

UNITED STATES-PANAMA TRADE PROMOTION
AGREEMENT IMPLEMENTATION ACT

OCTOBER 6, 2011.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. CAMP, from the Committee on Ways and Means,
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 3079]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 3079) to implement the United States-Panama Trade Promotion Agreement, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

H.R. 3079 would implement the agreement establishing a free trade area between the United States and Panama.

B. BACKGROUND

The United States-Panama Trade Promotion Agreement

The United States-Panama Trade Promotion Agreement (hereinafter the “Agreement”) was signed on June 28, 2007. The Agreement covers all agricultural and industrial sectors, provides for greatly expanded market access for U.S. services, contains robust protections for U.S. intellectual property rights holders, and includes strong labor and environment provisions. The Committee believes that the Agreement meets the objectives and priorities set forth in the Bipartisan Trade Promotion Authority Act of 2002 (“TPA”). Moreover, the agreement reflects the May 10, 2007 agreement between Congressional leaders and the last Administration regarding labor, environment, intellectual property, investment, government procurement, and port security (“May 10 agreement”).

U.S. industrial goods currently face an average tariff of 7 percent in Panama, with some tariffs as high as 81 percent. Conversely, almost all Panamanian exports enter the United States duty free due to low U.S. tariffs and U.S. trade preference programs. The Agreement would transition the U.S.-Panama trading relationship from one-way preferences to full partnership and reciprocal commitments, helping U.S. exporters gain greater access to the Panamanian market, one of the fastest growing in Latin America. The International Trade Commissions (“ITC”) estimates that U.S. exports to Panama for certain sectors would increase up to 145 percent.

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

Agriculture: U.S. agriculture exports to Panama currently face an average tariff of 15 percent, whereas more than 99 percent of Panamanian agricultural exports to the United States enter duty-free. The Agreement would remedy this by making more than half of current U.S. farm exports to Panama by value duty-free immediately upon implementation, including U.S. exports of pork, rice, soybeans, cotton, wheat, and most fresh fruit. The Agreement would also address key non-tariff barriers. For example, Panama would recognize the equivalence of the U.S. food safety system for meat, poultry, and processed foods and would provide access for all U.S. beef and beef products consistent with international norms.

Manufacturing: The Agreement would significantly lower both tariff and non-tariff barriers to U.S. exports of manufactured goods. Upon implementation, over 87 percent of U.S. exports of consumer and industrial products to Panama would immediately become duty-free, with remaining tariffs phased out over ten years. Key U.S. export sectors that would receive immediate duty-free treatment include aircraft, construction equipment, and medical and scientific equipment. As a result, the ITC estimates significant gains in U.S. exports in key sectors and products. For example, the ITC estimates that exports of cars and light trucks would increase by 43 percent. Similarly, exports of appliances, HVAC equipment, and parts would increase between 9 and 20 percent. Per the Agreement, Panama has also reaffirmed its commitment to fulfill its obligations under the WTO Information Technology Agreement, which would further open Panama's market to U.S. high-tech exports. The Agreement would provide U.S. firms with lower tariff barriers than major competitors from countries that do not have trade agreements with Panama in effect.

Services: The services sector accounts for nearly 78 percent of Panama's GDP, making improved market access for U.S. services critical. The Agreement would provide U.S. service firms with market access, national treatment, and regulatory transparency exceeding that afforded by the WTO General Agreement on Services. Under the Agreement, the United States would receive access to key services markets, including retail trade, financial services, and professional services. For example, the agreement would end the current Panamanian restriction allowing only Panamanian nationals to provide professional services. In addition, the Agreement would ban the current requirement of having to open a subsidiary in Panama to do business in Panama. U.S. service providers that establish a local presence in Panama would benefit from strong investor protections included in the Agreement. In addition, the Agreement would lift the cap on foreign direct investment in multi-brand retail in Panama. Overall, the opening of Panama's services market would allow U.S. service providers to benefit in the region, as well as Panama, because Panama is considered a prime logistical hub for the whole of Latin America.

Government Procurement and Canal Expansion: The government procurement provisions of the Agreement are essential to guaranteeing non-discriminatory access for U.S. goods, services, and suppliers to the Panamanian central and regional governments, as well as to significant government enterprises, including the Panama Canal Authority, particularly because Panama is not a member of the WTO Government Procurement Agreement. The procurement provisions would grant U.S. entities greater access and protection than they currently have. The Canal expansion now underway is expected to double capacity with a third lane and a new set of locks. The expansion will total \$5.25 billion in new contract opportunities. In addition to the Canal expansion, upcoming procurement opportunities in Panama are expected to be between \$1.5 billion and \$2.3 billion.

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

for enforcing those rights. Under the Agreement, each partner country would be required to grant national treatment to nationals of the other, and all laws, regulations, procedures and final judicial decisions would need to be in writing and published or made publicly available. The Agreement would lengthen terms for copyright protection, cover electronic and digital media, and increase enforcement to go beyond the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights. Both parties would be obliged to provide appropriate civil and criminal remedies for willful violators of intellectual property rights.

Textile and Apparel: Many U.S. textiles and apparel products meeting the Agreement's rules of origin would immediately become duty-free and quota-free when exported to Panama. The Agreement's rules of origin are generally based on the "yarn forward" standard. A "de minimis" provision would allow limited amounts of specified third-country content to go into U.S. and Panamanian apparel, giving producers in both countries needed flexibility. The Agreement would allow the use of "short supply" fabrics, yarns, and fibers (that is, fabrics, yarns, and fibers not made in Panama or the United States that have been determined not to be commercially available in either country) as inputs. The Parties agreed to a list of short supply fabrics, yarns, and fibers, and the Agreement includes a process for adding more.

Customs cooperation commitments between the United States and Panama would allow for verification of claims of origin or preferential treatment, and denial of preferential treatment or entry if claims cannot be verified. A special textile safeguard would provide for temporary tariff relief if imports under the Agreement prove to cause or threaten serious damage to U.S. producers.

Investment: The Agreement would ensure a stable legal framework for U.S. investors operating in Panama. All forms of investment would be protected under the Agreement, including enterprises, debt, concessions and similar contracts, and intellectual property. With very few exceptions, U.S. investors would be treated as well as Panamanian investors in the establishment, acquisition, and operation of investments in Panama.

The Agreement draws from U.S. legal principles and practices to provide U.S. investors in Panama with a basic set of substantive and procedural protections that Panamanian investors currently enjoy under the U.S. legal system. These include due process protections and the right to receive fair market value for property in the event of an expropriation. The Agreement includes recourse to an investor-state dispute settlement mechanism for certain types of claims.

