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UNITED STATES-BAHRAIN FREE TRADE AGREEMENT IMPLEMENTATION ACT

DECEMBER 6, 2005.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 4340]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 4340) to implement the United States-Bahrain Free Trade Agreement, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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I. INTRODUCTION

A. Purpose and Summary

H.R. 4340 would implement the September 14, 2004 Agreement establishing a free trade area between the United States and Bahrain.

B. Background

I. The United States-Bahrain Free Trade Agreement

The Committee believes that the Agreement meets the objectives and priorities set forth in the Bipartisan Trade Promotion Authority Act of 2002 (TPA). The Agreement covers all agricultural and industrial sectors, provides for the greatest market access for U.S. services of any Free Trade Agreement (FTA), contains robust protections for U.S. intellectual property rights holders, and includes strong labor and environment provisions. In addition to the new commercial opportunities it provides, the Agreement will support many of the recent governance, legal, and economic reforms in Bahrain.

Trade Impact.—All bilateral trade in consumer and industrial products will become duty-free immediately upon entry into force of the Agreement. Because most of the United States' tariffs are already low, the Office of the U.S. Trade Representative (USTR) estimates that the Agreement will have little impact on overall U.S. imports.

Agriculture.—All agricultural products are covered by the Agreement, which will provide immediate duty-free access for U.S. agricultural exports in 98% of the agricultural tariff lines. Bahrain will phase out remaining tariffs, primarily on alcohol and tobacco products, within ten years. Bahrain has not traditionally been a large agricultural exporter to the U.S. market, and USTR reports that the United States imported no agricultural products from Bahrain in 2004. The United States exported $22 million in agricultural products to Bahrain in 2004, including cotton, poultry meat, processed fruits and vegetables, and snack foods. Accordingly, the Agreement does not contain an agricultural safeguard.

Textiles and Apparel.—The Agreement contains a yarn-forward rule of origin for textiles. Like other FTAs (including Morocco, NAFTA, Singapore, and Chile), the Agreements contains limited, temporary allowances for the use of yarn and fabric from a non-party under a Tariff Preference Level (TPL). It is set at a level of 65 million square meters equivalent (SMEs) for the first ten years and is equal to 0.1% of total U.S. imports of textile and apparel. United States exporters are provided with the same TPL access to Bahrain's market. After this TPL expires, all trade under the United States-Bahrain FTA must adhere to the yarn-forward rule of origin. While the International Trade Commission estimates that the Agreement will result in an increase in Bahrain's textile exports to the United States, it also estimates that this will not have a significant impact on overall U.S. imports of textiles because in-

creased levels of imports from Bahrain will be offset by reduced levels of imports from other nations.

In addition, the Agreement contains a special textile safeguard which allows either party to re-impose Most Favored Nation (MFN) tariffs if imports from the other party cause or threaten to cause serious damage to the domestic industry. Furthermore, the FTA has special, state-of-the-art customs enforcement and cooperation provisions for textiles, allowing the customs authorities of the parties to verify production and ultimately to deny duty preferences or entry if production cannot be authenticated.

The Committee believes that maintaining a current short supply list under the FTA is integral to the effective functioning of the rule of origin for textiles and apparel. The Committee expects the President to seek to incorporate all existing and future affirmative short supply determinations from other trade agreements and trade preference programs into the textile and apparel rule of origin for this FTA. Moreover, given that prior short supply designations have already undergone public comment and consultation with domestic parties, the President should apply those designations to this FTA without further public investigation. Finally, the Committee clarifies that the short supply provision included in this FTA, as well as previous FTAs and trade preference programs enacted by Congress, contemplates items only being added to the list of short supply items, with a limited exception for in the Dominican Republic-Central America FTA (DR–CAFTA). In other words, once an item is designated as being in short supply, the item is permanently designated as such unless otherwise provided for by the statute implementing the FTA or trade preference program. Indeed, the fact that Congress specifically designated procedures for removal of products from the list in DR–CAFTA signifies that the authority to do so does not exist in implementing legislation or trade preference programs where that authority is not explicitly provided.

Furthermore, the Committee expects that all short supply parties will be able to participate in an open and transparent process. Specifically, the Committee for the Implementation of Textile Agreements (CITA) should publish procedures that clearly explain the criteria it uses to make its determinations on whether and why a good is or is not available in commercial quantities. At the very least, when CITA determines that a good is available in commercial quantities, a sample of the good should be readily available for physical inspection by all parties as well as by evidence of some effort to market the good in the United States. Moreover, all parties should have open access to the full evidence being considered by CITA as well as the opportunity to respond to the full evidence before a determination is made.

Services.—Under the Agreement, Bahrain will accord broad market access across its services industries and, according to USTR, is making commitments that are among the highest ever included in a U.S. FTA. The Agreement will provide increased market access and regulatory transparency in most industries. The Agreement utilizes the negative list approach for coverage with very few reservations, which means that all services are covered except those few specifically excluded. USTR reports that all of the major areas where U.S. services firms expressed interest will be liberalized

under the Agreement. The few exceptions taken by Bahrain include areas such as the ownership of local newspapers and periodicals, cargo handling at government-owned ports, certain government infrastructure services (including water and electricity distribution), certain requirements on real estate services, and Islamic pilgrimage services. The Agreement offers new access in key sectors such as audiovisual, express delivery, telecommunications, computer and related services, distribution, healthcare, services incidental to mining, construction, architecture, and engineering. Benefits are provided for businesses that wish to supply services cross-border (for example, by electronic means over the Internet) as well as those that wish to establish a local presence in Bahrain. The International Trade Commission (ITC) report on the Agreement states that the Agreement will provide substantial market access to U.S. services firms, and their affiliates in Bahrain will likely benefit from the improved transparency and market access.

Investment.—The Agreement does not contain an investment chapter because the United States and Bahrain have elected to use the existing Bilateral Investment Treaty (BIT), the first with a Gulf Cooperation Council (GCC) country, entered into in 2001. The BIT includes an investor-state dispute settlement provision, which allows investors alleging a breach in investment obligations to seek binding arbitration with the country directly, giving U.S. foreign investors enhanced protections.

Labor and Environment.—Labor and environmental obligations are part of the core text of the trade agreement, consistent with Trade Promotion Authority (TPA) requirements, and are similar to provisions in all prior FTAs covered by TPA. Like those FTAs, the Agreement states that both parties shall strive to ensure that their domestic labor laws provide for labor standards consistent with internationally recognized labor principles, and that environmental laws provide for high levels of environmental protection. The Agreement also provides that parties shall strive to continue to improve such laws. The Agreement states that it is inappropriate to weaken or reduce domestic labor or environmental protections to encourage trade or investment. The core commitment—that a party shall not fail to effectively enforce its labor or environmental laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the parties—is subject to dispute settlement under the Agreement. Bahrain and the United States will pursue a number of cooperative projects to promote environmental protection, and the Agreement contains a cooperative mechanism to promote respect for the principles embodied in the ILO Declaration on Fundamental Principles and Rights at Work and compliance with ILO Convention 182 on the Worst Forms of Child Labor. The labor provisions of the Agreement are similar to those in the DR–CAFTA and other recent FTAs.

Bahrain has been a leader in the Persian Gulf region in labor and governance reforms. Bahrain enacted significant labor law reforms both in 1993 and in 2002, when a new Trade Union Law was promulgated allowing independent labor for the first time since the early 1970s. Both domestic and foreign workers are allowed to form trade unions under the new law. Bahrain's 2002 Constitution recognizes the right of association, and there are now approximately forty private sector labor unions representing over 10,000 workers

operating in Bahrain. The General-Secretary of the International Confederation of Free Trade Unions (ICFTU) praised Bahrain, stating that the ICFTU "will be encouraging other Gulf states to follow the example of Bahrain in working towards a truly independent labor movement in the region." Bahrain's Ministry of Labor has also increased the number of inspectors, upgraded training for inspectors and worker education, and established a more responsive system for complaints, including the establishment of a 24-hour hotline that workers can call for advice.

