

**THE UNITED STATES-KOREA FREE TRADE
AGREEMENT IMPLEMENTATION ACT
SECTION-BY-SECTION SUMMARY
PREPARED BY THE COMMITTEE ON WAYS AND MEANS**

Sections 1–3: Short Title, Table of Contents, Purposes, and Definitions

Section 2 sets forth the purposes of the Act, which include approving and implementing the United States-Korea Free Trade Agreement (“Agreement”) and securing the benefits of the agreement entered into pursuant to an exchange of letters between the United States and the Government of Korea on February 10, 2011.

TITLE I: APPROVAL AND GENERAL PROVISIONS

Section 101: Approval and Entry into Force

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

Section 102: Relationship of the Agreement to United States and State Law

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

Section 103: Implementing Actions in Anticipation of Entry into Force and Initial Regulations

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

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

provision.

Section 104: Consultation and Layover for Proclaimed Actions

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

Section 105: Administration of Dispute Settlement Proceedings

Section 105 authorizes the President to establish an office within the Department of Commerce responsible for providing administrative assistance to dispute settlement panels that are established under the Agreement. The section also authorizes appropriations of up to \$750,000 for the establishment and operation of the office and to pay the U.S. share of expenses of the panels.

Section 106: Arbitration of Claims

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

Section 107: Effective Dates; Effect of Termination

Section 107 provides that, with the exception of Sections 1 through 3, Section 207(g), and Titles V of the Act, which take effect on the date of enactment of the Act, the effective date of the Act is the date the Agreement enters into force with respect to the United States. Amendments made to U.S. law by Sections 203, 204, 206, and 401 of the Act take effect on the date of enactment of the Act but apply with respect to Korea on the date on which the Agreement enters into force. Other than Title V, the provisions of the Act terminate on the date on which the Agreement terminates.

TITLE II: CUSTOMS PROVISIONS

Section 201: Tariff Modifications

Section 201(a) provides the President with the authority to proclaim tariff modifications necessary or appropriate to carry out the Agreement.

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

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

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

Section 202: Rules of Origin

Section 202 codifies the rules of origin set out in Article 4.2 and Chapter 6 of the Agreement. Section 202(b) establishes three basic ways for a Korean good to qualify as an “originating good” and therefore to be eligible for preferential tariff treatment when it is imported into the United States. A good is an originating good if: (1) it is “wholly obtained or produced entirely in the territory of Korea, the United States, or both”; (2) it is produced entirely in the United States, Korea, or both and any materials used to produce the good that are not themselves originating goods are transformed in such a way as to cause their tariff classification to change or the good otherwise meets regional content and other requirements, as specified in Annex 4-A or Annex 6-A of the Agreement; or (3) it is produced entirely in the territory of Korea, the United States, or both exclusively from originating materials.

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

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

The remainder of Section 202 sets forth more detailed rules for determining whether a good meets the Agreement’s requirements under the second method of qualifying as an originating good. These include rules pertaining to *de minimis* quantities of non-originating materials that do not undergo a tariff transformation, transformation by regional content, and alternative methods for calculating regional value-content. Other provisions in section 202 address valuation of materials, determination of the originating or non-originating status of fungible goods and materials, and treatment of accessories, spare parts and tools, packaging materials, indirect materials, and goods put up in sets. Section 202(l) specifies that goods that undergo further production or other operations outside Korea or the United States (with certain exceptions) or do not remain under the control of the customs authorities of such other countries do not qualify as originating goods.

Section 203: Customs User Fees

Section 203 implements the U.S. commitments under Article 2.10.4 of the Agreement to eliminate the Merchandise Processing Fee on originating goods. In accordance with U.S. obligations under the General Agreement on Tariffs and Trade 1994, the provision also prohibits use of funds in the Customs User Fee Account to provide services related to entry of originating goods.