In the preamble, the Parties agree that "foreign investors are not hereby accorded greater substantive rights with respect to investment protections than domestic investors under domestic law where, as in the United States, protections of investor rights under domestic law equal or exceed those set forth in this Agreement." This provision reflects one of the negotiating objectives of TPA to ensure "that foreign investors in the United States are not accorded greater substantive rights with respect to investment protections than United States investors in the United States."

Labor: The labor chapter of the Agreement includes the obligation that the Parties adopt and effectively enforce the five core

international labor rights as stated in the 1998 International Labor Organization Declaration on Fundamental Principles and Rights at Work. The Agreement would also require each country to enforce its own existing laws concerning acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health. The obligations under the labor chapter would be subject to the same dispute settlement mechanisms and enforcement mechanisms as obligations in other chapters of the Agreement. Neither Party would be permitted to waive or otherwise derogate from its laws that implement this obligation in a manner affecting trade or investment between the Parties. Procedural guarantees in the Agreement would ensure that workers and employers have fair, equitable, and transparent access to labor tribunals or courts. The Committee notes that Panama has shown a strong commitment to the protection of labor rights for Panamanian workers. Panama has made more than a dozen changes to its Labor Code since 2009. It recently passed legislation addressing worker rights in export processing zones, collective bargaining issues in companies under two years of age, and collective bargaining and temporary worker issues in its Baru District.

Environment: The Agreement would commit the Parties to effectively enforce their own domestic environmental laws and adopt, maintain, and implement laws and all other measures to fulfill obligations under covered multilateral environmental agreements. The Agreement also includes a fully enforceable, binding commitment that would prohibit the Parties from lowering environmental standards in the future in a manner affecting trade or investment. The Agreement would promote a comprehensive approach to environmental protection by encouraging voluntary, market-based mechanisms to protect the environment and by providing procedural guarantees that ensure fair, equitable and transparent proceedings for the administration and enforcement of environmental laws. The Agreement would call for a public submissions process with an independent secretariat for environmental matters to ensure that views of civil society are appropriately considered. All obligations in the environment chapter would be subject to the same dispute settlement procedures and enforcement mechanisms as obligations in other chapters of the Agreement.

Tax Transparency: The Committee notes Panama's significant steps to address concerns raised by certain critics that the country has tax transparency issues, although these steps are distinct from the Agreement. Panama and the United States now have an operational Tax Information Exchange Agreement ("TIEA") in force. Signed in November 2010, the TIEA was touted by Treasury Secretary Geithner as an agreement that "usher[s] in a new era of openness and transparency for tax information between the United States and Panama." Panama ratified the TIEA in April and had already passed the necessary implementing legislation. Moreover, the OECD has recently added Panama to the list of those countries, including the United States, that meet internationally agreed upon tax standards. The OECD Secretary General praised Panama's efforts, stating that "Panama has worked hard to achieve this milestone, making remarkable strides toward complying with the international standards in a very short time."

Procedures of the Trade Act of 2002

H.R. 3079 is being considered by Congress under the procedures of the Bipartisan Trade Promotion Authority Act of 2002, included in the Trade Act of 2002. Pursuant to these requirements, the President is required to provide written notice to Congress of the President's intention to enter into the negotiations. Throughout the negotiating process, and prior to entering into an agreement, the President is required to consult with Congress regarding the ongoing negotiations.

The President must notify Congress of his intent to enter into a trade agreement at least 90 calendar days before the agreement is signed. Within 60 days after entering into the Agreement, the President must submit to Congress a description of those changes to existing laws that the President considers would be required to bring the United States into compliance with the Agreement. After entering into the Agreement, the President must also submit to Congress the formal legal text of the agreement, draft implementing legislation, a statement of administrative action proposed to implement the Agreement, and other related supporting information as required under section 2105(a) of the Trade Act of 2002.

Following submission of these documents, the implementing bill is introduced, by request, by the Majority Leader and the Minority Leader in each chamber. The House then has up to 60 legislative days to consider implementing legislation for the Agreement, and the Senate has up to an additional 30 legislative days. No amendments to the legislation are allowed under TPA requirements.

C. LEGISLATIVE HISTORY

On November 18, 2003, the United States Trade Representative ("USTR") formally notified the Congress of its intention to initiate negotiation of a trade agreement with Panama. Negotiations on a trade agreement between the United States and Panama began on April 25, 2004. On March 30, 2007, the President notified the Congress of his intention to enter into a trade agreement with Panama. On June 28, 2007, then-U.S. Trade Representative Susan Schwab and Panamanian Minister of Commerce and Industry Alejandro Ferrer signed the United States-Panama Trade Promotion Agreement. Panama's National Assembly approved the agreement on July 11, 2007. On August 24, 2007, the USTR transmitted to Congress a description of the changes to existing U.S. laws required to comply with the Agreement.

Legislative hearings

On January 25, 2011, the Committee on Ways and Means held a hearing on the Panama trade agreement, as well as the U.S.-Colombia Trade Promotion Agreement and the U.S.-Korea Free Trade Agreement. The Trade Subcommittee of the Committee on Ways and Means then held a hearing on the Panama trade agreement on March 30, 2011.

Committee action

On July 7, 2011, the Committee on Ways and Means considered in an informal mark-up session draft legislation to implement the Agreement and a statement of administrative action. The Com-

mittee approved the draft legislation by a vote of 22–15, after agreeing to an amendment in the nature of a substitute offered by Chairman Camp.

On October 3, 2011, President Obama transmitted the United States-Panama Trade Promotion Agreement, a legislative proposal to implement the agreement, a Statement of Administrative Action and supporting documents to Congress. On the same day, H.R. 3079, a bill to implement the United States-Panama Trade Promotion Agreement, was introduced by Majority Leader Eric Cantor (R–VA), by request, for himself and Rep. Jim McDermott (D–WA). H.R. 3079 was then referred to the Committee on Ways and Means.

On October 5, 2011, Committee on Ways and Means formally met to consider H.R. 3079. The Committee ordered H.R. 3079 favorably reported to the House of Representatives by a vote of 32–3, without amendment. Under the procedures of TPA, no amendments are permitted after introduction.

II. SECTION-BY-SECTION SUMMARY

TITLE I: APPROVAL AND GENERAL PROVISIONS

SECTIONS 1–3: SHORT TITLE, TABLE OF CONTENTS, PURPOSES, AND DEFINITIONS

Present law

No provision.

Explanation of provision

Section 2 sets forth the purposes of the implementing act (“Act”), which include approving and implementing the Agreement.

Reason for change

The provision makes clear that the bill implements and approves the Agreement.

SECTION 101: APPROVAL AND ENTRY INTO FORCE

Present law

No provision.

Explanation of provision

Section 101 states that Congress approves the Agreement and the Statement of Administrative Action. The Agreement enters into force when the President determines that Panama is in compliance with all provisions that take effect on the date of entry into force of the Agreement and exchanges notes with the Government of Panama providing for entry into force on or after January 1, 2012.

