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H. R. 6183

To neutralize the discriminatory effect of any country that employs indirect taxes and grants rebates of the same upon export if United States trade negotiating objectives regarding border tax treatment are not met.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 27, 2016

Mr. PASCARELL (for himself and Mr. JONES) introduced the following bill;
which was referred to the Committee on Ways and Means

A BILL

To neutralize the discriminatory effect of any country that employs indirect taxes and grants rebates of the same upon export if United States trade negotiating objectives regarding border tax treatment 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Border Tax Equity
5 Act of 2016”.

6 **SEC. 2. FINDINGS AND DECLARATIONS OF POLICY.**

7 (a) FINDINGS.—Congress makes the following find-
8 ings:

1 (1) The United States largely relies on a direct
2 tax system, whereas 164 countries currently employ
3 one particular form of indirect tax known as value-
4 added taxes (VAT) as well as direct taxes. The
5 worldwide VAT average in 2015 was 15 percent, and
6 in countries of the European Union it was 21 per-
7 cent.

8 (2) Under the rules of the World Trade Organi-
9 zation (WTO), direct taxes, such as corporate in-
10 come taxes, if rebated or refunded upon the export
11 of goods, are viewed as export subsidies and prohib-
12 ited on most goods and are at least potentially ac-
13 tionable on all goods. However, indirect taxes, such
14 as sales taxes and VAT, may be rebated or refunded
15 upon the export of goods and such rebate or refund
16 is not defined as constituting a subsidy and hence is
17 not actionable under WTO rules.

18 (3) At present, there are no WTO rules on sub-
19 sidies as applied to trade in services. However, a
20 number of countries currently impose taxes on the
21 import of services and exempt or rebate or refund
22 taxes upon the export of services, to the disadvan-
23 tage of United States service providers.

24 (4) The disparate treatment of border taxes
25 detrimentally affects United States agricultural pro-

1 ducers, manufacturers, and service providers in
2 that—

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

5 (B) United States exporters are subject to
6 double taxation, by paying direct taxes on do-
7 mestic production in the United States and hav-
8 ing their exported product or service face a bor-
9 der tax in the importing country consisting of
10 indirect taxes.

11 (5) As one example, governments of member
12 states of the European Union, with an average VAT
13 of 21 percent in 2015 and total exports to the
14 United States of \$427.5 billion, paid their producers
15 an estimated \$91.9 billion of VAT rebates on goods
16 exported to the United States in 2015. These gov-
17 ernments collected from United States producers an
18 estimated \$28.7 billion of VAT-equivalent taxes on
19 their imported goods. For services, these govern-
20 ments paid their producers an estimated \$47.6 bil-
21 lion of VAT-equivalent taxes on services exported to
22 the United States and collected from United States
23 producers an estimated \$36.3 billion of VAT-equiva-
24 lent taxes on services imported from the United

1 States. The combined goods and services disadvan-
2 tage in 2015 was \$204 billion.

3 (6) For more than 45 years, United States
4 businesses have complained of border tax inequity
5 and, since 1968, prior United States administrations
6 and Congresses have sought to resolve it.

7 (7) Congress has repeatedly recognized the
8 prejudicial effect of the disparate treatment of bor-
9 der taxes with respect to goods and has directed the
10 United States to seek a negotiated solution:

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

18 (B) In section 1101(b)(16) of the Omnibus
19 Trade and Competitiveness Act of 1988 (19
20 U.S.C. 2901(b)(16)), section 2102(b)(15) of Bi-
21 partisan Trade Promotion Authority Act of
22 2002 (19 U.S.C. 3802(b)(15)), and section
23 102(b)(18) of the Bipartisan Congressional
24 Trade Priorities and Accountability Act of 2015
25 (19 U.S.C. 4201(b)(18)) Congress declared that

1 a principal trade negotiating objective of the
2 United States is to obtain a revision of WTO
3 rules with respect to the treatment of border
4 adjustments for internal taxes to redress the
5 disadvantage to countries relying primarily on
6 direct taxes for revenue rather than indirect
7 taxes.

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

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

16 (1) It is critically necessary that the issue of
17 border taxes be addressed and resolved during cur-
18 rent and future WTO negotiations.

