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112TH CONGRESS, 2d Session } SENATE { REPORT 112–223

UNITED STATES-KOREA FREE TRADE AGREEMENT IMPLEMENTATION ACT

SEPTEMBER 20, 2012.—Ordered to be printed

Mr. BAUCUS, from the Committee on Finance, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany S. 1642]

[Including cost estimate of the Congressional Budget Office]

The Committee on Finance, to which was referred the bill (S. 1642) to implement the United States-Korea Free Trade Agreement, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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I. REPORT AND OTHER MATERIALS OF THE COMMITTEE

A. Report of the Committee on Finance

The Committee on Finance, to which was referred the bill (S. 1642) to implement the United States-Korea Free Trade Agreement ("Agreement"), having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

B. Summary of Congressional Consideration of the Agreement

1. Background

On February 2, 2006, U.S. Trade Representative Rob Portman notified Congress of the Administration's intent to negotiate a free trade agreement with the Republic of Korea ("Korea"). Ambassador Portman consulted with the relevant congressional committees, including the Senate Committee on Finance, with respect to the initiation of negotiations.

Negotiations with Korea were initiated in June 2006. U.S. Trade Representative Susan C. Schwab announced that the United States and Korea had successfully concluded those negotiations on April 1, 2007.

The President notified Congress of his intent to enter into the Agreement on April 1, 2007 and published notice of his intent in the Federal Register on April 3, 2007. On May 1, 2007, Ambassador Schwab submitted to Congress the reports from 27 trade advisory groups commenting on the final text of the Agreement. The Office of the U.S. Trade Representative also made the reports publicly available on its website. Ambassador Schwab and Korean Minister for Trade Hyun Chong Kim signed the Agreement on June 30, 2007.

On May 10, 2007, the Bush Administration and the bipartisan leadership of the U.S. Senate Committee on Finance and the U.S. House of Representatives Committee on Ways and Means reached an agreement on trade policy. As discussed further below in Section I.D., the May 10 bipartisan trade deal required groundbreaking changes to the labor, environmental, intellectual property, government procurement, services, and investment provisions of the Agreement. U.S. Trade Representative Schwab and Korean Minister for Trade Kim signed amendments to the Agreement to reflect those changes on June 30, 2007.

On December 3, 2010, U.S. and Korean negotiators agreed to further commitments on automotive trade, pork, and pharmaceuticals, which were confirmed through an exchange of letters between U.S. Trade Representative Ron Kirk and Korean Minister for Trade Jong-Hoon Kim on February 10, 2011.

2. Trade promotion authority procedures in general

Article I, section 8 of the Constitution of the United States vests Congress with the authority to regulate international trade. Congress has periodically delegated a portion of this authority to the President in order to advance the economic interests of the United States. This delegation represents a compact between Congress and the Administration, by which Congress guarantees it will vote on a trade agreement entered into by the Administration without amendment and the Administration guarantees close consultation with Congress during the negotiation of the trade agreement in order to achieve the objectives that Congress identifies. Thorough and timely consultation by the Administration with Congress is the essential bedrock upon which Congress's delegation of constitutional authority rests. This longstanding compact, spanning decades, has resulted in the successful negotiation and implementation of numerous trade agreements that have contributed significantly to increased economic growth and prosperity in the United States.

The most recent incarnation of this compact is found in the Bipartisan Trade Promotion Authority Act of 2002 ("the Act"), which was included in the Trade Act of 2002 (Pub. L. 107–210). The Act includes prerequisites for congressional consideration of a trade agreement under expedited procedures (known as Trade Promotion Authority ("TPA") procedures), which are found in sections 2103 through 2106 of the Act (19 U.S.C. §§ 3803–3806) and section 151 of the Trade Act of 1974 (19 U.S.C. § 2191). Section 2103 of the Act authorizes the President to enter into reciprocal trade agreements with foreign countries to reduce or eliminate tariff or nontariff barriers and other trade-distorting measures. Section 2102 of the Act outlines the negotiating objectives that the President must achieve if the President intends to use TPA procedures to implement a trade agreement. And section 151 of the Trade Act of 1974 sets forth expedited procedures for congressional consideration of a trade agreement without amendment. The President's authority under section 2103 extends to trade agreements entered into on or before June 30, 2007.

3. Notification prior to negotiations

Under section 2104(a)(1) of the Act, the President must provide written notice to Congress at least 90 calendar days before initiating negotiations. On February 2, 2006, the U.S. Trade Representative notified Congress of the President's intent to initiate negotiations with Korea. The negotiations were initiated in June 2006. Section 2104(a)(2) requires the President, before and after submission of the notice, to consult regarding the negotiations with Congress. The Administration consulted with the Senate Committee on Finance and the House Committee on Ways and Means with respect to this Agreement.

4. Notification of intent to enter into an agreement

Under section 2105(a)(1)(A) of the Act, the President must notify Congress at least 90 calendar days before entering into an agreement of his intent to enter into the agreement. On April 1, 2007, the President notified Congress of his intent to enter into the United States-Korea Free Trade Agreement. The Agreement and amendments to reflect the changes required by the May 10 bipartisan trade deal were signed on June 30, 2007, and further commitments were agreed to through an exchange of letters on February 10, 2011.

5. Development of the implementing legislation

Under TPA procedures, Congress and the Administration work together to produce legislation that implements a free trade agreement. Draft legislation is developed in close consultation between the Administration and the committees with jurisdiction over the laws that must be enacted or amended to implement the agreement. The committees may hold informal meetings to consider the draft legislation and to make non-binding recommendations to the Administration. The Administration then finalizes the implementing legislation for formal submission to Congress and referral to the committees of jurisdiction. These procedures are meant to ensure close cooperation between the executive and legislative branches of government to develop legislation that faithfully implements the agreement. Under TPA and predecessor legislation, trade agreement implementing bills may include only those provisions that are "necessary or appropriate" to implement the agreement.

The Senate Committee on Finance met in open executive session on July 7, 2011, to consider informally the draft implementing legislation for the Agreement and the draft Statement of Administrative Action ("SAA"). The draft implementing legislation included provisions to renew aspects of the Trade Adjustment Assistance ("TAA") program that expired on February 13, 2011 and extend provisions that were due to expire on February 12, 2012. None of these provisions expanded TAA eligibility or benefits beyond those that had previously been provided; in fact, many of the provisions narrowed eligibility or benefits.

The TAA provisions were "necessary or appropriate" to implement the Agreement, as required by TPA and predecessor legislation. The "necessary or appropriate" standard has applied to virtually every trade agreement that Congress has considered since 1974, creating an extensive history of legislative practice. That practice clearly supported the inclusion of the TAA provisions in the draft legislation implementing this Agreement. For example, the North American Free Trade Agreement ("NAFTA") implementing bill included provisions to expand TAA benefits. The TAA provisions included in the draft legislation implementing this Agreement were likewise "necessary or appropriate." They would provide the full range of TAA benefits to help U.S. workers, firms, and farmers adjust to any trade-related dislocations they may experience, including as a result of the Agreement, which is the most economically significant FTA the United States has entered into since NAFTA. And the TAA provisions in the draft legislation implementing this Agreement were narrower than the TAA provisions in the NAFTA implementing bill in that they simply extended, and in some cases narrowed, TAA eligibility or benefits. The NAFTA implementing bill, by contrast, significantly expanded TAA eligibility.

As the Additional Views section of this report correctly points out, the Committee stated in its report accompanying the 2002 TPA legislation that the "necessary or appropriate" standard should be strictly interpreted. But the Committee has never taken the position that a strict interpretation limits implementing legislation to provisions that only relate to the FTA partner country at issue. To the contrary, the U.S.-Australia FTA implementing legislation included provisions relating to government procurement under the Chile and Singapore FTAs. The Bahrain FTA implementing legislation included provisions relating to government procurement under the Morocco FTA. And at the informal markup for the CAFTA–DR implementing legislation, the Senate Finance Committee adopted, by bipartisan voice vote, an amendment that extended TAA to service sector workers and increased the annual authorizations of the TAA for Workers and TAA for Firms programs. Like the TAA provisions in the draft legislation implementing this Agreement, the TAA provisions in the draft CAFTA–DR implementing legislation applied to workers dislocated by trade with any country, not just the FTA countries at issue.

The Additional Views section of this report incorrectly states that the decision to include the TAA provisions in the draft legislation implementing this Agreement was made with little or no consultation with the Minority. In fact, countless meetings between Majority and Minority staff, and between Chairman Baucus and Ranking Member Hatch, were held on this issue in the weeks leading up to the July 7 executive session. For example, Chairman Baucus indicated at the March 2011 hearing on the Administration's trade agenda that the Agreement and other pending FTAs could only be approved if TAA were extended, as did the Administration in May 2011. Numerous consultations were subsequently held with Committee members and their staff prior to the July 7 executive session. And a bipartisan meeting of all Finance Committee Members was held on June 30 to consider and discuss the issue. Regrettably, notwithstanding the clear statements of the Chairman and the Administration on the necessity of the renewing TAA, and the fact that no FTA implementing legislation had ever been enacted while TAA provisions had expired, minority Committee members indicated that they were unwilling to accept TAA provisions in connection with the FTAs (see Attached Letter dated June 30, 2011). TAA provisions negotiated between Chairman Baucus, House Ways and Means Chairman Camp, and the Administration were included in the implementing legislation against this background. TAA language was ultimately not included in the final version of the legislation because by that point the minority leadership had agreed to enact TAA separately and prior to Congressional consideration of the FTAs.

During the Committee's consideration of the draft implementing legislation at the July 7 executive session, thirteen amendments were offered. The first amendment, by Senator Hatch, sought to add language to the implementing legislation requiring the Comptroller General of the United States to submit a report to the U.S.

Senate Committee on Finance on the nature and effectiveness of the Obama Administration's Congressional and private sector consultations on various trade negotiations, including those relating to the Agreement. The amendment failed by voice vote. The second amendment, by Senators Wyden, Snowe, Schumer, and Cardin, was withdrawn. It would have added language to the draft implementing legislation to address concerns about the evasion of antidumping and countervailing duty orders. The third amendment, by Senator Roberts, would have delayed the TAA provisions from going into effect until the President certified that the U.S. FTAs with Colombia, Panama, and South Korea had entered into force. That amendment failed by a roll call vote of 10 ayes, 14 nays. Ayes: Hatch, Grassley (proxy), Kyl (proxy), Crapo, Roberts, Enzi, Cornyn (proxy), Coburn (proxy), Thune, and Burr (proxy). Nays: Baucus, Rockefeller, Conrad (proxy), Bingaman, Kerry (proxy), Wyden, Schumer (proxy), Stabenow, Cantwell (proxy), Nelson (proxy), Menendez, Carper, Cardin, and Snowe.

The fourth amendment, by Senator Hatch, would have required the Obama Administration to develop a public outreach plan on the benefits of international trade for the U.S. economy and U.S. workers. That amendment failed by a roll call vote of 11 ayes, 13 nays. Ayes: Hatch, Grassley (proxy), Snowe, Kyl (proxy), Crapo, Roberts, Enzi, Cornyn (proxy), Coburn (proxy), Thune, and Burr (proxy). Nays: Baucus, Rockefeller, Conrad (proxy), Bingaman, Kerry, Wyden, Schumer (proxy), Stabenow, Cantwell, Nelson, Menendez, Carper, and Cardin (proxy). The fifth amendment, by Senator Roberts, would have directed the Obama Administration to meet with government officials from China and Japan to discuss beef market access within 120 days. That amendment failed by a roll call vote of 11 ayes, 12 nays, and one pass. Ayes: Hatch, Grassley (proxy), Snowe, Kyl (proxy), Crapo, Roberts, Enzi, Cornyn (proxy), Coburn (proxy), Thune, and Burr (proxy). Nays: Baucus, Rockefeller, Conrad (proxy), Bingaman, Kerry, Wyden, Schumer (proxy), Cantwell, Nelson, Menendez (proxy), Carper, and Cardin (proxy). Pass: Stabenow.

The sixth amendment, by Senator Thune, would have extended TPA through December 31, 2015. That amendment failed by a roll call vote of 11 ayes, 13 nays. Ayes: Cantwell, Hatch, Grassley, Kyl (proxy), Crapo, Roberts, Enzi, Cornyn, Coburn, Thune, and Burr (proxy). Nays: Baucus, Rockefeller, Conrad (proxy), Bingaman, Kerry, Wyden, Schumer (proxy), Stabenow, Nelson, Menendez, Carper (proxy), Cardin, and Snowe. The seventh amendment, by Senator Bingaman, sought to add language providing $5 million per year for three years to the budget of the Office of the U.S. Trade Representative for enforcement activities. The Chairman ruled the amendment non-germane, and it was withdrawn. The eighth amendment, by Senator Hatch, to extend TPA through December 31, 2013, was withdrawn.

The ninth amendment, by Senator Rockefeller, to require the GAO to compare the TAA health care coverage tax credit with other options, was withdrawn. The tenth amendment, by Senator Cornyn, would have delayed the effect of the TAA provisions in the draft implementing legislation until the President issued a proposal to address Medicare funding. The Chairman ruled the amendment non-germane. Senator Cornyn moved to appeal the ruling of the Chair. The appeal failed by a roll call vote of 5 ayes, 9 nays. Ayes: Hatch, Snowe, Roberts, Enzi, and Cornyn. Nays: Baucus, Rockefeller, Bingaman, Wyden, Stabenow, Cantwell, Nelson, Menendez, and Cardin.

The eleventh amendment, by Senator Hatch, would have deleted the TAA provisions from the draft implementing legislation. That amendment failed by a roll call vote of 11 ayes, 13 nays. Ayes: Hatch, Grassley (proxy), Snowe, Kyl (proxy), Crapo (proxy), Roberts, Enzi, Cornyn (proxy), Coburn (proxy), Thune (proxy), and Burr (proxy). Nays: Baucus, Rockefeller, Conrad (proxy), Bingaman, Kerry, Wyden, Schumer (proxy), Stabenow, Cantwell, Nelson, Menendez, Carper (proxy), and Cardin. The twelfth amendment, by Senator Enzi, sought to add language to eliminate Medicaid and subsidy eligibility for early retirees. The Chairman ruled the amendment non-germane. Senator Enzi moved to appeal the ruling of the Chair. The appeal failed by a roll call vote of 5 ayes, 10 nays. Ayes: Bingaman, Hatch, Snowe, Roberts, and Enzi. Nays: Baucus, Rockefeller, Kerry, Wyden, Stabenow, Cantwell, Nelson, Menendez, Carper, and Cardin.

The thirteenth amendment, by Senator Roberts, would have required that implementation of the Patient Protection Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 take place through a notice of proposed rulemaking and would have imposed several further procedural requirements for receiving and considering comments in that connection. The Chairman ruled the amendment non-germane. Senator Roberts moved to appeal the ruling of the Chair. The appeal failed by a roll call vote of 4 ayes, 12 nays. Ayes: Hatch, Snowe, Roberts, and Enzi. Nays: Baucus, Rockefeller, Bingaman, Kerry, Wyden, Schumer, Stabenow, Cantwell, Nelson, Menendez, Carper, and Cardin.

The Committee then approved the draft implementing legislation and draft SAA, without amendment, by a roll call vote of 13 ayes, 11 nays. Ayes: Baucus, Rockefeller, Conrad, Bingaman, Kerry, Wyden, Schumer, Stabenow, Cantwell, Nelson, Menendez, Carper, and Cardin. Nays: Hatch, Grassley, Snowe, Kyl (proxy), Crapo (proxy), Roberts, Enzi, Cornyn (proxy), Coburn (proxy), Thune (proxy), and Burr (proxy). Separately, the Committee on Ways and Means in the House of Representatives approved the draft implementing legislation and draft SAA, as amended, on July 7, 2011, by a roll call vote of 25 ayes, 11 nays. Unlike the draft implementing legislation approved by this Committee, the draft implementing legislation approved by the Ways and Means Committee did not include TAA provisions.

6. *Formal submission of the agreement and implementing legislation*

When the President formally submits a trade agreement to Congress under section 2105 of the Act, the President must include in the submission the final legal text of the agreement, together with implementing legislation, an SAA describing regulatory and other changes to implement the agreement, a statement setting forth the reasons of the President regarding how and to what extent the agreement makes progress in achieving the applicable purposes, policies, priorities, and objectives set forth in the Act, and a statement setting forth the reasons of the President regarding how the agreement serves the interests of U.S. commerce. The implementing legislation is introduced in both Houses of Congress on the day it is submitted by the President and is referred to committees with jurisdiction over its provisions.

On October 3, 2011, the President transmitted to Congress the final text of this Agreement, the implementing legislation, the SAA, and the other supporting information required under section 2105 of the Act. That same day, Mr. Baucus, for himself, Mr. Hatch, and Mr. McConnell introduced the bill as S. 1642. The legislation was also introduced that same day in the House of Representatives (H.R. 3080).

S. 1642 is substantially similar to the draft legislation considered by the Committee during the open executive session on July 7, 2011. S. 1642, however, does not contain the provisions of the draft legislation relating to the TAA program. Those provisions were included in separate legislation, H.R. 2832, which the House and Senate approved and the President signed into law on October 21, 2011.

To qualify for TPA procedures, the implementing legislation itself must contain provisions formally approving the agreement and the SAA. And, as noted above, the implementing legislation must contain only those provisions necessary or appropriate to implement the Agreement. The implementing bill reported here—which approves the Agreement and the accompanying SAA and contains provisions necessary or appropriate to implement the Agreement into U.S. law—was referred to the Senate Committee on Finance.

7. Committee and floor consideration

When the requirements of the Act are satisfied, implementing revenue bills, such as the United States-Korea Free Trade Agreement Implementation Act, are subject to the legislative procedures of section 151 of the Trade Act of 1974. The following schedule for congressional consideration applies under these procedures:

(i) House committees have up to 45 calendar days in session in which to report the bill; any committee which does not do so in that period will be automatically discharged from further consideration.

(ii) A vote on final passage by the House must occur on or before the 15th calendar day in session after the committees report the bill or are discharged from further consideration.

(iii) Senate committees must act within 15 calendar days in session of receiving the implementing revenue bill from the House or within 45 calendar days in session of Senate introduction of the implementing bill, whichever is later, or they will be discharged automatically.

