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Trade Agreements: Procedure for Congressional Approval and Implementation

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name redacted
Specialist in International Trade and Finance
Foreign Affairs, Defense, and Trade Division

Trade Agreements: Procedure for Congressional Approval and Implementation

Summary

Trade agreements on tariff-and-nontariff barriers, including those establishing free-trade areas, must be approved and implemented by the enactment of implementing bills, for the consideration of which expedited legislative procedures have been enacted. The procedures, initially referred to as “fast track” and more recently as “trade authorities procedures,” provide for mandatory introduction and consideration of an implementing bill with deadlines for individual legislative stages, prohibit any amendments, and require an up-or-down vote.

This report presents the individual statutes setting out the authorities and procedures for relevant legislative action in a functional time-table, together with references to their public-law and U.S. Code alphanumerical designations.

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Trade Agreements: Procedure for Congressional Approval and Implementation

Background

The United States has recently completed, or has in progress or intends to enter into, negotiations with foreign countries of a number of bilateral or multilateral trade agreements establishing free-trade areas (FTAs); since they contain modifications of nontariff as well as tariff trade barriers, they require changes in U.S. trade legislation.¹ For the enactment of such legislation and its implementation, specific procedures are set out in trade law, which provide for expedited congressional consideration of the relevant measure if specified conditions required by law are complied with. The expedited consideration, originally called “fast track” procedure, but recently also named “trade authorities procedures (TAPs),” provides for mandatory consideration of the measure once introduced, with specific deadlines for each legislative phase; allows no amendments; and requires a final up-or-down vote.

The statutory authority and requirements² for the enactment and implementation of such trade agreements that have recently been concluded or are in the process of negotiation or in the planning stage are contained in the provisions of the Bipartisan Trade Promotion Authority Act of 2002 (TPA Act) (Title XXI of the Trade Act of 2002, as amended by Section 2004(a)(17) of the Miscellaneous Trade and Technical Corrections Act of 2004; P.L. 108-429). The legislative procedure for their implementation is set out in Section 151 of the Trade Act of 1974; P.L. 93-618).

The TPA Act authorizes the use of the trade authorities procedures for the enactment of bills implementing agreements regarding tariff-and-nontariff barriers (including free-trade agreements) entered into with foreign countries by the President before July 1, 2005 (or July 1, 2007, if the President requests such extension before April 1, 2005, and either House of Congress does not adopt an “extension disapproval resolution;” see Appendix item (1)).

¹ Implementation of trade agreements containing only tariff concessions historically has not required subsequent enactment and has taken place by Presidential proclamation, if the concessions agreed therein have been kept within the limits set by the legislation authorizing their negotiation.

² Such requirements (Presidential consultations with, and notices and reports to Congress before, during, and after the negotiations of agreements to be implemented by means of trade authorities procedures) are the subject of CRS Report RL31974, *Trade Agreements: Requirements for Presidential Consultations, Notices, and Reports to Congress Regarding Negotiations*, by (name redacted).

The expedited legislative procedures (“trade authorities procedures” — TAPs) by which such agreements would be implemented are set out principally in Section 151 of the Trade Act of 1974 (P.L. 93-618), as amended (19 U.S.C. 2191). Although this statute is permanent law, it has been enacted as an exercise of the rulemaking power of either House and can be changed by either House, with respect to its own procedure, at any time, in the same manner and to the same extent as any other rule of that House. It applies only to the procedure specifically covered by it (e.g., approval of trade agreements), but in that context supersedes any other rules to the extent that they are inconsistent with it (Section 151(a); 19 U.S.C. 2191(a)). These permanent procedural provisions are occasionally supplemented by additional, temporary ones, contained in the legislative authority for the negotiation of the agreements, such as various disapproval or other resolutions presented in the Appendix. They, too, are considered an exercise of the rulemaking power of either House of Congress.

Since the expedited procedures do not permit any amendments to the legislation once it has been introduced, the final language of the implementing bill is fashioned through advance “mock” or “nonmark” markups by the relevant committees in order to arrive at legislative language that reflects the provisions of the agreement as well as congressional concerns regarding its implementation. The version “marked up” in this manner is then transmitted, together with the required statement of administrative action and other supporting documents, by the President to Congress for legislative action.