During the Committee's September 29, 2005 hearing on the U.S.-Bahrain FTA, Members asked Bahrain to go on record committing to continue its reform efforts and further strengthening its labor laws. In two letters, on October 10th and November 10th, from Bahrain's Finance Minister to USTR Portman, Bahrain committed to seek to amend its laws and take other actions to:

- Accede to two additional International Labor Organization (ILO) core labor conventions, incorporating them into Bahrain's law under its constitution;
- Provide the option of reinstatement to workers dismissed due to union activities;
- Require employers that delay payment of wages to pay statutory damages and ensure that workers are paid wages due in a timely fashion;
- Abolish the requirement to have only a single union per enterprise;
- Ensure that Bahrain's technical requirements for strikes do not exceed ILO standards;
- Repeal the requirement that all unions join a single federation; and
- Ensure that penalties for anti-union discrimination meet ILO standards.

The Committee applauds these commitments by Bahrain to strive to improve its labor standards in accordance with internationally recognized labor rights. The Committee believes that these commitments relate to the FTA Parties' obligation to "strive to improve" their labor standards under Article 15.1 of the Agreement, an obligation contained in all FTAs negotiated under Trade Promotion Authority (TPA). The Committee notes that Ambassador Portman's Letter of November 16, 2005 underscores his understanding that the commitments set forth in the letter of Bahrain's Finance Minister of November 10, 2005 constitute "a matter arising under [the Chapter on Labor]" pursuant to the labor consultation mechanism established in the Agreement. These labor consultation provisions, established in Article 15.6 of the Bahrain FTA, are also similar to those contained in all FTAs negotiated under TPA. The Committee notes with approval Ambassador Portman's commitment, also included in his letter of December 16, to update Congress periodically on the progress that Bahrain has achieved in realizing the commitments to its labor law reform.

Dispute Settlement.—The Agreement sets out detailed procedures for the resolution of disputes over compliance, with high standards of openness and transparency, using the same basic procedures and obligations as prior free trade agreements. Dispute settlement procedures promote compliance through consultation and trade-enhancing remedies, rather than relying solely on trade sanctions.

The Agreement's dispute settlement procedures also provide for "equivalent" remedies for commercial and labor or environmental disputes. In addition to the use of trade sanctions in commercial disputes, the Agreement provides the parties the option of using monetary assessments to enforce commercial, labor, and environmental obligations of the Agreement, with the possibility that assessments from labor or environmental cases may be used to fund labor or environmental initiatives. If a party does not pay its annual assessment in a labor or environmental dispute, the complaining party may suspend tariff benefits, while bearing in mind the objective of eliminating barriers to trade and while seeking not to unduly affect parties or interests not party to the dispute.

Intellectual Property Rights.—Because the WTO agreement on intellectual property contains only rudimentary intellectual property protection requirements, bilateral free trade agreements are an important means of raising international practices to the higher U.S. standards. The U.S.-Bahrain FTA requires virtually no change to the already highly developed U.S. law and practice. U.S. authors, performers, inventors, and other producers of creative material will benefit from the higher and extended standards that the FTA requires of Bahrain for protecting intellectual property rights such as copyrights, patents, trademarks, and trade secrets and enhanced means for enforcing those rights. National treatment must be granted by each partner country to nationals of the other, and all laws, regulations, procedures, and final judicial decisions must be in writing and published or made publicly available. The Agreement lengthens terms for copyright protection, covering electronic and digital media, and increases enforcement to go beyond the WTO obligations. Each party is obliged to provide appropriate civil and criminal remedies for willful violators, and parties must provide legal incentives for service providers to cooperate with rights holders and limitations on liability.

Government Procurement.—Bahrain is not a party to the WTO Agreement on Government Procurement, but the U.S.-Bahrain FTA provides comparable benefits to U.S. interests, putting them at an advantage over other U.S. trading partners. Specifically, the Agreement grants non-discriminatory rights to bid on most contracts offered by Bahrain's ministries, agencies, and departments. It calls for transparent and fair procurement procedures including clear advanced notice of purchases and effective review. The parties are obliged to make bribery a criminal offense in matters affecting international trade and investment.

9/11 Commission Report Recommendations.—The 9/11 Commission report specifically noted the importance of the FTA signed with Bahrain, stating that the FTA and the Morocco FTA are "models [that] are drawing the interest of their neighbors." Citing the Administration's strategy for creating a Middle East Free Trade Area, the 9/11 Commission specifically recommended that a "comprehensive U.S. strategy to counter terrorism should include economic policies that encourage development, more open societies, and opportunities for people to improve the lives of their families and to enhance prospects for their children's future."

U.S.-Bahrain Cooperation in the War on Terrorism and International Security.—The Committee notes that Bahrain has long been a committed ally of the United States, hosting a U.S. naval

presence going back to World War II. Bahrain currently hosts the U.S. Fifth Fleet, which is the headquarters for U.S. naval operations in the Persian Gulf, with a constant presence of approximately 1,200 naval personnel over more than a 60 acre area. The United States and Bahrain signed an agreement in 1991 granting U.S. access to Bahrain's facilities and ensuring the right to pre-position materials to respond to any crises in the region. In October 2001, Bahrain was designed a Major Non-NATO Ally (MNNA) of the United States.

Political and Economic Reforms.—Bahrain has been a regional leader in promoting economic and governance reforms, with Bahrain's King al-Khalifa pushing reforms following his installation in 1999. Bahrain passed the centerpiece of its political reforms, the National Action Charter, in February 2001. Parliamentary elections were held in October 2002, and the first Parliamentary session since 1975 was held in Bahrain in December 2002. Bahrain has also liberalized its financial markets, with no restrictions on capital flows, and has become a major financial center for the region. Financial institutions operate in Bahrain without major impediments, and the financial sector is currently the second largest contributor to Bahrain's GDP. More than 100 offshore banking units operate in Bahrain, as well as more than sixty U.S. firms. Bahrain has also taken steps to liberalize its foreign ownership rules and strengthen its anti-money laundering laws over the past two years.

Arab League Boycott of Israel.—Bahrain has eliminated all aspects of the secondary and tertiary Arab League Boycott of Israel. The secondary boycott bans entities in the Arab League States where it is applied from doing business with firms that contribute to Israel's military or economic development, while the tertiary boycott prohibits business dealings with U.S. and other firms that do business with blacklisted companies. In a September 5th, 2005 letter to U.S. Trade Representative Portman, Bahrain's Finance Minister reiterated that Bahrain has eliminated the secondary and tertiary aspects of the boycott and stated that "the Kingdom of Bahrain recognizes the need to dismantle the primary [b]oycott of Israel" and is "fully committed to complying with WTO requirements." USTR has informed the Committee that it is satisfied that Bahrain has ended the primary boycott of Israel. In addition, USTR has also committed, as part of its annual National Trade Estimates Report, to monitor and report on Bahrain's actions in this area.

II. TPA Procedures

As noted above, this legislation is being considered by Congress under TPA procedures. As such, the Agreement has been negotiated by the President in close consultation with Congress, and it can be approved and implemented through legislation using streamlined procedures. Pursuant to TPA 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 TPA. Following submission of these documents, the implementing bill is introduced, by request, by the Majority Leader in each chamber. The House then has up to 60 days to consider implementing legislation for the agreement (the Senate has up to an additional 30 days). No amendments to the legislation are allowed under TPA requirements.

III. Status of implementation by Bahrain

On July 6th, 2005, both the upper and lower houses of Bahrain's Parliament overwhelmingly approved the U.S.-Bahrain FTA.

C. Legislative History

On August 4, 2003, the President first notified Congress of his intent to negotiate an FTA with Bahrain. FTA negotiations between the United States and Bahrain began in January 2004 and concluded in May 2004. During and after the negotiations, the President continued his consultations with Congress pursuant to the letter and spirit of the TPA requirements. On June 15, 2004, the President notified the Congress of his intent to enter into an FTA with Bahrain. Under TPA procedures, the President is able to sign an FTA ninety calendar days after he has notified Congress. On September 14, 2004, then-U.S. Trade Representative Robert Zoellick signed the U.S.-Bahrain FTA.

