

## Appendix J

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### The Uruguay Round Agreements Act of 1994<sup>1</sup>

#### Sec. 1. Short Title and Table of Contents

(a) **SHORT TITLE.** — This act may be cited as the “Uruguay Round Agreements Act”.

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#### Sec. 2. Definitions.

For purposes of this Act:

(1) **GATT 1947; GATT 1994**—

(A) **GATT 1947**— The term “GATT 1947” means the General Agreement on Tariffs and Trade, dated October 30, 1947, annexed to the Final Act Adopted at the Conclusion of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, as subsequently rectified, amended, or modified by the terms of legal instruments which have entered into force before the date of entry into force of the WTO Agreement.

(B) **GATT 1994**— The term “GATT 1994” means the General Agreement on Tariffs and Trade annexed to the WTO Agreement.

(2) **HTS**— The term “HTS” means the Harmonized Tariff Schedule of the United States.

(3) **INTERNATIONAL TRADE COMMISSION.**— The term “International Trade Commission” means the United States International Trade Commission.

(4) **MULTILATERAL TRADE AGREEMENT.**— The term “multilateral trade agreement” means an agreement described in section 101(d) of this Act (other than an agreement described in paragraph (17) or (18) of such section).

(5) **SCHEDULE XX.**— The term “Schedule XX” means Schedule XX— United States of America annexed to the Marrakesh Protocol to the GATT 1994.

(6) **TRADE REPRESENTATIVE.**— The term “Trade Representative” means the United States Trade Representative.

(7) **URUGUAY ROUND AGREEMENTS.**— The term “Uruguay Round Agreements” means the agreements approved by the Congress under section 101(a)(1).

(8) **WORLD TRADE ORGANIZATION AND WTO.**— The terms “World Trade Organization” and “WTO” mean the organization established pursuant to the WTO Agreement.

(9) **WTO AGREEMENT.**—The term “WTO Agreement” means the Agreement Establishing the World Trade Organization entered into on April 15, 1994.

(10) **WTO MEMBER AND WTO MEMBER COUNTRY.**—The terms “WTO member” and “WTO member country” mean a state, or separate customs territory (within the meaning of Article XII of the WTO Agreement), with respect to which the United States applies the WTO Agreement.

## **Title I—Approval of, and General Provisions Relating to, the Uruguay Round Agreements**

### **Subtitle A—Approval of Agreements and Related Provisions**

#### ***Sec. 101 · Approval and entry into force of the Uruguay Round Agreements.***

(a) **APPROVAL OF AGREEMENTS AND STATEMENT OF ADMINISTRATIVE ACTION.**—Pursuant to section 1103 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2903) and section 151 of the Trade Act of 1974 (19 U.S.C. 2191), the Congress approves—

(1) the trade agreements described in subsection (d) resulting from the Uruguay Round of multilateral trade negotiations under the auspices of the General Agreement on Tariffs and Trade, entered into on April 15, 1994, and submitted to the Congress on September 27, 1994; and

(2) the statement of administrative action proposed to implement the agreements that was submitted to the Congress on September 27, 1994.

(b) **ENTRY INTO FORCE.**—At such time as the President determines that a sufficient number of foreign countries are accepting the obligations of the Uruguay Round Agreements, in accordance with article XIV of the WTO Agreement, to ensure the effective operation of, and adequate benefits for the United States under, those Agreements, the President may accept the Uruguay Round Agreements and implement article VIII of the WTO Agreement.

(c) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated annually such sums as may be necessary for the payment by the United States of its share of the expenses of the WTO.

(d) **TRADE AGREEMENTS TO WHICH THIS ACT APPLIES.**—Subsection (a) applies to the WTO Agreement and to the following agreements annexed to that Agreement:

- (1) The General Agreement on Tariffs and Trade 1994.
- (2) The Agreement on Agriculture.
- (3) The Agreement on the Application of Sanitary and Phytosanitary Measures.
- (4) The Agreement on Textiles and Clothing.
- (5) The Agreement on Technical Barriers to Trade.
- (6) The Agreement on Trade-Related Investment Measures.

- (7) The Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.
- (8) The Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994.
- (9) The Agreement on Preshipment Inspection.
- (10) The Agreement on Rules of Origin.
- (11) The Agreement on Import Licensing Procedures.
- (12) The Agreement on Subsidies and Countervailing Measures.
- (13) The Agreement on Safeguards.
- (14) The General Agreement on Trade in Services.
- (15) The Agreement on Trade-Related Aspects of Intellectual Property Rights.
- (16) The Understanding on Rules and Procedures Governing the Settlement of Disputes.
- (17) The Agreement on Government Procurement.
- (18) The International Bovine Meat Agreement.