(iv) The full Senate then must vote within 15 calendar days in session on the implementing bill.

Once the implementing bill has been formally submitted by the President and introduced, no amendments to the bill are in order in either House of Congress. Floor debate in each House is limited to no more than 20 hours, to be equally divided between those favoring the bill and those opposing the bill.

The Committee on Finance met in open executive session on October 11, 2011, to consider favorably reporting S. 1642. At the meeting, the Committee favorably reported S. 1642 without amendment by voice vote, a majority of members being present. The Committee on Ways and Means in the House of Representatives favorably reported the House version of the legislation, H.R. 3080, on October 5, 2011, by a roll call vote of 31 ayes, 5 nays.

The House passed H.R. 3080 on October 12, 2011, by a roll call vote of 278 ayes, 151 nays. On the same day, the Senate passed H.R. 3080 by a roll call vote of 83 ayes, 15 nays. President Barack H. Obama signed H.R. 3080 into law on October 21, 2011 (Pub. L. 112–41).

C. Trade Relations With Korea

1. United States-Korea trade

In 2010, total goods trade between the United States and Korea was $87.7 billion, and Korea was the United States' seventh largest export market. Between 2003 and 2010, U.S. merchandise exports to Korea grew from $24.1 billion to $38.8 billion. Corresponding U.S. imports from Korea grew from $37.2 billion to $48.8 billion. Computer and electronic products and transportation equipment constitute over half of U.S. imports from Korea. Other significant imports include electrical equipment, appliances, machinery, and petroleum and coal products. Principal U.S. exports to Korea include machinery, chemicals, computer and electronic products, transportation equipment, agricultural products, and manufactured food products.

The following tables summarize the top U.S. merchandise exports to Korea and the top U.S. merchandise imports from Korea in 2010.

2010 U.S. EXPORTS TO KOREA

HTS Code—Product	Value in USD
84—NUCLEAR REACTORS, BOILERS, MACHINERY ETC.; PARTS	6,947,657,962
85—ELECTRIC MACHINERY ETC; SOUND EQUIP; TV EQUIP; PTS	5,074,051,704
90—OPTIC, PHOTO ETC, MEDIC OR SURGICAL INSTRMENTS ETC	2,660,191,601
88—AIRCRAFT, SPACECRAFT, AND PARTS THEREOF	2,430,810,796
29—ORGANIC CHEMICALS	2,148,147,452
10—CEREALS	1,846,700,000
27—MINERAL FUEL, OIL ETC.; BITUMIN SUBST; MINERAL WAX	1,549,372,516
39—PLASTICS AND ARTICLES THEREOF	1,235,694,860
72—IRON AND STEEL	1,131,471,428
98—SPECIAL CLASSIFICATION PROVISIONS, NESOI	1,025,023,070
OTHER	12,796,536,174
TOTAL	38,845,657,563

(Source: U.S. Department of Commerce, International Trade Administration)

2010 U.S. IMPORTS FROM KOREA

HTS Code—Product	Value in USD
85—ELECTRIC MACHINERY ETC; SOUND EQUIP; TV EQUIP; PTS	15,266,804,758
84—NUCLEAR REACTORS, BOILERS, MACHINERY ETC.; PARTS	9,340,574,766
87—VEHICLES, EXCEPT RAILWAY OR TRAMWAY, AND PARTS ETC	9,258,880,119
27—MINERAL FUEL, OIL ETC.; BITUMIN SUBST; MINERAL WAX	2,415,563,765
40—RUBBER AND ARTICLES THEREOF	1,572,507,719
73—ARTICLES OF IRON OR STEEL	1,544,020,378
39—PLASTICS AND ARTICLES THEREOF	1,065,287,210
29—ORGANIC CHEMICALS	946,240,140
72—IRON AND STEEL	893,487,339
90—OPTIC, PHOTO ETC, MEDIC OR SURGICAL INSTRMENTS ETC	845,644,888

2010 U.S. IMPORTS FROM KOREA—Continued

HTS Code—Product	Value in USD
OTHER	5,725,546,579
TOTAL	48,874,557,661

(Source: U.S. Department of Commerce, International Trade Administration)

2. Tariffs and trade agreements

Korea acceded to the World Trade Organization ("WTO") on January 1, 1995, with an average bound tariff rate of 16.6 percent for all goods (56.1 percent for agricultural goods and 10.2 percent for nonagricultural goods). In 2010, Korea maintained an average applied tariff rate of 12.1 percent for all goods (48.5 percent for agricultural goods and 6.6 percent for nonagricultural goods). The United States, in contrast, maintained an average applied tariff rate of 3.5 percent for all goods (4.7 percent for agricultural goods and 3.3 percent for nonagricultural goods) in 2009. Given that the Agreement will greatly reduce this existing tariff asymmetry, the U.S. International Trade Commission ("Commission") found that the Agreement likely will result in a larger increase in U.S. exports to Korea than in U.S. imports from Korea.

Korea has FTAs in place with several countries, including Chile, the European Union, India, Peru, Singapore, the 10-country Association of Southeast Asian Nations, and the European Free Trade Association countries (Norway, Liechtenstein, Iceland, and Switzerland). It has also signed numerous bilateral investment treaties. And Korea is a member of the Asia-Pacific Economic Cooperation forum.

3. U.S. International Trade Commission study

In September 2007, the Commission released the results of its investigation (Investigation No. TA–2104–24) into the probable economic effect of the Agreement (USITC Pub. 3949). The Commission found that the Agreement would have a substantial impact on U.S. trade and investment relationship with Korea. The expected growth in U.S. trade with Korea under the Agreement would have a positive impact on the U.S. economy, increasing U.S. gross domestic product by up to $12 billion.

As noted above, the Commission also concluded that the Agreement likely will result in a larger increase in U.S. exports to Korea than in U.S. imports from Korea. More specifically, it estimated that annual U.S. exports to Korea will increase by up to $10.9 billion while annual U.S. imports from Korea will increase by up to $6.9 billion. It further estimated that the largest increases in U.S. exports, by percent, will be in dairy products, other meat products (primarily pork and poultry), wearing apparel, and bovine meat products (beef). And it found the largest increases in U.S. exports, by value, will be in machinery and equipment; chemical, rubber, and plastic products; bovine meat products; other meat products; and certain other food products. The Commission expected certain U.S. sectors, such as textiles, wheat, wearing apparel, and electronic equipment, to experience modest declines in output or employment, generally less than 1 percent.

With respect to services, the Commission concluded that U.S. service firms will benefit from improved market access, national treatment, and regulatory transparency under the Agreement. The Commission noted that Korea's services market is large and that the Agreement will likely increase total U.S. services exports to Korea, although the impact will vary by industry.

D. Overview of the Agreement

1. Background

The Agreement establishes a bilateral free trade area that eliminates tariffs on trade between the United States and Korea for all qualifying goods except rice. The Agreement also liberalizes trade in services and contains provisions that address telecommunications, electronic commerce, intellectual property rights, labor, environment, government procurement, customs and trade facilitation, and investment issues. In addition, the Agreement contains provisions that promote bilateral consultation and cooperation, procedural and substantive due process, administrative and judicial review, transparency, and the rule of law. And it contains a mechanism for settling disputes that arise under the Agreement.

As noted above, the Bush Administration and the bipartisan leadership of the U.S. Senate Committee on Finance and the U.S. House of Representatives Committee on Ways and Means reached an agreement on trade policy on May 10, 2007. The United States and Korea signed amendments to the Agreement to reflect those changes on June 30, 2007. As a result of the amendments, this Agreement includes (1) fully enforceable commitments by the Parties to adopt, maintain, and enforce the five core international labor standards incorporated in the 1988 International Labor Organization Declaration on Fundamental Principles and Rights at Work; (2) fully enforceable commitments by the Parties to adopt, maintain, and enforce their obligations under certain common multilateral environmental agreements; (3) modifications to the intellectual property chapter to clarify rules concerning the protection of public health; (4) modifications to the government procurement chapter that allow the Parties to condition government contracts on adherence to core labor standards; (5) confirmation that the United States can prevent foreign companies from supplying services at U.S. ports if the United States deems such action necessary to protect our national security; and (6) confirmation that the Agreement accords foreign investors in the United States no greater substantive rights with regard to investor protections than U.S. investors in the United States.

2. Office of the U.S. Trade Representative summary of the agreement

The Office of the U.S. Trade Representative prepared a summary of the Agreement that was included among the documents that the President transmitted to Congress on October 3, 2011. This summary was distributed to Members of the Committee to aid in their consideration of the implementing legislation, and it is reprinted below:

THE UNITED STATES-KOREA FREE TRADE AGREEMENT

Summary of the Agreement

This summary briefly describes key provisions of the United States-Korea Free Trade Agreement ("Agreement") that the United States has concluded with the Republic of Korea ("Korea") and represents an authoritative expression of Administration views regarding the interpretation of the Agreement both for purposes of U.S. international obligations and domestic law.

The Agreement was signed on June 30, 2007. On December 3, 2010, Korea and the United States resolved outstanding issues related to the Agreement. As part of this resolution, the United States negotiated important new commitments on tariffs, nontariff barriers such as Korea's automotive safety standards, transparency, and a special automotive safeguard to protect U.S. workers from potential import surges. Where relevant, these new commitments, which are principally embodied in an exchange of letters between Korea and the United States dated February 10, 2011 ("February 10, 2011 Exchange of Letters"), are discussed further below.

PREAMBLE

The Preamble to the Agreement provides the Parties' underlying objectives in entering into the Agreement and provides context for the provisions that follow. It includes the following statement:

"*Agreeing* that foreign investors are not hereby accorded greater substantive rights with respect to investment protections than domestic investors under domestic law where, as in the United States, protections of investor rights under domestic law equal or exceed those set forth in this Agreement."

This statement clarifies that, as provided in the Bipartisan Trade Promotion Authority Act of 2002, under the Agreement foreign investors in the United States are not to be accorded greater substantive rights with respect to investment protections than U.S. investors in the United States.

CHAPTER ONE: INITIAL PROVISIONS AND DEFINITIONS

Section A of Chapter One sets out provisions establishing a free trade area and affirming the Parties' existing rights and obligations with respect to each other under the Marrakesh Agreement Establishing the World Trade Organization (WTO) and other agreements to which they are party.

Section B defines certain terms that recur in various chapters of the Agreement.

CHAPTER TWO: NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

Chapter Two and its relevant annexes and appendices set out the Agreement's principal rules governing trade in goods. Each Party must treat products from the other Party in a non-discriminatory manner, provide for the phase-out and elimination of tariffs on "originating" goods (as defined in Chapter Six) traded between the Parties, and eliminate a wide variety of non-tariff trade barriers that restrict or distort trade flows.

Tariff Elimination. Chapter Two provides for the elimination of customs duties on originating goods traded between the Parties. Duties on most trade in industrial and consumer goods will be eliminated within five years after the Agreement enters into force. Duties on almost all other goods will be phased out within 10 years. Some footwear, fishery, and agricultural goods will have longer periods for elimination of duties or be subject to other provisions, including, in some cases, the application of preferential tariff-rate quotas (TRQs). Annex 2–B and the General Notes to the U.S. and Korean Schedules to Annex 2–B include detailed provisions on staging of tariff reductions and application of TRQs for certain fishery products and agricultural goods. The Chapter provides that the Parties may agree to speed up tariff phase-outs on a product-by-product basis after the Agreement takes effect.

Pursuant to the February 10, 2011 Exchange of Letters, the United States will maintain its tariff on Korean cars until the fifth year after the Agreement enters into force, while Korea will reduce its tariff on U.S. cars by one half on the date that the Agreement enters into force and eliminate it at the same time the U.S. auto tariff is eliminated. Korea and the United States will accelerate the elimination of tariffs on electric cars, phasing them out in equal annual increments until they are eliminated in the fifth year (with Korea reducing its tariff by one half on the date that the Agreement enters into force). The United States will maintain its 25 percent U.S. truck tariff until the eighth year and then phase it out in three equal increments until it is eliminated in year ten. (Korea will eliminate its tariff on trucks immediately as agreed in 2007.) In addition, Korea will delay for two years, until January 1, 2016, the elimination of its tariffs on U.S. pork classified in one tariff line.

Waiver of Customs Duties. The Parties may not adopt new duty waivers or expand existing duty waivers conditioned on the fulfillment of a performance requirement. Chapter Two defines the term "performance requirements" so as not to restrict a Party's ability to provide duty drawback on goods imported from the other Party.

Temporary Admission. The Parties will provide duty-free temporary admission for certain products. Such items include professional equipment, goods for display or demonstration, and commercial samples. Chapter Two also includes specific provisions on transit of containers used in international traffic.

Import/Export Restrictions, Fees, and Formalities. The Chapter clarifies that restrictions prohibited under the Agreement and the General Agreement on Tariffs and Trade (GATT) 1994 include export and import price requirements (except under antidumping and countervailing duty orders and undertakings) and import licensing conditioned on the fulfillment of a performance requirement. In addition, a Party must limit all fees and charges imposed on or in connection with importation or exportation to the approximate cost of services rendered. Neither Party may apply a merchandise processing fee on imports of "originating" goods. In addition, Korea will amend its Special Consumption Tax and Annual Vehicle Tax on motor vehicles to reduce overall tax rates and decrease the tax disparity between different categories of motor vehicles. In the February 10, 2011 Exchange of Letters, Korea agreed to adhere to additional transparency obligations in the event that it adopts new automotive taxes based on greenhouse gas emissions or fuel economy.

Distinctive Products. Korea will recognize Bourbon Whiskey and Tennessee Whiskey as "distinctive products" of the United States, meaning that Korea will not permit the sale of any product as Bourbon Whiskey or Tennessee Whiskey unless it was manufactured in the United States in accordance with applicable laws and regulations. Similarly, the United States will recognize Andong Soju and Gyeongju Beopju as "distinctive products" of Korea.

Committee on Trade in Goods. The Parties will establish a Committee on Trade in Goods to consider matters arising under Chapters Two, Six (Rules of Origin and Origin Procedures), and Seven (Customs Administration and Trade Facilitation). The committee's functions include promoting trade in goods and addressing barriers to trade in goods between the Parties.

CHAPTER THREE: AGRICULTURE

Chapter Three contains special provisions covering trade in agricultural goods.

TRQs. Under Chapter Three each government must administer its tariff-rate quotas in a manner that is transparent, non-discriminatory, responsive to market conditions, and minimally burdensome on trade. The Chapter requires the Parties to make every effort to administer TRQs in a manner that allows importers to fully utilize import quotas. In addition, the Chapter provides that the Parties may not condition application for, or utilization of, quota allocations on the re-export of a good.

Safeguards. Chapter Three also sets out a safeguard mechanism that will permit Korea to impose an additional duty on specified agricultural products if imports of those products from the United States exceed an established volume "trigger." The list of products as well as trigger volumes and duty rates are set out in Annex 3–A of the Agreement. A safeguard measure will remain in force until the end of the year in which the measure applies. Korea may not apply an agricultural safeguard on a good after the period specified for that product in Annex 3–A.

Korea may not apply a safeguard measure on a good that is already the subject of a safeguard measure under either Chapter Ten (Trade Remedies) of the Agreement or the WTO Agreement on Safeguards. All agricultural safeguard measures must be implemented in a transparent manner and, on request, Korea must consult with the United States regarding any measure it applies.

Chapter Three prohibits both Parties from imposing safeguard duties pursuant to the WTO Agreement on Agriculture on "originating" goods.

Additional Provisions. Chapter Three provides for the creation of a Committee on Agricultural Trade. The committee will be established within 90 days after the Agreement enters into force and will provide a forum for promoting cooperation in the implementation and administration of the Chapter as well as for consultations on agricultural trade.

CHAPTER FOUR: TEXTILES AND APPAREL

Chapter Four contains special provisions covering trade in "originating" textile and apparel goods.

Safeguards. The Chapter establishes a transitional safeguard procedure for textile and apparel goods, under which the importing Party may temporarily impose additional duties up to the level of the normal trade relations most-favored-nation (NTR/MFN) duty rates on imports of textile or apparel goods that cause, or threaten to cause, serious damage to a domestic industry as a result of the elimination or reduction of duties under the Agreement. An importing Party may impose a textile safeguard measure only once on the same textile or apparel good. The measure may not be in place for more than two years, or four years if the measure is extended. A Party may not take or maintain a textile safeguard against a good beyond ten years after the date the Party must eliminate its customs duties on the good pursuant to the Agreement. A Party may not apply a textile safeguard measure to a good while the good is subject to a safeguard measure under (i) Chapter Ten (Trade Remedies) or (ii) Article XIX of the GATT 1994 and the WTO Agreement on Safeguards.

A Party imposing a safeguard measure under Chapter Four must provide the exporting Party with mutually agreed compensation in the form of trade concessions for textile or apparel goods that have substantially equivalent trade effects or that are equivalent to the increased duties resulting from application of the safeguard measure. If the Parties cannot agree on compensation, the exporting Party may raise duties on any goods from the importing Party in an amount that has a value substantially equivalent to the increased duties resulting from application of the safeguard measure.

Rules of Origin and Related Matters. A textile or apparel good will generally qualify as an "originating" good eligible to receive preferential treatment under the Agreement only if all processing from the yarn stage to the final product (*e.g.,* yarn-spinning, fabric production, cutting, and assembly) takes place in the United States, Korea, or both, or if there is an applicable change in tariff classification under the specific rules of origin contained in Annex 4–A of the Agreement.

Chapter Four sets out special rules for determining whether a textile or apparel good is an "originating" good, including a *de minimis* exception for non-originating yarns or fibers, a process for designating inputs not available in commercial quantities, a rule for treatment of sets, and consultation provisions.

The *de minimis* rule applies to goods that ordinarily would not be considered "originating" goods because certain of their fibers or yarns do not undergo an applicable change in tariff classification. Under the rule, the Parties will consider a good to be "originating" if those fibers or yarns constitute seven percent or less of the total weight of the component of the good that determines the classification. This special rule does not apply to goods containing elastomeric yarns in the component of the good that determines the classification.

