

URUGUAY ROUND AGREEMENTS ACT

OCTOBER 3, 1994.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. DINGELL, from the Committee on Energy and Commerce, submitted the following

REPORT

[To accompany H.R. 5110 which on September 27, 1994, was referred jointly for a period ending not later than October 3, 1994, to the Committee on Ways and Means, the Committee on Agriculture, the Committee on Education and Labor, the Committee on Energy and Commerce, the Committee on Foreign Affairs, the Committee on Government Operations, the Committee on the Judiciary, and the Committee on Rules]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 5110) to approve and implement the trade agreements concluded in the Uruguay Round of multilateral trade negotiations, having considered the same, report the bill without recommendation.

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PURPOSE AND SUMMARY

Agreements reached in the Uruguay Round of Multilateral Trade Negotiations were signed by the United States and 116 other member countries in Marrakech, Morocco, on April 15, 1994. The Uruguay Round negotiations were conducted under the auspices of the General Agreements on Tariffs and Trade. U.S. participation in the negotiations was initiated in 1986 by the Administration of former President Reagan and continued by the Administrations of former President Bush and of President Clinton.

Under the Uruguay Round Agreements, tariffs will be greatly reduced or eliminated in steel, paper, pharmaceuticals, electronics, semiconductor equipment, medical equipment, agricultural equipment, toys, furniture and many other sectors. Globally, the Treasury Department estimates that over the next ten years, tariffs on industrial commodities alone will fall by almost \$750 billion.

For the first time, these Agreements provide for the establishment of a multilateral framework covering services and agriculture. Intellectual property and investment measures, which have never before been made subject to a multilateral discipline, are also covered in the Uruguay Round Agreements.

The Uruguay Round Agreements affect a number of matters within the Committee's jurisdiction, including: trade in financial and telecommunications services; standards relating to the protection of human, animal, or plant life or health, including food safety; standards relating to the protection of the environment; and consumer protection standards.

On September 27, 1994, President Clinton transmitted to the Congress H.R. 5110, a bill to implement the Uruguay Round Agreements. H.R. 5110 implements the Uruguay Round Agreements, including the agreement establishing the new World Trade Organization, and the accompanying Statement of Administrative Action.

Under the provisions of the bill, the President is authorized to enter the Uruguay Round Agreements into force at such time as the President determines a sufficient number of foreign countries have accepted the obligations of the Agreements. Most of the provisions of the Uruguay Round Agreements would take effect over a 10-year period, during which tariffs and other barriers would be reduced or eliminated.

BACKGROUND AND NEED FOR THE LEGISLATION

H.R. 5110, the Uruguay Round Agreements Act, sets out the changes to U.S. statutory laws needed to put the Uruguay Round Agreements into effect in the United States. The following is a discussion of provisions of H.R. 5110 that affect matters within the jurisdiction of the Committee on Energy and Commerce. This discussion also covers some provisions of the Uruguay Round Agreements that are within the Committee's jurisdiction, but for which no statutory provisions were required.

I. RELATIONSHIP TO FEDERAL AND TO STATE LAW AND ENVIRONMENTAL AND SANITARY AND PHYTOSANITARY MEASURES

H.R. 5110 states that except as specifically provided for in the implementing bill, nothing in the bill shall be construed to amend

or modify any law of the United States. For example, the bill contains no amendments to U.S. food safety, health, or environmental laws under the jurisdiction of the Committee.

The Statement of Administrative Action states that, "As section 102(a)(2) of the bill makes clear, those provisions of U.S. law that are not addressed by the bill are left unchanged." The Statement of Administrative Action states that the following is an illustrative list of 21 Federal environmental and health-related statutes that are not amended by the bill:

The Federal Water Pollution Control Act (33 U.S.C. 251 et seq.);

Title XIV of the Public Health Service Act (popularly known as the Safe Drinking Water Act) (42 U.S.C. 300f et seq.);

The Clean Air Act (42 U.S.C. 7401 et seq.);

The Pollution Prevention Act of 1990 (42 U.S.C. 13101 et seq.);

The Toxic Substances Control Act (15 U.S.C. 2601 et seq.);

The Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.);

The Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 et seq.);

The Motor Vehicle Information and Cost Savings Act (14 U.S.C. 1901 et seq.);

The Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.);

The Atomic Energy Act of 1954 (42 U.S.C. 2001 et seq.);

The Noise Control Act of 1972 (42 U.S.C. 4901 et seq.);

The Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

The Superfund Amendments and Reauthorization Act of 1986 (Public Law 99-499; 100 Stat. 1613);

Title I of the Marine Protection Research and Sanctuary Act of 1972 (popularly known as the "Ocean Dumping Act") 33 U.S.C. 1411 et seq.);

The Environmental Research, Development, and Demonstration Authorization Act (Public Law 96-569; 94 Stat. 3335);

The Pollution Prosecution Act of 1990 (42 U.S.C. 4321 note);

The Federal Facilities Compliance Act of 1992 (Public Law 102-386; 106 Stat. 1505);

Sections 9 to 20 of the Act of March 3, 1899 (popularly known as the "Refuse Act") (33 U.S.C. 2701 et seq.);

The Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.); and

The Act to Prevent Pollution from ships (33 U.S.C. 1901 et seq.).

Furthermore, section 102(a)(1) of the bill clearly states that where there is an inconsistency or conflict between the Uruguay Round Trade Agreements and U.S. law exist, U.S. law—not the trade agreements—shall prevail.

The Statement of Administrative Action states:

Section 102(a)(1) will not prevent implementation of federal statutes consistently with the Uruguay Round Agreements, where permissible under the terms of such statutes. Rather, the section reflects the Congressional view

that necessary changes in federal statutes should be specifically enacted rather than provided for in a blanket preemption of federal statutes by those agreements.

Accordingly, at this time it is the expectation of the Administration that no changes in existing federal law, rules, regulations, or orders other than those specifically indicated in the implementing bill and this Statement will be required to implement the new agreements. Should it prove otherwise, the Administration would need to seek new legislation from Congress or, if a change in regulation is required, follow normal agency procedures for amending regulations.

The Statement of Administrative Action addresses the fact that U.S. environmental and health laws are not preempted by the Uruguay Round Agreements. The Statement specifically confirms the ability of each party to the Agreements to take necessary actions to ensure the safety of its food supply, such as through the inspection of food products. The Statement states:

The S&P Agreement (Sanitary and Phytosanitary) explicitly recognizes that countries have a legitimate need for regulations to protect human, animal, and plant life and health (which includes food safety regulations), and to establish the level of protection of life and health that they deem appropriate.

The Statement of Administrative Action further clarifies that, "The Agreement (Sanitary and Phytosanitary Agreement) was carefully drafted, with the Delaney clauses and other provisions of U.S. law firmly in mind, to safeguard the ability of governments to ensure food safety."

The statement makes it clear that the "Delaney Clauses", which prohibit the addition of food additives, color additives, and animal drugs to foods or feeds if the substance is found to induce cancer in humans or animals, are completely protected under the Agreement:

The determination that a particular substance poses a risk of cancer is a scientific determination, based on an evaluation of the potential for a substance to induce cancer. Based on scientific principles, the United States has determined that if a substance induces cancer in animals, it poses some risk of human carcinogenesis. And since the level of protection under Delaney requires that there be zero risk of carcinogenesis, the United States prohibits the substance. Moreover, the Delaney clauses are applied consistently across like products and do not discriminate against imported products in favor of domestic products.