Reason for change

Approval of the Agreement and the Statement of Administrative Action is required under the procedures of section 2103(b)(3) of Trade Act of 2002.

SECTION 102: RELATIONSHIP OF THE AGREEMENT TO UNITED STATES
AND STATE LAW

Present law

No provision.

Explanation of provision

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

Reason for change

The provision addresses the operation of the Agreement relative to federal and state law, as well as private remedies. Section 102 is necessary to make clear that no provision of the Agreement will be given effect if it is inconsistent with federal law and that entry into force of the Agreement creates no new private remedy.

SECTION 103: IMPLEMENTING ACTIONS IN ANTICIPATION OF ENTRY
INTO FORCE AND INITIAL REGULATIONS

Present law

No provision.

Explanation of provision

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

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

Reason for change

Section 103 provides for the issuance of regulations. The Committee strongly believes that regulations should be issued in a timely manner to provide maximum clarity to parties claiming benefits under the Agreement. The Committee notes, further, that the Statement of Administrative Action commits each agency that will be issuing regulations to provide a report to Congress if it cannot issue regulations within one year of the Agreement's entry into

force and that such report must be submitted at least 30 days prior to the end of the one-year period.

SECTION 104: CONSULTATION AND LAYOVER FOR PROCLAIMED ACTIONS

Present law

No provision.

Explanation of provision

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

Reason for change

The bill gives the President certain proclamation authority but requires extensive consultation with Congress before such authority may be exercised. The Committee believes that such consultation is an essential component of the delegation of authority to the President and expects that such consultations will be conducted in a thorough and timely manner.

SECTION 105: ADMINISTRATION OF DISPUTE SETTLEMENT PROCEEDINGS

Present law

No provision.

Explanation of provision

Section 105 authorizes the President to establish an office within the Department of Commerce responsible for providing administrative assistance to dispute settlement panels that are established under the Agreement. The section also authorizes appropriations of up to \$150,000 for the establishment and operation of the office and to pay the U.S. share of expenses of the panels.

Reason for change

Dispute settlement procedures and panels are necessary to ensure that disputes over compliance with Agreement provisions can be resolved effectively. The authorization is necessary for the Commerce Department to provide administrative assistance to panels.

SECTION 106: ARBITRATION OF CLAIMS

Present law

No provision.

Explanation of provision

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

Reason for change

This provision is necessary to meet U.S. obligations under Section B of Chapter 10 of the Agreement.

SECTION 107: EFFECTIVE DATES; EFFECT OF TERMINATION

Present law

No provision.

Explanation of provision

Section 107 provides that, with the exception of Sections 1 through 3 and Titles I and V of the Act, which take effect on the date of enactment of the Act, the effective date of the Act is the date that the Agreement enters into force with respect to the United States. Amendments made to U.S. law by Sections 204, 205, 207, and 401 of the Act take effect on the date of enactment of the Act but apply with respect to Panama on the date on which the Agreement enters into force. Other than Title V, the provisions of the Act terminate on the date on which the Agreement terminates.

Reason for change

Section 107 implements provisions of the Agreement relating to the effective date and date of termination of the Act.

TITLE II: CUSTOMS PROVISIONS

SECTION 201: TARIFF MODIFICATIONS

Present law

No provision.

Explanation of provision

Section 201(a) provides the President with the authority to proclaim tariff modifications necessary or appropriate to carry out the Agreement and requires the President to terminate Panama's designation as a beneficiary developing country for the purpose of the Generalized System of Preferences ("GSP") program and as a beneficiary country for the purposes of the Caribbean Basin Economic Recovery Act ("CBERA"), with certain exceptions, as of the date that the Agreement enters into force.

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 Panama 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) directs the President, when implementing tariff rate quotas under the Agreement, to ensure that imports of agricultural goods do not disrupt the orderly marketing of commodities in the United States.

Reason for change

The provision is necessary to ensure United States compliance with the market access provisions of the Agreement. The Committee expects the President to comply with the letter and spirit of the consultation and layover provisions of this Act in carrying out section 201(b).

SECTION 202: ADDITIONAL DUTIES ON CERTAIN AGRICULTURAL GOODS

Present law

No provision.

Explanation of provision

Section 202 implements the agricultural safeguard provisions of Article 3.17 and Annex 3.17 of the Agreement. Section 202(b) directs the Secretary of the Treasury (“Secretary”) to assess an additional duty in any year when the volume of imports to the United States of a “safeguard good” exceeds the trigger level for the good in that calendar year as set forth in the Schedule of the United States to Annex 3.17 of the Agreement. The additional duty is calculated as a specified percentage of the difference between the Normal Trade Relations (“NTR” or “MFN”) rate of duty and the duty set out in the Schedule of the United States to Annex 3.3 of the Agreement. The sum of the duties assessed under the agricultural safeguard and the applicable rate of duty in the U.S. Schedule may not exceed the NTR (MFN) rate of duty. No additional duty may be applied on a good if, at the time of entry, the good is subject to a safeguard measure under the procedures set out in Subtitle A of Title III of the Act or under the safeguard procedures set out in Chapter 1 of Title II of the Trade Act of 1974 (the “Section 201” global safeguard). The additional duties remain in effect only until the end of the calendar year in which they are imposed.

Reason for change

This provision implements commitments made in the Agreement relating to agricultural safeguards. Such safeguards provide temporary relief to farmers in the United States who face a surge in certain agricultural imports following entry into force of the Agreement.

SECTION 203: RULES OF ORIGIN

Present law

No provision.

Explanation of provision

Section 203 codifies the rules of origin set out in Chapter 4 of the Agreement. Section 203(b) establishes three basic ways for a Panamanian 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 Panama, the United States, or both”; (2) it is produced entirely in the United States, Panama, 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 value-content and other requirements, as specified in Annex 4.1 of the Agreement; or (3) it is produced entirely in the territory of Panama, the United States, or both exclusively from originating materials.

Under the rules in Chapter 4 and Annex 4.1 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 Panama, an apparel product must have been cut (or knit to shape) and sewn or otherwise assembled in Panama, the United States, or both from yarn, or fabric made from yarn, that originates in Panama, the United States, or both.

Section 203(o)(2) provides authority for the President to add fabrics, yarns, or fibers 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 Panama, regardless of their actual origin, when used as inputs in the production of textile or apparel goods. Section 203(o)(4) provides a process by which the President may modify that list at the request of interested entities, defined as Panama and potential and actual suppliers and purchasers of textile or apparel goods.

The remainder of Section 203 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 203 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 203(l) specifies that goods that undergo further production or other operations outside Panama or the United States (with certain exceptions) or do not remain under the control of the customs authorities of such other countries do not qualify as originating goods.