Annex 4–B of the Agreement sets out a process for creating a list of fabrics, yarns, and fibers that a Party determines are not available in commercial quantities in a timely manner from producers in its territory. A textile or apparel good that includes the fabrics, yarns, or fibers included in this list will be treated as if it is "originating" for purposes of the specific rules of origin in Annex 4–A of the Agreement. A Party may remove a fabric, yarn, or fiber from the list if it determines that the fabric, yarn, or fiber has become available in commercial quantities.

Customs Cooperation. Chapter Four commits the Parties to cooperate in enforcing their laws affecting trade in textile and apparel goods, to ensure the accuracy of claims of origin, and to prevent circumvention of international agreements affecting trade in textile and apparel goods. The Chapter also requires Korea to provide the United States specified information concerning entities engaged in the production of textile or apparel goods in its territory, including any potential circumvention.

Chapter Four provides that, at the request of the importing Party, the exporting Party must conduct a verification to determine that a claim of origin for a textile or apparel product is accurate. In addition, the Chapter provides that under certain circumstances the exporting Party must conduct a verification of an enterprise in its territory to determine whether it is complying with the Parties' customs laws applicable to textile trade. A verification may include visits to the premises of the exporter or producer of the goods in question. If there is insufficient information to make the relevant determination, or if an enterprise provides incorrect information, the importing Party may take appropriate action, which may include denying application of preferential tariff treatment to the goods in question or to similar textile or apparel goods exported or produced by the person subject to the verification.

Chapter Four also establishes a Committee on Textile and Apparel Trade Matters to consider issues arising under the Chapter.

CHAPTER FIVE: PHARMACEUTICAL PRODUCTS AND MEDICAL DEVICES

Chapter Five sets out provisions related to the pricing and reimbursement of pharmaceutical products and medical devices. The Chapter recognizes the Parties' shared commitment to promoting and facilitating access to high-quality patented and generic pharmaceutical products and medical devices, and affirms the importance of several key principles in pursuing these objectives.

Access to Innovation: Chapter Five calls for the Parties to apply fair, reasonable, and non-discriminatory procedures when they operate national-level listing and reimbursement regimes for pharmaceutical products and medical devices. In operating such a system, a Party must base reimbursement determinations on market prices or appropriately recognize the value of patented products and devices. A Party must also permit manufacturers to apply for increased reimbursement amounts, including for additional medical indications, based on evidence of a product's or device's safety or efficacy.

Transparency: The Chapter also commits each Party to ensure that its measures governing pricing and reimbursement for pharmaceutical products and medical devices are transparent and predictable. An exchange of letters appended to the Agreement calls for Korea to establish and maintain an independent body to review pricing and reimbursement decisions on pharmaceutical products and medical devices.

Dissemination of Information: Each Party must allow pharmaceutical manufacturers to publish certain information regarding their approved products on the Internet.

Ethical Business Practices: Chapter Five also calls for the Parties to maintain and enforce measures to prohibit manufacturers and suppliers from providing improper inducements to health care professionals or institutions for listing, purchasing, or prescribing their devices or products.

Cooperation: Chapter Five establishes a Medicines and Medical Devices Committee, co-chaired by health and trade officials from each Party, to monitor and support implementation of the Chapter and to provide for continued dialogue between the Parties on emerging health care policy issues. The Chapter also calls for each Party to facilitate consideration of requests from manufacturers to recognize the results of conformity assessment procedures that bodies in the other Party's territory have conducted.

CHAPTER SIX: RULES OF ORIGIN AND ORIGIN PROCEDURES

To benefit from various trade preferences provided under the Agreement, including reduced duties, a good must qualify as an "originating" good under the rules of origin set out in Chapter Six and Annex 6–A. These rules ensure that the preferential tariff treatment and other benefits of the Agreement accrue primarily to firms or individuals that produce or manufacture goods in the Parties' territories.

Key Concepts. Chapter Six provides general criteria under which a good may qualify as "originating:"

- When the good is wholly obtained or produced in Korea, the United States, or both (*e.g.,* crops grown or minerals extracted in the United States); or
- When the good is produced entirely in the territory of Korea, the United States, or both and: (1) non-originating materials used in the production of the good undergo a specified change in tariff classification in Korea, the United States, or both; or (2) meets any applicable "regional value content" requirement (see below); and (3) satisfies all other requirements of Chapter Six, including Annex 6–A; or
- When the good is produced in Korea, the United States, or both, exclusively from "originating" materials.

De Minimis. Even if a good does not undergo a specified change in tariff classification, it will be treated as an originating good if the value of non-originating materials that have been used in the production of the good and do not undergo the required change in tariff classification does not exceed ten percent of the adjusted value of the good, and the good otherwise meets the Chapter's criteria. This *de minimis* exception does not apply to certain agricultural and fisheries goods, and the Agreement includes a separate *de minimis* exception for textile and apparel goods.

Regional Value Content. Some origin rules under the Agreement require that certain goods meet a "regional value content" test in order to qualify as "originating," meaning that a specified percentage of the value of the good must be attributable to originating materials. In general, the Agreement provides two methods for calculating that percentage: (1) the "build-down method" (based on the value of non-originating materials used); and (2) the "build-up method" (based on the value of originating materials used). The regional value content of certain automotive goods may also be calculated on the basis of their net cost. Finally, standard accessories, spare parts, and tools delivered with a good are considered part of the material making up the good so long as these items are not separately classified or invoiced and their quantities and values are customary. The *de minimis* rule does not apply in calculating regional value content.

Claims for Preferential Treatment. Under Chapter Six, importers who wish to claim preferential tariff treatment for a particular good must be prepared to submit, on the request of the importing Party's customs authority, a statement explaining why the good qualifies as an originating good. A Party may only deny a claim for preferential treatment through a written determination that the claim is invalid as a matter of fact or law. The Chapter establishes a procedure for filing claims for preferential treatment for up to one year after a good is imported and for seeking a refund of any excess duties paid. The Chapter also prohibits a Party from penalizing an importer if the importer promptly and voluntarily corrects an incorrect claim and pays any duties owed.

Verification. Each Party must ensure that its customs authority is empowered to conduct verifications for purposes of determining whether a good is an originating good. Where an importing Party determines through a verification that an importer, exporter, or producer has engaged in a pattern of conduct in providing false or unsupported statements, declarations, or certifications that a good is an originating good, the Party may suspend preferential tariff treatment to identical goods from that importer, exporter, or producer until the importing Party determines that the importer, exporter, or producer is in compliance with the rules set out in the Chapter.

Additional Rules. Chapter Six provides specific rules with respect to the treatment of (1) packing materials and containers; (2) indirect materials; (3) fungible goods; and (4) sets of goods for purposes of determining origin. The Chapter provides that a Party may not treat a good as originating if the good undergoes any operation in a third country other than being unloaded, reloaded, or preserved in good condition, or if it is shipped through a third country and does not remain under the control of customs authorities there. The Chapter also provides that the Parties will meet to discuss whether to develop common guidelines for interpreting, applying, and administering Chapters Six and Seven.

CHAPTER SEVEN: CUSTOMS ADMINISTRATION AND TRADE FACILITATION

Chapter Seven establishes rules designed to encourage transparency, predictability, and efficiency in the operation of each Party's customs procedures and to provide for cooperation between the Parties on customs matters.

General Principles. In Chapter Seven, each Party commits to observe certain transparency obligations. Each Party must publish its customs measures, including on the Internet, and, where possible, provide opportunity for comments from the public before amending its customs regulations. Each Party must also provide written advance rulings, on request, to its importers and to exporters and producers of the other Party, regarding whether a product qualifies as an "originating" good under the Agreement, as well as on other customs matters. In addition, each Party must ensure that importers have access to both administrative and judicial review of customs determinations. The Parties must adopt or maintain procedures to release goods from customs promptly and expeditiously clear express shipments.

Cooperation. Chapter Seven also is designed to enhance customs cooperation. The Parties are encouraged to give each other advance notice of customs developments likely to substantially affect the operation of the Agreement. The Chapter calls for the Parties to cooperate in securing compliance with their respective customs measures related to the implementation and operation of the provisions of the Agreement governing importations and exportations. It includes specific provisions for sharing customs information where a Party has a reasonable suspicion of unlawful activity relating to its laws and regulations governing importations.

CHAPTER EIGHT: SANITARY AND PHYTOSANITARY MEASURES

Chapter Eight defines the Parties' obligations to each other under the Agreement regarding sanitary and phytosanitary (SPS) measures. It reflects the Parties' understanding that implementation of existing obligations under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) is a shared objective. Nothing in the Agreement imposes new limitations on the United States in terms of maintaining high safety and inspection standards.

Key Concepts. SPS measures are laws or regulations that protect human, animal, or plant life or health from certain risks, including plant- and animal-borne pests and diseases, additives, contaminants, toxins, or disease-causing organisms in food and beverages.

Cooperation. The Parties will establish a Committee on SPS Matters to (i) enhance each Party's implementation of the WTO SPS Agreement; (ii) help protect human, animal, or plant life or health; (iii) enhance consultation and cooperation between the Parties on SPS matters; and (iv) facilitate bilateral trade.

Dispute Settlement. Neither Party may invoke the Agreement's dispute settlement procedures for a matter arising under Chapter Eight.

CHAPTER NINE: TECHNICAL BARRIERS TO TRADE

Chapter Nine builds on WTO rules related to technical barriers to trade in order to promote transparency, accountability, and cooperation between the Parties on regulatory issues.

Key Concepts. The term "technical barriers to trade" (TBT) refers to barriers that may arise in preparing, adopting, or applying voluntary product standards, technical regulations, and procedures used to determine whether a particular good meets a standard or technical regulation ("conformity assessment procedures").

International Standards. Chapter Nine requires the Parties to apply the principles articulated in the WTO TBT Committee's Decision on Principles for the Development of International Standards, Guides and Recommendations in determining what constitutes an "international standard" within the meaning of the WTO TBT Agreement. Those principles emphasize the need for openness and consensus in the development of international standards.

Conformity Assessment. Chapter Nine also provides for a dialogue between the Parties on ways to facilitate the acceptance of conformity assessment results. Each Party will recognize conformity assessment bodies in the territory of the other Party on terms no less favorable than it accords conformity assessment bodies in its own territory. The Chapter also calls for the Parties to notify each other of the criteria they use to recognize conformity assessment bodies that perform conformity assessment procedures for cosmetics, household electrical appliances, and motor vehicles, and with respect to noise and emissions.

Transparency. Chapter Nine contains various transparency obligations, such as requiring each Party to: (i) allow persons of the other Party to participate in the development of technical regulations, standards, and conformity assessment procedures on terms no less favorable than those it accords to its own persons; (ii) transmit regulatory proposals notified under the WTO TBT Agreement directly to the other Party; (iii) describe in writing the objectives of and reasons for a proposed technical regulation or conformity assessment procedure; and (iv) consider comments on such proposals and respond in writing to significant comments it receives.

Cooperation. Chapter Nine establishes a Committee on Technical Barriers to Trade through which the Parties will cooperate to address technical barriers and improve market access. Annex 9–B establishes an Automotive Working Group to monitor and facilitate increased cooperation regarding the development, implementation, and enforcement of relevant standards, technical regulations, and conformity assessment procedures with respect to the regulation of motor vehicles.

Automotive Standards and Technical Regulations. Under Chapter Nine, each Party must ensure that technical regulations related to motor vehicles are not prepared, adopted, or applied with a view to or with the effect of creating unnecessary obstacles to international trade, to the extent provided in Article 2.2 of the WTO TBT Agreement. In an exchange of letters appended to the Agreement, Korea has also taken on specific commitments with respect to auto emission standards and regulations relating to self-certification of automotive safety standards. Furthermore, in the February 10, 2011 Exchange of Letters, Korea committed to allow U.S. manufacturers that sell 25,000 or fewer "originating" vehicles in Korea to be considered as meeting all Korean safety regulations provided the vehicles are certified to U.S. safety standards. For all regulatory measures that would require a substantial change in motor vehicle design or technology, Korea also agreed to provide a period between the date a regulation is issued and the date manufacturers must comply with it that is usually not less than one year, and to conduct post-implementation reviews of existing significant regulations affecting motor vehicles to assess whether the regulations remain appropriate.

CHAPTER TEN: TRADE REMEDIES

Safeguards. Section A of Chapter Ten establishes a safeguard procedure that will be available to aid domestic industries that sustain or are threatened with serious injury due to increased imports resulting from tariff reduction or elimination under the Agreement. As part of this process, each Party shall notify the other Party on initiation of an investigation and consult with the other Party as far in advance of a safeguard measure as practicable.

Chapter Ten authorizes a Party to impose temporary duties on an imported originating good if, as a result of the reduction or elimination of a duty under the Agreement, the good is being imported in such increased quantities and under such conditions as to constitute a substantial cause of serious injury, or threat of serious injury, to a domestic industry producing a "like" or "directly competitive" good.

Unless the exporting Party agrees otherwise, a safeguard measure may be applied on a good only during the Agreement's "transition period" (as defined in Article 10.6) for phasing out duties on the good. A safeguard measure may take one of two forms—a temporary increase in duties to NTR (MFN) levels or a temporary suspension of duty reductions called for under the Agreement. In "critical circumstances," the importing Party may, after 45 days have passed since initiation of the investigation, impose provisional relief for up to 200 days, based on a preliminary determination, while its investigation of the matter is underway. The Agreement provides an alternative form of safeguard measure for duties applied to a good on a seasonal basis.

A Party may not impose a safeguard measure under Chapter Ten more than once on any good. A safeguard measure may be in place for an initial period of up to two years. A Party may extend a measure for an additional year, if it determines that the industry is adjusting and the measure remains necessary to facilitate adjustment and prevent or remedy serious injury. If a measure lasts more than one year, the Party must scale it back at regular intervals.

If a Party imposes a safeguard measure, that Party must provide offsetting trade compensation to the other Party. No later than 30 days after it applies a safeguard measure, the respective Party shall afford an opportunity for consultations with the other Party regarding compensation. If the Parties cannot agree on the amount or nature of the compensation, the exporting Party may unilaterally suspend "substantially equivalent" trade concessions that it has made to the importing Party.

The February 10, 2011 Exchange of Letters includes a special safeguard for goods of tariff heading 8703 or 8704 (*i.e.,* cars and trucks). Under the special safeguard, a Party may apply a safeguard using the procedures set forth in Chapter Ten, with the following modifications: a safeguard may be applied on a good for an additional ten years after the "transition period" for phasing out duties on the good; a Party may impose a safeguard measure more than once on any good; the safeguard measure may be extended for an additional two years; there is no obligation to scale back a safeguard at regular intervals; there are fewer procedural requirements for critical circumstances; and the Party applying the safeguard is not subject to the suspension of trade concessions for up to two years after the safeguard is applied if it does not agree with the exporting Party on tariff reductions or other compensation.

Global Safeguards. Chapter Ten provides that each Party maintains its right to take action against imports from all sources under the WTO Agreement on Safeguards. A Party may exclude imports of an originating good from the other Party from a global safeguard measure if those imports are not a substantial cause of serious injury or do not create a threat of serious injury. A Party may not apply a safeguard measure under Chapter Ten at the same time that it applies a safeguard measure on the same good under the WTO Safeguards Agreement.

Antidumping and Countervailing Duties. Section B of Chapter Ten confirms that each Party retains its rights and obligations under the WTO Agreement with regard to the application of antidumping and countervailing duties. A Party must notify the other when it receives an antidumping or countervailing duty petition concerning imports from the other Party and afford the other Party a meeting or other similar opportunities regarding the application, consistent with the Party's law. With respect to anti-dumping cases, following a preliminary affirmative determination, the Party's competent authorities must provide exporters of the other Party due consideration and adequate opportunity for consultations regarding proposed price or quantity undertakings that could suspend the investigation. With respect to countervailing duty investigations, following a preliminary affirmative determination, the Party's competent authorities must provide the other Party and exporters of the other Party due consideration and adequate opportunity for consultations regarding proposed price or quantity undertakings that could suspend the investigation. Antidumping and countervailing duty measures may not be challenged under the Agreement's dispute settlement procedures.

Committee on Trade Remedies. Section C of the Chapter creates a Committee on Trade Remedies whose functions include (i) enhancing each Party's understanding of the other's trade remedy laws, policies, and practices; (ii) improving cooperation on trade remedies matters; and (iii) discussing topics of mutual interest.

CHAPTER ELEVEN: INVESTMENT

Chapter Eleven establishes rules to protect investors from one Party against wrongful or discriminatory government actions when they invest or attempt to invest in the other Party's territory. The Chapter's provisions reflect traditional standards incorporated in earlier U.S. bilateral investment treaties, previous free trade agreements, and customary international law.

Key Concepts. Under Chapter Eleven, the term "investment" covers all forms of investment, including enterprises, securities, debt, intellectual property rights, licenses, and contracts. Chapter Eleven covers both investments existing when the Agreement enters into force and future investments. The term "investor of a Party" encompasses U.S. and Korean nationals as well as firms (including branches) established in one of the Parties.

General Principles. Under the Agreement, investors enjoy six basic protections: (1) the right to non-discriminatory treatment relative both to domestic investors and investors of non-Parties; (2) limits on imposition by the host Party of "performance requirements;" (3) the right to free transfer of funds related to an investment; (4) the guarantee that expropriation will be done in accordance with customary international law standards; (5) the right to the minimum standard of treatment of aliens required by customary international law; and (6) the right to hire key managerial personnel without regard to nationality. (As to this last protection, a Party may require that a majority of the board of directors be of a particular nationality, as long as this does not prevent the investor from controlling its investment.)

Sectoral Coverage and Non-Conforming Measures. With the exception of investments in or by regulated financial institutions (which are treated in Chapter Thirteen), Chapter Eleven generally applies to all sectors, including service sectors. However, each Party has listed in Annexes I and II particular measures or sectors for which it negotiated an exemption from the Chapter's obligations relating to national treatment, NTR (MFN), performance requirements, or senior management and boards of directors ("non-conforming measures"). Annex I contains each Party's list of existing non-conforming measures at the central and regional levels of government. The United States has scheduled an exemption from all aforementioned obligations for all existing state measures. All existing local measures are exempted for both Parties without the need to be listed. If a Party liberalizes any of these non-conforming Annex I measures, it must thereafter maintain the measure at least at that level of openness. In Annex II, each Party has listed sectors or activities in which it reserves the right to maintain existing or adopt future non-conforming measures. (As described below, Annexes I and II also include exemptions from Chapter Twelve (Cross-Border Trade in Services).)