Implementing Procedure

The steps in the expedited procedure for the legislative consideration and enactment of an implementing bill, and the implementation of the underlying trade agreement are described below in their functional time sequence. While care has been taken to reflect accurately the meaning of the relevant, more extensively worded, statutes, consulting the actual language of any statute is recommended in case of any ambiguity or need for greater detail. Moreover, because these provisions are rulemaking statutes, questions concerning the interpretation of these procedures and possible parliamentary rulings pursuant to them should be referred to the House and Senate parliamentarians’ offices.

In this description, the provisions of Section 151 of the Trade Act of 1974 are not specifically identified in their alphanumerical designation as contained in that Act; provisions contained in the Trade Act of 2002, however, are identified with the addition of the abbreviation “TA02.”

(1) *Prior consultation, and report regarding U.S. trade remedy laws.*

Before entering into any tariff-and-nontariff agreement, the President is required (a) to consult with certain Congressional bodies on the contents of the agreement, and (b) submit a report on possible effect of the agreement on U.S. trade remedy laws³

³ A detailed description of such consultation and report, see CRS Report RL31974, *Trade* (continued...)

(2) *“Mock” mark-ups.*

Since the implementing bill is not amendable (see item (7)), its draft is submitted to Congress informally for hearings and “mock” mark-ups by the relevant committees for changes reflecting the Congress’s concerns regarding the agreement and the final language of the legislation to be transmitted to Congress formally for legislative action.

(3) *Enactment necessary.*

The agreement can take effect only if it is approved by the enactment of an implementing bill (Section 2105(a)(1)(D), TA02; 19 U.S.C. 3805(a)(1)(D)), the specific expedited procedures for which are contained in Section 151 (19 U.S.C. 2191).⁴

(4) *Transmittal of the agreement by the President to Congress.*

After entering into an agreement, the President is required to submit to Congress the final legal text of the agreement, together with a draft of the implementing bill, a statement of any administrative action proposed to implement the agreement, and sundry supporting information. While the law specifies no deadline for such submission, it must take place on a day on which both Houses are in session. Failure to comply with this submission requirement would prevent the agreement from entering into force (Section 2105(a)(1)(C) and (a)(2), TA02; 19 U.S.C. 3805(a)(1)(C) and (a)(2)).

(5) *Mandatory introduction of implementing bill.*

On the day the trade agreement, the implementing bill⁵ and the supporting documents are submitted to the Congress, the implementing bill must be introduced

³ (...continued)

Agreements: Requirements for Presidential Consultations, Notices, and Reports to Congress Regarding Negotiations, by (name redacted).

⁴ To qualify for expedited procedures, the implementing bill must contain provisions approving the trade agreement and the statement of administrative action, and the changes in existing laws required to implement the agreement. (Section 2103(b)(3), TA02; 19 U.S.C. 3803(b)(3)). — Expedited consideration of a tariff-and-nontariff implementing bills is also contingent on the President’s compliance with various statutory requirements for consultations with and notices and reports to Congress before, during, and after the negotiation of the agreement involved. (See footnote 3). Failure to comply with such requirements may result in the adoption of a procedural disapproval resolution denying expedited consideration (see Appendix item (2)).

⁵ In this description it is assumed that the implementing bill in question is an “implementing revenue bill”, that is a bill “which contains one or more revenue measures by reason of which it must originate in the House of Representatives” (Section 151(b)(2); 19 U.S.C. 2191(b)(2)). This is a requirement contained in Article I, Section 7, of the Constitution of the United States, which provides that “All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.” Although in this situation identical and nonamendable bills are introduced in both Houses, the measure enacted by Congress and transmitted to the President, consequently, has to be the House bill and the enacting procedure reflects that circumstance (Cf. the specific procedure for committee consideration in the Senate, described in item (10)).

(by request) in both Houses of Congress by their respective majority leaders for themselves and the minority leaders, or by their designees (Section 151(c)(1); 19 U.S.C. 2191(c)(1)).

(6) Committee referral.

In either House, the implementing bill is referred to the appropriate committee or, in the likely case that it contains provisions within the jurisdiction of more than one committee, jointly to such committees for consideration of matters within their jurisdiction (Section 151(c)(1); 19 U.S.C. 2191(c)(1)).

