

미국이 체결한 주요 통상협정 이행법의 “통상협정과 국내법과의 관계” 조항 비교

한-미 FTA 이행법 (2011년) (Public Law 112-42, Section 102)	미-호주 FTA 이행법 (2004년) (19 U.S. Code 3805 notes Section 102)	우루과이라운드협정 이행법 (1994년) (19 U.S. Code 3512)	NAFTA 이행법 (1993년) (19 U.S. Code 3312)
<p>(a) RELATIONSHIP OF AGREEMENT TO UNITED STATES LAW -</p> <p>(1) UNITED STATES LAW TO PREVAIL IN CONFLICT- No provision of the Agreement, nor the application of any such provision to any person or circumstance, which is inconsistent with any law of the United States shall have effect.</p> <p>(2) CONSTRUCTION- Nothing in this Act shall be construed --</p> <p>(A) to amend or modify any law of the United States, or</p> <p>(B) to limit any authority conferred under any law of the United States,</p> <p>unless specifically provided for in this Act.</p>	<p>(a) RELATIONSHIP OF AGREEMENT TO UNITED STATES LAW -</p> <p style="text-align: center;">< 좌동 ></p>	<p>(a) RELATIONSHIP OF AGREEMENT TO UNITED STATES LAW -</p> <p>(1) UNITED STATES LAW TO PREVAIL IN CONFLICT - ----- ----- any of the Uruguay Round Agreements, ----- -----, that is</p> <p>(2) CONSTRUCTION- -----</p> <p>(A) ----- ----- including any law relating to—</p> <p>(i) the protection of human, animal, or plant life or health,</p> <p>(ii) the protection of the environment, or</p> <p>(iii) worker safety, or</p> <p>(B) ----- -----, including section 2411¹⁾ of this title;</p>	<p>(a) RELATIONSHIP OF AGREEMENT TO UNITED STATES LAW -</p> <p>(1) UNITED STATES LAW TO PREVAIL IN CONFLICT - ----- ----- ----- -----</p> <p>(2) CONSTRUCTION- -----</p> <p>(A) ----- ----- including any law relating to—</p> <p>(i) the protection of human, animal, or plant life or health,</p> <p>(ii) the protection of the environment, or</p> <p>(iii) worker safety, or</p> <p>(B) ----- -----, including section 2411 of this title;</p>

※ NAFTA 이행법과 우루과이라운드협정 이행법은 1974년 제정되었던 소위 “Fast Track” (19 U.S.C. 2191~2194)에 따라 인준된 반면(동 규정은 1994년 종료), 미-호주 FTA와 한-미 FTA는 2002년에 새로 제정된 “Bipartisan Trade Promotion Authority” (19 U.S.C. 3801~3813)에 근거하여 인준되어 다소 구성이나 표현상의 차이는 있지만 논란이 되는 해당 조항의 내용은 동일함.

1) Section 2411은 소위 “Super 301조”로서 미국의 무역보복과 관련된 규정

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<p>(b) RELATIONSHIP OF AGREEMENT TO STATE LAW -</p> <p>(1) LEGAL CHALLENGE- No State law, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the Agreement, except in an action brought by the United States for the purpose of declaring such law or application invalid.</p> <p>(2) DEFINITION OF STATE LAW- For purposes of this subsection, the term 'State law' includes--</p> <p>(A) any law of a political subdivision of a State; and</p> <p>(B) any State law regulating or taxing the business of insurance.</p>	<p>(b) RELATIONSHIP OF AGREEMENT TO STATE LAW -</p> <p style="text-align: center;">< 좌동 ></p>	<p>(b) RELATIONSHIP OF AGREEMENT TO STATE LAW -</p> <p>(1) (...)</p> <p>(2) LEGAL CHALLENGE</p> <p>(A) ----- ----- ----- ----- ----- ----- -----</p> <p>(B) (...)</p> <p>(C) (...)</p> <p>(3) "STATE LAW" DEFINED - ----- ----- -----</p> <p>(A) ----- -----</p> <p>(B) ----- -----</p>	<p>(b) RELATIONSHIP OF AGREEMENT TO STATE LAW -</p> <p>(1) (...)</p> <p>(2) LEGAL CHALLENGE- ----- ----- ----- ----- ----- ----- -----</p> <p>(3) "STATE LAW" DEFINED - ----- ----- -----</p> <p>(A) ----- -----</p> <p>(B) ----- -----</p>

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<p>(c) EFFECT OF AGREEMENT WITH RESPECT TO PRIVATE REMEDIES- No person other than the United States--</p> <p>(1) shall have any cause of action or defense under the Agreement or by virtue of congressional approval thereof; or</p> <p>(2) may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of the United States, any State, or any political subdivision of a State, on the ground that such action or inaction is inconsistent with the Agreement.</p>	<p>(c) EFFECT OF AGREEMENT WITH RESPECT TO PRIVATE REMEDIES- No person other than the United States--</p> <p style="text-align: center;">< 좌동 ></p>	<p>(c) EFFECT OF AGREEMENT WITH RESPECT TO PRIVATE REMEDIES-</p> <p>(1) Limitations - No person other than the United States—</p> <p>(A)</p> <p>----- any of the Uruguay Round Agreements -----</p> <p>(B) -----</p> <p>-----</p> <p>-----</p> <p>-----</p> <p>-----</p> <p>-----</p> <p>-----</p> <p>-----</p>	<p>(c) EFFECT OF AGREEMENT WITH RESPECT TO PRIVATE REMEDIES- No person other than the United States—</p> <p>(1) -----</p> <p>-----</p> <p>(A) the Agreement -----</p> <p>-----</p> <p>(B) the North American Agreement on Environmental Cooperation or the North American Agreement on Labor Cooperation; or</p> <p>(2) -----</p> <p>-----</p> <p>-----</p> <p>-----</p> <p>-----</p> <p>-----</p> <p>-----,</p> <p>the North American Agreement on Environmental Cooperation, or the North American Agreement on Labor Cooperation.</p>