Investor-State Disputes. Chapter Eleven provides a mechanism for an investor of a Party to submit to binding international arbitration a claim for damages against the other Party. The investor may assert that the Party has breached a substantive obligation under the Chapter or that the Party has breached an "investment agreement" with, or an "investment authorization" granted to, the investor or a covered investment that the investor owns or controls. "Investment agreements" and "investment authorizations" are arrangements between an investor and a host government based on contracts and authorizations, respectively. These terms are defined in the Chapter.

Chapter Eleven affords public access to information on investor-State arbitrations conducted pursuant to the Agreement. For example arbitration hearings will generally be open to the public and key documents will be publicly available, with exceptions for confidential business information. The Parties also authorize arbitral tribunals to accept *amicus* submissions from the public. In addition, the Chapter includes provisions similar to those used in U.S. courts to dispose quickly of claims a tribunal finds to be frivolous. Finally, within three years after the Agreement enters into force the Parties will consider whether to establish an appellate body, or similar mechanism, to review arbitral awards that tribunals render under the Chapter.

Chapter Eleven confirms the Parties' understanding that, "except in rare circumstances," nondiscriminatory regulatory actions designed and applied to meet legitimate public welfare objectives, such as public health, safety, and the environment, are not indirect expropriations. The Chapter also provides a list of factors to be considered in determining whether a taxation measure constitutes an expropriation.

The Agreement does not require the United States to give Korean investors greater substantive rights than U.S. companies already enjoy in the United States.

CHAPTER TWELVE: CROSS-BORDER TRADE IN SERVICES

Chapter Twelve governs measures affecting cross-border trade in services between the Parties. Certain provisions also apply to measures affecting investments to supply services.

Key Concepts. Under the Agreement, cross-border trade in services covers supply of a service:

- from the territory of one Party into the territory of the other Party (*e.g.,* electronic delivery of services from the United States to Korea);
- in the territory of a Party by a person of that Party to a person of the other Party (*e.g.,* a Korean company provides services to U.S. visitors in Korea); and
- by a national of a Party in the territory of the other Party (*e.g.,* a U.S. lawyer provides legal services in Korea).

Chapter Twelve should be read together with Chapter Eleven (Investment), which establishes rules pertaining to the treatment of service firms that choose to provide their services through a local presence, rather than cross-border. Chapter Twelve applies where, for example, a service supplier is temporarily present in a territory of a Party and does not operate through a local investment.

General Principles. Among Chapter Twelve's core obligations are requirements to provide national treatment and NTR (MFN) treatment to service suppliers of the other Party. Thus, each Party must treat service suppliers of the other Party no less favorably than its own suppliers or those of any other country. This commitment applies to state and local governments as well as the national government. The Chapter's provisions apply to existing service suppliers as well as to those who seek to supply services. The Parties are prohibited from requiring firms to establish a local presence as a condition for supplying a service on a cross-border basis. In addition, certain types of market access restrictions on the supply of services (*e.g.,* that limit the number of firms that may offer a particular service or that restrict or require specific types of legal structures or joint ventures with local companies in order to supply a service) are also barred. The Chapter's market access rules apply both to services supplied on a cross-border basis and through a local investment.

Sectoral Coverage and Non-Conforming Measures. Chapter Twelve applies across virtually all services sectors. The Chapter excludes financial services (which are addressed in Chapter Thirteen), except that certain provisions of Chapter Twelve apply to investments in financial services that are not regulated as financial institutions and are covered by Chapter Eleven (Investment). In addition, Chapter Twelve does not cover air transportation, although it does apply to specialty air services and aircraft repair and maintenance.

Each Party has listed in Annexes I and II measures or sectors for which it negotiated exemptions from Chapter Twelve's core obligations (national treatment, NTR (MFN), local presence, and market access). Annex I contains the list of existing non-conforming measures at the central and regional level of government. Our coverage under the market access discipline is the same as our commitments under the WTO General Agreement on Trade in Services, with the right to take measures not inconsistent with those commitments. The United States has scheduled an exemption from national treatment, NTR (MFN), and local presence for all existing state measures. All existing local measures are exempted for both Parties without the need to be listed. However, once a Party liberalizes any of these non-conforming Annex I measures, it must thereafter maintain the measure at least at that level of openness. Each Party has listed in Annex II sectors or activities in which it reserves the right to adopt or maintain future non-conforming measures.

Specific Commitments. Chapter Twelve includes a comprehensive definition of express delivery services under which each Party must provide national treatment, NTR (MFN) treatment, and additional benefits to express delivery services of the other Party. The Chapter provides that the Parties will try to maintain the level of market openness for express delivery services they provided on the date the Agreement was signed, and a Party may request consultations with the other if it believes the other Party is not maintaining that level of access. The Chapter also addresses the issue of postal monopolies directing revenues derived from monopoly postal services to confer an advantage on express delivery services. In an exchange of letters appended to the Agreement, Korea has committed to expand the current exceptions to the Korean Postal Authority's monopoly to include all international document delivery services. In a further letter signed along with the Agreement, Korea has expressed its intention to gradually increase the scope of permitted private delivery services in other areas as well.

Transparency and Domestic Regulation. Provisions on transparency and domestic regulation complement the core rules of Chapter Twelve. The transparency rules apply to the development and application of regulations governing services. The Chapter's rules on domestic regulation govern the operation of approval and licensing systems for service suppliers. Like the Chapter's market access rules, its provisions on transparency and domestic regulation cover services supplied both on a cross-border basis and through a local investment.

Exclusions. Chapter Twelve does not apply to any service supplied "in the exercise of governmental authority"—that is, a service that is provided on a non-commercial and non-competitive basis. Chapter Twelve also does not apply to government subsidies. In addition, the Chapter makes clear that the Agreement does not impose any obligation on a Party with respect to its immigration measures, including admission or conditions of admission for temporary entry.

CHAPTER THIRTEEN: FINANCIAL SERVICES

Chapter Thirteen provides rules governing each Party's treatment of: (1) financial institutions of the other Party; (2) investors of the other Party, and their investments, in financial institutions; and (3) cross-border trade in financial services.

Key Concepts. The Chapter defines a "financial institution" as any financial intermediary or other institution authorized to do business and regulated or supervised as a financial institution under the law of the Party where it is located. A "financial service" is any service of a financial nature, including, insurance, banking, securities, asset management, financial information and data processing services, and financial advisory services.

General Principles. Chapter Thirteen's core obligations parallel those in Chapters Eleven (Investment) and Twelve (Cross-Border Trade in Services). Specifically, Chapter Thirteen imposes rules requiring national treatment and NTR (MFN) treatment, prohibits certain quantitative restrictions on market access of financial institutions, and bars restrictions on the nationality of senior management. As appropriate, these rules apply to measures affecting financial institutions, investors and investments in financial institutions of another Party, and services companies that are currently supplying and that seek to supply financial services on a cross-border basis. The rules do not apply to measures adopted or maintained by a Party relating to certain specified services and activities unless a Party allows its financial institutions to compete with a public entity or a financial institution to supply such services and activities. Chapter Thirteen includes broad flexibility and safeguards, including the prudential and monetary and exchange rate exceptions, to ensure that governments may continue to regulate the financial sector and take action to ensure the stability and integrity of the financial system in a financial crisis.

Non-Conforming Measures. Similar to Chapters Eleven and Twelve, each Party has listed in an annex (Annex III) particular measures for which it negotiated exemptions from the Chapter's core obligations. Existing non-conforming U.S. state and local laws and regulations are exempted from these obligations. Once a Party, including a state or local government, liberalizes one of these non-conforming measures, however, it must, in most cases, maintain the measure at least at that new level of openness.

Other Provisions. Chapter Thirteen also includes provisions on regulatory transparency, "new" financial services, self-regulatory organizations, and the expedited availability of insurance products.

Relationship to Other Chapters. Measures that a Party applies to financial services suppliers of the other Party, other than regulated financial institutions, that make or operate investments in the Party's territory are covered principally by Chapter Eleven (Investment) and certain provisions of Chapter Twelve (Cross-Border Trade in Services). In particular, the core obligations of Chapter Eleven apply to such measures, as do the market access, transparency, and domestic regulation provisions of Chapter Twelve. Chapter Thirteen incorporates by reference certain provisions of Chapter Eleven, such as those relating to transfers and expropriation.

Additional Commitments. Pursuant to the Chapter's annexes and an exchange of letters appended to the Agreement, Korea has taken on specific commitments to establish a more transparent financial regulatory regime, ensure that a government-owned insurance supplier will not be provided competitive advantages, and allow U.S. financial institutions in Korea to transfer information out of Korea for data processing to take advantage of global economies of scale.

CHAPTER FOURTEEN: TELECOMMUNICATIONS

Chapter Fourteen includes disciplines beyond those imposed under Chapters Eleven (Investment) and Twelve (Cross-Border

Trade in Services) on regulatory measures affecting telecommunications trade and investment between the Parties. It is designed to ensure that service suppliers of each Party have non-discriminatory access to and use of public telecommunications networks and services in the territory of the other Party. In addition, each Party must regulate its major telecommunications suppliers in ways that will help ensure a level playing field for new entrants. Each Party also commits to ensure that its telecommunications regulations are set by independent regulators applying transparent procedures.

Key Concepts. Under Chapter Fourteen, a "public telecommunications service" is any telecommunications service that a Party requires to be offered to the public generally. The term includes voice and data transmission services, but does not include "value-added services" (e.g., services that enable users to create, store, or process information over a network). A "major supplier" is a company that, by virtue of its market position or control over certain facilities, can materially affect the terms of participation in the market.

Competition. Chapter Fourteen establishes rules promoting effective competition in telecommunications services. The Chapter includes commitments by each Party to:

- ensure that all service suppliers of the other Party that seek to access or use a public telecommunications network in the Party's territory can do so on reasonable and non-discriminatory terms (e.g., Korea must ensure that its public phone companies do not provide preferential access to Korean banks or Internet service providers, to the detriment of U.S. competitors);
- ensure that the other Party's telecommunications suppliers have the right to interconnect their networks with public telecommunications networks in the Party's territory;
- ensure that telecommunications suppliers of the other Party are permitted to connect leased lines with public telecommunications networks in the Party's territory; and
- impose disciplines on the behavior of "major suppliers," such as ensuring that major suppliers provide interconnection at cost-oriented rates and do not impose unreasonable or discriminatory conditions or limitations on the resale of their services.

Regulation. The Chapter addresses key regulatory concerns that may create barriers to trade and investment in telecommunications services. In particular, each Party:

- will maintain or adopt procedures that will help ensure a transparent telecommunications regulatory regime, including requirements to publish interconnection agreements and service tariffs and provide meaningful opportunities for interested parties to participate in telecommunications rulemaking;
- will require its telecommunications regulator to resolve disputes between suppliers and provide foreign suppliers the right to seek judicial review of those decisions; and
- may elect to deregulate telecommunications services when competition emerges and certain standards are met.

Technological Choice. The Chapter contains innovative provisions designed to ensure that the Parties avoid limiting the technologies telecommunications suppliers may choose to use to provide their services.

CHAPTER FIFTEEN: ELECTRONIC COMMERCE

Chapter Fifteen establishes rules designed to prohibit discriminatory regulation of electronic trade in digitally encoded products such as computer programs, video, images, and sound recordings. The provisions in this and other recent U.S. free trade agreements represent a major advance over previous international understandings on this subject.

Customs Duties. Chapter Fifteen provides that a Party may not impose customs duties on digital products of the other Party that are either transmitted electronically or fixed on a carrier medium.

Non-Discrimination. The Parties will apply the principles of national treatment and NTR (MFN) treatment to trade in electronically-transmitted digital products. Thus, a Party may not discriminate against digital products that have a nexus to the other Party's territory (e.g., creation, production, or first sale there) or to otherwise afford protection to products with a connection to its own territory. Nor may a Party provide less favorable treatment to digital products that have a nexus to the other Party than it gives to like products that have a link to a third country. These non-discrimination rules do not apply to non-conforming measures adopted under Chapter Eleven (Investment), Twelve (Cross-Border Trade in Services), or Thirteen (Financial Services).

Additional Provisions. Chapter Fifteen contains additional provisions relating to electronic authentication and electronic signatures, online consumer protection, and paperless trade administration. The Chapter also establishes mutually agreed principles regarding the access to and use of the Internet for electronic commerce.

CHAPTER SIXTEEN: COMPETITION-RELATED MATTERS

Chapter Sixteen addresses competition laws, government-designated monopolies, state enterprises, and consumer protection.

Competition Laws. Each Party must maintain laws prohibiting anticompetitive business conduct and take appropriate action with respect to such conduct. Each Party must also maintain an authority responsible for enforcing its national competition laws. The Chapter affirms that the enforcement policy of each Party's national competition authority is to treat persons of the other Party no less favorably than their own nationals.

Chapter Sixteen obligates each Party to provide certain procedural protections in enforcement proceedings convened under its competition law. Specifically, each Party must ensure that any person that is subject to an administrative enforcement proceeding is provided a right to be heard, to present and rebut evidence, and to cross-examine witnesses. In addition, each Party must ensure that a person subjected to a sanction or remedy under the Party's competition law can ask a court to review it. The Chapter also requires each Party to empower its national competition authorities to settle their administrative or civil enforcement actions by mutual agreement with the subject of the enforcement action.

Designated Monopolies. Chapter Sixteen sets specific rules that apply with respect to any monopoly owned or controlled by a Party's national government and any private business to which a Party provides monopoly rights after the Agreement takes effect. The

Party must ensure that any such entity: (1) abides by the Party's obligations under the Agreement whenever it exercises governmental authority delegated to it by the Party in connection with the monopoly product; (2) purchases or sells the monopoly product in accordance with commercial considerations; (3) provides non-discriminatory treatment to the other Party's investments, goods, and service suppliers in its purchase or sale of the monopoly product; and (4) does not use its monopoly position to engage in anti-competitive practices in markets outside its monopoly mandate that harm the other Party's investments.

State Enterprises. The Chapter also establishes rules governing each Party's responsibility for non-monopoly enterprises it owns or controls. Each Party must ensure that its state enterprises accord non-discriminatory treatment in the sale of their products to the other Party's investments and abide by the Party's obligations under the Agreement in exercising any governmental authority that the Party has delegated to it.

Cross-Border Consumer Protection. Chapter Sixteen commits the Parties to cooperate, in appropriate cases of mutual concern, in the enforcement of their consumer protection laws. The Chapter provides that the Parties will also work to strengthen cooperation between their consumer protection agencies.

Dispute Settlement. Some of the Chapter's provisions are not subject to the Agreement's dispute settlement procedures, including provisions covering competition laws and consumer protection. The Chapter's rules addressing designated monopolies and state enterprises, however, are subject to those procedures.

CHAPTER SEVENTEEN: GOVERNMENT PROCUREMENT

Chapter Seventeen provides suppliers in each Party with additional access to the other Party's national government procurement market.

The Chapter reaffirms each Party's rights and obligations under the WTO Agreement on Government Procurement (GPA), and confirms the Parties' intention to apply the APEC Non-Binding Principles on Government Procurement, as appropriate, to all government procurement not covered under the GPA and the Agreement.

Coverage and Thresholds. Chapter Seventeen applies to procurements by those government departments, agencies, and enterprises listed in each Party's schedule of goods and services valued above certain dollar thresholds. Specifically, the Chapter applies to procurements by listed agencies of the "central government," which for the United States means the federal government, of goods and services valued at $100,000 or more and construction services valued at $7,407,000 or more. The threshold for goods and services is substantially lower than the threshold applied under the GPA—hence expanding market opportunities in both countries.

General Principles and Procurement Procedures. Chapter Seventeen incorporates a number of provisions from the GPA, including commitments to national treatment of persons of the other Party and requirements governing the conduct of procurements. The Chapter expands on the GPA by incorporating important improvements that reflect emerging practices in procurement, such as reducing the tendering period in cases where procurement notices and other procurement information are made available electronically; reducing the tendering period for off-the-shelf goods and services; and encouraging use of electronic procurement. In addition, in procurements subject to the Agreement, a government agency may adopt or apply technical specifications that require suppliers to comply with generally applicable laws regarding fundamental principles and rights at work and acceptable conditions of work in the territory where the supplier makes the product or performs the service that the agency will purchase.

CHAPTER EIGHTEEN: INTELLECTUAL PROPERTY RIGHTS

Chapter Eighteen complements and enhances existing international standards for the protection of intellectual property and the enforcement of intellectual property rights, consistent with U.S. law.

General Provisions. Chapter Eighteen commits each Party to ratify or accede to several agreements on intellectual property rights by the date the Agreement enters into force, including the WIPO Copyright Treaty, the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite, the WIPO Performances and Phonograms Treaty, the International Convention for the Protection of New Varieties of Plants, the Trademark Law Treaty, and the Patent Cooperation Treaty. The United States is already a party to these agreements. With very limited exceptions, each Party commits to provide national treatment to the other Party's nationals with respect to the enjoyment and protection of the intellectual property rights covered by the Chapter.

Trademarks and Geographical Indications. Each Party must protect trademarks and geographical indications, including by refusing protection or recognition of a geographical indication that is likely to cause confusion with a preexisting trademark. The Chapter calls for trademarks to include certification marks, and for geographical indications to be eligible for protection as trademarks. Each Party must establish an electronic system for applying for, registering and maintaining trademarks, as well as an online database, with efficient and transparent procedures governing applications. Furthermore, each Party's Internet domain name management system must include a dispute resolution procedure to address trademark cyber-piracy.

Copyright and Related Rights. Under Chapter Eighteen, the Parties must provide broad protection for copyright and related rights, affirming and building on rights set out in several international agreements. For instance, each Party must provide copyright protection for the life of the author plus at least 70 years (for works measured by a person's life), or at least 70 years (for corporate works). The Chapter clarifies that the right to reproduce literary and artistic works, phonograms, and performances encompasses temporary copies, an important principle in the digital realm. Each Party must also provide a right of communication to the public, which will further ensure that the right holder has the exclusive right to authorize making protected works available online. Each Party must also protect the rights of performers and producers of phonograms.

