

WITHDRAWING THE APPROVAL OF THE UNITED STATES
FROM THE AGREEMENT ESTABLISHING THE WORLD
TRADE ORGANIZATION

MAY 26, 2005.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

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

ADVERSE REPORT

together with

ADDITIONAL VIEWS

[To accompany H.J. Res. 27]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the joint resolution (H.J. Res. 27) withdrawing the approval of the United States from the Agreement establishing the World Trade Organization, having considered the same, reports unfavorably thereon without amendment and recommends that the joint resolution do not pass.

CONTENTS

	Page
I. Introduction:	
A. Purpose and Summary	2
B. Background	2
C. Legislative History	3
II. Explanation of the Resolution	4
III. Vote of the Committee	7
IV. Committee Oversight Findings and Recommendations	7
A. New Budget Authority and Tax Expenditures	7
B. Performance goals and objectives	7
C. Constitutional Authority Statement	7
D. Cost Estimate Prepared by the Congressional Budget Office	8
V. New Advisory Committees	9
VI. Congressional Accountability Act	9

VII. Federal Mandates	9
VIII. Views	10

I. INTRODUCTION

A. PURPOSE AND SUMMARY

House Joint Resolution 27 would withdraw the approval of the Congress from the Agreement establishing the World Trade Organization (WTO).

B. BACKGROUND

Background on the World Trade Organization

The WTO was established in the Uruguay Round, which was the eighth round or series of multilateral trade negotiations under the General Agreement on Tariffs and Trade (GATT). These negotiations to expand trade, which date back to the establishment of the GATT in 1948, were a response to the Great Depression and the political upheaval and conflicts of the 1930s, which deepened as a result of protectionist policies such as the Smoot-Hawley Tariff. Work under the GATT system, aimed at raising living standards and promoting international economic growth through the opening of world markets, has spanned six decades.

The trade agreements reached at the end of 1994 during the Uruguay Round were noteworthy in that they greatly expanded coverage of GATT rules beyond manufactured goods trade to include agricultural trade, services trade, trade-related investment measures, intellectual property rights, and textiles. The most visible accomplishment of this multilateral trade round was to establish the WTO to administer the GATT agreements and to settle disputes among WTO members.

Current negotiations in the Doha Development Round

WTO countries are currently participating in the ninth round of negotiations, called the Doha Development Round, which was launched in Doha, Qatar, in November 2001. The Doha agenda provides a mandate for negotiations on a range of subjects and for work in on-going WTO committees. According to the U.S. Trade Representative, the main focus of the negotiations is in the following areas: agriculture, industrial market access, services, trade facilitation, WTO rules (i.e., trade remedies, regional agreements, and fish subsidies), and development. The goal of the Doha agenda is to reduce trade barriers so as to expand global economic growth, development, and opportunity. The “2005 Trade Policy Agenda and 2004 Annual Report of the President on the Trade Agreements Program” provides an extensive description of the state of negotiations.

The five-year review of U.S. participation in the WTO

Sections 124–125 of the Uruguay Round Agreements Act (URAA) (P.L. 103–465) require the President to submit a special report on U.S. participation in the WTO every five years from the date the United States first joined the WTO. Congress received the first of these five-year reports in 2000. Congress received the second, and most recent, five-year report on March 1, 2005. Included in the “2005 Trade Policy Agenda and 2004 Annual Report of the Presi-

dent's Trade Agreements Program" is the President's review of the WTO, including highlights, recent accomplishments, as well as cumulative assessments of major trade topics since the WTO was established such as: (1) expanded market access in goods and services, (2) economic benefits of trade, (3) trade related aspects of intellectual property rights and investment protection, (4) customs related matters, (5) continued operation of a sound and effective system to settle disputes, and (6) launch of the Doha Development Round in 2001.

Section 125 of the URAA also provides a legislative procedure available every five years for Congress to consider withdrawal of Congressional approval for the WTO. The legislative procedure is initiated by introduction of a resolution containing specified language, which is then considered by the House in a specific expedited manner. The resolution is privileged and cannot be amended. The text of the resolution is as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress withdraws its approval, provided under section 101(a) of the Uruguay Round Agreements Act, of the WTO Agreement as defined in section 2(9) of that Act.

In 2000, a House-introduced resolution to withdraw Congressional approval of the WTO failed by a vote of 56 to 363.

