

**The Revenue Impact of the 2% Excise Tax:  
The Congressional Budget Office Estimates Relating to the James Zadroga  
9/11 Health and Compensation Act**

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## **Abstract**

This paper examines the revenue effect of the Excise Tax imposed on foreign contractors by the James Zadroga 9/11 Health and Compensation Act of 2010. Sponsors of the Act suggested placing a 2 percent tax on payments made to certain foreign contractors would not only pay for the fund to support World Trade Center victims, but would net \$450 million in extra revenue. However, many doubt the revenue raising capabilities of the tax. Hypothesizing that the predictions were based on a Buy American Act Report submitted to Congress by the United States Department of Defense, this paper identifies the assumptions of the predictive model used predict expected revenues of the 2 percent tax. This paper then examines how these predictions are changed by altering the assumptions of the model to better reflect the realistic implementation of the tax.

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## **I. Introduction of the 9/11 Health and Compensation Act**

The passage of the James Zadroga 9/11 Health and Compensation Act of 2010 (the “Act”),<sup>1</sup> which passed with little substantive debate,<sup>2</sup> has sparked a surprising amount of controversy. The Act establishes the World Trade Center Health Program to provide medical benefits to 9/11 emergency responders and New York residents medically impacted by the 9/11 attacks.<sup>3</sup> The intent and purpose of the Act has been consistently supported and lauded.<sup>4</sup> However, the funding of the program has been problematic.<sup>5</sup> The project requires \$4.3 billion over 2011-2015.<sup>6</sup> As late as July, 2010 Congress discussed funding the Act by closing certain corporate tax withholding loopholes.<sup>7</sup>

However, on December 22, 2010 Senator Gillibrand proposed Amendment 4923 that funded the new project via two tax increases on foreigners.<sup>8</sup> The amendment proposed funding the Act by (1) increased Visa fees<sup>9</sup> and (2) a two percent tax on foreign contractors.<sup>10</sup> After the introduction of the excise tax, the U.S. procurement industry and scholars became very concerned with the international trade implications.<sup>11</sup> In fact, a significant portion of the U.S.

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<sup>1</sup> James Zadroga 9/11 Health and Compensation Act of 2010, Pub. L. No. 111-347, 124 Stat. 3623 (2011) [hereinafter 9/11 Act].

<sup>2</sup> See Christopher R. Yukins, *Opening International Procurement Markets: Unfinished Business* 2011 Gov’t Cont. Year in Rev. Briefs 4 (Feb. 2011).

<sup>3</sup> See § 3301(a).

<sup>4</sup> See, e.g., 156 Cong. Rec. H6396 (daily ed. July 29, 2011) (statement of Rep. Anthony Weiner) (“This is a noncontroversial bill.”).

<sup>5</sup> See *id.* H6396-97 (statement of Rep. Jerrold Nadler).

<sup>6</sup> See §§ 3351(a)(2)(A)(ii)(I), 205(d)(1); see also Samuel B. Knowles, *The Two Percent Tax: Bad Policy for a Good Cause?* 5 (Apr. 29, 2011) (unpublished paper) (on file with author).

<sup>7</sup> H.R. 847, 111th Cong. § 302 (2d Session 2010).

<sup>8</sup> See 156 Cong. Rec. S10980 (daily ed. Dec. 22, 2010).

<sup>9</sup> § 302.

<sup>10</sup> § 301.

<sup>11</sup> To read more about the potential negative trade implications of the excise tax see Knowles, *supra* note 6 (unpublished paper).

contractor industry is opposed the tax for fear of potential retaliatory actions by foreign nations.<sup>12</sup> Despite these concern, the Act, amended to incorporate Amendment 4923, passed remarkably quickly. It was introduced and passed in both the United States Senate<sup>13</sup> and the United States House of Representatives<sup>14</sup> on December 22, 2010. It was signed into law by January 2, 2011.<sup>15</sup>

In addition to the international repercussion controversy, many also question the revenue raising effect of the tax.<sup>16</sup> In conjunction with the introduction of the Amendment, the Congressional Budget Office released a report (the “CBO Report”) created by the Joint Committee on Taxation (“Joint Committee”) detailing the revenue and spending effects of the new legislation.<sup>17</sup> The report indicated that the Statutory Pay-As-You-Go Impact of the Act would result in a net decrease in the deficit.<sup>18</sup>

Due to the nature of our international agreements, which requires that we give national treatment to many foreign contractors, and FAR provisions limiting the United States’ ability to contract with foreign contractors who do not receive national treatment, there is a real question about who the tax applies to and what data the Joint Committee relied upon to create its estimates.

The skeptics have good reason to doubt the revenue estimates of the CBO Report. The CBO Report predictions reveal that the Joint Committee grossly misunderstood U.S.

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<sup>12</sup> 156 Cong. Rec. H8960 (daily ed. Dec. 22, 2011) (reprinting a letter opposing the Excise Tax sent to key Congressional members in the record).

<sup>13</sup> *Id.* at S11039, S11051.

<sup>14</sup> *Id.* at H8965.

<sup>15</sup> 9/11 Act, Pub. L. No. 111-347, 124 Stat. 3623 (2011).

<sup>16</sup> “The potential revenue for this is somewhere between small and miniscule.” Sophia Yan & Richard Rubin, *Business Groups Oppose New Task in First Responders*, BLOOMBERG (Dec. 21, 2010, 6:45 PM), <http://www.bloomberg.com/news/2010-12-21/business-groups-oppose-new-tax-in-first-responders-health-bill.html> (quoting Prof. Steven Schooner).

<sup>17</sup> CONG. BUDGET OFFICE & JOINT COMM. ON TAXATION, BAI10680, CBO ESTIMATE OF THE DRAFT AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 847, THE JAMES ZADROGA 9/11 HEALTH AND COMPENSATION ACT OF 2010 (2010).

<sup>18</sup> *Id.*

international procurement obligations and how the tax would reasonably be implemented when it predicted expected revenue. The problems of CBO Report predictions are unrelated to escalation models or any predictive algorithms that may have been used. Rather the fatal flaw rests in the assumptions the Joint Committee made about the raw data available to it. The Joint Committee primarily relied on a Department of Defense (“DoD”) Report to Congress regarding DoD’s Fiscal Year (“FY”) 2009 Purchasing of Supplies Manufactured Outside of the United States (the “DoD Report”).<sup>19</sup> However, in using this data assumed that (1) DoD procurement was indicative of all Federal procurement and (2) the tax would apply to a greater proportion of Federal contracts than is realistically possible under the tax provision. Part II of this paper explains the statutory provisions implementing the 2 percent tax and whom they affect. Part III discusses the problems associated with the assumptions made by the Joint Committee. Finally, Part IV examines the effect of these assumptions by modeling how the predicted revenue of the tax is affected by adjusting the assumptions in order to be more consistent with the tax provisions and U.S. obligations under international procurement agreements. The analysis in Part IV indicates that the above assumptions unrealistically inflated the revenue predictions.

## **II. The Tax: Section 301 of the 9/11 Health and Compensation Act**

The Act is funded in large part by a 2 percent tax “on goods or services that are produced or provided in certain foreign countries.”<sup>20</sup> More precisely, Section 301 of the Act imposes a tax “on any *foreign person* that receives a specified Federal procurement payment . . . equal to 2 percent of the amount of [a] *specified Federal procurement payment*.”<sup>21</sup> Under this scheme,

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<sup>19</sup> The DoD submitted the report in order to comply with the reporting requirement of the Buy American Act. FAR 25.004; *see also* Letter from Ashton B. Carter, Under Sec’y of Def. for Acquisition, Tech. & Logistics, to Edolphus Towns, Chairman, Comm. on Oversight & Gov’t Reform (Sept. 14, 2011) (on file with author).