On September 29, 2005, the Committee on Ways and Means held a hearing on the United States-Bahrain FTA. The Committee received testimony supporting the Agreement from the Administration and U.S. private sector entities. On November 1, 2005, the Committee on Ways and Means considered in an informal markup session draft legislation to implement the Bahrain FTA. The Committee approved the draft implementing legislation by a recorded vote of 23 yeas to 0 nays with 15 Members voting present, without amendment.

In accordance with TPA requirements, President Bush submitted to Congress on October 29, 2004, a description of the changes to existing U.S. laws that would be required to bring the United States into compliance with the Agreement.

On November 16, 2005, President Bush formally transmitted to Congress the formal legal text of the United States-Bahrain FTA, implementing legislation, a statement of administrative action proposed to implement the Agreement, and other related supporting information as required under section 2105(a) of TPA. Following this transmittal, on November 16, 2005, Majority Whip and Interim Majority Leader Roy Blunt introduced, by request, H.R. 4340 to implement the United States-Bahrain FTA. The bill was referred to the Committee on Ways and Means.

On November 18, 2005, the Committee on Ways and Means formally met to consider H.R. 4340. The Committee ordered H.R. 4340 favorably reported to the House of Representatives by voice vote; under the requirements of TPA, amendments were not permitted.

II. SECTION-BY-SECTION SUMMARY

TITLE I: APPROVAL AND GENERAL PROVISIONS

Section 101: Approval and entry into force

Current law

No provision.

Explanation of provision

Section 101 states that Congress approves the Agreement and the Statement of Administrative Action and provides that the Agreement enters into force when the President determines that Bahrain is in compliance and has exchanged notes, on or after January 1, 2005.

Reason for change

Approval of the Agreement and the Statement of Administrative Action is required under the procedures of section 2103(b)(3) of the Bipartisan Trade Promotion Authority Act of 2002. The remainder of section 101 provides for entry into force of the Agreement.

Section 102: Relationship of the agreement to U.S. and State law

Current law

No provision.

Explanation of provision

Section 102 provides that U.S. law is to prevail in a conflict and states that the Agreement does not preempt state rules that do not comply with the Agreement. Only the United States is entitled to bring a court action to resolve a conflict between a state law and the Agreement.

Reason for change

Section 102 is necessary to make clear the relationship between the Agreement and Federal and State law, respectively.

Section 103: Implementing actions in anticipation of entry into force and initial regulations

Current law

No provision.

Explanation of provision

Section 103(a) provides that after the date of enactment, the President may proclaim actions and issue regulations as necessary to ensure that any provision of this Act that takes effect on the date that the Agreement is entered into force is appropriately implemented, but not before the date the Agreement enters into force.

Section 103(b) establishes that regulations necessary or appropriate to carrying out the actions proposed in the Statement of Ad-

ministrative Action shall, to the maximum extent feasible, be issued within one year of entry into force or 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. As noted in the Statement of Administrative Action, the regulation-issuing agency will provide a report to Congress not later than thirty days before one year elapses on any regulation that is going to be issued later than one year.

Section 104: Consultation and layover for proclaimed actions

Current law

No provision.

Explanation of provision

Section 104 provides that if the President implements by proclamation authority subject to consultation and layover, the President may proclaim action only after he has: obtained advice from the International Trade Commission and the appropriate private sector advisory committees, submitted a report to the Ways and Means and Finance Committees concerning the reasons for the action, and consulted with the Committees. The action takes effect after 60 days have elapsed.

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 manner.

Section 105: Administration of dispute settlement proceedings

Current 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 any panels that may be established under chapter 19 of the Agreement and authorizes appropriations for the office and for payment of the U.S. share of expenses.

Reason for change

The Committee believes that the Department of Commerce is the appropriate agency to provide administrative assistance to panels.

Section 106: Effective dates; effect of termination

Current law

No provision.

Explanation of provision

The effective date of this Act is date the Agreement enters into force with respect to the United States, except sections 1 through 3 and Title I take effect upon the date of enactment. The provisions of the Act terminate on the date on which the Agreement terminates.

Reason for change

Section 106 implements U.S. obligations under the Agreement.

TITLE II: CUSTOMS PROVISIONS

Section 201: Tariff modifications

Current law

No provision.

Explanation of provision

Section 201(a) provides the President with the authority to proclaim tariff modifications to carry out the Agreement and requires the President to terminate Bahrain's designation as a beneficiary developing country for the purposes of the Generalized System of Preferences program.

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

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

Reason for change

Section 201(a) is necessary to put the United States in compliance with the market access provisions of the Agreement. Section 201(b) gives the President flexibility to maintain the trade liberalizing nature 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 this subsection. Section 201(c) allows the President to convert tariffs to ad valorem rates to carry out the tariff modifications in the Agreement.

Section 202: Rules of origin

Current law

No provision.

Explanation of provision

Section 202 codifies the rules of origin set out in chapter 4 of the Agreement. Under the general rules, there are four basic ways for a good of Bahrain to qualify as an "originating good" and therefore be eligible for preferential tariff treatment when it is imported into the United States. A good is an originating good if it is imported directly from the territory of Bahrain into the territory of the United States and: (1) It is "wholly the growth, product, or manu-

facture of Bahrain or the United States, or both"; (2) it is a new or different good that has been "grown, produced, or manufactured in Bahrain or the United States, or both" and the value of the materials produced and the direct cost of processing operations performed in Bahrain or the United States, or both is not less than 35% of the appraised value of the good; (3) it satisfies certain rules of origin for textile or apparel goods specified in Annex 3–A of the Agreement; or (4) it satisfies certain product-specific rules of origin specified in Annex 4–A of the Agreement.

Under the rules in chapter 3.2 and Annex 3–A of the Agreement, an apparel product must generally meet a tariff shift rule that implicitly imposes a "yarn forward" requirement. Thus, to qualify as an originating good imported into the United States from Bahrain, an apparel product must have been cut (or knit to shape) and sewn or otherwise assembled in Bahrain from yarn, or fabric made from yarn, that originates in Bahrain or the United States, or both. However, Article 3.2.9 provides a limited exception to this general rule allowing access for 65 million SMEs of apparel that does not meet the yarn forward rule of origin for each of the first ten years of the Agreement. Section 202 also includes a de minimis exemption providing that in most cases a textile or apparel good will be considered originating if the total weight of all nonoriginating fibers or yarns is not more than 7 percent of the total weight of the good.

The remainder of section 202 addresses valuation of materials and special definitions.

Reason for change

Rules of origin are needed to confine Agreement benefits, such as tariff cuts, to Bahraini goods and to prevent third-country goods from being transshipped through Bahrain and claiming benefits under the Agreement. Section 202 puts the United States in compliance with the rules of origin provisions of the agreement. The Committee notes that the limited exception to the textile and apparel yarn forward rule of origin is phased down over ten years and covers approximately 0.1 percent of U.S. textile and apparel imports by volume.

Section 203: Customs user fees

Current law

Section 58c of the title 19 of the U.S. Code lays out various user fees applied by customs officials to imports, including the Merchandise Processing Fee (MPF), which is applied on an ad valorem basis subject to a cap.

Explanation of provision

Section 203 of the bill implements U.S. commitments under Article 2.9 of the Agreement, regarding the exemption of the merchandise processing fee on originating goods. This provision is similar to those included in the implementing legislation for the North America Free Trade Agreement, the U.S.-Singapore Free Trade Agreement, the U.S.-Chile Free Trade Agreement, the U.S.-Australia Free Trade Agreement, and the U.S.-Dominican Republic-Central America Free Trade Agreement. The provision also pro-

hibits use of funds in the Customs User Fee Account to provide services related to entry of originating goods, in accordance with U.S. obligations under the General Agreement on Tariffs and Trade 1994.

Reason for change

As with other Free Trade Agreements, the Agreement eliminates the merchandise processing fee on qualifying goods from Bahrain. Other customs user fees remain in place. Section 203 is necessary to put the United States in 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 MPF funds will not be available.