**Sec. 102 · Relationship of the agreements to United States law and state law.**

- (a) RELATIONSHIP OF AGREEMENTS TO UNITED STATES LAW. —
  - (1) UNITED STATES LAW TO PREVAIL IN CONFLICT. — No provision of any of the Uruguay Round Agreements, nor the application of any such provision to any person or circumstance, that is inconsistent with any law of the United States shall have effect.
  - (2) CONSTRUCTION. — Nothing in this Act shall be construed
    - (A) to amend or modify any law of the United States, including any law relating to —
      - (i) the protection of human, animal, or plant life or health,
      - (ii) the protection of the environment, or
      - (iii) worker safety, or
    - (B) to limit any authority conferred under any law of the United States, including section 301 of the Trade Act of 1974, unless specifically provided for in this Act.
- (b) RELATIONSHIP OF AGREEMENTS TO STATE LAW. —
  - (1) FEDERAL-STATE CONSULTATION. —
    - (A) IN GENERAL. — Upon the enactment of this Act, the President shall, through the intergovernmental policy advisory committees on trade established under section 306(c)(2)(A) of the Trade and Tariff Act of 1984 (19 U.S.C. 2114c(2)(A)), consult with the States for the purpose of achieving conformity of State laws and practices with the Uruguay Round Agreements.
    - (B) FEDERAL-STATE CONSULTATION PROCESS. — The Trade Representative shall establish within the Office of the United States Trade Representative a Federal-State consultation process for addressing issues relating to the

Uruguay Round Agreements that directly relate to, or will potentially have a direct effect on, the States. The Federal–State consultation process shall include procedures under which —

(i) the States will be informed on a continuing basis of matters under the Uruguay Round Agreements that directly relate to, or will potentially have a direct impact on, the States;

(ii) the States will be provided an opportunity to submit, on a continuing basis, to the Trade Representative information and advice with respect to matters referred to in clause (i); and

(iii) the Trade Representative will take into account the information and advice received from the States under clause (ii) when formulating United States positions regarding matters referred to in clause (i).

The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Federal–State consultation process established by this paragraph.

(C) FEDERAL–STATE COOPERATION IN WTO DISPUTE SETTLEMENT. —

(i) When a WTO member requests consultations with the United States under Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes referred to in section 101(d)(16) (hereafter in this subsection referred to as the “Dispute Settlement Understanding”) concerning whether the law of a State is inconsistent with the obligations undertaken by the United States in any of the Uruguay Round Agreements, the Trade Representative shall notify the Governor of the State or the Governor’s designee, and the chief legal officer of the jurisdiction whose law is the subject of the consultations, as soon as possible after the request is received, but in no event later than 7 days thereafter.

(ii) Not later than 30 days after receiving such a request for consultations, the Trade Representative shall consult with representatives of the State concerned regarding the matter. If the consultations involve the laws of a large number of States, the Trade Representative may consult with an appropriate group of representatives of the States concerned, as determined by those States.

(iii) The Trade Representative shall make every effort to ensure that the State concerned is involved in the development of the position of the United States at each stage of the consultations and each subsequent stage of dispute settlement proceedings regarding the matter. In particular, the Trade Representative shall —

(I) notify the State concerned not later than 7 days after a WTO member requests the establishment of a dispute settlement panel or gives notice of the WTO member’s decision to appeal a report by a dispute settlement panel regarding the matter; and

(II) provide the State concerned with the opportunity to advise and assist the Trade Representative in the preparation of factual

information and argumentation for any written or oral presentations by the United States in consultations or in proceedings of a panel or the Appellate Body regarding the matter.

(iv) If a dispute settlement panel or the Appellate Body finds that the law of a State is inconsistent with any of the Uruguay Round Agreements, the Trade Representative shall consult with the State concerned in an effort to develop a mutually agreeable response to the report of the panel or the Appellate Body and shall make every effort to ensure that the State concerned is involved in the development of the United States position regarding the response.

(D) NOTICE TO STATES REGARDING CONSULTATIONS ON FOREIGN SUBCENTRAL GOVERNMENT LAWS. —

(i) Subject to clause (ii), the Trade Representative shall, at least 30 days before making a request for consultations under Article 4 of the Dispute Settlement Understanding regarding a subcentral government measure of another WTO member, notify, and solicit the views of, appropriate representatives of each State regarding the matter.