Although the bill does not contain any direct amendments to environmental or health statutes under the Committee's jurisdiction, it does contain provisions, added at the Committee's request, which are within the Committee's jurisdiction and which are designed to ensure that Federal agencies continue to be able to enforce strong U.S. food safety standards.

Over the last four years, the Committee's Subcommittee on Commerce, Consumer Protection, and Competitiveness has held eight hearings and briefings on the impact of trade agreements on U.S. health and safety standards. In addition, the Subcommittee took a resolution to the House which expressed the intent of Congress not to implement any trade agreement that jeopardizes U.S. health, environmental, labor and safety standards.

In some instances, the Food and Drug Administration is currently allowed to make a determination of equivalency without following rulemaking procedures. At the Committee's request, H.R. 5110, contains new provisions that require in such instances that the Food and Drug Administration provide notice and an opportunity for public comment, and take into consideration any public comments received before making a determination that foreign food safety measures are equivalent to U.S. food safety measures. In those instances where the Food and Drug Administration is currently required by law to establish the U.S. food safety measure by rulemaking, an equivalency determination as to a foreign standard will, of course, have to be made through rulemaking.

At the Committee's request, the bill also prohibits any Federal agency from determining that a foreign sanitary or phytosanitary measure is equivalent to a U.S. sanitary or phytosanitary measure unless the agency demonstrates that the foreign measure achieves at least the same level of sanitary or phytosanitary protection as the U.S. measure. The bill also provides that designated agencies must annually publish notice of the agendas of international sanitary and phytosanitary standards-setting bodies, as well as information pertaining to U.S. participation in such bodies.

With respect to insurance, another matter within the Committee's jurisdiction, the Committee notes that the bill defines "state law" to include the business of insurance. Insurance is regulated at the state level pursuant to provisions of the McCarran-Ferguson Act. The Statement of Administrative Action, therefore, provides that, " * * * the implementing act must make specific reference to the business of insurance in order for the Uruguay Round Agreements covering the insurance business to be given effect with respect to state insurance laws."

The Committee also notes that many of the Federal environmental laws, such as the Clean Air Act and the Solid Waste Disposal Act, expressly allow state to impose requirements more stringent than Federal requirements. Nothing in the implementing bill shall be construed to affect or modify the states' ability to impose such requirements in a way that does not unfairly discriminate against imported goods.

H.R. 5110 makes it clear that neither the Uruguay Round Agreements nor the implementing bill permit a state law that is inconsistent with the Agreement to be declared invalid except pursuant to a judicial proceeding brought by the Federal Government.

II. TRADE IN FINANCIAL AND TELECOMMUNICATIONS SERVICES

Among the Agreements reached in the Uruguay Round negotiations is the General Agreement on Trade in Services, or the GATS. Services covered by the GATS include: professional services (accounting, architecture, engineering), other business services (com-

puter services, rental and leasing, advertising, market research, consulting, security services), communications (value-added telecommunications, couriers, audiovisual services), construction, distribution (wholesale and retail trade, franchising), educational services, environmental services, financial services (banking, securities, insurance), health services, and tourism services.

The Statement of Administrative Action describes the significance and purpose of the Agreement as follows:

The General Agreement on Trade in Services (GATS) is the first multilateral, legally enforceable agreement covering trade and investment in the services sector. It is designed to reduce or eliminate governmental measures that prevent services from being freely provided across national borders or that discriminate against locally-established service firms with foreign ownership. The agreement provides a legal framework for addressing barriers to trade and investment in services, includes specific commitments by WTO member countries to restrict their use of those barriers, and provides a forum for further negotiations to open services markets around the world.

Unfortunately, because insufficient commitments to open foreign markets for U.S. service firms in financial services and telecommunications were obtained by April 15, 1994, the negotiations on the GATS agreements on these subject were not concluded. In particular, U.S. negotiators, with the support of U.S. service firms in these fields, were unwilling to commit to extend most-favored-nation (MFN) treatment (i.e. agree to similar treatment service from other WTO member countries no less favorably than the treatment given any member country) to all WTO member countries unless substantial market access commitments were made in these fields.

In the absence of adequate market access commitment in these fields, a U.S. agreement to extend MFN treatment to services would have had the effect of giving foreign service firms free access to open U.S. services market, while freezing the U.S. service firms out of many closed service markets abroad. There would be little incentive for foreign governments to open otherwise closed service markets, if the U.S. had agreed to extend MFN without those markets across commitments being made.

As a result, negotiations on trade in financial services and trade in telecommunications services have been extended. Negotiations will continue in an effort to obtain improved market access commitments in financial services until June, 1995, and in telecommunication services until June, 1996. Title I of the implementing bill contains objectives for these negotiations.

At the Committee's request, provisions were also included in the Statement of Administrative Action to encourage foreign governments to open their markets to U.S. financial service firms. Under these provisions, the Treasury Department must report to Congress by April 30, 1995, concerning the status of financial service negotiations. Treasury is to include in the report an identification of market access offers other countries have made. With this information, the Congress will be better able to advise the President as to

whether the U.S. should agree to extend Most-Favored-Nation treatment in financial services to other member countries when extended negotiations on financial services are scheduled to conclude in June, 1995.

III. AMENDMENT TO THE COMMUNICATIONS ACT OF 1934

Title VIII contains an amendment to the Communications Act of 1934 that requires the Federal Communications Commission (FCC) to recover for the public a portion of the value of public spectrum that has been awarded by the Commission to licensees granted a "pioneer's preference."

Under the Commission's "pioneer's preference" program, certain persons whom the Commission determines to have made significant contributions to the development of a new telecommunications service or technology are assured of obtaining a Commission license. The Commission developed the pioneer preference program in the early 1990s as a means to reward those who invest in technology, but who, because of the Commission's licensing procedures, would not be assured of obtaining a license to offer the service to the public. The Commission reasoned that because the lottery system made no distinction between the serious technology innovator and the casual speculator, it gave no incentive to persons or companies to invest in new communications technology. Overall, the Commission has awarded several pioneer's preferences, including three in the broadband Personal Communications Service (PCS); one in narrowband PCS; and one in local multipoint distribution service.

In 1993, Congress changed dramatically the Commission's licensing process. The Licensing Reform Act of 1993, approved as part of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. No. 103-66, Title VI, section 6002), largely abolished lotteries and instead put in place a system of competitive bidding for licenses in services where there are mutually exclusive applications.

Earlier this year, the Commission began to utilize competitive bidding, or auctions, as a means of assigning FCC licenses. The first auction for narrowband PCS generated winning bids totaling more than \$600 million. On December 5, 1994, the Commission is scheduled to begin auctioning broadband PCS licenses, and many industry analysts predict those auctions will generate billions of dollars.

