2251 et seq.), the Commission makes an
 13 affirmative determination (or a determination which the
 14 President may treat as an affirmative determination under
 15 such chapter by reason of section 330(d) of the Tariff Act
 16 of 1930 (19 U.S.C. 1330(d))), the Commission shall also
 17 find (and report to the President at the time such injury
 18 determination is submitted to the President) whether im-
 19 ports of the Korean article are a substantial cause of seri-
 20 ous injury or threat thereof.

21 (b) PRESIDENTIAL DETERMINATION REGARDING
 22 KOREAN ARTICLES.—In determining the nature and ex-
 23 tent of action to be taken under chapter 1 of title II of
 24 the Trade Act of 1974 (19 U.S.C. 2251 et seq.), the Presi-
 25 dent may exclude from the action Korean articles with re-

1 spect to which the Commission has made a negative find-
 2 ing under subsection (a).

3 **TITLE IV—PROCUREMENT**

4 **SEC. 401. ELIGIBLE PRODUCTS.**

5 Section 308(4)(A) of the Trade Agreements Act of
 6 1979 (19 U.S.C. 2518(4)(A)) is amended—

7 (1) by striking “or” at the end of clause (vi);

8 (2) by striking the period at the end of clause
 9 (vii) and inserting “; or”; and

10 (3) by adding at the end the following new
 11 clause:

12 “(viii) a party to the United States—
 13 Korea Free Trade Agreement, a product or
 14 service of that country or instrumentality
 15 which is covered under that agreement for
 16 procurement by the United States.”.

17 **TITLE V—OFFSETS**

18 **SEC. 501. INCREASE IN PENALTY ON PAID PREPARERS WHO** 19 **FAIL TO COMPLY WITH EARNED INCOME TAX** 20 **CREDIT DUE DILIGENCE REQUIREMENTS.**

21 (a) IN GENERAL.—Section 6695(g) of the Internal
 22 Revenue Code of 1986 is amended by striking “\$100” and
 23 inserting “\$500”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to returns required to be filed after
3 December 31, 2011.

4 **SEC. 502. REQUIREMENT FOR PRISONS LOCATED IN THE**
5 **UNITED STATES TO PROVIDE INFORMATION**
6 **FOR TAX ADMINISTRATION.**

7 (a) IN GENERAL.—Subchapter B of chapter 61 of the
8 Internal Revenue Code of 1986 is amended by redesignig-
9 nating section 6116 as section 6117 and by inserting after
10 section 6115 the following new section:

11 **“SEC. 6116. REQUIREMENT FOR PRISONS LOCATED IN**
12 **UNITED STATES TO PROVIDE INFORMATION**
13 **FOR TAX ADMINISTRATION.**

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

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

25 “(1) first, middle, and last name,

1 “(2) date of birth,

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

4 “(4) prison assigned inmate number,

5 “(5) the date of incarceration,

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

8 “(7) the date of work release,

9 “(8) taxpayer identification number and wheth-
10 er the prison has verified such number,

11 “(9) last known address, and

12 “(10) any additional information as the Sec-
13 retary may request.

14 “(c) **FORMAT.**—The Secretary shall determine the
15 electronic format of the information described in sub-
16 section (b).”.

17 (b) **CLERICAL AMENDMENT.**—The table of sections
18 for such subchapter is amended by striking the item relat-
19 ing to section 6116 and by adding at the end the following
20 new items:

“Sec. 6116. Requirement for prisons located in United States to provide infor-
mation for tax administration.

“Sec. 6117. Cross reference.”.

21 **SEC. 503. RATE FOR MERCHANDISE PROCESSING FEES.**

22 For the period beginning on December 1, 2015, and
23 ending on June 30, 2021, section 13031(a)(9) of the Con-

1 consolidated Omnibus Budget Reconciliation Act of 1985 (19
2 U.S.C. 58c(a)(9)) shall be applied and administered—

3 (1) in subparagraph (A), by substituting
4 “0.3464” for “0.21”; and

5 (2) in subparagraph (B)(i), by substituting
6 “0.3464” for “0.21”.

7 **SEC. 504. EXTENSION OF CUSTOMS USER FEES.**

8 (a) IN GENERAL.—Section 13031(j)(3)(A) of the
9 Consolidated Omnibus Budget Reconciliation Act of 1985
10 (19 U.S.C. 58c(j)(3)(A)) is amended by striking “January
11 7, 2020” and inserting “August 2, 2021”.

12 (b) OTHER FEES.—Section 13031(j)(3)(B)(i) of the
13 Consolidated Omnibus Budget Reconciliation Act of 1985
14 (19 U.S.C. 58c(j)(3)(B)(i)) is amended by striking “Janu-
15 ary 14, 2020” and inserting “December 8, 2020”.

16 **SEC. 505. TIME FOR PAYMENT OF CORPORATE ESTIMATED**
17 **TAXES.**

18 Notwithstanding section 6655 of the Internal Rev-
19 enue Code of 1986, in the case of a corporation with assets
20 of not less than \$1,000,000,000 (determined as of the end
21 of the preceding taxable year)—

22 (1) the amount of any required installment of
23 corporate estimated tax which is otherwise due in
24 July, August, or September of 2012 shall be in-
25 creased by 0.25 percent of such amount (determined

1 without regard to any increase in such amount not
2 contained in such Code);

3 (2) the amount of any required installment of
4 corporate estimated tax which is otherwise due in
5 July, August, or September of 2016 shall be in-
6 creased by 2.75 percent of such amount (determined
7 without regard to any increase in such amount not
8 contained in such Code); and

9 (3) the amount of the next required installment
10 after an installment referred to in paragraph (1) or
11 (2) shall be appropriately reduced to reflect the
12 amount of the increase by reason of such paragraph.

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A BILL

To implement the United States–Korea Free Trade
Agreement.

OCTOBER 11, 2011

Reported without amendment