19 (2) If such WTO negotiations fail to achieve the
20 United States trade negotiating objective of revising
21 rules with respect to the treatment of border taxes
22 in order to redress the disadvantage to countries re-
23 lying primarily on direct taxes for revenue rather
24 than indirect taxes, then effective action through
25 legislation is warranted given the massive and in-

1 equitable distortions to trade that United States ag-
2 ricultural producers, manufacturers, and service pro-
3 viders face as a result of border taxes.

4 **SEC. 3. REPORTS ON RESULTS OF WTO NEGOTIATIONS TO**
5 **REVISE WTO RULES REGARDING BORDER**
6 **TAXES AND FREE TRADE AGREEMENTS RE-**
7 **GARDING BORDER TAXES.**

8 (a) REPORT ON RESULTS OF WTO NEGOTIATIONS
9 TO REVISE WTO RULES REGARDING BORDER TAXES.—

10 (1) REPORT REQUIRED.—Not later than 60
11 days after the completion of WTO negotiations, or
12 by January 1, 2018, whichever occurs first, the
13 United States Trade Representative shall submit to
14 Congress a report certifying whether or not each of
15 the United States trade negotiating objectives re-
16 garding border tax treatment, as specified in para-
17 graph (2), has been met as a result of such negotia-
18 tions.

19 (2) U.S. TRADE NEGOTIATING OBJECTIVES RE-
20 GARDING BORDER TAX TREATMENT SPECIFIED.—
21 The United States trade negotiating objectives re-
22 garding border tax treatment specified in this para-
23 graph are the following:

24 (A) With respect to trade in goods, the re-
25 vision of WTO rules with respect to the treat-

1 ment of border adjustments for internal taxes
2 to redress the disadvantage to countries relying
3 primarily on direct taxes for revenue rather
4 than indirect taxes, as provided for in section
5 102(b)(18) of the Bipartisan Congressional
6 Trade Priorities and Accountability Act of 2015
7 (19 U.S.C. 4201(b)(18)).

8 (B) With respect to trade in services—

9 (i) the elimination of the disadvantage
10 in trade in services that exists for coun-
11 tries relying primarily on direct taxes that
12 are not adjusted at the border rather than
13 indirect taxes that are adjusted at the bor-
14 der; and

15 (ii) the revision of WTO rules regard-
16 ing trade in services to ensure that such
17 rules do not result in disparate treatment
18 of border adjustments for internal taxes
19 based on the direct or indirect nature of
20 such taxes.

21 (3) DEFINITION.—In this subsection, the terms
22 “WTO negotiations” and “negotiations” mean any
23 World Trade Organization negotiations that may re-
24 sult in revisions to WTO rules to meet the United

1 States trade negotiating objectives regarding border
2 tax treatment, as specified in paragraph (2).

3 (b) REPORT ON FREE TRADE AGREEMENTS RE-
4 GARDING BORDER TAXES.—

5 (1) REPORT REQUIRED.—Not later than one
6 year after the date of the enactment of this Act, the
7 United States Trade Representative shall submit to
8 Congress a report certifying whether or not each
9 covered country that is a party to a multilateral, bi-
10 lateral, and regional trade agreement that has en-
11 tered into force on or before such date of enactment
12 with respect to the United States and such covered
13 country is taking or has taken the actions regarding
14 border tax treatment, as specified in paragraph (2).

15 (2) ACTIONS REGARDING BORDER TAX TREAT-
16 MENT SPECIFIED.—The actions regarding border tax
17 treatment specified in this paragraph are the fol-
18 lowing:

19 (A) With respect to trade in goods, the re-
20 vision of laws of the covered country with re-
21 spect to the treatment of border adjustments
22 for internal taxes to redress the disadvantage to
23 countries relying primarily on direct taxes for
24 revenue rather than indirect taxes.

25 (B) With respect to trade in services—

1 (i) the elimination of the disadvantage
2 in trade in services that exists for coun-
3 tries relying primarily on direct taxes that
4 are not adjusted at the border rather than
5 indirect taxes that are adjusted at the bor-
6 der; and

7 (ii) the revision of laws of the covered
8 country regarding trade in services to en-
9 sure that such laws do not result in dis-
10 parate treatment of border adjustments for
11 internal taxes based on the direct or indi-
12 rect nature of such taxes.