<sup>20</sup> 156 Cong. Rec. H8960 (daily ed. Dec. 22, 2010) (statement of Rep. Kevin Brady).

<sup>21</sup> 9/11 Act, Pub. L. No. 111-347§ 301(a), 124 Stat. 3623, 3666 (2011).

two conditions must be met for the tax to take effect. First the payment must be made to a foreign person. Second the contract must concern a qualifying good or services. The language of the tax departs significantly from the language of FAR provisions and international agreements concerning procurement. At times it is both more and less inclusive than the Buy American Act (“BAA”)<sup>22</sup> and the Trade Agreements Act of 1979 (“TAA”),<sup>23</sup> the primary domestic policies covering foreign procurement. Therefore, it is important to clarify and discuss the how the tax is likely to be applied and who will be affected before critiquing the CBO Report estimates.

### **A. Qualifying Individuals**

According to Section 301(c), the tax is imposed on any “foreign person,” defined as “any person other than a United States person.”<sup>24</sup> This provision will likely apply to the corporate and partnership context on the basis of legal status of the entity. This is consistent with both the FAR and the U.S. tax code, which define a foreign contractor, corporation or partnership as an entity organized or existing under the laws of a country other than the United States.<sup>25</sup>

The language of Section 301(c) appears to apply to every foreign contractor. However, many predict that, in implementation, the field of eligible contractors will be narrowed significantly. The final provision of the taxation section provides that “[t]his section and the amendment made by this section shall be applied in a manner consistent with United States obligations under international agreements.”<sup>26</sup> One of the cornerstones of U.S. trade agreements

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<sup>22</sup> 10 U.S.C. §§ 10a-10d (2006 & Supp. I 2007).

<sup>23</sup> 19 U.S.C. §§ 2501-2581 (2006).

<sup>24</sup> 9/11 Act, Pub. L. No. 111-347 § 301(c), 124 Stat. 3623, 3666 (2011).

<sup>25</sup> FAR 25.003, *see also* I.R.C. § 7701(a)(5) (2006).

<sup>26</sup> *See* Colloquium, *The Foreign Contractor Tax: A New Development in Trade and Procurement* (Mar. 30, 2011) (on file with author).

concerning procurement is national treatment status.<sup>27</sup> Under U.S. procurement agreements, Free Trade Agreements (“FTA”s) and the Government Procurement Agreement (“GPA”), the Federal Government is required to treat the goods, service and supplies of contractors entitled to national treatment status<sup>28</sup> “no less favourably” than it treats domestic goods.<sup>29</sup> Imposition of a tax against contractors from FTA or GPA countries,<sup>30</sup> while not taxing domestic contractors, could be viewed as disparate treatment. Consequently, it is highly probable that contractors organized or existing under the laws of a GPA or FTA country (“GPA or FTA Contractors”) will be exempted, via implementation regulations, from eligibility for the 2% tax consistent with national treatment policies. Such an exemption would be consistent with their treatment under the BAA which treats these contractors as domestic contractors for contracts over the BAA threshold.<sup>31</sup>

## **B. Qualifying Procurement**

The tax does not apply universally to all Federal contracts involving foreign persons. Where the first condition is met, the tax is assessed only against specified Federal procurement payments.<sup>32</sup> The Act provides the definition of qualifying payments in relation to the goods and services provided by the underlying contract.

(b) Specified Federal Procurement Payment. – For purposes of this section, the term „specified Federal procurement payment“ means any

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<sup>27</sup> Jean Hellman Grier, *The Role of International Trade Agreements in the Convergence of Procurement Systems* 2011 Gov’t Cont. Year in Rev. Briefs 1 (Feb. 2011).

<sup>28</sup> Contractors organized under or existing in FTA or GPA signatory countries are accorded national treatment.

<sup>29</sup> Greir, *supra* note 27.

<sup>30</sup> To view a chart designating all countries as either FTA signatories, GPA signatories or neither, see *infra* Table 1.

<sup>31</sup> It is unclear if the tax exemption would be a blanket exemption or would only apply to contracts above the threshold amounts of U.S. procurement agreements. However, any revenue generated by this tax will primarily derive from contracts that exceed the GPA \$194,000 threshold. Therefore, for the purposes of this paper, it is assumed that foreign contractors organized or existing in FTA or GPA countries are wholly exempt from the tax, unless otherwise stated.

<sup>32</sup> 9/11 Act, Pub. L. No. 111-347 §301(a), 124 Stat. 3623, 3666 (2011).

payment made pursuant to a contract with the Government of the United States for–

(1) the provision of goods, if such goods are manufactured or produced in any country which is not a party to an international procurement agreement with the United States, or

(2) the provision of services, if such services are provided in any country which is not a party to an international procurement agreement with the United States.<sup>33</sup>

The conditions that trigger the tax differ dependent upon whether a contract is for goods or is for services.

#### 1. Taxing Goods According to Place of Manufacture

For contracts involving goods, the tax is imposed where the goods provided to the Government are manufactured or produced in any country that is not a party to an international procurement agreement.<sup>34</sup> This provision is focused on where the underlying goods are manufactured rather than who is manufacturing. For example, imagine the Federal Government issues a \$100,000 contract to purchase widgets, and a German contractor is awarded the contract. For the purposes of this example, assume that FTA and GPA Contractors do not receive a blanket exemption from taxation.<sup>35</sup> Consider the following two scenarios:

Scenario 1: Manufacturing of the widgets occurs at a factory in Munich, Germany.

Scenario 2: The contractor manufactures the widgets out of its Guangzhou, China factory.

In Scenario 1, the German contractor will not be subject to the tax because the factory used for manufacturing is in Germany, a country that is party to a procurement agreement with

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<sup>33</sup> § 301(b).

<sup>34</sup> *Id.*

<sup>35</sup> Germany is a GPA signatory country. *See Parties and Observers to the GPA*, WORLD TRADE ORGANIZATION, [http://www.wto.org/english/tratop\\_e/gproc\\_e/memobs\\_e.htm#parties](http://www.wto.org/english/tratop_e/gproc_e/memobs_e.htm#parties) (last visited Apr. 28, 2011). This contract is below the GPA threshold. Therefore, if the tax is not implemented to provide a blanket exception, the scenarios illustrate how the tax could be implemented against even GPA country contractors.

the United States. However, in Scenario 2, the German contractor would be required to pay \$2,000 in taxes to the U.S. Government because the \$100,000 contract price qualifies as a “Specified Federal Procurement Payment.” In practice, the tax is structured as a withholding tax, so the Government would simply withhold \$2,000 from the contract payment and the German contractor in Scenario 2 would receive only \$98,000 for the contract. The same result would occur if the national identity of the contractor was Chinese. In Scenario 1 the Chinese contractor would not be taxed because it has located its manufacturing facility in a country that has a procurement agreement with the United States. However, by choosing to locate manufacturing in its own country (Scenario 2), Chinese contractors subject themselves U.S. tax liability.