Section 204: Enforcement relating to trade in textile and apparel goods

Current law

No provision.

Explanation of provision

Section 204 implements the verification provisions of the Agreement at Article 3.3 and authorizes the President to take appropriate action while the verification is being conducted. Such appropriate action includes suspending liquidation of the textile or apparel goods for which a claim of origin has been made or, in a case where the request for verification was based on a reasonable suspicion of unlawful activity related to such goods, for textile or apparel goods exported or produced by the person subject to a verification. If the Secretary of the Treasury determines that the information obtained from verification is insufficient to make a determination, the President may take appropriate action described in section 204(d), including publishing the name and address of the person subject to the verification and denial of preferential treatment and denial of entry to certain textile and apparel goods produced or exported by the person subject to the verification.

Reason for change

In order to ensure that only qualifying textile and apparel goods receive preferential treatment under the Agreement, special textile enforcement provisions are included in the Agreement. Section 204 is necessary to authorize these enforcement mechanisms for use by U.S. authorities.

Section 205: Regulations

Current law

No provision.

Explanation of provision

Section 205 provides that the Secretary of the Treasury shall issue regulations to carry out provisions of this bill related to rules of origin and customs user fees.

Reason for change

Because the implementing bill involves lengthy and complex implementation procedures by customs officials, section 205 is necessary in order to authorize the Secretary of the Treasury to carry out provisions of the implementing bill through regulations.

TITLE III: RELIEF FROM IMPORTS

Subtitle A: Relief from imports benefiting from the agreement (sections 311–316)

Current law

No provision.

Explanation of provision

Sections 311–316 authorize the President, after an investigation and affirmative determination by the U.S. International Trade Commission (ITC) or a determination that the President may consider to be affirmative under paragraph (1) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)), to impose specified import relief when, as a result of the reduction or elimination of a duty under the Agreement, a Bahraini 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(c) defines "substantial cause" and applies factors in making determinations in the same manner as section 202 of the Trade Act of 1974.

Section 311(d) exempts from investigation under this section Bahraini articles for which import relief has been provided under this safeguard since the Agreement entered into force.

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.

Under section 313(a), the President shall 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 President determines that 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 as: a suspension of further reductions for the article; or an increase to a level that does not exceed the lesser of the existing NTR/MFN rate or the NTR/MFN rate imposed when the Agreement entered into force. Section 313(c)(2) states that if the President provides relief for greater than one year, it must be subject to progressive liberalization at regular intervals over the course of its application.

Section 313(d) states that the import relief that the President is authorized to provide may not, in the aggregate, exceed three years.

Section 314 provides that no relief may be provided under this subtitle after ten years from the date on which the Agreement enters into force, unless the President determines under section 314(b) that Bahrain has consented to such relief.

Section 315 authorizes the President to provide compensation to Bahrain consistent with article 8.3 of the Agreement.

Section 316 provides for the treatment of confidential business information.

Reason for change

The Committee believes that it is important to have in place a temporary, extraordinary mechanism if a U.S. industry experiences injury by reason of increased import competition from Bahrain in the future, with the understanding that the President is not required to provide relief if the relief will not provide greater economic or social benefits than costs. The Committee intends that administration of this safeguard be consistent with U.S. obligations under chapter 8 (Safeguards) of the Agreement.

Subtitle B: Textile and apparel safeguard (sections 321–328)

Current law

No provision.

Explanation of provision

Section 321 provides that a request for safeguard relief under this subtitle may be filed with the President by an interested party. The President is to review the request and determine whether to commence consideration of the request. If the President determines to commence consideration of the request, he is to publish a notice commencing consideration and seeking comments. The notice is to include a summary of the request.

Section 322(a) of the Act provides for the President to determine, pursuant to a request by an interested party, whether, as a result of the elimination of a duty provided under the Agreement, a Bahraini textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article.

Section 322(b) identifies the relief that the President may provide, which is the lesser of the existing NTR/MFN rate or the NTR/MFN rate imposed when the Agreement entered into force.

Section 323 of the bill provides that the period of relief shall be no longer than three years. The President may extend the relief if the initial period for relief was less than three years, but the aggregate period of relief, including extensions, may not exceed three years.

Section 324 provides that relief may not be granted to an article under this safeguard if relief has previously been granted under this safeguard, or the article is subject to import relief 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 but for the safeguard action.

Section 326 states that the authority to provide safeguard relief under this subtitle expires ten years after the date on which duties on the article are eliminated pursuant to the Agreement. Section 327 of the Act gives authority to the President to provide compensation to Bahrain if he orders relief. Section 328 provides for the treatment of business confidential information.

Reason for change

The Committee intends that the provisions of subtitle B be administered in a manner that is in compliance with U.S. obligations under Article 3.1 of the Agreement. In particular, the Committee expects that the President will implement a transparent process 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 Department of Commerce, International Trade Administration's website. In addition, the Committee encourages the President to issue regulations on procedures for requesting such safeguard measures, for making its determinations under section 322(a), and for providing relief under section 322(b).

TITLE IV: GOVERNMENT PROCUREMENT

Section 401: Eligible products

Current law

U.S. procurement law (the Buy American Act of 1933 and the Buy American Act of 1988) discriminates against 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 party to a bilateral or multilateral procurement agreement, such as the WTO Agreement on Government Procurement and the North American Free Trade Agreement.

Explanation of provision

Section 401 implements chapter 9 of the Agreement and amends the definition of "eligible product" in section 308 of the Trade Agreements Act of 1979. As amended, section 308(4)(A) will provide that, for a party to a free trade agreement that entered into force for the United States after December 31, 2005 and prior to July 2, 2006, an "eligible product" means "a product or service of that country or instrumentality which is covered under the free trade agreement for procurement by the United States." This amended definition coupled with the President's exercise of his authority under section 301(a) of the Trade Agreement Act will allow procurement of products and services of Bahrain, assuming that the FTA enters into force during the specified time period.

Reason for change

This provision implements U.S. obligations with respect to FTAs that enter into force for the United States after December 31, 2005 and prior to July 2, 2006.

III. VOTE 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. 4340.

MOTION TO REPORT THE BILL

The bill, H.R. 4340 was ordered favorably reported by voice vote (with a quorum being present).

IV. BUDGET EFFECTS OF THE BILL

A. COMMITTEE ESTIMATE OF BUDGETARY EFFECTS

In compliance with clause 3(d)(2) 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. 4340, 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

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that enactment of H.R. 4340 would reduce customs duty receipts due to lower tariffs imposed on goods from Bahrain.

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 the CBO, the following report prepared by the CBO is provided.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 22, 2005.

Hon. WILLIAM "BILL" M. THOMAS,
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. 4340, a bill to implement the United States-Bahrain Free Trade Agreement.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Emily Schlect.

Sincerely,

DONALD B. MARRON
(For Douglas Holtz-Eakin, Director).

Enclosure.

H.R. 4340—United States-Bahrain Free Trade Agreement Implementation Act

Summary: H.R. 4340 would approve the free trade agreement between the government of the United States and the government of Bahrain that was entered into on September 14, 2004. It would provide for tariff reductions and other changes in law related to implementation of the agreement.

The Congressional Budget Office estimates that enacting the bill would reduce revenues by $20 million in 2006, by $143 million over the 2006–2010 period, and by $341 million over the 2006–2015 period, net of income and payroll tax offsets. CBO estimates that enacting H.R. 4340 also would increase direct spending by $1 million in 2006, $3 million over the 2006–2010 period, and $6 million over the 2006–2015 period.

CBO has determined that H.R. 4340 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not directly affect the budgets of State, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 4340 over the 2006–2015 period is shown in the following table. The cost for spending under this legislation falls within budget function 750 (administration of justice).

	By fiscal year, in millions of dollars—									
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
CHANGES IN REVENUES										
Estimated Revenues ..	−20	−28	−30	−32	−34	−35	−37	−39	−42	−45
CHANGES IN DIRECT SPENDING										
Estimated Budget Authority	1	1	1	1	1	1	1	1	1	0
Estimated Outlays	1	1	1	1	1	1	1	1	1	0

Note.—Negative changes in revenues and positive changes in direct spending correspond to increase in budget deficits.