In light of these events, the Committee examined whether recipients of pioneer preference designations should receive licenses without any payment. Under the Commission's pioneer's preference rules, the licenses being awarded to the pioneers would not be subject to auction, since by Commission rule there would be no opportunity for competing applications to be filed. In addition, the Committee was concerned that there may be some question about the authority of the Commission to require pioneer preference holders to pay.¹ Consequently, the Committee sought to develop legislation

¹On August 9, 1994, the Commission amended its pioneer's preference rules to require that recipients of pioneer's preferences in broadband PCS pay 90% of the adjusted value of the license calculated upon the average per population price for the top 10 markets, as established at auctions. Review of the Pioneer's Preference Rules, ET Docket No. 93-266, Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No.

that would ensure that holders of a pioneer's preference pay an equitable amount for use of their spectrum, and that such payment not be mooted by litigation.

Title VIII accomplishes that goal by amending section 309(j) of the Communications Act of 1934 to require pioneer's preference holders to pay a sum equal to not less than 85 percent, on a per population basis, of the highest bid for a license that is most reasonably comparable in terms of bandwidth, area designation, usage restrictions, and other characteristics. The legislation provides that recipients of pioneer designations for broadband PCS, the 20 largest markets in which no one has obtained a pioneer's preference would be most reasonably comparable. The nationwide formula excludes bids for the other available license in the three pioneer's preference markets because those bids are likely to be anomalous. For example, bid prices may well be depressed because of the significant cost advantages of the recipients of pioneer designation. Conversely, the scarcity value of the remaining license has been substantially enhanced as a result of the assignment of a license to a recipient of a pioneer designation. In light of these potential anomalies, the Committee excluded these markets from the calculation.

The legislation also provides that the sum owed to the Federal Government by the broadband PCS pioneers may be paid over a 5-year period, with interest only for the first two years, and with interest and principal after the initial two years in a manner consistent with the installment payment rules adopted by the Commission as part of its general competitive bidding regulations. The Committee anticipates that the Commission will calculate interest payments based on the prevailing prime rate.

Title VIII also contains a mechanism to ensure that the Federal Government obtains a minimum of \$400 million. If the formula described above does not result in payments of at least \$400 million, the Commission is authorized to impose a payment requirement so that at least that much, plus interest, is collectively paid by the three broadband PCS pioneer's preference holders.

Finally, the legislation directs that the Commission shall not delay in awarding the pioneer's preference and in granting the license, and that both of these decisions should be deemed final and not subject to further administrative or judicial review. The Committee intends that this provision not affect the rights of persons who have been denied a pioneer's preference, although it does eliminate challenges to the instant pioneer's preference holders, which could delay payment to the Government. The legislation then provides that the pioneer's preference holders must begin payment to the Federal Government 30 days after the award of the pioneer's preference, and the granting of the license becomes final.²

90-314 (Aug. 9, 1994). The Commission based its authority to impose this payment on section 4(i) of the Communications Act of 1934, which authorizes the Commission to "make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions." 47 U.S.C. 154(i).

² Because title VII changes the underlying law to be applied to pioneer's preferences, rather than compels a court to make findings under existing law, no constitutional concerns arise. See *Robertson v. Seattle Audobon Soc'y*, 112 S. Ct. 1407 (1992). However, if a party does obtain judicial review of this legislation or of the Commission's preference decision or licensing decision, then the Committee intends that payment would not commence until such review is complete.

HEARINGS AND BRIEFINGS

The Energy and Commerce Committee's Subcommittee on Commerce, Consumer Protection, and Competitiveness held 11 hearings and briefings on the Uruguay Round Agreements and related matters.

On March 23, 1994, the Subcommittee held a hearing on the Uruguay Round Agreements for which the witness was Ambassador Michael Kantor, The U.S. Trade Representative.

On February 18, 1993, the Subcommittee held a hearing on the treatment of food safety issues in international trade agreements with representatives from the U.S. Department of Agriculture, the General Accounting Office, Public Citizen, and the Florida Fruit and Vegetable Association.

On September 23, 1993, the Subcommittee held a hearing on the impact of trade agreements on the environment with representatives from the Environmental Protection Agency and others.

On August 3, 1993, the Subcommittee held a joint hearing with the Subcommittee on Telecommunications and Finance regarding telecommunications trade problems, for which the witness was Ambassador Michael Kantor, The U.S. Trade Representative.

On November 4, 1993, the Subcommittee held a hearing on the treatment of health and environmental standards under trade agreements with representatives from the Environmental Protection Agency and the Food and Drug Administration.

On October 31, 1991, the Subcommittee held a hearing on the environmental and food safety issues with representatives from the Environmental Protection Agency, the General Accounting Office, and the U.S. Border Inspection Association.

On May 15, 1991, the Subcommittee held a hearing with a U.S. Department of Agriculture meat inspector, the United Auto Workers and representatives from private groups concerning health and other matters involved in trade agreements.

On May 8, 1991, the Subcommittee held a hearing on environmental and consumer issues involved in trade agreements with representatives from the General Accounting Office, the Environmental Protection Agency, and Public Citizens.

On September 29, 1993, Ambassador Michael Kantor, The U.S. Trade Representative, and Administrator Carol Browner of the Environmental Protection Agency, at the request of the Subcommittee, briefed the Committee on the impact of trade agreements on U.S. environmental standards and policy.

On May 25, 1993, the Subcommittee held a briefing on food safety issues involved in trade agreements.

On March 31, 1993, the Subcommittee held a briefing with representatives from private groups on the impact of trade agreements on health and safety issues.

COMMITTEE CONSIDERATION

On September 28, 1994, the Committee on Energy and Commerce met in open session and ordered reported without recommendation the bill H.R. 5110, by a voice vote, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(1)(3)(A) of Rule XI of the Rules of the House of Representatives, no oversight findings or recommendations have been made by the Committee.

COMMITTEE ON GOVERNMENT OPERATIONS

Pursuant to clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Operations.

COMMITTEE COST ESTIMATE

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee believes that, in the case of matters within the jurisdiction of this Committee, H.R. 5110 would increase Federal revenues by approximately \$400 million.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 3, 1994.

Hon. JOHN D. DINGELL,
*Chairman, Committee on Energy and Commerce,
U.S. House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 5110, the Uruguay Round Agreements Act of 1994, as ordered reported by the Committee on Energy and Commerce on September 28, 1994. The Joint Committee on Taxation (JCT) and CBO estimate that the bill would decrease the deficit by \$1,064 million in fiscal year 1995 and increase the deficit by \$2,421 million over the 1995-1999 period as the result of changes in receipts and direct spending. The bill also would result in additional spending subject to appropriations action totaling \$240 million over the 1995-1999 period. CBO estimates that enactment of this bill would not directly affect the budgets of state and local governments.

H.R. 5110 would approve and implement the trade agreements concluded in the Uruguay Round of multilateral trade negotiations. These agreements would cut overall tariff rates by about one-third over ten years. The bill also includes several revenue and outlay provisions to offset the lost tariff revenue from the agreements. CBO estimated the budgetary effects of the provisions that would affect tariffs and outlays, while JCT estimated the budgetary effects of other revenue provisions.

The additional spending subject to appropriations actions would result from increased administrative costs for the Social Security Administration and state unemployment insurance offices to implement voluntary withholding. The estimated budgetary effects of the bill as ordered reported by the Committee on Energy and Commerce are shown below.