To curb copyright piracy, each Party must ensure that its government agencies use only legitimate computer software, setting an example for the private sector. The Chapter also includes provisions on anti-circumvention, under which the Parties commit to prohibit tampering with technology used to protect copyrighted works. In addition, Chapter Eighteen sets out obligations with respect to the liability of Internet service providers in connection with copyright infringements that take place over their networks. Recognizing the importance of satellite broadcasts, Chapter Eighteen provides that each Party will protect encrypted program-carrying satellite signals. The Chapter obligates the Parties to extend protection to the signals themselves, as well as to the content contained in the signals.

Patents. Chapter Eighteen also includes a variety of provisions for the protection of patents. Each Party is obligated to make patents available for any invention, subject to limited exclusions, and each Party confirms that patents will be available for any new uses or methods of using a known product. To guard against arbitrary revocation of patents, each Party must limit the grounds for revoking a patent to the grounds that would have justified a refusal to grant the patent. Under Chapter Eighteen, each Party shall adjust the term of a patent to compensate for unreasonable delays in granting the patent and, for certain pharmaceutical products, to compensate for unreasonable curtailment of the effective patent term as a result of the marketing approval process for such products.

Certain Regulated Products. Chapter Eighteen includes additional specific provisions relating to pharmaceuticals and agricultural chemicals. Among other things, the Chapter provides for the protection of information concerning product safety or efficacy, including test data that a company submits in seeking marketing approval for such products, by precluding other firms from relying on the information. It provides specific periods for such protection—at least five years for pharmaceuticals and ten years for agricultural chemicals. This means, for example, that during the period of protection, safety and efficacy information that a company submits for approval of a new agricultural chemical product cannot be used without that company's consent in granting approval to another company to market a combination product. The Chapter's rules protecting information concerning pharmaceutical product safety and efficacy are subject to a public health exception. Chapter Eighteen also requires the Parties to adopt measures to prevent the marketing of a competing pharmaceutical product during the term of a patent covering the original innovative product. The February 10, 2011 Exchange of Letters allows Korea three years from the date the Agreement enters into force to implement measures in its marketing approval process to prevent persons from marketing a patented product without the consent of the patent holder.

Public Health. Chapter Eighteen expresses the Parties' understanding that a Party's obligations under the Chapter do not and should not prevent it from taking measures to protect public health by promoting access to medicines for all.

Enforcement Provisions. The Chapter also imposes obligations with respect to the enforcement of intellectual property rights in civil proceedings, criminal proceedings, and at the border. For example, each Party must provide that, when determining damages in civil proceedings involving copyright infringement or trademark counterfeiting, its judicial authorities must be able to take into account the value of the legitimate goods as well as the infringer's profits. Each Party must also provide for damages based on a fixed range (*i.e.,* "statutory damages") as an option that the right holder can elect instead of actual damages.

Chapter Eighteen further provides that each Party's law enforcement agencies must have the authority to seize suspected pirated and counterfeit goods and the equipment used to make or transmit them. Each Party must also give its courts authority to order the forfeiture and/or destruction of these items. Chapter Eighteen also provides that each Party must establish criminal procedures and penalties for certain cases of trademark counterfeiting and copyright and related rights piracy.

Each Party must also empower its law enforcement agencies to take enforcement action at the border against pirated or counterfeit goods without waiting for a right holder to file a formal complaint.

CHAPTER NINETEEN: LABOR

Chapter Nineteen sets out the Parties' commitments and undertakings regarding trade-related labor rights.

Fundamental Labor Rights. Each Party commits to adopt and maintain in its statutes, regulations, and practice certain enumerated labor rights, as stated in the 1998 ILO Declaration on Fundamental Principles and Rights at Work and its Follow Up. Specifically, these are (1) freedom of association; (2) the effective recognition of the right to collective bargaining; (3) the elimination of all forms of forced or compulsory labor; (4) the effective abolition of child labor and, for purposes of the Agreement, a prohibition on the worst forms of child labor; and (5) the elimination of discrimination in respect of employment and occupation. In order to establish a violation of this obligation, a Party must demonstrate that the other Party has failed to comply in a manner affecting trade or investment between the Parties. Neither Party may waive or otherwise derogate from its statutes or regulations implementing this obligation in a manner affecting bilateral trade or investment where the waiver or derogation would be inconsistent with one of the enumerated rights. For the United States, the Chapter's provisions regarding fundamental labor rights apply to federal law only.

Effective Enforcement. Each Party commits not to fail to effectively enforce its labor laws on a sustained or recurring basis in a manner affecting trade or investment between the Parties. The Chapter defines "labor laws" to include laws directly related to the ILO fundamental labor rights as well as laws providing for acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health, and laws providing labor protections for children and minors, including a prohibition on the worst forms of child labor. For the United States, "labor laws" includes federal statutes and regulations addressing these areas, but does not cover state or local labor laws.

Procedural Guarantees. Each Party commits to afford procedural guarantees that ensure workers and employers have access to tribunals for the enforcement of its labor laws. To this end, each Party must ensure that proceedings before these tribunals are fair, equitable, and transparent and comply with due process of law. Decisions of such tribunals must be in writing, made available to the parties to the proceedings and the public, and based on information or evidence in respect of which the parties were offered the opportunity to be heard. In addition, hearings in such proceedings must be open to the public, except where the administration of justice otherwise requires. Each Party also commits to make remedies available to ensure the enforcement of its labor laws. Such remedies might include orders, fines, penalties, or temporary workplace closures.

Dispute Settlement. Chapter Nineteen provides for cooperative consultations as a first step if a Party considers that the other Party is not complying with its obligations under the Chapter. The complaining Party may, after an initial 60-day consultation period under Chapter Nineteen, invoke the Agreement's general dispute settlement mechanism by requesting additional consultations or a meeting of the Agreement's cabinet-level Joint Committee under Chapter Twenty-Two (Institutional Provisions and Dispute Settlement). If the Committee is unable to resolve the dispute, the matter may be referred to a dispute settlement panel.

Institutional Arrangements and Cooperation. Chapter Nineteen establishes a senior-level Labor Affairs Council to oversee the Chapter's implementation and to provide a forum for consultations and cooperation on labor matters. Each Party must designate an office to serve as contact point for communications with the other Party and the public regarding the Chapter. Each Party's contact point must provide transparent procedures for the submission, receipt, and consideration of communications from the public relating to the Chapter.

The chapter also creates a cooperation mechanism through which the Parties will collaborate to address labor matters of common interest. In particular, the mechanism will assist the Parties to establish priorities for, and carry out, cooperative activities relating to such topics as: fundamental rights and their effective application; social safety net programs; and labor-management relations.

CHAPTER TWENTY: ENVIRONMENT

Chapter Twenty sets out the Parties' commitments and undertakings regarding environmental protection.

General Principles. Each Party must strive to ensure that its environmental laws provide for and encourage high levels of environmental protection and continue to improve its respective levels of environmental protection. Each Party also commits not to waive or otherwise derogate from its environmental laws to weaken or reduce the levels of environmental protection in a manner affecting trade or investment between the Parties other than pursuant to any provision in its environmental law providing for waivers or derogations. Chapter Twenty further includes commitments to enhance cooperation between the Parties in environmental matters and encourages the Parties to develop voluntary, market-based mechanisms as one means for achieving and sustaining high levels of environmental protection.

Multilateral Environmental Agreements. The Chapter recognizes that certain multilateral environment agreements (MEAs) play an important role globally and domestically in protecting the environment. The Chapter includes a provision requiring each Party to adopt, maintain, and implement laws, regulations, and all other measures to fulfill its obligations under certain MEAs to which both governments are parties ("covered agreements"). To establish a violation of this obligation a Party must demonstrate that the other Party has failed to comply in a manner affecting trade or investment between the Parties.

Chapter Twenty provides that in the event of any inconsistency between a Party's obligations under the Agreement and a covered agreement, the Party must seek to balance its obligation under both agreements, but this will not preclude a Party from taking measures to comply with the covered agreement as long as the measure's primary purpose is not to impose a disguised restriction on trade.

Effective Enforcement. The Chapter commits each Party not to fail to effectively enforce its environmental laws, and its laws, regulations, and other measures to fulfill its obligations under the covered agreements, on a sustained or recurring basis in a manner affecting trade or investment between the Parties. For the United States, "environmental laws" comprise federal environmental statutes and regulations promulgated under those statutes that are enforceable by action of the federal government.

Procedural Matters. The Chapter requires each Party to make judicial, quasi-judicial, or administrative proceedings available to sanction or remedy violations of its environmental laws. Each Party must ensure that these proceedings are fair, equitable, and transparent, and, to this end, comply with due process of law and are open to the public, except where the administration of justice otherwise requires. Each Party must also ensure that interested persons may request the Party's competent authorities to investigate alleged violations of its environmental laws and that those authorities duly consider such requests. Each Party must also make appropriate and effective remedies available for violations of its environmental laws. These remedies may include, for example, fines, injunctions, or requirements to take remedial action or pay for the cost of containing or cleaning up pollution.

Environmental Performance. Each Party will encourage the development and use of flexible, voluntary, and incentive-based mechanisms for environmental protection and will also encourage the development and improvement of goals and indicators for measuring environmental performance as well as flexible means for achieving performance goals.

Institutional Arrangements and Cooperation. Chapter Twenty establishes a senior-level Environment Affairs Council to oversee implementation of the Chapter. The Council will provide for the public to participate in its work, including by affording an opportunity at each Council meeting, unless the Parties otherwise agree, for the public to express views on how the Chapter is being implemented. The Council must also provide appropriate opportunities for the public to participate in the development and implementation of joint environmental activities, including those developed under a separate bilateral environmental cooperation agreement that the Parties have signed.

Public Participation and Submissions. Each Party must provide for the receipt and consideration of submissions from persons of a Party on matters related to implementation of the Chapter. Each Party will also convene a national advisory committee to solicit views on those matters and to submit to the Joint Committee a written report on the implementation of the Chapter's public participation provisions within 180 days after the Agreement enters into force.

Dispute Settlement. Chapter Twenty provides for cooperative consultations as a first step if a Party considers that the other Party is not complying with its obligations under the Chapter. The complaining Party may, after an initial 60-day consultation period, invoke the Agreement's general dispute settlement mechanism by requesting additional consultations or a meeting of the Joint Committee under Chapter Twenty-Two (Institutional Provisions and Dispute Settlement). If the Joint Committee is unable to resolve the dispute, the matter may be referred to a dispute settlement panel.

CHAPTER TWENTY-ONE: TRANSPARENCY

Chapter Twenty-One sets out requirements designed to foster openness, transparency, and fairness in the adoption and application of measures respecting matters covered by the Agreement. Each Party must promptly publish all laws, regulations, procedures, and administrative rulings of general application concerning matters covered by the Agreement, or otherwise make them publicly available. To the extent possible, the Parties must publish proposed regulations in advance and give interested persons a reasonable opportunity to comment. The Chapter further provides that proposed regulations published by the central level of government must be published in a single official journal of national circulation and include an explanation of their purpose and rationale.

Wherever possible, each Party must provide reasonable notice to the other Party's nationals and enterprises that are directly affected by an administrative proceeding, such as an adjudication, rulemaking, licensing, determination, or approval process. A Party must afford such persons a reasonable opportunity to present facts and arguments before taking any final action, when time, the nature of the process, and the public interest permit.

Chapter Twenty-One also provides for independent review and appeal of final administrative actions. Appeal rights must include a reasonable opportunity to present arguments and to obtain a decision based on evidence in the administrative record.

Chapter Twenty-One reaffirms the Parties' resolve to eliminate bribery and corruption in international trade and investment. To this end, each Party is obligated to make it a criminal offense for their public officials to solicit or accept a bribe, and for any person to bribe a public official in exchange for favorable government action in matters affecting international trade or investment. Each Party must also adopt measures to protect persons who, in good faith, report acts of bribery or corruption. The Parties will also endeavor to work together to encourage and support initiatives in relevant international fora to prevent bribery and corruption.

CHAPTER TWENTY-TWO: INSTITUTIONAL PROVISIONS AND DISPUTE SETTLEMENT

Section A of Chapter Twenty-Two creates a Joint Committee, to be co-chaired by the Parties' trade ministers. The committee will be charged with supervising the implementation and overall operation of the Agreement. The committee may, among other things, issue interpretations of the Agreement's provisions and consider accelerating the elimination of duties on particular products or adjusting the Agreement's product-specific rules of origin. The Joint Committee will also assist in the resolution of any disputes that may arise under the Agreement and supervise the work of the various expert committees and other bodies established under the Agreement.

Chapter Twenty-Two also establishes two committees. One committee, established in Annex 22–B, will review and make recommendations to the Parties on whether conditions on the Korean Peninsula are appropriate for the development of outward processing zones. A second committee, to be convened under Annex 22–C, will promote bilateral cooperation on fisheries matters.

Section B of Chapter Twenty-Two sets out detailed procedures for the resolution of disputes between the Parties regarding the interpretation or application of the Agreement. These procedures emphasize amicable settlements, relying wherever possible on bilateral cooperation and consultations. When disputes arise under provisions common to the Agreement and other agreements (*e.g.,* the WTO agreements), the complaining government may choose a forum for resolving the matter that is set forth in any valid agreement between the Parties. The selected forum will be the exclusive venue for resolving that dispute.

Consultations. A Party may request consultations with the other Party on any matter that it believes might affect the operation of the Agreement. If the Parties cannot resolve the matter through consultations within a specified period (normally 60 days), either Party may refer the matter to the Joint Committee, which will attempt to resolve the dispute.

Panel Procedures. If the Joint Committee cannot resolve the dispute within a specified period (normally 60 days), the complaining Party may refer the matter to a panel comprising independent experts that the Parties select. The Parties will set rules to protect confidential information, provide for open hearings and public release of submissions, and allow an opportunity for the panel to accept submissions from non-governmental entities in the Parties' territories.

Unless the Parties agree otherwise, a panel is to present its initial report within 180 days after the panel chair is appointed. Once the panel presents its initial report containing findings of fact and a determination on whether a Party has met its obligations, the Parties will have the opportunity to provide written comments to the panel. When the panel receives these comments, it may modify its report and make any further examination that it considers appropriate. Within 45 days after it presents its initial report, the panel will submit its final report. The Parties will then seek to agree on how to resolve the dispute, normally in a way that conforms to the panel's determinations and recommendations. Subject to protection of confidential information, the panel's final report will be made available to the public 15 days after the Parties receive it.

Suspension of Benefits. If the Parties cannot resolve the dispute after they receive the panel's final report, the Parties will seek to agree on acceptable trade compensation. If they cannot agree on compensation, or if the complaining Party believes the defending

Party has failed to implement an agreed resolution, the complaining Party may provide notice that it intends to suspend trade benefits equivalent in effect to those it considers were impaired, or may be impaired, as a result of the disputed measure.

If the defending Party considers that the proposed level of benefits to be suspended is "manifestly excessive," or believes that it has modified the disputed measure to make it conform to the Agreement, it may request the panel to reconvene and decide the matter. The panel must issue its determination no later than 90 days after the request is made (or 120 days if the panel is reviewing both the level of the proposed suspension and a modification of the measure).

The complaining Party may suspend trade benefits up to the level that the panel sets or, if the panel has not been asked to determine the level, up to the amount that the complaining Party has proposed. The complaining Party cannot suspend benefits, however, if the defending Party provides notice that it will pay an annual monetary assessment to the other Party. The amount of the assessment will be established by agreement of the Parties or, failing that, will be set at 50 percent of the level of trade concessions the complaining Party was authorized to suspend.

Compliance Review Mechanism. If, at any time, the defending Party believes it has made changes in its laws or regulations sufficient to comply with its obligations under the Agreement, it may refer the matter to the panel. If the panel agrees, the dispute ends and the complaining Party must withdraw any offsetting measures it has put in place. Concurrently, the defending government will be relieved of any obligation to pay a monetary assessment.

Special Provisions for Disputes Relating to Motor Vehicles. Annex 22–A establishes an expedited dispute settlement mechanism for disputes concerning motor vehicles. The annex provides a shortened schedule for selecting panelists and for panel proceedings. If a panel determines that a Party has not met its obligations under the Agreement in a matter that relates to motor vehicles and, as a result, has materially affected their sale or distribution, the other Party may increase its tariff with respect to passenger vehicles (*i.e.*, vehicles classified under heading 87.03 of the Harmonized Commodity Description and Coding System) up to its prevailing NTR (MFN) applied tariff rate until the violation is remedied.

Settlement of Private Disputes. Section C of Chapter Twenty-Two calls for the Parties to encourage the use of arbitration and other alternative dispute resolution mechanisms to settle international commercial disputes between private parties. Each Party must provide appropriate procedures for the recognition and enforcement of arbitral awards, for example by complying with the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

CHAPTER TWENTY-THREE: EXCEPTIONS

Chapter Twenty-Three sets out provisions that generally apply to the entire Agreement. The Chapter makes Article XX of the GATT 1994 and its interpretive notes part of the Agreement, *mutatis mutandis*, for purposes of those Chapters related to treatment of goods. Likewise, Article XIV of the WTO General Agreement on Trade in Services is made part of the Agreement for purposes of

Chapters Twelve (Cross-Border Trade in Services), Fourteen (Telecommunications), and Fifteen (Electronic Commerce). For both goods and services, the Parties understand that these exceptions include environmental measures necessary to protect human, animal, or plant life or health and measures relating to the conservation of living and non-living exhaustible natural resources.

Essential Security. Chapter Twenty-Three makes clear that nothing in the Agreement prevents a Party from taking actions it considers necessary to protect its essential security interests, and specifically provides that an arbitration panel must apply the essential security exception if a Party invokes it. United States Annex II clarifies that non-conforming measures relating to the landside aspects of port activities are subject to the Agreement's essential security exception.

Taxation. A general exception set out in the Chapter provides that only certain provisions of the Agreement apply to taxation measures. For example, the exception generally provides that the Agreement does not affect a Party's rights or obligations under any tax convention. The exception specifies that certain rules established under the Agreement do apply to certain tax measures, namely: (1) national treatment for goods; (2) national treatment and NTR (MFN) for services; (3) prohibitions on performance requirements; and (4) expropriation rules.

