

Being advised that Canada, the European Community, Mexico, Japan, and other major trading countries have committed to acceptance of the Uruguay Round Agreements, I have determined that a sufficient number of foreign countries are accepting the obligations of those Agreements, in accordance with article XIV of the Agreement Establishing the World Trade Organization (WTO Agreement), to ensure the effective operation of, and adequate benefits for the United States under, those Agreements.

Pursuant to section 101(b) of the Uruguay Round Agreements Act (Public Law 103-465; 108 Stat. 4809) [19 U.S.C. 3511(b)] and section 301 of title 3, United States Code, I hereby direct the United States Trade Representative, or his designee, to accept the Uruguay Round Agreements, as described in section 101(d) of that Act, on behalf of the United States in accordance with article XIV of the WTO Agreement.

You are authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

§ 3512. Relationship of 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 2411 of this title,

unless specifically provided for in this Act.

(b) Relationship of agreements to State law

(1) Federal-State consultation

(A) In general

On December 8, 1994, the President shall, through the intergovernmental policy advisory committees on trade established under section 2114c(2)(A) of this title, 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 3511(d)(16) of this title (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 Representa-

tive 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) "State law" defined

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 3531 of this title.

(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 3511(a) of this title 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.

(Pub. L. 103-465, title I, §102, Dec. 8, 1994, 108 Stat. 4815.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (a)(2) and (d), is Pub. L. 103-465, Dec. 8, 1994, 108 Stat. 4809, known as the Uruguay Round Agreements Act. For complete classification of this Act to the Code, see Short Title note set out under section 3501 of this title and Tables.

The Federal Advisory Committee Act, referred to in subsec. (b)(1)(B), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

§ 3513. Implementing actions in anticipation of entry into force; regulations

(a) Implementing actions

After December 8, 1994—

- (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 3511(a) of this title to implement an agreement described in section 3511(d)(7), (12), or (13) of this title shall be issued not later than 1 year after the date on which the agreement enters into force with respect to the United States.

(Pub. L. 103-465, title I, §103, Dec. 8, 1994, 108 Stat. 4819.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), is Pub. L. 103-465, Dec. 8, 1994, 108 Stat. 4809, known as the Uruguay Round Agreements Act. For complete classification of this Act to the Code, see Short Title note set out under section 3501 of this title and Tables.

URUGUAY ROUND AGREEMENTS: ENTRY INTO FORCE

The Uruguay Round Agreements, including the World Trade Organization Agreement and agreements annexed to that Agreement, as referred to in section 3511(d) of this title, entered into force with respect to the United States on Jan. 1, 1995. See note set out under section 3511 of this title.

PART B—TARIFF MODIFICATIONS

§ 3521. Tariff modifications

(a) In general

In addition to the authority provided by section 2902 of this title, the President shall have the authority to proclaim—

- (1) such other modification of any duty,
- (2) such other staged rate reduction, or
- (3) such additional duties,

as the President determines to be necessary or appropriate to carry out Schedule XX.

(b) Other tariff modifications

Subject to the consultation and layover requirements of section 3524 of this title, the President may proclaim—

- (1) the modification of any duty or staged rate reduction of any duty set forth in Schedule XX if—

(A) the United States agrees to such modification or staged rate reduction in a multilateral negotiation under the auspices of the WTO, and

(B) such modification or staged rate reduction applies to the rate of duty on an article contained in a tariff category that was the subject of reciprocal duty elimination or harmonization negotiations during the Uruguay Round of multilateral trade negotiations, and

- (2) such modifications as are necessary to correct technical errors in Schedule XX or to make other rectifications to the Schedule.

(c) Authority to increase duties on articles from certain countries

(1) In general

(A) Determination with respect to certain countries

Notwithstanding section 1881 of this title, after the entry into force of the WTO Agreement with respect to the United States, if the President—

- (i) determines that a foreign country (other than a foreign country that is a WTO member country) is not according adequate trade benefits to the United States, including substantially equal competitive opportunities for the commerce of the United States, and
- (ii) consults with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate,

the President may proclaim an increase in the rate of duty with respect to any article of such country in accordance with subparagraph (B).

(B) Rate of duty described

The President may proclaim a rate of duty on any article of a country identified under subparagraph (A) that is equal to the greater of—

- (i) the rate of duty set forth for such article in the base rate of duty column of Schedule XX, or
- (ii) the rate of duty set forth for such article in the bound rate of duty column of Schedule XX.

(2) Termination of increased duties

The President shall terminate any increase in the rate of duty proclaimed under this subsection by a proclamation which shall be effective on the earlier of—