BUDGET EFFECTS ON H.R. 5110

[By fiscal year, millions of dollars]

	1995	1996	1997	1998	1999
Estimated revenues *	843	-1,372	-1,502	-2,824	-3,451
Direct spending:					
Estimated budget authority	-221	-912	-1,374	-1,449	-1,929
Estimated outlays	-221	-912	-1,374	-1,449	-1,929
Spending subject to appropriations:					
Estimated authorizations of appropriations	60	45	45	45	45
Estimated outlays	60	45	45	45	45

*Positive changes refer to an increase in revenues; estimates are net of income and payroll tax offsets.

The Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting receipts or direct spending through 1998. Because H.R. 5110 would affect receipts and direct spending, pay-as-you-go procedures would apply to the bill. These effects are summarized in the table below.

ESTIMATED PAY-AS-YOU-GO IMPACT OF H.R. 5110

[By fiscal year, in millions of dollars]

	1995	1996	1997	1998
Changes in outlays	-221	-912	-1,374	-1,449
Changes in receipts	843	-1,372	-1,502	-2,824

A detailed table of the receipt and direct spending effects of the bill is enclosed, along with a description of CBO's estimates for the direct spending provisions. If you wish further details, we will be pleased to provide them. The staff contact for receipts is Melissa Sampson. The staff contacts for outlays are Wayne Boyington, Paul Cullinan; Mark Grabowicz, Eileen Manfredi, John Webb; and Kathy Ruffing.

Sincerely,

ROBERT D. REISCHAUER,
Director.

ESTIMATES OF CHANGES IN REVENUES AND DIRECT SPENDING ASSOCIATED WITH H.R. 5110, THE URUGUAY ROUND AGREEMENTS ACT OF 1994

[By fiscal years, in millions of dollars]

	1995	1996	1997	1998	1999	1995-99
CHANGES IN REVENUES (Net)						
Reduction in tariff rates and miscellaneous tariff provisions	-909	-1,657	-2,319	-2,973	-3,658	-11,516
Generalized System of Preference extension (10/1/94-7/31/95)	-375	0	0	0	0	-375
Withholding on distribution of tribal casino profits ^a	15	11	14	15	16	712
Voluntary withholding on certain federal payments ^{a,b}	0	0	183	18	20	221
Voluntary withholding on unemployment compensation ^{a,b}	0	0	149	2	5	156
Treatment of subpart F and section 936 income ^a	999	153	76	79	84	1,391
Accelerate certain excise tax payments ^a	944	8	205	23	25	1,205
For Social Security benefits paid to nonresident aliens—withhold on 85 percent of payment rather than 50 percent ^a	41	61	64	67	70	303

ESTIMATES OF CHANGES IN REVENUES AND DIRECT SPENDING ASSOCIATED WITH H.R. 5110, THE URUGUAY ROUND AGREEMENTS ACT OF 1994—Continued

[By fiscal years, in millions of dollars]

	1995	1996	1997	1998	1999	1995-99
Taxpayer identification numbers required at birth (revenue portion) ^a	0	8	9	9	9	35
Prohibit nonresident aliens from receiving earned income tax credit (EITC) and modify EITC for military personnel outside the United States (revenue portion) ^a	0	12	13	14	14	53
Treat partnership distributions of marketable securities like cash ^a	11	33	48	56	63	211
Extend Internal Revenue Service user fees for five years	0	31	31	31	31	124
Rounding rules for pension cost of living adjustments ^a	103	38	111	29	114	395
Extend section 420 through 2000 with modifications ^a	0	42	120	119	118	399
Pension Benefit Guaranty Corporation (PBGC) reform (revenue portion) ^a	-1	-132	-226	-333	-382	-1074
Substantial understatement penalty for corporate tax shelters ^a	15	20	20	20	20	95
Subtotal	843	-1,372	-1,502	-2,824	-3,451	-8,306

CHANGES IN OUTLAYS

Taxpayer identification numbers required at birth (outlay portion) ^a	0	-13	-16	-15	-15	-59
Prohibit nonresident aliens from receiving EITC and modify EITC for military personnel outside the United States (revenue portion) ^a	-2	-57	-62	-62	-62	-245
Deny EITC for income of prisoners (outlay portion) ^a	-2	-3	-3	-3	-3	-14
Interest rate for portion of corporate tax overpayments over \$10,000 set at Federal short-term rate + 0.5 percent	-17	-104	-174	-225	-280	-800
Savings bonds—repeal 4 percent minimum rate, allow market-based investment yields	-31	-25	-24	-24	-18	-122
Customs merchandise processing fee	-64	-87	-89	-89	-86	-415
PBGC reform (outlay portion)	-81	-333	-621	-496	-506	-2,037
Charge for licenses issued under pioneer preferences	-22	-27	-27	-27	-427	-530
Commodity Credit Corporation ^c	-2	-263	-358	-508	-532	-1,663
Subtotal	-221	-912	-1,374	-1,449	-1,929	-5,885

EFFECT ON DEFICIT

Net Increase or Decrease(-)	-1,064	460	128	1,375	1,522	2,421
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^a Estimate provided by the Joint Committee on Taxation (JCT).

^b These provisions would also increase federal government administrative costs.

^c If the Crop Insurance Act of 1994 is cleared before the Uruguay Round Agreements Act, then this bill will be charged with additional outlays in 1995, depending upon the savings generated by the Crop Insurance Act.

BASIS OF CBO ESTIMATES OF DIRECT SPENDING EFFECTS OF H.R. 5110

Reduce interest rate on large corporate tax refunds (Sec. 713)

The bill would trim the interest rate paid on large refunds of taxes to corporations. Under current law, the rate of interest on refunds that qualify for interest is set at the federal short-term rate (a rate determined by the Secretary of the Treasury, basically resembling a Treasury bill rate) plus 2 percentage points. Section 713 would change this formula to the short-term rate plus 0.5 percent-

age point, for interest accruing after December 31, 1994. the change would apply only to corporate refunds larger than \$10,000.

CBO estimated the savings by applying the one and a half percentage point reduction in rates to the projected amount of eligible refunds over the applicable period (generally, the period between the original payment or filing of tax and the certification of the refund minus a 45-day processing period). Initial savings would be small, but would mount as the post-1994 period represents a growing fraction of the interest-earning period for such refunds.

Repeal 4 percent minimum rate on Savings bonds (Sec. 745)

The bill would repeal the 4 percent statutory minimum interest rate for U.S. savings bonds. The Treasury Department has publicly stated that it would then exercise its administrative discretion to—

Credit interest every six months, instead of monthly; and

Pay interest on bonds that are held for less than five years at a rate equal to 85 percent on bonds that are held for less than five years at a rate equal to 85 percent of the bond-equivalent rate on recent auctions of 6-month Treasury bills (a rate that would be updated semiannually).

The first change would save money—an estimated \$135 million over five years—because someone redeeming a bond could forfeit up to six months of interest. (Under current rules, he or she can lose at most one month of interest.) The second change would have little impact—it would increase net interest spending by an estimated \$13 million over five years—given CBO's January 1994 projections of interest rates.