The Committee on Ways and Means must consider any resolution introduced within 45-days or face automatic discharge, pursuant to the requirements of sections 124–125. After the 45-day period has ended, any Member may bring it to the floor of the House. A joint resolution of withdrawal must ultimately be passed by both Houses and signed by the President within 90 days to be effective. Even if enacted (i.e., signed by the President or Presidential veto overridden), the resolution does not actually require the President to begin withdrawal actions.

If the resolution is passed and vetoed by the President, each House may vote to override the veto before the end of the 90-day period or within 15 session days from the date on which Congress receives the President's veto message, whichever is later.

C. LEGISLATIVE HISTORY

Committee action

House Joint Resolution 27 was introduced on March 2, 2005, by Representatives Bernard Sanders (I-VT) and Ron Paul (R-TX). On March 2, 2005, the resolution was referred to the Committee on Ways and Means. On May 24, 2005, the Committee ordered adversely reported H.J. Res. 27 to the House of Representatives by a voice vote.

Legislative hearing and oversight

On May 17, 2005, the Trade Subcommittee held a hearing on (1) overall results of U.S. membership in the WTO and the GATT, (2) whether future participation of the United States in the WTO and the multilateral trading system can be expected to benefit Americans, and (3) prospects for increased economic opportunities for U.S. farmers, workers, businesses, and consumers in the Doha

Round. At the hearing, Deputy U.S. Trade Representative Peter Allgeier and representatives from the private sector expressed their views on the United States' involvement in the WTO. There was widespread support expressed for remaining in the WTO while working on various challenges that remain.

In addition to receiving annual reports by the President on the trade policy agenda, the Committee has conducted extensive oversight of WTO activities. Most importantly it has monitored results of key WTO disputes and U.S. positions in the current Doha Round negotiations. Moreover, select Members of the Committee participate in the Congressional Oversight Group process, which covers all trade matters including WTO issues. In addition, Members of the Committee attended the WTO's Ministerial Conference in Cancun in September 2003 as part of the U.S. delegation and anticipate attending the next Conference in Hong Kong in December 2005.

II. EXPLANATION OF THE RESOLUTION

Present law

Under WTO rules, the United States may withdraw from the WTO by exercising the procedures set forth in Article XV of the WTO Agreement, which requires six months' notice to the WTO Director General. Section 125(b) of the Uruguay Round Agreements Act (P.L. 103-465), establishes a procedure under which Congress may withdraw its approval of the WTO Agreement contained in section 101(a) of the Act. Sections 124-125 of the URAA require the President to submit a special report on U.S. participation in the WTO every five years from the date the United States first joined the WTO. Following receipt of the report, any Member of either the House or Senate may introduce a joint resolution to withdraw Congressional approval of the WTO Agreement. Congress then has 90 days from receipt of the report to act on the resolution. The resolution is privileged and cannot be amended.

Explanation of the resolution

House Joint Resolution 27 states that Congress withdraws its approval, provided under section 101(a) of the URAA, of the WTO Agreement Establishing the World Trade Organization entered into on April 15, 1994.

While enactment of a resolution withdrawing Congressional approval under section 125 would call into question the future of U.S. participation in the WTO, it does not require the President to withdraw the United States from the WTO and does not begin withdrawal procedures.

Reasons for change

The Committee reports Mr. Sanders' resolution to withdraw Congressional approval of the Agreement Establishing the World Trade Organization adversely, because the Committee believes that U.S. participation in the global trading system is vital to America's long term economic and strategic interests, continued prosperity, and strengthening the rule of law around the world. In particular, the prospects for further benefits to the U.S. economy by a successful

conclusion to the current Doha Round of negotiations make U.S. participation in the WTO even more compelling.

Review of WTO

The WTO is generally recognized as the most important vehicle to advance U.S. trade interests and is critical to America's consumers, workers, businesses, farmers, and ranchers. All are advantaged by a global trading system that must operate with predictability and transparency, without discrimination against American products, and providing for actions to address unfair trade practices.

Falling trade barriers as a result of the Uruguay Round have helped to increase rapidly the value of trade relative to the U.S. economy. United States goods and service trade (exports plus imports) reached 18 percent of the value of U.S. GDP in 1982 and then grew to 21.7 percent in 1994 and 25.2 percent in 2004. Both U.S. manufacturing exports and U.S. agricultural exports have grown strongly during U.S. membership in the WTO in the last 10 years. Between 1994 and 2004, exports in these sectors increased 65 percent and 38 percent, respectively. United States exports of high technology products grew by 67 percent during the past 10 years and account for one-quarter of total goods exports.