13 (3) DEFINITION.—In this subsection, the term
14 “covered country” means a country that relies pri-
15 marily on indirect taxes that are adjusted at the bor-
16 der rather than direct taxes that are not adjusted at
17 the border.

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

20 (a) IN GENERAL.—Subtitle D of chapter 36 of the
21 Internal Revenue Code (26 U.S.C. 4461 et seq.) is amend-
22 ed by adding at the end the following new subchapter:

1 **“Subchapter E—Tax on Imports From For-**
2 ****foreign Countries With An Indirect Tax Sys-****

3 ****tem****

“Sec. 4491. Imposition of tax.

4 **“SEC. 4491. IMPOSITION OF TAX.**

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

10 “(b) AMOUNT OF TAX.—The amount of the tax im-
11 posed by subsection (a) on an imported good or service
12 shall be an amount equal to the excess of—

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

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

17 “(c) LIABILITY AND TIME OF IMPOSITION OF TAX.—

18 “(1) LIABILITY.—The tax imposed by sub-
19 section (a) on a good or service shall be paid by the
20 importer of such good or service.

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

1 “(d) PERIOD OF APPLICABILITY.—The tax imposed
2 by subsection (a) shall apply during the period beginning
3 as prescribed in section 6(1) of the Border Tax Equity
4 Act of 2016 and ending on the date on which the United
5 States Trade Representative certifies to Congress that the
6 United States trade negotiating objectives of equitable
7 border tax treatment have been met.

8 “(e) SPECIAL ACCOUNT.—The tax on imports under
9 subsection (a) shall be collected by U.S. Customs and Bor-
10 der Protection and deposited into a special account. This
11 special account shall be the source of payments to quali-
12 fied United States exporters under section 314 of the Tar-
13 iff Act of 1930.

14 “(f) DEFINITIONS.—For purposes of this sub-
15 chapter—

16 “(1) IMPORTER.—The term ‘importer’ means—

17 “(A) as such term relates to imports of
18 goods, one of the parties eligible to file the re-
19 quired customs entry documentation or infor-
20 mation pursuant to section 484(a)(2)(B) of the
21 Tariff Act of 1930 (19 U.S.C. 1484(a)(2)(B)),
22 and

23 “(B) as such term relates to imports of
24 services, the importer of the service as defined

1 by the Secretary in rules and regulations pro-
2 mulgated under this subchapter.

3 “(2) TIME OF ENTRY.—The term ‘time of
4 entry’ means—

5 “(A) as relates to imports of goods, the
6 time generally specified in section 484(a)(2)(A)
7 of the Tariff Act of 1930 (19 U.S.C.
8 1484(a)(2)(A)) and prescribed in regulations
9 (19 C.F.R. 141.68), and

10 “(B) as relates to imports of services, the
11 time specified by the Secretary in rules and reg-
12 ulations promulgated under this subchapter.

13 “(3) INDIRECT TAX SYSTEM AND GRANTS RE-
14 BATES OF INDIRECT TAXES.—A foreign country em-
15 ploys an indirect tax system and grants rebates of
16 indirect taxes paid on goods or services exported
17 from that country if such country imposes indirect
18 taxes (including sales taxes and value-added taxes
19 (VAT)) on goods or services, and permits a rebate
20 of such indirect taxes paid on goods or services ex-
21 ported from such country.

22 “(4) VALUE-ADDED TAXES (VAT).—The term
23 ‘value-added taxes’ means an indirect general con-
24 sumption tax that is levied by the exporting country
25 on the value added to goods and services in that

1 country at multiple stages of the production and
 2 supply chain. This type of tax is also referred to as
 3 a goods and services tax (GST).

4 “(g) REGULATIONS.—The Secretary may prescribe
 5 such rules and regulations as are necessary to carry out
 6 this section.”.

7 (b) CLERICAL AMENDMENT.—The table of sub-
 8 chapters for subtitle D of chapter 36 of such Code is
 9 amended by adding at the end of the following new item:

“SUBCHAPTER E. TAX ON IMPORTS FROM FOREIGN COUNTRIES WITH AN
 INDIRECT TAX SYSTEM”.