Section 204: Disclosure of Incorrect Information; False Certifications of Origin; Denial of Preferential Tariff Treatment

Section 204 implements Articles 6.19.3 and 6.18.6 of the Agreement. Section 204(a) prohibits the imposition of a penalty upon importers who make an invalid claim for preferential tariff treatment under the Agreement if the importer acts promptly and voluntarily to correct the error and pays any duties owed on the good in question. The provision also makes it unlawful for a person to falsely certify, by fraud, gross negligence, or negligence, that a good exported from the United States is an originating good. However, the provision prohibits the imposition of a penalty if the exporter or producer promptly and voluntarily provides notice of the incorrect information to every person to whom a certification was issued.

Section 204(b) provides that if U.S. authorities find that an importer, exporter or producer has engaged in a pattern of conduct of providing false or unsupported representations, the authorities may suspend preferential treatment with respect to identical goods covered by subsequent representations made by that importer, exporter or producer, until U.S. authorities have determined that its representations are accurate.

Section 205: Reliquidation of Entries

Section 205 implements Article 6.19.5 of the Agreement and provides authority for the Customs Service to reliquidate an entry to refund any excess duties (including any merchandise processing fees) paid on a good qualifying under the rules of origin for which no claim for preferential tariff treatment was made at the time of importation if the importer so requests, within one year after the date of importation.

Section 206: Recordkeeping Requirements

Section 206 implements Article 6.17 of the Agreement. The provision requires any person who completes and issues a certificate of origin under Article 6.15 of the Agreement for a good exported from the United States to maintain, for a period of five years after the date of certification, specified documents demonstrating that the good qualifies as originating.

Section 207: Enforcement Relating to Trade in Textile or Apparel Goods

Section 207 implements the customs cooperation and verification of origin provisions in Article 4.3 of the Agreement. Under Article 4.3, the United States may request the Government of Korea to conduct a verification of whether a claim of origin for a textile or apparel good is accurate or a particular exporter or producer is complying with applicable customs laws, regulations, and procedures regarding trade in textile or apparel goods. Section 207(a) provides that the President may direct the Secretary to take “appropriate action” while such a verification is being conducted.

“Appropriate action” may include: (i) suspension of liquidation of entry of any textile or apparel goods that the person subject to the verification has produced or exported if the verification was based on a reasonable suspicion of unlawful activity related to such goods; and (ii) suspension of liquidation of the entry of a textile or apparel good that is the subject of a verification.

Under Section 207(c), the President may also direct the Secretary to take “appropriate action” when the Secretary determines that the information obtained within 12 months after making a request for a verification is insufficient to make a determination. Such action may include: (i) denying preferential tariff treatment to textile or apparel goods that the person subject to the verification has exported or produced; and (ii) denying entry to such goods.

Under Section 207(e), the Secretary may publish the name of a person that the Secretary has determined: (i) is engaged in circumvention of applicable laws, regulations, or procedures affecting trade in textile or apparel goods; or (ii) has failed to demonstrate that it produces, or is capable of producing, the textile or apparel goods.

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

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

Section 208: Regulations

Section 208 directs the Secretary to prescribe regulations necessary to carry out the tariff-related provisions of the Act, including the rules of origin and customs user fee provisions.

TITLE III: RELIEF FROM IMPORTS

Section 301: Definitions

Section 301 defines “Korean article,” “Korean textile or apparel article,” and “Korean motor vehicle article,” which are key terms for Title III of the Act.

SUBTITLE A: RELIEF FROM IMPORTS BENEFITING FROM THE AGREEMENT

Section 311: Commencing of Action for Relief

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

Section 311 provides for the filing of petitions with the ITC and for the ITC to conduct

safeguard investigations under Subtitle A. Section 311(a)(1) provides that a petition requesting a safeguard action may be filed by an entity that is “representative of an industry.” As under Section 202(a)(1) of the Trade Act of 1974, a trade association, firm, certified or recognized union, or a group of workers can be considered such an entity. Section 311(a)(2) provides that an entity filing a petition may request provisional relief be provided as if the petition had been filed under Section 202(a) of the Trade Act of 1974. Section 311(a)(3) provides that any allegation that critical circumstances shall be included in the petition. Section 311(b) sets out the standard to be used by the ITC in undertaking an investigation and making a determination in safeguard proceedings under Subtitle A of Title III of the Act.