On a day-to-day basis, the WTO provides opportunities for advancing U.S. interests through the more than twenty standing WTO Committees which meet regularly to administer agreements, allow members to exchange views, work at resolving questions of members' compliance with commitments, and develop initiatives aimed to improve the agreements and their operation. The WTO has also proven itself important for ensuring sustainable global economic development. In promoting expanded economic freedom, the WTO provides access to the developing world, contributes to a stable and peaceful world, and helps alleviate poverty.

To ensure equal and fair opportunities for U.S. interests and to enforce U.S. rights under the agreements, the United States has brought more WTO dispute settlement cases than any other member. Since establishment of the WTO, the United States has initiated 74 cases. The United States represents roughly 17 percent of world trade, yet has brought nearly 22 percent of the WTO disputes between January 1, 1995 and December 31, 2004. Examples of U.S. initiated cases involving diverse industries and interests such as those dairy, apples, biotechnology, telecommunications, automobiles, apparel, unfair customs procedures, and intellectual property rights. Of those, the United States has won 23 on core issues, lost four, and settled 23 before decision. The remaining 24 are "in process," i.e., before a panel, in the consultation stage, or being monitored for progress or otherwise inactive. According to USTR, in the last five years, the United States has won a total of 16 cases and lost 14 as plaintiff and defendant. From 1995 to 2000, the U.S. record was 18 wins and 15 losses. In many cases, U.S. losses have minimal or no impact on U.S. law or practice, or have provided an opportunity to amend U.S. law to make U.S. interests more competitive with its trading partners. At the same time the Committee notes that the United States is best positioned to actively pursue U.S. interests and WTO compliance with other members when the United States itself has met its obligations, includ-

ing coming into compliance with dispute settlement cases that require adjustments to U.S. law.

Doha Round

The Doha agenda provides a mandate for negotiations on a range of subjects and work in ongoing WTO committees: agriculture, industrial market access, services, trade facilitation, WTO rules (i.e., trade remedies, regional agreements, and fish subsidies), and development. Benefits from a successful Doha Round would be significant. According to USTR, elimination in industrial tariffs alone could help lift 300 million people in the world out of poverty and raise global income by \$500 billion, with much of the benefit attributable to trade between developing countries. For the United States, the benefits would be equivalent to an \$18 billion tax cut for American consumers and manufacturers while expanding the U.S. economy by \$95 billion. For these reasons, the Committee strongly seeks a comprehensive and ambitious result in the Doha Round.

In addition to industrial goods trade, the Doha Round provides the United States and rest of the world with historic opportunities to achieve agricultural reform and to greatly diminish current market distortions that present barriers to farmers everywhere. The United States also seeks an ambitious opening of services market that will benefit the wide range of important industries. WTO negotiations on trade facilitation will result in more efficiency and predictability, lower cost for moving goods across borders, and less corruption by customs officials abroad. The Committee considers each of these areas important in its own right and expects the Administration to firmly support a balanced approach to the negotiations.

The Committee is concerned that such a balanced approach is not supported adequately by other WTO members despite their long term interests in greater trade liberalization. In pursuing a balanced final agreement, the U.S. trade negotiating positions have been fair, offering ambitious trade liberalization in areas where the United States has both offensive and defensive interests. This is in marked contrast to many other countries, which have demanded more access while refusing access to their own markets, have sought to be explicitly exempted from new obligations, or have sought to effectively protect their sensitive industries and trade distorting programs through targeted exceptions. Accordingly, the Committee supports the Doha agenda as a means to reduce trade barriers broadly so as to expand global economic growth, development, and opportunity. While the Committee believes that developing countries should receive certain special and differential treatment in areas in which they are not developed, a successful trade agreement, however, cannot provide significant exemptions for countries, economic sectors, or products.

Despite the clear and compelling reasons for remaining in the WTO, the Committee notes several aspects of the current system that need improving. Such improvements will benefit the United States and can be addressed by a continued U.S. active presence as a member of the WTO, particularly in the only current negotiations. First, as tariffs have decreased, countries have taken to raising non-tariff barriers in various forms such as discriminatory in-

ternal taxes and standards targeting foreign goods. In the agriculture area, there are many sanitary-phytosanitary standards with inadequate scientific basis that effectively block U.S. exports. Second, U.S. trade remedy laws have occasionally been impacted by dispute settlement panels that read more exacting, and sometimes impractical, requirements into the WTO agreements. While the United States retains effective use of all of its trade remedy options, the panel “gap filling” in this and other areas raises very important concerns for the Committee, and the Committee urges USTR to continue to insist upon adherence to the appropriate standard of review by panels, the Appellate Body, and the WTO Secretariat and to the terms of reference of the review. Lastly, the consensus-based structure of the WTO gives recalcitrant and protectionist members the ability to minimize and dilute trade liberalizing efforts in a manner out of proportion to their economic commitment to the free trade system. The Committee supports U.S. efforts to redress all of these points as an active member in good standing of the WTO.