Reason for change

This provision implements the commitments made in the Agreement with respect to rules of origin applying to imports from Panama. Rules of origin are needed to confine Agreement benefits, such as tariff cuts, to Panamanian goods and to prevent third-country goods from being transshipped through Panama and claiming benefits under the Agreement.

SECTION 204: CUSTOMS USER FEES

Present law

Section 13031(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”), at 19 U.S.C. 58c(a), authorizes the

Secretary of the Treasury to collect a merchandise processing fee for formal and informal entries of merchandise into the United States (“Merchandise Processing Fee”). Section 13031(b) of COBRA exempts from the Merchandise Processing Fee all originating goods under each of the trade agreements currently in force between the United States and other countries.

Explanation of provision

Section 204 implements the U.S. commitments under Article 3.10.4 of the Agreement to eliminate the Merchandise Processing Fee on originating goods under the Agreement. In accordance with U.S. obligations under the General Agreement on Tariffs and Trade 1994, the provision also prohibits use of funds in the Customs User Fee Account to provide services related to entry of originating goods.

Reason for change

As with other trade agreements, the Agreement eliminates the Merchandise Processing Fee on qualifying goods from Panama. Other customs user fees remain in place. Section 204 is necessary to ensure United States compliance with the user fee elimination provisions of the Agreement. The Committee expects that the President, in his yearly budget request, will take into account the need for funds to pay expenses for entries under the Agreement given that Merchandise Processing Fee funds will not be available.

SECTION 205: DISCLOSURE OF INCORRECT INFORMATION; FALSE CERTIFICATIONS OF ORIGIN; DENIAL OF PREFERENTIAL TARIFF TREATMENT

Present law

No provision.

Explanation of provision

Section 205 implements Articles 4.16.3 and 4.20.5 of the Agreement. Section 205(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 205(b) provides that if U.S. authorities find that an importer, exporter or producer has engaged in a pattern of conduct of providing false or unsupported representations, the authorities may suspend preferential treatment with respect to identical goods covered by subsequent representations made by that importer, exporter, or producer, until U.S. authorities have determined that its representations are accurate.

Reason for change

This provision is necessary to implement commitments in the Agreement relating to application of penalties for submission of false information or certifications by importers, exporters, and producers.

SECTION 206: RELIQUIDATION OF ENTRIES

Present law

No provision.

Explanation of provision

Section 206 implements Article 4.16.5 of the Agreement and provides authority for U.S. Customs and Border Protection (“CBP”) to reliquidate an entry to refund any excess duties (including any Merchandise Processing Fees) paid on a good qualifying under the rules of origin for which no claim for preferential tariff treatment was made at the time of importation if the importer so requests within one year after the date of importation.

Reason for change

Article 4.16.5 of the Agreement anticipates that private parties may err in claiming preferential benefits under the Agreement and provides a one-year period for parties to make such claims for preferential tariff treatment even if the entry of the goods at issue has already been liquidated, i.e., legally finalized by customs officials. Section 206 is necessary to ensure United States compliance with Article 4.16.5.

SECTION 207: RECORDKEEPING REQUIREMENTS

Present law

No provision.

Explanation of provision

Section 207 implements Article 4.19 of the Agreement. The provision requires any person who completes and issues a certificate of origin under Article 4.15 of the Agreement for a good exported from the United States to maintain, for a period of five years after the date of certification, specified documents demonstrating that the good qualifies as originating.

Reason for change

Section 207 is necessary to ensure United States compliance with the recordkeeping requirement provisions in Article 4.19 of the Agreement.

SECTION 208: ENFORCEMENT RELATING TO TRADE IN TEXTILE OR APPAREL GOODS

Present law

No provision.

Explanation of provision

Section 208 implements the customs cooperation and verification of origin provisions in Article 3.21 of the Agreement. Under Article

3.21, the United States may request the Government of Panama 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 208(a) provides that the President may direct the Secretary to take “appropriate action” while such a verification is being conducted. “Appropriate action” may include (i) suspending preferential tariff treatment for textile or apparel goods that the person subject to the verification has produced or exported if the Secretary determines that there is insufficient information to sustain a claim for such treatment; (ii) denying preferential tariff treatment to such goods if the Secretary determines that a person has provided incorrect information to support a claim for such treatment; (iii) detaining such goods if the Secretary determines that there is not enough information to determine their country of origin; and (iv) denying entry to such goods if the Secretary determines that a person has provided erroneous information on their origin.

Under Section 208(c), the President may also direct the Secretary to take “appropriate action” after a verification has been completed. Such action may include (i) denying preferential tariff treatment to textile or apparel goods that the person subject to the verification has exported or produced if the Secretary determines that there is insufficient information to support a claim for such treatment or determines that a person has provided incorrect information to support a claim for such treatment; and (ii) denying entry to such goods if the Secretary determines that a person has provided incorrect information regarding their origin or that there is insufficient information to determine their origin. Unless the President sets an earlier date, any such action may remain in place until the Secretary obtains enough information to decide whether the exporter or producer that was subject to the verification is complying with applicable customs rules or whether a claim that the goods qualify for preferential tariff treatment or originate in an Agreement country is accurate.

Under Section 208(e), the Secretary may publish the name of a person that the Secretary has determined (i) is engaged in intentional circumvention of applicable laws, regulations, or procedures affecting trade in textile or apparel goods; or (ii) has failed to demonstrate that it produces, or is capable of producing, textile or apparel goods that are the subject of a verification.

Reason for change

To avoid textile transshipment, special textile enforcement provisions have been included in the Agreement. Section 208 is necessary to authorize these enforcement mechanisms for use by U.S. authorities.

SECTION 209: REGULATIONS

Present law

No provision.

Explanation of provision

Section 209 directs the Secretary to prescribe regulations necessary to carry out the tariff-related provisions of the Act, including the rules of origin and customs user fee provisions.

Reason for change

Because the Act involves lengthy and complex implementation procedures by customs officials, this provision is necessary to authorize the Secretary of Treasury to carry out provisions of the Act through regulations. No such regulations may take effect before the Agreement enters into force.

TITLE III: RELIEF FROM IMPORTS

SECTION 301: DEFINITIONS

Present law

No provision.

Explanation of provision

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

Reason for change

This provision clarifies the scope of the provisions in Title III.

SUBTITLE A: RELIEF FROM IMPORTS BENEFITING FROM THE AGREEMENT

SECTIONS 311–316

Present law

No provision.

Explanation of provisions

Subtitle A to Title III of the Act (Sections 311 to 316) authorizes the President, after an investigation and affirmative determination by the ITC, to impose certain import relief measures when, as a result of the reduction or elimination of a duty under the Agreement, a Panamanian 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) provides that a petition requesting a safeguard action may be filed by an entity that is “representative of an industry.” As under Section 202(a)(1) of the Trade Act of 1974, a trade association, firm, certified or recognized union, or a group of workers can be considered such an entity. Section 311(b) sets out the standard to be used by the ITC in undertaking an investigation and making a determination in safeguard proceedings under Subtitle A of Title III of the Act.