Basis of Estimate

Revenues

Under the United States-Bahrain agreement, tariffs on U.S. imports from Bahrain would be phased out over time. The tariffs would be phased out for individual products at varying rates according to one of several different timetables ranging from immediate elimination on the date the agreement enters into force, to gradual elimination over 10 years. According to the U.S. International Trade Commission, the United States collected $29 million in customs duties in 2004 on $406 million of imports from Bahrain. Those imports consist largely of various types of apparel articles, oils, aluminum, and chemicals. Based on these data, CBO estimates that phasing out tariff rates as outlined in the U.S.-Bahrain agreement would reduce revenues by $20 million in 2006, by $143 million over the 2006–2010 period, and by $341 million over the 2006–2015 period, net of income and payroll tax offsets.

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

Direct spending

This legislation would exempt certain goods imported from Bahrain from merchandise processing fees collected by the Department of Homeland Security. Such fees are recorded as offsetting receipts (a credit against direct spending). Based on the value of goods imported from those countries in 2004, CBO estimates that implementing this provision would reduce fee collections by under $1 million in fiscal year 2006 and in each year through 2014, for a total of $6 million over the 2006–2014 period. There would be no effects in later years because the authority to collect merchandise processing fees expires at the end of 2014.

Intergovernmental and private-sector impact: The bill contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: Federal Revenues: Emily Schlect. Federal Spending: Mark Grabowicz. Impact on State, Local, and Tribal Governments: Melissa Merrill. Impact on the Private Sector: Craig Cammarata.

Estimate approved by: G. Thomas Woodward, Assistant Director for Tax Analysis; and Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

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

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, based on public hearing testimony and information from the Administration, concluded that it is appropriate and timely to consider the bill 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 Committee advises that the bill H.R. 3045 makes de minimis authorization of funding, and the Administration has in place program goals and objectives, which have been reviewed by the Committee.

C. Constitutional Authority Statement

With respect to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, relating to Constitutional Authority, the Committee states that the Committee's action in reporting the bill is derived from Article 1 of the Constitution, Section 8 ('The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and to provide for * * * the general Welfare of the United States.')

D. INFORMATION RELATING TO UNFUNDED MANDATES

This information is provided in accordance with section 423 of the Unfunded Mandates Act of 1995 (P.L. 104–4).

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

VI. 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) * * *

* * * * * * *

(13) No fee may be charged under subsection (a) (9) or (10) with respect to goods that qualify as originating goods under section 202 of the United States-Singapore Free Trade Agreement Implementation 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.

* * * * * * *

(15) 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 Dominican Republic-Central America-United States Free Trade Agreement Implementation 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.

(16) No fee may be charged under subsection (a) (9) or (10) with respect to goods that qualify as originating goods under section 202 of the United States-Bahrain Free Trade Agreement Implementation 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.

* * * * * * *

SECTION 202 OF THE TRADE ACT OF 1974

SEC. 202. INVESTIGATIONS, DETERMINATIONS, AND RECOMMENDATIONS BY COMMISSION.

(a) * * *

(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, [and] title III of the United States-Morocco Free Trade Agreement Implementation Act, *and title III of the United States-Bahrain Free Trade 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.

* * * * * * *

SECTION 308 OF THE TRADE AGREEMENTS ACT OF 1979

SEC. 308. DEFINITIONS.

As used in this title—

(1) * * *

* * * * * * *

(4) ELIGIBLE PRODUCTS.—

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

(i) * * *

* * * * * * *

(iii) a party to a free trade agreement that entered into force with respect to the United States after December 31, 2003, and before January 2, 2005, a product or service of that country or instrumentality which is covered under the free trade agreement for procurement by the United States; [or]

(iv) a party to the Dominican Republic-Central America-United States Free Trade Agreement, a product or service of that country or instrumentality which is covered under that Agreement for procurement by the United States[.]*; or*

(v) a party to a free trade agreement that entered into force with respect to the United States after December 31, 2005, and before July 2, 2006, a product or service of that country or instrumentality which is covered

under the free trade agreement for procurement by the United States.

* * * * * * *

VII. EXECUTIVE CORRESPONDENCE

KINGDOM OF BAHRAIN
Ministry of Finance
Minister's Office

مملكة البحرين
وزارة المالية
مكتب الوزير

OM/267/2005

5th September, 2005

The Honorable Robert Portman,
US Trade Representative,
600 17th Street, NW
Washington DC 20508,
United States of America.

Dear Ambassador Portman,

Please accept my congratulations on your recent appointment to serve as the US Trade Representative. I look forward to meeting with you soon to discuss our mutual interest in strengthening trade relations between the Kingdom of Bahrain and the United States.

It has come to my attention that questions have arisen regarding any secondary and tertiary boycotts related to Israel.

Following a decision of the Arab League in 1963 and prior to Bahrain's independence, the Bahrain government issued Law No. 5 of 1963 (Finance) which established the Boycott of Israel Office.

In 1994, the Kingdom of Bahrain eliminated all aspects of the secondary and tertiary boycotts which extended to businesses which had relations with Israeli companies and businesses. Attached please find a copy of the memorandum recently sent to all Bahrain Ministries reminding them that the secondary and tertiary boycotts are null and void.

In the hope of advancing peace and regional cooperation, the Kingdom of Bahrain recognizes the need to dismantle the primary Boycott of Israel and is beginning efforts to achieve that goal.

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MINISTER'S OFFICE

مكتب الوزير

As founding members of the World Trade Organization (WTO), the Kingdom of Bahrain is fully committed to complying with WTO requirements. Bahrain has no restrictions whatsoever on American companies trading with Bahrain or doing business in Bahrain, regardless of its ownership or relations with Israeli companies.

Finally, it is Bahrain's sincerest hope that our Free Trade Agreement with the United States will enhance efforts to achieve a real and lasting peace in the Middle East.

Yours sincerely,

Ahmed bin Mohammed Al Khalifa,
Minister of Finance.

KINGDOM OF BAHRAIN
Ministry of Finance
Minister's Office

مملكة البحرين
وزارة المالية
مكتب الوزير

OM/302/2005

10 October. 2005

The Honorable Robert Portman,
US Trade Representative,
600 17th Street, NW
Washington DC 20508,
United States of America.

Dear Ambassador Portman,

This letter is to inform you of changes the Kingdom of Bahrain is currently initiating for enactments through its legislative channels. The necessary draft bills are currently being prepared for delivery to our Parliament for its consideration. These changes reflect input from your office, the U.S. Congress and the ILO.

First, Bahrain will seek accession to the ILO Convention Numbers 98 and 138. The accession to these Conventions will be affected by a law, pursuant to Article (37) of Bahrain's Constitution, which would automatically make their provisions an integral part of the national law.

Second, Bahrain will include amendments to its new draft Labor Law before the draft bill is submitted to Parliament. These amendments are:

- Mandatory reinstatement to any worker, at his option, if he was dismissed due to trade union activities;
- Introduce statutory damages, payable by the Employer, on an incremental scale for delaying the payment of wages due to workers.

Third, Bahrain will amend its Trade Unions Law of 2002 abolishing the requirement of one single trade union for each enterprise.

These changes and amendments will be completed shortly.

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MINISTER'S OFFICE مكتب الوزير

Finally, Bahrain will commence consultations immediately with the stakeholders on the provisions within the trade unions law related to strikes. We will be guided in our consultations by the corresponding provisions in western countries and international standards bearing in mind the relative infancy of the trade union movement in Bahrain and the need for a gradual but substantial enhancement to the existing provisions.