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

Section 311(d) exempts from investigation Korean articles, except for Korean motor vehicle articles (per Section 321), with respect to which relief has previously been provided under Subtitle A of Title III of the Act.

Section 312: Commission Action on Petition

Section 312 requires the ITC to make a determination not later than 120 days (180 days if critical circumstances have been alleged) after the date on which the Section 311 investigation is initiated. Under Sections 312(b) and (c), if the ITC makes an affirmative determination, it must find and recommend to the President the amount of import relief that is necessary to remedy or prevent serious injury and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition.

Section 312(d) directs the ITC to submit a report to the President regarding the determination no later than 30 days after the determination is made. Section 312(e) requires the ITC to make this report public and to publish a summary of it in the Federal Register.

Section 313: Provision of Relief

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

Section 313(c) sets forth the nature of the relief that the President may provide. The President may take action in the form of a suspension of further reductions in the rate of duty to be applied to the articles in question, or in the form of an increase in the rate of duty on the articles in question to a level that does not exceed the lesser of the existing NTR (MFN) rate or the NTR (MFN) rate of duty that was imposed on the day before the Agreement entered into force. In the case of a duty applied on a seasonal basis, the President may increase the rate of duty on the articles in question to a level that does not exceed the lesser of the NTR (MFN) rate for the corresponding season immediately preceding the date the import relief is provided or the NTR (MFN) rate of duty that was imposed for the corresponding season immediately preceding the date on which the

Agreement enters into force. Under Section 313(c)(3), if the relief the President provides has duration greater than one year, the relief must be subject to progressive liberalization at regular intervals over the course of its application, except with respect to a Korean motor vehicle article (per Section 321).

Section 313(d) provides that the President may initially provide import relief for up to two years. This period may be extended by up to one year for a Korean article and by up to two years for a Korean motor vehicle article (per Section 321) if, after an investigation by the ITC and receipt of an ITC report, the President determines that import relief continues to be necessary and there is evidence that the industry is making a positive adjustment to import competition. The ITC must conduct an investigation on these issues if, within a specified period before the relief terminates, a concerned industry files a petition requesting an investigation. The ITC must issue a report on its investigation to the President no later than 60 days before the termination of the import relief.

Section 313(e) specifies that upon the termination of import relief, the rate of duty shall be the rate that would have been in effect but for the provision of relief.

Section 313(f) exempts from relief any article that is: (i) subject to import relief under the global safeguard provisions in U.S. law (Chapter 1 of Title II of the Trade Act of 1974); or (ii) subject to import relief under Subtitle C of Title III of the Act.

Section 314: Termination of Relief Authority

Section 314 provides that no relief may be provided under Subtitle A of Title III of the Act after ten years from the date the Agreement enters into force, unless (i) the scheduled tariff phase-out period for the article under the Agreement is greater than ten years, in which case relief may not be provided for that article after the scheduled phase-out period ends; or (ii) the President determines that Korea has consented to such relief. In addition, per Section 321, relief for a Korean motor vehicle article may be provided during any period before the date that is 10 years after the date on which duties on the article are eliminated.

Section 315: Compensation Authority

Section 315 authorizes the President to provide compensation to Korea consistent with Article 10.4 of the Agreement if relief is ordered.

Section 316: Confidential Business Information

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

SUBTITLE B: MOTOR VEHICLE SAFEGUARD MEASURES

Section 321: Motor Vehicle Safeguard Measures

Section 321 implements the motor vehicle safeguard established by the exchange of letters between the United States and the Government of Korea on February 10, 2011 related to trade in automobiles. Section 321(1) provides that more than one investigation of Korean motor vehicles may be conducted and that progressive liberalization is not required while relief is being provided.

Section 321(2) provides that relief may be extended for up to two years. Section 321(3) provides that relief may be provided for a total of up to 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

Section 331: Commencement of Action for Relief

Section 331 provides that an interested party may file a request with the President for safeguard relief under Subtitle C of Title III of the Act (Sections 331-338). The President must review the request and determine whether to commence consideration of the request. Under Section 331(b), if the President determines that the request contains information necessary to warrant consideration on the merits, the President must publish notice in the *Federal Register* stating that the request will be considered and seeking public comments on the request.