The changes would take effect for bonds sold after enactment. CBO estimated savings by assuming—based on historical experience—that savings bond sales would total about \$11 billion a year and that 30 percent of bonds would be held for less than five years, and would thereby earn less interest under this proposal. The bill would not affect bonds that are held for five years or more, which are projected to earn more than the 4 percent statutory minimum in any event. Therefore, such bonds are excluded from CBO's estimate.

Raise customs fees

H.R. 5110 would raise fees that the United States Customs Service collects to process merchandise imported into the United States. Effective on January 1, 1995, the bill would raise the ad valorem rate on formal entries and releases from 0.19 percent to 0.21 percent and would raise certain other fees as well. CBO estimates that the additional fees collected would be \$64 million in fiscal year 1995 and would total \$415 million over the 1995–1999 period. These fees are recorded in the budget as offsetting receipts.

PBGC reform (outlay portion)

Underfunded pension plans covered by the termination insurance program of the Pension Benefit Guaranty Corporation (PBGC) are required to pay PBGC a variable rate premium based on the amount of underfunding. The variable rate premium is \$9 per \$1,000 of underfunding and is currently capped at \$53 per participant. This bill would phase out the cap on the variable rate pre-

mium over three years, starting with plan years beginning on or after July 1, 1994. This proposal also would require uniform mortality assumptions and would relax interest rate assumptions used when determining a plan's current liability for calculating its variable rate premium payments. The mortality assumptions that would be required are based on the 1983 Group Annuity Mortality Table (GAM-83). The interest rates would be changed from 80 percent to 85 percent of the 30-year Treasury rate, effective for plan years beginning on or after July 1, 1997.

CBO estimates that these amendments would increase the collection of premiums by about \$81 million in 1995, and by a total of \$2.0 billion over the 1995-1999 period. Premium collections are scored as reductions to direct spending outlays.

Federal Communications Commission license fees

Title VIII would require the Federal Communications Commission (FCC) to charge a fee to firms receiving a telecommunications license under the FCC's pioneer preference rules and would establish a formula for determining that fee. It would permit firms to pay the fee over five years. For broadband personal communications services (PCS), payments of interest only would be required for the first two years and payments for the last three years would be subject to the requirements of the FCC. If the statutory formula does not produce fees totaling at least \$400 million for broadband PCS licenses, title VIII would require the FCC to collect that minimum amount. Based on the assumptions underlying the budget resolution baseline, CBO estimates that the fees calculated under the formula in title VIII would not produce \$400 million from the broadband PCS pioneer firms, and that the FCC would charge them the minimum set in the bill. CBO expects that the FCC would charge the three firms interest only for the first four years, and they require a lump sum payment with interest in the fifth year. CBO estimates that the FCC would collect \$22 million in 1995 and \$530 million through 1999.

Agricultural trade

CBO estimates that the provisions of title IV would reduce direct spending budget authority and outlays by \$2 million in 1995 and by almost \$1.7 billion over the 1997-1999 period. Over \$1 billion of the savings would come from reduced export subsidies in the Export Enhancement Program (EEP) based on the schedule of subsidy reductions required by the agreement. The agreement requires EEP subsidies to be cut by 36 percent in value and by 21 percent in volume by the sixth year from a historical base level. The remainder of the savings would come from effect on domestic commodity programs of changes in prices resulting from expected changes in import and export levels. CBO projects large savings in the rice and peanut programs relative to baseline spending levels.

Section 426 would provide additional funding for alternative export programs, with the amount of additional spending to be determined by the amount of savings generated by legislation to reform crop insurance. Because that legislation has not yet been enacted (it is currently in conference), this estimate does not include any additional spending related to section 426.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee makes the following statement with regard to the inflationary impact of the reported bill:

The Committee is not aware of any impact that H.R. 5110 will have on inflation.

SECTION-BY-SECTION ANALYSIS

H.R. 5110, THE URUGUAY ROUND AGREEMENTS ACT

TITLE I—APPROVAL OF, AND GENERAL PROVISIONS RELATING TO, THE URUGUAY ROUND AGREEMENTS

SUBTITLE A—APPROVAL OF AGREEMENTS AND RELATED PROVISIONS

Section 101. Approval and Entry into Force of the Uruguay Round Agreements

Section 101 provides that the Congress approves the trade agreements resulting from the Uruguay Round of multilateral trade negotiations under the auspices of the General Agreement on Tariffs and Trade, which was signed on April 15, 1994, together with the Statement of Administrative Action describing these agreements and their implementation.

In addition, section 101 establishes conditions that must be met before the President may implement these agreements. This section states that when the President determines that a sufficient number of foreign countries are accepting the obligations of the Uruguay Round Agreements so as to ensure 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 (World Trade Organization).

This section also authorizes such sums as may be necessary to be appropriated annually for the payment by the United States of its share of the expenses of the WTO.

Section 102. Relationship of the Agreements to United States Law and State Law

Section 102 states that if any provision of the Uruguay Round Agreements is inconsistent with United States law it will have no effect. Furthermore, this section states that, unless specifically provided for in this implementing legislation, nothing in this implementing legislation shall be construed:

To amend or modify any law of the United States, including any law relating to the protection of human, animal, or plant life or health, the protection of the environment, or worker safety; or

To limit any authority conferred under and law of the United States, including section 301 of the Trade Act of 1974.

The Statement of Administrative Action states:

The implementing bill, including the authority granted to federal agencies to promulgate implementing regulations, is intended to bring U.S. law fully into compliance with U.S. obligations under those agreements. The bill ac-

completes that objective with respect to federal legislation by amending existing federal statutes that would otherwise be inconsistent with the agreements and, in certain instances, by creating entirely new provisions of law. As section 102(a)(2) of the bill makes clear, those provisions of U.S. law that are not addressed by the bill are left unchanged. An illustrative list of federal environmental and health measures that are not amended by the bill is set out at the end of this part of the Statement.

With respect to state law, section 102 requires that the President, through the intergovernmental policy advisory committee on trade established under section 306(c)(2)(A) of the Trade and Tariff Act of 1984, enter into consultations with the states in order to bring state laws and practices into conformity with provisions of the Uruguay Round Agreements.

State law is defined to include any law of a political subdivision of a State and any State law regulating or taxing the business of insurance, a matter within the Energy and Commerce Committee's jurisdiction. The Statement of Administrative Action explains:

The reference in section 102(b)(3) to the business of insurance is required by virtue of section 2 of the McCarran-Ferguson Act (15 U.S.C. 1012). That section states that no federal statute shall be construed to supersede any state law regulating or taxing the business of insurance unless the federal statute "specifically relates to the business of insurance." Certain provisions of the Uruguay Round Agreements (for example, certain provisions of the GATS [General Agreement on Trade in Services]) do apply to state measures regulating the insurance business." "Given the provision of the McCarran-Ferguson Act, the implementing act must make specific reference to the business of insurance in order for the Uruguay Round Agreements covering the insurance business to be given effect with respect to state insurance laws. Insurance is otherwise treated in the same manner under the Uruguay Round Agreements and the implementing bill as other financial services.