Section 311(c) provides that certain provisions of Section 202 of the Trade Act of 1974 also apply with respect to investigations initiated under Section 311(b), including provisions defining “substan-

tial cause” and listing factors to be taken into account in making safeguard determinations.

Section 311(d) exempts from investigation under this section Panamanian articles with respect to which relief has previously been provided under Subtitle A of Title III of the Act.

Section 312 requires the ITC to make a determination not later than 120 days after the date on which the Section 311 investigation is initiated. Under Sections 312(b) and (c), if the ITC makes an affirmative determination, it must find and recommend to the President the amount of import relief that is necessary to remedy or prevent serious injury and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. Section 312(d) directs the ITC to submit a report to the President regarding the determination no later than 30 days after the determination is made. Section 312(e) requires the ITC to make this report public and to publish a summary of it in the Federal Register.

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

Section 313(c) sets forth the nature of the relief that the President may provide. The President may take action in the form of a suspension of further reductions in the rate of duty to be applied to the articles in question, or in the form of an increase in the rate of duty on the articles in question to a level that does not exceed the lesser of the existing NTR (MFN) rate or the NTR (MFN) rate of duty that was imposed on the day before the Agreement entered into force. Under Section 313(c)(2), 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.

Section 313(d) provides that the President may provide import relief for up to four years. If the initial period of import relief is less than four years, this period may be extended to a maximum aggregate period of four years 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 for the remainder of the calendar year is the rate that was scheduled to have been in effect one year after the initial provision of import relief. In the calendar year that follows the year of termination of import relief, the President may either apply the rate of duty set out in the relevant U.S. Schedule to the Agreement or eliminate the duty in equal annual stages until the end of the scheduled phase-out period.

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); (ii) subject to import relief under Subtitle B of Title III of the Act (Sections 321 to 328); or (iii) subject to additional duties as an agricultural good under Section 202(b).

Section 314 provides that no relief may be provided under Subtitle A to Title III of the Act after ten years from the date the Agreement enters into force, unless 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.

Section 315 authorizes the President to provide compensation to Panama consistent with Article 8.5 of the Agreement if relief is ordered.

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

Reason for change

Sections 311 to 316 establish a mechanism for providing temporary import relief where a U.S. industry experiences serious injury or threat of serious injury by reason of increased import competition from Panama resulting from reduction or elimination of a duty under the Agreement. The Committee notes that the President is not required to provide relief if the relief will not provide greater economic and social benefits than costs. The Committee intends that administration of this safeguard be consistent with U.S. obligations under Section A of Chapter Eight (Trade Remedies) of the Agreement.

SUBTITLE B: TEXTILE AND APPAREL SAFEGUARD MEASURES

SECTIONS 321–328

Present law

No provision.

Explanation of provisions

Subtitle B of Title III of the Act (Sections 321 to 328) authorizes the President to impose certain import relief measures when he determines that, as a result of the elimination or reduction of a duty provided under the Agreement, a Panamanian textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage, or actual threat thereof, to the domestic industry.

Section 321 provides that an interested party may file a request with the President for safeguard relief under Subtitle B of Title III of the Act. The President must review the request and determine whether to commence consideration of the request. Under Section 321(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 322(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 Panamanian 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. The President must make this determination within 30 days after the completion of consultations held pursuant to Article 3.24.4 of the Agreement.

Section 322(b) sets forth the relief that the President may provide, which is 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 323 of the Act provides that the period of relief shall be no longer than three years. If the initial period of import relief is less than three years, this period may be extended to a maximum aggregate period of three 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 to import competition.

Section 324 provides that relief may not be granted to an article under this subtitle if relief has previously been granted under this subtitle for that article, or the article is subject to import relief under Subtitle A of Title III of the Act or under Chapter 1 of Title II of the Trade Act of 1974.

Under Section 325, 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 326 provides that the authority to provide safeguard relief under Subtitle B to Title III of the Act expires five years after the date on which the Agreement enters into force.

Section 327 authorizes the President to provide compensation to Panama if relief is ordered.

Section 328 provides for the treatment of confidential business information received by the President in connection with an investigation or determination under Subtitle B to Title III of the Act.

Reason for change

Sections 321 to 328 implement the commitments under the Agreement relating to textile and apparel safeguard measures. The Committee intends that the provisions of Subtitle B of Title III of the Act be administered in a manner that is transparent and that will serve as an example to our trading partners. For example, in addition to publishing a summary of the request for safeguard relief, the Committee notes that the President plans to make available the full text of the request, subject to the protection of business confidential data, on the website of the Department of Commerce, International Trade Administration. In addition, the Committee encourages the President promptly to issue regulations on procedures for requesting such safeguard measures, for making de-

terminations under Section 322(a), and for providing relief under Section 322(b).

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

SECTION 331: FINDINGS AND ACTION ON GOODS FROM PANAMA

Present law

No provision.

Explanation of provision

Section 331(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 Panamanian imports of the article that qualify as originating goods under the Agreement are a substantial cause of serious injury or threat thereof. Under Section 331(b), if the ITC makes a negative finding under Section 331(a), the President may exclude any imports that are covered by the ITC's finding from the global safeguard action.

Reason for change

This provision implements commitments under the Agreement relating to treatment of Panamanian imports in global safeguard investigations under Section 202(b) of the Trade Act of 1974.

TITLE IV: MISCELLANEOUS

SECTION 401: ELIGIBLE PRODUCTS

Present law

U.S. procurement law (such as the Buy American Act of 1933 and the Buy American Act of 1988) limits procurement from certain foreign suppliers of goods and services in favor of U.S. providers of goods and services. Most discriminatory purchasing provisions are waived if the United States is a party to a bilateral or multilateral procurement agreement, such as the WTO Agreement on Government Procurement, or a bilateral or multilateral trade agreement that includes provisions on procurement.

Explanation of provision

Section 401 implements Chapter 9 of the Agreement and amends the definition of “eligible product” in Section 308(4)(A) of the Trade Agreements Act of 1979. As amended, Section 308(4)(A) provides that an “eligible product” means a product or service of Panama that is covered under the Agreement for procurement by the United States.

Reason for change

This provision implements U.S. commitments under Chapter 9 of the Agreement (Government Procurement).

SECTION 402: MODIFICATION TO THE CARIBBEAN BASIN ECONOMIC
RECOVERY ACT

Present law

Panama is currently a beneficiary under the Caribbean Basin Economic Recovery Act (“CBERA”). As such, goods from Panama receive preferential trade treatment when entering the United States subject to various requirements.