10 **SEC. 5. PAYMENTS TO UNITED STATES EXPORTERS TO**
 11 **NEUTRALIZE DISCRIMINATORY EFFECT OF**
 12 **BORDER TAXES IMPOSED BY IMPORTING**
 13 **COUNTRIES.**

14 Part II of title III of the Tariff Act of 1930 (19
 15 U.S.C. 1305 et seq.) is amended by inserting after section
 16 313 the following:

17 **“SEC. 314. PAYMENTS TO UNITED STATES EXPORTERS TO**
 18 **NEUTRALIZE DISCRIMINATORY EFFECT OF**
 19 **BORDER TAXES IMPOSED BY IMPORTING**
 20 **COUNTRIES.**

21 “(a) PAYMENTS REQUIRED.—

22 “(1) IN GENERAL.—Upon exportation of goods
 23 or services from the United States to any foreign
 24 country that employs an indirect tax system and im-

1 poses or applies indirect taxes on imports of goods
2 or services at the border, the Secretary of the Treas-
3 ury, acting through the Commissioner of U.S. Cus-
4 toms and Border Protection, shall, if requested by
5 the exporter, pay to the exporter an amount equal
6 to the amount of indirect taxes that the importing
7 foreign country imposes or applies at the border to
8 such goods or services, minus any United States
9 taxes paid on such goods or services that have been
10 rebated or funded upon exportation.

11 “(2) INFORMATION TO BE INCLUDED IN RE-
12 QUEST.—An exporter who requests a payment under
13 paragraph (1) shall, in such request, identify the in-
14 direct taxes imposed by the importing foreign coun-
15 try and present proof of the payment of such taxes
16 to the importing foreign country’s authorities within
17 a reasonable period of time after exportation of the
18 goods or services.

19 “(b) SPECIAL ACCOUNT.—The payments required
20 under subsection (a) shall be paid from amounts contained
21 in the special account authorized under section 4491(e)
22 of the Internal Revenue Code of 1986.

23 “(c) PERIOD OF APPLICABILITY.—The requirement
24 to make payments under subsection (a) shall apply during
25 the period beginning as prescribed in section 6(2) of the

1 Border Tax Equity Act of 2016 and ending on the date
2 on which the United States Trade Representative certifies
3 to Congress that each of the United States trade negoti-
4 ating objectives regarding border tax treatment have been
5 met.

6 “(d) REGULATIONS.—The Secretary of the Treasury
7 is authorized to prescribe such rules and regulations as
8 are necessary to carry out the provisions of this section.

9 “(e) DEFINITIONS.—In this section:

10 “(1) INDIRECT TAX SYSTEM AND IMPOSES OR
11 APPLIES INDIRECT TAXES ON IMPORTS OF GOODS OR
12 SERVICES AT THE BORDER.—A foreign country em-
13 ploys an indirect tax system and imposes or applies
14 indirect taxes on imports of goods or services at the
15 border if such country imposes indirect taxes (in-
16 cluding sales tax and value-added taxes (VAT)) on
17 goods or services, and imposes or applies such indi-
18 rect taxes on imports of goods or services at the bor-
19 der.

20 “(2) VALUE-ADDED TAXES (VAT).—The term
21 ‘value-added taxes’ means an indirect general con-
22 sumption tax that is levied by the exporting country
23 on the value added to goods and services in that
24 country at multiple stages of the production and

1 supply chain. This type of tax is also referred to as
2 a goods and services tax (GST).”.

3 **SEC. 6. EFFECTIVE DATES.**

4 If, pursuant to subsection (a)(1) of section 3 of this
5 Act, the United States Trade Representative fails to cer-
6 tify to Congress by the date specified in such subsection
7 that each of the United States trade negotiating objectives
8 regarding border tax treatment described in section (a)(2)
9 of such section has been met as a result of WTO negotia-
10 tions, then—

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

14 (2) section 314 of the Tariff Act of 1930, as
15 added by section 5 of this Act, shall take effect 120
16 days after such date.

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