(7) Amendments prohibited.

In either House, no amendment to the bill is in order, nor is a motion to suspend the no-amendment rule, or a request to suspend it by unanimous consent (Section 151(d); 19 U.S.C. 2191(d)).

(8) Committee consideration in the House.

If a committee to which the bill has been referred has not reported it within 45 days⁶ after its introduction, such committee is automatically discharged from its further consideration, and the bill is placed on the appropriate calendar (Section 151(e)(1); 19 U.S.C. 2191(e)(1)).

(9) Floor consideration in the House.

(a) A motion to proceed to the consideration of an implementing bill is highly privileged and nondebatable; an amendment to the motion, or a motion to reconsider the vote whereby the motion is agreed or disagreed to, is not in order (Section 151(f)(1); 19 U.S.C. 2191(f)(1)).

(b) Debate on the bill is limited to 20 hours, divided equally between the supporters and opponents of the bill; a motion further to limit debate is not debatable; a motion to recommit the bill, or to reconsider the vote whereby the bill is agreed or disagreed to, is not in order (Section 151(f)(2); 19 U.S.C. 2191(f)(2)).

(c) Motions to postpone the consideration of the bill, and motions to proceed to the consideration of other business are decided without debate (Section 151(f)(3); 19 U.S.C. 2191(f)(3)).

(d) All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to an implementing bill are decided without debate (Section 151(f)(4); 19 U.S.C. 2191(f)(4)).

(e) The vote (by simple majority) on final passage of the bill must be taken on or before the 15th day⁷ after the bill has been reported by the committee(s) to which it had been referred, or such committees had been discharged from its further consideration (Section 151(e)(1); 19 U.S.C. 2191(e)(1)).

(f) In all other respects, consideration of an implementing bill is governed by the Rules of the House of Representatives applicable to other bills in similar circumstances (Section 151(f)(5); 19 U.S.C. 2191(f)(5)).

⁶ In computing the number of days in either House, any day on which that House is not in session is excluded (Section 151(e)(3); 19 U.S.C. 2191(e)(3)). Days are counted separately in either House.

⁷ Computed as in the previous footnote.

(10) *Committee consideration in the Senate.*

(a) An implementing revenue bill⁸ passed by the House of Representatives and received in the Senate is referred to the appropriate committee (or committees) (Section 151(e)(2); 19 U.S.C. 2191(e)(2)).

(b) If the bill has not been reported by the relevant committee(s) within 15 days after its receipt from the House, or 45 days⁹ after the introduction of the corresponding Senate measure (whichever is later), such committee is automatically discharged from further consideration of the bill, and the bill is placed on the appropriate calendar (Section 151(e)(2); 19 U.S.C. 2191(e)(2)).

(11) *Floor consideration in the Senate.*

(a) A motion to proceed to the consideration of the implementing bill is privileged and nondebatable; an amendment to the motion, or a motion to reconsider the vote whereby the motion is agreed or disagreed to, is not in order (Section 151(g)(1); 19 U.S.C. 2191(g)(1)).

(b) Debate on the implementing bill and on all debatable motions and appeals connected with it is limited to 20 hours, equally divided between, and controlled by, the majority leader and the minority leader, or their designees (Section 151(g)(2); 19 U.S.C. 2191(g)(2)).

(c) Debate on any debatable motion or appeal is limited to one hour, equally divided between, and controlled by, the mover and the manager of the bill, except that if the manager of the bill is in favor of any such motion or appeal, the time in opposition is controlled by the minority leader or his designee; such leaders may, from time under their control on the passage of the bill, allot additional time to any Senator during the consideration of any debatable motion or appeal (Section 151(g)(3); 19 U.S.C. 2191(g)(3)).

(d) A motion to further limit debate on the bill is not debatable; a motion to recommit it is not in order (Section 151(g)(4); 19 U.S.C. 2191(g)(4)).

(e) The vote (by simple majority) on final passage of the bill must be taken on or before the 15th day¹⁰ after the bill has been reported, or the committee(s) of referral have been discharged from its further consideration (Section 151(e)(2); 19 U.S.C. 2191(e)(2)).