Explanation of provision

Section 402 of the bill amends the CBERA in light of the fact that the President will withdraw Panama’s status as a CBERA beneficiary country on the date that the Agreement takes effect.

Reason for change

This provision amends section 212(b) of the CBERA to delete Panama from the list of countries that the President may designate as beneficiary countries.

TITLE V: OFFSETS

SECTION 501: CUSTOMS USER FEES

Present law

Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”) authorizes the Secretary of the Treasury to collect certain service fees. Section 412 of the Homeland Security Act of 2002 authorized the Secretary of the Treasury to delegate such authority to the Secretary of Homeland Security. Provided for under 19 U.S.C. 58c(a)(1)–(8), these fees include: processing fees for air and sea passengers, commercial trucks, rail cars, private aircraft and vessels, commercial vessels, dutiable mail packages, barges and bulk carriers, and Customs broker permits. COBRA has been amended on several occasions. The current authorization for the collection of the passenger and conveyance processing fees is through January 14, 2020.

Explanation of provision

Section 501 extends the passenger and conveyance processing fees authorized under Section 13031 of the COBRA through September 30, 2021.

Reason for change

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

SECTION 502: TIME FOR PAYMENT OF CORPORATE ESTIMATED TAXES

Present law

In general, corporations are required to make quarterly estimated tax payments of their income tax liability. For a corporation whose taxable year is a calendar year, these estimated tax payments must be made by April 15, June 15, September 15, and December 15.

Explanation of provision

For corporations with assets of at least \$1 billion, the provision increases the amount of the required installment of estimated tax otherwise due in July, August, or September 2012 and 2016 by 0.25 of such amount (determined without regard to any increase in such amount not contained in the Internal Revenue Code). The next required installment is reduced accordingly.

Reason for change

The Committee believes it is appropriate to adjust the corporate estimated tax payments for budgetary offset purposes.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statements are made concerning the vote of the Committee on Ways and Means in its consideration of the bill, H.R. 3079.

MOTION TO REPORT THE BILL

The bill, H.R. 3079, was ordered favorably reported by a rollcall vote of 32 yeas to 3 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Camp	X			Mr. Levin	X		
Mr. Herger	X			Mr. Rangel	X		
Mr. Johnson	X			Mr. Stark		X	
Mr. Brady	X			Mr. McDermott	X		
Mr. Ryan	X			Mr. Lewis		X	
Mr. Nunes	X			Mr. Neal	X		
Mr. Tiberi	X			Mr. Becerra	X		
Mr. Davis	X			Mr. Doggett			
Mr. Reichert	X			Mr. Thompson	X		
Mr. Boustany	X			Mr. Larson			
Mr. Roskam	X			Mr. Blumenauer	X		
Mr. Gerlach	X			Mr. Kind	X		
Mr. Price	X			Mr. Pascrell	X		
Mr. Buchanan	X			Ms. Berkley		X	
Mr. Smith	X			Mr. Crowley	X		
Mr. Schock	X						
Ms. Jenkins	X						
Mr. Paulsen	X						
Mr. Berg	X						
Ms. Black	X						
Mr. Reed	X						

IV. BUDGET EFFECTS OF THE BILL

A. COMMITTEE ESTIMATE OF BUDGETARY EFFECTS

In compliance with clause 3(d) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of this bill, H.R. 3079, as reported: The Committee agrees with the estimate prepared by the Congressional Budget Office (CBO) which is included below.

B. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX
EXPENDITURES BUDGET AUTHORITY

In compliance with subdivision 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the provisions of H.R. 3079 would reduce customs duty receipts due to lower tariffs imposed on goods from Panama.

C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET
OFFICE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by CBO, the following report prepared by CBO is provided:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 5, 2011.

Hon. DAVE CAMP,
*Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3079, the United States-Panama Trade Promotion Agreement.

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.

*H.R. 3079—United States-Panama Trade Promotion Agreement
Implementation Act*

Summary: H.R. 3079 would approve the trade promotion agreement between the government of the United States and the government of Panama that was signed on June 28, 2007. It would provide for tariff reductions and other changes in law related to implementation of the agreement. In addition, the bill would extend user fees collected by Customs and Border Protection (CBP) that expire under current law. The bill also would shift some corporate income tax payments between fiscal years.

The Congressional Budget Office (CBO) and the staff of the Joint Committee on Taxation (JCT) estimate that enacting H.R. 3079 would increase revenues by \$118 million in 2012 but would reduce revenues by \$6 million over the 2012–2021 period. CBO estimates that enacting H.R. 3079 would increase direct spending by \$1 million in 2012 but would decrease direct spending by \$8 million over the 2012–2021 period. Thus, the net impact of those effects is an estimated reduction in deficits of \$2 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 \$4 million over the 2012–2016 period, assuming the availability of appropriated funds.

CBO has determined that the nontax provisions of H.R. 3079 contain no intergovernmental mandates as defined in the Un-

funded 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 fall below the annual threshold established in UMRA for private-sector mandates (\$142 million in 2011, adjusted annually for inflation).

JCT has determined that the tax provision of H.R. 3079 contains no intergovernmental or private-sector mandates as defined in UMRA.

Estimated cost to the federal government: The estimated budgetary impact of H.R. 3079 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– 2021
CHANGES IN REVENUES											
Preferential Trade Agreement	*	*	*	*	–1	–1	–1	–1	–1	–2	–2
Corporate Payment Shift	118	–118	0	0	172	–172	0	0	0	0	172
Estimated Revenues	118	–118	*	*	171	–173	–1	–1	–1	–2	170
CHANGES IN DIRECT SPENDING^a											
Extend Customs User Fees:											
Estimated Budget Authority	0	0	0	0	0	0	0	0	0	–16	0
Estimated Outlays	0	0	0	0	0	0	0	0	0	–16	0
Exemption from Merchandise Processing Fee:											
Estimated Budget Authority	1	1	1	1	1	1	1	1	0	0	5
Estimated Outlays	1	1	1	1	1	1	1	1	0	0	5
Total Direct Spending: ^a											
Estimated Budget Authority	1	1	1	1	1	1	1	1	0	–16	5
Estimated Outlays	1	1	1	1	1	1	1	1	0	–16	5
NET INCREASE OR DECREASE (–) IN THE DEFICIT FROM CHANGES IN DIRECT SPENDING AND REVENUES											
Impact on Deficit	–117	119	1	1	–170	174	2	2	1	–14	–165

^a In addition, CBO estimates that implementing the provisions of H.R. 3079 would have a discretionary cost of \$4 million over the 2012–2016 period, assuming appropriation of the necessary amounts.

Notes: Components may not sum to totals because of rounding. * Indicates a loss of revenue less than \$500,000.