III. VOTE OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statements are made concerning the vote of the Committee on Ways and Means in its consideration of the resolution, H. J. Res. 27.

MOTION TO REPORT THE RESOLUTION

The resolution, H.J. Res. 27, was ordered adversely reported by voice vote (with a quorum being present).

IV. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee, based on public hearing testimony and information from the Administration, concludes that it is appropriate and timely to consider and adversely report this measure.

A. NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House Rule XIII is inapplicable because H.J. Res. 27 does not provide new budgetary authority or increased tax expenditures.

B. PERFORMANCE GOALS AND OBJECTIVES

The rule requiring a statement of performance goals and objectives is inapplicable.

C. CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this resolution in article I, section 1 of the Constitution.

D. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET
OFFICE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the Congressional Budget Office, the following report prepared by CBO is provided.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 25, 2005.

Hon. WILLIAM “BILL” M. THOMAS,
*Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.J. Res. 27, a joint resolution withdrawing the approval of the United States from the agreement establishing the World Trade Organization, ordered reported by the House Committee on Ways and Means on May 24, 2005.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Annabelle Bartsch and Emily Schlect.

Sincerely,

DOUGLAS HOLTZ-EAKIN, *Director.*

Enclosure.

H.J. Res. 27—A joint resolution withdrawing the approval of the United States from the agreement establishing the World Trade Organization

CBO estimates that enacting H.J. Res. 27 would likely have no effect on the federal budget. The legislation would withdraw the U.S. Congress’s approval of the World Trade Organization (WTO) agreement that was provided under section 101(a) of the implementing legislation (Public Law 103–412). If the United States were to withdraw from the WTO, any subsequent changes in U.S. collections of tariff duties could have significant budgetary effects. However, the ultimate impact of the legislation is unclear. In particular, it is not clear that enactment of this resolution would require the United States to withdraw from the WTO—and even if it did, there might not be any changes in tariffs. Based on information from the Administration in the past that suggests that such legislation would not affect the application of the WTO agreement to the United States, CBO concludes that enacting H.J. Res. 27 would probably have no budgetary impact.

H.J. Res. 27 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments. Withdrawing from the WTO would broaden the conditions under which the U.S. government could impose trade restrictions on imports. Trade restrictions—such as increased tariff duties or quota limits more restrictive than under current law—would impose private-sector mandates on importers of affected items. However, because the legislation would probably not affect the application of the WTO agreement to the United States, CBO concludes that H.J. Res. 27

would likely impose no new private-sector mandates as defined in UMRA.

This estimate was prepared by Annabelle Bartsch and Emily Schlect (for federal costs) and Paige Piper/Black (for the private-sector impact). This estimate was approved by G. Thomas Woodward, Assistant Director for Tax Analysis.

V. NEW ADVISORY COMMITTEES

H.J. Res. 27 does not establish or authorize any new advisory committees.

VI. CONGRESSIONAL ACCOUNTABILITY ACT

H.J. Res. 27 does not apply to activities relevant to the Congressional Accountability Act.

VII. FEDERAL MANDATES

H.J. Res. 27 provides no Federal mandates.

VIII. VIEWS

ADDITIONAL VIEWS

We support continued U.S. participation in the World Trade Organization (WTO) and the ongoing “Doha Development Round Agenda” of trade negotiations. We strongly disapprove of H.J. Res. 27, which would withdraw congressional approval of the Agreement establishing the WTO.

The Doha Round of trade negotiations should be our nation’s top trade priority, given the magnitude of the potential impact of a successful outcome on the U.S. economy, and the potential benefits for American workers, farmers and businesses. Ninety-seven percent of all U.S. trade is with other WTO Members. The WTO, and its predecessor, the General Agreement on Tariffs and Trade (GATT), have opened foreign markets around the world to U.S. goods and services, creating new opportunities for U.S. businesses, farmers and workers. The United States has, in general, benefitted from the more predictable environment for trade fostered by WTO rules and, taken as a whole, the WTO dispute settlement mechanism.

Nonetheless, it is important to recognize, particularly on this 10-year anniversary of the organization, that there remains substantial room for improvement at the WTO. In particular, both the ongoing Doha Round negotiations and the WTO dispute settlement system are facing significant challenges that will need to be addressed to preserve—and, in some cases, restore—confidence in the system of rules that undergirds the world trading system.

