To require persons who seek to retain seed harvested from the planting of patented seeds to register with the Secretary of Agriculture and pay fees set by the Secretary for retaining such seed, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 18, 2011

Ms. KAPTUR introduced the following bill; which was referred to the Committee on Agriculture, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To require persons who seek to retain seed harvested from the planting of patented seeds to register with the Secretary of Agriculture and pay fees set by the Secretary for retaining such seed, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Seed Availability and Competition Act of 2011”.

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SEC. 2. RETAINING PATENTED SEED.

(a) Registration.—Any person who plants patented seed or seed derived from patented seed may retain seed from the harvest of the planted seed for replanting by that person if that person—

(1) submits to the Secretary of Agriculture notice, in such form as the Secretary may require, of the type and quantity of seed to be retained and any other information the Secretary determines to be appropriate; and

(2) pays the fee established by the Secretary pursuant to subsection (b) for the type and quantity of seed retained.

(b) Fees.—The Secretary of Agriculture shall establish a fee to be paid by a person pursuant to subsection (a)(2) based on the type and quantity of seed retained. The Secretary shall deposit amounts collected pursuant to subsection (a)(2) in the Patented Seed Fund established under subsection (e)(1).

(c) Refunds.—The Secretary of Agriculture may refund or make an adjustment of the fee paid pursuant to subsection (a)(2) when the person is unable to plant or harvest the retained seed as a result of a natural disaster or related condition and under such other circumstances as the Secretary considers such refund or adjustment appropriate.
(d) DISTRIBUTIONS.—The Secretary of Agriculture shall pay the collected fees to the appropriate patent holders, at a frequency that the Secretary determines is appropriate, from the Patented Seed Fund established under subsection (e)(1), taking into consideration the possibility of refunds pursuant to subsection (e).

(e) PATENTED SEED FUND.—

(1) ESTABLISHMENT.—There is established in the Treasury of the United States a fund to be known as the “Patented Seed Fund”, consisting of such amounts as may be received by the Secretary and deposited into such Fund as provided in this section.

(2) ADMINISTRATION.—The Fund shall be administered by the Secretary of Agriculture and all moneys in the Fund shall be distributed solely by the Secretary in accordance with this section and shall not be distributed or appropriated for any other purpose. Amounts in the Fund are available without further appropriation and until expended to make payments to patent holders.

(f) INAPPLICABILITY OF CONTRACTS AND PATENT FEES.—A person who retains seed under subsection (a) from the harvest of patented seed or seed derived from patented seed shall not be bound by any contractual limi-
tation on retaining such seed, or by any requirement to pay royalties or licensing or other fees, by reason of the patent, for retaining such seed.

(g) Definition.—In this section, the term “patented seed” means seed for which a person holds a valid patent.

SEC. 3. TARIFF ON CERTAIN IMPORTED PRODUCTS.

(a) Tariff.—In any case in which—

(1) genetically modified seed on which royalties or licensing or other fees are charged by the owner of a patent on such seed to persons purchasing the seed in the United States is exported, and

(2) no such fees, or a lesser amount of such fees, are charged to purchasers of the exported seed in a foreign country,

then there shall be imposed on any product of the exported seed from that foreign country that enters the customs territory of the United States a duty determined by the Secretary of the Treasury, in addition to any duty that otherwise applies, in an amount that recovers the difference between the fees paid by purchasers of the seed in the United States and purchasers of the exported seed in that country.

(b) Deposit of Duties.—There shall be deposited in the Patented Seed Fund established under section 2(e)(1) the amount of all duties collected under subsection
(a) for distribution to the appropriate patent holders in accordance with section 2(d).

(c) DEFINITIONS.—In this section—

(1) the term “genetically modified seed” means any seed that contains a genetically modified material, was produced with a genetically modified material, or is descended from a seed that contained a genetically modified material or was produced with a genetically modified material; and

(2) the term “genetically modified material” means material that has been altered at the molecular or cellular level by means that are not possible under natural conditions or processes (including recombinant DNA and RNA techniques, cell fusion, microencapsulation, macroencapsulation, gene deletion and doubling, introducing a foreign gene, and changing the positions of genes), other than a means consisting exclusively of breeding, conjugation, fermentation, hybridization, in vitro fertilization, tissue culture, or mutagenesis.