Disclosure of Information. The Chapter provides that a Party may withhold information from the other Party if disclosing the information would be contrary to the public interest or prejudice the legitimate commercial interests of particular enterprises.

CHAPTER TWENTY-FOUR: FINAL PROVISIONS

Chapter Twenty-Four provides that (i) the annexes, appendices, and footnotes to the Agreement are an integral part of the Agreement; (ii) the Parties may amend the Agreement, subject to the each Party's legal requirements; and (iii) the English and Korean language texts of the Agreement are both authentic. The Chapter also provides for the Parties to consult if any provision of the WTO Agreement that the Parties have incorporated into the Agreement is amended.

Finally, Chapter Twenty-Four establishes procedures for the Agreement to enter into force and terminate.

E. GENERAL DESCRIPTION OF THE BILL TO IMPLEMENT THE AGREEMENT

Sec. 1. Short title; table of contents

This section provides that the short title of the act implementing the Agreement is the "United States-Korea Free Trade Agreement Implementation Act" ("Implementation Act"). Section 1 also provides the table of contents for the Implementation Act.

Sec. 2. Purposes

This section provides that the purposes of the Implementation Act are to approve and implement the Agreement, to secure the benefits of the Agreement pursuant to the exchange of letters on February 10, 2011, to strengthen and develop economic relations between the United States and Korea, to establish free trade between the United States and Korea through the reduction and elimination of barriers to trade in goods and services and to investment, and to lay the foundation for further cooperation to expand and enhance the benefits the Agreement.

Sec. 3. Definitions

This section defines the terms "Agreement," "Commission," "HTS," and "Textile or apparel good" for purposes of the Implementation Act.

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

Sec. 101. Approval and entry into force of the Agreement

This section provides congressional approval for the Agreement and its accompanying SAA. Section 101 also provides that, if the President determines that Korea has taken measures necessary to comply with obligations that take effect at the time the Agreement enters into force, the President may exchange notes with Korea providing for the entry into force of the Agreement with respect to the United States on or after January 1, 2012.

Sec. 102. Relationship of the Agreement to United States and state law

This section establishes the relationship between the Agreement and U.S. law. Section 102 clearly states that no provision of the Agreement will be given effect if it is inconsistent with any federal law.

Section 102 also provides that only the United States may bring a court action to resolve a conflict between a state law and the Agreement. And it precludes any private right of action against the federal government, state or local governments, or a private party based on the provisions of the Agreement.

Sec. 103. Implementing actions in anticipation of entry into force and initial regulations

This section provides that, following the enactment of the Implementation Act, the President may proclaim such actions, and other appropriate officers of the federal government may issue such regulations, as may be necessary to ensure that provisions of the legislation that take effect on the date the Agreement enters into force are appropriately implemented on that date. Section 103 further provides that, with respect to any action proclaimed by the President that is not subject to the consultation and layover provisions contained in section 104, such action may not take effect before the 15th day after the date on which the text of the proclamation is published in the Federal Register. The 15-day restriction is waived, however, to the extent that it would prevent an action from taking effect on the date the Agreement enters into force. Section 103 also provides that, to the maximum extent feasible, initial regulations necessary or appropriate to carry out the actions required by the Implementation Act or proposed in the SAA shall be issued within 1 year after the date on which the Agreement enters into force. In accordance with the SAA, any agency unable to issue a regulation within 1 year must report to the relevant Congressional committees, at least 30 days prior to the end of the 1-year period, the reasons for the delay and the expected date for issuance of the regulation.

Sec. 104. Consultation and layover provisions for, and effective date of, proclaimed actions

This section sets forth consultation and layover steps that must precede the President's implementation of any action by proclamation that is subject to the requirements of this section. Under the consultation and layover provisions, the President must obtain advice regarding the proposed action from the Commission and from the appropriate advisory committees established under section 135 of the Trade Act of 1974 (19 U.S.C. § 2155). The President must also submit to the Senate Committee on Finance and the House Committee on Ways and Means a report that sets forth the action proposed, the reasons for the proposed action, and the advice of the appropriate advisory committees and the Commission. Section 104 sets aside a 60-day period following the date of transmittal of the report for the President to consult with the Senate Committee on Finance and the House Committee on Ways and Means on the proposed action.

Sec. 105. Administration of dispute settlement proceedings

This section authorizes the President to establish or designate within the Department of Commerce an office responsible for providing administrative assistance to dispute settlement panels established under Chapter 21 of the Agreement. Section 105 also authorizes the appropriation of funds to support this office.

Sec. 106. Arbitration of claims

This section authorizes the United States to use binding arbitration to resolve certain claims against the United States pursuant to the Investor-State Dispute Settlement procedures set forth in section B of Chapter 11 of the Agreement.

Sec. 107. Effective dates; effect of termination

This section provides that the provisions of the Implementation Act and the amendments made by it take effect on the date on which the Agreement enters into force, except for sections 1 through 3, section 207(g), title I and title V, which take effect on the date of enactment of the Implementation Act. In addition, section 107 provides that the amendments made by sections 203, 204, 206, and 401 take effect on the date of the enactment of the Implementation Act and apply with respect to Korea on the date on which the Agreement enters into force. Section 107 also provides that the provisions of the Implementation Act and the amendments to other statutes made by it will cease to have effect on the date on which the Agreement terminates.

TITLE II—CUSTOMS PROVISIONS

Sec. 201. Tariff modifications

Section 201(a) authorizes the President to implement by proclamation the modification or continuation of any duty, imposition of any additional duties, or the continuation of duty-free or excise treatment that the President determines to be necessary or appropriate to carry out or apply Articles 2.3, 2.5, 2.6, and Annex 2–B, Annex 4–B, and Annex 22–A of the Agreement.

Section 201(b) authorizes the President, subject to the consultation and layover provisions of section 104, to proclaim the modification or continuation of any duty, the modification of the staging of any duty elimination, the imposition of additional duties, or the continuation of duty-free or excise treatment that the President determines to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Korea provided by the Agreement.

Section 201(c) authorizes the President, with respect to any good for which the base rate of duty in the Tariff Schedule of the United States to Annex 2–B of the Agreement is a specific or compound rate of duty, to substitute for the base rate an ad valorem rate that the President determines to be equivalent to the base rate.

Section 201(d) authorizes the President to proclaim tariff modifications with respect to motor vehicles of Korea, consistent with the agreement entered into pursuant to an exchange of letters between the United States and the Government of Korea on February 10, 2011.

Sec. 202. Rules of origin

Section 202 implements the rules of origin set forth in Article 4.2 and Chapter 6 of the Agreement. These rules define the circumstances under which a good imported from Korea qualifies as an originating good and is thus eligible for preferential tariff treatment under the Agreement.

Section 202(a) establishes the Harmonized Tariff Schedule of the United States ("HTS") as the basis of any tariff classification. It also provides that any cost or value referred to in section 202 shall be recorded and maintained in accordance with the generally accepted accounting principles applicable in the territory of the country in which the good is produced.

Section 202(b) provides that a good is an originating good if it falls within one of three specified categories. First, a good qualifies as an originating good if it is wholly obtained or produced entirely in the territory of Korea, the United States, or both. Second, a good qualifies as an originating good if the good is produced in the territory of Korea, the United States, or both, and the materials used to produce the good that are not themselves originating goods are transformed in such a way as to cause their tariff classification to change and to meet other requirements specified in Annex 4–A or Annex 6–A of the Agreement. Third, and finally, a good qualifies as an originating good if the good is produced entirely in the territory of Korea, the United States, or both, exclusively from materials that fall within the first two categories.

The remainder of section 202 sets forth specific rules related to determining whether a good meets the Agreement's specific requirements to qualify as an originating good. Section 202(c) implements provisions in Annex 6–A of the Agreement that require certain goods to have a specified percentage of "regional value content" to qualify as originating goods. It prescribes alternative methods for calculating regional value content, as well as a specific method that must be used in the case of certain automotive goods.

Section 202(d) addresses how materials are to be valued for purposes of calculating the regional value content of a good under subsection 202(c) and for purposes of applying the *de minimis* rules under subsection 202(f). Section 202(e) provides a rule of accumulation for originating materials from the territory of Korea or the United States that are used in the production of a good in the territory of the other country. Section 202(f) provides that a good is not disqualified as an originating good if it contains *de minimis* quantities of non-originating materials that do not undergo a change in tariff classification. Section 202(g) addresses how to determine whether fungible goods and materials qualify as originating or non-originating under the Agreement. Section 202(h) provides rules for the treatment of accessories, spare parts, or tools that are delivered with a good. Sections 202(i) and (j) address the treatment of packaging materials and containers for retail sale and for shipment in determining whether a good qualifies as an originating good. Section 202(k) provides that indirect materials shall be treated as originating materials without regard to where they are produced. Section 202(l) provides rules for the treatment of goods that undergo further production in a third country or that otherwise transit through a third country. And section 202(m) provides rules for the treatment of goods classifiable as sets.

Section 202(n) defines various terms used in section 202. Section 202(o) authorizes the President to proclaim the specific rules of origin set forth in Annex 4–A and Annex 6–A of the Agreement and to modify certain rules of origin in the Agreement by proclamation subject to the consultation and layover provisions of section 104.

Sec. 203. Customs user fees

This section provides for the immediate elimination of the merchandise processing fee for goods qualifying as originating goods under the Agreement. Processing of goods qualifying as originating goods will be financed from the General Fund of the Treasury.

Sec. 204. Disclosure of incorrect information; false certifications of origin; denial of preferential tariff treatment

Section 204(a) amends section 592 of the Tariff Act of 1930 (19 U.S.C. § 1592) to impose penalties on an importer, exporter, or producer that makes an invalid claim for preferential tariff treatment under the Agreement through negligence, gross negligence, or fraud, unless the importer, exporter, or producer, after discovering that the claim is invalid, promptly and voluntarily corrects the claim and pays any customs duties owed. Section 204(b) amends section 514 of the Tariff Act of 1930 (19 U.S.C. § 1514) to provide that, if an importer, exporter, or producer has engaged in a pattern of conduct in providing false representations that a good qualifies as originating, the United States may suspend preferential tariff treatment under the Agreement to identical goods covered by any subsequent representations that the person may make.

Sec. 205. Reliquidation of entries

Section 205 amends section 520(d) of the Tariff Act of 1930 (19 U.S.C. § 1520(d)) to allow an importer to claim preferential tariff treatment for an originating good within 1 year of importation, even if no such claim was made at the time of the importation.

Sec. 206. Recordkeeping requirements

Section 206 amends section 508 of the Tariff Act of 1930 (19 U.S.C. § 1508) to establish recordkeeping requirements for U.S. exporters and producers that issue certifications of origin for goods exported to Korea.

Sec. 207. Enforcement relating to trade in textile or apparel goods

This section authorizes the President to apply anti-circumvention provisions concerning trade in textile and apparel goods. Pursuant to article 4.3 of the Agreement, the Secretary of the Treasury ("Secretary") may request that the Government of Korea conduct a verification to determine the compliance of exporters and producers with applicable customs laws, regulations, and procedures regarding trade in textile or apparel goods, and to determine the accuracy of a claim of origin for a textile or apparel good. Section 207(a) provides that the President may direct the Secretary to take "appropriate action" while the verification is being conducted. Under section 207(b), such appropriate action includes suspension of liquidation of the entry of any textile or apparel good exported or produced by the subject of the verification or for which a claim has been made that is the subject of verification.

Section 207(c) permits the President to direct the Secretary to take "appropriate action" after a verification has been completed. Section 207(d) defines "appropriate action" to include the denial of preferential treatment or entry to textile or apparel goods that the person subject to the verification has exported or produced until such time as the Secretary receives information sufficient to prove compliance or until an earlier date as the President may direct.

Section 207(e) permits the Secretary to publish the name of any person that the Secretary determines has engaged in circumvention of applicable laws, regulations, or procedures affecting trade in textile or apparel goods or has failed to demonstrate that it produces, or is capable of producing, textile or apparel goods.

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

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

Sec. 208. Regulations

Section 208 authorizes the Secretary to prescribe regulations necessary to carry out the rules of origin and customs user fee provisions in the Implementation Act and to carry out the President's proclamation authority under section 202(o).

TITLE III—RELIEF FROM IMPORTS

Sec. 301. Definitions

This section defines the terms "Korean article," "Korean motor vehicle article," and "Korean textile or apparel article" for purposes of this title. Section 301(1) defines "Korean article" as an article that qualifies as an originating good under section 202(b) of the Implementation Act. Section 301(2) defines "Korean motor vehicle article" as a good provided for in heading 8703 or 8704 of the HTS that qualifies as an originating good under section 202(b) of the Implementation Act. And section 301(3) defines "Korean textile or apparel article" as a "textile or apparel good" as defined in section 3(5) (a good listed in the Annex to the WTO Agreement on Textiles and Clothing) that is a Korean article.

SUBTITLE A—RELIEF FROM IMPORTS BENEFITING FROM THE AGREEMENT

Subtitle A of title III implements the bilateral safeguard provisions set out in Chapter Ten of the Agreement. It authorizes the President, after an investigation and affirmative determination by the Commission, to suspend duty reductions or impose duties temporarily up to NTR (MFN) rates on a "Korean article" when, as a result of the reduction or elimination of a duty under the Agreement, the article is being imported into the United States in such increased quantities and under such conditions as to be a substantial cause of serious injury or threat of serious injury to a domestic industry that produces a like or directly competitive good. The standards and procedures set out in this subtitle closely parallel the procedures for global safeguards set forth in sections 201 through 204 of the Trade Act of 1974 (19 U.S.C. §§ 2251–2254).

Sec. 311. Commencing of action for relief

Section 311(a) requires an entity that is representative of an industry to file a petition with the Commission to commence a bilateral safeguard investigation. Section 311(a) defines an entity to include a trade association, firm, certified or recognized union, or a group of workers.

Section 311(b) provides that, upon the filing of a petition, the Commission shall promptly initiate an investigation to determine whether, as a result of the reduction or elimination of a duty provided for under the Agreement, a Korean article is being imported into the United States in such increased quantities and under such conditions that imports of the Korean article constitute a substantial cause of serious injury, or threat of serious injury, to the domestic industry producing an article that is like, or directly competitive with, the imported article.

Section 311(c) extends certain provisions (both substantive and procedural) contained in subsections (b), (c), (d), and (i) of section 202 of the Trade Act of 1974 (19 U.S.C. § 2252(b), (c), (d), and (i)), which apply to global safeguard investigations, to any bilateral safeguard initiated under the Agreement. These provisions include, *inter alia*, the requirement that the Commission publish notice of the commencement of an investigation; the requirement that the Commission hold a public hearing at which interested parties and consumers have the right to be present and to present evidence; the factors to be taken into account by the Commission in making its determinations; provisional relief; and authorization for the Commission to promulgate regulations providing access to confidential business information under protective order to authorized representatives of interested parties in an investigation.

Section 311(d) precludes the initiation of a bilateral safeguard investigation with respect to any Korean article for which import relief has already been provided under subtitle A.

Sec. 312. Commission action on petition

Section 312(a) establishes deadlines for Commission action following the initiation of a bilateral safeguard investigation. Section 312(b) applies certain statutory provisions regarding an equally divided vote by the Commission in a global safeguard investigation under section 202 of the Trade Act of 1974 (19 U.S.C. § 2252) to Commission determinations and findings under this section. If the Commission renders an affirmative injury determination or a determination that the President may treat as an affirmative determination in the event of an equally divided vote by the Commission, section 312(c) requires the Commission to find and recommend to the President the amount of import relief that is necessary to remedy or prevent the injury and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. Section 312(d) requires the Commission to submit a report to the President regarding its determination and specifies the information that the Commission must include in the report. Upon submitting the report to the President, section 312(e) requires the Commission to promptly release the report to the public, except for any confidential information contained therein, and to publish a summary of the report in the Federal Register.

Sec. 313. Provision of relief

Section 313(a) directs the President, not later than 30 days after receiving the report from the Commission, to provide relief from imports of the article subject to an affirmative determination by the Commission, or a determination that the President treats as affirmative, to the extent that the President determines is necessary to remedy or prevent the injury and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. Section 313(b), however, provides that the President need not provide import relief if the President determines that the import relief will not provide greater economic and social benefits than costs.

Section 313(c) specifies the nature of the import relief that the President may impose, which includes the suspension of any further reduction in the rate of duty imposed on the article in question under Annex 2–B of the Agreement and an increase in the rate of duty imposed on such article to a level that does not exceed the lesser of (1) the NTR (MFN) duty rate at the time the import relief is provided; or (2) the NTR (MFN) duty rate on the day before the Agreement enters into force. Section 313(c) also requires the President to provide for the progressive liberalization of import relief at regular intervals during the period of its application if that period exceeds 1 year.

Section 313(d) limits any import relief that the President imposes in a bilateral safeguard action to no more than 3 years in the aggregate. The initial period of import relief that the President imposes may not exceed 2 years. The President may extend the relief up to an additional year, however, if (1) the Commission makes an affirmative determination, or a determination that the President treats as affirmative, that import relief continues to be necessary to remedy or prevent serious injury and that there is evidence that the domestic industry is making a positive adjustment to import competition; and (2) the President makes a determination to the same effect.

Section 313(e) specifies the duty rate to be applied to Korean articles after termination of a safeguard action. On the termination of import relief, the rate of duty for the remainder of the calendar year shall be the rate that was scheduled to have been in effect but for the provision of such relief.

Section 313(f) precludes the application of import relief pursuant to the bilateral safeguard provisions with respect to any Korean article that is (1) subject to import relief under subtitle B or C of title III of the Implementation Act; or (2) subject to import relief under the global safeguard provisions in chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. §§ 2251 et seq).

Sec. 314. Termination of relief authority

This section provides that the President's authority to impose import relief under the bilateral safeguard expires 10 years after the date on which the Agreement enters into force. If, however, the period for elimination of duties on a particular article exceeds 10 years, relief may be provided for that article until the date on which the duty elimination period ends. Relief may also be provided beyond 10 years after the date on which the Agreement enters into force or the period for elimination of duties if the President determines that Korea has consented to such relief.

