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To authorize the imposition of a tax on imports from any country that employs indirect taxes and grants rebates of the same upon export and to authorize compensatory payments to eligible United States exporters to neutralize the discriminatory effect of such taxes paid by such exporters if United States trade negotiating objectives regarding border tax treatment in World Trade Organization negotiations are not met.

IN THE HOUSE OF REPRESENTATIVES

JUNE 17, 2009

Mr. PASCRELL (for himself, Mr. JONES, Mr. MICHAUD, Ms. KAPTUR, Mr. ROTHMAN of New Jersey, Mr. BARRETT of South Carolina, Mr. WESTMORELAND, and Ms. SUTTON) introduced the following bill; which was referred to the Committee on Ways and Means

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A BILL

To authorize the imposition of a tax on imports from any country that employs indirect taxes and grants rebates of the same upon export and to authorize compensatory payments to eligible United States exporters to neutralize the discriminatory effect of such taxes paid by such exporters if United States trade negotiating objectives regarding border tax treatment in World Trade Organization negotiations are not met.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Border Tax Equity Act of 2009''.

SEC. 2. FINDINGS AND DECLARATIONS OF POLICY.

(a) FINDINGS.—Congress makes the following findings:

(1) The United States largely relies on a direct tax system, whereas 150 countries currently employ one particular form of indirect tax known as value-added taxes (VAT) as well as direct taxes. The worldwide VAT tax average in 2005 was 15.7 percent, and in countries of the European Union it ranges between 15 and 25 percent.

(2) Under the rules of the World Trade Organization (WTO), direct taxes, such as corporate income taxes, if rebated or refunded upon the export of goods are viewed as export subsidies and prohibited on most goods and are at least potentially actionable on all goods. However, indirect taxes, such as sales taxes and VAT, may be rebated or refunded upon the export of goods and such rebate or refund is not defined as constituting a subsidy and hence is not actionable under WTO rules.

(3) At present, there are no WTO rules on subsidies as applied to trade in services. However, a number of countries currently impose taxes on the

import of services and exempt or rebate or refund taxes upon the export of services, to the disadvantage of United States services providers.

(4) The disparate treatment of border taxes detrimentally affects United States agricultural producers, manufacturers, and service providers in that—

(A) refunds of indirect taxes effectively act as export subsidies to foreign exporters; and

(B) United States exporters are subject to double taxation, by paying direct taxes on domestic production in the United States and having their exported product or service face a border tax in the importing country consisting of indirect taxes.

(5) Foreign governments paid their producers an estimated $369 billion of VAT rebates on goods exported to the United States. Foreign governments collected from United States producers an estimated $122.4 billion of VAT equivalent taxes on their imported goods. The combined goods and services disadvantage in 2007 was $474 billion.

(6) For more than 40 years, United States businesses have complained of border tax inequity

and, since 1968, prior United States Administrations and Congresses have sought to resolve it.

(7) Congress has repeatedly recognized the prejudicial effect of the disparate treatment of border taxes with respect to goods and has directed the United States to seek a negotiated solution:

(A) In passing the Trade Act of 1974 (19 U.S.C. 2101 et seq.), Congress sought ''revision of GATT articles with respect to the treatment of border adjustments for international taxes to redress the disadvantage to countries relying primarily on direct rather than indirect taxes for revenue needs.''.

(B) In section 1101(b)(16) of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2901(b)(16)) and section 2102(b)(15) of Bipartisan Trade Promotion Authority Act of 2002 (19 U.S.C. 3802(b)(15)), Congress declared that a principal trade negotiating objective of the United States is to obtain a revision of WTO rules with respect to the treatment of border taxes in order to redress the disadvantage to countries relying primarily on direct taxes for revenue rather than indirect taxes.

(8) The disparate treatment of border taxes is arbitrary, inequitable, causes economic distortions based only on the type of tax system used by a country, and is a primary obstacle to more balanced trade relations between the United States and its major trading partners.

(b) DECLARATIONS OF POLICY.—Congress declares the following:

(1) It is critically necessary that the issue of border taxes be addressed and resolved in WTO negotiations, whether in the ongoing Doha Development Round of WTO negotiations or subsequent WTO negotiations.

(2) If such WTO negotiations fail to achieve the United States trade negotiating objective of revising WTO rules with respect to the treatment of border taxes in order to redress the disadvantage to countries relying primarily on direct taxes for revenue rather than indirect taxes, then effective action through legislation is warranted given the massive and inequitable distortions to trade that United States agricultural producers, manufacturers, and service providers face as a result of border taxes.

SEC. 3. REPORT ON RESULTS OF WTO NEGOTIATIONS TO REVISE WTO RULES REGARDING BORDER TAXES.

(a) REPORT REQUIRED.—Not later than 60 days after the completion of WTO negotiations, or by January 1, 2011, whichever occurs first, the United States Trade Representative shall submit to Congress a report certifying whether or not each of the United States trade negotiating objectives regarding border tax treatment, as specified in subsection (b), has been met as a result of such negotiations.