Yours sincerely,

Ahmed bin Mohammed Al Khalifa,
Minister of Finance

KINGDOM OF BAHRAIN
Ministry of Finance
Minister's Office

مملكة البحرين
وزارة المالية
مكتب الوزير

OM/326/2005

10 November, 2005

The Honorable Robert Portman
U.S. Trade Representative
600 17th Street, NW
Washington, DC 20508

Dear Ambassador Portman

I appreciate the opportunity to work with you on the U.S-Bahrain Free Trade Agreement. In particular, I welcome your interest in our labor laws. Over the last few years, Bahrain has been engaged in a process of comprehensive and significant political and economic reforms. With respect to labor, Bahrain enacted in 2002 the Trade Unions Workers Law allowing for the first time in the Gulf the establishment of independent trade unions and recognizing strikes as a legitimate and essential means that workers may use to defend their interests. The Ministry of Labor has increased the number of inspectors; we have upgraded standards and training; and real efforts are underway to better educate workers to their rights in the workplace. The Government of Bahrain recognizes the importance of making progress on labor rights and we are in the process of amending many of our labor laws to be consistent with international standards. The General-Secretary of the International Confederation of Free Trade Unions (ICFTU) has publicly hailed Bahrain as showing the way for the region.

I am sharing this letter to provide further clarification of our labor laws and specifically the issues that have been raised during discussions with you and your staff.

Article 27 of Bahrain's Constitution allows workers the "freedom to form associations and unions." The 2002 Trade Unions Workers Law permitted the establishment and legal protection of independent labor unions. More significantly, both domestic and foreign workers (who represent over half of private sector workers) are allowed to form and join trade unions under our law. However, Bahrain's laws currently impose a limit of a single union per enterprise, which may raise questions regarding consistency with Article 2 of ILO Convention

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87. Because of the Government of Bahrain's commitment to the freedom of association, the Ministry of Labor previously tabled with the Cabinet of the Government of Bahrain a proposal to change Bahrain's laws to eliminate this requirement. Within the next week, the Cabinet will submit to the Parliament legislation repealing the requirement and will request that the Parliament take up the proposal on an urgent basis in order to expedite passage of this important reform.

Likewise, the Government of Bahrain strongly supports abolishing the requirement that all trade unions belong to one federation so that the law will provide that trade unions may form one or more federations and choose which federation to join. Bahrain, with assistance from the International Labor Organization (ILO) will consult with unions on abolishing this provision. In fact, Bahrain has today written to the ILO to request such assistance and will progress this issue on an urgent basis with the aim that by December 31, 2005 the Cabinet will submit to the Parliament legislation repealing the requirement and will request that the Parliament take up the proposal on an urgent basis.

In addition, to ensure compliance with ILO Convention 98 on the right to organize and bargain collectively, Bahrain has already initiated a process to provide in the law for mandatory reinstatement of any worker, at his or her option, if dismissed due to trade union activities. Within the next week, the Cabinet will submit to the Parliament an amendment to our Labor Law that includes this provision and will request that the Parliament take up the proposal on an urgent basis. The Government of Bahrain has today also reaffirmed publicly its strongly-held position that reinstatement is the preferred remedy in cases of unlawful dismissal for union activity

The Government of Bahrain also reiterates its commitment to ensuring that penalties for anti-union discrimination are adequate to deter such activity and that workers are paid wages due in a timely fashion, and that technical requirements for strikes do not exceed the standards of the International Labor Organization. The Ministry of Labor will submit to the Cabinet on an urgent basis the changes to law that are necessary to ensure that its laws comply fully with ILO standards on each of these issues, and request that the Parliament take up these proposals on an urgent basis as well. This will occur no later than December 31, 2005. Further, the Government of Bahrain will advise its labor conciliation panels to take note of

MINISTER'S OFFICE

مكتب الوزير

the new damages that have been proposed pending formal approval of legislative changes.

Finally, the Government of Bahrain also will publicly reaffirm its support for continuing the current practice in Bahrain, where workers are not dismissed following a strike, for a legitimate cause, on the grounds that the technical requirements for a strike have not been met, pending formal approval of legislative reforms establishing that only a simple majority of workers present and voting is necessary to approve a strike

Yours sincerely,

Ahmed bin Mohammed Al Khalifa
Minister of Finance

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

H.E. Sheikh Ahmed bin Mohammed Al Khalifa
Minister of Finance
Ministry of Finance
P.O. Box 333
Manama
Kingdom of Bahrain

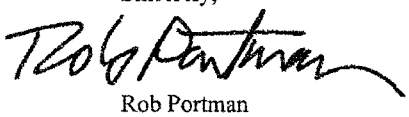
NOV 16 2005

Dear Sheikh Ahmed:

As you know, in connection with the entry into force of the United States-Bahrain Free Trade Agreement, the Kingdom of Bahrain has committed in writing to make needed changes to its labor laws and has clarified key aspects of its current labor measures. I have enclosed copies of Bahrain's commitment and clarification letters.

It is important that Bahrain carry through on its pledges to reform its labor laws and adhere to the clarifications it has issued regarding the operation of its existing labor measures, as detailed in the enclosed letters. Accordingly, this is to confirm our understanding that, in light of the collaboration that characterizes relations between our two countries, the commitments set forth in your letter of November 10, 2005 constitute "a matter arising under [the Chapter on Labor]" pursuant to Article 15.6 of the U.S.-Bahrain Free Trade Agreement. In light of its strong interest in this matter, I intend to update the U.S. Congress periodically on the progress that Bahrain has achieved in realizing the commitments to its labor law reform described in your letter.

Sincerely,



Rob Portman

VIII. VIEWS

The U.S.-Bahrain Free Trade Agreement (FTA) is an important trade agreement for the United States and Bahrain, and will bring useful benefits to the people of both countries. Bahrain has been a steadfast friend and ally to the United States over many years, including hosting a U.S. military presence since 1949. In recent years, Bahrain has undertaken major—and often difficult—economic, social and political reforms to improve its society and the life of its people.

Most recently, Bahrain took the important step of renouncing and terminating its participation in the Arab League Boycott of Israel. Renouncing this boycott, which should never have been imposed in the first place, is a difficult and important step toward expanding the circle of economic opportunity in the Middle East and building a stable and lasting peace between Israel and its neighbors.

Overall, this trade agreement contains numerous important benefits for the people of both countries, including: substantial market access to U.S. services providers, including in financial services; immediate duty-free access for consumer and industrial products; and duty-free access for 98 percent of tariff lines for U.S. agriculture exports.

AGREEMENT PROMOTES BASIC LABOR STANDARDS

As in all other U.S. Free Trade Agreements (FTAs) negotiated by the Bush Administration, the text of the U.S.-Bahrain Free Trade Agreement (FTA) requires only that the two countries enforce their own labor laws.

In 2002, Bahrain completed a major revision to its own labor law to comply with internationally-recognized standards and to ensure that working people in its country share fully in the benefits of globalization. However, six provisions of Bahrain's law, as currently written, raise concerns with regard to basic international labor standards. These six provisions have been identified by the U.S. Department of State and the International Labor Organization (ILO).

As a result, the U.S. Government and the Government of Bahrain have agreed to additional commitments on labor in order to advance the adoption and application of internationally-recognized labor standards in Bahrain.

These commitments are contained in an exchange of letters between Bahrain's Finance Minister, the Honorable Ahmed bin Mohammed Al Khalifa, and U.S. Trade Representative Rob Portman, as well as in additional letters and directives issued by the Government of Bahrain. All letters and directives are attached.

As detailed below, the agreement between the Governments of the United States and Bahrain addresses the concerns about these six deficiencies that Congressman Rangel and others have raised:

- First, Finance Minister Al Khalifa has written a letter to U.S. Trade Representative Portman, in which the Government of Bahrain commits to submit to Parliament within a week proposed amendments in four of the six areas where Bahrain's laws fall short of ILO standards and commits to seek expedited enactment. In the letter to USTR Portman and accompanying directives and letters, the Government of Bahrain also states its commitment to continue implementing these four provisions in a manner consistent with ILO standards pending formal changes to law.
- Second, in the letter to U.S. Trade Representative Portman, Finance Minister AI Khalifa commits Bahrain to submit to Parliament proposed amendments for the two remaining areas within a week, and commits to seek expedited enactment of those two remaining changes to law. It is notable that, of the two remaining provisions of law, one is an area in which Bahrain is prepared to change its law immediately; however, Bahrain must consult with its unions first to address their concerns.
- Third, the exchange of letters between U.S. Trade Representative Portman and Bahrain Finance Minister Al Khalifa expressly links Bahrain's commitments as to its *existing* law as well as its forthcoming *changes* to law to Article 15.6 of the U.S.-Bahrain FTA. In particular, the exchange of letters conveys the understanding of the two governments that Bahrain's commitments to continue to apply its laws in a WTO-compliant manner and to make all necessary changes to its laws to bring them formally into compliance with basic ILO standards constitute "matters arising under" the labor chapter of the FTA.