Under this section, no state law may be declared invalid on the ground that it is inconsistent with the Uruguay Round Agreements, except in an action brought by the United States for the purpose of declaring such law invalid. The Statement of Administrative Action states:

The Uruguay Round Agreements do not automatically "preempt" or invalidate state laws that do not conform to the rules set out in those agreements—even if a dispute settlement panel were to find a state measure inconsistent with such an agreement. (See discussion of panel reports under the Understanding on Dispute Settlement.) Each WTO member will be free to determine how it will conform with those agreements at the national and sub-national level. The Administration is committed to carrying out U.S. obligations under the Uruguay Round Agreements, as

they apply to the states, through the greatest possible degree of state-federal consultation and cooperation, in conformity with the consultative framework established under section 102(b)(1) of the bill.

Under that section, the President will consult in accordance with section 306(c)(2)(A) of the Trade and Tariff Act of 1984 (19 U.S.C. 2114(c)(2)(A)) through an intergovernmental policy advisory committee established under that section with state governments in order to assist states in conforming their laws and practices with the Uruguay Round Agreements. These consultations will begin immediately upon enactment of the implementing bill.

The Administration is committed to take into account the views of state governments in implementing the Uruguay Round Agreements with respect to any matter that may directly affect their interests. The Administration is particularly cognizant of the importance of coordination and consultation with state governments in areas of special importance or sensitivity to them, including with regard to state laws protecting human, animal, or plant health or the environment and the imposition or collection of state taxes.

To this end, the Administration will involve the states to the greatest extent possible in the development of U.S. positions with respect to issues subject to state jurisdiction that are addressed by the committee provided for under the various Uruguay Round Agreements, such as the SPS (Sanitary and Phytosanitary Standards) and TBT (Technical Barriers to Trade) Committees.

Section 102(b)(2) makes clear that only the United States is entitled to bring an action in court in the event that there is an unresolved conflict between a state law (which for purposes of the bill includes any provision of a state constitution, regulation, practice or other state measure), or the application of a state law, and a Uruguay Round Agreement. The authority conferred on the United States under this paragraph is intended to be used only as a "last resort", in the unlikely event that efforts to achieve consistency through the cooperative approach discussed above have not succeeded.

In determining whether to exercise the authority of this paragraph, the U.S. Attorney General will consider the advice of the Trade Representative as to whether a WTO member government has objected to the state measure in question and the extent to which any WTO member complaining of the measure is taking necessary measures to ensure the conformity of its subnational government measures with the relevant Uruguay Round Agreement. The Attorney General will be particularly careful in considering recourse to this authority where the state measure involved is aimed at the protection of human, animal, or plant health or of the environment or the state measure is a state tax of a type that has been held to be consistent with the requirements of the U.S. Constitution. In such a

case, the Attorney General would entertain use of this authority only if consultations between the President and the Governor of the state concerned failed to yield an appropriate alternative.

Furthermore, the Statement of Administrative Action states:

If an action is instituted under section 102(b)(2), the United States will not seek to introduce into evidence in federal court any panel or Appellate Body report issued under the DSU [Dispute Settlement Understanding] with regard to the state measure at issue. The United States would base any such proceeding on the provisions of the relevant Uruguay Round Agreement—not a panel report—and the court would thus consider the matter *de novo*. Although a court could take judicial notice of the panel or Appellate Body report and consider the views of the panel if the court considered them to be persuasive, section 102(b)(2)(B) makes clear that panel reports are not to be considered binding or otherwise accorded deference. In any such proceeding, the United States would have the burden of proof and the court would reach its own, independent interpretation of the relevant provisions in the light of Agreement's negotiating and legislative history, including this Statement. Section 102(b)(2)(B) also makes clear that the court is to regard this Statement as an authoritative expression by the United States of its views concerning the interpretation and application of the Uruguay Round Agreements.

In addition, section 102(c) bars private causes of action or defenses based on the Uruguay Round Agreements. Furthermore, this section precludes a private right of action challenging 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 the Uruguay Round Agreements.

Section 103. Implementing actions in anticipation of entry into force; regulations

Section 103 allows the President to proclaim such actions, and agencies of the Government to issue necessary regulations to ensure implementation of the Uruguay Round Agreements on the date of enactment, provided that no such action or regulations would be effective earlier than the date on which the Agreement enters into force.

SUBTITLE B—TARIFF MODIFICATIONS

This subtitle contains authorities and establishes conditions necessary for the President to modify U.S. tariffs in accordance with commitments made in the Uruguay Round Agreements.

In addition, section 113 of this subtitle sets out conditions, including layover requirements, under which the President may utilize authority in this implementing legislation, generally, to implement actions by proclamation.

SUBTITLE C—URUGUAY ROUND IMPLEMENTATION AND DISPUTE
SETTLEMENT

This subtitle contains procedures that the President, the U.S. Trade Representative, and agencies of the Federal government shall follow in addressing matters before and actions taken by the WTO's dispute settlement bodies.

Section 122. Implementation of Uruguay Round Agreement

Section 122 provides that the Trade Representative shall consult with the appropriate congressional committees (defined to be any committee of the Congress that has jurisdiction involving the matter with respect to which consultations are to be held before any vote is taken by the Ministerial Conference or the General Council of the WTO concerning any action of those bodies which would affect the rights or obligations of the United States under the WTO Agreement or another multilateral trade agreement or which would potentially entail a change in Federal or State law.

Section 123. Dispute settlement panels and procedures

Subsection (g) of section 123 sets out procedures to be followed in any case in which a dispute settlement panel or the Appellate Body decide that a regulation or practice of a department or agency of the United States is inconsistent with any of the Uruguay Round Agreements.

Under this subsection, an agency may not use authority it has under existing law to amend, rescind, or otherwise modify a regulation or practice that is determined to be inconsistent with Uruguay Round Agreements, unless and until—

The appropriate congressional committees have been consulted;

The Trade Representative has sought advice regarding the modification from relevant private sector advisory committees;

The head of the relevant department or agency has provided an opportunity for public comment by publishing in the Federal Register the proposed modification and the explanation for the modification;

The Trade Representative has submitted to the appropriate congressional committees a report describing the proposed modification and the reasons for the modification;

The President has consulted with the appropriate congressional committees on the proposed contents of the final rule or modification; and

The final rule or other modification has been published in the Federal Register.

In addition, this subsection states that a final rule or other modification may not take effect before the end of the 60-day period beginning on the date on which the President's consultations with the appropriate congressional committees begin, unless the President determines that an earlier effective date is in the national interest. Finally, this subsection states that during this 60-day period, the Committee on Ways and Means of the House and the Committee on Finance of the Senate may vote to indicate their agreement or disagreement with the proposed contents of the final rule or other

modification; although such vote shall not be binding on the department or agency which is implementing the rule or modification.

Section 127. Access to the WTO dispute settlement process

Section 127 provides that whenever the U.S. is a party before a dispute settlement panel, the Trade Representative shall, at each stage, consult with the appropriate congressional committees, the petitioner, and the relevant private sector advisory committees, and shall consider the views of appropriate interested private sector and nongovernmental organizations.