## 2. Taxing Services According to Place of Performance

For contracts involving services, the imposition of the tax is dependent on the country where services are performed. For illustration purposes, we will continue the assumption that FTA and GPA Contractors do not receive a blanket exemption from taxation. Consider the following four scenarios for a contract for services in the amount of \$100,000:

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|--------------------|--|
| <u>Scenario 1:</u> | A German contractor is providing services to the United States in Germany    |
| <u>Scenario 2:</u> | A German contractor is providing services in Iraq.                           |
| <u>Scenario 3:</u> | An Albanian contractor is providing services to the United States in Germany |
| <u>Scenario 4:</u> | An Albanian contractor is providing services in Iraq.                        |

In Scenarios 1 & 3 the German and Albanian contractors will not be subject to the 2% tax because the service is being provided in Germany. The Albanian contractor is not taxed despite the fact that it is not an FTA or GPA Contractor.<sup>36</sup> However, in Scenarios 2 & 4 both are subject

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<sup>36</sup> Albania is not a signatory to any procurement agreement with the United States. *See infra* Table 1.

to the 2% tax. The German contractor will be taxed any time it provides services in a country that has not signed a procurement agreement with the United States.<sup>37</sup>

### **III. The Department of Defense Report on the Purchase of Supplies Manufactured Outside the United States and the Problems of the Assumptions Made by the Joint Committee to Predict the Revenue Effect of the 2% Excise Tax**

The Joint Committee was responsible for generating the revenue estimate used to support imposition of the excise tax.<sup>38</sup> Such a prediction is necessarily based upon taking primary data about the extent of government contracting during a discrete period of time and then adjusting that information in order to predict future outcomes. Because it is impossible to gather perfect information, any modeling necessarily relies on assumptions about available data and how it relates to unknown or unavailable data. However flawed assumptions, assumptions that ignore reality, can seriously distort predictions about future outcomes.<sup>39</sup> Examining some of the assumptions upon which the CBO Report's estimate is built reveals that there is good reason to doubt the validity of the revenue estimates reported in the CBO Report.

#### **A. The DoD Buy American Act Report as the Primary Procurement Data**

There is strong evidence that the primary, if not only, procurement information relied upon to calculate the figures of the CBO Report was the "Report to Congress: Department of Defense Fiscal Year 2009 Purchases of Supplies Manufactured Outside the United States" (the

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<sup>37</sup> Note that the implication of this incidence is different from the implications of the goods provision. In the instance of goods, a contractor has a choice about where it chooses to manufacture its products and the ability to take into account, in its business model, the tax consequences manufacturing in a non-GPA country if it foresees offering its goods for sale to the Federal Government. However, in the services context, the contractor has much less control. The United States Government establishes the place of performance and triggers the tax consequences. The only choice available to the contractor in the services context is, given the place of performance and the excise tax, it should bid on the contract or not.

<sup>38</sup> See E-mail from Cathy Garman, Prof'l Staff Member, House Armed Servs. Comm., to Nicole Best (Mar. 10, 2011, 05:18 PM) (on file with author).

<sup>39</sup> See Neil H. Buchanan, *How Realistic is the Supply/Demand Equilibrium Story? A Simple Demonstration of False Trading and Its Implications for Market Equilibrium*, 37 J. of Socio-Economics 400, 407-11 (2008).

“DoD Report”).<sup>40</sup> The few statements made by Congressmen during the floor debates suggested that a large portion of the tax would be funded through military procurements.<sup>41</sup> There are also some internal indications from the Joint Committee that it relied on the DoD Report as the basis of its analysis.<sup>42</sup> Furthermore, the actual predictions of the CBO Report suggest such a result. The CBO Report predicts that for FY 2011, the 2% tax of Section 301 would yield \$305 Million.<sup>43</sup> Using this result, it is possible to run the necessary calculation in reverse to formulate an idea of what kind of information created such a result. In order to conclude that the new tax could generate such revenue, the Joint Committee must have begun with an assumption that 6.8% of all Federal contracts ( $r_x^0$ ) for six months<sup>44</sup> of FY 2011 would be subject to the tax.<sup>45</sup> The

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<sup>40</sup> UNDER SECRETARY OF DEFENSE, DEPARTMENT OF DEFENSE, FISCAL YEAR 2009 PURCHASES OF SUPPLIES MANUFACTURED OUTSIDE THE U.S. (June 2010).

<sup>41</sup> See, e.g., 156 Cong. Rec. H8960 (daily ed. Dec. 22, 2010) (statement of Rep. Kevin Brady).

<sup>42</sup> See E-mail from Tom Sutton, to Nicole Best (Apr. 5, 2011, 12:51 PM) (on file with author).

<sup>43</sup> See *infra* app. 1.

<sup>44</sup> The tax will not be implemented prior to July 2011, making it effective for only half of the year. See §§ 3301(a), 301(d)(3).

<sup>45</sup> To generate \$305 M in revenue off of a 2 % tax requires that at least \$15.25 B worth of government contracts be subject to the tax. This result is calculated as a function of the estimated revenue ( $R^0$ ), the rate of taxation ( $r_t$ ).

$$\begin{aligned} R^0 &= r_t(x) \\ 305 \text{ M} &= .02(X) \\ X &= \$15,250 \text{ Million} \end{aligned}$$

The question then becomes what percent ( $r_x^0$ ) of the total Federal procurement for FY 2011 ( $FP_{2011}$ ) must be taxed to generate \$305 M in revenue. The model must also accommodate for the fact that in 2011 the tax is not applied at the beginning of the year, but rather only comes into effect for the part of the year after July. See § 301(d)(3). The model is, therefore, as follows:

$$15,250 \text{ M} = r_x^0(FP_{2011}/2)$$

For this model, the assumption is that United States total Federal procurement is approximately 3% of annual GDP. See Christopher R. Yukins, *Are IDIQs Inefficient? Sharing Lessons with the European Framework Contracting*, 37 Pub. Cont. L. J. 545, 555 (2008).

$$FP_{2011} = .03 (GDP_{FY2011})$$

$GDP_{FY2011}$  is predicted based upon the Organisation for Economic Cooperation and Development predicted rates of GDP growth as a function of the previous year. See United States - Economic Outlook 88 Country Summaries, *available at*

DoD Report states that “\$25 billion or 6.8 percent [of total DoD procurement actions for FY 2009] was expended on purchases to foreign entities.”<sup>46</sup> The evidence creates a strong presumption that the Joint Committee relied on the 6.8% figure indicated in the DoD Report as a basis for its analysis.<sup>47</sup> Given the strong correlation between the DoD information and the CBO prediction, the rest of the analysis will assume that the DoD information was the only raw procurement data used to generate the CBO estimate.

### B. The Problems of the Joint Committee’s Use of the DoD Report as the Base Data for Its Revenue Calculation

There are two significant problems with how the Joint Committee used DoD Report information. To arrive at the FY 2011 revenue prediction, the Joint Committee’s model must

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[http://www.oecd.org/document/48/0,3746,en\\_2649\\_33733\\_45268528\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/48/0,3746,en_2649_33733_45268528_1_1_1_1,00.html) (last visited Apr. 28, 2011).

<u>Year</u>	<u>GDP %</u>	
2010	2.7 %	GDP <sub>2009</sub> = \$14,119 B*
2011	2.2 %	GDP <sub>2010</sub> = 1.027(GDP <sub>2009</sub> ) = 1.027(14,199) = \$14,500.21 B
2012	3.1 %	GDP <sub>2011</sub> = 1.022(GDP <sub>2010</sub> ) = 1.022(14,500.21) = \$14,819.21 B
		GDP <sub>2012</sub> = 1.031(GDP <sub>2011</sub> ) = 1.031(14,819.21) = \$15,278.61 B

\* As calculated by the International Monetary Fund. See World Economic Outlook Database October 2010, International Monetary Fund, available at <http://www.imf.org/external/pubs/ft/weo/2010/02/weodata/weoselco.aspx?g=2001&sg=All+countries> (Choose run report, select GDP in U.S. Dollars, select generate report).