Sec. 315. Compensation authority

This section authorizes the President, under section 123 of the Trade Act of 1974 (19 U.S.C. § 2133), to grant new concessions to Korea as compensation for the imposition of import relief pursuant to the bilateral safeguard.

Sec. 316. Confidential business information

This section applies the same procedures for the treatment and release of confidential business information by the Commission in a global safeguard investigation under chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. §§ 2251 et seq.) to investigations under title III of the Implementation Act.

SUBTITLE B—MOTOR VEHICLE SAFEGUARD MEASURES

Sec. 321. Motor vehicle safeguard measures

Subtitle B of title III implements the motor vehicle safeguard established by the exchange of letters between the United States and the Government of Korea on February 10, 2011, related to trade in motor vehicles. Section 321(1) provides that the same product can be the basis for according relief more than once and that progressive liberalization is not required while relief is being provided. Section 321(2) provides that relief may be extended for up to 2 years. Section 321(3) provides that relief may be provided for a total of up to 4 years. Section 321(4) provides that subtitle B exceptions shall not apply to any relief action brought under subtitle A. Section 321(5) provides that import relief may be provided with respect to a Korean motor vehicle article up to 10 years after the date on which duties on the article are eliminated.

SUBTITLE C—TEXTILE AND APPAREL SAFEGUARD MEASURES

Subtitle C of title III implements the Agreement's textile and apparel safeguard.

Sec. 331. Commencement of action for relief

Section 331(a) requires an interested party to file a request with the President in order to commence action for relief under the textile and apparel safeguard. Upon the filing of a request, the President must review the request to determine, from information presented in the request, whether to commence consideration of the request on its merits. Section 331(b) provides that, if the President determines that the request contains the information necessary for the request to be considered on the merits, the President must publish notice in the Federal Register stating that the request will be considered and seeking public comments on the request. The notice must contain a summary of the request and the dates by which comments and rebuttals must be received.

The Committee notes our regulatory processes should be administered in an open and transparent manner that can serve as a model for our trading partners. The Committee notes that the SAA states that, in addition to publishing a summary of a request for safeguard relief, the President plans to make the full text of the request available on the U.S. Department of Commerce's International Trade Administration website, subject to the protection of confidential business information, if any. The Committee encourages this and similar efforts to enhance government transparency.

Sec. 332. Determination and provision of relief

Section 332 sets out the procedures to be followed in considering a request filed under section 331. If a positive determination is made under section 331(b), section 332(a) requires the President to determine whether, as a result of the elimination of a duty under the Agreement, a Korean textile or apparel article is being imported into the United States in such increased quantities and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article. Section 332(a) also provides that, in making such a determination, the President shall examine the effect of increased imports on the domestic industry's output, productivity, capacity utilization, inventories, market share, exports, wages, employment, domestic prices, profits and losses, and investment, no one of which is necessarily decisive. Finally, section 332(a) provides that the President shall not consider changes in consumer preference or technology as factors supporting a determination of serious damage or actual threat thereof.

Section 332(b) authorizes the President, in the event of an affirmative determination of serious damage or actual threat thereof, to provide import relief to the extent that the President determines is necessary to remedy or prevent the serious damage and to facilitate adjustment by the domestic industry. Section 332(b) also specifies the nature of the import relief that the President may impose, which consists of suspension of any further duty reduction provided for under Annex 2–B of the Agreement in the duty imposed on the article, or an increase in the rate of duty imposed on the article to a level that does not exceed the lesser of (1) the NTR (MFN) duty rate in place for the textile or apparel article at the time the import relief is provided; or (2) the NTR (MFN) duty rate for that article on the day before the Agreement enters into force.

Sec. 333. Period of relief

Section 333 limits any import relief that the President imposes under the textile and apparel safeguard to no more than 4 years in the aggregate. Section 333(a) provides that the initial period of import relief that the President imposes may not exceed 2 years. Under section 333(b), however, the President may extend the relief up to 2 additional years if the President determines that (1) the import relief continues to be necessary to remedy or prevent serious damage and to facilitate adjustment by the domestic industry to import competition; and (2) there is evidence that the domestic industry is, in fact, adjusting to import competition.

Sec. 334. Articles exempt from relief

This section precludes the President from providing import relief under the textile and apparel safeguard with respect to a Korean article if import relief previously has been provided under subtitle C of title III of the Implementation Act or if the article is subject to import relief under subtitle A of title III of the Implementation Act or under the global safeguard provisions in chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. §§ 2251 et seq.).

Sec. 335. Rate after termination of import relief

This section provides that the duty rate applicable to a textile or apparel article after termination of the import relief shall be the duty rate that would have been in effect for that article, but for the provision of such relief, on the date on which the relief terminates.

Sec. 336. Termination of relief authority

This section provides that the President's authority to impose import relief under the textile and apparel safeguard with respect to any article expires 10 years after the date on which duties on the article are eliminated under the Agreement.

Sec. 337. Compensation authority

This section authorizes the President, under section 123 of the Trade Act of 1974 (19 U.S.C. § 2133), to grant new concessions to Korea as compensation for the imposition of import relief pursuant to the textile and apparel safeguard.

Sec. 338. Confidential business information

This section precludes the President from releasing information received in a textile and apparel safeguard proceeding that the President considers to be confidential business information unless the party submitting the confidential business information had notice, at the time of submission, that the information would be released by the President, or the party subsequently consents to the release of the information. This section also provides that, to the extent a party submits confidential business information to the

President, the party shall also submit a nonconfidential version of the information in which the confidential business information is summarized or, if necessary, deleted.

SUBTITLE D—CASES UNDER TITLE II OF THE TRADE ACT OF 1974

Subtitle D of title III implements the global safeguard provisions of the Agreement. It authorizes the President, in granting global import relief under the global safeguard provisions in sections 201 through 204 of the Trade Act of 1974 (19 U.S.C. §§ 2251–2254), to exclude imports of originating articles from the relief when certain conditions are present.

Sec. 341. Findings and action on Korean articles

Section 341(a) provides that, if the Commission makes an affirmative determination, or a determination that the President may treat as an affirmative determination, in a global safeguard investigation initiated under chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. §§ 2251 et seq.), the Commission must find and report to the President whether imports of the Korean article are a substantial cause of serious injury or threat thereof. Section 341(b) provides that, if the Commission makes a negative finding under section 341(a), the President may exclude the Korean articles from the global safeguard action.

TITLE IV—PROCUREMENT

Sec. 401. Eligible products

This section amends section 308(4)(A) of the Trade Agreements Act of 1979 (19 U.S.C. § 2518(4)(A)) to implement the government procurement provisions of the Agreement.

TITLE V—OFFSETS

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

Section 501 amends section 6695(g) of the Internal Revenue Code of 1986 to increase from $100 to $500 the penalty on tax return preparers who fail to comply with the due diligence requirements for determining eligibility for the earned income tax credit. The increased penalty applies to returns required to be filed after December 31, 2011.

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

Section 502 amends subchapter B of chapter 61 of the Internal Revenue Code of 1986 to require all prisons located in the United States to submit annually to the IRS a list of names and valid Social Security numbers of all inmates serving sentences of 1 year or more to assist in identifying fraudulent returns filed by prisoners. The information must be filed no later than September 15, 2012, and annually thereafter.

Sec. 503. Merchandise processing fee

Section 503 amends section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA") to provide for an increase in the current merchandise processing fee rate charged by Customs and Border Protection for formal entries to 0.3464 percent ad valorem and increases the cap on the range of such rate from 0.21 percent to 0.3464 percent ad valorem. The change in rate addresses the increased costs Customs and Border Protection is incurring. The last legislative change to the merchandise processing fee occurred in 1995. The provision will be effective from December 1, 2015, through June 30, 2021.

Sec. 504. Customs user fees

Section 504 amends section 13031 of COBRA to extend until August 2, 2021, the merchandise processing fees and until December 8, 2020, the passenger and conveyance processing fees authorized under that act.

Sec. 505. Time for payment of corporate estimated taxes

Section 505 increases the amount of the required installment of estimated tax otherwise due from a corporation with at least $1 billion in assets in (1) July, August, or September 2012 by 0.25 percent; and (2) July, August, or September 2016 by 2.75 percent. The bill reduces the next required installment to reflect the prior increase.

F. VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with section 133 of the Legislative Reorganization Act of 1946, the Committee states that on October 11, 2011, S. 1642 was ordered favorably reported, without amendment, by voice vote.

II. BUDGETARY IMPACT OF THE BILL

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 12, 2011.

Hon. MAX BAUCUS,
Chairman, Committee on Finance,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1642, the United States-Korea Free Trade Agreement Implementation Act.

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

Sincerely,

DOUGLAS W. ELMENDORF,
Director.

Enclosure.

S. 1642—United States-Korea Free Trade Agreement Implementation Act

Summary: S. 1642 would approve the free trade agreement between the government of the United States and the government of the Republic of Korea (Korea) that was signed on June 30, 2007, and modified by a later agreement on December 3, 2010. It would provide for tariff reductions and other changes in law related to implementation of the agreement. The bill would extend user fees collected by Customs and Border Protection (CBP) that expire under current law and would increase those fees. In addition, it would establish a reporting requirement for federal and state prisons for tax administration purposes and increase the penalties on tax preparers who did not comply with due-diligence requirements for the earned income tax credit. It also would shift some corporate income tax payments between fiscal years.

The Congressional Budget Office (CBO) and the staff of the Joint Committee on Taxation (JCT) estimate that enacting S. 1642 would reduce revenues by $31 million in 2012 and by about $7.0 billion over the 2012–2021 period. CBO estimates that enacting S. 1642 would increase direct spending by $53 million in 2012 but would decrease direct spending by about $7.0 billion over the 2012–2021 period. The net impact of those effects is an estimated reduction in deficits of $16 million over the 2012–2021 period. Pay-as-you-go procedures apply because enacting the legislation would affect direct spending and revenues.

Further, CBO estimates that implementing the legislation would cost $7 million over the 2012–2016 period, assuming the availability of appropriated funds.

CBO has determined that the nontax provisions of S. 1642 contain no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA), and would impose no costs on state, local, or tribal governments.

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

JCT has determined that the tax provisions of S. 1642 contain no intergovernmental or private-sector mandates as defined in UMRA.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1642 is shown in the following table. The costs of this legislation fall within budget functions 150 (international affairs), 370 (commerce and housing credit), 750 (administration of justice), and 800 (general government).

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

Sources: Congressional Budget Office and the staff of the Joint Committee on Taxation.

Note: Components may not sum to totals because of rounding; EITC = Earned Income Tax Credit.

[a] In addition, CBO estimates that implementing the provisions of S. 1642 would have a discretionary cost of $7 million over the 2012–2016 period, assuming appropriation of the necessary amounts.

Basis of estimate: For the purposes of this estimate, CBO assumes that S. 1642 will be enacted early in fiscal year 2012.

Revenues

Under the United States-Korea free trade agreement, tariffs on U.S. imports from Korea would be phased out over time. The tariffs would be phased out for individual products at varying rates, ranging from immediate elimination on the date the agreement enters into force to gradual elimination over 10 or more years. According to the U.S. International Trade Commission, the United States collected about $660 million in customs duties in 2010 on $48 billion of imports from Korea. Based on expected imports from Korea, CBO estimates that implementing the tariff schedule outlined in the U.S.-Korea free trade agreement would reduce revenues by $158 million in 2012, and by about $7 billion over the 2012–2021 period, net of income and payroll tax offsets.

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

S. 1642 would increase the penalties imposed on paid tax return preparers who do not comply with due-diligence requirements for determining their clients' allowable earned income tax credits (EITC), from $100 under current law to $500 for each failure. JCT estimates that this change would increase revenues by $197 million over the 2012–2021 period.

S. 1642 also would require prisons located in the United States to provide the names and Social Security Numbers of all inmates serving sentences longer than one year to the Internal Revenue Service for tax administration purposes. JCT estimates that this change would increase revenues by $122 million over the 2012–2021 period.

S. 1642 also would shift payments of corporate estimated taxes between fiscal years 2012 and 2013 and between fiscal years 2016 and 2017. For corporations with at least $1 billion in assets, the bill would increase the portion of corporate estimated payments due from July through September in both 2012 and 2016. JCT estimates that those changes would increase revenues by $118 million in 2012 and decrease them by $118 million in 2013, and would increase revenues by about $1.9 billion in 2016 and decrease them by about $1.9 billion in 2017.

Direct spending

Under current law, certain fees collected by CBP will expire in January of 2020. The bill would extend COBRA fees (which were established in the Consolidated Omnibus Budget Reconciliation Act of 1985) from January 14, 2020, through December 8, 2020, and would extend merchandise processing fees from January 7, 2020, through August 2, 2021. CBO estimates that those changes would increase offsetting receipts (a credit against direct spending) by about $4.1 billion over the 2020–2021 period. For merchandise entered from December 1, 2015, through June 30, 2021, the bill would raise the merchandise processing fee from 0.21 percent to 0.3464 percent of the value of goods entered. CBO estimates that this would increase offsetting receipts by about $4.3 billion over the 2012–2021 period.

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

Spending subject to appropriation

Implementing provisions of S. 1642 would increase the costs of several agencies affected by the bill including:

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

Based on information from the agencies, CBO estimates that those activities would cost $7 million over the 2012–2016 period, assuming appropriation of the necessary amounts.

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

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR S. 1642 AS ORDERED REPORTED BY THE SENATE COMMITTEE ON FINANCE ON OCTOBER 11, 2011

	By fiscal year, in millions of dollars—											
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2012–2016	2012–2021
NET INCREASE OR DECREASE (−) IN THE DEFICIT												
Statutory Pay-As-You-Go Impact	84	500	448	533	−1,613	2,192	351	410	−1,477	−1,444	−48	−16
Memorandum:												
Changes in Revenues	−31	−405	−349	−429	1,202	−2,732	−918	−1,006	−1,107	−1,215	−13	−6,991
Changes in Outlays	53	95	99	104	−411	−540	−567	−596	−2,584	−2,659	−61	−7,007

Estimated impact on state, local, and tribal governments: CBO has determined that the nontax provisions of S. 1642 contain no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. JCT has determined that the tax provisions of S. 1642 contain no intergovernmental mandates as defined in UMRA.

Estimated impact on the private sector: CBO has determined that the nontax provisions of S. 1642 would impose private-sector mandates, as defined in UMRA, by extending the customs user fees, by increasing merchandise processing fees and by enforcing new recordkeeping requirements. CBO estimates that the aggregate costs of those mandates would exceed the annual threshold established in UMRA for private-sector mandates ($142 million in 2011, adjusted annually for inflation). JCT has determined that the tax provisions of S. 1642 contain no private-sector mandates as defined in UMRA.

Previous CBO estimate: On October 5, 2011, CBO transmitted a cost estimate for H.R. 3080, the United States-Korea Free Trade Agreement Implementation Act, as ordered reported by the House Committee on Ways and Means on October 5, 2011. S. 1642 and H.R. 3080 are identical, and the CBO cost estimates are the same.

Estimate prepared by: Federal revenues: Kalyani Parthasarathy; Federal spending: Sunita D'Monte, Mark Grabowicz, Matthew Pickford, and Susan Willie; Impact on state, local, and tribal governments: J'nell L. Blanco; Impact on the private sector: Marin Randall.

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

III. REGULATORY IMPACT OF THE BILL AND OTHER MATTERS

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill will not significantly regulate any individuals or businesses, will not affect the personal privacy of individuals, and will result in no significant additional paperwork.

The following information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 ("UMRA") (Pub. L. No. 104–04). The Committee has reviewed the provisions of S. 1642 as approved by the Committee on October 11, 2011. In accordance with the requirements of UMRA, the Committee has determined that the nontax provisions of S. 1642 contain no intergovernmental mandates as defined in UMRA and impose no costs on state, local, or tribal governments. The Committee has determined that the tax provisions of S. 1642 contain no intergovernmental mandates as defined in UMRA. The Committee has determined that the nontax provisions of S. 1642 do impose private-sector mandates, as defined in UMRA, by extending customs user fees, increasing merchandise processing fees, and enforcing new recordkeeping requirements. The aggregate costs of those mandates will exceed the annual threshold established in UMRA for private-sector mandates ($142 million in 2011, adjusted annually for inflation). The Committee has determined that the tax provisions of S. 1642 contain no private-sector mandates as defined in UMRA.

IV. ADDITIONAL VIEWS

ADDITIONAL VIEWS OF RANKING MEMBER ORRIN G. HATCH AND SENATOR JON KYL

Several elements of this report deserve significant elaboration. The May 10, 2007 agreement (May 10th Agreement) negotiated by some in Congress and the Bush Administration was intended to secure votes for the four free trade agreements (FTAs) with Colombia, Panama, Peru and South Korea, but it did not reflect an agreement on a new trade policy as the Majority contends. We were not part of the negotiations of these new provisions. We continue to harbor misgivings over several aspects of these changes, including in the areas of labor, the environment and intellectual property. The May 10th Agreement, however—failed as only a vote on Peru was allowed by Democrat congressional leaders during the 110th Congress—and the other three FTAs had to wait for more than four years before a vote was secured. The Bush administration and the governments of Colombia, Panama, Peru and South Korea upheld their end of the bargain by incorporating the May 10th Agreement changes into each FTA, but the democrat leadership of Congress refused to honor its part of the May 10th Agreement and allow a vote on any of the three remaining FTAs. The Obama Administration continued this pattern of delay for nearly three years.

As acknowledged, years after the pending trade agreements were modified in accordance with the substantive provisions of the May 10th Agreement, the Majority in March 2011 and the administration in May 2011 added a new demand that Congress approve additional spending on a domestic job training program before they would allow any pending trade agreement to be considered. This new demand was not part of May 10th Agreement and it was made during a period of extreme fiscal austerity. Regardless, Senator Hatch indicated during a May 26, 2011 hearing on the U.S.-Korea FTA that he was not opposed to having Trade Adjustment Assistance (TAA) considered separately. Moreover, all Republican Finance Committee Members agreed that TAA should be "debated and considered on its own merits." Although some Republican Senators signaled a willingness to consider TAA and support a separate vote, the Majority rejected these overtures prior to the markup and refused to allow an open debate on the merits of TAA—or even to hold a hearing on the TAA program. In its report, the Majority states that no FTA implementing legislation has been passed while TAA provisions had expired. Even if this is true, it does not justify including TAA in the Korea FTA implementing bill, as the TAA program was not set to expire until February 2012.