In addition, when the U.S. is involved in a panel proceeding, the Trade Representative shall publish a notice in the Federal Register—

Identifying the initial parties to the dispute;

Setting forth the major issues raised by the country requesting the establishment of a panel and the legal basis of the complaint;

Identifying the specific measures, including any State or Federal law cited in the request for establishment of the panel; and

Seeking written comments from the public concerning the issues raised in the dispute.

In preparing U.S. submissions to the panel or Appellate Body, the Trade Representative is required by this section to take into account any advice received from appropriate congressional committees and others consulted, as well as information received pursuant to notices published.

In addition, this section provides for public access to documents considered by the panel during its proceedings.

Section 128. Advisory Committee participation

Section 128 amends section 135(b) of the Trade Act of 1974 to include representatives of non-governmental environmental and conservation organizations on the Advisory Committee for Trade Policy and Negotiations.

SUBTITLE D—RELATED PROVISIONS

This subtitle covers a number of different issues, including direction that the President seek the establishment of a working party to examine the relationship of internationally recognized worker rights to the Uruguay Round Agreements.

Section 135 of this subtitle contains negotiating objectives for the extended negotiations on trade in services, including financial services, and trade in basic telecommunications services, two areas within the jurisdiction of the Committee on Energy the Commerce.

The Uruguay Round Agreements and annexes provide WTO members a six-month period after the WTO enters into force to negotiate improvements in the commitments made in the financial services sector. The Statement of Administrative Action states that the Annex on Financial Services,

“* * * provides a broad and non-exclusive definition of financial services that includes insurance and insurance-related services, banking, securities, and a variety of other

financial services"; and "that, notwithstanding any other provision of the GATS (General Agreement on Trade in Services), member countries may take prudential measures to protect consumers or to ensure the integrity and stability of their financial systems."

At the conclusion of the six-month period for extended negotiations on financial services, member countries will be permitted to:

Exempt all or some of their financial services sectors (including banking, securities, insurance and diversified financial services) from the general most-favored-nation (MFN) requirement in the General Agreement on Trade in Services; and

Modify or withdraw some or all of their market access or national treatment commitments already made.

With regard to the extended negotiations on financial services, the Statement of Administrative Action states:

By permitting changes in scheduled commitments and MFN exemptions at the close of the six-month negotiating period, the Annex will permit the United States to address both the current asymmetry in market access or national treatment commitments and the differing effect of the GATAS (General Agreement on Trade in Services) MFN rule on the United States and other countries * * * the United States is prepared to apply an MFN exemption in the insurance sector and to modify its insurance commitments if these negotiations do not achieve the objective set forth in section 135 of the bill.

During the six-month negotiating period, the Administration will consult with the Congress and U.S. financial services industries on a regular basis regarding progress in those negotiations. In addition, the Administration will consult with the Congress and the affected industries prior to determining whether an MFN exemption should go into effect in the relevant sectors and the U.S. schedule of commitments should be modified. The Administration will also submit a written report by April 30, 1995, on the status of these negotiations. This report shall state the current status of the financial services negotiations as to each signatory to the GATS, and shall include the market access offers of each of the signatories. This report shall be provided to the Senate Finance, Commerce, and Banking Committees, and to the House Ways and Means, Energy and Commerce, and Banking Committees.

In the event the negotiations described above are not successful, the Administration will consult with Congress, including specifically the Committees of the House and Senate to which it has submitted the report required above, and, after doing so, shall take appropriate action to achieve the objectives set forth in section 135 of the implementing bill.

Pursuant to Ministerial Decisions, negotiations on basic telecommunications are expected to conclude by April 30, 1996. The Statement of Administration Action states:

The Annex on Telecommunications Services ensures that service providers will have reasonable and non-discriminatory access to, and use of, basic telecommunications services in member countries. It also provides that such services may be used for intracorporate communications and to provide service to customers in GATS countries. Specifically, the annex provides that services firms may attach the equipment of their choice to the telecommunications network, interconnect to other private networks, and use proprietary protocols. The annex applies to all services for which a GATS member has scheduled a market access commitment.

The annex provides that telecommunications authorities may regulate use of basic telecommunications services as necessary to ensure universal service, to protect the technical integrity of the network, and to prevent the provision of unauthorized service.

A separate annex provides an exception to the GATS MFN rule for measures affecting the provision of basic telecommunications during the pendency of further negotiations in this sector.

TITLE III—ADDITIONAL IMPLEMENTATION OF AGREEMENTS

SUBTITLE F—TECHNICAL BARRIERS TO TRADE

Subtitle F covers rules and procedures with respect to the development, adoption, and application of voluntary product standards, mandatory product standards, and the procedures used to determine whether a particular product meets such standards.

Section 351. Technical Barriers to Trade

Section 351 amends title IV of the Trade Agreements Act of 1979 (19 U.S.C. 2531 et seq.) to provide that nothing in this title shall be construed to prohibit a Federal agency from engaging in activity related to standards-related measures, including determining the level it considers appropriate of safety or of protection of human, animal, or plant life or health, the environment, or consumers.

This section also provides that the standards information center in the Department of Commerce shall serve as the principal source of information relating to the membership and participation of Federal, State, or local government bodies or private bodies in the United States in international and regional standardizing bodies as well as in bilateral and multilateral arrangements concerning standards-related activities.

The Statement of Administrative Action states:

The TBT (Technical Barriers to Trade) Agreement generally distinguished between “central” government measures (such as those adopted at the federal level in the United States), “local” government measures (for example, U.S. states and local laws and regulations), and “non-governmental” (private) measures. Like the Standards Code, the TBT Agreement generally obligates each WTO member to “take such reasonable measures as may be available” to it to ensure compliance by local government

and nongovernmental bodies with specified provisions of the Agreement.

The Statement of Administrative Action identifies additional obligations under the Agreement, including:

That technical regulations are not to be more trade-restrictive than necessary to fulfill a legitimate objective, taking account of the risks non-fulfillment would create, is new. * * * The Agreement's negotiators intended this obligation to operate in a manner similar to Article 5.6 of the S&P Agreement.

Thus, in order for a WTO member to show that another government's technical regulation is more trade-restrictive than required, the member would need to show that there is another measure that: is reasonably available to the government; fulfills the government's legitimate objectives; and is significantly less restrictive to trade.

Accordingly, the complaining member would need to identify a specific alternative measure that is reasonably available—a member is not obligated to do what is unreasonable. Furthermore, the alternative measure must make a significant difference from a trade perspective—there would be no need to adopt an alternative measure if it made an insignificant difference in terms of trade. Most importantly, the alternative measure must fully satisfy the government's legitimate objectives.

As in the case of the sanitary and phytosanitary text, the obligation to ensure compliance with the terms of the agreement applies to the Federal government, not state or local governments. The Federal government is not obligated to take action against a state or local government, if a conflict between local or state standards and the requirements of the Agreement are found; nor is a state or local government obligated to comply with standards set by the Federal government. If a state standard were found to be inconsistent with the Agreement and the state chose not to change its standard, the U.S. would have the option of doing nothing which could result in the payment of compensation to the complaining foreign country or the withdrawal of U.S. benefits provided by the country.

Section 352. Effective date

Section 352 states that this subtitle shall take effect when the agreement establishing the WTO enters into force.