Thus,

$$FP_{2011} = .03 (GDP_{FY2011}) = .03(14,819.21)$$

$$FP_{2011} = 444.58 \text{ B}$$

Inserting these values into the primary model results in the following:

$$15,250 \text{ M} = r_x^0 (FP_{2011}/2) = r_x^0 (444.58 \text{ B}/ 2) = r_x^0 (222.29 \text{ B})$$

$$r_x^0 = \frac{15,250,000,000}{222,290,000,000}$$

$$r_x^0 = .068 \approx 6.8\%$$

<sup>46</sup> UNDER SEC’y OF DEF., *supra* note 40.

<sup>47</sup> This conclusion is further supported by an inability to find any other set of raw data that supports the revenue results. The Buy American Act Report generated by the Federal Procurement Data System indicates a significantly higher 9.39% rate of manufacturing outside of the United States for FY 2009. See Buy American Act Place of Manufacture Report, FPDS *available at* <https://www.fpds.gov/Reports/manage/jsp/myReportsController.jsp?myReports.x=myReports&cat=1002>. Furthermore, individual agency reports to Congress on foreign contracting place percentage of foreign contracting at divergent extremes. The Department of the Interior

have relied upon two assumptions. First, it assumes that all procurement from foreign entities will be subject to the 2% tax. Second, the Joint Committee must have assumed that the DoD percentage of purchasing from foreign entities was indicative of the percentage of purchasing from foreign entities by the entire Federal Government. Both of these assumptions ignore the nature of our commitments under international procurement agreements.

The first assumption that all procurement with foreign entities will be taxed ignores the tax implementation of provisions of the Act. The assumption ignores that foreign status is one of two requirements which triggers the tax.<sup>48</sup> There is also a requirement of a Specified Federal Procurement Payment.<sup>49</sup> If the country of manufacture is a party to an international procurement agreement with the United States, any payment on a contract for those goods will not qualify as a Specified Federal Procurement Payment. Therefore, the tax will not apply in every foreign contracting situation. The 6.8 % must be reduced to exclude all products manufactured in GPA or FTA signatory countries.

The second assumption that DoD procurement is indicative of general Federal procurement is problematic. It is important to note that the DoD has an unusually high incidence of foreign procurement. Many agencies that complied with the BAA reporting requirement<sup>50</sup> and submitted reports similar to the DoD Report, reported zero incidences of contracting with foreign contractors.<sup>51</sup> Significantly, the DoD has an unusual ability to contract with foreign entities.

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<sup>48</sup> See *supra* pp. 4-5.

<sup>49</sup> 9/11 Act, Pub. L. No. 111-347 § 301(b), 124 Stat. 3623, 3666 (2011).

<sup>50</sup> See FAR 25.004.

<sup>51</sup> See, e.g., FED. HOUS. FIN. AGENCY, BUY AM. REPORT TO FOR FISCAL YEAR 2009, *available at* <http://www.fhfa.gov/webfiles/19904/Buy%20American%20Report%20FY%202009.pdf> (last visited Apr. 26, 2011); Letter from Donald S. Clark, Sec'y, Fed. Trade Comm'n, to Joseph I. Lieberman, Chairman, Comm. on Homeland Sec. & Governmental Affairs (Feb. 1, 2011) *available at* <http://www.ftc.gov/ftc/oed/fmo/fy2009buyamericanactrpt.pdf> (last visited Apr. 26, 2011).

Under the TAA, in acquisitions covered by the GPA,<sup>52</sup> the United States is required to “acquire only U.S. made or designated country end products or U.S. or designated country services.”<sup>53</sup> The effect of this provision, described as the “walled garden,” permits only FTA Contractors, GPA Contractors and contractors from least developed countries to sell to the Federal Government.<sup>54</sup> However, this restriction does not apply to DoD acquisitions because the DoD is an excepted agency under the GPA.<sup>55</sup> This has significant implications for the CBO Report. As was discussed above, there is a strong presumption among scholars that all FTA and GPA Contractors will be given a blanket exemption from the tax.<sup>56</sup> Even absent a blanket exemption, in order to comply with the national treatment requirement, these contractors will not be subject to the tax for payments on contracts exceeding a procurement agreement threshold.<sup>57</sup> This removes a large pool of contracts upon which the tax can be assessed. Because DoD has the freedom to contract with non-GPA and non-FTA contractors, relying on DoD data gives a false impression of the available pool of contracts against which the tax can be assessed.

These assumptions, which create the base of the CBO estimate, have the effect of inflating the number of U.S. contracts that could arguably be subject to the tax. Adjusting these assumptions to align more closely with reality seriously undercuts the predicted tax revenue.

#### **IV. Adjusting the Model Assumptions to Better Reflect Procurement Realities**

This Part does not attempt accurately predict the revenue generated by the excise tax. Such an analysis is, admittedly, highly complex and requires an aggregation of information that

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<sup>52</sup> The GPA covers all goods and supplies contracts valued at more than \$194,000. FAR 25.402(b).

<sup>53</sup> FAR 25.502(b)(1).

<sup>54</sup> See Christopher R. Yukins, *Opening International Procurement Markets: Unfinished Business* 2011 Gov't Cont. Year in Rev. Briefs 4 (Feb. 2011). Designated countries are GPA signatories, FTA signatories, countries with Least Developed Country Status, and Caribbean Basin countries. FAR 25.403-.404. See *infra* Table 1 to see individual countries status under the FAR.

<sup>55</sup> FAR 25.401.

<sup>56</sup> See *supra* pp. 4-5.

<sup>57</sup> *Id.*

is not readily nor publicly available.<sup>58</sup> Rather having identified two problematic baseline assumptions, this Part attempts to show how adjusting these assumptions to better reflect an internationally compliant implementation of the tax affects the revenue generated. The comparison consider only to 2011 figures because the 2011 revenue figure most directly aligns with the 6.8% foreign procurement rate, and therefore, neutralizes the effect of any escalation model problems. However, it should be noted that any reduction in predicted revenue for FY 2011 most likely correlates to a similar proportional reduction for the following years.

**A. Adjustment 1: Adjusting for the Exclusion of Manufacturing in GPA and FTA Signatory Countries**

This section examines the effect of adjusting the data so that products manufactured in GPA and FTA signatory countries are excluded from the revenue calculation. The Joint Committee treated foreign contracting as synonymous with contracts affected by the tax.<sup>59</sup> For the purpose of demonstrating the effect of this exclusion, this model will assume that manufacturing occurs in the country where the foreign entity operates.<sup>60</sup> Admittedly, this assumption ignores the realities of the global market. For example, this assumption has the effect of assuming that the Chinese contractor who manufactures widgets in Germany is actually manufacturing in China and taxed accordingly. At the same time it correctly recognizes that under national treatment obligations the German company manufacturing in China cannot be

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<sup>58</sup> The Federal Procurement Data System is not a sufficient source of information to gather sufficiently precise information to address this issue. *See* UNDER SECRETARY OF DEF., DEPARTMENT OF DEF. FISCAL YEAR 2009 PURCHASES OF SUPPLIES MANUFACTURED OUTSIDE THE U.S. 1-2 (June 2010). (relying on internal and DoD specific data services in combination with FPDS information to generate foreign contractor figures). In fact, I applaud the Joint Committee's decision to use the data because it provides highly accurate and aggregated data about foreign procurement. However, I take issue with how the Joint Committee used.