(ii) In exigent circumstances clause (i) shall not apply, in which case the Trade Representative shall notify the appropriate representatives of each State not later than 3 days after making the request for consultations referred to in clause (i).

(2) LEGAL CHALLENGE. —

(A) IN GENERAL. — No State law, or the application of such a State law, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with any of the Uruguay Round Agreements, except in an action brought by the United States for the purpose of declaring such law or application invalid.

(B) PROCEDURES GOVERNING ACTION. — In any action described in subparagraph (A) that is brought by the United States against a State or any subdivision thereof

(i) a report of a dispute settlement panel or the Appellate Body convened under the Dispute Settlement Understanding regarding the State law, or the law of any political subdivision thereof, shall not be considered as binding or otherwise accorded deference;

(ii) the United States shall have the burden of proving that the law that is the subject of the action, or the application of that law, is inconsistent with the agreement in question;

(iii) any State whose interests may be impaired or impeded in the action shall have the unconditional right to intervene in the action as a party, and the United States shall be entitled to amend its complaint to include a claim or cross-claim concerning the law of a State that so intervenes; and

(iv) any State law that is declared invalid shall not be deemed to have been invalid in its application during any period before the court's judgment becomes final and all timely appeals, including discretionary review, of such judgment are exhausted.

(C) REPORTS TO CONGRESSIONAL COMMITTEES. — At least 30 days before the United States brings an action described in subparagraph (A), the Trade Representative shall provide a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate —

- (i) describing the proposed action;
- (ii) describing efforts by the Trade Representative to resolve the matter with the State concerned by other means; and
- (iii) if the State law was the subject of consultations under the Dispute Settlement Understanding, certifying that the Trade Representative has substantially complied with the requirements of paragraph (1)(C) in connection with the matter.

Following the submission of the report, and before the action is brought, the Trade Representative shall consult with the committees referred to in the preceding sentence concerning the matter.

(3) DEFINITION OF STATE LAW. — For purposes of this subsection —

(A) the term “State law” includes —

- (i) any law of a political subdivision of a State; and
- (ii) any State law regulating or taxing the business of insurance; and

(B) the terms “dispute settlement panel” and “Appellate Body” have the meanings given those terms in section 121.

(C) EFFECT OF AGREEMENT WITH RESPECT TO PRIVATE REMEDIES. —

(1) LIMITATIONS. — No person other than the United States —

(A) shall have any cause of action or defense under any of the Uruguay Round Agreements or by virtue of congressional approval of such an agreement, or

(B) may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of the United States, any State, or any political subdivision of a State on the ground that such action or inaction is inconsistent with such agreement.

(2) INTENT OF CONGRESS. — It is the intention of the Congress through paragraph (1) to occupy the field with respect to any cause of action or defense under or in connection with any of the Uruguay Round Agreements, including by precluding any person other than the United States from bringing any action against any State or political subdivision thereof or raising any defense to the application of State law under or in connection with any of the Uruguay Round Agreements —

(A) on the basis of a judgment obtained by the United States in an action brought under any such agreement; or

(B) on any other basis.

(d) STATEMENT OF ADMINISTRATIVE ACTION. — The statement of administrative action approved by the Congress under section 101(a) shall be regarded as an authoritative expression by the United States concerning the interpretation and application of the Uruguay Round Agreements and this Act in any judicial proceeding in which a question arises concerning such interpretation or application.

**Sec. 103 · Implementing actions in anticipation of entry into force; regulations.**

(a) IMPLEMENTING ACTIONS. — After the date of the enactment of this Act —

(1) the President may proclaim such actions, and

(2) other appropriate officers of the United States Government may issue such regulations,

as may be necessary to ensure that any provision of this Act, or amendment made by this Act, that takes effect on the date any of the Uruguay Round Agreements enters into force with respect to the United States is appropriately implemented on such date. Such proclamation or regulation may not have an effective date earlier than the date of entry into force with respect to the United States of the agreement to which the proclamation or regulation relates.

(b) REGULATIONS. — Any interim regulation necessary or appropriate to carry out any action proposed in the statement of administrative action approved under section 101(a) to implement an agreement described in section 101(d)(7), (12), or (13) shall be issued not later than 1 year after the date on which the agreement enters into force with respect to the United States.

## Appendix J · Endnote

1. This appendix consists of provisions of the Uruguay Round Agreements Act, Pub. L. No. 103-465, 108 Stat. 4809, that do not amend title 17 of the *United States Code*.