The report also states that including the expired and expanded provisions of TAA in the draft implementing bill during the Senate

Finance Committee's "mock mark-up" process was "necessary or appropriate" to implement the Korea FTA. Again, that is not correct.

Inclusion of TAA in the draft implementing bill during the "mock mark-up" process abused long-standing rules and procedures governing the delegation of trade negotiating authority from Congress to the President. Moreover, contrary to the Senate Finance Committee's tradition of managing trade legislation through bipartisan collaboration, this decision was made with little to no consultation with Senate Finance Committee Members in the Minority.

Under the Bipartisan Trade Act of 2002, trade agreement implementing bills are considered under Trade Promotion Authority (TPA) procedures. Under TPA, trade agreement implementing bills are developed jointly by Congress and the administration. Close consultation with Congress during this process is key. Once submitted to Congress, these bills are not amendable. As added protection, the law says these bills can only consist of provisions that are necessary or appropriate to implement the trade agreement.

The Majority report states that it was necessary or appropriate to include the TAA provisions in the Korea FTA draft implementing bill because the North American Free Trade Agreement (NAFTA) included NAFTA Transitional Adjustment Assistance (NAFTA TAA). The Majority also claims that the Korea FTA implementing bill's TAA provisions were "narrower" than the NAFTA TAA provisions, and that the NAFTA TAA provisions expanded eligibility. Both contentions are incorrect. NAFTA TAA was far different from the TAA proposal included in the Korea FTA draft implementing bill. NAFTA TAA was a temporary and transitional program, narrowly tailored just for workers who might be directly dislocated by trade with NAFTA countries (Mexico and Canada). The TAA provisions considered as part of the Senate Finance Committee's informal consideration of the Korea FTA draft implementing bill went far beyond that, providing much richer benefits to workers dislocated for a myriad of reasons totally unrelated to the Korea FTA. In fact, benefits under the expanded TAA proposal go to workers dislocated by trade with any country. In addition, the proposal provided benefits to workers retroactively. Including statutory language to provide benefits to workers who were not, are not, and never will be affected by the approval of the Korea FTA itself was neither necessary nor appropriate to implement the Korea FTA. It is difficult to understand how these provisions could be narrower than the NAFTA TAA provisions that impacted two countries and provided temporary transitional benefits to workers affected by the NAFTA agreement after its approval.

It is also a specious argument to cite the inclusion of a TAA provision in an implementing bill as evidence that the practice comports with TPA statutory requirements. The fact that some unrelated provisions have been included in prior trade agreement implementing bills is not evidence that their inclusion was within the confines of TPA, simply that their inclusion was never formally challenged. The Majority's contention that the CAFTA–DR informal markup adopted a TAA expansion does not demonstrate that such an amendment was "necessary or appropriate" to include in the CAFTA–DR implementing bill. Unlike the Korea FTA implementing legislation that included TAA expansions in the chairman's informal markup text, the CAFTA–DR TAA provisions were included as an amendment as part of the informal markup process by voice vote. Then-Chairman Grassley expressed serious reservations regarding the adoption of the TAA amendment precisely because he viewed it as neither "necessary or appropriate" to implement the CAFTA–DR agreement. The general counsel of the Office of the United States Trade Representative concurred with this assessment, both during the informal mark-up and in subsequent correspondence where he stated that inclusion of such a TAA provision is not "necessary or appropriate." As a result, the Bush administration declined to submit implementing legislation that included the TAA provisions in the CAFTA–DR package that Congress approved. We have attached that letter as part of our additional views.

As the parliamentarian has never ruled on whether a disputed provision complies with the rules of TPA, there is no legal precedent for including such provisions in a trade agreement implementing bill. Nevertheless, in 2002, both houses of Congress expressed significant discomfort with the past practice of including overly broad provisions in trade agreement implementing bills. Statutory history which accompanies the 2002 TPA procedures makes it clear that, under these authorities, the parameters of what is necessary or appropriate should be strictly and narrowly construed.

Without demonstrating whether any jobs would be lost, the Majority attempted to use the Korea FTA draft implementing bill to shield wholesale changes to U.S. labor, tax, pension and health care law from debate and amendment, disregarding the clear written views of the Senate Finance Committee Republicans. (See Attached Letter dated June 30, 2011). In so doing, the draft implementing bill went far beyond what was necessary or appropriate to implement this agreement. House and Senate Finance Committee reports to the Trade Act of 2002 made it clear that the standard for what can be included in an implementing bill must be narrowly and strictly defined. Past administrations and Senate Finance Committees have carefully and faithfully followed these 2002 guidelines in implementing trade agreements by narrowly limiting any extraneous provisions in trade agreement implementing bills. Instead of serious consultations, the expanded TAA provisions were jammed into the Korea FTA draft implementing bill, providing the Senate Finance Committee Minority with little notice and no consultation. This highly partisan maneuver resulted in the first strictly partisan vote on a trade agreement in decades. Such a break from past practice and precedent was unnecessary and inappropriate. Including unrelated and highly-controversial provisions, like the TAA spending program, into the Korea FTA draft implementing bill with little to no consultation violated the letter and spirit of TPA. It is a practice which should not be replicated in future bills.

Finally, the Majority asserts that "countless" meetings took place between the Majority and the Minority prior to the introduction of the chairman's informal mark-up implementing legislation, which included the inappropriate TAA provisions. Yet, the ranking member's staff was not part of the substantive negotiations of the TAA provisions with the House Committee on Ways and Means Majority. It is correct that many meetings took place to prepare the implementing legislation language—including with the Office of the U.S. Trade Representative and the Majority and Minority staffs from the Committee on Finance and Ways and Means Committee—and to ensure that the terms of the Korea FTA were met in the implementing bill provisions. These meetings did not, however, include meaningful discussions regarding TAA or the process for moving this legislation, including its possible inclusion in the Korea FTA implementing bills. Although there were rumors that the chairman might include TAA in the chairman's mark for the informal markup, we and others cautioned against such an approach—privately and publicly. Our concerns were ignored, and the Republican Committee Members and staff saw the TAA provisions for the first time when the Majority posted the implementing legislation 48 hours prior to the scheduled informal markup. All Republican Committee Members rejected moving forward with TAA included in the Korea FTA implementing bill as evidenced by the second letter we have included in our additional views. Thankfully, the TAA language was stripped out of the final implementing legislation sent to Congress by the Obama administration.

Fortunately, the May 10th Agreement provisions diluting intellectual property rights protection for pharmaceutical products were not included in the Korea FTA. As a result, this pact contains some of the highest standards for intellectual property rights protection of any bilateral trade agreement. We hope these high standards, and their reflection of U.S. law, will continue to serve as the model for future trade agreements.

ADDITIONAL VIEWS OF SENATOR CHUCK GRASSLEY

The Majority has stated that, "On May 10, 2007, the Bush Administration and the bipartisan leadership of the U.S. Senate Committee on Finance and the U.S. House of Representatives Committee on Ways and Means reached an agreement on trade policy." However, as Ranking Member of the Finance Committee during that time period, I strongly disagree with the Majority's statement that the agreement was an agreement "on trade policy." The Majority's terminology implies the terms of the agreement reached on May 10, 2007 with President Bush are somehow now the blueprint for future trade agreements. This is not the case. The May 10th agreement was made out of necessity by President Bush as he attempted to gain support from the democratically-controlled Congress for approving the South Korea, Panama, Peru, and Colombia trade agreements. As I expressed at the time, I have reservations about many of the provisions included in the May 10th agreement, including the terms regarding labor, environment, and intellectual property. I continue to have reservations about the May 10th provisions. Most, if not all, of the members on our side do not see the May 10th provisions as part of a blueprint for future trade agreements. Those provisions were part of a bargain between President Bush and Democrat leaders in Congress, for those specific free trade agreements at the time, not an "agreement on trade policy" as the Majority suggests.

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

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

SECTION 13031 OF THE CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985

SEC. 13031. FEES FOR CERTAIN CUSTOMS SERVICES.

(a) * * *

(b) LIMITATIONS ON FEES.—(1) * * *

* * * * * * *

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

* * * * * * *

(j) EFFECTIVE DATES.—(1) * * *

* * * * * * *

(3)(A) Fees may not be charged under paragraphs (9) and (10) of subsection (a) after ⟦January 7, 2020⟧ *August 2, 2021.*

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

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TARIFF ACT OF 1930

* * * * * * *

TITLE IV—ADMINISTRATIVE PROVISIONS

* * * * * * *

Part III—Ascertainment, Collection, and Recovery of Duties

* * * * * * *

SEC. 508. RECORDKEEPING.

(a) * * *

* * * * * * *

(i) CERTIFICATIONS OF ORIGIN FOR GOODS EXPORTED UNDER THE UNITED STATES-KOREA FREE TRADE AGREEMENT.—

(1) DEFINITIONS.—In this subsection:

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

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

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

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

(B) KFTA CERTIFICATION OF ORIGIN.—The term "KFTA certification of origin" means the certification established under article 6.15 of the United States-Korea Free Trade Agreement that a good qualifies as an originating good under such Agreement.

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

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

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

(1) * * *

* * * * * * *

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

(a) * * *

* * * * * * *

(j) DENIAL OF PREFERENTIAL TARIFF TREATMENT UNDER THE UNITED STATES-KOREA FREE TRADE AGREEMENT.—If U.S. Customs and Border Protection or U.S. Immigration and Customs Enforcement of the Department of Homeland Security finds indications of a pattern of conduct by an importer, exporter, or producer of false or unsupported representations that goods qualify under the rules of origin provided for in section 202 of the United States-Korea Free Trade Agreement Implementation Act, U.S. Customs and Border Protection, in accordance with regulations issued by the Secretary of the Treasury, may suspend preferential tariff treatment under the United States-Korea Free Trade Agreement Implementation Act to entries of identical goods covered by subsequent representations by that importer, exporter, or producer until U.S. Customs and Border Protection determines that representations of that person are in conformity with such section 202.

* * * * * * *

SEC. 520. REFUNDS AND ERRORS.

(a) * * *

* * * * * * *

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

(1) * * *

* * * * * * *

PART V—ENFORCEMENT PROVISIONS

* * * * * * *

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

(a) * * *

* * * * * * *

(c) MAXIMUM PENALTIES.—

(1) * * *

* * * * * * *

(11) PRIOR DISCLOSURE REGARDING CLAIMS UNDER THE UNITED STATES-KOREA FREE TRADE AGREEMENT.—An importer shall not be subject to penalties under subsection (a) for making an incorrect claim that a good qualifies as an originating good under section 202 of the United States-Korea Free Trade Agreement Implementation Act if the importer, in accordance with regulations issued by the Secretary of the Treasury, promptly and voluntarily makes a corrected declaration and pays any duties owing with respect to that good.

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

* * * * * * *

(j) FALSE CERTIFICATIONS OF ORIGIN UNDER THE UNITED STATES-KOREA FREE TRADE AGREEMENT.—

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

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

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

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

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

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TRADE ACT OF 1974

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TITLE II—RELIEF FROM INJURY CAUSED BY IMPORT COMPETITION

CHAPTER 1—POSITIVE ADJUSTMENT BY INDUSTRIES INJURED BY IMPORTS

* * * * * * *

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

(a) PETITIONS AND ADJUSTMENT PLANS.—

(1) * * *

* * * * * * *

(8) The procedures concerning the release of confidential business information set forth in section 332(g) of the Tariff

Act of 1930 shall apply with respect to information received by the Commission in the course of investigations conducted under this chapter, part 1 of title III of the North American Free Trade Agreement Implementation Act, title II of the United States-Jordan Free Trade Area Implementation Act, title III of the United States-Chile Free Trade Agreement Implementation Act, title III of the United States-Singapore Free Trade Agreement Implementation Act, title III of the United States-Australia Free Trade Agreement Implementation Act, title III of the United States-Morocco Free Trade Agreement Implementation Act, title III of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act, title III of the United States-Bahrain Free Trade Agreement Implementation Act, title III of the United States-Oman Free Trade Agreement Implementation Act, [and] title III of the United States-Peru Trade Promotion Agreement Implementation Act, *and title III of the United States-Korea Free Trade Agreement Implementation Act.* The Commission may request that parties providing confidential business information furnish non confidential summaries thereof or, if such parties indicate that the information in the submission cannot be summarized, the reasons why a summary cannot be provided. If the Commission finds that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorize its disclosure in generalized or summarized form, the Commission may disregard the submission.

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TRADE AGREEMENTS ACT OF 1979

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TITLE III—GOVERNMENT PROCUREMENT

* * * * * * *

SEC. 308. DEFINITIONS.

As used in this title—

(1) * * *

* * * * * * *

(4) ELIGIBLE PRODUCTS.—

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

(i) * * *

* * * * * * *

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

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

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

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INTERNAL REVENUE CODE OF 1986

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Subtitle F—Procedure and Administration

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CHAPTER 61—INFORMATION AND RETURNS

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Subchapter B—Miscellaneous Provisions

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* * * * * * *

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

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

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

(1) first, middle, and last name,

(2) date of birth,

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

(4) prison assigned inmate number,

(5) the date of incarceration,

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

(7) the date of work release,

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

(9) last known address, and

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

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

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

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

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

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Subchapter B—Assessable Penalties

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PART I—GENERAL PROVISIONS

* * * * * * *

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

(a) * * *

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

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

JUN 28 2005

The Honorable Ron Wyden
United States Senate
Washington, D.C. 20510

Dear Senator Wyden:

Thank you for your letter of June 16, 2005, signed with nine of your Finance Committee colleagues, urging the Administration to include in the Central America – Dominican Republic Free Trade Agreement (CAFTA-DR) implementing legislation a Committee-approved amendment that would extend the Trade Adjustment Assistance (TAA) program to services workers. Ambassador Portman has asked me to respond on his behalf.

After carefully considering the proposed amendment, we concluded that the provision would nc be consistent with the legislative procedures provided for under the Bipartisan Trade Promotion Authority Act of 2002 (TPA Act) for trade agreement implementing bills. Accordingly, the amendment was not included in the draft bills that the President submitted on June 23.

As you know, TPA procedures apply to implementing bills for trade agreements that satisfy the criteria set out in the Act. Because TPA implementing bills are submitted by the President, cannot be amended, and proceed automatically to a vote, the types of provisions that may be included in these bills are strictly limited. In particular, TPA procedures apply to implementing bill provisions repealing or amending existing laws or providing new legislative authority that are "necessary or appropriate to implement" the trade agreement.

Since Congress enacted TPA, the Administration and the Congress have strictly interpreted this standard. All of the trade agreement implementing bills that the Administration has submitted – and the Congress has approved – under TPA have been limited to provisions directly related to carrying out the trade agreements. The Committee's proposed amendment would have created a new TAA program that is not specifically related to the CAFTA-DR or to carrying it out. Thus, including the Senate Finance amendment in the CAFTA-DR bill would have represented a clear break with consistent practice under TPA.

I do not believe that the implementing bill for the North American Free Trade Agreement (NAFTA) established a precedent for including the Finance Committee's TAA amendment in the CAFTA-DR bill. First, the NAFTA bill was submitted under earlier trade legislation, not under the TPA Act. Moreover, the NAFTA bill established a TAA program for workers displaced by imports under <u>that</u> agreement. In contrast, the Finance Committee's proposed TAA amendment would have created a new TAA program to cover services workers displaced by imports from <u>all sources</u>, rather than imports occasioned by the CAFTA-DR specifically. I would also note that the provision you refer to in the legislation implementing our free trade agreement with Australia

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was required for the very limited purpose of correcting an inadvertent omission in our earlier TPA implementing bills.

Lastly, it is correct that the Trade Act of 2002 – of which the TPA Act is a part – included provisions addressing trade adjustment assistance. Those provisions do not serve as a precedent for including the Finance Committee's proposed TAA amendment in the CAFTA-DR implementing bill, however. Congress enacted the Trade Act of 2002 using normal legislative procedures rather than under TPA procedures.

In closing, I would point out that the CAFTA-DR does not require the United States to open its services markets any further to imports from our trading partners. Thus, I would not expect the agreement to result in displacement of U.S. services workers. On the contrary, the agreement should provide significant new commercial opportunities for our services firms and their workers in the CAFTA-DR countries, which have committed to give us substantially increased access to their services markets. Accordingly, I believe it would be appropriate to consider TAA legislation for services workers on its broader trade merits.

Sincerely,

James Mendenhall
Acting General Counsel

United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510–6200

June 30, 2011

President Barack Obama
The White House
Washington, DC 20500

Dear Mr. President,

As you know, the U.S. Senate Finance Committee exercises jurisdiction over international trade, including jurisdiction over legislation implementing reciprocal trade agreements and authorizing legislation for trade adjustment assistance programs. This authority is rooted in Article I, Section 8 of the U.S. Constitution which grants Congress the power to "regulate commerce with foreign nations ..." and to "... lay and collect taxes, duties, imposts, and excises...." As elected representatives to the U.S. Senate and as members of the Finance Committee, we feel it is our constitutional duty to carefully consider and debate legislation under the Finance Committee's jurisdiction.

Under Trade Promotion Authority (TPA) procedures, legislation to implement trade agreements cannot be amended once it is submitted to Congress by the President. For this reason, it is imperative that Congress be closely consulted throughout the trade agreement negotiation process and during development of implementing legislation for each trade agreement.

We are concerned about last minute attempts to include provisions expanding Trade Adjustment Assistance in the South Korea FTA implementing bill. We believe such actions are beyond the scope of TPA authority and unduly infringe on the rights of Members of the Senate to carefully weigh and debate the merits of TAA.

While we may share different views regarding our support for these agreements and on trade adjustment assistance, we are united in our opposition to inclusion of expanded Trade Adjustment Assistance in this implementing bill submitted to Congress under Trade Promotion Authority. We believe each trade agreement and Trade Adjustment Assistance should be debated and considered in the Senate on its own merits.

Sincerely,

Orrin Hatch

Michael B. Enzi

Chuck Grassley

Tom Coburn

Jon Kyl

John Cornyn

Pat Roberts

[illegible]

Mike Crapo

[illegible]

Olympia Snowe