<sup>59</sup> *See supra* pp. 11-12.

<sup>60</sup> There is insufficient reliable public data to attempt calculate the place of manufacture for products provided to the Federal Government.

taxed.<sup>61</sup> This effect is consistent with many scholars' predictions that FTA and GPA Contractors will be given a blanket exemption from the tax.<sup>62</sup> The model, therefore, has a similar problem of taxing more contract payments than the reality. However, it trends much closer to the reality of the tax implementation.

The table below breaks down DoD's contracting with foreign entities, as indicated by the DoD Report, by their designation according to the FAR<sup>63</sup> and the instance of DoD interaction with each type of entity.<sup>64</sup>

**Aggregation of DoD Purchases from Foreign Entities –FY 2009 Data**

	<b>Total FY 2009 Contracts (\$)</b>	<b>% of Total Procurement Figure</b>
WTO GPA Countries	\$ 10,168,554,177	40.55 %
FTA Countries	\$ 2,582,899,778	10.3 %
Least Developed Status Countries (Afghanistan)	\$ 4,463,578,908 ( \$ 3,471,805,736)	17.8 % (13.85 %)
United States	\$ 1,227,350,838	4.89 %
Other (non FTA, GPA, LDC countries) (Iraq)	\$ 6,640,476,375 ( \$ 2,399,869,674)	26.5 % (9.6%)
<b>TOTAL</b>	<b>\$ 25,075,835,398</b>	<b>100%</b>

Contracts with GPA and FTA countries amount to \$12.7 billion or approximately 50.9% of all DoD foreign procurement. Excluding these contracts as unavailable for taxation has the following effect on the predicted revenue ( $R^1$ ) generated by the 2% tax of Section 301:

$$\begin{aligned} \$25.075 \text{ B} - \$12.7 \text{ B} &= \$ 12,324,381,443 \\ &= \text{Defense Contracts available for taxation (DC}_a\text{)} \end{aligned}$$

$$\begin{aligned} \text{DC}_a \text{ as a percent of Total} \\ \text{DoD Contract (DC}_T\text{)} &= r_x^1 = \frac{\text{DC}_a}{\text{DC}_T} = \frac{12.32 \text{ B}}{369.9 \text{ B}} \\ r_x^1 &= 3.33 \% \end{aligned}$$

<sup>61</sup> See *supra* pp. 4-5, note 31.

<sup>62</sup> See *supra* note 31.

<sup>63</sup> See *infra* Table 1.

<sup>64</sup> See *infra* app. 2.

$$R^1 = r_t(r_x^1(FP_{2011/2}))^{[65]}$$

$$R^1 = .02 (.0333 (444.58 B/2))$$

$$R^1 = 148,054,140$$

Compare the revenue prediction under this prediction model against the estimate of the Joint Committee. According to the CBO Report,  $R^0 = \$305,000,000$ .<sup>66</sup> The exclusion of manufacturing in GPA and FTA signatory countries<sup>67</sup> reduces the predicted revenue to only 48.5% of the CBO Report prediction.<sup>67</sup>

### **B. Adjustment 2: Adjusting for the Defense versus Civil Disparity**

Given the unique nature of DoD contracting, there is a strong reason to assume that the percentage of foreign procurement in the defense context is uniquely applicable to only DoD contracting. Thus the 6.8% rate, or more correctly 3.33% rate,<sup>68</sup> should be applied only to the Defense contracts. Rather than using one universal percentage of contracts subject to the excise tax ( $r_x$ ), a predictive model should reflect two distinct percentages: one for defense contracts ( $r_d$ ); one for all other contracts ( $r_c$ ). Then the rates can be applied separately to establish the revenue generated by taxing appropriate defense contract ( $R_d$ ) and the revenue generated by taxing appropriate non-defense contracts ( $R_c$ ). Total Revenue ( $R$ ) would then be a function  $R_d + R_c$ . For FY 2009 DoD procurement accounted for approximately 68.4%. Thus the 3.33% rate should be applied to only this portion of Federal procurement to predict the tax revenue in the defense context only ( $R_d$ ).

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<sup>65</sup> See *supra* note 45.

<sup>66</sup> See *infra* App. 1.

<sup>67</sup>  $148.054/305 = .4854 = 48.5\%$

<sup>68</sup> See *supra* p. 14.

$$R_d = r_t \left( r_d \left( \frac{.684(FP_{2011})}{2} \right) \right)$$

$$R_d = .02 \left( (.0333) \left( \frac{.684(444.58 \text{ B})}{2} \right) \right)$$

$$R_d = \$ 101,262,875$$

To finish this analysis it is necessary to predict the revenue that will be produced by taxing applicable non-defense contracts ( $R_c$ ). However, establishing an accurate percentage of non-defense contracts that will be subject to the tax ( $r_c$ ) is an unworkable endeavor. The defense rate has been established by examining the DoD Report, which was generated from both public and non-public information. Calculating a similar rate to apply against non-defense contracts would require analyzing a similar mass of raw data for each agency to generate a report of a similar caliber to the DoD report.<sup>69</sup> There is simply not enough available data to establish this rate. Rather than trying to calculate a rate that would ultimately inspire little confidence, there is a logical assumption that can be made. Practically, a large cause of the difference between the defense percentage ( $r_d$ ) and the non-defense percentage ( $r_d$ ) is DoD's exempted status under international trade agreements. This status allows it to contract with a greater number of

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<sup>69</sup> The FDPS does generate a Buy American Act Report cites total foreign procurement at 9.47% for FY 2009. FPDS: NEXT GENERATION, <https://www.fpds.gov/common/jsp/FPDSPublic.jsp> (select "standard Reports," select "Where," select "Buy American Act Place of Manufacture Report," run report for FY 2009). However, this represents a small cross section of contracting. The report also has some empirical errors. It places DoD foreign procurement at 10.1%. It oversamples DoD contracting to calculate the rate of foreign procurement; DoD contracts account for approximately 80% of the reported data. This is the best data available that could serve as a basis for attempting to calculate percentage of non-defense contracts. However, it simply does not provide enough good and accurate data to generate any confidence in a rate calculated, even if it was possible to accurately adjust the data to accommodate the known inaccuracies.

countries that are not exempt from taxation because they are guaranteed national treatment under international procurement agreements.<sup>70</sup> Therefore, we can assume that the final adjustment, provided below, offers a rate to be applied against non-defense contracts that is indicative of non-defense distinctive rate.

**C. Adjustment 3: Accounting for the Trade Agreement Act Exclusion in the Non-Defense Context**

Non-DoD procurement accounts for approximately 31.6% of all Federal procurement and is subject to different rules than DoD procurement. DoD may contract with non-FTA and non-GPA Contractors.<sup>71</sup> However, these entities are generally excluded from competing for non-DoD contracts under the TAA.<sup>72</sup> The number of contracts in the DoD Report that would normally be excluded in non-DoD contracting actions amounts to \$6.6 billion or approximately 26.5% of all DoD contracting activities.<sup>73</sup> Excluding these contracts as unavailable for taxation in addition to the amount to \$12.7 billion already excluded under Adjustment 1 leaves only \$5.6 billion or approximately 22.6 % of all DoD foreign contracting activities.<sup>74</sup> It assumed for the purposes of this model that by discounting all DoD contracting activities with countries who are not FTA or GPA signatories we have captured the difference between defense contracting activity and non-defense contracting activity. This adjustment has the following effect on the predicted non-DoD Revenue ( $R_c$ ) generated by the 2% tax:

$$r_c = \frac{5.6 \text{ B}}{369.9 \text{ B}}$$

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<sup>70</sup> See *supra* p. 12.