  Article 15.6 allows a Party to initiate formal consultations with the other Party with regard to a labor issue. If consultations fail to resolve the matter, either Party may request that a "Subcommittee on Labor Affairs," comprised of officials of the Parties' labor ministries and other appropriate agencies, be convened. The Subcommittee "shall endeavor to resolve the matter expeditiously," and may consult with governmental and non-governmental experts and have recourse to procedures such as conciliation or mediation. Linking Bahrain's commitments with regard to its labor laws to Article 15.6 *is* Bahrain's commitment in the text of the FTA to comply with basic ILO standards.
- Fourth, the U.S. Trade Representative has committed to report periodically to Congress on the progress—or lack thereof—of the Government of Bahrain in continuing to implement its laws in an ILO-compliant manner and make necessary changes to its laws. If there are problems with the continued application of laws, or the modifications to laws, USTR will invoke the consultative procedures under Article 15.6 to raise these matters with Bahrain, call attention to the matters, and seek their immediate successful resolution.

CONCLUSION

Trade agreements entered into by the United States must be judged on their own merits and in the context of the economic realities that exist between countries and in the trading partner's country. We must seek to advance the interests of U.S. businesses, workers and farmers, and to ensure that the benefits of globalization are broadly shared, including with full and fair participation in the workplace.

The U.S-Bahrain Free Trade Agreement constitutes, in the case of Bahrain, a step forward in the adoption and enforcement of internationally-recognized basic standards for working people. We hope that further steps can be taken in future FTAs so there may be the necessary restoration of a true and broadly bipartisan approach on trade.

LIST OF ATTACHED DOCUMENTS

1. *Letter from Bahrain Finance Minister to Portman*. This letter contains (1) Bahrain's specific descriptions of how it is currently applying its labor laws in an ILO-consistent manner (including four of the six provisions of law as to which the U.S. State Department and ILO have identified ILO-related concerns), and (2) Bahrain's further commitment to change within a short period of time all *six* labor laws as to which concerns have been raised.

2. *Bahraini Letter to International Labor Organization.* This letter fulfills one aspect of Bahrain's commitment to eliminate the requirement that unions belong to only one national confederation by requesting the ILO's help to work with Bahrain's unions on this point. (Unions in Bahrain like the existing requirement.)

3. *Ministry Directive on Reinstatement.* This directive fulfills Bahrain's commitment to make clear that under *current* Bahrain law, the Government of Bahrain strongly prefers—and has used, is using and will continue to use its good offices to achieve—reinstatement as the appropriate remedy for workers dismissed for union-related activities, even though formal Bahrain law does not provide this right. The directive states that Bahrain will seek to continue the application of its law in this manner until the law is formally amended.

4. *Letter to Conciliation Panels regarding Penalties.* This letter fulfills Bahrain's commitment to advise labor conciliation panels of the Government's view that adequate penalties—as reflected in a new draft labor law—should be observed as necessary to adequately enforce Bahrain's labor laws. The letter further states that the Government of Bahrain recommends using these penalties until the law is formally changed.

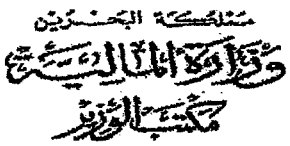
5. *Ministry Directive on Strike Requirements.* This directive fulfills Bahrain's commitment to urge continuation of current practice in Bahrain not to dismiss a worker even though the worker may have participated in a strike that does not technically meet the requirements of Bahrain law. This is meant specifically to address the formal requirement in Bahrain's law that a strike be authorized by a three-fourths vote of workers in a union. The directive further states that the government believes that the practice of not

dismissing a worker on the basis of technical strike requirements should continue until Bahrain's laws have been formally changed.

6. *Portman Letter to Bahrain Finance Minister.* Finally, USTR Portman has sent Bahrain's Finance Minister a letter that expressly links Bahrain's commitments as to its *existing* law as well as its forthcoming *changes* to law to Article 15.6 of the U.S.-Bahrain FTA. In particular, the exchange of letters conveys the understanding of the two governments that Bahrain's commitments to continue to apply its laws in a WTO-compliant manner and to make all necessary changes to its laws to bring them fully and formally into compliance with basic ILO standards constitute "matters arising under" the labor chapter of the FTA.

DOCUMENT #1

KINGDOM OF BAHRAIN
Ministry of Finance
Minister's Office



OM/326/2005

10 November, 2005

The Honorable Robert Portman
U.S. Trade Representative
600 17th Street, NW
Washington, DC 20508

Dear Ambassador Portman

I appreciate the opportunity to work with you on the U.S-Bahrain Free Trade Agreement. In particular, I welcome your interest in our labor laws. Over the last few years, Bahrain has been engaged in a process of comprehensive and significant political and economic reforms. With respect to labor, Bahrain enacted in 2002 the Trade Unions Workers Law allowing for the first time in the Gulf the establishment of independent trade unions and recognizing strikes as a legitimate and essential means that workers may use to defend their interests. The Ministry of Labor has increased the number of inspectors; we have upgraded standards and training; and real efforts are underway to better educate workers to their rights in the workplace. The Government of Bahrain recognizes the importance of making progress on labor rights and we are in the process of amending many of our labor laws to be consistent with international standards. The General-Secretary of the International Confederation of Free Trade Unions (ICFTU) has publicly hailed Bahrain as showing the way for the region.

I am sharing this letter to provide further clarification of our labor laws and specifically the issues that have been raised during discussions with you and your staff.

Article 27 of Bahrain's Constitution allows workers the "freedom to form associations and unions." The 2002 Trade Unions Workers Law permitted the establishment and legal protection of independent labor unions. More significantly, both domestic and foreign workers (who represent over half of private sector workers) are allowed to form and join trade unions under our law. However, Bahrain's laws currently impose a limit of a single union per enterprise, which may raise questions regarding consistency with Article 2 of ILO Convention

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87. Because of the Government of Bahrain's commitment to the freedom of association, the Ministry of Labor previously tabled with the Cabinet of the Government of Bahrain a proposal to change Bahrain's laws to eliminate this requirement. Within the next week, the Cabinet will submit to the Parliament legislation repealing the requirement and will request that the Parliament take up the proposal on an urgent basis in order to expedite passage of this important reform.

Likewise, the Government of Bahrain strongly supports abolishing the requirement that all trade unions belong to one federation so that the law will provide that trade unions may form one or more federations and choose which federation to join. Bahrain, with assistance from the International Labor Organization (ILO) will consult with unions on abolishing this provision. In fact, Bahrain has today written to the ILO to request such assistance and will progress this issue on an urgent basis with the aim that by December 31, 2005 the Cabinet will submit to the Parliament legislation repealing the requirement and will request that the Parliament take up the proposal on an urgent basis.

In addition, to ensure compliance with ILO Convention 98 on the right to organize and bargain collectively, Bahrain has already initiated a process to provide in the law for mandatory reinstatement of any worker, at his or her option, if dismissed due to trade union activities. Within the next week, the Cabinet will submit to the Parliament an amendment to our Labor Law that includes this provision and will request that the Parliament take up the proposal on an urgent basis. The Government of Bahrain has today also reaffirmed publicly its strongly-held position that reinstatement is the preferred remedy in cases of unlawful dismissal for union activity

The Government of Bahrain also reiterates its commitment to ensuring that penalties for anti-union discrimination are adequate to deter such activity and that workers are paid wages due in a timely fashion, and that technical requirements for strikes do not exceed the standards of the International Labor Organization. The Ministry of Labor will submit to the Cabinet on an urgent basis the changes to law that are necessary to ensure that its laws comply fully with ILO standards on each of these issues, and request that the Parliament take up these proposals on an urgent basis as well. This will occur no later than December 31, 2005. Further, the Government of Bahrain will advise its labor conciliation panels to take note of

MINISTER'S OFFICE مكتب الوزير

the new damages that have been proposed pending formal approval of legislative changes.