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

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

REVENUES

Under the United States-Panama trade promotion agreement, tariffs on U.S. imports from Panama 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 \$240,000 in customs duties in 2010 on \$380 million of imports from Panama. However, since 1983, imports to the United States from Panama have been subject to reduced tariff rates in accordance with the Caribbean Basin Initiative (CBI), which was expanded in legislation enacted in 2000, and is scheduled to expire on September 30, 2020. The CBI overlaps to a large extent with the trade promotion agreement that would be implemented by this bill. As a result, enacting the bill would effectively replace trade preferences under the CBI for Panama until 2021, while also lowering tariff rates not covered by the CBI.

Based on expected imports from Panama, CBO estimates that implementing the tariff schedule outlined in the U.S.-Panama trade promotion agreement would reduce revenues by less than \$500,000 in 2012 and by \$6 million over the 2012–2021 period, net of income and payroll tax offsets.

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

H.R. 3079 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 \$172 million in 2016 and decrease them by \$172 million in 2017.

DIRECT SPENDING

Under current law, certain fees (known as COBRA fees, which were established in the Consolidated Omnibus Budget Reconciliation Act of 1985) collected by CBP will expire in January 2020. The bill would permit CBP to collect those fees from September 1, 2021, to September 30, 2021. CBO estimates that this change would increase offsetting receipts (a credit against direct spending) by \$16 million in 2021.

In addition, the bill would exempt imports from Panama from merchandise processing fees. CBO estimates that this would reduce offsetting receipts by \$8 million over the 2012–2021 period.

SPENDING SUBJECT TO APPROPRIATION

Implementing provisions of H.R. 3079 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 Panamanian 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 \$4 million over the 2012–2016 period, assuming appropriation of the necessary amounts.

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

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 3079 AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON WAYS AND MEANS ON OCTOBER 5, 2011

	By fiscal year, in millions of dollars—										
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2012– 2021
	NET INCREASE OR DECREASE (–) IN THE DEFICIT										
Statutory Pay-As-You-Go Impact	– 117	119	1	1	– 170	174	2	2	1	– 14	– 165
Memorandum:											
Changes in Revenues	118	– 118	0	0	171	– 173	– 1	– 1	– 1	– 2	– 6
Changes in Outlays	1	1	1	1	1	1	1	1	0	– 16	5
											– 8

Estimated impact on state, local, and tribal governments: CBO has determined that the nontax provisions of H.R. 3079 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 provision of H.R. 3079 contains no intergovernmental mandates as defined in UMRA.

Estimated impact on the private sector: CBO has determined that the nontax provisions of H.R. 3079 would impose private-sector mandates, as defined in UMRA, by extending the customs user fees and by enforcing new recordkeeping requirements on exporters of goods to Panama. CBO estimates that the aggregate costs of those mandates would not 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 provision of H.R. 3079 contains no private-sector mandates as defined in UMRA.

Estimate prepared by: Federal Revenues: Kalyani Parthasarathy. Federal Spending: Sunita D'Monte, Mark Grabowicz, Matthew Pickford, and Susan Willie. Impact on State, Local, and Tribal Governments: Lisa Ramirez-Branum. Impact on the Private Sector: Marin Randall.

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

D. MACROECONOMIC IMPACT ANALYSIS

In compliance with clause 3(h)(2) of rule XIII of the Rules of the House of Representatives, the following statement is made by the Joint Committee on Taxation with respect to the provisions of the bill amending the Internal Revenue Code of 1986: the effects of the tax provisions of the bill on economic activity are so small as to be incalculable within the context of a model of the aggregate economy.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE OF REPRESENTATIVES

A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee concluded that it is appropriate and timely to consider H.R. 3079, as reported. In addition, the legislation is governed by procedures of the Bipartisan Trade Promotion Authority Act of 2002.

B. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objectives of the part of this legislation that authorizes funding are for (a) the payment of the U.S. share of the expenses incurred in dispute settlement proceedings established under Chapter 20 of the U.S.-Panama Trade Promotion Agreement and (b) the establishment and operation of an office within the Department of Commerce responsible for providing assistance to the panels in such proceedings.

C. INFORMATION RELATING TO UNFUNDED MANDATES

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (P.L. 104-4). The Committee has determined that the revenue provisions of the bill do not impose a Federal mandate on the private sector. The Committee has determined that the revenue provisions of the bill do not impose a Federal intergovernmental mandate on State, local, or tribal governments.

D. APPLICABILITY OF HOUSE RULE XXI 5(b)

Clause 5(b) of rule XXI of the Rules of the House of Representatives provides, in part that, "A bill or joint resolution, amendment, or conference report carrying a Federal income tax increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present." The Committee has carefully reviewed the sections of the bill and states that the bill does not involve any Federal income tax rate increases within the meaning of the rule.

E. TAX COMPLEXITY ANALYSIS

The Joint Committee on Taxation, in consultation with the Internal Revenue Service and the Department of the Treasury, will provide a tax complexity analysis to Members of the Committee as soon as practicable after the report is filed.

F. CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

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

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 13031 OF THE CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985

* * * * *

SEC. 13031. FEES FOR CERTAIN CUSTOMS SERVICES.

(a) * * *

(b) LIMITATIONS ON FEES.—(1) * * *

* * * * *

(21) No fee may be charged under subsection (a)(9) or (10) with respect to goods that qualify as originating goods under section 203 of the United States–Panama Trade Promotion Agreement Imple-

mentation 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) * * *

* * * * *

(D) Notwithstanding subparagraph (B)(i), fees may be charged under paragraphs (1) through (8) of subsection (a) during the period beginning on September 1, 2021, and ending on September 30, 2021.

* * * * *

TARIFF ACT OF 1930

* * * * *

TITLE IV—ADMINISTRATIVE PROVISIONS

* * * * *

Part III—Ascertainment, Collection, and Recovery of Duties

* * * * *

SEC. 508. RECORDKEEPING.

(a) * * *

* * * * *

(k) CERTIFICATIONS OF ORIGIN FOR GOODS EXPORTED UNDER THE UNITED STATES–PANAMA TRADE PROMOTION 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) PANAMA TPA CERTIFICATION OF ORIGIN.—The term “Panama TPA certification of origin” means the certification established under article 4.15 of the United States–Panama Trade Promotion Agreement that a good qualifies as an originating good under such Agreement.

(2) EXPORTS TO PANAMA.—Any person who completes and issues a Panama TPA 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 sup-

porting documents related to the origin of the good (including the certification or copies thereof).

(3) *RETENTION PERIOD.*—The person who issues a Panama TPA 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.

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

(a) * * *

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(1) *DENIAL OF PREFERENTIAL TARIFF TREATMENT UNDER THE UNITED STATES-PANAMA TRADE PROMOTION 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 203 of the United States-Panama Trade Promotion 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-Panama Trade Promotion Agreement 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 203.