<sup>71</sup> [Cite]. Agencies besides the DoD may, under certain exceptions, contract with foreign entities outside of the FTA and GPA countries. However, such instances are limited to particular circumstances, such as nonavailability, by the Trade Agreements Act and the FAR. [Cite] Due to the lack of sufficient reliable data on the use of exceptions, this model assumes away their existence.

<sup>72</sup> See *supra* pp. 11-12; see also FAR 25.502(b)(1).

<sup>73</sup> See *supra* p. 14.

<sup>74</sup> \$25.075B - \$12.7B - 6.6B = \$5,683,905,068

$$r_c = 1.53\%$$

$$R_c = r_t \left( r_c \left( \frac{.316(FP_{2011})}{2} \right) \right)$$

$$R_c = .02 \left( (.0153) \left( \frac{.316(444.58 \text{ B})}{2} \right) \right)$$

$$R_c = \$ 21,494,553$$

By making the above adjustments to the Joint Committee’s assumptions to reflect a more realistic understanding of the application of the tax provisions and the United States’ obligations under international procurement agreements the Total Revenue prediction for FY 2011 is significantly altered. Under the above adjustments Total Revenue in FY 2011 ( $R_{2011}$ ) is not the predicted \$305 million but more realistically:

$$R_{2011} = R_d + R_c$$

$$R = \$ 101,262,875 + \$21,494,533$$

$$R = \$122,757,408$$

## V. Conclusion

Adjusting the assumptions of the predictive model to more accurately reflect U.S. procurement realities seriously alters predicted revenue generated by the 2% excise tax of the James Zadroga 9/11 Health and Compensation Act of 2010. This paper does not and cannot stand for an actual prediction of the revenue that will be generated by the 2% tax. It merely hypothesizes that the DoD Report serves as the base information used to generate the CBO Report and examines the assumptions that must be made about the DoD data to generate the

predicted revenue indicated by the CBO Report. Disturbingly, these assumptions substantially diverge from reality. As a result, the predicted deficit reduction effect of the 2% tax is in serious question.

Section 301 of the Act has exposed the United States and its industry to potentially serious international repercussions. Section 301 supporters have touted the deficit reduction effect of the tax in order to justify its implementation. However, the fatal flaw of the CBO Report is that it was generated without even a basic understanding of the realities of the Federal procurement system. The result is that even the “positive” domestic implications of Section 301 must be seriously doubted. This begs the question, what if any interest is served by funding the James Zadroga 9/11 Health and Compensation Act via the 2% Excise tax of Section 301.

**Table 1: Status of the United States of America's Agreements with Foreign Countries**

<b>Sub-Saharan Africa (48)</b>				<b>Middle East &amp; North Africa (20)</b>	
<b>Country</b>	<b>Agreement</b>	<b>Country</b>	<b>Agreement</b>	<b>Country</b>	<b>Agreement</b>
Angola	LDC Status	Mauritius		Algeria	
Benin	LDC Status	Mayotte		Bahrain	FTA
Botswana		Mozambique	LDC Status	Djibouti	LDC Status
Burkina Faso	LDC Status	Namibia		Egypt	
Burundi	LDC Status	Niger	LDC Status	Iran	
Cameroon		Nigeria		Iraq	
Cape Verde		Rwanda	LDC Status	Israel	WTO GPA
Central African Rep.	LDC Status	Sao Tome & Principe	LDC Status	Jordan	
Chad	LDC Status	Senegal	LDC Status	Kuwait	
Comoros	LDC Status	Seychelles		Lebanon	
Congo Rep.		Sierra Leone	LDC Status	Libya	
Congo (Dem. Rep.)	LDC Status	Somalia	LDC Status	Morocco	FTA
Cote D'Ivoire		South Africa		Oman	FTA
Equatorial Guinea	LDC Status	Sudan		Qatar	
Eritrea	LDC Status	Swaziland		Saudi Arabia	
Ethiopia	LDC Status	Tanzania	LDC Status	Syria	
Gabon		Togo	LDC Status	Tunisia	
Gambia	LDC Status	Uganda	LDC Status	United Arab Emirates	
Ghana		Zambia	LDC Status	West Bank & Gaza	
Guinea	LDC Status	Zimbabwe		Yemen	LDC Status
Guinea-Bissau	LDC Status				
Kenya					
Lesotho	LDC Status				
Liberia	LDC Status				
Madagascar	LDC Status				
Malawi	LDC Status				
Mali	LDC Status				
Mauritania	LDC Status				

<b>East Asia &amp; Pacific (37)</b>				<b>Latin America &amp; Caribbean (38)</b>			
<b>Country</b>	<b>Agreement</b>	<b>Country</b>	<b>Agreement</b>	<b>Country</b>	<b>Agreement</b>	<b>Country</b>	<b>Agreement</b>
American Samoa		Papua New Guinea		Antigua & Barbuda		Netherlands Antilles	
Australia	FTA	Philippines		Argentina		Nicaragua	FTA
Brunei Darussalam		Samoa	LDC Status	Aruba	WTO GPA	Panama	
Cambodia	LDC Status	Singapore	WTO GPA	Bahamas		Paraguay	
China		Solomon Islands	LDC Status	Barbados		Peru	FTA
Fiji		Taiwan	WTO GPA	Belize		St. Kitts & Nevis	
French Polynesia		Thailand		Bermuda		St. Lucia	
Guam		Timor-Leste	LDC Status	Bolivia		St. Vincent & the Grenadines	
Hong Kong	WTO GPA	Tonga		Brazil		Suriname	
Indonesia		Tuvalu	LDC Status	Cayman Islands		Trinidad & Tobago	
Japan	WTO GPA	Vanuatu	LDC Status	Chile	FTA	Uruguay	
Kiribati	LDC Status	Vietnam		Colombia		Venezuela	
North Korea				Costa Rica	FTA		
South Korea	WTO GPA			Cuba			
Laos	LDC Status			Dominica			
Macau				Dominican Republic	FTA		
Malaysia				Ecuador			
Marshall Islands				El Salvador	FTA		
Fed. States of Micronesia				Grenada			
Mongolia				Guatemala	FTA		
Myanmar				Guyana			
New Caledonia				Haiti	LDC Status		
New Zealand				Honduras	FTA		
Northern Mariana Islands				Jamaica			
Palau				Mexico	FTA		