(f) Although, unlike in the case of the House procedure, this is not specifically mentioned in Section 151, the Rules of the Senate govern the consideration of the implementing bill in the Senate in all aspects not specifically addressed in Section 151.

(12) *Entry into force.* The agreement enters into force upon the completion of the necessary domestic legal procedures by each party to it¹¹ and exchange of written notices that such procedures have been completed. Entry into force may take place on the date of the exchange of such notices or on any later date set in the agreement or otherwise agreed upon by the parties.

⁸ See footnote 5.

⁹ Both computed as in footnote 6.

¹⁰ Computed as in footnote 6.

¹¹ In the United States, enactment of the implementing bill into law.

Appendix

(1) *Extension disapproval resolutions.*¹²

(a) By submitting a relevant report, the President may request an extension of the application of trade authorities procedures for bills implementing agreements involving tariff-and-nontariff barriers (e.g., free-trade agreements) entered into after July 31, 2005, and before July 1, 2007 (Section 2103(c)(1)(B)(i), TA02; 19 U.S.C. 3803(c)(1)(B)(i)).

(b) Trade authorities are extended automatically upon such request if neither House adopts an extension disapproval resolution before July 1, 2005 (Section 2103(c)(1)(B)(ii), TA02; 19 U.S.C. 3803(c)(1)(B)(ii)).

(c) An extension disapproval resolution is a resolution of either House, containing language prescribed by law, which may be introduced by any member, and is referred in the House to the committees on Ways and Means, and on Rules (Section 2103(c)(5)(A) and (B), TA02; 19 U.S.C. 3803(c)(5)(A) and (B)).¹³

(Legislation contains no deadline for committee report nor provision for discharge of a committee of referral; but see item (e) below.)

(d) On the floor of either House, the resolution is considered under the specific expedited procedure of the Trade Act of 1974 for resolutions disapproving certain actions (Section 152(d) and (e); 19 U.S.C. 2192(d) and (e)), and identical with the procedure for floor consideration of the implementing bill (see items (7) and (9) above), *except* that,

in the House, no amendment to the resolution is in order; and

in the Senate, a motion to proceed to the consideration of the resolution is debatable; the nondebatable motion to further limit debate on the resolution applies also to a debatable motion, or appeal; and no amendment to the resolution is in order.

(e) It is not in order to consider an extension disapproval resolution not reported, in the Senate, by the Finance Committee or, in the House, by the Ways and Means, and Rules Committees, or to consider it after June 30, 2005 (Section 2103(c)(5)(D), TA02; 19 U.S.C. 3803(c)(5)(D)).

(2) *Procedural disapproval resolutions.*¹⁴

(a) If the President fails or refuses to notify, or consult with, the Congress regarding the negotiation of a tariff-and-nontariff agreement, on specific topics as required by Section 2105(b)(1)(B)(ii), TA02 (19 U.S.C. 3805(b)(1)(B)(ii)), the Congress may deny the consideration of the implementing bill of such agreement under trade authorities procedures by both Houses agreeing, within 60 days from each other, to twin one-House procedural disapproval resolutions with respect to such agreement (Section 2105(b)(1)(A), TA02; 19 U.S.C. 3805(b)(1)(A)).

(b) The language of the resolution is prescribed by law (Section 2105(b)(1)(B), TA02; 19 U.S.C. 3085(b)(1)(B)).

¹² These provisions are enacted as an exercise of the rulemaking power of either House (Section 2105(c), TA02; 19 U.S.C. 3805(c)). (See also text on p. 2 regarding “rule” status of trade authorities procedures under Section 151.)

¹³ The law does not specify the committee of referral in the Senate, but by necessary implication of Section 2103(c)(5)(D)(i), it is the Committee on Finance (see sub-item (e)).

¹⁴ See footnote 12.