(b) U.S. TRADE NEGOTIATING OBJECTIVES REGARDING BORDER TAX TREATMENT SPECIFIED.—The United States trade negotiating objectives regarding border tax treatment specified in this subsection are the following:

(1) With respect to trade in goods, the revision of WTO rules with respect to the treatment of border adjustments for internal taxes to redress the disadvantage to countries relying primarily on direct taxes for revenue rather than indirect taxes, as provided for in section 2102(b)(15) of Bipartisan Trade Promotion Authority Act of 2002 (19 U.S.C. 3802(b)(15)).

(2) With respect to trade in services—

(A) the elimination of the disadvantage in trade in services that exists for countries relying primarily on direct taxes that are not adjusted at the border rather than indirect taxes that are adjusted at the border; and

(B) the revision of WTO rules regarding trade in services to ensure that such rules do not result in disparate treatment of border adjustments for internal taxes based on the direct or indirect nature of such taxes.

(c) DEFINITION.—In this section, the terms ''WTO negotiations'' and ''negotiations'' mean the ongoing Doha Development Round of World Trade Organization negotiations or subsequent WTO negotiations that may result in revisions to WTO rules to meet the United States trade negotiating objectives regarding border tax treatment, as specified in subsection (b).

SEC. 4. TAX ON IMPORTS FROM FOREIGN COUNTRIES WITH AN INDIRECT TAX SYSTEM.

Subtitle D of the Internal Revenue Code (26 U.S.C. 4461 et seq.) is amended by adding at the end the following new subchapter G:

"Subchapter G—Tax on Imports From Foreign Countries With An Indirect Tax System

"Sec. 4491. Imposition of tax.

"SEC. 4491. IMPOSITION OF TAX.

"(a) GENERAL RULE.—There is hereby imposed a tax on imports of goods and services from any foreign country that employs an indirect tax system and grants rebates of indirect taxes paid on goods or services exported from that country.

"(b) AMOUNT OF TAX.—The amount of the tax imposed by subsection (a) on an imported good or service shall be an amount equal to the excess of—

"(1) the indirect taxes that are rebated or not paid on the good or service upon its export, over

"(2) any indirect taxes imposed on the good or service at the border of the United States.

"(c) LIABILITY AND TIME OF IMPOSITION OF TAX.—

"(1) LIABILITY.—The tax imposed by subsection (a) on a good or service shall be paid by the importer of such good or service.

"(2) TIME OF IMPOSITION.—The tax imposed by subsection (a) shall be imposed on imports at the time of entry.

"(d) PERIOD OF APPLICABILITY.—The tax imposed by subsection (a) shall apply during the period beginning as prescribed in section 6(a)(1) of the Border Tax Equity Act of 2009 and ending on the date on which the United States Trade Representative certifies to Congress that the United States trade negotiating goals of equitable border tax treatment have been met.

"(e) SPECIAL ACCOUNT.—The tax on imports under subsection (a) shall be collected by the Bureau of Customs and Border Protection and deposited into a special account. This special account shall be the source of payments to qualified United States exporters under section 314(b) of the Tariff Act of 1930.

"(f) DEFINITIONS.—For purposes of this subchapter—

"(1) SECRETARY.—The term 'Secretary' means the Secretary of Homeland Security.

"(2) IMPORTER.—The term 'importer' means—

"(A) as such term relates to imports of goods, one of the parties eligible to file the required customs entry documentation or information pursuant to section 484(a)(2)(B) of the Tariff Act of 1930 (19 U.S.C. 1484(a)(2)(B)), and

"(B) as such term relates to imports of services, the importer of the service as defined by the Secretary in rules and regulations promulgated under this subchapter.

"(3) TIME OF ENTRY.—The term 'time of entry' means—

"(A) as relates to imports of goods, the time generally specified in section 484(a)(2)(A) of the Tariff Act of 1930 (19 U.S.C. 1484(a)(2)(A)) and prescribed in regulations (19 C.F.R. 141.68), and

"(B) as relates to imports of services, the time specified by the Secretary in rules and regulations promulgated under this subchapter.

"(4) INDIRECT TAX SYSTEM AND GRANTS REBATES OF INDIRECT TAXES.—A foreign country employs an indirect tax system and grants rebates of indirect taxes paid on goods or services exported from that country if such country imposes indirect taxes (including sales taxes and value-added taxes (VAT)) on goods or services, and permits a rebate of such indirect taxes paid on goods or services exported from such country.

"(5) VALUE-ADDED TAXES (VAT).—The term 'value-added taxes' means an indirect general con-

sumption tax that is levied by the exporting country on the value added to goods and services in that country at multiple stages of the production and supply chain. This type of tax is also referred to as a goods and services tax (GST).

"(g) REGULATIONS.—The Secretary may prescribe such rules and regulations as are necessary to carry out this section.".