<b>Eastern Europe &amp; Central Asia (22)</b>		<b>Western Europe (31)</b>		<b>South Asia (8)</b>		<b>Miscellaneous (2)</b>	
<b>Country</b>	<b>Agreement</b>	<b>Country</b>	<b>Agreement</b>	<b>Country</b>	<b>Agreement</b>	<b>Country</b>	<b>Agreement</b>
Albania		Andorra		Afghanistan	LDC Status	Canada	WTO GPA
Armenia		Austria	WTO GPA	Bangladesh	LDC Status	Iceland	WTO GPA
Azerbaijan		Belgium	WTO GPA	Bhutan	LDC Status		
Belarus		Croatia		India			
Bosnia & Herzegovina		Cyprus	WTO GPA	Maldives	LDC Status		
Bulgaria	WTO GPA	Czech Republic	WTO GPA	Nepal	LDC Status		
Georgia		Denmark	WTO GPA	Pakistan			
Kazakhstan		Estonia	WTO GPA	Sri Lanka			
Kosovo		Finland	WTO GPA				
Kyrgyz Rep.		France	WTO GPA				
Lithuania	WTO GPA	Germany	WTO GPA				
Macedonia		Greece	WTO GPA				
Moldova		Hungary	WTO GPA				
Montenegro		Ireland	WTO GPA				
Romania	WTO GPA	Italy	WTO GPA				
Russia		Latvia	WTO GPA				
Serbia		Liechtenstein	WTO GPA				
Tajikistan		Luxembourg	WTO GPA				
Turkey		Malta	WTO GPA				
Turkmenistan		Monaco					
Ukraine		Netherlands	WTO GPA				
Uzbekistan		Norway	WTO GPA				
		Poland	WTO GPA				
		Portugal	WTO GPA				
		San Marino					
		Slovakia	WTO GPA				
		Slovenia	WTO GPA				
		Spain	WTO GPA				
		Sweden	WTO GPA				
		Switzerland	WTO GPA				
		United Kingdom	WTO GPA				

**Table 2: Countries Without an Agreement With the United States Concerning Procurement or Least Developed Country Status**

<u>Sub-Saharan Africa (17)</u>	<u>Middle East &amp; North Africa (14)</u>	<u>East Asia &amp; Pacific (25)</u>		<u>Latin America &amp; Caribbean (26)</u>		<u>Eastern Europe &amp; Central Asia (18)</u>	<u>Western Europe (4)</u>
Botswana	Algeria	American Samoa	Thailand	Antigua & Barbuda	St. Kitts & Nevis	Albania	Andorra
Cameroon	Egypt	Brunei Darussalam	Tonga	Argentina	St. Lucia	Armenia	Croatia
Cape Verde	Iran	<b>China</b>	Vietnam	Bahamas	St. Vincent & the Grenadines	Azerbaijan	Monaco
Congo Rep.	Iraq	Fiji		Barbados	Suriname	Belarus	San Marino
Cote D'Ivoire	Jordan	French Polynesia		Belize	Trinidad & Tobago	Bosnia & Herzegovina	
Gabon	Kuwait	Guam		Bermuda	Uruguay	Georgia	
Ghana	Lebanon	Indonesia		Bolivia	Venezuela	Kazakhstan	
Kenya	Libya	North Korea		<b>Brazil</b>		Kosovo	
Mauritius	Qatar	Malaysia		Cayman Islands		Kyrgyz Rep.	
Mayotte	Saudi Arabia	Marshall Islands		Colombia		Macedonia	<b>South Asia (3)</b>
Namibia	Syria	Fed. States of Micronesia		Cuba		Moldova	<b>India</b>
Nigeria	Tunisia	Mongolia		Dominica		Montenegro	Pakistan
Seychelles	United Arab Emirates	Myanmar		Ecuador		<b>Russia</b>	Sri Lanka
South Africa	West Bank & Gaza	New Caledonia		Grenada		Serbia	
Sudan		New Zealand		Guyana		Tajikistan	
Swaziland		Northern Mariana Islands		Jamaica		Turkey	
Zimbabwe		Palau		Netherlands Antilles		Turkmenistan	
		Papua New Guinea		Panama		Ukraine	
		Philippines		Paraguay		Uzbekistan	

# APPENDIX 1

CBO Estimate of the Draft Amendment in the Nature of a Substitute to H.R. 847, the James Zadroga 9/11 Health and Compensation Act of 2010, as transmitted on December 20, 2010 (version BAI10680)

By Fiscal Year, in Millions of Dollars

December 20, 2010

	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2011- 2015	2011- 2020
<b>CHANGES IN REVENUES</b>												
<b>Title III: Sec 301, Excise Tax on Certain Foreign Procurement 3/</b>	305	495	490	485	480	475	471	466	461	457	2,255	4,585

\* This is an excerpt of the Congressional Budget Office Report. Cong. Budget Office & Joint Comm. On Taxation, BAI10680, CBO Estimate of the Draft Amendment in the Nature of a Substitute to H.R. 847, the James Zadroga 9/11 Health and Compensation Act of 2010 (2010).

## APPENDIX 2

TABLE 1						
DEPARTMENT OF DEFENSE PURCHASES FROM FOREIGN ENTITIES - FY 2009						
The following list includes ALL DoD purchases with foreign entities for supplies, services, fuel and construction						
Country Name	Actions	Dollars		Country Name	Actions	Dollars
AFGHANISTAN	17652	\$ 3,471,805,736		CHINA	5	\$ 1,622,811
ALBANIA	9	\$ 1,515,667		COLOMBIA	1937	\$ 42,599,558
ANGUILLA [UK]	3	\$ 239,444		COMOROS	26	\$ 1,175,796
ANTIGUA AND BARBUDA	10	\$ 339,192		CONGO, DEMOCRATIC REPUBLIC OF	1	\$ 66,394
ARGENTINA	60	\$ 1,203,652		CORAL ISLANDS [AUSTRALIA]	2	\$ 45,041
ARMENIA	5	\$ (61,452)		COSTA RICA	9	\$ 198,527
ARUBA [NETHERLANDS]	8	\$ 18,366		CROATIA	21	\$ 14,663,837
AUSTRALIA	80	\$ 57,392,831		CUBA	10	\$ 7,513,025
AUSTRIA	29	\$ 772,890		CYPRUS	3	\$ 25,149
AZERBAIJAN	6	\$ 985,459		CZECH REPUBLIC	2	\$ 6,354
BAHAMAS, THE	3	\$ 721,185		DENMARK	12243	\$ 15,472,182
BAHRAIN	3462	\$ 1,863,256,794		DJIBOUTI	214	\$ 16,325,148
BANLADESH	14	\$ 1,037,792		DOMINICA	1	\$ -
BARBADOS	5	\$ 301,455		DOMINICAN REPUBLIC	113	\$ 3,978,364
BELGIUM	1025	\$ 66,783,623		EAST TIMOR	5	\$ 1,234,710
BELIZE	23	\$ 1,513,977		ECUADOR	26	\$ 2,995,496
BENIN	23	\$ 1,650,036		EGYPT	357	\$ 22,885,309
BOLIVIA	15	\$ 238,204		EL SALVADOR	31	\$ 1,515,539
BOSNIA AND HERZEGOVINA	17	\$ 716,492		ESTONIA	4	\$ 439,516
BOTSWANA	1	\$ -		ETHIOPIA	104	\$ 874,280
BRAZIL	11	\$ 13,916,503		FINLAND	16	\$ 7,587,279
BRITISH INDIAN OCEAN TERRITORY	23	\$ 4,688,843		FRANCE	3633	\$ 242,345,497
BRITISH VIRGIN ISLANDS	2	\$ 28,955		FRENCH GUIANA	1	\$ 19,633
BRUNEI	18	\$ 856,377		GABON	23	\$ 2,286,098
BULGARIA	86	\$ 12,620,386		GAMBIA	3	\$ 134,311
BURUNDI	2	\$ 283,330		GEORGIA	15	\$ 1,345,285
CAMBODIA	61	\$ 3,483,640		GERMANY	50210	\$ 1,937,813,003
CAMEROON	40	\$ 5,678,223		GHANA	8	\$ 250,158
CANADA	14118	\$ 621,300,348		GIBRALTAR [UK]	1	\$ 15,971
CAPE VERDE	1	\$ 100,000		GREECE	391	\$ 342,836,272
CENTRAL AFRICAN REPUBLIC	2	\$ -		GREENLAND [DENMARK]	86	\$ 64,335,860
CHAD	1	\$ 3,473		GRENADA	3	\$ 19,016
CHILE	16	\$ 994,808		GUAM [UNITED STATES]	1	\$ -
<b>Subtotal</b>	<b>36831</b>	<b>\$ 6,134,366,229</b>		<b>Subtotal</b>	<b>69505</b>	<b>\$ 2,732,625,419</b>