(c) The resolution may be introduced by any Member of either House, is referred to the Ways and Means Committee and the Rules Committee in the House, and to the Finance Committee in the Senate, and is nonamendable (Section 2105(b)(2)(A), TA02; 19 U.S.C. 3805(b)(2)(A)).¹⁵

(d) On the floor of either House, the resolution is considered under the same expedited procedure (Section 152, Trade Act of 1974; see item (1)(d) above) as an extension disapproval resolution, but only if no other procedural disapproval resolution, or no “trade-remedy laws” resolution (see item (3) below) with respect to that trade agreement, has previously been reported in that House by the respective committee of referral (Section 2105(b)(2)(B), TA02; 19 U.S.C. 3805(b)(2)(B)).

(e) It is not in order to consider a procedural disapproval resolution not reported, in the House, by the Ways and Means Committee and the Rules Committee, or, in the Senate, by the Finance Committee (Section 2105(b)(2)(C) and (D), TA02; 19 U.S.C. 3805(b)(2)(C) and (D)).

(3) *Nonbinding (“trade-remedy laws”) resolutions.*¹⁶

(a) If the trade-remedy laws provisions of a prospective tariff-and-nontariff trade agreement, as described in the required relevant President’s report¹⁷, are inconsistent with the trade-remedy laws negotiating objectives of the Trade Act of 2002, either House may adopt a (one-House) nonbinding resolution, finding that there exists such inconsistency (Section 2104(d)(3)(C)(ii), TA02; 19 U.S.C. 3804(d)(3)(C)(ii)).¹⁸

(b) The language of the resolution is prescribed by law (Section 2104(d)(3)(C)(ii), TA02; 19 U.S.C. 3804(d)(3)(C)(ii)).

(c) The resolution may be introduced by any Member of either House, is referred to the Ways and Means Committee and the Rules Committee in the House, and to the

¹⁵ The nonamendability language of this resolution differs in the procedures of the two Houses: in the House, it applies to “either [Ways and Means, and Rules] Committee,” in the Senate, it is unqualified (respectively, subclauses (i)(III) and (ii)(III)), suggesting that this provision permits amendments on the House floor. Amendments on the House floor, however, are not in order pursuant to Section 152(d)(2) (19 U.S.C. 2192(d)(2)) of the specific expedited procedure, unless that provision does not apply because of a denial, on whatever grounds, of its applicability.

¹⁶ See footnote 12. - The term “trade-remedy laws resolution” is used in this report to avoid possible ambiguity; the legislation uses only “resolution.”

¹⁷ The President is required, by Section 2104(d)(3)(A) of the Trade Act of 2002 (19 U.S.C. 3804(d)(3)(A)) to report to the House Ways and Means Committee and the Senate Finance Committee, at least 180 days before entering into a tariff-and-nontariff agreement, regarding any proposals in the agreement that is being negotiated, which would require a change in U.S. countervailing, antidumping, or safeguard laws, and how such proposals relate to the U.S. negotiating objectives with respect to trade remedy laws stated in Section 2102(b)(14) (19 U.S.C. 3802(b)(14)).

¹⁸ The *adoption* itself of the “nonbinding” resolution has no objective consequences, but the fact of its having been *reported* in either House denies the application of the expedited procedure (see item (2)(d) above) to floor consideration of a procedural disapproval resolution in that House.

Finance Committee in the Senate, and is nonamendable (Section 2104(d)(3)(C)(iii), TA02; 19 U.S.C. 3804(d)(3)(C)(iii))¹⁹

(d) On the floor of either House, the resolution is considered under the same expedited procedure as an extension disapproval resolution (see items (1)(d) and (2)(d)above), but only if no procedural disapproval resolution or no other “trade-remedy laws” resolution with respect to that trade agreement has previously been reported in that House by the respective committee of referral (Section 2104(d)(3)(C), TA02; 19 U.S.C. 3804(d)(3)(C)).

¹⁹ The same nonamendability as applies to a procedural disapproval resolution (see item (2)(c) and footnote 15 above) also applies under this rule to a nonbinding resolution, but this, in practice, has no effect on a procedural disapproval resolution, since any such effect is contingent on the nonbinding resolution’s merely having been reported (see item (2)(d) above and footnote 18), up to which procedural stage it is nonamendable in either House. A “trade-remedy laws” resolution is also generally nonamendable in the House under the provisions of Section 152(d) of the Trade Act of 1974 (which applies to the consideration of such resolution), unless the applicability of that rule is denied, on whatever grounds, to such consideration.

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