The Doha Round of negotiations has reached a critical phase. It is generally agreed that in order to have a successful meeting of ministers this December in Hong Kong, the members of the WTO will have to come to a significant level of agreement by July in three key areas.

First, on agriculture, it will be essential that the final Doha agreement significantly narrows the gap between U.S. and EU spending on farm supports. We are hopeful that Pascal Lamy, the former Trade Commissioner of the EU, who recently was named the next Director General of the WTO, will provide strong leadership in this regard. We suspect that a key reason that so many countries placed their confidence in Mr. Lamy is the potential that he can persuade his former colleagues in the European Commission and EU member states to take the steps necessary to accomplish this critical goal.

Second, the so-called “non-agricultural market access” (NAMA) negotiations present two key challenges: tariff reductions and the elimination or reduction of non-tariff barriers (NTBs). In both of these areas, much work remains to be done. In order to produce commercially meaningful results for U.S. manufacturers and work-

ers in the Doha Round, it will be important to achieve commitments for substantial tariff reductions, particularly by advanced developing countries.

The elimination of non-tariff barriers also is increasingly critical for U.S. manufacturers, especially small manufacturers, and particularly in large markets such as Japan, China and Korea. Because experience has demonstrated that the benefits of tariff reduction in the automobile and other manufacturing sectors may be undermined by NTBs, U.S. tariff commitments should be linked to progress on NTBs.

Third, there is now widespread agreement that negotiations on services are far behind even the other areas of negotiations. Services are a priority for the United States, as services accounted for approximately 30% of U.S. exports of goods and services in 2003. Services industries employ as much as 80% of the U.S. workforce. In addition, after this year, services trade is likely to be the only area in which the United States has a trade surplus—albeit a rapidly shrinking one. We hope US. negotiators will be able to make up for lost time in the next two months so that an ambitious services package will be prepared for approval in Hong Kong.

Finally, it is essential to take this opportunity of the 10th anniversary of the WTO to highlight the weaknesses of the WTO dispute settlement system. None is as glaring as the penchant for overreaching that has been manifest in a significant number of WTO decisions.

Under the old GATT system, silence in an agreement meant that a *country* could do what *it* deemed appropriate. Under the decisions of the Appellate Body and panels of the WTO, silence has been altered to mean that the *Appellate Body and panels* do what *they* think is appropriate.

The WTO agreements do not give panels this authority, and Congress, in approving the WTO Agreements, certainly did not intend for panels to have this authority. In short, this overreaching must be corrected—fully and quickly. If it is not corrected, it risks eroding support for the WTO. In fact, it has already begun to do so.

The number of cases in which overreaching is occurring is clear and disturbing. In cases brought against the United States since 1995, panels or the Appellate Body have overreached in 22 out of 33 instances, or in fully two-thirds. Even more disturbing, in 23 instances involving trade remedy issues brought against the United States since 1995, there has been overreaching in 20 of them—more than 85 percent.

The consequences of this overreaching are clear. In 10 years, the WTO has not affirmed a *single* safeguard measure—as applied by the United States or any other country. In trade remedy cases involving the United States—antidumping duties, countervailing duty measures and safeguards cases—the WTO has upheld the U.S. decision in only 2 of 17 cases.

A growing number of observers is coming to recognize that this extraordinary loss rate is because WTO panels and its Appellate Body do not respect the letter of the WTO agreements and are “filling in gaps” beyond what US. negotiators agreed to in the Uruguay Round. USTR has even recognized this problem with proposals it has made to the dispute settlement negotiations in the Doha round.

The tendency of the WTO dispute settlement panels and Appellate Body to overstep their authority is unacceptable and damaging to U.S. businesses and workers. Decisions involving overreaching undermine confidence in the WTO system and will make negotiating new agreements that much harder.

To conclude, we believe that most of our colleagues in the House will agree that, on balance, the benefits of US. participation in the WTO outweigh the costs, and that the organization has been a positive force in promoting and shaping global trade. But we also hope that our colleagues will view this ten year anniversary of the WTO as an opportunity to assess the WTO's strengths and weaknesses and to develop and implement mechanisms for improving the organization.

CHARLES B. RANGEL.
WILLIAM J. JEFFERSON.
RAHM EMANUEL.
JIM McDERMOTT.
JOHN B. LARSON.
BEN CARDIN.
MICHAEL R. McNULTY.
SANDER LEVIN.
JOHN LEWIS.
XAVIER BECERRA.
STEPHANIE TUBBS JONES.

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