\* This is a reproduction of the Table appearing in the DoD Report, which was the basis for the 6.8% rate. UNDER SECRETARY OF DEFENSE, DEPARTMENT OF DEFENSE, FISCAL 2009 PURCHASES OF SUPPLIES MANUFACTURED OUTSIDE THE U.S. (June 2010).

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DEPARTMENT OF DEFENSE PURCHASES FROM FOREIGN ENTITIES - FY 2009						
The following list includes ALL DoD purchases with foreign entities for supplies, services, fuel and construction						
Country Name	Actions	Dollars		Country Name	Actions	Dollars
GUATEMALA	55	\$ 1,302,352		MALAWI	1	\$ -
GUINEA	1	\$ -		MALAYSIA	54	\$ 934,817
GUINEA-BISSAU	1	\$ 101,024		MALDIVES	1	\$ (20,000)
GUYANA	6	\$ (391,252)		MALI	18	\$ 1,674,920
HAITI	8	\$ 76,898		MARSHALL ISLANDS	6	\$ 37,400
HONDURAS	373	\$ 13,367,853		MAURITANIA	1	\$ 16,000
HONG KONG	88	\$ 660,973		MAURITIUS	2	\$ 24,000
HUNGARY	12	\$ 139,041		MEXICO	1	\$ 5,500
ICELAND	4	\$ (183,145)		MOLDOVA	2	\$ 392,803
INDIA	59	\$ 1,807,051		MONGOLIA	9	\$ 607,716
INDONESIA	189	\$ 3,568,616		MONTENEGRO	2	\$ 31,078
IRAQ	12457	\$ 2,399,869,674		MONTSERAT [UNITED KINGDOM]	4	\$ 87,391
IRELAND	5	\$ 986,687		MOROCCO	1	\$ 133,586
ISRAEL	282	\$ 47,242,971		NETHERLANDS	2777	\$ 17,187,822
ITALY	8303	\$ 254,473,348		NETHERLANDS ANTILLES	10	\$ 881,570
JAMAICA	100	\$ 1,495,027		NEW ZEALAND	12	\$ 7,515,972
JAPAN	14679	\$ 1,302,063,983		NICARAGUA	12	\$ 1,971,941
JORDAN	54	\$ 7,775,118		NIGER	2	\$ 272,899
KAZAKHSTAN	15	\$ 14,004,382		NIGERIA	4	\$ 530,864
KENYA	120	\$ 8,175,644		NIUE [NEW ZEALAND]	1	\$ 10,271
KIRIBATI	25	\$ 951,657,234		NORTHERN MARIANA IS [US]	1	\$ 57,140
KOSOVO	218	\$ 4,408,019		NORWAY	115	\$ 48,956,442
KUWAIT	26057	\$ 2,540,846,712		OMAN	16	\$ 5,633,614
KYRGYZSTAN	5	\$ 307,228,418		PAKISTAN	9	\$ 1,469,029
LAOS	100	\$ 4,691,258		PALAU	23	\$ 185,704
LEBANON	5	\$ -		PANAMA	67	\$ 1,889,361
LESOTHO	4	\$ 36,220		PAPA NEW GUINEA	14	\$ 391,444
LIBERIA	4	\$ 928,250		PARAGUAY	25	\$ 642,480
LITHUANIA	2	\$ -		PERU	17	\$ 4,687,007
LUXEMBOURG	2	\$ 16,441		PHILIPPINES	893	\$ 41,056,394
MACEDONIA	30	\$ 509,976		POLAND	10	\$ 10,788,422
MADAGASCAR	1	\$ (8,322)		PORTUGAL	645	\$ 16,435,706
<b>Subtotal</b>	<b>63242</b>	<b>\$ 7,866,850,451</b>		<b>Subtotal</b>	<b>4755</b>	<b>\$ 164,489,093</b>

## APPENDIX 2

DEPARTMENT OF DEFENSE PURCHASES FROM FOREIGN ENTITIES - FY 2009						
The following list includes ALL DoD purchases with foreign entities for supplies, services, fuel and construction						
Country Name	Actions	Dollars		Country Name	Actions	Dollars
QATAR	543	\$ 47,158,959		UGANDA	133	\$ 3,283,228
ROMANIA	135	\$ 2,945,005		UKRAINE	19	\$ 5,844,274
RUSSIA	36	\$ 11,639,340		UNITED ARAB EMIRATES	3189	\$ 118,949,249
RWANDA	5	\$ 449,748		UNITED KINGDOM	7011	\$ 2,233,185,208
SAINT KITTS AND NEVIS	21	\$ 224,984		UNITED STATES	2237	\$ 1,227,350,838
SAINT LUCIA	3	\$ 654,911		URUGUAY	23	\$ 954,438
SAINT PIERRE AND MIQUELON [FR]	1	\$ 8,186		UZBEKISTAN	2	\$ 4,877
SAMOA	4	\$ 215,799		VANUATU	1	\$ 51,000
SAO TOME AND PRINCIPE	2	\$ 492,920		VIETNAM	171	\$ 437,344
SAUDI ARABIA	772	\$ 692,807,433		YEMEN	1	\$ -
SENEGAL	15	\$ 1,222,680		ZAMBIA	1	\$ 231,681
SERBIA	10	\$ 165,959				
SEYCHELLES	12	\$ 1,871,136		<b>Subtotal</b>	<b>12788</b>	<b>\$ 3,590,292,137</b>
SIERRA LEONE	9	\$ 111,005				
SINGAPORE	1275	\$ 81,194,014				
SLOVAKIA	10	\$ 88,220,000				
SOLOMON ISLANDS	5	\$ 308,100				
SOUTH AFRICA	22	\$ 4,610,545				
SOUTH KOREA	7181	\$ 2,055,002,074		<b>TOTAL</b>	<b>218723</b>	<b>\$ 25,075,835,398</b>
SPAIN	2235	\$ 158,678,033				
SPRATLY ISLANDS [UNDETERMINED]	3	\$ 127,438				
SURINAME	13	\$ 11,893				
SVALBARD [NORWAY]	1	\$ 47,978				
SWAZILAND	1	\$ 67,279				
SWEDEN	44	\$ 59,431,812				
SWITZERLAND	15856	\$ 1,164,204,417				
TANZANIA	23	\$ 749,514				
THAILAND	2124	\$ 12,804,552				
TOGO	1	\$ -				
TONGA	10	\$ 580,825				
TRINIDAD AND TOBAGO	55	\$ 744,754				
TURKEY	1175	\$ 200,480,785				
<b>Subtotal</b>	<b>31602</b>	<b>\$ 4,587,212,074</b>				