Section 332: Determination and Provision of Relief

Section 332(a) provides that the President shall determine, pursuant to a request by an interested party, whether, as a result of the elimination or reduction of a duty provided under the Agreement, a Korean textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article.

Section 332(b) sets forth the relief that the President may provide, which is a suspension of any further reduction provided for under Annex 2-B of the Agreement, or an increase in the rate of duty on the articles in question to a level that does not exceed the lesser of the existing NTR (MFN) rate or the NTR (MFN) rate of duty that was imposed on the day before the Agreement entered into force.

Section 333: Period of Relief

Section 333 provides that the period of relief shall be no longer than two years. The period may be extended for an additional period of not more than two years if the President determines that continuation is necessary to remedy or prevent serious damage and to facilitate adjustment by the domestic industry to import competition and there is evidence the industry is making a positive adjustment. The aggregate period of relief, including any extension, may not exceed four years.

Section 334: Articles Exempt from Relief

Section 334 provides that relief may not be granted to an article under this subtitle if relief has previously been granted under this subtitle for that article, or the article is subject to import relief under Subtitle A of Title III of this Act or under Chapter 1 of Title II of the Trade Act of 1974.

Section 335: Rate After Termination of Import Relief

Under Section 335, after a safeguard expires, the rate of duty on the article that had been subject to the safeguard shall be the rate that would have been in effect at that time, but for the safeguard action.

Section 336: Termination of Relief Authority

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

Section 337: Compensation Authority

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

Section 338: Confidential Business Information

Section 338 provides for the treatment of confidential business information received by the President in connection with an investigation or determination under Subtitle C of Title III of the Act.

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

Section 341: Findings and Action on Goods from Korea

Section 341(a) provides that if the ITC makes an affirmative determination, or a determination that the President may consider to be an affirmative determination, in a global safeguard investigation under Section 202(b) of the Trade Act of 1974, the ITC must find and report to the President whether Korean imports of the article that qualify as originating goods under the Agreement are a substantial cause of serious injury or threat thereof. Under Section 341(b), if the ITC makes a negative finding under Section 341(a), the President may exclude any imports that are covered by the ITC's finding from the global safeguard action.

TITLE IV: PROCUREMENT

Section 401: Government Procurement

Section 401 implements Chapter 17 of the Agreement and amends the definition of "eligible product" in Section 308(4)(A) of the Trade Agreements Act of 1979. As amended, Section 308(4)(A) will provide that an "eligible product" means a product or service of Korea that is covered under the Agreement for procurement by the United States.

TITLE V: OFFSETS

Section 501: Increase in Penalty on Paid Preparers Who Fail to Comply With Earned Income Tax Credit Due Diligence Requirements

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

Section 502: Requirement for Prisons Located in the United States to Provide Information for Tax Administration

Section 502 requires the head of the Federal Bureau of Prisons and the head of any State agency that administers prisons to provide certain information regarding inmates incarcerated, in electronic format, to the Secretary of the Treasury. The information provided will assist in ensuring that inmates are not filing fraudulent tax returns. The information must be filed no later than September 15, 2012, and annually thereafter.

Section 503: Merchandise Processing Fee

Section 503 increases the ad valorem fee collected by Customs and Border Protection that offsets the costs incurred in processing and inspecting imports from 0.21 percent to 0.3464 percent. This is the first increase in this fee since 1994.

Section 504: Extension of Customs User Fees

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

Section 505: Time for Payment of Corporate Estimated Taxes

Section 505(a) increases by 0.25 percent the rate of corporate estimated tax payments in July, August, or September of 2012 under subparagraph (B) of section 401(1) of the Tax Increase Prevention and Reconciliation Act of 2005, which applies solely to corporations with at least \$1 billion in assets. Section 505(b) increases by 2.75 percent the rate of corporate estimated tax payments in July, August, or September of 2016 under subparagraph (B) of section 401(1) of the Tax Increase Prevention and Reconciliation Act of 2005, which applies solely to corporations with at least \$1 billion in assets. The next required installment is reduced to reflect the prior increase.