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SEC. 520. REFUNDS AND ERRORS.

(a) * * *

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

(1) * * *

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Part V—Enforcement Provisions

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

(a) * * *

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(c) MAXIMUM PENALTIES.—

(1) * * *

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(13) *PRIOR DISCLOSURE REGARDING CLAIMS UNDER THE UNITED STATES–PANAMA TRADE PROMOTION 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 203 of the United States–Panama Trade Promotion 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.

* * * * *

(l) *FALSE CERTIFICATIONS OF ORIGIN UNDER THE UNITED STATES–PANAMA TRADE PROMOTION 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 Panama TPA 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 203 of the United States–Panama Trade Promotion 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 Panama TPA 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 Panama TPA 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-Panama Trade Promotion Agreement Implementation Act*. The Commission may request that parties providing confidential business information furnish nonconfidential summaries thereof or, if such parties indicate that the information in the submission cannot be summarized, the reasons why a summary cannot be provided. If the Commission finds that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorize its disclosure in generalized or summarized form, the Commission may disregard the submission.

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TRADE AGREEMENTS ACT OF 1979

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TITLE III—GOVERNMENT PROCUREMENT

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SEC. 308. DEFINITIONS.

As used in this title—

(1) * * *

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(4) ELIGIBLE PRODUCTS.—

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

(i) * * *

* * * * *

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

* * * * *

CARIBBEAN BASIN ECONOMIC RECOVERY ACT

* * * * *

TITLE II—CARIBBEAN BASIN INITIATIVE

* * * * *

SUBTITLE A—DUTY-FREE TREATMENT

* * * * *

SEC. 212. BENEFICIARY COUNTRY.

(a) * * *

(b) In designating countries as “beneficiary countries” under this title the President shall consider only the following countries and territories or successor political entities:

Anguilla	Jamaica
Antigua and Barbuda	Nicaragua
Bahamas, The	[Panama]
Barbados	Saint Lucia
Belize	Saint Vincent and the Grenadines
Costa Rica	Suriname
Dominica	Trinidad and Tobago
Dominican Republic	Cayman Islands
El Salvador	Montserrat
Grenada	Netherlands Antilles
Guatemala	Saint Christopher-Nevis
Guyana	Turks and Caicos Islands
Haiti	Virgin Islands, British
Honduras	

In addition, the President shall not designate any country a beneficiary country under this title—

(1) * * *

* * * * *

VII. ADDITIONAL VIEWS

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

THE AGREEMENT WITH PANAMA

On May 10, 2007, we won a major breakthrough to change U.S. trade policy. We insisted that this Agreement, and others like it, be renegotiated to: (1) require our Panama to comply with international labor standards, fully enforceable through the Agreement's normal dispute settlement mechanism; (2) require Panama to comply with key mutually-accepted international environmental agreements, again fully enforceable through dispute settlement; (3) help to ensure that poor patients in Panama have access to affordable medicines; (4) allow U.S. government agencies to base government procurement decisions on compliance with core labor standards; (5) make clear that nothing in the agreement should be interpreted to provide foreign investors greater rights than U.S. investors have under U.S. law; and (6) make clear that the United States has the non-challengeable authority to prevent foreign companies from operating in U.S. ports, based on national security concerns.

We then worked with the Obama Administration to ensure that Panama addressed a variety of deficiencies in Panama's labor laws—in particular, those laws related to the right of unions to organize and collectively bargain. In April of this year, Panama's President signed into law the last remaining changes needed to bring Panama's laws into compliance with the labor obligations of the agreement.

We also pressed for Panama to sign and implement a tax information exchange agreement ("TIEA") with the United States. For six years, the last Administration tried but failed to conclude a TIEA with Panama. But, once the Agreement was conditioned on the conclusion of the TIEA, Panama was persuaded to sign, ratify and fully implement the TIEA. According to the Economist Intelligence Unit, Panama's ratification "marks the most significant step to date on the road to ending over four decades of virtually water-tight banking secrecy laws."¹ In July, the OECD officially removed Panama from its "grey list" of tax havens.²

This Agreement also provides a more balanced approach to ensuring that the rights of U.S. investors are protected while preserving the rights of governments to protect legitimate public wel-

¹ Economist Intelligence Unit, "Tax Deal Lifts FTA's Chances," May 23, 2011.

² <http://www.oecd.org/dataoecd/50/0/43606256.pdf>.

fare objectives. Early arbitral decisions under the investor-state dispute settlement mechanism of the North American Free Trade Agreement demonstrated the need for improvements in this regard. Thus, unlike NAFTA's investment chapter, the investment chapter of the Panama Agreement: (1) clarifies that regulations that protect legitimate public-welfare objectives, such as public health, safety, and the environment, generally are not considered expropriations; (2) provides for the expeditious dismissal of frivolous investor claims; (3) provides for transparency in the arbitration process; (4) provides for input in the arbitration process from environmental groups and other non-governmental organizations; and (5) clarifies that the agreement does not provide foreign investors greater substantive rights than U.S. investors have under U.S. law. The Agreement also limits so-called "minimum standard" investor claims (e.g., regarding "fair and equitable treatment" of investors) and provides a mechanism for the governments to agree to dispose of investor claims.

The United States has consistently maintained a trade surplus with Panama for over 20 years (\$5.7 billion in 2010), and the trade agreement is widely expected to increase that surplus.

THE AGREEMENT IN ITS BROADER CONTEXT

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

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

Some progress has been made on these initiatives. For example, the 2009 reforms to Trade Adjustment Assistance (TAA) dramatically improved the program, including by covering service workers and many more manufacturing workers, increasing training funding and mandating counseling to ensure appropriate training, promoting on-the-job, part-time and longer-term training, and by increasing the TAA health coverage tax credit. We now have agreement to extend the program, which the new Majority allowed to expire in February. And while modifications have been made, both

the integrity of the program and the major 2009 improvements are preserved. And the Affordable Care Act of 2010 will make the United States more competitive by reining in health care costs.

But much more needs to be done, particularly with respect to enforcement and global trade imbalances. For example, Fred Bergsten, the Director of the Peterson Institute for International Economics recently described China's currency manipulation as "by far the largest protectionist measure adopted by any country since the Second World War—and probably in all of history." Eliminating currency misalignments (caused in large part by China's currency manipulation) is expected to improve the U.S. current account position by \$200 billion to \$250 billion annually and produce at least a million good jobs, mainly in manufacturing. Years of "quiet diplomacy" to address this issue have produced only meager results. And more tools and resources are needed to address the many trade-distorting policies of our trading partners, including China's massive subsidies and other industrial policies in key sectors such as clean energy. Those policies have been allowed to persist even as important incentives for our companies like the Section 48C Advanced Manufacturing Credit have lapsed due to Republican opposition.

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

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