Finally, the Government of Bahrain also will publicly reaffirm its support for continuing the current practice in Bahrain, where workers are not dismissed following a strike, for a legitimate cause, on the grounds that the technical requirements for a strike have not been met, pending formal approval of legislative reforms establishing that only a simple majority of workers present and voting is necessary to approve a strike

Yours sincerely,

Ahmed bin Mohammed Al Khalifa
Minister of Finance

DOCUMENT #2

KINGDOM OF BAHRAIN
MINISTRY OF LABOUR
OFFICE OF THE MINISTER

مملكة البحرين
وزارة العمل
مكتب الوزير

14th November 2005 — 100/936/2005

Date: ..... التاريخ : — No.: ..... الرقم :

Mr Juan Somavia
Director General
International Labour Organization (ILO)
16, Rue Des Morillons
Geneva
SWITZERLAND

Dear Mr Somavia

Over the last few years, Bahrain has implemented comprehensive and significant political and economizes the importance of making progress on labor rights, and we are in the process of amending many of our labor laws to be consistent with international standards.

Because of the Government of Bahrain's commitment to the freedom of association, the Government of Bahrain strongly supports abolishing the requirement set forth in current Bahraini law that all trade unions belong to one federation> However, existing unions in Bahrain have expressed concern that eliminating this requirement would weaken labor unions. As such, the Government of Bahrain requests the immediate assistance of the International Labour Organization (ILO) in consulting with unions with regards to the importance of providing unions the rights to form and join one or more federations and that this change would promote, rather than undermine, the rights of working people in Bahrain and bring Bahrain's laws into compliance with applicable ILO standards.

We look forward to working with you to bring our laws into compliance with international standards.

Kind Regards

Dr. Majeed Bin Mohsen Al Alawi
Minister of Labour

jmcma

وزارة العمل ، ص.ب: ٣٢٣٣٣ ، البحرين ، هاتف: ١٧٦٤١٢١٢ ، فاكس: ١٧٦٨٦٩٩٩
Ministry of Labour, P.O.Box: 32333 , Bahrain, Tel.: 17641212, Fax: 17686999
E-mail: moisabah@batelco.com.bh ، البريد الالكتروني - www.bah-moisa.com الانترنت

DOCUMENT #3

KINGDOM OF BAHRAIN
MINISTRY OF LABOUR
OFFICE OF THE MINISTER

مملكة البحرين
وزارة العمل
مكتب الوزير

The General Manager
٢٠٠٤
Bahrain News Agency
Kingdom of Bahrain

Date: 14th November

Press Announcement
For Immediate Release

I would kindly request the following announcement to be circulated to the press:

"It has been the policy of the Government of Bahrain, represented by the Bahraini Ministry of Labor, to encourage employers, through various means, to reinstate workers who are dismissed due to their trade union activity. The Government of Bahrain has consistently informed employers, that reinstatement is clearly the preferred outcome in all instances of this kind. The Ministry has used its good offices and powers to the fullest extent possible to advance this policy goal.

To further clarify the policy of the Government of Bahrain, the Ministry of Labor reaffirms its longstanding policy that reinstatement is the clearly preferred remedy in cases of unlawful dismissal for union activity. This policy will remain in effect until formal changes to law are enacted. The Ministry of Labor will continue its collaborative effort with employers to ensure the broad and consistent application of this policy. Of course, this effort will include entities that employ foreign workers."

I am grateful for your continued cooperation with the Ministry of Labor.

Yours sincerely,

Dr. Majeed Al Alawi
Minister of Labor

DOCUMENT #4

Letter to the Director of the Labor Complaints and Conflicts Department from the Undersecretary of Labor

November 15, 2005

As you know, Bahrain has engaged in a process of comprehensive and significant political and economic reforms over the last few years. As part of this reform effort, the Government of Bahrain recognizes the importance of making progress on labor rights, and we are in the process of making some amendments to our labor laws to be consistent with international standards.

Because of the Government of Bahrain's commitment to the freedom of association and the lack of specific damages in Bahrain's existing laws regarding anti-union discrimination, the Government of Bahrain has proposed new legislation setting forth specific penalties as civil damages to be imposed for anti-union discrimination and damages for delay in payment of wages. The legislation provides that discrimination against workers for anti-union discrimination is punishable by having the employer pay the worker damages that are approximately two months to six months of the worker's total wage. The legislation provides that delay in payment of wages to a worker makes the employer liable to pay the worker damages on an incremental scale that varies from 6-12 percent yearly from the delayed wages.

The damages set forth above are necessary to adequately enforce Bahrain's existing laws prohibiting discrimination against workers engaged in union activity and to ensure prompt payment of wages owed to workers. I hope that these new penalties will be noted and observed by conciliation panels pending formal approval of the new law.

DOCUMENT #5

KINGDOM OF BAHRAIN
MINISTRY OF LABOUR
OFFICE OF THE MINISTER

مملكة البحرين
وزارة العمل
مكتب الوزير

The General Manager
٢٠٠٤
Bahrain News Agency
Kingdom of Bahrain

Date: ١٤th November

Press Announcement
For Immediate Release

I would kindly request the following announcement to be circulated to the press:

"It is widely known that Bahrain has been engaged in a process of comprehensive and significant political and economic reforms over the last few years. With respect to labor laws, Bahrain enacted in ٢٠٠٢ the Trade Unions Workers Law allowing for the first time in the Gulf the establishment of independent trade unions and recognizing strikes as a legitimate and essential means that workers may use to advance and defend their rights and interests.

In the three years since the enactment of the Trade Union Workers Law, no worker has been dismissed following a strike concerning any issue directly or indirectly related to employment, even in cases where the technical requirements for a strike have not been met. In light of the Government of Bahrain's commitment to the freedom of association and right to organize, the Government of Bahrain believes this practice should continue pending implementation of formal changes to law to be consistent with International Labor Organization standards. This practice is consistent with international standards and we believe will further strengthen Bahrain's economy."

I am grateful for your continued cooperation with the Ministry of Labor.

Yours sincerely,

Dr. Majeed Al Alawi
Minister of Labor

DOCUMENT #6

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

H.E. Sheikh Ahmed bin Mohammed Al Khalifa
Minister of Finance
Ministry of Finance
P.O. Box 333
Manama
Kingdom of Bahrain

NOV 16 2005

Dear Sheikh Ahmed:

As you know, in connection with the entry into force of the United States-Bahrain Free Trade Agreement, the Kingdom of Bahrain has committed in writing to make needed changes to its labor laws and has clarified key aspects of its current labor measures. I have enclosed copies of Bahrain's commitment and clarification letters.

It is important that Bahrain carry through on its pledges to reform its labor laws and adhere to the clarifications it has issued regarding the operation of its existing labor measures, as detailed in the enclosed letters. Accordingly, this is to confirm our understanding that, in light of the collaboration that characterizes relations between our two countries, the commitments set forth in your letter of November 10, 2005 constitute "a matter arising under [the Chapter on Labor]" pursuant to Article 15.6 of the U.S.-Bahrain Free Trade Agreement. In light of its strong interest in this matter, I intend to update the U.S. Congress periodically on the progress that Bahrain has achieved in realizing the commitments to its labor law reform described in your letter.

Sincerely,

Rob Portman

Rob Portman

CHARLES B. RANGEL.
XAVIER BECERRA.
JOHN B. LARSON.
STEPHANIE TUBBS JONES.
SANDER LEVIN.
BEN CARDIN.
JOHN LEWIS.

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