SEC. 5. PAYMENTS TO UNITED STATES EXPORTERS TO NEUTRALIZE DISCRIMINATORY EFFECT OF BORDER TAXES IMPOSED BY IMPORTING COUNTRIES.

Part II of title III of the Tariff Act of 1930 (19 U.S.C. 1305 et seq.) is amended by inserting after section 313 the following:

"SEC. 314. PAYMENTS TO UNITED STATES EXPORTERS TO NEUTRALIZE DISCRIMINATORY EFFECT OF BORDER TAXES IMPOSED BY IMPORTING COUNTRIES.

"(a) PAYMENTS REQUIRED.—

"(1) IN GENERAL.—Upon exportation of goods or services from the United States to any foreign country that employs an indirect tax system and imposes or applies indirect taxes on imports of goods or services at the border, the Secretary of Homeland

Security, acting through the Commissioner responsible for the Bureau of Customs and Border Protection, shall, if requested by the exporter, pay to the exporter an amount equal to the amount of indirect taxes that the importing foreign country imposes or applies at the border to such goods or services, minus any United States taxes paid on such goods or services that have been rebated or refunded upon exportation.

"(2) INFORMATION TO BE INCLUDED IN REQUEST.—An exporter who requests a payment under paragraph (1) shall, in such request, identify the indirect taxes imposed by the importing foreign country and present proof of the payment of such taxes to the importing foreign country's authorities within a reasonable period of time after exportation of the goods or services.

"(b) SOURCE OF PAYMENTS.—

"(1) SPECIAL ACCOUNT.—The payments required under subsection (a) shall be paid from amounts contained in the special account authorized under section 4491(e) of the Internal Revenue Code of 1986.

"(2) APPROPRIATION OF ADDITIONAL AMOUNTS.—To the extent that, at any time,

amounts contained in the special account described in paragraph (1) are inadequate to make payments required under subsection (a), there are hereby appropriated, out of any money in the Treasury of the United States not otherwise appropriated, such sums as may be necessary for such purpose.

"(c) PERIOD OF APPLICABILITY.—The requirement to make payments under subsection (a) shall apply during the period beginning as prescribed in subsection (a)(2) or (b) of section 6 of the Border Tax Equity Act of 2009, as the case may be, and ending on the date on which the United States Trade Representative certifies to Congress that each of the United States trade negotiating goals regarding border tax treatment have been met.

"(d) REGULATIONS.—The Secretary of Homeland Security is authorized to prescribe such rules and regulations as are necessary to carry out the provisions of this section.

"(e) DEFINITIONS.—In this section:

"(1) INDIRECT TAX SYSTEM AND IMPOSES OR APPLIES INDIRECT TAXES ON IMPORTS OF GOODS OR SERVICES AT THE BORDER.—A foreign country employs an indirect tax system and imposes or applies indirect taxes on imports of goods or services at the border if such country imposes indirect taxes (in-

cluding sales taxes and value-added taxes (VAT)) on goods or services, and imposes or applies such indirect taxes on imports of goods or services at the border.

"(2) VALUE-ADDED TAXES (VAT).—The term 'value-added taxes' means an indirect general consumption tax that is levied by the exporting country on the value added to goods and services in that country at multiple stages of the production and supply chain. This type of tax is also referred to as a goods and services tax (GST).".

SEC. 6. EFFECTIVE DATES.

(a) GENERAL EFFECTIVE DATE.—If, pursuant to subsection (a) of section 3 of this Act, the United States Trade Representative fails to certify to Congress by the applicable date specified in such subsection that each of the United States trade negotiating objectives regarding border tax treatment described in subsection (b) of such section has been met as a result of WTO negotiations, then—

(1) section 4491 of the Internal Revenue Code of 1986, as added by section 4 of this Act, shall take effect 90 days after such date; and

(2) subject to subsection (b), section 314 of the Tariff Act of 1930, as added by section 5 of this Act, shall take effect 120 days after such date.

(b) EARLIER EFFECTIVE DATE FOR EXPORTS OF SERVICES.—

(1) IN GENERAL.—If, pursuant to subsection (a) of section 3 of this Act, the United States Trade Representative fails to certify to Congress by January 1, 2010, that each of the United States trade negotiating objectives regarding border tax treatment described in subsection (b) of such section has been met as a result of WTO negotiations, then section 314 of the Tariff Act of 1930, as added by section 5 of this Act, shall take effect on January 1, 2010, with respect to exports of services from the United States as described in section 314 of the Tariff Act of 1930.

(2) APPROPRIATION OF AMOUNTS.—There are hereby appropriated, out of any money in the Treasury of the United States not otherwise appropriated, such sums as may be necessary for making payments with respect to exports of services from the United States in accordance with section 314 of the Tariff Act of 1930, as added by section 5 of this Act, until such time as the special account author-

ized under subsection (e) of section 4491 of the Internal Revenue Code of 1986, as added by section 4 of this Act, is established and amounts contained in the special account are adequate to make such payments.

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