TITLE IV—AGRICULTURE-RELATED PROVISIONS

SUBTITLE B—SANITARY AND PHYTOSANITARY MEASURES

Sanitary and phytosanitary measures are those that address the protection of human, animal, and plant life from the risks of plant- or animal-borne pests or diseases, or from additives, contaminants, toxins, or disease-causing organisms in foods, beverages, or food-stuffs.

Section 431. Sanitary and phytosanitary measures

Section 431 amends section 414 of the Trade Agreements Act of 1979 by adding at the end of new subsection (c) which establishes new functions for the standards information center in the Department of Commerce. Pursuant to this section, the standards information center is required to make available to the public relevant documents, at a reasonable fee, and information regarding:

Any sanitary or phytosanitary measure of general application, including any inspection procedure or approval procedure proposed, adopted, or maintained by federal agency or agency of a State or local government;

Factors and procedures any Federal, State or local agency used in determining risk assessment;

Determinations of appropriate levels of protection by Federal, State or local agencies; and

The membership and participation of Federal, State and local governments in international and regional sanitary and phytosanitary organizations and systems, and in bilateral and multi-lateral arrangements regarding sanitary and phytosanitary measures, and the provisions of those systems and arrangements.

This section also contains amendments to other laws not within the jurisdiction of the Committee on Energy and Commerce.

Section 432. International standard-setting activities

Section 432 amends title IV of the Trade Agreements Act of 1979 by adding at the end a new "Subtitle F", entitled "International Standard-Setting Activities".

New section 491 of Subtitle F states that the President shall designate an agency to be responsible for informing the public of the sanitary and phytosanitary standard-setting activities of each international standard-setting organization. By June 1 of each year, the designated agency shall publish notice in the Federal Register for the previous one year period of the following information:

The sanitary or phytosanitary standards under consideration or planned for consideration by the organization;

For each sanitary or phytosanitary standard identified—a description of the consideration or planned consideration of the standard;

Whether the United States is participating or plans to participate in the consideration of the standard;

The agenda for the United States participation; and

The agency responsible for representing the United States with respect to the standard.

In addition, section 491 requires the agency responsible for representing the United States with respect to the standard to provide an opportunity for public comment with respect to the standards for which such agency is responsible and to take the comments into account in participating in the consideration of the standards and in proposing matters to be considered by the organization.

Section 492 of this new subtitle states that a federal agency may not determine that a sanitary or phytosanitary measure of a foreign country is equivalent to a sanitary or phytosanitary measure

established under the authority of Federal law unless the agency determines that the sanitary or phytosanitary measure of the foreign country provides at least the same level of sanitary or phytosanitary protection as the comparable sanitary or phytosanitary measure established under the authority of Federal law.

The Statement of Administrative Action states:

This change makes explicit that implementation of the equivalence provisions of the S&P Agreement results in imports that are just as safe or healthy as domestic goods. In practice only the Department of Agriculture (USDA), Food and Drug Administration (FDA) and the Environmental Protection Agency (EPA) make equivalency determinations, since they are the agencies in the federal government that maintain S&P measures.

The amendment made by section 432 also requires the FDA to provide public notice and opportunity for comment prior to determining that a foreign country's S&P measure is equivalent to a FDA S&P measure. USDA and EPA already provide notice and comment on their equivalency determinations.

This section also states that if the Food and Drug Administration proposes to issue a determination that a sanitary or phytosanitary measure of a foreign country is equivalent to a U.S. sanitary or phytosanitary standard that is required to be promulgated as a rule under the Federal Food, Drug, and Cosmetic Act or other statute administered by the Food and Drug Administration, the Commissioner of Food and Drugs shall issue a proposed regulation to incorporate such determination and shall include in the notice of proposed rulemaking the basis for the determination that the sanitary or phytosanitary measure of a foreign country provides at least the same level of sanitary or phytosanitary protection as the comparable Federal measure.

The Commissioner is required to provide an opportunity for comment and is prohibited from issuing a final regulation without taking into account the comments received.

If the comparable U.S. sanitary or phytosanitary measure was not required to be promulgated as a rule, the Commissioner shall publish notice in the Federal Register that identifies the basis for the determination that foreign sanitary or phytosanitary measure provides at least the same level of sanitary or phytosanitary protection as the comparable Federal sanitary or phytosanitary measure.

The Commissioner is required to provide opportunity for comment, and he is prohibited from issuing a final determination on the issue of equivalency without taking into account the comments received.

The federal government, in turn, is obligated to formulate and implement positive measures and mechanisms in support of observance of the Agreement by state and local governments. * * * Nothing in the Agreement, however, requires that state or local governments adopt, or comply with, federal S&P measures * * * Furthermore nothing in the Agreement requires the federal government to take

legal action against state measures that dispute settlement panels may determine to be inconsistent with trade obligations. Under the Agreement, panel opinions are advisory only. If the defending country loses, it is not required to remove or change the measure in question. It may decide to do so, but it may choose instead to offer trade compensation to the other party to the dispute, settle the matter on some other basis, or simply permit the other party to suspend equivalent trade concessions.

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TITLE VIII—PIONEER PREFERENCES

Section 801 of H.R. 5110 consists of an amendment to section 309(j) of the Communications Act of 1934 and establishes how the Federal Communications Commission should recover the value of public spectrum in connection with pioneer preferences.

Section 309(j)(13)(A), as amended by H.R. 5110, contains a general rule governing recovery for the public of monetary value related to the granting of licenses by the Commission through a "pioneer's preference." Section 309(j)(13)(B), as amended by H.R. 5110, establishes the formula the Commission shall use to recover such value, and provides that the Commission is required to base recovery on 85 percent of an average per population price bid in the most reasonably comparable markets. Subsection (13)(C) permits guaranteed installment payments. Subsection (13)(D) directs the Commission to establish rules for future pioneer's preference applicants in order to improve the administration of this program.

Section 309(j)(13)(E), as amended by H.R. 5110, directs the Commission on how to implement this paragraph with respect to pending applications. It requires that the Commission shall not delay in awarding the pioneer's preference in granting the license, and such decision shall not be subject to administrative or judicial review. Section 309(j)(13)(E)(iii), as amended by H.R. 5110, stipulates that the 20 largest markets in which no one has obtained a pioneer's preference would be most reasonably comparable. Section 309(j)(13)(E)(iv), as amended by H.R. 5110, provides that the pioneers shall pay interest only for the first two years, and interest and principal for the next 3 years, pursuant to the Commission's regulations. This paragraph further provides that the pioneer's preference holders must begin payment to the Federal Government 30 days after the award of the pioneer's preference, and the granting of the license, becomes final. Section 309(j)(13)(E)(v), as amended by H.R. 5110, requires the Commission to recover at least \$400 million, and, if the formula does not generate such an amount, the Commission is authorized to impose, on a *pro rata* fashion, such payments as necessary to obtain such an amount.

Section 309(j)(13)(F), as amended by H.R. 5110, terminates the Commission's authority to provide pioneer's preference designation on September 30, 1998. Finally, this provision clarifies that this

paragraph applies to any pioneer's preference licenses issued on or after August 1, 1994.

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